

No. 20-1797

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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CRYSTAL HOLTZ,  
Plaintiff-Appellant,

v.

ONEIDA AIRPORT HOTEL CORPORATION, ROBERT BARTON,  
STEVE NINHAM, and AIMBRIDGE HOSPITALITY, LLC,  
Defendant-Appellees.

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On Appeal from the United States District Court  
For the Eastern District of Wisconsin  
Honorable Judge William C. Griesbach, Chief Judge  
Case No. 1:2019-cv-01682-WCG

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**Opening Brief of Plaintiff-Appellant**

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Crystal Holtz, *pro se*  
1140 Moraine Way, Apt. 21  
Green Bay, WI 54303

Phone: 954.647.5156

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Fed. Rule 26.1 Statement.

Pursuant to Fed. Rule 26.1 the Plaintiff-Appellant states, Plaintiff-Appellant files this action as an individual and not a non-governmental corporate party to any proceeding and that this action is not of any parent corporation, publicly held company, nor is stock held.

Table of Contents

Contents

Table of Authorities ..... iv

INTRODUCTION..... 1

STATEMENT OF JURISDICTION..... 2

STATEMENT OF THE ISSUES ..... 2

STATUTORY PROVISIONS..... 4

STATEMENT OF THE CASE..... 4

    I.    FACTUAL BACKGROUND RELEVANT TO REVIEW ..... 5

    II.   PROCEDURAL HISTORY AT THE DISTRICT COURT..... 6

SUMMARY OF THE ARGUMENT..... 6

STANDARD OF REVIEW-REVIEWABILITY..... 7

ARGUMENT..... 8

    I.    THE PLAINTIFF-APPELLANT’S REQUEST TO DENY STATE COURT  
REMOVAL IS THE OPPOSITION TO DISMISSAL. .... 8

    II.   THE DISTRICT COURT CLEARLY ERRORED WHEN DECIDING THAT  
OAHG HAD SOVEREIGN IMMUNITY WITHOUT APPLYING A THRESHOLD ARM-  
OF-THE-TRIBE TESTS TO DETERMINE OAHGs TRUE IDENTITY. .... 9

    III.  OAHG WILL FAIL THE ARM-OF-THE-TRIBE TESTS THEREFORE U.S.  
CONSTITUTIONAL AMENDMENTS, STATUTES AND OTHER FEDERAL RIGHTS

AND LAWS WOULD APPLY TO OAHC BECAUSE THEY CANNOT HIDE UNDER THE VEIL OF TRIBAL SOVEREIGNTY..... 14

IV. BECAUSE OAHC FAILS THE ARM-OF-THE-TRIBE TESTS THE OTHER DEFENDANTS WILL ALSO NOT HAVE SOVEREIGN IMMUNITY..... 14

V. THE DISTRICT COURT’S UNDERLYING DECISION THAT OAHC HAS SOVERIGN IMMUNITY IS A MISTAKE, LEADING TO A FLAWED ANALYSIS THAT EXTINGUISHES THE PLAINTIFF-APPELLANT’S MERITS. .... 15

VI. RED LIVES MATTER. THE DISTRICT COURT APPEARS TO RESENT THE PLAINTIFF BEING AN ONEIDA CITIZEN LEADING TO THE ERRONEOUS DECISION THAT OAHC HAS SOVEREIGN IMMUNITY WITHOUT PROOF TO QUASH THE PLAINTIFF-APPELLANT’S MERITS. .... 16

CONCLUSION ..... 17

STATEMENT OF RELATED CASES ..... 18

CERTIFICATE OF COMPLIANCE ..... 19

EXHIBIT A ..... 20

Table of Authorities

**Cases**

1:19-cv-01682-WCG ..... 5

*Ashcroft v. Iqbal*, 556 U.S. 662 (2009) ..... 3

*Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) ..... 3, 7

*Burrell v. Armijo*, 456 F.3d 1159 (10th Cir. 2006) ..... 2

*Haines v. Kerner*, 404 U.S. 519 (1972) ..... 3, 7, 9

*Hwal'Bay Ba: J Enterprises, Inc., v. Honorable Lee F. Jantzen, Judge of the Superior Court of the State of Arizona, in and for the County of Mohave, and Sara and William Fox*..... 1, 10

*Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998) ..... 7

*Miner Elect., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007) ..... 16

*People Ex Rel. Owen v. Miami Nation Enterprises*, 2 Cal.5th 222 (2016) ..... 1, 10

*Salas v. United States*, 234 F. 842 (2d Cir. 1916) ..... 16

*Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144 (2012) ..... 1, 2, 10

**Exhibits**

Corporate Charter ..... passim

**Rules**

Fed. R. Civ. P. 8(a)(2) ..... 3

Rule 3(a) ..... 2

Rule 4(a)(1)(A) ..... 2

**U. S. Constitution**

Article III Standing to Sue ..... 6, 18  
Fifth Amendment ..... 4, 16, 20  
Fourteenth Amendment ..... 4, 16, 20

## INTRODUCTION

**This Brief is tenet to tribal sovereignty of the Oneida Airport Hotel Corporation (OAHC) a tribal corporation because the District Court erred or in the alternative ignored “true identity<sup>1</sup>” doctrine to determine if OAHC can be cloaked in tribal sovereignty.** The District Court judge misconstrues or ignores tribal corporation *stare decisis* six-factor arm-of-the-tribe tests<sup>2, 3</sup> to determine the true identity of OAHC; which is a for profit business operating under its own business Corporate Charter<sup>4</sup> waives sovereignty to the extent the Corporate Charter allows OAHC to sue and be sued. The District Court fails to address the “**true identity**” of OAHC by ignoring precedential arm-of-the-tribe tests<sup>5</sup> which leads the District Court to an erroneous Decision to Dismiss by placing the Court’s knee on the Plaintiff-Appellant’s neck to remove oxygen from any federal claim upon which relief can be granted. In reverse or in the alternative the contrary language ought to be, in sum, Holtz’s claims are valid because the OAHC cannot claim sovereign immunity and since tribal courts are not courts of general jurisdiction, they cannot hear 42 U.S.C. § 1983, 42 U.S.C. § 1985 or other federal claims, *inter alia*, and thus Holtz states a claim for which relief can be granted.

It is irresponsible for the District Court to Dismiss this claim with prejudice when the District Court makes no attempt to determine the “**true identity**” of the OAHC; the District Court makes an fallacious “assumption” that OAHC is automatically immune from lawsuit because the Defendants raise a snippet of tribal sovereignty. This erroneous “assumption” without applying judicial rigor to the arm-of-the-tribe tests are a severe District Court failure that directly harms the

<sup>1</sup> *People Ex Rel. Owen v. Miami Nation Enterprises*, 2 Cal.5th 222 (2016).

<sup>2</sup> *Hwal'Bay Ba: J Enterprises, Inc., v. Honorable Lee F. Jantzen, Judge of the Superior Court of the State of Arizona, in and for the County of Mohave, and Sara and William Fox*, No. CV-19-0123-PR (25 Feb. 2020).

<sup>3</sup> *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144 (2012) at 1149

<sup>4</sup> Corporate Charter of Oneida Airport Hotel Corporation (Exhibit 1).

<sup>5</sup> For example, the *Fox* and *Miami* arm-of-the-tribe tests.

Plaintiff-Appellant because it eliminates [her] U.S. Constitutional rights to equal protection and [her] right to due process; to a “full and fair opportunity to litigate<sup>6</sup>.”

The arm-of-the-tribe “**true identity**” *doctrine* tests will demonstrate to this Court that the District Court erred when they Dismissed this case because OAHG will fail all six (6) arm-of-the-tribe tests when they are properly applied to the tribal corporation. The failed arm-of-the-tribe tests will demonstrate to this Court that OAHG is a corporation just like any other. The Defendants therefore cannot cloak themselves in sovereign immunity. In other words, had the District Court applied the arm-of-the-tribe “**true identity**” tests, the District Court would not have Dismissed this Case. Because all four elements of clear error<sup>7</sup> are elucidated herein, this Case heard *de novo* or in the alternative ought to be Remanded; the Plaintiff-Appellant must have [her] day in court.

#### STATEMENT OF JURISDICTION

The District Court’ Screening Order Dismissing this Case for failure to state a claim upon which relief can be granted is appealable as of Right taken under Fed. Rules of Appellate Procedure, Rule 3(a) and Rule 4(a)(1)(A).

#### STATEMENT OF THE ISSUES

1. Did the District Court fail to construe ECF 23 as Opposition to the Defendant’s Motion to Dismiss? On page 1 of ECF 23 the header states, “Opposition to the Defendant’s Argument.” To liberally construe the Plaintiff’s ECF 23 pleading is minimally “a memorandum in opposition to dismiss.” Does ECF 23 show enough diligence to continue the Case without premature Dismissal?

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<sup>6</sup> *Burrell v. Armijo*, 456 F.3d 1159 (10th Cir. 2006).

<sup>7</sup> *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144 (2012) at 1153.



2. What happens right after the District Court lays out the *pro se* cut-in-paste “instructions” in ECF 25, page 5 (short plain statement<sup>8</sup>, fair notice<sup>9</sup>, the grounds<sup>10</sup>, labels and conclusions<sup>11</sup>, formulaic recitation will not do<sup>12</sup>, pleads sufficient true factual matter plausible on its face<sup>13</sup>, reasonable inference that the defendant is liable<sup>14</sup>, and enough to raise a right to relief above a speculative level<sup>15</sup>, and however inartfully pleaded given a liberal construction<sup>16</sup>)? These *pro se* “instructions” are meaningless because in the next paragraph, the District Court states, “Holtz’s federal claims fail first of all because they are barred under the doctrine of sovereign immunity.” And is stated so without determining the “**true identity**” of the OAHC; to determine *if* OAHC is cloaked in sovereign immunity by applying the arm-of-the-tribe tests. This Court must recognize this “clear error<sup>17</sup>” and Remand to allow the Lower Court to arm-of-the-tribe tests to determine OAHCs “**true identity**.”
3. If OAHC is not cloaked in sovereignty (assume OAHC fails the arm-of-the-tribe tests) is it possible that 42 U.S.C. § 1983 and 42 U.S.C. § 1985 would apply because OAHC is not cloaked in sovereignty and therefore could not claim to “act under color of tribal law?” See, ECF 25, page 7. Furthermore, if OAHC fails the arm-of-the-tribe tests they must also be subjected to the provisions of the Fifth Amendment and Fourteenth Amendment. See ECF 25, page 7.

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<sup>8</sup> Fed. R. Civ. P. 8(a)(2).

<sup>9</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 555.

<sup>10</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 555.

<sup>11</sup> *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) at 662.

<sup>12</sup> *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) at 662.

<sup>13</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 570.

<sup>14</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 556.

<sup>15</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 555

<sup>16</sup> *Haines v. Kerner*, 404 U.S. 519 (1972) at 520-21.

<sup>17</sup> A standard of review.

4. If OAHC is not cloaked in sovereignty (assume failed tests in item 3 *supra*.) It follows that the other Defendants, i.e., Barton, Ninham, and Aimbridge are also not cloaked in sovereignty and can be sued as outlined in the OAHC Corporate Charter.
5. In sum, is the District Court's Analysis flawed without first determining the "**true identity**" of OAHC? Why Analyze 25 U.S.C. § 1302 or Indian Civil Rights Act (ICRA) if OAHC fails the arm-of-the-tribe tests? See ECF 25, page 8. The inept justification for kicking this case down the road to the 7th Cir. is because the District Court wrongly assumes OAHC is "auto-sovereign" and then "inappropriately" applies federal-tribal law that results in an erroneous Dismissal.
6. Lastly, being Native American is not like having a gym membership; if you get lazy, you are "free" to terminate the gym membership. On the other hand, it is dangerous, irresponsible, insensitive, and doddering to infer the Oneida Plaintiff ought to "**terminate**" her tribal citizenship as a *remedy*. "She is also free to terminate her membership in the Oneida Nation," see ECF 25, page 6. The District Court fails to understand that both tribal governments and individual Indian citizens have federal legal rights. Generally, the erroneous protection of the former is at the expense of the other.

#### STATUTORY PROVISIONS

The laws are listed in the table of contents, there is an addendum, and they are all bound together in this single document.

#### STATEMENT OF THE CASE

The Defendants, i.e., the Oneida Airport Hotel Corporation (OAHC) an Oneida tribal corporation wrongfully terminated the Oneida Plaintiff who worked at the Radisson Hotel and

Conference Center as a sales manager. The background of employment is further elucidated by the District Court in ECF 25 Allegations of the Complaint, page 1. The Plaintiff sued the OAHC for the unlawful constructive discharge in Brown County and removed to federal District Court, *id.* 1:19-cv-01682-WCG. Subsequently, the District Court wrongly “assumed,” or in the alternative had erroneously decided that the tribal corporation shared sovereign immunity with the Oneida Nation without applying arm-of-the-tribe tests to determine the “**true identity**” of OAHC. The District Courts’ unfounded or in the alternative *untested* OAHC sovereign immunity declaration crosses an unconstitutional line; tips the laws in favor of the Defendants by scuttling the Plaintiff’s underlying merits concomitant Article III Standing to Sue. Plaintiff-Appellant states, that after the arm-of-the-tribe tests are applied the “**true identity**” of OAHC will be known such that OAHC will not be cloaked in tribal sovereignty thus making Plaintiff’s merits and Standing to Sue valid.

#### I. FACTUAL BACKGROUND RELEVANT TO REVIEW

On April 30, 2020, the District Court automatically assumed that a tribal corporation is cloaked in tribal sovereignty and thus the District Court projects this doomed ideology *passim* in the condemned Decision to Dismiss, ECF 25. And, because the “assumption” (albeit wrong) is so engrained in the District Court’s demeanor and judgement that the District Court can “see” no other logical outcome than to “decide” OAHC has tribal sovereignty parallelism, shared immunity. Does OAHC have the same sovereign immunity power as the Oneida Nation? Clearly, the arm-of-the-tribe tests are designed to answer whether OAHC shares sovereign immunity. Unfortunately, the District Court jumped to a conclusion that OAHC has sovereign immunity concomitant made a senseless Dismissal Decision based on the ill-fated assumption without applying the arm-of-the-tribe tests to elucidate the “**true identity**” of OAHC. In other words, the Plaintiff-Appellant’s underlying merits and Article III Standing to Sue failed because the District

Court's Decision to Dismiss this Case is like a house built on quicksand; the Defendant's foundational defense of shared sovereign immunity implodes upon itself.

## II. PROCEDURAL HISTORY AT THE DISTRICT COURT

On April 4, 2020, the Honorable William C. Griesbach, Chief Judge of E.D. Wis. by Decision and Order prematurely Dismissed this Case because Judge Griesbach wrongly believed Defendants were cloaked under tribal sovereign immunity. The District Court did not apply arm-of-the-tribe tests to determine the truth of this belief. The truth of the belief can only be known when OAHCs "**true identity**" is uncovered after the arm-of-the-tribe tests have been applied.

### SUMMARY OF THE ARGUMENT

The Plaintiff has the right to sue the Oneida Airport Hotel Corporation (OAH) because it is a public corporation just like all other corporations thus the OAH can sue and be sued<sup>18</sup>. The District Court attempts to preclude the latter. The Argument before the 7th Cir. is that the District Court made an arbitrary and capricious Decision to declare the tribal corporation (OAH) has or in the alternative shares sovereign immunity with the Oneida Nation without applying any framework or arm-of-the-tribe tests to determine the legitimacy of the nature or in the alternative uncover the "**true identity**" of the tribal corporation, i.e., *Fox* tests. The Plaintiff states that OAH would fail all six of the arm-of-the-tribe tests<sup>19</sup>, for example, the OAH is not a subordinate economic entity because OAH is a for profit corporation operating under a Board of Directors<sup>20</sup>. In another test, the lawsuit is not against the tribe and will not affect the tribe's property. All six tests will be fully elucidated in the Argument, *infra*.

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<sup>18</sup> OAH Corporate Charter, Article VI, Section M.

<sup>19</sup> *Fox* tests.

<sup>20</sup> OAH Corporate Charter, Article VII, Section A.

Because the OAHC would fail the arm-of-the-tribe tests, meaning the OAHC does not have sovereign immunity, the Plaintiff's pleadings, being liberally construed<sup>21</sup> should be heard in District Court. Thus, the Plaintiff-Appellant asks this Court find in [her] favor and Remand so the Plaintiff-Appellant can have a "full and fair opportunity to litigate"<sup>22</sup> because the Plaintiff-Appellant "raises a right to relief above a speculative level."<sup>23</sup>

#### STANDARD OF REVIEW-REVIEWABILITY

Notwithstanding, the OAHC Corporate Charter states the tribal corporation can be sued<sup>24</sup>, the applicability of whether OAHC can be sued can also be determined by its "true identity" as an outcome of the arm-of-the-tribe tests. The failure to administer a simple arm-of-the-tribe test is so egregious that the failure to test thwarts the Plaintiff-Appellant's due process and equal protections because the erroneous Decision to Dismiss maladroitly favors the Defendants while attempting to place a botched estoppel upon the unsuspecting *pro se* Plaintiff-Appellant. These matters are reviewable as questions of law (*de novo*), clear error, and abuse of discretion.

Are tribal laws relevant if OAHC fails the arm-of-the-tribe tests? If the OAHC fails, the arm-of-the-tribe tests can the Defendants claim tribal sovereign immunity? These are questions of law and are reviewable *de novo*.

Notwithstanding the OAHC Corporate Charter, the Oneida Radisson Hotel projects a global business brand to unsuspecting individuals all over the world such that these "unaware"<sup>25</sup> individuals have a shred of belief that they have a right to relief if injured at the Oneida Radisson

<sup>21</sup> *Haines v. Kerner*, 404 U.S. 519 (1972) at 520-21.

<sup>22</sup> *Burrell*

<sup>23</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) at 555.

<sup>24</sup> OAHC Corporate Charter, Article VI, Section M.

<sup>25</sup> *Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998) at 758.

Hotel. Is this the reason for the tribal Corporate Charter? These matters are reviewable as questions of law, clear error, and discretion.

How is it possible for the OAHC Corporate Charter to state it can sue and be sued and then claim to have tribal sovereignty? This is reviewable as a question of law, *de novo*. This appears to be reviewable because it is a clear error.

A remedy by tribal citizenship “termination”, ECF 25, page 6, is meant to slap the Oneida Plaintiff and is an abuse of the Court thus reviewable for abuse of discretion.

#### ARGUMENT

- I. THE PLAINTIFF-APPELLANT’S REQUEST TO DENY STATE COURT REMOVAL IS THE OPPOSITION TO DISMISSAL.
  - A. The Plaintiff-Appellant’s ECF 23<sup>26</sup> directly opposes the Defendant’s Motions to Dismiss. And, if, to Removed and not Remanded that this Case be heard on the framework of constructive discharge. However, the District Court made an erroneous Decision to thwart a constructive discharge claim and Dismiss this Case based on the Defendant’s ridiculous claim that the OAHC had sovereign immunity.
  - B. The Plaintiff-Appellant states, “The Defendants provide a silly smoke-n-mirrors example by suggesting a corporation (OAHC) is protected by sovereignty; arguably a federal question but is inherently idiotic.” See ECF 23, page 4. The point? The District Court thwarts the Plaintiff-Appellant’s constructive discharge claim in favor of the Defendant’s

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<sup>26</sup> ECF 23 was filed after Defendant’s Motion’s to Dismiss such that Plaintiff opposed Removal and Dismissal.

unfounded claim that their tribal corporation has tribal sovereign immunity without a shred of evidence to support the OAHC arm-of-the-tribe tests pass the “**true identity**” determination.

C. As noted in ECF 25 the liberal construction of ECF 23 opposes Dismissal.

See *Haines v. Kerner*, 404 U.S. 519 (1972) at 520-21.

II. THE DISTRICT COURT CLEARLY ERRORED WHEN DECIDING THAT OAHC HAD SOVEREIGN IMMUNITY WITHOUT APPLYING A THRESHOLD ARM-OF-THE-TRIBE TESTS TO DETERMINE OAHCS TRUE IDENTITY.

A. The District Court cannot “**assume**” a tribal corporation has tribal sovereign immunity without applying a framework or arm-of-the-tribe tests to determine whether OAHC indeed has immunity. “To determine whether a tribe’s economic entity is to share in the tribe’s immunity, this court set forth a six-factor test (*Fox* tests) for assessing the closeness of the relationship between the entity and the tribe.” See *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144 (2012) at 1149, also *Hwal’Bay Ba: J Enterprises, Inc., v. Honorable Lee F. Jantzen, Judge of the Superior Court of the State of Arizona, in and for the County of Mohave, and Sara and William Fox*, No. CV-19-0123-PR (25 Feb. 2020) and *People Ex Rel. Owen v. Miami Nation Enterprises*, 2 Cal.5th 222 (2016).

B. *Fox* tests (starting at para. 17).

1. The entity's creation and business form. OAHC is a corporation, a separate legal entity and not entitled to share in the tribe's immunity. The OAHC Corporate Charter is proof.
2. The entity's purpose. OAHC solely exists for profit and projects this through the Radisson Hotel brand, therefore OAHC is not entitled to share in the tribe's immunity.
3. The business relationship between the tribe and the entity. OAHC is a corporation and operates under a Board of Directors, therefore OAHC is not entitled to share in the tribe's immunity.
4. The tribe's intent to share immunity with the entity. "Recovery against OAHC (Corporation) shall be limited to OAHC assets such that the Oneida Nation, nor any of the Nation's property, shall be liable for the debts or obligations of the Corporation," therefore OAHC is not entitled to share in the tribe's immunity. See Corporate Charter, Article VI, Section M.
5. The financial relationship between the entity and the tribe. As noted in item 5 *supra*, the tribe's assets are shielded by the OAHC corporate veil, therefore OAHC is not entitled to share in the tribe's immunity.



6. Whether immunizing the entity furthers federal policies underlying sovereign immunity. “Arm-of-the-tribe immunity must not become a doctrine of form over substance<sup>27</sup>.” The OAHC projection of the Radisson Hotel brand benefits both OAHC and the Radisson Hotel corporation in the United States and world-wide. The adage goes, either you are pregnant, or you are not; either you are a corporation, or you are sovereign. This is not the Oneida Nation Hotel, it is the Oneida Radisson Hotel the latter is clearly a global brand meant to maximize the Corporations profit margin, therefore OAHC is not entitled to share in the tribe’s immunity.

C. AHC is a tribally chartered corporation<sup>28</sup> and “although the immunity extends to entities that are *arms of tribes*, it apparently does not cover tribally chartered corporations that are completely independent of the tribe.” See, *Somerlott* at 1149.

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<sup>27</sup> *Fox* para. 25.

<sup>28</sup> OAHC Corporate Charter.

- D. OAHC voluntarily subjects themselves to lawsuits<sup>29</sup> and other legal entities because the Radisson a global hotel chain<sup>30</sup> and thus if an arm-of-the-tribes test as applied to OAHC, the tribal corporation would fail miserably, *id.* at 1149.
- E. OAHC liability is limited to OAHC assets and tribal assets are not at risk. By Corporate Charter OAHC can only be sued to the extent of the Radisson (OAHC) and no further, i.e., the tribe may be immune but, not OAHC. “Recovery against the Corporation (OAHC) shall be limited to the assets of the Corporation (OAHC).” See Corporate Charter, Article VI, Section M.
- F. The District Court must determine whether OAHC shares in the sovereignty of the Oneida Nation as an important precursor to the Plaintiff-Appellant’s due process right to a “full and fair opportunity to litigate.”<sup>31</sup> The Plaintiff-Appellant preserves these rights and this issue on appeal in District Court because the Plaintiff-Appellant states, “The Defendants provide a silly smoke-n-mirrors example by suggesting a corporation is protected by sovereignty; arguably a federal question but is inherently idiotic.” See ECF 23, page 4.

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<sup>29</sup> OAHC Corporate Charter, Article VI, Section M.

<sup>30</sup> For example, Radisson Blu Style Hotel, Vienna.

<sup>31</sup> See *Burrell*.

The District Court ignored the Plaintiff-Appellant's plea to determine if the OAHC, a tribal corporation, shared in the tribe's immunity. Worse, the District Court did not bother to seek the answer to what OAHCs "true identity" is, a most probable federal question considering the six-factor arm-of-the-tribe tests, *id.* 1149. The point? "An issue is preserved for appeal if a Party alerts the District Court to the issue and seeks a ruling." The District Court did not apply any test, but rather just "assumed" OAHC shares sovereign immunity with the Oneida Nation. This is in plain error<sup>32</sup> and affects the substantial rights of the Plaintiff-Appellant to be heard on the merits because the Defendants are wrongly declared immune from suit when they are not, notwithstanding OAHC Corporate Charter states [they] can be sued<sup>33</sup>.

Moreover, failure for the Plaintiff-Appellant to be heard on the merits because OAHC is "assumed" to have immunity when [they] do not, "seriously affects the fairness, integrity, or public reputation of judicial proceedings," *id.* 1151.

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<sup>32</sup> Plain error is, 1) error, 2) plain, 3) which affects substantial rights, and 4) which seriously affects the fairness, integrity, or public reputation of judicial proceedings, see *Somerlott* at 1151.

<sup>33</sup> OAHC Corporate Charter, Article VI, Section M.

III. OAHC WILL FAIL THE ARM-OF-THE-TRIBE TESTS THEREFORE U.S. CONSTITUTIONAL AMENDMENTS, STATUTES AND OTHER FEDERAL RIGHTS AND LAWS WOULD APPLY TO OAHC BECAUSE THEY CANNOT HIDE UNDER THE VEIL OF TRIBAL SOVEREIGNTY.

A. Unfortunately, the District Court inappropriately “analyzes” that the Fifth Amendment, Fourteenth Amendment and other federal rights are mute, null, void, or in the alternative invalid because OAHC shares sovereign immunity with the Oneida Nation, see ECF 25, page 7. Of course, the “analysis” might be correct had the arm-of-the-tribe tests been applied to OAHC and they were found to be immune. First the six-factor test was not applied and secondly, if the six-factor test were applied, the OAHC would still fail. This infers, all the constitutional rights, statutes such as 42 U.S.C. § 1983 and other federal laws apply to OAHC because they are not an arm-of-the-tribe as assessed under the six-factor test, see ECF 25, page 7.

IV. BECAUSE OAHC FAILS THE ARM-OF-THE-TRIBE TESTS THE OTHER DEFENDANTS WILL ALSO NOT HAVE SOVEREIGN IMMUNITY.

A. Unfortunately, the District Court inappropriately “analyzes” that the Defendants are immune because OAHC shares immunity with the Oneida Nation. Indeed, the District Court states, “In sum, Holtz’s claims, state as well as federal, are barred under the doctrine of sovereign immunity.” The District Court bars a state and federal lawsuit because of sovereignty and is a cause-effect relationship. If there is no cause, i.e., meaning OAHC does not share sovereign immunity then OAHC can be sued, notwithstanding OAHC Corporate Charter states [they] can be sued in the first place, a neon error.

V. THE DISTRICT COURT'S UNDERLYING DECISION THAT OAHC HAS SOVERIGN IMMUNITY IS A MISTAKE, LEADING TO A FLAWED ANALYSIS THAT EXTINGUISHES THE PLAINTIFF-APPELLANT'S MERITS.

A. With or without arm-of-the-tribe tests OAHCs "**true identity**" is that they are a for profit business just like all other businesses. Following *Miner Elect., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007) at 1011 and *Salas v. United States*, 234 F. 842 (2d Cir. 1916) at 844-45, when the Oneida Nation enters into commercial business form like OAHC is, i.e., Corporate Charter, Board of Directors, the right to sue and be sued, the Oneida Nation "abandons its sovereign capacity and is to be treated like any other corporation."

It is a **mistake** to have the District Court treat OAHC as if it were sovereign when it is not. "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that **a mistake has been committed,**" see *Somerlott* at 1148. The District Court's mistake eschews the Plaintiff-Appellant's merits concomitant Article III Standing to Sue OAHC as because OAHC is a "just-like-any-other-corporation," who can be sue and be sued.

VI. RED LIVES MATTER. THE DISTRICT COURT APPEARS TO RESENT THE PLAINTIFF BEING AN ONEIDA CITIZEN LEADING TO THE ERRONEOUS DECISION THAT OAHG HAS SOVEREIGN IMMUNITY WITHOUT PROOF TO QUASH THE PLAINTIFF-APPELLANT'S MERITS.

A. The District Court erroneously believes OAHG shares sovereign immunity with the Oneida Nation and is *too-quick* to Dismiss this Case while unjustly placing the Oneida citizen Plaintiff-Appellant in peril. The "Indian Civil Rights Act dilemma;" (elucidated in ECF 25) if the tribal citizen wins the Oneida Nation loses, contrarily the Oneida Nation wins the tribal citizen loses. This dilemma does not have to exist in this case because OAHG cannot meet the arm-of-the-tribe tests anyway.

B. In clear error or in the alternative an erroneous finding of "fact," the District Court favors the tribe even though OAHG does not share sovereign immunity because it could not pass any element of the arm-of-the-tribe test much less all six-factors? The point? OAHG is a duck, it looks like a corporation, it acts like a corporation, and it operates like a corporation; OAHG is a corporation.

C. The District Court makes the Plaintiff-Appellant look like a bad actor, and instigator, can offer up nothing but conclusory allegations dreamt up while taking drugs. Not so! The District Court retaliates against the Oneida Plaintiff-Appellant because the District Court believes this lawsuit is a sham, fictitious, or in the alternative frivolous.

The District Court calls the Oneida Plaintiff-Appellant out and tells [her] if [she] does not like the *injustices*<sup>34</sup> done to [her] she should just “**terminate**” [her] Indianness. Like a black man “terminating” [his] blackness to be white. Or a gay man “terminating” being gay so [he] can now be straight. On the face, these ideas are nonsense, if not dangerous especially while living in the era of Black Lives Matter, RIP George Floyd. Will this Court ensure that Red Lives Matter? Send this case back to the District Court so it can be heard on the merits without scuttling it on some whimsical “assumption” that OAHC has sovereign immunity.

## CONCLUSION

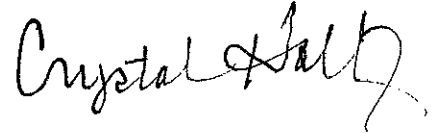
The District Court abuses the Plaintiff-Appellant inferring [she] can “terminate” [her] ethnicity as a remedy. This star-crossed pattern of judicial thinking negatively impacted the District Court’s erroneous Decision to Dismiss this Case leading the Plaintiff-Appellant to assert that the District Court clearly erred in “assuming” that the OAHC shares immunity with the Oneida Nation with bothering to test the truth of OAHCs “**true identity**”. The error is so grave and unjust that it substantially harms the Plaintiff-Appellant’s due process right to a “full and fair opportunity to litigate<sup>35</sup>” because the unfounded claim that OAHC shares sovereignty with the Oneida Nation unfairly eliminated all of the Plaintiff-Appellant’s constitutional and federal rights such as Fifth Amendment and Fourteenth Amendment rights noted in ECF 25. This Court should find in favor of the Plaintiff-Appellant *de novo* or in the alternative Remand so the Plaintiff-Appellant can have [her] day in court.

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<sup>34</sup> Courts are supposed to administer justice.

<sup>35</sup> See *Burrell*.

Dated; July 17, 2020



Crystal Holtz, Pro Se.

STATEMENT OF RELATED CASES

To the best of Plaintiff-Appellants' knowledge the related cases are 1) Brown County Wis. Case No. 20-353, 2) E.D. Wis. Case No. 20-976, and 3) EEOC Case No. 443-2020-01748.



CERTIFICATE OF COMPLIANCE

Plaintiff-Appellant that the Opening Brief is less than 30 pages, proportionally spaced, has a typeface of 12 points and contains 4,799 words.

Dated: July 17, 2020



Crystal Holtz, Pro Se.

C: Attorney's for the Defendants, Mark Johnson 1243 N. 10<sup>th</sup> St., Suite 200, Milwaukee, WI 53205 and Jodi Arndt Labs, P.O. Box 23200, Green Bay, WI 54305-3200.

**CORPORATE CHARTER  
OF  
ONEIDA AIRPORT HOTEL CORPORATION<sup>1</sup>**

**ARTICLE I - NAME**

The name of this tribally chartered corporation is the Oneida Airport Hotel Corporation. The Oneida Tribe of Indians of Wisconsin confers on the Corporation all of the rights, privileges and immunities existing under federal and Oneida tribal laws.

**ARTICLE II – AUTHORITY**

The Oneida Business Committee grants this Charter based upon authority vested in it by the Oneida General Tribal Council, Oneida Tribe of Indians of Wisconsin pursuant to Article IV, Section 1 (g) of the Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin and pursuant to the exercise of the sovereign rights, future and reserved, of the Oneida Tribe of Indians of Wisconsin by Article IV, Section 2 and 3, of the Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin, duly approved by the Secretary of the Interior on December 21, 1936.

**ARTICLE III - DURATION**

The period of existence of the Corporation shall be perpetual until it is dissolved, pursuant to Article XII, hereof.

**ARTICLE IV - REGISTERED OFFICE AND PLACES OF BUSINESS**

The principal place of business and the registered office of the Corporation shall be on the Oneida Indian Reservation, Wisconsin. The registered office address of the Corporation and principal place of business is 2040 Airport Drive, Green Bay, Wisconsin, 54313. The Corporation may also have such other places of business as the Board of Directors of the Corporation may from time to time direct, as the operations of the Corporation shall require.

**ARTICLE V - JURISDICTION**

The Corporation is created under and is subjected to the jurisdiction, laws and ordinances of the Oneida Tribe of Indians of Wisconsin. The actions hereby taken by the Oneida Business Committee and the Oneida General Tribal Council expressly reserve to the Oneida Tribe of Indians of Wisconsin all its inherent sovereign rights as an Indian Tribe with regard to the activities of the Corporation.

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<sup>1</sup> This strikeout version starts with the Corporate Charter adopted by BC Resolution 07-30-2003-A. The resolution initially adopting the Corporate Charter and subsequent resolutions amending the same do not contain attachments as said resolutions indicate. Nor does a search by Records Management locate any attachments or back up materials from said Business Committee meetings.

## ARTICLE VI - PURPOSES AND POWERS

The purposes for which the Corporation is organized are:

- A. The Corporation shall promote the establishment and development of a hotel on Tribal land in conformity to and in coordination with the economic development policies and plans of the Oneida Tribe of Indians of Wisconsin as adopted by the Oneida Business Committee.
- B. To operate and assist in the development of the hotel and in any and all aspects of financing, construction and contracting.
- C. To do any and all activities which may be necessary, useful or desirable for the furtherance, accomplishment, fostering or attainment of the hotel development, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such others be persons or organizations of any kind or nature, such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.
- D. To purchase, take, receive, lease, solicit, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with money, securities, real and personal property, rights and services of any kind and description, or any interest therein.
- E. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets, PROVIDED, that title to all trust or restricted real property of the Oneida Tribe of Indians of Wisconsin shall be and remain in its trust or restricted status.
- F. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, guarantees, and other obligations of the Corporation for monies borrowed, or in payment for property acquired or for any such obligations be secured interest, mortgage, pledge deed, indenture, agreement or other instrument of trust, or by other lien upon, assignment of or agreement in regard to all or any part of the property, rights or privileges of the Corporation.
- G. To buy, own, sell, assign, mortgage or lease any interest in real or personal property for such periods as may be authorized by law and to hold, manage, mortgage and sublease the same.
- H. To enter into, make, perform and carry out contracts, including contracts of employment, and to receive financial assistance from any governmental or private source and to expend its funds in furtherance of its purposes.
- I. To borrow money and to issue evidence of indebtedness in furtherance of the purposes of the Corporation and to secure the same by mortgage, pledge or other lien upon the property of the Corporation.

J. To invest in, furnish management, administrative, and other business advice, support, training and technical assistance, either directly or indirectly, including specifically, but not by way of limitation, hospitality development, construction, marketing, accounting and operational management services and any ancillary services or operations for this industry, both within and without tribal boundaries, for itself, for other Oneida Tribal enterprises, for other Native American Tribal organizations, and for such other business organizations as may be approved by the Board of Directors. Provided, however, that no such services shall be rendered to or on behalf of any person or entity who is a director, shareholder, member, partner, officer, employee, agent, consultant, owner or operator of any hotel or hospitality project which competes or intends to compete with the business conducted by the Oneida Airport Hotel Corporation within a radius of ten miles from the Radisson Hotel & Conference Center Green Bay, and further provided, that any person or entity to whom such services are offered in relation to the purchase or development of a hotel or hospitality business shall first execute in favor of Oneida Airport Hotel Corporation, a non-competition agreement or such other assurances as may be satisfactory to the Board of Directors to require compliance with the restrictions contained herein. The foregoing restriction does not apply to any entity wholly owned or operated by the Oneida Airport Hotel Corporation or the Oneida Tribe. Upon the approval of the Oneida Business Committee, the Oneida Airport Hotel Corporation is hereby authorized to form limited liability companies, corporations, or other such entities of which it may be the sole shareholder or member or one of a number of shareholders or members for the purpose of accomplishing the purposes set forth immediately above, and it shall have the power to engage attorneys, accountants and other professionals to assets in the formation of such entities and to take any other action reasonably required of it to form and maintain any such entities in accordance with applicable laws, statutes and ordinances.

K. To elect or appoint officers and agents of the Corporation and define their duties and fix their compensation, PROVIDED, that such elections or appointments comply with hiring policies established by the Oneida Airport Hotel Corporation.

L. To amend and alter By-Laws, not inconsistent with this Charter, for the administration and regulation of the affairs of the Corporation, subject to being approved by the Oneida Business Committee.

M. To sue and be sued in its Corporate name to the extent allowed by law, the Oneida Tribe of Indians of Wisconsin hereby giving its irrevocable consent to allowing the Corporation to sue and be sued upon any contract, claim or obligation of the Corporation arising out of the accomplishment of its purposes and hereby authorizing the Corporation to waive any immunity from suit which it might otherwise have and that any recovery against the Corporation shall be limited to the assets of the Corporation. PROVIDED, however, that neither the Oneida Tribe of Indians of Wisconsin, nor any of its property, shall be liable for the debts or obligations of the Corporation.

N. No substantial part of the activities of the Corporation shall be for the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

O. The purposes specified herein shall be construed as both purposes and powers.

#### ARTICLE VII - CONTROL OF OPERATIONS

A. The business, affairs, and property of the Corporation shall be managed by a Board of Directors consisting of five (5) members, whom shall be selected and appointed by the Oneida Business Committee. The term of office of a director shall be five (5) years. The Business Committee, in selecting and appointing members of the Board of Directors, shall give due consideration to qualities of industry, responsibility, integrity and judgment, and shall have due regard for:

1. The need for diversity of experience on the Board of Directors
2. The need for adequate representation of the various areas of expertise served and required by the Corporation
3. The guidelines of organizations providing financial assistance to the Corporation

B. The Board of Directors shall be responsible for the development, custody, management and operation of the hotel; for the establishment and maintenance of effective operating policies; for the selection of the President of the Corporation and for the usual and ordinary duties of oversight of performance and advice to management traditionally performed by Boards of Directors.

C. Directors appointed by the Oneida Business Committee may be removed, with or without cause, by the Oneida Business Committee by a vote of the majority of the members of the Oneida Business Committee present and voting at any duly called and held meeting of the Oneida Business Committee. The Board of Directors may adopt By-laws governing the removal of Corporate Officers by the Board of Directors for cause. Prior to removal, any Corporate Officer, must be given the opportunity to request a hearing in order to object to the proposed removal.

#### ARTICLE VIII - ASSETS

Subject to such contractual rights of others, including the Oneida Tribe, the Corporation shall have as its corporate assets and the authority to acquire, manage, own, use, pledge, encumber, assign the following:

- A. Tribal properties of a real or personal nature subject to any conditions set out in the Tribal Council's Resolution authorizing the transfer of such properties to the Corporation.

- B. All funds which the Corporation may acquire by grant, gift, loan or other means.
- C. All interests in real and personal property whether of a tangible or intangible nature, the Corporation may acquire by grant, gift, loan, purchase, lease or other means.
- D. All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

#### **ARTICLE IX - INDEMNIFICATION OF DIRECTORS & OFFICERS**

The Corporation shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the Corporation against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the extent that such person is not otherwise indemnified

#### **ARTICLE X - PAYMENTS TO TRIBE**

This Charter is granted upon the condition that the Corporation shall make prorated payments to the government of the Oneida Tribe of Indians of Wisconsin. Payments shall be made on a monthly basis, and are due and payable immediately upon the receipt by the Corporation of its annual audited financial statement.

Cash flow shall be paid to the Oneida Tribe of Indians of Wisconsin annually at 80 percent of gross operating profit (as such terms are defined in the current Uniform System of Accounts for Hotels) derived from the hotel for each fiscal year. The following definitions shall be used in determining payment to the Oneida Tribe:

- A. The term "Gross Revenues" shall consist of all revenues or income or sale of any kind, whether derived directly or indirectly from any source over which Corporation has any direct or indirect responsibility.
- B. The term "Gross Operating Revenues" shall mean that amount remaining after deducting all "expenses of operation" from all "gross revenues" as those terms are herein defined.
- C. The term "Expenses of Operation" shall include any cost of sales or direct costs and expenses or general expenses as those terms are used within the current Uniform System of Accounts for Hotels as adopted by the American Hotel & Motel Association, and as may, from time to time be supplemented or amended. The term "Expense of Operation" shall include payments (whether principal or interest) relating to financing of capital improvements or encumbering the Hotel or premises, land or building rental payments, insurance premiums, reserve for replacement fund, expense amortization, real estate, income or other taxes of any nature.

D. The term "prorated" shall mean that the payments due to the Oneida Tribe of Indians of Wisconsin under this article shall be adjusted to reflect the number of months left in the current fiscal year. For example, if the Corporation receives its annual audited financial statement for the Fiscal year 2003-2004 in January, 2005, its payment to the Oneida Tribe of Indians of Wisconsin for 2003-2004 is due in January, 2005. This payment will be prorated to reflect the number of months left in the current fiscal year (January through September).

## ARTICLE XI – REPORTS

The Secretary or other designated reporting officer of the Corporation shall file reports with the Oneida Business Committee and General Tribal Council in accordance with this Article. Reports shall be prepared at least annually to coincide with the annual meeting of General Tribal Council, with other reports quarterly to the Oneida Business Committee or as required by the Business Committee as the shareholder/member of the corporation.

### Section 1: Narrative Report

- (A) Definition: Narrative report is defined generally as contextual and non-financial information reported with financial information in order to provide understanding of the corporation's business done, market position, strategies, performance and future expectations. The Narrative report should include topics and information covering four broad categories of information, including 1) Market overview; 2) Strategy and Structure of the Corporation; 3) Management of value of the Corporation; and 4) Performance of the Corporation over the reporting period.
- (B) Components of Report: Narrative reports should include, but are not limited to, at a minimum, the following components in a comprehensive means for easy distribution and understanding:
  - a. Explanation of the core of the Corporation's business practices and market overview.
  - b. Explanation of the Corporation's current place within the market.
  - c. Explanation of the outlines of strategies by the Corporation for improved value in the market.
  - d. Explanation of the Corporation's relative performance vs. competitors and identification of key competitors within the market.
  - e. Explanation of any material changes or developments in the market or nature of business the Corporation is primarily engaged in since the last reporting period.
  - f. Identification of the primary goals and targets of the Corporation and progress made towards accomplishment of the same.
  - g. Identification of key elements for success in strategies given, including risks, resources and relations available and needed in order to successfully fulfill outlined strategies.
  - h. Identification of medium (two to five year) and long (greater than five year) prospects and sustainability of the Corporation given present status, strategies and risks.

- i. Explanation of market growth(if any) experienced by the Corporation, identifying sources of growth (i.e. organic growth through market share increase, volume of business increase, acquisition of competition or other assets, etc.).
  - j. Summary of the assets of the Corporation, including but not limited to its financial, physical, employee, customer, brand or intellectual property, and supply assets.
  - k. Summary and status update of any pending legal action to which the Corporation is a party and any relevant government regulation to which the Corporation may be subject.
- (C) Report Due Date: Narrative reports are due in time for the annual meeting of General Tribal Council generally held in July of each year, meaning it should be submitted no later than May 31st of each year unless GTC changes its meeting date or some other date is issued by the Business Committee.
- (D) Narrative Report Access: The Narrative report is one submitted to the Business Committee and General Tribal Council of the Oneida Tribe. It is considered a public report and shall be made available to the public through the office of the Secretary and/or the Oneida website or other available means.

Section 2: Financial Report

- (A) Financial Report Defined: The Financial report is the formal record of the financial activities of the Corporation. Such statements shall be presented in a structured and understandable manner consistent with Generally Accepted Accounting Principles (GAAP).
- (B) Financial Report Content: the Financial report shall include information in the following broad categories including but not limited to: 1) an executive summary or broad overview; 2) a balance sheet of the Corporation's financial position listing assets and liabilities; 3) income statement reporting the income, expenses and general profit over the reporting period; 4) statement of retained earnings; and 5) statement of cash flow.
- (C) Financial Report Due: Financial Reports are due quarterly to the Oneida Business Committee with copies to the Oneida Treasurer and Chair of the Oneida Audit Committee and as otherwise demanded by the Oneida Business Committee as the representative owner of the Corporation.
- (D) Financial Reports are subject to an annual audit by auditors from the Oneida Tribe or by third party auditors as hired by the Oneida Tribe at the Corporation's expense detailing the fairness and accuracy of the financial reports. The audit reports shall be submitted as attachments to the financial reports as they are done and completed with each applicable reporting period.
- (E) Financial Report Access: Financial reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Financial reports are accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information. They may be disclosed with permission of the Corporation's Board and/or the Owner for economic solicitation purposes or as demanded by the Owner.



Section 3: Disclosure Report

- (A) Disclosure Report Defined: Disclosure reports financial and familial relationships and connections between the Corporation and other entities, as well as members of the Corporation's Board and key management personnel. Any financial or legal relationship, ownership interest, or any blood kinship within the Corporation and its financial practices or partnerships shall be detailed in a structured and easy to understand format.
- (B) Disclosure Report Content: The Disclosure report shall include, but not be limited to, the following detailed information:
- a. Names and title of all of the Corporation's Board members' names, time in the position, and date when position shall be up for renewal or replacement (if applicable).
  - b. Names and title of all of the Corporation's key management personnel, with length of service in that position, and if under contract, when that position is up for renewal or expiration of the contract term.
  - c. Summary of any financial or familial relationship between any of the people in part a. or part b. in this Section, as well as any relationship, financial or familial with any current member of the Oneida Business Committee or any member of any regulatory body within Oneida such as a board committee or commission charged with regulating the Corporation's industry or activities.
  - d. Names of any other person, whether it be a business in any legal form or an individual, doing business with the Corporation for purposes of mutual enterprise (i.e. including but not limited to: joint ventures; membership in an LLC together; acquisition as a subsidiary; partnership).
  - e. Summary of the financial transactions or relationship between those listed in d. above in this Section and the Corporation, including the purpose of the mutual enterprise, legal relationship, or other connection between the Corporation, its Board or its key management personnel and this other named entity or person.
- (C) Disclosure Report Due: An annual report to the Oneida Business Committee is due concurrently with the narrative report, as well as whenever there is a change to the Corporation's Board membership, turnover to key management personnel, or a business venture creating a new partnership, LLC, subsidiary, or any other legal entity connected to the Corporation for any purpose.
- (D) Disclosure Report Access: Disclosure reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Disclosure reports are submitted to the Oneida Business Committee and accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information.

## ARTICLE XII – DISSOLUTION

The Corporation may be dissolved upon:

- A. Adoption of a resolution providing for dissolution of the Corporation by the affirmative vote of two-thirds of the Directors, or

B. Adoption by the Business Committee of a resolution proposing dissolution of the Corporation.

Upon dissolution of the Corporation, the assets of the Corporation remaining for payment of all debts and liabilities of the Corporation, shall be distributed to creditors in the following order:

1. Third parties perfected security interests.
2. Security interests of Oneida Tribe of Indians of Wisconsin.
3. Third parties unperfected security interests.

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BC Resolution 08-24-1994-B:	Charter of the Oneida Airport Hotel Corporation for the express purpose of developing and/or assisting in the development of the hotel
BC Resolution 05-15-1991-N:	Amendment to Corporate Charter
BC Resolution 03-01-1995-C:	Amendment to Corporate Charter designating distribution of profits from the Corporation should be utilized to pay down debts of corporation.
BC Resolution 04-16-1997-E:	Rescinds BC Resolution 03-01-1995-C
BC Resolution 08-23-2000-E:	Amendments to Corporate Charter expanding the purposes and powers of the corporation
BC Resolution 08-29-2001-A:	Amendments to Corporate Charter regarding typographical errors
BC Resolution 07-30-2003-A:	Amendments to Corporate Charter regarding distribution of profits from corporation
BC Resolution 05-19-2004-A	Amendments to Corporate Charter expanding existing purposes and powers
BC Resolution 08-29-2007-A	Amendment to Corporate Charter increasing the terms of office for the Board of Directors from four years to five years.
BC Resolution 01-26-2011-B	Amendment to Corporate Charter replacing Article XI. Reports.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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CRYSTAL HOLTZ,

Plaintiff,

v.

Case No. 19-C-1682

ONEIDA AIRPORT HOTEL CORPORATION, et al.,

Defendants.

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**DECISION AND ORDER**

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Plaintiff Crystal Holtz, proceeding *pro se*, filed an action in the Circuit Court for Brown County on October 15, 2019, alleging various federal, state, and tribal law claims against Defendants Oneida Airport Hotel Corporation (d/b/a Radisson Hotel & Conference Center Green Bay), Robert Barton, Aimbridge Hospitality, LLC, and Steve Ninham. Dkt. No. 1-2 at 4. One week later, she filed an amended complaint that added allegations as to the motivation behind the alleged wrongdoing of the defendants, but added no substantive claims. Dkt. No. 1-3 at 4. Defendants filed a timely notice to remove Holtz's action to this court pursuant to 28 U.S.C. § 1446(b), Dkt. No. 1, and two separate motions to dismiss. Dkt. Nos. 7 and 11. Holtz filed an objection to the removal of her action, Dkt. No. 16, but has not responded to either motion to dismiss. For the reasons that follow, the defendants' motions will be granted.

**ALLEGATIONS OF THE COMPLAINT**

In her amended complaint, Holtz—a member of the Oneida Nation tribe who was employed at the Radisson Hotel and Conference Center of Green Bay (Hotel) during the time relevant to her complaint—alleges after lunch on September 20, 2019, Hotel security personnel

escorted her from work to St. Mary's Hospital because they suspected her of drinking alcohol while at lunch due to "droopy eyes" and her "flush" appearance. She refers to this as a "2.8 screening," conducted pursuant to the Drug and Alcohol Screening Policy contained in section 2.8 of her employer's handbook. Holtz alleges Defendant Steve Ninham—General Manager of the hotel and employed by Aimbridge Hospitality—approved and authorized this policy. Holtz alleges that the hospital's staff did not know what to do when she arrived. She claims that the defendants failed to communicate the "2.8 screening protocol" to the hospital's staff. Holtz blames the failed screening protocol for exacerbating her distress and aggravating existing health problems. As a result, she states she needed medical treatment from the hospital's emergency room staff for an alleged personal injury. Holtz claims she did not refuse screening and that the hospital's exam reveals she was not impaired. The defendants terminated her employment soon after the alleged drug screening on September 23, 2019.

Holtz's amended complaint makes several other allegations regarding her employer. Holtz states that she amended her lawsuit to clarify that the intent behind her wrongful termination was to move the Sales Manager position from the Oneida Airport Hotel Corporation to Aimbridge Hospitality. This was done to thwart the hiring and promotion of members of the Oneida Nation and bypass tribal laws, according to Holtz. Holtz accuses Defendant Robert Barton, President of the Oneida Hotel Corporation, of conspiring with Ninham to wrongfully terminate her and shift the Sales Manager position to Aimbridge Hospitality.

Holtz also alleges discrimination because HR stated her daughter will never work for the Hotel, despite the fact that the HR manager's son is the Hotel's housekeeping supervisor. She also claims that her supervisor reprimanded her for wearing a nose ring in August 2019 (and HR failed

to document this “adverse employee assault”), that her professional degree is a threat to her supervisor’s position, and that her employer may have violated laws regarding workhours, wages, and compensation (she worked a twelve hour day in Tulsa, Oklahoma the day before her termination), among other allegations.

Holtz claims that in so acting the defendants violated Wisconsin employment law; Article VII of the Oneida Nation Constitution; the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302; 42 U.S.C. § 1985, 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments to the United States Constitution. She also believes that she is protected by the Americans with Disabilities Act (ADA), but is not alleging a violation against Defendants under the ADA at this time.

### ANALYSIS

Holtz first asks the court to deny the removal of her action from Brown County Circuit Court. Dkt. No. 16 at 2. She claims that Defendants lacked a cause of action and good cause to remove her lawsuit. She argues that her claim of wrongful termination, an intentional tort, is required to be tried in Wisconsin circuit court and that Defendants acted in bad faith by removing this action to federal court. Holtz clearly does not understand removal.

Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” A United States district court has jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Whether an action was properly removed is determined based on whether the complaint “would have been within the district court’s original jurisdiction *at the time of the removal.*” *Fed. Deposit*

*Ins. Corp. v. Elephant*, 790 F.2d 661, 667 (7th Cir. 1986) (emphasis added) (citing *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983)). Here, there is no doubt that the amended complaint purports to state claims that arise under the Constitution and laws of the United States. It thus follows that the case was properly removed.

Holtz argues that despite what she asserted in her complaint, her action arises solely under state law. She cites a Wisconsin Supreme Court case, *Strozinsky v. School District of Brown Deer*, 2000 WI 97, 237 Wis. 2d 19, 614 N.W.2d 443, to show that her case is one of intentional wrongful termination by constructive discharge. The fact that Holtz has also stated state law claims, however, does not defeat federal jurisdiction. Assuming there are federal claims over which a federal court has jurisdiction, the court would have supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367. If the federal claims are dismissed before trial, the court has discretion to retain jurisdiction over the state law claims, but the normal practice is to dismiss the state law claims without prejudice, or in cases that are removed, to remand the case to the state court for disposition of the remaining claims, unless it is clear that the state claims should be dismissed as well.

Holtz's failure to respond to Defendants' motions to dismiss is by itself grounds to grant Defendants' motions. *See* Civil L.R. 7(d) ("Failure to file a memorandum in opposition to a motion is sufficient cause for the court to grant the motion."). Further, under Civil L.R. 41(c), "Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice." Even aside from these procedural grounds, however, Holtz's federal claims fail on their merits, and there are ample grounds for the court to dismiss the complaint.

Despite alleging a number of causes of action that arise under federal law, none of them are plausibly stated in Holtz's complaint. To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a "short and plain statement of the claim showing that [she] is entitled to relief." Fed. R. Civ. P. 8(a)(2). The plaintiff's statements must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, a complaint that offers "labels and conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). To state a claim, a complaint must contain sufficient factual matter, accepted as true, "that is plausible on its face." *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). The complaint's allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citations omitted). The court is obliged to give the plaintiff's pro se allegations, however inartfully pleaded, a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972).

Holtz's federal and state claims fail first of all because they are barred under the doctrine of sovereign immunity. The Oneida Airport Hotel Corporation, d/b/a Radisson Hotel and Conference Center of Green Bay, as the complaint alleges, is an entity owned and operated by the Oneida Nation, formerly known as the Oneida Indian Tribe of Wisconsin, a federally recognized Indian tribe. Dkt. No. 1-3 at 4. "Indian tribes are domestic dependent nations that exercise inherent sovereign authority." *Michigan v. Bay Mills Indian Comty.*, 572 U.S. 782, 788 (2014) (internal

quotations omitted). Among the core aspects of sovereignty that tribes possess is the common-law immunity from suit traditionally enjoyed by sovereign powers. *Id.* The interests served by the doctrine of tribal sovereign immunity are at their highest when a tribe exercises tribal authority over its own members on its own land. Indian tribes retain “‘their original natural rights’ in matters of local self-government.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (quoting *Worcester v. Georgia*, 6 Pet. 515, 559 (1832)). “Although no longer ‘possessed of the full attributes of sovereignty,’ they remain a ‘separate people, with the power of regulating their internal and social relations.’” *Id.* (quoting *United States v. Kagama*, 118 U.S. 375, 381–82 (1886)). “They have power to make their own substantive law in internal matters . . . and to enforce that law in their own forums.” *Id.* at 55–56 (internal citations omitted). In addition, tribal officers are also immune from suit when they act within their official capacity and within the scope of their authority. *Id.* at 59.

Holtz, as a member of the Oneida Nation, is certainly aware of the unique status of her tribe under the law. Because the Oneida Nation is considered a sovereign nation, her claims against the Nation and its agents acting within the scope of their employment and authority are barred. This does not leave Holtz without a remedy. She is free to seek redress within the Nation’s own courts. *See Trial Court*, ONEIDA, <https://oneida-nsn.gov/government/judiciary/trialcourt/> (last visited Apr. 30, 2020). She is also free to terminate her membership in the Oneida Nation.

Alternatively, even if the defendants were not immune, Holtz’s complaint would nevertheless be dismissed for failure to state a federal claim. The complaint alleges that the defendants injured Holtz in violation of rights guaranteed to her by the United States Constitution. The statutory vehicle for individuals seeking relief for violation of federal rights is 42 U.S.C.



§ 1983. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988); *L.P. v. Marian Catholic High Sch.*, 852 F.3d 690, 696 (7th Cir. 2017). The general rule, however, is that tribal officers and agents do not act under color of state law within the meaning of § 1983. *R. J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979, 982 (9th Cir. 1983). This follows because tribal police officers act under color of tribal law, and no § 1983 action can be maintained in federal court for persons alleging deprivation of constitutional rights under color of tribal law since Indian tribes are separate and distinct sovereignties and are not constrained by the provisions of the Fourteenth Amendment. *Martinez*, 436 U.S. at 56; *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967). Holtz’s claims for violations of her rights under the Fifth and Fourteenth Amendments fail for this reason as well.

Holtz also alleges a violation of 42 U.S.C. § 1985. Because Holtz is not a government official § 1985(1) does not apply, and because she is not a party, witness, or juror, § 1985(2) does not apply. In order to state a claim under § 1985(3), Holtz would have to allege “(1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of the alleged conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens.” *Brokaw v. Mercer Cty.*, 235 F.3d 1000, 1024 (7th Cir. 2000) (quoting *Majeske v. Fraternal Order of Police, Local Lodge No. 7*, 94 F.3d 307, 311 (7th Cir. 1996)). This she fails to do. Essentially, Holtz’s claim is for wrongful termination of her employment. Whatever else it may be, her job at the Hotel was not a deprivation of equal protection of the laws.

Section 1985(3) does not create rights. A plaintiff must identify a right independently secured by state or federal law. *Stevens v. Tillman*, 855 F. 2d. 394, 404 (7th Cir. 1988). Holtz has failed to establish “independent substantive rights enforceable in the federal courts to serve as a predicate violation” under the statute. *Gallegos v. Jicarilla Apache Nation*, 97 F. App’x 806, 812 (10th Cir. 2003). Instead, she alleges that she was discharged in order to avoid tribal laws. (Am. Compl. at 9, 11). She alleges this was a violation of her rights under Article VII of the Oneida Constitution. (Am. Compl. at 11, ¶ vii). That is not a conspiracy to deprive her of federal or state rights. Accordingly, the claims alleged under Section 1983 and 1985 fail to state a claim.

Holtz has also failed to state a claim under the ICRA. The ICRA, like this country’s Bill of Rights, lists a number of limitations on the authority of Indian tribes over individual members. For example, 25 U.S.C. § 1302(a)(1) prohibits any Indian tribe from making or enforcing any law abridging freedom of speech, and § 1302(a)(8) prohibits a tribe from depriving any person of property without due process of law. Holtz contends that the defendants’ actions violated provisions of the ICRA.

The Supreme Court has held, however, that Congress did not create a federal cause of action for the enforcement of rights created by the ICRA, other than for relief via habeas corpus. *Martinez*, 490 U.S. at 71–72. Although the Court recognized that creating a federal cause of action for enforcement of all of the rights listed in the ICRA would no doubt be useful in securing compliance with § 1302, it concluded that federal enforcement would be plainly at odds with the congressional goal of protecting tribal self-government. *Id.* at 64. Absent an unequivocal statement by Congress of its intent to abrogate tribal sovereignty, the Court rejected the argument

that the ICRA created such a cause of action. As a result, Holtz has no claim in this case under the ICRA.

And, of course, Holtz has no claim over which this court has jurisdiction arising under the laws or constitution of the Oneida Nation. This court has no authority to enforce the Nation's own laws. *See Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (concluding resolution of disputes involving questions of interpretation of a tribal constitution and tribal law are not within the district court's jurisdiction). The court agrees that these disputes are within the jurisdiction of the tribal courts. *See Talton v. Mayes*, 163 U.S. 376, 385 (1896) (Construction of tribal law is "solely a matter within the jurisdiction" of the tribal courts).

In sum, Holtz's claims, state as well as federal, are barred under the doctrine of sovereign immunity. Since none of the conditions set forth in 28 U.S.C. § 1367(c) are present, remand of the state law claims, as opposed to dismissal with prejudice, would be inappropriate. The complaint also fails to state a federal claim upon which relief can be granted. The defendants' motions to dismiss (Dkt. Nos. 7 and 11) are therefore granted, all claims are dismissed with prejudice, and the Clerk is directed to enter judgment in favor of the defendants forthwith.

**SO ORDERED** at Green Bay, Wisconsin this 30th day of April, 2020.

s/ William C. Griesbach  
William C. Griesbach, District Judge  
United States District Court

AO 450 (Rev. 5/85) Judgment in a Civil Case

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**United States District Court**  
EASTERN DISTRICT OF WISCONSIN

CRYSTAL HOLTZ,

Plaintiff,

v.

**JUDGMENT IN A CIVIL CASE**

Case No. 19-C-1682

ONEIDA AIRPORT HOTEL  
CORPORATION, et al.,

Defendants.

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- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict
- Decision by Court.** This action came before the Court for consideration.

**IT IS HEREBY ORDERED AND ADJUDGED** that the plaintiff takes nothing and this case is DISMISSED with prejudice.

Approved:

s/ William C. Griesbach  
WILLIAM C. GRIESBACH  
United States District Judge

Dated: April 30, 2020

STEPHEN C. DRIES  
Clerk of Court

s/ Mara A. Corpus  
(By) Deputy Clerk