

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

LEE BORDELEAU, et al.

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.

Defendants.

Index No. 6582-08

AFFIDAVIT OF
PATRICK O'LEARY

PATRICK O'LEARY, being duly sworn, deposes and says:

1. I have been employed by International Business Machines Corporation ("IBM") for 26 years. I currently hold the title of Senior Engineering Manager and am responsible for coordinating IBM's efforts to obtain a grant regarding IBM's nanotechnology work. I state the following based on personal knowledge.
2. I submit this affidavit in support of IBM's opposition to the Order to Show Cause dated August 4, 2008.
3. IBM has announced that it will make a \$1.5 billion investment during the period of 2008 through 2011 in New York in nanotechnology-related efforts. IBM has learned that it may receive economic development grants totaling \$65 million from the Empire State Development Corporation ("ESDC") to supplement its nanotechnology-related investments.
4. IBM has not received any grants within the last four months relating to its nanotechnology investments. In fact, IBM and ESDC are currently negotiating the terms of the 2008 grant, which has not yet been finalized.

5. On September 18, 2008, ESDC took initial action to approve a grant of \$65 million to IBM. Several steps must be undertaken before the grant is finalized, including a public hearing, a financing decision by the Public Authorities Control Board, and a signed contract between ESDC and IBM regarding the terms of the grant.

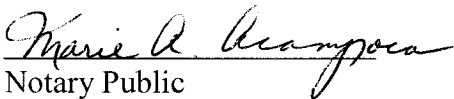
6. As part of an investment package dedicated to research, development and manufacturing facilities, the grant will aid economic development in New York State by allowing for technology improvements at IBM's East Fishkill facility.

7. IBM has committed to the retention of 1,400 semiconductor jobs at its East Fishkill facility as a condition of the grant.



Patrick O'Leary

Sworn to before me
the 24 day of September, 2008.


Notary Public

MARIE A. ACAMPORA
Notary Public-State of New York
No. 01AC5068879
Qualified in Dutchess County
Commission Expires Nov. 12, 2010