



# GEE-WIND v. SPINPOWER NEGOTIATION

## Counsel for GEE-Wind Co.

Your client, GEE-Wind Co. ("GEE-Wind") is a wholly owned subsidiary of Giant Electric Engine Co., ("GEE-Co"). A large and well-established company itself, GEE-Wind now generates 20% of GEE-Co's revenues. GEE-Co is relying on increased GEE-Wind revenues to help offset declines in internal combustion engine sales.

Some months ago, GEE-Wind bid on a proposal by a large Midwestern agribusiness, All-Ag Co., ("All-Ag"), for rights to install wind turbines all over its extensive agricultural acreage. At its bid price, GEE-Wind initially projected annual revenues of \$100 million from energy generated and sold, with net profits of \$10 million per year for five years while capital expenditures were paid off, and \$20 million per year after that.

While other competitors put in bids, GEE-Wind was informed that All-Ag had narrowed the field to the proposals submitted by GEE-Wind and SpinPower, Inc., ("SpinPower"), a privately held company with a reputation as a scrappy upstart in wind energy. Both companies were invited to give final presentations to All-Ag's executive team over two days- SpinPower the first day and GEE-Wind the next.

Based on the way their presentation was received, GEE-Wind's team was sure they would win the contract. The All-Ag President commented at the conclusion of the pitch, "That was tremendously impressive! Why wouldn't we want to sign with GEE-Co, the established gold standard for wind turbines? Before we sign, we'll need to have our business and legal teams review the other specific terms in your proposal and consider how we might work these out."

A week later, they were shocked to learn SpinPower had won the bid with pricing and contract terms that were substantially similar to the terms GEE-Wind had proposed. A few days after hearing this news, GEE-Wind's chief engineer reported that a former GEE-Wind engineer, now at SpinPower, was heard bragging at a local bar about how "we got that one away from the big guys." The GEE-Wind engineer investigated through backchannels and learned that an All-Ag executive was a college buddy of SpinPower's founders. Apparently, after GEE-Wind's presentation, All-Ag went back to SpinPower and disclosed GEE-Wind's terms to see if SpinPower could match GEE-Wind's proposal. You also learned that SpinPower had denigrated GEE-Wind's technology and claimed it had a reputation for sharp business practices, adding: "GEE-Wind can't be trusted, if you know what I mean." Moreover, SpinPower represented its turbines' technical capabilities and installation process as far superior. This is misleading, and it suggests SpinPower used information from an informant, perhaps a current or former GEE-Wind employee.

GEE-Wind's President and General Counsel retained you to investigate the fallout from the All-Ag bid process and to file suit, if appropriate. Your interviews with GEE-Wind employees strongly suggested that someone at All-Ag briefed SpinPower on GEE-Wind's



bid terms and let SpinPower submit a revised bid. It is also known that SpinPower spoke disparagingly about GEE-Wind, alleging GEE-Wind's technology and installation speed were inferior and their turbines were noisier while requiring more frequent ongoing repairs. That would matter to All-Ag, as repairs involve disturbing valuable crop fields, and noisier turbines mean more complaints in general. Furthermore, GEE-Wind has a source alleging that SpinPower asserted that GEE-Wind's management was difficult to work with.

At the client's request, you drafted a complaint against SpinPower for \$200 million, claiming slander, tortious interference with contractual relations, tortious interference with advantageous business relationships, and intellectual property theft. However, you also explained the weaknesses of these claims to GEE-Wind, namely that All-Ag had the right to negotiate with SpinPower and ask it to match GEE-Wind's terms. Some of SpinPower's allegations about GEE-Wind's turbines and management may have been true in the past, but this sort of reverse puffery asserted by SpinPower is merely in bad taste, not illegal.

GEE-Wind's President, the client representative with settlement authority, is very angry. GEE-Wind is convinced All-Ag and SpinPower were playing them all along. GEE-Wind feels that despite the many hours spent crafting their proposal, their bid was fated to serve as due diligence window-dressing for a rigged bid process at best, or a way for All-Ag to get a better offer from SpinPower at worst. Having prematurely bragged to GEE-Co's board about the anticipated profits from the All-Ag deal, GEE-Wind's president was humiliated when GEE-Co's President called him out for losing the deal to SpinPower.

You advised GEE-Wind's President to let you send a courtesy copy of the complaint to SpinPower's General Counsel before filing. Your goal was to prompt settlement discussions before discovery and before a judge can arbitrate GEE-Wind's weak claims. It worked. SpinPower's General Counsel responded almost immediately and asked if your client would be open to negotiation. They also asked you to delay filing suit until after SpinPower could conduct its internal investigation. You agreed.

In the meanwhile, you met with GEE-Wind's President and leadership team to discuss settlement. You explained that litigating would require GEE-Wind to reveal its projected profit margins. Additionally, GEE-Wind's prior problematic history of technical turbine installation, noise, and repairs would be on display for the public, investors, and customers alike. While GEE-Wind's current turbines are technically superior to the competition, that was not always true and this litigation could do much to damage brand perception.

You also explained that All-Ag would be dragged into the fight through discovery, even without GEE-Wind suing All-Ag directly. All-Ag owns and continues to acquire considerable acreage- parcels that GEE-Wind could sell lucrative turbine contracts on. If All-Ag decides GEE-Wind is a petulant entity that flings lawsuits with little provocation, All-Ag may bar GEE-Wind from future bids. Worse, if All-Ag let it be known to other companies that GEE-Wind sues when it misses out on a contract, who else would invite bids from GEE-Wind? This is probably the most important consideration, as GEE-Wind just learned of

another enormous chunk of property in the Midwest soon to be available for wind turbine leasing bidding. Frankly, if GEE-Wind had won this All-Ag deal, they couldn't have manufactured turbine units fast enough for both projects in the short term.

Based on your legal advice, and extensive discussions with GEE-Wind's sales and technical teams, they finally instructed you to "Just negotiate for as much as you can... this bad faith kick in the teeth has got to be worth something." In your mind, "...as much as you can..." means just that- you will try to negotiate as large a settlement number as possible. Just the first year's profits were projected at \$10 million per year over the first five years while capital expenditures were expensed and then \$20 million per year after that. GEE-Wind feels that SpinPower's trashing of GEE-Wind's capabilities at their All-Ag pitch is worth damages. Though GEE-Wind's President hasn't said it directly, you do not believe he would settle for less than \$100,000- even if he ultimately decides to drop the lawsuit. It probably cost GEE-Wind \$50,000 in management labor costs to put the proposal together. .

It is not lost on you that GEE-Wind would be an ecstatic and loyal client forever- if only you could negotiate for a sizeable chunk of the profits lost to SpinPower. To protect GEE-Wind's broader and long-term interests, you will require the strongest confidentiality provision ever negotiated.