

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**COPY**  
Original Received

OCT 06 2015

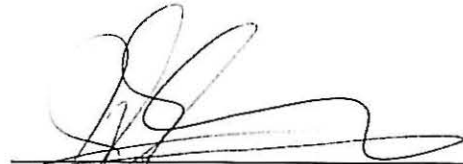
Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**MOTION TO COMPEL RESPONSES TO PLAINTIFF'S  
FIRST REQUESTS FOR PRODUCTION TO 716 WEST  
FOURTH AVENUE LLC**

Pursuant to Civil Rule 37(d), Plaintiff Alaska Building, Inc., moves to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC.

Dated October 6, 2015.

  
James B. Gottstein, ABA # 7811100  
Attorney for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
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OCT 03 2015

Glenn County Trial Courts


Case No. 3AN-15-05969CI

**CIVIL RULE 37(d) CERTIFICATE**

Pursuant to Civil Rule 37(d), with respect to Plaintiff's Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC of even date, the undersigned hereby certifies he has taken the following actions to confer with defendant 716 Fourth Avenue LLC (716 LLC) in an effort to obtain responses without court action:

1. On Thursday, September 24, 2015, I e-mailed and mailed the letter attached hereto as Exhibit 1 to Mr. Jeffrey W. Robinson, counsel for 716 LLC.
2. On Wednesday, September 30, 2015, Mr. Robinson and I conferred, the results of which are documented in the exchange of e-mails attached hereto as Exhibit 2.

Dated October 2, 2015.

  
James B. Gottstein, ABA # 7811100  
Attorney for Plaintiff

Law offices of  
**JAMES B. GOTTSTEIN**  
406 G STREET, SUITE 206  
ANCHORAGE, ALASKA 99501  
(907) 274-7686  
TELECOPIER (907) 274-9493

September 24, 2015

Jeffrey L. Robinson  
Ashburn & Mason  
1227 W. 9th Ave., Ste. 200  
Anchorage, AK 99501

Re: 716 LLC's Responses to Alaska Building, Inc's First  
Requests for Production; *Alaska Building, Inc., v. 716 West  
Fourth Avenue LLC, et al.*, Anchorage Superior Court Case  
No. 3AN-15-5969CI

Dear Mr. Robinson:

This is an attempt under Civil Rules 34(b) and 37(d) to resolve without court action your failure to provide certain requested documents under Civil Rule 34 in response to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Production Requests).

You have objected to producing documents on the following grounds:

1. They are confidential and/or proprietary.
2. They are protected by the attorney client privilege, work product doctrine.
3. They are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

First, that documents are confidential and/or proprietary is no justification for withholding them. *Lockwood v. Geico*, 323 P.3d 691, 699-700 (Alaska 2014). The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order. *Id.*

Second, Civil Rule 26(b)(5), expressly requires you to provide sufficient information with respect to documents withheld on privilege grounds to enable the plaintiff to challenge any claims of privilege:<sup>1</sup>

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Third, your relevance objection is misplaced. As the Alaska Supreme Court reiterated in *Lockwood*, 323 P.3d at 699, the "relevancy standard is to be broadly construed at the discovery stage." In fact, in light of my previously informing you of the relevance of 716 LLC's financial information, it is disingenuous at best to claim lack of relevance. I have spoken with you in person about its relevance as well as written you. See, attached e-mails. In a nutshell, it is

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<sup>1</sup> See, *Lee v. State*, 141 P.3d. 232, n1 of Appendix, adopted by reference, 141 P.3d. 351.



Jeffrey L. Robinson  
September 24, 2015  
Page 2

probable to highly probable that at least Mr. Pfeffer is sucking out all funds in excess of that needed to operate the building, which will leave 716 LLC even more unable to pay any award. As you know, my client believes excess payment to 716 LLC is accumulating at over \$175,000 per month. You can expect a motion for a preliminary injunction to sequester funds along the lines of the attached e-mails.

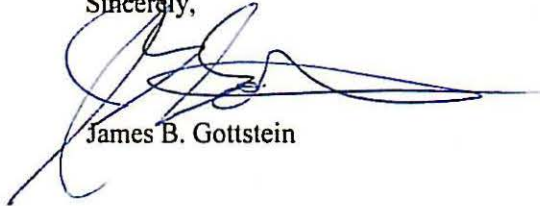
The relevance of the Operating Agreement also goes to the ability to pay back overpayments as well as whether 716 LLC is essentially a completely different entity other than having the same name. Publicly available documents show that Mr. Pfeffer is now the Manager, apparently in sole control. This is relevant to whether the contract between the Legislative Affairs Agency and 716 LLC is an extension. It is also possible Mr. Pfeffer has agreed to indemnify Mr. Acree for any costs associated with the agreement being illegal under AS 36.30.083(a).

You also objected to producing documents related to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease (Request for Production No. 6) on the grounds that these documents "would be in the possession of the Legislative Affairs Agency," and related assertions. If your client has no such documents in its possession, it should just respond thusly. If, if does have such documents in its possession, it is required to produce them.

You also objected to providing documents relating to payments by the Legislative Affairs Agency for what is called renovations (Request for Production No. 8), on the grounds that (a) it is duplicative of requests made to Pfeffer Development LLC (Pfeffer Development), and (b) they relate to business activities of third parties not named in Count One. Neither of these objections are well taken, even leaving aside that Pfeffer Development is no longer in the case and has refused to respond to the requests for production served on it for that reason.

It is my hope that your client will comply with its discovery obligations as outlined herein without court action. I will also call to confer about this in an attempt to resolve this.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James B. Gottstein', with a long horizontal flourish extending to the right.

James B. Gottstein

cc: via e-mail

Enc.



## James B. Gottstein

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**From:** Jeffrey W. Robinson <jeffrey@anchorlaw.com>  
**Sent:** Friday, June 26, 2015 11:57 AM  
**To:** James B. Gottstein; Eva R. Gardner  
**Cc:** Donald W. McClintock  
**Subject:** RE: Blanket Extension Request

Thanks, Jim. I simply asked if you would agree to extend me the courtesy of replying to any oppositions or motions you file until a week after I return. I am not going to hash out in any way what you claim to be "undisputed facts." I am not going to reply to the questions you posed at the end of your message. You are entitled to oppose any motions we have filed or file whatever you deem to be in your best interest to file to protect your interests. If you do not agree to my request, please note that Eva Gardner from my firm will be covering the case for me in my absence. She is copied here. Please copy both of us on future correspondence. I hope you have a good weekend, and that your father's health has improved.

JWR

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**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Friday, June 26, 2015 11:48 AM  
**To:** Jeffrey W. Robinson  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com); Donald W. McClintock  
**Subject:** Blanket Extension Request

Hi Jeff,

Yesterday, you wrote, "I am paternity leave from 6/30-7/15 and would appreciate the opportunity to reply to any oppositions, or oppose any motions, until at least a week or so after my return. Is this agreeable?"

Normally, this wouldn't be a problem and in the final analysis I won't oppose allowing you until July 22nd for any responsive pleadings so long as you include this e-mail, but your client gains an extreme financial benefit from delay and has been doing everything possible to achieve such delay. Its Rule 56(f) Request to not even be required to present opposing evidence to Alaska Building's Motion for Partial Summary Judgment (Not Extension) for ten months dramatically illustrates this. Especially since your client should have any such evidence at hand. The Motion for Partial Summary Judgment is purely a legal question based on what I believe are the following undisputed facts:

The New LIO Lease provides for:

1. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
2. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
3. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
4. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Do you dispute any of these facts? If so, why can't you produce such evidence? Are there any other facts that you think are relevant? If so, what? And why can't you produce those? In other words, how is discovery going to have any impact on the Motion for Partial for Summary Judgment other than to allow your client to continue to collect rent from the illegal lease that will then likely not be recoverable.

So, I have some questions for you.

1. Will 716 West Fourth Avenue LLC agree to sequester all rent not needed for debt service and direct operating costs, including not paying any money to any of its members, directly or indirectly, and recover any such money previously paid until Count One is resolved?
2. Will 716 West Fourth Avenue LLC post a bond for repayment of any rent that the Court holds should be repaid?
3. If not, will 716 West Fourth Avenue LLC provide me with its accounting data to date and on a monthly basis notwithstanding the stay of discovery as to Count One?

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Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com



## James B. Gottstein

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**From:** Jeffrey W. Robinson <jeffrey@anchorlaw.com>  
**Sent:** Wednesday, August 26, 2015 2:44 PM  
**To:** James B. Gottstein  
**Subject:** RE: Schedule

Thanks, Jim. Is it now your theory that 716 is strictly liable for damage to the party wall? This is disappointing, and not in concert with the negligence-based allegations included in your previous two complaints. In light of the terms of your settlement with Criterion, I hope this is not an end-around to the preclusion of further damage claims you can make against 716 for damage to the Alaska Building. Furthermore, when I met with you on 8/19, you were wholly uninterested in settling.

At the conclusion of oral argument, the court encouraged all parties to engage in meaningful communication regarding a discovery timeline. I reached out for that purpose. I do not believe that your offer for my clients to sequester funds or admit to personal liability was made in good faith, and therefore I will not address it further. If you are interested in a perhaps more productive face-to-face meeting to address issues in the case as we move forward, please let me know.

JWR

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**From:** James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]  
**Sent:** Wednesday, August 26, 2015 2:28 PM  
**To:** Jeffrey W. Robinson <jeffrey@anchorlaw.com>  
**Cc:** james.b.gottstein@gottsteinlaw.com  
**Subject:** RE: Schedule

Hi Jeff,

The Court ordered that I have to file a new action, which I intend to do. I don't know when, but I hope not a long time from now. While I doubt I will include the Legislative Affairs Agency, I am leaning towards including 716, as it is strictly liable for damage to the Alaska Building Party Wall. Of course, we could settle the damages claim before then.

As to the schedule, as I informed you, I think delay is very prejudicial to the state because I don't think 716 will be able to pay much, if any, of the money back. Will 716 agree to sequestering funds not needed for direct operating expenses? Will Bob Acree agree to be responsible for any amounts that are ultimately decided are due, if any? Mark Pfeffer?

It seems to me the accounting information should be available very easily. Also, you may have a two week trial starting in early September, but what about the three weeks since the requests for production were served? You certainly knew about your trial. What about Eva or other attorneys at Ashburn & Mason?

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e-mail: James.B. Gottstein@GottsteinLaw.Com



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**From:** Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]  
**Sent:** Wednesday, August 26, 2015 12:39 PM  
**To:** James B. Gottstein  
**Subject:** RE: Schedule

Hi Jim:

I left you a message. I start a two week civil trial in early September. I then hope to take a few days off. Please keep that in mind regarding my ability to provide discovery expeditiously. Also, can you please let me know if you are filing an amended complaint regarding Count Two or intend to dismiss? This will also make a difference in workloads as we prepare discovery.

Thank you,

JWR

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**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Tuesday, August 25, 2015 12:22 PM  
**To:** 'Cuddy, Kevin M.' <[kevin.cuddy@stoel.com](mailto:kevin.cuddy@stoel.com)>  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com); Jeffrey W. Robinson <[jeffrey@anchorlaw.com](mailto:jeffrey@anchorlaw.com)>  
**Subject:** RE: Schedule

Hi Kevin,

You haven't conducted any discovery since August 3rd when the stay expired. As you know, I don't believe there are any facts you might discover or present that would affect Alaska Building's argument that the lease is not an extension. Alaska Building may not win on that argument, but I just don't believe there is any genuine dispute over any material fact. I think we should just get on with a determination and go from there. I can live with the normal reply time. I just think it is ironic for you to complain since you are trying to delay as much as possible.

It is conceivable that I will file the Amended Complaint today, but my calendar exploded on Sunday when I took on an involuntary commitment case, which have very short deadlines. I will be filing a separate action for Count Two, but I don't know if I will include the Legislative Affairs Agency as a defendant. Probably not, but I haven't made the final decision.

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e-mail: [James.B. Gottstein@GottsteinLaw.Com](mailto:James.B.Gottstein@GottsteinLaw.Com)

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**From:** Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]  
**Sent:** Tuesday, August 25, 2015 11:56 AM  
**To:** James B. Gottstein; 'Jeffrey W. Robinson'  
**Subject:** RE: Schedule

Hi Jim,

My math may be faulty, but wouldn't that mean that all discovery requests would have to be served in the next 72 hours in order to get responses served by September 30 (assuming no extensions are required and no motion practice with respect to the discovery requests)? Functionally, it also would deprive the defendants of any opportunity to conduct depositions if necessary, since transcripts wouldn't be available by the proposed close of discovery. Also, why would you get more time than allotted under Rule 77 for your reply? Let me check with the client and get back to you with an alternative proposed schedule.

When will you be filing your amended complaint as to Count One? Have you decided whether to pursue a separate action for Count Two?

-Kevin

---

**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Tuesday, August 25, 2015 11:12 AM  
**To:** Cuddy, Kevin M.; 'Jeffrey W. Robinson'  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)  
**Subject:** Schedule

Hi Kevin and Jeffrey,

In thinking about the schedule for your Rule 56(f) requests, I propose that discovery for that end September 30, 2015, with 716 LLC's opposition and the Legislative Affairs Agency's supplemental opposition to the Motion for Partial Summary Judgment due October 15, 2015, and my reply October 28th.

James B. Gottstein  
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## James B. Gottstein

---

**From:** James B. Gottstein <james.b.gottstein@gottsteinlaw.com>  
**Sent:** Thursday, October 01, 2015 10:31 AM  
**To:** 'Jeffrey W. Robinson'  
**Cc:** james.b.gottstein@gottsteinlaw.com  
**Subject:** RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

Responses below.

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**From:** Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]  
**Sent:** Wednesday, September 30, 2015 4:31 PM  
**To:** James B. Gottstein  
**Subject:** RE: Alaska Building, Inc.'s Requests for Production

Jim:

1. I indicated I would provide the e-mails within two weeks from today. If any emails are withheld on privilege grounds, I will describe the basis under Rule 26(b)(5). I do not need to be reminded of my procedural obligations, and I also am not going to be able to get you "all documents" withheld on privilege grounds, if they exist, within two weeks. Your request for expediting the case was essentially denied by McKay setting the 1/30 deadline for SJ on your "not extension" argument. Discovery is ongoing. You have discovery obligations as well. I am continuously doing my best to be responsive to all matters affiliated with both actions.

***[Jim Gottstein] This has nothing to do with expediting the motion for partial summary judgment. I have expressed concern about your client's ability to pay back money over what is illegally allowed for months and the financial information is critical to determining that. You have given oral assurances that your client is fiscally sound, but refuse to provide any documentation. Since your client is being overpaid by over \$170,000 per month it is absolutely critical that funds be preserved as possible to pay a prospective judgment, including especially that Messrs. Acree and Pfeffer not such your client dry. As I indicated, in light of your failure to provide any such documentation that your client will be able to pay back amounts in excess of what is allowed by law I intend to file a motion for a preliminary injunction on this issue as soon as I can.***

2. I dispute your sequence on this point. I thought my suggestion of McKay reviewing the OA was a healthy overture. If he found this document relevant and distributed it to you, you could then assess its relevance, and then determine if you wanted to pursue 716's financial records. You then made the unilateral decision that you were entitled to all of 716's financial information. Not only do I reiterate my objections, but please read the language of your RFP No. 5 and ask yourself if your decision to forego an *in camera* inspection is valid.

***[Jim Gottstein] If you were willing to provide an in camera inspection of all of the financial information requested, that would be a different matter.***

3. We spoke broadly regarding emails and not specifically regarding RFP 4 related emails. We provided significant material in response to RFP 4. As I previously indicated in 1 above, we will provide additional emails in two weeks.

***[Jim Gottstein]***

4. Your elaboration upon the basis of you RFP No 6. is a new RFP entirely from your original RFP No. 6. I will review the basis of your request and do my best to respond in due time.



*[Jim Gottstein] I clarified RFP 6.*

5. We provided the material germane to this request and maintain previously asserted objections.
6. Mischaracterization. We reviewed the items we documented in review of RFP No. 8. I indicated that if there were invoices affiliated with some of this material, I would provide that to you.

*[Jim Gottstein] Please correct me if my interpretation is wrong that you are not going to provide documentation of all of the payments requested.*

I hope this is helpful and that all parties can act in good faith, patiently, and with respect for due process before needlessly filing motions to compel.

Thanks,

JWR

---

**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]

**Sent:** Wednesday, September 30, 2015 2:39 PM

**To:** Jeffrey W. Robinson <[jeffrey@anchorlaw.com](mailto:jeffrey@anchorlaw.com)>

**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)

**Subject:** RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

After conferring earlier today this is to confirm where we are at with respect to the September 3, 2015 responses by 716 West Fourth Avenue LLC (716 LLC) to Plaintiff's First Request for Production to 716 West Fourth Avenue LLC.

1. 716 LLC will comply with Civil Rule 26(b)(5) within two weeks with respect to all documents withheld on grounds of privilege
2. You indicated that you would provide documents responsive to Request for Production (RFP) No. 5 regarding the operating agreements, etc., to judge McKay *in camera* for him to determine if they should be provided to Alaska Building, Inc.; however this was contingent on Alaska Building, Inc., dropping the other requests pertaining to 716 LLC's financial status, i.e., RFP 1 pertaining to financing, RFP 2 pertaining to 716 LLC's financial records, and RFP 3 pertaining to payments to Mr. Acree and Mr. Pfeffer and his affiliates,. Since that was not acceptable to Alaska Building, Inc., you indicated you would not provide the documents *in camera*. This has left Alaska Building with having to move to compel with respect to RFPs 1-3, 5.
3. With respect to RFP 4, you will provide the e-mails within two weeks from today. Documents withheld on privilege grounds are subject to the agreement to comply with Civil Rule 26(b)(5) within two weeks. 716 LLC also objected to RFP 4 on the grounds it was unreasonable, overbroad and unduly burdensome in light of various privileges. This makes no sense to me in that I don't see how this is related to privileges. I don't think it is unreasonable, overbroad or unduly burdensome at all to ask for all documents relating to 716 LLC leasing or potentially leasing space for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This leaves a motion to compel with respect to that objection unless you reconsider.
4. I said I would rework RFP 6 to clarify what is sought. What I am seeking is documents in 716 LLC's possession, custody or control, relating to the LIO Lease constituting a lease extension, or, in the words of the statute, "extend a real property lease." RFP No. 6, is not directed at the Legislative Affairs Agency's consideration of the issue *per se*, but all documents in 716 LLC's possession relating to the LIO Lease extending a real property lease. An example is LAA\_001295, the May 7, 2013, letter from

Mr. Acree to Rep. Hawker proposing to completely renovate the building and renew the lease under AS 36.30.083(a). So, RFP No. 6 would include any documents, including e-mails, that could be considered "backup" or justification for the May 7, 2013, letter, to the extent it relates to the LIO Lease extending a real property lease.

5. With respect to RFP 7, I will move to compel any such valuations that you have withheld on the grounds that they are confidential and proprietary.
6. You said 716 LLC would provide the documents responsive to RFP No. 8, pertaining to payments under the LIO Lease, those being invoices and checks. This should include the \$7.5 million for tenant improvements.

If I have misstated or misinterpreted anything, please let me know.

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**From:** Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]  
**Sent:** Wednesday, September 30, 2015 9:47 AM  
**To:** James B. Gottstein  
**Subject:** RE: E-mails

Jim:

I will have the emails to you in two weeks. Does that work? As you know, I had been in trial for several weeks. I am also working on Count II matters. What date do you anticipate responding to our RFP?

*[Jim Gottstein] I expect to respond on or about the deadline.*

Thank you,

JWR

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**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Wednesday, September 30, 2015 9:44 AM  
**To:** Jeffrey W. Robinson <[jeffrey@anchorlaw.com](mailto:jeffrey@anchorlaw.com)>  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)  
**Subject:** E-mails

Hi Jeff,

In addition to the items in my letter, please be prepared to say when the non-privileged e-mails requested will be produced. It has been almost a month since you responded, "Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented." With respect to claims of privilege, of course, you must provide sufficient information to enable my client to challenge the privilege claims.

James B. Gottstein

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
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Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**COPY**  
Original Received

OCT 03 2015

Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF  
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S  
FIRST REQUESTS FOR PRODUCTION TO 716 WEST  
FOURTH AVENUE LLC**

Plaintiff Alaska Building, Inc., has moved to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Production Requests). Copies of the August 3, 2015, Production Requests and the September 3, 2015, responses by 716 West Fourth Avenue LLC (716 LLC) are attached hereto as Exhibits A & B respectively. Filed contemporaneously herewith is counsel's Civil Rule 37(d) Certificate, Exhibits 1 & 2 to which document the results of the parties conferring under Civil Rule 37(d).

**A. Overview**

Broadly speaking, 716 LLC's objections fall into three main categories:

1. The requested documents are confidential and/or proprietary.

2. The requested documents are protected by the attorney client privilege, work product doctrine.

3. The requested documents are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

With respect to No. 1, it is not proper to withhold documents on the grounds that they are confidential or proprietary. *Lockwood v. Geico*, 323 P.3d 691, 699-700 (Alaska 2014). The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order. *Id.* Alaska Building, Inc., invited 716 LLC to negotiate a protective order, but 716 LLC did not take it up on the offer. See, Exhibit 1, page 1, and Exhibit 2 to Rule 37(d) Certificate.

With respect to No. 2, Civil Rule 26(b)(5), expressly requires 716 LLC to provide sufficient information with respect to documents withheld on privilege grounds to enable the plaintiff to challenge any claims of privilege:<sup>1</sup>

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

716 LLC has failed to do so.

With respect to No. 3, in the main, the requested documents to which relevance objections apply pertain to the financial condition of LLC. As the Supreme Court

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<sup>1</sup> See, *Lee v. State*, 141 P.3d. 232, n1 of Appendix, adopted by reference, 141 P.3d. 351.

reiterated in *Lockwood*, "the 'relevancy standard is to be broadly construed at the discovery stage.'" <sup>2</sup> The relevance is 716 LLC's ability to pay back money it receives under the LIO Lease in excess of what is allowed under AS 36.30.083(a). Filed contemporaneously herewith is a motion for preliminary injunction primarily intended to prevent 716 LLC's owners from taking money out of the company, making it unavailable for repayment. 716 LLC's financial condition is directly relevant to this pending motion.

Alaska Building, Inc., will now go through each Request for Production, including 716 LLC's objections, the current status and the relief requested under Civil Rule 37.

### **B. Individual Requests for Production**

#### **Request for Production No 1.**

Request for Production No. 1, is as follows:

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

Exhibit A, page 3

716 LLC objected to this request for production on the grounds that the information is confidential and proprietary, and they are protected by the attorney client privilege,<sup>3</sup> work product doctrine, but produced 5 documents. Exhibit B, page 4-5. The produced documents did not include loan application(s), promissory note(s), guarantees, if any, projections or *pro formas*, or personal financial statements. 716 LLC did not describe the

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<sup>2</sup> 323 P.3d at 699.

<sup>3</sup> 716 LLC did not interpose a specific relevancy objection to this request.



nature of the documents not produced in a manner that would enable an assessment of the applicability of the claimed privilege(s).

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 1 not already produced.<sup>4</sup> With respect to claims of privilege, Alaska Building, Inc., requests 716 LLC be required to describe each document or other item withheld as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;
- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

#### **Request for Production No 2.**

Request for Production No. 2, is as follows:

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format, and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012, through July 31,

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<sup>4</sup> Alaska Building, Inc., believes a protective order is probably appropriate with respect to personal financial information.

2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

Exhibit A, page 3-4.

716 LLC objected to this request for production on the grounds that the requested documents are confidential and proprietary and not relevant. No documents or other material was produced. Exhibit B, page 6.

As set forth above, that documents may be confidential or proprietary is not a proper objection and the requested documents are directly relevant to the pending motion for preliminary injunction. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 2.

### **Request for Production No 3.**

Request for Production No. 3, is as follows:

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust Utad 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

Exhibit A, page 4.

716 LLC objected to this request for production on the grounds that the requested documents are confidential and proprietary and not relevant. No documents or other material was produced. Exhibit B, page 6.

As set forth above, that documents may be confidential or proprietary is not a proper objection. The amount of money paid as rent under the LIO Lease that has and is



continuing to be paid to Messrs. Acree and Pfeffer and Mr. Pfeffer's trust is directly relevant to the pending motion for preliminary injunction. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 3.

**Request for Production No 4.**

Request for Production No. 4, is as follows:

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

Exhibit A, page 4-5

716 LLC first objected on the grounds that it calls for "privileged internal documents." Exhibit B, page 7. This is not a proper objection. There is no privilege for internal documents. To the extent this is really an objection that the documents are confidential or proprietary, as set forth above, it is also not a proper objection.

716 LLC next objected on the grounds that it is,

unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery.

*Id.* It is important to note that this objection is not that the request is unreasonable, overbroad, and unduly burdensome *per se*, but instead that it is unreasonable, overbroad, and unduly burdensome in light of the various privileges claimed. This is thus a privilege objection subject to the rule on making a proper privilege objection.

However, to the extent the objection is interpreted to be that the request is unreasonable, overbroad, and unduly burdensome, it is not a proper objection. Civil Rule 26(b)(2)(A)(i)-(ii) provides that Discovery may be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

716 LLC has not attempted to make any showing under (i) that the requested material is unreasonably cumulative or duplicative or obtainable from a more convenient, less burdensome, or less expensive source. Similarly, 716 LLC has made no showing that Alaska Building, Inc., has had ample opportunity by discovery in this action to obtain the information sought. It has also failed to make a showing that the burden or expense outweighs its likely benefit.

Alaska Building, Inc., does not believe any of the criteria for limiting discovery exist. With respect to both (i) & (ii), the Legislative Affairs Agency has provided certain material and Alaska Building, Inc., does not object to 716 LLC not providing duplicative discovery of this material.

With respect to 716 LLC's privilege objections to Request for Production No. 4, it should be required to provide the information required by Civil Rule 26(b)(5), as set forth above.

*Memorandum In Support of Motion  
to Compel 716 LLC Production*

*Page 7*

716 LLC has promised to provide the requested e-mails by Friday, October 16, 2015, as well as the information required by Civil Rule 26(b)(5) for any claims of privilege, and Alaska Building, Inc., is requesting this be ordered by the Court. Otherwise, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 4.

**Request for Production No 5.**

Request for Production No. 5, is as follows:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

Exhibit A, page 5.

716 LLC objected to this request for production on the grounds that it is confidential and proprietary, and that it is irrelevant and not likely to lead to admissible evidence. Exhibit B, page 8. As set forth above, that documents might be confidential and proprietary is not a proper basis to withhold discovery.

With respect to relevancy, it appears there has been a change in control of 716 LLC and this is relevant to whether or not the lessee is the same, which is relevant to the issue of whether the LIO Lease extends a real property lease as required by AS 36.30.083(a). In addition, there may be indemnity or other types of agreements that allocate financial responsibility for the illegality of the LIO Lease.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 5.



### **Request for Production No 6.**

Request for Production No. 6, is as follows:

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

Exhibit A, page 5.

716 LLC Objected to this Request for Production as follows:

716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

Exhibit B, page 9

First, Alaska Building, Inc., does not object to 716 LLC not producing duplicative discovery. Second, Alaska Building, Inc., is requesting material in 716 LLC's possession. If material is only in the Legislative Affairs Agency's possession, the request for production does not apply.

Interestingly, the Legislative Affairs Agency produced a legal memo from in-house counsel for Pfeffer Development stating that the LIO Lease should be approved by the entire Legislature because it did not appear either AS 36.30.080 or AS 36.30.083(a)

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*Memorandum In Support of Motion  
to Compel 716 LLC Production*

*Page 9*

stretched far enough to encompass the LIO Lease. Exhibit C, pages 1, 2 & 5.<sup>5</sup> Any other non-privileged material responsive to this request should be produced. Any objection to producing material because a privilege is claimed should include the information required by Civil Rule 26(b)(5) as set forth above.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 6.

**Request for Production No 7.**

Request for Production No. 7, is as follows:

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCKd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

Exhibit A, page 6.

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<sup>5</sup> This memo was transmitted to the Legislative Affairs Agency, thus waiving the attorney-client privilege.

716 LLC objected on the grounds that the material was confidential and proprietary, but produced two appraisals that were circular in that the valuations were based on the income from the LIO Lease. Other valuations were not produced. Exhibit B, page 10.

As set forth above, that material is confidential and proprietary is not a proper ground to withhold discovery. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 6.

**Request for Production No 8.**

Request for Production No. 8, is as follows:

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development LLC.

Exhibit A, page 7

716 LLC produced certain contractual documents, but objected to the balance as follows:

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC, the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Exhibit B, page 11.

*Memorandum In Support of Motion  
to Compel 716 LLC Production*

*Page 11*



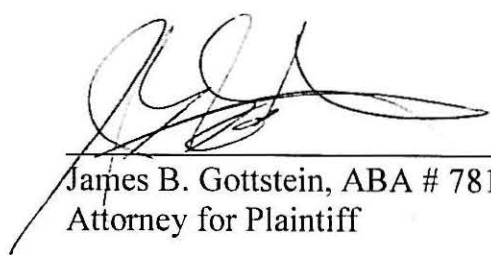
As set forth above, that material is confidential and proprietary is not a proper ground to withhold discovery. With respect to the claim of privilege, 716 LLC must include the information required by Civil Rule 26(b)(5) as set forth above. With respect to the argument that it is duplicative of the same request made to Pfeffer Development, LLC, attached hereto as Exhibit D, which is Pfeffer Development's responses to discovery wherein it did not produce any material on the grounds that the claims against it has been severed from this action.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all non-produced documents and other material responsive to Request for Production No. 8, subject to proper claims of privilege.

### C. Conclusion

For the foregoing reasons, Alaska Building, Inc., respectfully requests the Court to grant its motion to compel discovery from defendant 716 West Fourth Avenue LLC.

Dated October 6, 2015.



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James B. Gottstein, ABA # 7811100  
Attorney for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,  
KOONCE PFEFFER BETTIS, INC., d/b/a  
KPB ARCHITECTS, PFEFFER  
DEVELOPMENT, LLC, LEGISLATIVE  
AFFAIRS AGENCY, and CRITERION  
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO  
716 WEST FOURTH AVENUE LLC**

Pursuant to Civil Rule 34 Plaintiff Alaska Building, Inc., serves the following requests for production on the Defendant 716 West Fourth Avenue, LLC (716 LLC).

Electronic production of hard-copy documents as word searchable Acrobat (PDF) files is preferred. Reasonably useable forms or formats for electronically stored information include (i) word searchable Acrobat (PDF) for written documents, (ii) jpeg or tiff for photographs or other images or graphics, (iii) MP3 for audio files, (iv) MPEG or MP4 for video files, and (v). pst (Outlook) or word searchable Acrobat for E-mails.

## I. DEFINITIONS

Unless the request conclusively indicates otherwise, the following definitions apply to the words used in these interrogatories:

A. LIO Lease: The words "LIO Lease" refers to that certain document titled "Extension of Lease and Lease Amendment No. 3 Extension of Lease," a copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment.

B. New LIO Building. The term "New LIO Building," means the completed building under the LIO Lease.

C. Document: The term "document" is defined to mean and include any and all graphic or physical representations, including without limitation all handwritten, typed or printed material, photographs, copies of all the foregoing, and electronically stored information within the meaning of Civil Rule 34(a), including e-mail.

D. Relate: The words "relate" or "relating to" mean referring to, pertaining to, concerning, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or pertaining to, directly or indirectly, in whole or in part.

## II. CLAIMS OF PRIVILEGE:

If any document(s) or other item(s) identified or requested herein are withheld for any reasons under a claim of privilege or any other claim, the particular document or other item(s) withheld are to be described as follows:

- (1) The date of the document or other item;
- (2) The author or addressor of the document or other item;
- (3) The recipient or addressee of the document or other item;
- (4) The number of pages of the document;
- (5) The general subject matter of the document or other item;
- (6) Each person who sent, received and obtained copies of the document or other item;
- (7) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and



- (8) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

#### REQUEST FOR PRODUCTION NO. 1.

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

#### RESPONSE

#### REQUEST FOR PRODUCTION NO. 2.

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format, and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an annual basis to the

end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012, through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

**RESPONSE**

**REQUEST FOR PRODUCTION NO. 3.**

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust Utad 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

**RESPONSE**

**REQUEST FOR PRODUCTION NO. 4.**

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on

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Plaintiff's First Requests  
for Production to 716 LLC

January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

**RESPONSE**

**REQUEST FOR PRODUCTION NO. 5.**

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

**RESPONSE**

**REQUEST FOR PRODUCTION NO. 6.**

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

**RESPONSE**



## REQUEST FOR PRODUCTION NO. 7.

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCKd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

## RESPONSE

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Plaintiff's First Requests  
for Production to 716 LLC

REQUEST FOR PRODUCTION NO. 8.

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development LLC.

**RESPONSE**

DATED: August 3, 2015.


Law Offices of James B. Gottstein

By: 

James B. Gottstein, ABA # 7811100  
Attorney for Alaska Building, Inc.

**CERTIFICATE OF SERVICE**

I certify that on August 3, 2015, I hand delivered a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Daniel T. Quinn, and Cynthia L. Ducey, and mailed a copy to Mark Scheer.

  
Jim Gottstein

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Plaintiff's First Requests  
for Production to 716 LLC

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

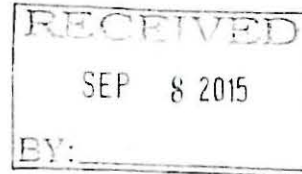
ALASKA BUILDING, INC., an Alaska  
corporation, )

Plaintiffs, )

vs. )

716 WEST FOURTH AVENUE LLC, )  
KOONCE PFEFFER BETTIS, INC., d/b/a )  
KPB ARCHITECTS, PFEFFER )  
DEVELOPMENT, LLC, LEGISLATIVE )  
AFFAIRS AGENCY, and CRITERION )  
GENERAL, INC., )

Defendants. )



Case No.: 3AN-15-05969 Civil

**716 WEST FOURTH AVENUE, LLC'S RESPONSES TO ALASKA BUILDING,  
INC.'S FIRST REQUEST FOR PRODUCTION**

COMES NOW, Defendant, 716 West Fourth Avenue ("716 WEST" or  
"Defendant"), by and through counsel, Ashburn & Mason, P.C. and responds to  
Plaintiff's First Request for Production.

**PRELIMINARY STATEMENT**

Discovery in this case is not complete. As discovery proceeds, facts,  
information, evidence, documents, and things may be discovered which are not set forth  
in these responses, but which may be responsive to these discovery requests. The  
following responses are complete based on 716 WEST's current knowledge,  
information and belief. Furthermore, these responses were prepared based on 716

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ANCHORAGE, ALASKA 99501  
TEL 907.276.4331 • FAX 907.277.8235



WEST's good faith interpretation of the discovery requests and are subject to correction for inadvertent errors or omissions, if any.

716 WEST reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of hearing, any and all facts, evidence, documents and things developed during the course of discovery and hearing preparation, notwithstanding references to facts, evidence, documents and things provided herein. These responses are given without prejudice to subsequent revision or supplementation, including objections, based on any information, evidence and documentation which hereinafter may be discovered.

#### GENERAL OBJECTIONS

716 WEST expressly incorporates the following general objections as if set forth fully in response to each of the following individual discovery requests addressed in the specific objections section below, and any response below is made subject to and without waiving these objections:

1. 716 WEST objects to the discovery requests to the extent they purport to impose requirements upon 716 WEST beyond those authorized by Alaska Rules of Civil Procedure 26, 33, and 34, and otherwise fail to comport with the Alaska rules.
2. 716 WEST objects to requests for the production of documents, calculations, and analyses that do not exist. Under Alaska Civil Rule 34, parties are required to produce documents within their "possession, custody, or control." A document is not within a party's "possession, custody, or control" if it does not exist.

3. 716 WEST objects to each and every discovery request insofar as they are vague, ambiguous, overly broad, unduly burdensome, or use terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these discovery requests.

4. 716 WEST objects to each and every discovery request insofar as they are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter of this proceeding.

5. 716 WEST objects to providing information to the extent that it is already a matter of public record, or to the extent it is obtainable from other sources that are more convenient and less burdensome, or are equally available to the Plaintiff. Plaintiff is not entitled to require other parties to gather information that is equally available and accessible to it.

6. 716 WEST objects to each and every discovery request insofar as they seek documents or information protected by the attorney-client privilege or the work product privilege. Nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any such privilege or protection, or any other applicable privilege or doctrine.

7. 716 WEST objects to the instructions contained in Plaintiff's discovery requests. In responding to the requests, 716 WEST will follow the standard discovery rules and practices for civil litigation in the Alaska courts. 716 WEST will produce

non-privileged documents that are within its own possession, custody or control of its respective officers, employees, representatives and attorneys.

8. 716 WEST objects to production of any confidential documents or other information that could prejudice the business interests of 716 WEST or of any party that may have provided the confidential information to 716 WEST.

9. 716 WEST objects to the discovery requests insofar as certain requests are duplicative of other requests. 716 WEST will not undertake to produce more than one copy of any document that may be responsive to more than one request.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

**RESPONSE:** 716 objects to this request because it seeks information that is confidential and proprietary and seeks information and documents protected by the attorney client privilege, work product doctrine, or any other applicable privilege. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:



- Northrim Bank terms and conditions letter to Mark Pfeffer, dated 9-10-13, Bates-stamped 716-000264 thru 716-000266.
- 716 – Wells Fargo Commitment Letter, dated 11-29-13, Bates-stamped 716-000267 thru 716-000271.
- Everbank – Conditional Commitment Letter, dated 11-14-14, Bates-stamped 716-000272 thru 716-000278.
- Appraisal of 716 West 4<sup>th</sup> Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St. John of EverBank, dated December 12, 2014, Bates-stamped 716-000279 thru 716-000545.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Ms. Deatrice Swazer of Northrim Bank dated October 28, 2013, Bates-stamped (note in two parts)-Part One 716-000546 thru 716-000715 and Part Two 716-000716 thru 716-000881.

**REQUEST FOR PRODUCTION NO. 2:**

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an

annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012 through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

**RESPONSE:** In addition to the general objections set forth above, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence in the instant action.

**REQUEST FOR PRODUCTION NO. 3:**

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

**RESPONSE:** Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 4:**

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the

Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

**RESPONSE:** 716 objects to this request to the extent that it calls for production of privileged internal documents. Furthermore, the request for "all documents" relating to the expiration of the lease in effect on January 2, 2010 and thereafter is unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery. The request is also ambiguous as it suggest that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute. Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- 2010 Lease Renewal 2, dated 10-11-10, Bates-stamped 716-000882-716-000887.
- 2011 Lease Renewal 3, dated 4-13-11, Bates-stamped 716-000888 thru 716-000893.
- 2012-2013 Lease Renewal 4, dated 7-19-12, Bates-stamped 716-000894 thru 716-000899.



- Extension of Lease and Lease Amendment No.3, dated 9-19-13, Bates-stamped 716-000900 thru 716-001079.
- Memorandum of Lease – Recorded, dated 10-7-13, Bates-stamped 716-001080 thru 716-001083.
- Memorandum of Understanding between 716, the Legislative Affairs Agency (“LAA”), and Alaska Housing Finance Corporation (“AHFC”) dated 2/18/14, Bates-stamped 716-001084 thru 716-001087.
- LIO Presentation, Bates-stamped 716-001088 thru 716-001103.
- September 18, 2013 email from Mark Pfeffer to Timothy Lowe, Mike Buller and Doc Crouse with Final Budget attached, Bate Stamped 716-001256 thru 716-001258.

**REQUEST FOR PRODUCTION NO. 5:**

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

**RESPONSE:** Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 6:**

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

**RESPONSE:** 716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

**REQUEST FOR PRODUCTION NO. 7:**

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market

rent value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

**RESPONSE:** 716 objects to this request because it seeks information that is confidential and proprietary. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 has already produced, in response to Request for Production No. 1, an appraisal of 716 West 4<sup>th</sup> Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St.John of EverBank, dated December 12, 2014, previously attached as Bates-stamped 716-000279 thru 716-0005454.

**REQUEST FOR PRODUCTION NO. 8:**

Please produce all document memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC.



**RESPONSE:**

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC., the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

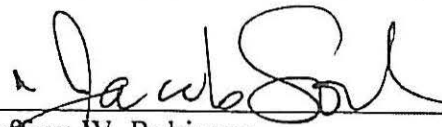
- Construction contract between 716 and Criterion General, Inc., including construction cost estimate, dated 11-11-13; Bates-stamped 716-001104 thru 716-001156.
- Criterion General Business License, Bate Stamped 716-001157 thru 716-001159.
- Criterion Payment and Performance Bond, Bate Stamped 716-001160 thru 716-001168.
- Certificate of Liability Insurance, Bate Stamped 716-001169-716-1170;

- Certificate of Liability Insurance (Wells Fargo), Bate Stamped 716-001171.
- Certificate of Liability Insurance, Bate Stamped 716-001172 thru 716-1177.
- Criterion General Builders Risk, Bate Stamped 716-001178 thru 716-001179.
- Contractor Qualification Statement, Bate Stamped 716-001180 thru 716-001186.
- Change Order #1, Bate Stamped 716-001187 thru 716-001189.
- Change Order #2, Bate Stamped 716-001190 thru 716-001192.
- Change Order #3, Bate Stamped 716-001193 thru 716-001195.
- Change Order #4, Bate Stamped 716-001196 thru 716-001207.
- Certificate of Insurance, Bate Stamped 716-001208-716-001209.
- LIO Change Order dated 12/30/14, Bate Stamped 716-001210 thru 716-001221.
- Kpb Subcontract, Bate Stamped 716-001222 thru 716-001255.

ASHBURN & MASON P.C.  
LAWYERS  
1227 WEST 9TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
TEL 907.276.4331 FAX 907.277.8235

DATED: 9/3/15

ASHBURN & MASON, P.C.  
Attorneys for 716 West Fourth Avenue, LLC

By:   
for Jeffrey W. Robinson  
Alaska Bar No. 0805038



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger  
☐ facsimile ☒ U.S. Mail on the 3 day of September 2015, on:

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, Alaska 99501

Mark P. Scheer  
Scheer & Zehnder LLP  
701 Pike Street, Suite 2200  
Seattle, WA 98101

Kevin Cuddy  
Stoel Rives, LLP  
510 L Street, Suite 500  
Anchorage, Alaska 99501

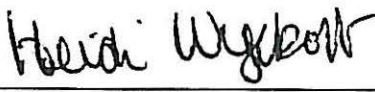
Cynthia L. Ducey  
Delaney Wilson, Inc.  
1007 W. 3rd Avenue, Ste. 400  
Anchorage, Alaska 99501

Dan Quinn  
360 K Street, Suite 200  
Anchorage, AK 99501

Blake Call  
Call & Hanson, P.C.  
413 G Street  
Anchorage, Alaska 99501

ASHBURN & MASON

By:



Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION  
*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC*, et. al. 3AN-15-05969 Civil

{10708-101-00281426;5}

Page 14 of 14

Exhibit B, page 14 of 14

ASHBURN & MASON<sup>PC</sup>  
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1227 WEST 9TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
TEL 907.276.4331 • FAX 907.277.8235

**Juli Lucky**

---

**From:** John L. Steiner <JSteiner@PfefferDevelopment.com>  
**Sent:** Thursday, July 18, 2013 12:03 PM  
**To:** LAA Legal  
**Cc:** 'bob acree'; Mark Pfeffer; Heidi A. Wyckoff; Donald W. McClintock  
**Subject:** RE: LAA leases  
**Attachments:** LIO Project Procurement Analysis dated 7-13-2013.docx  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Doug,

Based on your concern as to any possible procurement implications of our transactional plan for the Anchorage LIO lease amendments, I prepared a memo with my analysis of that issue. I have been authorized to release it to you, as we thought it might be helpful to you, as well.

I look forward to talking through whatever issues may yet need to be resolved.

**John L. Steiner**

**Project Director and Counsel**

---

**Pfeffer Development, LLC**  
*Commercial Real Estate Developers*  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907.646.4644 | f 907.646.4655  
d 907.770.4306 | c 907.382.2300

This email may contain confidential or attorney-client privileged information and is in any case confidential. If you are not the intended recipient of this email please notify the sender then delete it permanently.

**From:** Donald W. McClintock [mailto:dwm@anchorlaw.com]  
**Sent:** Friday, July 12, 2013 12:53 PM  
**To:** LAA Legal  
**Cc:** 'bob acree'; Mark Pfeffer; John L. Steiner; Heidi A. Wyckoff  
**Subject:** LAA leases

L2144

Doug,

Per our conversation today, please find attached draft leases for 716 W. 4<sup>th</sup> extension and the material amendment to add 712 W. 4<sup>th</sup> and renovate.

I also attach the analysis on how the extension rent was set under the BOV delivered to Representative Hawker.

As noted, there are business issues that you need to confirm with your clients, but we also stand by to address the various boilerplate clauses . Note, we tried to anticipate from your existing lease structure some of the clauses you would expect to see and obviously are receptive to adding others we may have missed. A lot of the technical detail that are in your leases will be in the plans and specifications in this deal, which we will both have to see once the AHFC and architectural process is complete.

I look forward to working these through with you. Enjoy the weekend; we are enjoying a blue bird summer day in Anchorage.

Don

**Donald W. McClintock**

**Ashburn & Mason, P.C.**

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

[www.anchorlaw.com](http://www.anchorlaw.com)

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## **Legislative Information Office Project Procurement Analysis**

**John Steiner, Project Director and Counsel**

July 13, 2013

### **Executive Summary**

I do not believe the proposed Anchorage Legislative Information Office (LIO) lease extension and potential project plan is subject to any reasonable issue as to its compliance with applicable procurement rules. Indeed, I believe the proposed plan to be the most legally defensible manner in which to implement the intent of the Legislative Council.

### **Outline of Lease Extension and Potential Project Plan**

The plan is to first execute a ten-year extension of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. This extension would secure ongoing space after May 31, 2014 at a price statutorily deemed fair, but without committing the legislature to any major enlargement or cost increase.

Next, a material amendment to the extended lease (in the form of a restated lease document) will provide for enlargement, renovation and lease rate adjustment, but rather than the Legislative Council chair assuming that he and the Legislative Council possess the authority for that scope of change, it will be made expressly subject to legislative approval under AS 36.30.080.

Reflecting the Legislative Council chairman's confidence that the legislature will, indeed, approve the proposed enlargement and renovation, and to allow planning and design to proceed so work can be accomplished while the legislature is in Juneau for the up-coming legislative session, an independently and immediately valid provision of the lease restatement will authorize such planning and design to proceed pending legislative approval, with a lump sum cost approved by AHFC to be payable from funds previously appropriated for Legislative Council use.

### **Analysis of Legislative Council Authorization**

The first step of the plan is to implement the lease extension authorized by the first motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

AS 36.30.083(a) provides in relevant part:

(a) Notwithstanding any other provision of this chapter, . . . the legislative council . . . may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

The motion set out above authorizes exactly what AS 36.30.083(a) appears to contemplate: an extension of up to ten years of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. Nothing in the motion, or for that matter in AS 36.30.083(a), suggests an expectation, contemplation, or even authority for the Legislative Council to double the area leased or total lease cost immediately before or in conjunction with an extension under that statute. Accordingly, the "as-is" extension will comply precisely with the Legislative Council and statutory authorizations.

The second step of the plan is to conditionally execute the lease modification authorized by the third motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

The restated lease document will accomplish everything authorized in the above motion. Although the Legislative Council gave broad authority to its chairman in this motion, the scope of proposed changes is so great that it seems imprudent to assume that the Legislative Council itself has the authority to authorize the modification without full legislative approval under AS 36.30.080.

That the plan is consistent with the actions taken by the Legislative Council is supported by the requirement that the renovations "not . . . exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation." Not only does this language provide a test of reasonable cost for the renovations independent of the 90% of market value standard under AS 36.30.083(a), but if the latter standard were meant to apply to the lease rate for the renovated space, there would be no reason to include a renovation cost limit at all.

## Procurement Analysis

The Legislative Council is not subject to any requirement for competitive lease procurement except to the extent it has imposed the restriction on itself. As such, the Legislative Council's change to its Procurement Procedures should be effective in opting to allow noncompetitive modification of a lease.

Under AS 36.30.850(5), the Alaska Procurement Code does not apply to "acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085." (emphasis added). One may question whether a lease is an exempted interest in real property, but analysis of the Procurement Code eliminates all doubt. A lease is clearly an interest in real property, exempt from the Procurement Code except as stated in AS 36.30.850(5).

AS 36.30.080 and AS 36.30.085 deal *expressly* with leasing. Although the latter includes possible acquisition of title, the former does not. The logical and necessary import of inclusion of an exception for AS 36.30.080 in the general exclusion for "acquisitions or disposals of real property or interest in real property," is that the leasing activity covered by AS 36.30.080 is acquisition of an interest in real property.

Importantly, however, the exception under AS 36.30.850(5) does not state that Legislative Council leasing is generally subject to *all* provisions of the Procurement Code; rather Legislative Council enjoys the same exclusion for leasing as for any other acquisition of an interest in real property "except as provided in AS 36.30.080 and AS 36.30.085" (emphasis added). So only the specific requirements of those statutes apply.

AS 36.30.080(a) makes some leasing—by the Department of Administration for "the state or an agency"—"subject to compliance with the [competitive procurement] requirements of [the Procurement Code]." But the Legislative Council is not "the state or an agency" for which the Department of Administration leases space. Rather, under AS 36.30.990(1) "agency" "means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, the Alaska Veterans' Home, or other administrative unit of the executive branch of state government." (emphasis added).

Clearly, neither the Legislature nor the Legislative Council is an administrative unit of the executive branch. The Legislative Council leases space for the Legislature under AS 36.30.080(c).

So although it is true that leasing space for state agency use generally falls subject to competition under the Procurement Code, that is not the case for leasing by the Legislative Council.

AS 36.30.080(c) applies to the Legislative Council, but it does *not* reincorporate the Procurement Code. Rather, it requires notice to the legislature, and legislative approval (which



may be satisfied by appropriation of the first year's rent) if the annual rent is expected to "exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease." It further expressly states that

"the legislative council . . . may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options."

Thus, AS 36.30.080(c) does not re-inject a competition requirement for legislative leasing. The statutory expectation is legislative approval, not competition. The general principal is that just as no appropriation, direct legislative grant or other legislative action is required to be based upon a formal competitive process, the legislature is free to act on its own leasing by law without any other procurement process.

The reimbursement of planning and design work may appropriately be covered as a term of an exempt lease, as a material modification under Alaska Legislative Procurement Procedures Section 040(a) or (d), inasmuch as the Lessor is making that material modification of the lease a requirement to submit the larger modification (that includes a schedule for proposed renovations requiring the planning and design to proceed) for legislative approval.

#### **Limits of AS 36.30.083(a) Authority**

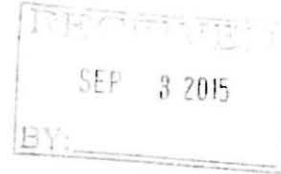
It is worth a brief additional note as to the risk of seeking to avoid legislative approval under AS 36.30.083(a) based on a renovated lease rate 10% below market rent, even if that were feasible as a business matter because of the enforced 10 year term. **For the Legislative Council to attempt to accomplish redevelopment and an associated change in rent (increasing both the space leased and the rent per square foot) under AS 36.30.083(a) would seem much more likely to be seen as an end-run around the statutory requirement for full legislative approval.** The current proposal as mapped by the Legislative Council motions to extend "as-is" and explicitly **present the restated lease for legislative approval** addresses the requirements of the Code more directly. **That way there can be no allegation that the amendment is beyond merely "material" but so changes the amount and nature of the space leased that for purposes of legislative approval it should be treated as a new and different lease and not just a lease extension allowable under AS 36.30.083(a).**

## Alaska Legislative Procurement Procedures

One might inquire as to the implications of Alaska Legislative Procurement Procedures Section 033 (LIMITED COMPETITION PROCUREMENTS), which addresses procurement of “supplies” not exceeding \$50,000, and expressly “includes a space lease” for no more than \$50,000 or for no more than 3,000 square feet. The inclusion of leased space within the definition of “supplies” may derive from the Procurement Code’s definition of “supplies” under AS 36.30.990(24), to include “privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land” (emphasis added). As previously noted, because the legislature is not an “agency,” its leases do not fall within the statutory definition of “supplies.” Hence the Legislative Procurement Procedure that seems to consider a small lease a “supply” is not compelled by statute.

Similarly, the new material amendment language of Section 040(d) addresses lease extension in the context of a Procurement Procedure Section regarding exemption from standard procurement by formal solicitation and low bid. Thus, even though legislative leasing appears to be exempt from the Procurement Code as a matter of statute, the Legislative Council has arguably committed to competition in most cases under its own procedures.

But the new material amendment provision under Section 040(d) of the Legislative Procurement Procedures lifts whatever self-imposed issue there may be relating to competition under those Procedures. And the Legislative Council imposed no limitation on the terms that can be modified under Section 040(d) given legitimate findings by the chair of the Council. All that remains is any legislative approval that may be required by AS 36.30.080. Our plan calls for precisely such approval.



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an )  
Alaska Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
716 WEST FOURTH AVENUE LLC, )  
KOONCE PFEFFER BETTIS, INC., )  
d/b/a KPB ARCHITECTS, PFEFFER )  
DEVELOPMENT, LLC, LEGISLATIVE )  
AFFAIRS AGENCY, and CRITERION )  
GENERAL, INC., )  
 )  
Defendants. ) Case No. 3AN-15-05969 CI  
 )

RESPONSE TO PLAINTIFF'S FIRST REQUESTS FOR  
PRODUCTION TO PFEFFER DEVELOPMENT, LLC

Defendant PFEFFER DEVELOPMENT, LLC, by and through the law firm of Delaney Wiles, Inc., hereby responds to "Plaintiff's First Requests for Production to Pfeffer Development, LLC" as follows:

REQUEST FOR PRODUCTION NO. 1.

Please produce all documents, from January 1, 2008, forward, including without limitation, e-mails, relating to providing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office when the Legislative Affairs Agency's then current lease terminated. This request

DELANEY WILES, INC.  
SUITE 400  
1007 WEST 3<sup>RD</sup> AVENUE  
ANCHORAGE, ALASKA  
99501  
(907) 279-3581  
FAX (907) 277-1331

Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al. Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 1 of 6



encompasses all efforts relating to providing space for the Anchorage Legislative Information Office upon the expiration of the then existing lease. By way of illustration, this request includes without limitation all responsive documents related to the building at 9th and I Street in Anchorage that was ultimately renovated and occupied by NANA, Inc. This request includes all responsive documents relating to the LIO Lease, including without limitation, negotiations with the Legislative Affairs Agency and/or any agents or representatives thereof, specifically including Rep. Mike Hawker.

**RESPONSE:** Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 1 is relevant.

REQUEST FOR PRODUCTION NO. 2.

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

**RESPONSE:** Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim;

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Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al. Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 2 of 6

therefore, none of the information sought in Request for Production No. 2 is relevant.

REQUEST FOR PRODUCTION NO. 3.

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space by the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCKd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to by the Legislative Affairs Agency leasing or otherwise acquiring space for the Anchorage

Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al. Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 3 of 6

Legislative Information Office after the expiration of the then existing lease, including space other than under the LIO Lease.

**RESPONSE:** Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 3 is relevant.

**REQUEST FOR PRODUCTION NO. 4.**

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for demolition and construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015.

**RESPONSE:** Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 4 is relevant.


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1007 WEST 3<sup>rd</sup> AVENUE  
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*Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al.* Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 4 of 6



DATED this 2nd day of September, 2015, at Anchorage,  
Alaska.

DELANEY WILES, INC.  
Attorneys for Defendant  
Pfeffer Development, LLC

  
for Cynthia L. Ducey  
Alaska Bar Assoc. No. 8310161

CERTIFICATE OF SERVICE

This certifies that I am an authorized agent of Delaney Wiles, Inc., for service of papers pursuant to Civil Rule 5, and that on this 2nd day of September, 2015, a copy of the foregoing document was served by mail upon:

Attorney for Alaska Building, Inc.  
James B. Gottstein  
Law Offices of James B. Gottstein  
406 G St Ste 206  
Anchorage AK 99501

Attorney for 716 West Fourth Avenue, LLC  
Jeffrey W. Robinson  
Ashburn & Mason, PC  
1227 W 9th Ave Ste 200  
Anchorage AK 99501

Attorney for Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects  
Daniel T. Quinn  
Richmond & Quinn  
360 K St Ste 200  
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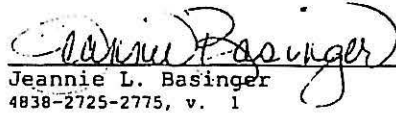
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Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al. Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 5 of 6

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Alaska Building, Inc. v. 716 W. 4<sup>th</sup> Ave., LLC, et al. Case No. 3AN-15-05969 CI  
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 6 of 6

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**COPY**  
Original Received

OCT 06 2015

Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**ORDER GRANTING  
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S  
FIRST REQUESTS FOR PRODUCTION TO 716 WEST  
FOURTH AVENUE LLC**

Upon the motion by plaintiff, Alaska Building, Inc., to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC pursuant to Civil Rule 37(d), and after consideration of all responses, if any, it is hereby Ordered that the motion is **GRANTED**.

**IT IS FURTHER ORDERED,**

1. Defendant, 716 West Fourth Avenue LLC shall produce the requested material within 30 days of this Order, and
2. Defendant, 716 West Fourth Avenue LLC shall describe any documents or other material withheld because of an asserted privilege as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;

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- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

Dated \_\_\_\_\_, 2015.

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PATRICK J. McKAY,  
SUPERIOR COURT JUDGE