

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 27 2015

Clerk of the Trial Courts

Case No.: 3AN-15-05969 CI

**716'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Defendant 716 West Fourth Avenue, LLC ("716") has objected to disclosing certain proprietary information relating to 716's internal financial operations. Plaintiff Alaska Building, Inc. ("ABI") has filed for a preliminary injunction in order to make that otherwise irrelevant proprietary information discoverable. For the reasons stated within this motion, ABI is barred from seeking injunctive relief by the equitable defense of laches and ABI has otherwise failed to meet the "balance of hardships" test. A proposed order denying the injunction and affidavits of counsel and Mark Pfeffer, Operating Manager of 716, accompany this Motion.

I. FACTUAL BACKGROUND

On September 19, 2013, 716 entered into an agreement with the Legislative Affairs Agency (the "Agency") to renovate and expand the Anchorage Legislative Information Office (the "LIO Project"). The Alaska Building, which is owned by ABI,

is situated immediately adjacent to the LIO. Jim Gottstein, president and sole member of ABI, learned about the contemplated renovation of the LIO as early as “mid-September, 2013.”¹ On October 2, 2013 Gottstein met with Mark Pfeffer to discuss the project.² By October 3, 2015, ABI was specifically aware that (1) the construction and renovations involved in the project would cost tens of millions of dollars, (2) was not the subject of a competitive procurement process, and (3) media outlets were reporting the agreement would increase the Legislature’s rent rates.³ By mid-October, Gottstein had reviewed AS 36.30.083(a) and formed the opinion that the September 19, 2013 agreement was not a valid lease extension.⁴

By October 11, 2013 Gottstein was engaging in discussions with his own business associates as well as legal counsel for 716, threatening to seek injunctive relief unless Mark Pfeffer provided assurances that he was taking any potential risk of construction damage to the Alaska Building seriously.⁵

On October 25, 2013 Gottstein again communicated with 716’s counsel regarding ABI’s concerns of potential construction damage associated with the project.⁶ Specifically, ABI requested to be paid for Plaintiff’s personal services to date and

¹ Plaintiff’s Response to 716 Interrogatory No. 1. Attached as Exhibit A.

² *Id.*

³ *See Id.*; Plaintiff’s Response to LAA Interrogatory No. 1. Attached as Exhibit B; Deposition of Jim Gottstein (excerpts attached as Exhibit C) at 77: 21-25.; 78: 1-19.

⁴ *See Ex. A*; Plaintiff’s Response to LAA Interrogatory No. 1; Exhibit C at 78: 20-25; 79: 1-2.

⁵ *See Ex. C* at 81:1-9, 15-25; 83: 24-25; 84: 1.

⁶ *See Ex. C.* at 89: 8-18; October 25, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit D.

sought to force Pfeffer into agreeing to a “\$Ten [sic] million purchase obligation” if the building was catastrophically damaged.⁷ Representatives of 716 and ABI met on October 28, 2013. Apparently unsatisfied with that meeting, ABI emailed 716’s counsel on October 30, 2013, threatening to “launch the grenade”—later described by Gottstein as filing suit “and asking for a preliminary injunction to stop the project”⁸—unless 716 agreed to his proposed Indemnification Agreement terms.⁹

During this same time period, Plaintiff contemplated, but ultimately chose not to raise his concerns with then Attorney General Michael Geraghty.¹⁰ In one of the letters Gottstein drafted but never sent, dated October 30, 2013, Gottstein raised concerns that (1) the lease extension was illegal under AS 36.30.083, and (2) the project developer had not made adequate assurances that the Alaska Building would not be damaged as a result of any construction.¹¹ Indeed, as part of the October 30, 2013 correspondence with 716’s counsel, Gottstein not only threatened to file for injunctive relief, but also threatened to contact the Attorney General and then Deputy Attorney General for the Department of Law’s Criminal Division, Rick Svobodny.¹² No letters were ever sent.

⁷ *See Id.*

⁸ Ex. C. at 94: 5-14.

⁹ October 30, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit E.

¹⁰ Draft letters to Attorney General Geraghty, dated October 30, 2013, attached as Exhibit F.

¹¹ *Id.*

¹² *See* Exhibit E.

Indeed, rather than file suit or send a letter notifying a high government official of the alleged lease illegality, ABI voluntarily elected to enter into indemnity and insurance agreements with 716.¹³ Drafting and negotiations regarding the principal agreement took place in November of 2013 and a final Access, Indemnity, and Insurance Agreement (“the Agreement”) was executed on December 6, 2013.¹⁴ As part of the Agreement, 716 paid: (1) \$15,000 to ABI in consideration of the “professional time required to address preparation” for the LIO Project;¹⁵ (2) \$10,000 to ABI for offsite mirroring of data;¹⁶ (3) \$2,000 to Gottstein as a rent abatement payment for relocating his office across the hall during construction;¹⁷ and (4) \$3,900 to ABI for use of the parking space in the alley.¹⁸ Incorporated into the terms of the Agreement, ABI also received over \$14,400 in rent from Criterion General as part of a Space Lease.¹⁹ Based on those values alone, ABI received approximately \$45,300 in compensation under the terms of the Agreement and Space Lease.

LIO Project construction commenced in December 2013 and concluded on or about January 9, 2015.²⁰ At no time during the construction process did ABI file to stop

¹³ One such agreement, regarding relocation of a gas line and gas meters, was actually entered into on October 30, 2013. Exhibit E.; *See also* Ex. C at 97: 7-20.

¹⁴ Interpretation of the Agreement is a subject of dispute in 3AN-15-09785CI.

¹⁵ *See* Ex. C. at 108: 22-25; 109: 1-13.

¹⁶ *See Id.* at 109: 14-23.

¹⁷ *See Id.* at 110: 8-14.

¹⁸ *See Id.* at 109: 24-25; 110: 1-7.

¹⁹ *See Id.* at 111: 2-11.

²⁰ *See* Ex. A. Plaintiff’s Response to LAA Request for Admission No. 17.

the LIO Project. Rather, on January 23, 2015, Gottstein emailed 716 (and Criterion) asserting a claim for \$250,000 for alleged damage to the Alaska Building ABI during the LIO Project construction.²¹ Having tendered the claim to Criterion's insurer pursuant to the terms of the Agreement, 716 did not pay ABI any amount in satisfaction of the alleged damages.²² According to Gottstein, had ABI been compensated for alleged property damage, ABI would "probably not" have filed this litigation.²³

It was not until March 31, 2015—almost **3 months** after construction of the LIO ended, **15 months after** construction began and **17 months after** the extension was signed—that ABI filed suit challenging the damage to the Alaska Building as well as the "legality" of the lease extension.²⁴

II. DISCOVERY REQUEST

ABI has requested discovery of information relating to 716's internal financial operations and 716 has refused to disclose that information on the basis that the confidential and proprietary information sought is irrelevant to ABI's claims.²⁵ As the court is aware, the scope of this litigation is limited to (1) the legality of the lease extension and (2) whether the rental rate affiliated with the lease is at least 10 percent

²¹ See Ex. G Claim from Alaska Building, Inc. dated January 23, 2015.

²² See *Id.* at 118: 24-25; 119: 1-2.

²³ See *Id.*.

²⁴ See Ex. A; Plaintiff's Responses to LAA Request for Admission Nos. 19, 20, and 23.

²⁵ See 716's Opposition to Motion to Compel.

below the market rental value of the real property at issue at the time the lease was executed.²⁶ ABI is not asserting a veil piercing argument.²⁷

Preserving its discovery objections, which are fully laid out in 716's opposition to Plaintiff's motion to compel, 716 nevertheless offered to provide 716's Operating Agreement to Judge McKay for an *in camera* review, for Judge McKay to make a relevance determination.²⁸ ABI rejected this overture and filed for a preliminary injunction on October 6, 2015. ABI acknowledges that the disputed discovery is not relevant to the underlying litigation issues—the legality of the lease or the market rental rate—but argues it is relevant for the purposes of this injunction motion.²⁹ Plaintiff's request for a preliminary injunction thus fundamentally appears to be a discovery litigation tactic to obtain otherwise undiscoverable information.

III. ARGUMENT

A. The equitable doctrine of laches bars ABI's claim for injunctive relief.

Despite ABI's extensive knowledge of the LIO Project, its negotiated compensation payments, and its awareness of the tens of millions of dollars paid by 716 to various entities involved in the Project, ABI waited **almost two full years**, until

²⁶ See Amended Complaint, filed by Plaintiff on August 25, 2015.

²⁷ Plaintiff's Motion for Preliminary Injunction at 6; FN 3.

²⁸ See September 30, 2015 email exchange between undersigned and Gottstein, dated, attached as Exhibit H.

²⁹ Motion to Compel at 3, 5-6; Plaintiff's Motion for Preliminary Injunction at 3 (“[i]f 716 LLC had produced documents providing that it would be able to pay back the money, this Motion [for Preliminary Injunction] would not have been filed.”)

October 6, 2015, to file for preliminary injunctive relief. ABI's claim for injunctive relief is now barred under the equitable defense of laches.³⁰

In order to prevail under the defense of laches, 716 must show, (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant.³¹ The factual background provided above is evidence of ABI's unreasonable delay in bringing the action. Plaintiff's lawsuit mirrors the facts of *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) and the application of the laches doctrine should be similarly applied here to bar Plaintiff's request for injunctive relief. In *Breck*, the Supreme Court stated:

[O]ne of the factors to be considered in measuring the plaintiff's delay is when, under the circumstances, it becomes no longer reasonable for the plaintiff to assume that the defendants would comply with the law. Additionally, the court will "look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."³²

Breck involved litigation surrounding the construction of a marine park and parking garage in Juneau.³³ In December 1983 the City and Borough of Juneau ("the City") publicly announced that it was seeking design-build proposals for the parking structure and executed a construction contract with Kiewit in May of 1984.³⁴ The

³⁰ See also The Legislative Affairs Agency's Memorandum in Support Of Motion for Summary Judgment (Laches).

³¹ *City & Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985); See also *Moore v. State*, 553 P.2d 8, 15 (Alaska 1986),

³² *Id.* at 315 (internal citations omitted).

³³ *Id.* at 314.

³⁴ *Id.* at 314.

contract specified the project was to be completed largely within a six to eight month period.³⁵ The legality of the project was opposed by Juneau citizen Betty Breck, who contacted the mayor and voiced her concerns to the City's Assembly on nine separate occasions, even after the City awarded the contract to Kiewit.³⁶ Breck was aware that construction had begun in the middle of May, but contended that it was not until the end of June that she realized the assembly would not respond absent litigation.³⁷ When Breck ultimately filed suit on August 24, 1984 it was "approximately eight months after the city advertised its intent to seek 'design-build' proposals, four months after the contract with Kiewit Construction was signed, and after approximately 50 per cent of the project was complete."³⁸ The superior court nonetheless issued the preliminary injunction after concluding Breck had demonstrated a high probability of success on the merits, and that Breck had shown irreparable injury for which there was no adequate and complete remedy at law.³⁹

The Alaska Supreme Court reversed.⁴⁰ It held that "the signing of the contract and the commencement of work under the contract would have galvanized a reasonable plaintiff into seeking a lawyer."⁴¹ A reasonable person would have known well before June (the date Breck claimed she began to prepare to file suit) that the City was

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 315.

³⁹ *Id.* at 314.

⁴⁰ *Id.* at 315.

⁴¹ *Id.* at 316.

embarking “on a course of action that it would not alter unless forced to.”⁴² The Court agreed with the City’s contention that Breck “should have realized that the large financial commitment, and the delay that would result if the contract was declared void, made such a change inconceivable.”⁴³ It further rejected Breck’s contention that her delay in bringing suit was excusable because she lacked knowledge about how to file suit.⁴⁴ Because cancelation of the contract would have cost the City millions of dollars, and thus resulted in undue prejudice to the City, the Court held that Breck’s claims of injunctive relief were barred by the equitable doctrine of laches.

ABI’s claims are similarly barred as the Plaintiff has (1) unreasonably delayed in bringing the present action and (2) this unreasonable delay has caused undue harm or prejudice to the defendant.

1. Plaintiff unreasonably delayed in bringing the instant action.

In order to evaluate the reasonableness (or unreasonableness) of a plaintiff’s delay, the court must look to when, under the circumstances, it became unreasonable for the plaintiff to assume a defendant would stop its planned course of action absent litigation.⁴⁵ The court must “look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer.”⁴⁶ Finally, the Alaskan Supreme

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See Id.* at 315 (citing *Moore v. State*, 553 P.2d at 16).

⁴⁶ *Id.* (internal citations omitted).

Court has said that “in determining when laches should be applied, our concern is not so much with when the alleged wrong occurred, as it is with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the wrong.”⁴⁷

Here, ABI became aware of the LIO Project sometime between late September and early October 2013. By the middle of October 2013, Gottstein had reviewed AS 36.30.083(a) and formed the belief that the lease was illegal.⁴⁸ By the end of October 2013 ABI threatened to, but chose not to file for injunctive relief or mail any of the letters Gottstein had drafted to the Attorney General voicing his concerns that the LIO project was illegal and the contemplated construction efforts should be terminated. Instead, ABI voluntarily elected to receive approximately \$45,300 in compensation and Gottstein personally observed the construction activities taking place at 716 West 4th Avenue from December 2013 through January 2015.

Other than the parties directly involved in the Project, ABI was arguably the entity most closely involved with the Project. Plaintiff’s building shared a wall with the old Empress Theatre, which was torn down to expand the LIO into the adjacent space. Plaintiff signed agreements with 716 and Criterion involving liability and risk allocation. Plaintiff hired an engineer to help monitor the process. He continued to accept rent payments. Plaintiff waited until three months *after* construction was

⁴⁷ *Moore v. State*, 553 P.2d at 14.

⁴⁸ Plaintiff’s Response to LAA Interrogatory No. 1.

completed to file suit, and only included the lease legality claim as a throw-in claim to his construction damage suit.⁴⁹

Under the facts of this case, Plaintiff is guilty of inexcusable delay in filing this action. The delay was even more unreasonable than the delay in *Breck* given: (1) Gottstein is an attorney and had allegedly formulated the basis for his claim in October 2013 (Breck was not an attorney), (2) ABI waited to file suit until the Project was completed (Breck only waited until the facility was halfway completed); (3) no efforts were actually made to voice concerns to government officials (Breck spoke with the mayor and testified before the assembly on nine occasions); and (4) ABI and Gottstein received approximately \$45,300 in compensation during the construction period (Breck received no compensation).

ABI's delay in bringing this action served to provide ABI with the maximum financial benefit while potentially causing the greatest financial harm to 716. As explained in detail in the following section, ABI was aware that 716 expended tens of millions of dollars in construction costs and expected to receive tens of millions of dollars in lease payments. The court should find ABI has unreasonably delayed in bringing the action.

2. ABI's unreasonable delay caused undue harm or prejudice to 716.

⁴⁹ Plaintiff claims he did not file for an injunction because he was concerned about "retaliatory damage to the Alaska Building." See Ex. C. at 134: 5-7. Although his motive for not filing is irrelevant, it should be made clear that Gottstein himself has acknowledged that no one threatened ABI during the Project. See Ex. C at 141: 22-24; Ex. C. at 118: 24-25; 119: 1-2 (throw-in claim).

The court must next consider whether the unreasonable delay has caused undue harm or prejudice to the defendants in this action. 716 already expended tens of millions of dollars in construction costs. In order to undertake the Project, 716 signed a construction contract with Criterion General on November 11, 2013 in excess of \$30,000,000.⁵⁰ 716 spent approximately \$44,500,000 in construction efforts.⁵¹ The Premises was renovated to meet the specific needs of the Agency, including an expansion of office space and appropriate off-street parking spaces.⁵² The Agency paid \$7.5 million in tenant improvements.⁵³

If ABI had filed an injunction in October, 2013 as Gottstein had threatened, and had he been successful, 716 would not have paid over \$30,000,000 to Criterion. By waiting until well after construction was complete to challenge the lease, ABI's seeks to cause 716 to suffer the maximum prejudice from payments spent in its construction efforts.

In addition to jeopardizing costs already incurred, ABI's request to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services also significantly prejudices the defendants by depriving 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the project as a good faith investment, expecting a monthly rate of return on

⁵⁰ Affidavit of Mark Pfeffer ¶ 5.

⁵¹ Id. at ¶ 7.

⁵² See Extension of Lease and Lease Amendment No. 3.

⁵³ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency's Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

its investment outside of merely recovering debt services and operating expenses.⁵⁴ That monthly rate of return is not a negligible amount.

In summary, 716 faces irreparable injury if the court grants an injunction at this stage—there are deeds of trusts, loans, and commitments made in reliance on the contract that was signed. Sequestering a significant amount of monthly rent payments puts all of that potentially in default and affects numerous entities involved in the Project’s financing, not simply 716 and the Agency. It goes without saying that 716, who has been the Landlord of the LIO for 23 years, stands to lose its professional reputation and status among lending institutions, construction professionals, and business clients should the court grant ABI injunctive relief.

The Court should find that ABI’s unreasonable delay in bringing suit has and will continue to cause undue harm and prejudice to 716. As 716 has met both prongs under the equitable doctrine of laches, the Court should bar ABI’s request for a preliminary injunction.

B. Denial of the preliminary injunction is still appropriate even if the court finds that 716 has not successfully raised the defense of laches.

Preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances.⁵⁵ The traditional purpose of a preliminary injunction is to prohibit an action. Preliminary injunctions are meant to “protect the status quo and to prevent irreparable harm during

⁵⁴ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

⁵⁵ *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001).

the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits.”⁵⁶ Under Alaska law, in deciding whether to grant or deny a preliminary injunction, Alaska courts apply the “balance of hardships” test. Immediate injunctive relief is warranted when the following three factors are present:

(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case. Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits.⁵⁷

Here, ABI cannot show it is faced with irreparable harm by maintaining the status quo during the pendency of the litigation. ABI’s sole claim of irreparable harm is the unsubstantiated, speculative claim that because 716 is limited liability corporation it will be unable to pay “pay back rent money it has received in excess of that allowed by law.”⁵⁸ Not only does this argument ignore the fact 716’s has operated as landlord to the LIO for the past 23 years,⁵⁹ but it also is hypocritical given ABI’s assessment that 716 was financially viable enough to execute a ten million dollar purchase option over the Alaska Building.⁶⁰ Likewise, by delaying this litigation, any “damage” is already

⁵⁶ *Perry v. Judd*, 840 F. Supp. 2d 945, 950, 954 (E.D. Va.) *aff’d*, 471 F. App’x 219 (4th Cir. 2012)(barring under laches the plaintiffs’ motion for a preliminary injunction where the plaintiffs, various candidates who were seeking the Republican Nomination for office of President of the United States, had “slept on their rights to the detriment of the defendants.”)

⁵⁷ *Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010)(internal citations omitted.)

⁵⁸ Plaintiff’s Memorandum at 3-4.

⁵⁹ See ¶ 3 of Affidavit of Mark Pfeffer.

⁶⁰ See *Id.*

done; the State, has already paid \$7.5 million in tenant improvements,⁶¹ and 716 has already contributed vast resources in the expansion and renovation efforts. Any “irreparable harm” from that expenditure has already occurred. Finally, with respect to prong one, the availability of funds from the Legislature to pay for the Agency’s monetary obligations is contingent upon appropriation of funds for the particular fiscal year involved.⁶² If the Agency’s Executive Director determines that sufficient funds are not appropriated by the Legislature, the lease can be terminated by the Agency or amended.⁶³ In summary, ABI cannot show continuation of the status quo subjects the State to irreparable harm.⁶⁴

Conversely, 716—the opposing party to the injunction—would be left inadequately protected were the injunction granted. ABI’s request is to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services. This sequestration deprives 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the LIO Project as a good faith investment, expecting a monthly rate of return on its investment.⁶⁵ As stated above, that monthly rate of return is not de minimus, nor does it exist in a vacuum.

⁶¹ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency’s Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

⁶² Extension of Lease and Lease Amendment No.3 ¶ 43. The Governor, of course, can also veto appropriated funds.

⁶³ *Id.*

⁶⁴ It goes without saying that any irreparable harm ABI faced during construction is over as ABI waited until the construction process was completed to file suit.

⁶⁵ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

And, of course, sequestration of any portion of monthly lease payments adversely affects 716's ability to conduct business in the state.

Because the harm is not irreparable and 716 cannot be adequately protected were an injunction granted, ABI must do more than just raise serious and substantial questions going to the merits of the case; as the moving party ABI must show probable success on the merits.⁶⁶ For the reasons explained above, ABI's claim is likely barred by the equitable defense of laches. Beyond the laches argument, ABI has not shown probable success on the merits. Defendants complied with AS 36.30.083(a). As the lease extension indicates, Timothy Lowe completed an independent analysis "and concluded that the rent due under the terms and conditions of the lease extension and amendment [are] at least 10 percent below the market rental value of the real property at the time of the extension for a ten year term."⁶⁷ In dispute of this claim, ABI has attached an affidavit of a retired real estate appraiser, Larry Norene, to its motion. In the event the case is not summarily dismissed, ABI will have the opportunity to have a battle of the expert appraisals; however, merely finding an individual who disagrees with Mr. Lowe's appraisal is insufficient to support a finding of probable success on the merits. Placing blind faith in Mr. Norene's appraisal, after Mr. Lowe's appraisal was vetted by various groups, including the Alaska Housing Finance Corporation, completely negates the purpose of having safeguards already in place to ensure

⁶⁶ 716 disputes, for the same reasons stated within this section, that ABI has even raised serious and substantial questions going to the merits of the case.

⁶⁷ See ¶ 1.2 of 9/19/13 lease.

statutorily compliance. AS 36.30.083(a) requires the market value to be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. The legislative council was not obligated to select Mr. Gottstein's preferred appraiser to determine rental value. Similarly, there can be no good faith dispute that the Lease Extension was an extension of the original lease arrangement, despite Plaintiff's claims to the contrary in his motion for summary judgment on this issue. (The court will not hear argument on this novel claim until at least January 30, 2016.)

In granting citizen-taxpayer standing, the court afforded ABI the opportunity to air its grievances. The court specifically warned ABI at the oral argument on August 18, 2015 that permission to proceed in the litigation was not an indication of whether or not his claims would ultimately prevail. Citizen-standing should not now be interpreted to mean ABI has carte-blanche to jeopardize the financial and professional well-being of the parties involved. There is no prejudice to ABI in waiting for the court to address the merits of its claims pursuant to the court's initial scheduling order and subsequent scheduling of dispositive arguments on summary judgment and other motions. As such, Plaintiff's request for a preliminary injunction should be denied.

In the event the court is inclined to grant ABI's request for the injunction, 716 requests the opportunity for oral argument. Attached to this Opposition is a proposed order, denying the preliminary injunction request and outlining a reasonable schedule for hearings on the various motions the parties have filed.

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

DATED: 10-27-15

By: gur
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 27 day of October 2015, on:

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

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

ASHBURN & MASON

By: 
Heidi Wyckoff

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

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, *et al.*

Defendants.

RECEIVED

OCT 16 2015

ASHBURN & MASON

Case No. 3AN-15-05969CI

**RESPONSE TO 716 WEST FOURTH AVENUE, LLC'S FIRST
DISCOVERY REQUESTS TO ALASKA BUILDING, INC.**

Alaska Building, Inc., hereby responds to 716 West Fourth Avenue, LLC's First Discovery Requests To Alaska Building, Inc. By doing so, it is not waiving any evidentiary objections. If it is discovered that these responses should be amended, corrected or supplemented, Alaska Building, Inc., reserves the right so to do.

REQUESTS FOR PRODUCTION

The produced documents can be downloaded as a "zip" archive from
<http://gottsteinlaw.com/AkBldgv716W4thAve/Discovery/AkBldgDiscovery/Docs4ResponseTo716FirstDiscovery%20Requests/>.

REQUEST FOR PRODUCTION NO. 1:

Please produce all documents, including without limitation, emails, relating to ABI and/or Jim Gottstein's knowledge of the contemplated renovation of the Legislative Information Office ("LIO Project"). This should include, but is not limited to, all

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-8493

documents indicating when ABI or Jim Gottstein first became aware of the LIO Project and all documentation of ABI and Jim Gottstein's awareness of the ongoing construction work through the LIO Project's completion.

RESPONSE:

Object on the grounds that Mr. Gottstein's knowledge of the contemplated LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska.

Notwithstanding the foregoing, the documents are being produced.

REQUEST FOR PRODUCTION NO.2:

Please produce all documents relating to ABI and Jim Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project. This includes, but is not limited to any specific efforts ABI or Jim Gottstein made to stop the LIO project from moving forward either before construction began or after construction commenced. Court filings need not be discovered.

RESPONSE:

Object on the grounds that Mr. Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska.

Notwithstanding the foregoing, the documents are being produced.

LAW OFFICES OF
JAMES B. GOTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 2

REQUEST FOR PRODUCTION NO. 3

Please produce all documents relating to payments and compensation made to ABI and its tenants relating to the LIO Project. This request includes, but is not limited to, any requests for compensation, regardless of whether compensation was actually paid.

RESPONSE:

Object on the grounds that payments and compensation made to ABI and its tenants relating to the LIO Project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

REQUEST FOR PRODUCTION NO. 4

Please provide all documents relating to communication between Jim Gottstein, or any agent of ABI, and any tenant, or agent of that tenant, regarding any concerns expressed relating to the legality of the LIO project.

RESPONSE:

Object on the grounds that Mr. Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 3

INTERROGATORIES

INTERROGATORY NO.1

On what date and under what circumstances did ABI and/or Jim Gottstein first acquire knowledge of the contemplated renovation of the Legislative Information Office?

RESPONSE:

Object on the grounds that when and under what circumstances Alaska Building, Inc., and/or I acquired knowledge of the LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska.

Notwithstanding the foregoing, I know I became aware of it by mid-September, 2013. I know the Alaska Dispatch News ran a story about it on June 7, 2013, but I don't have a specific memory of that. I ran into Mark Pfeffer sometime on or around the week of September 16, 2013, and he said he wanted to get together with me, which we did on October 2, 2013, I think. Mr. Pfeffer went through the project during that meeting.

INTERROGATORY NO. 2

Prior to the commencement of this lawsuit, on what date and under what circumstances did ABI and/or Jim Gottstein first express-formally or informally-concern over and/or opposition to the contemplated renovation of the Legislative Information Office? Please describe the first such instance and all subsequent instances.

RESPONSE:

Object on the grounds that, except for informing Don McClintock, attorney for 716 LLC, when and under what circumstances I first expressed -formally or informally-

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 4

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7666
FACSIMILE
(907) 274-9493

concern over and/or opposition to the LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. I expressed my concern and opposition to Don McClintock, attorney for 716 LLC in early October, 2013. I remember we had a meeting and might have had a telephone conversation or two and e-mail, which is being produced.

INTERROGATORY NO. 3

Did ABI and/or Jim Gottstein ever receive any payment in connection with the renovation of the Legislative Information Office? If so, please describe the circumstances, including the date, the amount, and the reason for the payment.

RESPONSE:

Object on the grounds that payments to Alaska Building, Inc., or me in connection LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Also object to the characterization of the LIO Project as a renovation.

Notwithstanding the foregoing, yes, on December 6, 2013, \$15,000 to Alaska Building, Inc., from 716 LLC pursuant to Section 1 of the November 6, 2013, Access, Indemnity, and Insurance Agreement (Agreement) for payment of professional fees related to the LIO Project, \$10,000 to Alaska Building, Inc., from 716 LLC pursuant to Section 2 of the Agreement for computer mirroring equipment to have close to real-time offsite mirroring since one of the server room walls was the very vulnerable party wall, \$2,000 to me pursuant to Section 3 of the Agreement to pay for me having to move out of my office because my computer desk was right against the party wall and very vulnerable to a

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 5

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7886
FACSIMILE
(907) 274-9493

catastrophic failure, \$14,400 to Alaska Building, Inc., pursuant to Section 4 of the Agreement for a 12 month lease of the space from which Blu Menswear was constructively evicted by the LIO Project, and \$3,900 to Alaska Building, Inc., from 716 LLC pursuant to Section 5 of the Agreement for use of the parking space on the alley. The Agreement is in 716 LLC's possession and also produced along with copies of the checks.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that the alleged damage to ABI's property, if it occurred, was caused by renovation activity.

RESPONSE:

Object to the characterization as renovation. Notwithstanding the foregoing, and assuming the request for admission refers to physical damage, Alaska Building, Inc., admits that the physical damage the Alaska Building was caused by the demolition and construction undertaken pursuant to the LIO Lease.

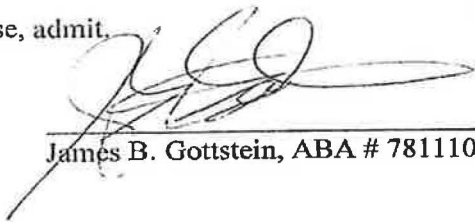
REQUEST FOR ADMISSION NO. 2

Admit that the physical act of signing the lease document at issue did not cause damage to ABI's property.

RESPONSE:

Subject to the previous response, admit.

Dated October 15, 2015.


James B. Gottstein, ABA # 7811100

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 205
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-6493

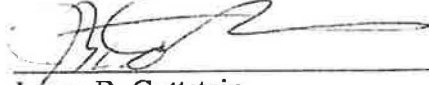
*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 6

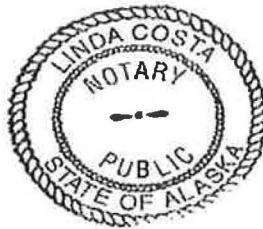
VERIFICATION

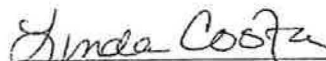
James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 15, 2015.


James B. Gottstein,
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 15th day of October 2015.




Notary Public in and for Alaska
My Commission Expires: 04/10/2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 15, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7886
FACSIMILE
(907) 274-9493

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

Page 7

SCANNED
TO WD

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, *et al.*

Defendants.

RECEIVED

OCT 06 2015

ASHBURN & MASON

Case No. 3AN-15-05969CI

**RESPONSE TO DEENDANT'S (LEGISLATIVE AFFAIRS
AGENCY) FIRST DISCOVERY REQUESTS TO PLAINTIFF
ALASKA BUILDING, INC.**

Admissions and Responses to Interrogatories herein do not constitute agreement that the requests and interrogatories, and responses thereto are relevant. Object to characterizations of the agreement as a lease extension and the project as a renovation.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that YOU were aware as of June 9, 2013 that the Legislative Council was negotiating a deal with Mark Pfeffer to revamp and expand the Legislative Information Office building, as publicly reported.

RESPONSE: Deny inasmuch as I don't remember. I don't think so.

REQUEST FOR ADMISSION NO. 2: Please admit that on September 19, 2013, 716 West Fourth Avenue, LLC entered into an agreement with the Legislative Affairs Agency to renovate and expand the Legislative Information Office (the "LIO Project").

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that YOU were aware on or about September 19, 2013, that 716 West Fourth Avenue, LLC had signed an agreement with the Legislative Affairs Agency to renovate and expand its leased office building.

RESPONSE: Deny because I don't recall and don't believe that I knew about the agreement that early.

REQUEST FOR ADMISSION NO. 4: Please admit that YOU were aware by October 3, 2013, that the Legislative Affairs Agency had signed a deal for the LIO Project, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Please admit that YOU were aware by October 3, 2013, that the construction and renovations for the LIO Project would cost tens of millions of dollars, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 6: Please admit that YOU entered into a License to Enter Indemnity and Insurance Agreement with Criterion General, Inc., on or about October 30, 2013, to allow Criterion to re-locate gas service in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 7: Please admit that YOU entered into an Access, Indemnity, and Insurance Agreement with 716 West Fourth Avenue, LLC, on December 6, 2013 (the "Access Agreement").

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 2

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Please admit that YOU became aware no later than December 6, 2013, that 716 West Fourth Avenue, LLC, would be demolishing the Empress Theater in connection with the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Please admit that YOU accepted payment of \$15,000 from 716 West Fourth Avenue, LLC in December 2013 for professional fees that YOU incurred to address preparation for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 10: Please admit that YOU were aware of the construction no later than December 10, 2013, as you were quoted in a news article describing the construction, <http://www.ktva.com/legislative-building-constructioncauses-the-closure-of-downtown-boutique/>

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 11: Please admit that YOU required the contractor for the LIO Project to provide you with a certificate of insurance prior to commencement of construction for the LIO Project.

RESPONSE: Admit to the following extent. After failing to get 716 West Fourth Avenue LLC (716 LLC) to abandon the project because it was illegal, we negotiated an agreement in which, at 716 LLC's insistence, the contractor agreed to be responsible for damage and provide insurance.

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 3

REQUEST FOR ADMISSION NO. 12: Please admit that YOU entered into a space lease with Criterion General, Inc. ("Criterion"), the contractor for the LIO Project, on or about December 5, 2013 (the "Space Lease").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 13: Please admit that YOU were aware that Criterion was leasing space from YOU under the Space Lease in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 14: Please admit that YOU accepted in excess of \$10,000 in rent from Criterion under the Space Lease.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 15: Please admit that you were aware no later than December 21, 2013, that the LIO Project arose from what the Alaska Dispatch News called a "no-bid deal," consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 16: Please admit that you were aware no later than December 21, 2013, that the Alaska Dispatch News stated that the renovated Legislative Information Office building would allegedly require the State to pay more than the going rate for downtown office space, consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 4

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

REQUEST FOR ADMISSION NO. 17: Please admit that the renovated Anchorage Legislative Information Office building opened for business on or about January 9, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 18: Please admit that millions of construction costs were spent on the LIO Project between October 2013 and January 9, 2015.

RESPONSE: Admit; the Legislative Council agreed to pay for such construction costs, which were well in excess of what new construction would have cost, agreeing to pay rent in an amount over twice market rental value.

REQUEST FOR ADMISSION NO. 19: Please admit that YOU first brought this legal action challenging the legality of the Extension of Lease and Third Amendment of Lease (the "Lease Extension") on March 31, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 20: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after the Lease Extension was signed.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 21: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after you had already received tens of thousands of dollars in rent and other payments relating to the LIO Project from Criterion and 716 West Fourth Avenue, LLC.

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 5

RESPONSE: Admit; In addition to rent from Criterion because the project constructively evicted the tenant of that space, the payments were for costs incurred as a result of the LIO Project.

REQUEST FOR ADMISSION NO. 22: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after you contend that the Legislative Affairs Agency violated the State Procurement Code.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 23: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 15 months after construction began on the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 24: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after the LIO Project was completed in all material respects.

RESPONSE: Admit to the extent that the legal action was brought after the new Legislative Information Office Building was substantially completed and had at least some occupancy. Object to the term "in all material respects," because there is over 9 years of performance left under the agreement.

REQUEST FOR ADMISSION NO. 25: Please admit that there was no indication, once construction began in late 2013, that the Legislative Affairs Agency had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 6

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

RESPONSE: Admit; if the Legislative Affairs Agency had been willing to rectify its blatantly illegal action in entering into the LIO Project this action would not have been filed. It should still do so.

REQUEST FOR ADMISSION NO. 26: Please admit that the LIO Project did not demolish the entirety of the Legislative Information Office Building, but rather left certain key structural elements in place for a renovation project.

RESPONSE: Object to "key structural elements" characterization. Otherwise admit that the foundation and steel frame was left of the former Anchorage Legislative Information Office building, as was a portion of the exterior wall at the bottom south end of the west wall. While new floors were poured, some part of the floors may have also been left.

REQUEST FOR ADMISSION NO. 27: Please admit that the subject of the Lease Extension is a real property lease.

RESPONSE: Deny to the extent that the request does not acknowledge that the agreement provides for the construction of a new office building after the demolition of the existing building and the adjacent building, the newly constructed premises then being leased under the agreement. In other words, it is really a construction and lease-back agreement. Admit that LAA is currently leasing the building constructed under the agreement and to that extent it is a real property lease.

REQUEST FOR ADMISSION NO. 28: Please admit that the landlord both prior to and after the Lease Extension was executed remained the same.

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 7

RESPONSE: Admit that the landlord before and after the agreement is 716 West Fourth Avenue LLC, but deny to the extent that the ownership and management of the LLC changed substantially with the addition of Mark Pfeffer and an organization associated with Mark Pfeffer. Public records indicate that there has been a change of control and 716 West Fourth Avenue LLC has refused to produce requested documents pertaining to the ownership and operation of 716 West Fourth Avenue LLC. For this reason Alaska Building, Inc., cannot truthfully admit or deny whether the Landlord remained the same prior to and after the agreement other than that the legal entity both before and after the agreement is 716 West Fourth Avenue LLC.

REQUEST FOR ADMISSION NO. 29: Please admit that the address of the Legislative Information Office remained the same both prior to and after the Lease Extension was executed.

RESPONSE: Admit, except to the extent that 712 West 4th Avenue has been incorporated into the new building.

REQUEST FOR ADMISSION NO. 30: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different terms and conditions than the original lease.

RESPONSE: Admit that certain terms and conditions, most obviously, the ending date of the lease may be different, but different terms and conditions may disqualify an agreement as extending a real property lease under AS 36.30.083(a). Calling an agreement a lease extension or reciting that it extends a real property lease does not make it a lease extension or that it extends a real property lease.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 8

REQUEST FOR ADMISSION NO. 31: Please admit that the Lease Extension complied with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 32: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension is achieved.

RESPONSE: Admit that premised on landlords having already amortized (recovered) construction costs and therefore able to afford to extend leases at substantially less cost, AS 36.30.083(a) allows a lessee to extend a real property lease with different pricing terms than the original lease, provided that 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 statute also limits such extensions to 10 years.

INTERROGATORIES

INTERROGATORY NO. 1; Please describe WITH PARTICULARITY how and when YOU first became aware that the Lease Extension (1) was not the subject of a competitive procurement process, (2) was allegedly not an extension of the existing lease, and (3) did not allegedly yield cost savings of at least 10 percent below the market value of the rental property at the time of the extension.

RESPONSE: I don't remember exactly how and when I first became aware the project was not the subject of a competitive procurement process, but I don't think it was

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE:
(907) 274-7686
FACSIMILE:
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 9

earlier than late September or later than October 3, 2013, when the Alaska Dispatch News (Dispatch) published an article. It was probably the Dispatch article that made me aware of it, but I can't be sure I was not aware of it before then. I also don't remember exactly when I first became aware the project was not a lease extension, but it was by the middle of October, 2013, after I had reviewed AS 36.30.083(a). The facts involved in tearing down the existing building to its steel frame and foundation, demolishing the adjacent old Empress Theatre, throwing the tenant out for over a year and building a new building made it obvious to me that it did not "extend" a real property lease. Similarly, I don't remember exactly when I became aware that the rent for the new Anchorage Legislative Information Office Building was well above market value, but it was by the middle of October, 2013. As a downtown landlord, in fact of the building adjacent to the new Anchorage Legislative Information Office Building, I was aware of market rents in the area.

INTERROGATORY NO. 2: Please describe WITH PARTICULARITY any and all actions you took in an effort to stop, question, dispute, or in any way challenge the Lease Extension or the procurement process that led to the execution of the Lease Extension - aside from filing this lawsuit on March 31, 2015.

RESPONSE: I had a discussion with Donald W. McClintock, attorney for 716 LLC, sometime shortly before October 11, 2013, about my concerns regarding damage to the Alaska Building and the lease being illegal. I indicated I was contemplating filing for an injunction to stop the project on that basis. I met with Mr. McClintock again on or around October 28, 2013, at which time I reiterated the project was illegal under AS 36.30.083(a).

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 10

INTERROGATORY NO. 3: Please describe WITH PARTICULARITY any impediment that you claim prevented you from challenging the legality of the Lease Extension prior to March 31, 2015.

RESPONSE: The problem I was faced with was the Alaska Building was in great jeopardy from the construction project and I was very concerned that if I tried to obtain an injunction against the project moving forward and failed, there was a much higher likelihood of substantial damage, even to the point of the effective destruction of the Alaska Building. As it was, I had to hire an engineer to advocate for more protection of the Alaska Building. Mr. McClintock stated that he didn't think even I could afford the bond and while it is possible an injunction against commencement of the project was possible without posting a bond, I felt the risk of retaliatory damage to the Alaska Building was just too great to challenge the legality of the agreement at that time.

INTERROGATORY NO. 4: Please identify the "drastically different terms" contained in the Lease Extension, as alleged in page 6 of YOUR Memorandum in Support of Motion for Partial Summary Judgment: Not Extension, including but not limited to which of those "drastically different terms" causes the Lease Extension to not be an extension.

RESPONSE: Object because it is like asking what are the differences between a Yugo and a Lamborghini. Notwithstanding this objection, Plaintiff responds as follows:

Most of the sections of the lease have been replaced or drastically amended, to wit:

- Section 1 was replaced with a new section.
- Section 2 was replaced with a new section.
- Section 3 was replaced with a new section.

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 11

- Section 4 was replaced with a new section.
- Section 5 was replaced with a new section.
- Section 6 was replaced with a new section.
- Section 7 was replaced with a new section.
- Section 8 was replaced with a new section.
- Section 9 was replaced with a new section.
- Section 10 was replaced with a new section.
- Section 11 was replaced with a new section.
- Section 12 was replaced with a new section.
- Section 13 was replaced with a new section.
- Section 14 was replaced with a new section.
- Section 15 was replaced with a new section.
- Section 16 was replaced with a new section.
- Section 17 was replaced with a new section.
- Section 18 was replaced with a new section.
- The last sentence of Section 19A was replaced with the following:
 "The Lessor shall be responsible for completing the Renovations described in Exhibit "N" prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement."
- Section 20 was deleted in its entirety.
- Section 21 was replaced with a new section.
- Section 22 was replaced with a new section.
- Section 23 was replaced with a new section.
- Section 24 was replaced with a new section.
- Section 25 was replaced with a new section.
- Section 30 was replaced with a new section.
- Section 31 was replaced with a new section.
- Section 33 was replaced with a new section.

LAW OFFICES OF
 JAMES B. GOTTSTEIN
 406 G STREET, SUITE 206
 ANCHORAGE, ALASKA
 99501

TELEPHONE
 (907) 274-7686
 FACSIMILE
 (907) 274-9493

*Responses to Legislative Affairs Agency's
 First Discovery Requests to Plaintiff*

Page 12

- Section 34 was replaced with a new section.
- Section 35 was replaced with a new section.
- Section 36 was replaced with a new section.
- Section 37 was replaced with a new section.
- Section 39, as amended, was amended by deleting all content after the first paragraph.
- Section 41 was replaced with a new section.
- Section 42 was replaced with a new section.
- Section 43 was replaced with a new section.
- Section 46 was added.
- Section 47 was added.
- Section 48 was added.
- Section 49 was added.
- Section 50 was added.
- Section 51 was added.
- Section 52 was added.

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

INTERROGATORY NO. 5: If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe **WITH PARTICULARITY** all facts supporting your contention.

RESPONSE: AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7586
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 13

is it 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.


Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

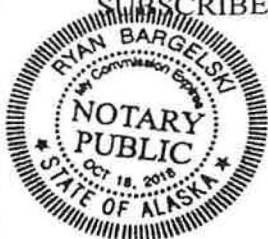
VERIFICATION


James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.


James B. Gottstein,
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.




Notary Public in and for Alaska
My Commission Expires: 10-18-18

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 205
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 14

Exhibit B
Page 14 of 14

In the Matter Of:
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

PACIFIC RIM REPORTING
STENOGRAPHIC COURT REPORTERS
711 M STREET, SUITE 4
ANCHORAGE, ALASKA 99501
907-272-4383
www.courtreportersalaska.com

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

3
4 ALASKA BUILDING, INC., an
5 Alaska corporation,

6 Plaintiff,

7 vs.

8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,

11 Defendants.

12 Case No. 3AN-15-05969 CI

CERTIFIED
TRANSCRIPT

13 DEPOSITION OF JAMES B. GOTTSTEIN

14 VOLUME II

15 Pages 59 - 147, inclusive

16 Friday, October 23, 2015
17 9:00 A.M.

18
19 Taken by Counsel for
20 Defendant 716 West Fourth Avenue LLC
21 at
22 ASHBURN & MASON
23 1227 West 9th Avenue, Suite 200
24 Anchorage, Alaska
25

1 basis in Alaska statute or common law for that
2 recovery?

3 A. I don't think I -- no, I don't think I
4 admitted that. I mean, I think I'm trying to
5 establish that there is a basis.

6 Q. I want to ask you questions about your
7 questioning of the legality of the lease. Okay?
8 And you've already answered questions germane to
9 this line before, right?

10 A. Ask them. Ask your questions.

11 Q. When did you first specifically become
12 aware of the lease agreement between 716 and the
13 Agency?

14 A. You know, I have -- that's been asked and
15 answered. It was sometime late September or early
16 October.

17 Q. At least at --

18 A. Of 2013.

19 Q. At least by October 3rd, 2013?

20 A. I believe that's correct.

21 Q. Okay. And your knowledge of the lease
22 involved your understanding that the construction
23 renovations would cost tens of millions of dollars,
24 correct?

25 A. Asked and answered. Yes.

1 Q. And specifically 716 West Fourth Avenue LLC
2 was spending in the ballpark 30 to \$40 million in
3 construction renovation efforts, correct?

4 A. I've asked for that information, and -- and
5 you've refused to provide it in discovery. It's the
6 subject of a pending motion to compel, so the --
7 I've certainly seen budgets that say that.

8 Q. You've previously admitted, in requests for
9 admission, that you are aware that tens of millions
10 of dollars were being spent on construction,
11 correct?

12 A. Yeah, I think so.

13 Q. And you were a neighbor of the project,
14 correct?

15 A. Yes.

16 Q. So you personally observed what was
17 happening?

18 A. It looked like, yes, probably, certainly,
19 millions, tens of millions were spent, yes.

20 Q. You've repeatedly claimed that the lease
21 extension is not, in your opinion, an extension,
22 right? And you also came to that conclusion at some
23 point in early to mid-October 2013, right?

24 A. Yes.

25 Q. And that was after you personally reviewed

1 AS 36.30.083, right?

2 A. Yes.

3 Q. And by personally reviewing it, describe
4 what you did.

5 A. Well, I pulled the statute up and read it.

6 Q. Did you read in the statute that there was
7 a requirement that the terms of the lease extension
8 remain exactly the same as the original lease?

9 A. No.

10 Q. You've generally complained -- and,
11 actually, in paragraph 24 of your amended complaint,
12 you --

13 A. Is that the second amended claim?

14 Q. Yes. Jim attempted to convince Pfeffer and
15 716 LLC to not proceed with the LIO project because
16 of the all-but-certain damage to the Alaska Building
17 that would result, and because the LIO project was
18 illegal under AS 36.30.083(a).

19 You've made that claim in your amended
20 complaint?

21 A. Yes.

22 Q. Okay. I want to get into the specifics of
23 that claim, but generally can you describe what
24 specific attempts you took to convince 716 that the
25 lease was illegal?

1 Q. Okay. At some point, when you -- and this
2 was at 7:44 a.m. Did you follow up with Mr. LeClair
3 indicating that you were thinking about filing for
4 an injunction if Pfeffer doesn't provide adequate
5 assurances?

6 A. Uh-huh.

7 Q. What did you mean by that?

8 A. That -- that the project wouldn't damage
9 the Alaska Building.

10 Q. Was that the first time that you mentioned
11 to anyone that you were going to file or possibly
12 file an injunction?

13 A. I don't know. I don't recall. I may have
14 talked to Don before that.

15 MR. ROBINSON: I'm going to hand you,
16 Mr. Gottstein, an e-mail chain dated 10/11/15 --
17 excuse me -- 10/11/13, the same day as the Mr. LeClair
18 e-mail. I'm going to mark this as Exhibit B. If you
19 could take a minute to review it.

20 (Exhibit B marked.)

21 BY MR. ROBINSON:

22 Q. So you sent Mr. LeClair the e-mails roughly
23 around 7:45, 7:50 in the morning on the 11th, right?

24 Excuse me. On the -- yeah, on the 11th, correct?

25 A. Yes.

1 concerns seriously, right?

2 A. Correct.

3 Q. And why did you believe this?

4 A. I had a meeting with him, where he was just
5 very dismissive about my concerns. His plan -- as I
6 said before, I was very alarmed when I heard the
7 idea was to take a front-end loader, or I guess they
8 call them an excavator, to demolish the Empress, old
9 Empress Theater.

10 And I asked about contingency, you know,
11 contingency in the budget and what -- and he basically
12 dismissed the idea. And I said, well, you're going to
13 have to cut the wall -- the wall out, aren't you? He
14 says, oh, no.

15 And to me, that was really outrageous.

16 Q. So your concerns as of this point,
17 October 11, 2013, they had to do with damage to your
18 building? That was your principal concern, correct?

19 A. I -- I was actually also very outraged by
20 the lease agreement itself and had an independent
21 concern about it, and was conflicted about whether
22 or not I should try and stop that, just on the basis
23 of the public interest.

24 And so I'm not -- so -- but my -- the concern
25 expressed in these e-mails is certainly about damage

1 to my building.

2 Q. And that's what I'm getting at, just to be
3 as responsive as we can here. The concern expressed
4 in this specific e-mail had to do with your worry
5 that Mr. Pfeffer was not taking your concerns about
6 any possible building damage seriously, correct?

7 A. Well, I mean, the concern was about the
8 damage to the building.

9 Q. Right.

10 A. And that was, you know, certainly not -- I
11 was not comforted by Mr. Pfeffer's lack of taking it
12 seriously.

13 Q. And after reviewing this e-mail, you'd
14 agree that Mr. McClintock offered to put you in
15 touch with people from Pfeffer Development,
16 including Bob O'Neill, the engineer, to address your
17 concerns. You would agree that that's reflected in
18 Exhibit B, correct? We're on page 1.

19 A. Well, he said, "The line people of the job,
20 Bob O'Neill and Shea Simasko are very experienced
21 and some of the best people I have worked with in
22 terms of professionalism.

23 "Let me know what I can do to help
24 communications."

25 Q. At this point, in October of 2013, roughly

1 THE REPORTER: And the second was that you
2 not bear any costs if something were to go wrong,
3 right? Those were the two concerns that you expressed
4 as of October 25th, 2013?

5 THE WITNESS: Right. So that was not limited
6 to the e-mail.

7 BY MR. ROBINSON:

8 Q. Mr. Gottstein, looking at page 1 of -- this
9 is Exhibit C, correct?

10 The bottom of page 1, in writing to
11 Mr. McClintock on October 25th, 2013, you specifically
12 asserted that your complaints -- or your concerns were
13 the integrity of the Alaska Building and that you not
14 bear any costs as a result of what you term "Mark's
15 project," correct?

16 A. The document speaks for itself.

17 Q. So that's a yes?

18 A. The document speaks for itself.

19 Q. Earlier in this chain -- and I'll refer you
20 to page 3 -- did you try to negotiate with
21 Mr. McClintock an agreement or provision in some
22 contract whereby you would be compensated
23 \$10 million in the event the building was damaged;
24 in other words, Mr. Pfeffer would have to buy your
25 building for \$10 million if you believed it was

1 didn't believe 716 was going to sign the
2 indemnification agreement with language that you
3 wanted included. Is that accurate?

4 A. Yes.

5 Q. So in your mind, the meeting on the 28th
6 didn't go well, so in this e-mail, at some point you
7 threatened to launch the grenade. And if you can
8 explain what you meant by that.

9 A. Just filing for a preliminary -- for the
10 lawsuit and asking for a preliminary injunction to
11 stop the project. And I think that this all, you
12 know, reflects what I said earlier about that I had
13 an independent interest in trying to stop this
14 outrageous lease.

15 Q. Mr. McClintock informed you in the same
16 e-mail on the same day that he was comfortable with
17 the process the Agency's pursued, right?

18 A. It speaks for itself.

19 Q. Okay. Also on the 30th of October, 2013,
20 you started drafting letters to then Attorney
21 General Michael Geraghty, correct?

22 A. Sometime around then, yes.

23 Q. Okay. And this may refresh your
24 recollection. I believe this was exhibit -- was it
25 Exhibit J last time, the draft? This has previously

1 A. Yeah. But I didn't send it.

2 Q. Sure. I'm just asking you if you copied
3 it -- if you had sent it, if you had gone forth and
4 sent the letter, you intended --

5 A. You know, it speaks for itself, but as --
6 the media is listed as a CC.

7 Q. Okay. On the 30th of October, while you're
8 e-mailing Mr. McClintock, threatening to launch the
9 grenade, and drafting letters to the Attorney
10 General that you never sent, you actually entered
11 into an indemnity agreement regarding relocation of
12 the gas line and gas meter, correct?

13 A. I don't recall what day. Was it the same
14 day?

15 Q. Yeah. I'm going to provide you with
16 Exhibit F.

17 A. Yeah. One of the things that was going on
18 was Pfeffer had said they were just going to cut off
19 the gas to my building.

20 (Exhibit F marked.)

21 BY MR. ROBINSON:

22 Q. So we're on Exhibit F. Page 2, is that
23 your signature Mr. Gottstein, on page 2?

24 A. Yes. It's an electronic signature.

25 Q. And the date, please?

1 amount of money you received as part of the
2 agreement?

3 A. I don't think so.

4 Q. You were compensated \$15,000, in fact, for
5 professional fees, right?

6 A. I think that's correct.

7 Q. That's correct, right?

8 And you were compensated -- and who
9 compensated you for that?

10 A. 716 LLC, I -- well, I'm not sure. I -- I
11 certainly produced the copies of the checks. I
12 think it was 716.

13 Q. Okay. And I'm going to refer you -- why
14 don't we move on to the next exhibit, which contains
15 the checks. And maybe it will make it easier to
16 track. I'm going to mark it as Exhibit P. It's a
17 payment summary and a copy of checks issued to you,
18 issued to ABI.

19 Exhibit P.

20 (Exhibit P marked.)

21 BY MR. ROBINSON:

22 Q. On the second page of Exhibit P, you'd
23 agree with me that a check was issued to you on
24 December 5th, 2013, in the amount of \$15,000?

25 A. The check was issued to Alaska Building,

1 Inc.

2 Q. Alaska Building, Inc. and in the amount of
3 \$15,000?

4 A. Yes.

5 Q. And that was for professional fees that you
6 personally incurred in preparing for the project,
7 correct?

8 A. Well, that Alaska Building, Inc. incurred.

9 Q. So those weren't fees that you personally
10 incurred as a lawyer and president, sole member
11 of --

12 A. Well, some of it was Law Office billings to
13 Alaska Building, Inc.

14 Q. You'd also agree with me -- and we are on
15 the third page of Exhibit P -- that you were
16 issued -- excuse me -- Alaska Building, Inc. was
17 issued a check for \$10,000? And that had to do with
18 access to the Alaska Building servers during the
19 construction project, more or less?

20 A. No. It was to provide for offsite
21 mirroring of data.

22 Q. You accepted that check?

23 A. Yes.

24 Q. If you can go to the next page,
25 Mr. Gottstein. There's a check in the amount of

1 \$3,900?

2 A. Yes.

3 Q. What was that check for?

4 A. I think it was for parking, for using a
5 parking spot.

6 Q. Was that in the alley?

7 A. Yes.

8 Q. If you can go to the next page, please.

9 Jim Gottstein personally was compensated, in
10 addition, \$2,000 as part of the agreement, correct?

11 A. Well, I wouldn't necessarily say
12 additional. I received a check for 2,000 --

13 Q. As a rent agreement payment, right?

14 A. Yeah, to move across the hall.

15 Q. So you moved, from your office, across the
16 hall because your office abutted the party wall,
17 right, the old Empress Building?

18 A. The one wall -- the wall that my desk was
19 on, or the credenza, actually was -- is the party
20 wall.

21 Q. You were compensated \$2,000 to move your
22 office across the hall during -- how long did your
23 office remain across the hall? When did you move
24 back into your original office?

25 A. I'm not sure, but maybe by April or May of

1 2014.

2 Q. Did Criterion, the general contractor on
3 the project, issue you a check on December 4th,
4 2013, in the amount of \$10,000 for space lease?
5 And, I mean, Alaska Building.

6 A. For how much?

7 Q. \$10,000.

8 A. No.

9 MR. ROBINSON: I'm going to mark this as
10 Exhibit Q. Excuse me. \$14,400.

11 THE WITNESS: Right.

12 MR. ROBINSON: I appreciate your attention to
13 detail.

14 (Exhibit Q marked.)

15 THE WITNESS: Well, you're going to -- you
16 know, whatever I do, you're going to throw up, in my
17 face, whatever I say.

18 BY MR. ROBINSON:

19 Q. Did you receive a letter from Dave
20 DeRoberts, the project manager, on December 4th,
21 indicating that he had enclosed a check in the
22 amount of \$14,400 for the period of January 1st,
23 2014, through December 31st, 2014?

24 A. Yes.

25 Q. So the general contractor of the project

1 Mr. DeRoberts and Mr. Pfeffer and Mr. O'Neill and
2 Dennis Berry. And just briefly, if you can explain
3 your relationship with Mr. Berry. What work did
4 Mr. Berry do during the project?

5 A. He was my consulting engineer.

6 Q. So he consulted on the party wall?

7 A. (Witness nods head.)

8 Q. Yes?

9 A. Yes.

10 Q. Okay. And the \$250,000 claim was his
11 estimate of damage to your building, correct?

12 A. The document speaks for itself, that the
13 \$250,000 claimed is reasonable.

14 Q. In this claim, Mr. Gottstein, dated
15 January 23rd, 2015 -- and feel free to review it
16 thoroughly -- did you ever make a claim that the
17 lease itself was illegal?

18 A. No.

19 Q. When you sent this, did you expect to be
20 compensated by 716 or Criterion or both in the full
21 amount as recommended by Mr. Berry?

22 A. I don't know that I expected it. I -- it
23 would have been the right thing to do.

24 Q. And if you had been compensated in that
25 amount on that date, you never would have brought

1 the lease claim, would you have?

2 A. Probably not.

3 Q. At some point did you send a claim to
4 Sandra Heiden?

5 A. I believe so, yes.

6 Q. A claims adjuster for Navigators Insurance
7 who was the insurer for Criterion?

8 A. Yeah. After it was ignored for a long
9 time, then Ms. Windt -- I asked who it was and
10 basically got the runaround. And finally found out
11 she was involved, and sent it to her.

12 Q. So let's talk about that. After you
13 submitted your claim on January 23rd, 2015, you
14 believe that your claim was ignored by Criterion, by
15 716, correct?

16 A. Well, it had -- there was no response to
17 it. I don't know that -- there was no response to
18 it, to me.

19 Q. You had previously admitted that on
20 March 28th, 2015, you read an article in the
21 Anchorage Daily News that expressed skepticism about
22 the lease, right?

23 Let me refresh your recollection. Let's mark
24 this as Exhibit V. And take a moment to review it.

25 (Exhibit V marked.)

1 hadn't gone forward, right? If you sincerely held
2 those beliefs --

3 A. I don't know that it would have helped the
4 Alaska Building. I think it was important, you
5 know, to the State. But, again, I -- I had great
6 concerns about basically retaliatory damage to the
7 Alaska Building.

8 Q. So help me understand that. What claim
9 have you made that anyone involved in this project
10 was somehow going to retaliate against you for
11 raising a fuss about the lease? You've never made
12 that allegation in a complaint.

13 A. No. I didn't make the allegation in my
14 complaint. That doesn't mean it wasn't a concern.
15 It was my concern, and that's the reason why I
16 didn't do it.

17 Q. You just had a general concern that
18 somehow these -- and you'd agree with me that the
19 communications that we read, at least regarding 716
20 and Pfeffer Development, is Mr. McClintock
21 suggesting that they were sensitive to your
22 concerns, they wanted to meet with you, this was an
23 ongoing discussion, and you entered into a contract
24 with them?

25 A. Well, you know, as 716's lawyer,

1 General on or about October 30th? Did you take any
2 steps after that date to continue in that direction
3 with another letter for the research, anything at
4 all between, say, October 31st and March of 2015?

5 A. Well, I didn't take any, you know, steps to
6 advise, you know, people, I mean, the Attorney
7 General anyway. I don't know what further
8 research -- I may have done more research.
9 Certainly, I did -- you know, probably at least
10 relooked at it before I filed the lawsuit.

11 Q. Okay. You dropped this idea of sending a
12 letter to the Attorney General basically at the same
13 time that you received the license to enter
14 indemnity and insurance agreement. Is that right?

15 A. No. I mean, basically, I dropped it. I
16 mean, which -- if you're talking -- the gas piping
17 one was -- I mean, that was just kind of coincidence
18 that it was the same time. But I -- I dropped
19 pursuing that because of the concern over the
20 retaliatory damage to the Alaska Building, so which
21 ultimate- -- go ahead.

22 Q. Well, did anyone threaten you,
23 Mr. Gottstein?

24 A. No.

25 Q. Did Mr. McClintock suggest to you that you

From: James B. Gottstein [james.b.gottstein@gottsteinlaw.com]
Sent: Friday, October 25, 2013 7:20 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com; Eric Follett
Subject: Revised Agreement; Bill
Attachments: 131025LIORenovationInvoice.pdf; 131025IndemnityAgreement.doc

Hi Don,

I have (hopefully) attached a slightly revised agreement, with the only two changes being that blocking access to the parking spot will cost \$100 per day and payment of \$6,344 for my time spent through yesterday. An invoice for the \$6,344 is also (hopefully) attached.

You should bring the check for \$6,344 with you on Monday.

I see no reason why I should have to bear any expense because of Mark's project. At our initial meeting Mark said he had no budget to pay for the Alaska Building's lost rent. I view that as outrageous and a clear indication that Mark has no intention of treating me fairly without an ironclad agreement in place.

I thought we had an understanding that Mark was not going to move forward until BBFM had had a chance to review the plans, means and methods.

Yesterday, I received a copy of the following e-mail:

On 10/23/2013 4:24 PM, Shea C. Simasko wrote:
Hi Dennis,

I spoke with Criterion today. Latest update is they met with MOA yesterday to discuss the party wall and are in agreement the party wall will stay. With this information Redi, is working on the design plans and details with the wall in place. We plan to sit down and review with you once the plans near completion which will be very soon.

That the party wall is to stay in place should not have even been a topic of discussion.

To say the timeline for this is unreasonable is a gross understatement. I believe Mark is trying to accomplish a *fait accompli* by getting the Old Empress Theater torn down as soon as possible and the Project going to prevent anyone from stopping it.

Originally, I wasn't going to charge for my time or having to move my office. That is now off the table.

I don't have time for negotiations. I do think we need to pick the person who is going to decide what costs Mark refuses to pay have to be paid. I also think it would be a good idea to figure out a mechanism for determining in what event(s) the \$Ten million purchase obligation is triggered if we can.

I believe there is a well better than even chance that I can stop the project, maybe without even having to file a lawsuit, if we cannot reach an agreement in short order (Monday?). You can talk to Eric about the situation. He has a very good handle on it.

James B. Gottstein
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

Law Offices of James B. Gottstein

406 G Street, Suite 206
 Anchorage, AK 99501
 (907) 274-7686 Tel
 (907) 274-9493 Fax

Invoice

DATE	INVOICE #
10/25/2013	3386

BILL TO
Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
9/24/2013	E-mail from/to A. Slinker (.05)	0.05	325.00	16.25
9/25/2013	E-mails from/to A. Slinker (.12)	0.12	325.00	39.00
10/2/2013	Conference with Pfeffer & minions, Walk-Through (1.5)	1.5	325.00	487.50
10/3/2013	Conference with Project personnel (1.5)	1.5	325.00	487.50
10/4/2013	Call from S. Simasko, e-mails from/to S. Simasko (.1)	0.1	325.00	32.50
10/5/2013	Walk-through with Simasko (1)	1	325.00	325.00
10/7/2013	Research & Review title documents (1.5)	1.5	325.00	487.50
10/8/2013	E-mail to D. Berry (.05)	0.05	325.00	16.25
10/10/2013	E-mail from/to D. Berry, e-mails from/to S. Simasko, e-mail from B. Nolin, call with Alaska USA Insurance Brokers, e-mails from Dave DeRoberts (.7)	0	325.00	0.00
10/11/2013	E-mails to/from S. Simasko, e-mails to/from D. McClintock, e-mail from/to B. O'Neill, Criterion Gas Loads check (1)	1	325.00	325.00
10/13/2013	E-mail FOIA Request to AHFC (.1), Access and Indemnification Agreement (3), e-mail to D. Berry and F. Braun, (.12)	3.22	325.00	1,046.50
10/14/2013	E-mail from D. Berry, Memo to tenants, conferences with tenants, e-mails from/to D. McClintock, e-mail from/to S. Johansson, e-mail from M. Pfeffer (1.5)	1.5	325.00	487.50
10/15/2013	E-mails from/to D. McClintock (.08)	0.08	325.00	26.00
			Total	

Law Offices of James B. Gottstein

406 G Street, Suite 206
Anchorage, AK 99501
(907) 274-7686 Tel
(907) 274-9493 Fax

Invoice

DATE	INVOICE #
10/25/2013	3386

BILL TO
Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/16/2013	E-mail from/to D. McClintock (.05)	0.05	325.00	16.25
10/17/2013	E-mails from/to S. Johansson, review AS appraisal & lease "extension," review AS 36.30.083, call to E. Follett, e-mail to/from E. Follett, call with E. Follett (2)	2	325.00	650.00
10/21/2013	e-mail from D. Berry, call with D. Berry, e-mails to D. Berry, walk through with D. Berry (1.5)	1.5	325.00	487.50
10/22/2013	E-mail from D. Berry, e-mail to D. Berry, call with E. Follett (may not be this day), conference with C. Waldrup (May not be this day)(1)	1	325.00	325.00
10/23/2013	E-mail from/to D. Berry (.1)	0.1	325.00	32.50
10/24/2013	Agreement, conferences with ACS, call with D. Berry, call from D. Berry, e-mail from D. Berry, conference with C. Wier, e-mail to D. McClintock(3.2), e-mail from/to D. McClintock (.05)	3.25	325.00	1,056.25
			Total	\$6,344.00

Indemnification Agreement

(Alaska Building, Inc.--Pfeffer Development/Pfeffer/Criterion)

AGREEMENT made as of the 2nd day of October, 2013, between and among:

1. Pfeffer Development, LLC, an Alaska Limited Liability Company, whose address is 425 G Street, Suite 210, Anchorage, Alaska 99501 (Developer);
2. Mark Pfeffer, individually, whose address is 425 G Street, Suite 210, Anchorage, Alaska, 99501 (Pfeffer)
3. Criterion General, Inc., an Alaska corporation, 2820 Commercial Drive, Anchorage, Alaska 99501 (Contractor); and
4. Alaska Building, Inc., an Alaska corporation, 406 G Street, Suite 206, Anchorage, Alaska 99501 (Owner).

RECITALS

- A. Owner owns the Alaska Building situated at 4th and G streets in Anchorage, Alaska, more particularly described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40), of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska.
- B. Developer owns the adjacent property to the West of the Alaska Building (Old Empress Theater) and intends to demolish the existing structure and construct a new building (Project).
- C. Pfeffer , through the Mark E. Pfeffer Revocable Trust, owns 100% of Pfeffer Development.
- D. 100% of the shares of Owner are owned by Jim Gottstein, through the James B. Gottstein Revocable Trust.
- E. The Alaska Building and the Old Empress Theater share a wall (Party Wall).
- F. Developer is obligated to Owner to maintain the Party Wall and desires access to the Alaska Building in order to fulfill this obligation.
- G. The Alaska Building was purchased by James B. (Jim) Gottstein's grandfather, J.B. "Jake" Gottstein in 1926, and in order to preserve it, in 1995, by Jim Gottstein from his father, B.J. Gottstein.
- H. There is a lot of Gottstein family history associated with the Alaska Building and Jim Gottstein is determined to preserve the building as long as possible. In

addition, it is one of the oldest structures in Anchorage, being first constructed on or around 1917, and of historical importance.

- I. Jim Gottstein is very concerned about catastrophic damage to the Alaska Building caused by the Project and one purpose of this agreement is to incentivize Developer and Contractor to take all possible steps to avoid such damage.
- J. Another purpose is to ensure that Owner and its Tenants are indemnified and held harmless from any and all loss occasioned by the Project.
- K. Owner has hired BBFM Engineers, Inc. (BBFM) to be its representative for the Project.
- L. The Party Wall is the West wall of the Alaska Building's server room, containing servers that need to be available 24 hours a day, 7 days a week, and as a matter of prudence the Owner is arranging to have these servers remotely mirrored in the event the Project interrupts their operation.

NOW THEREFORE IT IS AGREED:

1. Protection and Preservation of the Alaska Building

(a) Developer and Contractor shall take all possible steps to preserve the Party Wall and avoid damage to it and the Alaska Building.

(b) In the event such damage is not avoided, Developer, Pfeffer, and Contractor will, to the extent possible, repair and reconstruct the Party Wall and, if necessary, the Alaska Building, to its condition at the date of this Agreement. **This obligation is joint and several.**

(c) In the event of damage to the Party Wall or the Alaska Building which the Developer determines is not susceptible to repair and reconstruction as set forth in subsection (b), above, the Developer, Pfeffer, or Contractor, or any combination thereof as they may determine, shall purchase the Alaska Building for Ten Million Dollars (\$10,000,000).

2. Maintenance of Safe, Secure and Clean Access

Developer, Contractor and Pfeffer shall maintain safe, secure and clean access to the Alaska Building at all times during the Project, including without limiting the generality of the foregoing, access to the alley parking spot and door adjacent to the Old Empress Theater; **Contractor shall pay Owner \$100 for every day or part of a day access to the alley parking spot is blocked in any way as a result of the Project.**

3. Indemnification:

(a) Developer, Pfeffer and Contractor shall defend, indemnify and hold harmless (i) Owner, (ii) Owner's tenants, agents and employees, and (iii) Jim Gottstein, from and

against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of the Project, whether caused by any act or omission of the Contractor, Pfeffer or Developer, or any combination thereof, any subcontractor and, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

(b) Without limiting the generality of the foregoing and in addition to Section 1 above, such indemnity shall include the following:

- (i) The reasonable charges by BBFM, Engineers, and Eric Follett, MAI, to Owner related to the Project;
- (ii) Lost rents;
- (iii) Reasonable expenses of Alaska Building Tenants incurred as result of the Project;
- (iv) Owner's share of arbitration costs under subparagraph (c), below;
- (v) Release of hazardous materials caused by the Project;
- (vi) Replacement of the roof of the Alaska Building with the same type of roof it has currently, and reinstallation of the rooftop deck, if anything falls on the Alaska Building's roof as a result of the Project, or the roof develops a leak within 18 months of the Certificate of Occupancy being issued;
- (vii) the time spent by Jim Gottstein on the Project at his normal rate of \$325/hour, receipt of \$6,344, constituting time spent through October 2, 2013, is hereby acknowledged; and
- (viii) The costs of setting up remote mirroring of the servers located in the Alaska Building.

(c) In the event any claims for indemnification by Owner, Jim Gottstein, or any Alaska Building Tenants, are not paid within 30 days, _____, whose address is _____ is appointed as arbitrator to resolve, in each such instance, the amount of indemnification to be paid to Owner, Jim Gottstein, or Alaska Building tenants.

(d) In any and all claims against the Owner, Jim Gottstein, or any of their agents or employees by any employee of the Developer, Pfeffer, Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

4. Access to Alaska Building

(a) Subject to the terms of this agreement, including consultation with BBFM and its approval, Developer and Contractor shall be granted access to the Alaska Building under a separate access license, in the form attached hereto as Exhibit A at reasonable times in order to plan and implement the Project and minimize the adverse impacts of the Project on the Alaska Building.

(b) Any damage to the Alaska Building, without limiting the generality of the foregoing, such as holes cut in walls or ceilings, to observe the construction of the Alaska Building as it relates to the Party Wall, shall be immediately repaired completely at Developer's and Contractor's expense.

5. Coordination with BBFM

(a) Reid Middleton, the Project's engineering firm shall meet with BBFM the week of October 21, 2013, to get an overview of their design approach.

(b) Developer and Contractor shall provide BBFM the full plan for demolition, shoring structural design and construction sequencing, as well as the means and methods to implement same, at least two weeks before applying for a demolition permit.

(c) No demolition work on the Project shall commence until any and all concerns of BBFM are addressed to its satisfaction.

(d) BBFM shall also be given advance notice of all such work, allowed to observe it in progress and the right to issue a stop work order in the event it observes conditions jeopardizing, safety or the integrity of the Party Wall or the Alaska Building.

(e) A set of monitoring points will be established on the Alaska Building to track any movement, vertically or horizontally, during the demolition and destruction of the Old Empress Theater as well as the completion of the Project.

6. Use of Hazardous Materials on the Project:

(a) Contractor and Developer covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials

(b) Contractor and Developer shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the project by Contractor and Developer, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor and Developer's work on the project.

(c) Any hazardous material permitted on the Project as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a

manner that complies with all laws or regulations applicable to any such hazardous material.

(d) Contractor and Developer shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by Owner or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the project or any other real or personal property.

(e) Contractor and Developer specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Owner, and to keep Owner fully informed of any communication between Contractor and Developer and any person or agency concerning potential environmental contamination and hazardous substances.

(f) Contractor and Developer hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the project by Contractor and Developer, or its authorized representatives and invitees.

7. Conveyance of Party Wall

Immediate upon receiving a Certificate of Occupancy for the Project, all rights in the Party Wall shall be conveyed to Owner in form and substance approved by Owner.

8. Insurance & License Requirements

The CONTRACTOR AND DEVELOPER are to provide the Alaska Building with a certificate of insurance prior to commencement of construction. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder. The certificate shall include items (a)-(f) as set forth below.

(a) General Liability		
	General Aggregate	\$2,000,000
	Products/Completed Operations	\$1,000,000
	Personal/Advertising	\$1,000,000
	Each Occurrence	\$1,000,000
	Damage to Owner's Premises	\$10,000,000
	Lost Rents	\$500,000
	Medical Expense	\$5,000
(b) Automobile		
	Combined Single Limit	\$1,000,000

(c) Workers' Compensation

Workers' Compensation	Statutory
EL - Each Accident	\$500,000
EL - Disease, Policy Limit	\$500,000
EL - Disease, each Employee	\$500,000

(d) Alaska Building, Inc., shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.

(e) Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)

(f) Auto insurance should apply to owned, non-owned and hired auto exposure of the Contractor and Developer and subcontractors working on the project.

9. General.

Time is of the essence of each and every provision hereof. The captions to the sections of this Agreement are solely for convenience of reference and shall not in any way limit, amplify or modify the provisions hereof. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and such provision shall be construed to most closely match the intent of such provision that is valid and enforceable. Each party has had the opportunity to have this Agreement reviewed by counsel and the rule of construction or interpretation that ambiguities, if any, in a writing be construed against the drafter shall not apply to this Agreement. This is the entire agreement of the parties pertaining to the subject matter hereof and supersedes all or any other prior agreements and understandings between the parties. No change or modification to this Agreement shall be valid unless the same be in writing and signed by all the parties affected.

IN WITNESS WHEREOF, the parties have entered in to this Agreement

DEVELOPER: Pfeffer Development, LLC, an Alaska
Limited Liability Company

By: Mark Pfeffer
Its: Manager

PFEFFER:

Mark Pfeffer, individually, jointly and
severally

DEVELOPER: Criterion General, Inc., an Alaska corporation

By: Dave Roberts

Its: President

OWNER: Alaska Building, Inc., an Alaska corporation

By: Jim Gottstein

Its: President

From: Donald W. McClintock
Sent: Wednesday, October 30, 2013 10:07 AM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Larger Issues

Jim,

Thanks for the clarification. As noted in our meeting, we are comfortable with the process that the agencies pursued.

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

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution or copying of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by return e-mail and delete this message and destroy any printed copies. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is appreciated.

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, October 30, 2013 9:13 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Larger Issues

Hi Don,

I am assuming your client is not going to work with me to fill in the blanks and sign the Indemnification Agreement I e-mailed last Friday, and we discussed Monday. As you know I have been very conflicted about even making a deal in light of what I learned about the project being a violation of state law. I don't really need anything in writing from Eric to launch the grenade, but gave you the impression you had a couple of days for him to get something in writing to me. Since I don't have any sense that your client is going to agree to the Indemnification Agreement, my moral conflict is resolved, but I do feel I should give you notice since I left the impression your client had through today.

When I met with you on Monday, I fully intended to pursue the criminal violation, but as I was writing the letter to Geraghty and Svobodny, I decided not to mention it. I am not trying to harm Mark; I just think the deal is outrageous and should be stopped.

James B. Gottstein
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



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

October 30, 2013

Michael C. Geraghty
Attorney General
P.O. Box 110300
Juneau, AK 99811

Re: Anchorage Legislative Information Office
Fraudulent Lease Extension

Dear Attorney General Geraghty and Deputy Attorney General Svobodny

I am the owner of the Alaska Building, which is adjacent to the Old Empress Theater, most recently the Anchor Pub. The Alaska Building and the Old Empress Theater share a party wall. Thus, I was naturally concerned when plans were announced to demolish the Old Empress Theater to make way for

Sincerely,

Jim Gottstein
President

cc: The Media
Don McClintock, Esq.
attorney.general@alaska.gov
richard.svobodny@alaska.gov

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

October 30, 2013

Michael C. Geraghty
Attorney General
P.O. Box 110300
Juneau, AK 99811



Re: Anchorage Legislative Information
Office Renovation Contract

Dear Attorney General Geraghty:

I represent Alaska Building, Inc.,¹ which owns the building adjacent to the Old Empress Theatre, most recently the Anchor Pub. The Alaska Building and the Old Empress Theatre share a party wall. Thus, my client was naturally concerned when plans were announced to demolish the Old Empress Theatre to make way for the renovations of the Anchorage Legislative Information Office. When the developer refused to provide adequate written assurances that Alaska Building, Inc., and its tenants would be compensated for any losses caused by the renovations, and that the Alaska Building would not be irreparably damaged, I looked into the so-called lease "extension" and have discovered that it is in violation of AS 36.30.083.²

As you know, in order to ensure that the State receives the best price for its purchases almost all contracts for a substantial amount of money require an open, public bidding process. Sole source contracts are extremely limited under state law. One of the exceptions is AS 36.30.083, which does allow a lease extension for up to 10 years if there is a minimum cost savings of at least 10 percent below the market rental value. The contract is neither a lease extension, nor is it for at least 10 percent below market rent. It is not a close call on either.

The putative lease extension calls for the LIO to vacate the building for over a year while the existing building is gutted and replaced, with the construction of new space on a different lot to be added. By no stretch of the imagination is this a lease extension. Just calling a contract a lease extension doesn't make it so.

¹ I am also the 100% owner of Alaska Building, Inc., through my revocable trust.

² The reviewed documents I reviewed are available at <http://gottsteinlaw.com/lio/>.

Michael C. Geraghty
October 30, 2013
Page 2

On its face the appraisal is for \$4.40 per square foot per month rent. It is not believed any building in Anchorage has ever been leased for that much, let alone the almost \$5.00 per square foot market rent that purports to be at least 10 percent less than. Worse, I have had an expert MAI appraiser review the deal and once one adds in all of the extras the State is paying for, deduct the space that one normally doesn't count in the space, and the other shenanigans in the appraisal, the State is actually paying an effective market full service rent in excess of \$7 per square foot per month for rentable office space. Even the appraisal used to support the contract

Please see to it that this illegal contract is cancelled immediately.

Preparatory work on the contract has already commenced with moving a gas line from behind the Old Empress Theatre to behind the Alaska Building scheduled for November 11th, and the demolition of the Old Empress Theatre planned to begin November 15th .

Thus, contract needs to be cancelled by November 8th.

Sincerely,

Jim Gottstein
President

cc: The Media
Don McClintock, Esq.
attorney.general@alaska.gov



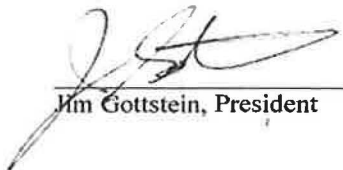
ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone - (907) 274-9493 Fax

Claim

To: 716 West Fourth Avenue, LLC & Criterion Construction
From: Alaska Building, Inc.
For: Damage from Legislative Information Office Building Reconstruction Project
Amount: \$250,000

Dated: January 23, 2015:



Jim Gottstein, President

**Known Damage to Alaska Building Caused by Old Empress Theater
Demolition & Construction of Elevator & Utility Tower for
Legislative Information Office Demolition and Reconstruction**

Chronology

- There was a tremendous amount shaking during the demolition phase of the project.
- When the Old Empress Theater was demolished, the flashing protecting preventing water running down the Alaska Building side of the Party wall was removed and the roof membrane protecting it left open, exposing it to the elements. This was later discovered to have allowed water under the roof and into the building.
- On February 9th there was so much shaking that items fell off the shelves in Octopus Ink and broke. Criterion settled with Octopus Ink only.
- On February 24, 2014, the slab adjoining the party wall failed due to excavation of the basement of the Old Empress Theater, exposing a large void underneath the slab. The void was immediately filled with cement/grout due to extreme safety concerns. A review of the post/beam connection and door to the server room at the top of the internal stairs points to about an inch of downward movement of the wall and floor at the top of the stairs.
- On April 1, 2014, Shara of Octopus Ink reported that things had shifted around so much that the locks are no longer lining up, including that she is not strong enough to open the lock to the alley. Criterion adjusted the doors so they would lock/unlock.
- On April 3, 2014, Dennis Berry noted that the North end of the Party Wall had moved about an inch and Jim Gottstein noted a crack in the slab he hadn't noticed before.
- On May 14, 2014, the pounding removal of the braces caused so much shaking that Jim Gottstein went up and stopped the workers. The braces, which had been placed when it was close to or below 0 degrees Fahrenheit, had apparently expanded, and the workers were pounding them out. An inspection of the stairwell to 4th Avenue reveals that the party wall had moved to the West with significant resultant damage to the Alaska Building.
- From 4th Avenue the extent of the damage/wall movement is even more evident with about an inch of westward movement of the party wall at the top of the stairwell door.
- On May 17, 2014, Jim Gottstein noted that the pounding of the steel beams during the erection of the tower was causing severe shaking.
- Also on May 17, 2014, it was discovered that leaving the membrane covering the Party Wall on the North end open to the elements had caused water to collect under the roof.
- On June 25, 2014, a leak appeared behind the door to Jim Gottstein's office.
- On July 7, 2014, Jim Gottstein noticed a crack in his 4th avenue wall within a few feet of the Party Wall.
- On July 11, 2014, Jim Gottstein was informed that water was running down the Alaska Building on the South side of the Party Wall and had been for weeks.
- On July 25, 2014, water again was running down the Alaska Building side of the Party Wall during a period of heavy rain.
- On August 6, 2014, it appeared that the bracing from the slab failure was failing, indicating further settlement of the slab.
- On August 18, 2014, Jim Gottstein noticed that a couple of ceiling tiles below where the water had accumulated below the roof membrane were stained. The tiles were not stained before the project.
- On January 23, 2015: flashing above the 4th Avenue Stairway door had still not been replaced.

Photographs

Slab Failure



February 24, 2014

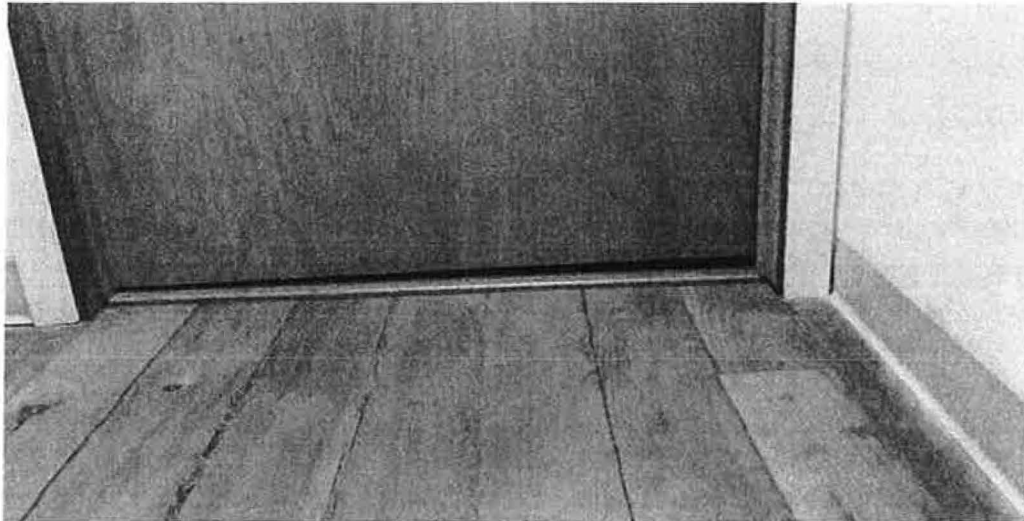


This shows where the post had dropped by what looks to be about an inch
February 24, 2014



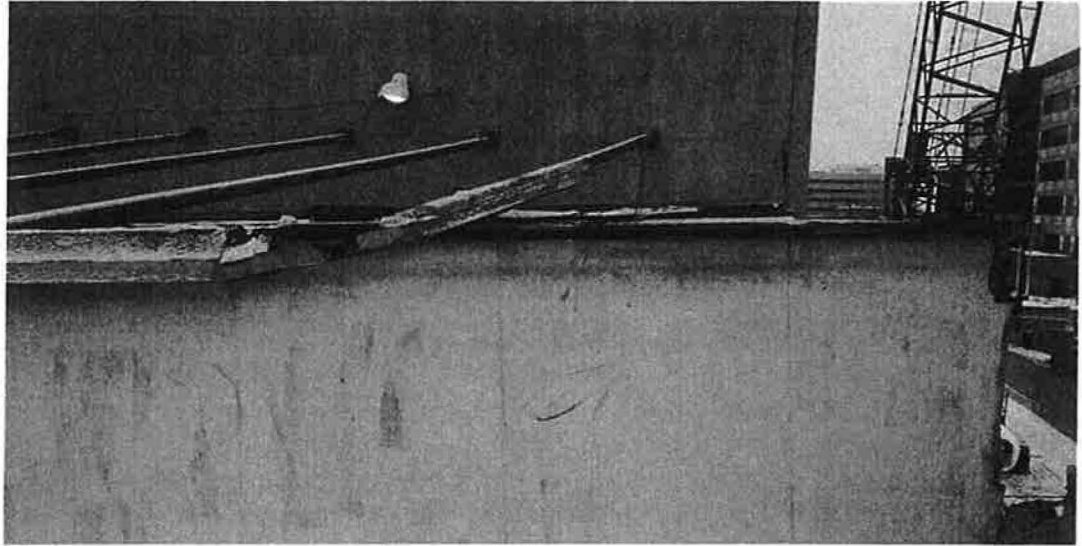
August 6, 2014 (Bracing failing)

Server Room Door at top of Stairs from Party Wall- (Shows Almost 1 Inch Drop in Floor)



(January 20, 2015)

Roof



January 9, 2014



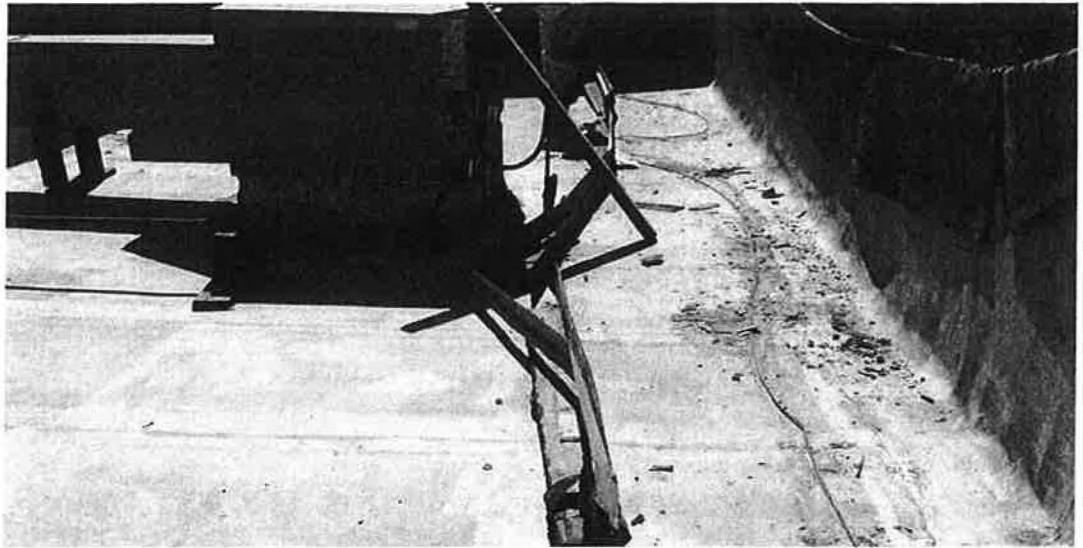
March 13, 2014



March 13, 2014



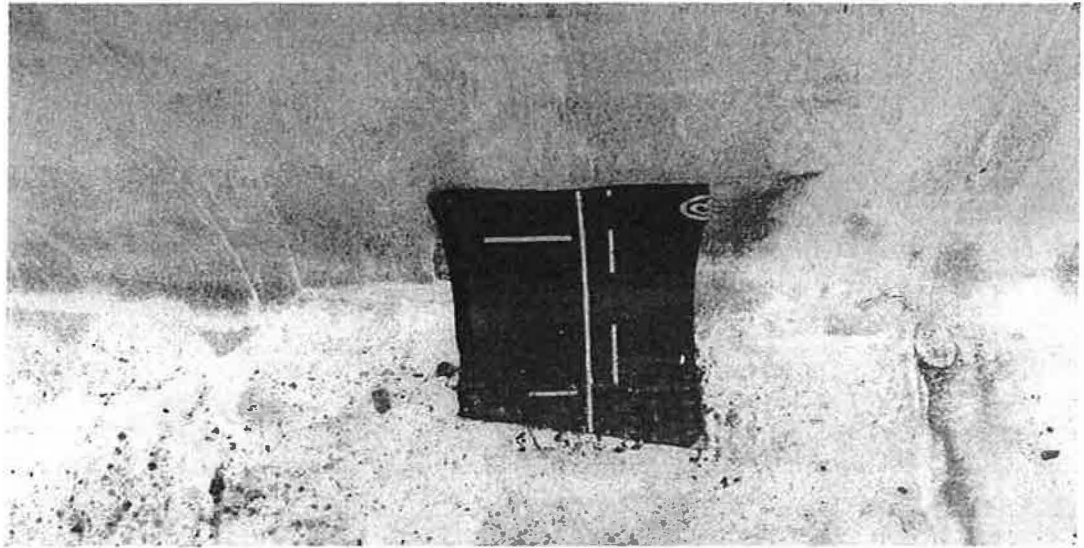
May 16, 2014



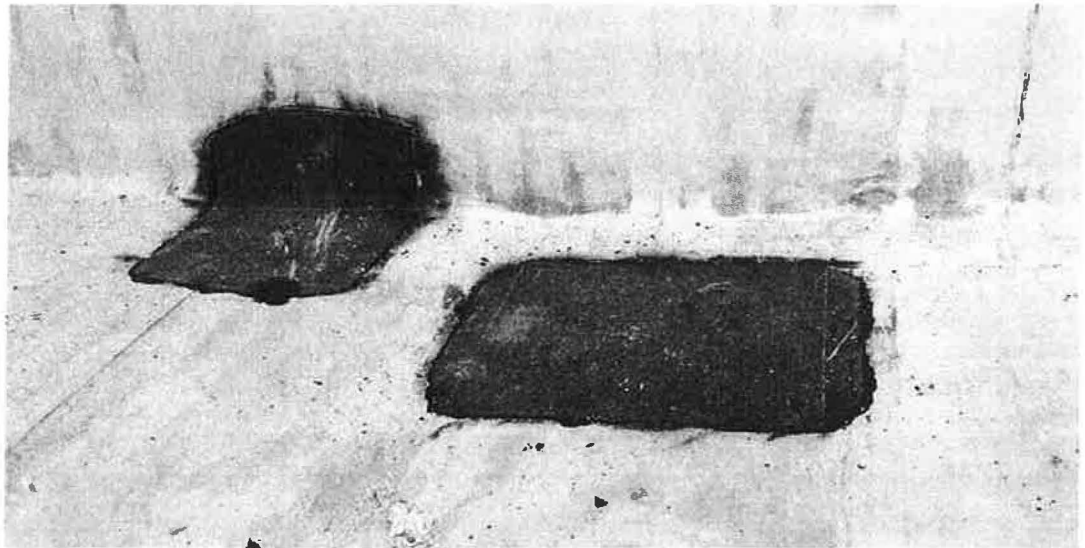
May 16, 2014



May 18, 2014



June 2, 2014



August 20, 2014

Ceiling Tile Stains/Water Damage

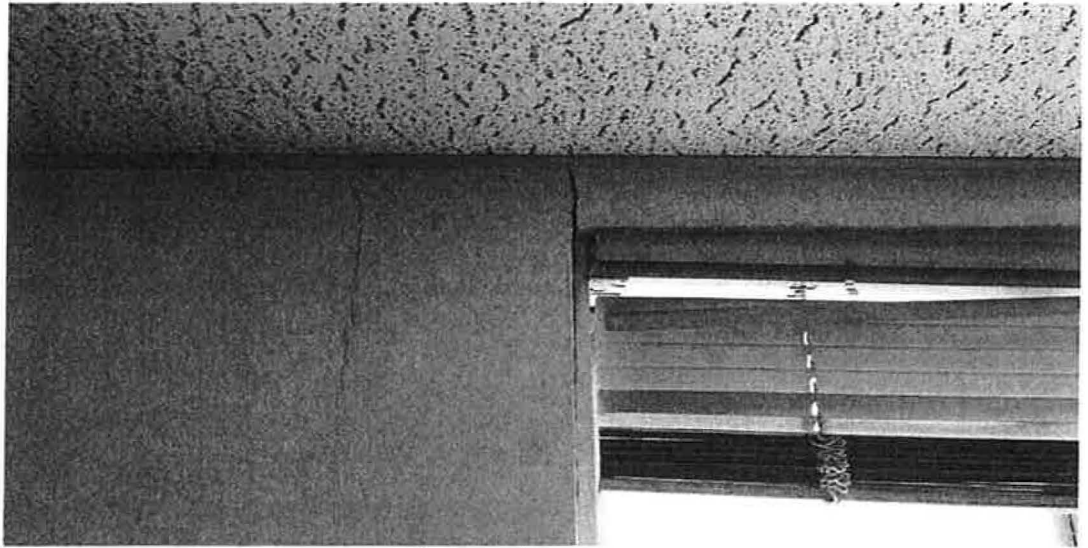


Unstained Ceiling Tiles December 1, 2013

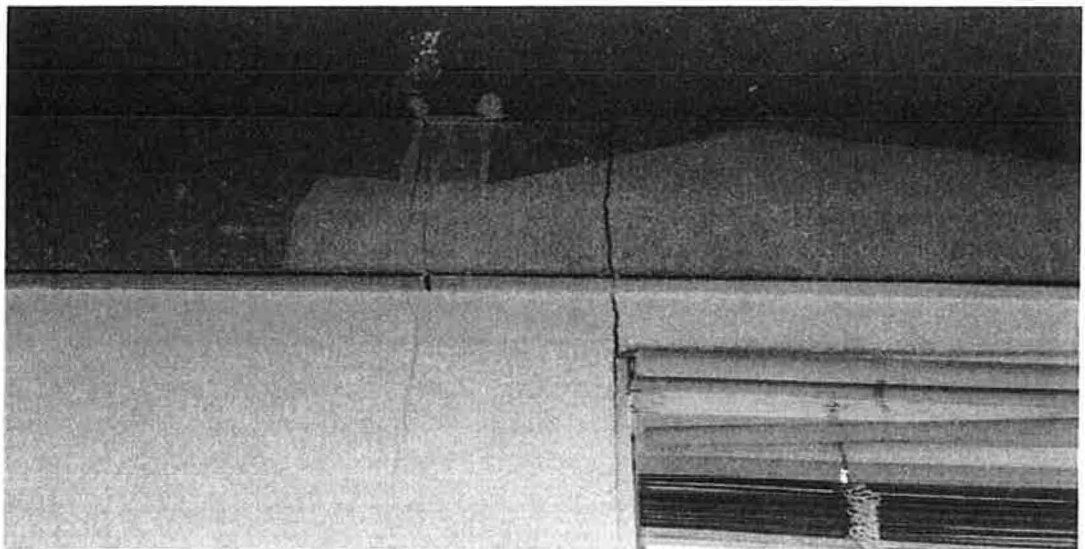


August 17, 2014

Cracks in 4th Avenue Wall

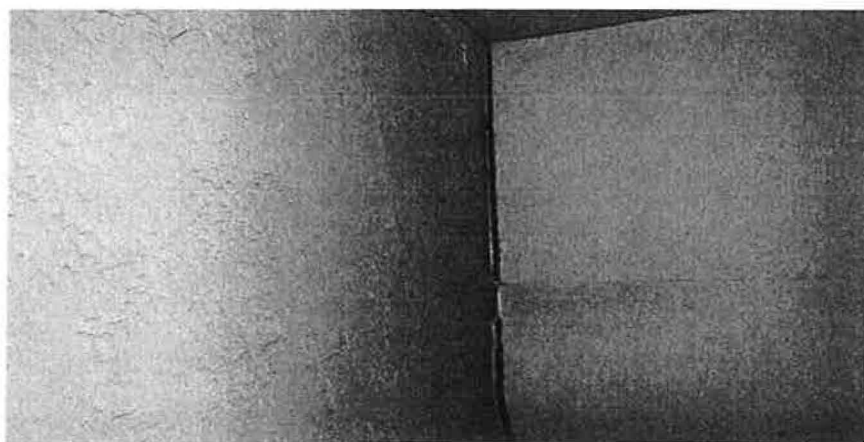
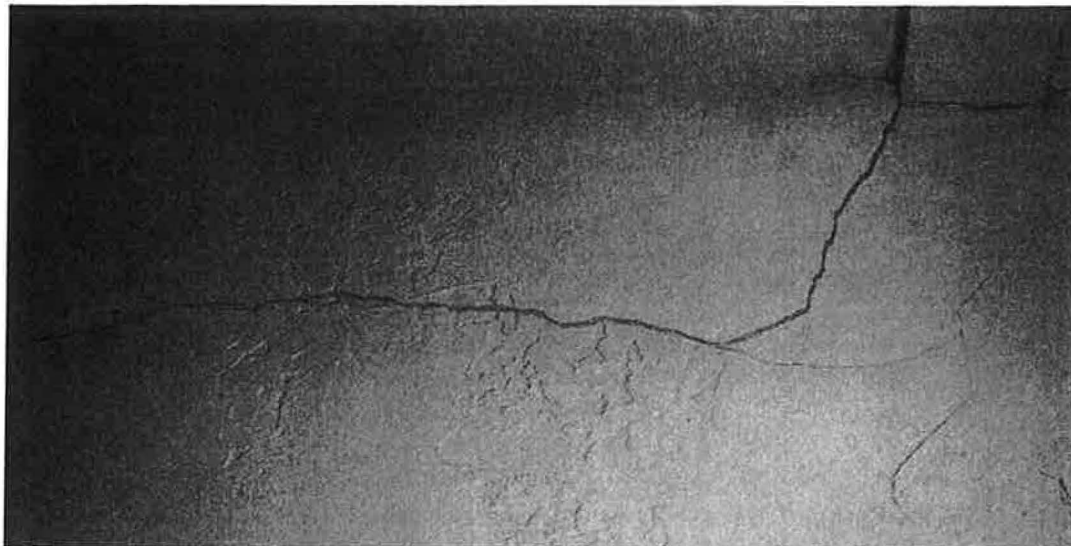


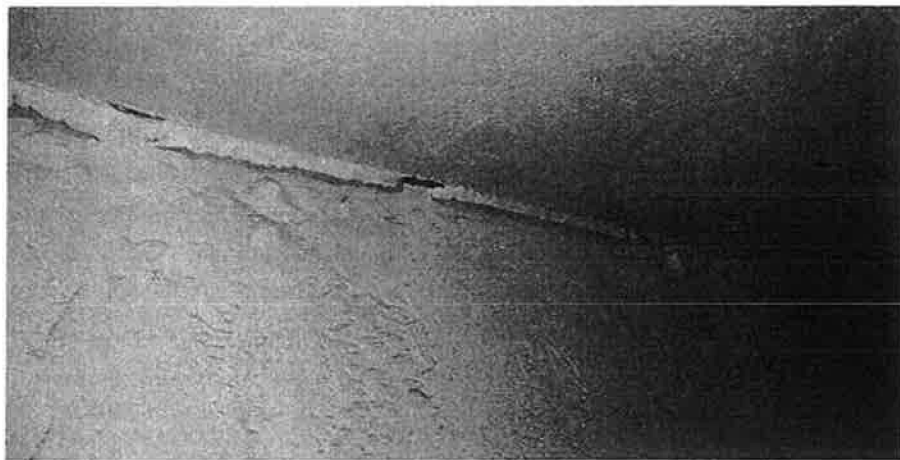
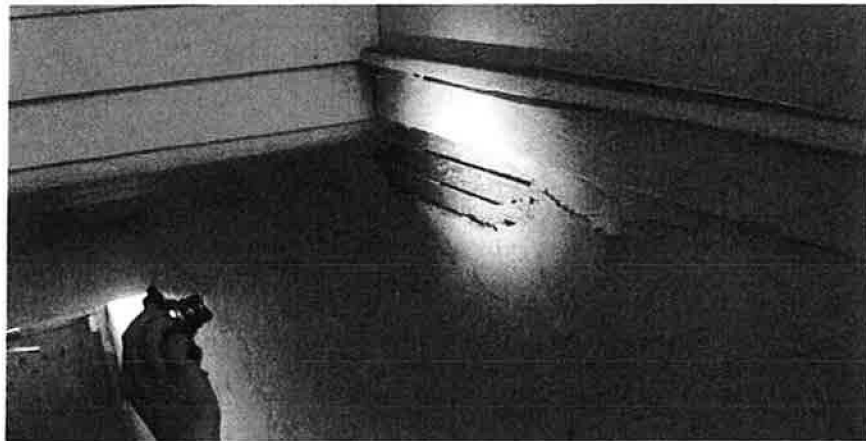
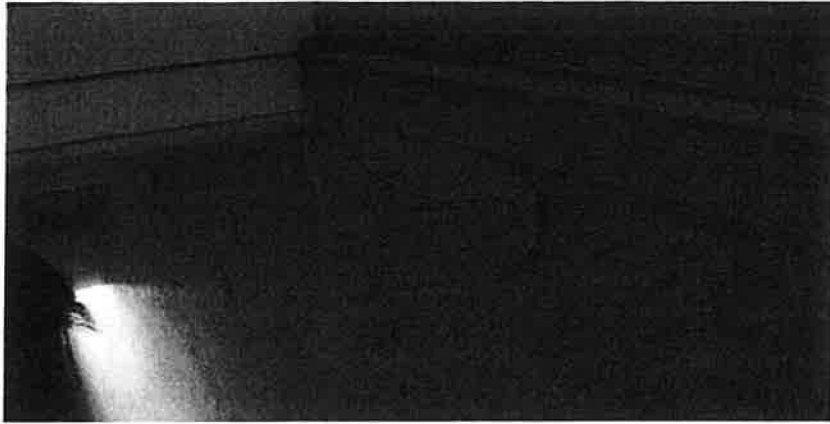
July 7, 2014

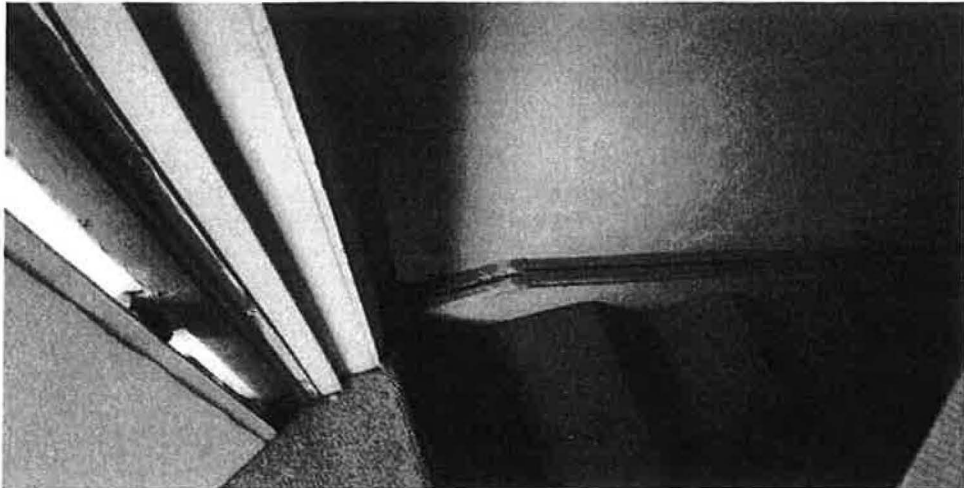


December 26, 2014

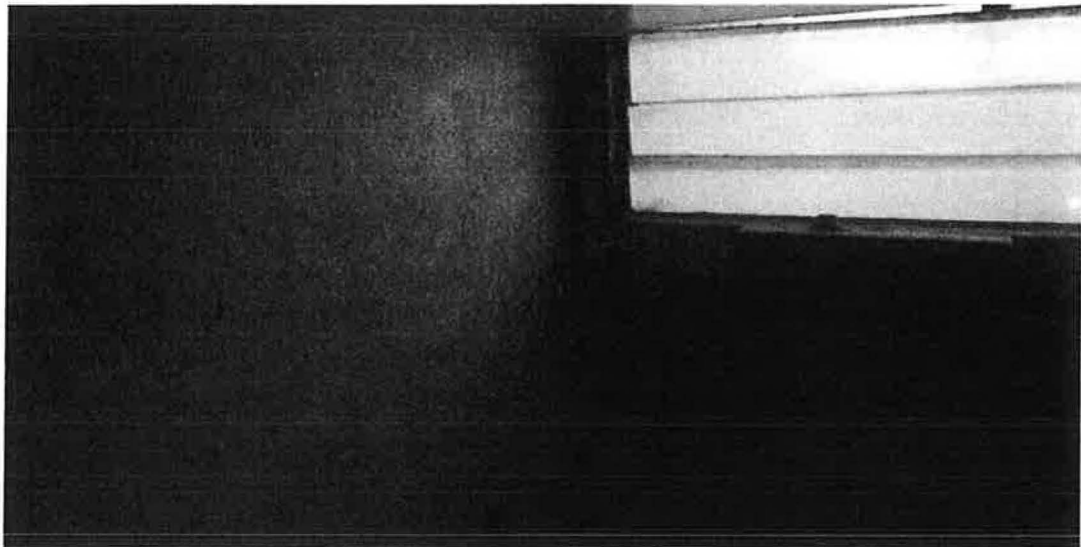
4th Avenue Stairwell (All Taken May 16, 2014)

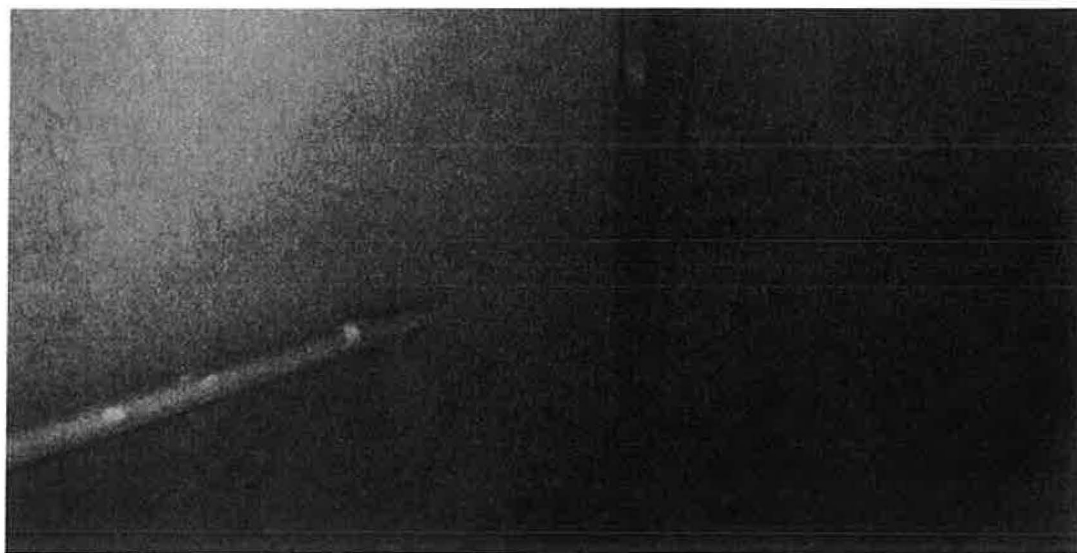
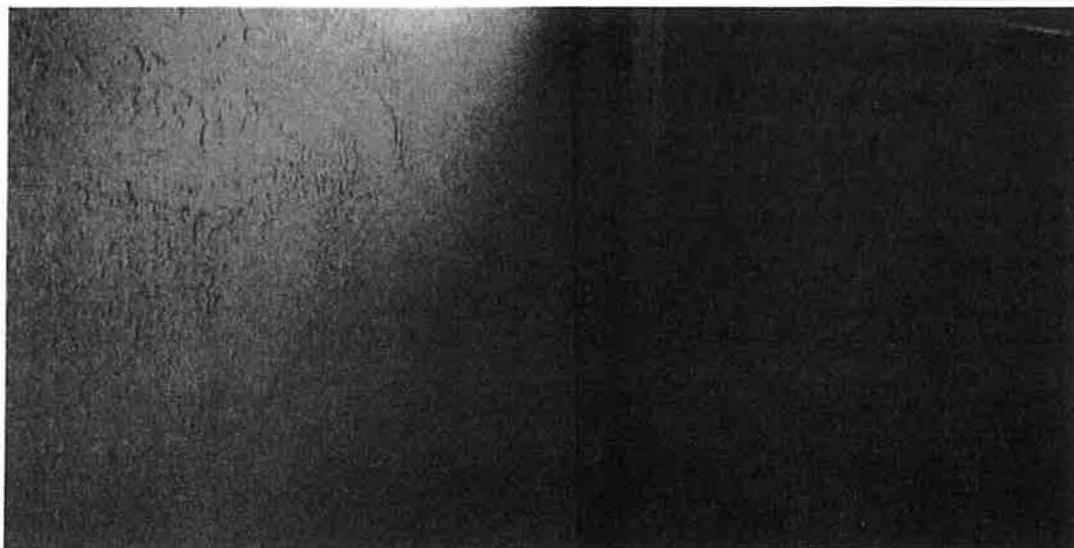




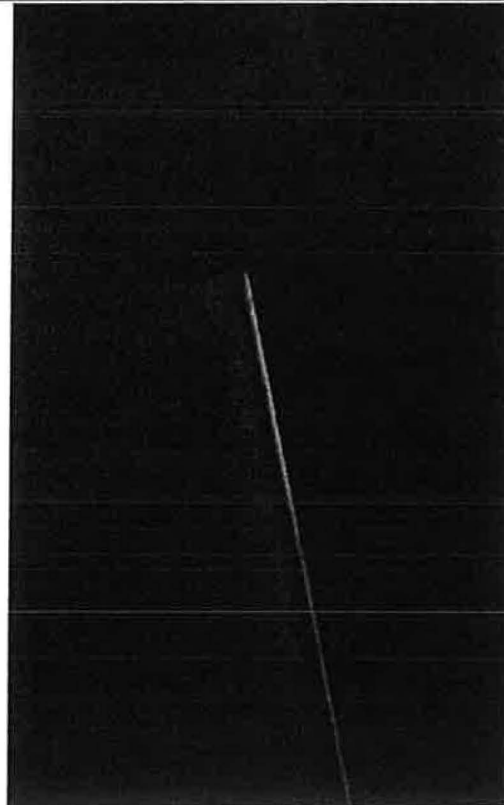
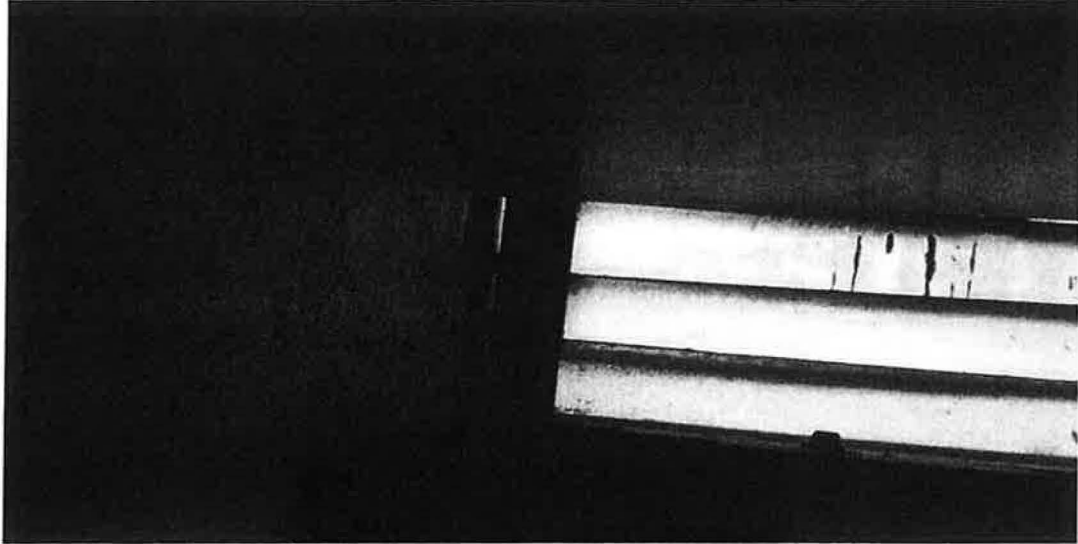


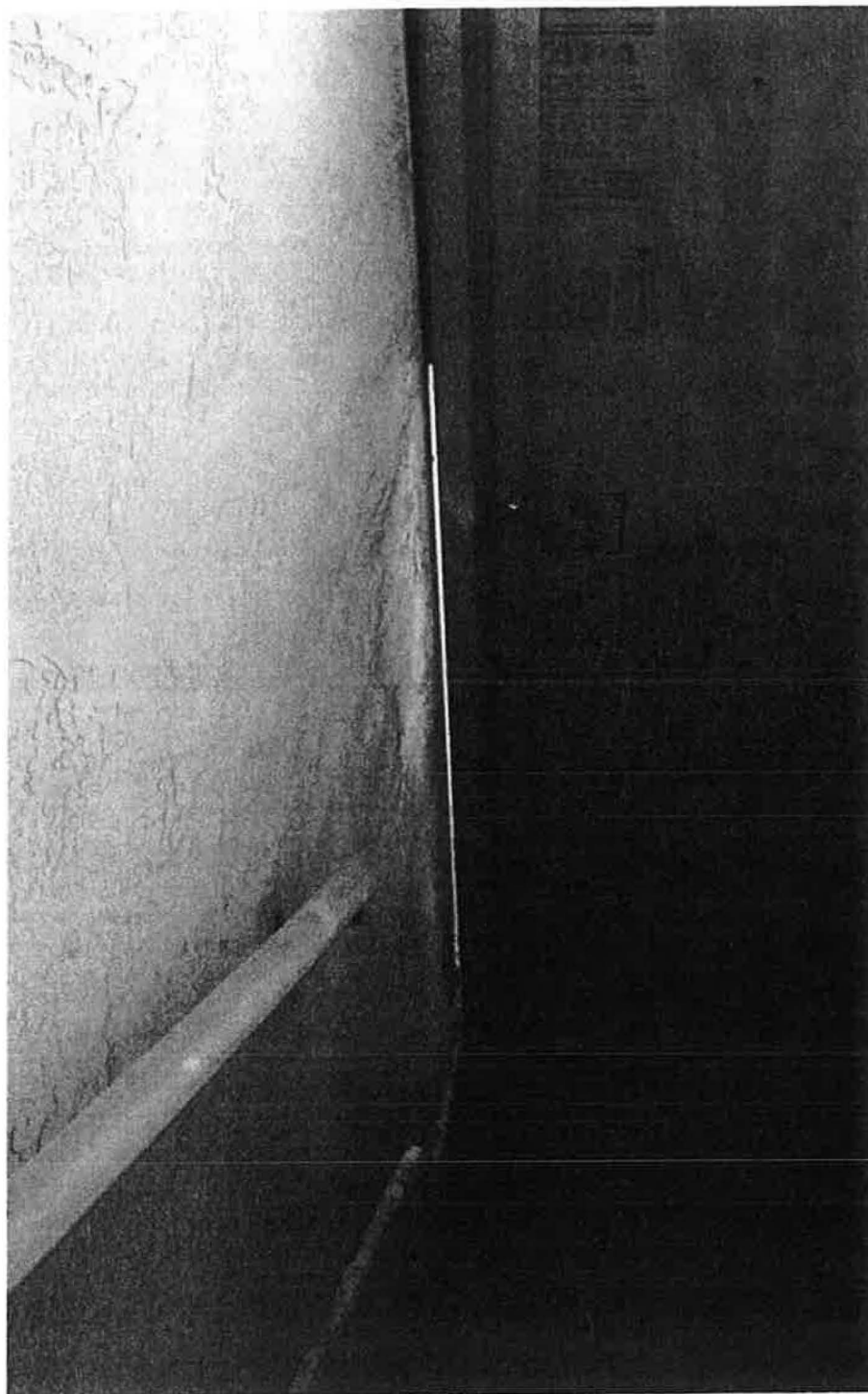
4th Ave Stairwell Door before Project





4th Avenue Stairwell Door after Project



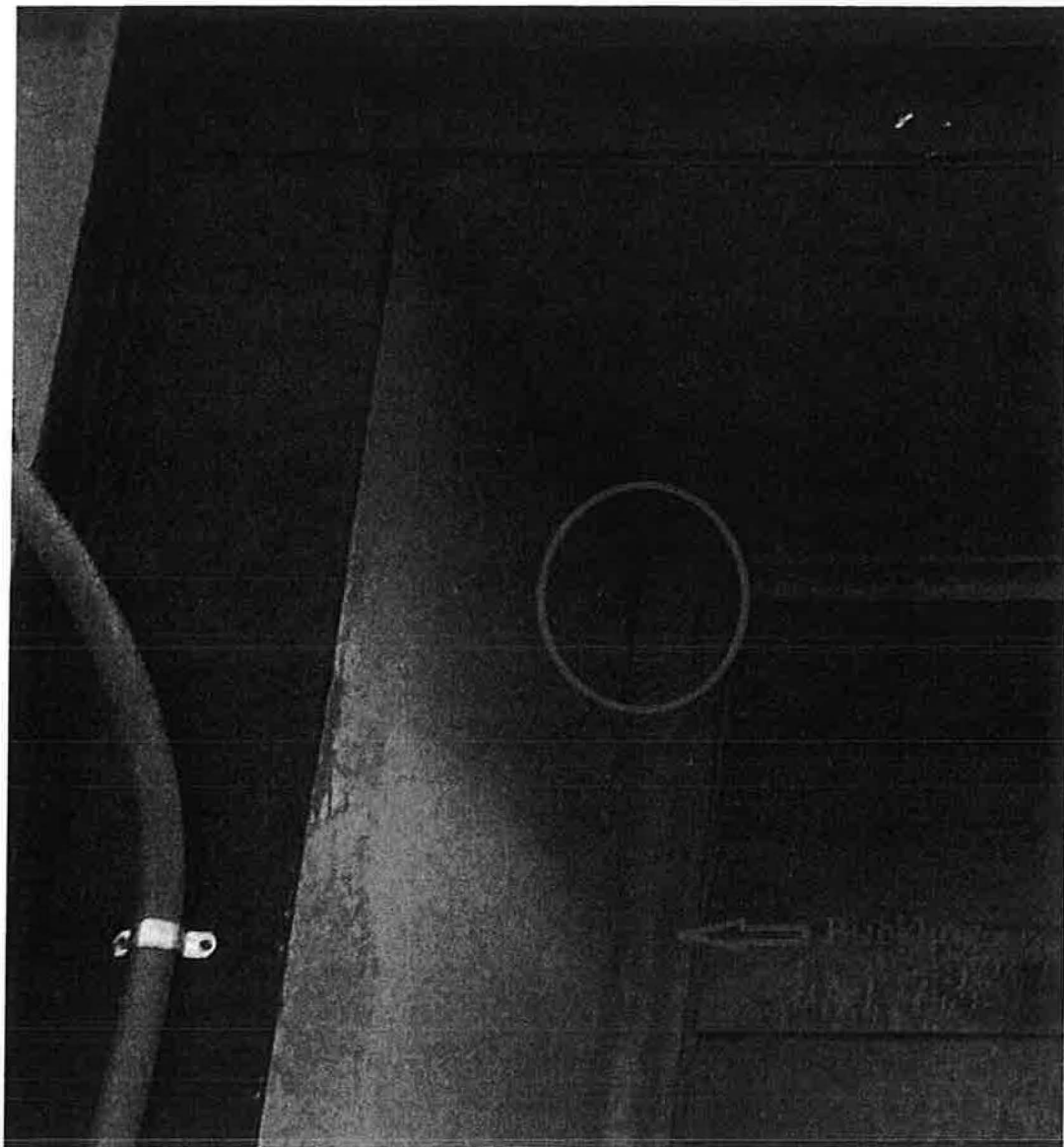


The 4th Avenue Side of the Stairwell Door (January 9, 2015)

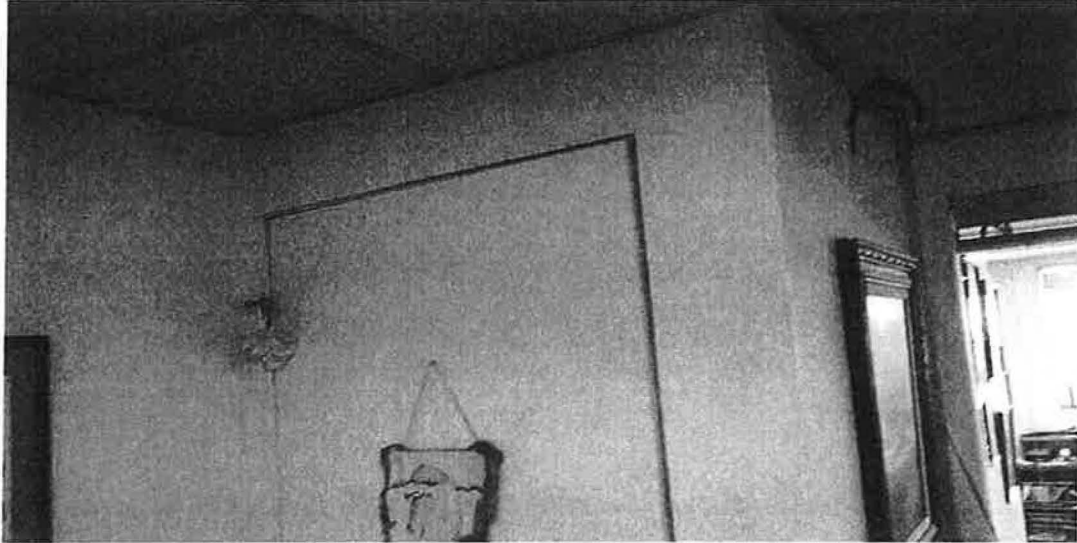




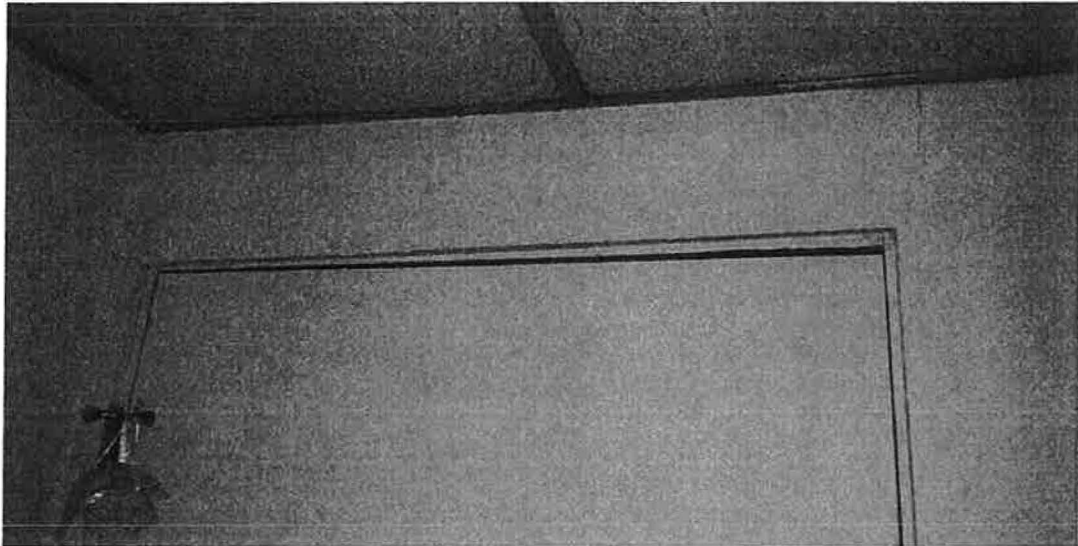
January 23, 2015



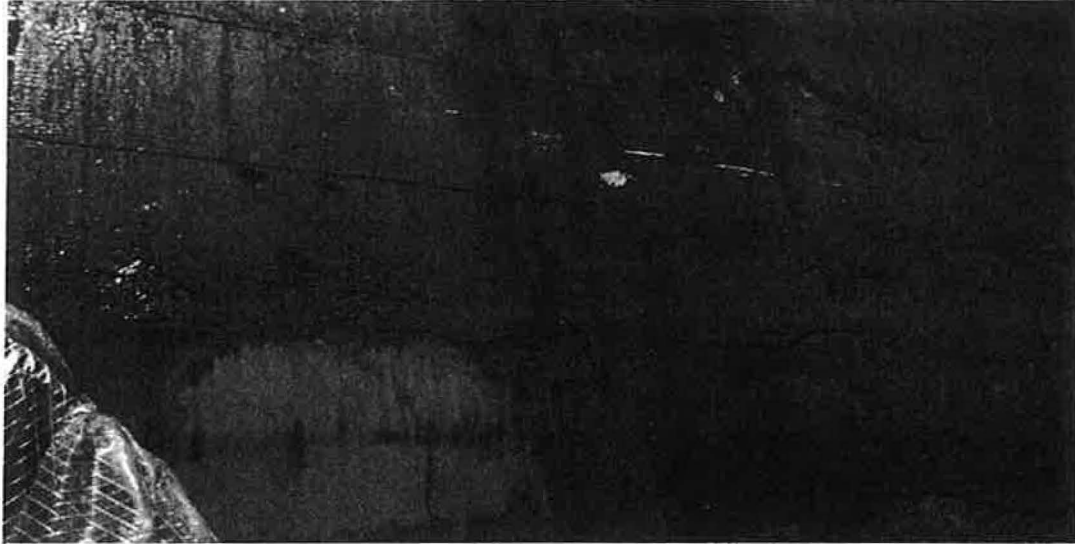
Top of 4th Avenue Stairwell Before Project



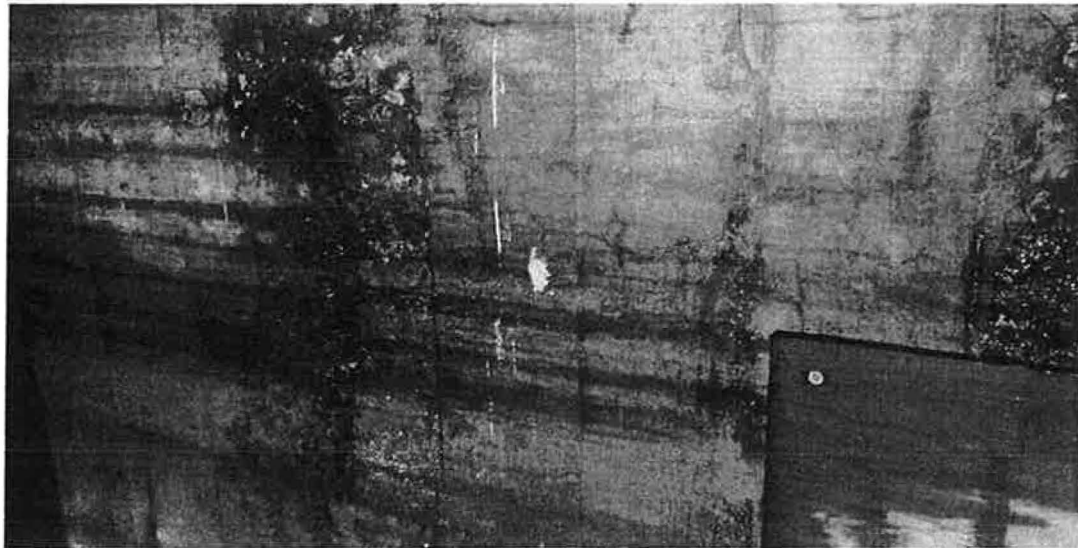
Top of 4th Avenue Stairwell on January 23, 2015



Party Wall Water



July 10, 2014



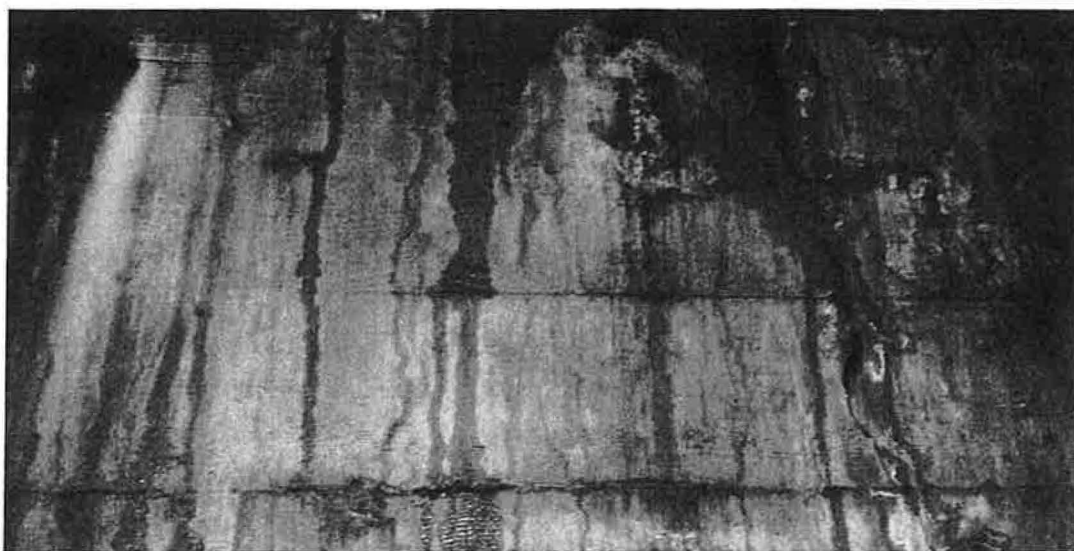
July 25, 2014



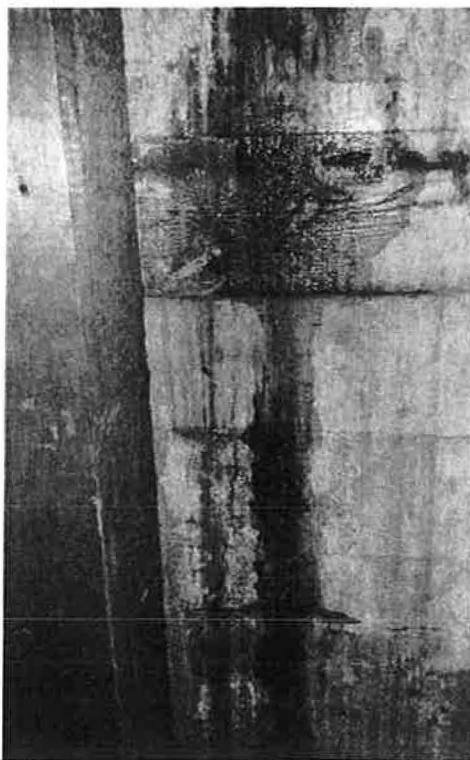
July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014 (may be upside down)



January 23, 2015

Jeffrey W. Robinson

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.

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>
Cc: 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.

James B. Gottstein
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

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

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>
Cc: 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

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

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 27 2015

Clerk of the Trial Courts

Case No.: 3AN-15-05969 CI

**[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Having considered the parties' briefing regarding Plaintiff's Motion for Preliminary Injunction, the motion is DENIED.

Alternatively, the Court will schedule oral argument on this motion at a time to be scheduled following the conclusion of oral argument addressing 716's Motion for Summary Judgment under the Laches Doctrine, which 716 has joined.

DATED: _____

HON. PATRICK J. McKAY
Superior Court Judge

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐ facsimile ☒ U.S. Mail on the 27 day of October 2015, on:

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

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

ASHBURN & MASON

By: Heidi Wyckoff

Heidi Wyckoff