

**In the Matter Of:**

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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

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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 \_\_\_\_\_/  
13 Case No. 3AN-15-05969 CI

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14                                   DEPOSITION OF JAMES B. GOTTSTEIN

15                                   VOLUME I

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16                                   Pages 1 - 58, inclusive

17                                   Friday, October 16, 2015  
18   2:00 P.M.

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

**CERTIFIED  
TRANSCRIPT**

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**A-P-P-E-A-R-A-N-C-E-S**

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1 ANCHORAGE, ALASKA; FRIDAY, OCTOBER 16, 2015

2 2:03 P.M.

3 -oOo-

4 JAMES B. GOTTSTEIN,

5 deponent herein, being sworn on oath,

6 was examined and testified as follows:

7 EXAMINATION

8 BY MR. CUDDY:

9 Q. Good afternoon, Mr. Gottstein. We've met  
10 before, but my name is Kevin Cuddy. For the record,  
11 I'm here on behalf of the Legislative Affairs  
12 Agency. I'll be asking you a few questions today,  
13 and I know Mr. Robinson will as well.

14 Have you ever been deposed before?

15 A. I don't remember, really. I've been in  
16 depositions.

17 Q. Okay. Have you ever given testimony?

18 A. Yes.

19 Q. And how many times?

20 A. I don't know. Half a dozen, maybe.

21 Q. Okay. And can you describe the  
22 circumstances of those, to the best of your  
23 recollection?

24 A. Well, the two that come to mind are in a  
25 civil commitment case. I testified for a

1     respondent.  I testified for my now-wife's -- she  
2     had a hearing for a modification, support  
3     modification.  I testified at a hearing in my  
4     divorce.  It was a preliminary hearing.  Probably  
5     some more.  I don't -- don't recall.

6           Q.     Okay.  Along the same lines as what you  
7     have just described or any other civil litigation  
8     that's closer to the type that we're dealing with  
9     today?

10          A.     Not -- none --

11          Q.     Okay.

12          A.     -- like that we're doing.

13          Q.     All right.  Since I know that you've been  
14     involved in depositions before, I'm not going to go  
15     through all of the details about sort of the ground  
16     rules that might ordinarily apply, but I do want to  
17     just state a few for the record, probably the  
18     principal one being we want to make sure that we  
19     understand one another.  So I will do my best to  
20     wait until you have finished your answer before I  
21     start my next question.  And if I could ask you to  
22     wait until I finish my question before you start  
23     your answer, it will make Gary's life a lot easier.  
24     Okay?

25          A.     Sure.

1 Q. Great. And if you could also make sure  
2 that you give audible responses to any of the  
3 questions so that it comes through on the record,  
4 that would be helpful. Okay?

5 A. Uh-huh.

6 Q. And we'll try to avoid the uh-huhs and  
7 huh-uhs, if we can. Okay?

8 A. The record will show that I winked.

9 MR. ROBINSON: With your left eye.

10 BY MR. CUDDY:

11 Q. Okay. All right. So you have been put  
12 under oath, and so it's very important, obviously,  
13 that you tell the truth in all of your testimony  
14 today. Do you understand that?

15 A. Sure.

16 Q. All right. I'm going to mark as our first  
17 exhibit -- and there are a number of other exhibits  
18 that will be coming in later today, in earlier  
19 letters. I'm going to mark my first one as  
20 Exhibit I.

21 (Exhibit I marked.)

22 BY MR. CUDDY:

23 Q. Have you ever seen this document before,  
24 Mr. Gottstein?

25 A. I believe so.

1 Q. And can you describe what it is for the  
2 record?

3 A. It's a request for information dated  
4 May 14, 2013.

5 Q. And is this with respect to the Legislative  
6 Information Office building renovation or new lease?

7 A. Yes.

8 Q. Mr. Gottstein, I should have addressed this  
9 at the beginning. You are here on behalf of the  
10 plaintiff in this case, Alaska Building, Inc.?

11 A. I'm the president of Alaska Building, Inc.

12 Q. Okay. And you're testifying in that  
13 capacity today?

14 A. Yes.

15 Q. Okay. Did you provide any response to this  
16 request for information when it was issued?

17 A. I don't believe I saw it until sometime  
18 after the -- the new lease was announced in mid to  
19 late September 2013.

20 Q. All right. So then I take it you did not  
21 respond to the RFI when it was originally issued?

22 A. Correct.

23 Q. Do you know how many, if any, entities did  
24 respond?

25 A. Well, I understand that a number of people



1 thought it was a sham and didn't respond, but I  
2 understand that there were two that did.

3 Q. And who were they?

4 A. I don't recall. I'm trying to visualize --  
5 you know, I -- a lot of this is from discovery that  
6 you provided, so going through that discovery, I saw  
7 that there were two. One was something Seasons, I  
8 think. I don't know if it was Four Seasons. I  
9 don't know. There were two, I think.

10 Q. And as to these two, do you know whether --

11 A. Oh, Carr Gottstein Properties was one, I  
12 think.

13 Q. Okay. Do you know whether either of the  
14 two proposals that you --

15 A. So there might have been three.

16 Q. -- mentioned were responsive?

17 A. No, I don't really know.

18 Q. You don't know one way or the other?

19 A. No.

20 Q. Okay. Do you know what rent either of  
21 those entities were offering for the space?

22 A. Something under three dollars a square foot  
23 is my recollection. Somewhere 2.75 to three  
24 dollars, I think, maybe even 2.50.

25 Q. And what's the basis for that

1 understanding?

2 A. The discovery that you provided.

3 Q. Do you know whether there are any entities  
4 in existence as of today that would be able to meet  
5 this request for information for office space in  
6 downtown Anchorage?

7 A. Well, it says occupancy is required by  
8 May 1st, 2014, so obviously that couldn't be done.  
9 I understand that both the Mental Health Trust and  
10 the Alaska Pacific University endowment lands had  
11 suitable parcels within six blocks, maybe less, of  
12 the current Anchorage Legislative Information  
13 Office, that they could have built suitable offices  
14 for around or under three dollars a square foot.

15 Q. Do you know how long it would have taken to  
16 build such office space?

17 A. Not any longer than it took to, you know,  
18 tear down the existing one and the building next to  
19 it and construct a new building.

20 Q. So roughly a year?

21 A. I don't know. I -- I would think it could  
22 be done in a year. You know, it depends when --  
23 when things are started and all that.

24 Q. So --

25 A. And I'm not -- well, go ahead.

1 Q. So it could take longer than a year,  
2 depending on seasonal challenges for construction?

3 A. It seems like it. I mean, you would have  
4 to ask them.

5 Q. Alaska Building, Inc., originally filed a  
6 complaint in this case for both a property damage  
7 claim and challenging the legality of the lease. Is  
8 that correct?

9 A. Yes.

10 Q. The property damage claim piece of that,  
11 did you have any discussions with any of the  
12 defendants, before filing a claim, alleging  
13 negligence for that property damage?

14 A. I -- well, I had submitted a claim, and I  
15 had provided a draft complaint to the landlord, or  
16 landlord's attorney.

17 Q. And is that Mr. McClintock?

18 A. That was Rebecca Windt, I think, at that  
19 time.

20 Q. Okay. So when you say --

21 A. Well, no. Actually, I submitted it -- now,  
22 let me go back. I submitted it to Criterion, the  
23 contractor, and then -- I submitted the claim to  
24 them, and then I -- I definitely provided a draft of  
25 the complaint to Ms. Windt. And I'm not sure if I

1 did to Criterion.

2 Q. So you sent the claim to Criterion, and you  
3 sent a draft complaint to Ms. Windt on behalf of  
4 716 West Fourth Avenue LLC, and you may also have  
5 submitted a copy of that draft complaint to  
6 Criterion. Is that right?

7 A. Well, now that I'm thinking -- you know, my  
8 recollection has been refreshed -- so when I sent it  
9 to Criterion, they basically said that Ashburn &  
10 Mason would be handling it. And so then when no  
11 action was taken on the claim after about a month,  
12 I -- I started contacting Ms. Windt about it.

13 Q. Did you contact anyone else about it?

14 A. No. Criterion was represented, so I -- I  
15 felt I had to talk to their attorney.

16 Q. Did you contact any other parties, other  
17 than Criterion and the landlord?

18 A. Not that I recall. And, again, it was -- I  
19 submitted the -- well, you have -- let me go back.  
20 I -- the claim I submitted to -- by e-mail to  
21 Criterion and to 716, I don't recall if I submitted  
22 it to the architect or not. It seems like there was  
23 someone else.

24 Q. Did you submit it to the Legislative  
25 Affairs Agency?

1 A. No.

2 Q. Why not?

3 A. At that point it was really a dispute with  
4 Criterion, and I really didn't want to get into the  
5 politics of it.

6 Q. I'm sorry. You faded off there.

7 A. And I didn't really want to get into the  
8 politics of it.

9 Q. Did you ask that an expert come out to  
10 inspect the alleged damage to the shared wall?

11 A. Well, I had my engineer, Dennis Berry, look  
12 at it, yes. I mean, there were various times when  
13 the slab failed, when we looked at the stairwell  
14 going down to the Fourth Avenue -- to Fourth Avenue.

15 Q. I'm going to rudely interrupt you, because  
16 I think we may be going in different directions. My  
17 question was whether -- or what I intended my  
18 question to be was whether you had any other party's  
19 expert witness, an engineer, anything of that sort  
20 come to inspect the property, not just your own  
21 engineer.

22 A. Well, Criterion had -- I allowed  
23 Criterion's engineer to come and inspect --

24 Q. Okay.

25 A. -- if that's the question.

1 Q. That was much closer to the question I  
2 meant to ask. Thank you.

3 And who was present for that inspection?

4 A. I think Mr. Robertson was.

5 There was Mark Scheer, the lawyer for  
6 Criterion. There was Robert -- it might have been  
7 Harrower, Harr- -- or Harr- -- the engineer. Dave  
8 DeRoberts with Criterion, Berry with Criterion,  
9 Kendall with Criterion.

10 Q. Was there anyone --

11 A. I don't think -- I don't think Jeff Koonce  
12 was there.

13 Q. Okay. And understanding that there --

14 A. There was quite a few people there,  
15 actually.

16 Q. It sounds like quite a party. Was there  
17 anyone there on behalf of the Legislative Affairs  
18 Agency?

19 A. No.

20 Q. Were they invited?

21 A. No.

22 Q. Did you believe, Mr. Gottstein, that the  
23 defendants were moving too slowly to resolve your  
24 claim of property damage?

25 A. Yes.

1 Q. And that was why you filed suit involving  
2 the property damage claim?

3 A. Yeah. Me, and my understanding is that  
4 insurance companies basically stonewall, and you're  
5 going to end up having to file anyway.

6 Q. Okay. And at the same time that you filed  
7 the complaint involving the property damage, you  
8 also brought a claim involving the alleged  
9 illegality of the LIO building lease. Is that  
10 right?

11 A. When I filed the lawsuit?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. And just --

15 A. So can I just say -- I mean, I don't -- I  
16 object to the relevancy of all this stuff, not the  
17 last one, but previously. But go ahead.

18 Q. Thanks. During the conversation that you  
19 and I had in June, Mr. Gottstein, you stated that  
20 you included Count I, this LIO illegality of the  
21 lease issue, in the complaint because you were  
22 already going to be filing suit involving the  
23 property damage claim. Do you recall that?

24 A. No, I don't recall that, but I don't  
25 dispute it.

1 Q. Okay. All right. If not for the property  
2 damage claim, if not for needing to file a lawsuit  
3 to move along this property damage claim, it was not  
4 your plan to bring a separate suit on Count I  
5 involving the LIO lease. Isn't that right?

6 A. That's correct. And I really -- again, I  
7 object to relevancy of this, because I don't  
8 think -- you know, this was brought on behalf of the  
9 people in the state of Alaska, and so kind of my  
10 motivation is they're totally irrelevant.

11 Q. Well, we'll get to that. On June 8th of  
12 this year, you filed your first amended complaint.  
13 Does that time sound about right to you?

14 A. Yes.

15 Q. And you added the Legislative Affairs  
16 Agency as a defendant in Count II as part of this --

17 A. Yes.

18 Q. -- first amended complaint?

19 Were there any new facts that you uncovered  
20 between March 31st and June 8th that caused you to  
21 believe that the Legislative Affairs Agency was  
22 responsible for any property damage to the building?

23 A. There were no new facts. I mean, the basis  
24 of it was that the illegal lease, from my  
25 perspective anyway, is what caused the damage, that



1 if the -- if the illegal lease hadn't been entered  
2 into, then the Alaska Building would not have been  
3 damaged. And Legislative Affairs Agency was a party  
4 to that -- is a party to that lease.

5 Q. Okay. And I think I know the answers to  
6 these questions, but I'm just going to try to  
7 address them quickly. Did you have any factual  
8 basis for believing that the legislative agency --  
9 legislative -- I'll just call them LAA for short  
10 here -- performed any part of the construction in  
11 this matter?

12 A. No. But the contractor and the plans were  
13 incorporated into the lease.

14 Q. Okay.

15 A. So they -- you know, this -- this -- in my  
16 view, this was a construction contract that they  
17 basically signed off on, including the demolition of  
18 what I refer to as the old Empress Theater, which  
19 was most recently the Anchor Pub.

20 And to me, damage to the Alaska Building was  
21 almost inevitable as a result of that because of the  
22 shared party wall, and, ultimately, which I didn't  
23 appreciate at the time, the plans for undermining the  
24 foundation of the Alaska Building, basically.

25 Q. Okay. So same question with respect to any

1 factual basis for believing that LAA either oversaw  
2 the design, assisted the architect, or took any  
3 affirmative steps with respect to the construction  
4 itself, aside from signing the lease.

5 A. Well, they -- since then, in going through  
6 your discovery, it's pretty clear that at least  
7 Representative Hawker was -- and his assistant at  
8 least were very involved in the actual design of the  
9 building, probably more in terms of layout. But  
10 they were involved in the design.

11 In terms of the actual construction process,  
12 I don't know that they were involved in that. I would  
13 suspect not.

14 Q. Okay. You provided discovery responses in  
15 this matter. Is that right?

16 A. Yes.

17 Q. So I'm going to hand you a copy of those as  
18 Exhibit J.

19 (Exhibit J marked.)

20 THE WITNESS: Do you have to leave or  
21 something? Is that why you're going first?

22 BY MR. CUDDY:

23 Q. Say again.

24 A. Are you going first because you have to  
25 leave? Is that the --

1 Q. We'll see. We'll see. Is this a copy of  
2 your discovery responses in this matter?

3 A. Looks like it.

4 Q. And are these true and accurate, to the  
5 best of your knowledge?

6 A. Yes.

7 Q. In response to Request for Admission 11,  
8 you indicate that you attempted but failed to get  
9 716 West Fourth Avenue LLC to abandon the project  
10 because you believed it was illegal. Is that right?

11 A. Yes.

12 Q. And when did you do so?

13 A. Shortly after I heard about it around  
14 mid-October, I talked with Mr. McClintock about it.

15 Q. And did you also raise the issue with  
16 Legislative Affairs Agency, or LLA -- LAA, at that  
17 time?

18 A. No.

19 Q. Why not?

20 A. I didn't want to get into the politics of  
21 it, basically. I mean, it had been all over the  
22 papers that -- you know, about the "no bid" contract  
23 and how exorbitant the price for the rental rate  
24 was. And it seemed, I think, a -- it seemed like it  
25 would be a futile gesture. I thought -- well, go

1 ahead.

2 Q. Well, what do you mean by that? What do  
3 you mean when you say it would be a futile gesture  
4 to notify LAA?

5 A. Because they -- it just seemed that they --  
6 I mean, they were already under a lot of criticism,  
7 and they were -- seemed bound and determined to go,  
8 go ahead. I mean, that's kind of just speculation  
9 on my part, I suppose.

10 Q. That's fine. And all I'm trying to get is  
11 your understanding or your belief at the time. But  
12 am I understanding your testimony correctly that you  
13 believed that they were already set and determined  
14 to proceed with this project as of October of 2013,  
15 and so anything you had to say to them wasn't going  
16 to change the direction of the project?

17 A. Yeah. And, again, I object to this whole  
18 line of questioning, because I don't think that it's  
19 relevant to whether -- whether or not the lease is  
20 illegal.

21 Q. So I want to show you -- or mark, I guess,  
22 as the next exhibit, Exhibit K.

23 MR. ROBINSON: Yeah, that should be.

24 MR. CUDDY: Thanks.

25 (Exhibit K marked.)

1 MR. CUDDY: Sorry.

2 MR. ROBINSON: Thank you.

3 BY MR. CUDDY:

4 Q. So I've handed you what's been marked as  
5 Exhibit K. This is a letter on the letterhead of  
6 Law Offices of James B. Gottstein, dated  
7 October 30th, 2013, addressed to Michael Geraghty,  
8 who was then the Attorney General for the State of  
9 Alaska. Do you see that?

10 A. Yes.

11 Q. And I'll represent to you that this is a  
12 document that was produced in discovery today from  
13 Alaska Building, Inc. Do you recognize this  
14 document?

15 A. Yes.

16 Q. Did you prepare this document?

17 A. Yes.

18 Q. And I note in the upper right-hand corner  
19 of the first page there's a graphic that says  
20 "Draft." Was this a draft of a letter to the  
21 Attorney General?

22 A. Yes.

23 Q. And was this letter, in fact, ever sent?

24 A. I don't believe so, no.

25 Q. If I look at the substance of the letter,

1 at the bottom of the first paragraph, it says:  
2 "...I looked into the so-called lease 'extension,'"  
3 quote, unquote, "and have discovered that it is in  
4 violation of AS 36.30.083." Do you see that?

5 A. Yes.

6 Q. And was that your understanding as of  
7 October 30th, 2013, that the lease extension that  
8 you have challenged in this litigation was in  
9 violation of AS 36.30.083?

10 A. Yes.

11 Q. You also have a Footnote 2 saying that the  
12 reviewed documents that you had reviewed are  
13 available at [gottsteinlaw.com/lio](http://gottsteinlaw.com/lio).

14 Had you begun preparing a database of  
15 documents with respect to the lease at that time?

16 A. Yes.

17 Q. What was the purpose of that?

18 A. Well, most of my work for the last dozen  
19 years or so has been with the Law Project for  
20 Psychiatric Rights, public interest law firm. And  
21 we had kind of developed a practice of posting  
22 legal-type documents.

23 And I thought this was a matter of public  
24 interest and concern, and so just an -- seemed  
25 basically a public service to make those documents

1 available. You know, if people wanted -- I think the  
2 main thing was the lease itself and the appraisal by  
3 Tim Lowe. And then there was kind of a cost  
4 validation by AHFC. I think those were the main  
5 documents there at the time.

6 Q. Okay. And you'd reviewed the statute by  
7 this time, obviously?

8 A. Yes.

9 Q. And on the second page, you say: "Please  
10 see to it that this illegal contract is canceled  
11 immediately." That's its own paragraph. Do you see  
12 that?

13 A. Where is it? Yes.

14 Q. Okay. You then go on to note that:  
15 Preparatory work on the contract has commenced and  
16 the demolition of the old Empress Theater is planned  
17 to begin November 15th.

18 And a portion of that language was  
19 highlighted. Do you know why it was highlighted?

20 A. Probably because it was something for me to  
21 come back and take a look at.

22 Q. Okay. Do you recall whether -- whether the  
23 timing described here is more or less accurate, that  
24 the demolition of the old Empress Theater building  
25 was supposed to take place sometime in mid-November?

1           A.    My recollection is that's what I was told,  
2   and I didn't think it was two -- two or so weeks  
3   later that they actually started.  Later than that.

4           Q.    Okay.  So they may have started that  
5   demolition sometime in early December, give or take?

6           A.    Yes.

7           Q.    Okay.  Why didn't you send this letter?

8           A.    Well, I -- I got very concerned that -- you  
9   know, I was very concerned about damage to the  
10  Alaska Building and was really trying to get them to  
11  take care of that party wall and the rest of the  
12  shared wall.  And I felt that if I had raised too --  
13  you know, too much of a ruckus and tried to stop it,  
14  that they would not be very diligent at protecting  
15  the wall and that the Alaska Building could be  
16  seriously damaged.

17                   I mean, it -- my meeting with Mr. Pfeffer  
18  and -- before that, he was very cavalier about the  
19  wall.  In fact, you know, I had said you're going to  
20  have to saw that wall apart from the rest of it, and  
21  he -- I was flabbergasted to hear they were going to  
22  use a front-end loader or excavator to tear down the  
23  Empress Theater.  And he says, oh, no, we're not going  
24  to have to saw out that wall.  And to me that was  
25  really cavalier.



1           And they ended up, once -- you know, later,  
2 looking at it, and indeed they did see the wall out.  
3 But the plans were inadequate for protection of the --  
4 of the wall in the Alaska Building. And I had my  
5 engineer contact them. And I just felt if I had  
6 really tried to stop it, that they -- you know, that  
7 there would be potentially negative repercussions in  
8 terms of damage to the Alaska Building.

9           Q.    When you say tried to stop it, do you mean  
10 an injunction?

11          A.    There was that, too, yes.

12          Q.    Okay.

13          A.    I mean, that was certainly one of the  
14 considerations for not filing for an injunction.  
15 The other one being Mr. McClintock pointed out that  
16 the bond would be prohibitive. And I thought about  
17 that. Because I felt like I -- I had the -- I had  
18 to either -- if I wasn't successful, it was going to  
19 subject the Alaska Building to a lot of potential  
20 damage, and so I decided not to pursue it.

21          Q.    So I understand the bond issue for the  
22 injunction. What about seeking a declaratory  
23 judgment action?

24          A.    Well, that wouldn't help, if -- if there  
25 was no injunction to stop it.

1 Q. Would that have put the Legislative Affairs  
2 Agency on notice of your concerns about the  
3 purported illegality of the lease?

4 A. I mean, I don't think that the Legislative  
5 Affairs Agency needed to be put on notice. I mean,  
6 to me, it's blatantly illegal. It's illegal on its  
7 face.

8 So to me, you know, you can make whatever --  
9 can draw whatever conclusions, but the obvious ones  
10 were that they wanted to go ahead and do this  
11 regardless of the statute, and felt like they could  
12 pull it off.

13 So, yeah, I -- I felt they were on notice  
14 that it was illegal, and I think some of the discovery  
15 that you provided kind of suggests that as well.

16 Q. Mr. Gottstein, Alaska Building, Inc. had an  
17 indemnification agreement, including proof of  
18 insurance, for any damages that the building  
19 incurred as a result of the construction. Isn't  
20 that right?

21 A. Yes.

22 Q. So if you had an indemnification agreement  
23 in place, why not bring suit?

24 A. Well, there was a lot of history before  
25 that, and I -- Mr. Pfeffer insisted that any -- any

1 claims would have to go through insurance, the  
2 insurance.

3 And so, you know, from my perspective, that's  
4 basically a crooked business, and insurance companies  
5 always try to get out of paying what's due. And  
6 that's not really a satisfactory remedy. It was --  
7 which is proven by subsequent events. And so it was  
8 the best I could get, but it was far from  
9 satisfactory.

10 Q. When you spoke with Mr. McClintock in early  
11 October of 2013, you already concluded, in your own  
12 mind anyway, that the lease was illegal. Is that  
13 right?

14 A. Yes.

15 Q. And you had reviewed the statute by that  
16 point to reach that conclusion?

17 A. Yes. Again, you know, what -- when I knew  
18 that was illegal, I think, is irrelevant to this  
19 lawsuit, because it's brought on behalf -- you know,  
20 as citizen taxpayers, and it's brought on behalf of  
21 the people in the state of Alaska. So, you know,  
22 what I knew, you know, what anybody else knew,  
23 doesn't, I think, really impact that.

24 Q. When was the first time that you raised the  
25 issue of the purported illegality of the lease with

1 anyone from Legislative Affairs Agency?

2 A. I don't know that I did prior to bringing  
3 suit.

4 Q. So certainly not before the construction  
5 began?

6 A. I think this has been asked and answered,  
7 hasn't it?

8 Q. If the answer is correct, then I can move  
9 on.

10 A. Yes.

11 Q. Okay. You took a number of photographs of  
12 the construction during its course, at least a few  
13 of which we have seen in some of the pleadings in  
14 this case. Is that right?

15 A. Yes.

16 Q. Was this a significant project?

17 A. Yes. It was certainly in my mind. I  
18 think --

19 Q. Was it your understanding that millions of  
20 dollars were being spent on the renovation?

21 A. Yes.

22 Q. Even tens of millions?

23 A. But I object to the characterization of  
24 "renovation," but, yes, on the project.

25 Q. Okay. We'll just call it the project. Is

1 it fair to say that tens of millions of dollars were  
2 being spent on the project?

3 A. That seems likely. I mean -- yeah, I think  
4 that's probably true. It's far more expensive to  
5 have demolished the old building and the Empress  
6 Theater and then build up from there than to build a  
7 new building.

8 Q. Okay. And you were aware that that was the  
9 plan, to do this demolition of the old Empress  
10 Theater and at least some of the original building  
11 in order to create what is now the LIO building?

12 A. Well, it was virtually all of the old  
13 building. The only thing they left was the steel  
14 frame and foundation and a little part of the  
15 concrete skin on the west wall and the south -- the  
16 bottom of the south corner.

17 Q. Okay. So using your description of it, you  
18 were aware of that, that that was basically the  
19 scope of the construction before it began?

20 A. I think so, yes.

21 Q. Okay. Were you also aware that the  
22 Legislative Affairs Agency was contributing seven  
23 and a half million dollars to the cost of the  
24 project as payment for certain tenant improvements?

25 A. You know, I'm not really sure when I became

1 aware that that was, you know, a separate payment up  
2 front. I'm not really sure when I was aware of it.  
3 I mean, probably from whenever it first appeared in  
4 the newspaper.

5 Q. Okay. Did you review the lease before  
6 construction began as part of your review of --

7 A. Yes.

8 Q. -- illegalities?

9 Okay. And if that provision was prominently  
10 displayed in the lease, do you have any reason to  
11 think you would not have reviewed that section?

12 A. You know, when I say "reviewed it," I  
13 didn't carefully go through it at that time.

14 Q. Okay. The Waronzof Associates' estimate of  
15 rental value, do you remember reviewing that  
16 document as part of your assessment of the legality  
17 of the lease?

18 A. I -- I got it, and it was so patently  
19 absurd that I -- you know, I didn't really go  
20 through it. I mean, it's very long with a lot of  
21 smoke and mirrors, and I've looked at it more  
22 carefully since.

23 Q. Okay. Your requested relief in this case  
24 is for the Court to declare the lease void. Is that  
25 correct?

1 A. Yeah, invalid. Illegal, invalid, yeah.

2 Q. All right. And --

3 A. Null and void, I think.

4 Q. Null and void. Okay. It's your -- your  
5 hoped-for relief is that the Legislative Affairs  
6 Agency would have to exit the building and go  
7 through a competitive procurement process?

8 A. Well, I think there are a lot of different  
9 scenarios involved. I mean, this lease -- this  
10 lawsuit is about that lease being illegal. And I  
11 think the legislature -- well, I don't know. You  
12 know, I -- I think the -- kind of the -- no. There  
13 can be a lot of different scenarios.

14 One might be a renegotiation of the -- a  
15 resetting of the lease rate to comply with at least  
16 the rental rate part of AS 36.30.083(a). The Governor  
17 has indicated there's room in the Atwood Building, I  
18 think it's called, you know, for the offices there.  
19 So that's a possibility.

20 I think that there are a lot of  
21 possibilities. I think that there are -- especially  
22 with the downturn, you know, in economic activity here  
23 and the recent construction of some office buildings,  
24 I think there are other alternatives as well, too,  
25 like the -- maybe the CIRI Building at Fireweed and

1 the New Seward Highway.

2 So I -- the lawsuit is about declaring it  
3 null and void. And the legislature -- anyway, there  
4 can be --

5 Q. Okay.

6 A. That's -- I mean, I think that the lease is  
7 illegal, and that's -- that's what the lawsuit asks  
8 for declaratory judgment on.

9 Q. And so the lease should end, and then as to  
10 whatever the parties do from that point on, it  
11 should comply with the statute. Is that right?

12 A. Well, like I said, there are numerous  
13 possible scenarios.

14 Q. But all of them require that the lease be  
15 declared null and void and cease to exist so that  
16 the parties can then proceed to comply with the  
17 statute. Isn't that your position?

18 A. Well, it may not be these parties. Like I  
19 said, there might be something else. The  
20 Legislative Information Office might move somewhere  
21 else. So I think -- so what's requested is that the  
22 lease be declared -- I think what I say is illegal,  
23 null and void.

24 Q. Okay. During the August 18 hearing on the  
25 standing issue and motion to sever, you informed the



1 Court that you were looking for the Court to  
2 establish Alaska Building, Inc.'s entitlement to  
3 10 percent of any savings achieved. Do you recall  
4 that?

5 A. It came up, yes.

6 Q. Alaska Building, Inc. does have a personal  
7 stake in this case, does it not?

8 A. I'm not sure what you mean by "personal  
9 stake."

10 Q. Monetary. You have a monetary stake in  
11 this case.

12 A. Other than the 10 percent?

13 Q. No. The 10 percent will do just fine.

14 A. Oh, yeah.

15 Q. The 10 percent is a monetary interest in  
16 the case --

17 A. Yes.

18 Q. -- correct?

19 Okay. And in some of the briefing in this  
20 case, specifically the opposition to the motion to  
21 dismiss or sever, Alaska Building, Inc. asserted that  
22 the amount being paid over the life of the lease was  
23 more than \$21 million more than what was allowed under  
24 the statute. Is that right?

25 A. Yes.

1 Q. And so if you were -- you, Alaska Building,  
2 Inc. was to receive 10 percent of the savings,  
3 that's a minimum of \$2.1 million in savings,  
4 correct? Well, 21 million in savings, but 2.1 is  
5 this 10 percent. Is that right?

6 A. Right. There have been some slight changes  
7 in those amounts with the affidavit of Larry Norene.  
8 But, yes, I mean -- so the State would, you know,  
9 say, end up with 19 million and Alaska Building,  
10 Inc. would get two.

11 Q. Okay. So that --

12 A. The judge expressed some skepticism about  
13 that, and there's a pending motion on that issue.

14 Q. That there is. For today, though, I just  
15 want to focus on this idea of monetary interest.  
16 This 2 million or so that constitutes the  
17 10 percent, does that go back to the taxpayers or  
18 does that go to Alaska Building, Inc.?

19 A. It's -- it's for -- it's to go to Alaska  
20 Building, Inc., because otherwise is -- if it's  
21 successful, the State -- if it wasn't successful,  
22 the State would get none of it, and so this would  
23 be -- well, you could look at it different ways, but  
24 the State would get 19 million and Alaska Building,  
25 Inc. would get two.

1 Q. You have experience litigating qui tam  
2 cases, do you not?

3 A. Yes, some.

4 Q. And in particular, you led the charge in  
5 the US ex rel. Law Project for Psychiatric Rights  
6 versus Matsutani case?

7 A. Yes.

8 Q. The trial judge held in that case that the  
9 public already knew about the alleged misconduct.  
10 Is that right?

11 A. Well, there is -- I wouldn't say that  
12 that's a fair characterization. Under the False  
13 Claims Act, it's a very arcane process or set of  
14 rules, and one of them is what's called the public  
15 disclosure bar.

16 Q. Uh-huh.

17 A. And it's changed over the years, but  
18 basically, if I can recall it, if the -- I forget  
19 what it was, the transit -- but basically if the  
20 facts were disclosed through certain enumerated  
21 sources, including court cases, then -- then the  
22 public disclosure bar would be triggered.

23 And so I filed -- or the Law Project for  
24 Psychiatric Rights had filed a previous lawsuit in  
25 which this was raised in state court, and -- and so

1 that the judge held that was one of the enumerated  
2 sources.

3 Since then, the statute has been changed, and  
4 it only applies to federal court. So I wouldn't say  
5 that the public knew about it, but the judge held that  
6 the public disclosure bar had been triggered.

7 Q. And that ruling was affirmed by the Ninth  
8 Circuit?

9 A. In a non-precedential ruling, yes.

10 Q. And how much were you seeking in that case?

11 A. Well, it kind of ends up being a  
12 mind-boggling amount, so I don't think we had any  
13 specific number. Each false claim -- I mean, under  
14 the federal False Claims Act, the relaters, which  
15 are the plaintiffs suing on behalf of the  
16 government, get between 25 and 30 percent of any  
17 recovery. And every false claim carries a minimum  
18 penalty of \$5,500. And since each prescription that  
19 was not for a medically accepted indication was a  
20 false claim, it really adds up. So it was a very  
21 large amount.

22 Q. When you say "it really adds up," are we  
23 talking about tens of millions, hundreds of millions  
24 or billions?

25 A. Depends on the particular defendant. So --

1 Q. Taking all the defendants together.

2 A. Well, I mean, one of the claims was against  
3 Walmart, so that would be billions.

4 Q. Okay. And you were seeking personally, on  
5 behalf of Law Project for Psychiatric Rights, in the  
6 25 to 30 percent range of that as your share as a  
7 relater?

8 A. Well, again, I -- it wasn't seeking  
9 personally. It was for the Law Project for  
10 Psychiatric Rights. But the whole idea behind the  
11 lawsuit was not the financial gain to PsychRights,  
12 the Law Project for Psychiatric Rights, it was to  
13 put a stop to this very harmful practice of drugging  
14 children with these very powerful drugs that have  
15 never been approved for the use in children, cause  
16 them great harm, and that for which there's no  
17 scientific evidence supporting their use.

18 And the idea was that if a psychiatrist was  
19 tagged with one of these, that large judgment, which  
20 in that case would be in the millions range, a few  
21 millions, that that would cause the other  
22 psychiatrists to, you know, curtail the practice. And  
23 that was -- that was the -- and still is basically the  
24 reason for it.

25 Now, the pharmacies were included, because

1 while a psychiatrist might have a million or two or  
2 few to -- you know, to get, we were trying to attract  
3 the private bar. And if the relater would get, say,  
4 25 percent of a million and the lawyer got 30 -- a  
5 third or 40 percent of that, it's not very attractive  
6 to the lawyers. But you get a pharmacy -- you know,  
7 has deep pockets, so -- and the idea was to make it  
8 attractive to the private bar.

9 But the purpose was not really to get money  
10 to PsychRights. It was to stop this harmful practice  
11 by psychiatrists.

12 Q. And getting 20 or 30 percent of billions  
13 would be a nice side benefit?

14 A. It would be good.

15 Q. Yeah. Did you cause defendants to incur  
16 hundreds of thousands of dollars in fees and costs  
17 in connection with that litigation?

18 A. Don't know.

19 Q. Didn't they seek fees against you?

20 A. I guess, yeah, now that you mention it. I  
21 don't recall how much it was. It seems like it  
22 was -- I don't think it was hundreds of thousands,  
23 but maybe in the hundred-thousand range, maybe  
24 under -- maybe 200,000. I don't know.

25 Q. Okay. You've claimed that the LIO

1 project -- and I take it you understand what I mean  
2 when I say "the LIO project," the construction  
3 that's at issue here, that that is the product of  
4 corruption. Is that right?

5 A. It appears like it.

6 Q. And you're claiming that the legislature,  
7 as represented through the Legislative Affairs  
8 Agency, is defrauding the State?

9 A. Well, the -- it's obvious to me that it  
10 doesn't comply with AS 36.30.083(a), that the rental  
11 rate is well over twice what the market rate is, and  
12 for that -- and it's obvious that it is. And so  
13 that just has the odor of corruption.

14 Q. Is that a yes?

15 A. What was the question?

16 Q. You're claiming that the legislature has --  
17 acting through the Legislative Affairs Agency, is  
18 defrauding the State of Alaska. Is that right?

19 A. I'll stand by my answer. I mean,  
20 defrauding? I don't -- you know, I'm not -- I think  
21 I answered the question.

22 Q. I'm not sure that you did, so I'll try it a  
23 different way. Are you claiming that the  
24 Legislative Affairs Agency, on behalf of the  
25 legislature, is engaged in some corrupt practice to

1 take money away from the State?

2 A. The lease blatantly violates  
3 AS 36.30.083(a), in that it's well over twice the  
4 market rate when it's required to be at least  
5 10 percent under, leaving aside the issue of whether  
6 or not it's an extension.

7 And, you know -- and the Legislative Affairs  
8 Agency signed off on that in spite of that, and it  
9 resulted in -- you know, over the life of the  
10 contract, some \$20 million over what it should be. So  
11 you can characterize that however you want, but that's  
12 the way I would characterize it.

13 Q. Did the legislature authorize and ratify  
14 the LIO project?

15 A. The whole legislature?

16 Q. Yes.

17 A. Not that I know of.

18 Q. What do you know, in terms of the extent of  
19 any authorization or ratification of the LIO  
20 project?

21 A. By the whole legislature?

22 Q. By any portion of the legislature. How did  
23 we get here, that we have a project that has gone  
24 forward and tens of millions of dollars have been  
25 spent for legislators to work and assist the public?



1 Did the legislature know about this? Is it your  
2 understanding that they were surprised to find out  
3 that a building had been renovated and prepared for  
4 them?

5 A. Well, my understanding is that in June  
6 of -- June or July of 2013, the legislative council  
7 passed amendments to its procurement code purporting  
8 to authorize this. And then the legislative council  
9 authorized Representative Hawker, who is chair of  
10 the legislative council, to negotiate the lease,  
11 which -- it was supposed to be a lease extension  
12 complying with the revised procurement rules and  
13 AS 36.30.083(a).

14 And it's my understanding that a number of  
15 legislators were flabbergasted when this deal actually  
16 was announced as being far in excess of what was, you  
17 know, approved. So I don't think the full legislature  
18 had a vote on it. I think -- I mean, I just don't  
19 think so. I mean, I don't think they wanted to stand  
20 up and vote in favor of this.

21 Q. If you're mistaken and the legislature as a  
22 whole either approved, authorized or ratified the  
23 project, does that change your position in this  
24 lawsuit?

25 A. I'd have to look at the circumstances of

1 that. I would be -- I'd welcome any kind of any  
2 indication of that.

3 Q. Under a qui tam case like you pursued in  
4 the Matsutani case, the complaint is filed under  
5 seal. Is that right?

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this  
12 is not a qui tam case. What is the basis for  
13 claiming an entitlement to 10 percent of the  
14 savings?

15 A. I think that it's -- it's a way to make  
16 real the citizen taxpayers' right to bring actions  
17 on behalf of the government to stop government --  
18 illegal government action.

19 What we had -- from about 1974 through 1998,  
20 the Alaska Supreme Court had established what's called  
21 a public interest exception to Civil Rule 82,  
22 providing that public interest litigants that were  
23 truly suing on behalf of the public were not subjected  
24 to having attorneys' fees against them and would  
25 have -- if they prevailed, would have -- be awarded

1 full attorneys' fees.

2 So there wasn't really -- if they could  
3 establish that they were public interest litigants,  
4 they wouldn't really face the risk of having  
5 attorneys' fees awarded against them.

6 In 2003, the Alaska legislature passed a  
7 statute that changed that, except with respect to  
8 constitutional claims, basically because they were  
9 tired of paying attorneys' fees in all these cases  
10 where the government was found to have acted  
11 illegally.

12 And so now you have a situation where anybody  
13 trying to bring such a suit faces potentially ruinous  
14 attorneys' fees if they don't prevail, or certainly  
15 large attorneys' fees if they don't prevail. And  
16 that, in my -- my sense of it, has essentially  
17 virtually dried up public interest litigation, and so  
18 now the government pretty much has free rein to act  
19 illegally without any kind of check through this  
20 public interest litigation.

21 And so by -- in these types of cases, where a  
22 big, you know, savings or recovery on behalf of the  
23 government is achieved, this is a way to really make  
24 real the citizens' rights to sue to redress illegal  
25 government action.

1 Q. So thank you for the answer. I'm going to  
2 go back to my original question, which is: What is  
3 the basis for your claim to an entitlement of  
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a  
7 history lesson about the public interest exception  
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam  
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point  
14 to to say that a savings of this type had been given  
15 a private litigant?

16 A. No. Well, not yet anyway. So, I mean,  
17 it's possible I'll come up with some, but I haven't  
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very  
20 important public issue, and the point is, is that if  
21 this right of public -- the public citizens to sue  
22 over illegal government action is to have any, you  
23 know, reality at all, there needs to be some  
24 countervailing element for the prospect of attorneys'  
25 fees being awarded against a plaintiff if they're

1       unsuccessful.

2           Q.     So I'm going to switch gears.

3           MR. ROBINSON:   Before you do that, Kevin, I'm  
4 going to request a brief restroom break.  Is that  
5 okay?

6           MR. CUDDY:    Sure.  Yeah.

7           MR. ROBINSON:   Just a couple minutes.

8           (Recess taken.)

9           MR. CUDDY:    Okay.  I am ready whenever you  
10 are.

11          Q.     Mr. Gottstein, just stepping back for a  
12 minute, the construction in this project started in,  
13 roughly, early December of 2013.  Is that right?

14          A.     Yes.

15          Q.     And once construction started, you had no  
16 reason to believe that the Legislative Affairs  
17 Agency was going to abandon the lease due to any  
18 alleged problem with the procurement process,  
19 correct?

20          A.     Yes.

21          Q.     And you were aware, once construction  
22 started, that the defendants were going to be  
23 committing millions of dollars to the project in  
24 order to complete the construction?

25          A.     It's been asked and answered, hasn't it?

1 Q. I think it has. All right.

2 Alaska Building, Inc. made money off this  
3 project. Is that right?

4 A. I wouldn't say that. It received -- well,  
5 it received payments, so Criterion leased space that  
6 would have been impossible to lease during the --  
7 constructively evicted the tenant, and they leased  
8 it for their office. And so I suppose -- I mean,  
9 Alaska Building, Inc. made money on that. Other  
10 payments were really compensation for expenses.

11 Q. So let's talk about just compensation then,  
12 not profit or anything like that, but just  
13 compensation. How much compensation did Alaska  
14 Building, Inc. get that's directly connected to this  
15 LIO project?

16 A. You know, that was a question I -- in the  
17 discovery I answered today. So, you know, my memory  
18 might be a little bit faulty, but there was, I  
19 think, 15,000 for professional fees that actually  
20 did include some attorneys' fees. But not just.  
21 There was a payment to set up an offsite mirroring  
22 of the -- of our -- of our server, the Alaska  
23 Building, Inc. server. And also -- which hosts  
24 other organizations, too, and websites and things,  
25 that was in a room that -- one of the walls was that

1 shared wall, and so -- so I felt I had to have a  
2 realtime mirroring or backup replication off site in  
3 case of some sort of catastrophe. And they paid for  
4 that. I had --

5 Q. My question is specific just to dollars.  
6 I'm trying to understand, was this a -- did you  
7 receive --

8 A. That was 10,000.

9 Q. -- 30,000 total in compensation that was  
10 connected to the project? 50,000? 100,000? What  
11 came in the door, in terms of compensation that was  
12 directly related to the project?

13 A. Well, the large ones, it was like 10,000,  
14 twenty-five -- if you count -- it was, I think,  
15 under thirty, if not counting the Criterion lease.  
16 I think under thirty, maybe kind of close to it, and  
17 14,400, I think, for the Criterion lease.

18 Q. Okay. So somewhere in the vicinity of  
19 40,000 total, if you include the Criterion lease?

20 A. Seems like it. But I'd really want to  
21 refer you to my response to 716's discovery request,  
22 because it's precise.

23 Q. Okay. If we had more time to review those  
24 discovery requests that came in -- or discovery  
25 responses that came in today, I would be pointing to

1     them directly, but we're just making do with what  
2     we've got for the moment.

3           A.     Well, I'm just, you know -- I, you know,  
4     looked them up and put them in there, and so that --  
5     that's pretty definitive and so --

6           Q.     I understand. And so whatever is in that  
7     discovery response is true and accurate, to the best  
8     of your knowledge?

9           A.     Yes.

10          Q.     Okay. And how often were you getting  
11     checks from the -- from the project for  
12     compensation?

13          A.     I really just got them once.

14          Q.     At the beginning of the project or after it  
15     was done?

16          A.     No. December 6th, 2013, I think.

17          Q.     Okay.

18          A.     I got -- maybe it was a day or so later for  
19     the -- no, I think it was December 6th. I got -- I  
20     got checks for all of this.

21          Q.     Okay. Did you negotiate with either  
22     716 West Fourth Avenue LLC or Criterion with respect  
23     to how much you should receive?

24          A.     You know, I had someone helping with that,  
25     Eric Follett, so through him, yes.



1 Q. Okay. How much were you asking for?

2 A. For what?

3 Q. For compensation. And I'm just talking  
4 about the whole pot here.

5 A. Well, my big concern was catastrophic  
6 damage to the Alaska Building, and there was not  
7 really a satisfactory resolution of that in my mind,  
8 from my perspective. So from my perspective, that's  
9 a big mess.

10 And, you know -- and I suffered two hundred  
11 and fifty -- or Alaska Building, Inc. has suffered  
12 \$250,000 worth of damage and has gotten fifty so far  
13 and may probably get another fifty, and then have to  
14 litigate for the rest. So I don't recall in terms of  
15 those other pieces. I think the other specific pieces  
16 probably were pretty close to what I asked for.

17 Q. Okay. Have you contacted anyone from the  
18 press about this case?

19 A. Yes.

20 Q. Who?

21 A. Well, I have this e-mail list that I  
22 sent -- I can't remember if I sent anything out to  
23 the whole list, but basically it's been Nathaniel  
24 Herz, Lisa Demer, Rich Mauer at the Alaska Dispatch  
25 News. I must have sent something out to the whole

1 list, because I got calls from, like -- what, like,  
2 Fox 4. And ABC, Channel 13, I think, did a story on  
3 our argument over standing.

4 Q. Aside from e-mail contacts, have you also  
5 had phone contacts with members of the press about  
6 this case?

7 A. Yes.

8 Q. Who have you spoken with?

9 A. Lisa Demer and Nathaniel Herz and Rich  
10 Mauer.

11 Q. What did you say?

12 A. I mean, I talked about -- I've had various  
13 conversations. Talked about the illegal nature of  
14 the lease. I mean, my big effort was I wanted -- I  
15 felt that it would be good to have people show up at  
16 the standing hearing, and so it was some effort to  
17 get them to actually put anything in about it.

18 Q. Any other reasons why you've contacted  
19 press about this case?

20 A. Well, I think it's a matter of public  
21 importance, so that's the reason.

22 Q. Okay. You published all of the discovery  
23 that you received in this case on line. Is that  
24 right?

25 A. I'm not sure all of it's up there yet, but

1 I -- I have been posting it.

2 Q. And why do you do that?

3 A. I think it's a matter of public interest.

4 Q. You were involved, Mr. Gottstein, with the  
5 release of the Zyprexa papers?

6 A. Yes.

7 Q. If you had to do it over again, would you  
8 release those papers?

9 A. Not -- no, not in the way that I did.

10 Q. You can object to this characterization,  
11 but you boast about it a bit on your website, do you  
12 not, for Law Project for Psychiatric Rights?

13 A. Well, the -- these were documents that had  
14 been sealed, kept -- you know, made secret that  
15 showed tremendous harm being done by Zyprexa that  
16 Eli Lilly had -- you know, was keeping -- that knew  
17 about this huge amount of damage that was kept  
18 secret from the public, so it also was a matter of  
19 great public importance.

20 So there was a protective order that said  
21 that if the documents were subpoenaed in another case,  
22 that Eli Lilly had to be given notice of it and a  
23 reasonable opportunity to object before the person who  
24 was subpoenaed could produce it.

25 And I followed that. And I think that it

1 actually was a very important thing. One of the -- I  
2 think that tens of thousands of lives have probably  
3 been saved, maybe hundreds of thousands. I think it  
4 also has changed the culture a little bit of the --  
5 of these -- of this kind of litigation.

6 The lawyers are faced with this problem:  
7 They've got clients who they're representing, and the  
8 drug company says, well, we'll settle, but you have to  
9 agree to keep these documents that show how much we're  
10 harming people secret. And the lawyers have tended to  
11 say, well, our obligation to our clients requires us  
12 to recommend that.

13 And since then, there's gotten to be a lot  
14 more recognition that it's important for these types  
15 of documents to become available, and they have in  
16 other cases.

17 Q. It was a good result for you, wasn't it?

18 A. Yes. Well, it actually cost me a lot of  
19 money.

20 Q. I understand that, and I have seen the  
21 fundraising letters. But was this an instance where  
22 you believe that the end justified the means?

23 A. No. I thought I was operating completely  
24 legally.

25 Q. Judge Weinstein didn't see it that way, did

1 he?

2 A. Correct.

3 Q. And he thought that you had deliberately  
4 misled Eli Lilly and violated the terms of the  
5 protective order?

6 A. I don't -- no, I don't think that's a fair  
7 characterization. I mean, that I deliberately  
8 misled Eli Lilly? No. I don't think that. He --  
9 he determined that I had violated the protective  
10 order, of which I was not a party, but in any  
11 event --

12 Q. Judge Weinstein found that you used a  
13 subpoena as a subterfuge to get around the  
14 protective order. Isn't that right?

15 A. You'd have to show me the language. I'm  
16 not sure that -- I'd have to look at the exact  
17 language of his decision. That doesn't sound right.

18 Q. Leaving aside the language of the decision,  
19 was it a subterfuge?

20 A. No.

21 Q. Did you deliberately violate the terms of  
22 the protective order?

23 A. No.

24 Q. You sent these protected materials to  
25 contacts at The New York Times. Is that right?

1           A.     Yes.  They were not protected at that time  
2     in my mind, because the terms of the protective  
3     order had been complied with.  I mean, the  
4     obligation was on the person I subpoenaed, who was  
5     an expert in the case, expert witness in the case,  
6     to comply with the protective order.  And he  
7     determined that Eli Lilly had been given an adequate  
8     opportunity to object, and then provided them to me.  
9     And at that point I believe that they were no longer  
10    protected.

11           Q.     Magistrate Judge Mann also reviewed some of  
12    this information and your conduct in the Zyprexa  
13    proceeding.  Is that right?

14           A.     So, first off, I don't see how this -- I'm  
15    going to object to this line of questioning, just  
16    for the record, as I don't see how it's relevant or  
17    likely to lead to admissible evidence.

18                    What was the question again?

19           Q.     Did a magistrate judge, Mann, also get to  
20    oversee some of the Zyprexa proceedings and your  
21    conduct with respect to the protective order?

22           A.     I'm not -- I don't recall the name.  It  
23    might have been Mann.  I don't know why it wouldn't  
24    have been.

25           Q.     Was there a magistrate judge involved?

1           A.     Early on, like December 19th, 2005,  
2 something, 2006.

3           Q.     And that magistrate judge found that your  
4 conduct smacked of bad faith. Isn't that right?

5           A.     I'd have to look at the decision. They  
6 were not happy with me.

7           Q.     Was it -- was -- your use of the subpoena  
8 to obtain and then produce these protected materials  
9 a matter of public interest, was that done in bad  
10 faith?

11          A.     No. I had -- no.

12          Q.     Judge Cogan also reviewed some of your  
13 conduct in the case. Isn't that right?

14          A.     That name sounds familiar.

15          Q.     He found that you were aware that these  
16 documents were restricted. Is that right?

17          A.     Yes.

18          Q.     And he also found that you knew what you  
19 were doing and that you deliberately tried to  
20 circumvent the protective order. Isn't that right?

21          A.     You know, the document speaks for itself,  
22 so like I said, they were not very happy with me. I  
23 felt like I complied with it. I expected Lilly to  
24 object, make a timely objection, and then I would be  
25 arguing it to the Superior Court why my client, who

1 was faced with being drugged against his will, why  
2 he was entitled to have this information that would  
3 show that it was very harmful. I expected that to  
4 occur.

5 And instead, Eli Lilly did not -- kind of sat  
6 on this notice. And when I got the documents, then I  
7 got them out to various parties, including The New  
8 York Times.

9 Q. The Second Circuit affirmed the lower  
10 Court's findings with respect to this alleged  
11 subterfuge?

12 A. Yes.

13 Q. Did you agree with the Second Circuit's  
14 findings?

15 A. No. I said -- I issued a statement that  
16 said I -- I mean, I don't know -- I assume you have  
17 it here, the statement that I issued. Basically I  
18 said I believed I complied with the law, but I  
19 under- -- you know, did it in good faith, and  
20 I under- -- but I understand why Judge Weinstein  
21 believed otherwise.

22 Q. I saw that Dr. -- I'm going to butcher the  
23 pronunciation -- Dr. Egil- --

24 A. Egilman.

25 Q. Egilman -- that he entered into a



1 settlement agreement with Eli Lilly that required  
2 the payment of, I think, \$100,000. Did you ever  
3 enter into a settlement agreement with Eli Lilly to  
4 end the proceedings finally with respect to your  
5 involvement?

6 A. No. They were absolutely despicable. They  
7 all but agreed to -- to a settlement agreement and  
8 then -- basically to get me to not say anything  
9 while they -- while they were -- during Alaska  
10 versus Eli Lilly. And then once that trial was  
11 over, they just basically reneged.

12 Q. So they never entered into a settlement  
13 agreement with you?

14 A. Correct.

15 Q. Did they ever pursue the contempt  
16 proceedings that they threatened?

17 A. Not so far.

18 MR. CUDDY: Okay. I don't think I have  
19 anything further at this time.

20 MR. ROBINSON: Okay. Are we ready to  
21 proceed?

22 THE REPORTER: Yes.

23 MR. ROBINSON: Just for the record, I'm Jeff  
24 Robinson, from Ashburn & Mason, representing 716 West  
25 Fourth Avenue. And in the room with me is Eva

1 Gardner; also works with Ashburn & Mason and  
2 represents 716.

3 Jim, before we proceed, I want to get your  
4 confirmation that -- this is how I plan on doing it.  
5 I have questions for you I intend to ask today. I  
6 want to reserve time after I review your responses to  
7 our requests for production. And you're agreeable to  
8 that?

9 THE WITNESS: Yeah. Maybe we should just  
10 adjourn and come back.

11 MR. ROBINSON: Kevin, what's your schedule?

12 MR. CUDDY: Do you want to go off the record  
13 for a minute?

14 MR. ROBINSON: Yes. Why don't we do that.

15 (Discussion off record.)

16 MR. ROBINSON: Back on record. And the  
17 parties have mutually agreed to continue this  
18 deposition till October 22nd at 1:00 o'clock p.m.

19 Thank you.

20 (Proceedings recessed at 3:35 p.m.)

21 (Signature reserved.)

22 -o0o-

23

24

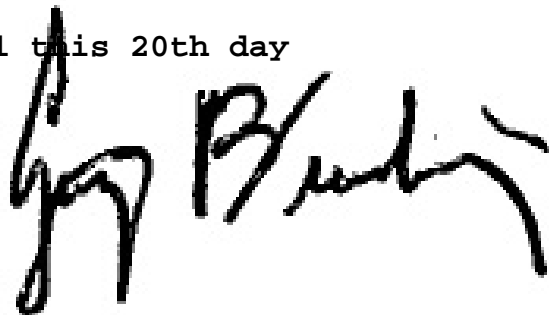
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CERTIFICATE

I, GARY BROOKING, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the witness in the foregoing proceedings was duly sworn; that the proceedings were then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed by computer transcription; that the foregoing is a true record of the testimony and proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 20th day of October, 2015.



---

GARY BROOKING, RPR  
My Commission Expires 6/28/2016

GB4223

1 Errata Sheet

2

3 NAME OF CASE: ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

4 DATE OF DEPOSITION: 10/16/2015

5 NAME OF WITNESS: JAMES GOTTSTEIN - VOLUME I

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

11 From \_\_\_\_\_ to \_\_\_\_\_

12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

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20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

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Signature

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Date

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# State of Alaska

## Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



### REQUEST FOR INFORMATION (RFI) ANCHORAGE PROFESSIONAL OFFICE SPACE

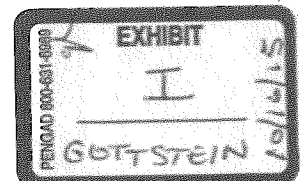
The Legislative Affairs Agency ("Agency") is interested in receiving information regarding the availability of new or existing professional office space for lease to serve as Legislators' personal Anchorage Offices and the Legislative Agency Support Offices in the greater Anchorage area. The space must meet the general descriptions in this request and be available for occupancy by May 1, 2014.

Respondents must include the following property identification information:

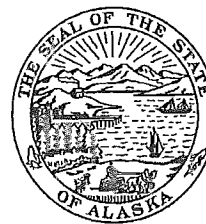
- Owner's, and, if applicable, agent's name and contact information
- Physical address of property
- Tax assessor's plat and lot numbers of property
- At least one but no more than 10 photographs of proposed property

A response to this RFI must address the following minimum requirements of the Agency:

- 30,000 to 45,000 square feet of net usable Class A or Class B office space located within the Municipality of Anchorage
- Comply with all planning and zoning ordinances and Municipal development plans for government facilities
- Contiguous office space (multiple floors acceptable)
- Identify available dedicated on-site parking and alternative parking
- Full telecommunications and broadband wiring in facility
- Two executive conference rooms suitable for general meetings (approximately 250 sq. ft.)
- Four 3-room office suites (approximately 800 sq. ft.)
- Twenty-three 2-room office suites (approximately 500 sq. ft.)
- Fifteen 1-room office suites (approximately 200 sq. ft.)
- Copier rooms on each floor occupied
- Kitchenette space on each floor occupied minimally including a sink and wash area
- Storage Area – for boxes, supplies, equipment spares (approximately 1,100 sq. ft.)
- Information Services Staff Area & Maintenance Shop – suitable for three people and work bench for maintaining equipment (approximately 300 sq. ft.)
- One network room – equipped with cooling for 200 sq. ft. of computer and telecommunications equipment.
- Network Closets – one per floor with good ventilation (approximately 50 sq. ft.) preferable in silo configuration
- Contiguous ground floor space (minimum of 3,600 sq. ft.) for the Legislative Information Office consisting of:
  - Two small enclosed offices with additional open space for four support staff



# State of Alaska



## Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918

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- One large hearing room – suitable for legislative hearings and teleconferencing (approximately 1,500 sq. ft. adjoined by a teleconference bridge room approximately 200 sq. ft.)
- Two medium hearing rooms – suitable for legislative hearings and teleconferencing (approximately 500 sq. ft.)
- One small hearing room – suitable for legislative hearings and teleconferencing (approximately 200 sq. ft.)
- LIO Copier & Mailroom enclosed office – close proximity to LIO (approximately 250 sq. ft.)

### **Occupancy Date:**

Occupancy is required by May 1, 2014. Any offering must be able to meet this requirement and identify a strategy and timeline to accommodate this deadline.

### **Cost Information:**

Provide approximate cost information:

- Identify both net usable and net rentable space in square feet
- Identify full service or triple net
- Identify tenant improvement allowance
- Cost information must be provided on both net usable and net rentable space

Responses that do not include the above cost information presented in the form required will be of little assistance to the Agency. The respondent acknowledges that information provided to the Legislative Affairs Agency in response to this RFI is a public record subject to public inspection in accordance with the Alaska Public Records Law, AS 40.25.123(b).

### **Submission:**

Provide one electronic copy of the requested information to the email address below. Submissions shall not exceed five pages of narrative and no more than 10 photographs. Responses to this RFI must be received no later than 4:00 p.m. AST, on **May 24, 2013**. Please note the State does not accept responsibility for failed emailed response deliveries.

Tina Strong, Procurement Officer  
Legislative Affairs Agency  
State Capitol, Room 3  
Juneau, AK 99801-1182  
PH: (907) 465-6705

# *State of Alaska*



## *Legislative Affairs Agency*

*Administrative Services, Supply Section*

*State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918*

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FAX: (907) 465-2918

Email: [tina.strong@akleg.gov](mailto:tina.strong@akleg.gov)

This RFI in no manner obligates the Legislative Affairs Agency to lease space or pursue a contractual relationship with an entity that responds to this RFI or limits or restricts the Legislative Affairs Agency's right to lease space or pursue a contractual relationship with an entity that does not respond to this RFI, on such terms the Legislative Affairs Agency considers necessary or desirable.

This RFI in no manner obligates the Legislative Affairs Agency to pay any costs incurred in the preparation of any response to this RFI. A party responding to this RFI is responsible for all costs associated with their response. Responses become the property of the Agency.

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.

**FILE**

81622-3

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OCT 06 2015

Stoel Rives LLP

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*

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. 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.

**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*

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**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.

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**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.

**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.

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*Responses to Legislative Affairs Agency's  
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**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.

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**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

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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).

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**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.

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- 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.

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- 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.

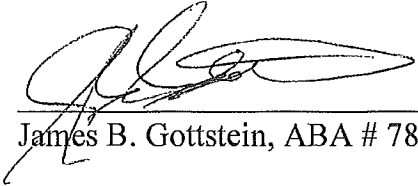
The operating costs were drastically increased.

**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

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.

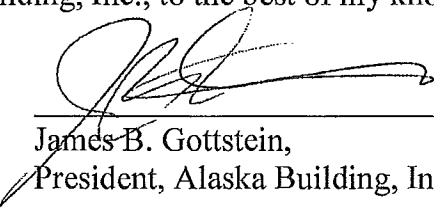
Dated October 5, 2015.

  
James B. Gottstein, ABA # 7811100

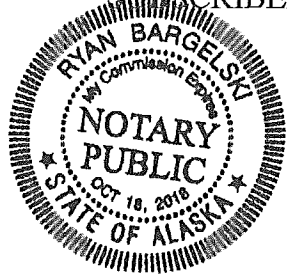
**VERIFICATION**


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.

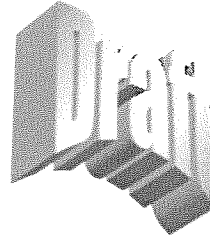
Dated October 5, 2015.

  
Jim Gottstein

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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.,<sup>1</sup> 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.<sup>2</sup>

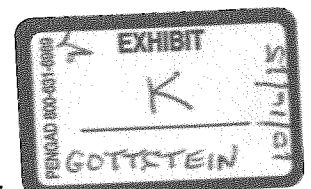
As you know, in order to ensure that the State receives the best price for its purchases almost all contracts for a substantial amount of money require an open, public bidding process. Sole source contracts are extremely limited under state law. One of the exceptions is AS 36.30.083, which does allow 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.

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

<sup>2</sup> 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