

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

Kevin Cuddy (Alaska Bar #0810062)  
STOEL RIVES LLP  
510 L Street, Suite 500  
Anchorage, AK 99501  
Telephone: (907) 277-1900  
Facsimile: (907) 277-1920



Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan  
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S INITIAL DISCLOSURES**  
**(Rule 26(a)(1))**

Pursuant to Alaska Rule of Civil Procedure 26(a)(1), this Court's May 5, 2015 Initial Pretrial Order and this Court's June 17, 2015 Order Granting Defendant Legislative Affairs Agency's Motion to Stay Proceedings for 45 days (08/03/15), Defendant Legislative Affairs Agency ("Agency") hereby submits its Initial Disclosures

based on information reasonably and currently available to it. The Agency reserves its right to supplement, modify or withdraw these disclosures based on information developed in the course of this lawsuit. By making this disclosure, the Agency does not admit that any of the information disclosed is relevant. It does not waive, but expressly reserves, its right to object to the admission of the information provided in this disclosure, and the right to object to any inspection, demand, or discovery involving this disclosure or the subject matter of it. In addition, by disclosing this information the Agency does not waive, but expressly reserves, its right to object to the disclosure of any information protected by the attorney-client privilege, common interest doctrine and/or work product doctrine.

**(A) Factual Bases of Defendant's Defenses (Rule 26(A)(1)(A)):**

Count 1 of the Amended Complaint alleges that the lease relating to the Anchorage Legislative Information Office (LIO Project) was illegal because the lease purportedly did not comply with AS 36.30. The lease does, however, comply with AS 36.30. The lease involves the extension of an existing contractual arrangement that was in place for a number of years and had been amended on numerous occasions, as described in the Agency's opposition to plaintiff's motion for partial summary judgment. The same parties (the Agency and 716 West Fourth Avenue, LLC) continued their longstanding contractual arrangement for the leasing of office space and parking spaces on the corner of 4th Avenue and G Street in Anchorage. There have been fluctuations over the past decade, i.e., the number of allotted parking spaces has changed, the rent has changed and the facilities have undergone renovations, including relocation of staff,

tearing down walls, and creating offices. None of these changes to the leased space or the applicable rent means that any of these prior amendments were not “the same contract.” Modifications to leases are routine and do not render each modification a different contract.

The lease is also consistent with the procedures set out in the Alaska Legislative Procurement Procedures (AS 36.30.020), including a written determination by the procurement officer that material modifications were appropriate as part of the Lease Extension. This extension was reviewed and approved by the Alaska Legislature.

Further, it appears that the plaintiff lacks standing to bring this claim against the Agency because it is not an appropriate plaintiff and has suffered no injury to its interest as a result of the extension. Plaintiff was not a potential lessor for any property at issue.

As to Count 2 of the Amended Complaint, the Agency did not perform or oversee any of the work that allegedly caused this damage. The Agency did not cause the property damage alleged by the plaintiff. The Agency’s decision to enter into the lease extension agreement was also not negligent. To the extent that the Agency has any conceivable vicarious liability, that liability was released in connection with the offer of judgment from Criterion General, Inc., that was accepted by plaintiff on July 22, 2015.

**(B) Individuals Likely to Have Discoverable Information Relevant to Disputed Facts (Rule 26(A)(1)(B)):**

The following is a list of individuals likely to have discoverable information that the Agency may use to support its defenses and the subject matter of such information. The Agency does not consent to or authorize Plaintiff’s communications with its

employees and former employees to the extent such communications are prohibited by applicable rules of professional conduct. To the extent required under the applicable rules of professional conduct, Plaintiffs contact with the Agency's employees and former employees should take place solely through the Agency's counsel of record.

Similarly, witnesses identified in these Initial Disclosures may possess information or knowledge protected by the attorney-client privilege, the work product doctrine, or other applicable legal privileges and protections. By listing witnesses, the Agency does not waive its right to assert any applicable privilege or protection as to the listed witnesses, and the Agency does not contend that the individuals listed necessarily have discoverable information regarding the claims or defenses in this action, but have identified such individuals under a broad reading of disclosure obligations.

The Agency anticipates that, as discovery proceeds, it may discover additional individuals who have information relevant to disputed factual matters relating to this action. The Agency reserves the right to supplement or modify this list as additional information becomes available through discovery or through additional factual investigation.

1. Alaska Building, Inc.  
c/o James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
907-274-7686

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** As Plaintiff in this matter, it is anticipated that a designated representative of Alaska Building, Inc. will testify

regarding his knowledge and understanding of the facts and circumstances surrounding the September 19, 2013 contract entered into between Defendant 716 West Fourth Avenue, LLC and the Agency, as well as plaintiff's property damage claim.

2. Robert B. Acree  
Donald McClintock  
Robert O'Neil  
Mark Pfeffer  
716 West Fourth Avenue, LLC  
c/o Jeffrey W. Robinson Ashburn & Mason, PC  
1227 W. 9th Avenue, Suite 200  
Anchorage, AK 99501  
907-276-4331

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** As a Defendant in this matter, it is anticipated that the designated individuals from 716 West Fourth Avenue, LLC will testify regarding their knowledge and understanding of the facts and circumstances surrounding the September 19, 2013 contract entered into between Defendant 716 West Fourth Avenue, LLC and the Agency, as well as plaintiff's property damage claim.

3. Mike Hawker  
Alaska Legislative Agency  
c/o Kevin Cuddy, Esq.  
Stoel Rives LLP  
510 L Street, Suite 500  
Anchorage, AK 99501  
(907) 277-1900

**Attorney-Client Privilege**

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** It is anticipated that in his capacity as Chairman of the committee that entered into the lease with 716 West Fourth Avenue, Mr. Hawker will testify regarding his knowledge and understanding of the September 19, 2013 contract entered into between Defendant 716 West Fourth Avenue,

LLC and the Agency. Mr. Hawker may also testify concerning the Agency's compliance with the Alaska Legislative Procurement Procedures (AS 36.30.020), and the basis for his written determination that material modifications were appropriate as part of the Lease Extension.

4. James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
(907) 274-7686

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** As Director, President, Shareholder, Secretary, Treasurer, Vice President and 100% owner of plaintiff Alaska Building, Inc., it is anticipated that Mr. Gottstein will testify regarding his knowledge and understanding of the September 19, 2013 contract entered into between Defendant 716 West Fourth Avenue, LLC and the Agency, as well as plaintiff's property damage claim.

5. Criterion General, Inc.  
c/o Scheer & Zehnder LLP  
701 Pike Street, Suite 2200  
Seattle, WA 98101  
(206) 262-1200

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** As the general contractor for the LIO Project, it is anticipated that Criterion General, Inc.'s designated representative will testify regarding plaintiff's property damage claim, the type of work performed for the LIO Project, and the Agency's lack of involvement in any such work.

6. Alaska Legislative Agency  
c/o Kevin Cuddy, Esq.  
Stoel Rives LLP  
510 L Street, Suite 500  
Anchorage, AK 99501

**Attorney-Client Privilege**

(907) 277-1900

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** It is anticipated that a designated representative of the Agency will testify regarding the Agency's knowledge and understanding of the September 19, 2013 contract entered into between Defendant 716 West Fourth Avenue, LLC and the Agency, as well as the Agency's compliance with the Alaska Legislative Procurement Procedures (AS 36.30.020) and the procurement act.

7. Koonce Pfeffer Bettis, Inc., d/b/a KPBB Architects  
c/o Dan Quinn, Esq.  
Richmond & Quinn  
360 K Street, Suite 200  
Anchorage, AK 99501  
(907) 276-5727

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** It is anticipated that a designated representative of KPBB Architects will testify regarding plaintiff's property damage claim, the type of work performed for the LIO Project, and the Agency's lack of involvement in any such work.

8. Pfeffer Development, LLC  
c/o Cynthia L. Ducey  
Delaney Wiles  
1007 W. 3rd Avenue, Suite 400  
Anchorage, AK 99501  
(907) 279-3581

**ANTICIPATED SUBJECT MATTER OF TESTIMONY:** It is anticipated that a designated representative of Pfeffer Development LLC will testify regarding plaintiff's property damage claim, the type of work performed for the LIO Project, and the Agency's lack of involvement in any such work.

9. Any and all other custodians of records needed to authenticate business records produced or gathered related to the issues in dispute in this case.

10. Any and all individuals, parties, and other persons disclosed by the Plaintiff and other defendants in their initial disclosures and any supplementation thereof.

11. Any and all witnesses identified through further discovery and any supplementation thereof.

The Agency anticipates that, as discovery proceeds, it may discover additional individuals, including third-party witnesses, who have information relevant to disputed factual matters relating to this action. The Agency reserves the right to supplement or modify this list as additional information becomes available through discovery or through additional factual investigation.

**(C) Individuals Known to Have Made Written or Recorded Statements Relevant to this Case (Rule 26(A)(1)(C)):**

The Agency is unaware of the existence of any written or recorded statements relevant to this case, aside from publicly available hearing recordings relating to the extension of the lease.

The Agency's investigation into this matter is ongoing; should any discoverable written or recorded statements be located later, they will be disclosed.

**(D) Description of Documents, Data Compilations, and Tangible Things Relevant to Disputed Facts (Rule 26(A)(1)(D)):**

The Agency refers plaintiff to the attachments to the Affidavit of Kevin M. Cuddy dated June 29, 2015, as well as Exhibit 1 to Plaintiff's Affidavit in Support of Plaintiff's



Motion for Partial Summary Judgment dated June 21, 2015. The Agency also identifies Amendment No. 12 to the Legislative Procurement Procedure 040, the motions passed by Legislative Council on June 7, 2013, relating to the lease extension; the May 2013 Request for Information regarding office space (located at <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>); documents relied upon by the Procurement Officer for his September 16, 2013 findings under Legislative Procurement Procedure 040(d); and the appraisal by Tim Lowe that was conducted on September 18, 2013.

The Agency is unaware of any documents or tangible things in its possession, custody, or control that are relevant to plaintiff's property damage claim. The Agency understands that other defendants may have documents in their possession regarding the scope of work performed for the LIO Project.

**(E) Photos, Diagrams, and Videotapes of Persons, Objects, Scenes, or Occurrences Relevant to Disputed Facts (Rule 26(A)(1)(E)):**

The Agency is unaware of any such documents in its possession, custody, or control. The Agency understands that other defendants may have documents in their possession regarding the scope of work performed for the LIO Project.

**(F) Insurance Agreements That May Be Available to Satisfy Any Judgment or Indemnify or Reimburse Payments Made to Satisfy A Judgment (Rule 26(A)(1)(F)):**

Given that Plaintiff is seeking a windfall under Count 1, but not any amounts directly from the Agency, and any vicarious liability for Count 2 was resolved by

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

Criterion General, Inc.'s offer of judgment, the Agency is unaware of any responsive insurance agreements.

**(G) Categories of Damages Claimed by Defendant (Rule 26(A)(1)(G)):**

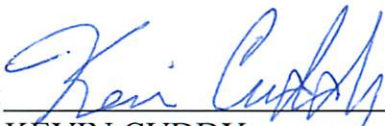
The Agency reserves the right to claim damages as litigation proceeds. It will seek to recover all of its reasonable costs and attorney's fees expended in defending this lawsuit.

**(H) Other Responsible Persons (Rule 26(A)(1)(H)):**

Other than Plaintiff and other named defendants, it is too early in the discovery process to identify any potentially responsible persons at this time. Discovery is ongoing and information will be supplemented as it becomes available.

DATED: August 3, 2015

STOEL RIVES LLP

By:   
\_\_\_\_\_  
KEVIN CUDDY  
(Alaska Bar #0810062)  
Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on August 3, 2015, a true and correct copy of the foregoing was served via U.S. Mail on:

James B. Gottstein, Esq.  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
*(Attorney for Plaintiff)*

Mark P. Scheer, Esq.  
Scheer & Zehnder LLP  
701 Pike Street, Suite 2200  
Seattle, WA 98101  
*(Attorneys for Def/Criterion General, Inc.)*

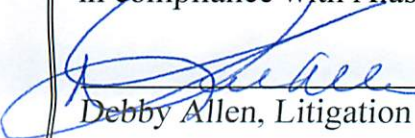
Jeffrey W. Robinson  
Ashburn & Mason  
1227 West Ninth Avenue, Suite 200  
Anchorage, AK 99501  
*(Attorneys for Defendant 716 West Fourth Avenue, LLC)*

Daniel T. Quinn, Esq.  
Richmond & Quinn  
360 K Street, Suite 200  
Anchorage, AK 99501-2038  
*(Attorneys for Defendant Koonce Pfeffer Bettis, inc. d/b/a KP Architects)*

Cynthia L. Ducey, Esq.  
Delaney Wiles, Inc.  
1007 W. 3rd Avenue, Suite 400  
Anchorage, AK 99501  
*(Attorneys for Defendant, Pfeffer Development, LLC)*

Blake H. Call, Esq.  
Call & Hanson, P.C.  
413 G Street  
Anchorage, Alaska 99501  
*(Co-Attorneys for Def/Criterion General, Inc.)*

I further certify that this document was substantively produced in *Times New Roman 13*, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
\_\_\_\_\_  
Debby Allen, Litigation Practice Assistant

79580891.2 0081622-00003

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920