

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

COPY
Original Received

DEC 14 2015

Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**MOTION AND MEMORANDUM TO ORDER REP.
HAWKER TO REQUEST E-MAILS FROM GCI**

Plaintiff Alaska Building, Inc., hereby moves for an order requiring former Legislative Council Chair Rep. Mike Hawker, who negotiated the lease the subject matter of this action, to request GCI to provide to the Legislative Affairs Agency's attorney in this matter copies of all of his e-mail from January 1, 2013, to October 1, 2013, to enable compliance with Plaintiff's First Requests for Production to Legislative Affairs Agency. Exhibit A.

As set forth at Paragraph 10 of the December 9, 2015, Affidavit Of Counsel In Support Of Alaska Building, Inc.'s Conditional Civil Rule 56(f) Request For Additional Time To Conduct Discovery Regarding Legislative Affairs Motion For Summary Judgment Under The Laches Doctrine (Affidavit of Counsel), and Exhibit 1, thereto, counsel for the Legislative Affairs Agency has reported that the Legislative Affairs

Agency is not able to produce responsive e-mails from or to Rep. Mike Hawker because he has deleted them. The Affidavit of Counsel is attached hereto as Exhibit B for the Court's convenience.

Paragraph 10 of the Affidavit of Counsel states that the logical next step is for Alaska Building to subpoena the e-mails from GCI, but in preparing for such a subpoena, counsel became aware that cases interpreting the Electronic Communications Privacy Act, 18 U.S.C. 2702, hold that it invalidates such subpoenas. *See, e.g., In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va 2008), citing to *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2003). Big concerns include that such subpoenas would obtain privileged and irrelevant, potentially embarrassing, material.

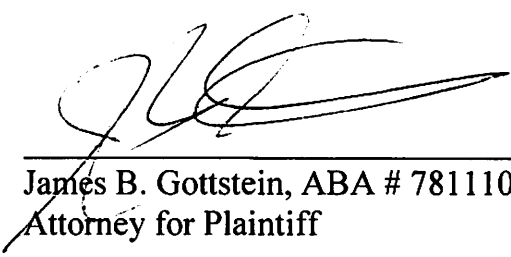
Therefore, Alaska Building, Inc., has determined that the next logical step is for this Court to order Rep. Hawker to request GCI to send copies of his e-mails to the Legislative Affairs Agency's attorney in this matter to enable the Legislative Affairs Agency to be able to comply with Plaintiff's First Requests for Production to Legislative Affairs Agency with full attorney review. 18 U.S.C. 2702(b)(3) specifically allows for GCI to provide such copies with the consent of Rep. Hawker. Therefore, it is respectfully suggested this Court should order Rep. Hawker to provide such consent.

Counsel sent an e-mail to counsel for the Legislative Affairs asking him to do this voluntarily, Exhibit C, but has not heard back. It hasn't been a long time since this e-mail was sent, but if such a request to GCI was made before the time for opposition hereto is due, it would merely render this motion moot.

A. Conclusion

For the foregoing reasons, Alaska Building, Inc., respectfully requests the Court order Rep. Hawker to request GCI to send copies of his e-mails from January 1, 2013, to October 1, 2013 to counsel for the Legislative Affairs Agency .

Dated December 14, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated December 14, 2015.


Jim Gottstein

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.

Case No. 3AN-15-05969CI

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO
LEGISLATIVE AFFAIRS AGENCY**

Pursuant to Civil Rule 34 Plaintiff Alaska Building, Inc., serves the following requests for production on Defendant Legislative Affairs Agency. If counsel for the Legislative Affairs Agency claims an attorney-client relationship with any current or former legislator(s) with respect to this matter such that counsel believes Rule 4.2 of the Alaska Rule of Professional Conduct applies, these requests for production include production from such legislator(s).

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

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7555
FACSIMILE
(907) 274-9493

I. DEFINITIONS

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

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

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

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

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

II. CLAIMS OF PRIVILEGE:

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

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

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7888
FACSIMILE
(907) 274-9493

Plaintiff's First Requests for Production
To Legislative Affairs Agency

Page 2

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

REQUEST FOR PRODUCTION NO. 1.

Please produce all documents, from January 1, 2010, forward, including without limitation, e-mails, relating to leasing or potentially leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office when the then current lease terminated. This request encompasses all efforts relating to acquiring space for the Anchorage Legislative Information Office following the expiration of the then existing lease. This includes all responsive documents relating to the LIO Lease, including without limitation, negotiations and internal consideration by the Legislative Affairs Agency.

RESPONSE

REQUEST FOR PRODUCTION NO. 2.

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

RESPONSE

**LAW OFFICES OF
JAMES B. GOTTSTEIN**
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7000
FACSIMILE
(907) 274-0493

**Plaintiffs First Requests for Production
To Legislative Affairs Agency**

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REQUEST FOR PRODUCTION NO. 3.

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

RESPONSE

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7666
FACSIMILE
(907) 274-9493

Plaintiff's First Requests for Production
To Legislative Affairs Agency

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REQUEST FOR PRODUCTION NO. 4.

Please produce all documents relating to payments under the LIO Lease. This request should be updated monthly.

RESPONSE

DATED: August 3, 2015.

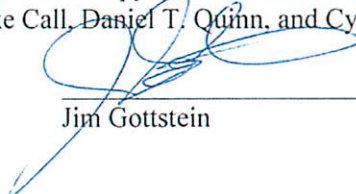
Law Offices of James B. Gottstein

By: 

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

CERTIFICATE OF SERVICE

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


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7586
FACSIMILE
(907) 274-9493

Plaintiff's First Requests for Production
To Legislative Affairs Agency

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Defendants.

Case No. 3AN-15-05969CI

**AFFIDAVIT OF COUNSEL
IN SUPPORT OF
ALASKA BUILDING, INC.'S CONDITIONAL CIVIL RULE 56(f)
REQUEST FOR ADDITIONAL TIME TO CONDUCT DISCOVERY
REGARDING LEGISLATIVE AFFAIRS MOTION FOR SUMMARY
JUDGMENT UNDER THE LACHES DOCTRINE**

THIRD JUDICIAL DISTRICT)

)ss

STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and
states as follows:

1. I am the attorney for plaintiff Alaska Building, Inc., in the above captioned
action and this affidavit is submitted in support of the plaintiff's Conditional Civil Rule
56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs
Motion for Summary Judgment Under the Laches Doctrine (56(f) Request).

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

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

2. The 56(f) Request is conditional, because Alaska Building, Inc., may very well be entitled to denial of the Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (Laches Motion) on the current record.

3. However, if not, counsel believes that additional discovery could very well produce additional evidence supporting denial of the Laches Motion.

4. Most particularly, additional evidence to support the defense of unclean hands could be discovered.

5. Defendant 716 LLC has refused to produce certain documents relevant to such a defense which is the subject of a pending motion to compel production. This and other discovery could reveal even more evidence that 716 LLC and the Legislative Affairs Agency knew the no-bid lease the subject of this litigation was illegal. It might also reveal that the owners of 716 LLC have pocketed millions of dollars from the illegal lease already.

6. Other discovery might reveal the extent of the pressure Mr. Pfeffer and Rep. Hawker exerted on Pam Varni and Doug Gardner, the Legislative Affairs Agency's executive director and lawyer, respectively, to go along with the lease in spite of their concerns over its legality. It might even reveal more wrongdoing, such as payoffs, constituting classic corruption.

7. Additional discovery could also very well reveal that the Tim Lowe appraisal used to justify the no bid lease under AS 36.30.083(a) was fraudulent and unduly

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

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

*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

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influenced by Mr. Pfeffer or otherwise. This appraisal appears to have been used in a criminal act under AS 36.30.930(2) to justify the no-bid lease under AS 36.30.083(a).

8. Alaska Building, Inc., has been very diligent with its discovery. It immediately propounded requests for production to both 716 LLC and the Legislative Affairs Agency when the stay of discovery expired on August 3, 2015, and has been working to obtain compliance, particularly from 716 LLC ever since, including the pending motion to compel production from 716 LLC.

9. In its responses, 716 LLC complains that Alaska Building, Inc., seeks documents in addition to whatever might be contained in e-mail and related attachments and is over 90 days late in producing responsive documents. It has also made what appears to be unfounded claims of privilege. These are currently among the issues in the pending motion to compel.

10. With respect to the Legislative Affairs Agency's responses to Alaska Building's first production requests to it, the Legislative Affairs Agency first asserted the private e-mails of Rep. Hawker, the chair of the Legislative Council who negotiated the illegal no-bid contract the subject of this litigation, were not subject to production because they were not in the possession, custody or control of the Legislative Affairs Agency. *See*, Exhibit 1, page 2. Then, when I wrote that if Rep. Hawker was going to be considered his client for purposes of the attorney-client privilege, such e-mail was subject to production, counsel for the Legislative Affairs Agency indicated he would consult with his client. *See*, Exhibit 1, pages 1 & 2. Counsel for the Legislative Affairs Agency subsequently reported orally

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

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

*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

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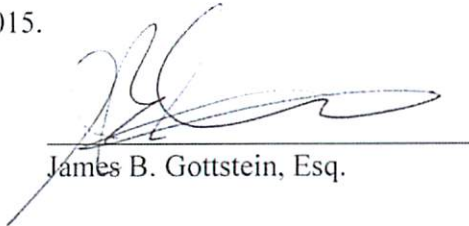
that the e-mails had been deleted. I asked that he put that in writing, but have yet to receive such a writing. Alaska Building, Inc.'s logical next step is to subpoena the e-mail provider(s).

11. In order for depositions of Rep. Hawker and Mark Pfeffer (and others) to be maximally productive, Alaska Building, Inc., needs as much of a documentary record as possible and the obstructionist behavior of 716 LLC in particular has dragged out this process.

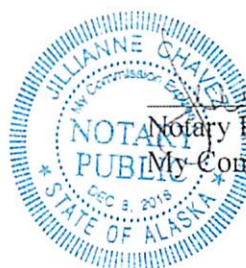
12. Therefore, counsel believes it is appropriate to grant the requested Civil Rule 56(f) extension if the court finds the current record insufficient to deny the Laches Motion.

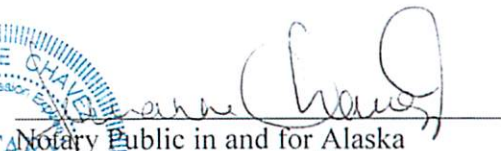
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9th day of December, 2015.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 9th day of December, 2015.




Notary Public in and for Alaska

My Commission Expires: December 8, 2018

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

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

*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 4 of 4

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Monday, October 19, 2015 11:19 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

That's fine. I'm looking into the other questions you've raised.

-Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 19, 2015 8:41 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Discovery Meeting

Hi Kevin,

Do you want to reschedule our discovery meeting to accommodate 716's continued deposition of me?

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

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Sunday, October 18, 2015 11:28 AM
To: 'Cuddy, Kevin M.'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Thanks Kevin.

I will plan on popping over if that is okay.

With respect to Rep. Hawker's e-mails, it seems to me that since you are claiming the attorney-client privilege applies, that you are obligated to provide documents in his possession, custody or control. Will you agree to supplement your responses to include such documents?

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

-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Sunday, October 18, 2015 10:46 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

I'm available at 2 p.m. on Friday. I trust you'll call me then.

I do not know whether this particular email was part of the several thousand pages that LAA already produced, but I do note that it appears to be an email sent to Mike Hawker's personal email account -- not his legislative account. LAA does not have possession, custody, or control over legislators' private email accounts (or their private mail, etc.).

-Kevin

From: James B. Gottstein [james.b.gottstein@gottsteinlaw.com]
Sent: Sunday, October 18, 2015 10:35 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Hi Kevin,

How about 2:00 pm on Friday?

I have been going through 716 LLC's e-mail production and there are e-mails that the Legislative Affairs Agency (LAA) should have produced too, such as the attached. If I am mistaken and it was produced by the LAA, I apologize.

Otherwise, please explain/justify.

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

-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Sunday, October 18, 2015 8:13 AM
To: James B. Gottstein
Subject: Re: Discovery Meeting

Jim,

Let me know some times that work for you. Wednesday is bad for me, but otherwise I'm pretty flexible.

On Oct 17, 2015, at 10:08 PM, James B. Gottstein
<james.b.gottstein@gottsteinlaw.com<<mailto:james.b.gottstein@gottsteinlaw.com>>> wrote:

Hi Kevin,

I totally forgot about setting a time to meet about discovery when we were together yesterday.

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

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 5030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner

Project Director and Counsel

Pfeffer Development, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655
d 907 770.4306 | e 907.382.2300

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

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procurement issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion, he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

Donald W. McClintock
Ashburn & Mason, P.C.
1227 W. 9th Ave. Ste. 200
Anchorage, AK 99501
(907) 276-4331 (voice)
(907) 277-8235 (fax)
www.anchorlaw.com

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James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Thursday, December 10, 2015 9:22 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: GCI E-mails

Good Morning Kevin,

As I was working towards issuing a subpoena to GCI for Rep. Hawker's e-mails I found that the cases interpreting 18 U.S.C.A. § 2702 hold I can't do that. *See, e.g., In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va 2008), citing to *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2003)

I think the court can order Rep. Hawker to request GCI to provide them to you so that you can then respond to Alaska Building, Inc.'s First Requests for Production, but I wonder if Rep. Hawker will just go ahead do that without court involvement?

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

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Defendants.

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Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**ORDER GRANTING
ALASKA BUILDING, INC.'S MOTION TO ORDER
REP. HAWKER TO REQUEST E-MAILS FROM GCI**

Upon the motion by plaintiff, Alaska Building, Inc., for an order requiring former Legislative Council Chair Rep. Mike Hawker to request GCI to provide copies to the Legislative Affairs Agency's attorney in this matter of all of his e-mail from January 1, 2013, to October 1, 2013, , it is hereby ORDERED the motion is GRANTED.

IT IS FURTHER ORDERED,

1. Within 10 days of this Order, Rep. Mike Hawker request that GCI provide copies of all of his e-mails from January 1, 2013, to October 1, 2013, to Kevin Cuddy, of Stoel Rives, 510 L St., Ste. 500, Anchorage, AK 99501.

2. The Legislative Affairs Agency shall produce all non-privileged e-mails, including attachments, responsive to Plaintiff's First Requests for Production to Legislative Affairs Agency within three weeks of receiving such e-mails.

3. With respect to any e-mails withheld on grounds of privilege, to be able to assess the applicability of the asserted privilege Legislative Affairs Agency shall state:

- (a) The date;
- (b) The author or sender;
- (c) The recipient or recipients;
- (d) Any other person who sent, received or obtained copies of the e-mail;
- (e) The subject of the e-mail; and
- (f) The basis of the privilege asserted with respect to the alleged grounds for non-production of the e-mail.

Dated _____.

PATRICK J. McKAY,
SUPERIOR COURT JUDGE