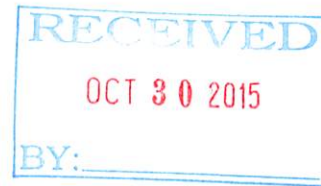


Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920



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,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF
REQUEST FOR ENTITLEMENT TO ATTORNEYS' FEES AND COSTS**

In its opening brief, Defendant Legislative Affairs Agency ("LAA") explained why it was the prevailing party respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"). ABI agrees that it has functionally dismissed LAA from the property damage claim by not naming LAA in the separate action that now addresses that claim. Despite this, ABI argues that it is "plain wrong" that LAA – which paid nothing as a defendant in the property damage claim – is the prevailing party on that

LAA'S REPLY IN SUPPORT OF ENTITLEMENT TO FEES AND COSTS

ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 1 of 4

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claim. ABI claims that LAA was not a prevailing party because LAA was only included in the claim due to its alleged vicarious liability for the conduct of Criterion General, Inc. (“Criterion”)¹ Once ABI had resolved its claim with Criterion, the logic goes, there was no property damage claim to pursue as against LAA and so LAA’s dismissal was a non-event. Therefore, in ABI’s view, ABI was the prevailing party against LAA since it obtained payment from Criterion. ABI’s argument is demonstrably incorrect.

Criterion presented ABI with an offer of judgment on July 22, 2015. That offer encompassed “the entire claim of plaintiff against defendant Criterion General, Inc. *and any vicarious liability any other defendant might have for the actions of Criterion General Inc.* and any and all liens and/or subrogation interests of all parties, persons or entities.”² That offer was accepted in its entirety on the same day – July 22, 2015.³ Then, *after* ABI had already accepted Criterion’s offer of judgment which encompassed any vicarious liability claims any other defendant may have, ABI proceeded to seek additional recoveries from LAA. In particular, on July 24, 2015 (two days *after* accepting Criterion’s offer of judgment), ABI made an offer of judgment to be entered against LAA in the amount of \$25,000 with respect to the property damage claim.⁴ That

¹ Opposition to Legislative Affairs Agency’s Motion for Entitlement to Attorney’s Fees and Costs at 1.

² Offer of Judgment at 2 (Exh. A) (served by hand on July 22, 2015) (emphasis added). Note that the offer itself has a date of June 22, 2015, but the listed month is apparently a typographical error.

³ Letter from Jim Gottstein to Blake Call dated July 22, 2015 (Exh. B).

⁴ Offer of Judgment (Damage to Alaska Building) to Defendant Legislative Affairs Agency (dated July 24, 2015) (Exh. C).

is, ABI was continuing to seek more money from LAA after the vicarious liability claims were resolved. ABI's contention that its claim was solely for vicarious liability for the actions of Criterion is flatly inconsistent with ABI's subsequent offer of judgment which necessarily indicated that ABI understood that its claim against LAA was still alive despite having accepted Criterion's offer of judgment.⁵

ABI's claims are further undermined by its joint motion for an order dismissing Criterion with prejudice from the lawsuit. ABI did not seek to dismiss its claims against LAA or any other party whose sole alleged liability in the case was due to Criterion's actions. Instead, ABI's proposed order requested that all claims against Criterion alone be dismissed with prejudice so that Criterion would be dismissed as a party to this case.⁶ This is directly contrary to ABI's late-found position that all claims against LAA were resolved by the settlement with Criterion. Instead of dismissing its claims against LAA on July 24, ABI was demanding additional money for claims it insisted were still alive despite its acceptance of the Criterion offer of judgment. ABI cannot rewrite history in order to avoid a finding that LAA was the prevailing party as to this ill-advised claim.

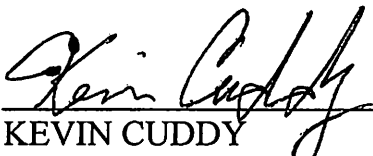
⁵ LAA notes that it agrees that there was never any plausible claim against LAA for any direct liability for the alleged property damage. That said, there also was never any plausible claim against LAA under a vicarious liability theory. Nevertheless, ABI persisted with its claim against LAA after resolving its claim against Criterion (including any vicarious liability claims).

⁶ See proposed Order Dismissing with Prejudice All Claims Against Defendant Criterion General, Inc. (filed Aug. 19, 2015).

For the foregoing reasons, LAA seeks a finding that it is the prevailing party with respect to the property damage claim (which was originally Count 2 in the first amended complaint).

DATED: October 29, 2015.

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

I hereby certify that on October 29, 2015, I caused a true and correct copy of the foregoing to be served by 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)

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

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, Practice Assistant

RECEIVED
OCT 30 2015
BY: _____

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

1. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs.

2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

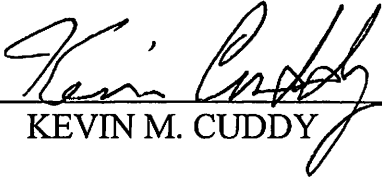
3. Attached as **Exhibit A** to Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs is a true and correct copy of Defendant Criterion General, Inc.'s Offer of Judgment dated and served by hand on July 22, 2015 on James B. Gottstein, Attorney for Plaintiff.

4. Attached as **Exhibit B** to Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs is a true and correct copy of Jim Gottstein's July 22, 2015 correspondence to Blake Call accepting Criterion General, Inc.'s Offer of Judgment.

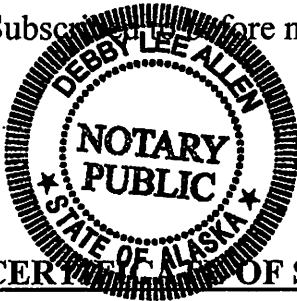
5. Attached as **Exhibit C** to Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs is a true and correct copy of the July 24, 2015 Offer of Judgment (Damage to Alaska Building) to Defendant Legislative Affairs Agency.

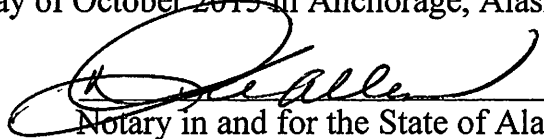
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29 of October, 2015.


KEVIN M. CUDDY

Subscribed before me this 29 day of October 2015 in Anchorage, Alaska.




Notary in and for the State of Alaska
My Commission expires: 12/17/16

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 29 2015, a true and correct copy of the foregoing was served in the manner identified below on:

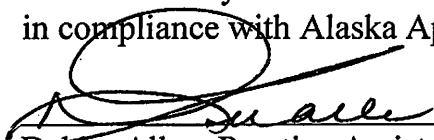
VIA FIRST CLASS MAIL

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

VIA FIRST CLASS MAIL

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

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, Practice Assistant
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JUL 23 2015

Stoel Rives LLP

Mark P. Scheer, ASBA No. 8807153
mscheer@scheerlaw.com
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Tel: 206-262-1200
Fax: 206-223-4065
Attorney for Defendant Criterion General, Inc.

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff,

v.

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

CASE NO. 3AN-15-05969CI

Defendants.

OFFER OF JUDGMENT

TO: James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Attorney for Plaintiff(s)

The Defendant Criterion General, Inc., pursuant to Civil Rule 68 and AS
09.30.065(a), hereby offers to allow entry of judgment for plaintiff Alaska Building, Inc. in
this action for the sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00),
inclusive of Civil Rule 79 costs, prejudgment interest, and attorney's fees. This offer of

OFFER OF JUDGMENT - Page 1

SCHEER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4065

EXHIBIT A | Page 1 of 4

1 judgment includes the entire claim of plaintiff against defendant Criterion General, Inc. and
2 any vicarious liability any other defendant might have for the actions of Criterion General
3 Inc. and any and all liens and/or subrogation interests of all parties, persons or entities.

4 This is an offer of compromise only, and is not to be construed as an admission.

5
6 DATED this 22nd day of June, 2015.

7 SCHEER & ZEHNDER LLP

8
9 By Mark P. Scheer
10 Mark P. Scheer, ASBA No. 8807153
11 mscheer@scheerlaw.com
12 Scheer & Zehnder LLP
13 701 Pike Street, #2200
14 Seattle, WA 98101
15 Tel: 206-262-1200
16 Fax: 206-223-4065
17 Attorney for Defendant Criterion General, Inc.
18
19
20
21
22
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24
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26

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Alaska, that the following is true and correct:

I am employed by the law firm of Call & Hanson, P.C.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Alaska, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the documents to which this is attached, in the manner noted on the following persons:

<u>PARTY/COUNSEL</u>	<u>DELIVERY INSTRUCTIONS</u>
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	() Via U.S. Mail (X) Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>716 West Fourth Avenue LLC</u> Jeffrey W. Robinson Ashburn & Mason P.C. 1227 W. 9th Avenue, Suite 200 Anchorage, Alaska 99501-5914	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Pfeffer Development, LLC</u> Cynthia L. Ducey Delaney Wiles 1007 W. 3rd Avenue, Suite 400 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Legislative Affairs Agency</u> Kevin M. Cuddy Stoel Rives LLP	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
510 L Street, Suite 500 Anchorage, AK 99501	
<u>Counsel for Defendant</u> <u>Koonce Pfeffer Bettis, Inc. d/b/a</u> <u>KPB Architects</u> Daniel T. Quinn Richmond & Quinn 360 K Street, Suite 200 Anchorage, Alaska 99501	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail

DATED this 22nd day of July, 2015, at Anchorage, Alaska.



 Mona Schultz, Legal Secretary

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

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July 22, 2015

Stoel Rives LLP

Hand Delivered

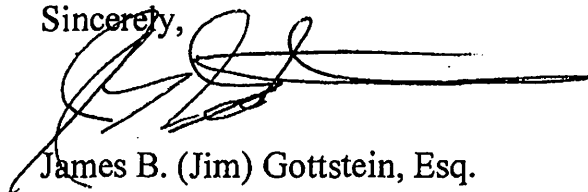
Blake Call
Call & Hanson
413 G Street, Suite 206
Anchorage, AK 99501

Re: Offer of Judgment in *Alaska Building*
Inc., v. Criterion General, et al.,
Case No. 3AN-15-05969CI

Dear Mr. Call:

The Offer of Judgment in the above referenced case hand delivered to my office today is accepted.

Sincerely,



James B. (Jim) Gottstein, Esq.

cc: Mark Scheer
Jeffrey W. Robinson/Eva R. Gardner
Daniel T. Quinn
Cynthia L. Ducey
Kevin M. Cuddy

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.

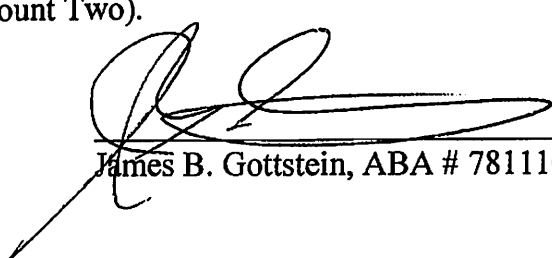
**OFFER OF JUDGMENT
(Damage to Alaska Building)**

Case No. 3AN-15-05969CI

To: Defendant Legislative Affairs Agency
From: Alaska Building, Inc.

The Plaintiff Alaska Building, Inc., pursuant to Civil Rule 68 and AS 09.30.065(a), hereby offers to allow judgment be entered against Defendant Legislative Affairs Agency (LAA) in the amount of \$25,000 in complete satisfaction of its claim against LAA for damage to the Alaska Building (Count Two).

Dated July 27, 2015.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

I certify that on this date 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 e-mailed a copy to Mark Scheer.

Dated July 24, 2015.


Jim Gottstein

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