

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 07-cv-01355-LTB-MJW

UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF SUN
CONSTRUCTION COMPANY, INC., a Colorado corporation;

Plaintiff,

and

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Maryland corporation,

Intervenor Plaintiff,

v.

TORIX GENERAL CONTRACTORS, LLC, a Colorado limited liability company f/k/a
Alliance General Contractors, LLC, and ST. ANDREWS/ALLIANCE JOINT VENTURE, a
joint venture,

Defendants and Counterclaimants

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a Connecticut
corporation,

Defendants.

ORDER

Whether Colorado has or would adopt the four-part test for a “total cost claim” as referenced in *City of Westminster v. Centric-Jones Constructors*, 100 P.3d 472, 479 (Colo. App. 2003) is the pivotal question raised by Defendants Renewed Motion for Judgment as a Matter of Law. Resolution of this question drives not only ruling on the Renewed Motion for Judgment as a Matter of Law but also on the motions of the Plaintiff and Intervenor Plaintiff for additional post-trial relief in the form of prejudgment interest, costs,

and attorney fees. The question then is whether this issue should be certified to the Colorado Supreme Court for its answer. Preliminary statements by counsel as to such certification may be helpful to the Court.

Accordingly,

IT IS ORDERED that the parties will file their preliminary statements concerning certification of this question to the Colorado Supreme Court **on or before Friday, February 28, 2011**.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

DATED: January 28, 2011