

**KEMP, JONES & COULTHARD, LLP**  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Tel. (702) 385-6000 • Fax: (702) 385-6001  
kjc@kempjones.com

1 Spencer H. Gunnerson, Esq.  
2 Nevada Bar No. 008810  
3 s.gunnerson@kempjones.com  
4 Nathanael R. Rulis, Esq.  
5 Nevada Bar No. 011259  
6 n.rulis@kempjones.com  
7 KEMP, JONES & COULTHARD, LLP  
8 3800 Howard Hughes Parkway  
9 Las Vegas, Nevada 89169  
10 Telephone: (702) 385-6000  
11 *Counsel for The Erection Company*

12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA**

14 THE ERECTION COMPANY, INC., a  
15 Washington Corporation

16 Plaintiff,

17 vs.

18 ARCHER WESTERN CONTRACTORS, LLC,  
19 a Delaware foreign limited-liability company;  
20 POSTEL ERECTION GROUP, LLC, a  
21 domestic limited liability company; POSTEL  
22 WEST, INC., an Arizona corporation; POSTEL  
23 INDUSTRIES, INC., an unknown entity;  
24 TRAVELERS CASUALTY AND SURETY  
25 COMPANY OF AMERICA; DOES I through  
26 X; ROES XI through XX

27 Defendants.

CASE NO. 2:12-cv-00612-MMD-NJK

**STIPULATION AND ORDER TO LIMIT  
THE FIRST PHASE OF TRIAL TO THE  
THRESHOLD ISSUES OF TEC'S RIGHT  
TO STOP WORK AND THE  
TERMINATION OF THE  
SUBCONTRACT**

28 AND RELATED ACTIONS

Plaintiff, The Erection Company (“TEC), and Defendants, Archer Western Contractors, LLC (“AWC”), and Travelers Casualty and Surety Company of America (“Travelers”), by and through their counsel of record, hereby jointly move for an Order limiting the first phase of trial, currently scheduled for December 8-11, 2015, to the threshold issues of whether TEC was justified in stopping work and the termination of its subcontract with Postel Industries, Inc. (“Postel”), on the construction of the new control tower at McCarran International Airport (hereinafter the “Project”)

1 On August 13, 2015, the Court provided a minute order stating that the trial in this case would  
2 be bifurcated into liability and damages phases (Dkt. No. 259). The Court further stated that upon  
3 determining liability, the Court would then decide when to proceed with the damages phase.

4 The parties discussed the best way to approach these separate phases and agree that the most  
5 effective way to do so will be to limit the first phase of trial only to liability under limited aspects of  
6 TEC's first two claims for relief for breach of contract and breach of the covenant of good faith and  
7 fair dealing and limited aspects of AWC's first cause of action against TEC. The issues to be decided  
8 in these respective claims are regarding TEC's right to stop work and the termination of its subcontract  
9 on the Project due to Postel's and AWC's alleged (1) failure to make payment to TEC; and (2)  
10 Postel's alleged abandonment of its subcontract with AWC. Similarly, AWC's first cause of action is  
11 limited to the alleged issues against TEC regarding TEC's work stoppage, subcontract termination,  
12 and cessation of work/abandonment. The parties agree that a determination of TEC's right to stop  
13 work and the termination of its subcontract are threshold issues and may also help foster settlement  
14 discussions. Furthermore, the parties anticipate that a trial on these threshold issues will limit the first  
15 phase to 4 days.

16 In focusing the first phase of the trial on TEC's limited first two claims for relief and AWC's  
17 limited first claim for relief, the parties agree to limit their argument to the factual and legal allegations  
18 made in those claims for relief as described herein. The parties agree that the first phase of trial will  
19 not include factual evidence or argument regarding TEC's claims against AWC and AWC's  
20 counterclaims against TEC (beyond the limited first cause of action described above) including but not  
21 limited to: critical path issues (delay), crane time issues, TEC's manpower, TEC's inspection  
22 scheduling, actions of Wade Richotte and his removal from the Project, procurement of temporary  
23 stairs, air handler storage fees, TEC's workmanship, TEC's alleged negligence, alleged repair work  
24 completed by Union Erectors, AWC's scheduling of the work, the alleged false claim submitted by  
25 AWC to Travelers, and any other issue unrelated to the alleged failure to pay TEC and the alleged  
26 abandonment by Postel, TEC's right to stop work, and the termination of the TEC subcontract. The  
27 parties agree that these claims, factual allegations and issues, along with those regarding damages,  
28 may be addressed in the second phase of trial. AWC is not precluded from asserting previously

1 submitted defenses/remedies to TEC's claims and TEC is not precluded from asserting previously  
2 submitted defenses/remedies to AWC's limited first claim for relief, so long as they are in accordance  
3 with the limitations outlined above.


4       The parties agree that the second phase of trial will address the alleged damages of the  
5 prevailing party of the first phase of trial. If TEC prevails at the first phase, then the second phase will  
6 include the remainder of TEC's breach of contract claims and its claim for relief for breach of  
7 contract claim against Travelers/AWC, as well as AWC's defenses and set offs to such claims. If  
8 AWC prevails at the first phase of trial, then the second phase will include the remainder of AWC's  
9 claims for relief against TEC, including the first cause of action (concerning delay and workmanship),  
10 the second cause of action, and the fifth cause of action against TEC/Travelers, as well as the  
11 remainder of TEC's claims regarding unpaid work and AWC rights are reserved and not waived to  
12 contest such claims of TEC. The non-prevailing party in the first phase may present defenses in the  
13 second phase but will not assert any further cause of action for damages pled in the respective  
14 complaint, counterclaim or third party complaint (other than noted above). The parties agree that the  
15 allegations in these remaining claims for relief are so closely associated with damages, and in many  
16 instances are argued in an effort to adjust damage calculations, that it is impracticable not to present  
17 them together.

18       Furthermore, the parties agree that for the purposes of the first phase of trial, to the extent the  
19 parties will introduce evidence regarding the total amount allegedly owed to TEC, it will be limited to  
20 evidence regarding communications between the parties through March 16, 2012. The parties further  
21 agree that TEC is permitted to introduce the work orders, invoices, and supporting documents related  
22 to Invoices 4601, 4612, 4626, and 4630, and agree that TEC witnesses will only speak as to the  
23 general amounts listed on the work orders or invoices unless AWC introduces evidence challenging  
24 the accuracy of the same. For the first phase of trial, the parties reserve their rights to address the total  
25 amount owed to TEC on contractual, procedural, and legal grounds. The parties also agree that the  
26 prove up and/or determination of the exact amounts owed to TEC is reserved for the second phase of  
27 trial, if necessary.


1 In the interest of judicial economy and avoiding undue expense to the parties, the parties agree  
2 that the second phase of trial should be stayed until the Court has made a decision on the first phase of  
3 trial, allowing for at least two months between phases. Furthermore, the parties agree that the witness  
4 list, exhibit list, motions in limine and trial brief will be provided separately for each phase. Upon  
5 conclusion of the first phase, the parties with the Court's guidance, will agree upon a new schedule for  
6 providing a second set of witness lists, exhibit lists, motions in limine and trial briefs in preparation for  
7 the second phase.

8 DATED this 24th day of November, 2015.

9 THE FAUX LAW GROUP

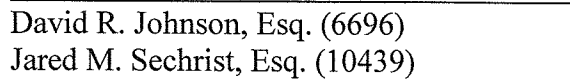
10   
11 Kurt C. Faux, Esq. (003407)  
12 Willi H. Siepman, Esq. (002478)  
13 1540 W. Warm Springs Road, #100  
14 Henderson, Nevada 89014  
15 *Counsel for Archer Western Contractors, LLC*  
16 *and Travelers Surety and Casualty Company of*  
17 *America (Bond No. 105478077)*

KEMP, JONES & COULTHARD, LLP

18   
19 Spencer H. Gunnerson, Esq. (008810)  
20 Nathanael R. Rulis, Esq. (011259)  
21 3800 Howard Hughes Parkway  
22 Las Vegas, Nevada 89169  
23 *Counsel for The Erection Company*

WATT, TIEDER, HOFFAR  
& FITZGERALD, LLP

/s/ David Johnson

24   
25 David R. Johnson, Esq. (6696)  
26 Jared M. Sechrist, Esq. (10439)  
27 3993 Howard Hughes Parkway, Suite 400  
28 Las Vegas, Nevada 89169  
*Counsel for Travelers Casualty & Surety Co.*  
*(Bond No. 105707041)*

**ORDER**

IT IS SO ORDERED:



United States District Court Judge

DATED: November 25, 2015