

APPROVED BY COURT
06/30/2025

DISTRICT COURT, EL PASO COUNTY, COLORADO Address: 270 South Tejon Colorado Springs, CO 80901 Phone: (719) 452-5000	DATE FILED June 30, 2025 11:54 AM CASE NUMBER: 2024CV31928  DAVID SCOTT PRINCE District Court Judge
PLAINTIFF: ADB COMPANIES, LLC v. DEFENDANT: COLORADO SPRINGS UTILITIES, AN ENTERPRISE OF THE CITY OF COLORADO SPRINGS, COLORADO	▲ Court Use Only ▲
	Case Number: 2024CV31928 Div.: 2
PROPOSED CASE MANAGEMENT ORDER	

The parties, through their respective counsel, submit the following Proposed Case Management Order pursuant to C.R.C.P. 16(b):

The virtual case management conference is scheduled for February 7, 2024 at 8:30 a.m.

1. The “at issue” date is December 23, 2024.
2. The Responsible Attorney’s name, address, phone number, and email address:
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3. **Meet and Confer:** Counsel for Plaintiff and Defendant conferred on **December 11, 2024** concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A)-(E).

4. **Brief description of the case and identification of the issues to be tried:**

Plaintiff's Description of the Case:

On August 5, 2022, Plaintiff entered into a \$266,000,000 contract to provide Defendant with an underground citywide fiber optic communications network (“Contract”). Plaintiff prepared for the massive project by sending scores of employees, engaging 20+ subcontractors, mobilizing tens of millions of dollars in heavy equipment, and leasing two facilities for employees and materials. Defendant committed to providing Plaintiff with blanket regional permits to facilitate its work, seemingly allowing for the swift completion of each region of the project. However, as construction work began, Defendant was unable to keep up with the locating demands of the project, resulting in delays.

The City of Colorado Springs subsequently limited Plaintiff to 20 permits at a time, crippling Plaintiff's work schedule. When Defendant raised from time to time issues with delays—often caused by Defendant's own locating and permitting restrictions—Plaintiff responded to and resolved issues as necessary and never was in default under the Contract. Defendant eventually acknowledged its own locating problems and requested Plaintiff to place a bid out to subcontractors who would assume Defendant's duties. Defendant rejected all five bids assembled by Plaintiff.

On April 30, 2024, Defendant expressly terminated the Contract “for convenience” effective May 30, 2024, pursuant to Section 15.03 of the Contract. Defendant further ordered Plaintiff to immediately stop all work on the project. Defendant's stop work order left numerous construction work zones open and dangerous to the public.

The Contract expressly sets forth categories of damages to which Plaintiff is entitled in the event of a termination for convenience. Plaintiff properly presented to Defendant invoices for work completed pursuant to the terms of the parties' Contract. Defendant ignored its contractual duties to pay such invoices within 30 days.

Plaintiff brings suit against Defendant for breach of contract. Defendant breached the Contract by failing to pay Plaintiff's invoices, failing to release retention, improperly charging for liquidated damages, and refusing to compensate Plaintiff for its reasonable damages as provided under Section 15.03 of the Contract "Termination for Convenience" among other breaches. Plaintiff further brings suit for breach of the implied covenant of good faith and fair dealing, unjust enrichment, and attorney's fees as provided in the Contract.

Plaintiff also brings suit for two declaratory judgments. First, Plaintiff seeks a declaration that Plaintiff is not liable for any costs of corrected work by Defendant because Defendant did not terminate the Contract for cause or provide Plaintiff with a notice of deficiency and an opportunity to cure. Second, Plaintiff seeks a declaration that Defendant's purported degradation fees are factually unsupported and unlawful, thus Plaintiff is not liable for payment of such fees.

Defendant filed counterclaims against Plaintiff for breach of contract and a declaratory judgment limiting Plaintiff's damages to those enumerated under Section 15.03A of the Contract and reducing the scope of the attorney's fees available to Plaintiff under the Contract. Plaintiff denies such allegations forming the basis of Defendant's counterclaim for breach of contract and denies that Defendant is entitled to any such declaratory relief.

Defendant's Description of the Case:

Colorado Springs Utilities (“Utilities”) is an enterprise of Defendant City of Colorado Springs on (“Defendant”). Utilities is installing a fiber optic to enhance utility operations, allow it to better serve customers, and meet the needs of the thriving Colorado Springs community. The completed fiber optic network will allow Colorado Springs to be one of the best-connected cities in the country, enabling the highest-speed internet connectivity for homes and businesses. Utilities issued a Request for Proposal to interested parties as to the installation of fiber optic cable in the first parts of Colorado Springs. One such interested party was Plaintiff, who submitted a proposal and was one of the contractors selected by Utilities to install the fiber optic network.

Utilities and Plaintiff entered into an Owner Contractor Agreement with an effective date of August 5, 2022 (“Contract”). Utilities only issued two (2) task orders against the Contract, which is not a “\$266,000,000 contract” as alleged by Defendant.

Plaintiff’s performance of the Contract got off to a rocky start right away. By November 10, 2022, Plaintiff’s initial Project Manager was already submitting a Process Improvement Plan. Additionally, numerous key members of Plaintiff’s team were either terminated or retired. By December 2022, Utilities was forced to send a Notice of Deficient Performance to Plaintiff, which centered primarily around delayed performance.

In addition to such delayed performance, Utilities was forced to issue numerous Stop Work Notices to Plaintiff, especially as to serious safety issues that continued through April 2024. Plaintiff also had extreme difficulty in closing permits. There were permits that were open for eighteen months to two years before being closed (if ever) by Plaintiff. As of April 2024, Plaintiff and its subcontractors had pulled 582 permits. Of that amount, only 155 had been closed, which

left 392 permits as open. Of the 392 open permits, only 27 were in progress. Finally, Plaintiff damaged public and private property in its performance that was never repaired/restored and/or for which Plaintiff refused to repair/restore. Utilities has had to repair/restore and continues to repair/restore such damage.

For the above reasons, Utilities issued a Stop Work Notice and Termination for Convenience on April 30, 2024. Utilities has continued the fiber optic project with other vendors.

In October 2024, Plaintiff commenced this action and asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and declaratory judgment. These claims are barred by affirmative defenses of lack of subject matter jurisdiction, breach of contract, failure to satisfy a condition precedent, release and/or waiver, accord and satisfaction, estoppel, unclean hands, and setoff and/or recoupment.

Based on the actions and inactions of Plaintiff, Defendant asserts claims for breach of contract and declaratory judgment. Defendant breached the Contract through its defective performance, delayed performance, and failure to follow safety requirements.

Defendant also seeks declaratory judgment that (1) Plaintiff only issued two (2) task orders pursuant to the terms of the Contract, (2) Plaintiff only may potentially recover the limited scope of relief permitted by Section 15.03.A of the General Conditions of the Contract associated with termination for convenience (if at all), and (3) Plaintiff only is permitted reasonable attorneys' fees pursuant to Section 15.03.A.3 of the General Conditions of the Contract "incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others" and not the attorneys' fees sought in the First Amended Complaint.

5. **The following motions have been filed and are unresolved:** None.

6. **Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b):**

Plaintiff: This is a complex construction case involving the breach of a \$266,000,000 contract and significant damages. Defendant has lodged counterclaims, as well. The case will require extensive and greater than average discovery consisting of timely production of all relevant documents in the possession of the parties, timely production of material witnesses for deposition, and expert testimony in many areas.

Plaintiff believes that the discovery limitations provided in C.R.C.P. 26(b)(2) are appropriate for this case, with the exception of the number of depositions set forth in C.R.C.P. 26(b)(2)(A), which should be expanded to include the parties, retained experts, and five (5) additional persons per party. This slight modification to the default provisions is warranted given the complex issues and extraordinary damages presented in this case. The parties also reserve the right to seek additional discovery with a specific showing of good cause for each instance in which a party seeks to exceed those limits. The parties will attempt to confer and work together to resolve any disputes concerning the scope and extent of discovery disputes prior to seeking court involvement.

Defendant: Defendant agrees with Plaintiff this is a “complex construction case” that will involve “extensive and greater than average discovery.” Defendant alleges damages in excess of \$60 million dollars associated with a project that took place over the course of several years. There are numerous individuals likely to have discoverable information relevant to the claims and defenses who are current employees of Plaintiff or who are former employees of Plaintiff. Additionally, there were many subcontractors and suppliers of Plaintiff whose employees/former

employees are also likely to have discoverable information relevant to the claims and defenses in this action.

Defendant believes that the discovery limitations provided in C.R.C.P. 26(b)(2) are appropriate except for the following:

- (1) Ten (10) non-party depositions (excluding document depositions) due to the number of current Plaintiff employees, former Plaintiff employees, and numerous subcontractors and suppliers who are likely to have discoverable information relevant to the claims and defenses.
- (2) Thirty (30) Requests for Production of Documents.

Defendant believes the above discovery limitations balance the need for Defendant to defend against over \$60 million dollars in damages with the associated costs and fees of such discovery.

7. The parties engaged in an unsuccessful pre-suit mediation as required by the Contract. The prospects for settlement are unknown until the parties engage in discovery.

8. **Deadlines for:**

- a. Amending or supplementing pleadings: **April 7, 2025**
- b. Joinder of additional parties: **April 7, 2025**
- c. Identifying nonparties at fault: **January 6, 2025**

9. **Dates of Initial Disclosures: January 21, 2025**

Objections, if any, about their adequacy: The parties agree to confer regarding any objections to the adequacy of their disclosures. If the parties are not able to resolve such matters, they will seek the intervention of the Court.

At this time, Defendant objects to Plaintiff's Initial Disclosures as (1) they fail to identify specific names, addresses, and telephone numbers of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific information that each such individual is known or believed to possess and (2) they only identify 703 pages of documents for a case where Defendant alleges over \$60 million dollars in damages associated with a project that took place over the course of several years (of which 260 pages were already exhibits to the Complaint).

10. **If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosure:** Non-applicable.

11. **Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):**

- a. Depositions:
 - i. Plaintiff's Position: Depositions shall be limited to the parties, all disclosed experts pursuant to C.R.C.P. 26(a)(2), and five (5) additional depositions per party.
 - ii. Defendant's Position: Depositions shall be limited to the parties, all disclosed experts pursuant to C.R.C.P. 26(a)(2), and ten (10) additional depositions per party (which shall exclude document depositions).
- b. Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): No modification.
- c. Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): 30 Requests for Production of Documents.
- d. Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): No modification.
- e. Any examination per C.R.C.P. 35: None

12. **Number of experts and subjects for anticipated expert testimony:**

Plaintiff: At this time, Plaintiff anticipates designating four (4) retained expert witnesses specializing in the fields of project management, construction contracts, accounting, and economics. Plaintiff reserves the right to designate rebuttal experts in the same or similar fields of experts disclosed by Defendant.

Defendant: Defendant currently does not anticipate any affirmative expert witness but at this time, anticipates retaining expert witnesses in response to Plaintiff's expert witnesses (which may be four (4) retained expert witnesses based on what Plaintiff states in Section 12). Defendant reserves the right to identify expert witnesses as permitted by C.R.C.P. 26(a)(2) and this Case Management Order.

13. **If more than one expert in any subject per side is anticipated, the Party(s) must state the reasons why such expert is appropriate, consistent with proportionality factors in C.R.C.P 26(b)(1), and any differences among the positions of multiple parties on the same side:**

- a. Plaintiff's Position: The Parties will resolve such issues regarding expertise by agreement or seek leave of Court.
- b. Defendant's Position: The Parties shall not more have than one expert in any subject matter without the prior agreement of the parties or leave of the Court.

14. **Proposed deadlines for expert witness disclosures:**

a. **Production of expert reports and disclosures:**

- i. **Plaintiff/Counter-Claimant: 126 days** before the commencement of trial.

ii. **Defendant/Counter-Defendant: 98 days** before the commencement of trial.

b. **Production of Rebuttal expert reports: 77 days** before the commencement of trial.

c. **Production of Expert Witness Files: Within 7 days** after expert disclosures.

The “file” should include the expert’s entire file, including any billing records, literature reviewed or relied upon, all documents containing the witness’s markings, such as construction records, depositions, or other documents reviewed, or notes, subject to the privileges set forth in C.R.C.P. 26(c)(4)(D).

a. **State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C):**

Not-applicable.

15. **Oral Discovery Motions.** The parties will abide by this Court’s Pretrial Order when conducting discovery and will abide by the procedures set forth by this Court if a discovery dispute arises.

16. **Electronically Stored Information.** The parties are negotiating an ESI and Paper Document Production Protocol. If the Parties are unable to negotiate such an ESI and Paper Document Production Protocol, they will set a Status Conference.

17. **Parties’ best estimate as to when discovery can be completed:** 49 days before trial.

18. **Parties’ best estimate of the length of trial:**

- Plaintiff’s Position: 10 trial days.
- Defendant’s Position: 15 trial days.

19. **Trial Date:** Trial will be set at the Case Management Conference.

20. **Other appropriate matters for consideration:** The caption of this case should be changed as to Defendant to state “City of Colorado Springs on behalf of Colorado Springs Utilities” based on the First Amended Complaint, the Contract, and the City Code.

Respectfully submitted this 4th day of February, 2025.

s/ Andrew T. Hepworth

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CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this ____ day of _____, 2025.

BY THE COURT:

District Court Judge