

1 for their final cost proposal.

2 At that point Whiting Turner would also have
3 a major input and provide their selection to ForestCity
4 for approval. And at that time we would review the
5 final packages and make, you know, and say that is the
6 contractor.

7 Q. That is a very owner-involved process.

8 A. ForestCity is a general contractor. We got
9 away from it years ago because development goes up and
10 down. But we are a very hands-on group and we do
11 understand construction. And we have done it
12 ourselves. So, you know, we pride ourselves on, you
13 know, producing quality projects on time and on budget,
14 or that are under budget, which this project was under
15 budget.

16 Q. Oh, really? I wasn't aware of that.

17 So you were involved in obviously with the
18 selection of Mojave --

19 A. Yes.

20 Q. -- as a subcontractor?

21 A. Along with other ForestCity entities -- or
22 personnel.

23 Q. Okay. And do you go any further down the --

24 A. No.

25 Q. -- subtier?

1 And when it comes to, I guess, management of
2 payments, are you -- is the owner involved in managing
3 payments to subcontractors?

4 A. No.

5 Q. So would you only then be approving payments
6 to Whiting Turner, or how did the whole payment process
7 work?

8 A. The payment process was also pretty detailed.
9 It was detailed in development agreement of how it
10 would be done. Once a month all the subcontractors
11 would provide Whiting Turner with their billing
12 information. I would review all the detail of Mojave's
13 billing per se. Because it's billed on a percentage of
14 completion, I would say yes or no, or this area is not
15 what he is billing for or whatever; we would make
16 corrections.

17 At that point, when that was corrected, we
18 would sit down with the City staff and walk the
19 project. They would also review the completion
20 percentages, as well as the architect at the same time.
21 When that was -- when everybody agreed to that package,
22 then we would -- it would be signed by the architect.
23 I would send that package to Cleveland, where the
24 executive vice president was required to initial off to
25 make sure, which he understood that I went through it

1 pretty thoroughly.

2 And then the invoice would at that point be
3 put together -- that billing would be put together with
4 our invoice, for our fees and architectural fees or any
5 other fees we would have a combined invoice of
6 everyone's. That would be submitted to the City. The
7 City had a five-person signoff of that invoice.

8 At that time it would be sent to the trustee
9 for the project, which is I believe Bank of America.
10 They would at that time wire transfer funds to Whiting
11 Turner for their billing. They would wire transfer
12 ForestCity, which in turn we would wire transfer to our
13 third-party consultants.

14 Q. And that happened every month?

15 A. Every month.

16 Q. Wow. So how long would that process take for
17 the approval of a billing?

18 A. We were required to do that within ten days
19 in the development agreement. The City had -- as soon
20 as we completed our process, the City had ten days to
21 do it. We were following under the State statute of I
22 believe 45 days, which we always met.

23 Q. Wow. So I guess just to backtrack a tiny
24 bit, how exactly did the whole development -- because
25 it was privately owned property, but there was

1 obviously a public component, I guess, in some way.

2 Can you describe to me how that sort of worked?

3 A. It was a private public partnership. The
4 funding came from Build American Bonds, and we were
5 able to construct and develop it for the City. And we
6 negotiated for land costs to do the trade of the two
7 parcels for the rest of it.

8 Q. Okay. So did you have a requirement for
9 Whiting Turner concerning the Disadvantaged Business
10 Entities percentage that was to be met or to try to be
11 met on the project?

12 A. That was -- during our negotiations with the
13 City, it was at a time when they were laying off
14 people. It was a tough time to sell a new City Hall.
15 The City had a lot of pressure on them from the
16 minority groups to say, If you are going to do this,
17 please get participation. The City does not have a
18 diversity program that they can enforce in the city.

19 So they came to us and said, We would like
20 you to try and get the participation. And we agreed as
21 a goal to try to get 15 percent. We included that goal
22 to Whiting Turner's contracts. And from there they
23 managed how that was obtained.

24 Q. So it was a city requirement essentially?

25 A. Well, it was a request, a strong request.

1 Which we ended up getting over 20 percent at the end of
2 the day.

3 Q. So did you leave it to Whiting Turner, then,
4 to enforce it or encourage subcontractors to meet
5 certain goals?

6 A. During that first interview process before,
7 you know, we awarded contractors, we told them that it
8 was an important factor in selection, as well as for
9 selection purposes. They needed to come to the table
10 with some diversity.

11 Q. So were they required to identify like which
12 areas they would be, you know, meeting diversity with?

13 A. Early on, no. They basically came back and
14 said, We feel for this contract we can get 8 percent or
15 we can get 10 percent, you know. And we monitored
16 them. And most of the contractors met their goals.
17 And the ones that didn't actually we had them
18 contribute.

19 Q. How do you mean?

20 A. There was one contractor that poorly missed
21 his goal. And we had him -- well, he volunteered to --
22 in the minority publications take out ads for his
23 company, which was a benefit to the minority magazines
24 and to the minority groups. So we convinced them to do
25 things of that nature.

1 Q. Okay. Was there -- I guess speaking of if
2 they didn't meet their goal, was there any consequence?

3 A. No. We would only ask that they do
4 something.

5 Q. Okay.

6 A. It was monitored on a monthly basis during
7 the pay application process.

8 Q. Because they were required to submit like the
9 certificates of DBE with their pay aps?

10 A. Yeah.

11 Q. So did you check that with Whiting Turner on
12 a monthly basis?

13 A. No. They provided ForestCity with a report.
14 It was based off costs of the project, costs of each
15 subcontractor. They provided us a breakdown and we
16 never audited.

17 Q. Then I guess in conjunction with payments,
18 did you require a certain waiver or releases from subs
19 and suppliers for Whiting Turner to get those, or did
20 you rely on Whiting Turner to make sure that they were
21 obtaining the proper releases?

22 A. We did get all releases.

23 Q. How did you monitor, I guess, what releases
24 you would need?

25 A. They had a -- Whiting Turner had a breakdown

1 within the pay application for the previous month's
2 payments. We would get unconditionals, you know, for
3 that breakdown after the payment and they would provide
4 us conditional waivers with the initial payment. And
5 Whiting Turner had to do unconditionals and
6 conditionals to us for the project too.

7 Q. So did you have anyone in your offices
8 tracking, say, preliminary notices with releases, or
9 how did you --

10 A. Yes, that went to our corporate.

11 Q. So someone in Cleveland was handling that?

12 A. Yes. Michelle did -- Michelle Lagina did
13 that. She bugged me all the time. When am I getting
14 my releases?

15 Q. So did you rely on a combination of Whiting
16 Turner keeping track of which suppliers were supplying
17 to the projects under subcontractors, or did you have
18 your own tracking system?

19 A. We did not get conditionals or unconditionals
20 from suppliers. It was from the first tier. So we
21 would get -- like, Mojave would provide us conditionals
22 and unconditionals for --

23 Q. Its payments?

24 A. Yeah.

25 Q. Then you weren't tracking downstream subs and

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 23

1 suppliers to Mojave?

2 A. No.

3 Q. Is there a reason why you weren't tracking
4 downstream?

5 A. Because that is not part of our standard
6 process.

7 Q. Did you rely on Whiting Turner to be tracking
8 downstream?

9 A. No, not in our contract it's not required.

10 Q. Were you concerned about lien claims from
11 people who might be unpaid under the subcontractor's
12 second, third tier suppliers or subs?

13 A. Concerned about it? It happens all the time.

14 Q. But, I mean, not concerned enough to require
15 that, I guess, releases be provided?

16 A. It hasn't been in our past history a major
17 concern for us on subtiers and suppliers.

18 Q. Okay. Can you tell me what the status of the
19 project is now?

20 A. Well, on February 14th of this year it's
21 going to be one year opened. We had substantial
22 completion on February 14th of 2012.

23 Q. Is the project totally closed out at this
24 point?

25 A. No.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 24

1 Q. And what is, I guess, left open?

2 A. The contract with Whiting Turner is still
3 open.

4 Q. Why is it open?

5 A. We were still negotiating some requests from
6 them specifically. We still have the Mojave contract
7 open because there is payments still within that --
8 their line items or schedule of values for the
9 generator, which I held after -- it was pretty much
10 paid out, but it was the completion portion that's
11 there.

12 Q. So you are holding money for the generator
13 from Whiting Turner?

14 A. From Mojave.

15 Q. From Mojave. Do you recall offhand how much
16 you are holding? Is it the full cost of the generator
17 line item?

18 A. No. I would be surprised if it's \$30,000.
19 It's somewhere in there, I think.

20 Q. So the project has a permanent C of O?

21 A. Correct.

22 Q. Do you recall when you got that?

23 A. On February 14th.

24 Q. And then -- I mean, I am sure you generally
25 know that we are here because Cashman didn't get paid

1 for the generator and the UPS equipment that it
2 supplied to the project.

3 A. I have been told that.

4 Q. So when we talk about the generator and UPS
5 equipment, it's kind of a package deal. You know what
6 I am referring to?

7 A. Yes.

8 Q. So what is the status of the generator, UPS
9 equipment on the project now?

10 A. Well, it's installed. I am being told that
11 it would operate in case of an emergency. I have not
12 witnessed that. Due to a lack of some programming on
13 the system itself, it does not give my client, the
14 City, the opportunity to go into a laptop on site or
15 off site and monitor the status of the generator
16 systems, which is critical. Most buildings are fully
17 automated and have a building management system. And
18 they sit up in an office when they need to check to
19 verify that the fuel is correct, the batteries are
20 operating, how that system is operating after it starts
21 up for RPMs and the technical things that need to be
22 monitored on these systems in case of an emergency, and
23 that is not available.

24 Q. And so as a result of that, were you taking
25 any action against Whiting Turner or Mojave or --

1 A. We have been, you know, pushing to get
2 resolution of that.

3 Q. Of that issue?

4 A. Of that issue.

5 Q. So does that leave any pending issues between
6 you, your company, or ForestCity and the City of Las
7 Vegas?

8 A. The City is aware of the situation. Being
9 aware of it, they can manually go check things, which
10 they are doing, but they are not very pleased about it.
11 Because there is a fault on the generator panel.

12 Q. What do you mean? What does that mean?

13 A. It's a big red light that flashes.

14 Q. Like something is wrong?

15 A. Yeah.

16 (Exhibit 2 marked.)

17 BY MS. LLOYD:

18 Q. Can you take a look at this document? This
19 was produced in conjunction with a subpoena that I
20 issued to ForestCity. Do you recognize this document?

21 A. Yes. It's the one I provided. It's the last
22 executed pay application to Whiting Turner.

23 Q. Okay. And then if you go to page Bates stamp
24 5, can you tell me what -- under the electrical, that
25 first line item, it looks like there is a withholding.

1 Am I reading that correctly?

2 A. Yeah, there was a retainage still held.

3 Q. It looks like -- is that 792 or --

4 A. Yeah, it's --

5 Q. In that range?

6 A. Yeah, I believe.

7 Q. Is that still being withheld?

8 A. Yes.

9 Q. From Whiting Turner?

10 A. From Mojave.

11 Q. Through Whiting Turner, I guess. So why is

12 that being withheld?

13 A. We were closing out with Mojave. There were

14 several change orders that they had asked for that did

15 not get approved before this was done.

16 Q. So that line item is not related to the

17 generator equipment?

18 A. No.

19 Q. Do you have a breakdown of what it is related

20 to somewhere else?

21 A. Whiting Turner would. Whiting Turner held

22 all the files for this project. I did not keep -- they

23 are to provide me on disk the entire file system, which

24 I have not received because we haven't closed out yet.

25 So this is all I had available.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 28

1 Q. What type of file, like, recordkeeping
2 software do they use?

3 A. I don't know.

4 Q. There wasn't a requirement for a specific
5 program?

6 A. (Shakes head.)

7 Q. So that withholding on there is not related
8 to the generator?

9 A. No.

10 Q. In speaking with Nancy from Whiting Turner,
11 she seemed to indicate that it was related to the
12 generator. Unless I misunderstood -- I guess I am
13 trying to understand. Do you recall -- you are still
14 holding it, or have you paid it out?

15 A. No.

16 Q. You are still holding it?

17 A. Until a project is completely closed out with
18 a contractor, I do not release. I release 5 percent.
19 That is 5 percent, I believe. And then column, I think
20 it says 5 percent. I released under percentage
21 retainage; it's 5 percent. Until a project is closed
22 out, ForestCity's policy is we do not release all the
23 retainage. And it's not specifically to any certain
24 item.

25 Q. Well, that particular item shows both a

1 balance to finish and a retainage amount. Those are
2 two separate -- are those two separate -- because most
3 of the items show basically no balance to finish,
4 because they are all looking like they are complete and
5 have been paid out, except for some show retention. So
6 that's why I was trying to understand exactly what the
7 status of the payment to Whiting Turner was on that
8 particular item, because it looks like there is a
9 balance to finish and then a retainage amount.

10 A. The balance to finish was listed of the
11 contract change orders that we were still negotiating.

12 Q. Do you recall what those were about?

13 A. No.

14 Q. So did the owner withhold any funds from
15 Whiting Turner and Mojave related to the generator
16 beyond -- I think you identified 30,000?

17 A. That's all we did because it was a specific
18 line item. Mojave's contract would have -- or pay
19 application would have this cover sheet. And then they
20 were required to give us schedule of values for every
21 item of their scope of work, which entailed the
22 electrical, audio, visual, I mean, the whole breakdown.
23 It was a specific line item for the generator.

24 Q. So the generator line item was somewhere in
25 the range of 800,000. But if it was, would you have

1 withheld 800,000 or would you withhold an amount you
2 determined separately, or did you have a way of coming
3 up with what you were going to withhold?

4 A. The generator was already paid out before
5 this was brought to our attention. So I just refused
6 to pay any more on that line item.

7 Q. Okay. I guess what's the status of the
8 negotiations with Whiting Turner to close everything
9 out?

10 A. We are hoping to have it all closed out
11 within the next two weeks.

12 Q. Then what is your plan, I guess, in reference
13 to the operation of the generator equipment as far as,
14 you know, I guess sort of how that is going to work
15 with the City?

16 A. We have asked Whiting Turner to give us a
17 proposal on how they want to handle it. They have to
18 deal with their contractor.

19 Q. Have they come to you with any proposal yet?

20 A. No. They are in the -- they are just
21 following this process. That is all they can give us
22 the information.

23 Q. So is that item just going to remain open
24 until the litigation is complete?

25 A. Well, the lien has been bonded around. As

1 far as the City, the lien has been bonded. But
2 operationalwise I am not sure. We have been trying to
3 get resolution of this, so that I can go down and talk
4 to the City to determine exactly what their position is
5 on this.

6 Q. Okay. Did you have any involvement in
7 choosing the generator system requirements?

8 A. No, I am not an electrical engineer.

9 Q. So was that a JMA role as part of their
10 design services?

11 A. Yes. JMA, JBA.

12 Q. Did you have any involvement in approving the
13 system that was proposed by Mojave to be used?

14 A. No.

15 Q. Would that just have been JMA and Whiting
16 Turner?

17 A. It's a combination of JMA, Whiting Turner and
18 JBA.

19 Q. So would you have seen any of the submittals
20 concerning any type of the equipment that was being
21 supplied to the project?

22 A. No, not on that specific item, no. The
23 specifications are performance specifications. It
24 requires -- it will provide at least three different
25 manufacturers of equipment, three to five, which is our

1 requirement. We cannot single-source a product for
2 ForestCity. We are a public company. Any of those
3 manufacturers would have to meet the performance
4 specifications that the engineers design to. If
5 those -- that selection process, they are all equal in
6 the engineer's eyes as well as the owner's eyes, then
7 they can -- they are responsible for making sure that
8 system is complete.

9 (Exhibit 3 marked.)

10 BY MS. LLOYD:

11 Q. Take a look at this document. Have you seen
12 it before?

13 A. Yes.

14 Q. And when did you first see the lien?

15 A. I don't recall exactly when I saw the lien.

16 Q. Was it shortly after it was recorded?

17 A. At some point. Like I said, I can't give an
18 exact time.

19 Q. Did you -- it was forwarded to you from
20 Cleveland, your Cleveland offices?

21 A. Yes.

22 Q. And then what action did you take once you
23 were aware of the lien?

24 A. I took a copy over to Whiting Turner and
25 said, Address this issue.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 33

1 Q. And what did they say?

2 A. That is when it was bonded around.

3 Q. And so did you take any other action in
4 relation to the lien or the lien claim?

5 A. No.

6 Q. Did you have any discussions with Whiting
7 Turner about what happened or why there was a lien?

8 A. I asked what was going on and they said they
9 were trying to contact Mojave to find out.

10 Q. Did you do any inquiry beyond that
11 afterwards?

12 A. No.

13 MS. LLOYD: I don't think I have any other
14 questions.

15 MR. BOSCHEE: I think I have a couple.

16 EXAMINATION

17 BY MR. BOSCHEE:

18 Q. Looking at Exhibit 3, I understand that you
19 don't recall exactly what date that you saw that. Was
20 that the first time that you learned or ascertained of
21 the issue that has caused us to sit here today?

22 A. Well, this was not specific to the issues we
23 are sitting here today. It was a lien from Cashman for
24 equipment. That didn't explain why we are sitting here
25 today.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 34

1 Q. Well, what is your understanding of why we
2 are here today?

3 A. It's all hearsay.

4 Q. Okay.

5 MS. LLOYD: Depos are okay for hearsay.

6 THE WITNESS: When we started to commission
7 this building, we have a third-party commissioner on
8 the project. When they started to come out and test
9 equipment and do things, there was this flag that was
10 put on the generator system by our third-party
11 consultant concerning, you know, PCL or whatever. And
12 at that point it sat there and I kept asking, Is this
13 resolved? Is this resolved? And they said, No, not
14 yet, not yet. And finally it came out that -- how it
15 was told that there was an issue with Cashman and CAM.

16 BY MR. BOSCHEE:

17 Q. Yeah.

18 A. And they explained to me the situation. At
19 that point they didn't have all the detailed facts.
20 They just -- you know, they reassured ForestCity. It
21 was at an owner's meeting. We would have a meeting
22 prior to -- before the City came in. So in our meeting
23 they explained of the situation. And that they assured
24 us that we had final releases and things of that
25 nature. That put people somewhat to comfort and it was

1 bonded around. And we didn't know how -- we knew we
2 needed to get the program so that we could complete our
3 commissioning and move forward with the City.

4 Q. Prior to seeing this lien and getting this
5 from your corporate office, did you have any actual
6 knowledge that Cashman Equipment Company was involved
7 in what we will call the project? Have you ever heard
8 of them before?

9 A. I have been here for 24 years. I have heard
10 of Cashman. But no, generators show up, equipment
11 shows up. Who supplies it, who is installing it, I am
12 just relying on Whiting Turner to make sure it's done.

13 Q. Okay. And I mean, sitting here right now, do
14 you have any actual knowledge of when or whether
15 Cashman Equipment Company actually supplied the
16 generators to the project?

17 A. No, I don't.

18 Q. And following up on that, do you have any
19 specific recollection of when the generators were
20 delivered to the project?

21 A. Not specifically, no.

22 Q. Is it fair to say you just know that they got
23 there and it got put in and the construction kept
24 flowing?

25 A. Correct.

1 Q. Now, I had another question from my notes in
2 talking to you. Do you recall -- I believe there was a
3 pending log that you reviewed from time to time; is
4 that correct?

5 A. Every day.

6 Q. I didn't want to hold your feet to the fire
7 on the everyday thing, but I knew it was pretty much
8 every day. Do you recall seeing anything in the
9 pending log about change orders with respect to the
10 generators?

11 A. There was none.

12 Q. Okay. And again, just to clarify, your
13 company and you personally had played no part in the --
14 I guess we will call it the screening process for the
15 disadvantaged business entities that were used on this
16 project, did you?

17 A. No.

18 Q. And with respect to -- with respect to JMA's
19 involvement, you talked to Ms. Lloyd about this a
20 little bit earlier. Is it fair to say that their
21 primary job was to deal with the design and the design
22 changes once the project got going; is that fair?

23 A. Yes.

24 MR. BOSCHEE: I don't think I have anything
25 further.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 37

1 MS. LLOYD: I have a follow-up.

2 FURTHER EXAMINATION

3 BY MS. LLOYD:

4 Q. What is a pending log?

5 A. ForestCity requires all of our contractors to
6 keep track of any possible change or foreseeable change
7 and project a cost that could impact the project. We
8 don't like surprises. If you know you have a
9 problem -- if we know we have a problem out there with
10 some steel, we would indicate that on this pending log
11 and we would project a cost. So every month we knew
12 what our exposure was to the project in any changes.
13 It might end up being zero.

14 The City might come and say, Dave, I want you
15 to redo these floor plans, which they did. We would
16 put that on there and we would project a cost involved
17 in that. So that at the end of the day, every month we
18 knew what our true cost exposure was on a monthly basis
19 for finance purposes.

20 Q. Would you see, like, a pending cost if
21 Whiting Turner determined that, say, a sub missed
22 something and didn't bid it properly so they were going
23 to essentially put the cost back onto the sub? Would
24 they have notified you of something like that?

25 A. No.

1 Q. Or only if it was going to be an
2 owner-impacted change or potential cost?

3 A. It tracked -- if Whiting Turner missed
4 something in the contract itself, that item would be
5 put -- it would be tracked to Whiting Turner. If
6 ForestCity asked for a change, it would be listed as
7 ForestCity. And if the City made a change, it would be
8 City. Beyond that, nothing else went on that log.

9 Q. So it was only if, say, Whiting Turner was
10 going to ask for more money --

11 A. Right.

12 Q. -- related to a certain item.

13 So if they made a determination that, say,
14 Mojave missed something and it was in the drawings and
15 they should have included it and it wasn't going to be
16 a change to the owner, you wouldn't be notified --

17 A. No, I wasn't.

18 Q. -- an issue like that.

19 Talking about the generator, I guess,
20 delivery. Do you recall seeing the generators be
21 delivered?

22 A. I just saw them sitting there one day.

23 Q. Before they were in the box or however they
24 are housed in the equipment room, or after they were
25 already in the equipment room?

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 39

1 A. After they were already in the -- it's a wall
2 enclosure.

3 Q. Okay. Do you recall meeting Shane Norman of
4 Cashman Equipment Company?

5 A. His name doesn't sound familiar.

6 Q. It would have been around the time of the
7 lien, sort of the dispute concerning the payment
8 issues. He recalled, I guess visiting the site and
9 meeting you, but I don't know if you had recalled.

10 A. I met so many people.

11 Q. No, I am sure. Especially every day.

12 A. The name doesn't sound familiar, but I am not
13 saying I didn't meet him. I am just saying I don't
14 recall meeting him.

15 Q. But you don't recall having a conversation
16 concerning this bounced check and the issue with the
17 nonpayment of the generator?

18 A. I don't recall that.

19 MS. LLOYD: Okay. That is all I have.

20 (Thereupon, the deposition
21 concluded at 4:00 p.m.)

22

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24

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David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 40

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I, David Phillips, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action; that
I have read, corrected and do hereby affix my signature
to said deposition under penalty of perjury.

DAVID PHILLIPS, Deponent

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 41

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Christy L. DeJonker, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of David Phillips, commencing on Thursday, January 10, 2012, at 3:00 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 14th day of January, 2013.

CHRISTY LYN DeJONKER, CCR NO. 691

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada
corporation,

) Case No.

) A642583

Plaintiff,

vs.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE ELECTRIC, a
Nevada corporation; WESTERN SURETY
COMPANY, a surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety;
TRAVELERS CASUALTY AND SURETY COMPANY
OF AMERICA, a surety; DOES 1-10,
inclusive; and ROE CORPORATIONS 1-10,
inclusive;

Defendants.

DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF
CASHMAN EQUIPMENT COMPANY
KEITH LOZEAU

Las Vegas, Nevada
Tuesday, September 4, 2012

REPORTED BY: Tammy M. Breed, CCR NO. 305
JOB NO.: 164929

1 DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF CASHMAN
2 EQUIPMENT COMPANY, KEITH LOZEAU, taken at 400 South Fourth
3 Street, Las Vegas, Nevada, on Tuesday, September 4, 2012, at
4 9:30 a.m., before Tammy M. Breed, Certified Court Reporter, in
5 and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff:

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16 For the Defendants:

17 BRIAN W. BOSCHEE, ESQ.
18 SHEMAILLY A. BRISCOE, ESQ.
19 Cotton, Driggs, Walch, Holley
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I N D E X

WITNESS: KEITH LOZEAU

EXAMINATION

PAGE

BY: Mr. Boschee

4

E X H I B I T S

EXHIBIT

PAGE

Exhibit 1	Notice of 30(B)(6) Deposition of Person Most Knowledgeable of Cashman Equipment Company	9
Exhibit 2	Letter from Jennifer R. Robinson, Esq., Dated 8/31/12	10
Exhibit 3	Stop Payment on a check to Cashman Equipment in the amount of \$755,893.89, Dated 4/29/11, Bates CASH014	35
Exhibit 4	Application For Credit, Bates CASH001 to 002	51
Exhibit 5	Invoices and Bill of Lading, Bates CASH003 to 008	54
Exhibit 6	Subcontractor's Daily Log, The Whiting-Turner Contracting Company, Bates WTC00070 to 71	60

1 Las Vegas, Nevada; Tuesday, September 4, 2012

2 9:30 a.m.

3 -oOo-

4 Whereupon --

5 KEITH LOZEAU

6 having been first duly sworn to testify to the truth, was
7 examined and testified as follows:

8
9 EXAMINATION

10 BY MR. BOSCHEE:

11 Q. Can you please state your full name for the record?

12 A. Keith Daniel Lozeau.

13 Q. You'd better spell the last name for the court
14 reporter.

15 A. Yes, L-O-Z-E-A-U.

16 Q. You ever been deposed before, Keith?

17 A. No.

18 Q. This is the first time?

19 A. Yes, sir.

20 Q. Great. I'll run through a couple of ground rules
21 with you. I'm sure you talked about this with your counsel
22 but -- and you are represented by counsel, is that correct,
23 Jennifer --

24 A. Uh-huh.

25 Q. -- Robinson's here?

1 A. Yes.

2 Q. First, the oath you just took from the court
3 reporter is the same oath you take in a court of law. It
4 carries with it the same obligations and penalties that the
5 oath would take in court. So I just want to make sure you
6 understand that before we get started. Okay?

7 A. Yes, sir. Yep.

8 Q. Okay. You're not going to be able to remember
9 everything that I ask you about today, I'm sure, and I don't
10 want you to guess at anything. I don't want you speculating
11 or guessing at the questions I'm asking. But I am entitled to
12 your best recollection. So to the extent that you remember
13 anything related to the questions I've asked, I'm entitled to
14 know that, but don't guess at something. If you don't know,
15 you don't know, just let me know that. Okay?

16 A. Okay.

17 Q. The court reporter is going to make a transcript
18 about what we're talking about today, my questions and your
19 answers. Couple things related to that. I will do my best
20 not to ask a follow-up question while you're still answering,
21 if you would do me the same courtesy of not answering when I'm
22 asking a question. She can't transcribe us both talking at
23 the same time. Okay?

24 A. Understood.

25 Q. Along the same lines, your lawyer may object, may

1 tell you not to respond to one of my questions. I don't think
2 I've got anything like that in here, but she may make an
3 objection for the record. Let her finish before you say
4 anything or -- and I'll try to do the same, give her the same
5 courtesy as well. Okay?

6 A. Fair enough.

7 Q. The court reporter can't transcribe head nods, head
8 shakes.

9 A. (Witness nodding.)

10 Q. Just like that.

11 A. Right. Understood. Understood.

12 Q. Audible responses are going to be great for her. If
13 you need me to clarify any of my questions, if there's
14 something I asked that you don't understand, which is very
15 likely at some point in the morning, just ask me to clarify
16 something because it's very likely that -- I know exactly what
17 I'm talk -- what I'm asking about and you're going to hear a
18 question that I think is really artfully asked of you, and
19 you're going to be like, I don't have any idea what you're
20 talking about, Brian. Please clarify that. And I'd be happy
21 to do that. Okay?

22 A. Okay. Thank you.

23 Q. This is not -- I know that we're under a little bit
24 of a time crunch today, you need to be somewhere this
25 afternoon. That said, I don't want this to be an endurance

1 contest. If you need to run down the hallway to the restroom,
2 get something to drink, anything like that, we can take a
3 five-minute break. It's not a big deal. Just let me know and
4 say, hey, can we take a quick break, and we'll go off the
5 record and take a quick break. All right?

6 A. Cool.

7 Q. Kind of related to what I said earlier, your counsel
8 may make objections for the record at some point during this
9 proceeding. Unless she -- however, unless she instructs you
10 not to answer my question, let her make the objection. I may
11 or may not respond. And then go ahead and answer the question
12 at that point. Okay?

13 A. Okay.

14 Q. Cool.

15 Are you on any medication today that would prevent
16 you from giving your best testimony?

17 A. No.

18 Q. Is there any other reason why you can't give your
19 best testimony today?

20 A. No.

21 Q. Don't have a cold or a flu or anything?

22 A. Other than a three-day weekend, everything's fine.

23 Q. I've got that same problem working for me this
24 morning.

25 Let me ask you, other than speaking to your attorney

1 have you done anything to prepare for this deposition this
2 morning?

3 A. I went through back -- excuse me. I went back
4 through some of my e-mails from the time period, but there was
5 a lot of things that were frankly verbal, um, leading up to a
6 lot of this very early on. So I -- there's not -- there
7 wasn't a lot of preparation I was able to do, so I had to do
8 some review of some e-mails but that's about it.

9 Q. Sure. And that's part of the reason that we're
10 taking a deposition today, because a lot of this was verbal
11 and there were meetings and whatnot and I just need to know
12 kind of what happened.

13 Other than your counsel have you spoke -- did you
14 speak to anybody about your deposition today?

15 A. No.

16 Q. Nobody at the company?

17 A. At Cashman?

18 Q. Yeah.

19 A. There's a couple people at Cashman that know I'm
20 here. My supervisor, Joel Larson, and Shane Norman, who
21 you've already deposed I think, so -- but other than that, no.

22 Q. Shane was the one I was kind of -- did you talk to
23 Shane at all about the substance of what you were coming here
24 to do today, or does he just know that you're here?

25 A. He just knows I'm here.

1 Q. Anything substantive you talked about with anybody
2 at Cashman other than, hey, I've got to go take this
3 deposition? I'm going to this deposition, I'm going to be out
4 of the office for a few hours?

5 A. Yeah -- no.

6 Q. Okay. Did you look at -- other than the e-mails we
7 just talked about, did you look at any documents to prepare
8 for this deposition?

9 A. No.

10 MR. BOSCHEE: I'm going to mark as the first
11 exhibit, it's the amended, submitted depo notice.

12 (Exhibit No. 1 marked.)

13 Q. (BY MR. BOSCHEE) Take a look at this exhibit. This
14 is an amended deposition notice that we sent out, which is why
15 you're here today.

16 A. Uh-huh.

17 Q. Do you recall receiving a copy of this?

18 A. Yes, sir.

19 Q. Go to page 3.

20 A. (Witness complying.)

21 Q. Excluding items three and four, which we'll talk
22 about in just a second, are you -- to the best of your
23 understanding are you the person most knowledgeable from
24 Cashman with respect to items one, two, five, six, seven, and
25 eight? And take a second.

1 A. Likely so.

2 Q. Okay. I'm going to mark the next -- keep that in
3 front of you.

4 A. Okay.

5 Q. I have another exhibit that I just received this
6 morning. I'm literally going to ask you one question.
7 (Exhibit No. 2 marked.)

8 Q. (BY MR. BOSCHEE) Okay. I don't know that you've
9 actually seen this letter before. You may have.

10 A. Nope.

11 Q. Okay. My question to you is, without going back to
12 items three and four in your -- in the deposition notice,
13 relates to insurance policies and insurance claims basically.
14 My understanding from this letter is that you are not the
15 person most knowledgeable from Cashman as to insurance-related
16 issues; is that correct?

17 A. That is correct.

18 Q. Just to save us some time because I've now deposed
19 two folks over at Cashman and I don't want to have to keep
20 doing this, do you happen to know off the top of your head who
21 I would need to talk about insurance-related issues, who that
22 person might be?

23 If you don't know, you don't know. That's fine.
24 I'm just trying to save everybody a little bit of time going
25 forward.

1 A. There's one of two people.

2 Q. Okay.

3 A. And the only reason I say it's one of two people is
4 we had some turnover. Our previous CFO would have been the
5 person.

6 Q. Uh-huh.

7 A. Our new CFO was not present when all this happened.

8 Q. Okay.

9 A. So his name is Lee Vanderpool. The president of the
10 company is Mike Pack, and Mike at the end of the day might be
11 the best person to discuss insurance and that kind of --

12 Q. Mike Pack was the CFO at the time?

13 A. No, he is president.

14 Q. Okay.

15 A. And he has been president throughout.

16 Q. Who was the CFO at the time?

17 A. Jim Moore.

18 Q. Jim Moore.

19 A. And quite frankly, I'm not sure Jim Moore would be
20 available to be deposed or not because he has terminal cancer.

21 Q. That would probably be no.

22 A. Yes.

23 Q. Okay. I assume -- is that why he left the company?

24 A. That is.

25 Q. Okay.

1 A. So I'm sorry to just give kind of an obtuse answer,
2 but that's -- that's the situation.

3 Q. No, that -- that stinks. Okay.

4 Well, it could be -- it could be something where
5 counsel may pick up the phone and ask a question or two and
6 get to the bottom of this, but I don't want -- I'm certainly
7 not going to drag him in for that.

8 Okay. But other -- other than the insurance, who we
9 may need to talk to Mike or Lee about, you're good to go on
10 everything else in the depo -- in Exhibit 1 there?

11 A. Yes, sir..

12 Q. What is your position with Cashman?

13 A. I am the sales and rental manager of the power
14 division.

15 Q. Okay. And how long have you had that position?

16 A. Six years.

17 Q. Okay. Did you have a different position with the
18 company prior to that?

19 A. I was just a sales rep.

20 Q. Okay. What are your -- as -- as manager of the
21 power division, what are your job responsibilities with that
22 position for the last six years or so?

23 A. All of our account managers statewide report to me,
24 and basically I'm responsible for growing our sales and rental
25 business.

1 Q. Okay. How long have you been employed with Cashman
2 overall?

3 A. Sorry, I have to think because I left for two years.
4 Overall about 19 years.

5 Q. Well, walk me through that. You started with
6 Cashman when?

7 A. '91. Left in '97.

8 Q. Okay.

9 A. Came back in '99. Been with them ever since.

10 Q. What did you do with them from '91 to '97?

11 A. I was a technician for a good part of the time, and
12 when I left I was a salesperson.

13 Q. What were your job responsibilities as technician?
14 Walk me through a typical day in the life of a Cashman
15 technician.

16 A. Okay. We repair anything that we sell, and that's
17 primary Caterpillar products but there -- there's some other
18 products associated with that too. I worked on generators,
19 electrical equipment, engines, some machinery. You know, the
20 idea was to get things running before warranty repairs,
21 startups, those kind of things.

22 Q. Okay. And that was what you did before you become a
23 sales rep?

24 A. Yes, sir.

25 Q. Okay. And when did you kind of transition from tech

1 into sales?

2 A. I believe it was 1995.

3 Q. Okay. And then when you came back in '99, were you
4 again a sales rep or --

5 A. I was --

6 Q. Okay.

7 A. -- yes.

8 Q. Okay. And you've had that until about six years
9 ago?

10 A. Correct.

11 Q. Which would be 2006, 2007, sometime in there?

12 A. Yes.

13 Q. With respect to your current job, does your current
14 job require any of your, I guess, technical background or your
15 background as a technician? Does that come into play with
16 what you do now?

17 A. Yes.

18 Q. Okay. How so?

19 A. What we do is -- the products and services that we
20 sell -- everything is a very technical sale, so it is
21 tremendously helpful to be able to fall back on that
22 background and have an understanding when I have somebody
23 telling me something in the field that they have going on that
24 I -- I have a reasonable knowledge of the challenges that they
25 have and what they need to do to fix them.

1 Not to mention, prior to the sale I can have a
2 discussion with architects and engineers and contractors and
3 those kinds of things and talk them through what they're
4 buying, why they're buying it, and what we're going to have
5 to -- what challenges and opportunities we'll face during
6 installation and start-up.

7 Q. Okay. With respect to specifically the City Hall
8 project -- and that's pretty much what we're going to be
9 talking about today.

10 A. Uh-huh.

11 Q. -- do you have a general familiarity with the
12 start-up -- well, your word -- start-up, installation, ah,
13 requirements for -- for what's going on over there right now?

14 A. Yes.

15 Q. Okay. And what I'm thinking of specifically are --
16 there's some codes that counsel and I are still -- still
17 arguing about a little bit with the judge. But there's some
18 codes that are -- as I understand, are required to get things
19 up and running over there. Do you have a familiarity with
20 that?

21 A. Generally speaking, yes. And the reason I say
22 generally speaking is --

23 Q. That's fine.

24 A. -- each municipality has their own rules and
25 regulations. And then sometimes the design engineer has input

1 into that. And so they're not unfortunately universal to
2 every project.

3 Q. Okay. Well, I guess what I'm -- what I'm wondering,
4 specifically with respect to this project, my understanding is
5 that -- that there is some concerns or some issues with --
6 with getting this -- at this stage, like tomorrow, getting
7 this stuff started up and installed and running with these
8 codes today. Could you -- could you explain to me what -- if
9 you know, what your concerns are with respect to that?

10 A. Only to the extent that we (indicating) discussed it
11 on the phone, and there's -- there's two --

12 MS. ROBINSON: I'm going to object --

13 Q. (BY MR. BOSCHEE) I don't want to know anything -- I
14 don't want to know anything you discussed with Jennifer. I
15 don't want to know anything that -- any attorney/client
16 communication.

17 MS. ROBINSON: And I'm going to object to the form
18 of your question. Maybe it's a little vague. If you can
19 rephrase. "Issues," I don't know.

20 MR. BOSCHEE: I'm sure -- okay. Concern was the
21 real -- was the word I was looking at.

22 Q. (BY MR. BOSCHEE) You guys have some -- you guys
23 have some codes that are required to, as I understand it, get
24 the stuff over at City Hall up and running, correct?

25 A. Typically, yes.

1 Q. Okay.

2 A. And I say typically because I have no direct
3 knowledge of the status of the equipment, what's been done,
4 what's not been done --

5 Q. Right.

6 A. -- and what they're requiring.

7 Q. Well, going back in time, assuming -- I don't want
8 to say assuming but -- you guys at some point stopped working
9 on this project for -- because of nonpayment, correct?

10 A. Correct.

11 Q. At that point before anything else had happened, you
12 guys had some codes that would have been used to get the stuff
13 started, installed, and running, correct?

14 A. Codes can have two different definitions.

15 Q. Tell me what they are. You're the technical guy and
16 I'm not.

17 A. So there's -- there's -- there's National Electrical
18 Code and fire protection codes.

19 Q. Sure.

20 A. And those are -- those are code requirements that
21 are regulations, laws. And then there's codes that are
22 associated with communication protocols that we use for the
23 equipment to be able to talk to each other. So there's -- I'm
24 not sure which codes it is that they're asking about. That's
25 where I'm at. I'm not sure -- I'm not sure what's holding

1 this them up at this point. I don't know.

2 Q. Okay. Well, I'm just thinking out loud here. Both
3 sets of those codes would probably be -- probably pretty handy
4 in terms of getting everything up and running, I would think,
5 wouldn't they?

6 A. The codes -- the protocols -- the communication
7 protocols for the equipment would be absolutely required. The
8 codes for the fire protection -- it's NFPA, National Fire
9 Protection Association, and the National Electrical Code and
10 Clark County fire code or City of Las Vegas fire code,
11 depending upon which it is, they often vary from job to job.

12 Q. Okay.

13 A. So it's hard for me to say if that's what their hold
14 up is, specifically what the hold up is. And what we do --
15 what would typically happen in a project like this is, once we
16 get to the latter stages of the job, there's meetings between
17 us and the contractor and the inspectors, and the inspectors
18 sort of lay out what specifically they're looking for to meet
19 the codes.

20 And then a lot of times we have to make adjustments
21 to our bills of materials or specifically how -- we may have
22 an image at the beginning of the job of how we're going to
23 address the codes. What that looks like at the end of the
24 project could be something very different.

25 Q. Okay.

1 A. Does that help?

2 Q. It does a little bit. I want to talk about the
3 protocol calls specifically, because I think I know what
4 you're talking about with fire codes. And that's kind of a
5 moving target a little bit.

6 A. Uh-huh.

7 Q. But the protocol codes, if those aren't -- if those
8 aren't in, the equipment can't kind of communicate with each
9 other. What is the net effect of that? I mean what -- what
10 happens if those codes aren't used at installation?

11 A. A qualified person might be able to make the
12 equipment work to a certain extent, but they probably wouldn't
13 be able to make it work to its full capability.

14 Q. Okay. Would there be -- I mean when you say it
15 wouldn't be able to work to its full capability, what are some
16 things that might not -- might not work? Would there be
17 safety concerns?

18 A. It depends.

19 Q. Okay.

20 A. And if the -- one of the things that we talked
21 about -- one of the -- one of the more important functions of
22 this system is to be able to parallel the two generator sets
23 together. If the building load doesn't exceed the capacity of
24 one generator, you could theoretically lock one generator out,
25 use just one generator, and you could bypass a lot of that

1 protocol and communications that make the system work.

2 If the load does exceed the rating of one generator
3 set and you need both generator sets, then you're -- then
4 those codes become absolutely necessary.

5 Q. Okay. I'm not -- I'm not an engineer or a
6 contractor, per se, but I've been over to City Hall. It's a
7 pretty big project. I mean, fair to say that it's going to --
8 it at least contemplates both generators being needed over
9 there, doesn't it? I mean it's. . .

10 A. It was certainly designed that way.

11 Q. Right.

12 A. It's -- that would be something the design engineer
13 could tell you better than I could.

14 Q. Sure.

15 But when -- when you guys were supplying the
16 equipment, it was certainly contemplated it was going to be --
17 that both generators were going to be used over there, wasn't
18 it?

19 A. Yes, but that could be for a different reason. In a
20 lot of cases they'll have two generator sets for redundancy.

21 Q. Sure.

22 A. So they won't -- the load doesn't exceed the
23 capacity of both generators -- or excuse me, of one generator.
24 You have the second generator in case the first generator
25 fails.

1 Q. Kind of a backup?

2 A. And -- and -- and -- right. And one generator can
3 still carry the entire building. So -- and that's why I said
4 the design engineer would probably have to have a discussion
5 with you about that because I don't know if they had a -- if
6 they had two generators for capacity or two generators for
7 redundancy.

8 Q. Okay.

9 A. Two kind of different things.

10 Q. That makes sense. And it's a government job so
11 redundancy wouldn't be completely out of the question.

12 But assuming that -- if it wasn't -- if it wasn't a
13 redundancy situation, if it was actually two generators were
14 required, then those codes are absolutely going to be
15 necessary for them to communicate with each other?

16 A. That is correct.

17 Q. We may get back to some of that. I have completely
18 gone afield of my outline of questions, so I'm going to try to
19 get back on track here.

20 Before the City Hall project, how many times have
21 you worked with Mojave Electric?

22 A. Oh, boy.

23 Q. Estimate? I don't want you to have to count them on
24 your fingers.

25 A. Yeah. Probably a few dozen.

1 Q. Okay. How about Whiting-Turner?

2 A. Indirectly, probably a dozen times. I say indirect
3 because we don't usually deal directly with the general
4 contractor.

5 Q. Right. Usually deal with --

6 A. Mojave Electrical.

7 Q. -- with like --

8 A. Yes.

9 Q. Do you have any idea how many accounts you've opened
10 for -- for Mojave off the top of your head?

11 A. How many --

12 Q. Shane had -- Shane had an estimate, and I was
13 wondering if you maybe had a little more -- yeah, I mean how
14 many different -- different specific accounts you've opened
15 with -- with Mojave?

16 A. Oh, you know what. I don't know.

17 Q. Dozens?

18 A. Well, I guess depends on how you look at it. Are
19 you talking about physical accounts, or you talking about
20 projects?

21 Q. Projects?

22 A. Oh, projects. Yeah, probably -- I'm going to say
23 three dozen.

24 Q. Okay. You personally worked on a lot of those
25 projects?

1 A. Yes.

2 Q. Prior to this -- and obviously this is a bit of a --
3 have you ever had any problems with Mojave prior to this
4 incident?

5 A. The only problem we ever had with Mojave -- and this
6 has been more of a recent thing in the last couple of years --
7 they've had somewhat of a different definition associated with
8 lien releases. And at times they've asked us to sign lien
9 releases when we still haven't received full payment. And
10 that's -- it seems to be related to one specific person that
11 they hired a couple years ago. And prior to that we never had
12 a problem with Mojave ever.

13 Q. Okay.

14 A. Paid like clockwork.

15 Q. Do you know that person's name off the top of your
16 head?

17 A. Her first name is Francis.

18 Q. Okay.

19 A. I do not know her last name.

20 Q. You don't even need to tell me anymore.

21 A. Okay.

22 Q. I do know her last name.

23 You guys use conditional lien releases though, don't
24 you?

25 A. Typically.

1 Q. Okay.

2 A. I mean there's -- there's conditional and there's
3 unconditional.

4 Q. Sure.

5 A. So -- but we have -- again, more recently we've had
6 situations where she would hold a check until we signed
7 conditional and/or unconditional releases for unrelated
8 projects, which is very -- well, let's just say it's not
9 consistent --

10 Q. Okay.

11 A. -- with industry practice. And -- but to collect
12 money we did what we had to do paperwork wise to satisfy what
13 she was asking for. And this -- quite frankly, this is more
14 of a Shane question than mine. He has more direct knowledge
15 of a lot of that that was going on. But -- but I do know
16 there was some irregularities, and we were really struggling
17 with how to -- how to work through that process.

18 Q. When you're describing -- and I talked to Shane
19 about something related to this. And I don't -- if this is
20 getting afield of your knowledge, please tell me. But when
21 you're talking about, okay, there's payment due on this
22 project and you've got a lien release for this. And basically
23 you -- what you typically do in the industry is you swap check
24 for a lien release, as I understand; is that right?

25 A. For the same project?

1 Q. For the same project, correct.

2 A. Yes.

3 Q. And what I under -- as I understand what you're
4 saying is, okay, that's fine for this project. But then you
5 got a project over here, and they're holding your money on
6 this one as well looking for -- looking for a lien release
7 when you haven't been paid yet. Is that what you're telling
8 me?

9 A. It appeared from conversations that I had with Shane
10 that that was what they were doing.

11 Q. Okay. And how often did that happen?

12 A. It seemed to happen on every job after she got
13 hired.

14 Q. Okay. I guess the obvious question to me is -- I
15 mean why -- if -- if the payment wasn't made yet, if you guys
16 weren't paid in full, why were you giving unconditional lien
17 releases?

18 MS. ROBINSON: I'm just going to object. It's going
19 outside his notice for his person most knowledgeable. So are
20 you asking him as the person most knowledgeable of Cashman, or
21 did you already depay -- depose Shane as the person most
22 knowledge on this issue, are you asking him for his own
23 personal knowledge?

24 MR. BOSCHEE: I'm asking for his own personal
25 knowledge because he brought it up.

1 MS. ROBINSON: Right. That --

2 MR. BOSCHEE: I mean that's -- I mean I understand.
3 But Shane -- Shane painted a very different -- I mean not a
4 very different, but Shane said something a little different.
5 I just want to make sure that I understand exactly what --
6 what this witness is talking about because I just want -- more
7 of a clarification than anything.

8 Q. (BY MR. BOSCHEE) To the best of your understanding
9 why -- you know why -- why were doing -- why were you guys
10 doing that?

11 A. To the best of my understanding we had had a
12 long-term relationship with Mojave Electric. We had no
13 history of never not being paid. And so we felt like if
14 that's what we needed to do to accommodate a valuable
15 customer, then -- then we were willing to do that.

16 Q. Okay. Again, to the best of your understanding,
17 prior to this situation, we'll call it, did you guys ever have
18 a payment problem with Mojave? Have you ever been not paid by
19 Mojave?

20 A. Never not paid, no.

21 Q. Okay.

22 A. Slow sometimes, but never not paid.

23 Q. Right. Sometimes -- the situation we're talking
24 about, you know, a little bit of slow pay, little bits, but
25 never a non-payment issue, correct?

1 A. Correct.

2 Q. Okay. And again, you're usually one or two steps
3 removed Whiting, but had you ever had this situation with
4 Whiting before, just not getting paid?

5 A. Not to my knowledge.

6 Q. Okay. With respect to -- and again the -- the lien
7 releases and the -- and the payment kind of Francis holding
8 the checks, as I understand it, that resulted in a little bit
9 of a slow -- a slowdown effect, but you guys always did get
10 paid for the work that you performed prior to this project,
11 right, as far as you know?

12 A. As far as I know.

13 Q. Okay. Now, on this project you guys, as I
14 understand it, contracted directly with a company called CAM
15 Consulting, right?

16 A. Correct.

17 Q. And they were -- I mean I always look for the
18 politically correct way to say this, but I mean it's the term
19 used in the industry I think, minority contractor, are you
20 familiar with that?

21 A. Yes.

22 Q. That was their role here, correct --

23 A. Yes.

24 Q. -- CAM Consulting?

25 A. Yes.

1 Q. Are you familiar generally with the requirements for
2 minority contracts? I mean why did they end up being used in
3 this pro -- in projects like this?

4 A. That's a broad question, but to --

5 Q. In your experience?

6 A. To make it sort of simple, a lot of government
7 projects require a certain amount of equipment and services to
8 be purchased by -- from, excuse me, minority entities. And --
9 and I don't recall what the percentage was, but I can remember
10 being told early on by -- by -- Peter Fergen is the vice
11 president of Mojave that does a lot of their purchasing and
12 those kinds of things. He told me very early on that we were
13 -- that there was a percentage of the project that had to be
14 purchased by -- from minority entities and their intention was
15 to purchase this equipment through a minority entity.

16 Q. Okay.

17 A. So I -- so we -- does that answer your question?

18 Q. I think so.

19 You've dealt with minority contractors on other
20 projects, correct?

21 A. Yes. Not a lot, but yes.

22 Q. Was this -- was this scenario or was this experience
23 considerably different than your experiences on other projects
24 with minority contractors, obviously other than not getting
25 paid?

1 A. The obvious exception?

2 Q. Other than that how did you like the play,
3 Mrs. Lincoln, but -- yeah, up to that point?

4 A. You got me with the Mrs. Lincoln.

5 Q. Sorry.

6 A. It's okay.

7 Um, no, I -- I would say in the few instances that
8 we had to do -- I think the only thing that was different is
9 in most cases we dealt with a larger company, as opposed to a
10 very small entity such that CAM was.

11 Q. Okay. Now, I talked to Shane a lot about the -- the
12 -- kind of credit process and things like that. We'll talk
13 about that very briefly in a few minutes. But as I
14 understand, you worked with -- you were kind of on the ground
15 and worked with CAM kind of directly in terms of the equipment
16 transfer, is that fair, or not really?

17 A. No, not really. I -- no.

18 Q. Tell me what was your experience. What did you do
19 with CAM?

20 A. The only time I actually met Angelo was when we met
21 over at Mojave's office to discuss transacting this deal
22 through them.

23 Q. Okay.

24 A. And -- and actually I'm not even sure -- I don't
25 even recall talking to him on the phone after that. It was a

1 pretty straightforward discussion. We discussed the finances,
2 the percentage, and came to an agreement, shook hands, and
3 that was pretty much it.

4 Q. That was that?

5 A. Yeah.

6 Q. Okay.

7 A. In terms of equipment getting to the site, what I
8 would call logistics of the project, everything was transacted
9 directly with the Mojave folks.

10 Q. Okay. That makes sense.

11 Did you participate -- when I say "you" I mean you
12 or anybody else at Cashman -- participate in the selection of
13 CAM as the minority contractor here?

14 A. Yes.

15 Q. Okay. What -- how so? Walk me through the kind of
16 picking them process, if you will. That was a terrible
17 question but. . .

18 A. No, that's okay. I'll do the best I can here.

19 We had -- originally all of our equipment was going
20 to be purchased through a company called NEDCO, which we had
21 done this with before. And NEDCO's a large company and
22 there's -- you know, there's generally no problems there. But
23 they wanted -- this was a very tight competitive bid job.
24 There was not a lot of money in there to be spiffing (sic)
25 companies for pushing paper through their books. And what

1 NEDCO wanted for a percentage was not going to be acceptable.

2 So we were talking to another group that was just in
3 the process of getting their disadvantaged business license,
4 and they were -- they were experiencing delays getting that
5 done. And Pete contacted me a couple of times and said, you
6 know, what are we doing? Are -- is that group going to work?
7 And you know it didn't seem like it was going to.

8 And then he called me and said, listen, we had this
9 guy come in. We're using him on a couple other things. Would
10 you like to meet him? Maybe you could work something out with
11 him. So -- and I'm not sure how the meeting was actually
12 arranged. I don't know if he was already there. And -- but I
13 went over there very shortly after the phone call and met
14 Angelo at their office. And Pete introduced us in their
15 conference room, and we sat down and had a discussion.

16 Q. Okay. And after that discussion you were
17 comfortable using, I guess CAM, but I mean Angelo? After you
18 met him you were comfortable using them going forward?

19 A. I'm not sure if comfortable is the right word. His
20 documentation was in order. His story seemed legitimate. And
21 by story he talked about being in the Army Rangers, which I
22 guess maybe wasn't even the case. But he'd been wounded and
23 different things, and so he had gotten licensed by this
24 federal office to be a disadvantaged business. And you know
25 seemed like -- certainly I think all of us as Americans want

1 to support people who have come back from wars and those kinds
2 of things. So it seemed like somebody that we want to try and
3 do business with. If we have to put money in somebody's
4 pocket, I would rather put money in somebody like that's
5 pocket, rather than you know somebody that maybe doesn't need
6 it quite so much.

7 Q. Sure.

8 A. Does that make sense?

9 Q. Yeah. I think I understand what you're saying.

10 A. Okay.

11 Q. And I don't disagree with your rationale on that.

12 Let me -- you had the meeting, and it's Mojave and
13 you and Angelo. Did you have any conversations -- I know you
14 didn't with Angelo, but did you have any conversations with
15 anybody at Mojave -- okay, Angelo leaves -- kind of, okay, you
16 left the room now I can talk about you behind your back
17 conversation. Did you have any conversations like that with
18 anybody at Mojave about Angelo and CAM and any concerns you
19 might have using them, you personally?

20 A. No, not really.

21 Q. Okay.

22 A. Not -- not -- not relative to concerns. It was
23 basically, okay, he's willing to do it for what we're looking
24 to spend. And so let's go forward, let's get paperwork
25 written up. At that point the job was getting very

1 compressed. We needed to get some paperwork going and do some
2 different things or we were going to start missing some
3 milestones.

4 Q. Okay.

5 A. So it was -- it was -- we jumped right into, let's
6 get things going.

7 Q. Time was getting tight at that point?

8 A. Yes, sir.

9 Q. Okay. Now, when I talked to Shane he -- he -- he
10 discussed having some concerns about the credit or in his case
11 lack of credit that CAM had. Did you ever have a conversation
12 with Mr. Norman about that?

13 A. Not specifically, no. I mean understanding was that
14 there was going to be -- and this was something that Pete and
15 I had talked about it -- that there was going to be an
16 exchange of checks pretty -- I mean we understood the fact
17 that -- that Angelo didn't have three quarters of a million
18 dollars to lay out and then wait for payment. We understood
19 that he was going to take payment from Mojave and then turn
20 right around and cut Cashman a check for our portion. So
21 there was -- I don't think there was ever any confusion in --
22 in that regard. And that was our understanding of what was
23 going to happen.

24 You know, Shane in his typical process had -- had
25 Angelo fill out a credit app. He also -- I'm pretty sure --

1 understood the same, and we moved forward.

2 Q. I think you answered -- you indirectly answered
3 this, but I just want to clarify. You had never worked with
4 CAM or Angelo Carvalho before? Cashman hadn't before this
5 project, had --

6 A. We had not, that's correct.

7 Q. Okay. And again, if you could quantify it, um,
8 disadvantaged businesses, minority contractors, how often do
9 you think you'd worked with them on other projects? I think
10 the word you used was handful but -- less than ten?

11 A. Definitely less than ten, probably less than five.

12 Q. Just a couple of times?

13 A. Yes.

14 Q. Have you ever encountered anything like this? And I
15 say the "anything like this," a failure to pay by a minority
16 contractor?

17 A. No.

18 Q. Okay. Did you -- aside from what you knew or didn't
19 know about CAM, you talked a little bit about Angelo
20 personally. And he told you he was an Army Ranger and things
21 like that. Did you know any -- did you ever know anything
22 else about Angelo Carvalho personally, aside from he's working
23 with this company, he's doing this? Did you do any other
24 background check on him or anything like that?

25 A. With the exception of verifying his status with

1 the -- and I'm sorry, I'm forgetting the name of the
2 government entity that he was -- he was sponsored by.

3 Q. Sure.

4 A. I -- with the exception of verifying that that
5 letter was legit, had no other knowledge of him.

6 Q. So basically just to summarize, just so I've got the
7 lay of the land: Time's getting tight. NEDCO wasn't going to
8 work out. You had someone else that was having a hard time
9 getting a disadvantaged status; is that right?

10 A. That's correct.

11 Q. Okay. And get a call from Mojave. Say, hey, we
12 worked with this guy on this other project. Why don't you
13 come in and meet him, see if you have a comfort level. You go
14 in, have the one meeting at Mojave's office. Everybody shakes
15 hands. Submit the paperwork. And then you just kind of go
16 forward from there --

17 A. Yes, sir.

18 Q. -- correct?

19 Let's take a look at -- now things start getting --
20 going south.

21 (Exhibit No. 3 marked.)

22 Q. (BY MR. BOSCHEE) I suspect you'll recognize this
23 check. Take a second to look at it.

24 A. I might be familiar with it.

25 Q. I assume you've seen this check before?

1 A. Yes, sir.

2 Q. Okay. This is -- you recognize this as the check
3 from CAM for the full 755,893.89, correct?

4 A. Correct.

5 Q. And that was, as I understand from documents that
6 have been filed and other things, that was the amount that --
7 that you guys were owed on this project for the equipment
8 provided, correct?

9 A. I don't have our invoice in front of me, but I --
10 it's -- I believe it's correct.

11 Q. We'll look at those later, but it's close. Okay.

12 As I understand it, Shane Norman received this
13 check; is that right?

14 A. Yes.

15 Q. Okay. Do you have any understanding -- I talked to
16 Shane about his, and you may not know. Do you have any
17 understanding as to why you guys accepted a postdated check
18 from Mr. Carvalho?

19 A. I -- honestly, no.

20 Q. Okay. Did he ever communicate anything directly to
21 anybody at Cashman, you or otherwise, other than Shane, any
22 reason why he would need to give you guys a postdated check?

23 A. No.

24 Q. Okay. Did you ever have any conversations with
25 Shane Norman about the fact that you guys had accepted a

1 postdated check from -- from CAM?

2 A. No.

3 Q. Okay. I'm guessing it's not something you typically
4 do, Cashman typically does, accepting postdated checks in
5 situations like this?

6 A. Not to my knowledge.

7 Q. Okay. You testified earlier that it was your --
8 that everybody's understanding kind of was: Mojave's paying
9 CAM, CAM's paying you guys, and that's going to be a fairly,
10 you know, simultaneous process, correct?

11 A. Correct.

12 Q. Okay. Did it concern you that this check was dated
13 a handful of days after -- well, let me ask you this: Do you
14 have an understanding as to whether Mojave paid CAM the
15 755,893? Do you have an understanding as to whether that
16 actually happened?

17 A. I believe that happened, yes.

18 Q. Okay. And then --

19 A. I haven't seen that check, so I -- but I believe
20 it's happened.

21 Q. Okay. I can get it for you as an exhibit, but I
22 don't think it necessarily matters.

23 And then CAM gives you guys a check, but it's dated
24 a few days later. Did that give -- would that be something
25 that would cause you -- typically in a situation like this.

1 cause you concern?

2 MS. ROBINSON: I'm going to object to incomplete
3 hypothetical, and he already stated he had no knowledge.

4 MR. BOSCHEE: Well -- okay. I'm saying --

5 THE WITNESS: I --

6 MR. BOSCHEE: -- as to this personally but --

7 THE WITNESS: I was on vacation when this
8 happened --

9 Q. (BY MR. BOSCHEE) Oh, okay.

10 A. -- so I didn't know -- I didn't know any of this was
11 even going on until I got back --

12 Q. Okay.

13 A. -- a week later.

14 Q. You get back and there's a stop payment on this
15 check, correct?

16 A. Welcome back. Yes.

17 Q. Exactly. Again, thank you for that vacation.

18 Do you guys have -- I mean -- I say you guys, I keep
19 saying that, I mean Cashman. Do you have a procedure,
20 standard procedure, when a creditor fails to fund like -- as
21 in a situation like this?

22 A. You know, that's probably a question best asked of
23 Shane.

24 Q. Okay.

25 A. I'm not really in the -- I'm not typically involved

1 directly in the collections business.

2 Q. Okay. Well, let me ask you a different way, because
3 I did ask Shane this. Are you aware of any protections that
4 the company has to try to protect itself from something like
5 this happening?

6 A. Certainly the lien process.

7 Q. Right.

8 A. You know, in a lot of cases, situation like this, we
9 would ask for a joint check. And I believe we did. And
10 again, this was Shane's, so I'm -- this is a discussion with
11 Shane, so it's secondhand.

12 Q. Sure.

13 A. But my understanding is that he did ask to do a
14 joint check and was told that that was a problem. And I'm not
15 sure he was ever told why it was problem, but they didn't want
16 to do it.

17 Q. Okay. Were you ever told by anybody why a joint
18 check was a problem?

19 A. The one time I had a discussion with Pete Fergen
20 about it early on he -- I think he had a concern that a joint
21 check would create a -- what am I looking for -- a potential
22 inconsistency in the process of using a disadvantaged
23 business. He was afraid the paperwork wouldn't look
24 appropriate.

25 Q. Okay. These --

1 A. That was my impression of what he answered.

2 Q. Sure.

3 These other jobs that you had worked on with
4 disadvantaged owners, with minority contractors, on those jobs
5 did you receive joint checks, or did it go the process like
6 this where the minority contractor got paid and then paid you?

7 A. Minority contractor got paid and paid us. We were
8 usually dealing with people of -- of greater financial
9 strength.

10 Q. But the process --

11 A. And quite frankly, this was easily the biggest job
12 we had ever done in this process as well.

13 Q. Right.

14 A. We were usually working in the 30- to \$50,000 range.
15 It was a completely different scale.

16 Q. Three quarters of a million dollars was a little
17 bit --

18 A. Correct.

19 Q. Was the outlier in that?

20 A. Right.

21 Q. But the process, the actual process, was the same in
22 the other jobs as it was here where the minority contractor
23 gets paid, then you get paid? Kind of, you know, one check,
24 then another check?

25 A. Correct.

1 Q. Okay. As I understand it, no one else from Cashman
2 ever accompanied Mr. Carvalho to a financial institution or
3 anything like that, it was just Shane that was dealing with
4 him directly, correct? As far as you know?

5 A. As far as I know.

6 Q. Now, going back to the joint check question, if you
7 will, you worked on a few dozen projects with Mojave, have you
8 ever gotten a joint check from Mojave on any of those
9 projects? That you can recall?

10 A. No, not that I can recall.

11 Q. Okay. And they -- and I understand they wouldn't --
12 again, Pete Fergen may have said -- but for whatever reason
13 they didn't want to do a joint check on this project, and you
14 guys proceeded anyway, right? I mean it wasn't -- that didn't
15 cause you guys pause in not -- in not finishing -- you know,
16 going forward and giving the lien release, did it?

17 A. Did it not give us pause? It was certainly not what
18 we would have preferred.

19 Q. Okay.

20 A. So to say that it -- it probably did give us a
21 little bit of pause. But you know in -- in my discussions
22 with Shane after the fact, as he said, you know, we don't
23 usually have a problem with \$750,000 checks bouncing, it's
24 usually the \$3,000 checks that bounce. So it just -- it just
25 really at that point hadn't entered our mind that somebody

1 would do something like this.

2 Q. Okay. We'll get to this in a minute as well but --
3 you did supply an unconditional lien release in exchange for
4 -- not a joint check, but the check from CAM, correct?

5 A. I don't know. I wasn't there.

6 Q. That wasn't you?

7 A. That wasn't me.

8 Q. Do you have an understanding as to whether that
9 happened? I mean I don't -- we talked to Shane about this at
10 length but. . .

11 A. I don't know.

12 Q. Okay. In the absence of a joint check, are you
13 aware of any other precautions that you guys undertook at that
14 point?

15 A. Again, as far as I know the project was liened or
16 preliened.

17 Q. Okay.

18 A. Which, you know, usually is security enough on a
19 government project that you're going to get paid.

20 Q. Sure.

21 And a lot of these are -- these are probably going
22 to be pretty quick questions because I talked to Shane about
23 them a little bit, but you may have -- there were a couple
24 things that he wasn't able to identify. He said you might
25 know.

1 A. Okay.

2 Q. Are you familiar with the steps that Cashman has
3 taken subsequent to the two bounced checks to obtain funds
4 from Mr. Carvalho?

5 A. You know, from a very high level. I know that I
6 personally went and knocked on his door one day. Shane and I
7 both knocked on his door one day. We tried some very direct
8 things to try and physically collect money. Not to threaten
9 the guy, but to you know compel him to pay. And those were
10 obviously unsuccessful.

11 But other than that when it reached the point of
12 where it was beginning to become apparent that there was
13 something not right, the first thing I did when I got back
14 from vacation is I heard about this, and I sent an e-mail to
15 Pete and I said should we be considering you guys stop payment
16 on his check, because we're -- and -- and he had changed his
17 e-mail address, he changed his phone number. All the
18 information that I had on him from his business card that he
19 gave me in our initial meeting was all invalid.

20 Q. Just so we're clear, when you say Pete, you mean
21 Pete Fergen?

22 A. Pete Fergen. Yep.

23 And so I e-mailed Pete and said, you know, we're
24 trying to reach him. We're not able to reach him. He's not
25 answering his phone. He's not answering his e-mails. Now it

1 turned out that he had changed his phone numbers and e-mails
2 and I didn't know that. That's why he wasn't responding. Um,
3 well, I think.

4 But I did at that point ask Pete, do you guys want
5 to consider stopping payment on your check? And that was --
6 that was the first thing that came to my mind is if this guy
7 is going to scamper, you know, maybe we can do something real
8 quick to protect Mojave.

9 Q. Okay.

10 A. And so -- and I don't know -- we never verbally had
11 a conversation about it, and so I don't know what they talked
12 about internally --

13 Q. Okay.

14 A. -- with that. But that was -- I mean it was -- at
15 that point I was still in the mode of it's not too late, let's
16 see if we can do something to protect us both. Mojave had
17 been a tremendous partner to us for years. I didn't want to
18 see them get hurt either.

19 So -- and at that point that's what it -- it was
20 starting to look like because of this -- you know, this guy
21 was going to skip away with our money and go lay on a beach in
22 Tahiti. So that was -- that was step one.

23 And then we had some follow-up discussions. Pete
24 got us some updated contact information. And that was when
25 Shane and I started to get sort of aggressive with -- with

1 trying to chase him down and collect the money. And it really
2 did -- you know, he told us some stories about being deployed
3 in Afghanistan and coming back in the middle of the night and
4 all kinds of other craziness. And we didn't -- his stories
5 were just plausible enough to be believable that the reason
6 why he was having these delays -- the reason he stopped
7 payment on the check was because we were sending him e-mails
8 concerned about the funding of the check and all kinds of
9 other things.

10 It was really -- at that point it seemed very
11 plausible that everything was just sort of a honest mistake
12 and as soon as we got him face to face and at a financial
13 institution he would be able to get us a check legitimately,
14 get us paid, and all those other things. And that's what
15 Shane attempted to do by going down to his bank with him with
16 the second check.

17 Q. Right.

18 A. And then -- and then he bailed at the last minute,
19 is my understanding. And that was when -- that was when the
20 game was really afoot.

21 Q. Okay. Other than the e-mail with Pete Fergen, did
22 you have any follow-up conversations with folks at Mojave
23 about, okay, this guy doesn't have any money in his bank
24 account. He's skipped off with the funds. What can we do?

25 A. I don't recall.

1 Q. Okay.

2 A. I should, but I don't.

3 Q. Did you have any meetings with anybody at Mojave
4 about this issue?

5 A. I did not.

6 Q. Okay. Do you have any understanding -- other than
7 Shane, do you have any understanding as to whether anybody
8 else at Cashman did, had meetings with Mojave?

9 A. The only meeting we had with Mojave that I recall
10 specifically was -- now Shane was having discussions and those
11 kinds of things, and I'm sure you've got a record of those.

12 The only other meeting that we had was when we were
13 a good bit of the way down the road and we had told them that
14 we weren't going to perform startup on the equipment and those
15 kinds of things and things were starting to get sort of messy,
16 I sent an e-mail to Brian and to Troy. And I said, you know,
17 we've done a lot of projects together over the years -- and I
18 can't remember the exact words in my e-mail. I'm sure we
19 could find it.

20 But the gist of it was, we've done a lot of projects
21 over the years, we've had a lot of challenges, and we've
22 always been able to overcome them, can we get a few minutes of
23 your time to sit down and discuss this and see if there's some
24 place we can find some common ground and get this thing moving
25 forward.

1 And I mean Troy called me within ten minutes of me
2 hitting the send button on the e-mail. He said, "Absolutely.
3 Come on down. Let's talk about it."

4 And I went down there with my boss, Joel Larson, and
5 Mike Pack, our president. And we met with Brian Bugney
6 (phonetic) and with Troy Nelson, and we discussed the
7 situation where it was and what we could do to get things
8 moving forward again somehow. And there really wasn't a whole
9 lot of resolution in that meeting. I mean certainly Mojave
10 had their stance and we had ours, and I don't think we really
11 made a lot of progress there.

12 Q. Well, let's walk through that a little bit. Let's
13 -- I want to follow up on that meeting because -- I may have
14 heard something different about that meeting.

15 But when you say Mojave had their stance and we had
16 our stance, specifically what do you mean by that?

17 A. You know, they wanted us to perform startup, and
18 Mike basically told them that we would be glad to perform
19 startup if they would cut us a check for \$755,000 we were owed
20 and we would perform startup.

21 Q. Okay. So at that point Cashman had not performed
22 the startup?

23 A. That is correct.

24 Q. Okay. Maybe getting back into the technician days,
25 what was required at that point in time to perform startup, if

1 **you recall?**

2 A. You know, at that stage of the game it was still
3 pretty early on. Mojave would -- to kind of step through at a
4 real high level, Mojave would perform installation, which
5 involves putting the equipment in place, hooking it up,
6 verifying wiring, doing some different things against the
7 schematics that we provided them. It's a pretty
8 straightforward deal from their standpoint.

9 And then we have -- we have two stages to startup,
10 basically. We have a technician that goes out and verifies
11 that the installation is correct and everything was done
12 correctly. He verifies wiring and -- basically verifies
13 Mojave's work and makes sure that it's done to the factory
14 standard.

15 And the second part of startup is actually
16 physically starting to energize equipment, make equipment
17 work, activate the electronics, physically start running
18 equipment, setting up controls, adjusting controls, doing
19 different things. And it all -- there's a checklist that we
20 have to do on all the pieces of equipment. And that would be
21 the generators, the switchgear, the transfer switches and the
22 Mitsubishi UPS that are -- that we have checklists from the
23 factories that tell us the things that have to be done.

24 And we go through those checklists. And it's
25 basically just verifying that everything is operating

1 correctly and there's no -- there's no defects in materials of
2 workmanship at that point. And then when we're done
3 performing those checklists, the customer signs a document
4 that they've received the equipment, it's in good running
5 order, and it now has a viable factory warranty.

6 Q. And those protocol codes that we talked about
7 earlier, about a half hour ago, that's part of that startup
8 process as well, isn't it?

9 A. That would have been part of that process, yes.

10 Q. Energizing and all that --

11 A. Uh-huh.

12 Q. -- okay.

13 And that's -- and none of that, the inspection of --
14 of the installation or the energizing startup, any of that,
15 that hadn't been done when you had the meeting with Mojave,
16 correct?

17 A. No.

18 Q. As to the equipment?

19 A. No.

20 Q. As I understand it, and correct me if I'm wrong
21 about this, but the equipment was delivered, but before you
22 guys could go back and inspect anything or do any of the
23 startup, you know, the energizing or anything, this -- this
24 check issue happened, and that was pretty much where you guys
25 stopped doing anything, correct?

1 A. That is correct.

2 Q. Okay. Are you familiar -- Shane talked about this a
3 little bit, and I don't know if you're familiar with it or
4 not. But there was -- you guys submitted this to the -- to
5 the bad check department, I understand?

6 A. Of the District Attorney's office?

7 Q. Yes.

8 A. Yes. Correct.

9 Q. Okay.

10 A. I'm not sure of the timing of that, but I know Shane
11 was -- that was one of his first things that he, Shane did.

12 Q. Are you familiar with what's happening in that case?
13 I understand a Grand Jury was apparently called?

14 A. I testified in front of a Grand Jury. That's the
15 extent of what I know.

16 Q. Do you know what the proceeding was that you
17 testified at, what stage of the -- of the process that was in?

18 A. I --

19 Q. If you don't know, you don't know.

20 A. I don't know.

21 Q. Okay. That's fine.

22 Do you have a general understanding of what's going
23 -- what's happening with that case? Obviously, you testified
24 so. . .

25 A. With the exception of my testimony, I have none.

1 Q. Okay. Has Mojave participated in that -- in that
2 case at all, to the best of your knowledge?

3 A. I don't know.

4 Q. Okay, that's fine.

5 I want to just get into the project briefly. I'm
6 going to show you -- you're probably not going to know a lot
7 about this document, but I'm going to show it to you anyway.

8 A. Sure.

9 (Exhibit No. 4 marked.)

10 MS. ROBINSON: Can we take a break?

11 MR. BOSCHKE: Sure. When we come back, we'll talk
12 about Exhibit 4.

13 (A brief recess was taken.)

14 MR. BOSCHKE: Back on the record.

15 Q. (BY MR. BOSCHKE) You understand you're still under
16 oath?

17 A. Yes, sir.

18 Q. Okay. Off the record we had a ten-second
19 conversation about Pete Fergen's position with Mojave. Could
20 you tell me what that is?

21 A. His -- he's a vice president. He manages a lot of
22 their -- he manages most of their larger projects. He does
23 their major product purchasing, handles a lot of logistics,
24 and has several folks work for him that handle the -- that
25 handle the direct logistics for him.

1 Q. Okay. And he was someone that you dealt with? He's
2 someone at Mojave you personally dealt with a fair amount?

3 A. For a lot of years, yes.

4 Q. Right. Okay.

5 Before we broke I marked CAT application for credit
6 for CAM Consulting as Exhibit 4. You recognize this document?

7 A. I do.

8 Q. Did you see this document prior to using CAM on this
9 job? Did you review this document --

10 A. No.

11 Q. -- I know Shane did?

12 A. No.

13 Q. Okay. But you had an understanding that an
14 Application For Credit was filled out by CAM, correct?

15 A. I had an understanding, yes.

16 Q. Because otherwise if they didn't you wouldn't have
17 been able to use them on -- use them going forward, could you?

18 A. Right. Even the fact that it wasn't necessarily the
19 understanding that it was going to be a credit transaction, so
20 to speak, we weren't extending them 30-day terms -- even when
21 we deal with somebody on a cash basis, we have them fill out
22 these applications so we have their pertinent information and
23 they sign, you know, that they're going to comply with our
24 terms and conditions and those kinds of things.

25 Q. Yeah, you anticipated my next question, which is,

1 even though this was a cash transaction, you're still going to
2 have a minority contractor in a situation like this fill out
3 the credit application so that you've got the information --

4 A. Yes --

5 Q. -- correct?

6 A. -- sir.

7 Q. Okay. And in this case, they filled out -- as I
8 understand the process, they fill out the Application For
9 Credit and then there's the -- the invoicing starts taking
10 place from you to them, correct? I mean, there's nothing --
11 there's nothing in between that is there?

12 A. I --

13 Q. As far as --

14 A. You know, honestly I'm not sure. Ordinarily there
15 is a process of, you know, checking trade references and those
16 kinds of things. And I'm honestly not sure if Shane did that
17 in this case or not, understanding that it was going to be
18 sort of a check exchange. So I don't know the answer to that.

19 Q. Okay. And we did talk to Shane about that. I don't
20 think it necessarily matters for what we're talking about.
21 But I guess what I'm asking is: There wasn't -- there isn't
22 some other document that transpires between the credit
23 application and the beginning of invoicing that I just haven't
24 seen, is there, between you and CAM?

25 A. That -- a purchase order.

1 Q. Right.

2 A. Right. That's it.

3 Q. Let's go to the first invoice or an invoice.

4 (Exhibit No. 5 marked.)

5 Q. (BY MR. BOSCHÉE) These are -- Exhibit 5, take a
6 look at them -- are some invoices that I'm guessing are going
7 to look familiar to you I hope.

8 A. Yes.

9 Q. Okay. Followed up with -- we've got the Bill of
10 Lading in the back?

11 A. Bill of Lading.

12 Q. I assume you are familiar with these documents?

13 A. Yes.

14 Q. Now, just to be clear about something, did -- to the
15 best of your understanding, Cashman ever enter any contract
16 directly with Mojave on this project?

17 A. I don't know how to answer that question. And the
18 reason I say that is because the purchase order was a Mojave
19 Electric purchase order. It was on their letterhead. And I
20 believe the line said, Care of CAM Consulting or something --

21 Q. Okay.

22 A. -- along those lines. So I guess I'm not sure how
23 to answer that.

24 Q. Well, let me ask you -- let me ask you a better
25 question: There's no -- there's no signed written contract

1 between Cashman and Mojave that I just haven't seen for this
2 project, is there?

3 A. With the exception of that purchase order that --

4 Q. The purchase order, right.

5 A. No.

6 Q. As a part of -- of the overall -- of the overall
7 agreement between CAM, Cashman, and Mojave, could you just
8 tell me generally what was the scope of work that Cashman was
9 going to perform on this project, kind of start to finish?

10 A. Okay. We would take the purchase order and provide
11 what we call submittals, which is basically a technical
12 description of the equipment we proposed to provide. And we
13 provide those submittals to Mojave Electric, and they provide
14 those to Whiting-Turner, who in turn provides them to the
15 architects and engineers that design the building.

16 And basically everybody just reviews everybody's
17 scope of work and what they're proposing to use to make sure
18 it meets with their specifications and requirements. And I
19 don't know the specific details relative to this because I'm
20 not the person that directly reviews those anymore. But I
21 believe there was a few questions relative to some of our
22 equipment that the engineers came back with, but there was
23 nothing -- they were all of a very minor nature. And -- and I
24 believe we addressed those questions.

25 And we received a release from Mojave Electric to go

1 ahead -- the release basically signals us, go ahead and order
2 the equipment. So we went ahead and ordered equipment. The
3 equipment gets built, produced, modified in some cases, and
4 then delivered to the site. And that's the Bills of
5 Lading --

6 Q. Sure.

7 A. -- that are on here. And we delivered the
8 generators and the transfer switches, the paralleling gear and
9 the UPS to the site, coordinating with -- I believe Chris
10 Meyers is the project manager on this job for Mojave. And
11 we -- our project manager handled all the logistics with
12 Chris, getting everything to the site when they needed it,
13 where they needed it.

14 Mojave unloads the equipment, installs the
15 equipment, as we discussed earlier.

16 Q. Right.

17 A. When the equipment's all installed, they call us out
18 to perform startup. And I kind of outlined that process as
19 well. And at the end of all of that when the successful
20 startup is completed, we complete the paperwork that we submit
21 to Caterpillar and Mitsubishi that states that the startup was
22 completed by a factory-certified technician, everything
23 conforms to their requirements as far as the installation
24 goes, and we're good to start the warranty at that time on all
25 both those pieces of -- or three of those pieces of equipment.

1 Q. Okay.

2 A. That's pretty much it. I -- as I said earlier, some
3 of the, I guess what I would call fine-tuning of the project,
4 how they're going to comply with the fire department as far as
5 alarms and their fire command room and some different things,
6 a lot of that stuff is somewhat of a fluid situation. And
7 when we get to the end -- we have an idea at the beginning how
8 we're going to address that, but sometimes what we plan on
9 doing at the beginning is not exactly what happens at the end.

10 And so we -- we, you know, typically participate in
11 some meetings. We discuss how we intend to address whatever
12 it is they're asking for. And then we go through the process
13 of doing that. It's usually not a tremendously big deal.

14 Q. That was very thorough. It was a good answer to my
15 very vague question.

16 We discussed earlier the scope and you just
17 discussed the scope involved the installation of the st -- the
18 startup primarily of a lot of this equipment down the line a
19 little bit. And that never happened, correct, because of the
20 check?

21 A. Right.

22 Q. Right.

23 A. We put an all stop to everything.

24 Q. Sure.

25 Now, looking at this exhibit -- looking at the Bill

1 of Lading first -- Bills of Lading, you see at the top there
2 it says -- the date on there is 1/17/11. Does that comport
3 generally with your recollection of when most of this
4 equipment was delivered? January, early February of 2011?

5 A. Without having my calendar in front of me it seems
6 right.

7 Q. Okay. The reason I ask -- and then we'll move on to
8 the next -- because the first two invoices which constitute,
9 you know, the majority -- it's actually the first three pages
10 of this exhibit, you've got the first invoice there for
11 598,936.26?

12 A. Uh-huh.

13 Q. And then the 156,627.92. And they're both dated
14 February of 2011, February 1st of 2011. Again, does that
15 comport generally with your understanding of when this
16 equipment was delivered to the site?

17 A. The February 1st date or the January 17th?

18 Q. Well, either one. I mean I guess -- let me ask you
19 a better question.

20 A. Because we have two different things here.

21 Q. Sure.

22 A. The January 17th I'm going to say is probably the
23 date that the equipment left the factory, and then the
24 February 1st date is probably pretty close to when the stuff
25 actually arrived on the site.

1 Q. Okay.

2 A. Does that make sense?

3 Q. Yeah, and that's what I was going to ask you?

4 A. Okay.

5 Q. The Bill of Lading is probably when the stuff

6 leaves. And then sometime before February 1st is when the

7 equipment arrives on the site, because then you send the

8 invoice out because the equipment's been delivered --

9 A. That is correct.

10 Q. -- correct?

11 Okay. So that's most of it, it looks like. And

12 then I've got another one that's the fourth page in. It looks

13 like some miscellaneous lugs essentially were -- were

14 delivered for \$329.71, it looks like March 25, 2011. Do you

15 have a specific recollection of that?

16 A. I have no idea.

17 Q. Okay. But per your understanding, almost all of the

18 equipment, other than maybe these lugs, all of that stuff was

19 delivered to the site a little bit before February 1st, 2011;

20 is that right?

21 A. Yes.

22 Q. Okay. Sitting here -- and if you add -- I'll

23 represent to you if you add the three invoices up -- we talked

24 about this earlier. I did the math, and I'm not very good at

25 this, but I'm guess -- it comes out to 755,893.89. Do you

1 have an understanding of whether Cashman delivered any
2 materials or did any additional work on -- on the City Hall
3 project after the -- you know, after March of 2011?

4 A. The only thing that I know of is we have a -- we
5 have a factory project manager for paralleling gear
6 specifically who visited the site sometime after this, just to
7 review the installation and those kinds of things. And I
8 don't remember the specific date.

9 Q. When you say after this?

10 A. Right.

11 Q. Is that after the installation or after delivery?

12 A. After delivery.

13 Q. Okay. Would it have been shortly after the
14 delivery?

15 A. Pretty shortly.

16 Q. I'll introduce another exhibit. This might help.
17 (Exhibit No. 6 marked.)

18 Q. (BY MR. BOSCHEE) Exhibit 6, I will represent is --
19 is what appear would be my client's daily log.

20 A. Okay.

21 Q. Okay. This is the last -- if you take a look -- and
22 we've got some -- we've got some dates on here. And it's got,
23 (as read): Description of work performed. It's kind of hard
24 to read. And this goes into -- this is that right -- this is
25 between, if you look at the dates, January 20th, January 21st,

1 after the Bill of Lading, but before the invoice.

2 January 21st, this is the last record that my client
3 has of Cashman actually being onsite. Do you have any
4 understanding or documentation that Cashman was onsite after
5 this, after January 21st?

6 A. I don't because that gentleman doesn't work for
7 Cashman, he works for the factory.

8 Q. Okay.

9 A. So I -- and I couldn't tell you what the date was.
10 I couldn't tell you what the date was.

11 Q. Okay.

12 MS. ROBINSON: Can you clarify who you mean by "my
13 client"?

14 MR. BOSCHEE: Oh, I'm sorry.

15 MS. ROBINSON: Who you're identifying, because you
16 have so many.

17 MR. BOSCHEE: I understand.

18 You've got -- what you've got here is a -- is a
19 Whiting-Turner document. I believe this was actually filled
20 out by Mojave.

21 MS. ROBINSON: Oh.

22 MR. BOSCHEE: By the subcontractor. And the reason
23 I say that is because it's a Subcontractor's Daily Log, and it
24 says, (as read): Trade, Mojave.

25 Q. (BY MR. BOSCHEE) So someone from the factory came

1 out in the -- you know, shortly after delivery of the stuff to
2 inspect it, but you don't have any knowledge or documentation
3 that anybody from Cashman was actually onsite or delivered any
4 materials after January 21st of 2011, do you?

5 A. Not to my knowledge.

6 Q. Okay. Do you have any -- again, there's the factory
7 person that came out -- I understand the factory person is not
8 a Cashman employee, correct?

9 A. That is correct.

10 Q. Okay. Do you have any -- any record or knowledge of
11 any work that Cashman performed after January 21st of 2011?

12 A. I don't.

13 Q. Kind of what I'm getting at is, we talked about the
14 fact that there was a bunch of stuff that was going to happen,
15 but then the check incident happened so you guys never got to
16 the inspection and then the -- the startup. So after delivery
17 of this stuff, January 20th and 21st, you guys were done, you
18 guys didn't do any other work on this project, correct?

19 A. Right. At that point we're in a wait mode for
20 Mojave to contact us and let us know they want us out to the
21 site.

22 Q. Sure.

23 And then the -- the check unfortunateness happens
24 and then that was that?

25 A. Right.

1 Q. So the scope of work that we talked about earlier
2 that include the startup and everything, there's no -- we're
3 not -- we don't have any dispute between us, you guys didn't
4 complete the scope of work that you had originally agreed to
5 do, correct?

6 A. Correct.

7 Q. Because you didn't get paid?

8 A. Right.

9 Q. Right. Okay.

10 And the work that was left to be completed, just so
11 I've got this clear in my mind, was you guys were going to go
12 out inspect the installation that Mojave and/or whoever had
13 done with the equipment and then perform the startup, correct?

14 A. Correct.

15 Q. And that was going to involve those protocol codes
16 that we talked about earlier, correct?

17 A. That would involve -- that would be part of it, yes.

18 Q. Okay. Did you guys receive -- do you recall
19 receiving a demand from Mojave to complete the work -- to
20 complete your scope of work? Does that ring a bell?

21 A. I'm not sure about a demand. I got an e-mail
22 asking.

23 Q. Let's start there.

24 A. Yeah. I got an e-mail asking and -- and I, you
25 know -- from Pete Fergen.

1 Q. Okay.

2 A. And I said, you know, we're not in a position to be
3 able to do that. We got to work this money thing out first
4 and then we'll be out.

5 Q. Sure.

6 Was that e-mail before or after you had the meeting
7 with Brian and Troy?

8 A. Before.

9 Q. Okay. So Pete sends you an e-mail saying, hey, you
10 know got this problem, but we really need you to come out and
11 get the inspection and startup done. You say, no, you know
12 this money issue is a big deal. And then sometime after that
13 you send an e-mail to Troy. Troy calls you up. You guys go
14 and have a meeting, but that doesn't resolve it either,
15 correct?

16 A. Correct.

17 Q. Okay. And just so I understand, the reason you guys
18 -- when I say "you guys," you being part of the
19 decision-making process, I'm assuming, did not do the
20 inspection and startup is because you didn't get paid,
21 correct?

22 A. Correct.

23 Q. Were there any other issues that you -- I mean --
24 and again, you know, other issues besides the \$755,000 you --
25 but were there any other issues or reasons that you wouldn't

1 have gone out and done the inspection or the startup?

2 A. No.

3 Q. Did you receive any complaints from Mojave about the
4 quality or functioning of the materials that were provided?

5 A. No.

6 Q. Okay. Do you recall anybody at Mojave ever
7 requesting repair of any of the equipment that was provided?
8 Does that ring a bell?

9 A. No.

10 Q. You personally didn't -- don't have knowledge of
11 that?

12 A. Don't recall that.

13 Q. Then obviously the follow-up of that would be: You
14 don't recall ever actually going out and repairing any of the
15 equipment out at the job site, do you?

16 A. No.

17 Q. Okay. Because again, January 21st that's -- you
18 guys haven't gone back out there to do any inspection,
19 installation, or repair any other work out there, have you?

20 A. Not to my knowledge.

21 Q. Okay. Do you have an understanding -- did anybody
22 at Mojave communicate to you they were going to try to hire
23 some folks, other contractors, to complete your work?

24 A. Yes.

25 Q. Who communicated that to you?

1 A. Pete Fergen.

2 Q. What did Pete tell you?

3 A. He said first he was going to contact some
4 neighboring CAT dealers to see if they could get one of them
5 to do it. And then -- and that was sort of the end of our
6 conversation in that regard because it -- because the
7 understanding is that only an authorized Caterpillar dealer
8 can start this equipment up.

9 Q. Okay.

10 A. So I -- when -- when we started hearing rumors that
11 maybe there was an independent company out there starting it
12 up, I was not aware that they we're looking at hiring an
13 independent.

14 Q. Okay. When you are talking to Pete and had the
15 meeting with Brian and Troy -- I want to be -- I want to be
16 clear about this so I -- so I know. There was no dispute that
17 you guys weren't -- that you weren't paid, that CAM's check
18 bounced. Why were they asking you -- or what were they
19 communicating to you that they want -- as a reason to go out
20 there and finish the job?

21 A. You know, our discussions at that point were
22 basically it needs to be done.

23 Q. Okay.

24 A. They have obligations to Whiting-Turner. Whiting-
25 Turner has obligations to the owner. And they -- you know, it

1 needed to be done.

2 Q. Okay. During those meetings, those communications,
3 did they articulate to you that, well, we did pay. We paid
4 CAM, so the work needs to get done and you guys need to figure
5 out what to do with CAM? Was part of the rationale, if you
6 will?

7 A. I'm not sure if that was specifically spoken --

8 Q. Okay.

9 A. -- but I -- that was certainly the implication.

10 Q. Okay. And sitting here right now -- again we talked
11 about this earlier -- but you don't -- you don't have any --
12 you don't dispute that Mojave paid CAM, do you?

13 A. I -- without having direct knowledge of it, I don't
14 necessarily dispute it.

15 Q. Okay. And we talked earlier, you didn't actually do
16 the exchange, but there was an unconditional lien release
17 provided for this work, correct?

18 A. I -- it looks like you have it there so I'm --

19 Q. I do. I'm going to show it to you.

20 A. I've never -- I've not seen it.

21 Q. You've never seen it?

22 A. I have not.

23 Q. Okay.

24 A. I don't -- that's a Shane Norman -- that's his
25 department and their function that takes care of that.

1 Q. Understand. And I'm not going to have you look at a
2 document that you haven't seen.

3 Were you -- did you play any part in -- in the lien
4 process in terms of getting the process started or anything
5 else, or was that all Shane?

6 A. Pretty much all Shane. The only thing -- the only
7 part of that process that our department has is we provide the
8 customer with a form to fill out with the prelien information
9 so we have all the interested parties' information and those
10 kinds of thing. Other than that, I -- after that, it's pretty
11 much Shane's department's --

12 Q. Okay.

13 A. -- rodeo.

14 Q. Okay. The lien's dated April 26th, 2011 and signed
15 under a notary. Do you have any reason to dispute that date
16 as the lien date? I mean does that comport with your
17 understanding of when you guys liened the project -- or I
18 mean --

19 MS. ROBINSON: I'm going to --

20 Q. (BY MR. BOSCHEE) -- gave the lease -- gave the
21 release? Because we're going to look at the Right to Lien in
22 a second.

23 A. I guess I have no comment.

24 Q. Okay.

25 A. I don't know.

1 Q. You just don't know?

2 A. Right.

3 Q. Okay. Well, let's take a look. Maybe you don't --
4 maybe you don't know this, I've got a Notice of Right to Lien.
5 Have you ever seen that document before?

6 A. I have not.

7 Q. Did you provide any equipment -- any equipment? You
8 did provide equipment.

9 Did you provide the information with respect to
10 getting that process started, the Right to Lien?

11 A. Again --

12 MS. ROBINSON: I object, he -- asked and answered.

13 MR. BOSCHEE: Well, he said he --

14 Q. (BY MR. BOSCHEE) He (sic) said that your company
15 provided some information with respect to the release and --
16 and the lien itself. The prelien information --

17 A. Right.

18 Q. -- like what did you -- what did you provide in
19 terms of the prelien?

20 A. The prelien is essentially -- I haven't seen the
21 form in a while, to tell you the truth. But the last time I
22 saw it, it's basically a list of the interested contractors on
23 the job, the owner, names, addresses, contacts. There's
24 really not much else to it.

25 Q. And you didn't -- you've never actually seen the --

1 the Notice of Right to Lien for -- with respect to this
2 project, have you?

3 A. I have not.

4 Q. Well, then I'm not going to ask you about it.

5 Have you ever seen the lien, the actual Notice of
6 Lien for this project?

7 A. I have not.

8 Q. Did you participate in any way, shape, or form with
9 putting that document together?

10 A. Again, with the exception of the prelien process,
11 no.

12 Q. Okay. This document -- this Notice of Lien is dated
13 June 21st, 2011, signed by Shane Norman. Do you have any
14 reason to -- and it looks like it was recorded on -- the next
15 day, June 22nd, 201 by Ms. Robinson. Do you have any reason
16 to doubt that that's the date the lien was recorded? Any
17 reason to dispute that?

18 A. No.

19 Q. Okay. Follow-up question, I'm going back again off
20 my own line: Do you have an understanding as to why you guys
21 didn't give a conditional lien release with respect to the
22 755,000, as opposed to an unconditional lien release?

23 A. I don't.

24 MS. ROBINSON: Objection, asked and answered.

25 Q. (BY MR. BOSCHEE) Or was that a -- was that a -- was

1 that a decision you were part of?

2 A. Again, I was on vacation.

3 Q. Okay.

4 A. So that was a Shane decision.

5 Q. Okay. You were completely out of the loop on that?

6 A. That is correct.

7 Q. On the other projects you had worked on or that you
8 were a part of with the disadvantaged business owners or
9 minority contractors where the check was cut and then the next
10 check was cut to you guys, did you provide unconditional lien
11 releases on those projects, if you know?

12 A. If we liened the project, at some point we would
13 have had to provide an unconditional release to close out the
14 job.

15 Q. Okay.

16 A. So logic says yes, we have. I'm not -- I don't see
17 them very often.

18 Q. Right.

19 Let me -- let me ask you another way. On those
20 other projects -- we talked about the process, right. There's
21 -- the minority contractor gets a check, and then they cut a
22 check to you guys, correct?

23 A. (Witness nodding.)

24 Q. Do you have an understanding as to whether a
25 conditional release was given upon the first check being cut

1 and then an unconditional release being given once the
2 minority contractor's check cleared your financial
3 institution, or was it just, it got paid, here's the
4 unconditional release, if you know?

5 A. I don't know. That's a Shane question. Sorry.

6 Q. Okay, yeah. And I think we did ask Shane that
7 question, but anyway.

8 MS. BRISCOE: He said you would know.

9 MR. BOSCHEE: He did say you would know.

10 MS. ROBINSON: I don't recall that actually.

11 MR. BOSCHEE: He did. Well, I've got his transcript
12 here.

13 Q. (BY MR. BOSCHEE) But he said you might know that.

14 A. That's -- that's typically his.

15 I -- i can tell you, if you take the minority
16 contractor out of it --

17 Q. Yeah.

18 A. -- if we're dealing directly with a contractor,
19 ordinarily the conditional release is provided upon -- we
20 usually get paid in stages on a job like this, and they'll
21 hold what's called a retention. And we'll get -- we'll sign a
22 conditional release on the payment -- the majority payment,
23 and we won't provide the unconditional until the retention is
24 paid.

25 Q. Until the thing's paid in full?

1 A. Right.

2 Q. But in this case, the 755 was -- was the entirety of
3 -- was essentially the entirety of the payment --

4 A. It's -- yeah --

5 Q. -- per the invoice?

6 A. I'm trusting your math.

7 Q. Right. Don't make that mistake the second time
8 but -- but it is, that's the correct number.

9 Is that -- and that would -- given that there's no
10 necessary retention at that point going forward, would that
11 be -- that would be a typical reason -- you don't know
12 specifically as to this project, but that would typically be a
13 reason to give the unconditional instead of the conditional,
14 because there's no retention to hold back?

15 A. Correct.

16 Q. Okay.

17 A. That would make sense.

18 Q. Do you have any knowledge of a claim made to
19 Whiting-Turner with respect to this amount owed?

20 A. I don't.

21 Q. You don't. That was again -- that was a Shane issue
22 completely?

23 A. Yeah. Yep.

24 Q. So sitting here right now you're not -- you're not
25 familiar with the 90-day -- what's typically termed the 90-day

1 notice to the general contractor, with respect to this?

2 A. That was something that Shane was working with Mike
3 on, and I -- frankly I'm not -- I wasn't involved.

4 Q. Okay. That would be something -- if -- if there was
5 something that Shane didn't know in his deposition about that,
6 that would be something I would need to talk to Mike about?

7 A. Mike Pack.

8 Q. The president?

9 A. The president of our company.

10 Q. Okay.

11 A. I guess so, yes.

12 Q. Okay. Sitting here right now are -- and this is the
13 only -- I'll represent this is -- this is a document disclosed
14 because I -- I don't have any other ones.

15 Are you aware of any -- of any other notices that
16 were sent to Whiting-Turner, other than perhaps this 90-day
17 notice? I mean did you personally communicate anything to
18 Whiting-Turner, i.e., we didn't get paid. You know, we're
19 going to make a claim on your bond. Anything like that?

20 A. I did not.

21 Q. Okay. That again would have been Shane and Mike,
22 theoretically, or Mike?

23 A. Yes, I -- for want of a -- I'm not sure.

24 Q. Okay. The 90-day notice that was provided to
25 Whiting-Turner is again -- it's at that same -- this one is

1 June 24th, 2011. Do you have -- sitting here right now, do
2 you have any knowledge or information as to -- as to any
3 notices that were provided to Whiting-Turner prior to that?

4 A. No, I don't.

5 Q. Okay. Do you sitting here right now have any
6 knowledge of any notices that were provided to any surety
7 companies, Whiting or Mojave's, at any point during this
8 process?

9 A. No direct knowledge.

10 Q. Okay. And who -- if anybody had that direct
11 knowledge would it be Shane or Mike?

12 A. Yes.

13 Q. I want to go back to the initial meeting and -- the
14 meeting with Angelo and you and Mojave. Specifically to the
15 best you can recall, what did -- and was that -- was that with
16 Pete or was it with Troy or Brian?

17 A. It was with Peter.

18 Q. Okay. Specifically, what did Pete tell you about
19 their relationship or their working relationship on the other
20 projects with CAM Consulting?

21 A. Almost nothing.

22 Q. Okay.

23 A. He basically just introduced us and said that we've
24 been -- we've had -- he -- I think he said something to the
25 effect of, we're working with him on some other things. Seems

1 like a really straight up guy. Can probably get us where we
2 need to go on this project.

3 Q. Okay.

4 A. I'm paraphrasing, but I -- pretty close.

5 Q. I understand. And it's been awhile, so remember
6 specific words in a conversation is difficult. I get that.

7 But during that conversation that kind of led you to
8 the meeting with them, did he articulate that they had any
9 kind of a special working relationship or that they had a
10 personal relationship with Angelo Carvalho, other than just
11 working on some projects with him?

12 A. No.

13 Q. Now, Cashman -- you guys -- Cashman has also brought
14 a claim in this case for fraudulent transfer against Mojave.
15 Are you familiar with that?

16 A. I'm not.

17 Q. You're not?

18 A. No.

19 Q. Okay. So asking you about the factual basis for
20 that is probably -- probably something you're not going to
21 know about.

22 Let me ask you this: To the extent that any
23 investigation was performed after the fact, after the check
24 didn't clear, as to other business dealings between Mojave and
25 CAM Consulting, would you have been involved in that?

1 A. The only knowledge I had of any sort of prior
2 relationship between Mojave and CAM was when we got -- when we
3 subpoenaed CAM's financial records and bank statements and
4 there were payments made to Mojave that appeared to be for
5 transactions prior to this one. But that's the extent of what
6 I know.

7 Q. Okay. Did you -- after you got those bank
8 statements, did you perform any follow-up investigation beyond
9 that as to the other jobs or what the source of those payments
10 would be?

11 A. No. And when we sat in that meeting with Brian and
12 Troy, you know Mike mentioned those transactions specifically.
13 I think sort of -- he didn't want to -- I'm not sure why he
14 didn't want to ask directly. But he didn't want to ask
15 directly about them. But he did mention those transactions.
16 And Brian and Troy pretty much just didn't acknowledge one way
17 or the other their knowledge of those transactions.

18 Q. I got to follow up on that because I don't -- when
19 you say they didn't acknowledge one way or another, I mean --
20 let me -- let me see if I understand this. What
21 specifically did Mike ask them about those other payments?

22 A. I believe Mike said something to the effect of that
23 -- you know, the transactions we see on here, we see a couple
24 of payments to Mojave for -- and they were large dollar
25 amounts.

1 Q. Uh-huh.

2 A. And Brian and Troy basically just didn't say
3 anything.

4 Q. They didn't deny them? They didn't tell -- say they
5 were for another job? They didn't say anything?

6 A. They didn't acknowledge.

7 Q. Did they just sit there silently and not say
8 anything about that question? It's a pretty loaded question.
9 I mean I -- they didn't say a word?

10 A. They did not say a word.

11 Q. Did either of them say, well, we're just not going
12 to talk about that or we're just not going to address that,
13 that's apples and oranges, or I mean they literally didn't say
14 anything?

15 A. They did not acknowledge it.

16 Q. I'm just imagining Troy Nelson sitting in a room not
17 saying anything upon a question like that. I'm having a hard
18 time reconciling that but. . .

19 A. He's not the kind of guy to hold back on something.
20 And that was why it was sort of noteworthy. That's why I
21 remember it specifically is -- you know, Troy's not -- well,
22 you know him. He's -- he's not a -- he's not somebody who's
23 not a forthcoming person. And that was -- that's why it
24 sticks in my mind, because it was so out of character.

25 Q. Well, did you or Mike follow up with any questions

1 about those checks after the non-response?

2 A. No. We moved on to talking about other things
3 relative specifically to this project.

4 Q. Like what?

5 A. How do we go forward?

6 Q. And at that point you reached an impasse because
7 there was no way to go forward?

8 A. That is correct.

9 Q. You guys, as I understand it -- as I understand the
10 topic, Mojave wants you to go forward because it needs to get
11 done. You guys aren't going to go forward do the ins -- or do
12 the checklist and then do the startup, provide the codes,
13 because you weren't paid, correct?

14 A. Correct.

15 Q. Okay. You're a tech guy, so I'm going to ask you a
16 little bit of a technical question. And we're still arguing
17 about this with the judge a little bit but. . . .

18 If Cashman has to go in and provide those protocol
19 codes at this stage in the game, does that -- what concerns
20 would you have about doing that today?

21 A. Concerns? None from a technical standpoint.

22 Q. Okay.

23 A. I mean there's no physical reason why we wouldn't be
24 able to do that. It's just -- it's proprietary information.
25 It's privileged and --

1 Q. You haven't been paid?

2 A. Correct.

3 Q. Okay. But from an actual just going in there and
4 putting the codes in and getting the stuff communicating, like
5 physically there's no real issue there, you just don't want to
6 do it because you haven't gotten paid, right?

7 A. That is correct.

8 MR. BRISCOE: Let me take two minutes, review my
9 notes, and we might be able to get you out of here pretty
10 quick.

11 THE WITNESS: Okay.

12 (A brief recess was taken.)

13 MR. BOSCHEE: Back on the record. We'll be quick.

14 THE WITNESS: No problem. I appreciate it.

15 Q. (BY MR. BOSCHEE) You understand you're still under
16 oath?

17 A. Yes, sir.

18 Q. Factory guy came out and inspected the site at some
19 point. You don't know -- we don't have dates, that's fine.
20 Did he ever provide you a report that you recall?

21 A. Not us.

22 Q. Okay. Who did he provide it to?

23 A. Back to the factory.

24 Q. Okay. Did you ever have a conversation with the
25 factory guy about what he saw out there or anything like that?

1 A. Had a conversation with him, it was -- you know, it
2 was basically, the equipment is installed. It looks like it's
3 being installed correctly. But that was -- it was still very
4 early --

5 Q. Right.

6 A. -- stages, so there wasn't anything really done yet.
7 It was more -- honestly, I think he wanted a weekend in Vegas.
8 So -- I hate to say it but. . .

9 Q. I can't hate him for that.

10 But it was early on in the process. He just went
11 out, looked at it, said things are going smoothly, chow?

12 A. Right.

13 Q. When you talked to Pete initially about CAM and he
14 said they were working on other jobs with CAM, did he tell you
15 what other jobs they were working on with him?

16 A. He did not.

17 Q. Okay. But you knew that they were working -- you
18 knew that Pete was working on at least a couple other jobs
19 with CAM before that meeting, right?

20 A. Yes.

21 Q. The meeting -- the one meeting with all three of
22 them?

23 A. Right. Yes.

24 Q. Okay. And did he articulate any problems that they
25 had had with CAM on any other projects?

1 A. No, he did not.

2 Q. Did he talk about any -- any money that was due and
3 owing on those other jobs during that meeting?

4 A. We did not even -- didn't have that in depth of a
5 discussion.

6 Q. Didn't get to that. Okay.

7 We talked about the fact that you haven't seen the
8 prelien notice and you haven't even seen the lien, per se, but
9 one thing that Shane did identify you as knowing is, who's
10 going to figure out the amount of the mechanic's lien. Would
11 that be you or would that be someone else at Cashman that
12 would determine the amount that Cashman's going to lien for?

13 A. It would be probably somewhat of a joint discussion.

14 Q. Okay.

15 A. Certainly myself and the account manager on the job
16 have the most direct knowledge of what work -- what costs go
17 into the total makeup of the job, if that's -- I think that's
18 what you're asking.

19 Q. Well, I am, and that's why -- I guess what I'm
20 getting at it is, okay, we've got a \$755,893.89 lien on this
21 project. Did you participate in coming to that number?

22 A. Yes.

23 Q. Who else participated in coming to that number?

24 A. My account manager.

25 Q. And so who did you provide that number to? I mean

1 obviously you didn't see the lien, you didn't see the prelien,
2 but the information was provided to somebody. Who did you
3 provide that to?

4 A. Within Cashman?

5 Q. Yeah. Right.

6 A. In other words, for them to be able to generate that
7 paper?

8 Q. Right.

9 A. Shane.

10 Q. Oh.

11 A. And I'm going to guess that he just did it off the
12 invoice --

13 Q. Okay.

14 A. -- or invoices.

15 Q. Sure.

16 But you were involved in coming up with the number?

17 A. Yes, sir.

18 Q. Okay. Let's say a 755,893.89 bowl of gold coins
19 fell in your lap today and you were able to go out and
20 complete the project, get the inspection and the startup done.
21 How much time would that take?

22 A. Difficult to say without having a knowledge of the
23 condition of the site. Now, I'm assuming that it's pretty
24 late in the construction stages. So assuming that everything
25 is -- the table is set, so to speak --

1 Q. Uh-huh.

2 A. -- and everything is ready and everything that
3 Mojave did was done correctly and all those other things, you
4 know, a typical time frame for a project like this would be
5 two weeks.

6 Q. Okay.

7 A. Maybe three.

8 Q. Two to three weeks.

9 Would that be the same as had -- I mean, let's say
10 CAM's doesn't -- let's say he's got sufficient funds back in
11 the day and you guys had gone out and done the inspection when
12 -- when Mojave called, and the startup. Would that time frame
13 be the same at that point as it is now, or would it take a
14 little longer or shorter?

15 A. Hard to say. Likely longer, only because -- if
16 you've ever been on a construction site, it's kind of a mad
17 house. And there's people running all over the place and
18 doing different things and everything gets sort of fragmented.
19 And there's probably -- there probably would have been days in
20 there where we would not be able to get our work done.

21 So we would say, you know something, where you are
22 with your situation, we can't get any work done today so we're
23 not going to have a technician out there. So if the -- the
24 time -- the total time frame should be the same. Well, I
25 shouldn't say that. The net time frame would be the same.

1 The total would probably be something longer, maybe four
2 weeks.

3 Q. Sure.

4 We're kind of talking about the same thing. If it
5 would take you 14 days, and right now you could do it 14
6 consecutive days, back a -- you know, a year ago it would have
7 maybe taken you 14 days with breaks?

8 A. Correct.

9 Q. Okay. How much expense would -- would -- ballpark
10 would Cashman incur on that process?

11 A. You know, it depends a lot on how much is done
12 correctly at the site.

13 Q. Right.

14 A. It can vary pretty widely. I -- man, I don't recall
15 how much we had in there for startup.

16 Q. Okay.

17 A. I mean we can take a literal sense of it and -- two
18 guys for 14 days and do the math at \$110 an hour --

19 Q. Sure.

20 A. -- and come up with a number. But that's just the
21 -- that's just the man hours. It doesn't count if we had to
22 purchase any materials or anything. So I don't -- I don't
23 think I can answer that accurately.

24 Q. So you don't know what the hard cost would be
25 because it would depend on whether everything was installed

1 correctly?

2 A. And -- right.

3 Q. And then rest of it would be man hours. And then
4 it's just a question of two people, 14 days, X amount per
5 hour, figuring that math out?

6 A. Right. And then -- and then as we discussed
7 earlier, the last part of that is working out the final
8 details. How are -- how is the communication with the
9 building going to work, how is the communication with fire
10 command going to work, those kinds of things that get hammered
11 out in the latter stages of the process. So there could be a
12 variance there in cost as well.

13 Q. Okay. Well, how -- when you say a variance in cost,
14 I mean how much variance are we talking about there? I mean
15 ballpark? It doesn't seem like a lot, but I -- you know.

16 A. Well, you know, it depends --

17 Q. Yeah.

18 A. -- if -- if they want some high-level communications
19 at a digital level, I mean that's a 5-, \$6,000 process.

20 Q. Okay. Not a high cost relative to what we're
21 talking about in this case?

22 A. Relative to three quarters of a million dollars not
23 high.

24 Q. Well, 5-, \$6,000, not insignificant either?

25 A. Right.

1 Q. So I mean you would have to come out-of-pocket
2 for -- okay.

3 Just specifically talking about the installation of
4 the protocol codes, how much time is that going to take? If
5 it has to happen? If it. . .

6 A. You know I really can't answer. And the reason I
7 can't answer is when I was a technician, we didn't have all
8 these digital communications. So I can tell you that we have
9 to go all the way back to the beginning. It's not something
10 you can pick up in the middle and do just that. We have to go
11 back to the very beginning and start from ground zero and work
12 through the checklist process that Caterpillar gives us to get
13 to that point where we start getting things communicating with
14 each other.

15 Q. Okay. And to go back from the beginning and go
16 through the checklist, how -- I mean, approximately how long
17 is that going to take?

18 A. That's 14 days.

19 Q. That's 14 days?

20 A. Yep.

21 Q. Well, so what you're saying is you can't -- as I
22 understand this, you can't install the protocol codes without
23 doing the whole startup?

24 A. Correct.

25 Q. Okay.

1 A. Whatever has been done out there, and I don't know
2 what has or has not been done, is -- is -- how do I say
3 this -- is inconsequential. It doesn't make any difference
4 what they did or didn't do. From Caterpillar and Mitsubishi's
5 on the UPS side's standpoint, none of that work was done by a
6 factory-authorized rep. So all of that has to be done by a
7 factory-authorized rep. So -- and because our folks don't
8 know what was done or what was not done you can't -- you can't
9 try and pick up somebody else's work in the middle. They're
10 going to have to start from the beginning and go all the way
11 through the process.

12 Q. Okay.

13 A. And if that doesn't happen -- well, two things could
14 happen. Number one, it could be done incorrectly. A step
15 could be missed, and that could be expensive. The second part
16 is there won't be a viable warranty on any of the products
17 until that is done.

18 Q. Okay. Sitting here right now though, you don't know
19 whether a factory-authorized representative has been out there
20 and done any of that work, do you?

21 A. I'm relatively sure that that has not happened.

22 Q. Based on?

23 A. Based on discussions we had with Mitsubishi as far
24 as them dispatching somebody. They were not going to dispatch
25 anybody without our knowledge. And they say that they

1 haven't.

2 Q. Okay.

3 A. And as far as Caterpillar goes our -- we've had --
4 we have very specific what we call sales and service
5 agreements with Caterpillar. And if another dealer is going
6 to come in and work in our territory, perform any sort of work
7 whatsoever, they need to notify us that they're going to be in
8 our territory working. And we've had no CAT dealer notify us
9 that they were going to be working on the job.

10 So could somebody have snuck in and done it?

11 Q. Sure.

12 A. Yes. It's not very likely.

13 Q. Okay. Have you had communications with anybody at
14 Caterpillar about not wanting anyone else to come in and do
15 that, primary because you guys haven't -- or are owed a lot of
16 money on this project?

17 A. I don't recall.

18 Q. How about Mitsubishi, communications with them along
19 those same lines?

20 A. I --

21 Q. I.E., don't let -- don't let someone else come in
22 and do this because we're owed a lot of money and -- and we
23 want to get paid?

24 A. Yeah, I don't recall -- yeah, no, I don't recall
25 having that conversation.

1 Q. But nobody from Caterpillar or Mitsubishi could do
2 anything with the protocol codes? That's something that you
3 guys would have to do, because like you said earlier, I think
4 it's proprietary?

5 A. Correct.

6 Q. All right. And the other kind of question I had --
7 it's kind of random -- when you say the factory guy, which
8 factory?

9 A. We have several involved. What -- carry a couple of
10 different terms. Their official name at this point is
11 Caterpillar Switchgear. It use to be known as Intelligent
12 Switchgear Organization. And then it was known as CAT ISO
13 (phonetic) for awhile during a transition period. But their
14 official title now is Caterpillar Switchgear.

15 Q. Okay.

16 A. And it's a division of Caterpillar. And they
17 have -- they have their own people that go out and do site
18 inspections and project management and those kinds of things.
19 It's a very -- very technical business that most dealers don't
20 have the real ability to support, so they have factory folks
21 that help out.

22 Q. Okay. That was -- that was where I was going. I
23 wasn't sure where -- which of the factories he came from.

24 We talked about a lot of subjects today and a lot of
25 specific things. Is there anything else about your

1 involvement with the City Hall project and specifically
2 relating to your dealings with Mojave Electric that I did not
3 ask you about today, but that you feel are important to my
4 understanding of what -- what the dynamic here is, issues
5 going forward?

6 A. No.

7 MS. ROBINSON: Object, form of the question.

8 THE WITNESS: No.

9 MR. BOSCHEE: Okay, I don't have any further
10 questions.

11 I'm assuming Jennifer doesn't have any questions?

12 MS. ROBINSON: No.

13 (Signature requested.)

14 (The proceedings concluded at 11:36 a.m.)

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CERTIFICATE OF DEPONENT

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* * * * *

I, KEITH LOZEAU, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

KEITH LOZEAU, Deponent

REPORTER'S CERTIFICATE

I, Tammy M. Breed, CSR No. 305, Certified
Reporter, certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth, at which time the
witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements made
at the time of the examination were recorded stenographically
by me and were thereafter transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

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

Dated this 5th day of September, 2012.

TAMMY M. BREED, C.C.R. No. 305

A	18:20	87:6,7	Army 31:21	a.m 2:4 4:2
ability 90:20	affix 92:20	answered 34:2,2	34:20	91:14
able 5:8 8:7	Afghanistan	40:1 69:12	arranged 31:12	A642583 1:5
14:21 17:23	45:3	70:24	arrived 58:25	B
19:11,13,15,22	afield 21:18	answering 5:20	arrives 59:7	B 3:8
42:24 43:24	24:20	5:21 43:25,25	artfully 6:18	back 8:3,3 10:11
45:13 46:22	afoot 45:20	answers 5:19	articulate 67:3	13:9 14:3,21
52:17 64:3	afraid 39:23	anticipated	76:8 81:24	17:7 21:17,19
79:24 80:9	afternoon 6:25	52:25	aside 34:18,22	32:1,16 38:11
83:6,19 84:20	aggressive	anybody 8:14	asked 5:13 6:14	38:14,16 41:6
absence 42:12	44:25	9:1 30:12	6:18 23:8	43:13 45:3
absolutely 18:7	ago 14:9 23:11	32:15,18 36:21	38:22 69:12	47:24 49:22
20:4 21:14	49:7 85:6	39:17 46:3,7	70:24	51:11,14 54:10
47:2	agreed 63:4	62:3 65:6,21	asking 5:11,22	55:22 65:18
acceptable 31:1	agreement 30:2	75:10 88:25	6:17 17:24	70:19 73:14
accepted 36:17	55:7	89:13	24:13 25:20,22	75:13 78:19
36:25	agreements	anymore 23:20	25:24 53:21	80:13,23 84:10
accepting 37:4	89:5	55:20	57:12 63:22,24	85:6 87:9,11
accommodate	ah 15:12	anyway 41:14	66:18 76:19	87:15
26:14	ahead 7:11 56:1	51:7 72:7	82:18	background
accompanied	56:1,2	app 33:25	associated 13:18	14:14,15,22
41:2	aka 1:10	apparent 43:12	17:22 23:7	34:24
account 12:23	alarms 57:5	apparently	ASSOCIATES	backup 21:1
45:24 82:15,24	amended 9:11	50:13	1:11	bad 50:5
accounts 22:9	9:14	appear 60:19	Association	bailed 45:18
22:14,19	AMERICA	APPEARAN...	18:9	ballpark 85:9
accurately	1:14	2:7	assume 11:23	86:15
85:23	Americans	appeared 25:9	35:25 54:12	bank 45:15,23
acknowledge	31:25	77:4	assuming 17:7,8	77:3,7
77:16,19 78:6	amount 3:14	apples 78:13	21:12 64:19	Based 88:22,23
78:15	28:7 36:6 52:2	application 3:16	83:23,24 91:11	basically 10:13
action 92:19	73:19 82:10,12	52:5,14 53:3,8	attempted 45:15	12:24 24:22
93:16	86:4	53:23	attorney 7:25	32:23 35:6
activate 48:17	amounts 77:25	applications	93:15	47:18 48:10,12
actual 40:21	and/or 24:7	52:22	Attorney's 50:6	48:25 55:11,16
70:5 80:3	63:12	appreciate	16:15	56:1 66:22
add 59:22,23	Angelo 1:9	80:14	Audible 6:12	69:22 75:23
additional 60:2	29:20 31:14,17	appropriate	Austi 2:10	78:2 81:2
address 18:23	32:13,14,15,18	39:24	authorized 66:7	basis 52:21
43:17 57:8,11	33:17,25 34:4	approximately	available 11:20	76:19
78:12	34:19,22 75:14	87:16	aware 39:3	Bates 3:14,16,17
addressed 55:24	76:10	April 68:14	42:13 66:12	3:20
addresses 69:23	answer 7:10,11	architects 15:2	74:15	bboschec@ne...
adjusting 48:18	12:1 28:17	55:15	awhile 76:5	2:19
adjustments	53:18 54:17,23	arguing 15:17	90:13	beach 44:21
	57:14 85:23	79:16		

beginning 18:22 43:12 53:23 57:7,9 87:9,11 87:15 88:10 believable 45:5 believe 14:2 36:10 37:17,19 39:9 54:20 55:21,24 56:9 61:19 77:22 bell 63:20 65:8 best 5:12,19 7:16,19 9:22 11:11 26:8,11 26:16 30:18 38:22 51:2 54:15 75:15 better 4:13 20:13 54:24 58:19 beyond 77:8 bid 30:23 big 7:3 20:7 57:13 64:12 biggest 40:11 Bill 3:17 54:9,11 57:25 59:5 61:1 bills 18:21 56:4 58:1 bit 6:23 10:24 15:17 19:2,5 23:2 26:24 27:8 34:19 40:17 41:21 42:23 46:13 47:12 50:3 57:19 59:19 79:16,17 bits 26:24 bond 74:19 books 30:25 Boschee 2:15 3:4 4:10 9:10 9:13 10:8 16:13,20,22	25:24 26:2,8 35:22 38:4,6,9 51:11,14,15 54:5 60:18 61:14,17,22,25 68:20 69:13,14 70:25 72:9,11 72:13 80:13,15 91:9 boss 47:4 bottom 12:6 bounce 41:24 bounced 43:3 66:18 bouncing 41:23 bowl 83:18 boy 21:22 break 7:3,4,5 51:10 breaks 85:7 Breed 1:24 2:4 93:3,23 Brian 2:15 6:20 46:16 47:5 64:7 66:15 75:16 77:11,16 78:2 brief 51:13 80:12 briefly 29:13 51:5 BRISCOE 2:15 72:8 80:8 broad 28:4 broke 52:5 brought 25:25 76:13 Bugney 47:5 building 19:23 21:3 55:15 86:9 built 56:3 bunch 62:14 business 12:25 31:3,24 32:3 39:1,23 43:18	71:8 76:24 90:19 businesses 34:8 button 47:2 buying 15:4,4 bypass 19:25 <hr/> C calendar 58:5 call 26:17 30:8 31:13 35:11 55:11 56:17 57:3 89:4 called 27:14 30:20 31:8 47:1 50:13 72:21 84:12 calls 19:3 64:13 CAM 1:9 27:14 27:24 29:10,15 29:19 30:13 31:17 32:18 33:11 34:4,19 36:3 37:1,9,14 37:23 42:4 52:6,8,14 53:24 54:20 55:7 67:4,5,12 75:20 76:25 77:2 81:13,14 81:19,25 CAM's 37:9 66:17 77:3 84:10 cancer 11:20 capability 19:13 19:15 capacity 19:23 20:23 21:6 card 43:18 care 54:20 67:25 carries 5:4 carry 21:3 90:9 Carvalho 1:9,10 34:4,22 36:18 41:2 43:4	76:10 case 1:4 20:24 31:22 33:10 50:12,23 51:2 53:7,17 73:2 76:14 86:21 cases 20:20 29:9 39:8 56:3 cash 52:21 53:1 Cashman 1:4,20 2:1 3:11,13 8:17,19 9:2,24 10:15,19 12:12 13:1,6,14 25:20 30:12 33:20 34:4 36:21 37:4 38:19 41:1 43:2 46:8 47:21 54:15 55:1,7,8 60:1 61:3,4,7 62:3,8 62:11 76:13,13 79:18 82:11 83:4 85:10 Cashman's 82:12 CASH001 3:16 CASH003 3:18 CASH014 3:15 CASUALTY 1:14 CAT 52:5 66:4 89:8 90:12 Caterpillar 13:17 56:21 66:7 87:12 88:4 89:3,5,14 90:1,11,14,16 cause 37:25 38:1 41:15 CCR 1:24 certain 19:12 28:7 certainly 12:6 20:10,16 31:25	39:6 41:17 47:9 67:9 82:15 CERTIFICA... 92:1 93:1 Certified 2:4 93:3 certify 92:18 93:4,14 CFO 11:4,7,12 11:16 challenges 14:24 15:5 46:21 CHANGE 92:2 changed 43:16 43:17 44:1 character 78:24 chase 45:1 check 3:13 24:6 24:23 33:20 34:24 35:23,25 36:2,13,17,22 37:1,12,19,23 38:15 39:9,14 39:18,21 40:23 40:24 41:6,8 41:13 42:4,4 42:12 43:16 44:5 45:7,8,13 45:16 47:19 49:24 50:5 53:18 57:20 62:15,23 66:17 71:9,10,21,22 71:25 72:2 76:23 checking 53:15 checklist 48:19 79:12 87:12,16 checklists 48:22 48:24 49:3 checks 27:8 33:16 37:4 40:5 41:23,24 43:3 79:1
---	--	--	--	--

chow 81:11	87:1 89:6,14	65:23 83:20	76:25	copy 9:17
Chris 56:9,12	89:21	completed	contact 44:24	corporation 1:5
City 15:7 16:24	comes 59:25	56:20,22 63:10	62:20 66:3	1:9,11,13
18:10 20:6	comfort 35:13	completely	contacted 31:5	CORPORAT...
21:20 60:2	comfortable	21:11,17 40:15	contacts 69:23	1:15
91:1	31:17,18,19	71:5 73:22	contemplated	correct 4:22
claim 73:18	coming 8:23	comply 52:23	20:16	10:16,17 14:10
74:19 76:14	45:3 82:21,23	57:4	contemplates	16:24 17:9,10
claims 10:13	83:16	complying 9:20	20:8	17:13 21:16
clarification	command 57:5	comfort 58:2,15	contest 7:1	25:1 26:25
26:7	86:10	68:16	contract 54:15	27:1,16,18,22
clarify 6:13,15	comment 68:23	compressed	54:25	28:20 34:6
6:20 34:3	common 46:24	33:1	contracted	35:10,18 36:3
61:12	communicate	concern 16:20	27:14	36:4,8,10
Clark 1:2 18:10	19:8 21:15	37:12 38:1	Contracting	37:10,11 38:15
clear 43:20	36:20 65:22	39:20	1:12 3:19	40:18,25 41:4
54:14 63:11	74:17	concerned 45:8	contractor	42:4 47:23
66:16 76:24	communicated	concerns 16:5,9	18:17 20:6	48:11 49:16,20
cleared 72:2	65:25	19:17 32:18,22	22:4 27:19	49:25 50:1,8
client 61:2,13	communicating	33:10 79:19,21	30:13 34:16	52:14 53:5,10
client's 60:19	66:19 80:4	concluded 91:14	40:6,7,22 53:2	57:19 59:9,10
clockwork	87:13	condition 83:23	71:21 72:16,18	62:8,9,18 63:5
23:14	communication	conditional	74:1	63:6,13,14,16
close 36:11	16:16 17:22	23:23 24:2,7	contractors	64:15,16,21,22
58:24 71:13	18:6 86:8,9	70:21 71:25	15:2 28:19,24	67:17 71:6,22
76:4	communicatio...	72:19,22 73:13	34:8 40:4	73:8,15 79:8
code 17:18,20	20:1 67:2	conditions	65:23 69:22	79:13,14 80:2
18:9,10,10	86:18 87:8	52:24	71:9	80:7 85:8
codes 15:16,18	89:13,18	conference	contractor's	87:24 90:5
16:8,23 17:12	companies	31:15	72:2	93:12,18
17:14,18,21,24	30:25 75:7	conforms 56:23	contracts 28:2	corrected 92:20
18:3,6,8,19,23	company 1:4,12	confusion 33:21	controls 48:18	correctly 48:12
19:4,7,10 20:4	1:12,13,14,20	consecutive	48:18	49:1 81:3 84:3
21:14 49:6	2:2 3:11,19	85:6	conversation	85:12 86:1
63:15 79:12,19	8:16 11:10,23	consider 44:5	32:17 33:11	cost 85:24 86:12
80:4 87:4,22	12:18 27:14	considerably	44:11 51:19	86:13,20
90:2	29:9 30:20,21	28:23	66:6 76:6,7	costs 82:16
coins 83:18	34:23 39:4	considering	80:24 81:1	Cotton 2:16
cold 7:21	66:11 69:14	43:15	89:25	counsel 4:21,22
collect 24:11	74:9	consistent 24:9	conversations	7:7 8:13 12:5
43:8 45:1	compel 43:9	constitute 58:8	25:9 32:13,14	15:16
collections 39:1	competitive	construction	32:17 36:24	count 21:23
come 14:15 31:9	30:23	83:24 84:16	45:22	85:21
32:1 35:13	complaints 65:3	Consulting 1:9	Cool 7:6,14	County 1:2
47:3 51:11	complete 56:20	27:15,24 52:6	coordinating	18:10
64:10 85:20	63:4,19,20	54:20 75:20	56:9	couple 4:20 5:19

8:19 23:6,11 31:5,9 34:12 42:23 77:23 81:18 90:9 court 1:1 2:4 4:13 5:2,3,5,17 6:7 courtesy 5:21 6:5 craziness 45:4 create 39:21 credit 3:16 29:12 33:10,11 33:25 52:5,14 52:19 53:3,9 53:22 creditor 38:20 crunch 6:24 CSR 93:3 current 14:13 14:13 customer 26:15 49:3 68:8 cut 33:20 47:19 71:9,10,21,25 C.C.R 93:23	47:24 84:19 85:5,6,7,18 86:4 87:18,19 dba 1:11 deal 7:3 22:3,5 29:21 48:8 52:21 57:13 64:12 dealer 66:7 89:5 89:8 dealers 66:4 90:19 dealing 40:8 41:3 72:18 dealings 76:24 91:2 dealt 28:19 29:9 52:1,2 decision 71:1,4 decision-maki... 64:19 declare 92:19 93:17 defects 49:1 Defendants 1:17 2:14 Definitely 34:11 definition 23:7 definitions 17:14 delays 31:4 45:6 delivered 49:21 56:4,7 58:4,16 59:8,14,19 60:1 62:3 delivery 60:11 60:12,14 62:1 62:16 demand 63:19 63:21 deny 78:4 department 50:5 57:4 67:25 68:7 department's 68:11	depay 25:21 depend 85:25 depending 18:11 depends 19:18 22:18 85:11 86:16 deployed 45:2 depo 9:11 12:10 deponent 92:1 92:18,24 depose 25:21 deposed 4:16 8:21 10:18 11:20 DEPOSIT 1:13 deposition 1:19 2:1 3:10 8:1 8:10,14 9:3,3,8 9:14 10:12 74:5 92:19,20 depth 82:4 describing 24:18 description 55:12 60:23 design 15:25 20:12 21:4 55:15 designed 20:10 details 55:19 86:8 determine 82:12 difference 88:3 different 12:17 17:14 18:24 20:19 21:9 22:14,14 23:7 26:3,4,4 28:23 29:8 31:23 33:2 39:2 40:15 47:14 48:6,19 57:5 58:20 84:18 90:10 difficult 76:6	83:22 digital 86:19 87:8 direct 17:2 24:14 43:7 51:25 67:13 75:9,10 82:16 directly 22:3 27:14 29:15 30:9 36:20 39:1 41:4 54:16 55:20 72:18 77:14,15 disadvantaged 31:3,24 34:8 35:9 39:22 40:4 71:8 disagree 32:11 disclosed 74:13 discuss 11:11 29:21 46:23 57:11 discussed 16:10 16:14 30:1 33:10 47:6 56:15 57:16,17 86:6 discussion 15:2 21:4 30:1 31:15,16 39:10 39:19 82:5,13 discussions 41:21 44:23 46:10 66:21 88:23 dispatch 88:24 dispatching 88:24 dispute 63:3 66:16 67:12,14 68:15 70:17 District 1:1 50:6 division 12:14 12:21 90:16 document 49:3 51:7 52:6,8,9	53:22 61:19 68:2 69:5 70:9 70:12 74:13 documentation 31:20 61:4 62:2 documents 9:7 36:5 54:12 doing 10:20 25:10 26:9,10 31:6 34:23 48:6,18 49:25 57:9,13 79:20 84:18 87:23 dollar 77:24 dollars 33:18 40:16 86:22 door 43:6,7 doubt 70:16 dozen 21:25 22:2,23 41:7 Dozens 22:17 drag 12:7 Driggs 2:16 drink 7:2 due 24:21 82:2 duly 4:6 dynamic 91:4
D D 3:1 daily 3:19 60:19 61:23 Daniel 4:12 date 58:2,17,23 58:24 60:8 61:9,10 68:15 68:16 70:16 dated 3:12,14 37:12,23 58:13 68:14 70:12 93:19 dates 60:22,25 80:19 day 11:10 13:14 43:6,7 70:15 84:11 93:19 days 37:13,24				E E 3:1,8 earlier 7:7 37:7 49:7 56:15 57:2,16 59:24 63:1,16 67:11 67:15 86:7 90:3 early 8:6 28:10 28:12 39:20 48:3 58:4 81:4 81:10 easily 40:11 EDNA 1:10 effect 19:9 27:9 75:25 77:22 eight 9:25

either 44:18 58:18 64:14 78:11 86:24 Electric 1:11 21:21 26:12 54:19 55:13,25 91:2 electrical 13:19 17:17 18:9 22:6 electronics 48:17 else's 88:9 employed 13:1 employee 62:8 93:15 encountered 34:14 endurance 6:25 energize 48:16 energizing 49:10,14,23 engineer 15:25 20:5,12 21:4 engineers 15:2 55:15,22 engines 13:19 enter 54:15 entered 41:25 entire 21:3 entirety 73:2,3 entities 28:8,14 entitled 5:11,13 entity 28:15 29:10 35:2 equipment 1:4 1:20 2:2 3:11 3:14 13:19 17:3,23 18:7 19:8,12 20:16 28:7,15 29:15 30:7,19 36:7 46:14 48:5,16 48:16,18,20 49:4,18,21 55:12,22 56:2	56:2,3,14,15 56:25 57:18 58:4,16,23 59:7,18 63:13 65:7,15 66:8 69:7,7,8 81:2 equipment's 56:17 59:8 Esq 2:9,15,15 3:12 essentially 59:13 69:20 73:3 estimate 21:23 22:12 everybody 10:24 35:14 55:16 everybody's 37:8 55:16 everything's 7:22 exact 46:18 exactly 6:16 26:5 38:17 57:9 examination 3:3 4:9 93:10 examined 4:7 exceed 19:23 20:2,22 exception 29:1 34:25 35:4 50:25 55:3 70:10 exchange 33:16 42:3 53:18 67:16 Excluding 9:21 excuse 8:3 20:23 28:8 exhibit 3:9,10 3:12,13,16,17 3:19 9:11,12 9:13 10:5,7 12:10 35:21	37:21 51:9,12 52:6 54:4,5 57:25 58:10 60:16,17,18 expense 85:9 expensive 88:15 experience 28:5 28:22 29:18 experiences 28:23 experiencing 31:4 explain 16:8 extending 52:20 extent 5:12 16:10 19:12 50:15 76:22 77:5 e-mail 43:14,17 45:21 46:16,18 47:2 63:21,24 64:6,9,13 e-mailed 43:23 e-mails 8:4,8 9:6 43:25 44:1 45:7 F face 15:5 45:12 45:12 fact 33:16 36:25 41:22 52:18 62:14 76:23 82:7 factories 48:23 90:23 factory 48:13 49:5 58:23 60:5 61:7,25 62:6,7 80:18 80:23,25 90:7 90:8,20 factory-autho... 88:6,7,19 factory-certifi... 56:22	factual 76:19 fails 20:25 38:20 failure 34:15 fair 6:6 20:7 29:16 52:2 fairly 37:9 fall 14:21 familiar 27:20 28:1 35:24 43:2 50:2,3,12 54:7,12 73:25 76:15 familiarity 15:11,19 far 27:11,12 41:4,5 42:15 53:13 56:23 57:4 88:23 89:3 February 58:4 58:14,14,17,24 59:6,19 federal 31:24 feel 91:3 fell 83:19 felt 26:13 Fergen 28:10 39:19 41:12 43:21,22 45:21 63:25 66:1 Fergen's 51:19 FIDELITY 1:13 field 14:23 figure 67:4 82:10 figuring 86:5 filed 36:6 fill 33:25 52:21 53:2,8 68:8 filled 52:14 53:7 61:19 final 86:7 finances 30:1 financial 40:8 41:2 45:12 72:2 77:3	financially 93:15 find 46:19,24 fine 7:22 10:23 15:23 25:4 50:21 51:4 80:19 fine-tuning 57:3 fingers 21:24 finish 6:3 55:9 66:20 finishing 41:15 fire 17:18 18:8,8 18:10,10 19:4 57:4,5 86:9 first 4:6,18 5:2 9:10 20:24 23:17 43:13 44:6 50:11 54:3 58:1,8,9 58:10 64:3 66:3 71:25 five 9:24 34:11 five-minute 7:3 fix 14:25 Floor 2:17 flu 7:21 fluid 57:6 folks 10:19 30:9 45:22 51:24 65:23 88:7 90:20 follow 47:13 77:18 78:25 Followed 54:9 follows 4:7 follow-up 5:20 44:23 45:22 65:13 70:19 77:8 foregoing 92:19 93:5,12,18 forgetting 35:1 form 16:17 68:8 69:21 70:8 91:7
---	---	--	--	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, KEITH LOZEAU, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

KEITH LOZEAU, Deponent

REPORTER'S CERTIFICATE

I, Tammy M. Breed, CSR No. 305, Certified
Reporter, certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth, at which time the
witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements made
at the time of the examination were recorded stenographically
by me and were thereafter transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

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

Dated this 5th day of September, 2012.

TAMMY M. BREED, C.C.R. No. 305

A				
ability 90:20	18:20	87:6,7	Army 31:21	a.m 2:4 4:2
able 5:8 8:7	affix 92:20	answered 34:2,2	34:20	91:14
14:21 17:23	Afghanistan	40:1 69:12	arranged 31:12	A642583 1:5
19:11,13,15,22	45:3	70:24	arrived 58:25	B
42:24 43:24	afield 21:18	answering 5:20	arrives 59:7	B 3:8
45:13 46:22	24:20	5:21 43:25,25	artfully 6:18	back 8:3,3 10:11
52:17 64:3	afoot 45:20	answers 5:19	articulate 67:3	13:9 14:3,21
79:24 80:9	afraid 39:23	anticipated	76:8 81:24	17:7 21:17,19
83:6,19 84:20	afternoon 6:25	52:25	aside 34:18,22	32:1,16 38:11
absence 42:12	aggressive	anybody 8:14	asked 5:13 6:14	38:14,16 41:6
absolutely 18:7	44:25	9:1 30:12	6:18 23:8	43:13 45:3
20:4 21:14	ago 14:9 23:11	32:15,18 36:21	38:22 69:12	47:24 49:22
47:2	49:7 85:6	39:17 46:3,7	70:24	51:11,14 54:10
acceptable 31:1	agreed 63:4	62:3 65:6,21	asking 5:11,22	55:22 65:18
accepted 36:17	agreement 30:2	75:10 88:25	6:17 17:24	70:19 73:14
36:25	55:7	89:13	24:13 25:20,22	75:13 78:19
accepting 37:4	agreements	anymore 23:20	25:24 53:21	80:13,23 84:10
accommodate	89:5	55:20	57:12 63:22,24	85:6 87:9,11
26:14	ah 15:12	anyway 41:14	66:18 76:19	87:15
accompanied	ahead 7:11 56:1	51:7 72:7	82:18	background
41:2	56:1,2	app 33:25	associated 13:18	14:14,15,22
account 12:23	aka 1:10	apparent 43:12	17:22 23:7	34:24
45:24 82:15,24	alarms 57:5	apparently	ASSOCIATES	backup 21:1
accounts 22:9	amended 9:11	50:13	1:11	bad 50:5
22:14,19	9:14	appear 60:19	Association	bailed 45:18
accurately	AMERICA	APPEARAN...	18:9	ballpark 85:9
85:23	1:14	2:7	assume 11:23	86:15
acknowledge	Americans	appeared 25:9	35:25 54:12	bank 45:15,23
77:16,19 78:6	31:25	77:4	assuming 17:7,8	77:3,7
78:15	amount 3:14	apples 78:13	21:12 64:19	Based 88:22,23
action 92:19	28:7 36:6 52:2	application 3:16	83:23,24 91:11	basically 10:13
93:16	73:19 82:10,12	52:5,14 53:3,8	attempted 45:15	12:24 24:22
activate 48:17	86:4	53:23	attorney 7:25	32:23 35:6
actual 40:21	amounts 77:25	applications	93:15	47:18 48:10,12
70:5 80:3	and/or 24:7	52:22	Attorney's 50:6	48:25 55:11,16
add 59:22,23	63:12	appreciate	attorney/client	56:1 66:22
additional 60:2	Angelo 1:9	80:14	16:15	69:22 75:23
address 18:23	29:20 31:14,17	appropriate	Audible 6:12	78:2 81:2
43:17 57:8,11	32:13,14,15,18	39:24	Austi 2:10	basis 52:21
78:12	33:17,25 34:4	approximately	authorized 66:7	76:19
addressed 55:24	34:19,22 75:14	87:16	available 11:20	Bates 3:14,16,17
addresses 69:23	76:10	April 68:14	aware 39:3	3:20
adjusting 48:18	answer 7:10,11	architects 15:2	42:13 66:12	bboschee@ne...
adjustments	12:1 28:17	55:15	74:15	2:19
	53:18 54:17,23	arguing 15:17	awhile 76:5	beach 44:21
	57:14 85:23	79:16	90:13	

beginning 18:22 43:12 53:23 57:7,9 87:9,11 87:15 88:10 believable 45:5 believe 14:2 36:10 37:17,19 39:9 54:20 55:21,24 56:9 61:19 77:22 bell 63:20 65:8 best 5:12,19 7:16,19 9:22 11:11 26:8,11 26:16 30:18 38:22 51:2 54:15 75:15 better 4:13 20:13 54:24 58:19 beyond 77:8 bid 30:23 big 7:3 20:7 57:13 64:12 biggest 40:11 Bill 3:17 54:9,11 57:25 59:5 61:1 bills 18:21 56:4 58:1 bit 6:23 10:24 15:17 19:2,5 23:2 26:24 27:8 34:19 40:17 41:21 42:23 46:13 47:12 50:3 57:19 59:19 79:16,17 bits 26:24 bond 74:19 books 30:25 Boschee 2:15 3:4 4:10 9:10 9:13 10:8 16:13,20,22	25:24 26:2,8 35:22 38:4,6,9 51:11,14,15 54:5 60:18 61:14,17,22,25 68:20 69:13,14 70:25 72:9,11 72:13 80:13,15 91:9 boss 47:4 bottom 12:6 bounce 41:24 bounced 43:3 66:18 bouncing 41:23 bowl 83:18 boy 21:22 break 7:3,4,5 51:10 breaks 85:7 Breed 1:24 2:4 93:3,23 Brian 2:15 6:20 46:16 47:5 64:7 66:15 75:16 77:11,16 78:2 brief 51:13 80:12 briefly 29:13 51:5 BRISCOE 2:15 72:8 80:8 broad 28:4 broke 52:5 brought 25:25 76:13 Bugney 47:5 building 19:23 21:3 55:15 86:9 built 56:3 bunch 62:14 business 12:25 31:3,24 32:3 39:1,23 43:18	71:8 76:24 90:19 businesses 34:8 button 47:2 buying 15:4,4 bypass 19:25 <hr/> C calendar 58:5 call 26:17 30:8 31:13 35:11 55:11 56:17 57:3 89:4 called 27:14 30:20 31:8 47:1 50:13 72:21 84:12 calls 19:3 64:13 CAM 1:9 27:14 27:24 29:10,15 29:19 30:13 31:17 32:18 33:11 34:4,19 36:3 37:1,9,14 37:23 42:4 52:6,8,14 53:24 54:20 55:7 67:4,5,12 75:20 76:25 77:2 81:13,14 81:19,25 CAM's 37:9 66:17 77:3 84:10 cancer 11:20 capability 19:13 19:15 capacity 19:23 20:23 21:6 card 43:18 care 54:20 67:25 carries 5:4 carry 21:3 90:9 Carvalho 1:9,10 34:4,22 36:18 41:2 43:4	76:10 case 1:4 20:24 31:22 33:10 50:12,23 51:2 53:7,17 73:2 76:14 86:21 cases 20:20 29:9 39:8 56:3 cash 52:21 53:1 Cashman 1:4,20 2:1 3:11,13 8:17,19 9:2,24 10:15,19 12:12 13:1,6,14 25:20 30:12 33:20 34:4 36:21 37:4 38:19 41:1 43:2 46:8 47:21 54:15 55:1,7,8 60:1 61:3,4,7 62:3,8 62:11 76:13,13 79:18 82:11 83:4 85:10 Cashman's 82:12 CASH001 3:16 CASH003 3:18 CASH014 3:15 CASUALTY 1:14 CAT 52:5 66:4 89:8 90:12 Caterpillar 13:17 56:21 66:7 87:12 88:4 89:3,5,14 90:1,11,14,16 cause 37:25 38:1 41:15 CCR 1:24 certain 19:12 28:7 certainly 12:6 20:10,16 31:25	39:6 41:17 47:9 67:9 82:15 CERTIFICA... 92:1 93:1 Certified 2:4 93:3 certify 92:18 93:4,14 CFO 11:4,7,12 11:16 challenges 14:24 15:5 46:21 CHANGE 92:2 changed 43:16 43:17 44:1 character 78:24 chase 45:1 check 3:13 24:6 24:23 33:20 34:24 35:23,25 36:2,13,17,22 37:1,12,19,23 38:15 39:9,14 39:18,21 40:23 40:24 41:6,8 41:13 42:4,4 42:12 43:16 44:5 45:7,8,13 45:16 47:19 49:24 50:5 53:18 57:20 62:15,23 66:17 71:9,10,21,22 71:25 72:2 76:23 checking 53:15 checklist 48:19 79:12 87:12,16 checklists 48:22 48:24 49:3 checks 27:8 33:16 37:4 40:5 41:23,24 43:3 79:1
--	--	---	---	--

chow 81:11	87:1 89:6,14	65:23 83:20	76:25	copy 9:17
Chris 56:9,12	89:21	completed	contact 44:24	corporation 1:5
City 15:7 16:24	comes 59:25	56:20,22 63:10	62:20 66:3	1:9,11,13
18:10 20:6	comfort 35:13	completely	contacted 31:5	CORPORAT...
21:20 60:2	comfortable	21:11,17 40:15	contacts 69:23	1:15
91:1	31:17,18,19	71:5 73:22	contemplated	correct 4:22
claim 73:18	coming 8:23	comply 52:23	20:16	10:16,17 14:10
74:19 76:14	45:3 82:21,23	57:4	contemplates	16:24 17:9,10
claims 10:13	83:16	complying 9:20	20:8	17:13 21:16
clarification	command 57:5	comport 58:2,15	contest 7:1	25:1 26:25
26:7	86:10	68:16	contract 54:15	27:1,16,18,22
clarify 6:13,15	comment 68:23	compressed	54:25	28:20 34:6
6:20 34:3	common 46:24	33:1	contracted	35:10,18 36:3
61:12	communicate	concern 16:20	27:14	36:4,8,10
Clark 1:2 18:10	19:8 21:15	37:12 38:1	Contracting	37:10,11 38:15
clear 43:20	36:20 65:22	39:20	1:12 3:19	40:18,25 41:4
54:14 63:11	74:17	concerned 45:8	contractor	42:4 47:23
66:16 76:24	communicated	concerns 16:5,9	18:17 20:6	48:11 49:16,20
cleared 72:2	65:25	19:17 32:18,22	22:4 27:19	49:25 50:1,8
client 61:2,13	communicating	33:10 79:19,21	30:13 34:16	52:14 53:5,10
client's 60:19	66:19 80:4	concluded 91:14	40:6,7,22 53:2	57:19 59:9,10
clockwork	87:13	condition 83:23	71:21 72:16,18	62:8,9,18 63:5
23:14	communication	conditional	74:1	63:6,13,14,16
close 36:11	16:16 17:22	23:23 24:2,7	contractors	64:15,16,21,22
58:24 71:13	18:6 86:8,9	70:21 71:25	15:2 28:19,24	67:17 71:6,22
76:4	communicatio...	72:19,22 73:13	34:8 40:4	73:8,15 79:8
code 17:18,20	20:1 67:2	conditions	65:23 69:22	79:13,14 80:2
18:9,10,10	86:18 87:8	52:24	71:9	80:7 85:8
codes 15:16,18	89:13,18	conference	contractor's	87:24 90:5
16:8,23 17:12	companies	31:15	72:2	93:12,18
17:14,18,21,24	30:25 75:7	conforms 56:23	contracts 28:2	corrected 92:20
18:3,6,8,19,23	company 1:4,12	confusion 33:21	controls 48:18	correctly 48:12
19:4,7,10 20:4	1:12,13,14,20	consecutive	48:18	49:1 81:3 84:3
21:14 49:6	2:2 3:11,19	85:6	conversation	85:12 86:1
63:15 79:12,19	8:16 11:10,23	consider 44:5	32:17 33:11	cost 85:24 86:12
80:4 87:4,22	12:18 27:14	considerably	44:11 51:19	86:13,20
90:2	29:9 30:20,21	28:23	66:6 76:6,7	costs 82:16
coins 83:18	34:23 39:4	considering	80:24 81:1	Cotton 2:16
cold 7:21	66:11 69:14	43:15	89:25	counsel 4:21,22
collect 24:11	74:9	consistent 24:9	conversations	7:7 8:13 12:5
43:8 45:1	compel 43:9	constitute 58:8	25:9 32:13,14	15:16
collections 39:1	competitive	construction	32:17 36:24	count 21:23
come 14:15 31:9	30:23	83:24 84:16	45:22	85:21
32:1 35:13	complaints 65:3	Consulting 1:9	Cool 7:6,14	County 1:2
47:3 51:11	complete 56:20	27:15,24 52:6	coordinating	18:10
64:10 85:20	63:4,19,20	54:20 75:20	56:9	couple 4:20 5:19

8:19 23:6,11	47:24 84:19	depay 25:21	83:22	53:22 61:19
31:5,9 34:12	85:5,6,7,18	depend 85:25	digital 86:19	68:2 69:5 70:9
42:23 77:23	86:4 87:18,19	depending	87:8	70:12 74:13
81:18 90:9	dba 1:11	18:11	direct 17:2	documentation
court 1:1 2:4	deal 7:3 22:3,5	depends 19:18	24:14 43:7	31:20 61:4
4:13 5:2,3,5,17	29:21 48:8	22:18 85:11	51:25 67:13	62:2
6:7	52:21 57:13	86:16	75:9,10 82:16	documents 9:7
courtesy 5:21	64:12	deployed 45:2	directly 22:3	36:5 54:12
6:5	dealer 66:7 89:5	depo 9:11 12:10	27:14 29:15	doing 10:20
craziness 45:4	89:8	deponent 92:1	30:9 36:20	25:10 26:9,10
create 39:21	dealers 66:4	92:18,24	39:1 41:4	31:6 34:23
credit 3:16	90:19	depose 25:21	54:16 55:20	48:6,18 49:25
29:12 33:10,11	dealing 40:8	deposed 4:16	72:18 77:14,15	57:9,13 79:20
33:25 52:5,14	41:3 72:18	8:21 10:18	disadvantaged	84:18 87:23
52:19 53:3,9	dealings 76:24	11:20	31:3,24 34:8	dollar 77:24
53:22	91:2	DEPOSIT 1:13	35:9 39:22	dollars 33:18
creditor 38:20	dealt 28:19 29:9	deposition 1:19	40:4 71:8	40:16 86:22
crunch 6:24	52:1,2	2:1 3:10 8:1	disagree 32:11	door 43:6,7
CSR 93:3	decision 71:1,4	8:10,14 9:3,3,8	disclosed 74:13	doubt 70:16
current 14:13	decision-maki...	9:14 10:12	discuss 11:11	dozen 21:25
14:13	64:19	74:5 92:19,20	29:21 46:23	22:2,23 41:7
customer 26:15	declare 92:19	depth 82:4	57:11	Dozens 22:17
49:3 68:8	93:17	describing	discussed 16:10	drag 12:7
cut 33:20 47:19	defects 49:1	24:18	16:14 30:1	Driggs 2:16
71:9,10,21,25	Defendants 1:17	description	33:10 47:6	drink 7:2
C.C.R 93:23	2:14	55:12 60:23	56:15 57:16,17	due 24:21 82:2
	Definitely 34:11	design 15:25	86:6	duly 4:6
D	definition 23:7	20:12 21:4	discussion 15:2	dynamic 91:4
D 3:1	definitions	55:15	21:4 30:1	
daily 3:19 60:19	17:14	designed 20:10	31:15,16 39:10	E
61:23	delays 31:4 45:6	details 55:19	39:19 82:5,13	E 3:1,8
Daniel 4:12	delivered 49:21	86:8	discussions	earlier 7:7 37:7
date 58:2,17,23	56:4,7 58:4,16	determine 82:12	41:21 44:23	49:7 56:15
58:24 60:8	59:8,14,19	difference 88:3	46:10 66:21	57:2,16 59:24
61:9,10 68:15	60:1 62:3	different 12:17	88:23	63:1,16 67:11
68:16 70:16	delivery 60:11	17:14 18:24	dispatch 88:24	67:15 86:7
dated 3:12,14	60:12,14 62:1	20:19 21:9	dispatching	90:3
37:12,23 58:13	62:16	22:14,14 23:7	88:24	early 8:6 28:10
68:14 70:12	demand 63:19	26:3,4,4 28:23	dispute 63:3	28:12 39:20
93:19	63:21	29:8 31:23	66:16 67:12,14	48:3 58:4 81:4
dates 60:22,25	deny 78:4	33:2 39:2	68:15 70:17	81:10
80:19	department	40:15 47:14	District 1:1 50:6	easily 40:11
day 11:10 13:14	50:5 57:4	48:6,19 57:5	division 12:14	EDNA 1:10
43:6,7 70:15	67:25 68:7	58:20 84:18	12:21 90:16	effect 19:9 27:9
84:11 93:19	department's	90:10	document 49:3	75:25 77:22
days 37:13,24	68:11	difficult 76:6	51:7 52:6,8,9	eight 9:25

either 44:18	56:2,3,14,15	37:21 51:9,12	factual 76:19	financially
58:18 64:14	56:25 57:18	52:6 54:4,5	fails 20:25 38:20	93:15
78:11 86:24	58:4,16,23	57:25 58:10	failure 34:15	find 46:19,24
Electric 1:11	59:7,18 63:13	60:16,17,18	fair 6:6 20:7	fine 7:22 10:23
21:21 26:12	65:7,15 66:8	expense 85:9	29:16 52:2	15:23 25:4
54:19 55:13,25	69:7,7,8 81:2	expensive 88:15	fairly 37:9	50:21 51:4
91:2	equipment's	experience 28:5	fall 14:21	80:19
electrical 13:19	56:17 59:8	28:22 29:18	familiar 27:20	fine-tuning 57:3
17:17 18:9	Esq 2:9,15,15	experiences	28:1 35:24	fingers 21:24
22:6	3:12	28:23	43:2 50:2,3,12	finish 6:3 55:9
electronics	essentially	experiencing	54:7,12 73:25	66:20
48:17	59:13 69:20	31:4	76:15	finishing 41:15
else's 88:9	73:3	explain 16:8	familiarity	fire 17:18 18:8,8
employed 13:1	estimate 21:23	extending 52:20	15:11,19	18:10,10 19:4
employee 62:8	22:12	extent 5:12	far 27:11,12	57:4,5 86:9
93:15	everybody	16:10 19:12	41:4,5 42:15	first 4:6,18 5:2
encountered	10:24 35:14	50:15 76:22	53:13 56:23	9:10 20:24
34:14	55:16	77:5	57:4 88:23	23:17 43:13
endurance 6:25	everybody's	e-mail 43:14,17	89:3	44:6 50:11
energize 48:16	37:8 55:16	45:21 46:16,18	February 58:4	54:3 58:1,8,9
energizing	everything's	47:2 63:21,24	58:14,14,17,24	58:10 64:3
49:10,14,23	7:22	64:6,9,13	59:6,19	66:3 71:25
engineer 15:25	exact 46:18	e-mailed 43:23	federal 31:24	five 9:24 34:11
20:5,12 21:4	exactly 6:16	e-mails 8:4,8 9:6	feel 91:3	five-minute 7:3
engineers 15:2	26:5 38:17	43:25 44:1	fell 83:19	fix 14:25
55:15,22	57:9	45:7	felt 26:13	Floor 2:17
engines 13:19	examination 3:3		Fergen 28:10	flu 7:21
enter 54:15	4:9 93:10	F	39:19 41:12	fluid 57:6
entered 41:25	examined 4:7	face 15:5 45:12	43:21,22 45:21	folks 10:19 30:9
entire 21:3	exceed 19:23	45:12	63:25 66:1	45:22 51:24
entirety 73:2,3	20:2,22	fact 33:16 36:25	Fergen's 51:19	65:23 88:7
entities 28:8,14	exception 29:1	41:22 52:18	FIDELITY 1:13	90:20
entitled 5:11,13	34:25 35:4	62:14 76:23	field 14:23	follow 47:13
entity 28:15	50:25 55:3	82:7	figure 67:4	77:18 78:25
29:10 35:2	70:10	factories 48:23	82:10	Followed 54:9
equipment 1:4	exchange 33:16	90:23	figuring 86:5	follows 4:7
1:20 2:2 3:11	42:3 53:18	factory 48:13	filed 36:6	follow-up 5:20
3:14 13:19	67:16	49:5 58:23	fill 33:25 52:21	44:23 45:22
17:3,23 18:7	Excluding 9:21	60:5 61:7,25	53:2,8 68:8	65:13 70:19
19:8,12 20:16	excuse 8:3 20:23	62:6,7 80:18	filled 52:14 53:7	77:8
28:7,15 29:15	28:8	80:23,25 90:7	61:19	foregoing 92:19
30:7,19 36:7	exhibit 3:9,10	90:8,20	final 86:7	93:5,12,18
46:14 48:5,16	3:12,13,16,17	factory-autho...	finances 30:1	forgetting 35:1
48:16,18,20	3:19 9:11,12	88:6,7,19	financial 40:8	form 16:17 68:8
49:4,18,21	9:13 10:5,7	factory-certifi...	41:2 45:12	69:21 70:8
55:12,22 56:2	12:10 35:21	56:22	72:2 77:3	91:7

forth 93:6	general 15:11	57:12 63:11	gold 83:18	64:13,17,18
forthcoming	22:3 50:22	64:13 66:19	good 12:9 13:11	65:18 66:17
78:23	74:1	75:13 76:2	46:13 49:4	67:4 68:17
forward 10:25	generally 15:21	79:5,7,10,11	56:24 57:14	70:20 71:10,22
31:18 32:24	15:22 28:1	79:18 82:16	59:24	76:13 79:9,11
34:1 35:16	30:22 55:8	83:19 87:9,10	gotten 31:23	84:11 85:18
41:16 46:25	58:3,15	87:15,15 88:10	41:8 80:6	89:15 90:3
47:8 52:17	generate 83:6	90:17	government	
73:10 79:5,7	generator 19:22	goes 48:10 56:24	21:10 28:6	H
79:10,11 91:5	19:24,24,25	60:24 89:3	35:2 42:19	H3:8
four 9:21 10:12	20:2,3,20,23	going 5:8,17	Grand 50:13,14	half49:7
85:1	20:24,24 21:2	6:12,17,19 9:3	great 4:20 6:12	Hall 15:7 16:24
fourth 2:2,17	generators	9:3,10 10:2,6	greater 40:8	20:6 21:20
59:12	13:18 20:8,17	10:11,24 12:7	ground 4:20	60:2 91:1
fragmented	20:23 21:6,6	14:23 15:4,8	29:14 46:24	hallway 7:1
84:18	21:13 48:21	15:13 16:12,17	87:11	hammered
frame 84:4,12	56:8	17:7 18:22	group 31:2,6	86:10
84:24,25	gentleman 61:6	20:7,16,17	growing 12:24	handful 34:10
Francis 23:17	getting 16:6,6	21:14,18 22:22	guess 5:10,14	37:13
27:7	18:4 24:20	24:15 25:18,18	14:14 16:3	handle 51:24,25
frankly 8:5	27:4 28:24	30:19 31:1,6,7	22:18 25:14	handled 56:11
11:19 24:13	30:7 31:3,4	31:18 33:1,2,6	31:17,22 53:21	handles 51:23
40:11 74:3	32:25 33:7	33:14,15,19,23	54:22 57:3	hands 30:2
fraudulent	35:7,9,19	35:7,20 37:9	58:18 59:25	35:15
76:14	47:24 56:12	38:2,11 41:6	68:23 74:11	handy 18:3
front 10:3 36:9	62:13 68:4	41:16 42:19,21	82:19 83:11	happen 10:20
50:14 58:5	69:10 80:4	44:7,21 45:15	guessing 5:11	18:15 25:11,12
full 4:11 19:13	82:20 87:13	46:14 50:22	37:3 54:6	33:23 62:14
19:15 23:9	gist 46:20	51:6,6,7 52:17	guy 17:15 31:9	87:5 88:13,14
25:16 36:3	give 6:4 7:18	52:19,23 53:1	35:12 43:9	happened 8:12
72:25	12:1 36:22	53:17 54:6	44:6,20 45:23	11:7 17:11
function 67:25	37:24 41:17,20	55:9 57:4,8	76:1 78:19	37:16,17,20
functioning	70:21 73:13	58:22 59:3	79:15 80:18,25	38:8 42:9
65:4	given 71:25 72:1	62:14 63:11,15	90:7	49:24 57:19
functions 19:21	73:9	65:14,22 66:3	guys 16:22,22	62:15 88:21
fund 38:20	gives 37:23	67:19 68:1,19	17:8,12 20:15	happening 39:5
funding 45:8	87:12	68:21 70:4,19	23:23 25:15	50:12,23
funds 43:3	giving 7:16	73:10 74:19	26:9,17 27:9	happens 19:10
45:24 84:10	25:16 41:16	76:20 78:11,12	27:13 36:7,17	57:9 62:23
further 91:9	glad 47:18	79:11,15 80:3	36:22,25 37:9	happy 6:20
93:14	go 7:4,11 9:2,19	81:11 82:10,12	37:23 38:18,18	hard 18:13 35:8
	12:9 32:24	83:11 84:23	41:14,15 42:13	60:23 78:17
G	35:13,15 40:5	86:9,10 87:4	43:15 44:4	84:15 85:24
game 45:20 48:2	44:21 48:24	87:17 88:10,24	49:22,24 50:4	hate 81:8,9
79:19	49:22 54:3	89:5,7,9 90:22	62:15,17,18	head 6:7,7 10:20
gear 56:8 60:5	55:25 56:1	91:5	63:3,11,18	22:10 23:16

hear 6:17	61:15	inspected 80:18	invoices 3:17	78:5 82:15,17
heard 43:14	image 18:22	inspection 49:13	54:6 58:8	89:9
47:14	imagining 78:16	62:16 64:11,20	59:23 83:14	jobs 40:3,4,22
hearing 66:10	impasse 79:6	65:1,18 83:20	invoicing 53:9	77:9 81:14,15
help 19:1 60:16	implication 67:9	84:11	53:23	81:18 82:3
90:21	important 19:21	inspections	involve 63:15,17	Joel 8:20 47:4
helpful 14:21	91:3	90:18	involved 38:25	joint 39:9,14,17
herby 92:18	impression 40:1	inspectors 18:17	57:17 74:3	39:20 40:5
hey 7:4 9:2	incident 23:4	18:17	76:25 83:16	41:6,8,13 42:4
35:11 64:9	62:15	install 87:22	90:9	42:12 82:13
high 43:5 48:4	include 63:2	installation 15:6	involvement	jrobinson@pe...
86:20,23	inclusive 1:15	15:12 19:10	91:1	2:12
high-level 86:18	1:15	48:4,11 49:14	involves 48:5	judge 15:17
hire 65:22	incomplete 38:2	56:23 57:17	irregularities	79:17
hired 23:11	inconsequential	60:7,11 63:12	24:16	jumped 33:5
25:13	88:3	65:19 87:3	ISO 90:12	June 70:13,15
hiring 66:12	inconsistency	installed 16:7	issue 25:22	75:1
history 26:13	39:22	17:13 56:17	26:25 46:4	Jury 50:13,14
hitting 47:2	incorrectly	81:2,3 85:25	49:24 64:12	
hold 18:13,14	88:14	installs 56:14	73:21 80:5	K
24:6 72:21	incur 85:10	instances 29:7	issues 10:16,21	keep 10:2,19
73:14 78:19	independent	institution 41:2	16:5,19 64:23	38:18
holding 17:25	66:11,13	45:13 72:3	64:24,25 91:4	Keith 1:20 2:2
25:5 27:7	indicating 16:10	instructs 7:9	items 9:21,24	3:2 4:5,12,16
Holley 2:16	indirect 22:2	insurance 10:13	10:12	92:18,24
honest 45:11	indirectly 22:2	10:13 11:11	i.e 74:18 89:21	kind 7:7 8:12,22
honestly 36:19	34:2	12:8		11:11 12:1
53:14,16 81:7	individual 1:10	insurance-rel...	J	13:21,25 19:4
hooking 48:5	1:10	10:15,21	JANEL 1:10,10	19:8 21:1,9
hope 54:7	industry 24:11	Intelligent	January 58:4,17	27:7 29:12,14
hour 49:7 85:18	24:23 27:19	90:11	58:22 60:25,25	29:15 30:15
86:5	information	intend 57:11	61:2,5 62:4,11	32:15 35:15
hours 9:4 85:21	43:18 44:24	intention 28:14	62:17 65:17	37:8 40:23
86:3	52:22 53:3	interested 68:9	Jennifer 2:9	48:3 55:9
house 84:17	68:8,9 69:9,15	69:22 93:16	3:12 4:23	56:18 60:23
hurt 44:18	69:16 75:2	internally 44:12	16:14 91:11	62:13 76:7,9
hypothetical	79:24 83:2	introduce 60:16	Jim 11:17,18,19	78:19 84:16
38:3	initial 43:19	introduced	job 1:25 12:21	85:4 90:6,7
	75:13	31:14 75:23	13:13 14:13,14	kinds 15:3
I	initially 81:13	invalid 43:19	18:11,11,16,22	28:12 32:1
idea 6:19 13:20	input 15:25	investigation	21:10 25:12	45:4,8 46:11
22:9 57:7	ins 79:11	76:23 77:8	30:23 32:25	46:15 52:24
59:16	insignificant	invoice 36:9	40:11 52:9	53:16 60:7
identify 42:24	86:24	54:3,3 58:10	56:10 65:15	68:10 86:10
82:9	inspect 49:22	59:8 61:1 73:5	66:20 69:23	90:18
identifying	62:2 63:12	83:12	71:14 72:20	knew 34:18

81:17,18	88:1,8,18	59:6	listen 31:8	18:20 19:25
knocked 43:6,7	knowing 82:9	led 76:7	literal 85:17	20:20 22:24
know 5:14,14,15	knowledge	Lee 11:9 12:9	literally 10:6	24:15 28:6,11
5:15 6:16,23	14:24 17:3	left 11:23 13:3,7	78:13	28:21 29:11
7:3 8:11,19,24	24:14,20 25:22	13:12 32:16	little 6:23 10:24	30:24 39:8
10:8,20,23,23	25:23,25 27:5	58:23 63:10	15:17 16:18	42:21 46:17,20
13:19 16:9,13	35:5 37:6 38:3	legit 35:5	19:2,5 22:13	46:21 47:9,11
16:14,15,19	51:2 62:2,5,10	legitimate 31:20	26:4,24,24	51:6,21,23
18:1 19:3 21:5	65:10,20 67:13	legitimately	27:8 34:19	52:3 57:6,18
22:16,16 23:15	73:18 75:2,6,9	45:13	40:16 41:21	85:11 86:15
23:19,22 24:15	75:11 77:1,17	length 42:10	42:23 47:12	89:15,22 90:24
26:9,24 27:11	82:16 83:22	letter 3:12 10:9	50:3 57:19	90:24
27:12 30:22	88:25	10:14 35:5	59:19 79:16,17	loud 18:2
31:6,7,12,24	knowledgeable	letterhead 54:19	84:14	Lozeau 1:20 2:2
32:5,13 33:24	1:19 2:1 3:10	let's 24:8 32:24	load 19:23 20:2	3:2 4:5,12
34:19,21,21	9:23 10:15	32:24 33:5	20:22	92:18,24
36:16 37:10	25:19,20	35:19 44:15	loaded 78:8	lugs 59:13,18
38:10,10,22	known 90:11,12	47:3,12,12	lock 19:24	L-O-Z-E-A-U
39:8 40:23	knows 8:25	54:3 63:23	log 3:19 60:19	4:15
41:4,5,15,21		69:3 83:18	61:23	
41:22 42:5,11	L	84:9,10	logic 71:16	M
42:15,18,25	lack 33:11	level 35:13 43:5	logistics 30:8	M 1:24 2:4 93:3
43:5,5,9,23	Lading 3:17	48:4 86:19	51:23,25 56:11	93:23
44:2,7,10,11	54:10,11 56:5	license 31:3	long 12:15 13:1	machinery
44:20 45:2	58:1,1 59:5	licensed 31:23	87:16	13:19
46:16 47:17	61:1	lien 23:8,8,23	longer 84:14,15	mad 84:16
48:2 49:23	land 35:7	24:22,24 25:6	85:1	major 51:23
50:3,10,15,16	lap 83:19	25:16 27:6	long-term 26:12	majority 58:9
50:19,19,20	large 30:21	39:6 41:16	look 9:6,7,13	72:22
51:3,6 52:11	77:24	42:3 67:16	22:18 27:17	makeup 82:17
52:23 53:14,15	larger 29:9	68:3,16,21	35:19,23 36:11	man 85:14,21
53:18 54:17	51:22	69:4,10,16	39:23 44:20	86:3
55:19 57:10	Larson 8:20	70:1,5,6,12,16	54:6,7 60:21	management
58:9 60:3,4	47:4	70:21,22 71:10	60:25 68:1,21	90:18
62:1,20 63:25	Las 1:21 2:3,11	82:8,10,12,20	69:3	manager 12:13
64:2,10,11,24	2:18 4:1 18:10	83:1	looked 81:11	12:20 56:10,11
66:16,21,25	late 44:15 83:24	liened 42:15	looking 16:21	60:5 82:15,24
68:25 69:1,4	law 5:3	68:17 71:12	18:18 25:6,6	managers 12:23
71:11 72:4,5,8	laws 17:21	lien's 68:14	32:23 39:21	manages 51:21
72:9,13 73:11	93:17	life 13:14	57:25,25 66:12	51:22
74:5,18 76:21	lawyer 5:25	Lincoln 29:3,4	looks 18:23	March 59:14
77:6,12,23	lay 18:18 33:18	line 54:20 57:18	59:11,12,14	60:3
78:21,22 80:19	35:7 44:21	70:20 92:2	67:18 70:14	mark 9:10 10:2
81:1 84:4,21	leading 8:5	lines 5:25 54:22	81:2	marked 9:12
85:6,11,24	lease 68:20	89:19	loop 71:5	10:7 35:21
86:15,16 87:6	leaves 32:15	list 69:22	lot 8:5,6,7,10	51:9 52:5 54:4

60:17	mention 15:1	88:4	N	NEPA 18:8
Maryland 1:12	77:15	mode 44:15	N 3:1	night 45:3
1:13	mentioned	62:19	name 4:11,13	nodding 6:9
materials 18:21	77:12	modified 56:3	11:9 23:15,17	71:23
49:1 60:2 62:4	messy 46:15	Mojave 1:11	23:19,22 35:1	nods 6:7
65:4 85:22	met 29:20,20	21:21 22:6,10	90:10	nonpayment
math 59:24 73:6	31:13,18 47:5	22:15 23:3,5	names 69:23	17:9
85:18 86:5	Meyers 56:10	23:12 26:12,18	National 17:17	non-payment
matters 37:22	middle 45:3	26:19 28:11	18:8,9	26:25
53:20	87:10 88:9	30:9 32:12,15	nature 55:23	non-response
mean 19:9,14	Mike 11:10,10	32:18 33:19	necessarily	79:1
20:7,9 22:13	11:12 12:9	35:11 37:14	37:22 52:18	Nope 10:10
24:2 25:15	47:5,18 74:2,6	41:7,8 44:8,16	53:20 67:14	Norman 8:20
26:2,2,3 27:17	74:7,21,22	45:22 46:3,8,9	necessary 20:4	33:12 36:12,25
27:18 28:2	75:11 77:12,21	47:9,15 48:3,4	21:15 73:10	67:24 70:13
30:11 31:17	77:22 78:25	49:15 51:1,19	NEDCO 30:20	notary 68:15
33:13,16 38:18	milestones 33:3	52:2 54:16,18	31:1 35:7	notes 80:9 93:13
38:19 41:14	million 33:17	55:1,7,13,25	NEDCO's 30:21	noteworthy
42:9 43:20	40:16 86:22	56:10,14 61:20	need 6:13,24 7:1	78:20
44:14 47:1,9	mind 41:25 44:6	61:24 62:20	8:11 10:21	notice 3:10 9:11
47:16 53:10	63:11 78:24	63:12,19 65:3	12:9 14:25	9:14 10:12
58:18 61:12	mine 24:14	65:6,22 67:12	20:3 23:20	25:19 69:4
64:23 68:16,18	minor 55:23	75:14 76:14,24	32:5 36:22	70:1,5,12 74:1
74:17 77:19	minority 27:19	77:2,4,24	64:10 67:4	74:17,24 82:8
78:9,13 79:23	28:2,8,14,15	79:10 84:3,12	74:6 76:2 89:7	notices 74:15
82:25 84:9	28:19,24 30:13	91:2	needed 20:8	75:3,6
85:17 86:14,14	34:8,15 40:4,6	Mojave's 29:21	26:14 33:1	notify 89:7,8
86:19 87:1,16	40:7,22 53:2	35:14 37:8	56:12,13 67:1	number 43:17
mechanic's	71:9,21 72:2	48:13 75:7	needs 66:22	73:8 82:21,23
82:10	72:15	money 24:12	67:4 79:10	82:25 83:16
medication 7:15	minute 42:2	25:5 30:24	neighboring	85:20 88:14
meet 18:18	45:18	32:3,4 43:8	66:4	numbers 44:1
31:10 35:13	minutes 29:13	44:21 45:1,23	Nelson 47:6	
meeting 31:11	46:22 47:1	64:3,12 82:2	78:16	O
32:12 35:14	80:8	89:16,22	net 19:9 84:25	oath 5:2,3,5
43:19 46:9,12	miscellaneous	Moore 11:17,18	Nevada 1:2,4,9	51:16 80:16
47:9,13,14	59:13	11:19	1:11,21 2:3,5	93:7
49:15 64:6,14	missed 88:15	morning 6:15	2:11,18 4:1	object 5:25
66:15 75:13,14	missing 33:2	7:24 8:2 10:6	93:18	16:12,17 25:18
76:8 77:11	mistake 45:11	move 58:7	never 23:11	38:2 69:12
81:19,21,21	73:7	moved 34:1 79:2	26:13,20,22,25	91:7
82:3	Mitsubishi	moving 19:5	34:3 44:10	objection 6:3
meetings 8:11	48:22 56:21	46:24 47:8	57:19 62:15	7:10 70:24
18:16 46:3,8	88:23 89:18	municipality	67:20,21 69:25	objections 7:8
57:11 67:2	90:1	15:24	new 11:7	93:9
meets 55:18	Mitsubishi's			obligations 5:4

66:24,25	41:11,19 42:2	oranges 78:13	80:1,6 89:23	11:3 32:1 40:8
obtain 43:3	42:12,17 43:1	order 31:20	painted 26:3	84:17 86:4
obtuse 12:1	44:9,13 45:21	49:5 53:25	paper 30:25	90:17
obvious 25:14	45:23 46:1,6	54:18,19 55:3	83:7	percentage 28:9
29:1	47:21,24 49:12	55:4,10 56:1	paperwork	28:13 30:2
obviously 23:2	50:2,9,21 51:1	ordered 56:2	24:12 32:24	31:1
28:24 43:10	51:4,18 52:1,4	ordinarily 53:14	33:1 35:15	perform 46:14
50:23 65:13	52:13 53:7,19	72:19	39:23 56:20	47:17,18,20,25
83:1	54:9,21 55:10	Organization	parallel 19:22	48:4 55:9
office 9:4 29:21	57:1 58:7 59:1	90:12	paralleling 56:8	56:18 63:13
31:14,24 35:14	59:4,11,17,22	originally 30:19	60:5	77:8 89:6
50:6	60:13,20,21	63:4	paraphrasing	performed
official 90:10,14	61:8,11 62:6	outlier 40:19	76:4	27:10 47:21
Oh 21:22 22:16	62:10 63:9,18	outline 21:18	Parkway 2:10	60:23 62:11
22:22 38:9	64:1,9,17 65:6	outlined 56:18	part 8:9 13:11	76:23
61:14,21 83:10	65:17,21 66:9	outside 25:19	48:15 49:7,9	performing
okay 5:6,8,15,16	66:14,23 67:2	out-of-pocket	55:6 63:17	49:3
5:23 6:5,21,22	67:8,10,15,23	87:1	64:18 67:5	period 8:4 90:13
7:12,13 9:6	68:12,14,24	overall 13:2,4	68:3,7 71:1,8	perjury 92:19
10:2,4,8,11	69:3 70:12,19	55:6,6	86:7 88:15	93:17
11:2,8,14,23	71:3,5,15 72:6	overcome 46:22	participate	person 1:19 2:1
11:25 12:3,8	73:16 74:4,10	owed 36:7 47:19	30:11,12 57:10	3:10 9:23
12:15,17,20	74:12,21,24	73:19 89:15,22	70:8 82:21	10:15,22 11:5
13:1,8,16,22	75:5,10,18,22	owing 82:3	participated	11:11 19:11
13:25 14:3,6,8	76:3,19 77:7	owner 66:25	51:1 82:23	23:10 25:19,20
14:18 15:7,15	79:15,22 80:3	69:23	parties 68:9	25:21 55:20
16:3,20 17:1	80:11,22,24	owners 40:4	93:15	62:7,7 78:23
18:2,25 19:14	81:17,24 82:6	71:8	partner 44:17	personal 25:23
19:19 20:5	82:14,20 83:13		pause 41:15,17	25:24 76:10
21:8 22:1,24	83:18 84:6	P	41:21	personally
23:13,18,21	85:9,16 86:13	Pack 11:10,12	pay 26:24 34:15	22:24 32:19
24:1,10,21	86:20 87:2,15	47:5 74:7	43:9 67:3	34:20,22 38:6
25:4,11,14	87:25 88:12,18	page 3:3,9 9:19	paying 37:8,9	43:6 52:2
26:16,21 27:2	89:2,13 90:15	59:12 92:2	payment 3:13	65:10 74:17
27:6,13 28:16	90:22 91:9	pages 58:9	23:9 24:21	person's 23:15
29:6,11,23	once 18:15 72:1	paid 23:14 25:7	25:15 26:18	pertinent 52:22
30:6,10,15,18	ones 74:14	25:16 26:13,18	27:7 33:18,19	Pete 31:5,14
31:16 32:10,15	onsite 61:3,4	26:20,22 27:4	38:14 43:15	33:14 39:19
32:15,21,23	62:3	27:10 28:25	44:5 45:7	41:12 43:15,20
33:4,9 34:7,18	oOo 4:3	37:14 40:6,6,7	72:22,22 73:3	43:21,22,23
35:11 36:2,11	opened 22:9,14	40:7,23,23	payments 77:4,9	44:4,23 45:21
36:15,20,24	operating 48:25	42:19 45:14	77:21,24	51:19 63:25
37:3,7,12,18	opportunities	63:7 64:20	penalties 5:4	64:9 66:1,2,14
37:21 38:4,9	15:5	66:17 67:3,12	penalty 92:19	75:16,18 81:13
38:12,24 39:2	opposed 29:9	72:3,20,24,25	93:17	81:18
39:17,25 41:1	70:22	74:18 79:13	people 8:19 11:1	Peter 28:10

75:17	12:15,17,22	22:22 34:11	25:1,4,5 27:10	80:20,22 82:25
Pezzillo 2:9	51:19 64:2	38:22 41:20	27:13 28:13	83:3
phone 12:5	postdated 36:17	42:21 51:6	30:8 34:5	provided 36:8
16:11 29:25	36:22 37:1,4	58:22,24 59:5	35:12 36:7	48:7 65:4,7
31:13 43:17,25	potential 39:21	76:1,20,20	41:13 42:15,19	67:17 69:15
44:1	power 12:13,21	82:13 84:19,19	51:5 54:16	72:19 74:24
phonetic 47:6	practice 24:11	85:1	55:2,9 56:10	75:3,6 83:2
90:13	precautions	problem 7:23	56:11 57:3	provides 55:14
physical 22:19	42:13	23:5,12 26:18	60:3,5 62:18	purchase 28:15
79:23	preferred 41:18	39:14,15,18	68:17 70:2,6	53:25 54:18,19
physically 43:8	prelien 68:8	41:23 64:10	71:12 73:12	55:3,4,10
48:16,17 80:5	69:16,19,20	80:14	76:2 79:3	85:22
pick 12:5 87:10	70:10 82:8	problems 23:3	82:21 83:20	purchased 28:8
88:9	83:1	30:22 81:24	84:4 89:16	28:14 30:20
picking 30:16	preliened 42:16	procedure	90:18 91:1	purchasing
pieces 48:20	preparation 8:7	38:19,20	projects 22:20	28:11 51:23
56:25,25	prepare 8:1 9:7	proceeded	22:21,22,25	pushing 30:25
place 46:24 48:5	present 11:7	41:14	24:8 28:3,7,20	put 32:3,4 57:23
53:10 84:17	president 11:9	proceeding 7:9	28:23 34:9	93:7
93:6	11:13,15 28:11	50:16	41:7,9 46:17	putting 48:5
Plaintiff 1:6 2:8	47:5 51:21	proceedings	46:20 51:22	70:9 80:4
plan 57:8	74:8,9	91:14 93:5	71:7,11,20	
plausible 45:5	pretty 15:8 18:3	process 24:17	75:20 76:11	Q
45:11	20:7 30:1,3	29:12 30:16	81:25	qualified 19:11
play 14:15 29:2	33:16,25 42:22	31:3 33:24	proposed 55:12	quality 65:4
68:3	48:3,7 49:24	37:10 39:6,22	proposing 55:17	quantify 34:7
please 4:11 6:20	57:2 58:24	40:5,10,12,21	propounded	quarters 33:17
24:20	60:15 68:6,10	40:21 49:8,9	93:9	40:16 86:22
pocket 32:4,5	76:4 77:16	50:17 53:8,15	proprietary	question 5:20,22
point 6:15 7:8	78:8 80:9	56:18 57:12	79:24 90:4	6:18 7:10,11
7:12 17:8,11	83:23 85:14	64:19 68:4,4,7	protect 39:4	10:6,11 12:5
18:1 29:3	prevent 7:15	69:10 70:10	44:8,16	16:18 21:11
32:25 33:7	previous 11:4	71:20 75:8	protection	24:14 25:14
41:25 42:14	primarily 57:18	81:10 85:10	17:18 18:8,9	28:4,17 30:17
43:11 44:4,15	primary 13:17	86:11,19 87:12	protections 39:3	38:22 41:6
44:19 45:10	89:15	88:11	protocol 19:3,7	52:25 54:17,25
47:21,25 49:2	prior 12:18 15:1	produced 56:3	20:1 49:6	57:15 58:19
62:19 66:21	23:2,3,11	product 51:23	63:15 79:18	70:19 72:5,7
71:12 73:10	26:17 27:10	products 13:17	87:4,22 90:2	78:8,8,17
75:7 79:6	52:8 75:3 77:1	13:18 14:19	protocols 17:22	79:16 86:4
80:19 84:13	77:5	88:16	18:6,7	90:6 91:7
87:13 90:10	privileged 79:25	progress 47:11	provide 55:10	questions 5:11
policies 10:13	pro 28:3	project 15:8	55:12,13,13	5:13,18 6:1,13
politically 27:18	probably 11:21	16:2,4 17:9	68:7 69:7,8,9	21:18 42:22
portion 33:20	18:3,3 19:12	18:15,24 20:7	69:18 71:10,13	55:21,24 78:25
position 12:12	21:4,25 22:2	21:20 24:22,25	72:23 79:12,18	91:10,11 93:9

quick 7:4,5 42:22 44:8 80:10,13 quite 11:19 24:13 32:6 40:11	29:25 41:9,10 45:25 46:9 48:1 63:18 65:6,12,14 72:10 75:15 80:20 85:14 89:17,24,24 receive 40:5 63:18, 65:3 received 10:5 23:9 36:12 49:4 55:25 receiving 9:17 63:19 recess 51:13 80:12 recognize 35:22 36:2 52:6 recollection 5:12 58:3 59:15 reconciling 78:18 record 4:11 6:3 7:5,8 46:11 51:14,18 61:2 62:10 80:13 recorded 70:14 70:16 93:10 records 77:3 redundancy 20:20 21:7,11 21:13 references 53:15 regard 33:22 66:6 regulations 15:25 17:21 related 5:13,19 7:7 23:10 24:19 relates 10:13 relating 91:2 relationship 26:12 75:19,19	76:9,10 77:2 relative 32:22 55:19,21 79:3 86:20,22 93:14 relatively 88:21 release 24:22,24 25:6 41:16 42:3 55:25 56:1 67:16 68:21 69:15 70:21,22 71:13 71:25 72:1,4 72:19,22 releases 23:8,9 23:23 24:7 25:17 27:7 71:11 remember 5:8 5:12 28:9 46:18 60:8 76:5 78:21 removed 27:3 RENNIE 1:10 rental 12:13,24 rep 12:19 13:23 14:4 88:6,7 repair 13:16 65:7,19 repairing 65:14 repairs 13:20 rephrase 16:19 report 12:23 80:20 REPORTED 1:24 reporter 2:4 4:14 5:3,17 6:7 93:4 REPORTER'S 93:1 represent 59:23 60:18 74:13 representative 88:19 represented 4:22	requested 91:13 requesting 65:7 require 14:14 28:7 required 15:18 16:23 18:7 21:14 47:25 requirements 15:13 17:20 28:1 55:18 56:23 requiring 17:6 resolution 47:9 resolve 64:14 respect 9:24 14:13 15:7 16:4,9 27:6 69:9,15 70:1 70:21 73:19 74:1 respond 6:1 7:11 responding 44:2 responses 6:12 responsibilities 12:21 13:13 responsible 12:24 rest 86:3 restroom 7:1 resulted 27:8 retention 72:21 72:23 73:10,14 review 8:8 52:9 60:7 80:8 reviews 55:16 55:20 right 6:11 7:5 15:13 17:5 20:11 21:2 22:5 24:24 26:1,23 27:11 27:15 31:19 33:5,20 35:9 36:13 39:7 40:13,20 41:14	43:13 45:17 52:4,18 54:1,2 55:4 56:16 57:21,22 58:6 59:20 60:10,24 62:19,25 63:8 63:9 67:10 68:21 69:2,4 69:10,17 70:1 71:18,20 73:1 73:7,24 74:12 75:1,5 80:6 81:5,12,19,23 83:5,8 85:5,13 86:2,6,25 88:18 90:6 ring 63:20 65:8 road 46:13 Robinson 2:9,9 3:12 16:12,17 25:18 26:1 38:2 51:10 61:12,15,21 68:19 69:12 70:15,24 72:10 91:7,12 Robinson's 4:25 rodeo 68:13 ROE 1:15 role 27:22 room 31:15 32:16 57:5 78:16 rules 4:20 15:24 rumors 66:10 run 4:20 7:1 running 13:20 15:19 16:7,24 17:13 18:4 48:17 49:4 84:17
R R 2:9 3:12 random 90:7 range 40:14 Ranger 34:20 Rangers 31:21 rating 20:2 rationale 32:11 67:5 reach 43:24,24 reached 43:11 79:6 read 60:23,24 61:24 92:20 ready 84:2 real 16:21 44:7 48:4 80:5 90:20 really 6:18 24:16 29:16,17 32:20 38:25 41:25 45:1,10 45:20 47:8,10 64:10 69:24 76:1 81:6 87:6 reason 7:18 8:9 11:3 15:21 20:19 36:22 41:12 45:5,6 54:18 58:7 61:22 64:17 66:19 68:15 70:14,15,17 73:11,13 79:23 87:6 92:2 reasonable 14:24 reasons 64:25 recall 9:17 28:9				S S 3:8 safety 19:17 sale 14:20 15:1

sales 12:13,19 12:24 13:23 14:1,4 89:4 salesperson 13:12 sat 31:15 77:11 satisfy 24:12 save 10:18,24 saw 69:22 80:25 saying 25:4 32:9 38:4,19 64:9 78:17 87:21 says 58:2 61:24 71:16 SBriscoe@ne... 2:19 scale 40:15 scamper 44:7 scenario 28:22 schematics 48:7 scope 55:8,17 57:16,17 63:1 63:4,20 se 20:6 82:8 second 9:22,25 20:24 35:23 45:16 48:15 68:22 73:7 88:15 secondhand 39:11 security 42:18 see 35:13 44:16 44:18 46:23 52:8 58:1 66:4 71:16 77:20,23 77:23 83:1,1 seen 10:9 35:25 37:19 53:24 55:1 67:20,21 68:2 69:5,20 69:25 70:5 82:7,8 selection 30:12 sell 13:16 14:20 send 47:2 59:7	64:13 sending 45:7 sends 64:9 sense 21:10 30:10 32:8 59:2 73:17 85:17 sent 9:14 43:14 46:16 74:16 September 1:22 2:3 4:1 93:19 service 89:4 services 14:19 28:7 set 20:3 83:25 93:6 sets 18:3 19:22 20:3,20 setting 48:18 seven 9:24 shakes 6:8 35:14 Shane 8:20,22 8:23 22:12,12 24:14,18 25:9 25:21 26:3,3,4 29:11 33:9,24 36:12,16,21,25 38:23 39:3,11 41:3,22 42:9 42:22 43:6 44:25 45:15 46:7,10 50:2 50:10,11 52:11 53:16,19 67:24 68:5,6 70:13 71:4 72:5,6 73:21 74:2,5 74:21 75:11 82:9 83:9 Shane's 39:10 68:11 shape 70:8 SHEMILLY 2:15 shook 30:2	shorter 84:14 shorthand 93:13 shortly 31:13 60:13,15 62:1 show 51:6,7 67:19 sic 30:24 69:14 side's 88:5 sign 23:8 52:23 72:21 signals 56:1 signature 91:13 92:20 signed 24:6 54:25 68:14 70:13 signs 49:3 silently 78:7 simple 28:6 simultaneous 37:10 sir 4:19 5:7 9:18 12:11 13:24 33:8 35:17 36:1 51:17 53:6 80:17 83:17 sit 46:23 78:7 site 30:7 56:4,9 56:12 58:16,25 59:7,19 60:6 62:21 65:15 80:18 83:23 84:16 85:12 90:17 sitting 59:22 67:10 73:24 74:12 75:1,5 78:16 88:18 situation 12:2 21:13 26:17,23 27:3 37:25 38:21 39:8 47:7 53:2 57:6 84:22	situations 24:6 37:5 six 9:24 12:16 12:22 14:8 skip 44:21 skipped 45:24 slow 26:22,24 27:9 slowdown 27:9 small 29:10 smoothly 81:11 snuck 89:10 somebody 14:22 32:2,4,5 41:25 52:21 78:22 83:2 88:9,24 89:10 somebody's 32:3 somewhat 23:7 57:6 82:13 soon 45:12 sorry 12:1 13:3 29:5 35:1 61:14 72:5 sort 18:18 28:6 44:25 45:11 46:15 53:18 66:5 77:1,13 78:20 84:18 89:6 source 77:9 south 2:2,17 35:20 speak 8:14 52:20 83:25 speaking 7:25 15:21,22 special 76:9 specific 22:14 23:10 55:19 59:15 60:8 76:6 89:4 90:25 specifically 15:7 15:15 16:4	18:14,18,21 19:3 33:13 46:10 47:16 60:6 67:7 73:12 75:14,18 77:12,21 78:21 79:3 87:3 91:1 specifications 55:18 speculating 5:10 spell 4:13 spend 32:24 spiffing 30:24 spoke 8:13 spoken 67:7 sponsored 35:2 st 57:17 stage 16:6 48:2 50:17 79:19 stages 18:16 48:9 72:20 81:6 83:24 86:11 stance 47:10,15 47:16 standard 38:20 48:14 standpoint 48:8 79:21 88:5 start 33:2 35:19 48:17 55:9 56:24 63:23 66:8 87:11,13 88:10 started 5:6 13:5 16:7 17:13 44:25 66:10 68:4 69:10 starting 44:20 46:15 48:16 66:11 starts 53:9 startup 46:14 47:17,19,20,22 47:25 48:9,15 49:7,14,23
--	---	--	---	--

56:18,20,21	3:19 61:23	suspect 35:22	81:13 82:7	territory 89:6,8
57:18 62:16	subjects 90:24	swap 24:23	90:24	testified 4:7
63:2,13 64:11	submit 35:15	switches 48:21	talking 5:18,22	37:7 50:14,17
64:20 65:1	56:20	56:8	6:20 15:9 19:4	50:23
79:12 83:20	submittals	switchgear	22:19,19 24:21	testify 4:6
84:12 85:15	55:11,13	48:21 90:11,12	26:6,23 29:25	testimony 7:16
87:23	submitted 9:11	90:14	31:2 53:20	7:19 50:25
startups 13:21	50:4	sworn 4:6	66:14 79:2	93:8
start-up 15:6,12	subpoenaed	system 19:22	85:4 86:14,21	thank 6:22
15:12	77:3	20:1	87:3	38:17
state 2:5 4:11	subsequent 43:3		Tammy 1:24 2:4	theoretically
stated 38:3	substance 8:23	T	93:3,23	19:24 74:22
statements 77:3	substantive 9:1	T 3:8	target 19:5	thing 23:6 29:8
77:8 93:9	successful 56:19	table 83:25	tech 13:25 79:15	43:13 44:6
states 56:21	sufficient 84:10	Tahiti 44:22	technical 14:14	46:24 60:4
statewide 12:23	Suite 2:10	take 5:3,5 7:2,4	14:20 17:15	64:3 68:6,10
status 17:3	summarize 35:6	7:5 9:2,13,25	55:11 79:16,21	82:9 85:4
34:25 35:9	supervisor 8:20	33:19 35:19,23	90:19	things 5:19 8:5
stenographica...	supply 42:3	51:10 54:5	technician	13:20,21 15:3
93:10	supplying 20:15	55:10 60:21	13:11,13,15	15:18 19:16,20
step 44:22 48:3	support 32:1	69:3 72:15	14:15 47:24	21:9 28:12
88:14	90:20	80:8 83:21	48:10 56:22	29:12 31:9,23
steps 27:2 43:2	sure 4:21 5:5,9	84:13 85:5,17	84:23 87:7	32:2 33:2,6
sticks 78:24	8:9 11:19	87:4,17	tell 6:1 17:15	34:20 35:19
stinks 12:3	16:20 17:19,24	taken 2:2 43:3	20:13 23:20	36:6 42:24
stop 3:13 38:14	17:25,25 20:14	51:13 80:12	24:20 29:18	43:8 45:9,14
43:15 57:23	20:21 24:4	85:7 93:5,13	48:23 51:20	46:11,15,15
stopped 17:8	26:5 29:24	takes 67:25	55:8 61:9,10	47:7 48:6,19
45:6 49:25	31:11,19 32:7	talk 6:17 8:22	66:2 69:21	48:23 50:11
stopping 44:5	33:25 35:3	9:21 10:21	72:15 75:18	52:24 53:16
stories 45:2,4	39:12,15 40:2	12:9 15:3	78:4 81:14	57:5 58:20
story 31:20,21	42:20 46:11,18	17:23 19:2	87:8	60:7 75:25
straight 76:1	48:13 50:10	29:12 32:16	telling 14:23	79:2 81:11
straightforwa...	51:8,11 53:14	47:3 51:11	25:7	84:3,18 86:10
30:1 48:8	53:16 54:22	53:19 74:6	ten 34:10,11	87:13 88:13
Street 2:3,17	55:17 56:6	78:12 82:2	47:1	90:18,25
strength 40:9	57:24 58:21	talked 4:21 9:1	ten-second	thing's 72:25
struggling 24:16	62:22 63:21	9:7 19:20	51:18	think 6:1,18
stuff 16:7,24	64:5 67:7	24:18 29:11	term 27:18	8:21 13:3 18:4
17:12 57:6	74:23 77:13	31:21 33:9,15	termed 73:25	19:3 27:19
58:24 59:5,18	83:15 85:3,19	34:19 36:15	terminal 11:20	28:18 29:8
62:1,14,17	88:21 89:11	42:9,22 44:11	terms 18:4	31:25 32:9
80:4	90:23	49:6 50:2	29:15 30:7	33:21 34:2,9,9
subcontractor	surety 1:11,12	59:23 62:13	52:20,24 68:4	37:22 39:20
61:22	1:13,14,14	63:1,16 67:10	69:19 90:10	44:3 47:10
Subcontracto...	75:6	67:15 71:20	terrible 30:16	53:20 72:6

75:24 77:13	39:17 45:2	true 93:12,18	42:3 67:16	43:10
81:7 82:17	46:13 47:18	trusting 73:6	70:22 71:10,13	updated 44:24
85:23 90:3	tomorrow 16:6	truth 4:6 69:21	72:1,4,23	UPS 48:22 56:9
thinking 15:15	top 10:20 22:10	try 6:4 21:18	73:13	88:5
18:2	23:15 58:1	32:2 39:4 43:8	understand 5:6	use 17:22 19:25
Third 2:17	topic 79:10	65:22 88:9	6:14 15:18	23:23 52:17,17
Thompson 2:16	total 82:17	trying 10:24	16:23 24:24	55:17 90:11
thorough 57:14	84:24 85:1	43:24 45:1	25:3 26:2,5	usually 22:3,5
threaten 43:8	track 21:19	Tuesday 1:22	27:8,14 29:14	27:2 40:8,14
three 9:21 10:12	trade 53:15	2:3 4:1	32:9 36:5,12	41:23,24 42:18
22:23 33:17	61:24	turn 33:19	41:1,11 49:20	57:13 72:20
40:16 56:25	transacted 30:8	55:14	50:5,13 51:15	
58:9 59:23	transacting	turned 44:1	53:8 61:17	V
81:21 84:7,8	29:21	Turner 1:12	62:7 64:17	vacation 38:7,17
86:22	transaction	66:25	68:1 76:5	43:14 71:2
three-day 7:22	52:19 53:1	turnover 11:4	77:20 79:9,9	vague 16:18
tight 30:23 33:7	transactions	two 9:24 10:19	80:15 87:22	57:15
35:7	77:5,12,15,17	11:1,3 12:5	understanding	valuable 26:14
time 4:18 5:23	77:23	13:3 16:11	9:23 10:14	Vanderpool
6:24 8:4 10:18	transcribe 5:22	17:14 19:22	14:22 16:4	11:9
10:24 11:12,16	6:7	20:20 21:6,6,9	26:8,11,16	variance 86:12
13:11 17:7	transcribed	21:13 27:2	33:13,22 36:15	86:13,14
29:20 33:7	93:11	43:3 48:9 58:8	36:17 37:8,14	vary 18:11
35:8 39:19	transcript 5:17	58:20 80:8	37:15 39:13	85:14
46:23 47:25	72:11 93:12	84:5,8 85:17	42:8 45:19	Vegas 1:21 2:3
56:24 69:21	transcription	86:4 88:13	46:6,7 50:22	2:11,18 4:1
73:7 78:18	92:19	typical 13:14	52:13,15,19	18:10 81:7
83:21 84:4,12	transfer 29:16	33:24 73:11	53:17 54:15	verbal 8:5,10
84:24,24,25	48:21 56:8	84:4	58:15 59:17	verbally 44:10
87:4 93:6,6,10	76:14	typically 16:25	60:1 61:4	verifies 48:10
times 18:20	transition 13:25	17:2 18:15	65:21 66:7	48:12,12
21:20 22:2	90:13	23:25 24:23	68:17 70:20	verifying 34:25
23:8 31:5	transpires 53:22	37:3,4,25	71:24 91:4	35:4 48:6,25
34:12	TRAVELERS	38:25 57:10	understood 5:24	viable 49:5
Time's 35:7	1:14	72:14 73:12,25	6:11,11 33:16	88:16
timing 50:10	tremendous		33:18 34:1	vice 28:10 51:21
title 90:14	44:17	U	undertook	visited 60:6
today 5:9,18	tremendously	Uh-huh 4:24	42:13	vs 1:7
6:24 7:15,19	14:21 57:13	9:16 11:6	unfortunately	
8:10,14,24	tried 43:7	15:10 19:6	16:1	W
9:15 15:9 16:8	Troy 46:16 47:1	49:11 58:12	unfortunaten...	W 2:15
79:20 83:19	47:6 64:7,13	78:1 84:1	62:23	wait 33:18 62:19
84:22 90:24	64:13 66:15	um 8:5 29:7	universal 16:1	Walch 2:16
91:3	75:16 77:12,16	34:7 44:2	unloads 56:14	walk 13:5,14
told 28:10,12	78:2,16	unconditional	unrelated 24:7	30:15 47:12
34:20 39:14,15	Troy's 78:21	24:3,7 25:16	unsuccessful	want 5:5,10,10

6:25 10:19	46:14 52:20	witness 3:2 6:9	52:16 64:25	008 3:18
12:6 16:13,14	66:17,17 79:13	9:20 26:6 38:5	79:23	
16:15 17:7	WEST 1:10	38:7 71:23	wounded 31:22	1
19:2 21:23	WESTERN	80:11,14 91:8	written 32:25	13:10 9:12
26:5,6 31:25	1:11	93:7,8	54:25	12:10
32:2 34:3	we'll 7:4 9:21	Woloson 2:16	wrong 49:20	1st 58:14,17,24
39:15 41:13	15:5 26:17	wondering 16:3	WTC00070	59:6,19
44:4,17 47:13	29:12 36:11	22:13	3:20	1-10 1:14,15
51:5 62:20	42:2 51:11	word 15:12		1/17/11 58:2
66:15,15,19	58:7 64:4	16:21 31:19	X	10 3:12
74:23 75:13	72:21,21 80:13	34:10 78:9,10	X 3:1,8 86:4	11:36 91:14
77:13,14,14	we're 5:18 6:23	words 46:18	Y	14 85:5,5,7,18
80:5 86:18	8:9 15:4,8	76:6 83:6	yeah 8:18 9:5	86:4 87:18,19
89:23	18:22 26:23	work 19:12,13	21:25 22:13,22	156,627.92
wanted 30:23	31:9 32:23	19:15,16 20:1	29:3 30:5 32:9	58:13
31:1 47:17	43:16,20,23,24	24:17 27:10	52:25 59:3	164929 1:25
81:7	49:2 53:20	31:6,10 35:8	63:24 72:6,17	17th 58:17,22
wanting 89:14	56:24 57:8	48:13,17 51:24	73:4,23 83:5	170 2:10
wants 79:10	62:19 63:2	55:8,17 60:2	86:17 89:24,24	19 13:4
warranty 13:20	64:2 66:12	60:23 61:6	year 85:6	1995 14:2
49:5 56:24	68:21 72:18	62:11,18 63:1	years 12:16,22	2
88:16	74:18 75:25	63:4,10,19,20	13:3,4 14:8	23:12 10:7
wars 32:1	78:11,12 79:16	64:3 65:19,23	23:6,11 44:17	20th 60:25
wasn't 8:7 20:17	84:22 85:4	67:4,17 82:16	46:17,21 52:3	62:17
21:12,12 25:15	86:20 89:22	84:20,22 86:9	Yep 5:7 43:22	2006 14:11
31:22 35:7	we've 24:5	86:10 87:11	73:23 87:20	2007 14:11
41:14 42:5,6,7	46:17,20,21,21	88:5,9,20 89:6	Z	201 70:15
42:24 44:2	54:9 60:22,22	89:6	zero 87:11	2011 58:4,14,14
47:8 52:18	75:23,24 82:20	worked 13:18	\$	59:14,19 60:3
53:21 74:3	89:3,8	21:21 22:24	\$110 85:18	62:4,11 68:14
81:6 90:23	whatnot 8:11	29:14,15 34:3	\$3,000 41:24	70:13 75:1
way 20:10 27:18	whatsoever 89:7	34:9 35:12	\$329.71 59:14	2012 1:22 2:3
39:2 46:13	Whiting 1:12	40:3 41:7 71:7	\$50,000 40:14	4:1 93:19
70:8 71:19	27:3,4 66:24	working 7:23	\$6,000 86:19,24	21st 60:25 61:2
77:16,19 79:7	75:7	17:8 34:22	\$750,000 41:23	61:5 62:4,11
87:9 88:10	Whiting-Turn...	40:14 74:2	\$755,000 47:19	62:17 65:17
week 38:13	3:19 22:1	75:19,25 76:9	64:24	70:13
weekend 7:22	55:14 61:19	76:11 81:14,15	\$755,893.89	22nd 70:15
81:7	66:24 73:19	81:17,18 86:7	3:14 82:20	233-4225 2:11
weeks 84:5,8	74:16,18,25	89:8,9	0	24th 75:1
85:2	75:3	workmanship	okay 18:12	25 59:14
Welcome 38:16	widely 85:14	49:2	002 3:16	26th 68:14
went 8:3,3 31:13	willing 26:15	works 61:7		3
43:6 47:4 56:2	32:23	wouldn't 18:5		33:13 9:19
81:10	wiring 48:6,12	19:12,15 21:11		
weren't 25:16	wise 24:12	39:23 41:11		

35:21	74:16,24			
30 40:14	91 13:7,10			
30(B)(6) 3:10	97 13:7,10			
30-day 52:20	99 13:9 14:3			
305 1:24 93:3,23				
35 3:13				
<u>4</u>				
4 1:22 2:3 3:4,16				
4:1 51:9,12				
52:6				
4/29/11 3:14				
400 2:2,17				
<u>5</u>				
5 3:17 54:4,5				
86:19,24				
5th 93:19				
51 3:16				
54 3:17				
598,936.26				
58:11				
<u>6</u>				
6 3:19 60:17,18				
60 3:19				
6750 2:10				
<u>7</u>				
702 2:11,18				
71 3:20				
755 73:2				
755,000 70:22				
755,893 37:15				
755,893.89 36:3				
59:25 83:18				
791-0308 2:18				
<u>8</u>				
8/31/12 3:12				
89101 2:18				
89119 2:11				
<u>9</u>				
9 3:10				
9:30 2:4 4:2				
90-day 73:25,25				

EXHIBIT B

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

CASHMAN EQUIPMENT COMPANY, a)
Nevada corporation,)
)
Plaintiff,)

vs.)

CASE NO. A642583

CAM CONSULTING, INC., a Nevada)
corporation; ANGELO CARVALHO, an)
individual; JANEL RENNIE aka JANEL)
CARVALHO, an individual; WEST EDNA)
ASSOCIATES, LTD., dba MOJAVE)
ELECTRIC, a Nevada corporation;)
WESTERN SURETY COMPANY, a surety;)
THE WHITING TURNER CONTRACTING)
COMPANY, a Maryland corporation;)
FIDELITY AND DEPOSIT COMPANY OF)
MARYLAND, a surety; DOES 1 through)
10, inclusive; and ROE CORPORATIONS)
1 through 10, inclusive,)

Defendants.)

AND ALL RELATED MATTERS.)
_____)

DEPOSITION OF DAVID PHILLIPS

Taken on Thursday, January 10, 2013

At 3:00 p.m.

At 6725 Via Austi Parkway, Suite 290

Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 2

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11

12 I N D E X

13 WITNESS: DAVID PHILLIPS

	Examination	Further Examination
14 By Ms. Lloyd:	3	37
15 By Mr. Boschee:	33	

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17
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E X H I B I T S

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Exhibit No.	Description	Page
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1	Preliminary Notice of Right to Lien	11
2	Application and Certification for Payment	26
3	Notice of Lien	32

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 3

1 (Prior to the commencement of the deposition, all of
2 the parties present agreed to waive statements by the
3 court reporter, pursuant to Rule 30(b)(4) of NRCP.)
4 Thereupon --

5 DAVID PHILLIPS,
6 was called as a witness, and having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MS. LLOYD:

10 Q. Hi, I am Jennifer Lloyd. I am attorney for
11 Cashman Equipment Company in this matter. We are here
12 for your deposition today. You can go ahead and state
13 your name for the record.

14 A. It's David Ross Phillips, P-H-I-L-L-I-P-S.

15 Q. You have done this before.

16 A. Yes, I have.

17 Q. Have you had your deposition taken before?

18 A. Yes, I have.

19 Q. How many times? A number of times?

20 A. Probably a dozen maybe.

21 Q. When was the most recent?

22 A. It's probably been 16, 17 years.

23 Q. Okay. So let's briefly go over the rules.

24 It's question and answer. We need verbal responses to
25 all of the questions. The court reporter is going to

1 take down everything that we say, so we need to not
2 speak at the same time. You can take a break at any
3 time you need, just ask. Except for when a question is
4 pending, I would ask that you answer the question prior
5 to taking the break.

6 If any of my questions are unclear or you
7 don't understand what I am asking, just ask me to
8 rephrase it and I will be happy to do that. Your
9 testimony is under oath today. It's the same oath you
10 take in a court of law.

11 Is there any reason why you cannot give your
12 complete and truthful testimony here today?

13 A. No.

14 Q. What did you do to prepare for your
15 deposition today?

16 A. I met with Shimali (phonetic) on Tuesday.

17 Q. Not going into the substance of those
18 communications, did you do anything else to prepare for
19 your deposition today?

20 A. No.

21 Q. What is the highest level of education you
22 have obtained?

23 A. I have a degree in architecture from Texas
24 A&M University.

25 Q. And when did you graduate there?

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 5

1 A. 1974.

2 Q. And do you hold any professional licenses?

3 A. I am a member of the Construction
4 Specifications Institute.

5 Q. And how long have you been a member there?

6 A. I believe since '88.

7 Q. And have you been convicted of any crimes
8 within the last ten years?

9 A. No.

10 Q. I am required to ask that. I hate to ask
11 that question..

12 A. I know.

13 Q. So tell me about where you are currently
14 employed.

15 A. I am currently employed with ForestCity
16 Construction Services, LLC, which is a business unit of
17 ForestCity Enterprises, Inc. based in Cleveland, Ohio.

18 Q. And what's your position with ForestCity
19 Construction Services?

20 A. Vice president.

21 Q. Of a particular division or just vice
22 president?

23 A. Vice president.

24 Q. Okay. What do your job duties entail?

25 A. I manage our development in construction

1 projects in the west.

2 Q. The whole western region?

3 A. West of the Mississippi.

4 Q. Are you based here in Las Vegas?

5 A. Yes, I am.

6 Q. And how long have you been in that position
7 with ForestCity?

8 A. Fifteen years.

9 Q. And prior to that, where were you employed?

10 A. I was employed with Domingo Camaro
11 Architects.

12 Q. What was your position with --

13 A. I was the director of construction services.

14 Q. And have you been based here in Las Vegas for
15 15 years with ForestCity?

16 A. Yes.

17 Q. Okay. So this litigation concerns the
18 new Las Vegas City Hall, as I am sure you are aware. I
19 am going to use the word "project." If I use the word
20 "project," I am going to be referring to that
21 particular project. So can you describe to me
22 ForestCity Construction Services' role on that project.

23 A. We were employed by -- we were employed as
24 the owner's representative on-site by QH Las Vegas,
25 LLC, which was the entity that owned the property and

1 developed the property.

2 Q. Okay. And then is there also a PQ Las Vegas?

3 A. There is a PQ Las Vegas, LLC.

4 Q. What is that?

5 A. That was the entity established for -- there

6 is a land swap within the development agreement.

7 QH Las Vegas is the property in Symphony Park. And

8 it's the two parcels, Q and H. And so, you know, QH is

9 Queen of Hearts, because that is the property. The

10 Queen of Hearts sat on that property. So that is how

11 they determined the two LLCs.

12 Q. Just coming up with a name?

13 A. Coming up with a name. So PQ was tied to the

14 development agreement with the City. And when we

15 closed we swapped land.

16 Q. Okay. So then what is ForestCity

17 Enterprises' role? Are they like the parent

18 corporation?

19 A. That is the parent corporation.

20 Q. For all the different individual --

21 A. Entities.

22 Q. And is there a ForestCity Commercial

23 Construction Entity?

24 A. In the first quarter of 2012 we merged our

25 two construction divisions together. We had a

1 commercial construction division as well as a
2 residential construction. And in the reorganization of
3 the company, as everybody is doing, we merged. And now
4 we are just Construction Services to deal with
5 everything.

6 Q. So at the time was it ForestCity Commercial
7 Construction that was the owner's rep on this project?

8 A. It was ForestCity Commercial Construction CO,
9 Inc.

10 Q. Were there any other owner affiliated
11 companies that were involved in the projects, or did we
12 cover them?

13 A. The project was developed under ForestCity
14 Commercial Development California.

15 Q. Can you think of any others?

16 A. That is all the entities I believe that was
17 involved.

18 Q. So what was your role on the project?

19 A. I was designated by the City as well as our
20 company as the owner's rep. I assisted in the
21 development of the construction documents with the
22 architects. I was involved in the RP for the
23 construction manager at risk. I was involved in the
24 final selections of contractors, subcontractors, with
25 Whiting Turner. And then I was on site to make sure

1 that the construction was pursuant to construction
2 documents.

3 Q. Did you have an office on site?

4 A. I had a trailer.

5 Q. And were you there on a daily basis or a
6 weekly basis?

7 A. Every day.

8 Q. So when you are there at the project, are you
9 just observing the construction activities, or did you
10 have a particular role you took on at different times?

11 A. No. I was there to just observe and make
12 sure that the project was moving smoothly; it was
13 within schedule, within budget; if there was any
14 questions that occurred that I could answer, or I would
15 take to the engineers to get answered. So I was more
16 of an assistant to make sure that the project ran
17 smoothly.

18 Q. And then did you hold meetings at the project
19 with the general contractor?

20 A. We had one once a month, OAC meetings, what
21 we called OAC, which is the owner, architect,
22 contractor meetings. At that time that would include
23 City staff representatives. A lot of my corporate from
24 Cleveland would come down; the developer from LA would
25 come over. And we would just do an overview of the

1 project, how the schedule was going, how the costs were
2 going. They would walk the project just to see how
3 everything was going.

4 Q. Okay. Then did you participate in any
5 meetings with the subcontractors?

6 A. No.

7 Q. Did you keep any records on site, concerning
8 preliminary notices or other things that the owner
9 might receive as part of construction?

10 A. I only received things that corporate would
11 somehow send to me. They all went to our corporate
12 office, which they kept, you know, lien notices and
13 things. But they weren't mailed directly to the
14 trailer.

15 Q. Because the record address was the address --

16 A. Public Square and Queen.

17 Q. So who in Cleveland would be responsible for
18 tracking that information?

19 A. I am not quite sure who in our corporate
20 office did that. It went to legal, I believe.

21 Q. How big is ForestCity Enterprises?

22 A. We are a multi-billion-dollar corporation
23 with about 2800 employees across the country.

24 Q. That is pretty big.

25 A. It used to be a lot larger.

1 Q. Oh, yeah?

2 (Exhibit 1 marked.)

3 BY MS. LLOYD:

4 Q. So have you seen this document?

5 A. I don't recall seeing this one.

6 Q. So it would have been served obviously on the
7 Cleveland address for QH Las Vegas, and then you didn't
8 necessarily get copies of everything.

9 A. No, I didn't.

10 Q. Okay. But do you think that there are
11 records in Cleveland concerning the preliminary notices
12 that were received?

13 A. Well, if it went to Suite 1005, that is
14 ForestCity Construction Services or ForestCity
15 Commercial Construction suite numbers.

16 Q. So they would likely kept records there
17 somewhere concerning all of these preliminary notices
18 or other notices that they might have received?

19 A. Yes.

20 Q. Let's talk a little bit about JMA's role on
21 the project. Can you tell me what JMA was hired to do.

22 A. ForestCity Commercial Development hired JMA
23 as the executive architect, which under the executive
24 architect they were to do all the construction
25 documents. The design architect, which is Helkis

1 Manfredi out of Boston, worked under JMA. And his
2 contract, JMA's contract, included all subtiers of
3 structural engineers, mechanical, electrical engineers.
4 It was all under their control.

5 Q. So did they act as part of their role to be
6 the owner's rep concerning certain items on the
7 project?

8 A. No.

9 Q. What was their role, then, in, I guess,
10 dealing with those subtiers? Like JBA was one of their
11 subtiers?

12 A. Right.

13 Q. So what was their role if they weren't acting
14 as owner's rep for certain approvals, or how did that
15 work?

16 A. I am not sure what you are asking.

17 Q. Like, for instance, if they asked for
18 submittals on certain items to make sure that what was
19 going to be provided by a contractor or subcontractor
20 was to contract, were they the one that would have the
21 ultimate approval or would it go all the way up to,
22 say, you as the owner's rep for approval?

23 A. How did that process work?

24 Q. Yeah, how did that process work?

25 A. Well, the process is that in the construction

1 documents there is specifications that clearly indicate
2 what submittals are required in the project. The
3 subcontractor would prepare those specifications; you
4 know, product data, drawings, whatever was required
5 within the spec. It would first go to Whiting Turner.
6 They are required by our contract to review those
7 documents to make sure that they meet and fall within
8 the range of the contract documents. If they did, they
9 transmitted directly to JMA.

10 JMA would then distribute to whatever party
11 was required, either JBA or the structural engineer.
12 They would review them for the specification, to meet
13 all the specifications. If they did, they would stamp
14 them reviewed. Sometimes they stamped them reviewed as
15 noted, just because there might be some minor errors.
16 It would go back to JMA; JMA would review them. Then
17 if they were approved and stamped by them, then it
18 would go back to Whiting Turner. Then Whiting Turner
19 would in turn give copies back to the subcontractor.

20 Q. And down the line?

21 A. Down the line. The only time I ever got
22 involved on anything would be if the submittal was
23 totally out of range of the specifications.

24 Q. And do you recall any instances like that on
25 this project?

1 A. No.

2 Q. So in the submittal process, then, JMA had
3 the final approval of the submittals that were for the
4 contract work?

5 A. Well, it's a combination. I require that the
6 contractor approve them because he bid the job, and I
7 am holding him responsible for, you know -- I am
8 holding Whiting Turner responsible to build it within
9 the specifications. So from my point of view, Whiting
10 Turner's approval is just as important as the
11 engineer's approval. They are all equal in the realm
12 of responsibility.

13 Q. JMA, Whiting Turner?

14 A. JBA. Everyone is -- from the owner's point
15 of view, they are all held --

16 Q. Equally responsible?

17 A. -- equally responsible.

18 Q. What was your involvement with the selection
19 of subcontractors on the project?

20 A. What the process is that we go through is
21 that we do an RFP. Whiting Turner did an RFP to at
22 least three and mostly five subcontractors for each
23 trade. We would review who they were bidding to in
24 case we had people that we wanted to add; or if we had
25 experiences with contractors we don't want to deal with

1 anymore, then they would bid the project. We would as
2 a team -- and that would include myself and our
3 corporate -- we have an estimating group and we have
4 other people in Cleveland that would review the scope
5 of work, make sure that the scope was complete. We
6 would evaluate the cost.

7 As a public company we do not have to select
8 the lowest bidder, but we do select the lowest
9 qualified bidder on the project. We would normally
10 narrow that down to three. We had -- I mean, we had
11 five to six on each trade because of the timing, and
12 everybody wanted to work on the City Hall project. So
13 we narrow it down to three.

14 We would bring them in and have an interview.
15 We require -- ForestCity requires interviews, which
16 means you bring your project managers, you bring your
17 foremen. You bring anyone in upper level that would be
18 on that site in. And we would have resumes. And we
19 truly -- you know, it's a team effort. So we do a
20 complete review.

21 At that time, we would go back and reconvene.
22 We would say, okay, we like, you know, this person or
23 that person. There was always qualifications of the
24 initial bid, because someone would miss this or we
25 would have questions. Then we would bring them back in

1 for their final cost proposal.

2 At that point Whiting Turner would also have
3 a major input and provide their selection to ForestCity
4 for approval. And at that time we would review the
5 final packages and make, you know, and say that is the
6 contractor.

7 Q. That is a very owner-involved process.

8 A. ForestCity is a general contractor. We got
9 away from it years ago because development goes up and
10 down. But we are a very hands-on group and we do
11 understand construction. And we have done it
12 ourselves. So, you know, we pride ourselves on, you
13 know, producing quality projects on time and on budget,
14 or that are under budget, which this project was under
15 budget.

16 Q. Oh, really? I wasn't aware of that.

17 So you were involved in obviously with the
18 selection of Mojave --

19 A. Yes.

20 Q. -- as a subcontractor?

21 A. Along with other ForestCity entities -- or
22 personnel.

23 Q. Okay. And do you go any further down the --

24 A. No.

25 Q. -- subtier?

1 And when it comes to, I guess, management of
2 payments, are you -- is the owner involved in managing
3 payments to subcontractors?

4 A. No.

5 Q. So would you only then be approving payments
6 to Whiting Turner, or how did the whole payment process
7 work?

8 A. The payment process was also pretty detailed.
9 It was detailed in development agreement of how it
10 would be done. Once a month all the subcontractors
11 would provide Whiting Turner with their billing
12 information. I would review all the detail of Mojave's
13 billing per se. Because it's billed on a percentage of
14 completion, I would say yes or no, or this area is not
15 what he is billing for or whatever; we would make
16 corrections.

17 At that point, when that was corrected, we
18 would sit down with the City staff and walk the
19 project. They would also review the completion
20 percentages, as well as the architect at the same time.
21 When that was -- when everybody agreed to that package,
22 then we would -- it would be signed by the architect.
23 I would send that package to Cleveland, where the
24 executive vice president was required to initial off to
25 make sure, which he understood that I went through it

1 pretty thoroughly.

2 And then the invoice would at that point be
3 put together -- that billing would be put together with
4 our invoice, for our fees and architectural fees or any
5 other fees we would have a combined invoice of
6 everyone's. That would be submitted to the City. The
7 City had a five-person signoff of that invoice.

8 At that time it would be sent to the trustee
9 for the project, which is I believe Bank of America.
10 They would at that time wire transfer funds to Whiting
11 Turner for their billing. They would wire transfer
12 ForestCity, which in turn we would wire transfer to our
13 third-party consultants.

14 Q. And that happened every month?

15 A. Every month.

16 Q. Wow. So how long would that process take for
17 the approval of a billing?

18 A. We were required to do that within ten days
19 in the development agreement. The City had -- as soon
20 as we completed our process, the City had ten days to
21 do it. We were following under the State statute of I
22 believe 45 days, which we always met.

23 Q. Wow. So I guess just to backtrack a tiny
24 bit, how exactly did the whole development -- because
25 it was privately owned property, but there was

1 obviously a public component, I guess, in some way.

2 Can you describe to me how that sort of worked?

3 A. It was a private public partnership. The
4 funding came from Build American Bonds, and we were
5 able to construct and develop it for the City. And we
6 negotiated for land costs to do the trade of the two
7 parcels for the rest of it.

8 Q. Okay. So did you have a requirement for
9 Whiting Turner concerning the Disadvantaged Business
10 Entities percentage that was to be met or to try to be
11 met on the project?

12 A. That was -- during our negotiations with the
13 City, it was at a time when they were laying off
14 people. It was a tough time to sell a new City Hall.
15 The City had a lot of pressure on them from the
16 minority groups to say, If you are going to do this,
17 please get participation. The City does not have a
18 diversity program that they can enforce in the city.

19 So they came to us and said, We would like
20 you to try and get the participation. And we agreed as
21 a goal to try to get 15 percent. We included that goal
22 to Whiting Turner's contracts. And from there they
23 managed how that was obtained.

24 Q. So it was a city requirement essentially?

25 A. Well, it was a request, a strong request.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 20

1 Which we ended up getting over 20 percent at the end of
2 the day.

3 Q. So did you leave it to Whiting Turner, then,
4 to enforce it or encourage subcontractors to meet
5 certain goals?

6 A. During that first interview process before,
7 you know, we awarded contractors, we told them that it
8 was an important factor in selection, as well as for
9 selection purposes. They needed to come to the table
10 with some diversity.

11 Q. So were they required to identify like which
12 areas they would be, you know, meeting diversity with?

13 A. Early on, no. They basically came back and
14 said, We feel for this contract we can get 8 percent or
15 we can get 10 percent, you know. And we monitored
16 them. And most of the contractors met their goals.
17 And the ones that didn't actually we had them
18 contribute.

19 Q. How do you mean?

20 A. There was one contractor that poorly missed
21 his goal. And we had him -- well, he volunteered to --
22 in the minority publications take out ads for his
23 company, which was a benefit to the minority magazines
24 and to the minority groups. So we convinced them to do
25 things of that nature.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 21

1 Q. Okay. Was there -- I guess speaking of if
2 they didn't meet their goal, was there any consequence?

3 A. No. We would only ask that they do
4 something.

5 Q. Okay.

6 A. It was monitored on a monthly basis during
7 the pay application process.

8 Q. Because they were required to submit like the
9 certificates of DBE with their pay aps?

10 A. Yeah.

11 Q. So did you check that with Whiting Turner on
12 a monthly basis?

13 A. No. They provided ForestCity with a report.
14 It was based off costs of the project, costs of each
15 subcontractor. They provided us a breakdown and we
16 never audited.

17 Q. Then I guess in conjunction with payments,
18 did you require a certain waiver or releases from subs
19 and suppliers for Whiting Turner to get those, or did
20 you rely on Whiting Turner to make sure that they were
21 obtaining the proper releases?

22 A. We did get all releases.

23 Q. How did you monitor, I guess, what releases
24 you would need?

25 A. They had a -- Whiting Turner had a breakdown

1 within the pay application for the previous month's
2 payments. We would get unconditionals, you know, for
3 that breakdown after the payment and they would provide
4 us conditional waivers with the initial payment. And
5 Whiting Turner had to do unconditionals and
6 conditionals to us for the project too.

7 Q. So did you have anyone in your offices
8 tracking, say, preliminary notices with releases, or
9 how did you --

10 A. Yes, that went to our corporate.

11 Q. So someone in Cleveland was handling that?

12 A. Yes. Michelle did -- Michelle Lagina did
13 that. She bugged me all the time. When am I getting
14 my releases?

15 Q. So did you rely on a combination of Whiting
16 Turner keeping track of which suppliers were supplying
17 to the projects under subcontractors, or did you have
18 your own tracking system?

19 A. We did not get conditionals or unconditionals
20 from suppliers. It was from the first tier. So we
21 would get -- like, Mojave would provide us conditionals
22 and unconditionals for --

23 Q. Its payments?

24 A. Yeah.

25 Q. Then you weren't tracking downstream subs and

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 23

1 suppliers to Mojave?

2 A. No.

3 Q. Is there a reason why you weren't tracking
4 downstream?

5 A. Because that is not part of our standard
6 process.

7 Q. Did you rely on Whiting Turner to be tracking
8 downstream?

9 A. No, not in our contract it's not required.

10 Q. Were you concerned about lien claims from
11 people who might be unpaid under the subcontractor's
12 second, third tier suppliers or subs?

13 A. Concerned about it? It happens all the time.

14 Q. But, I mean, not concerned enough to require
15 that, I guess, releases be provided?

16 A. It hasn't been in our past history a major
17 concern for us on subtiers and suppliers.

18 Q. Okay. Can you tell me what the status of the
19 project is now?

20 A. Well, on February 14th of this year it's
21 going to be one year opened. We had substantial
22 completion on February 14th of 2012.

23 Q. Is the project totally closed out at this
24 point?

25 A. No.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 24

1 Q. And what is, I guess, left open?

2 A. The contract with Whiting Turner is still
3 open.

4 Q. Why is it open?

5 A. We were still negotiating some requests from
6 them specifically. We still have the Mojave contract
7 open because there is payments still within that --
8 their line items or schedule of values for the
9 generator, which I held after -- it was pretty much
10 paid out, but it was the completion portion that's
11 there.

12 Q. So you are holding money for the generator
13 from Whiting Turner?

14 A. From Mojave.

15 Q. From Mojave. Do you recall offhand how much
16 you are holding? Is it the full cost of the generator
17 line item?

18 A. No. I would be surprised if it's \$30,000.
19 It's somewhere in there, I think.

20 Q. So the project has a permanent C of O?

21 A. Correct.

22 Q. Do you recall when you got that?

23 A. On February 14th.

24 Q. And then -- I mean, I am sure you generally
25 know that we are here because Cashman didn't get paid

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 25

1 for the generator and the UPS equipment that it
2 supplied to the project.

3 A. I have been told that.

4 Q. So when we talk about the generator and UPS
5 equipment, it's kind of a package deal. You know what
6 I am referring to?

7 A. Yes.

8 Q. So what is the status of the generator, UPS
9 equipment on the project now?

10 A. Well, it's installed. I am being told that
11 it would operate in case of an emergency. I have not
12 witnessed that. Due to a lack of some programming on
13 the system itself, it does not give my client, the
14 City, the opportunity to go into a laptop on site or
15 off site and monitor the status of the generator
16 systems, which is critical. Most buildings are fully
17 automated and have a building management system. And
18 they sit up in an office when they need to check to
19 verify that the fuel is correct, the batteries are
20 operating, how that system is operating after it starts
21 up for RPMs and the technical things that need to be
22 monitored on these systems in case of an emergency, and
23 that is not available.

24 Q. And so as a result of that, were you taking
25 any action against Whiting Turner or Mojave or --

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 26

1 A. We have been, you know, pushing to get
2 resolution of that.

3 Q. Of that issue?

4 A. Of that issue.

5 Q. So does that leave any pending issues between
6 you, your company, or ForestCity and the City of Las
7 Vegas?

8 A. The City is aware of the situation. Being
9 aware of it, they can manually go check things, which
10 they are doing, but they are not very pleased about it.
11 Because there is a fault on the generator panel.

12 Q. What do you mean? What does that mean?

13 A. It's a big red light that flashes.

14 Q. Like something is wrong?

15 A. Yeah.

16 (Exhibit 2 marked.)

17 BY MS. LLOYD:

18 Q. Can you take a look at this document? This
19 was produced in conjunction with a subpoena that I
20 issued to ForestCity. Do you recognize this document?

21 A. Yes. It's the one I provided. It's the last
22 executed pay application to Whiting Turner.

23 Q. Okay. And then if you go to page Bates stamp
24 5, can you tell me what -- under the electrical, that
25 first line item, it looks like there is a withholding.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 27

1 Am I reading that correctly?

2 A. Yeah, there was a retainage still held.

3 Q. It looks like -- is that 792 or --

4 A. Yeah, it's --

5 Q. In that range?

6 A. Yeah, I believe.

7 Q. Is that still being withheld?

8 A. Yes.

9 Q. From Whiting Turner?

10 A. From Mojave.

11 Q. Through Whiting Turner, I guess. So why is
12 that being withheld?

13 A. We were closing out with Mojave. There were
14 several change orders that they had asked for that did
15 not get approved before this was done.

16 Q. So that line item is not related to the
17 generator equipment?

18 A. No.

19 Q. Do you have a breakdown of what it is related
20 to somewhere else?

21 A. Whiting Turner would. Whiting Turner held
22 all the files for this project. I did not keep -- they
23 are to provide me on disk the entire file system, which
24 I have not received because we haven't closed out yet.
25 So this is all I had available.

1 Q. What type of file, like, recordkeeping
2 software do they use?

3 A. I don't know.

4 Q. There wasn't a requirement for a specific
5 program?

6 A. (Shakes head.)

7 Q. So that withholding on there is not related
8 to the generator?

9 A. No.

10 Q. In speaking with Nancy from Whiting Turner,
11 she seemed to indicate that it was related to the
12 generator. Unless I misunderstood -- I guess I am
13 trying to understand. Do you recall -- you are still
14 holding it, or have you paid it out?

15 A. No.

16 Q. You are still holding it?

17 A. Until a project is completely closed out with
18 a contractor, I do not release. I release 5 percent.
19 That is 5 percent, I believe. And then column, I think
20 it says 5 percent. I released under percentage
21 retainage; it's 5 percent. Until a project is closed
22 out, ForestCity's policy is we do not release all the
23 retainage. And it's not specifically to any certain
24 item.

25 Q. Well, that particular item shows both a

1 balance to finish and a retainage amount. Those are
2 two separate -- are those two separate -- because most
3 of the items show basically no balance to finish,
4 because they are all looking like they are complete and
5 have been paid out, except for some show retention. So
6 that's why I was trying to understand exactly what the
7 status of the payment to Whiting Turner was on that
8 particular item, because it looks like there is a
9 balance to finish and then a retainage amount.

10 A. The balance to finish was listed of the
11 contract change orders that we were still negotiating.

12 Q. Do you recall what those were about?

13 A. No.

14 Q. So did the owner withhold any funds from
15 Whiting Turner and Mojave related to the generator
16 beyond -- I think you identified 30,000?

17 A. That's all we did because it was a specific
18 line item. Mojave's contract would have -- or pay
19 application would have this cover sheet. And then they
20 were required to give us schedule of values for every
21 item of their scope of work, which entailed the
22 electrical, audio, visual, I mean, the whole breakdown.
23 It was a specific line item for the generator.

24 Q. So the generator line item was somewhere in
25 the range of 800,000. But if it was, would you have

1 withheld 800,000 or would you withhold an amount you
2 determined separately, or did you have a way of coming
3 up with what you were going to withhold?

4 A. The generator was already paid out before
5 this was brought to our attention. So I just refused
6 to pay any more on that line item.

7 Q. Okay. I guess what's the status of the
8 negotiations with Whiting Turner to close everything
9 out?

10 A. We are hoping to have it all closed out
11 within the next two weeks.

12 Q. Then what is your plan, I guess, in reference
13 to the operation of the generator equipment as far as,
14 you know, I guess sort of how that is going to work
15 with the City?

16 A. We have asked Whiting Turner to give us a
17 proposal on how they want to handle it. They have to
18 deal with their contractor.

19 Q. Have they come to you with any proposal yet?

20 A. No. They are in the -- they are just
21 following this process. That is all they can give us
22 the information.

23 Q. So is that item just going to remain open
24 until the litigation is complete?

25 A. Well, the lien has been bonded around. As

1 far as the City, the lien has been bonded. But
2 operationalwise I am not sure. We have been trying to
3 get resolution of this, so that I can go down and talk
4 to the City to determine exactly what their position is
5 on this.

6 Q. Okay. Did you have any involvement in
7 choosing the generator system requirements?

8 A. No, I am not an electrical engineer.

9 Q. So was that a JMA role as part of their
10 design services?

11 A. Yes. JMA, JBA.

12 Q. Did you have any involvement in approving the
13 system that was proposed by Mojave to be used?

14 A. No.

15 Q. Would that just have been JMA and Whiting
16 Turner?

17 A. It's a combination of JMA, Whiting Turner and
18 JBA.

19 Q. So would you have seen any of the submittals
20 concerning any type of the equipment that was being
21 supplied to the project?

22 A. No, not on that specific item, no. The
23 specifications are performance specifications. It
24 requires -- it will provide at least three different
25 manufacturers of equipment, three to five, which is our

1 requirement. We cannot single-source a product for
2 ForestCity. We are a public company. Any of those
3 manufacturers would have to meet the performance
4 specifications that the engineers design to. If
5 those -- that selection process, they are all equal in
6 the engineer's eyes as well as the owner's eyes, then
7 they can -- they are responsible for making sure that
8 system is complete.

9 (Exhibit 3 marked.)

10 BY MS. LLOYD:

11 Q. Take a look at this document. Have you seen
12 it before?

13 A. Yes.

14 Q. And when did you first see the lien?

15 A. I don't recall exactly when I saw the lien.

16 Q. Was it shortly after it was recorded?

17 A. At some point. Like I said, I can't give an
18 exact time.

19 Q. Did you -- it was forwarded to you from
20 Cleveland, your Cleveland offices?

21 A. Yes.

22 Q. And then what action did you take once you
23 were aware of the lien?

24 A. I took a copy over to Whiting Turner and
25 said, Address this issue.

1 Q. And what did they say?

2 A. That is when it was bonded around.

3 Q. And so did you take any other action in
4 relation to the lien or the lien claim?

5 A. No.

6 Q. Did you have any discussions with Whiting
7 Turner about what happened or why there was a lien?

8 A. I asked what was going on and they said they
9 were trying to contact Mojave to find out.

10 Q. Did you do any inquiry beyond that
11 afterwards?

12 A. No.

13 MS. LLOYD: I don't think I have any other
14 questions.

15 MR. BOSCHEE: I think I have a couple.

16 EXAMINATION

17 BY MR. BOSCHEE:

18 Q. Looking at Exhibit 3, I understand that you
19 don't recall exactly what date that you saw that. Was
20 that the first time that you learned or ascertained of
21 the issue that has caused us to sit here today?

22 A. Well, this was not specific to the issues we
23 are sitting here today. It was a lien from Cashman for
24 equipment. That didn't explain why we are sitting here
25 today.

1 Q. Well, what is your understanding of why we
2 are here today?

3 A. It's all hearsay.

4 Q. Okay.

5 MS. LLOYD: Depos are okay for hearsay.

6 THE WITNESS: When we started to commission
7 this building, we have a third-party commissioner on
8 the project. When they started to come out and test
9 equipment and do things, there was this flag that was
10 put on the generator system by our third-party
11 consultant concerning, you know, PCL or whatever. And
12 at that point it sat there and I kept asking, Is this
13 resolved? Is this resolved? And they said, No, not
14 yet, not yet. And finally it came out that -- how it
15 was told that there was an issue with Cashman and CAM.

16 BY MR. BOSCHEE:

17 Q. Yeah.

18 A. And they explained to me the situation. At
19 that point they didn't have all the detailed facts.
20 They just -- you know, they reassured ForestCity. It
21 was at an owner's meeting. We would have a meeting
22 prior to -- before the City came in. So in our meeting
23 they explained of the situation. And that they assured
24 us that we had final releases and things of that
25 nature. That put people somewhat to comfort and it was

1 bonded around. And we didn't know how -- we knew we
2 needed to get the program so that we could complete our
3 commissioning and move forward with the City.

4 Q. Prior to seeing this lien and getting this
5 from your corporate office, did you have any actual
6 knowledge that Cashman Equipment Company was involved
7 in what we will call the project? Have you ever heard
8 of them before?

9 A. I have been here for 24 years. I have heard
10 of Cashman. But no, generators show up, equipment
11 shows up. Who supplies it, who is installing it, I am
12 just relying on Whiting Turner to make sure it's done.

13 Q. Okay. And I mean, sitting here right now, do
14 you have any actual knowledge of when or whether
15 Cashman Equipment Company actually supplied the
16 generators to the project?

17 A. No, I don't.

18 Q. And following up on that, do you have any
19 specific recollection of when the generators were
20 delivered to the project?

21 A. Not specifically, no.

22 Q. Is it fair to say you just know that they got
23 there and it got put in and the construction kept
24 flowing?

25 A. Correct.

1 Q. Now, I had another question from my notes in
2 talking to you. Do you recall -- I believe there was a
3 pending log that you reviewed from time to time; is
4 that correct?

5 A. Every day.

6 Q. I didn't want to hold your feet to the fire
7 on the everyday thing, but I knew it was pretty much
8 every day. Do you recall seeing anything in the
9 pending log about change orders with respect to the
10 generators?

11 A. There was none.

12 Q. Okay. And again, just to clarify, your
13 company and you personally had played no part in the --
14 I guess we will call it the screening process for the
15 disadvantaged business entities that were used on this
16 project, did you?

17 A. No.

18 Q. And with respect to -- with respect to JMA's
19 involvement, you talked to Ms. Lloyd about this a
20 little bit earlier. Is it fair to say that their
21 primary job was to deal with the design and the design
22 changes once the project got going; is that fair?

23 A. Yes.

24 MR. BOSCHEE: I don't think I have anything
25 further.

1 MS. LLOYD: I have a follow-up.

2 FURTHER EXAMINATION

3 BY MS. LLOYD:

4 Q. What is a pending log?

5 A. ForestCity requires all of our contractors to
6 keep track of any possible change or foreseeable change
7 and project a cost that could impact the project. We
8 don't like surprises. If you know you have a
9 problem -- if we know we have a problem out there with
10 some steel, we would indicate that on this pending log
11 and we would project a cost. So every month we knew
12 what our exposure was to the project in any changes.
13 It might end up being zero.

14 The City might come and say, Dave, I want you
15 to redo these floor plans, which they did. We would
16 put that on there and we would project a cost involved
17 in that. So that at the end of the day, every month we
18 knew what our true cost exposure was on a monthly basis
19 for finance purposes.

20 Q. Would you see, like, a pending cost if
21 Whiting Turner determined that, say, a sub missed
22 something and didn't bid it properly so they were going
23 to essentially put the cost back onto the sub? Would
24 they have notified you of something like that?

25 A. No.

1 Q. Or only if it was going to be an
2 owner-impacted change or potential cost?

3 A. It tracked -- if Whiting Turner missed
4 something in the contract itself, that item would be
5 put -- it would be tracked to Whiting Turner. If
6 ForestCity asked for a change, it would be listed as
7 ForestCity. And if the City made a change, it would be
8 City. Beyond that, nothing else went on that log.

9 Q. So it was only if, say, Whiting Turner was
10 going to ask for more money --

11 A. Right.

12 Q. -- related to a certain item.

13 So, if they made a determination that, say,
14 Mojave missed something and it was in the drawings and
15 they should have included it and it wasn't going to be
16 a change to the owner, you wouldn't be notified --

17 A. No, I wasn't.

18 Q. -- an issue like that.

19 Talking about the generator, I guess,
20 delivery. Do you recall seeing the generators be
21 delivered?

22 A. I just saw them sitting there one day.

23 Q. Before they were in the box or however they
24 are housed in the equipment room, or after they were
25 already in the equipment room?

1 A. After they were already in the -- it's a wall
2 enclosure.

3 Q. Okay. Do you recall meeting Shane Norman of
4 Cashman Equipment Company?

5 A. His name doesn't sound familiar.

6 Q. It would have been around the time of the
7 lien, sort of the dispute concerning the payment
8 issues. He recalled, I guess visiting the site and
9 meeting you, but I don't know if you had recalled.

10 A. I met so many people.

11 Q. No, I am sure. Especially every day.

12 A. The name doesn't sound familiar, but I am not
13 saying I didn't meet him. I am just saying I don't
14 recall meeting him.

15 Q. But you don't recall having a conversation
16 concerning this bounced check and the issue with the
17 nonpayment of the generator?

18 A. I don't recall that.

19 MS. LLOYD: Okay. That is all I have.

20 (Thereupon, the deposition
21 concluded at 4:00 p.m.)
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25

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 40

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* * * * *

I, David Phillips, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action; that
I have read, corrected and do hereby affix my signature
to said deposition under penalty of perjury.

DAVID PHILLIPS, Deponent

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 41

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

) ss:

3 COUNTY OF CLARK)

4 I, Christy L. DeJonker, a duly commissioned
5 Notary Public, Clark County, State of Nevada, do hereby
6 certify: That I reported the deposition of David
7 Phillips, commencing on Thursday, January 10, 2012, at
8 3:00 p.m.

9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript is a
13 complete, true and accurate transcription of my said
14 shorthand notes. That review of the transcript was
15 requested.

16 I further certify that I am not a relative,
17 employee or independent contractor of counsel of any of
18 the parties; nor a relative, employee or independent
19 contractor of the parties involved in said action; nor
20 a person financially interested in the action; nor do I
21 have any other relationship with any of the parties or
22 with counsel of any of the parties involved in the
23 action that may reasonably cause my impartiality to be
24 questioned.

25 IN WITNESS WHEREOF, I have set my hand in my
 office in the County of Clark, State of Nevada, this
 14th day of January, 2013.

CHRISTY LYN DeJONKER, CCR NO. 691

EXHIBIT C

DECLARATION OF ERIC J. LOUTTIT

I, Eric J. Louttit, hereby declare the following:

1. That I am the Vice President of Artus Inc., Managing Member of Rolling Acres Properties Co. Limited Partnership, Managing Member of FC Vegas 20, LLC, Managing Member of FC/LW VEGAS, LLC ("FC/LW"). In my capacity as such, I am responsible for identifying and gathering documents responsive to the subpoena served on FC/LW.

2. That on the 21st day of November, 2012, FC/LW was served with a subpoena calling for the production of documents, records and/or things outlined in the subpoena and pertaining to the civil action entitled *Cashman Equipment Company v. CAM Consulting, Inc., et al.*, District Court Clark County, Nevada, Case No. A-11-642583-C.

3. That I have caused a thorough search to be made of FC/LW's records for any documents requested pertaining to the civil action, FC/LW's business dealings with Cashman Equipment Company.

4. That based upon the information provided, I have not identified any responsive records.

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



Eric J. Louttit

EXHIBIT D

DECLARATION OF WILLIAM T. ROSS

I, William T. Ross, hereby declare the following:

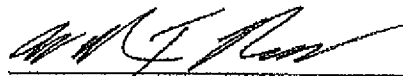
1. That I am the Executive Vice President of Asset Management of Forest City Commercial Group, Inc., Managing Member of QH LAS VEGAS LLC ("QH"). In my capacity as such, I am responsible for identifying and gathering documents responsive to the subpoena served on QH.

2. That on the 21st day of November, 2012, QH was served with a subpoena calling for the production of documents, records and/or things outlined in the subpoena and pertaining to the civil action entitled *Cashman Equipment Company v. CAM Consulting, Inc., et al.*, District Court Clark County, Nevada, Case No. A-11-642583-C.

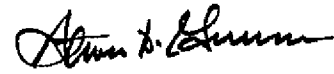
3. That I have caused a thorough search to be made of QH's records for any documents requested pertaining to the civil action, QH's business dealings with Cashman Equipment Company.

4. That based upon the information provided, I have not identified any responsive records.

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



William T. Ross



CLERK OF THE COURT

RPLY

Jennifer R. Lloyd, Esq.
Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
Nevada State Bar No. 10928

PEZZILLO LLOYD

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Attorneys for Plaintiff,
Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD., dba MOJAVE
ELECTRIC, a Nevada corporation;
WESTERN SURETY COMPANY, a
surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety;
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a surety; QH
LAS VEGAS LLC, a foreign limited
liability company; PQ LAS VEGAS, LLC, a
foreign limited liability company; L W T I C
SUCCESSOR LLC, an unknown limited
liability company; FC/LW VEGAS, a

Case No.: A642583
Dept. No.: 32

Consolidated with Case No.: A653029

**CASHMAN EQUIPMENT COMPANY'S
REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT
AGAINST WEST EDNA ASSOCIATES,
LTD. dba MOJAVE ELECTRIC and
WESTERN SURETY COMPANY ON
THE PAYMENT BOND CLAIM**

Date: April 11, 2013
Time: 9:00 a.m.

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel: 702 233-4225

1 foreign limited liability company; DOES 1 -
2 10, inclusive; and ROE CORPORATIONS 1
3 - 10, inclusive;

4 Defendants.

5 AND ALL RELATED MATTERS.

6 CASHMAN EQUIPMENT COMPANY'S REPLY IN SUPPORT OF ITS MOTION
7 FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES, LTD. dba
8 MOJAVE ELECTRIC and WESTERN SURETY COMPANY ON THE PAYMENT BOND
9 CLAIM

10 Plaintiff, CASHMAN EQUIPMENT COMPANY ("Cashman"), by and through its
11 undersigned counsel of record and pursuant to NRCP 56, respectfully submits the following
12 Reply in Support of its Motion for Summary Judgment Against WEST EDNA
13 ASSOCIATES, LTD. dba MOJAVE ELECTRIC ("Mojave") and WESTERN SURETY
14 COMPANY ("Western") on its claim against the Payment Bond. This Reply is supported by
15 the following Memorandum of Points and Authorities, the exhibits attached hereto, the
16 Court's file, and any evidence adduced at a hearing, should one be held.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I.

19 INTRODUCTION

20 Summary Judgment should be granted in favor of Cashman and against Defendants,
21 Mojave and Western on Cashman's claim against the payment bond issued to Mojave by
22 Western (hereinafter the "Payment Bond") for the benefit of "all persons supplying labor,
23 material, rental equipment, supplies, or services in the performance" of Mojave's contract on
24 the New Las Vegas City Hall project ("the Project") should Mojave fail to ensure that
25 payment is made to those persons. See Supplement to Cashman's Motion, filed March 5,
26 2013: Exhibit "2," to the Deposition Transcript of Brian Bugni. Cashman has established that
27 no genuine issues of material fact exist and Mojave's Opposition does nothing more than
28

1 present alleged factual issues that are not relevant to the Payment Bond claim before the
2 Court.

3 Cashman's Motion is the first time this Court has had the opportunity to consider
4 Cashman's claim on this Payment Bond, contrary to Mojave's representations. Cashman's
5 ability to prove its claim on the Payment Bond obtained by Whiting Turner and separate
6 mechanic's lien claim asserted against the Project have no bearing on this claim. Mojave's
7 argument that the Court must decide Cashman's lien claim prior to, or in order to, evaluate the
8 validity of the claim at issue here is without basis in the law. In order for the Court to
9 determine whether Mojave is liable to Cashman on this Payment Bond claim, the Court must
10 evaluate the legal requirements for this claim and the undisputed facts relevant to this claim,
11 all of which establish Cashman's entitlement to judgment against the Payment Bond in the
12 amount of \$755,893.89 for the materials it supplied to this Project.

13 In its Opposition, Mojave fails to raise a single genuine issue of material fact to
14 preclude the entry of judgment on this claim in favor of Cashman. Understanding that
15 Cashman has established it is entitled to payment of its claim from the Payment Bond,
16 Mojave seeks to have the Court apply NRS Chapter 339, the chapter governing contractors'
17 bonds on public works, even where the undisputed facts of this matter establish that the
18 Project was not public works, but was privately constructed. The Payment Bond at issue is
19 not subject to those statutes, but is a contract between private parties governed only by its
20 express terms. Mojave attempts to create an issue concerning whether Cashman is owed the
21 full amount claimed, however, it is undisputed that Mojave has been paid in full on its
22 contract to supply the materials provided by Cashman and that Mojave issued payment to
23 Cam for the full amount billed by Cashman for the materials. Had some amount not been
24 owed at the time payment was issued, Mojave should have withheld part of the payment.
25 Mojave did not do so and this fact establishes the validity of the amount claimed by Cashman.
26 Further, and as has been Cashman's position from the beginning of this dispute, Cashman
27
28

1 remained willing to complete the few items remaining upon receipt of payment. Mojave
2 created the situation of which it now complains by failing to make any payment to Cashman,
3 had Mojave simply ensured payment to Cashman, as was its responsibility under the Payment
4 Bond, all work would be complete.

5 Despite Mojave's argument, it is impossible for the Court to decide whether Mojave
6 owes Cashman for the materials supplied to the Project without evaluating and deciding the
7 individual claims brought by Cashman against Mojave. Each is subject to its own
8 requirements and elements of proof. The claim at issue in this Motion is the claim Cashman
9 brought against the Payment Bond obtained by Mojave from Western as required by Mojave's
10 contract with Whiting Turner. The requirements of that claim are unambiguous and governed
11 by the language of the Payment Bond and the undisputed facts of this matter establish that
12 Cashman is a claimant on the Payment Bond, that Cashman supplied materials to the Project,
13 that Cashman remains unpaid for those materials while Mojave has been paid in full on its
14 contract, and that Mojave failed to ensure that payment was made to Cashman for the
15 materials giving rise to its liability on the Payment Bond; liability that is separate and distinct
16 from Cashman's other claims in this matter.

17 **II.**

18 **STATEMENT OF FACTS**

19 The undisputed facts establishing that Cashman is entitled to judgment on its claim
20 against the Payment Bond are set forth in Cashman's Motion and will not be repeated here.
21 Mojave includes in its Opposition, alleged facts that are not relevant to the claim at issue. The
22 circumstances surrounding Cam's failure to pay Cashman are disputed and have no bearing
23 on whether Cashman should prevail on this Payment Bond claim, except that Mojave admits
24 that Cashman was not paid for the materials it supplied to the Project. See Opposition at p. 4.
25 Mojave's claim that it could not pay Cashman directly is simply not supported by the law or
26 the evidence presented in this matter.

1 Mojave admits that it obtained the Payment Bond against which Cashman seeks
2 judgment and does not dispute the validity of the Payment Bond. *See* Opposition at p. 4. By
3 obtaining the Payment Bond, Mojave created a separate and distinct liability to "all persons
4 supplying labor, material, rental equipment, supplies, or services in the performance" of
5 Mojave's contract the Project should Mojave fail to ensure that payment is made to those
6 persons, just as a mechanic's lien creates a separate and distinct liability between the owner of
7 a project and those that are providing labor and materials to improve the project, where one
8 may not exist otherwise. This liability to Cashman is not discharged by Mojave's payment to
9 Cam; Mojave was required to ensure that payment was made to Cashman for the materials
10 Cashman provided by the terms of the Payment Bond, and it did not. *See* Supplement to
11 Cashman's Motion, filed March 5, 2013: Exhibit "2," to the Deposition Transcript of Brian
12 Bugni (WTUR0001154). The Payment Bond does not require that a claimant have a contract
13 with Mojave in order for Mojave to be liable to that claimant. *Id.* The Payment Bond
14 contains no notice requirements. *Id.* Mojave obtained the Payment Bond, which is a contract,
15 was able to set the requirements for a claim and cannot claim to be unaware of its
16 requirements or the liability it imposes. Mojave is not an innocent party being subjected to an
17 unforeseeable claim of an unpaid supplier. This is likely why Mojave did not disclose the
18 Payment Bond, and why it was only discovered in the more than 20,000 pages disclosed by
19 Whiting Turner in this matter.

20 The undisputed facts mandate judgment in favor of Cashman on its Payment Bond
21 claim. Cashman provided materials to be used in the performance of Mojave's contract on
22 the Project and was to be paid \$755,893.89 for those materials. *See* Cashman's Motion at
23 Exhibit "1," Affidavit of Shane Norman and Exhibit "2," Invoices. Mojave selected Cashman
24 to provide these materials. *See* Cashman's Motion at Exhibit "7," Deposition of Peter Rodney
25 Fergen at p. 9, lns. 11 - 16. Mojave admits that the materials were delivered and
26 incorporated into the Project. *See* Cashman's Motion at Exhibit "6," Deposition Transcript of
27
28

1 Christopher Meiers at p. 21, ln. 21 – P. 22, ln. 7. Mojave admits that Cashman remains
2 unpaid for the materials supplied. See Opposition at p. 4. The principal balance of
3 \$755,893.89 currently remains due and owing to Cashman. See Cashman's Motion at
4 Exhibits "1" and "2." Mojave was paid in full for the materials Cashman provided to the
5 Project. See Cashman's Motion at Exhibit "5," p. 19, lns. 7 – 9. Mojave admits it obtained
6 the Payment Bond and does not contest its validity. See Opposition at p. 4. Mojave admits
7 that it did not ensure payment was made to Cashman and did not issue payment to Cashman
8 directly. *Id.*

9 III.

10 ARGUMENTS AND AUTHORITIES

11 A. Summary Judgment should be Granted in Favor of Cashman on its Claim against
12 the Payment Bond.

13 Summary judgment should be awarded in favor of Cashman on its claim against the
14 Payment Bond, as Mojave has failed set forth specific facts relevant to this claim to show that
15 genuine material factual issues exist. Cashman established in its Motion that Cashman is
16 within the class of claimants for which the Payment Bond was obtained, Cashman remains
17 unpaid for the materials it supplied and Mojave failed to ensure payment was made to
18 Cashman, as it was required to do by the terms of the Payment Bond. Cashman supplied
19 materials to the Project that were incorporated into the Project by Mojave, were included in
20 Mojave's scope of work, and for which Mojave has received payment, and Cashman is owed
21 the principal amount of \$755,893.89 for the materials it supplied. As such, no question of fact
22 exists that precludes judgment in favor of Cashman on its claim against the Payment Bond.

23 Summary judgment is appropriate where no genuine issue of material fact exists and the
24 moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724,
25 731, 121 P.3d 1026 (2005). As was explained by the Nevada Supreme Court:

26 The substantive law controls which factual disputes are material
27 and will preclude summary judgment; other factual disputes are
28

1 irrelevant. A factual dispute is genuine when the evidence is such
2 that a rational trier of fact could return a verdict for the
3 nonmoving party.

4 *Id.* The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy,
5 speculation, and conjecture." *Id.* at 732 (citations omitted). Further, the nonmoving party
6 "may not rest upon general allegations and conclusions, but must, by affidavit or otherwise,
7 set forth specific facts demonstrating the existence of a genuine factual issue." *Id.* at 731
8 (citations omitted).

9 When evaluated in light of the substantive law governing the Payment Bond Claim at
10 issue, Mojave does not establish the existence of a genuine factual issue to preclude the entry
11 of judgment in favor of Cashman. Mojave fails to set forth specific facts that dispute the
12 evidence submitted by Cashman on this claim and instead seeks to confuse the separate
13 claims brought by Cashman and argues the Court should apply NRS Chapter 339 even where
14 it does not govern this claim. Cashman's claim is subject only to the requirements of the
15 Payment Bond. Mojave's liability to Cashman under the Payment Bond is not extinguished
16 by its payment to Cam and the Payment Bond does not require that Cashman have a contract
17 with Mojave in order to make a claim. Cashman supplied the materials at issue, is owed
18 \$755,893.89 and Mojave has been paid in full for those materials.

19 **B. Cashman's Claim Against the Payment Bond is Subject Only to the**
20 **Requirements of the Bond.**

21 The Payment Bond at issue is governed only by its terms. "A surety bond is a contract
22 and should be construed as such." *John McShain, Inc. v. Eagle Indem. Co.*, 180 Md. 202, 205
23 (Md. 1942). Mojave negotiated for and obtained this Payment Bond. Mojave could have
24 included any number of requirements for a claimant to make a claim, just as were included by
25 Whiting Turner in its payment bond, but simply chose not to do so. Mojave wants this Court
26 to ignore the express terms of the Payment Bond.

27 ///

1 The Payment Bond states:

2
3 The said Principal and the said Surety agree that this Bond shall inure to the
4 benefit of all persons supplying labor, material, rental equipment, supplies, or
5 services in the performance of the said Contract, as well as to the Obligee, and
6 that such persons may maintain independent actions upon this Bond, in their
7 own names.

8
9 See Supplement to Cashman's Motion, filed March 5, 2013: Exhibit "2," to the Deposition
10 Transcript of Brian Bugni (WTUR0001154). Mojave is the principal on the bond and
11 Western is the surety. *Id.* The Payment Bond goes on to state that Mojave's liability on the
12 Payment Bond is only extinguished where Mojave "promptly make[s] payments to all persons
13 supplying labor, material, rental equipment, supplies, or services in the performance of the
14 said Contract..." *Id.*

15 There are only two requirements a claimant on this Payment Bond must prove to
16 prevail on a claim: (1) that it supplied labor, material, rental equipment, supplies, or services
17 in the performance of Mojave's contract on this Project, and (2) that Mojave failed to ensure
18 payment to the claimant for the work or materials provided. Cashman has established that it
19 fulfills both of these requirements. Mojave acknowledges that Cashman supplied the
20 materials at issue and that the materials were incorporated into the Project and the evidence
21 submitted with Cashman's Motion establishes that these materials were supplied in the
22 performance of Mojave's contract on this Project, fulfilling the first requirement. As to the
23 second requirement, Mojave acknowledges that Cashman has not received payment for these
24 materials. Mojave also admits that it did not pay Cashman for these materials, nor did
25 Mojave ensure that Cashman received payment, as was its obligation under the Payment
26 Bond.

27 ///

28 ///

1 1. Mojave's Liability to Cashman under the Payment Bond is not Extinguished by its
2 Payment to Cam.

3 Mojave argues that its payment to Cam extinguishes Cashman's claim on the Payment
4 Bond in spite of the plain language of the Payment Bond. Mojave failed to ensure payment
5 was made to Cashman for the materials Cashman supplied, a fact that Mojave admits in its
6 Opposition. Mojave could have easily ensured payment was made to Cashman and simply
7 chose not to do so. Brian Bugni, Mojave's Vice President of Finance, testified that Cashman
8 requested a joint check and that Mojave refused to issue a joint check payable to both Cam
9 and Cashman, even though it was not prohibited from doing so by Whiting Turner. *See*
10 Exhibit "5" to Cashman's Motion at pgs. 67 - 68. Mojave controlled payment for these
11 materials and Mojave chose not to ensure that Cashman, who it knew was supplying those
12 materials and who bore the risk by delivering the materials without payment, received
13 payment by either issuing the payment directly to Cashman or issuing a joint check as
14 Cashman requested. By failing to ensure payment to Cashman, Mojave remains liable to
15 Cashman under the plain language of the Payment Bond.

16 2. The Payment Bond does not Limit Claims to Subcontractors and Suppliers that
17 Contracted Directly with Mojave.

18 Mojave also seems to argue that the bond is not for the benefit of Cashman because
19 Cashman has not alleged it has a contract with Mojave to supply the materials for which it is
20 claiming payment. The plain language of the Payment Bond renders those arguments without
21 merit. The Payment Bond requires that Mojave must ensure that payment is made to **all**
22 **persons** supplying labor, material, rental equipment, supplies or services in the performance
23 of its Contract on the Project, not just those with which it contracted. *See* Supplement to
24 Cashman's Motion, filed March 5, 2013: Exhibit "2," to the Deposition Transcript of Brian
25 Bugni (WTUR0001154). In failing to ensure Cashman was paid for the materials it supplied,
26 Mojave remains liable under the plain language of the Payment Bond.
27
28

1 3. Cashman is Owed \$755,893.89 for the Materials it Supplied to this Project.

2 Mojave admits that it has been paid in full on its contract on the Project that included
3 the materials provided by Cashman. Mojave chose to issue payment to Cam for the full
4 amount billed by Cam for the materials. Mojave now wants to argue that the full amount
5 billed by Cashman is not owed, however, given that Mojave has been paid in full and chose to
6 pay for the materials in full, that argument is without merit. By paying in full, Mojave was
7 accepting the materials as complete. Further, and as has been Cashman's position from the
8 beginning of this dispute, Cashman remained willing to complete the few items remaining
9 upon receipt of payment for the materials. Cashman is not in breach of its agreement with
10 Cam, Cam breached the agreement by failing to pay for the materials and Cashman was
11 excused from further performance. Cashman delivered the materials that comprise the
12 majority of the purchase order, and it was not until Mojave failed to ensure that payment was
13 made to Cashman, that Cashman stopped work due to nonpayment.

14 The total amount of Cashman's claim is recoverable under Nevada law. A party to a
15 contract who is not in default should recover the total price promised less the cost of
16 completing performance of the work, where there has been partial performance. *Fuller v.*
17 *United Electric Co.*, 70 Nev. 448, 451-52, 273 P.2d 136, 137 (1954); *see also Bradley v.*
18 *Nevada-California-Oregon Ry.*, 42 Nev. 411, 178 P. 906, 910 (1919) (the measure of
19 damages to be awarded a non-breaching party is the amount which would have been received
20 if the contract had been had not been broken). The purpose of money damages is to put the
21 injured party in as good a position as that which full performance of the contract would have
22 put him. *Fuller*, 70 Nev. at 452, quoting 1 Restatement of the Law, Contracts, 574, § 346,
23 Comment b. As further delineated by the Nevada Supreme Court:

24 If the breach consists in preventing the performance of the contract without fault of the
25 other party, who is willing and able to perform, the damage of the latter consists in two
26 distinct items, namely: First, what he has already expended toward performance (less
27 materials in hand); and second, the profits that he would realize by performing the whole
28 contract. *Fuller*, 70 Nev. at 451 quoting *Bradley*, 42 Nev. at 420.

1 Cashman supplied the materials at issue. The unfinished work of which Mojave
2 complains is comprised of the installation of codes that enable certain specialized functions.
3 These codes do not have value independent of the materials supplied by Cashman, meaning
4 Cashman cannot sell these codes to a third party, these codes are for the materials supplied to
5 the Project. The cost of installation is included in the cost of the materials, and is not
6 separated on the purchase order, so it does not have a separate value apart from the sale of the
7 materials. As such, Cashman is entitled to recover the full amount owed, as the item
8 remaining to be performed cannot be deducted as it does not have a separate value apart from
9 the materials supplied.

10 As Mojave does not have a contract with Cashman, its counterclaims have no bearing
11 on the amount claimed by Cashman. Even if the counterclaims somehow did affect
12 Cashman's claim, that would not prevent the Court from issuing judgment on this claim in
13 favor of Cashman in the full amount claimed and separately deciding whether Mojave is
14 entitled to any of the damages it seeks from Cam or some other party.

15 Finally, should the Court decide that the amount owed to Cashman requires additional
16 evidence before it can be determined, judgment should be entered in favor of Cashman on
17 Mojave and Western's liability on the Payment Bond, as there exist no genuine issues of fact
18 concerning whether Cashman is entitled to recovery from these parties based upon its
19 Payment Bond claim. An evidentiary hearing could then be held to determine the amount of
20 the recovery against the Payment Bond.

21 4. NRS Chapter 339 is Not Applicable to Cashman's Claim Against this Payment
22 Bond, as it Applies Only to Public Works of Improvement.

23 In a desperate effort to avoid Summary Judgment, Mojave argues incorrectly that NRS
24 Chapter 339 should somehow be made applicable to the claim Cashman has made against the
25 Payment Bond at issue in this Motion. Mojave bases this argument on nothing more than
26 conjecture and conclusory statements, and as the Nevada Supreme Court stated in *Wood v.*
27 *Safeway*, that is not sufficient to avoid summary judgment.
28

1 The evidence submitted by Cashman establishing that this Project was private at the
2 time of construction is undisputed. See Cashman's Motion at Exhibit "8." A private
3 company, PQ Las Vegas LLC, owned and developed the Property at the time of construction.
4 *Id.* See also Exhibit "13," at p. 7, Deposition Transcript of David Phillips, attached hereto.
5 QH Las Vegas, LLC, an affiliate of PQ Las Vegas LLC, contracted with Whiting Turner for
6 the construction of the Project, and the Project remained private until it was complete. See
7 Cashman's Motion at Exhibit "4," p. 16, lns. 5-15. Mr. Phillips' employer, Forest City
8 Commercial Construction, Co., Inc. was employed by the owner of the Project, QH Las
9 Vegas, LLC, to be the owners' representative on-site. See Exhibit "13," at p. 6 lns. 23-25.
10 Mojave confirmed the private ownership of the Project when it provided Project information
11 to Cashman. See Exhibit "14". Mojave's attempt to make requirements that are only
12 applicable to public works projects, applicable to this private Project would be extremely
13 prejudicial to Cashman, as Cashman would not be on notice that it needed to comply with
14 NRS Chapter 339, as it only applies to public works and the record ownership, which was
15 confirmed by Mojave to Cashman, provides this was a private Project at the time of
16 construction.

17 NRS Chapter 339's inapplicability to the Payment Bond at issue as is also established
18 by a review of its plain language. "When the language of a statute is plain and unambiguous,
19 a court should give that language its ordinary meaning and not go beyond it." *Coast Hotels &*
20 *Casinos v. Nev. State Labor Comm'n*, 117 Nev. 835, 840 (2001). The title of Chapter 339 is
21 "Contractors' Bonds on Public Works." NRS 339.025(1) states:

22 Before any contract ... exceeding \$100,000 for any project for the
23 new construction, repair or reconstruction of any public building or
24 other public work or public improvement of any *contracting body*
25 is awarded to any contractor, the contractor shall furnish to the
contracting body the following bonds which become binding upon
the award of the contract to the contractor...

26 (*Emphasis added*).
27
28

1 NRS 339.015(2) defines "Contracting Body" as "the State, county, city, town, school
2 district, or any public agency of the State or its political subdivisions which has authority to
3 contract for the construction, alteration or repair of any public building or other public work
4 or public improvement." Therefore in order for the requirements of NRS Chapter 339 to
5 apply to a construction project, the project must be for the construction of a public building,
6 work or improvement and the contracting body must be the State, or a county, city, town,
7 school district, or other public agency.

8 Here, the Project was owned by P Q Las Vegas, LLC at the time of construction, not a
9 state agency. *See* Cashman's Motion at Exhibit "8." Whiting Turner did not contract with the
10 State, county, city, town, school district or any public agency of the State to construct the
11 Project. Whiting Turner contracted with QH Las Vegas, LLC. *See* Cashman's Motion at
12 Exhibit "4," p. 16, Ins. 5-15. Mojave's reliance on the City of Las Vegas' involvement in the
13 Project or the fact that the Project eventually belonged to the City of Las Vegas to somehow
14 make the requirements of NRS Chapter 339 attach to this private Payment Bond is in error.
15 Mojave was required to obtain this Payment Bond by Whiting Turner, not by a "contracting
16 body" as would be the case on a public work of improvement. *See* Supplement to Cashman's
17 Motion, filed March 5, 2013: Exhibit "2," to the Deposition Transcript of Brian Bugni
18 (WTUR0001154). The Payment Bond makes no reference to NRS Chapter 339 and was not
19 issued solely for the protection of claimants supplying labor and materials to the contractor,
20 but was obtained for the benefit of "all persons supplying labor, material, rental equipment,
21 supplies, or services in the performance of the said Contract, as well as to the Obligee,"
22 Whiting Turner. Mojave is attempting to create issues of fact where none exist. In light of
23 the evidence submitted by Cashman, it cannot be disputed that this was a privately owned
24 Project at the time of construction. Mojave relies only upon speculation and conjecture in its
25 attempt to make NRS Chapter 339 applicable to this Payment Bond. As the Project was
26 constructed on privately owned property and was not contracted for by a "contracting body"

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1 as that term is defined in NRS 339.015, NRS Chapter 339 and its requirements do not apply
2 to Cashman's claim on the Payment Bond at issue. Therefore, all arguments made by Mojave
3 in reliance upon NRS Chapter 339 must be disregarded.

4 As NRS Chapter 339 and its requirements do not apply to Cashman's claim on this
5 Payment Bond, the Court need look only to the terms of the Payment Bond to determine
6 whether Cashman has a valid claim. As is set forth in Cashman's Motion and above, the
7 Payment Bond does not require notice of any type prior to making a claim, rendering
8 Mojave's argument that Cashman did not give proper notice without merit. Cashman has
9 established that no genuine issues of fact material to Cashman's claim on this Payment Bond
10 exist, and that judgment is warranted in favor of Cashman on this claim.

11
12 IV.

13 CONCLUSION

14 Based on the foregoing, Cashman is entitled to judgment against Mojave and Western
15 on its Payment Bond claim in the amount of \$755,893.89.

16 DATED: April 5, 2013

PEZZILLO LLOYD

17
18 By: 

19 Jennifer R. Lloyd, Esq.
20 Nevada State Bar No. 9617
21 Marisa L. Maskas, Esq.
22 Nevada State Bar No. 10928
23 6725 Via Austi Parkway, Suite 290
24 Las Vegas, Nevada 89119
25 Attorneys for Plaintiff,
26 Cashman Equipment Company
27
28

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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of PEZZILLO LLOYD, hereby certifies that on the 5th day of April, 2013, a true and correct copy of the foregoing document, **CASHMAN EQUIPMENT COMPANY'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC and WESTERN SURETY COMPANY ON THE PAYMENT BOND CLAIM**, was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to;

Brian Boschee, Esq.
COTTON, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
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Attorneys for Whiting Turner Contracting, Mojave Electric LV, LLC, Western Surety Company and Fidelity and Deposit Company of Maryland

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An employee of PEZZILLO LLOYD

EXHIBIT 13

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY, a)
Nevada corporation,)

Plaintiff,)

vs.)

CASE NO. A642583

CAM CONSULTING, INC., a Nevada)
corporation; ANGELO CARVALHO, an)
individual; JANEL RENNIE aka JANEL)
CARVALHO, an individual; WEST EDNA)
ASSOCIATES, LTD., dba MOJAVE)
ELECTRIC, a Nevada corporation;)
WESTERN SURETY COMPANY, a surety;)
THE WHITING TURNER CONTRACTING)
COMPANY, a Maryland corporation;)
FIDELITY AND DEPOSIT COMPANY OF)
MARYLAND, a surety; DOES 1 through)
10, inclusive; and ROE CORPORATIONS)
1 through 10, inclusive,)

Defendants.)

AND ALL RELATED MATTERS.)

DEPOSITION OF DAVID PHILLIPS
Taken on Thursday, January 10, 2013
At 3:00 p.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 2

APPEARANCES:

For the Plaintiff:

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Las Vegas, Nevada 89101

INDEX

WITNESS: DAVID PHILLIPS

Examination Further Examination

By Ms. Lloyd: 3 37

By Mr. Boschee: 33

EXHIBITS

Exhibit No.	Description	Page
1	Preliminary Notice of Right to Lien	11
2	Application and Certification for Payment	26
3	Notice of Lien	32

Page 4

take down everything that we say, so we need to not speak at the same time. You can take a break at any time you need, just ask. Except for when a question is pending, I would ask that you answer the question prior to taking the break.

If any of my questions are unclear or you don't understand what I am asking, just ask me to rephrase it and I will be happy to do that. Your testimony is under oath today. It's the same oath you take in a court of law.

Is there any reason why you cannot give your complete and truthful testimony here today?

A. No.

Q. What did you do to prepare for your deposition today?

A. I met with Shihua (phonetic) on Tuesday.

Q. Not going into the substance of those communications, did you do anything else to prepare for your deposition today?

A. No.

Q. What is the highest level of education you have obtained?

A. I have a degree in architecture from Texas A&M University.

Q. And when did you graduate there?

Page 3

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRC.P.) Thereupon --

DAVID PHILLIPS,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. LLOYD:

Q. Hi, I am Jennifer Lloyd. I am attorney for Cashman Equipment Company in this matter. We are here for your deposition today. You can go ahead and state your name for the record.

A. It's David Ross Phillips, P-I-I-L-L-I-I-P-S.

Q. You have done this before.

A. Yes, I have.

Q. Have you had your deposition taken before?

A. Yes, I have.

Q. How many times? A number of times?

A. Probably a dozen maybe.

Q. When was the most recent?

A. It's probably been 16, 17 years.

Q. Okay. So let's briefly go over the rules.

It's question and answer. We need verbal responses to all of the questions. The court reporter is going to

Page 5

A. 1974.

Q. And do you hold any professional licenses?

A. I am a member of the Construction Specifications Institute.

Q. And how long have you been a member there?

A. I believe since '88.

Q. And have you been convicted of any crimes within the last ten years?

A. No.

Q. I am required to ask that. I hate to ask that question.

A. I know.

Q. So tell me about where you are currently employed.

A. I am currently employed with ForestCity Construction Services, LLC, which is a business unit of ForestCity Enterprises, Inc. based in Cleveland, Ohio.

Q. And what's your position with ForestCity Construction Services?

A. Vice president.

Q. Of a particular division or just vice president?

A. Vice president.

Q. Okay. What do your job duties entail?

A. I manage our development in construction

2 (Pages 2 to 5)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 6	Page 8
<p>1 projects in the west.</p> <p>2 Q. The whole western region?</p> <p>3 A. West of the Mississippi.</p> <p>4 Q. Are you based here in Las Vegas?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And how long have you been in that position</p> <p>7 with ForestCity?</p> <p>8 A. Fifteen years.</p> <p>9 Q. And prior to that, where were you employed?</p> <p>10 A. I was employed with Domingo Camaro</p> <p>11 Architects.</p> <p>12 Q. What was your position with --</p> <p>13 A. I was the director of construction services.</p> <p>14 Q. And have you been based here in Las Vegas for</p> <p>15 15 years with ForestCity?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So this litigation concerns the</p> <p>18 new Las Vegas City Hall, as I am sure you are aware. I</p> <p>19 am going to use the word "project." If I use the word</p> <p>20 "project," I am going to be referring to that</p> <p>21 particular project. So can you describe to me</p> <p>22 ForestCity Construction Services' role on that project.</p> <p>23 A. We were employed by -- we were employed as</p> <p>24 the owner's representative on-site by QH Las Vegas,</p> <p>25 LLC, which was the entity that owned the property and</p>	<p>1 commercial construction division as well as a</p> <p>2 residential construction. And in the reorganization of</p> <p>3 the company, as everybody is doing, we merged. And now</p> <p>4 we are just Construction Services to deal with</p> <p>5 everything.</p> <p>6 Q. So at the time was it ForestCity Commercial</p> <p>7 Construction that was the owner's rep on this project?</p> <p>8 A. It was ForestCity Commercial Construction CO,</p> <p>9 Inc.</p> <p>10 Q. Were there any other owner affiliated</p> <p>11 companies that were involved in the projects, or did we</p> <p>12 cover them?</p> <p>13 A. The project was developed under ForestCity</p> <p>14 Commercial Development California.</p> <p>15 Q. Can you think of any others?</p> <p>16 A. That is all the entities I believe that was</p> <p>17 involved.</p> <p>18 Q. So what was your role on the project?</p> <p>19 A. I was designated by the City as well as our</p> <p>20 company as the owner's rep. I assisted in the</p> <p>21 development of the construction documents with the</p> <p>22 architects. I was involved in the RP for the</p> <p>23 construction manager at risk. I was involved in the</p> <p>24 final selections of contractors, subcontractors, with</p> <p>25 Whiting Turner. And then I was on site to make sure</p>
Page 7	Page 9
<p>1 developed the property.</p> <p>2 Q. Okay. And then is there also a PQ Las Vegas?</p> <p>3 A. There is a PQ Las Vegas, LLC.</p> <p>4 Q. What is that?</p> <p>5 A. That was the entity established for -- there</p> <p>6 is a land swap within the development agreement.</p> <p>7 QH Las Vegas is the property in Symphony Park. And</p> <p>8 it's the two parcels, Q and H. And so, you know, QH is</p> <p>9 Queen of Hearts, because that is the property. The</p> <p>10 Queen of Hearts sat on that property. So that is how</p> <p>11 they determined the two LLCs.</p> <p>12 Q. Just coming up with a name?</p> <p>13 A. Coming up with a name. So PQ was tied to the</p> <p>14 development agreement with the City. And when we</p> <p>15 closed we swapped land.</p> <p>16 Q. Okay. So then what is ForestCity</p> <p>17 Enterprises' role? Are they like the parent</p> <p>18 corporation?</p> <p>19 A. That is the parent corporation.</p> <p>20 Q. For all the different individual --</p> <p>21 A. Entities.</p> <p>22 Q. And is there a ForestCity Commercial</p> <p>23 Construction Entity?</p> <p>24 A. In the first quarter of 2012 we merged our</p> <p>25 two construction divisions together. We had a</p>	<p>1 that the construction was pursuant to construction</p> <p>2 documents.</p> <p>3 Q. Did you have an office on site?</p> <p>4 A. I had a trailer.</p> <p>5 Q. And were you there on a daily basis or a</p> <p>6 weekly basis?</p> <p>7 A. Every day.</p> <p>8 Q. So when you are there at the project, are you</p> <p>9 just observing the construction activities, or did you</p> <p>10 have a particular role you took on at different times?</p> <p>11 A. No. I was there to just observe and make</p> <p>12 sure that the project was moving smoothly; it was</p> <p>13 within schedule, within budget; if there was any</p> <p>14 questions that occurred that I could answer, or I would</p> <p>15 take to the engineers to get answered. So I was more</p> <p>16 of an assistant to make sure that the project ran</p> <p>17 smoothly.</p> <p>18 Q. And then did you hold meetings at the project</p> <p>19 with the general contractor?</p> <p>20 A. We had one once a month, OAC meetings, what</p> <p>21 we called OAC, which is the owner, architect,</p> <p>22 contractor meetings. At that time that would include</p> <p>23 City staff representatives. A lot of my corporate from</p> <p>24 Cleveland would come down; the developer from LA would</p> <p>25 come over. And we would just do an overview of the</p>

3 (Pages 6 to 9)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 10	Page 12
<p>1 project, how the schedule was going, how the costs were 2 going. They would walk the project just to see how 3 everything was going. 4 Q. Okay. Then did you participate in any 5 meetings with the subcontractors? 6 A. No. 7 Q. Did you keep any records on site, concerning 8 preliminary notices or other things that the owner 9 might receive as part of construction? 10 A. I only received things that corporate would 11 somehow send to me. They all went to our corporate 12 office, which they kept, you know, lien notices and 13 things. But they weren't mailed directly to the 14 trailer. 15 Q. Because the record address was the address -- 16 A. Public Square and Queen. 17 Q. So who in Cleveland would be responsible for 18 tracking that information? 19 A. I am not quite sure who in our corporate 20 office did that. It went to legal, I believe. 21 Q. How big is ForestCity Enterprises? 22 A. We are a multi-billion-dollar corporation 23 with about 2800 employees across the country. 24 Q. That is pretty big. 25 A. It used to be a lot larger.</p>	<p>1 Manfredi out of Boston, worked under JMA. And his 2 contract, JMA's contract, included all subletters of 3 structural engineers, mechanical, electrical engineers. 4 It was all under their control. 5 Q. So did they act as part of their role to be 6 the owner's rep concerning certain items on the 7 project? 8 A. No. 9 Q. What was their role, then, in, I guess, 10 dealing with those subletters? Like JBA was one of their 11 subletters? 12 A. Right. 13 Q. So what was their role if they weren't acting 14 as owner's rep for certain approvals, or how did that 15 work? 16 A. I am not sure what you are asking. 17 Q. Like, for instance, if they asked for 18 submittals on certain items to make sure that what was 19 going to be provided by a contractor or subcontractor 20 was to contract, were they the one that would have the 21 ultimate approval or would it go all the way up to, 22 say, you as the owner's rep for approval? 23 A. How did that process work? 24 Q. Yeah, how did that process work? 25 A. Well, the process is that in the construction</p>
Page 11	Page 13
<p>1 Q. Oh, yeah? 2 (Exhibit 1 marked.) 3 BY MS. LLOYD: 4 Q. So have you seen this document? 5 A. I don't recall seeing this one. 6 Q. So it would have been served obviously on the 7 Cleveland address for QH Las Vegas, and then you didn't 8 necessarily get copies of everything. 9 A. No, I didn't. 10 Q. Okay. But do you think that there are 11 records in Cleveland concerning the preliminary notices 12 that were received? 13 A. Well, I think went to Suite 1005, that is 14 ForestCity Construction Services or ForestCity 15 Commercial Construction suite numbers. 16 Q. So they would likely kept records there 17 somewhere concerning all of these preliminary notices 18 or other notices that they might have received? 19 A. Yes. 20 Q. Let's talk a little bit about JMA's role on 21 the project. Can you tell me what JMA was hired to do. 22 A. ForestCity Commercial Development hired JMA 23 as the executive architect, which under the executive 24 architect they were to do all the construction 25 documents. The design architect, which is Helkis</p>	<p>1 documents there is specifications that clearly indicate 2 what submittals are required in the project. The 3 subcontractor would prepare those specifications; you 4 know, product data, drawings, whatever was required 5 within the spec. It would first go to Whiting Turner. 6 They are required by our contract to review those 7 documents to make sure that they meet and fall within 8 the range of the contract documents. If they did, they 9 transmittal directly to JMA. 10 JMA would then distribute to whatever party 11 was required, either JBA or the structural engineer. 12 They would review them for the specification, to meet 13 all the specifications. If they did, they would stamp 14 them reviewed. Sometimes they stamped them reviewed as 15 noted, just because there might be some minor errors. 16 It would go back to JMA; JMA would review them. Then 17 if they were approved and stamped by them, then it 18 would go back to Whiting Turner. Then Whiting Turner 19 would in turn give copies back to the subcontractor, 20 Q. And down the line? 21 A. Down the line. The only time I ever got 22 involved on anything would be if the submittal was 23 totally out of range of the specifications. 24 Q. And do you recall any instances like that on 25 this project?</p>

4 (Pages 10 to 13)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 14	Page 16
<p>1 A. No.</p> <p>2 Q. So in the submittal process, then, JMA had</p> <p>3 the final approval of the submittals that were for the</p> <p>4 contract work?</p> <p>5 A. Well, it's a combination. I require that the</p> <p>6 contractor approve them because he bid the job, and I</p> <p>7 am holding him responsible for, you know -- I am</p> <p>8 holding Whiting Turner responsible to build it within</p> <p>9 the specifications. So from my point of view, Whiting</p> <p>10 Turner's approval is just as important as the</p> <p>11 engineer's approval. They are all equal in the realm</p> <p>12 of responsibility.</p> <p>13 Q. JMA, Whiting Turner?</p> <p>14 A. JMA. Everyone is -- from the owner's point</p> <p>15 of view, they are all held --</p> <p>16 Q. Equally responsible?</p> <p>17 A. -- equally responsible.</p> <p>18 Q. What was your involvement with the selection</p> <p>19 of subcontractors on the project?</p> <p>20 A. What the process is that we go through is</p> <p>21 that we do an RFP. Whiting Turner did an RFP to at</p> <p>22 least three and mostly five subcontractors for each</p> <p>23 trade. We would review who they were bidding to in</p> <p>24 case we had people that we wanted to add; or if we had</p> <p>25 experiences with contractors we don't want to deal with</p>	<p>1 for their final cost proposal.</p> <p>2 At that point Whiting Turner would also have</p> <p>3 a major input and provide their selection to ForestCity</p> <p>4 for approval. And at that time we would review the</p> <p>5 final packages and make, you know, and say that is the</p> <p>6 contractor.</p> <p>7 Q. That is a very owner-involved process.</p> <p>8 A. ForestCity is a general contractor. We got</p> <p>9 away from it years ago because development goes up and</p> <p>10 down. But we are a very hands-on group and we do</p> <p>11 understand construction. And we have done it</p> <p>12 ourselves. So, you know, we pride ourselves on, you</p> <p>13 know, producing quality projects on time and on budget,</p> <p>14 or that are under budget, which this project was under</p> <p>15 budget.</p> <p>16 Q. Oh, really? I wasn't aware of that.</p> <p>17 So you were involved in obviously with the</p> <p>18 selection of Mojave --</p> <p>19 A. Yes.</p> <p>20 Q. -- as a subcontractor?</p> <p>21 A. Along with other ForestCity entities -- or</p> <p>22 personnel.</p> <p>23 Q. Okay. And do you go any further down the --</p> <p>24 A. No.</p> <p>25 Q. -- subtier?</p>
Page 15	Page 17
<p>1 anymore, then they would bid the project. We would as</p> <p>2 a team -- and that would include myself and our</p> <p>3 corporate -- we have an estimating group and we have</p> <p>4 other people in Cleveland that would review the scope</p> <p>5 of work, make sure that the scope was complete. We</p> <p>6 would evaluate the cost.</p> <p>7 As a public company we do not have to select</p> <p>8 the lowest bidder, but we do select the lowest</p> <p>9 qualified bidder on the project. We would normally</p> <p>10 narrow that down to three. We find -- I mean, we had</p> <p>11 five to six on each trade because of the timing, and</p> <p>12 everybody wanted to work on the City Hall project. So</p> <p>13 we narrow it down to three.</p> <p>14 We would bring them in and have an interview.</p> <p>15 We require -- ForestCity requires interviews, which</p> <p>16 means you bring your project managers, you bring your</p> <p>17 foremen. You bring anyone in upper level that would be</p> <p>18 on that site in. And we would have resumes. And we</p> <p>19 truly -- you know, it's a team effort. So we do a</p> <p>20 complete review.</p> <p>21 At that time, we would go back and reconvene.</p> <p>22 We would say, okay, we like, you know, this person or</p> <p>23 that person. There was always qualifications of the</p> <p>24 final bid, because someone would miss this or we</p> <p>25 would have questions. Then we would bring them back in</p>	<p>1 And when it comes to, I guess, management of</p> <p>2 payments, are you -- is the owner involved in managing</p> <p>3 payments to subcontractors?</p> <p>4 A. No.</p> <p>5 Q. So would you only then be approving payments</p> <p>6 to Whiting Turner, or how did the whole payment process</p> <p>7 work?</p> <p>8 A. The payment process was also pretty detailed.</p> <p>9 It was detailed in development agreement of how it</p> <p>10 would be done. Once a month all the subcontractors</p> <p>11 would provide Whiting Turner with their billing</p> <p>12 information. I would review all the detail of Mojave's</p> <p>13 billing per se. Because it's billed on a percentage of</p> <p>14 completion, I would say yes or no, or this area is not</p> <p>15 what he is billing for or whatever; we would make</p> <p>16 corrections.</p> <p>17 At that point, when that was corrected, we</p> <p>18 would sit down with the City staff and walk the</p> <p>19 project. They would also review the completion</p> <p>20 percentages, as well as the architect at the same time.</p> <p>21 When that was -- when everybody agreed to that package,</p> <p>22 then we would -- it would be signed by the architect.</p> <p>23 I would send that package to Cleveland, where the</p> <p>24 executive vice president was required to initial off to</p> <p>25 make sure, which he understood that I went through it</p>

5 (Pages 14 to 17)

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JA 00002086

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 18	Page 20
<p>1 pretty thoroughly.</p> <p>2 And then the invoices would at that point be</p> <p>3 put together -- that billing would be put together with</p> <p>4 our invoice, for our fees and architectural fees or any</p> <p>5 other fees we would have a combined invoice of</p> <p>6 everyone's. That would be submitted to the City. The</p> <p>7 City had a five-person signoff of that invoice.</p> <p>8 At that time it would be sent to the trustee</p> <p>9 for the project, which is I believe Bank of America.</p> <p>10 They would at that time wire transfer funds to Whiting</p> <p>11 Turner for their billing. They would wire transfer</p> <p>12 ForestCity, which in turn we would wire transfer to our</p> <p>13 third-party consultants.</p> <p>14 Q. And that happened every month?</p> <p>15 A. Every month.</p> <p>16 Q. Wow. So how long would that process take for</p> <p>17 the approval of a billing?</p> <p>18 A. We were required to do that within ten days</p> <p>19 in the development agreement. The City had -- as soon</p> <p>20 as we completed our process, the City had ten days to</p> <p>21 do it. We were following under the State statute of I</p> <p>22 believe 45 days, which we always met.</p> <p>23 Q. Wow. So I guess just to backtrack a tiny</p> <p>24 bit, how exactly did the whole development -- because</p> <p>25 it was privately owned property, but there was</p>	<p>1 Which we ended up getting over 20 percent at the end of</p> <p>2 the day.</p> <p>3 Q. So did you leave it to Whiting Turner, then,</p> <p>4 to enforce it or encourage subcontractors to meet</p> <p>5 certain goals?</p> <p>6 A. During that first interview process before,</p> <p>7 you knew, we awarded contractors, we told them that it</p> <p>8 was an important factor in selection, as well as for</p> <p>9 selection purposes. They needed to come to the table</p> <p>10 with some diversity.</p> <p>11 Q. So were they required to identify like which</p> <p>12 areas they would be, you know, meeting diversity with?</p> <p>13 A. Early on, no. They basically came back and</p> <p>14 said, We feel for this contract we can get 8 percent or</p> <p>15 we can get 10 percent, you know. And we monitored</p> <p>16 them. And most of the contractors met their goals.</p> <p>17 And the ones that didn't actually we had them</p> <p>18 contribute.</p> <p>19 Q. How do you mean?</p> <p>20 A. There was one contractor that poorly missed</p> <p>21 his goal. And we had him -- well, he volunteered to --</p> <p>22 in the minority publications take out ads for his</p> <p>23 company, which was a benefit to the minority magazines</p> <p>24 and to the minority groups. So we convinced them to do</p> <p>25 things of that nature.</p>
Page 19	Page 21
<p>1 obviously a public component, I guess, in some way.</p> <p>2 Can you describe to me how that sort of worked?</p> <p>3 A. It was a private public partnership. The</p> <p>4 funding came from Build American Bonds, and we were</p> <p>5 able to construct and develop it for the City. And we</p> <p>6 negotiated for land costs to do the trade of the two</p> <p>7 parcels for the rest of it.</p> <p>8 Q. Okay. So did you have a requirement for</p> <p>9 Whiting Turner concerning the Disadvantaged Business</p> <p>10 Entities percentage that was to be met or to try to be</p> <p>11 met on the project?</p> <p>12 A. That was -- during our negotiations with the</p> <p>13 City, it was at a time when they were laying off</p> <p>14 people. It was a tough time to sell a new City Hall.</p> <p>15 The City had a lot of pressure on them from the</p> <p>16 minority groups to say, If you are going to do this,</p> <p>17 please get participation. The City does not have a</p> <p>18 diversity program that they can enforce in the city.</p> <p>19 So they came to us and said, We would like</p> <p>20 you to try and get the participation. And we agreed as</p> <p>21 a goal to try to get 15 percent. We included that goal</p> <p>22 to Whiting Turner's contracts. And from there they</p> <p>23 managed how that was obtained.</p> <p>24 Q. So it was a city requirement essentially?</p> <p>25 A. Well, it was a request, a strong request.</p>	<p>1 Q. Okay. Was there -- I guess speaking of if</p> <p>2 they didn't meet their goal, was there any consequences?</p> <p>3 A. No. We would only ask that they do</p> <p>4 something.</p> <p>5 Q. Okay.</p> <p>6 A. It was monitored on a monthly basis during</p> <p>7 the pay application process.</p> <p>8 Q. Because they were required to submit like the</p> <p>9 certificates of DBE with their pay apps?</p> <p>10 A. Yeah.</p> <p>11 Q. So did you check that with Whiting Turner on</p> <p>12 a monthly basis?</p> <p>13 A. No. They provided ForestCity with a report.</p> <p>14 It was based off costs of the project, costs of each</p> <p>15 subcontractor. They provided us a breakdown and we</p> <p>16 never audited.</p> <p>17 Q. Then I guess in conjunction with payments,</p> <p>18 did you require a certain waiver or releases from subs</p> <p>19 and suppliers for Whiting Turner to get those, or did</p> <p>20 you rely on Whiting Turner to make sure that they were</p> <p>21 obtaining the proper releases?</p> <p>22 A. We did get all releases.</p> <p>23 Q. How did you monitor, I guess, what releases</p> <p>24 you would need?</p> <p>25 A. They had a -- Whiting Turner had a breakdown</p>

6 (Pages 18 to 21)

David Phillips - 1/10/2013
Cushman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 22	Page 24
<p>1 within the pay application for the previous month's 2 payments. We would get unconditionals, you know, for 3 that breakdown after the payment and they would provide 4 us conditional waivers with the initial payment. And 5 Whiting Turner had to do unconditionals and 6 conditionals to us for the project too. 7 Q. So did you have anyone in your offices 8 tracking, say, preliminary notices with releases, or 9 how did you -- 10 A. Yes, that went to our corporate. 11 Q. So someone in Cleveland was handling that? 12 A. Yes, Michelle did -- Michelle Laguna did 13 that. She bugged me all the time. When am I getting 14 my releases? 15 Q. So did you rely on a combination of Whiting 16 Turner keeping track of which suppliers were supplying 17 to the projects under subcontractors, or did you have 18 your own tracking system? 19 A. We did not get conditionals or unconditionals 20 from suppliers. It was from the first tier. So we 21 would get -- like, Mojave would provide us conditionals 22 and unconditionals for -- 23 Q. Its payments? 24 A. Yeah. 25 Q. Then you weren't tracking downstream subs and</p>	<p>1 Q. And what is, I guess, left open? 2 A. The contract with Whiting Turner is still 3 open. 4 Q. Why is it open? 5 A. We were still negotiating some requests from 6 them specifically. We still have the Mojave contract 7 open because there is payments still within that -- 8 their line items or schedule of values for the 9 generator, which I held after -- it was pretty much 10 paid out, but it was the completion portion that's 11 there. 12 Q. So you are holding money for the generator 13 from Whiting Turner? 14 A. From Mojave. 15 Q. From Mojave. Do you recall offhand how much 16 you are holding? Is it the full cost of the generator 17 line item? 18 A. No, I would be surprised if it's \$30,000. 19 It's somewhere in there, I think. 20 Q. So the project has a permanent C of O? 21 A. Correct. 22 Q. Do you recall when you got that? 23 A. On February 14th. 24 Q. And then -- I mean, I am sure you generally 25 know that we are here because Cushman didn't get paid</p>
Page 23	Page 25
<p>1 suppliers to Mojave? 2 A. No. 3 Q. Is there a reason why you weren't tracking 4 downstream? 5 A. Because that is not part of our standard 6 process. 7 Q. Did you rely on Whiting Turner to be tracking 8 downstream? 9 A. No, not in our contract it's not required. 10 Q. Were you concerned about lien claims from 11 people who might be unpaid under the subcontractor's 12 second, third tier suppliers or subs? 13 A. Concerned about it? It happens all the time. 14 Q. But, I mean, not concerned enough to require 15 that, I guess, releases be provided? 16 A. It hasn't been in our past history a major 17 concern for us on subfiers and suppliers. 18 Q. Okay. Can you tell me what the status of the 19 project is now? 20 A. Well, on February 14th of this year it's 21 going to be one year opened. We had substantial 22 completion on February 14th of 2012. 23 Q. Is the project totally closed out at this 24 point? 25 A. No.</p>	<p>1 for the generator and the UPS equipment that it 2 supplied to the project. 3 A. I have been told that. 4 Q. So when we talk about the generator and UPS 5 equipment, it's kind of a package deal. You know what 6 I am referring to? 7 A. Yes. 8 Q. So what is the status of the generator, UPS 9 equipment on the project now? 10 A. Well, it's installed. I am being told that 11 it would operate in case of an emergency. I have not 12 witnessed that. Due to a lack of some programming on 13 the system itself, it does not give my client, the 14 City, the opportunity to go into a laptop on site or 15 off site and monitor the status of the generator 16 systems, which is critical. Most buildings are fully 17 automated and have a building management system. And 18 they sit up in an office when they need to check to 19 verify that the fuel is correct, the batteries are 20 operating, how that system is operating after it starts 21 up for RPMs and the technical things that need to be 22 monitored on these systems in case of an emergency, and 23 that is not available. 24 Q. And so as a result of that, were you taking 25 any action against Whiting Turner or Mojave or --</p>

7 (Pages 22 to 25)

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JA 00002088

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 26	Page 28
<p>1 A. We have been, you know, pushing to get 2 resolution of that. 3 Q. Of that issue? 4 A. Of that issue. 5 Q. So does that leave any pending issues between 6 you, your company, or ForestCity and the City of Las 7 Vegas? 8 A. The City is aware of the situation. Being 9 aware of it, they can manually go check things, which 10 they are doing, but they are not very pleased about it. 11 Because there is a fault on the generator panel, 12 Q. What do you mean? What does that mean? 13 A. It's a big red light that flashes. 14 Q. Like something is wrong? 15 A. Yeah. 16 (Exhibit 2 marked.) 17 BY MS. LLOYD: 18 Q. Can you take a look at this document? This 19 was produced in conjunction with a subpoena that I 20 issued to ForestCity. Do you recognize this document? 21 A. Yes, it's the one I provided. It's the last 22 executed pay application to Whiting Turner. 23 Q. Okay. And then if you go to page Bales stamp 24 5, can you tell me what -- under the electrical, that 25 first line item, it looks like there is a withholding.</p>	<p>1 Q. What type of file, like, recordkeeping 2 software do they use? 3 A. I don't know. 4 Q. There wasn't a requirement for a specific 5 program? 6 A. (Shakes head.) 7 Q. So that withholding on there is not related 8 to the generator? 9 A. No. 10 Q. In speaking with Nancy from Whiting Turner, 11 she seemed to indicate that it was related to the 12 generator. Unless I misunderstood -- I guess I am 13 trying to understand. Do you recall -- you are still 14 holding it, or have you paid it out? 15 A. No. 16 Q. You are still holding it? 17 A. Until a project is completely closed out with 18 a contractor, I do not release. I release 5 percent. 19 That is 5 percent, I believe. And then column, I think 20 it says 5 percent. I released under percentage 21 retainage; it's 5 percent. Until a project is closed 22 out, ForestCity's policy is we do not release all the 23 retainage. And it's not specifically to any certain 24 item. 25 Q. Well, that particular item shows both a</p>
Page 27	Page 29
<p>1 Am I reading that correctly? 2 A. Yeah, there was a retainage still held. 3 Q. It looks like -- is that 792 or -- 4 A. Yeah, it's -- 5 Q. In that range? 6 A. Yeah, I believe. 7 Q. Is that still being withheld? 8 A. Yes. 9 Q. From Whiting Turner? 10 A. From Mojave. 11 Q. Through Whiting Turner, I guess. So why is 12 that being withheld? 13 A. We were closing out with Mojave. There were 14 several change orders that they had asked for that did 15 not get approved before this was done. 16 Q. So that line item is not related to the 17 generator equipment? 18 A. No. 19 Q. Do you have a breakdown of what it is related 20 to somewhere else? 21 A. Whiting Turner would. Whiting Turner held 22 all the files for this project. I did not keep -- they 23 are to provide me on disk the entire file system, which 24 I have not received because we haven't closed out yet. 25 So this is all I had available.</p>	<p>1 balance to finish and a retainage amount. Those are 2 two separate -- are those two separate -- because most 3 of the items show basically no balance to finish, 4 because they are all looking like they are complete and 5 have been paid out, except for some slow retention. So 6 that's why I was trying to understand exactly what the 7 status of the payment to Whiting Turner was on that 8 particular item, because it looks like there is a 9 balance to finish and then a retainage amount. 10 A. The balance to finish was listed of the 11 contract change orders that we were still negotiating. 12 Q. Do you recall what those were about? 13 A. No. 14 Q. So did the owner withhold any funds from 15 Whiting Turner and Mojave related to the generator 16 beyond -- I think you identified 30,000? 17 A. That's all we did because it was a specific 18 line item. Mojave's contract would have -- or pay 19 application would have this cover sheet. And then they 20 were required to give us schedule of values for every 21 item of their scope of work, which entailed the 22 electrical, audio, visual, I mean, the whole breakdown. 23 It was a specific line item for the generator. 24 Q. So the generator line item was somewhere in 25 the range of 800,000. But if it was, would you have</p>

8 (Pages 26 to 29)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 30	Page 32
<p>1 withheld 800,000 or would you withhold an amount you</p> <p>2 determined separately, or did you have a way of coming</p> <p>3 up with what you were going to withhold?</p> <p>4 A. The generator was already paid out before</p> <p>5 this was brought to our attention. So I just refused</p> <p>6 to pay any more on that line item.</p> <p>7 Q. Okay. I guess what's the status of the</p> <p>8 negotiations with Whiting Turner to close everything</p> <p>9 out?</p> <p>10 A. We are hoping to have it all closed out</p> <p>11 within the next two weeks.</p> <p>12 Q. Then what is your plan, I guess, in reference</p> <p>13 to the operation of the generator equipment as far as,</p> <p>14 you know, I guess sort of how that is going to work</p> <p>15 with the City?</p> <p>16 A. We have asked Whiting Turner to give us a</p> <p>17 proposal on how they want to handle it. They have to</p> <p>18 deal with their contractor.</p> <p>19 Q. Have they come to you with any proposal yet?</p> <p>20 A. No. They are in the -- they are just</p> <p>21 following this process. That is all they can give us</p> <p>22 the information.</p> <p>23 Q. So is that item just going to remain open</p> <p>24 until the litigation is complete?</p> <p>25 A. Well, the lien has been bonded around. As</p>	<p>1 requirement. We cannot single-source a product for</p> <p>2 ForestCity. We are a public company. Any of those</p> <p>3 manufacturers would have to meet the performance</p> <p>4 specifications that the engineers design to. If</p> <p>5 those -- that selection process, they are all equal in</p> <p>6 the engineer's eyes as well as the owner's eyes, then</p> <p>7 they can -- they are responsible for making sure that</p> <p>8 system is complete.</p> <p>9 (Exhibit 3 marked.)</p> <p>10 BY MS. LLOYD:</p> <p>11 Q. Take a look at this document. Have you seen</p> <p>12 it before?</p> <p>13 A. Yes.</p> <p>14 Q. And when did you first see the lien?</p> <p>15 A. I don't recall exactly when I saw the lien.</p> <p>16 Q. Was it shortly after it was recorded?</p> <p>17 A. At some point. Like I said, I can't give an</p> <p>18 exact time.</p> <p>19 Q. Did you -- it was forwarded to you from</p> <p>20 Cleveland, your Cleveland offices?</p> <p>21 A. Yes.</p> <p>22 Q. And then what action did you take once you</p> <p>23 were aware of the lien?</p> <p>24 A. I took a copy over to Whiting Turner and</p> <p>25 said, Address this issue.</p>
Page 31	Page 33
<p>1 far as the City, the lien has been bonded. But</p> <p>2 operational-wise I am not sure. We have been trying to</p> <p>3 get resolution of this, so that I can go down and talk</p> <p>4 to the City to determine exactly what their position is</p> <p>5 on this.</p> <p>6 Q. Okay. Did you have any involvement in</p> <p>7 choosing the generator system requirements?</p> <p>8 A. No, I am not an electrical engineer.</p> <p>9 Q. So was that a JMA role as part of their</p> <p>10 design services?</p> <p>11 A. Yes. JMA, JBA.</p> <p>12 Q. Did you have any involvement in approving the</p> <p>13 system that was proposed by Mojave to be used?</p> <p>14 A. No.</p> <p>15 Q. Would that just have been JMA and Whiting</p> <p>16 Turner?</p> <p>17 A. It's a combination of JMA, Whiting Turner and</p> <p>18 JBA.</p> <p>19 Q. So would you have seen any of the submittals</p> <p>20 concerning any type of the equipment that was being</p> <p>21 supplied to the project?</p> <p>22 A. No, not on that specific item, no. The</p> <p>23 specifications are performance specifications. It</p> <p>24 requires -- it will provide at least three different</p> <p>25 manufacturers of equipment, three to five, which is our</p>	<p>1 Q. And what did they say?</p> <p>2 A. That is when it was bonded around.</p> <p>3 Q. And so did you take any other action in</p> <p>4 relation to the lien or the lien claim?</p> <p>5 A. No.</p> <p>6 Q. Did you have any discussions with Whiting</p> <p>7 Turner about what happened or why there was a lien?</p> <p>8 A. I asked what was going on and they said they</p> <p>9 were trying to contact Mojave to find out.</p> <p>10 Q. Did you do any inquiry beyond that</p> <p>11 afterwards?</p> <p>12 A. No.</p> <p>13 MS. LLOYD: I don't think I have any other</p> <p>14 questions.</p> <p>15 MR. BOSCHER: I think I have a couple,</p> <p>16 EXAMINATION</p> <p>17 BY MR. BOSCHER:</p> <p>18 Q. Looking at Exhibit 3, I understand that you</p> <p>19 don't recall exactly what date that you saw that. Was</p> <p>20 that the first time that you learned or ascertained of</p> <p>21 the issue that has caused us to sit here today?</p> <p>22 A. Well, this was not specific to the issues we</p> <p>23 are sitting here today. It was a lien from Cashman for</p> <p>24 equipment. That didn't explain why we are sitting here</p> <p>25 today.</p>

9 (Pages 30 to 33)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 34	Page 36
<p>1 Q. Well, what is your understanding of why we 2 are here today? 3 A. It's all hearsay. 4 Q. Okay. 5 MS. LLOYD: Depos are okay for hearsay. 6 THE WITNESS: When we started to commission 7 this building, we have a third-party commissioner on 8 the project. When they started to come out and test 9 equipment and do things, there was this flag that was 10 put on the generator system by our third-party 11 consultant concerning, you know, PCL or whatever. And 12 at that point it sat there and I kept asking, Is this 13 resolved? Is this resolved? And they said, No, not 14 yet, not yet. And finally it came out that -- how it 15 was told that there was an issue with Cashman and CAM. 16 BY MR. BOSCHKE: 17 Q. Yeah. 18 A. And they explained to me the situation. At 19 that point they didn't have all the detailed facts. 20 They just -- you know, they reassured ForestCity. It 21 was at an owner's meeting. We would have a meeting 22 prior to -- before the City came in. So in our meeting 23 they explained of the situation. And that they assured 24 us that we had final releases and things of that 25 nature. That put people somewhat to comfort and it was</p>	<p>1 Q. Now, I had another question from my notes in 2 talking to you. Do you recall -- I believe there was a 3 pending log that you reviewed from time to time; is 4 that correct? 5 A. Every day. 6 Q. I didn't want to hold your feet to the fire 7 on the everyday thing, but I knew it was pretty much 8 every day. Do you recall seeing anything in the 9 pending log about change orders with respect to the 10 generators? 11 A. There was none. 12 Q. Okay. And again, just to clarify, your 13 company and you personally had played no part in the -- 14 I guess we will call it the screening process for the 15 disadvantaged business entities that were used on this 16 project, did you? 17 A. No. 18 Q. And with respect to -- with respect to JMA's 19 involvement, you talked to Ms. Lloyd about this a 20 little bit earlier. Is it fair to say that their 21 primary job was to deal with the design and the design 22 changes once the project got going; is that fair? 23 A. Yes. 24 MR. BOSCHKE: I don't think I have anything 25 further.</p>
Page 35	Page 37
<p>1 bonded around. And we didn't know how -- we know we 2 needed to get the program so that we could complete our 3 commissioning and move forward with the City. 4 Q. Prior to seeing this lien and getting this 5 from your corporate office, did you have any actual 6 knowledge that Cashman Equipment Company was involved 7 in what we will call the project? Have you ever heard 8 of them before? 9 A. I have been here for 24 years. I have heard 10 of Cashman. But no, generators show up, equipment 11 shows up. Who supplies it, who is installing it, I am 12 just relying on Whiting Turner to make sure it's done. 13 Q. Okay. And I mean, sitting here right now, do 14 you have any actual knowledge of when or whether 15 Cashman Equipment Company actually supplied the 16 generators to the project? 17 A. No, I don't. 18 Q. And following up on that, do you have any 19 specific recollection of when the generators were 20 delivered to the project? 21 A. Not specifically, no. 22 Q. Is it fair to say you just know that they got 23 there and it got put in and the construction kept 24 flowing? 25 A. Correct.</p>	<p>1 MS. LLOYD: I have a follow-up. 2 FURTHER EXAMINATION 3 BY MS. LLOYD: 4 Q. What is a pending log? 5 A. ForestCity requires all of our contractors to 6 keep track of any possible change or foreseeable change 7 and project a cost that could impact the project. We 8 don't like surprises. If you know you have a 9 problem -- if we know we have a problem out there with 10 some steel, we would indicate that on this pending log 11 and we would project a cost. So every month we knew 12 what our exposure was to the project in any changes. 13 It might end up being zero. 14 The City might come and say, Dave, I want you 15 to redo these floor plans, which they did. We would 16 put that on there and we would project a cost involved 17 in that. So that at the end of the day, every month we 18 knew what our true cost exposure was on a monthly basis 19 for finance purposes. 20 Q. Would you see, like, a pending cost if 21 Whiting Turner determined that, say, a sub missed 22 something and didn't bid it properly so they were going 23 to essentially put the cost back onto the sub? Would 24 they have notified you of something like that? 25 A. No.</p>

10 (Pages 34 to 37)

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 38

1 Q. Or only if it was going to be an
2 owner-impacted change or potential cost?

3 A. It tracked -- If Whiting Turner missed
4 something in the contract itself, that item would be
5 put -- it would be tracked to Whiting Turner. If
6 ForestCity asked for a change, it would be listed as
7 ForestCity. And if the City made a change, it would be
8 City. Beyond that, nothing else went on that log.

9 Q. So it was only if, say, Whiting Turner was
10 going to ask for more money --

11 A. Right.

12 Q. -- related to a certain item.

13 So if they made a determination that, say,
14 Mojave missed something and it was in the drawings and
15 they should have included it and it wasn't going to be
16 a change to the owner, you wouldn't be notified --

17 A. No, I wasn't.

18 Q. -- an issue like that.

19 Talking about the generator, I guess,
20 delivery. Do you recall seeing the generators be
21 delivered?

22 A. I just saw them sitting there one day.

23 Q. Before they were in the box or however they
24 are housed in the equipment room, or after they were
25 already in the equipment room?

Page 39

1 A. After they were already in the -- it's a wall
2 enclosure.

3 Q. Okay. Do you recall meeting Shane Norman of
4 Cashman Equipment Company?

5 A. His name doesn't sound familiar.

6 Q. It would have been around the time of the
7 lien, sort of the dispute concerning the payment
8 issues. He recalled, I guess visiting the site and
9 meeting you, but I don't know if you had recalled.

10 A. I met so many people.

11 Q. No, I am sure. Especially every day.

12 A. The name doesn't sound familiar, but I am not
13 saying I didn't meet him. I am just saying I don't
14 recall meeting him.

15 Q. But you don't recall having a conversation
16 concerning this bounced check and the issue with the
17 nonpayment of the generator?

18 A. I don't recall that.

19 MS. LLOYD: Okay. That is all I have.
20 (Thereupon, the deposition
21 concluded at 4:00 p.m.)

Page 40

1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

3

4

5

6

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9

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11

12

13

14 *****

15 I, David Phillips, deponent herein, do hereby
16 certify and declare the within and foregoing
17 transcription to be my deposition in said action; that
18 I have read, corrected and do hereby affix my signature
19 to said deposition under penalty of perjury.

20

21

22

23

24

25

DAVID PHILLIPS, Deponent

Page 41

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) ss:

4 COUNTY OF CLARK)

5 I, Christy L. DeJonker, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify that I reported the deposition of David
8 Phillips, commencing on Thursday, January 10, 2013, at
9 3:00 p.m.

10 That prior to being deposed, the witness was
11 duly sworn by me to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript is a
14 complete, true and accurate transcription of my said
15 shorthand notes. That review of the transcript was
16 requested.

17 I further certify that I am not a relative,
18 employee or independent contractor of counsel of any of
19 the parties; nor a relative, employee or independent
20 contractor of the parties involved in said action; nor
21 a person financially interested in the action; nor do I
22 have any other relationship with any of the parties or
23 with counsel of any of the parties involved in the
24 action that may reasonably cause my impartiality to be
25 questioned.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
10th day of January, 2013.

CHRISTY LYN DEJONKER, CCR NO. 691

11 (Pages 38 to 41)

Depo International, LLC
(702) 386-9322 or (800) 982-3299 admin@depointernational.com

JA 00002092

EXHIBIT 14

Nov 27 10 08:42a

Mojave Buyout Dept

702-798-8010

p.2

JOB INFORMATION SHEET

PROJECT INFORMATION

City of Las Vegas New City Hall
495 Main Street
Las Vegas Nevada 89101

ELECTRICAL CONTRACTOR:

MOJAVE ELECTRIC
8785 W. Hacienda Avenue
Las Vegas, Nevada 89118
PHONE: (702) 798-2970
FAX: (702) 798-3740

PRIME CONTRACTOR

Whiting - Turner
6720 Via Aurel Parkway, Suite 800
Las Vegas Nevada 89119
PHONE: 888-0700
FAX: 888-2680

OWNER

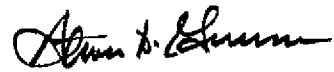
OH Las Vegas LLC
60 Public Square, Suite 1005
Cleveland Ohio 44115
PHONE:
FAX:

FROM:



CASH1737

JA 00002094



CLERK OF THE COURT

SUPP

Jennifer R. Lloyd, Esq.
Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
Nevada State Bar No. 10928

PEZZILLO LLOYD

6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel: 702 233-4225
Fax: 702 233-4252
jlloyd@pezzillolloyd.com
mmaskas@pezzillolloyd.com
Attorneys for Plaintiff,
Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

Case No.: A642583
Dept. No.: 32

Consolidated with Case No.: A653029

CAM CONSULTING INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD., dba MOJAVE
ELECTRIC, a Nevada corporation;
WESTERN SURETY COMPANY, a
surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety;
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a surety; QH
LAS VEGAS LLC, a foreign limited
liability company; PQ LAS VEGAS, LLC, a
foreign limited liability company; L W T I C
SUCCESSOR LLC, an unknown limited
liability company; FC/LW VEGAS, a

**SUPPLEMENT TO CASHMAN
EQUIPMENT COMPANY'S
SUPPLEMENT TO ITS
COUNTERMOTION FOR SUMMARY
JUDGMENT ON ITS PAYMENT BOND
AND MECHANIC'S LIEN CLAIMS**

Date: April 16, 2013
Time: 9:00 a.m.

PEZZILLO LLOYD

6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel: 702 233-4225

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702.239-4225

1 foreign limited liability company; DOES 1 -
2 10, inclusive; and ROE CORPORATIONS 1
- 10, inclusive;

3 Defendants.

4 AND ALL RELATED MATTERS.

5 **SUPPLEMENT TO CASHMAN EQUIPMENT COMPANY'S SUPPLEMENT TO ITS**
6 **COUNTERMOTION FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND AND**
7 **MECHANIC'S LIEN CLAIMS**

8 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

9 Plaintiff, CASHMAN EQUIPMENT COMPANY, by and through its counsel of
10 record, PEZZILLO LLOYD, hereby supplements its SUPPLEMENT TO ITS
11 COUNTERMOTION FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND AND
12 MECHANIC'S LIEN CLAIMS, filed on March 18, 2013, with the attached Exhibit "1," a
13 signed copy of Shane Norman's Affidavit.

14 DATED: April 5, 2013

PEZZILLO LLOYD

15
16 By: /s/ Jennifer R. Lloyd
Jennifer R. Lloyd, Esq.
17 Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
18 Nevada State Bar No. 10928
6725 Via Austi Parkway, Suite 290
19 Las Vegas, Nevada 89119
20 Attorneys for Plaintiff,
Cashman Equipment Company
21
22
23
24
25
26
27
28

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 250
Las Vegas, Nevada 89119
Tel. 702 233-4225

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of PEZZILLO LLOYD, hereby certifies that on the 5th day of April, 2013, a true and correct copy of the foregoing document, **SUPPLEMENT TO CASHMAN EQUIPMENT COMPANY'S SUPPLEMENT TO ITS COUNTERMOTION FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND AND MECHANIC'S LIEN CLAIMS**, was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Brian Boschee, Esq.
COTTON, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
Attorneys for Whiting Turner Contracting, Mojave Electric LV, LLC, Western Surety Company and Fidelity and Deposit Company of Maryland

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
8275 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorneys for Janel Rennie aka Janel Carvalho and Linda Dugan

Keen L. Ellsworth, Esq.
ELLSWORTH, BENNION & ERICSSON, CHTD.
777 N. Rainbow Blvd. Ste. 270
LAS VEGAS, NV 89107
Attorneys for Element Iron and Design

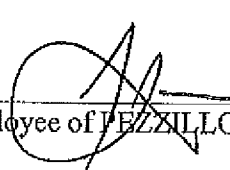

An employee of PEZZILLO LLOYD

EXHIBIT 1

Pezillo Lloyd
6725 Via Arroyo, Suite 290
Las Vegas, Nevada 89119
TEL 702 253-4325

AFFIDAVIT OF SHANE NORMAN IN SUPPORT OF SUPPLEMENT TO OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT OF SURETY PAYMENT AND LICENSE BOND
CLAIMS, AND CASHMAN'S COUNTER-MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Shane Norman, having been duly sworn and under the penalty of perjury do hereby state:

1. I am personally knowledgeable about the facts contained herein and am competent to testify.

2. I am the Credit Manager at CASHMAN EQUIPMENT COMPANY ("Cashman") and am authorized to make this Affidavit.

3. Cashman submitted a revised Quote to Mojave on or about January 11, 2010 for the materials at issue and according to owner requirements with a total price of \$855,467.00. A true and correct copy of the Revised Quote is attached to this Supplement as Exhibit "2."

4. The Quote from Cashman to Mojave details the materials to be supplied as two Caterpillar diesel generators, Caterpillar switchgear and Mitsubishi battery backup. As part of supplying the materials for this price, Cashman also agreed to ship the materials to the Project, perform start up functions, commission the equipment, perform load bank testing and provide training to users. Cashman was also to provide a parts and labor warranty from startup and two years of service and maintenance. *Id.*

5. Mojave issued two purchase orders on April 23, 2010 to purchase these materials for a total price of \$757,611.00. The purchase orders were issued to "CAM Consulting c/o Cashman Equipment." See Exhibit "3," true and correct copies of the Purchase Orders (CASH1752-54).

6. Cashman provided submittals for the materials it was to supply to Mojave for the Project on January 25, 2010, March 9, 2010 and April 12, 2010.

7. Cashman received correspondence forwarded by Mojave requesting revisions to certain items included in the submittals and provided its response on May 24, 2010. See Exhibit "4," a true and correct copy of the Letter from Cashman to Mojave (CASH1762).

Pezullo Lloyd
6725 VIA AUSTI PRNT, SUITE 250
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

1 8. Cashman received notice of approval for certain materials from Mojave directly on June
2 16, 2010. See Exhibit "5," a true and correct copy of the Mojave Transmittal showing Approved
3 Status (CASH1763).

4 9. Cashman received the Materials Release Order from Mojave directing it to begin
5 procuring the materials for delivery to the Project on August 11, 2010. A true and correct copy is
6 attached hereto as Exhibit "18" (CASH1766 - 67).

7 10. Cashman began procuring the materials shortly thereafter.

8 11. Cashman received notice of approval for certain materials from Mojave directly on
9 September 21, 2010. A true and correct copy is attached hereto as Exhibit "20," (CASH1168).

10 12. The Mitsubishi uninterrupted power supply was delivered to Mojave on November 18,
11 2010. See Exhibit "6," a true and correct copy of the Signed Packing Slip (CASH1769).

12 13. The Caterpillar switchgear was delivered to Mojave on December 27, 2010. See Exhibit
13 "7," a true and correct copy of the Signed Bill of Lading (CASH1770).

14 14. The three automatic transfer switches and the two batteries for the switchgear were
15 provided to Mojave on January 5, 2011. See Exhibit "8," a true and correct copy of the signed receipt
16 (CASH 1771).

17 15. Cashman coordinated delivery of the two Caterpillar diesel generators with Mojave
18 directly to the Project.

19 16. The two Caterpillar diesel generators were delivered to the Project on January 19, 2011.
20 See Exhibit "19," true and correct copies of the Delivery Receipts.

21 17. Cashman personnel were last at the Project performing work required for the materials on
22 May 23, 2011.

23 18. Cashman served a Notice of Right to Lien on April 29, 2010 addressed to Mojave and
24 Forest City Enterprises at Terminal Tower #1410, 50 Public S., Cleveland, OH 44113-2202. This
25 Notice was served by certified mail and the record kept in the ordinary course of business. See Exhibit
26 "9," a true and correct copy of the Preliminary Notice of Right to Lien dated 4/29/2010 (CASH 1734).

27 19. The assessor's page record ownership information at the time the first Notice of Right to
28 Lien was served listed the owner of the Project as PQ Las Vegas, LLC, c/o Forest City Entrprs, Inc.,

Perzillo Lloyd
6725 VIA AUSTIN PROY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

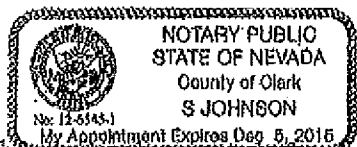
1 Terminal Tower #1410, 50 Public Square, Cleveland, OH, 44113-2202. See Exhibit "10," a true and
2 correct copy of the owner information obtained (CASH 1735).

3 20. Cashman served a Notice of Right to Lien on December 7, 2010 addressed to Mojave,
4 Whiting Turner, and OH Las Vegas, LLC at 50 Public Square, Ste 1005, Cleveland, OH, 44113. This
5 Notice was served by certified mail and the record kept in the ordinary course of business. A true and
6 correct copy is attached as Exhibit "11," (CASH 1736).

7 21. Cashman received a job information sheet from Mojave for this Project, which listed the
8 owner of the Project as OH Las Vegas, LLC, 50 Public Square, Suite 1005, Cleveland, OH, 44113.
9 See Exhibit "12," a true and correct copy of the job information sheet (CASH1737).

10 22. Cashman served a Notice of Right to Lien on April 20, 2011 addressed to Mojave and PQ
11 Las Vegas, LLC at 50 Public Sq-TT #1410, Cleveland, OH, 44113-2202. A true and correct copy is
12 attached as Exhibit "13," (CASH013).

13 FURTHER YOUR AFFIANT SAYETH NAUGHT.



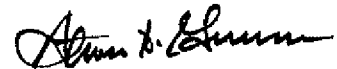
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27
28

Shane Norman

Date

Subscribed and sworn to before me
this 5 day of April, 2013.

Notary Public in and for said county and state



CLERK OF THE COURT

1 **RPLY**
2 BRIAN W. BOSCHKEE, ESQ.
3 Nevada Bar No. 7612
4 E-mail: bboschkee@nevadafirm.com
5 COTTON, DRIGGS, WALCH,
6 HOLLEY, WOLOSON & THOMPSON
7 400 South Fourth Street, Third Floor
8 Las Vegas, Nevada 89101
9 Telephone: 702/791-0308
10 Facsimile: 702/791-1912

11 *Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The*
12 *Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,*
13 *Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 CASHMAN EQUIPMENT COMPANY, a
17 Nevada corporation,

18 Plaintiff,

19 v.

20 CAM CONSULTING, INC., a Nevada
21 corporation; ANGELO CARVALHO, an
22 individual; JANEL RENNIE aka JANEL
23 CARVALHO, an individual; WEST EDNA
24 ASSOCIATES, LTD. dba MOJAVE
25 ELECTRIC, a Nevada corporation; WESTERN
26 SURETY COMPANY, a surety; THE WHITING
27 TURNER CONTRACTING COMPANY, a
28 Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

QH LAS VEGAS, LLC, PQ LAS VEGAS, LLC, LWTIC SUCCESSOR LLC, AND
FC/LW VEGAS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS,
OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Defendants QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor LLC, and
FC/LW Vegas (collectively "Moving Defendants"), by and through its undersigned counsel of
record, hereby reply to the opposition to their motion to dismiss Plaintiff Cashman Equipment

1 Company's ("Plaintiff") Fifteenth Cause of Action for unjust enrichment against Moving
2 Defendants, articulated in the Fourth Amended Complaint. This Reply is based upon the Points
3 and Authorities set forth below, the papers and pleadings on file herein, and any argument of
4 counsel the Court entertains at the hearing of this Motion.

5 POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 The fundamental flaw in Plaintiff's claim for unjust enrichment is that in order for there
8 to be unjust enrichment under the laws of this state, the Plaintiff, in this case Cashman
9 Equipment, had to have conferred some benefit upon a Defendant, in this case the moving
10 Defendants, which the Moving Defendants have retained and enjoyed. In this case, even though
11 Mojave tendered the entire amount to CAM for the materials and labor that were **supposed** to be
12 provided to the Project by Cashman, there is no dispute that Cashman did not supply all of the
13 labor and materials required. In Cashman's own Statement of Relevant Facts in the Opposition,
14 Cashman acknowledges that the "materials supplied by Cashman to the Project, the generator
15 systems, are working properly *except for the PLC.*" See Opposition, P. 5, ¶4-5 (emphasis
16 added). Later in the Opposition, Cashman supports its argument by alleging that, "Defendants
17 retained the materials, as they are incorporated into the Project, and *majority of the materials*
18 *supplied by Cashman, including the generators, are operational.* See Opposition, P. 7, ¶16-18.

19 The evidence in this case, primarily in the form of the testimony of owners'
20 representative David Phillips, clearly shows that the reason that the Project has not been wrapped
21 up, and the owners have not released the nominal amount of retention they still have, is due
22 primarily to the fact that Cashman has refused to provide and install the PLC Codes for the
23 generators. As a result of this, the Project is not complete, and this vital work remains unfinished
24 by Cashman. The Court previously ordered Cashman to supply and install the PLC materials,
25 which would have wrapped up the Project and in consideration for which Mojave was forced to
26 post yet another bond, but instead of completing the work this Court ordered it to complete,
27 Cashman instead chose to appeal that ruling and now the issue is pending before the Nevada
28 Supreme Court.

1 Yet, despite knowing that the reason that the full retention has not been paid and the
2 Project has not been wrapped up is due to its own refusal to complete the work that is the subject
3 of its lien and for which Mojave tendered full payment to CAM, the Plaintiff comes before this
4 Court on an equitable claim seeking some type of damages from the owner for unjust
5 enrichment. The current and prior owners of this Project do not owe Cashman anything. The
6 only portion of Cashman's work that was not tendered related to the work that Cashman has
7 repeatedly admitted that it did not perform, despite being ordered to by this Court. The Moving
8 Defendants have retained no benefit for which they did not pay, and Cashman has no evidence
9 showing otherwise. Thus, the claim for unjust enrichment must be dismissed with prejudice.

10 **II. STATEMENT OF FACT RELEVANT TO THIS ISSUE**

11 At this point, the Court can likely recite the facts of this case as well as any of the parties.
12 Whiting was the general contractor on the City Hall Project, and the city of Las Vegas let them
13 know that minority participation in the Project was an absolute necessity. See Deposition of
14 David Phillips, attached hereto as Exhibit "A" and incorporated by this reference. P. 19, ll. 8-25;
15 P. 20, ll. 1-10. Whiting then entered into an agreement with Mojave to provide certain labor and
16 materials. Consistent with the requirement set forth by the city of Las Vegas, Mojave entered
17 into a subcontract with CAM, a qualifying disadvantaged business owner, to supply labor and
18 materials to the Project. Per the testimony of both the representatives of Cashman, Cashman was
19 given CAM's information prior to Mojave entering into an agreement with CAM, and Cashman
20 determined that it had no reservations about providing materials and some labor to CAM so that
21 CAM could fulfill its obligations to Mojave. See Deposition of Keith Lozeau, attached hereto as
22 Exhibit "B" and incorporated by reference. P. 30, ll. 15-26; P. 31, ll. 1-25; P. 32, ll. 1-20. See
23 also Deposition of Shane Norman, attached hereto as Exhibit "C" and incorporated by
24 reference. P. 24, ll. 20-25; P. 25, ll. 1-2.

25 As the Court is also well aware of at this point, despite the fact that Cashman had **not**
26 supplied all of the labor and materials it had invoiced for (the \$755,893.93 that has been
27 repeatedly referenced in this case), Mojave tendered that full amount to CAM for ultimate
28 payment to Cashman. It was at that point that Cashman, instead of simply signing the check

1 over and then cutting CAM a check for its portion or taking a contemporaneously-dated check
2 from CAM, decided to accept a post-dated check from CAM and wait a few days for payment.
3 As the Court knows, that post-dated check was returned for insufficient funds and Cashman was
4 never able to procure payment from CAM, hence this lawsuit, the lien recorded against the
5 Property and the most recent claim for unjust enrichment against the owner.

6 There is no dispute between the parties that Cashman has no contractual relationship with
7 the current or prior owners of the Project. There is also no dispute that the Moving Defendants
8 are not the owners of the Project; the city of Las Vegas now is. Thus, even taking Plaintiff's
9 allegations as true, the Moving Defendants have retained no benefit as they no longer own the
10 Property.

11 Further, there is no factual dispute that Cashman did not complete its work on the Project.
12 The PLC codes have never been supplied or installed, and that is the primary reason that the
13 Project is still open and the Moving Defendants have not paid out the remainder of the retention.
14 Thus, even if this Court were to determine that an unjust enrichment claim *could* lie against the
15 prior owners of the Property, none of whom are currently retaining *any* benefit for any of the
16 work Plaintiff allegedly provided, the "benefit" that Plaintiff alleges that the Moving Defendants
17 retained without paying for is work that the Plaintiff has repeatedly acknowledged was *not*
18 provided for the Project.

19 Therefore, as a matter of law or fact, the claim for unjust enrichment must be dismissed
20 with prejudice, as discovery has closed and there is no evidence of any benefit retained by the
21 Moving Defendants that was not paid for.

22 III. LEGAL ARGUMENT

23 A. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT PRECLUDING 24 DISMISS OF THE UNJUST ENRICHMENT CLAIM WITH PREJUDICE

25 The discovery that Plaintiff has obtained demonstrated that the prior owners have
26 withheld payment for labor and materials that Cashman did *not* provide, namely the PLC codes.
27 There is no material factual dispute that Cashman has not completed the work on the generators,
28 as evidenced by the admissions of Cashman's key personnel. See Exhibit "B," P. 37, ll. 12-17,

1 Exhibit "C," P. 36, ll. 8-13, and the Order of this Court directing Cashman to supply and install
2 the PLC Codes. The money being withheld, though nothing was actually withheld from
3 Cashman as Mojave tendered the full amount for work and materials even though the work was
4 not complete, is being withheld because there is still work left to be completed on the Project,
5 and specifically the generators. Thus, the argument that the Moving Defendants are withholding
6 money for a benefit conferred by the Plaintiff is refuted completely by the evidence in this case,
7 evidence that is not going to change given that discovery is now over.

8 For purposes of summary judgment defense, now is the time for the Plaintiff to come
9 forward with its evidence that it has conferred a benefit upon the Moving Defendants that has not
10 been paid for. Instead, what the evidence, and the pleadings in this case, clearly demonstrate is
11 that whatever money has been held back by the Moving Defendants has been withheld due to the
12 benefit Cashman did **not** confer on the Project, namely supply and installation of the codes.
13 Thus, Plaintiff has no evidence to support this claim and it should be dismissed with prejudice.

14 **B. ADDITIONALLY, PLAINTIFF HAS SOUGHT ITS PROPER REMEDIES TO**
15 **ATTEMPT TO RECOVER ANY MONEY OWED TO IT**

16 Typically, when a subcontractor or material supplier has not been paid for work
17 performed, that company records a mechanic's lien and sues to enforce that lien. While Moving
18 Defendants submit that Plaintiff's lien claim has no merit, that claim has been asserted against
19 the Project and, if determined to be valid by the Court, provides an avenue for recovery for the
20 Plaintiff.

21 Additionally, Plaintiff has sued Mojave for claims arising out of some conspiracy with
22 CAM to abscond with Plaintiff's money. While these claims have absolutely no merit, and will
23 likely be dismissed with prejudice at some point in the case, Plaintiff has asserted claims against
24 Mojave as well as the other Defendants.

25 Further, Plaintiff has brought claims against at least 3 different surety bonds in order to
26 try to secure payment for its claims. Again, these claims are dependent upon a Court finding that
27 Cashman is actually owed money by any of the Defendants other than CAM, but they do provide
28 a basis for recovery in the event the Court makes such a determination. Plus, the Plaintiff has

1 claims, and a judgment, against the person and entity that actually wronged Cashman, namely
2 Cavalho and CAM. Those are the Defendants in this case that actually took the money
3 belonging to Cashman, and the Plaintiff has actually reduced those claims into a judgment.

4 Finally, for an unjust enrichment claim to lie against a specific defendant, the burden is
5 on the Plaintiff to show that the party actually enjoyed the benefit allegedly provided. In this
6 case, as noted extensively, there was no benefit conferred that was not paid for because Cashman
7 never actually finished the work, thus the reason the Moving Defendants withheld a nominal sum
8 of money and have not closed the Project. Further, the Moving Defendants are not enjoying **any**
9 benefit because they do not own the Property any longer. They paid for the work actually
10 performed, and subsequently transferred the Project and Property to the city of Las Vegas. There
11 is no benefit being enjoyed by the Moving Defendants, and certainly not a benefit that was not
12 paid for.

13 Simply stated, there is no evidence in this case demonstrating that the Moving
14 Defendants have retained any benefit conferred by Cashman for which the Moving Defendants
15 have not tendered consideration. To the extent some nominal amount of money has been held
16 back, that money has been held back due to the fact that Cashman has not completed the work on
17 the generators. Thus, this claim must be dismissed, and it must be dismissed at this stage with
18 prejudice.

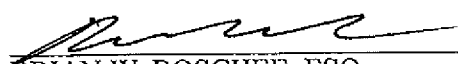
19 CONCLUSION

20 The Plaintiff has sued every party under the sun in an effort to attempt to collect the
21 \$755,893.89 from **somebody**. There is no dispute in this case as to which parties stole these
22 funds from the Plaintiff, and there is also no real dispute that the Plaintiff had ample
23 opportunities to prevent the theft of these funds by CAM and Cavalho. However, in addition to
24 obtaining a judgment against the real villains in this dispute, Cashman has now chosen to drag
25 parties into this lawsuit that have nothing to do with this suit, no knowledge that Cashman ever
26 even supplied equipment to the Project, and that have retained no benefit from anything
27 Cashman supplied that they did not pay for. Cashman had an opportunity to conduct discovery
28 as to potential liability of the Moving Defendants under the flawed theory of unjust enrichment,

1 and now that discovery is closed, no evidence exists support the claim and thus it must be
2 dismissed, along with the Moving Defendants, from this case with prejudice.

3 Dated this 7 day of April, 2013.

4 **COTTON, DRIGGS, WALCH,**
5 **HOLLEY, WOLOSON & THOMPSON**

6
7 
8 **BRIAN W. BOSCH, ESQ.**

9 Nevada Bar No. 7612

10 400 South Fourth Street, Third Floor

11 Las Vegas, Nevada 89101

12 *Attorneys for Defendants West Edna, Ltd., dba*
13 *Mojave Electric, Western Surety Company, The*
14 *Whiting Turner Contracting Company and*
15 *Fidelity and Deposit Company of Maryland,*
16 *Travelers Casualty and Surety Company of*
17 *America, Counterclaimant and Crossclaimant*

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 5 day of April, 2013 and pursuant to NRCP 5(b), I
3 deposited for mailing in the U.S. Mail a true and correct copy of the foregoing QH LAS
4 VEGAS, LLC, PQ LAS VEGAS, LLC LWTIC SUCCESSOR, LLC and FC/LW VEGAS'
5 REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS, OR IN THE
6 ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, postage prepaid and addressed
7 to:

8 Jennifer R. Lloyd, Esq.
9 Marisa L. Maskas, Esq.
10 PEZZILLO LLOYD
11 6725 Via Austi Parkway, Suite 290
12 Las Vegas, Nevada 89119
13 *Attorneys for Plaintiff*

14 Edward Coleman, Esq.
15 COLEMAN LAW ASSOCIATES
16 8275 S. Eastern, Suite 200
17 Las Vegas, Nevada 89123
18 *Attorneys for Defendant Janel Rennie aka Janel Carvalho*

19 Keen L. Ellsworth, Esq.
20 ELLSWORTH & BENNION, CHTD.
21 777 N. Rainbow Blvd., Suite 270
22 Las Vegas, Nevada 89107
23 *Attorneys for Element Iron and Design*

24 C. M. Lillo
25 An employee of Cotton, Driggs, Walch,
26 Holley, Woloson & Thompson
27
28

EXHIBIT A

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

CASHMAN EQUIPMENT COMPANY, a)	
Nevada corporation,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. A642583
)	
CAM CONSULTING, INC., a Nevada)	
corporation; ANGELO CARVALHO, an)	
individual; JANEL RENNIE aka JANEL)	
CARVALHO, an individual; WEST EDNA)	
ASSOCIATES, LTD., dba MOJAVE)	
ELECTRIC, a Nevada corporation;)	
WESTERN SURETY COMPANY, a surety;)	
THE WHITING TURNER CONTRACTING)	
COMPANY, a Maryland corporation;)	
FIDELITY AND DEPOSIT COMPANY OF)	
MARYLAND, a surety; DOES 1 through)	
10, inclusive; and ROE CORPORATIONS))	
1 through 10, inclusive,)	
)	
Defendants.)	
)	
)	
AND ALL RELATED MATTERS.)	
)	

DEPOSITION OF DAVID PHILLIPS
Taken on Thursday, January 10, 2013
At 3:00 p.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 2

1 APPEARANCES:

2 For the Plaintiff:

3 JENNIFER R. LLOYD, ESQ.
Pezzilla Lloyd
4 6725 Via Austi Parkway
Suite 290
5 Las Vegas, Nevada 89119
6

For the Defendants:

7 BRIAN W. BOSCHEE, ESQ.
8 Cotton, Driggs, Walch,
Holley, Woloson & Thompson
9 400 South Fourth Street
Third Floor
10 Las Vegas, Nevada 89101
11

12 I N D E X

13 WITNESS: DAVID PHILLIPS

	Examination	Further Examination
14		
15 By Ms. Lloyd:	3	37
16 By Mr. Boschee:	33	

18 E X H I B I T S

19	Exhibit No.	Description	Page
20			
21	1	Preliminary Notice of Right to Lien	11
22	2	Application and Certification for Payment	26
23	3	Notice of Lien	32
24			
25			

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 3

1 (Prior to the commencement of the deposition, all of
2 the parties present agreed to waive statements by the
3 court reporter, pursuant to Rule 30(b)(4) of NRCP.)
4 Thereupon --

5 DAVID PHILLIPS,
6 was called as a witness, and having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MS. LLOYD:

10 Q. Hi, I am Jennifer Lloyd. I am attorney for
11 Cashman Equipment Company in this matter. We are here
12 for your deposition today. You can go ahead and state
13 your name for the record.

14 A. It's David Ross Phillips, P-H-I-L-L-I-P-S.

15 Q. You have done this before.

16 A. Yes, I have.

17 Q. Have you had your deposition taken before?

18 A. Yes, I have.

19 Q. How many times? A number of times?

20 A. Probably a dozen maybe.

21 Q. When was the most recent?

22 A. It's probably been 16, 17 years.

23 Q. Okay. So let's briefly go over the rules.

24 It's question and answer. We need verbal responses to

25 all of the questions. The court reporter is going to

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 4

1 take down everything that we say, so we need to not
2 speak at the same time. You can take a break at any
3 time you need, just ask. Except for when a question is
4 pending, I would ask that you answer the question prior
5 to taking the break.

6 If any of my questions are unclear or you
7 don't understand what I am asking, just ask me to
8 rephrase it and I will be happy to do that. Your
9 testimony is under oath today. It's the same oath you
10 take in a court of law.

11 Is there any reason why you cannot give your
12 complete and truthful testimony here today?

13 A. No.

14 Q. What did you do to prepare for your
15 deposition today?

16 A. I met with Shimali (phonetic) on Tuesday.

17 Q. Not going into the substance of those
18 communications, did you do anything else to prepare for
19 your deposition today?

20 A. No.

21 Q. What is the highest level of education you
22 have obtained?

23 A. I have a degree in architecture from Texas
24 A&M University.

25 Q. And when did you graduate there?

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 5

1 A. 1974.

2 Q. And do you hold any professional licenses?

3 A. I am a member of the Construction
4 Specifications Institute.

5 Q. And how long have you been a member there?

6 A. I believe since '88.

7 Q. And have you been convicted of any crimes
8 within the last ten years?

9 A. No.

10 Q. I am required to ask that. I hate to ask
11 that question.

12 A. I know.

13 Q. So tell me about where you are currently
14 employed.

15 A. I am currently employed with ForestCity
16 Construction Services, LLC, which is a business unit of
17 ForestCity Enterprises, Inc. based in Cleveland, Ohio.

18 Q. And what's your position with ForestCity
19 Construction Services?

20 A. Vice president.

21 Q. Of a particular division or just vice
22 president?

23 A. Vice president.

24 Q. Okay. What do your job duties entail?

25 A. I manage our development in construction

1 projects in the west.

2 Q. The whole western region?

3 A. West of the Mississippi.

4 Q. Are you based here in Las Vegas?

5 A. Yes, I am.

6 Q. And how long have you been in that position
7 with ForestCity?

8 A. Fifteen years.

9 Q. And prior to that, where were you employed?

10 A. I was employed with Domingo Camaro
11 Architects.

12 Q. What was your position with --

13 A. I was the director of construction services.

14 Q. And have you been based here in Las Vegas for
15 15 years with ForestCity?

16 A. Yes.

17 Q. Okay. So this litigation concerns the
18 new Las Vegas City Hall, as I am sure you are aware. I
19 am going to use the word "project." If I use the word
20 "project," I am going to be referring to that
21 particular project. So can you describe to me
22 ForestCity Construction Services' role on that project.

23 A. We were employed by -- we were employed as
24 the owner's representative on-site by QH Las Vegas,
25 LLC, which was the entity that owned the property and

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 7

1 developed the property.

2 Q. Okay. And then is there also a PQ Las Vegas?

3 A. There is a PQ Las Vegas, LLC.

4 Q. What is that?

5 A. That was the entity established for -- there
6 is a land swap within the development agreement.

7 QH Las Vegas is the property in Symphony Park. And
8 it's the two parcels, Q and H. And so, you know, QH is
9 Queen of Hearts, because that is the property. The
10 Queen of Hearts sat on that property. So that is how
11 they determined the two LLCs.

12 Q. Just coming up with a name?

13 A. Coming up with a name. So PQ was tied to the
14 development agreement with the City. And when we
15 closed we swapped land.

16 Q. Okay. So then what is ForestCity
17 Enterprises' role? Are they like the parent
18 corporation?

19 A. That is the parent corporation.

20 Q. For all the different individual --

21 A. Entities.

22 Q. And is there a ForestCity Commercial
23 Construction Entity?

24 A. In the first quarter of 2012 we merged our
25 two construction divisions together. We had a

1 commercial construction division as well as a
2 residential construction. And in the reorganization of
3 the company, as everybody is doing, we merged. And now
4 we are just Construction Services to deal with
5 everything.

6 Q. So at the time was it ForestCity Commercial
7 Construction that was the owner's rep on this project?

8 A. It was ForestCity Commercial Construction CO,
9 Inc.

10 Q. Were there any other owner affiliated
11 companies that were involved in the projects, or did we
12 cover them?

13 A. The project was developed under ForestCity
14 Commercial Development California.

15 Q. Can you think of any others?

16 A. That is all the entities I believe that was
17 involved.

18 Q. So what was your role on the project?

19 A. I was designated by the City as well as our
20 company as the owner's rep. I assisted in the
21 development of the construction documents with the
22 architects. I was involved in the RP for the
23 construction manager at risk. I was involved in the
24 final selections of contractors, subcontractors, with
25 Whiting Turner. And then I was on site to make sure

1 that the construction was pursuant to construction
2 documents.

3 Q. Did you have an office on site?

4 A. I had a trailer.

5 Q. And were you there on a daily basis or a
6 weekly basis?

7 A. Every day.

8 Q. So when you are there at the project, are you
9 just observing the construction activities, or did you
10 have a particular role you took on at different times?

11 A. No. I was there to just observe and make
12 sure that the project was moving smoothly; it was
13 within schedule, within budget; if there was any
14 questions that occurred that I could answer, or I would
15 take to the engineers to get answered. So I was more
16 of an assistant to make sure that the project ran
17 smoothly.

18 Q. And then did you hold meetings at the project
19 with the general contractor?

20 A. We had one once a month, OAC meetings, what
21 we called OAC, which is the owner, architect,
22 contractor meetings. At that time that would include
23 City staff representatives. A lot of my corporate from
24 Cleveland would come down; the developer from LA would
25 come over. And we would just do an overview of the

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 10

1 project, how the schedule was going, how the costs were
2 going. They would walk the project just to see how
3 everything was going.

4 Q. Okay. Then did you participate in any
5 meetings with the subcontractors?

6 A. No.

7 Q. Did you keep any records on site, concerning
8 preliminary notices or other things that the owner
9 might receive as part of construction?

10 A. I only received things that corporate would
11 somehow send to me. They all went to our corporate
12 office, which they kept, you know, lien notices and
13 things. But they weren't mailed directly to the
14 trailer.

15 Q. Because the record address was the address --

16 A. Public Square and Queen.

17 Q. So who in Cleveland would be responsible for
18 tracking that information?

19 A. I am not quite sure who in our corporate
20 office did that. It went to legal, I believe.

21 Q. How big is ForestCity Enterprises?

22 A. We are a multi-billion-dollar corporation
23 with about 2800 employees across the country.

24 Q. That is pretty big.

25 A. It used to be a lot larger.

David Phillips - 1/10/2013
Cashman Equipment Company, et al. vs. CAM Consulting, Inc., et al.

Page 11

1 Q. Oh, yeah?

2 (Exhibit 1 marked.)

3 BY MS. LLOYD:

4 Q. So have you seen this document?

5 A. I don't recall seeing this one.

6 Q. So it would have been served obviously on the
7 Cleveland address for QH Las Vegas, and then you didn't
8 necessarily get copies of everything.

9 A. No, I didn't.

10 Q. Okay. But do you think that there are
11 records in Cleveland concerning the preliminary notices
12 that were received?

13 A. Well, if it went to Suite 1005, that is
14 ForestCity Construction Services or ForestCity
15 Commercial Construction suite numbers.

16 Q. So they would likely kept records there
17 somewhere concerning all of these preliminary notices
18 or other notices that they might have received?

19 A. Yes.

20 Q. Let's talk a little bit about JMA's role on
21 the project. Can you tell me what JMA was hired to do.

22 A. ForestCity Commercial Development hired JMA
23 as the executive architect, which under the executive
24 architect they were to do all the construction
25 documents. The design architect, which is Helkis

1 Manfredi out of Boston, worked under JMA. And his
2 contract, JMA's contract, included all subtiers of
3 structural engineers, mechanical, electrical engineers.
4 It was all under their control.

5 Q. So did they act as part of their role to be
6 the owner's rep concerning certain items on the
7 project?

8 A. No.

9 Q. What was their role, then, in, I guess,
10 dealing with those subtiers? Like JBA was one of their
11 subtiers?

12 A. Right.

13 Q. So what was their role if they weren't acting
14 as owner's rep for certain approvals, or how did that
15 work?

16 A. I am not sure what you are asking.

17 Q. Like, for instance, if they asked for
18 submittals on certain items to make sure that what was
19 going to be provided by a contractor or subcontractor
20 was to contract, were they the one that would have the
21 ultimate approval or would it go all the way up to,
22 say, you as the owner's rep for approval?

23 A. How did that process work?

24 Q. Yeah, how did that process work?

25 A. Well, the process is that in the construction

1 documents there is specifications that clearly indicate
2 what submittals are required in the project. The
3 subcontractor would prepare those specifications; you
4 know, product data, drawings, whatever was required
5 within the spec. It would first go to Whiting Turner.
6 They are required by our contract to review those
7 documents to make sure that they meet and fall within
8 the range of the contract documents. If they did, they
9 transmitted directly to JMA.

10 JMA would then distribute to whatever party
11 was required, either JBA or the structural engineer.
12 They would review them for the specification, to meet
13 all the specifications. If they did, they would stamp
14 them reviewed. Sometimes they stamped them reviewed as
15 noted, just because there might be some minor errors.
16 It would go back to JMA; JMA would review them. Then
17 if they were approved and stamped by them, then it
18 would go back to Whiting Turner. Then Whiting Turner
19 would in turn give copies back to the subcontractor.

20 Q. And down the line?

21 A. Down the line. The only time I ever got
22 involved on anything would be if the submittal was
23 totally out of range of the specifications.

24 Q. And do you recall any instances like that on
25 this project?

1 A. No.

2 Q. So in the submittal process, then, JMA had
3 the final approval of the submittals that were for the
4 contract work?

5 A. Well, it's a combination. I require that the
6 contractor approve them because he bid the job, and I
7 am holding him responsible for, you know -- I am
8 holding Whiting Turner responsible to build it within
9 the specifications. So from my point of view, Whiting
10 Turner's approval is just as important as the
11 engineer's approval. They are all equal in the realm
12 of responsibility.

13 Q. JMA, Whiting Turner?

14 A. JBA. Everyone is -- from the owner's point
15 of view, they are all held --

16 Q. Equally responsible?

17 A. -- equally responsible.

18 Q. What was your involvement with the selection
19 of subcontractors on the project?

20 A. What the process is that we go through is
21 that we do an RFP. Whiting Turner did an RFP to at
22 least three and mostly five subcontractors for each
23 trade. We would review who they were bidding to in
24 case we had people that we wanted to add; or if we had
25 experiences with contractors we don't want to deal with

1 anymore, then they would bid the project. We would as
2 a team -- and that would include myself and our
3 corporate -- we have an estimating group and we have
4 other people in Cleveland that would review the scope
5 of work, make sure that the scope was complete. We
6 would evaluate the cost.

7 As a public company we do not have to select
8 the lowest bidder, but we do select the lowest
9 qualified bidder on the project. We would normally
10 narrow that down to three. We had -- I mean, we had
11 five to six on each trade because of the timing, and
12 everybody wanted to work on the City Hall project. So
13 we narrow it down to three.

14 We would bring them in and have an interview.
15 We require -- ForestCity requires interviews, which
16 means you bring your project managers, you bring your
17 foremen. You bring anyone in upper level that would be
18 on that site in. And we would have resumes. And we
19 truly -- you know, it's a team effort. So we do a
20 complete review.

21 At that time, we would go back and reconvene.
22 We would say, okay, we like, you know, this person or
23 that person. There was always qualifications of the
24 initial bid, because someone would miss this or we
25 would have questions. Then we would bring them back in

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Case No: 61715 Tracie K. Lindeman
Case No: 65819 Clerk of Supreme Court

District Court Case Nos.: **A642583 &
A653029**

23
24

26

TABLE OF CONTENTS FOR JOINT APPENDIX
- CHRONOLOGICAL & ALPHABETICAL -

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TABLE OF CONTENTS (CHRONOLOGICAL)

Tab No.	Description	Filed	Vol. No.	Page(s)
1	Complaint	06/03/2011	1	JA00001- 9
2	Amended Complaint	07/25/2011	1	JA00010 - 27
3	Affidavits of Service on Angelo Carvalho and Janel Rennie aka Janel Carvalho	09/29/2011	1	JA00028 - 33
4	Second Amended Complaint	09/30/2011	1	JA00034-50
5	Errata to Second Amended Complaint	10/10/2011	1	JA00051-52

1	6	Acceptance of Service	10/10/2011	1	JA00053
2					
3	7	Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/26/2011	1	JA00054-75
4					
5					
6					
7	8	Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/27/2011	1	JA00076-97
8					
9					
10					
11					
12	9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
13					
14					
15					
16					
17	10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
18					
19					
20					
21	11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
22					
23	12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
24					
25					
26	13	Acceptance of Service (Filed in A653029)	01/18/2012	1	JA000119-22
27					
28					

1	14	Affidavit of Service	01/19/2012	1	JA000123-25
2	15	Scheduling Order	01/31/2012	1	JA000126-28
3	16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
4					
5					
6					
7					
8	17	Answer to Complaint (Filed in A653029)	02/02/2012	1	JA000135-44
9					
10					
11	18	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	02/21/2012	1	JA000145-46
12					
13					
14	19	Affidavit of Service	03/01/2012	1	JA000147-49
15					
16	20	Defendants' Motion for Summary Judgment	03/09/2012	1	JA000150-203
17					
18					
19					
20	21	Cashman's Opposition to Motion for Summary Judgment	04/23/2012	1-2	JA000204-61
21					
22					
23					
24	22	Affidavit of Service	04/30/2012	2	JA000262-65
25					
26	23	Defendants' Reply to Cashman's Opposition to	05/02/2012	2	JA000266-75
27					
28					

		Motion for Summary Judgment		
24	Third Amended Complaint	05/24/2012	2	JA000276-94
25	Notice of Entry of Order Granting Cashman's Motion to Amend Complaint	05/25/2012	2	JA000295-99
26	Notice of Entry of Order Denying Defendants' Motion for Summary Judgment without Prejudice	05/25/2012	2	JA000300-04
27	Defendants' Answer to Third Amended Complaint, Counterclaim, and Cross Claim	06/28/2012	2	JA000305-31
28	Counterclaimants' Motion for Mandatory Injunction to Procure Codes on OST or in the Alternative Application for Writ of Possession	07/18/2012	2	JA000332-58

1	29	Cashman's Answer to Counterclaim	07/20/2012	2	JA000359-63
2					
3	30	Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/26/2012	2	JA000364-97
4					
5					
6					
7	31	Reply to Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/31/2012	2	JA000398-404
8					
9					
10					
11					
12	32	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	08/06/2012	2	JA000405-06
13					
14					
15					
16	33	Notice of Posting Security Bond	08/09/2012	2	JA000407-13
17					
18	34	Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/10/2012	2	JA000414-16
19					
20					
21					
22					
23	35	Notice of Entry of Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/13/2012	2	JA000417-22
24					
25					
26					
27					
28					

1	36	Transcript of Proceedings for August 3, 2012	08/22/2012	2	JA000423-38
2					
3					
4	37	Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	08/29/2012	2	JA000439-66
5					
6					
7					
8					
9					
10					
11					
12					
13					
14	38	Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	08/30/2012	2	JA000467-98
15					
16					
17					
18					
19	39	Opposition to Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/07/2012	2-3	JA000499-609
20					
21					
22					
23					
24					
25					
26					
27					
28					

1	40	Notice of Appeal	09/13/2012	3	JA00610-19
2	41	Defendants' Motion to Expunge or Reduce Mechanic's Lien	09/17/2012	3	JA000620-700
3					
4					
5					
6	42	Case Appeal Statement	09/18/2012	3	JA000701-03
7					
8	43	Cashman's Opposition to Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	09/19/2012	3-4	JA000704-853
9					
10					
11					
12					
13					
14					
15	44	Notice of Posting Cost Bond	09/19/2012	4	JA000854-57
16					
17	45	Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/28/2012	4	JA000858-84
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					

1	46	Defendants' Opposition to Cashman's Motion to Stay or Suspend Order Granting in Part	10/01/2012	4	JA000885-89
2		Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively			
3		Motion for Clarification and Request for OST			
4					
5					
6					
7					
8					
9					
10					
11					
12	47	Amended Affidavit of Service	10/17/2012	4	JA000890
13					
14	48	Cashman's Reply to its Motion to Stay or Suspend Order Granting in Part	10/22/2012	4	JA000891-904
15		Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively			
16		Motion for Clarification and Request for OST			
17					
18					
19					
20					
21					
22					
23					
24					
25	49	Cashman's Opposition to Defendants' Motion to Expunge or Reduce Mechanic's Lien	10/25/2012	4-5	JA000905-1039
26					
27					
28					

1	50	Motion to Amend Complaint	10/31/2012	5	JA0001040-76
2					
3	51	Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001077-78
4					
5					
6					
7					
8					
9	52	Notice of Entry of Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001079-83
10					
11					
12					
13					
14					
15					
16	53	Affidavit of Brian Bugni in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001084-85
17					
18					
19					
20					
21	54	Affidavit of Nancy Briseno-Rivero in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001086-87
22					
23					
24					
25					
26					
27					
28					

1	55	Cashman's Reply in support of Countermotion for Summary Judgment	11/02/2012	5	JA0001088- 1101
2					
3					
4					
5	56	Reply to Cashman's Opposition to Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001102-11
6					
7					
8					
9					
10	57	Notice of Posting Bond	11/07/2012	5	JA0001112-16
11					
12	58	Opposition to Motion to Amend Complaint	11/19/2012	5	JA0001117-26
13					
14					
15	59	Reply in Support of Motion to Amend Complaint	12/17/2012	5	JA0001127-48
16					
17					
18	60	Notice of Entry of Order Granting Motion to Amend Complaint	01/09/2013	5	JA0001149-53
19					
20					
21					
22	61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
23					
24	62	Transcript of Proceedings for November 9, 2012	01/11/2013	5	JA0001173- 1203
25					
26					
27	63	Certificate of Service for Fourth Amended	01/17/2013	5	JA0001204-05
28					

	Complaint			
64	Acceptance of Services for LWTIC Successor, LLC, FC/LW Vegas, PQ Las Vegas, LLC, and QH Las Vegas, LLC	01/22/2013	5	JA0001206-13
65	Answer to Fourth Amended Complaint, Counterclaim and Crossclaim	02/07/2013	5	JA0001214-40
66	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	02/07/2013	5-6	JA0001241-1355
67	Cashman's Motion for Summary Judgment on the Payment Bond Claim	02/25/2013	7	JA0001356-1520
68	Cashman's Opposition to QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC,	03/06/2013	7	JA0001521-1664

	and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment			
69	Defendants’ Opposition to Cashman’s Motion for Summary Judgment on the Payment Bond Claim	03/15/2013	7-8	JA0001665- 1782
70	Cashman’s Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic’s Lien Claims	03/18/2013	8	JA0001783- 1893
71	Defendants’ Supplement to Motion to Expunge Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims	04/02/2012	8-9	JA0001894- 2065
72	Cashman’s Reply to its Motion for Summary Judgment on the Payment Bond	04/05/2013	9	JA0002066-94

	Claim			
73	Supplement to Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	04/05/2013	9	JA0002095-2101
74	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Reply to their Motion to Dismiss, or in the alternative, Motion for Summary Judgment	04/05/2013	9-10	JA0002102-2387
75	Order Rescheduling Pretrial/Calendar Call	04/17/2013	10	JA0002388-89
76	Notice of Entry of Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims and Cashman's Countermotion for Summary	05/06/2013	10	JA0002390-95

	Judgment			
77	Notice of Entry of Order Denying Cashman's Motion for Summary Judgment on Defendants' Payment Bond Claim	05/06/2013	10	JA0002396-2401
78	Notice of Entry of Order Denying Mojave's Motion to Expunge or Reduce Mechanic's Lien	05/06/2013	10	JA0002402-07
79	Notice of Entry of Order Denying QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	05/06/2013	10	JA0002408-13
80	Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	05/31/2013	10	JA0002414-40
81	QH Las Vegas, PQ Las Vegas, LWITC Successor and	06/11/2013	10	JA0002441-61

	FC/LW Vegas' Answer to Fourth Amended Complaint			
82	Opposition to Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	06/20/2013	10	JA0002462-74
83	Cashman's Reply in Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	07/02/2013	10	JA0002475-87
84	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	09/06/2013	10	JA0002488-90
85	Cashman's Response to Mojave's Counterclaim (Filed in A653029)	09/12/2013	10	JA0002491-95
86	Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/20/2013	10	JA0002496-97

1	87	Notice of Entry of Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/24/2013	10- 11	JA0002498- 2502
2	88	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	10/1/2013	11	JA0002503-05
3	89	Defendants' Trial Brief	01/16/2014	11	JA0002506-33
4	90	Plaintiff's Trial Brief	01/16/2014	11	JA0002534-59
5	91	Joint Pretrial Memorandum	01/16/2014	11	JA0002560-79
6	92	Joint Trial Exhibit Index	01/21/2014	11	JA0002580-82
7	92.J01 to 92.J65	Joint Trial Exhibits	01/21/2014	11- 27	JA0002583- 6552
8	93	Non-Jury Trial Transcripts (for January 21, 2014 through January 24, 2014)	01/31/2014	27- 29	JA0006553- 7098
9	94	Motion for Relief Pursuant to NRCP 60(b) and Motion	03/20/2014	29	JA0007099- 7112

	for Attorneys' Fees and Costs Pursuant to NRS Ch. 108			
95	Appendix to Exhibits to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	03/20/2014	29-30	JA0007113-7359
96	Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/15/2014	30-31	JA0007360-7693
97	Reply to Cashman's Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/23/2014	31	JA0007694-7707
98	Cashman's Reply in Support of Motion for Attorneys' Fees	05/05/2014	31	JA0007708-13
99	Findings of Fact and Conclusions of Law	05/05/2014	31	JA0007714-29

1	100	Notice of Entry of Findings of Fact and Conclusions of Law	05/06/2014	31	JA0007730-47
2					
3					
4	101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
5					
6					
7	102	Notice of Appeal	05/30/2014	32	JA0007751-72
8					
9	103	Case Appeal Statement	06/05/2014	32	JA0007773-76
10					
11	104	Decision and Order	08/04/2014	32	JA0007777-81
12					
13	105	Notice of Entry of Decision and Order	08/13/2014	32	JA0007782-88
14					
15	106	Judgment	08/18/2014	32	JA0007789-91
16					
17	107	Notice of Entry of Judgment	08/21/2014	32	JA0007792-96
18					
19	108	Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007797-98
20					
21					
22	109	Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007799-7804
23					
24					
25					
26					
27					
28					

1	110	Errata to Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007804-12
2					
3					
4					
5					
6	111	Notice of Appeal	09/02/2014	32	JA0007813-29
7					
8	112	Case Appeal Statement	09/11/2014	32	JA0007830-33
9					
10	113	Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/08/2015	32	JA0007834-36
11					
12					
13					
14					
15					
16					
17					
18					
19	114	Notice of Entry of Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/11/2015	32	JA0007837-42
20					
21					
22					
23					
24					
25					
26					
27					
28					

TABLE OF CONTENTS (ALPHABETICAL)

Tab No.	Description	Filed	Vol. No.	Page(s)
6	Acceptance of Service	10/10/2011	1	JA00053
13	Acceptance of Service (Filed in A653029)	01/18/2012	1	JA000119-22
64	Acceptance of Services for LWTIC Successor, LLC, FC/LW Vegas, PQ Las Vegas, LLC, and QH Las Vegas, LLC	01/22/2013	5	JA0001206-13
53	Affidavit of Brian Bugni in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001084-85
54	Affidavit of Nancy Briseno-Rivero in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001086-87
14	Affidavit of Service	01/19/2012	1	JA000123-25

1	19	Affidavit of Service	03/01/2012	1	JA000147-49
2					
3	22	Affidavit of Service	04/30/2012	2	JA000262-65
4					
5	3	Affidavits of Service on Angelo Carvalho and Janel Rennie aka Janel Carvalho	09/29/2011	1	JA00028 - 33
6					
7					
8					
9	47	Amended Affidavit of Service	10/17/2012	4	JA000890
10					
11	8	Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/27/2011	1	JA00076-97
12					
13					
14					
15					
16	2	Amended Complaint	07/25/2011	1	JA00010 - 27
17					
18					
19	17	Answer to Complaint (Filed in A653029)	02/02/2012	1	JA000135-44
20					
21	65	Answer to Fourth Amended Complaint, Counterclaim and Crossclaim	02/07/2013	5	JA0001214-40
22					
23					
24					
25					
26	7	Answer to Second Amended Complaint, Counterclaim and	10/26/2011	1	JA00054-75
27					
28					

		Crossclaim		
95	Appendix to Exhibits to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	03/20/2014	29-30	JA0007113-7359
42	Case Appeal Statement	09/18/2012	3	JA000701-03
103	Case Appeal Statement	06/05/2014	32	JA0007773-76
112	Case Appeal Statement	09/11/2014	32	JA0007830-33
29	Cashman's Answer to Counterclaim	07/20/2012	2	JA000359-63
80	Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	05/31/2013	10	JA0002414-40
37	Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or	08/29/2012	2	JA000439-66

	Alternatively Motion for Clarification and Request for OST			
67	Cashman's Motion for Summary Judgment on the Payment Bond Claim	02/25/2013	7	JA0001356- 1520
45	Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/28/2012	4	JA000858-84
43	Cashman's Opposition to Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	09/19/2012	3-4	JA000704-853
49	Cashman's Opposition to Defendants'	10/25/2012	4-5	JA000905-1039

		Motion to Expunge or Reduce Mechanic's Lien		
30	Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/26/2012	2	JA000364-97
21	Cashman's Opposition to Motion for Summary Judgment	04/23/2012	1-2	JA000204-61
68	Cashman's Opposition to QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	03/06/2013	7	JA0001521- 1664
83	Cashman's Reply in Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	07/02/2013	10	JA0002475-87
55	Cashman's Reply in support of Countermotion for Summary	11/02/2012	5	JA0001088- 1101

	Judgment			
98	Cashman's Reply in Support of Motion for Attorneys' Fees	05/05/2014	31	JA0007708-13
72	Cashman's Reply to its Motion for Summary Judgment on the Payment Bond Claim	04/05/2013	9	JA0002066-94
48	Cashman's Reply to its Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	10/22/2012	4	JA000891-904
10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
85	Cashman's Response to Mojave's Counterclaim (Filed in A653029)	09/12/2013	10	JA0002491-95

70	Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	03/18/2013	8	JA0001783-1893
63	Certificate of Service for Fourth Amended Complaint	01/17/2013	5	JA0001204-05
1	Complaint	06/03/2011	1	JA00001- 9
11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
28	Counterclaimants' Motion for Mandatory Injunction to Procure Codes on OST or in the Alternative Application for Writ of Possession	07/18/2012	2	JA000332-58
104	Decision and Order	08/04/2014	32	JA0007777-81
27	Defendants' Answer to Third Amended Complaint,	06/28/2012	2	JA000305-31

		Counterclaim, and Cross Claim		
20	Defendants' Motion for Summary Judgment	03/09/2012	1	JA000150-203
38	Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	08/30/2012	2	JA000467-98
41	Defendants' Motion to Expunge or Reduce Mechanic's Lien	09/17/2012	3	JA000620-700
69	Defendants' Opposition to Cashman's Motion for Summary Judgment on the Payment Bond Claim	03/15/2013	7-8	JA0001665- 1782
46	Defendants' Opposition to Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively	10/01/2012	4	JA000885-89

	Motion for Clarification and Request for OST			
23	Defendants' Reply to Cashman's Opposition to Motion for Summary Judgment	05/02/2012	2	JA000266-75
71	Defendants' Supplement to Motion to Expunge Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims	04/02/2012	8-9	JA0001894-2065
89	Defendants' Trial Brief	01/16/2014	11	JA0002506-33
9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
110	Errata to Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007804-12

1	5	Errata to Second Amended Complaint	10/10/2011	1	JA00051-52
2					
3					
4	99	Findings of Fact and Conclusions of Law	05/05/2014	31	JA0007714-29
5					
6					
7	34	Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/10/2012	2	JA000414-16
8					
9					
10					
11					
12	61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
13					
14	91	Joint Pretrial Memorandum	01/16/2014	11	JA0002560-79
15					
16	92	Joint Trial Exhibit Index	01/21/2014	11	JA0002580-82
17					
18	92.J01	Joint Trial Exhibits	01/21/2014	11-27	JA0002583-6552
19	to				
20	92.J65				
21					
22					
23	106	Judgment	08/18/2014	32	JA0007789-91
24					
25	101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
26					
27	94	Motion for Relief Pursuant to NRCP	03/20/2014	29	JA0007099-7112
28					

	60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108			
50	Motion to Amend Complaint	10/31/2012	5	JA0001040-76
12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
93	Non-Jury Trial Transcripts (for January 21, 2014 through January 24, 2014)	01/31/2014	27- 29	JA0006553- 7098
40	Notice of Appeal	09/13/2012	3	JA00610-19
102	Notice of Appeal	05/30/2014	32	JA0007751-72
111	Notice of Appeal	09/02/2014	32	JA0007813-29
105	Notice of Entry of Decision and Order	08/13/2014	32	JA0007782-88
76	Notice of Entry of Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims and Cashman's Countermotion for	05/06/2013	10	JA0002390-95

	Summary Judgment			
100	Notice of Entry of Findings of Fact and Conclusions of Law	05/06/2014	31	JA0007730-47
35	Notice of Entry of Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/13/2012	2	JA000417-22
107	Notice of Entry of Judgment	08/21/2014	32	JA0007792-96
77	Notice of Entry of Order Denying Cashman's Motion for Summary Judgment on Defendants' Payment Bond Claim	05/06/2013	10	JA0002396-2401
109	Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007799-7804
26	Notice of Entry of Order Denying Defendants'	05/25/2012	2	JA000300-04

	Motion for Summary Judgment without Prejudice			
78	Notice of Entry of Order Denying Mojave's Motion to Expunge or Reduce Mechanic's Lien	05/06/2013	10	JA0002402-07
79	Notice of Entry of Order Denying QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	05/06/2013	10	JA0002408-13
87	Notice of Entry of Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/24/2013	10-11	JA0002498-2502
25	Notice of Entry of Order Granting Cashman's Motion to Amend Complaint	05/25/2012	2	JA000295-99

1	52	Notice of Entry of Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001079-83
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8	60	Notice of Entry of Order Granting Motion to Amend Complaint	01/09/2013	5	JA0001149-53
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11	16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
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16	114	Notice of Entry of Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/11/2015	32	JA0007837-42
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26	57	Notice of Posting Bond	11/07/2012	5	JA0001112-16
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1	44	Notice of Posting Cost Bond	09/19/2012	4	JA000854-57
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3	33	Notice of Posting Security Bond	08/09/2012	2	JA000407-13
4					
5	82	Opposition to Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	06/20/2013	10	JA0002462-74
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10	39	Opposition to Cashman's Motion for Reconsideration of Order Granting in Part Counter- claimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/07/2012	2-3	JA000499-609
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20	96	Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/15/2014	30- 31	JA0007360- 7693
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26	58	Opposition to Motion to Amend Complaint	11/19/2012	5	JA0001117-26
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108	Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007797-98
86	Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/20/2013	10	JA0002496-97
51	Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001077-78
75	Order Rescheduling Pretrial/Calendar Call	04/17/2013	10	JA0002388-89
18	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	02/21/2012	1	JA000145-46
32	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	08/06/2012	2	JA000405-06

1	84	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	09/06/2013	10	JA0002488-90
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4	88	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	10/1/2013	11	JA0002503-05
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8	90	Plaintiff's Trial Brief	01/16/2014	11	JA0002534-59
9					
10	66	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	02/07/2013	5-6	JA0001241- 1355
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18	74	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Reply to their Motion to Dismiss, or in the alternative, Motion for Summary Judgment	04/05/2013	9- 10	JA0002102- 2387
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26	81	QH Las Vegas, PQ Las Vegas, LWITC Successor and FC/LW Vegas'	06/11/2013	10	JA0002441-61
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	Answer to Fourth Amended Complaint			
59	Reply in Support of Motion to Amend Complaint	12/17/2012	5	JA0001127-48
31	Reply to Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/31/2012	2	JA000398-404
97	Reply to Cashman's Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/23/2014	31	JA0007694-7707
56	Reply to Cashman's Opposition to Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001102-11
15	Scheduling Order	01/31/2012	1	JA000126-28
4	Second Amended Complaint	09/30/2011	1	JA00034-50
113	Stipulation and Order for	05/08/2015	32	JA0007834-36

	Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice			
73	Supplement to Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	04/05/2013	9	JA0002095-2101
24	Third Amended Complaint	05/24/2012	2	JA000276-94
36	Transcript of Proceedings for August 3, 2012	08/22/2012	2	JA000423-38
62	Transcript of Proceedings for November 9, 2012	01/11/2013	5	JA0001173-1203