

1 A It is bonding around the mechanics lien that
2 Cashman put on the project.

3 Q And so can you explain to me your understanding
4 of -- of that, what that means?

5 A My understanding is that the bonding agent will
6 deal with the issue in lieu of Whiting Turner. So they're --
7 they're releasing us of those issues.

8 Q So really it releases the lien from the property
9 and the lien -- Cashman's lien then attaches to this bond?

10 A Right.

11 Q Instead of being attached to the project?

12 A Yes.

13 Q Okay. And if we go back to Exhibit 40, on page
14 5, Whiting Turner's contract in Article 8 here, it
15 specifically provides that Mojave is to hold all moneys paid
16 by a contractor in trust for the payment of lower tier
17 subcontractors and suppliers, correct?

18 A I'm sorry? Where are you reading?

19 Q Article 8 --

20 A Mm-hmm.

21 Q -- on page 5 of the exhibit. Under, Releases of
22 claims and waiver of liens. Do you see it there?

23 A Yeah.

24 Q So it specifically states, Subcontractor shall
25 hold all moneys paid by contractor, contractor being Whiting

1 Turner, in trust for the payment of lower tier subcontractors
2 and suppliers.

3 A Yes.

4 Q Okay. So Whiting Turner expected Mojave to
5 ensure that subcontractors and suppliers supplying under it
6 were going to get paid with the moneys that Whiting Turner was
7 paying?

8 A Yes.

9 Q And then if we turn to page 7 of this contract
10 of the exhibit?

11 A Okay.

12 Q Whiting Turner required Mojave to obtain a
13 payment and performance bond on this project?

14 A Yes.

15 Q And did Whiting Turner require Mojave to obtain
16 that?

17 A Yes.

18 Q Okay. Why did Whiting Turner require that
19 payment bond?

20 A Typically any of our projects, something over
21 about 500,000 is required to have a bond.

22 Q And is that just to provide --

23 A That's just --

24 Q -- additional security for -- that your
25 subcontractor will pay its subcontractors and suppliers --

1 A Yes.

2 Q — supplying under it?

3 A Yes.

4 Q And was Mojave required to use a certain amount
5 of disadvantaged business enterprises on the project?

6 A We asked everybody to engage as many diversity
7 subcontractors as possible because it was a -- it was a
8 requirement to get diversity participation.

9 Q So was there a certain number they had to get
10 to, or did you just require a good-faith effort?

11 A We required a good faith effort.

12 Q Okay. And is there anywhere in this contract
13 where Whiting Turner prohibits Mojave from issuing joint
14 checks to its subcontractors or suppliers?

15 A No.

16 Q And did Whiting Turner prohibit Mojave from
17 issuing joint checks to subcontractors or suppliers?

18 A We didn't -- we didn't prohibit anybody -- I --
19 nobody asked.

20 Q Would you have prohibited Mojave from issuing a
21 joint check to its --

22 A I -- I would have had to ask either Forest City
23 -- and I'm sure they would have asked the City.

24 Q So do you recall having your deposition taken in
25 this matter?

1 A Yes.

2 Q And in your deposition you testified that
3 Whiting Turner would not prohibit Mojave from issuing a joint
4 check ---

5 A Right.

6 Q -- to its subcontractors or suppliers in this
7 matter. So are you changing your testimony here today on that
8 issue?

9 A I guess I'm clarifying it.

10 Q Okay. So to the best of your knowledge, would
11 Whiting Turner have prohibited --

12 A No.

13 Q -- Mojave from issuing a joint check?

14 A No.

15 Q Okay. And to the best of your knowledge, a
16 joint check would not invalidate or remove credit for the use
17 of a disadvantaged business on its project?

18 A Repeat the question, please.

19 Q To the best of your knowledge, if Mojave had
20 issued payment to a DBE with a joint check, would that have
21 invalidated the credit you were giving Mojave for using the
22 DBE?

23 A No.

24 Q So in this instance, Mojave could have issued a
25 joint check to CAM and Cashman for these materials and that --

1 well, Whiting Turner wouldn't have objected to that?

2 A As I previously said, I wouldn't have
3 prohibited, but had they asked I probably would have had to go
4 up the chain to make sure if they were allowed to or not.

5 Q Okay. Let's turn to the Joint Exhibit 49. And
6 -- do you have it there?

7 A No.

8 MS. LLOYD-ROBINSON: May I approach, Your Honor?
9 Thanks. Oh, yeah, No. 2, I think.

10 THE WITNESS: 49?

11 BY MS. LLOYD:

12 Q 49. Are you familiar with this document?

13 A Yeah.

14 Q And this is a copy of the payment bond that
15 Mojave obtained as a requirement of its contract to Whiting
16 Turner for this project?

17 A That's correct.

18 Q Okay. The principal on this bond is Mojave.
19 Western Surety Company is the surety, correct?

20 A Yes.

21 Q And the bond states that the principal, Mojave,
22 and the surety are bound into Whiting Turner in the amount of
23 the contract we just went over, the 10,969,669?

24 A Yes.

25 Q Okay. The bond goes on to state that the --

1 Mojave has entered into agreement with Whiting Turner,
2 identifies the contract number, 12600-26A here, for the City
3 of New Las Vegas, City Hall, and incorporates that contract
4 into this bond, correct?

5 A Yes.

6 Q Okay. So this bond is specifically for the
7 contract we just went over?

8 A Yes.

9 Q Okay. And as defined in here, the term
10 "contract" refers to that contract?

11 A Yes.

12 Q Okay. The bond states that for that contract,
13 This obligation remains in full force and effect unless Mojave
14 makes payment to all persons supplying labor, material, rental
15 equipment, supplies, or services in the performance of the
16 said contract and any and all modifications of said contract,
17 correct?

18 A Yes.

19 Q And this bond specifically states that the bond
20 is for the benefit of all persons supplying labor, materials,
21 rental equipment, supplies, or services in the performance of
22 the said contract, and that such person may maintain
23 independent actions on the bond, correct?

24 A Yeah. Where -- I'm sorry, where did you read
25 that? The same page?

1 Q That is on page 2.

2 A Oh.

3 Q That first whole paragraph there.

4 A Yes.

5 Q And you testified previously here that Cashman
6 supplied materials in the performance of Mojave's contract on
7 this project?

8 A Yes.

9 Q So Cashman is a person covered by this bond,
10 correct?

11 A I would assume.

12 Q And we're here today because Cashman did not
13 receive payment for those materials?

14 A Yes.

15 Q And this bond specifically requires Mojave to
16 ensure payment to Cashman. And if it doesn't, then Cashman is
17 a claimant on the bond, correct?

18 A Yes.

19 Q Let's talk a little bit more about the project
20 that -- the project is complete?

21 A Yes.

22 Q And has its permit certificate of occupancy?

23 A Yes.

24 Q And Whiting Turner has paid Mojave in full on
25 this contract we just went over?

1 A Yes.

2 Q So has Whiting Turner been paid in full on this
3 project?

4 A No.

5 Q The owner is holding funds from Whiting Turner
6 related to the generator equipment?

7 A No. It's actually in escrow.

8 Q So --

9 A So the owners released the money and it's in
10 escrow. And as soon as the PLC codes are received, we
11 exchange that for our own check.

12 Q Okay. But the owner is preventing release of
13 the funds to Whiting Turner?

14 A No, they're not.

15 Q When was the money deposited into escrow?

16 A It was --

17 Q After your deposition in this matter, I'm
18 assuming?

19 A I'm sorry?

20 Q After your deposition --

21 A Yeah, I want to --

22 Q -- in this matter?

23 A -- say it was late last year.

24 Q Did you specify in your deposition that the
25 owner was withholding retention and the costs related to the

1 generator work?

2 A Right.

3 Q So is that what's been deposited into the escrow
4 account?

5 A Yes.

6 Q And is there an escrow agreement related to --

7 A Yes.

8 Q -- that? And was that produced in this matter?

9 A I'm sorry?

10 Q Was that produced in this litigation -- the
11 escrow agreement?

12 A No.

13 Q So just to clarify: In the escrow account is
14 your retention -- is Whiting Turner's retention and the entire
15 costs related to the generator equipment?

16 A 86,000 is what's in the escrow amount.

17 Q That's all that's being held by escrow is
18 86,000?

19 A Yes.

20 Q That's your retention?

21 A No, it -- it -- as the project moves on and as
22 we complete stuff retention just gets released. So at the end
23 of the day there was only 86,000 left to pay Whiting Turner,
24 so that's what retention was left.

25 Q Okay. And I'm assuming Whiting Turner tracks

1 statutory releases on its projects?

2 A I'm sorry?

3 Q Did Whiting Turner track statutory releases on
4 this project?

5 A Yes.

6 Q Unconditionals and conditionals from subs and
7 suppliers?

8 A Yes.

9 Q So Whiting Turner would know to request those
10 releases based upon receiving preliminary notices from
11 subcontractors and suppliers on the project?

12 A Yes.

13 Q Okay. So let's look at Joint Exhibit 62, which
14 we're going to need another binder.

15 MS. LLOYD-ROBINSON: May I approach?

16 THE COURT: Yeah, you can always do that.

17 BY MS. LLOYD:

18 Q Do you have --

19 A I do.

20 Q -- oh, okay. Are you at Joint Exhibit 62?

21 A Yes -- oh, 62? Yeah.

22 Q And do you recognize this document?

23 A Yes.

24 Q And this is a preliminary notice served by
25 Cashman on this project?

1 A Yes.

2 Q And it appears to be stamped, Received, by
3 Whiting Turner on the --

4 A Yes.

5 Q -- top? It looks like it was received on
6 December 8, 2010?

7 A Yes.

8 Q And it was prepared December 7, 2010, by Cashman
9 Equipment? And it states that Cashman is supplying equipment
10 for the improvement of Las Vegas City Hall and identifies
11 Mojave, Whiting Turner, and OH Las Vegas as the owner?

12 A Yes.

13 Q Okay. So when -- when Whiting Turner receives
14 this notice, Whiting Turner then knows to request for leases
15 from Cashman Equipment -- or from Mojave to obtain from
16 Cashman when it's releasing payments?

17 A Yes.

18 Q Okay. And Whiting Turner did request releases
19 from Cashman Equipment from Mojave in the course of making
20 payments to Mojave on this project, correct?

21 A To the best of my knowledge, yes.

22 Q Okay. Because at the end of the day when
23 Cashman's claim arose on this project, you had a release --

24 A Yes.

25 Q -- from Cashman? All right. And are you aware

1 -- did the owner forward preliminary notices that it received
2 in its offices in Cleveland to Whiting Turner on this project?

3 A I don't know about preliminary notices that they
4 -- I think they did.

5 Q And why would the owner have been forwarding
6 those notices to Whiting Turner?

7 A To make sure that we knew who was supplying
8 material.

9 Q Because was the owner relying upon you to check
10 the releases --

11 A Yes.

12 Q -- for the project?

13 So let's go to Joint Exhibit 61. And do you
14 recognize this document? It's actually a copy of the same
15 thing that we just went over, stamped by -- received by
16 Whiting Turner, except this received stamp is from another
17 entity. Do you see that there in the middle?

18 A Yes.

19 Q Do you recognize whose received stamp that is?

20 A No, I -- I can't read it on -- it's very light.

21 Q Okay. As part of this litigation Whiting
22 Turner disclosed a number of documents related to its job file
23 on this project from Mojave, correct?

24 A Yes.

25 Q And you were responsible for preparing that

1 disclosure?

2 A Yes.

3 Q Okay. I'm going to represent to you that if you
4 see on the bottom there that Whiting Turner Bates No.?

5 A Mm-hmm.

6 Q That's -- was prepared by your counsel in
7 disclosing these documents. So this document came from
8 Whiting Turner's job file.

9 A Okay.

10 Q So if you can see in the middle, it looks like
11 -- what is legible there is initials that appear to say ML.
12 Does that comport with what you see?

13 A Yeah.

14 Q Okay. Then let's go to Joint Exhibit 63. Do
15 you recognize this document?

16 A Yes.

17 Q This is another preliminary notice served by
18 Cashman in this matter. This also has a received stamp there,
19 do you recognize that received stamp?

20 A Yeah, Forest City Construction.

21 Q And those initials are also noted?

22 A Yes.

23 Q So this one is stamped received by Forest City
24 and presumably forwarded to Whiting Turner for tracking. So
25 if we want to look back at the release we were just looking

1 at, J-61, does that help refresh your recollection as to whose
2 received stamp that is in the middle of that preliminary
3 notice?

4 A Yes, Forest City.

5 Q Forest City? So this notice was received by the
6 owner?

7 A Yews.

8 Q And stamped received and forwarded to Whiting
9 Turner for tracking?

10 A Yes.

11 Q Okay. And then if we want to look at Joint
12 Exhibit 64. Your guys's document?

13 A Yes.

14 Q It's another preliminary notice served by
15 Cashman on this project. This is also stamped received by
16 Forest City. It was served April 28 and notes the initials ML
17 and was also forwarded to Whiting Turner for tracking?

18 A Yes.

19 Q Okay. Let's go to Joint Exhibit 47.

20 A Okay.

21 Q Do you recognize this document?

22 A Yes.

23 Q This is a letter from -- from Whiting Turner to
24 Mojave requesting releases for this project, correct?

25 A I'm sorry. What was your question? I was

1 reading.

2 Q That's okay. This is a letter from Whiting
3 Turner to Mojave requesting releases for Mojave's
4 subcontractors and suppliers or those supplying under it?

5 A No, because it says, Whiting Turner is in
6 position of signed unconditional releases.

7 Q Are we looking at the same exhibit? Joint
8 Exhibit 47? Oh, I'm sorry, 16 --- page 16. I apologize.

9 A Oh.

10 Q My --- my mistake.

11 A Same exhibit?

12 Q Same exhibit.

13 A Okay.

14 Q I want you to take a look at this document.

15 A Yes.

16 Q So this is a letter from Whiting Turner to
17 Mojave dated March 4, in which Whiting Turner is requesting
18 Mojave supply releases from suppliers and subcontractors
19 supplying to Mojave on this project, correct?

20 A Yes.

21 Q And Cashman is included in this letter?

22 A Yes.

23 Q So Whiting Turner was requesting releases from
24 Mojave for Cashman and this for a period prior to December 31,
25 2010? You know -- at the top.

1 A Right. Yes.

2 Q So Whiting Turner was aware that Cashman was
3 supplying equipment to the project --

4 A Yes.

5 Q -- and knew that they needed to get releases
6 from Mojave for Cashman's work there?

7 A Yes.

8 MS. LLOYD-ROBINSON: I have nothing further at this
9 time.

10 THE COURT: All right, Ms. Lloyd.

11 Boschee?

12 CROSS-EXAMINATION

13 BY MR. BOSCHEE:

14 Q Keep that document in front of you. The lien
15 releases -- the prelien releases we just looked at -- the
16 exhibits -- none of those denoted that you needed a lien
17 release from CAM Consulting, did they?

18 A No.

19 Q Okay. The lien releases that you were looking
20 for were going to come from Mojave for Cashman Equipment,
21 correct -- is I think what you just said? You were looking
22 for -- for unconditional lien releases from Mojave for the
23 stuff that Cashman was supplying, correct?

24 A Yeah.

25 Q Okay. And there was no mention in any of those

1 prelien notices -- there was nothing that was -- that
2 triggered in your mind the need to get a prelien or any kind
3 of a lien release from CAM Consulting, was there?

4 A No.

5 Q Okay. If you look at this letter to Mojave,
6 [Inaudible] our files need the following information from your
7 company, if you go down from your subtier suppliers vendors,
8 cash and equipment is there. If you go down a little further,
9 QED Inc. is on there as well, and it says, QED Inc. needs
10 unconditional from CAM Consulting; do you see that?

11 A Yes.

12 Q Does that -- does that refresh your recollection
13 at all as to whether CAM Consulting was working on any other
14 aspects of this project other than with Mojave?

15 A No, but I believe that there is another company
16 by the name of CAM. I can't remember.

17 Q Okay. CAM Consulting?

18 A There's -- I want to say there's a CAMS or a
19 CAM, I can't remember, and I -- I know they do electrical-type
20 stuff.

21 Q Okay. But there was never -- nothing ever
22 popped into your mind that triggered that you needed an
23 unconditional from CAM Consulting with respect to the
24 generators, right?

25 A No.

1 Q Okay. Did you have -- did you and the owner --
2 did the owner convey to you an aspirational, let's say, goal,
3 for minority participation in this project?

4 A Yes.

5 Q What was that?

6 A We were shooting for 15 percent.

7 Q Okay. And just so I understand and the Court
8 understands, I mean, how much DBE participation is that on a
9 project of this size?

10 A You're going to make me do the math?

11 Q Yeah, sorry. I couldn't do it, so...

12 A About 15 million.

13 Q Okay. And do you have an understanding of how
14 much CAM Consulting's participation was with respect to
15 this -- the generator equipment?

16 A The amount?

17 Q Yeah.

18 A The 755,000?

19 Q Right. Okay. And did CAM Consulting -- did
20 Mojave and CAM Consulting get full credit for that or just
21 CAMs fee?

22 A No, the full amount.

23 Q Okay. So the 755 went a good amount of the way,
24 but not -- not more than a few percent of the 15 million that
25 you guys -- that you guys were actually shooting for, correct?

1 A Correct.

2 Q Okay. Whiting Turner paid, I think you said
3 earlier, in full for the equipment and services that were to
4 be provided by Mojave under its scope of work with respect to
5 the generators; is that right?

6 A Yes.

7 Q Okay. The full 755,000 and change; is that
8 right?

9 A Yes.

10 Q Okay. And do you have an understanding as to
11 whether Mojave tendered that amount to CAM Consulting?

12 A Yes.

13 Q And what is that understanding?

14 A That they paid CAM.

15 Q Okay. And you did, in fact, receive an
16 unconditional final lien release from Cashman Equipment,
17 didn't you, with respect to that equipment?

18 A Yes.

19 Q That was provided by Mojave?

20 A Yes.

21 Q Okay. And to the best of your understanding
22 when you received that -- when that payment was made was
23 Cashman's work complete?

24 A No.

25 Q In fact, they -- there was still materials that

1 had to be supplied and work that needed to be done by other
2 subcontractors; is that right?

3 A I don't know all the detail, but to the best of
4 my knowledge, yes.

5 Q Okay. And pursuant to your agreement with
6 Mojave that was Mojave's sole and complete responsibility to
7 get that done, wasn't it?

8 A Yes.

9 Q Okay. Mojave ended up having to hire the
10 subcontractors and purchase the materials to get that portion
11 of it -- scope of work completed, didn't it?

12 A Yes.

13 Q Okay. And that was above and beyond the 755?
14 You didn't pay them anything additional for that work did you?

15 A No.

16 Q Okay. And in fact, you said that the -- the
17 project is complete, but I think you started to kind of -- you
18 started to say something -- the project technically isn't
19 complete is it?

20 A No.

21 Q There's still some PLC codes that aren't -- that
22 are missing, aren't there?

23 A Yes.

24 Q Okay. That's why that \$86,000 is being held in
25 escrow, right?

1 A Yes.

2 Q Okay. Why are the PLC codes important for this
3 project?

4 A My understanding is that they -- they tell other
5 parts and pieces of the electrical system what to do, and you
6 can see how the building is functioning off of a network, and
7 you don't actually have to be there.

8 Q Okay. Are -- to the best of your understanding
9 as project manager of this project, are the generators and the
10 UPS systems operating at full efficiency right now?

11 A No.

12 Q Why not?

13 A Because if something needs -- if -- it can -- it
14 -- it helps tell the generators either to fuel up, not fuel
15 up, and I think right now they're going full capacity because
16 there's nothing telling it to react otherwise.

17 Q Okay. And you also testified on -- on direct
18 examination that there was -- there was no -- you said, I
19 think, there was no -- you didn't prohibit joint checks from
20 your subcontractors; do you remember that?

21 A Yes.

22 Q Okay. But it's true -- and again, this is --
23 this is just a clarification question, that had a -- that a
24 subcontractor would have had to have requested of Whiting
25 Turner the ability to write a joint check to its lower-tiered

1 subs, wouldn't they?

2 A Yes.

3 Q Okay. And at that point you would have had to
4 have gone -- especially in a DBE situation, you would have had
5 to have gone to the City and to Forest City and ask them if it
6 was okay in that situation to write a joint check, wouldn't
7 you?

8 A Yes.

9 Q Okay. And that would have been a bit of a
10 process, wouldn't it? It would have taken more than a few
11 days to -- to get that approval obtained?

12 A Typically.

13 Q Okay. It doesn't happen instantaneously?

14 A No.

15 Q Okay. Additionally, you said that the -- that
16 what you required with respect to the DBEs from your
17 lower-tiered subs was a good-faith effort; do you recall that?

18 A Yes.

19 Q Okay. With respect to that good-faith effort --
20 if the lower-tiered subs don't work with DBEs upon request
21 from, you know, either yourself or -- someone at Whiting
22 Turner or the City of Las Vegas, is there typically a
23 consequence to that?

24 A No. There's -- there's not a consequence, but
25 we -- that's one of the things that we -- that we look at the

1 subcontractor to decide whether we want to use that sub or
2 not.

3 Q Right. Maybe we have a different definition of
4 consequence. On the next project, when you're looking for
5 subcontractors on — and especially on a city project or a
6 project like Metro or something else that's going to be a
7 public works project, that's something you're going to look at
8 when you're deciding which subs to use isn't it?

9 A Yeah.

10 Q Whether they complied with your good-faith
11 effort to use a DBE —

12 A Yes.

13 Q — right? Okay. So had Mojave not done — not
14 worked with a DBE upon — upon Whiting's request, that's
15 something that Whiting would have considered on the next
16 project when it was looking at electrical subcontractors,
17 isn't it?

18 A Yes.

19 Q And it may have contributed to what -- to Mojave
20 not getting chosen for another contract, right?

21 A Yes.

22 MR. BOSCHKE: I have nothing further.

23 THE COURT: Ms. Lloyd, any follow up?

24 REDIRECT EXAMINATION

25 BY MS. LLOYD-ROBINSON:

1 Q So you testified that Mojave needed permission
2 to write a joint check on this project?

3 A If they would have asked us to write a joint
4 check, then --

5 Q But did they need permission to write a joint
6 check to their subs and suppliers?

7 A I -- I'm not saying that they needed it. I
8 would just say that if they asked me, I would have done what I
9 said I would do, go up the chain and ask.

10 Q So your contract doesn't prohibit joint check
11 payments to subs and suppliers, correct?

12 A Yes, correct.

13 Q And Mojave doesn't have to ask for permission to
14 issue a joint check to its subs and suppliers?

15 A We don't -- we don't -- it's not written in our
16 contract that way.

17 Q Okay. So are you aware if other joint checks
18 were issued by Mojave or to Mojave in this matter?

19 A No.

20 MS. LLOYD-ROBINSON: I have nothing further.

21 MR. BOSCHEE: Nothing further.

22 THE COURT: Okay. Ms. Briseno-Rivera, I have a
23 question for you.

24 THE WITNESS: Okay.

25 THE COURT: You testified that there was a

1 requirement to have diversity -- that was the word used,
2 Diversity?

3 THE WITNESS: Correct.

4 THE COURT: I know that goes back to this idea or
5 concept having to do with a disadvantaged business entity, a
6 DBE. I just wondered -- I think I'll be asking everybody this
7 question. Do you have an understanding -- if you don't that's
8 okay. But do you have an understanding as to where this
9 requirement practically stems from? What's its root source?

10 THE WITNESS: I think that -- my opinion, I think the
11 root source is the local community wanting diversity
12 participation because it was the City Hall and, you know,
13 getting local --

14 THE COURT: All right.

15 THE WITNESS: -- local companies and diverse is where
16 it stems from.

17 THE COURT: All right. That's a -- I understand that
18 answer. I think it's a good one. It's a practical concern.
19 Maybe to refine that, though, are you aware of any sort of
20 more official, if you will, edict or proclamation or
21 requirement, anything in writing, anything that came down
22 from, like, on high, anything official in that regard?

23 THE WITNESS: No.

24 THE COURT: Okay. Counsel, any questions based on
25 mine?

1 MS. LLOYD-ROBINSON: No, I don't have any.

2 MR. BOSCHEE: No, I think Mr. Phillips may be the
3 right person to answer those questions.

4 THE COURT: Okay. All right. Thanks a lot. Ms.
5 Briseno-Rivera, you're excused.

6 And, Ms. Lloyd, please call your next witness.

7 MS. LLOYD-ROBINSON: Plaintiff calls David Phillips.

8 DAVID PHILLIPS, PLAINTIFF'S WITNESS, SWORN

9 THE CLERK: Thank you. Please be seated. Sir, can
10 you state and spell your first and last name for the record,
11 please?

12 THE WITNESS: David Ross Phillips, D-A-V-I-D,
13 R-O-S-S, P-H-I-L-L-I-P-S.

14 THE COURT: All right. Mr. Phillips, I didn't let
15 her know because she's been in the court a while, but I'll let
16 you know because this -- I think you're -- this is your first
17 day here --

18 THE WITNESS: Yeah.

19 THE COURT: -- there's some water and stuff there if
20 you want to help yourself.

21 THE WITNESS: All right. Thank you.

22 THE COURT: Okay? Ms. Lloyd?

23 MS. LLOYD-ROBINSON: Thank you.

24 DIRECT EXAMINATION

25 BY MS. LLOYD-ROBINSON:

1 Q Good afternoon, Mr. Phillips.

2 A Good afternoon.

3 Q Can you tell me where you're currently employed?

4 A I'm with Forest City Construction Services.

5 Q And that's a business unit of Forest City
6 Enterprises?

7 A Yes, it is.

8 Q And Forest City Enterprises is based in
9 Cleveland, Ohio?

10 A Correct.

11 Q And what's your position at Forest City
12 Construction Services?

13 A I'm vice president.

14 Q And can you just briefly describe what your
15 duties are in that position?

16 A I manage construction projects for our
17 development out -- out on the West Coast.

18 Q And how long have you been in that position with
19 Forest City?

20 A 16 years.

21 Q And are you based here in Las Vegas?

22 A Yes, I am.

23 Q Okay. And you're familiar, then, with the
24 project -- the New Las Vegas City Hall?

25 A Yes, I am.

1 Q So Forest City Commercial Construction Company
2 was employed by the owner of the project as the owner's
3 representative?

4 A Correct.

5 Q And at the time that was another unit of Forest
6 City Enterprises?

7 A Yes, it was.

8 Q I think you testified previously that the Forest
9 City Commercial Construction was merged -- you want to go
10 ahead and finish that -- with another division, I think?

11 A We merged several divisions. Our retail
12 residential division we -- we just put everyone in well,
13 one --

14 Q Making this the one you work for now?

15 A Right.

16 Q Okay. But you've been employed by Forest City
17 in various capacities in these different corporations?

18 A Yes.

19 Q Okay. And what was your specific role on the
20 project?

21 A I was designated by the city -- or to the city
22 that I would be the owner's rep.

23 Q And so the owner at the time of construction of
24 the project was listed as QH Las Vegas on Whiting Turner's
25 contract; is that correct?

1 A Correct.

2 Q And is that a Forest City Enterprises affiliate
3 or subsidiary?

4 A Repeat that.

5 Q Is QH Las Vegas another Forest City Enterprises
6 affiliate?

7 A It's an LLC ownership by Forest City
8 Enterprises, yes.

9 Q So Forest City Enterprises owns QH Las Vegas?

10 A Yes.

11 Q And then -- was that the same with PQ Las Vegas?

12 A Yes, PQ.

13 Q Okay. And that was another entity that was
14 involved in the project?

15 A It was the overall -- it was another -- for a
16 piece of property in Symphony Park, which is -- which was part
17 of the agreement with the city.

18 Q Okay. And then FC/LW is another Forest City
19 Enterprises-related --

20 A Correct.

21 Q -- company? Okay. And those were all, in some
22 form or fashion, involved in this project at different points?

23 A It was part of the development agreement -- the
24 entities involved with the development agreement --

25 Q Okay.

1 A -- with the city.

2 Q And so are you aware -- legal notices were to be
3 served on the Cleveland office?

4 A To the ownership, yes.

5 Q Right. So was -- ownership was listed QH Las
6 Vegas care of Forest City at that Cleveland address?

7 A Yes.

8 Q Okay. And you were on site at the project every
9 day?

10 A Yes, I was.

11 Q Can you turn to Joint Exhibit 61?

12 A Okay.

13 Q Are you familiar with this document?

14 A I was -- I was -- became familiar with this
15 document at my deposition.

16 Q Okay. Do you recognize that stamp there in the
17 middle of the document?

18 A It's too blurred to -- to read it.

19 Q Do you recognize those initials there listed on
20 the side?

21 A No.

22 Q Okay. And then is this -- this ad just listed
23 here for QH Las Vegas, or I think it's a typo. It says OH Las
24 Vegas, but is this the service address that we just spoke
25 about in Cleveland, Ohio?

1 A Yes, this is the address for the Forest City
2 Construction --

3 Q Mm-hmm.

4 A -- and that's the suite --

5 Q And so --

6 A -- Suite 1005.

7 Q -- I think you just previously testified that
8 the ownership, the property records would have reflected QH
9 Las Vegas in care of Forest City?

10 A I didn't say, in care of. I said it was -- it
11 would go to corporate.

12 Q Okay. So this would be -- this would be service
13 on the owner at this address?

14 A On -- yes.

15 Q Yes. Okay. And let's go ahead and look at
16 Joint Exhibit 63, there. It's just two pages down.

17 And this is another preliminary notice served by
18 Cashman on the owner for this project. And do you recognize
19 that received stamp there?

20 A Yeah, that one is clear. It's Forest City
21 Commercial Construction.

22 Q And those initials there, that ML, is that for
23 Michelle Legina?

24 A It could be.

25 Q Wasn't she the one at Forest City that was

1 responsible for tracking preliminary notices that were
2 received by the owner?

3 A Yeah, I worked with her specifically for the
4 accounting and pay applications and lien releases and things
5 of that nature.

6 Q So did -- she contacted you about tracking the
7 preliminary notices?

8 A The preliminary notices she didn't contact me
9 on. It was an automatic for most of our projects. They would
10 go to her or whoever was assigned to the project and they
11 would track them.

12 Q So was she assigned to this project --

13 A Yes.

14 Q -- to track the -- so Michelle Legina was
15 tracking preliminary notices on the City Hall project?

16 A Yes.

17 Q Okay. And so did she track all subcontractors
18 and suppliers on the project, or was she only concerned with
19 the first tier?

20 A We -- normally Forest City only deals with the
21 first tier. We don't do subtiers. We're not -- we did -- we
22 do not require it from our contractor.

23 Q Okay. So you weren't even really concerned with
24 anyone supplying below the first tier?

25 A No.

1 Q So on this project Mojave would be first tier?

2 A Correct.

3 Q And anyone supplying below Mojave you weren't
4 really worried about?

5 A Mmm-mm.

6 Q Okay. And did you have the requirement for the
7 use of the DBE on this project?

8 A There was not really a requirement for diversity
9 for the project.

10 Q Mm-hmm.

11 A It was a request from the city. The city
12 council requested it. They do not have a program within the
13 city, and -- but they felt -- you know, they -- they did ask
14 most developers and contractors working within the city to --
15 good faith effort, try to get participation from minorities
16 and diverse groups, and we agreed to -- we had a goal that we
17 stated we would try to reach, which was 15 percent to the city
18 which they accepted.

19 And -- and it was good faith. There was no
20 guarantees to the city that we would get that.

21 Q So it wasn't a contractual responsibility for
22 Mojave to have a certain number of DBE suppliers or
23 subcontractors on this project?

24 A I wouldn't know that because I -- I -- the
25 contract is with Mojave-Whiting Turner.

1 Q So you contract with Whiting Turner, did you
2 have a specific requirement for Whiting Turner on this
3 project?

4 A We had a statement that we would like
5 participation, and we said 15 percent, but it was not a
6 requirement.

7 Q So you didn't require Whiting Turner to make
8 sure Mojave did 15 percent then, correct?

9 A We -- we requested that 15 percent overall,
10 however it was obtained, that's what we would like to see.

11 Q But if someone couldn't do that, it wasn't a
12 breach of the contract --

13 A No.

14 Q -- to perform the work? Okay. And let's go
15 back really quick to Joint Exhibit 61, just to follow-up.

16 Q After looking at 63, does that refresh your
17 recollection as to whose stamp that is there with the ML?

18 A The initials look -- you know, the initials look
19 the same as 63, the stamp, I --

20 Q And this is the address for Forest City
21 Construction Services --

22 A Yes.

23 Q -- on here? And then did Forest City forward
24 preliminary notices to the -- to Whiting Turner to track on
25 this project?

1 A I'm not familiar with that process.

2 Q So you weren't in charge of making sure that
3 those things happened?

4 A No.

5 Q Even as the owners were up on site?

6 A No.

7 Q It was someone else within Forest City who would
8 have done that?

9 A Correct.

10 Q Specifically Michelle Legina?

11 A She is responsible for that, yes, so —

12 Q Okay.

13 A — I would assume —

14 Q You would assume that this was received by
15 Forest —

16 A They weren't —

17 Q -- City --

18 A — they were not issued to the field.

19 Q — right. Because you were on site at the
20 projects —

21 A Correct.

22 Q — in a trailer. And so these were served on
23 the corporate offices?

24 A Correct.

25 Q And then they had a tracking process there. And

1 this appears to be Forest City's received stamp, correct?

2 A It appears --

3 Q With the initials --

4 A -- to be.

5 Q -- ML?

6 A It appears to be.

7 Q And the address on here is the Forest City
8 address?

9 A It is the Forest City address.

10 Q Okay. And Whiting Turner had it -- because it
11 was likely forwarded by Forest City to Whiting Turner for
12 tracking? Yes?

13 A I don't know.

14 Q Okay. Thank you.

15 MS. LLOYD-ROBINSON: I have nothing further at this
16 time.

17 THE COURT: All right. Mr. Boschee?

18 CROSS-EXAMINATION

19 BY MR. BOSCHEE:

20 Q While you have 61 open. You were the Forest
21 City representative on the project, correct.

22 A Correct.

23 Q In the entire time that you were there, did you
24 have any idea that Cashman Equipment was providing anything
25 for the City Hall project?

1 A Not until I received the official lien on the
2 property.

3 Q Well, until they liened the property, you didn't
4 know that --

5 A Until they liened the property --

6 Q All right.

7 A -- correct.

8 Q Now, let me at 61 -- again, as an owner's
9 representative can you tell me -- I mean, obviously you -- you
10 probably have an idea now because you're sitting here and
11 you've been deposed. Can you tell me what -- what equipment
12 or materials Cashman was providing for this project?

13 A I wouldn't know.

14 Q Can you tell me the amount of -- the aggregate
15 dollar amount of materials or equipment Cashman was providing
16 for the project?

17 A There's no dollar amount listed here.

18 Q No, there isn't. And if you look at the top, it
19 says that the customer is Mojave Electric; do you see that?

20 A Correct.

21 Q Okay. Now, if you flip to Exhibit 63, which we
22 were just looking at, same questions. Can you tell me from
23 looking at that document what -- what materials or supplies
24 that are being supplied to this project by Cashman?

25 A I wouldn't know.

1 Q And there's no aggregate dollar amount on that
2 -- on that prelien notice either, is there?

3 A No, there isn't.

4 Q Okay. Now, the second prelien notice, can you
5 see -- do you see the date on that one? Is it -- it's in
6 April of 2011, I believe.

7 A Where is it listed?

8 Q Actually show you where -- hold on. It looks
9 like it's stamped April 27, but --

10 A Well, that's -- that's the stamp from Forest --

11 Q Right.

12 A -- City. April 27?

13 Q That was the -- that was the -- that was the
14 date I was looking for.

15 A Oh, okay.

16 Q Do you have -- do you have an understanding
17 because you were on site everyday as to whether the generator
18 equipment was by and large delivered to the site prior to
19 April 27?

20 A I don't recall.

21 Q Okay. From your -- from your experience in this
22 case -- well, do you -- do you have an understanding as to
23 whether payment was made on or -- on or before April 27, 2011?

24 A I couldn't --

25 Q Okay.

1 A -- confirm that either.

2 Q Okay. But again, if you look at -- if you look
3 at this preliminary notice, it lists the customer as CAM
4 Consulting, doesn't it?

5 A Yes, it does.

6 Q Okay. So just to be clear, from looking at the
7 two documents, one document says that there is an agreement
8 between Cashman and Mojave, the later document says there's an
9 agreement between Cashman and CAM Consulting, doesn't it?

10 A Correct.

11 Q Okay. And neither document has any general
12 description of the scope of work or materials being provided
13 to the project by Cashman, do they?

14 A No, it doesn't.

15 Q And neither document has a dollar amount of the
16 materials or the scope of work that was provided by Cashman,
17 does it?

18 A No, it doesn't.

19 Q So as an owner's representative you -- if you're
20 looking at these two documents, you know, without, again,
21 knowing anything below that first tier of contractors, you
22 wouldn't have any idea of what Cashman was providing or what
23 aggregate dollar amount they were providing to this project,
24 would you?

25 A Not from this notice.

1 Q Or even from -- or even who their agreement was
2 with, would you? I mean, one says one entity, one says the
3 other.

4 A Yeah, it's different.

5 Q Okay. Now, do you have an understanding as to
6 whether Cashman ever actually completed the generator work?

7 A The work is not complete as of today.

8 Q Right. That's why there's money in escrow,
9 correct?

10 A Correct.

11 Q About \$86,000?

12 A About that.

13 Q Okay. And that money is in escrow because the
14 PLC codes have never been -- there was testimony yesterday --
15 turned on, but the PLC codes are not inputted into the -- into
16 the system, correct?

17 A That's correct.

18 Q Okay. And why are the PLC codes important
19 for -- for this project and for these generators?

20 A It's a program that the -- it's tied to the
21 building management system that's -- that he has. So the city
22 operation can pull up the generator. They can -- they
23 understand if it's operating at the right temperatures, if
24 it -- when it's running, if it needs oil, if it needs
25 servicing. So it's -- right now there's just an alert -- a

1 red button that says, you know, it's not working.

2 So you basically have to manually go check the
3 generator, instead of having it available to them.

4 Q Okay. And then -- you went over this a little
5 bit, but I'm -- I'm going to try to preempt the Judge's
6 question before he can get to it. You talked a little bit
7 about the representations with respect to the disc management
8 [inaudible] requirement on this project, correct?

9 A Correct.

10 Q Just so -- just so we all -- a complete
11 understanding, you said it wasn't a requirement, but it was a
12 representation that Forest City made to the city council that
13 you were going to put a good-faith effort to get 15 percent
14 minority participation on this project, correct?

15 A Correct.

16 Q And per your understanding, that was a very
17 important issue for the city, wasn't it?

18 A Very much so.

19 Q Why was that?

20 A Well, the -- the minorities and diversity groups
21 in town during our council meetings and everything else came
22 up and voiced their concerns that city projects were not being
23 required or having, you know, specific participation. So, you
24 know, they -- they went to all the councilmen and said, you
25 know, we would like, you know, this -- it's a public, you

1 know, it's a public building, we would like to have that
2 participation.

3 Q Okay. And then the city council kind of
4 conveyed that to you and said, well, they want this
5 participation, we want this participation, get it done,
6 basically, right?

7 A Right.

8 Q Okay.

9 A So at that point we did -- we prepared a
10 diversity program. The city didn't have a diversity program.
11 We took -- our company is diverse across the entire country
12 that we do work in, we modify one of our programs to, you
13 know, try to, you know, so the council would understand what
14 we were trying to do, what the community -- that was
15 distributed to the community, we met with the community groups
16 so they understood what we were trying to do.

17 Q Okay.

18 A But they also knew it was not, you know, it
19 wasn't, quote, required.

20 Q Right. If -- it would have fallen short if one
21 or more subs or whatever wouldn't have gotten there, it wasn't
22 something that you were going to fire them from the job, but
23 it was something that was very important for the city, given
24 the representation you made to the city, wasn't it?

25 A Correct.

1 Q Okay. And to say, if you wouldn't have put --
2 and I say, you, I mean, if Forest City wouldn't have put a
3 good-faith effort and wouldn't have gone to these lengths to
4 get DBEs involved in this, it would have endangered your
5 future relationship and future projects with the City of Las
6 Vegas, wouldn't it?

7 A Yes.

8 Q Okay.

9 MR. BOSCHEE: I have nothing further for this
10 witness.

11 THE COURT: Ms. Lloyd, any follow-up?

12 MS. LLOYD-ROBINSON: I have just a few more
13 questions.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MS. LLOYD-ROBINSON:

17 Q So for the DBE requirement that you were just
18 speaking about, is the intent to be what happened here, which
19 is, I think -- you weren't here yesterday, but Judge Bare
20 referred to it as a, Contractual placeholder, that CAM was
21 just inserted in the middle, didn't really do anything, took a
22 fee, and Cashman supplied the materials almost directly to
23 Mojave on this project.

24 So is that -- is that the intent of the DBE
25 requirement here, to fulfill it with a person that's not

1 actually performing any work or doing anything on the project?

2 A No. Well, there's no specific, you know,
3 definition of -- if they acquire a certified, you know -- you
4 know, diversity company which they have to be certified, then
5 they -- their participation could be utilized.

6 Q So that counts for the entire amount that
7 Cashman supplied? Not just his little fee on the job --

8 A Correct.

9 Q -- CAMs little fee, but the whole contract,
10 then? Even though CAM just passed through, he just passed
11 some paper back and forth and took his fee and some more,
12 but --

13 A The thing is --

14 Q -- that fulfills --

15 A -- is that I, you know, Forest City was not
16 aware of CAM at all until, you know, all the liens and this
17 developed. We were not -- were not aware of some of the other
18 contractors in the diversities. You know, Whiting Turner
19 tracked it for us, they listed the companies which was
20 upper-tier contracts, and the participation and that's what
21 was provided to us. And we provided that same report to the
22 City of Las Vegas on a monthly basis.

23 Q So when you were talking with the city, though,
24 was that what they had in mind for diversity participation? I
25 mean, is that really what was anticipated would be fulfilling

1 the requirement?

2 A We didn't --

3 MR. BOSCHEE: I want to object to it being called for
4 speculation as to what the city anticipated. I mean, if they
5 had made specific representations, that would be one thing,
6 but what they anticipate, I think is speculative.

7 THE COURT: All right. Well, my thought is that Mr.
8 Phillips has demonstrated through his testimony a pretty good
9 understanding as to the requirement or the philosophy behind
10 the initiative. So I think all these questions are fair.

11 Go ahead, Ms. Lloyd.

12 BY MS. LLOYD-ROBINSON:

13 Q Okay. Do you want to go ahead and answer if
14 that's -- when you were talking with the city in developing
15 this diversity program, as you testified previously, you --
16 that Forest City helped the city develop this program,
17 correct?

18 A It was our program that we presented to the city
19 that showed them how we were going to do it. And it was the
20 certification of the companies and that's as far as we took
21 it, not anywhere beyond that point.

22 Q So what's the purpose of using DBEs on any
23 project?

24 A It -- it gives the minorities in the community
25 and opportunity to participate and -- and become, you know,

1 better members of the construction industry. We do it all
2 over the country. You know, the small companies have a very
3 difficult time breaking into multimillion dollar projects.

4 So by working within their certification which, you
5 know, they're required to, you know, to go to education and
6 everything else during those programs, it -- it allows
7 companies to hire them to, you know, get them more involved in
8 the community and financially.

9 Q It just seems like a situation here where CAM
10 Consulting, the DBE, wasn't doing any work, doesn't really
11 fulfill that purpose?

12 A I can't comment on that. I don't -- I really
13 don't know.

14 Q Okay. And if you can turn to Joint Exhibit 61.
15 You may still have it open. I think that's what you left
16 with -- with Mr. Boschee on.

17 A Okay.

18 Q Right in the middle of the page there it states,
19 The undersigned notifies you that they have supplied equipment
20 for the improvement of the property, identified as Las Vegas
21 City Hall. Do you see that above that box there?

22 A Yes.

23 Q So that's a general description of what Cashman
24 was doing, supplying equipment to the project, correct?

25 A It says, Supply equipment.

1 Q That's a general --

2 A What equipment --

3 Q -- description?

4 A -- it's a general, you know, boilerplate
5 statement.

6 Q So it does provide a general description of what
7 Cashman Equipment is doing on the project?

8 A I would have to say yes.

9 Q Okay. And do you know in Nevada is there a
10 requirement that a monetary amount be included on a
11 preliminary notice?

12 MR. BOSCHEE: Objection. Calls for a legal
13 conclusion.

14 THE COURT: Well, in his area of expertise he either
15 would or would not have an answer to that. He might not know,
16 but I -- he's -- I think he works enough in the area where you
17 can ask the question, at least. So go -- that's a fair
18 question.

19 THE WITNESS: I've seen some preliens with dollar
20 amounts and some preliens without dollar amounts.

21 BY MS. LLOYD-ROBINSON:

22 Q Okay.

23 A So --

24 MS. LLOYD-ROBINSON: I have nothing further.

25 THE COURT: Mr. Boschee?

1 RECROSS-EXAMINATION

2 BY MR. BOSCHER:

3 Q So looking at 61, what equipment was Cashman
4 providing for the project?

5 A I wouldn't know.

6 Q Okay. And you wouldn't know the amount or the
7 extents to -- or the amount or the duration of the services
8 they were providing in terms of installation or startup or
9 anything like that, would you?

10 A No.

11 Q Okay. And with respect to -- to the DBE
12 requirement, once -- once these DBEs got certified and once
13 they were involved and got certification and were involved in
14 the project, did Forest City have any input at all at that
15 second and third tier of what they were doing or what they
16 were or were not doing on any of these projects?

17 A We -- we were not aware of -- of any of the
18 lower tiers, you know, on the project.

19 Q Right. It's not something that you guys would
20 have followed, was it?

21 A It's not something we followed.

22 Q Okay.

23 MR. BOSCHÉE: Nothing further, Judge.

24 THE COURT: Ms. Lloyd?

25 MS. LLOYD-ROBINSON: I have nothing further, Your

1 Honor.

2 THE COURT: All right. I know it sounds -- it --
3 you're probably getting the feel that I ask questions all the
4 time. I've had bench trials where I've asked no questions, or
5 at least maybe just one or two. But there -- there are some
6 questions that come to mind. The parameter I like to use
7 which I've been trained on formally as well in this process --
8 I really should try to clarify things if I have questions.

9 I want you to know I -- I wouldn't want to get into
10 areas that would be something of, sort of a new area, but I
11 think it's important to clarify things, especially if my mind
12 is going certain directions, based upon the fact that you guys
13 did really good work on your trial briefs and I'm getting a
14 real feel for what's going on here.

15 This is important to me to make a good decision. So
16 I just hope you can respect that I will ask questions to
17 clarify along those lines. What I haven't said, though, and
18 it's important to let you know, is that if you object to my
19 questions, you can do that. If I ask a question and you want
20 to object, you can. I won't -- I won't hold it against you
21 personally or professionally. But just like any other
22 question you can object. Just let me know, okay?

23 MR. BOSCHEE: And then does, Your Honor --

24 MS. LLOYD-ROBINSON: Thank you.

25 MR. BOSCHEE: -- rule on our objection of your

1 question?

2 THE COURT: Well, it's just like a motion for
3 reconsideration type of deal. I mean, judges shouldn't be
4 offended when lawyers come in and ask you to change your mind
5 about something. The same standard there, I wouldn't be
6 offended. I'm just -- and the thing is, it's hard for you to,
7 perhaps know exactly where my mind is going so far, and it
8 could go down other paths as we go through this, but -- so
9 here we go. I do have some questions.

10 First, I wondered, Mr. Phillips, if you could please
11 describe for me what it means to be an owner's rep for QH Las
12 Vegas, the owner here? In other words, please give me, just,
13 the short rundown of the type of authority you have, and in
14 what capacity you're sort of there in as an owner's rep and
15 how that becomes relevant in a practical sense to the whole
16 project?

17 THE WITNESS: Well, I was involved in the project
18 from the inception. I worked with our development group,
19 alongside them, with our finance group creating the
20 development agreement for this project.

21 THE COURT: Mm-hmm.

22 THE WITNESS: And then after the development
23 agreement was executed I was involved in assisting and
24 reviewing the architect's plans, hiring the architects and
25 consultants, and I am an architect -- I gave it up years ago,

1 but my expertise -- I have an architectural background, so I
2 assist in -- I assisted in reviewing all the architectural
3 plans to make sure they're correct.

4 I was involved in sending out an RFP for the CMAR,
5 construction manager at risk, who was involved with our team
6 to review the most qualified CMAR for this project. I also
7 helped review the contract with Whiting Turner with our -- our
8 construction people and our attorneys to make sure it met the
9 requirements of the development agreement.

10 And then when construction physically started, I was
11 on site day-to-day basis for quality control, you know, I'm
12 fully aware of the documents so I could do clarifications for
13 the contractor --

14 THE COURT: So you're walking around there with a
15 hard hat on?

16 THE WITNESS: -- yes.

17 THE COURT: Every day?

18 THE WITNESS: Every day.

19 THE COURT: Okay. All right. So then -- I don't
20 mean to interrupt you, but that pretty much answers that part
21 of it.

22 THE WITNESS: Okay.

23 THE COURT: To be the owner of something like this, I
24 mean, how does that happen? Is it the city through its city
25 council chooses to work with you that way, or how does that

1 come about?

2 THE WITNESS: It's -- it's a new process that's
3 started across the country, it's a public/private working
4 relationship, and the state has the -- and the cities have
5 that ability to do that, where they provide us with their
6 budget, they provide us with the program of the building that
7 they would like, and we -- we met with -- they're -- they have
8 architects on staff at the city.

9 THE COURT: Okay. All right. Now, another area of
10 your testimony, one which I think could be relevant
11 potentially, having to do with the ultimate calculation of
12 things, if I get to a calculation. It has to do with this PLC
13 code issue, all right?

14 THE WITNESS: Sure.

15 THE COURT: It's my understanding, correct me if I'm
16 wrong, but there's a \$86,000 amount in escrow presently --

17 THE WITNESS: Correct.

18 THE COURT: -- you're aware of that, right?

19 THE WITNESS: Yes.

20 THE COURT: Is it \$86,000 even or is it some odd
21 amount?

22 THE WITNESS: I think it's got some change. I --

23 THE COURT: Okay.

24 THE WITNESS: -- I wasn't really involved with the
25 agreement. My corporate and our attorneys dealt with that.

1 THE COURT: It's been suggested, at least to the best
2 I can figure out, and that's why I'm asking you to clarify it,
3 that this 86,000 that's in escrow is specifically and only
4 related to this PLC code situation and not related to any
5 other aspect of the construction or equipment. Is that a fair
6 understanding of it?

7 THE WITNESS: Correct.

8 THE COURT: Okay. So is it -- does it stand to
9 reason in your view that -- I mean, the implementation of the
10 PLC code, the value of that is \$86,000?

11 THE WITNESS: I don't know what the value of it is.
12 It was the remaining amount of the contract that was available
13 at the time --

14 THE COURT: Okay.

15 THE WITNESS: -- when we were closing out the project
16 to, you know, to put in escrow.

17 THE COURT: All right. So is this something that
18 hasn't been done, then, as far as Cashman -- I don't know
19 what -- maybe I should start with this, I'm sorry.

20 What would Cashman have to do -- since I know you
21 know the answer to this -- I mean, from a construction point
22 of view, what would they have to do to actually implement
23 these codes?

24 THE WITNESS: It's my understanding it's -- it's a
25 program that needs to be inserted into the system.

1 THE COURT: All right. So does the 86,000 encompass
2 that aspect of the code issue? In other words, the actual
3 connection and implementation of it? Or is it the equipment?
4 Or is it both? I mean, can you tell me about that?

5 THE WITNESS: It's specific to the PLC codes -- the
6 agreement, the escrow agreement and the funds being held --

7 THE COURT: All right. So --

8 THE WITNESS: -- because the city required us --
9 they're asking me when are we getting the PLC codes.

10 THE COURT: All right. What happens -- well, what do
11 you think happens to the 86,000 if Cashman implements -- or
12 puts the codes in and finishes that aspect of it?

13 THE WITNESS: Then there's a, you know, a process in
14 that agreement where we would have to sign off on it, I think
15 Whiting Turner signs off on it and if I'm not mistaken, even
16 Mojave signs off that it has been completed --

17 THE COURT: All right.

18 THE WITNESS: -- and the funds would be released.

19 THE COURT: Who is -- what entity is responsible for
20 the providing of the 86,000? Do you know? Whose money is it?
21 I mean, who put it there? Where -- what's the source of that
22 money?

23 THE WITNESS: It's with American Title, I believe.

24 THE COURT: Did you guys ever give me an offer of
25 proof on that? Who provided the 86 grand?

1 THE WITNESS: Oh, who provided --

2 MR. BOSCHKE: For who actually provided --

3 THE WITNESS: -- the 86 grand?

4 THE COURT: Yeah.

5 THE WITNESS: Well, it was part of the final payment.

6 So it -- it was submitted to the city for approval, they
7 understood that 86 was going to be put into an escrow account
8 --

9 THE COURT: Mm-hmm.

10 THE WITNESS: -- and the lender processed the
11 payment. And the lender actually processed the payment
12 directly to the title company.

13 THE COURT: All right. If -- in your opinion, if
14 circumstances evolve somehow where Cashman finalized the
15 implementation of the PLC codes --

16 THE WITNESS: Right.

17 THE COURT: -- would they reasonably have a claim to
18 that 86,000 if they were to do that?

19 THE WITNESS: I don't believe so.

20 THE COURT: Why not?

21 THE WITNESS: That dollar amount -- I do not believe
22 that dollar amount was listed in the schedule of values for,
23 specifically, the generator. It was retention amounts
24 available --

25 THE COURT: Okay.

1 THE WITNESS: -- for the project.

2 THE COURT: All right. So if the PLC codes were
3 fully implemented, and I'm sorry if that's a, you know, a
4 construction lay term --

5 THE WITNESS: That's fine.

6 THE COURT: -- I'm not a construction guy.

7 THE WITNESS: I'm not sure it actually goes, so
8 there's --

9 THE COURT: You know, I mean, I put some light
10 fixtures in my loft one time, but that's about it. But as
11 these PLC codes go in, what do you think should happen to the
12 \$86,000, then?

13 THE WITNESS: Well, per our agreement it just gets
14 released to Whiting -- you know, to the parties.

15 THE COURT: Okay. That's all I have. And could be
16 you guys want to follow-up on that? I don't know. Anybody.
17 have further questions?

18 MR. BOSCHEE: Well, I don't know if it would be -- I
19 don't know if it would necessarily be a question for -- for
20 this witness, but I -- do you have an understanding as to
21 whether the -- the implementation of the PLC codes was
22 something that was within Mojave's scope, or if that was
23 something that was supposed to be supplied by Cashman that was
24 paid for, wasn't it?

25 THE WITNESS: Yeah.

1 MR. BOSCHÉE: Okay. Yeah, that's it.

2 MS. LLOYD-ROBINSON: But you understand that Cashman
3 didn't receive payment for it, and that's why the work wasn't
4 completed?

5 THE WITNESS: Well, that's what I'm being told.

6 MS. LLOYD-ROBINSON: And that's why we're here today?

7 THE WITNESS: Correct.

8 MS. LLOYD-ROBINSON: Okay. Nothing further.

9 THE COURT: Anything further?

10 MR. BOSCHÉE: No. No.

11 THE COURT: All right. Mr. Phillips, thank you so
12 much for your testimony. You're excused.

13 And it's probably a good time to take a break. Ms.
14 Lloyd, how much time do you want to take on a break?

15 MS. LLOYD-ROBINSON: If we can do 25 minutes, that
16 will be perfect.

17 THE COURT: 25? Sure. Okay. We're going to take a
18 25-minute break. That will put us back here at --

19 MR. BOSCHÉE: 2:50?

20 THE COURT: -- a quarter -- no, that's --

21 MR. BOSCHÉE: 2:45?

22 THE COURT: -- 2:45.

23 MR. BOSCHÉE: Sure.

24 MS. LLOYD-ROBINSON: Okay.

25 THE COURT: We'll come back at 2:45.

1 MS. LLOYD-ROBINSON: Thank you.

2 THE COURT: We'll see everybody then.

3 (Court recessed from 2:22 p.m. to 2:51 p.m.)

4 BRIAN BUGNI, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Sir, can you state and spell your first
6 and last name for the record, please?

7 THE WITNESS: Brian Bugni, B-R-I-A-N, and the last
8 name is B-U-G-N-I.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LLOYD-ROBINSON:

12 Q Good afternoon, Mr. Bugni.

13 A Good afternoon.

14 Q Can you tell me where you're currently employed?

15 A I'm currently employed at Mojave Electric.

16 Q And how long have you been with Mojave?

17 A In June it will be 17 years.

18 Q And what's your position there?

19 A Vice president of finance.

20 Q And how long have you been the vice president of
21 finance?

22 A 16 years.

23 Q And so you're familiar with the project we're
24 talking about today, the New Las Vegas City Hall?

25 A Yes.

1 Q And Mojave contracted with Whiting Turner to
2 perform all the electrical, correct?

3 A Yes.

4 Q Okay. So what were your duties related to the
5 project?

6 A Preparation of the monthly billing to Whiting
7 Turner, and then monitoring payment to the subcontractors and
8 suppliers.

9 Q So you were responsible for coordinating
10 payments to all your lower-tiered subs and suppliers on this
11 project?

12 A Yes.

13 Q And getting releases if necessary?

14 A Myself and my staff, yes.

15 Q Okay. So Mojave chose not to buy the equipment
16 directly from Cashman because there was a DBE requirement on
17 the project, correct?

18 A That's my understanding.

19 Q And so it was Mojave that determined that these
20 particular materials — the materials that were going to be
21 supplied by Cashman to the project should be supplied through
22 a DBE?

23 A Yes.

24 Q And so then, Mojave in turn contracted with a
25 DBE to supply those materials?

1 A No.

2 Q You didn't contract with a DBE?

3 A No. Cashman selected the DBE.

4 Q But who -- Mojave had a contract with CAM
5 Consulting in this matter to supply these materials?

6 A Correct.

7 Q So Mojave contracted with CAM to supply the
8 materials?

9 A Yes.

10 Q Okay. And -- well, this wasn't the first time
11 Mojave had worked with CAM, correct?

12 A Correct.

13 Q So how did Mojave first come into contact with
14 CAM and Angelo?

15 A My understanding is that Angelo came to our
16 office, you know, stating that he was a disadvantaged business
17 entity, and he was trying to do work with us.

18 Q So he just sort of showed up out of the blue
19 looking for work with Mojave?

20 A I'm not sure if he had been referred to us by a
21 general contractor or another contractor.

22 Q And so he came into your offices looking for
23 work and what happened? Do you know what happened?

24 A I don't know what happened. I was not involved
25 in that selection process.

1 Q Did he meet with Troy Nelson, the owner of
2 Mojave Electric at any point?

3 A I believe he did.

4 Q And what was the outcome of that meeting?

5 A CAM was chosen to do some work with Mojave.

6 Q And so he worked on two other projects in
7 addition to the City Hall project with Mojave?

8 A That's correct.

9 Q So before contracting with CAM on these projects
10 did Mojave run a credit check for CAM?

11 A No.

12 Q And did Mojave check to see if he was a licensed
13 contractor?

14 A When you -- could you define "licensed
15 contractor?" Because, I mean, we did have his DBE
16 certification.

17 Q You checked his DBE certification, but did you
18 check to see if he was a licensed contractor with the State of
19 Nevada?

20 A I did not.

21 Q Did Mojave?

22 A I'm not sure if anyone else did.

23 Q And did you check to see how long he had been in
24 business?

25 A No, I didn't.

1 Q Did you do any due diligence concerning CAM
2 before contracting with him?

3 A I don't handle the contract, so I -- I really
4 don't have any due diligence to do with --

5 Q But you handled the payments?

6 A -- yes.

7 Q So you're responsible for paying CAM for the
8 work?

9 A Yes.

10 Q So you didn't do any due diligence prior to
11 issuing payments to him on any of these projects?

12 A No.

13 Q So Mojave felt comfortable enough to pay large
14 amounts of money to CAM without really doing any checking on
15 him before he worked with Mojave on these projects?

16 A Well, Mojave knew their checks were good so -- I
17 mean, their -- trust there was not a concern.

18 Q But you were paying the money to him, and then
19 waiting for him to pay others, or pay Mojave back, correct?

20 A Yeah, at the time of payment to CAM there were
21 check exchanges, so there wasn't really a right period.

22 Q So Cashman asked Mojave to issue a joint check
23 for the materials that Cashman supplied to the project,
24 correct?

25 A Yes.

1 Q And Mojave refused to issue the joint check
2 because of the minority participation?

3 A And also that I did not have a joint check
4 agreement with CAM in our contract, and I did not have CAM's
5 approval on a joint check.

6 Q Well, did you ask CAM if he could issue a joint
7 check?

8 A No, because I did not have it in my contract.

9 Q So did you not issue any other -- any joint
10 checks to CAM?

11 A I -- I can't remember.

12 Q Is Mojave in the practice of issuing joint
13 checks?

14 A Typically, no.

15 Q So did you believe that if you issued a joint
16 check it would remove the credit that Mojave was going to get
17 for using the DBE on this project?

18 A Yes, I did.

19 Q And isn't that why you didn't issue a joint
20 check on this project?

21 A There were two reasons. One, for the minority
22 participation, and two, I did not have a joint check agreement
23 with CAM.

24 Q But you didn't ask for a joint check agreement
25 with CAM either?

1 A No.

2 Q So Whiting Turner didn't prohibit Mojave from
3 issuing a joint check to CAM and Cashman for this equipment?

4 A Not to my knowledge.

5 Q And it's true that if a joint check had been
6 issued we wouldn't be here today because Cashman would have
7 been paid?

8 A To me that's speculation.

9 Q But that's true because then your funds would
10 have been good and they would have gone directly to Cashman.
11 You keep saying the funds were good, so the funds would have
12 been good and they would have gone to Cashman?

13 A But I did not have a contractual agreement to do
14 a joint check so you're --

15 Q But if a joint --

16 A -- you're asking me to do something that I could
17 not do.

18 Q But you didn't ask CAM for permission to issue a
19 joint check at any point?

20 A Correct.

21 Q So you could have asked CAM to issue a joint
22 check and he just chose not to?

23 A Correct.

24 Q And if you had we wouldn't be here today?

25 MR. BOSCHEE: Objection. I think it misstates prior

1 testimony.

2 THE COURT: Well, I agree with that objection on a
3 different basis, though.

4 MR. BOSCHEE: Okay.

5 THE COURT: I mean, God only knows what would have
6 happened. I mean, if you do a joint check that sets it up, I
7 think, in a more secure way, I think we all can agree to that.
8 But who knows what CAM does. What if they forge the joint --
9 the name of the other entity and then go cash the check and
10 run off to the -- wherever they run off to? Who knows?

11 MS. LLOYD-ROBINSON: That's true. And there was just
12 testimony offered previously about --

13 THE COURT: I mean, that would be a way of trying to
14 put in place a security device more than what you end up
15 having here. But it wouldn't, in my view, be an absolute
16 secure transaction. Who knows, given what we now think of Mr.
17 Carvalho.

18 MS. LLOYD-ROBINSON: No. No --

19 THE COURT: I mean, really, who knows?

20 BY MS. LLOYD-ROBINSON:

21 Q So let's talk a little bit about the meeting at
22 Mojave that occurred on April 26, 2011, that was testified to
23 previously -- and you were in the courtroom -- that there was
24 a meeting between CAM and Mojave, and then also that Cashman
25 was there for an exchange of checks, that's correct?

1 A Correct.

2 Q Okay. So you required CAM to bring releases
3 from his suppliers to obtain his check from Mojave?

4 A Yes.

5 Q On the project? So then you understood that you
6 were having to pay CAM in order for CAM to pay his suppliers
7 to get those releases?

8 A Yes.

9 Q Because you knew CAM did not have funds to pay
10 for the materials that he was -- were being supplied through
11 him to the project?

12 A Correct.

13 Q Okay. And then you also understood that the
14 suppliers would need to be paid in order to provide these
15 releases?

16 A Correct.

17 Q So then there were a couple more payments made
18 on that date that we haven't yet talked about. CAM issued two
19 checks to Mojave on that same date?

20 A That's correct.

21 Q So as part of that meeting CAM wrote two checks
22 back to Mojave on April 26, 2011?

23 A Not in that meeting.

24 Q It wasn't that day?

25 A It was that day.

1 Q Okay. Can you -- you had a meeting with CAM and
2 then you had a meeting with Cashman, or how did that timing
3 work? Was Cashman first and CAM second?

4 A No, I met with my accounts payable and CAM and
5 then CAM and my accounts payable met with Cashman.

6 Q So in the first meeting CAM wrote two checks to
7 Mojave?

8 A Correct.

9 Q And handed them to you that day?

10 A Yes.

11 Q And then the second meeting was when the check
12 was given to Cashman in exchange for the release?

13 A Yes.

14 Q Okay. So those two payments that CAM made that
15 day to Mojave, those weren't for the City Hall project?

16 A They had nothing to do with the City Hall
17 project.

18 Q Those were for the Nevada Energy project?

19 A Correct.

20 Q And that was kind of unusual because you
21 basically inserted CAM in between yourself -- in between
22 Mojave?

23 A Divisions within Mojave, yes.

24 Q So you had Mojave contracting with CAM to
25 contract with Mojave to do --

1 A With Mojave Systems, a division of Mojave
2 Electric, yes.

3 Q -- okay. So -- and in that agreement CAM was
4 late on paying Mojave on the Nevada Energy Project, correct?

5 A Correct.

6 Q So he was supposed to make the payment
7 immediately upon getting the payment from Mojave? He was
8 supposed to make that payment right back to Mojave?

9 A Correct.

10 Q Okay. So -- and he was late on that payment
11 because he was out of the country? That's what he told you?

12 A He --- we were late because my payables didn't
13 realize that he was giving us a check in exchange for, I
14 believe it was the January billing for that NV Energy project.

15 Q So after your accounts payable made that mistake
16 in early March -- because that's when the check -- the payment
17 was issued to him, correct?

18 A Yes.

19 Q You didn't take any action for seven weeks to
20 try to get that payment from him?

21 A I tried calling -- calling Angelo to find out
22 and I was unable to reach him until -- I think we got ahold of
23 him mid -- sometime in April.

24 Q And so were you informed at that time that the
25 reason you couldn't reach him was because he was supposedly

1 out of the country?

2 A Yes.

3 Q Okay. So you had issued this payment to CAM and
4 he didn't hold up his end of the bargain there? He didn't
5 give the payment right back to Mojave?

6 A Correct.

7 Q So let's take a look really quick at Joint
8 Exhibit 60, page 57. So if you go to the next page, 58,
9 you'll see -- this is the Mojave check to CAM.

10 A Okay.

11 Q And was that for the NV Energy project?

12 A I believe that it was. I -- I mean, I -- I
13 don't know what exactly the check was for without seeing the
14 detail attached with the check.

15 Q So but Mojave did make a large payment to CAM in
16 early March for the NV Energy project?

17 A Yes.

18 Q And expected that Mojave would -- I mean, CAM
19 would make that payment back to Mojave?

20 A Yes.

21 Q Okay. So were you -- weren't you concerned when
22 Angelo didn't make that first payment as he had agreed to do?

23 A There was some concern, but I knew we had other
24 projects with him.

25 Q Other projects, like, the City Hall project?

1 A The City Hall, NV Energy, and Metro Police
2 Headquarters.

3 Q But you also knew that his -- his -- I guess,
4 involvement in those projects was minimal, correct?

5 A Correct. I mean, he was a DV contractor, you --
6 more or less managing that aspect of each project that he
7 would -- he was contracted for.

8 Q And you knew he didn't have independent funds to
9 pay Mojave for the work that Mojave was doing on NV Energy
10 project?

11 A Well, once we paid him then I knew he -- he had
12 funds.

13 Q Only because Mojave paid him the funds, you knew
14 he had the funds. He didn't have independent funds?

15 A I'm not sure what was in his bank account.

16 Q Did you inform Cashman at any point that CAM had
17 been late making that first payment to Mojave on the NV Energy
18 project?

19 A No.

20 Q And you were concerned enough with that payment
21 that you required Angelo to bring two checks to get the NV
22 Energy payment that day, April 26?

23 A Because we paid him the -- I believe it was the
24 February draw that day also, which covered those two checks.

25 Q So you wanted him to immediately -- you were

1 giving him a check on NV Energy and you wanted him to
2 immediately give you a check right back?

3 A Correct.

4 Q For the same time period?

5 A Correct.

6 Q So you made him bring the earlier payment, and
7 then you made him pay you immediately for what you were paying
8 him?

9 A Right. Per our -- per our agreement.

10 Q Okay. Did you agree to hold CAM's check before
11 depositing it in the bank to allow for Mojave's funds to make
12 it into his account?

13 A No.

14 Q So the meeting was April 26, and when did you
15 deposit those checks?

16 A I believe it -- it may have been that night
17 because I think that -- he came in probably around 4:00 at
18 night, so it was either that night or the following day. I'm
19 not -- I don't recall.

20 Q Okay. Let's turn to page 90 of this same
21 exhibit. Do you recognize this check?

22 A Yes, I think that was the second check that he
23 gave us in that --

24 Q And this --

25 A -- meeting.

1 Q — this check is dated April 27, 2011?

2 A Yes.

3 Q So you accepted a postdated check from CAM at
4 that meeting on April 26?

5 A I mean, if it was the 26.

6 Q And then you held it for a day and you deposited
7 it the next day, correct?

8 A I'm not sure what day we deposited it.

9 Q I think if you look down here at the bottom,
10 this is actually the subpoenaed records from the bank, it
11 shows the date of deposit of April 27, 2011, there at the
12 bottom.

13 A Okay.

14 Q And then if we go to the next — the next page.
15 This is the second check that you got for NV Energy that day.

16 A Okay.

17 Q And this -- this check is dated April 28, 2011.

18 A Okay.

19 Q So you accepted a second postdated check from
20 CAM that day for payment?

21 A It appears that way.

22 Q And it looks like this check was deposited on
23 April 28, 2011, correct?

24 A Correct.

25 Q So you held it for two days after the meeting

1 before you deposited it?

2 A Yes.

3 Q So Mojave was contractually obligated to take
4 steps to ensure that Cashman received payment for these
5 materials, right?

6 A Yes.

7 Q Both by its contract with Whiting Turner and by
8 the payment bond that you had gotten for the project?

9 A Yes.

10 Q And that could have been done here, Mojave just
11 chose not to do that?

12 A No.

13 Q You couldn't have ensured payment to Cashman by
14 making payment to Cashman for the materials?

15 A No, I mean, because there was an intermediary of
16 CAM.

17 Q Well, you testified previously that there wasn't
18 a prohibition on issuing a joint check or a similar
19 arrangement by Whiting Turner, so there were ways to make sure
20 that when you gave your funds that those funds were going to
21 Cashman, and the release you were getting in exchange would be
22 enforceable because you were giving Cashman a check?

23 A No.

24 Q But you're the one with the -- you're the one
25 holding the money -- Mojave is holding the money. So Mojave

1 can choose how and when it wants to pay?

2 A No, I still have contractual obligations with
3 CAM. Because if I -- if I issue a joint -- a check directly
4 to Cashman, then CAM is not paid and -- and CAM could come
5 after us for that payment because I don't have any contractual
6 obligation to Cashman.

7 Q But you didn't ask CAM if he was okay with
8 issuing a joint check?

9 A No.

10 Q So he may have been okay with it?

11 MR. BOSCHÉE: Objection. Calls for speculation. And
12 asked and answered.

13 THE COURT: I think it's a fair question. It has
14 sort of been answered, but I'll allow it. Do you want to
15 rephrase it or ask it again?

16 MS. LLOYD-ROBINSON: That's okay. I'll withdraw the
17 question.

18 THE COURT: Okay.

19 BY MS. LLOYD:

20 Q And I think you testified previously you weren't
21 sure if Mojave had issued joint checks involving CAM before?

22 A Correct.

23 Q So if we want to turn to this same exhibit,
24 Joint Exhibit 60, page 58.

25 A What page was that?

1 Q The same exhibit you're in, but page 58 on it.
2 When we take a look at this check it appears to be a -- a
3 two-party check, CAM Consulting and QED. QED is another
4 electrical supplier in town?

5 A Correct.

6 Q So this check has two names on it, CAM
7 Consulting and QED?

8 A Correct.

9 Q So Mojave issued a joint check in this instance?

10 A Yes.

11 Q And then if we look at page 79. Is this another
12 joint check?

13 A Yes, to QED.

14 Q So on this instance weren't you, I guess you
15 testified you were contractually responsible to pay CAM. Did
16 CAM give you permission to issue a joint check to it and QED?

17 A I'm assuming they did for this check.

18 Q But you don't recall talking to CAM about that?

19 A No.

20 Q Do you recall why you would issue a joint check
21 to CAM and QED but refuse to issue a joint check to CAM and
22 Cashman?

23 A No.

24 Q And this was for materials supplied also on the
25 City Hall project?

1 A I'm not sure. I'm not sure. I'd have to look
2 at the check details to see which project this was for.

3 Q And then prior to issuing a payment to CAM for
4 these materials, Mojave determined that the full amount that
5 had been invoiced should be paid?

6 A Correct.

7 Q So Mojave determined to pay that 100 percent
8 billing for those materials at that time?

9 A Correct.

10 Q So Mojave could have determined how much and
11 when to pay because Mojave had the ability to determine if it
12 was -- the work was 100 percent or 80 percent or 50 percent
13 when that payment was issued?

14 A Correct.

15 Q So Mojave paid for it in full and chose to do
16 so?

17 A Yes.

18 MS. LLOYD-ROBINSON: I have nothing further at this
19 time.

20 THE COURT: Okay. Mr. Boschee?

21 MR. BOSCHEE: I'll defer to Counsel, and, Your Honor,
22 I could do this one of two ways. I could ask Mr. Bugni two
23 questions -- or a couple of questions as -- as follow-up and
24 then recall him in two minutes of my direct and the case
25 in chief, or just go at it right now and -- and just get done

1 with him. I'll defer to Counsel and Your Honor as to what you
2 guys would prefer?

3 MS. LLOYD-ROBINSON: I have no objection to him
4 extending the scope as long -- you know, I'll just get to
5 redirect and we can proceed?

6 MR. BOSCHEE: Yeah.

7 THE COURT: Okay. Yeah, let's go ahead and handle
8 him for all purposes.

9 MR. BOSCHEE: Okay. That's kind of what I was
10 looking.

11 CROSS-EXAMINATION

12 BY MR. BOSCHEE:

13 Q The -- the two checks you looked at -- forget
14 the -- I mean, not the joint checks, the two postdated checks,
15 the check for the 27th and the check for the 28th, can you go
16 back to those for just a second?

17 A What page was that?

18 Q I'm sorry.

19 A I'm sorry.

20 Q We don't -- you may not even need to look at
21 them. I'll just ask you a general question, and if you can't
22 remember you can't remember. One check was deposited on the
23 27th and one check was deposited on the 28th, correct?

24 A Yes.

25 Q Okay. So had CAM or Mr. Carvalho and Mr. Norman

1 gone to a Nevada State Bank branch on the 26th with the check
2 that was cut both to CAM and then back to Cashman, that check
3 would have cleared without any issue at all because these two
4 checks weren't even deposited until after the fact, were they?

5 MS. LLOYD-ROBINSON: Objection. Calls for
6 speculation.

7 THE COURT: Well --

8 MR. BOSCHEE: I know that it's speculation, it's --
9 the two checks were deposited after the fact.

10 THE COURT: -- yeah. It's pretty much a matter of
11 accounting --

12 MR. BOSCHEE: Yeah.

13 THE COURT: -- it seems, but what -- maybe he could
14 look at them. I think they're Exhibit 60, pages 90 and 91?

15 MR. BOSCHEE: It's 90 and -- yeah, 90 is one of them,
16 I know.

17 MR. MILLER: Yeah, 91 --

18 MR. BOSCHEE: -- I don't know if the other one is --

19 MR. MILLER: -- 90 and 91.

20 MR. BOSCHEE: Okay.

21 THE COURT: All right. So --

22 BY MR. BOSCHEE:

23 Q So the first -- the first check is -- is dated
24 the 27th and deposited, apparently, according to the check
25 register, on the 27th, correct?

1 A Yes.

2 Q Okay. And the next page, if you look, it's the
3 -- dated the 28th and deposited the 28th; is that right?

4 A Yes.

5 Q Okay. And the check exchange between Mojave and
6 CAM and then CAM to Cashman occurred on the 26th, correct?

7 A Yes.

8 Q So just from a pure timing standpoint, neither
9 of these two checks would have cleared -- would have -- would
10 have come out of CAM's bank account until at the very earliest
11 the 27th or -- and then the 28th, correct? Based on your
12 deposit?

13 A Correct.

14 Q Okay. So any money that -- that would have gone
15 into CAM's account on the 26th, at least arguably,
16 theoretically would have been available for transfer on the
17 26th because these two checks weren't -- weren't drawn on it
18 yet, were they?

19 A No, they weren't.

20 Q Okay. Now, with respect to -- there were two
21 other projects. There was -- it wasn't just the -- it was the
22 Nevada Energy and the Metro project, correct?

23 A Correct.

24 Q Okay. And you had a -- with respect to both
25 projects, a fairly fluid relationship with CAM where you

1 would -- he would come in and there would be a check exchange
2 and then the next time he would come in there would be another
3 check exchange. Was that fairly common of the way you did
4 business with him -- with Mr. Carvalho and his company?

5 A That -- that was a typical scenario --

6 Q Okay.

7 A -- with CAM.

8 Q And is that ultimately the reason, to the extent
9 -- to the extent you know if -- whether credit was run on him
10 or not, was that the reason that you guys didn't have that
11 much concern about his credit?

12 A Yes.

13 Q Because the idea is you're going to
14 simultaneously exchange funds, kind of on a going basis,
15 correct?

16 A Correct.

17 Q Okay. What was -- what was CAMs specific role
18 on the other two projects? What were they actually doing?

19 A They were a DBE on the NV Energy project, I
20 think we had a request for trying to use a DBE and we just
21 figured it was a fairly plausible situation where we had them
22 between Mojave and our systems division.

23 Q Okay. And I want you to explain that a little
24 bit because I -- maybe the Judge understood it, I wanted to --
25 I didn't understand it particularly, and I know your business

1 pretty well. Could you explain what Mojave Systems is,
2 precisely?

3 A It's a division of Mojave Electric that deals in
4 low voltage wiring, for example, close circuit TVs, doing the
5 low voltage wiring for data jacks, phone systems, you know,
6 maybe some low LED lighting.

7 Q Okay. And what is the difference between Mojave
8 Electric, which in that case was -- was the sub, and then
9 Mojave Systems which is a lower, I guess, tiered
10 subcontractor, but also a part of the company. How did
11 that -- how -- well, explain to me and to the Court the
12 relationship on those two projects between Mojave Electric,
13 CAM Consulting and Mojave Systems?

14 A We basically had Mojave Electric which would
15 have been the subcontractor, for example, NV Energy on that
16 project, then CAM would be the DBE, and then below that would
17 be Mojave Systems.

18 Q Okay. And CAM was providing some level of
19 service, some level of -- kind of the DBE services we've been
20 talking about, maybe not extensive work, but they're providing
21 similar DBE service on those projects as they were on the City
22 Hall project, correct?

23 A Correct.

24 Q Okay. And again, this was a requirement -- this
25 is something that was passed down on each project from the

1 general contractor?

2 A That's what I'm assuming, yes.

3 Q Okay. And — but CAM, on these other two
4 projects was actually doing something? You had — there was
5 an agreement in place? They weren't just collecting —
6 collecting checks for — for doing nothing; is that right?

7 A That's correct.

8 Q Okay. And the two checks we — we looked at —
9 and this was -- I believe it's -- it's in two different
10 exhibits, there's J-14 is the one -- but you also have it in
11 here with -- what exhibit was the checks? The two -- two --

12 MR. MILLER: The ones -- 90 and 91?

13 MR. BOSCHEE: No. No, the ones to -- back to CAM?

14 BY MR. BOSCHEE:

15 Q Well, if you look at --

16 MR. MILLER: 15.

17 BY MR. BOSCHEE:

18 Q -- joint -- joint 14, it doesn't matter.

19 MR. MILLER: 15.

20 BY MR. BOSCHEE:

21 Q They're the same exhibit, I think. Okay. With
22 respect to the two payments, the two checks were written and,
23 you know, given that -- that day, these were for work done on
24 other projects, correct? They weren't just -- just nominal
25 payments, there was actually consideration for these two

1 checks, weren't there?

2 A Yes, these were for the NV Energy project.

3 Q Okay. And for work performed by CAM on the NV
4 Energy projects, correct?

5 A Correct.

6 Q Okay. And over the course of your dealings on
7 these two projects there was a fairly regular -- over the
8 course of that period of months -- exchange of checks that
9 went on, correct?

10 A Correct.

11 Q Okay. At that time did you have any reason to
12 believe that -- that CAM Consulting didn't have any other
13 money in its bank account?

14 A No, I didn't. I'd probably say over the -- the
15 life of the relationship with CAM there was maybe about 1
16 million 250 paid to CAM from Mojave.

17 Q Right. Kind of on a revolving fashion with
18 these -- with these check exchanges?

19 A With these check exchanges, yes.

20 Q Okay. And with respect to the -- to the
21 payments for the other projects and the -- and the exchanges,
22 did you have any reason to believe that CAM was insolvent on
23 April 26, 2011?

24 A No.

25 Q Okay. Did you have any reason to believe that

1 there was no money in CAM's account, other than what was being
2 tendered in the 820?

3 A No.

4 Q Okay. Because Mojave had been paying them
5 fairly consistently over a period of several months prior to
6 that, correct?

7 A That's correct.

8 Q Okay. It was Mr. Carvalho and Mr. Shane Norman
9 that were in the office on the 26th, correct? I think you --
10 you said that there were representatives there, I don't know
11 that you identified who they were?

12 A That's correct.

13 Q Okay. If you turn to Exhibit 13, that's the
14 check to -- that's the check that was drawn -- drawn to CAM,
15 correct? Unless I've written the exhibit wrong --
16 incorrectly?

17 A It's a deposit slip from CAM --

18 Q Or deposit slip -- was it -- page 4, I'm sorry.

19 A -- yeah.

20 Q I can't read my own handwriting, I apologize.
21 Which is why I type all my briefs to the Court. This check is
22 for more than \$755,000, isn't it?

23 A Yes.

24 Q Okay. And again, in conjunction with the
25 amounts that you had been exchanging with CAM over the

1 period -- over the period before this, it's reasonable to
2 believe that there was additional money that was going to be
3 in CAMs bank account above and beyond the 755, wasn't there?

4 A Yes.

5 Q Okay. Now, we've -- we've kind of gone over the
6 joint check -- the joint check question. CAM didn't sign this
7 check over -- the one that you're looking at right there, to
8 Cashman, did they?

9 A Not to my knowledge, no.

10 Q Okay. And I think it's undisputed at this
11 point, but I just want to make sure, Mojave Electric did have
12 \$820,000 in its checking account when this check was drawn,
13 didn't it?

14 A Yes, it did.

15 Q More than that?

16 A Yes.

17 Q Okay. This was -- there was no danger of
18 insufficient funds from this check?

19 A Not from Mojave, no.

20 Q Okay. Flip to Exhibit 4 -- J-4. Did there come
21 a point -- this is unconditional final lien release, I
22 believe. Again, if my own handwriting isn't tripping me up
23 again.

24 MR. MILLER: Two pages.

25 BY MR. BOSCHEE:

1 Q Two pages. Was this -- was this unconditional
2 final provided to you at some point on the April 26; do you
3 recall?

4 A Yes, after Angelo and Shane left the building.

5 Q Okay. Payment was made, they left the building,
6 this was given to you, and this is what was passed up to the
7 -- to the general contractor, and eventually the owner,
8 correct?

9 A Correct.

10 Q Okay. At that point, having received this --
11 having received this document and having tendered full
12 payment -- and again, your check was good, it didn't bounce,
13 the money was actually deposited, correct?

14 A Correct.

15 Q Okay. Did you believe that at that point Mojave
16 was pretty much done with respect to this particular issue and
17 these generators?

18 A Yes.

19 Q Right. Even though the work wasn't completed,
20 you thought with respect to the payment and the unconditional
21 lien release that you guys were finished with respect to the
22 generators, correct?

23 A For payment, yes.

24 Q Yeah. Okay. And with respect to -- you guys
25 issued -- and you can look at it if you need to -- you guys

1 issued a payment bond on this project, correct?

2 A Yes.

3 Q Okay. And -- well, actually, go to Exhibit 49.
4 I don't know if it's up there. Okay. Cool. Sorry, I was
5 just closer. I figured I'd run up there. Okay.

6 Second paragraph from the bottom. All this payment
7 and bond -- again, Mojave Electric is the principal, correct?

8 A Yes.

9 Q Okay. And it says, Now, therefore the
10 commission of this obligation is such that if the principal
11 shall properly make payments to all persons, supplying labor
12 material, rental equipment, supplies or services in the
13 performance of said contract, and any and all modification of
14 the contract, then this obligation shall be null and void. Do
15 you see that?

16 A Yes, I do.

17 Q Okay. You guys made full payment for the
18 materials and services with respect to the generator on April
19 26, didn't you?

20 A Yes.

21 Q Okay. And at that point did you believe that
22 the obligations in this payment bond were essentially null and
23 void because you had tendered full payment?

24 A Yes.

25 Q Okay. But you knew that the -- the work wasn't

1 done yet, right?

2 A Yes.

3 Q Okay. When did you learn that there was a
4 problem? You, Brian Bugni?

5 A I believe it was Monday morning, the 2nd of May.

6 Q Okay. And how did you learn that there was some
7 issue?

8 A Pete Fergen with Mojave Electric came to my
9 office and said that Keith Lozeau had gone to his house on
10 Saturday, wondering what we had done with payment on -- for
11 the generators.

12 Q Oh, okay. And did you subsequently learn that
13 there was just a breakdown in communication between Keith and
14 Shane at Cashman and that was the -- the initial -- the
15 initial problem?

16 A Yeah, Shane said he didn't tell anybody that
17 that he was holding the check.

18 Q Okay. And when did you learn that there was a
19 stop payment issued on -- on CAMs check?

20 A I believe it was around May 11.

21 Q Okay. Did somebody at Cashman -- well, did
22 Cashman contact you guys to try to stop payment on the Mojave
23 check to CAM?

24 A Yes.

25 Q Okay. Were you able to?

1 A No, we weren't.

2 Q Okay.

3 A The check had already cleared.

4 Q Okay. And so then after some other machinations
5 did you attend a meeting at Mojave's office with
6 representatives of Cashman?

7 A In the August time frame, yes.

8 Q It was in August?

9 A Yes.

10 Q Okay. And what was the purpose of that meeting?

11 A My assumption was to try and see if we couldn't
12 -- maybe compare notes with each company and see if there was
13 some resolution that could be resolved.

14 Q Okay. At some point prior to that meeting did
15 Cashman indicate to you guys that they were not going to
16 finish the work on the project?

17 A Yes.

18 Q Okay. Do you recall when that was?

19 A I'd probably say in the mid-May time frame.

20 Q Okay. And in -- in the meeting that you
21 attended you were not able to come to any resolution with
22 Cashman as to how to, I guess, solve this problem, were you?

23 A No, we weren't.

24 Q Obviously because we're -- we're sitting here.

25 So then did you have to -- and I say, You, Mojave,

1 have to get new subs in to finish the work that Cashman did
2 not finish?

3 A Yes, we did.

4 Q Okay. Could you turn to Exhibit 65? I don't
5 know if we got this one or not.

6 A I think it's this one.

7 Q Is it that one? I don't think so. It should be
8 the very last one because it's the very last exhibit. That's
9 56.1.

10 THE CLERK: 7 is probably on the stand.

11 MR. BOSCHEE: Is it on the stand?

12 THE CLERK: Yeah.

13 MR. BOSCHEE: Is No. 7 up here somewhere? Oh, I see.
14 The stickers got moved. That's the problem. Okay. Yeah,
15 it's here.

16 BY MR. BOSCHEE:

17 Q Could you take a second and go through the
18 invoices and P.O.s in Exhibit 65 and tell me what these are?

19 A Do you want a technical description because I'm
20 probably not the best one for --

21 Q No, I just want to know what -- what were these
22 invoices for because you're the -- you're the money guy at
23 Mojave? That's why I'm asking you.

24 A These were invoices for the work to start up the
25 generator.

1 Q Okay. And I've done this twice with a
2 calculator, so -- and then, I'm sure the Court will double
3 check me and I hope that it does. If you add up these
4 invoices it comes to approximately 142,431.84. Does that
5 comport with your recollection of how much money Mojave had to
6 expend to finish the work at City Hall?

7 A Yeah, the 142 was a portion of the money we had
8 expended for this.

9 Q Okay. What was the -- what was the rest?

10 A Well, there's -- we had to pay for our bonds.

11 Q Right. Okay. Putting aside the money that you
12 had to expend for the bonds --

13 A Okay.

14 Q -- there's the -- the lien bond and everything
15 else, this is the money that you actually had to expend to
16 finish the work, correct?

17 A Correct.

18 Q Okay. And as you look at -- about halfway
19 through -- and now I can't find it. Actually, go to 15. It's
20 an invoice from Codale Energy Supplies.

21 A Yes.

22 Q Okay. Do you recall what this invoice was for
23 -- what you had to pay this for?

24 A It was for the batteries for the UPS, as I
25 recall.

1 Q The -- the batteries that you -- that Codale
2 bought from Cashman?

3 A Yes.

4 Q Okay. And these are the batteries that were
5 ultimately supplied to the City Hall project?

6 A Yes.

7 Q Okay. And do you recall why you guys paid for
8 these batteries a second time after, you know, above and
9 beyond the 755?

10 A Because Cashman wouldn't provide them, so we
11 tried another avenue to get the batteries for the UPS.

12 Q Okay. And their --- and this was the cheapest,
13 most efficient avenue to get them?

14 A It's what appeared to us to be the cheapest and
15 efficient avenue.

16 Q Now, this \$142,000 and change got most of the
17 work done, but was the work ever actually completed? Was
18 Cashman's work ever actually finished?

19 A No.

20 Q They still don't have the PLC codes out there,
21 do they?

22 A That's correct.

23 Q Okay. And the exhibits we just looked at --
24 Exhibit 65, again, you're the money guy so you're the one I
25 got to ask about this, this is money that was expended by

1 Mojave. It wasn't reimbursed by Whiting Turner or the owner
2 or anybody else, was it?

3 A No, this money was not reimbursed from any
4 entity in Mojave Electric.

5 Q Okay. So Mojave at this point has tendered the
6 755 which was cashed in and deposited, correct?

7 A Yes.

8 Q Okay. And it's expended this money as well for
9 the City Hall project; is that right?

10 A That's correct.

11 Q Above and beyond the 755. And you guys had --
12 you guys posted a payment bond and you also had a bonder on
13 the mechanics lien, correct?

14 A And -- and also the PLC codes.

15 Q Right. You guys -- that was an injunction bond,
16 I believe?

17 A I believe.

18 Q Per order of this Court?

19 A Yes.

20 Q Okay. And just to clarify, that was -- that was
21 after this Court ordered Cashman to supply the PLC codes; is
22 that right?

23 A Yes.

24 Q Okay. And that issue has subsequently been
25 appealed by Cashman; is that right?

1 A That's my understanding.

2 Q Okay. And if Cashman prevails in this case in
3 any way, shape, or form, if this Court awards damages to
4 Cashman, who is going to ultimately have to pay those damages?

5 A Mojave Electric.

6 Q Right. You are, right?

7 A Yes.

8 Q Above and beyond the 755 and the 142 that you've
9 already paid; is that right?

10 A That's correct.

11 Q Which would be the second time in the battery --
12 in the case of the batteries and the third time Mojave has
13 paid for this equipment; is that right?

14 A That's correct.

15 MR. BOSCHEE: I have no further questions, Your
16 Honor.

17 THE COURT: All right. Before you go --

18 MR. BOSCHEE: Yep?

19 THE COURT: -- would you run through what you think
20 the accounting is as to the financial outlay of Mojave
21 again --

22 MR. BOSCHEE: Sure.

23 THE COURT: -- and I'd like to know the actual costs
24 associated with the liens and bond activity as well?

25 MR. BOSCHEE: Yeah, the witness would have to answer

1 that one. I don't know what the -- I can't remember what
2 the -- the bond --

3 THE COURT: All right.

4 MR. BOSCHKE: -- that you required --

5 THE COURT: So the PLC --

6 MR. BOSCHKE: -- in your --

7 THE COURT: -- the PLC codes?

8 MR. BOSCHKE: -- right. The PLC codes --

9 THE WITNESS: I believe that was in the ballpark of
10 11,000 --

11 MR. BOSCHKE: I --

12 THE WITNESS: -- is the number that sticks in my
13 mind.

14 MR. BOSCHKE: -- I believe that's correct, but that
15 would be -- we could look -- find the Court order for that and
16 take Judicial Notice of it. Whatever Your Honor required. I
17 think it was 10 or \$11,000.

18 THE COURT: Okay. What about the --

19 MR. BOSCHKE: For the injunction bond.

20 THE COURT: -- okay.

21 MR. BOSCHKE: And then there was a --

22 THE WITNESS: There was --

23 MR. BOSCHKE: -- you had bond around -- you had a
24 bond around the mechanic's lien, correct?

25 THE WITNESS: -- correct.

1 MR. BOSCHEE: And that is Exhibit -- I'll find it --
2 maybe I won't find it. Exhibit J -- Joint Exhibit 39. I
3 think. Yep.

4 THE COURT: Well, actually -- I don't know if you
5 want to do this right now --

6 MR. BOSCHEE: Okay.

7 THE COURT: -- but I -- it would be helpful to me if
8 we have -- and he'll be here anyway --

9 MR. BOSCHEE: Right.

10 THE COURT: -- right -- if I had some sort of an
11 accounting as to -- in the light most favorable to Mojave,
12 what they put out.

13 MR. BOSCHEE: Okay.

14 THE COURT: And for what? What was their financial
15 outlay in this whole mess relevant to our case and the whole,
16 you know, Cashman and what did CAM do and all that.

17 MR. BOSCHEE: Mm-hmm.

18 THE COURT: I'd like to know every penny you put out.

19 THE WITNESS: Okay.

20 THE COURT: Even if it was something that I ordered
21 along the way. I'd just like to know --

22 THE WITNESS: Sure.

23 THE COURT: -- for -- all the financial outlay that
24 Mojave has in this thing.

25 MR. BOSCHEE: And we can certainly --

1 THE COURT: And that --

2 MR. BOSCHÉE: -- provide that.

3 THE COURT: -- that would include the escrow money if
4 they have a role in that too. That's --

5 MR. BOSCHÉE: And I'm guessing --

6 THE COURT: -- in escrow.

7 MR. BOSCHÉE: -- they don't actually. That was --

8 THE WITNESS: I don't --

9 MR. BOSCHÉE: -- kind of news to us on the fly, but
10 --

11 THE WITNESS: -- think we --

12 THE COURT: Okay.

13 MR. BOSCHÉE: -- but we'll find that out as well.

14 THE COURT: And then you gave an accounting for
15 Exhibit 65. You said 142 something. I didn't write it down
16 quick enough, though.

17 MR. BOSCHÉE: It's in my brief as well, but --

18 THE COURT: Oh, yeah, it is. Okay.

19 MR. BOSCHÉE: -- if you happen to see that is all.

20 THE COURT: I know. I was just --

21 MR. BOSCHÉE: Yeah, the only -- the only numbers that
22 we didn't include in the brief would be the -- the injunction
23 bond --

24 THE COURT: Right.

25 MR. BOSCHÉE: -- the lien release bond, and then

1 again, any other -- I think there may be -- I don't think
2 there's an outlay with respect to the escrow, but we'll get
3 those numbers --

4 THE COURT: All right. So I'm saying to you --

5 MR. BOSCHEE: -- right.

6 THE COURT: -- it would be helpful to me to have a
7 -- just a standalone accounting of everything, what -- no
8 matter what it is --

9 MR. BOSCHEE: Right.

10 THE COURT: -- that they put out -- that Mojave put
11 out.

12 MR. BOSCHEE: And I think we can have that provided
13 for Your Honor tomorrow morning, I suspect -- without knowing
14 that we're going to be done with the witnesses today, so -- or
15 early tomorrow, so we'll have that for you tomorrow before
16 closing arguments? That's --

17 THE COURT: Okay.

18 MR. BOSCHEE: -- if that's sufficient?

19 THE COURT: Good.

20 MR. BOSCHEE: Okay.

21 THE COURT: I appreciate it. Okay. Ms. Lloyd?

22 MR. BOSCHEE: Thanks, Judge.

23 REDIRECT EXAMINATION

24 BY MS. LLOYD-ROBINSON:

25 Q So testimony previously was that Mojave knew

1 that Cashman provided the unconditional release in exchange
2 for the check from CAM in your office?

3 A Yes.

4 Q So you know the check from CAM to Cashman has to
5 be good in order for that release to be valid and enforceable?

6 MR. BOSCHEE: Objection. Calls for a legal
7 conclusion.

8 MS. LLOYD-ROBINSON: To the extent he --

9 THE COURT: You know, I've -- given his role as the
10 VP of finance and being there so long, I think it's a fair
11 question. So go ahead. You can -- do you need to have it
12 reasked, Mr. --

13 THE WITNESS: Could you reask it, please?

14 MS. LLOYD-ROBINSON: I'll withdraw the question.

15 BY MS. LLOYD-ROBINSON:

16 Q Let's turn to Joint Exhibit 49. This is that
17 payment bond that you just looked at with Mr. Boschee, again.

18 A Okay.

19 Q The obligation in this bond is that Mojave
20 insure payment to all persons. If you look at that second
21 paragraph from the bottom, All persons supplying labor,
22 material, rental equipment, supplies, or services in the
23 performance of Mojave's contract, correct?

24 A Yes.

25 Q It doesn't say, All persons Mojave contracted

1 with?

2 A No.

3 Q It says, All persons providing services to
4 Mojave in the performance of Mojave's contract?

5 A Well, it says, All persons supplying labor,
6 material, rental equipment, supplies, or services in the
7 performance of said contract.

8 Q Right. And the said contract that it's talking
9 about, defined above, is Mojave's contract with Whiting Turner
10 on this project?

11 A Yes.

12 Q Okay. So the obligation was not simply to pay
13 the people that Mojave contracted with, the obligation here in
14 this bond is to ensure that everyone supplying under Mojave on
15 this project is getting paid?

16 A Yes.

17 Q Okay. Let's look at Joint Exhibit 60. Let's
18 first take a look at page 53, there. And this is CAM
19 Consulting's bank statement from Nevada State Bank, period
20 ending March 31, 2011.

21 A Okay.

22 Q And it looks like here you can see the deposits,
23 one of the deposits listed is that Mojave check you testified
24 about earlier, the \$149,777.70?

25 A Yeah, I'm assuming. Yes.

1 Q Okay. Well, I mean, we can look -- you can --
2 we can look through that -- all the supporting documents are
3 in here. If you go to page 58, there's the check.

4 A Okay.

5 Q And you testified previously that that payment
6 that -- that Mojave made to CAM was mostly to be paid back to
7 Mojave, except for CAM's fee?

8 A No, not that check. That one is to CAM and QED.

9 Q So that was for different materials?

10 A Yes.

11 Q So didn't you testify, though, previously that
12 Mojave made a payment to CAM in early March that was to be
13 paid back to Mojave?

14 A Yes.

15 Q So do we need to go to the statement -- the
16 prior statement, then, to find that?

17 A I'm assuming. I -- I don't know how CAM handled
18 their banking.

19 Q Oh -- okay. And you have no way to
20 cross-reference the Mojave check to know exactly what it was
21 for?

22 A Not here, right now.

23 Q Right. Okay. Let's just take a look at CAM's
24 statement here. He had at the beginning of this, \$4,800 in
25 his account, approximately. And then at the end, after he

1 received all that money from Mojave, at the end of the month
2 he had \$3,500, correct?

3 A Correct.

4 Q So during this period you testified that he owed
5 Mojave about \$135,000, whether or not that check was the check
6 that was supposed to be paid back, during this period he owed
7 Mojave \$135,000?

8 A Yes.

9 Q So it's clear from his bank account he did not
10 have those funds to pay Mojave at the end of this month? The
11 money you had already paid him, you testified?

12 A At that time I was -- I mean, I was -- I had no
13 information on his bank account.

14 Q I'm not asking about what you knew. I'm just
15 saying from this document here looking at it, he had already
16 spent the money that Mojave had given him that needed to be
17 paid back to Mojave?

18 A I mean, it's not in the account.

19 Q Right. By looking at this, it's not there?
20 Okay.

21 So then if we go to page 87 of the same joint
22 exhibit. This is a withdrawal slip that was filled out by
23 Angelo Carvalho from this account, this Nevada State Bank
24 account on April 27, 2011?

25 A Okay.

1 Q And you -- that's what it says? He's
2 withdrawing \$600,000 on that date, correct?

3 A Correct.

4 Q So really, it wouldn't have mattered if Cashman
5 had deposited the check that it received the very next day,
6 the money was already gone?

7 A I -- I mean, I don't know when this was done.

8 Q Well, it's dated April 27, and you can see it
9 cleared the bank April 27. These are bank records. So he had
10 already -- it seems he had already intended to defraud Cashman
11 at that point since he had spent all the money he had from
12 Mojave the month before, and then also withdrew the majority
13 of the money that needed to be paid to Cashman, he withdrew it
14 that very next day?

15 A It would appear that way.

16 Q So he didn't stop payment on the check
17 subsequent, it's pretty clear here that he never intended for
18 that check to be paid at all?

19 A I don't know his intent.

20 Q But the money was gone out of his account, the
21 check would not have ever cleared?

22 A But I don't know where the money went. So it --
23 I mean, he could have had set up another banking account to
24 handle that. I don't know.

25 Q Right. But he gave Cashman a check drawn on

1 this Nevada State Bank account?

2 A I -- I mean, it --

3 Q We can go in --

4 A -- okay.

5 Q -- we can look at the next statement, if you
6 would like? The Cashman check is in there.

7 MS. LLOYD-ROBINSON: I apologize. Court's
8 indulgence, please.

9 BY MS. LLOYD:

10 Q Do you want to turn to Joint Exhibit 7? And a
11 stop payment check, right here?

12 A Yes.

13 Q And this is a check -- this is a check that was
14 given my CAM to Cashman in exchange for that release. This is
15 drawn on Nevada State Bank, correct?

16 A Yes.

17 Q And do you want the opportunity to just review
18 the account number to see that it is drawn on this same
19 account that we were just talking about where Cashman -- I
20 mean, CAM withdrew the funds?

21 A Shall we go back to that -- because I just
22 closed it. I'm sorry.

23 Q I apologize. I can represent that it's the same
24 account?

25 A Okay. I mean -- yeah.

1 Q Okay.

2 A No, that's fine.

3 Q Okay. So CAM was passing a check to Cashman
4 that he probably -- he never intended for it to fulfill -- so
5 the stop payment -- like I said, if Cashman had taken that
6 check the very next day and cashed it, it wouldn't have
7 cleared because Carvalho had already removed the money from
8 his account --

9 A But if they would have --

10 Q -- correct?

11 A -- taken it the 26th, it would have cleared
12 then.

13 Q Well, you said the payments occurred late in the
14 day on the 26th and you didn't deposit your checks on the
15 26th --

16 A Right.

17 Q -- right?

18 A But I'm not Cashman. I mean, Cashman -- for all
19 the concern that Shane had, could have gone to the bank at
20 that time, with Angelo, to get the money.

21 Q If he had known that Mojave and CAM banked at
22 the same bank, if he had known all those things? Because he
23 didn't have that knowledge at the time. So he didn't know
24 that the funds would be immediately available that way,
25 correct? That was his testimony yesterday.

1 A Yeah, that was his testimony.

2 Q Yeah. So you just sort of briefly reviewed the
3 expenses -- some of the expenses that it appears Mojave
4 incurred due to CAM's failure to complete its work, correct?

5 A Could you rephrase that?

6 Q You just reviewed with your counsel the expenses
7 that Mojave incurred to complete CAMs work on this project?

8 A For the generator and the UPS, yes.

9 Q So you testified previously that you had an
10 agreement with CAM to complete that work on the generator and
11 the switch gear and the UPS?

12 A Yes.

13 Q So CAM did not complete its work?

14 A Yes.

15 Q And did Mojave at any point issue back charges
16 to CAM on this contract for it -- for CAM's failure to finish
17 this work?

18 A No.

19 Q So these amounts that Mojave incurred, those
20 would be chargeable to CAM -- the person that Mojave
21 contracted with to -- to do this work?

22 A Contractually, yes. And then -- I mean, to me
23 it would then flow to Cashman.

24 Q But the reason Cashman didn't do it is because
25 Cashman didn't get paid. Cashman is the only party here that

1 hasn't received any payment.

2 A Well, I mean, my opinion is Cashman got paid,
3 took a promissory note and waited six days to deposit the
4 check.

5 Q That's your opinion. There's no evidence --

6 A Oh, I know.

7 Q -- of a promissory note, and there's no evidence
8 of him waiting six days.

9 A Well, it's a postdated check. A postdated check
10 is a promissory note.

11 Q According -- you're making legal conclusions in
12 your testimony?

13 A No, I mean, that's my understanding.

14 Q Okay. So Mojave contracted with CAM and CAM
15 didn't complete its work. So any expenses that Mojave
16 incurred are chargeable to CAM?

17 A Correct.

18 Q So why didn't Mojave issue back charges to CAM?
19 Is it not your normal course of business to issue back charges
20 when you incur expenses for a subcontractor's failure to
21 perform?

22 A It's by situation on how we handle back charges.

23 Q So you didn't --

24 A I mean --

25 Q -- you didn't --

1 A -- go ahead.

2 Q -- you didn't charge these to CAM?

3 A They haven't been charged to anybody because
4 they're -- I mean, CAM basically disappeared after that time.

5 Q Are you seeking to recover these amounts from
6 CAM in this litigation?

7 A I'm not sure the legal -- how the legal
8 proceedings on how -- how that functions.

9 Q Should -- wouldn't Mojave want to recover those
10 amounts from CAM?

11 A Mojave would want to recover those amounts, yes.

12 Q And would be contractually able to do that since
13 this agreement was with CAM?

14 A Yes.

15 Q And again, we specifically talked about the
16 Codale invoice, but again, that was paid by Mojave because CAM
17 did not supply that battery to the project, correct?

18 A Correct.

19 MS. LLOYD-ROBINSON: I have nothing further at this
20 time.

21 THE COURT: All right.

22 RECROSS-EXAMINATION

23 BY MR. BOSCHEE:

24 Q But that money was paid to Cashman, wasn't it --
25 for those batteries?

1 A Yeah -- to my understanding, yes.

2 Q Batteries that Cashman never did provide to the
3 project, even though it's claiming the full 755 in this
4 litigation; is that right?

5 A That's correct.

6 Q Okay. And with respect to the \$142,000 that is
7 owed, you are not actually seeking that as a breach of
8 contract or a breach of agreement damage from Cashman in this
9 case, are you? You are seeking that as an offset to their
10 lien that they're -- that they're attempting to recover,
11 aren't you?

12 A Yes.

13 Q Okay. And in fact, you do have -- take Judicial
14 Notice if you want -- there are claims pending against CAM
15 Consulting and Angelo Carvalho by Mojave in this case, aren't
16 there?

17 A I believe we have countersuits, yes.

18 Q Right. And a default has been entered and
19 default judgment is pending, depending on what the outcome of
20 this trial is and any of the damages that we would be entitled
21 to recover. Do you have an understanding as to that?

22 A Yes.

23 Q Okay. And had -- since we walked through the
24 withdrawals and deposits -- had Angelo Carvalho and Shane
25 Norman gone to a Nevada State Bank branch on April 26 -- April

1 26, if I'm not mistaken, is the day before April 27, isn't it?

2 A Yes.

3 Q Okay. And had the check been signed over to
4 Cashman by CAM, had that -- had that happened, instead of
5 taking a postdated check, then the withdrawal on the 27th
6 could have never happened, right?

7 A Correct.

8 MR. BOSCHÉE: I have nothing further, Your Honor.

9 THE COURT: Ms. Lloyd?

10 MS. LLOYD-ROBINSON: I have nothing further at this
11 time.

12 THE COURT: All right. Well, I'm going to continue
13 my efforts here. Sorry about that.

14 All right. So, Mr. Bugni, and -- if you want to
15 object to this, please do, but it's just a question. All
16 right?

17 MR. BOSCHÉE: I'm not going to object to Your Honor's
18 questions. I'll go on the record with that now.

19 THE COURT: I mean, I'll -- I'm not going to try to
20 ask you legal questions, but an objection could come, if this
21 does call for a legal answer. I don't think it does, though.
22 Okay?

23 I mean, I respect -- you've been along -- you've
24 been around a long time, right? I mean, you're --

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: -- you're the finance guy for a pretty
2 good company for a heck of a long time, right? You might be
3 able to retire in a couple years?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay. So here's the thing. I take it
6 you probably agree, just as a conceptual matter, and without
7 law entering into it, that here we got Cashman, I mean, you
8 got to have the backup power system in this deal with the City
9 Hall, you know, they got the stuff, right? And they provide
10 it with limited exception -- the code thing or whatever,
11 right?

12 THE WITNESS: Right.

13 THE COURT: How are they supposed to get paid, in
14 your opinion, at this point, given everything that happened?
15 Do you have an opinion for me as to how they're supposed to --
16 I mean, they did provide the stuff, and it's expensive -- you
17 know, in some people's world it's expensive and meaningful
18 equipment, and it's necessary over there at City Hall to give
19 us all a sense that the power is not ever going to be an
20 issue, right?

21 THE WITNESS: Right.

22 THE COURT: So how are they supposed to get paid, in
23 your view? And I say it in all due respect. I know you have
24 a role for a company, but just a thought that I wanted to sort
25 of send your way and see what you thought?

1 THE WITNESS: Your Honor, my thought on this is, I
2 mean, CAMs the one that has the money. I mean, Mojave has
3 paid for this once. We've had a check cleared. We've gone
4 out above and beyond, done extra work just to get this done.
5 And -- and I'm not sure the value of the vehicle is in the car
6 but I'm just saying, if -- if Angelo took 755, less the house
7 and car, that's 500,000 that's still out there that, you know,
8 I haven't done a forensic accounting of this, so it's out
9 there somewhere --

10 THE COURT: Okay.

11 THE WITNESS: -- and whether it's with the kids or at
12 a different bank, I'm not sure.

13 THE COURT: All right. So you -- just to crystallize
14 that or maybe summarize it, your thought is they should be
15 going after CAM because he's the one that stole the money?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. All right. And then -- I
18 don't know if he's the right witness for this, but it's
19 something that's been percolating in my brain. And since he's
20 the finance guy for the Mojave Company, is there -- to your
21 knowledge is there an effort in the criminal case to get
22 restitution?

23 I mean, you just -- you just talked to me -- it's a
24 really good segue. You talked to me that the money is
25 probably out there with the kids, whatever, but I mean, if --

1 if Carvalho is being prosecuted, it would seem to me that the
2 DA's office, in a case like this, as part of that prosecution,
3 would endeavor, respectfully, to have a restitution payment.
4 I mean, if he misappropriated or stole, you know, 800 grand
5 and he's being prosecuted for that, it's typical in that sort
6 of a process -- and I do criminal cases too, from time to
7 time. I mean, it is typical to have a restitution goal that
8 he -- you know, maybe -- especially if he enters into a plea
9 arrangement which he may or may not do.

10 But if he -- even if he doesn't, that could be part
11 of a criminal sentence to -- to pay restitution --

12 THE WITNESS: Yes.

13 THE COURT: -- even if he goes to jail.

14 THE WITNESS: Yeah. I'm not sure what's going on
15 with the criminal side of that because, I mean, technically
16 Mojave is not -- and I'm just -- for lack of a better term,
17 the damaged party in this --

18 THE COURT: Yeah.

19 THE WITNESS: -- because Cashman, however you want to
20 call the check, I mean, they have the NSF check and that's how
21 they're going after CAM, but, I mean, I don't really have -- I
22 mean, because of privacy notice, I'm assuming I wouldn't have
23 the jurisdiction to go in and say what's going on with Angelo.

24 THE COURT: All right. Would you agree with this:
25 That if in the criminal case there is restitution that comes

1 about that that goes to Cashman, unless they get paid some
2 other way prior to that?

3 THE WITNESS: Yes, I would.

4 THE COURT: Okay. All right. I mean, it might have
5 been nice for me if the criminal case went first. I mean, I'm
6 not --

7 MR. BOSCHEE: I think --

8 THE COURT: -- somewhat saying let's do that, but it
9 sure would be interesting to see if restitution came out
10 because, I mean, you know, in civil -- in the civil arena --
11 and I'm just talking to everybody, but it's helpful,
12 hopefully, in the civil arena you can do a lot of things. You
13 can enter judgments until the cows come home, but when some
14 guy is looking at going to jail and he's -- I don't know, how
15 old is this guy?

16 MS. LLOYD-ROBINSON: He's in his, I think, early 40s.

17 MR. BOSCHEE: Early 40s, yeah.

18 THE COURT: All right. Well, he probably doesn't
19 want to go to prison for a while. My guess is it might be
20 interesting to see his financial resources come about when
21 restitution as part of the criminal case becomes irrelevant to
22 that case.

23 MS. LLOYD-ROBINSON: I can represent to the Court
24 that a review of the bank statements we've submitted as
25 evidence shows that Carvalho isn't sitting on money anywhere.

1 He spends all the money. You can see his gambling trail. You
2 can see his trips to Hawaii, his trip to Disneyland. He
3 purchased that house that we, you know, we're trying to get
4 title to.

5 THE COURT: All right.

6 MS. LLOYD-ROBINSON: I mean, it's pretty clear he's
7 not -- he didn't hide the money somewhere. He spent the
8 money, I think, in anticipation of --

9 THE COURT: Okay.

10 MS. LLOYD-ROBINSON: -- I don't know what since he
11 has never --

12 THE COURT: All right. Well, I'm --

13 MS. LLOYD-ROBINSON: -- appeared.

14 MR. BOSCHEE: But --

15 THE COURT: -- I'm glad I brought it up --

16 MS. LLOYD-ROBINSON: And I --

17 THE COURT: -- if that's the case.

18 MS. LLOYD-ROBINSON: -- I also can represent --

19 THE COURT: He may be --

20 MS. LLOYD-ROBINSON: -- we've attempted to collect on
21 a judgment that we have against Carvalho, we've issued writs
22 --

23 THE COURT: Okay.

24 MS. LLOYD-ROBINSON: -- done due diligence trying to
25 find additional assets --

1 THE COURT: Okay.

2 MS. LLOYD-ROBINSON: — and we've been unable to do
3 that, so —

4 THE COURT: All right. That —

5 MR. BOSCHÉE: And we did — and Counsel and I both
6 —

7 THE COURT: — yeah.

8 MR. BOSCHÉE: — and Mr. Norman, additionally, have
9 been to some of the criminal proceedings and it's just, you
10 know, Judge Herndon is busy too, and he hasn't — he just
11 hasn't been able to set the thing for trial yet, but I agree
12 with Your Honor that it would have been ideal had we maybe had
13 that done first, but it just, you know, it wasn't in the
14 cards. So — and I know everybody is busy and everybody is
15 busy over here and you guys have very stacked calendars, as
16 does he, so —

17 THE COURT: And again, though, and I've seen it many
18 times — I did criminal work many years ago. I've had
19 criminal cases, even though I respect that there may have been
20 a pretty solid attempt at collection and a pretty good
21 evaluation of what, if — what, if any, assets he has that he
22 may be judgment proof in some ways, it's just that the specter
23 of paying restitution or going to jail has prompted a lot of
24 people to find very resourceful ways to come up with money.
25 Your liberty is a — you know, not being in jail can motivate

1 you. I'm just saying.

2 And so part of this might be for you all to consider
3 in your argument to me -- and maybe this is something for you
4 to think about on behalf of your company and you guys,
5 whatever I do at the end, I do, I'll do -- I'll, of course,
6 think about it and do the best I can and give people answers
7 probably real soon -- probably on Friday, but think about what
8 you want to have in any resulting order from this civil case
9 that would be designed to address the -- the specter of
10 potential restitution later.

11 Might as well think about that. It's my concerted
12 opinion, based upon a lot of dealing with this kind of stuff,
13 that he's going to come up with some money in that criminal
14 case. If he doesn't, I'd be surprised. Even though I respect
15 tremendously what you've said about his financial ability and
16 his gambling problems and his traveling, living la vida loca,
17 or whatever he's been doing, you know?

18 I mean, again, you know, who knows who he knows or
19 what the -- you can, you know, if it comes down to the DA -- I
20 don't know what the DA's office is doing, and I'm not
21 suggesting they do this either, but I have seen it in practice
22 where -- where, you know, when they -- in the white collar
23 crime sort of a scenario, you pay restitution and it either
24 puts you in a probation situation or it limits the actual jail
25 time.

1 And when that's, you know, with a 40--some year old
2 guy, you know, who knows who he knows even, or where it could
3 come from. I'm just -- I'm bringing that up because I think
4 that's part of what it -- you know, I like to end all loose
5 ends here, and so I'd -- I'd ask you all to consider adding
6 that to your thoughts at the end --

7 MR. BOSCHEE: Sure.

8 THE COURT: -- as a proviso, not, you know, because
9 it eventually will occur, and we might be glad this came up
10 now so that there's an arrangement put in place, you know, in
11 the criminal case, okay?

12 MR. BOSCHEE: Thank you, Judge. Yeah, we had -- we
13 had actually -- Mr. Norman, in particular, had considered
14 that, and we -- Counsel and I and Mr. Norman had hoped that
15 that would -- that would happen because I think we all
16 believed that criminal restitution order would spur him on
17 even more so than -- than the civil judgment that was entered.

18 THE COURT: Yeah.

19 MR. BOSCHEE: But again, it just hasn't happened yet.

20 THE COURT: Okay.

21 MR. BOSCHEE: And through no fault of anybody.

22 THE COURT: I mean, I'll bet you a Starbucks it does.

23 MR. BOSCHEE: I -- I won't take that bet because I'll
24 owe you a Starbucks, but --

25 MS. LLOYD-ROBINSON: He lost his employment. He was

1 removed from the military. I mean, it appears he doesn't even
2 have active employment --

3 THE COURT: Yeah.

4 MS. LLOYD-ROBINSON: -- just to put out there, we've
5 really attempted to collect on the judgment --

6 THE COURT: All right.

7 MS. LLOYD-ROBINSON: -- in hoping --

8 THE COURT: So I won't tell you about -- I won't tell
9 you about the homeless person case I had where they came up
10 with 50 grand in restitution to stay out of jail. I won't
11 tell you --

12 MR. BOSCHEE: It sounds like --

13 MS. LLOYD-ROBINSON: Wow.

14 MR. BOSCHEE: -- Jennifer wants to bet you that
15 Starbucks.

16 MS. LLOYD-ROBINSON: I mean --

17 MR. BOSCHEE: That's -- I think that's an acceptance.

18 MS. LLOYD-ROBINSON: -- if that works out, let's
19 speed up the criminal case, you know, and I think everyone
20 would be happy.

21 THE COURT: I'm just telling you right now. Believe
22 me.

23 All right. Any other questions for Mr. Bugni?

24 MR. BOSCHEE: No other -- none from us.

25 MS. LLOYD-ROBINSON: No, nothing further.

1 THE COURT: All right. Mr. Bugni, thanks so much for
2 your testimony.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Please go head back, have a seat here at
5 the table.

6 And do you have another witness for today?

7 MS. LLOYD-ROBINSON: The Plaintiff rests.

8 THE COURT: All right. Do you have a witness for
9 today?

10 MR. BOSCHEE: Well, out first witness was Brian
11 Bugni, and he just got done testifying. We'll call Chris
12 Meiers. I'll go out in the hall and get him.

13 THE COURT: Okay.

14 MR. BOSCHEE: Or Brian will get him.

15 THE COURT: All right. Mr. Meiers, if you would,
16 please come on up to the witness box area. When you arrive
17 there, please remain standing. Raise your right hand, and
18 face Ying [phonetic] she's our court clerk today. She's going
19 to swear you in.

20 CHRIS MEIERS, DEFENDANT'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. Sir, can
22 you state and spell your last name -- first and last name for
23 the record, please?

24 THE WITNESS: Chris, C-H-R-I-S, Meiers, M-E-I-E-R-S.

25 THE CLERK: Thank you.

1 THE COURT: All right. Mr. Meiers, there's some --
2 should be some fresh water in there if you want to help
3 yourself at any time. Mr. Bugni, go right ahead?

4 MR. BOSCHEE: Mr. Boschee --

5 THE COURT: Boschee.

6 MR. BOSCHEE: -- that's okay.

7 THE COURT: Mr. Boschee.

8 MR. BOSCHEE: You talked to Brian Bugni so much you
9 got confused on that.

10 THE COURT: Maybe the case is just starting to bug
11 me.

12 MR. BOSCHEE: There you go. More so than looking out
13 your window and seeing the trucks every day.

14 MS. LLOYD-ROBINSON: I just got that. It took me a
15 minute.

16 THE COURT: Yeah, it's true, I do see the Whiting
17 Hall -- Whiting Turner truck there --

18 MR. BOSCHEE: It's always there. It just never
19 moves.

20 THE COURT: -- I know. Okay.

21 DIRECT EXAMINATION

22 BY MR. BOSCHEE:

23 Q Okay. Mr. Meiers, can you tell the Court your
24 position with Mojave?

25 A Project manager.

1 Q Okay. And how long have you been a project
2 manager?

3 A About seven years now.

4 Q How long have you been with Mojave in total?

5 A Seven years.

6 Q Okay. Project manager the entire time?

7 A Correct.

8 Q Okay. What are your job responsibilities as a
9 project manager for Mojave?

10 A Liaison between the general contractor and
11 Mojave Electric and our subcontractors.

12 Q Okay. And could you describe kind of day to day
13 what -- what you do as a liaison for the Court?

14 A Any issues that come up between the general
15 contractor and my field staff that -- I field the questions, I
16 look for answers, try to figure out a way to solve any
17 problems. I work with our general foreman to go through
18 material issues, manpower issues, see where we're at so we can
19 stay on schedule.

20 Q Okay. Kind of have your -- your fingers in all
21 aspects of what Mojave's doing on any given project?

22 A Correct.

23 Q Okay. You're familiar with the City Hall
24 project?

25 A Yes.

1 Q Were you the project manager for Mojave on that?

2 A Yes.

3 Q Okay. Specific to that project, what were your
4 job responsibilities just with City Hall and if there were any
5 differences than what they normally would be?

6 A Same -- same as what they normally are, you
7 know, liaison between the general contractor and Mojave
8 Electric and our subcontractors and material and -- and
9 manpower and solving any problems that may come up.

10 Q Okay. Couldn't have solved this problem, that
11 would have been amazing. Was Cashman Equipment involved in
12 the project?

13 A Yes.

14 Q Okay. And how were they involved?

15 A They supplied the generator, the parallelling
16 switch gear, the UPS, and the battery system for the UPS.

17 Q Okay. And do you recall when you first became
18 aware that Cashman was going to be supplying this equipment?

19 A Probably two to three months after the start of
20 the project.

21 Q Okay. And when was that? I'm sorry.

22 A Offhand -- I don't know the exact date, but --

23 Q Ballpark?

24 A -- 2010.

25 Q Sometime there?

1 A Yeah, mid-2010.

2 Q Okay. And when was the first time you actually
3 interacted with anybody from Cashman?

4 A It probably would have been around August or
5 September of 2010.

6 Q Okay. And Cashman was -- the first -- the first
7 step of a process, if you will, Cashman was to deliver this
8 generator equipment to the site; is that right?

9 A That's correct.

10 Q Okay. And they did that for the most part,
11 didn't they?

12 A Yes.

13 Q Okay. And do you recall when that happened?

14 A The generators were delivered on January -- mid
15 to late January.

16 Q And that's 2011?

17 A Yes.

18 Q Okay. And walk us through the process. So
19 Cashman is to deliver the generators, how did the whole thing
20 play out from the delivery to they get put in place until
21 Cashman finishes whatever they finished?

22 A The -- well, the process goes, you know, they
23 deliver the generators, when they deliver to the site, they
24 get offloaded with a crane, they get set in place. After
25 they're set in place, normally the distributor of the

1 generator goes through and installs all the mufflers, gets all
2 the spare parts installed on them, and then, we in turn go
3 through and pull all the cable, get everything terminated, and
4 then we're ready for the startup.

5 Q Okay. And in this particular instance -- you
6 just testified that the generators were actually delivered
7 on -- on or around January 20; is that right?

8 A Correct.

9 Q Okay. And what did Cashman specifically do,
10 and, I guess -- and over how much duration of time did they do
11 it, with respect to getting these generators in place and then
12 any installation that they did?

13 A They were there for two days for the offload and
14 setting of the generator and they installed one of the
15 mufflers for one of the generator units.

16 Q Why didn't they install the other one?

17 A Because -- to bring another crew back in to
18 install that last muffler wasn't going to take that much time,
19 and they were going to do it when they did the startup.

20 Q Okay. Did -- aside from getting the -- getting
21 the two generators in place, then installing the one muffler,
22 did Cashman do anything else with respect to these generators?

23 A No.

24 Q Were there some UPS batteries that -- that were
25 supposed to be delivered?

1 A They were supposed to be delivered, but never
2 were.

3 Q Okay. PLC codes?

4 A No.

5 Q Did they — did they do startup?

6 A No.

7 Q Did they ever install the second exhaust
8 muffler?

9 A No.

10 Q Okay. So after this two-day period — and we're
11 looking at January 20, 21, 22, that ballpark, from your
12 experience on the ground with this project, did Cashman do any
13 other work with respect to these generators?

14 A No.

15 Q Was there anything left for them to do?

16 A Yes.

17 Q What was left --

18 A Yes.

19 Q -- for them to do?

20 A Yes, usually on the startup process you go
21 through and you verify all of the control wire and you go
22 through and — and you have to synch the generators to the
23 actual power supply, which is our parallelling switch gear,
24 and then you also have to synch it in with the UPS and the
25 batteries just to make sure everything is the correct phase,

1 correct voltage, everything like that.

2 Q Okay. And they didn't do any of that?

3 A No.

4 Q Okay. After that second day -- after the
5 generators were delivered, did you see any Cashman personnel
6 on site again?

7 A No.

8 Q Okay. When was -- was there anything really for
9 Cashman to do between the -- say, that second day and the kind
10 of pre-startup?

11 A They could have gone through and verified wiring
12 or installed the -- the mufflers --

13 Q Okay.

14 A -- on the second generator, but, you know,
15 normally you don't do that until you have all the cables
16 pulled and ready for startup for load bank testing and things
17 like that because they have all the paperwork, they have all
18 of the software, they can usually do that fairly quick.

19 Q But in this case they didn't?

20 A No.

21 Q Okay. When were -- and I say, You, when was
22 Mojave ready for the startup of this equipment?

23 A In May.

24 Q Okay. And at that point was Cashman on site?

25 A No.

1 Q Okay. When did you learn that Cashman was not
2 going to finish the work or get this stuff started up?

3 A I had called Cashman to order the fuel for the
4 generators so that we could do the startup on them and do a
5 load bank test. At that time I was told that they were --
6 they were informed that they were not allowed to do any more
7 work on the job site.

8 Q Okay.

9 THE COURT: What time was that? When was that?

10 THE WITNESS: May -- first or second week in May.

11 THE COURT: Okay.

12 BY MR. BOSCHEE:

13 Q Okay. And so what did you do next?

14 A I said -- I just asked why?

15 Q Okay.

16 A Why not? I got to get this thing up and going.
17 So after they said that no, they're not going to be doing any
18 more work, I contacted our office to try to figure out what
19 was going on.

20 Q Okay. And what -- and what were you told?

21 A From what I understand is that Cashman said that
22 they were not paid.

23 Q Okay.

24 A And when I went back to our office --

25 Q Okay. Well, City Hall -- well, City Hall, by

1 and large got built, I mean, what did you do next to try to
2 solve this problem?

3 A I had to go ahead and hire separate contractors,
4 subcontractors to come in and verify the wiring, verify the
5 parallelling switch gear and actually do the installation of
6 the UPS, had to hire somebody else to come through and do the
7 startup, the synchronization of the generators. We also --
8 and it was a lengthy process without the information for the
9 wiring schematics and the software and everything else. We
10 also had to purchase a separate set of batteries --

11 Q Okay.

12 A -- for the UPS system.

13 Q Could you take a look at -- and I believe it's
14 -- it should be up there right in front of you. It would be
15 in Binder No. 7, Exhibit No. 65. This one.

16 And I'm not going to ask you to do hard math. We
17 just went through that. But if you would take a second and
18 skim through these, are these the -- the replacement
19 subcontractors that you guys end up having to get to to
20 complete the startup and do the work you just described?

21 A Yes.

22 Q Okay. And did you have any difficulty
23 obtaining, you know, finding subcontractors to come in and
24 finish this work?

25 A Yes.

1 Q Why? What was the difficulty?

2 A It was -- the difficulty was trying to get the
3 information to actually go through the generators themselves,
4 the control wiring, the parallelling switch gear, connection
5 wiring diagrams. That stuff was never turned over to us. We
6 didn't have it. I had actually called the manufacturer of the
7 parallelling switch gear looking for the information which
8 they would not give to us.

9 Q Okay. And do you have an understanding as to
10 why they wouldn't give it to you?

11 A Because of the issue with Cashman.

12 Q Okay. And Cashman wouldn't give it to you?

13 A Cashman wouldn't give it to us.

14 Q Okay. If you look at the invoices again, you
15 talked about the UPS batteries briefly, if you go to page --
16 Exhibit -- page 15 of the Exhibit 65?

17 The UPS batteries were ultimately supplied that --
18 that you used in the project by Codale; is that correct?

19 A Yes.

20 Q Do you have an understanding as to how or where
21 Codale got them from?

22 A They bought them from Cashman.

23 Q Okay. It was the same batteries that Cashman
24 was going to supply that -- that Codale bought and then Mojave
25 bought from them; is that right?

1 A That's correct.

2 Q Okay. Now, the PLC codes, with respect to the
3 generators are still not operational out there, are they?

4 A We still do not have that.

5 Q Okay. And did you make any attempts to try to
6 -- to get the codes or to try to get around the -- the
7 requirement?

8 A Yes.

9 Q Okay. And what did you do?

10 A I actually -- well, I called Cashman first to
11 try to get those codes, then I tried, again, to call the
12 manufacturer of the parallelling switch gear, ISO, and again,
13 they told me, no, that they're not going to hand any of that
14 over. So to -- I mean, to this day we still don't have the --
15 the codes.

16 Q Okay. And from a practical perspective, what is
17 the impact of not having those codes on -- on the -- on the
18 generators out there?

19 A There is -- is no tie to the building management
20 system, so when somebody is -- is there actually trying to see
21 at what state the electrical gear is, the parallelling switch
22 gear, the generators of that, you can't because there's no
23 interface. There's nothing to come up and tell you whether
24 you have this piece of gear live or that piece of gear live.
25 You have to physically go down there and try to see what's

1 going on.

2 Q Okay. You weren't here but there's been --
3 there's been testimony and argument in this case that there
4 were Cashman workers actually still on site doing work on this
5 project as late as May 23 or May 24. As the project manager
6 who was -- who was actually on the ground on site, do you
7 recall ever seeing anybody from Cashman there that late?

8 A No.

9 Q Okay. When is the last time you recall anybody
10 from Cashman actually being on site doing anything?

11 A January 21.

12 Q Okay.

13 MR. BOSCHEE: I have no further questions for this
14 witness at this time.

15 THE COURT: Okay. Ms. Lloyd?

16 CROSS-EXAMINATION

17 BY MS. LLOYD-ROBINSON:

18 Q You testified previously that the generators
19 were delivered in January to the projects?

20 A January 20, is when they were delivered to the
21 project, offloaded, and set in place.

22 Q But those weren't the only materials supplied by
23 Cashman in -- to perform the -- to get the switch gear and the
24 generators and --

25 A Correct. The parallelling switch gear was

1 delivered at an earlier date. I don't recall the exact date.

2 Q So these deliveries really occurred over a
3 period beginning mid-November and ending with the delivery of
4 the two large generators at the site?

5 A I can't be sure of the exact dates, but the last
6 parts besides the UPS batteries were the generators.

7 Q So do -- would it help you to look at shipping
8 documents to see when the materials were -- began delivery --
9 when Cashman began delivery of these materials to Mojave?

10 A Of course.

11 Q Okay. Let's turn to page -- Joint Exhibit 54,
12 page 211. Are you there?

13 A Yes.

14 Q Okay. If you want to take a look here, this
15 appears to be a shipment to Mojave, correct? It says,
16 Consignee to Mojave --

17 A It says, Consignee, yes.

18 Q -- okay. And this is batteries -- were these
19 the batteries that were supplied by Cashman to the project?

20 A Cashman never supplied us the batteries.

21 Q Well, weren't there other types of batteries? I
22 don't know --

23 A The batteries for the UPS system.

24 Q -- in this entire -- in this entire generator,
25 switch gear, or UPS system, I don't know all the little parts

1 that are involved. I'm assuming you probably do?

2 A Mm-hmm.

3 Q Okay. So there was testimony yesterday that
4 these were parts that were shipped to Mojave, you know, to
5 fulfill Cashman's responsibilities to do this generator,
6 switch gear, UPS system on the project. Do you recognize
7 these materials that as being received by Mojave?

8 A The two batteries are for the generators
9 themselves.

10 Q So these were received?

11 A I don't see a signature on it --

12 Q Okay. Let's --

13 A -- so I can't confirm whether we --

14 Q -- let's keep turning --

15 A -- received it or not.

16 Q -- pages. Let's go to page 216. Do you see a
17 signature at the bottom there?

18 A Yes, I do.

19 Q And do you recognize that signature?

20 A Yes.

21 Q Who is that?

22 A Tom, one of our guys in the warehouse.

23 Q This is a Mojave person?

24 A Yes.

25 Q So this was received -- these Mitsubishi

1 products were received at Mojave November 18, 2010?

2 A Yes.

3 Q So is it safe to say that Cashman began
4 delivering the materials in November?

5 A Yes.

6 Q And then it ended with the large generators at
7 the site in January?

8 A Correct.

9 Q Okay. And would you have been informed every
10 single time Cashman was at the project doing anything?

11 A Yes, it would have been listed in our daily
12 reports.

13 Q And so you were -- I don't recall seeing any
14 daily reports. So you would have personal knowledge if they
15 were on site? You would have seen them on site doing work?

16 A Yes.

17 Q Okay. Let's turn to Joint Exhibit 31. I think
18 you testified they were out there two days after the delivery
19 in January; is that correct?

20 A I only have record of them being there January
21 20 and 21.

22 Q Okay.

23 A And I honestly only remember them being there
24 for the delivery of the generators and one day after.

25 Q One day after the delivery of the generators?

1 A The 20th and the 21st.

2 Q So didn't you have a lot of responsibilities on
3 this project?

4 A Yes.

5 Q So would you necessarily have been there to see
6 Cashman on the project working on the generators on any given
7 day?

8 A I was there every day.

9 Q I know you were there every day, but I'm
10 assuming Mojave was doing all of the electrical work --

11 A Mm-hmm.

12 Q -- correct? So that included much more than
13 just the generators and the room, the generator --

14 A Correct.

15 Q -- enclosure?

16 A Correct.

17 Q So it's possible that Cashman could have had
18 personnel out there and you would not have seen them?

19 A If they got on site without going through the
20 proper chain, then they probably could have snuck on site.

21 Q So did Cashman attend any meetings at City Hall
22 with Mojave personnel?

23 A Only the day that the generators were delivered.

24 Q Okay. Are you -- Joint Exhibit 31.

25 A Okay.

1 Q Page 9. Now there was testimony yesterday that
2 there was Cashman personnel on site installing the muffler on
3 the roof on May 3, 2011, the installation finished on May 4,
4 2011. There was interconnection wiring you can see there at
5 the bottom. And there was other things happening at the site,
6 by Cashman personnel?

7 A Not that I'm aware of, and it wasn't listed in
8 any of our daily reports.

9 Q But it's possible it could have happened, and
10 you weren't aware of it?

11 A If they snuck on site.

12 Q Okay. Let's turn to Joint Exhibit 56. Page 390
13 is the first one I'd like to take a look at. I apologize,
14 it's going to be this one.

15 A I was going to say --

16 Q I thought they all were --

17 A -- I don't see a 56 anywhere.

18 Q -- I thought this --

19 MR. MILLER: Got to use all the binders, right?

20 MS. LLOYD-ROBINSON: That's okay.

21 THE WITNESS: Okay. 56.

22 BY MS. LLOYD-ROBINSON:

23 Q Page 390.

24 A Okay.

25 Q It looks like here -- is Richard Christenson

1 another Mojave employee?

2 A Yes, he's our general foreman.

3 Q And so you were copied on an email here to
4 Whiting Turner concerning the generator -- the status of the
5 generator, and Cashman working on site? When Cashman could
6 complete the work? So at this point -- this is May 12,
7 Cashman was apparently still performing because you were
8 talking about the Cashman technician not being able to come
9 out until there was power in the area where Cashman needed to
10 do work -- it's like the first paragraph there?

11 A Okay. It says, The Cashman technician will not
12 come out until the power is on, for both of these.

13 Q So at this point Cashman was still -- it was
14 assumed Cashman was going to be finishing the work. This was
15 May 12, correct?

16 A Yeah, at that point.

17 Q Okay. Well, you testified that it was early may
18 when they refused to -- to complete.

19 A Okay.

20 Q Let's move on to page 392. And the email at the
21 bottom of that page, that's from a Cashman employee, correct,
22 Rob Mayer [phonetic]?

23 A Okay.

24 Q And he was the technician that was working on
25 this project?

1 A No.

2 Q You're not familiar with Rob Mayer?

3 A He wasn't the technician. He was office

4 personnel.

5 Q Okay. So he was coordinating the work on the

6 project?

7 A It could -- yeah. Yeah, him and Kim

8 [inaudible].

9 Q So he sent you this email directly, right?

10 A Yes.

11 Q So you were aware of his role on this project?

12 A Yes.

13 Q Okay. So he states here that they've run into a

14 problem -- Cashman has, on the project?

15 A Okay.

16 Q Is that what it states?

17 A Yes.

18 Q And he's looking to you for assistance to

19 resolve it?

20 A Yes.

21 Q So Cashman was still performing on May 20, 2011?

22 A They didn't do any installation.

23 Q But they were still, in the performance of their

24 work, asking questions, looking for more information,

25 coordinating to complete the work?

1 A Obviously.

2 Q Okay. And how would we have -- how would he
3 have known there was a problem on the overhead conduits here
4 if there wasn't anyone on site from Cashman doing the
5 interconnection wiring or whatever work was left to be
6 performed by Cashman at that point?

7 A It was --

8 MR. BOSCHEE: Objection. That calls for rank
9 speculation.

10 MS. LLOYD-ROBINSON: Well, this email was directed to
11 Chris, I apologize.

12 MR. BOSCHEE: I --

13 THE COURT: Well, actually, I --

14 MR. BOSCHEE: -- how would he know?

15 THE COURT: -- I think it's a fair question, given
16 his role and understanding of everything. So go ahead.

17 THE WITNESS: It could have happened any -- any
18 number of ways. More than likely our general foreman noticed
19 an issue and got ahold of him.

20 BY MS. LLOYD:

21 Q Who was your general foreman?

22 A Richard Christenson.

23 Q So Rob contacts you, Chris, with an email,
24 saying there's an issue?

25 A Mm-hmm.

1 Q And then you forward it to Richard?

2 A Mm-hmm.

3 Q And it would appear that then you were looking
4 to Richard for guidance on this issue, correct?

5 A What I told him was please look into this issue
6 with the conduits.

7 Q And he didn't respond back to tell you that he
8 had told Cashman about the issue? I mean, he addresses your
9 question, but --

10 A Right.

11 Q -- assuming Cashman had this information because
12 they were on site performing work on the generators as the
13 time cards indicated, that were testified about yesterday?

14 A They didn't do any more installation since
15 January 21.

16 Q Any other work -- I don't know, is
17 interconnection wiring considered installation? So what is
18 interconnecting wiring?

19 A Interconnection wiring is -- is installation,
20 but they weren't doing it. That's what we had to hire
21 somebody else to do.

22 Q Did they start doing it before the payment issue
23 occurred?

24 A Not that I'm aware of.

25 Q Because those records indicate that's what they

1 were doing at the site, which is likely why they were sending
2 emails asking questions about clarification as to their scope?

3 A Which records?

4 Q The record that I just referred you to, but
5 that's okay.

6 A The email?

7 Q I'm sorry?

8 A The email?

9 Q Yeah, the email would indicate they were doing
10 work on site and had questions in order to complete, correct?

11 A It may have been a coordination issue, but they
12 didn't do any of the installation on it. That's why I had to
13 hire somebody else to finish everything.

14 Q You had to hire somebody else to finish after
15 Cashman didn't get payment, but Cashman did start the
16 installation -- the remainder of the installation work,
17 correct?

18 A Not that I'm aware of.

19 Q They didn't install one muffler?

20 A They installed one muffler, and that would have
21 been on January 21.

22 Q And then they were coordinating the completion
23 of the work, as I --

24 A Coordinating but didn't do any installation.

25 Q -- okay. And can you tell me was Cashman

1 performing as you expected, prior to the payment issue with
2 CAM?

3 A Yes.

4 Q So there was no issues with them missing
5 anything, and they didn't get it done? They were completing
6 their performance as you had anticipated --

7 A Yes.

8 Q -- until that CAM paying issue arose?

9 A Correct.

10 Q Okay. And did you approach Cashman about paying
11 Cashman to complete the work on the project?

12 A That, I asked when they were going to come back
13 and they told me that they weren't going to come back to the
14 job site.

15 Q Right. And --

16 A So as far as approaching them to come and finish
17 the work --

18 Q -- that wasn't the question I asked. Did you
19 approach them and offer to pay them to finish the work?

20 A No.

21 Q So you would rather have paid other people to
22 finish the work than pay Cashman to finish the work?

23 A Cashman told me they weren't going to come
24 out --

25 Q Because they hadn't --

1 A -- and finish their work.

2 Q -- because they hadn't been paid, correct?

3 A Okay.

4 Q So --

5 A Yes.

6 Q -- and isn't it more costly to go find other
7 people to do the work than it would have been to have Cashman
8 do the work?

9 A Yes.

10 MR. BOSCHEE: Objection. But he already answered,
11 so...

12 THE COURT: Well, I mean, that's a good question,
13 actually. I think it is a good question.

14 MR. BOSCHEE: Okay. And he already answered it, so
15 -- before I could object, so there you are.

16 BY MS. LLOYD:

17 Q And it would have been substantially more costly
18 to pay someone else to do the work, correct?

19 A Yes.

20 Q Okay.

21 MS. LLOYD-ROBINSON: I have nothing further.

22 REDIRECT EXAMINATION

23 BY MR. BOSCHEE:

24 Q Well, to be fair the representation was Cashman
25 wasn't going to come back and finish the work unless they were

1 paid in full -- the full 755; isn't that right?

2 A That's correct.

3 Q Okay. So the -- with respect to going and
4 asking them, hey, we'll give you a couple thousand dollars to
5 come and do this work or that work or that or something else,
6 that wasn't something you had really considered because the
7 possibility of paying them the full 755 wasn't a decision you
8 were authorized to make, was it?

9 A That's correct.

10 Q Okay. Cashman did get paid for the UPS
11 batteries, didn't they?

12 A From what I understand, yes.

13 Q Through Codale, but they were ultimately paid
14 for that, weren't they?

15 A Yes.

16 Q So in a sense you did go back to Cashman to at
17 least finish part of the work that you had to do for the
18 142,000, right?

19 A Yes.

20 Q Okay. And with respect to what they were doing
21 and not doing, and I just want to be clear about this, the
22 documentation that you were looking at with counsel right -- a
23 little while ago, and you can go back and look at it if you
24 want, those are interoffice documents from -- from Cashman; is
25 that right?

1 A That's correct.

2 Q Okay. Do you have any recollection
3 independently of Keith Lozeau ever being on property?

4 A No.

5 Q Do you have any recollection of Shane Norman
6 ever being on property?

7 A No.

8 Q Okay. So in terms of what they may or may not
9 have thought in terms of work being done or installation being
10 done, neither of them was ever actually on site, were they?

11 A Not that I'm aware of.

12 Q Okay. But you were on site every day?

13 A Yes.

14 Q And you have a daily log that would have shown
15 whether or not Cashman was there or not there?

16 A Yes.

17 Q And the last time that you indicate that you and
18 your recollection and log indicate them being there was
19 January 21; is that right?

20 A January 21.

21 Q Of 2011?

22 A Correct.

23 MR. BOSCHEE: I have nothing further.

24 THE COURT: Ms. Lloyd?

25 RECROSS-EXAMINATION

1 BY MS. LLOYD-ROBINSON:

2 Q Just to clarify really quickly. Are you aware
3 -- did you, as part of this litigation, did Mojave produce a
4 daily log that you are referring to?

5 A The daily logs were turned into the general
6 contractor on a daily basis.

7 Q Well, you kept a copy?

8 A Yes.

9 Q So you -- did you review them before you came to
10 court today?

11 A A while ago, yeah.

12 Q And were they produced as part of this
13 litigation?

14 A I'm not aware.

15 Q You didn't give them to Counsel to be produced
16 since they were relevant to Cashman's work on the projects?

17 A No.

18 Q And then just quickly, you purchased the battery
19 -- the UPS battery from Codale, correct?

20 A Mm-hmm.

21 Q So you paid Codale's markup on that battery
22 instead of purchasing it directly from Cashman, correct?

23 MR. BOSCHÉE: Objection.

24 THE WITNESS: I'm not sure.

25 MR. BOSCHÉE: That -- that may call for speculation

1 too, if he knows.

2 MS. LLOYD-ROBINSON: Just assuming he knows it.

3 THE COURT: I think it's a fair question. Go ahead.

4 BY MS. LLOYD:

5 Q So you paid Codale --

6 A I'm not sure.

7 Q Assuming Codale had a markup on their battery
8 they purchased from someone else?

9 A I wouldn't know what they -- their markup was on
10 an item like that.

11 Q Wouldn't it be standard, though, that Codale did
12 mark it up to sell it to Mojave?

13 A It could be.

14 Q Or they just passed it through as a favor and
15 didn't charge anything on it?

16 A I do not know.

17 Q Okay.

18 MS. LLOYD-ROBINSON: Nothing further.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. BOSCHEE:

21 Q Sitting here right now, you don't -- you don't
22 know -- you have no independent knowledge as to Codale
23 actually marking up the batteries, do you?

24 A No.

25 Q Okay.

1 MR. BOSCHEE: Nothing further.

2 THE COURT: All right. So here's an understanding I
3 have that I can ask this witness about, Mr. Meiers. Correct
4 me if I'm wrong, but here's the deal. All right? For the 755
5 Cashman was going to supply the uninterruptible power supply,
6 or UPS, two generators, mufflers, and all the stuff necessary
7 to have, essentially this backup power supply in my sort of
8 nonconstruction layman terms, put in place?

9 THE WITNESS: Yes.

10 THE COURT: And that was it? That was what they were
11 supposed to do?

12 THE WITNESS: And including startup, and then
13 maintenance.

14 THE COURT: Okay. And that -- that's pretty much the
15 deal for them, right?

16 THE WITNESS: Yes.

17 THE COURT: Okay. So everything that they -- that
18 you had to do when they stopped working, if I -- if I were to
19 look at everything you did, would it be the case that --
20 whether it's the batteries or whether it's labor or setup or
21 getting things going, everything you had to do, would it have
22 been inclusive in the 755 had they just done it all?

23 THE WITNESS: Yes.

24 THE COURT: I mean, in other words it would have --
25 there's nothing extra you did?

1 THE WITNESS: No.

2 THE COURT: Because in -- in other words, what I'm
3 asking is this -- let me see if I can clarify it. You got put
4 into a situation where Cashman says they're not going to work
5 anymore. They made that decision, obviously. That was a
6 policy, or business, or legal decision, whatever --

7 THE WITNESS: Correct.

8 THE COURT: -- it's their decision? They can --

9 THE WITNESS: It was their decision.

10 THE COURT: -- they can -- they decided not to work?

11 THE WITNESS: Mm-hmm.

12 THE COURT: Your decision was to complete the part of
13 the project that you wanted to use them for?

14 THE WITNESS: Correct.

15 THE COURT: Right. So when you did that, is there
16 anything additional -- that's what I'm going to say -- since
17 now you're -- now you know, Mojave knows that it's involved
18 with, you know, doing stuff to complete the project. Is there
19 anything additional that had Cashman completed wouldn't have
20 been an expense?

21 THE WITNESS: Wouldn't have been an expense?

22 THE COURT: Right. Is there something additional
23 that you just -- in other words, you're kind of in a spot
24 where, okay, now we're sort of taking over to finish what
25 Cashman was going to be doing anyway --

1 THE WITNESS: Correct.

2 THE COURT: -- okay? I'm just thinking that from a
3 construction point of view you might say, well, let's just do
4 this, that, and the other too, while we're at it?

5 THE WITNESS: No, it's straightforward. It's all
6 listed --

7 THE COURT: Okay.

8 THE WITNESS: -- on the drawings what needs to be
9 done --

10 THE COURT: Okay.

11 THE WITNESS: -- and that was -- that was one of the
12 issues is that we didn't have all the information from Cashman
13 to properly do the work, so there was a lot of investigation
14 that went on. I had asked Cashman to provide the drawings --

15 THE COURT: Mm-hmm.

16 THE WITNESS: -- to do that work, and they refused.

17 THE COURT: Okay. That's what I wanted to know.

18 MR. BOSCHEE: And to be fair, it wasn't -- and, you
19 know, maybe it was just a choice of words, it wasn't really a
20 choice that you made to -- to finish up the work Cashman
21 didn't do, you guys had to finish up the work. That was part
22 of your scope of -- of the agreement with Whiting Turner,
23 wasn't it?

24 THE WITNESS: Correct.

25 MR. BOSCHEE: Okay. You didn't really have a choice

1 as to whether or not to -- to finish up Cashman's work, did
2 you?

3 THE WITNESS: No. Not --

4 MR. BOSCHEE: Okay. You had to go out and get other
5 people to do this work if Cashman didn't do it, right?

6 THE WITNESS: We have a schedule to meet with the
7 general contractor, so --

8 MR. BOSCHEE: Okay.

9 THE WITNESS: -- I had to finish the work.

10 MR. BOSCHEE: Thank you.

11 THE COURT: Yeah, I didn't mean to imply that wasn't
12 the case.

13 MR. BOSCHEE: I just wanted to make sure it was -- it
14 was clear.

15 THE COURT: All right. Ms. Lloyd, anything further
16 for Mr. Meiers?

17 MS. LLOYD-ROBINSON: Just that as -- I'm sorry. I
18 apologize. Just the -- as to Mojave CAM was responsible to
19 complete this work?

20 THE WITNESS: CAM?

21 MS. LLOYD-ROBINSON: Mm-hmm.

22 THE WITNESS: I don't know how that interaction takes
23 place. I dealt with the Cashman individuals --

24 MS. LLOYD-ROBINSON: Well, Mojave is contracted with
25 CAM to supply these materials.

1 THE WITNESS: Okay.

2 MS. LLOYD-ROBINSON: So it's CAM's responsibility to
3 complete the work, correct?

4 THE WITNESS: Okay.

5 MS. LLOYD-ROBINSON: Thank you.

6 MR. BOSCHEE: Did you ever deal with anybody from CAM
7 Consulting in your entire time working on these generators?

8 THE WITNESS: No.

9 MR. BOSCHEE: Okay. All of your interactions were
10 with the people from Cashman?

11 THE WITNESS: That's correct.

12 MR. BOSCHEE: And Cashman actually supplied all of
13 the materials -- well, except for the ones they didn't, but
14 they supplied the materials?

15 THE WITNESS: Correct.

16 MR. BOSCHEE: In -- in November through January,
17 correct?

18 THE WITNESS: Correct.

19 MR. BOSCHEE: Okay. Thank you.

20 THE COURT: Did CAM have anybody to work with other
21 than Mr. Carvalho?

22 MS. LLOYD-ROBINSON: He was CAM.

23 MR. BOSCHEE: Yeah, Carvalho should have gone out
24 there and --

25 MS. LLOYD-ROBINSON: He was --

1 MR. BOSCHEE: -- lifted the crane. That would have
2 been --

3 MS. LLOYD-ROBINSON: -- he's -- he was CAM.

4 THE COURT: That's my question.

5 MR. BOSCHEE: Yeah.

6 THE COURT: In all sincerity, was there anybody other
7 than Mr. Carvalho that could even be utilized if CAM were to
8 do anything at the project itself?

9 THE WITNESS: Instead of CAM?

10 THE COURT: Yeah. I mean, instead of the individual.
11 Did he have employees and people with hard hats walking around
12 or any of that?

13 THE WITNESS: I don't know.

14 THE COURT: Okay.

15 THE WITNESS: I know this is the first time I had
16 ever had CAM on a project.

17 THE COURT: All right.

18 MR. BOSCHEE: Okay.

19 THE COURT: Anything else for him?

20 MR. BOSCHEE: Nope.

21 MS. LLOYD-ROBINSON: Just one follow-up. You recall
22 specifically that CAM was never on the project, or you weren't
23 aware if CAM was on the project?

24 THE WITNESS: I wasn't aware of CAM being on the
25 project.

1 MS. LLOYD-ROBINSON: But you recall with specificity
2 the last date that Cashman was on the project?

3 THE WITNESS: Yes.

4 MS. LLOYD-ROBINSON: Okay.

5 THE WITNESS: Because we kept record.

6 MS. LLOYD-ROBINSON: That's it.

7 THE COURT: All right. Anything else?

8 MR. BOSCHEE: Nope.

9 THE COURT: All right. Mr. Meiers, thank you so much
10 for your time and your testimony. You're excused.

11 THE WITNESS: Okay.

12 THE COURT: All right. It's about 25 minutes until
13 5. Do we want to call another witness today, or --

14 MR. BOSCHEE: Are we starting at 1:00 or 9:00
15 tomorrow? I can't remember the Court's schedule.

16 THE COURT: 1. |

17 MR. BOSCHEE: 1?

18 THE COURT: Yeah.

19 MR. BOSCHEE: Okay.

20 THE COURT: I got a pretty good calendar all morning,
21 on -- well, you know, civil law motion stuff.

22 MR. BOSCHEE: I think we can probably get --

23 MS. LLOYD-ROBINSON: Yeah.

24 THE COURT: Friday we have all day, though.

25 MS. LLOYD-ROBINSON: Tomorrow morning?

1 MR. BOSCHEE: -- I think we can get him in today, if
2 you want to? I mean, it's --

3 MS. LLOYD-ROBINSON: Oh --

4 MR. BOSCHEE: -- we just got done with him in a
5 half-hour, I mean --

6 MS. LLOYD-ROBINSON: -- right.

7 MR. BOSCHEE: -- Pete's about the same, I think.

8 MS. LLOYD-ROBINSON: Okay. That's fine with me, if
9 you want?

10 MR. BOSCHEE: All right. We'll call Pete Fergen. If
11 we can't get him done we'll -- he'll come back tomorrow.

12 THE COURT: All right. Let's bring in Mr. Fergen.

13 All right. Mr. Fergen, come on in, please. And
14 when you arrive at the witness box area, please remain
15 standing, raise your right hand, and our court clerk -- yeah,
16 she'll swear you in.

17 PETER FERGEN, DEFENDANT'S WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated. Sir, can
19 you state and spell your first and last name for the record?

20 THE WITNESS: Pardon?

21 THE CLERK: Can you state and spell your first and
22 last name for the record, please?

23 THE WITNESS: Peter Fergen, spelled P-E-T-E-R,
24 F-E-R-G-E-N.

25 THE COURT: All right. Mr. Fergen, nobody -- I don't

1 think anybody has taken me up on the water offer, but I like
2 to always mention that it's there. If you want to help
3 yourself any time, go ahead.

4 And, Mr. Boschee?

5 DIRECT EXAMINATION

6 BY MR. BOSCHEE:

7 Q I'll apologize in advance, my voice is going
8 quickly, but I will try to get through this before I lose it.
9 Mr. Fergen, could you tell the Court your position with
10 Mojave?

11 A Vice president of project development.

12 Q Okay. And what are your job responsibilities as
13 VP of project development?

14 A Converting the estimate over to a -- budgeting
15 and everything to help for the project managers to perform
16 their job. It would be including estimate -- the --
17 converting the estimate to actual purchase orders,
18 subcontracts, creating the submittals, and then turning it all
19 over to the PM.

20 Q Okay. You're familiar with the City Hall
21 project?

22 A Yes, I am.

23 Q That's why we're here? Okay. You were part of
24 the bidding process for suppliers for the generators on this
25 project, were you not?

1 A Actually, it was after the bidding process I got
2 — I get involved.

3 Q Okay. How do -- how did you get involved after
4 the bidding process?

5 A We were awarded a contract and I turned around
6 and I had to physically buyout all the materials.

7 Q Okay. And how did you do that?

8 A Reviewing the lowest responsible bid and
9 bringing them in line -- product by product and making sure
10 that they had a complete package and they covered all the
11 plans and specifications.

12 Q Okay. And for -- with respect to the generators
13 and the UPS, you chose Cashman, correct?

14 A Correct.

15 Q Okay. And why did you choose Cashman?

16 A They were the lowest responsible bidder and we
17 had done multiple projects before.

18 Q Okay. And then how did CAM Consulting get
19 involved in all of this?

20 A There was a -- there was a requirement as part
21 of the contract to have minority participation, as much of it
22 as we could. So we asked them to -- if they had a supplier
23 that was a qualified minority that they could run it through.
24 They [inaudible] a company and except he was -- they were not
25 certified. So I gave them the opportunity to -- companies

1 that we were dealing with at the time, being Nedco, Codale,
2 and CAM.

3 Q Okay. You provided all three of those options
4 to --

5 A Correct.

6 Q -- Cashman? And who were you talking to during
7 this process?

8 A Keith Lozeau.

9 Q Okay. You were dealing with anybody else?

10 A No.

11 Q Okay. And with respect to the three potential
12 DBEs, was there a difference in cost between Codale, Nedco and
13 CAM?

14 A Where the -- Nedco and Codale were at 3 percent
15 and Codale -- and CAM was at 1 percent.

16 Q Okay. And on the projects -- you had been
17 working with CAM on a couple other projects, kind of, right
18 around this time; is that right?

19 A We had -- yes, I had already contracted with
20 them on NV Energy and some -- I'm not positive whether Metro
21 was before or after it, but it's around the same time.

22 Q Right.. The same -- and you got that -- and they
23 did at 1 percent?

24 A Yes.

25 Q Okay. So at some point -- we heard testimony

1 yesterday, at some point you scheduled a meeting with
2 yourself, Mr. Lozeau, and Mr. Carvalho; is that right?

3 A Correct.

4 Q At the Mojave office?

5 A Correct.

6 Q Okay. Walk me through what was discussed at
7 that meeting?

8 A Basically it was nothing more, from my behalf,
9 as an introduction between Cashman and CAM Consulting. It was
10 their deal on what they wanted -- how they wanted to do it, et
11 cetera. I just said these are available. And we know he had
12 the certifications and we had copies of the certifications
13 from the VA.

14 Q Okay. Did -- did Mr. Lozeau ask you to schedule
15 a meeting with either Nedco or Codale?

16 A No, he did not.

17 Q Do you have an understanding as to why?

18 A It's too expensive.

19 Q Okay. And after you made the initial
20 introduction at this meeting -- I guess, what happened next?
21 Did he -- was there a negotiation that took place?

22 A That would be -- I did not get involved in any
23 of the cost -- cost or benefits for -- between either one of
24 them.

25 Q Okay. So Mr. Lozeau and Mr. Carvalho negotiated

1 the terms of whatever deal they were going to work out?

2 A Correct.

3 Q Okay. Do you have an understanding as to what
4 the ultimate charge was?

5 A Half a percent.

6 Q Okay.

7 A I was physically told that.

8 Q Did that upset you because you were getting
9 charged 1 percent?

10 A Yeah, I made a comment to Angelo regarding it.

11 Q Okay. But ultimately it was — it was Cashman
12 that chose to use CAM instead of the other two companies,
13 right?

14 A Correct.

15 Q And negotiated the fee with them?

16 A Correct.

17 Q Okay. And in talking — and to be fair you and
18 Mr. Lozeau were and maybe still are friends; is that right?

19 A Yes, we are.

20 Q Okay. Did you have any conversations with him
21 with respect to how he should handle his business interactions
22 with CAM?

23 A Actually, his statement was, is did I run a
24 credit check on them, and I said, no. I said the simplest way
25 to do business with minorities, and I've done it for several

1 years, is to have the minority sign the check over, and you
2 give them a check for the fee. There's no risk, no muss, no
3 fuss.

4 Q Okay.

5 A That's exactly how I said it. And that was not
6 only to Cashman but to anybody I deal with.

7 Q Okay. That's a pretty standard recommendation
8 that you make to any -- any folks you deal with?

9 A Yeah, because the idea of the minorities is
10 you're trying to build their business, so they're not
11 necessarily the most financially secure, and they're not the
12 most -- they're not opposed to having risk.

13 Q Okay. And so you specific -- was this at that
14 same meeting?

15 A Actually, I said it right in front of him.
16 Right in front of Mr. Carvalho.

17 Q Okay. And you recall specifically saying those
18 exact words to Mr. Lozeau?

19 A Yes.

20 Q Okay. And so shortly thereafter Cashman enters
21 into -- into the agreement with CAM and then CAM enters into
22 an agreement with Mojave for the supply of the generator
23 materials, correct?

24 A Actually, correct one would be we went to --

25 Q The other way around?

1 A -- to CAM and CAM in turn did the contract with
2 them.

3 Q Okay. And with respect to -- okay. So the
4 generators get delivered by and large, and it comes time to
5 get paid, and long story short what you recommended to Mr.
6 Lozeau didn't happen, did it?

7 A Correct.

8 Q Okay.

9 A And I would say from what I'm being told, it did
10 not.

11 Q Right. Do you recall Cashman asking for a joint
12 check? Were you part of that process?

13 A No, I'm not.

14 Q Okay. In your experience would -- would your
15 recommendation, sign the check over and then just dealing with
16 it that way, wouldn't that accomplish the same thing as a
17 joint check? Maybe even be safer?

18 A It would be safer to me.

19 Q Okay. When did you find out there was a problem
20 with Cashman's payment?

21 A When I got a phone call from Keith Lozeau asking
22 me for contact information because the check bounced.

23 Q And do you recall when that was?

24 A Over the weekend.

25 Q Okay. Do you -- do you recall him asking you to

1 try to stop payment?

2 A He asked then and I said I'm just not within my
3 realm. It's not in my -- I can't do it. He's got to talk to
4 Brian.

5 Q Okay. Do you know if he talked to Brian, or did
6 you talk to Brian at that point?

7 A I passed it on to Brian that there was a
8 problem.

9 Q Okay.

10 A Nothing more.

11 Q But he also -- during this conversation he also
12 asked if you could help facilitate trying to find Mr.
13 Carvalho; is that right?

14 A Yes.

15 Q Okay. And did you do that?

16 A I gave him all the contact information, all the
17 addresses, emails, et cetera, including a personal email for
18 Mr. Carvalho that I had at the time.

19 Q Okay. And do you have an understanding as to
20 whether Keith or Mr. Norman were able to find Mr. Carvalho
21 after that?

22 A I understand -- I was -- hearsay is yes, they
23 did.

24 Q Okay. Well, Mr. Lozeau told you that, didn't
25 he?

1 A Yes.

2 Q Okay. And -- but ultimately they didn't -- they
3 were not able to secure payment from CAM; is that right?

4 A That's what I understand.

5 Q Okay. Now, after -- after this all takes place,
6 and the payment issue transpires, did you have any additional
7 discussions with anybody at Cashman about finishing the work
8 on the project?

9 A Yes, I did.

10 Q Who did you talk to?

11 A Actually, it was Mr. Lozeau and Kim Simons

12 [phonetic] --

13 Q Okay. Did you talk to them --

14 A -- at different times.

15 Q -- okay. And what were the substance of those
16 conversations?

17 A Basically they were -- he was told that we're
18 not -- he's not allowed to do any work on the job.

19 Q Okay. Do you recall when that -- when those
20 conversations took place?

21 A The exact time, I do not.

22 Q Was it in May of 2011?

23 A That's when all the problems were going on, so
24 I'd have to assume so.

25 Q Okay. It was -- let me ask you another way, was

1 it within a very short time of -- of the problems going on,
2 and I say that, the problems being the checks bouncing and --
3 and then not getting paid?

4 A Well, us start -- trying to start up the job --

5 Q Right.

6 A -- is what the big key was.

7 Q Okay. And you were told by both Kim Simons and
8 Keith Lozeau that they were not going to do any more work
9 unless they got paid?

10 A Correct.

11 Q Did you ever end up having a meeting with
12 anybody from Cashman about this or was these -- were these
13 just telephone calls?

14 A These were all telephone calls.

15 Q Okay. Now, eventually you learn that Cashman is
16 not going to -- they just refuse to -- to do any more work on
17 the project, but the startup had to take place, right?

18 A Correct.

19 Q Okay. So at some point can -- well, can you
20 explain to the Court how it was that Codale ended up
21 purchasing the UPS batteries that -- that ultimately were
22 supplied for City Hall?

23 A Okay. I found out -- we actually called
24 Cashman, asking them if -- since they had the batteries if
25 they would sell them to us, and they said, no, we're not

1 allowed to do anything. So I turned around and went to a
2 mutual friend and asked if they could come and do a buy from
3 the secondary side -- from the secondary side because the
4 batteries have an age and they were sitting on the floor, and
5 they couldn't be sold anywhere else. So he may as well --
6 sorry -- they may as well take care of it and get rid of --
7 get rid of them.

8 So basically it was a cash drain -- a deal through
9 another minority supplier to buy them from them and give them
10 to us.

11 Q Do you recall if Codale marked up the price of
12 the batteries when they resold them to you?

13 A I was told "minimal."

14 Q Okay. Now, did you -- with -- in addition to
15 the batteries did you take any efforts to try to find
16 replacement subcontractors to try to finish this work?

17 A Actually, I got quotes from other -- they're
18 competitors here in the Valley, to try to do that. I also
19 tried at other -- other CAT dealerships outside of the Las
20 Vegas market. So we ended -- to no avail, so we ended up
21 going back to subcontractors here in town.

22 Q Okay. And did you have any problems -- what
23 were the issues that you had from getting help from CAT
24 contractors outside of Las Vegas?

25 A They were specifically called, told to keep away

1 from it. That it was a legal issue between Mojave Electric
2 and Cashman. And as a respect for the -- and a sister
3 Caterpillar company they weren't going to touch it.

4 Q Okay. Did you also take any efforts to try to
5 obtain -- the PLC codes were never supplied for the project,
6 correct?

7 A Correct.

8 Q You also endeavored to try to obtain some way to
9 get PLC codes facilitated out there, didn't you?

10 A Correct.

11 Q Okay.

12 A I went from multiple CAT dealers again, and the
13 Caterpillar regional salesmen.

14 Q Okay. And what was the result of those
15 communications?

16 A The only place I could get them from was
17 Cashman.

18 Q Okay. And Cashman would not and still to this
19 day has not provided those, have they?

20 A I'm going to say, correct.

21 Q Okay.

22 MR. BOSCHEE: I have no further questions for this
23 witness.

24 THE COURT: All right. Ms. Lloyd?

25 //

1 CROSS-EXAMINATION

2 BY MS. LLOYD-ROBINSON:

3 Q Before contracting with CAM on these three
4 projects you described, did you do any checking of his
5 business history or licensing, anything like that?

6 A I called the VA.

7 Q You called the VA? And you checked to see if he
8 was really a certified DBE?

9 A I made sure that the letters he gave me were
10 correct.

11 Q And so he was a certified DBE by the Veteran's
12 Administration?

13 A Yes, ma'am.

14 Q And did they describe to you that -- what caused
15 his -- how he ended up being a DBE, how he was certified?

16 A He got an injury in the Middle East.

17 Q Okay. And did you do any other checking of CAM
18 to see how long he had been operating?

19 A No, ma'am.

20 Q Did you check to see if he was a licensed
21 contractor in the State of Nevada?

22 A No, ma'am.

23 Q And then you described a payment process where
24 you said that the check that CAM receives, they sign over to
25 Cashman and then Cashman pays back the percentage or whatever

1 to CAM?

2 A Right. Whatever their -- whatever their fee
3 was, gives them a check for his fee.

4 Q But that wasn't how Mojave was getting its fee
5 from CAM on those other subcontracts, right?

6 A Not that I'm aware because again, it was -- the
7 scenario was he had to pay us before he got another check.

8 Q So Mojave wasn't abiding by that process that
9 you just described?

10 A Different scenario.

11 MS. LLOYD-ROBINSON: I have nothing further.

12 THE COURT: All right. Mr. Boschee, anything
13 further?

14 MR. BOSCHEE: No.

15 THE COURT: All right. Mr. Fergen, thank you so much
16 for your time. You're excused.

17 THE WITNESS: Have a good evening.

18 MR. BOSCHEE: I don't know if that's a good thing or
19 a bad thing. That's the first witness that Your Honor hasn't
20 asked a question of. Maybe we finally got it right.

21 THE COURT: It has nothing to do with the fact that
22 it's 10 to 5, just for the record.

23 MR. BOSCHEE: Fair enough. We have no further
24 witnesses.

25 THE COURT: Okay. Defense rests. Any rebuttal?

1 MS. LLOYD-ROBINSON: No rebuttal.

2 THE COURT: All right. So that takes us right to
3 closing, which we're going to do tomorrow.

4 MR. BOSCHÉE: Yes.

5 THE COURT: So anything anybody wants to still do on
6 the record today, the Court record?

7 MR. BOSCHÉE: No. The only thing that we obviously,
8 per Your Honor's request, before we start closings tomorrow we
9 will provide the Court with a full accounting of every dollar
10 for dollar that Mojave has put into the project, including
11 Exhibit 65 and any bond fees and -- really everything, other
12 than attorney's fees, obviously.

13 THE COURT: Okay. Right. Other than attorney's
14 fees.

15 MR. BOSCHÉE: Right.

16 THE COURT: You're going to provide that to Ms.
17 Lloyd?

18 MR. BOSCHÉE: Yes.

19 THE COURT: All right. Do you want to say anything
20 on the record?

21 MS. LLOYD-ROBINSON: Nothing further, Your Honor.

22 THE COURT: Okay. We'll go off the court record,
23 then.

24 (Court recessed for the evening at 4:51 p.m.)
25

CERTIFICATION

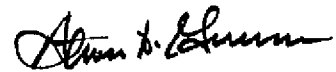
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY,)

Plaintiff,)

vs.)

CAM CONSULTING INC.,)

Defendant.)

AND RELATED PARTIES)

CASE NO. A-11-642583-C

A-11-653029-C

DEPT NO. XXXII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 3

THURSDAY, JANUARY 23, 2014

APPEARANCES:

For the Plaintiff:

JENNIFER LLOYD-ROBINSON, ESQ.

BRIAN J. PEZZILLO, ESQ.

For the Defendant:

BRIAN W. BOSCHEE, ESQ.

WILLIAM MILLER, ESQ.

RECORDED BY CARRIE HANSEN, COURT RECORDER

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JA 00006923

I N D E X

CLOSING ARGUMENT:

By Mr. Pezzillo	24
By Mr. Boschee	81

CLOSING REBUTTAL ARGUMENT:

By Mr. Pezzillo	129
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E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

66	Amended Notice of Lien	20
67	Cashman Invoice for battery	21

1 LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 23, 2014, 2:02 P.M.

2 * * * * *

3 MR. BOSCHEE: You asked us for a spreadsheet which
4 I've -- I've already provided this to counsel -- with the
5 numbers on it and whatnot. We've also included all of the
6 invoices which is Exhibit -- Joint Exhibit 65 as well as the
7 bond -- the bond slips for the three bonds that we've got, and
8 so we've got that. I don't know if counsel already got one.
9 If I could approach or if --

10 MS. LLOYD-ROBINSON: Yes, you can approach.

11 MR. BOSCHEE: Okay.

12 THE COURT: Ms. Lloyd, have you had a chance to see
13 what's being handed to me?

14 MS. LLOYD-ROBINSON: I did take a look at it.

15 THE COURT: Is this two copies of it?

16 MR. BOSCHEE: Two copies, yes. Same thing. I just
17 wanted one for the Court and one for Your Honor.

18 THE COURT: I'm going to make it a Court Exhibit
19 unless you have an objection to it.

20 MS. LLOYD-ROBINSON: I have -- my objection would be
21 that the bond invoices were not disclosed during discovery, and
22 I don't think those are proper damages to be asserted against
23 Cashman at this point.

24 THE COURT: Okay. Let's go ahead and take a look at
25 what it is you're objecting to. It's not Bates stamped or

1 numbered.

2 MS. LLOYD-ROBINSON: Because it wasn't -- it wasn't
3 provided during discovery.

4 THE COURT: No, I mean the packet of materials --

5 MS. LLOYD-ROBINSON: Oh, the packet.

6 THE COURT: -- Mr. Bochee just gave me. I mean, it's
7 just what it is. It looks it's like about 20 pages of stuff.

8 So --

9 MR. BOSCHEE: Well, yes. The first, I guess, 18
10 pages --

11 MS. LLOYD-ROBINSON: The first section is Joint
12 Exhibit 65.

13 MR. BOSCHEE: -- yes -- are Joint Exhibit 65, and
14 then the last several pages are the checks and whatnot for the
15 bonds.

16 THE COURT: All right. So after the page which has
17 the No. 18 on the bottom right, I have 1, 2, 3, 4, 5, 6 more
18 pages. Which of those 6 do you object to Ms. Lloyd?

19 MS. LLOYD-ROBINSON: I object to all of those
20 pages --

21 THE COURT: All six of them, okay.

22 MS. LLOYD-ROBINSON: -- as not being relevant to --

23 THE COURT: What's the basis of the objection?

24 MS. LLOYD-ROBINSON: They're not relevant to the
25 claims perceived by Cashman in this matter, and they were not

1 disclosed during discovery as damages being sought by
2 defendants.

3 THE COURT: All right. Your position in that regard?

4 MR. BOSCHEE: I believe that they're valid offset
5 amounts, and they are being provided today as opposed to
6 earlier because Your Honor asked for them.

7 THE COURT: Okay.

8 MR. BOSCHEE: You wanted -- you wanted to know what
9 we paid for the bonds, and so we provided that.

10 THE COURT: Okay. I'll give you that, but her point
11 as far as two things, one, disclosure during discovery, okay.
12 And separate and distinctly from that, is there any notice that
13 this is part of your counterclaim?

14 MR. BOSCHEE: It would be -- it wouldn't necessarily
15 be part of our counterclaim. It would be part of our offset
16 defense. It would be one of our affirmative defenses.

17 THE COURT: Okay. So it's an offset defense?

18 MR. BOSCHEE: Correct. There was no doubt, there has
19 been no dispute in the case that we -- I mean, the lean -- the
20 bonds are in evidence -- that we had to post the lien for -- or
21 bond around the mechanic's lien. We had to renew it in large
22 part because the case has dragged on a bit, and we also had to
23 post a bond for the injunction that Your Honor entered that
24 they've subsequently appealed.

25 Those are all -- I mean, the bonds are -- have been

1 disclosed. They're a matter of public record as well as
2 they've been a big part of the litigation. The lien -- or the
3 injunction bond I think was ordered by this Court. So I don't
4 think that that \$4,000 check -- I mean, whether it -- I had
5 never actually disclosed the check, but Your Honor put in the
6 order that we had to post a bond for the injunction. So I
7 didn't think that was really an issue with respect to that
8 particular invoice.

9 THE COURT: Okay. Do you want to say anything else
10 about this Ms. Lloyd?

11 MS. LLOYD-ROBINSON: These claimed offsets are not
12 proper against Cashman. I think that's been discussed
13 previously during trial in this matter, and the amounts
14 incurred to obtain bonds, those were Mojave's choice in
15 deciding to proceed in the fashion that it did which was namely
16 not ensure payment to Cashman, and as a result we ended up in
17 litigation, and they had to post some bonds. These are not
18 damages that should be assessed against Cashman, and because we
19 didn't have notice of them there was no discovery done. There
20 was nothing dealt with, you know, previous to, I guess, the end
21 of trial in this matter, you know, on this specific issue.

22 THE COURT: All right.

23 MR. BOSCHKE: I'm not sure what discovery would have
24 been done as to -- as it relates to the bonds that are put up
25 to record around a mechanic's lien. That said, I don't know --

1 I wouldn't say that it was a choice. We've alleged throughout
2 the case that the lien is both invalid and excessive. We
3 bonded around it for purposes of getting this off the project
4 so the project could open on time. I don't think that's -- I
5 don't think that's necessarily valid.

6 And also going back to the original point, what
7 discovery would we have done? I mean, this is what was paid
8 for the bond around the mechanic's lien, yes? Yes. I mean,
9 it's not -- I mean, you could've asked the question in
10 deposition, I guess, but there is no issue that there was a
11 bond around the mechanic's lien, and obviously that bond has a
12 cost.

13 MS. LLOYD-ROBINSON: Well, we didn't know it was
14 being claimed against Cashman as an offset. I think that's the
15 key point. There was no notice that this was part of suddenly
16 their claim for offset until the end of trial. That's the
17 purpose of discovery is to have notice of what's being claimed
18 against you, and this was not included in that.

19 MR. BOSCHEE: Well, we also -- we also just got an
20 amended notice of lien that was recorded yesterday by Cashman
21 that has never been discussed or talked about in this case
22 either. I mean, before I start going down this road as to what
23 we're doing at the very end of trial, I mean, that's something
24 you're going to hear about in about two minutes I suspect.

25 Your Honor asked for what our out-of-pocket costs

1 were. We've disclosed the -- the work that was done. You
2 asked for the bond costs. We gave them to you. I don't think
3 there's been any dispute in the case that there were bond
4 costs. We think that the mechanic's lien is invalid. We had
5 to bond around it. That's been part of our case in chief since
6 day one. We've been arguing about this mechanic's lien
7 literally in front of Your Honor at least a half-dozen times.
8 I think that they're valid offset damages.

9 THE COURT: Okay.

10 MS. LLOYD-ROBINSON: We amended the lien as allowed
11 by statute during trial given what had been discovered. I
12 think that's irrelevant to whether or not they can claim their
13 bond costs against Cashman in this matter and whether we had
14 notice that they were doing so.

15 MR. BOSCHEE: And I would also say it's probably
16 weight for submissability, and Your Honor is obviously free
17 to -- to, you know, not consider them and say, no, you can't
18 claim those as offset damages. We just think it's proper to at
19 least have them in front of Your Honor. You can review them,
20 do whatever you feel is appropriate with them, and if you give
21 that no weight, you give that no credence in terms of the
22 offset, then you don't, but I think, you know, you asked for
23 them. The liens -- the bond liens have been in play the entire
24 case. I think it's fair game at this point.

25 THE COURT: Okay. Here's the way I'll reconcile this

1 situation. First, I did ask, and so it is a part of just what
2 I wanted to see in fairness. You know, in a case -- well,
3 every bench-trial case, civil case, you know, where there's
4 money damages I always like to just know the money flow and
5 everything that I could conceivably see, and mainly I do that
6 because it's funny how these things end up many times involving
7 themselves in equitable-fairness-based decisions.

8 They don't always do that as I indicated yesterday
9 off the record. I mean, sometimes there's a legal standard
10 perhaps relevant to a bond or a lien that might not encompass
11 so much equity and fairness, but nonetheless I really wanted to
12 see the money trail. So I appreciate that I have these because
13 I asked for them, and you provided them. So there's that.

14 Cashman still has a right to object to their
15 consideration or admittance, and she's done that. My thought
16 is that they are reasonably related as far as I can see, the
17 various checks and amounts associated with payment here. I
18 think they're reasonably related to issues that have been in
19 the case for some time, the bond issues, the lien issues, the
20 injunction and everything else that we were doing along the
21 way.

22 So what I want to say is, though they may not have
23 been formally disclosed in the discovery deadline type of a
24 process I think they're at least reasonably anticipated to be
25 expenses incurred, and so the aspect of the objection having to

1 do with failure to disclose somehow in discovery, I'm going to
2 deny that part of your request even though I think it's given
3 to me of course in good faith like everything else you do. I
4 just think it's -- it would be reasonable to anticipate that
5 these costs would be -- and expenses would be foregone in the
6 various context in which they came about in the case.

7 And of all the things I've heard, I will tell you the
8 one thought that I had in my head that was said better actually
9 by Mr. Boschee was it will come down to sort of the weight
10 given to them as opposed to whether they'll be admitted as a
11 court exhibit. That will give them the appropriate weight.

12 I want Cashman to know that just because I asked for
13 this stream of money, I don't have an intention or my mind is
14 not made up in any way to say that somehow operates as a
15 settlement. I just wanted to see it. So that's what I did.

16 So for all those reasons I'm going to admit the
17 entirety of the packet that Mr. Boschee has given us as the --
18 this will be a court exhibit because it's really -- some of
19 it's based upon my request, and some of it -- it's a
20 demonstrative exhibit, really, if you think about it in regards
21 to an accounting. I mean, that's what it truly is.

22 And so it's part of what could be your argument.
23 It's a demonstrative exhibit for purposes of argument is the
24 way I'll treat it, but I'll make it part of the record of
25 course as a court exhibit so that if somebody decides to appeal

1 this thing it will be there. So it's Court Exhibit 1, the
2 entire packet.

3 Anything else?

4 MR. BOSCHEE: Yes, since you asked. I've also
5 provided this to counsel, and I'm going to draw an objection on
6 this as well. This is the -- I have two copies if I may
7 approach -- two copies of the Zillow printout this morning of
8 the infamous property of Jenel Rennie that the Court awarded to
9 Cashman --

10 THE COURT: Okay.

11 MR. BOSCHEE: -- earlier in the case that we believe
12 should be an offset. Now, I will represent to the Court,
13 you're going to hear for me per your request a little later in
14 my closing argument what I think may be a reasonable, quote,
15 unquote, fair resolution of this.

16 I am not going to ask the Court to value this house
17 at two hundred and fourteen thousand, eight, eighty-one even
18 though that's what Zillow has it as. We have -- basically what
19 we're going to argue is we're going to -- there's the one,
20 sixty-five that was paid for. Zillow has got this number on
21 there. We recognize the issues with the house, that they've
22 got to expend a little bit of time getting Miss Rennie out.
23 They've got to do a few other things. So we're just splitting
24 the difference. We are going to ask for a number in the middle
25 of that, and that's the number we're going to go with. This is

1 more just for if nothing else the Court's -- you know, that's
2 what Zillow says the house is worth, and that's the basis of my
3 argument.

4 THE COURT: I understand. But just as far as what
5 I'll -- my intention would be to put it into the record as
6 Court Exhibit 2.

7 Do you have an objection, Ms. Lloyd, to that?

8 MS. LLOYD-ROBINSON: I object to evidence being
9 offered relevant to the value of a house that Cashman doesn't
10 even own as of yet, and I think the value is really
11 unascertainable at this time given the fact that we don't know
12 what condition the home is in, the amount of work it's going to
13 take to get her out of the home, the carrying costs for the
14 house, how long we're going to have to carry the house before
15 there's even a realized amount related to the judgment. I
16 think it's speculative and inappropriate, and I would ask that
17 it not be admitted.

18 THE COURT: All right. Well, I'm going to admit it
19 as Court Exhibit 2. I will say that for the record so Cashman
20 knows, I mean, I will not treat this as a fair estimate of the
21 true value of the place. I mean, it's just -- it gives me an
22 idea as to what the value could be, but of course I'm cognizant
23 of efforts that would have to be put forth, you know, when I --
24 a construction company comes into possession of a house.

25 MS. LLOYD-ROBINSON: Can I add for the record that I

1 think -- Cashman has been asking at this time that the judgment
2 be entered against Mojave jointly and severally for the amount
3 that the Court finds is owed to Cashman for the work that it
4 performed on the project, and I think, you know, without saying
5 any amount recovered on another judgment from another defendant
6 in this matter, you know, later on that would be offset after
7 the cost to recover that amount were deducted.

8 I don't think that that is necessarily -- you know,
9 it needs to be offset at this point in time where there is no
10 unascertainable -- it's unascertainable, the amount that
11 Cashman is even going to recover on this particular judgment.

12 THE COURT: But that sounds like you'd be amenable to
13 part of an order -- assuming that you received a monetary
14 judgment in this case -- that you would be amenable to having
15 an order indicate that if you were to collect in your efforts
16 to deal with the title of this house that you would have to
17 reimburse, I guess, is what it would be.

18 MS. LLOYD-ROBINSON: If Mojave paid the judgment, or
19 if we were awarded judgment and Mojave paid it, that's correct.
20 If we had a full recovery on what, you know, Your Honor ordered
21 in this matter, then that's correct. Mojave would be able to
22 recover those those amounts.

23 THE COURT: That's an interesting thing though
24 because it does put upon you some sort of duty of due diligence
25 to collect. I mean, because what they might do is transfer the

1 interest to Mojave.

2 MR. BOSCHKE: And see that's the problem, Judge. You
3 ordered this in June of 2013 and awarded them the house that
4 that time, and had Your Honor not done that, had you just been
5 sitting on a judgment with execution remedies that argument
6 would be more persuasive to me, but you did give them the
7 house, and so at that point I think we are entitled to an
8 offset. It's just, again, weight versus amount. It's just up
9 to Your Honor to decide if --

10 THE COURT: It would be nice if I had a good, I mean,
11 a really solid appraisal or something I could use other than
12 this. I wanted this, no doubt. It gives me -- it's --
13 something is better than nothing, but it's an interesting spot
14 because -- and maybe we'll get to it, and we can talk after I
15 come up with the whole thing when I do --

16 MS. LLOYD-ROBINSON: I think what he's asking for --
17 I apologize.

18 THE COURT: I was is going to say, we can talk about
19 what to do about this contingency later, too. It's not like we
20 have to make up our mind right now, but, I mean, it does seem
21 odd to me that a Court could be involved with, you know,
22 essentially handing a house over to, you know, a construction
23 company, and then later in the same case handing that same
24 house over to an electric company. I mean, it would be a first
25 probably of all time for something like that.

1 But please know that I was doing this because I
2 thought it was the right thing. I mean, the guy stole the
3 money is what's been shown to me, clear and convincing evidence
4 on that, and I just I felt like, well, I can at least do
5 something for a company who along the way, you know, who
6 supplied all this stuff and didn't get paid, and I was just
7 trying to do what I thought made sense. Maybe you guys could,
8 you know, pick up a hundred and fifty grand or a hundred grand
9 out of it or something. You know, that's what I thought.

10 MS. LLOYD-ROBINSON: And it's not for lack of trying.
11 I was unfortunately on maternity leave for a few months there
12 after the judgment was granted. I remember I was in here very
13 pregnant, but I think Mr. Boschee is asking to penalize Cashman
14 for trying to collect all these amounts. I mean, Mojave has
15 not done one thing. I'm talking about equity and fairness.
16 They haven't done one thing to get anything from Mr. Carvalho,
17 and Cashman has expended significant resources attempting to
18 obtain these judgments and find assets and do what they can to
19 recover --

20 MR. BOSCHEE: Well, we can't --

21 THE COURT: Okay. Let's segue now. That other thing
22 you brought up, let's segue from what we can affectionately
23 refer to as the nightmare on Little Elm Street. All right.
24 We'll talk about that a little bit later because it's a Little
25 Elm Street address as ironic as that is.

1 MR. BOSCHÉE: It was.

2 THE COURT: Okay. But something that came up in the
3 trial that seriously now we need to figure out, too, is what
4 about collection efforts that are designed, you know, to get
5 something from either CAM, Mr. Carvalho including the criminal
6 case if there's restitution in the criminal case. It's been
7 alluded to that there's civil activity. I mean, I don't know
8 the full extent of what civil activity is going on. I mean --

9 MR. BOSCHÉE: With respect to our claims against Mr.
10 Carvalho?

11 THE COURT: Yes.

12 MR. BOSCHÉE: Well, they're in front of Your Honor.
13 We've got a default entered. I can't submit default judgment
14 paperwork until I know how this case is going to play out
15 because I don't know what my damages are. I mean, I have an
16 idea, but I don't know -- until -- until and unless Your Honor
17 awards damages that Mojave owes to Cashman, that's going to
18 impact my damages as to --

19 THE COURT: I'm aware of our default. What I meant
20 to say is --

21 MR. BOSCHÉE: That's it. That's --

22 THE COURT: Oh, okay. Then I misunderstood it. It
23 sounded like there were still efforts.

24 MR. BOSCHÉE: They do.

25 MS. LLOYD-ROBINSON: I -- we have a judgment against

1 CAM and Carvalho that we have attempted to execute on since we
2 requested that it be certified final before the end of the case
3 in our attempts again to mitigate the damages that we've
4 suffered even though Mojave has not taken any action.

5 THE COURT: Okay. We definitely need to address the
6 prospect of restitution in that criminal case.

7 MR. BOSCHEE: And we plan to do that. I plan to do
8 that in my argument. I don't know if you want to address that
9 now, but we had some thoughts on that. Depending on what you
10 want to do -- do you want to discuss that now, or do you want
11 to wait until the arguments, or how --

12 THE COURT: I'll wait till the arguments.

13 MR. BOSCHEE: Okay.

14 THE COURT: I think we're ready to go with -- is
15 there any other preliminary stuff to talk about?

16 MS. LLOYD-ROBINSON: Mr. Boschee alluded to it.
17 Cashman did amend its lien as allowed by NRS 108.229 to reflect
18 the amount it's attempting to collect in this matter as it can
19 be done before or during trial, and given the evidence that we
20 submitted, we have amended our lien to reflect our claim as it
21 stands at this time.

22 We also have the invoice to Codale for that battery.
23 The amount that we actually sold the battery to Codale for,
24 that is reflected in the amended lien, and we also in good
25 faith credited the settlement payments that we received from

1 other defendants in this matter.

2 THE COURT: Oh, yes, you got 5,000 bucks?

3 MS. LLOYD-ROBINSON: Yes, and \$200, and we didn't
4 even deduct from that the cost to sue those defendants. We
5 actually gave full credit for the amounts that we recovered.

6 THE COURT: Okay. So you have a document that shows
7 all of this?

8 MS. LLOYD-ROBINSON: I did. I gave a copy of the
9 amended lien and the invoice to Mr. Boschee. I have another
10 copy for Your Honor if I may approach.

11 MR. BOSCHEE: Yes, I've got it. The only objection I
12 would have is obviously this is an invoice dated -- the amended
13 lien was recorded yesterday. So, you know, that's a relatively
14 new document. I'm not going to say that that should've been
15 disclosed earlier.

16 The invoice between Codale is dated 11/9/11. This is
17 something that's going to come up in my argument fairly
18 extensively later on, but this is something that Cashman knew
19 about. They knew that they had bought these batteries. They
20 didn't amend the lien at that time. This document has never
21 been disclosed in this lawsuit. This is something that's been
22 in the possession of Cashman since at least November of 2011,
23 and more to the point, Judge -- I'm going to address this again
24 later -- I came before Your Honor about three or four months
25 ago, and I asked Your Honor to reduce the lien.

1 You denied that motion without prejudice, and then
2 awarded them attorneys fees of about \$10,000 pending what
3 happened at trial. Well, now, they have sua sponte turned
4 around and reduced their own lien because of documentation that
5 they had in their possession. So at some point today or
6 otherwise I'm probably going to ask for Rule 60 relief from
7 that attorney's fees order because they have -- they have
8 acknowledged that there lien was excessive and have reduced it
9 now on the last day of trial which is what I was asking Your
10 Honor to do several months ago, and, you know, you obviously
11 didn't do it at that point because none of us knew about this.

12 So I would object to this document coming in at this
13 point because it wasn't disclosed, but I would also say that,
14 you know, I think that this opens the door to Rule 60 relief as
15 it relates to their attorney's fee order.

16 THE COURT: All right. Now these two items that I've
17 been provided, these are -- I'm going to treat them as proposed
18 affirmative exhibits in the case.

19 So what's the next exhibit in order, 66?

20 THE CLERK: Yes.

21 MR. BOSCHEE: Yes.

22 THE COURT: All right. So the amended notice of lien
23 is going to be Proposed Exhibit 66.

24 And do you have an objection to the admittance of the
25 amended lien?

1 MR. BOSCHKE: No.
2 THE COURT: Okay. So 66 is admitted.
3 (Plaintiff's Exhibit No. 66 admitted.)
4 THE COURT: And do we have a clean copy of it yet?
5 MS. LLOYD-ROBINSON: The amended lien?
6 THE CLERK: The amended lien, no.
7 THE COURT: Okay. Would you give that to our clerk
8 please, Ms. Lloyd.
9 MS. LLOYD-ROBINSON: Yes.
10 THE COURT: That's going to be admitted as
11 Exhibit 66. And then the invoice, that's going to be Proposed
12 Exhibit 67.
13 And do you want to be heard as to his objection to
14 it?
15 MS. LLOYD-ROBINSON: I think it's interesting he's
16 objecting to documents that weren't disclosed not being
17 admitted at this time since we are admitting documents he
18 hadn't disclosed.
19 He had not made the arguments related to the battery
20 to cause any internal investigation at Cashman until his trial
21 brief. The moment I received his trial brief I actually
22 prompted my client to do this investigation. This was filed
23 under Codale. It wasn't filed under anything related to the
24 City Hall or Mojave which is why it was missed when the lien
25 was repaired, and at the time the lien was prepared, we were

1 still attempting to work a resolution to hopefully to get out
2 there and finish, and the lien statutes allow you to lien for
3 the balance owed or the full value of your contract which is
4 what we did.

5 THE COURT: Okay. I think that adequately explains
6 the circumstances which led Ms. Lloyd to generate this document
7 and provide it. I think part of that had to do with the trial
8 and my questioning, frankly, having to do with the batteries
9 and what have you. So just like I appreciate what you've put
10 together and made it at least a Court exhibit, this will be
11 admitted as Exhibit 67.

12 (Plaintiff's Exhibit No. 67 admitted.)

13 THE COURT: You probably said it already, but this
14 sixty-six thousand, nine, sixty-seven, what does that
15 represent?

16 MS. LLOYD-ROBINSON: That's the amount that Cashman
17 sold the battery that was referred to by Mr. Boschee as being
18 not supplied to Cashman to the project. So at the point
19 Cashman didn't supply it, they sold this battery to Codale, and
20 Codale sold it to Mojave subsequently.

21 THE COURT: So this was sold -- this 66 grand, almost
22 67, that --

23 MS. LLOYD-ROBINSON: It was not supplied by Cashman
24 to the project which is why I credited the full amount of the
25 lien with this amount, and then this represents the amount that

1 Cashman received for the -- I mean, it's kind of a --

2 MR. BOSCHÉE: And if you look at Joint 65 on page 15,
3 that's then the Codale sale to Mojave which is five days later.

4 MS. LLOYD-ROBINSON: Which you can see that Codale
5 substantially marked up the battery in its sale to Mojave.

6 THE COURT: 60 -- what exhibit was that?

7 MR. BOSCHÉE: Joint 65.

8 THE COURT: What did they sell it for? Can you
9 remind me?

10 MR. BOSCHÉE: They sold it to us for --

11 MS. LLOYD-ROBINSON: 79.

12 MR. BOSCHÉE: -- 79,000.

13 MS. LLOYD-ROBINSON: Seventy-nine, seven, two, one
14 and thirty-one cents.

15 THE COURT: Oh, yes, they marked it up a little bit.

16 MS. LLOYD-ROBINSON: Quite a bit.

17 MR. BOSCHÉE: 20 percent. That was nice of them.

18 Mr. Fergen testified yesterday that it was a nominal markup --

19 THE COURT: Well, he's a disadvantaged business
20 entity.

21 MR. BOSCHÉE: Well, exactly. They have to make their
22 money somewhere.

23 THE COURT: All right.

24 MR. BOSCHÉE: Now, we see why nobody wanted to
25 contract with them, right?

1 THE COURT: All right. Okay. Anything else before
2 we get to argument?

3 MS. LLOYD-ROBINSON: I think that's it.

4 MR. BOSCHEE: I think that's it.

5 MS. LLOYD-ROBINSON: That's everything.

6 THE COURT: Oh, do you have a clean copy of 67?

7 MS. LLOYD-ROBINSON: I do.

8 THE CLERK: Thank you.

9 MR. BOSCHEE: Oh, and we also --

10 I'm sure you guys do, too, for your PowerPoint.

11 We have a packet of the hard copy of the exhibits --

12 MS. LLOYD-ROBINSON: We do.

13 THE COURT: Okay.

14 MR. BOSCHEE: -- that we're going to use. Do you
15 want both of them now, or do you want us to give them to you
16 before --

17 THE COURT: Yes, I'd like to have hard copies of your
18 PowerPoints because I may take notes on them.

19 MR. BOSCHEE: I am not going to be using PowerPoint
20 I'll probably just put a few things on the Elmo, but this is
21 what we'll be referring to.

22 THE COURT: All right. Thank you.

23 MR. PEZZILLO: Here's two copies. These smaller one
24 actually has a place for notes. The other one takes up a
25 full-page so you can actually read that.

1 THE COURT: Oh, that's nice. That's well done.
2 Thank you.

3 Well, I've never seen it done quite that way, and I
4 had a six-week jury trial where the jury gave out 70 million
5 bucks, and I took notes all over things that looked like this.
6 Next time I'm going to remember, do one of these. It's pretty
7 good. All right.

8 Anything else before we go to Ms. Lloyd's closing
9 argument?

10 MS. LLOYD-ROBINSON: I think we are ready. Mr.
11 Pezzillo is making the closing arguments today.

12 THE COURT: Oh, okay.

13 MR. PEZZILLO: I have to justify my existence
14 somehow.

15 THE COURT: All right. It's time for the plaintiff's
16 closing argument.

17 Mr. Pezzillo.

18 MR. PEZZILLO: Thank you, Your Honor.

19 We -- well, first off, I hope we don't find too many
20 errors in the PowerPoint. We were working until about an hour
21 ago to try to make sure we had all the numbers in here as
22 accurately as we could to address Your Honor's concerns and
23 questions.

24 And I think it was already kind of alluded to but
25 I'll go ahead and kind of address it at this point with regards

1 to restitution and possible treatments of that. Cashman's
2 position on that is obviously that Cashman is not seeking a
3 windfall. They're not seeking to turn a profit. In fact, I'm
4 going to demonstrate for you momentarily it's going to be
5 impossible for Cashman to ever even breakeven on this adventure
6 we'll call it.

7 When and if restitution becomes available, first,
8 I'll be the first one to buy you Starbucks because I hope it
9 happens. I guess I -- we've been dealing with this case so
10 long that I don't have a whole lot of great hope, but anything
11 is possible, and we've certainly seen crazier things, but when
12 and if that happens, Your Honor, I think that should be treated
13 as a credit in the future. Joint and several liability is what
14 should apply here, and whatever number is awarded should be
15 awarded in our position in full against the current defendants
16 who are in this case.

17 And next week if we get lucky and the recorder's
18 office decides to record everything that we are trying to do to
19 get title of the house transferred and if there's criminal
20 restitution that comes up -- and currently just so Your Honor
21 is aware that trial is set for September the 22nd of 2014. It
22 has been continued a few times and not in small part, I'm sure,
23 to the fact that Mr. Carvalho's attorney sought to withdraw
24 from the case for nonpayment. So we'll see when it happens.
25 Hopefully it does take place in September, but you know how

1 those things go.

2 If he settles and strikes a plea agreement next week
3 and says he's going to make restitution and we collect
4 \$200,000, then our position would be certainly, we reduce any
5 judgments by \$200,000. That would be an obligation on behalf
6 of our client. We can't collect twice, and so I want to make
7 sure that that's very clear.

8 With regard to the remaining aspects, we've try to
9 address the equities as you've asked for. Construction -- the
10 construction area in Nevada is very interesting in that it's
11 very statutorily driven, and there is binding law in that area,
12 and we're bound to follow it even when we think that it's not
13 necessarily fair.

14 And I've certainly been on the other side of the
15 table representing people who may have to pay twice, but as
16 you're going to see in this matter, Mojave is not unique to
17 that situation. Cashman is finding themselves having to pay
18 twice as well, and that's something that's been forgotten in
19 this case, and we've missed it.

20 So basically what I'm going to do is -- it would help
21 if I turn the power on -- is to walk through a brief history.
22 I mean, I think -- obviously Your Honor is well aware of what
23 happened, but this chart for lack of a better term is
24 critically important because it shows the flow of both
25 contracts and funds on this project.

1 Now, the owner originally -- this is what it was --
2 it was referred to by one of the witnesses and we call them
3 P3s, public-private partnerships. It's the new thing across
4 the country. It's designed to deliver projects in a more -- a
5 faster, efficient manner, and sometimes it works, sometimes it
6 doesn't. Obviously when you start including DBE requirements,
7 it gets trickier, for lack of a better term.

8 And for the record, I happen to share Your Honor's
9 concerns that the DBE program as it's been described in this
10 courtroom, in this case is not how this program is supposed to
11 work in any way, shape or form. It is truly supposed to be
12 essentially a helping hand to people who otherwise need it.
13 It's not supposed to be somebody who collects a fee for
14 using -- essentially letting somebody use their letterhead
15 which is what obviously CAM did.

16 Now in this case, you'll notice that Cashman is at
17 the bottom, and that's precisely where they were. They are at
18 the bottom. They are the last tier on this project. It flows
19 from the owner which was originally private and is now the City
20 of Las Vegas, to Whiting Turner is the contractor -- general
21 contractor, to Mojave is the electrical sub, to CAM which is
22 something -- I'm not even really sure what to call them since
23 they didn't have any role in the project but to fulfill the DBE
24 requirement -- to Cashman.

25 Cashman is the low man on the totem pole. They're

1 going to be the last one in the contract chain. They're going
2 to be the last one to get paid. They are dependent upon every
3 single person above them doing their job for them to get paid.

4 Now, in February of 2010 Mojave entered into a
5 contract with Whiting Turner. A month prior to that,
6 January 11th of 2010, Cashman was already entering submittals
7 directly to Mojave, and that's what this project originally was
8 designed to do. Cashman was going to contract directly with
9 Mojave -- as it has dozens of times -- was the testimony. That
10 was the anticipation, and as Mr. Lozeau testified, that's
11 really how they wanted it.

12 It wasn't their idea to use a DBE, and in fairness to
13 Mojave, I don't think it was their idea either. I think they
14 knew probably would've preferred not to use one as well
15 because, frankly, in this particular case, the DBE took a
16 percentage for doing nothing other than lending its name to the
17 project so that somewhere -- and perhaps this is overly
18 harsh -- but somewhere some politician can say, hey, we used a
19 DBE on this project, pat themselves on the back, and say, look
20 at what a great job we did. It didn't benefit anybody.

21 Now, in April of 2010 -- and we're remembering that
22 delivery wasn't made until January of 2011, so well in
23 advance -- in April Mojave issued two purchase orders, and this
24 followed a meeting where Cashman was introduced to CAM at
25 Mojave's offices, and we're going to talk about that in just a

1 little bit. \$757,000 was the original purchase orders for this
2 project.

3 Now, on January 25, 2010, March 9, 2010 and
4 April 2010, Cashman is providing submittals. Mr. Lozeau
5 described that process. It goes -- that chain we just looked
6 at, it goes all the way from Cashman up through Whiting Turner
7 to the project owner to all of their -- their professionals,
8 architects, engineers, whoever needs to look at it. If there's
9 questions, it goes back down the chain, back up the chain, and
10 that's how the process works.

11 This is not what I -- I kind of call it a
12 dump-and-run type project. There are projects where the
13 supplier supplies one thing, so many cubic yards of dirt, and
14 then they're done. You never see them again. Cashman was
15 intimately involved from the point in time prior to Mojave even
16 entering into a contract.

17 Now, on August 11, 2010, a materials release order --
18 we didn't specifically talk about it, but it's Joint Exhibit 27
19 in the case -- was issued. That's basically Mojave's way of
20 saying, okay, let's get going. We're ready to go. The
21 submittals have been approved. That led to January when the
22 two generators were delivered.

23 I thought it was important to note as well -- during
24 the testimony it was undisputed -- Cashman started working
25 deliveries prior to that back in November. So this is a

1 process, and as Mr. Lozeau testified, this process actually
2 involved putting together component materials from -- all the
3 way from Georgia to Japan when it comes to the overall shell of
4 the generators to the switchboards to every component part.
5 This is a complex piece of machinery, and although they can
6 certainly do it -- Cashman's very adept at doing it -- you
7 don't just walk into a warehouse and pick one off the shelf.

8 Now, January 11th of 2011, CAM issued an invoice to
9 Mojave, so shortly thereafter the delivery. February, the next
10 day, Cashman issued invoices to CAM expecting to be paid, and
11 then we get to the infamous dates of April 26th when payment
12 was actually made from Mojave to CAM with this check exchange
13 as it's been described in Mojave's offices.

14 That same day there's essentially kind of a
15 roundabout of checks. Mojave is cutting CAM a check. CAM is
16 cutting Mojave a couple of checks. They're cutting Cashman
17 some checks, and I think everybody understood this is dependent
18 upon Mojave paying, and obviously I think it goes without
19 saying, but I guess I'll go ahead and say it. It assumes
20 nobody is intending to steal the money and run away which is a
21 very difficult thing to anticipate. Unfortunately, knowing now
22 what we know, that's precisely what happened.

23 Now, Cashman finds out a few days later that there's
24 been a stop payment issued on the check. That was Joint
25 Exhibit 7. I think it was interesting to note that Cashman

1 didn't just walk off the job at that point. Frankly, as a
2 matter of law they could have. A lot of this goes back to the
3 first semester, first-year law-school class of contracts we all
4 took. If you have a contract and one party breaches, the
5 nonbreaching party is excused from performance, and that's why
6 that timeline is so important.

7 Cashman's contract is with CAM. It is not with
8 Mojave and vice versa. Mojave's contract is with CAM not with
9 Cashman. Nevertheless, as late as May 20, 2011, there are
10 still e-mails going back and forth between Mojave and Cashman
11 talking about issues related to coordination, issues with
12 regards to the top of the generators. It appeared certain
13 things maybe weren't fitting quite right, and they were talking
14 about that, and we're going to look at that e-mail in just a
15 moment.

16 And after all is said and done -- and obviously
17 that's kind of a brief synopsis of everything you heard --
18 Cashman's claim is six hundred eighty-three thousand, seven,
19 twenty-six, eighty-nine. That is the amount reflected on the
20 amended lien, and that gives credit for the battery sale to
21 Codale less the 20 percent markup that they, you know, kind of
22 stuck to Mojave, and the \$5200 that have been collected in this
23 action.

24 Now, as Jennifer pointed out, we didn't deduct the
25 amount of money it's taken to get to that point, and I can

1 assure you it exceeded \$5200 unfortunately which often times
2 occurs, but his ex-wife and mother and such and such, you don't
3 really have money to really collect upon. So, you know,
4 Cashman has done the best that they can in order to mitigate
5 their damages.

6 This number is very important, and we came up with
7 this number -- it's in the exhibits, Joint Exhibit 54 if you
8 look at it in the aggregate -- and we asked -- after we left
9 here yesterday, we talked to our client and explained what it
10 is that you wanted it for. This number, Your Honor represents
11 what Cashman has paid out of pocket on this job, \$716,000 --
12 let me try that again \$716,777.

13 I think it's been lost a little bit in the morass of
14 facts and details that Cashman maybe -- it's kind of almost
15 been assumed. Cashman's sitting kind of neutral. They're at
16 zero. Really -- they're not really out anything, but they
17 haven't been paid. It's absolutely untrue. This is hard
18 dollars out of Cashman's pockets because believe it or not the
19 people who supply all these component parts, they want to be
20 paid, too, and Cashman paid them.

21 And so there's been kind of a sense that, well, you
22 know, Cashman kind of almost abandoned this project in some
23 fashion. They paid \$716,000 to keep this project going even
24 though they haven't been paid. That's not abandonment. That
25 was good faith, and they did that because that was their

1 obligation. That's what they viewed their obligation as a
2 legitimate business entity to do, and so when you add up all
3 the invoices that have been submitted as Joint Exhibit 54 --
4 and I'll tell you our client was able to do it a lot faster
5 than us -- that's what you come to.

6 THE COURT: This seven, sixteen, seven,
7 seventy-seven, does that include what you essentially paid to
8 have the two Caterpillar diesel generators, the switchgear and
9 that sort of --

10 MR. PEZZILLO: Correct.

11 THE COURT: -- I mean, the hard equipment?

12 MR. PEZZILLO: That's -- yes, and these are the hard
13 costs for that equipment.

14 THE COURT: All right. What about the shipping?

15 MR. PEZZILLO: That would include shipping. That's
16 included in that exhibit as well.

17 THE COURT: All right. How about costs associated
18 with any startup and what have you? You didn't get to that,
19 right, because you stopped working?

20 MR. PEZZILLO: These would just be the hard costs --

21 THE COURT: Okay.

22 MR. PEZZILLO: -- paid out.

23 THE COURT: All right. And this is maybe a little
24 off the point, but in my notes I intended to ask you a
25 question, and this is a good time for it. It appeared to me

1 that there was a warranty relevant to this. There was a
2 two-year warranty that Cashman was going to provide if
3 everything went well?

4 MR. PEZZILLO: Correct.

5 THE COURT: I mean, part of my question then would be
6 what about that? I mean, it seems like that's part and parcel
7 of what was supposed to be paid for, the warranty, and so how
8 does that fit into it? Is the warranty still applicable, or is
9 it --

10 MR. PEZZILLO: Unpaid, the warrantee would not be
11 applicable.

12 THE COURT: Okay. So is there a value?

13 MR. PEZZILLO: I don't believe that there was a
14 specific line item value for the warranty.

15 THE COURT: To the warrantee.

16 MR. PEZZILLO: That would have been included in the
17 aggregate.

18 THE COURT: Okay. I just thought I'd ask. All
19 right. So the seven, sixteen, seven, seventy-seven, that's
20 just basically hard costs for the stuff that you shipped and
21 provided, the equipment?

22 MR. PEZZILLO: That's correct.

23 THE COURT: Okay.

24 MR. PEZZILLO: And so if we take the amount that
25 Cashman is seeking and we compare that with the amount Cashman

1 has expended, if you award every single penny that we are
2 asking for here today, Cashman will lose \$33,000 on this job.

3 Mojave has argued, and, you know, certainly it's not
4 on deaf ears, that they may have to pay twice. The problem is
5 that's precisely what they're asking you to order Cashman to
6 do. They want the codes. They've asked for that repeatedly,
7 and yet nobody has paid Cashman, but Cashman has paid out, and
8 so if they go out there and perform and they provide initial
9 materials, that's precisely what they're doing. They're
10 essentially paying twice with no reimbursement.

11 So the best case scenario, Cashman comes out on the
12 losing end here. They will not turn any profit on this job
13 whatsoever, and that's your best case scenario. Nevertheless,
14 Your Honor, as late as May 20, 2011, there are e-mails going
15 back and forth -- and this was discussed yesterday. It was
16 joint Exhibit 56 -- where Cashman was still talking about, you
17 know, fixtures, bolts on top of -- allowing circuit breakers to
18 be removed. They didn't abandon the project. That was May
19 20th.

20 That's about two weeks after finding out about a
21 joint -- I'm sorry, joint check. We wouldn't be here if we had
22 that -- a check that was stopped payment on by Mr. Carvalho,
23 and that too is also a very important point because there were
24 a couple of times I heard witnesses say, you know, there were
25 insufficient funds. It's important to note this check didn't

1 bounce. This isn't a check that was written and we went to the
2 bank and cashed it, and it bounced. There was an intentional
3 harm committed here by Mr. Carvalho.

4 Now, obviously this is a picture of the infamous
5 generators, one of which is already sitting in place and one of
6 which is being craned into place.

7 So more specifically addressing some of the equitable
8 factors that Your Honor has asked about, I will tell you I
9 thought a lot about that last night and thought where does
10 equity fit into this. How do we really apply that, and who
11 bears the burden? Clearly all parties bear a burden to act in
12 good faith, and I think that's a given, but one of the things
13 we really need to look at -- and again I think sometimes this
14 gets lost -- is we can't look at this is what do we know now.
15 We are all vastly more educated than what we were in 2011.

16 We have to evaluate this as what did the parties know
17 in 2011 and then judge the actions of that in accordance. In
18 2011, A, Cashman didn't think they were going to be dealing
19 with a DBE. They thought -- they were bidding directly to
20 Mojave. They already did, and they expected to deal with
21 Mojave who -- you heard the testimony -- they said they had
22 never not been paid by Mojave. Slow pay, yeah, occasionally
23 but they always ended up getting paid.

24 And I think it's almost -- perhaps there is no legal
25 relevance -- but it's almost a sad thing to note that you may

1 have two parties who have had a business relationship for
2 years, dozens of projects that maybe ends over this because
3 somebody stole money, and that is a sad issue. It's another
4 reason that, frankly, the DBE program failed so poorly here.

5 But at that time there was a DBE -- we'll call it --
6 strong suggestion. I believe the testimony from Whiting Turner
7 was that it wasn't an actual requirement, but it was strongly
8 suggested, and Whiting Turner and Mojave both testified, you
9 know, almost really -- they viewed it as a requirement. They
10 want the next job, whatever the next City Hall project is they
11 want that, and they know if they don't do -- if they don't
12 involve DBEs, they're not going to get it, or at least that's
13 going to be a factor being weighed into it.

14 THE COURT: Well, I did say yesterday and it comes to
15 mind that I'm not going to unduly interrupt everybody in their
16 closings, but I just want to say to you, I mean, look, if the
17 City Council has a desire to use DBEs which apparently they did
18 and you're building City Hall that's about as strong of a
19 suggestion to use DBE's as you're going to have because it's
20 the place where the City Council sits or is going to sit.

21 MR. PEZZILLO: Absolutely.

22 THE COURT: Okay.

23 MR. PEZZILLO: And, you know, frankly, as we are just
24 standing here discussing it, I think it was incumbent upon the
25 city that they didn't have a program in place. We heard from

1 the owner's rep they had to create one, and the concept behind
2 DBEs is a good one, but it's got to be implemented properly,
3 and in this case obviously participation was measured by
4 dollars, and obviously I think there are better ways of doing
5 it maybe perhaps limiting the amount of manpower or work
6 actually performed is a better way of doing it, but that wasn't
7 done, and I guess that's neither here nor there.

8 Mojave introduces Cashman to CAM at Mojave's
9 offices, and it's going to give Cashman a certain level of
10 comfort because when they're there they hear that Mojave has
11 other ongoing jobs with CAM, and CAM and Cashman sat down and
12 tried to negotiate a deal, and you heard from the Mojave
13 witnesses yesterday. Three names were given, two of which
14 wanted 3 percent to fulfill the role of DBE on this project,
15 and then we have CAM who came in at about a half of a percent.

16 Well, given those facts -- I mean, at this point in
17 time there really aren't any warning signs. You know, frankly,
18 with a DBE, you don't expect to be dealing with the strongest
19 company in the world. If they are, they're not going to need
20 the DBE status. Given the fact that Mojave has got a long
21 history with Cashman, Mojave was working with CAM, it's
22 reasonable for Cashman to infer, yeah, they probably wouldn't
23 be introducing me if this wasn't a halfway decent company.

24 Now, nobody knew what was to come obviously. After
25 Cashman and CAM reach an agreement where CAM gets half a

1 percent. It works out to about \$3700 for lending his name to
2 the project. That's essentially presented, and I think
3 importantly it's got to be approved by Mojave because if we go
4 back to that original flowchart, Mojave is the one who enters
5 into a contract with CAM, and at any point obviously Mojave
6 could've said no. They could've said, you know what, we've got
7 these guys on other projects. We don't want to use them. We
8 are concerned. Well, they don't do that even though, you know,
9 there are times where, frankly, CAM wasn't paying Mojave back.

10 We have to remember that there was testimony that at
11 one point on one of the other projects Mojave and CAM were
12 dealing with each other on, Mojave hired CAM to hire Mojave,
13 and so Mojave would pay CAM. CAM would essentially pay Mojave
14 back with its own funds, and at one point in time CAM didn't do
15 that. Now, that's not revealed. There still don't appear to
16 be any red flags going on.

17 And, frankly, in the construction industry, you know,
18 it's nice to think you're going to be able to get paid in 24
19 hours, but it's not unusual to wait 30 or 60 days for payment.
20 That's just standard. We can all argue that it's not right,
21 but that's the standard in the industry. It's just not too
22 unusual.

23 So at the outset again, we still don't see any big
24 red flags going on, and this is going to be kind of a one-shot
25 deal. The vast majority of work is going to take place in one

1 short period of time. Now, Mojave has admitted that they
2 didn't -- other than checking the DBE status with the VA, they
3 didn't check to see if CAM was a licensed contractor. They
4 didn't run CAM's credit to see what their credit history was
5 like. You know, Cashman did do that.

6 And Mr. Shane Norman was asked a question, well,
7 didn't that -- you know, that credit issue really caused you
8 concern, and Mr. Norman's answer was actually I thought --
9 well, it was very precise. He's a very precise individual. He
10 said, you know, It wasn't that there was any bad credit. There
11 just wasn't any, and you expect that with a DBE, with a start
12 up. There's not going to be credit out there, not a lot
13 anyway.

14 So after that Cashman asked for a joint check.
15 That's undisputed. I think all of the parties have testified
16 to that effect. Cashman asked, Can we get paid with a joint
17 check, and Mojave said, No, you can't get paid with a joint
18 check for two reasons. Mr. Bugni testified to that. One, he
19 said, We didn't have a joint-check agreement with CAM. Well,
20 they could have. They certainly could've negotiated a
21 joint-check agreement with CAM. If they had concerns based on
22 their history, they could have done that. They chose not to.

23 And the second reason is they were concerned that
24 this would destroy or somehow impact the DBE status or at least
25 the credit being given for doing business with a DBE entity.

1 Well, as we found out when we asked Whiting Turner that
2 question, Well, would you have said no if you were asked, and
3 Ms. Briseno said, No, I wouldn't have said no. I have to run
4 it up the flagpole and, you know, run it past corporate, make
5 sure everything is okay, but I wouldn't have said no.

6 And in reality there has been no evidence presented
7 that this would affect DBE at all, and it wouldn't. It would
8 have no effect on a DBE status. This is a typical payment term
9 in construction.

10 The burden there was kind of shifted to Cashman and
11 same things, and I thought Mr. Fergen's testimony was
12 interesting, and I believe his words were, No muss, no fuss.
13 You just get the DBE to sign over an entire check to you. You
14 go cash it and write them back a check.

15 Well, Your Honor, if you are representing the DBE,
16 and they came to you and said, hey, does it sound like a good
17 idea if I write over my entire check which is more than I owe
18 to this supplier to them, and I hope that they write me a check
19 back, I'll bet you would say, no, that is not a good idea, and
20 that would be crazy. That's not standard in the industry, and
21 quite frankly, nobody -- I don't know why anybody would do it.
22 More importantly, there's no way to compel that. Cashman has
23 no way to force CAM to do that.

24 Now, one point that I thought was important and
25 interesting as well is the fact that Mojave has never asked if

1 they could do a joint check. They never asked Whiting Turner.
2 That was the testimony, and yet when asked later, Did you ever
3 write a joint check, the answer was, Yeah, they did, twice, to
4 QED and CAM. So apparently joint checks could've been written.

5 There's a copy of the amended lien there which we've
6 already handed out. So with that as kind of, I guess, the
7 equitable or the factual background, we need to also evaluate
8 what is the legal obligations of the parties, and this is one
9 of the reasons why it's not quite as simple I think as Mojave
10 would have you believe in terms of Cashman simply telling CAM,
11 hey, give me the check. I'll write you a check back, or let's
12 go to the bank together right now.

13 Frankly, I think you could run into a whole lot of
14 issues trying to tell someone I'm going to follow you to the
15 bank and make sure you give me money, but statutorily we have
16 something called the Prompt to Pay Act here. This is a
17 creature from 2001 legislative session, and in it they actually
18 set the maximum time to pay -- time period allowed for
19 payments, and it's 10 days. If CAM had said, hey, Cashman, you
20 know what, I'm not going to pay you for 10 days, there's
21 absolutely nothing Cashman can do about that. They can ask
22 which they did. They asked for a joint check, and they were
23 told, no.

24 They could ask, Angelo, please, you know,
25 Mr. Carvalho, you know, bring -- bring us cash, do something.

1 He can say, no. There is no legal ability for Cashman to force
2 him to do anything. The only thing they can do is tell him,
3 look, we know you got paid because we were sitting in the
4 office. We were at Mojave's offices. You must pay us within
5 10 days of receipt, and that would be his obligation, but they
6 can't force him to do it before that. It would be nice if you
7 could but you can't.

8 And so that leads into what are the claims of
9 Cashman, and so we have claims on a private-work payment bond
10 that has been posted by Mojave, the foreclosure of a mechanic's
11 lien claim which now attaches also to a bond -- it does not
12 encumber the real property any longer -- foreclosure of a
13 security interest, a UCC interest which was granted in the
14 credit application by CAM to Cashman, a fraudulent transfer of
15 claim and an unjust enrichment claim.

16 We'll get to the unjust enrichment claim, but I just
17 want the Court to note the funds we were talking about there is
18 the \$86,000 that apparently now is in an escrow account. We
19 didn't know that. That was news when we heard that in the
20 courtroom. We had no idea that there was money sitting in an
21 escrow account anywhere. Through discovery it was believed
22 that money was being withheld somewhere, but beyond that there
23 really wasn't a whole lot known, certainly not that it was
24 sitting in escrow.

25 So we don't actually know what the terms of that

1 escrow agreement are, who's entitled to the money. We would
2 state that -- that, frankly, it's being held -- the testimony
3 was it's held because of the code; therefore, Cashman should
4 have a claim upon that. There could be other parties. Maybe
5 Mojave has a claim on that. We don't know though because we've
6 never seen that agreement, and it hasn't been produced in this
7 litigation.

8 The Mojave payment bond, this is a private-work
9 payment bond. This project started as a private work -- as
10 part of the P3 process, and this payment bond was a very
11 general payment bond, and it's different than most payment
12 bonds that you actually run into in that it lacked a lot of
13 information. Well, let me rephrase that. It lacked a lot of
14 constraints that normally you see in payment bonds. They're
15 usually boilerplate language. They're AIA forms or something
16 along those lines.

17 This one wasn't, and it was written in very broad
18 terms because it was written for the benefit of all persons
19 supplying labor and material, rental equipment, supplies or
20 services in the performance of the contract, and the contract
21 that we're talking about is the one between Mojave and Whiting
22 Turner.

23 The important language there which is -- obviously
24 you can guess what I think is important because it's in red --
25 it's all persons who supplied the labor and equipment. It

1 doesn't say, all persons who are in direct contractual privy
2 with Mojave are protected by this bond. Now, this is a
3 private-work bond. They could have -- it's a creature of
4 contract -- they could have negotiated whatever terms they
5 wanted.

6 The surety could've put whatever they wanted to in
7 here, and Cashman's claim is against the surety on this bond
8 because they're the ones who posted it, and the surety has
9 chosen for whatever reason not to put any requirements
10 regarding time. Usually there's a contractual statute of
11 limitations that typically would read, you must commence an
12 action within one year in a court of competent jurisdiction.
13 You don't see that language here. It's just not there.

14 There would usually be some sort of notice provision.
15 There isn't one. Maybe a prelien notice or a preconstruction
16 notice of some sort, it's not there. The bond is simply there
17 to protect everybody who supplied on that project, and that
18 includes Cashman.

19 THE COURT: Could you -- I mean, it's in the brief.
20 I could find it, but give me the entity names that would be
21 specific if I were to want to have the words principal and
22 surety in place with entity names.

23 MR. PEZZILLO: Mojave was the principal.

24 MR. BOSCHEE: The surety is Western, I believe.

25 MR. PEZZILLO: And Western Surety Company would be

1 the surety.

2 MR. BOSCHEE: Yes.

3 THE COURT: Yes, Western, I've seen it in. Western,
4 is that the name of that company?

5 MS. LLOYD-ROBINSON: Western Surety Company.

6 MR. PEZZILLO: The surety, yes.

7 THE COURT: Okay. Go ahead. Thank you.

8 MR. PEZZILLO: Whiting Turner is listed as an
9 obligee. They get the benefit of the bond. Now, this was
10 required by the contract with Whiting Turner which is joint
11 Exhibit 40, page 7, paragraph P. That same contract requires
12 specific duties of Mojave. In particular, they are to take any
13 and all necessary actions to keep the Project free and clear of
14 all claims.. That burden is on Mojave. This is something they
15 contracted for. This is something that they are paid for, and
16 there hasn't really been any dispute. They've been paid. This
17 is their obligation.

18 Now, we've heard a lot of testimony about Cashman and
19 woulda, coulda, should've and we wish, and Mr. Norman even
20 said, Hey, if I had to do it all over again knowing what I know
21 is now, we wouldn't have bid the project.

22 THE COURT: Sorry. I'm going to ask you a question.

23 MR. PEZZILLO: Okay.

24 THE COURT: The payment bond --

25 MR. PEZZILLO: Yes.

1 THE COURT: -- going back to that, the page before,
2 what's the policy behind that? I mean, the practical public
3 policy, right, behind it?

4 MR. PEZZILLO: Right. It's a practical public policy
5 to make sure that lower tiers are paid on jobs and that it's --
6 and that the project is ultimately kept free and clear. It's
7 particularly important in projects like this where they are the
8 P3s that begin because they're little -- they're a little
9 trickier when you have a public-private partnership in that
10 because it's private initially, you can put a mechanic's lien
11 on the job, and yet you want to transfer to a public entity
12 which normally you would not be able to have a mechanic's lien
13 on, yet, they would take it subject to that lien.

14 And so more and more as a practical matter you're
15 seeing this required of lower-tiered contractors to protect the
16 project and to make sure people get paid, also supplies and
17 materials.

18 THE COURT: Then your next slide entitled duties of
19 Mojave, is that just for the payment bond or was that
20 otherwise?

21 MR. PEZZILLO: That's a general requirement even if
22 there had not been a payment bond.

23 THE COURT: Okay.

24 MR. PEZZILLO: And the policy behind that is obvious.
25 Ultimately, you know, we want people paid. That's the goal.

1 You want a project built on time, on budget, and you want
2 people paid to go on to the next project, and so that is a very
3 typical clause. Importantly, those duties can be passed down.
4 Now, you can pass those down as many tiers as you'd like.

5 For instance, Mojave could have required CAM to sign
6 a contract that had the exact same requirements. In fact they
7 could have required CAM to post a bond. Now, I don't know that
8 he would've had the wherewithal to do that, but it could have
9 been a requirement.

10 So Cashman is entitled to recover upon this payment
11 bond. There has spending in prior briefing some argument that
12 is subject to Chapter 339, public-work payment bonds. This is
13 not a public-work payment bond because this was a private
14 project when it commenced. This is private. It is a creature
15 of contract as I've discussed.

16 Any terms could have been negotiated. It inures to
17 the benefit of all the labor and suppliers, no claim forms, no
18 notice forms and no timelines were identified there. So
19 basically they -- it's a good bond in the sense that they're
20 making it easy for claimants to make a claim. There's nothing
21 tricky. There aren't legal loopholes that you have to jump
22 through. It serves the purpose it's designed for, and that's
23 what Western chose to put it in their bond forms. They're the
24 surety. They could've put whatever they wanted to in there.

25 THE COURT: I know you're going to get to mechanic's

1 lien next, but what -- in your view, what extinguishes exposure
2 to the bond?

3 MR. PEZZILLO: Payment, actual payment. You have to
4 demonstrate that payment has been not just tendered but
5 actually received and is good payment to everybody who would be
6 covered under that bond. Honestly that's one of the reasons
7 why, you know, personally I thought the bond was a little
8 unusual because typically these bonds limit their liability by
9 limiting the number of tiers of people that can make claims on
10 it. This one didn't.

11 And it's not particularly relevant in this action,
12 but normally it would be like two tiers down. So you would
13 have CAM and Cashman being permitted to make a claim, but
14 Cashman's subsuppliers could not normally.

15 THE COURT: In other words, I take it it's obvious.
16 I mean, it's your view that when Mojave tenders payment that
17 that does not -- that does not operate as a -- I don't know
18 what the right word is -- exoneration of the bond if you will?

19 MR. PEZZILLO: It does not -- it would operate as an
20 exoneration as to CAM who actually received it. It would not
21 operate as an exoneration to Cashman or any lower tiers for
22 that matter who did not actually end up receiving the payment.

23 THE COURT: Okay.

24 MR. PEZZILLO: And that's really practically one of
25 the reasons we have these bonds is that if somebody -- normally

1 what would happen if somebody just has financial difficulties
2 and they may go bankrupt, and then you could make a claim on
3 the bond, but it applies in this case as well regardless of the
4 reason why the payment wasn't made. The bond is in place.

5 With regard to the mechanic's lien claim -- although
6 this is now City Hall, at the time it was not, and we had a
7 number of different entities that owned it at different times
8 as was testified to and PQ and QH and all these other entities,
9 and this is almost like a checklist. You just go through the
10 statute to see if you're a valid lien claimant. Did you supply
11 more than \$500 worth of material? Well, I think we've
12 established we had more than \$500 out there.

13 Is the lien amount proper? The amended lien shows
14 six hundred eighty-three thousand, seven, twenty-six,
15 eighty-nine, and there's been some argument with regard to
16 whether that's appropriate or not or whether that was good
17 faith because the lien got amended. We have to remember, at
18 the time the lien was recorded, these Codale batteries hadn't
19 been an issue. So it was proper, and the statutes actually
20 state that you can amend a lien at any time, including trial
21 which is what happened here.

22 We didn't even know this was an issue until we read a
23 trial brief, and then it was adjusted immediately. Nobody is
24 trying to maintain an overinflated lien, and in fact if Cashman
25 wanted -- I can understand why Cashman might want to because it

1 if it's inflated that's the only way they don't lose money on
2 this, but they voluntarily reduced it to a point where they're
3 going to lose money in a best case scenario.

4 Then there's the issue of preliminary notices, and
5 we're going to address it in a couple of different places.
6 Preliminary notices were sent to the owner, and in fact we saw
7 copies that were actually stamped by the owner, and a lot of
8 the questions you heard were, Well, you know, where's the
9 certified-mail return-receipt. Well, I'm going to show you in
10 the statutes there is a specific differentiation between
11 certified mail and certified-mail return-receipt within Chapter
12 108 which governs mechanic's liens, and so when the legislature
13 wants it to be a certified-mail return-receipt, they say so,
14 and they don't with regard to preliminary notices.

15 And then with regard to liens have to be timely
16 recorded and timely served, a copy of that lien is in Joint
17 Exhibit 11. There's no dispute. It was timely served. It was
18 recorded on time, and it's never in fact even been really
19 raised as an issue in this litigation.

20 The foreclosure of the security interest, it's
21 something that has been -- it's out there, and it's been a
22 little bit under the radar because typically this is -- this
23 case kind of has it all. I have to be honest with you. It's
24 an odd case, and it has a lot of facts that you don't typically
25 see. In this case a security interest was taken by Cashman as

1 part of the credit agreement when CAM signed it. Cashman
2 perfected that, and they've filed with the Secretary of State
3 as you're supposed to do to perfect your rights.

4 Mr. Norman was asked the question, Did you release
5 it. No. Were you ever asked to release it? No. The trial
6 brief, the defense indicates, well, you can't really allow that
7 because if we allow foreclosure of this security interest, that
8 would imply that we are going to go out there and take these
9 two generators, take them off their pads and I suppose crane
10 them away. That's not what we're suggesting.

11 The security agreement attaches to the proceeds, and
12 that's what were really looking at are the proceeds that have
13 been paid for these. That's fungible. That's money, and we
14 know where that money went, and, well, frankly, Mojave was paid
15 for this, and they took it subject to this security interest.

16 This is one of those areas where -- and it's a trap
17 for the weary. When you buy this, you have to check the public
18 records because smart suppliers do this to protect their
19 rights, and that's what Cashman did, and this security interest
20 specifically covers the proceeds derived from the equipment.
21 I've included a copy of the statute, 104.9203 which talks about
22 security interests, and that's certainly there. I won't
23 belabor that by reading it.

24 Unjust enrichment, this one -- this is an interesting
25 one as well because throughout this litigation we've always

1 understood some funds were being withheld. To be honest with
2 you, in discovery we heard different amounts. We really didn't
3 know. We heard everything from a few bucks to the entire
4 amount was being withheld, and we never really knew, but I
5 think we found out at trial. It's about 86,000, \$87,000 that's
6 being held in escrow, and it's being held until such time as
7 these codes are released.

8 Well, that money is being withheld. Cashman has
9 supplied -- and I should actually say, really the testimony --
10 and I don't want to say it wavered -- but the amount they
11 withheld actually isn't specific just to codes. It was
12 clarified when he said, This is what was left of retention to
13 finish the project. What's left on the project? The generator
14 set but it's more than just going and doing codes.

15 You have to go out there and make sure everything is
16 set up, wired properly, the whole thing, and you can't --
17 what -- I guess the best way of describing this, Cashman wasn't
18 delivering a piece of equipment and then walking away. They
19 were delivering a system and the goal is for the system to be
20 integrated and to operate at peak efficiency. So the \$86,000
21 is being held because the system is not complete yet.

22 Well, Cashman's -- you know, they've done their part
23 as they were required to, and so they should be permitted to
24 that \$86,000 since they've now expended over \$700,000 to put
25 that equipment out there and have not received 1 penny for it,

1 well, with the exception of what we try to do in litigation
2 that we've recovered.

3 THE COURT: What would Cashman do regarding the codes
4 if they were to receive the amount in escrow?

5 MR. PEZZILLO: Your Honor, I think that would -- I
6 think the codes would not have to be turned over at that point
7 because again that eighty-six would only reimburse against the
8 711,000 that's already been expended. I think full payment has
9 to be made because this is -- it's difficult to ascertain
10 individual component prices on these sorts of things because,
11 for instance, if you look at all the bids and all the
12 paperwork, anybody's paperwork, you'll never see a line item
13 that says codes, a hundred dollars, a hundred thousand dollars.
14 It just isn't done that way. It's an aggregate system, and so
15 the aggregate amount needs to be paid for delivery.

16 With regard to the fraudulent-transfer claim. There
17 may be some confusion here.

18 THE COURT: I'm sorry to interrupt you. I really am.

19 MR. PEZZILLO: No. No. Absolutely.

20 THE COURT: But let me ask you this for guidance.

21 MR. PEZZILLO: Sure.

22 THE COURT: If -- I mean, you've got a lot of
23 different bases, and so that's a credit to your side of it, the
24 lawyering credit. I mean, you guys did a great job coming up
25 with every conceivable legal and fairness basis to get your

1 client paid whether it's a lien, a bond, contract, equity,
2 security interest or just do it because it sounds good and
3 feels good, right. I mean, you've got it all here.

4 If you do get the satisfaction of a judgment that
5 you're asking for, what's Cashman's intent then? Because, I
6 mean, there was a maintenance aspect of this. There was a
7 warranty aspect to this. There was an installation aspect to
8 this. There were the codes.

9 MR. PEZZILLO: Your Honor at this point in time
10 Cashman's position -- and certainly they can poke me or throw
11 something at me if I misspeak has always been to actually kind
12 of finish the project and complete it and fulfill all the
13 duties that they're otherwise obligated to upon receipt of
14 payment.

15 THE COURT: All right. So part and parcel of that
16 inquiry on my behalf, and it could be that the defense is going
17 to talk about it. The defense went and did a bunch of stuff
18 when you guys stopped working, and I'm not criticizing your
19 decision to stop. That's not the point, but they did a bunch
20 of stuff to the tune of their claim that they spent a hundred
21 and forty-two grand doing things that you guys would've done
22 had you not stopped. Okay.

23 So if you're now going to say, well, if we receive
24 sort of -- you know, be made whole, the best that can be done
25 under all the circumstances and you're willing to finish, how

1 does that reconcile with the hundred and forty-two that they've
2 put in?

3 MR. PEZZILLO: In part, I think we've addressed some
4 of that hundred and forty-two through the battery because we've
5 now reduce that from the claim, and that was my understanding
6 part of the hundred and forty-two.

7 THE COURT: That's a good point.

8 MR. PEZZILLO: So we reduced sixty-six from that.

9 THE COURT: Okay.

10 MR. PEZZILLO: The remaining balance, Your Honor,
11 frankly is an issue between Mojave and CAM. My view on that --
12 and it was kind of born out in the testimony -- is that Mojave,
13 for instance, when they're asked to do something that would
14 favor Cashman, a joint check, they stood on the contract and
15 said, well, we don't have a contract with you. Our contract is
16 with CAM, and you know what, we don't have a provision to allow
17 us to do that, but yet when they want to benefit, they really
18 don't have a problem skipping CAM and going directly to Cashman
19 and saying, well, you should have to do this.

20 The bottom line -- and it's not lost on me that the
21 reality of the situation is CAM is a bit of a fiction, but
22 nevertheless CAM has the responsibility to Mojave to perform
23 those items. Is Mojave entitled to reimbursement? Absolutely
24 from CAM but not from Cashman. They don't have a contract with
25 Cashman.

1 THE COURT: All right. That's a good answer, and
2 I've written it down. Thank you. Go ahead.

3 MR. PEZZILLO: With regard to the fraudulent
4 transfer, there is an issue there, and I -- at least this is
5 what I kind of derived from reading the defendant's trial
6 brief -- we're not saying in any way that Mojave acted in a
7 nefarious fashion or was conspiring with CAM. You know,
8 frankly, that wouldn't benefit them. We don't think that's
9 what happened, but it's not with the statute requires either.

10 When we look at the important dates, now between
11 April 26th and April 28th, CAM received about \$901,000, and,
12 frankly, within probably hours -- I believe the testimony from
13 Mr. -- I believe it was Fergen -- was at -- you know, this
14 meeting took place kind of late in the day, about 4 p.m.,
15 something like that -- and I apologize. It may have been Mr.
16 Bugni that testified to that -- and they said that's why
17 actually Mojave didn't cash one of the checks that had been
18 given to them.

19 Well, Your Honor, we saw the exhibit, and I don't
20 have it as part of the PowerPoint, but the very next day CAM
21 races to the bank and took out \$600,000, and so it's very clear
22 he had no intention of honoring his obligations at that point
23 in time. Nevertheless, he wrote a check, asked Cashman a
24 reasonable request, Hey, I just got three quarters of a million
25 dollars. It might take a couple of days to clear the bank.

1 Okay. Sure. Can't really do anything about it anyway.

2 THE COURT: Okay. A tough question for you.

3 MR. PEZZILLO: A tough question, okay.

4 THE COURT: All right. What are the elements of this
5 cause of action, fact specific, inclusive elements that I would
6 have to find in order to give you a fraudulent-transfer finding
7 concerning Mojave?

8 MR. PEZZILLO: It would be under NRS 112.180
9 subsection 1 that it was made with an actual intent to hinder,
10 delay or defraud any creditor of the debtor. Here -- you've
11 actually --

12 THE COURT: So Mojave would've had to have done this?

13 MR. PEZZILLO: No, CAM would have to have that. CAM
14 moved the money with that intent.

15 THE COURT: Okay. I want you to give me these
16 elements in your view. Go ahead. So the actual intent of CAM.

17 MR. PEZZILLO: Correct.

18 THE COURT: Okay. What else you got, elements on
19 this?

20 MR. PEZZILLO: Your Honor, under the statute once you
21 reach that, that's enough on fraudulent transfer, and, in fact,
22 Your Honor has actually already found it because we've already
23 prevailed against CAM and his family members with regards to
24 that intent, and, you know, for instance, we didn't have
25 evidence per se although it's pretty suspicious, you know, that

1 his ex-wife was conspiring with him. Nevertheless, she
2 obviously received the benefits of his theft.

3 THE COURT: Now, this fraudulent transfer, it's been
4 indicated to me in paperwork that it has to do with a
5 consolidated case. So tell me about what -- explain that to
6 me, please.

7 MR. PEZZILLO: Well, I think within this case, you've
8 made -- you've already necessarily made the determination as to
9 what CAM -- or Mr. Carvalho's state of mind was at this time
10 when he was receiving money, and he was acting with an intent
11 to hinder, defraud and delay, and I don't know that -- one,
12 you've already made that determination. Two, I don't know that
13 we could make a determination other than that in light of the
14 fact that within probably hours he ran to the bank and took
15 \$600,000 out.

16 THE COURT: Okay. I mean, I'll give you that. I
17 mean, I've told everybody enough on the record, but I don't
18 mind saying it again that, I mean, this Court's finding is that
19 CAM and Mr. Carvalho stole the money.

20 MR. PEZZILLO: Correct.

21 THE COURT: That's more than fraud even, okay, to me,
22 but how is this attributable under this fraudulent-transfer
23 claim to Mojave then?

24 MR. PEZZILLO: Because there were two checks written
25 to Mojave at that time when CAM was acting with an intent to

1 defraud Cashman, and those checks were dated for April the 27th
2 and 28th, and he provided those to Mojave, and those cleared,
3 and yet that money would've been due to Cashman because we know
4 that -- looking through the bank records -- which we kind of
5 walked through yesterday -- absent those payments, CAM doesn't
6 have any money to pay Cashman.

7 He has to have that payment. So when he receives
8 that payment, part of that money, less his half a percent has
9 to go to Cashman. There's no other way for him to pay. He
10 took the two checks and dated them for the 27th, 28th and gave
11 them immediately to Mojave when he knew he needed that money to
12 pay Cashman, and at the same time was taking --

13 THE COURT: All right.

14 MR. PEZZILLO: -- \$600,000 which he needed to pay
15 Cashman and ran off with it.

16 THE COURT: You don't think there has to be -- I'm
17 going to borrow a criminal term, and if you don't do criminal
18 and want to talk about it with me, of course I would engage in
19 that process -- but you don't think that in order to have a
20 fraudulent-transfer claim against Mojave there has to be some
21 sort of -- in the criminal world what would be called scienter?
22 Do you know what I'm talking about?

23 MR. PEZZILLO: I do.

24 THE COURT: Okay.

25 MR. PEZZILLO: I don't know why I know that.

1 THE COURT: So what do you think about that because
2 it seems to me that Mojave in regard to any bad intent has
3 none. So go ahead.

4 MR. PEZZILLO: It's the intent of CAM that's
5 important under the statute though. It's not the party who
6 receives the money. It's the party -- it's the debtor, the
7 debtor's action and the debtor's state of mind that were
8 looking at, not the innocent third party.

9 Frankly, I agree with you. Mojave is kind of an
10 innocent third party in that regard in that they --

11 THE COURT: You all got victimized by CAM.

12 MR. PEZZILLO: Yes. I would say his victimization
13 even goes further than that, but, yes, to answer your question.

14 THE COURT: Okay. All right. I appreciate that.
15 Thank you. Go ahead.

16 MR. PEZZILLO: Now, I've included copies of those
17 checks in the PowerPoint. We've seen them as joint exhibits,
18 and here's one check to Mojave the very next day, a hundred
19 thirty-nine thousand, three, sixty-seven, on April 28th, a
20 hundred thirty-six thousand, two, eighty-nine and then we have
21 the infamous Cashman check which again was stop payment.

22 THE COURT: Right.

23 MR. PEZZILLO: And I think that that's, you know --
24 the fact that this is stop payment also, Your Honor, does have
25 some significance in this case. If it had been an issue where,

1 you know, it was just insufficient funds and Cashman had done
2 nothing to protect themselves, maybe some of the arguments
3 Mojave's offered would have some traction, but here we're
4 really talking about, are you truly expected to protect
5 yourself with the expectation that somebody is going to commit
6 fraud and steal your money, particularly when someone you've
7 done business with dozens of times is using them?

8 And I submit to you that just as a public policy
9 matter, as a fairness issue, whatever you want to call it, no
10 party is really going to be able to sit there and expect or
11 have to operate under the expectation somebody is going to
12 steal money. Mojave didn't. They didn't -- if they thought
13 that CAM was going to run off with the money, there is no way
14 they're going to give them a check for \$755,000. I just -- I
15 don't believe that.

16 THE COURT: Eight hundred and twenty, right?

17 MR. PEZZILLO: Eight hundred and twenty, correct. I
18 keep looking at it from Cashman's point of view, but it was
19 more than that. In fact, it was about 901,000 during that time
20 frame.

21 THE COURT: The biggest check was eight, twenty?

22 MR. PEZZILLO: Yes.

23 Nobody expected that to happen. One of the issues,
24 too, is -- and this goes to I think what Your Honor has
25 probably already said is it's pretty obvious that he acted

1 with -- Mr. Carvalho acted with bad intentions. He also
2 violated the contractor's law. You can't divert money for any
3 purpose other than what it's intended for, and he did that, and
4 that's 624.750, and not just further kind of shows his intent.

5 Now, Mojave has asserted a number of defenses.

6 THE COURT: Hold on a second.

7 MR. PEZZILLO: Sure.

8 THE COURT: I want to look at No. 28 just for a
9 minute.

10 MR. PEZZILLO: Oh, absolutely.

11 THE COURT: Okay. You've submitted 28 to show me the
12 further legal culpability of CAM, right?

13 MR. PEZZILLO: Correct, in support of the fraudulent
14 transfer.

15 THE COURT: Got it. All right. Go ahead.

16 MR. PEZZILLO: With regard to this we went through
17 all these causes of action we have -- it's been articulated in
18 the trial brief -- a number of defenses, accord and
19 satisfaction, the execution of the unconditional release,
20 deficiency with preliminary notice and then the offsets which
21 we've touched upon.

22 Taking directly from the defendant's trial brief, we
23 looked at the prima facie elements of accord and satisfaction,
24 and, frankly, we don't get beyond element No. 1, a bona fide
25 dispute over and on liquidated amount. We're done. Accord and

1 satisfaction does not apply. The check handed over by CAM to
2 Cashman and Cashman's acceptance of that cannot constitute an
3 accord and satisfaction.

4 There wasn't a dispute. There is no testimony that
5 there was ever a dispute between Cashman and CAM as to what was
6 owed. So there's no settlement. Payment was tendered in full
7 of settlement in that the entire dispute -- again we don't have
8 a dispute, or at least we didn't until Cashman -- or, I mean --
9 I apologize -- until CAM took the money.

10 An understanding by the creditor -- in that case
11 Cashman -- that the transaction is in fact a settlement. Now,
12 there's been zero evidence of that, and in fact Cashman
13 testified precisely the opposite, and as noted on pages 15 and
14 16 of the trial brief the central issue is a meeting of the
15 minds. It's just basic contract law, and there isn't one here.
16 So accord and satisfaction really doesn't work.

17 The issue of this unconditional release, a lot has
18 been made about it, but, frankly, the plain language of the
19 statute controls here, and I will tell you that there is
20 confusion about this in the real world outside of the courtroom
21 because Nevada is unique in this. An unconditional release, in
22 Nevada I would submit to you there's really actually as a
23 matter of law no such creature.

24 We call them that, but this subparagraph E which is
25 the unconditional-release language states at the end, Even if

1 it's unconditional, if the check fails to clear the bank on
2 which it's drawn for any reason -- so theft I think would be
3 any reason -- then the waiver and release shall be deemed null,
4 void and of no legal effect whatsoever, and that's precisely
5 what Mr. Norman testified to is that was his understanding.
6 That's why he felt comfortable handing the unconditional
7 release over. I will tell you if you go to other states you
8 better not do it because they treat it very differently, but
9 Nevada admitted the statutes and has changed that.

10 The next defense that we've seen is a postdated check
11 is a promissory note, and we heard testimony from Mojave to
12 that effect, that it was their understanding that that's the
13 case. I only saw one Nevada case cited in the trial brief for
14 that point, and it was interesting because the Court didn't
15 even address the issue. It was actually in the recitation of
16 facts, and it was regarding -- it was setting forth the
17 testimony of one of the parties before the real-estate advisory
18 commission that he had -- that one of the parties testified
19 that way before the real-estate advisory commission. So
20 there's no holding there.

21 Now, we do have a case that was a 1973 case. In
22 2000, the Nevada Supreme Court did address this issue, and it
23 was in the context of a bad check, and it was a marker case
24 where the typical situation you go, you give a postdated check
25 to the casino cage. They extend you some credit. You don't

1 pay them back, they get to go cash your check. Well, as most
2 people do, the guy lost, and then he wasn't happy when they
3 went to go cash the check, and he said, well, you can't treat
4 this as a bad check because you know what, it's postdated, or
5 it's predated. He argued both ways, and the Supreme Court
6 said, well, guess what, you lose both ways. That doesn't work.

7 And why does it not work? Because you've got to show
8 an agreement of the parties that there was an agreement for a
9 loan to be made. Your Honor, there wasn't any evidence offered
10 in this case that Cashman agreed to extend a loan.

11 THE COURT: Okay.

12 MR. PEZZILLO: And in fact Mr. Norman testified he
13 didn't even notice it was a postdated check until he got back
14 to the office. So that's irrelevant.

15 The preliminary notice deficiencies, as I indicated
16 before there's been argument that the preliminary notice was
17 not sent certified-mail return-receipt, page 7, line 9 of the
18 trial brief of the defendants. There is no such requirement
19 under Nevada law. Under 108.245 subparagraph 1, the
20 requirement is that it is served in person or by certified
21 mail. No return receipt is required.

22 And I've actually demonstrated -- and Your Honor
23 picked up on it pretty quickly that the font was different on
24 some of those where there was a number. That was because that
25 was a certified receipt on there, and Mr. Norman testified

1 that's what we do. We send them and then we take the sticker
2 and we put it on the notice.

3 Now, we know that a return receipt is not required
4 because if we compare the provisions of 108.245 to the next
5 slide of 108.227, we see that when the legislature wants
6 something to be served with return receipt, they say so. When
7 a mechanic's lien is served, it has to be sent certified-mail
8 return-receipt, the little green card that has been referred
9 to. I can't really give you a reason why they chose one for
10 one statute and one for the other, but that's what they chose to
11 do in their wisdom, and Cashman has fulfilled those duties.

12 It was also argued that there wasn't -- there really
13 wasn't evidence of actual receipt of the preliminary notices by
14 the owner. Now, in a minute we're going to show you that's not
15 true, that we actually can show that, but that isn't part of
16 the statute. You don't have to show actual receipt, and it
17 really wouldn't make much sense if you did because quite,
18 frankly, what an owner might do is just not except their mail,
19 or they'd throw it away, or they wouldn't open it, and they
20 wouldn't have actual knowledge, and that's been done before.
21 People do it.

22 Now, for those with right to lien, a copy of it --
23 that comes right out of the statute -- is attached to the
24 slide. We heard -- we've heard some arguments as well and it
25 was asked of all the witnesses, well, as you look at this can

1 you tell me what the amount is that Cashman is supplying. The
2 answer was always, No, and that's because there isn't an amount
3 on it. That's because there's not an amount required.

4 This is a statutory form the legislature set forth in
5 108.245. At one point in time prior to 2003 we had
6 requirements for amounts on it. The legislature amended the
7 statute in 2003 much to the demise of many people, and it used
8 to be right there in the center, anticipated total value. You
9 used to have to put it a number there, and if you ended up --
10 if you had a contract for \$100,000 and you end up supplying
11 them a million, it was in your best interest to send an amended
12 prelim to let people know that the scope was changing.

13 They eliminated that requirement. Whether we agree
14 with it or disagree with it -- personally I happen to disagree
15 with it, but that's what they've done, and so that requirement
16 is no longer present. Again, we're a bit of a minority state
17 in that. If you go to other states, you do have to have an
18 amount in there, and any time it changes by 10 percent you've
19 got to amend it, but that's not the case here.

20 The Nevada Supreme Court has actually gone so far as
21 to say that if you don't send a preliminary notice at all, but
22 if the owner has knowledge of you, that's got to suffice
23 because the entire point of 108.245 of the preliminary notice
24 statute is just to put the owner on notice that you're out
25 there, you're supplying work. You are a potential lien

1 claimant. You hope to be paid because there's actually a part
2 of this statute that says, I'm sending this, but I'm not
3 sending it because I expect not to be paid.

4 All it is is a notice issue. It's not to impart the
5 details of anything that you're doing. It's to put people on
6 notice that you're out there. You want to be paid. In this
7 case, Your Honor, it worked because we actually went through
8 one of the exhibits, and it was a letter from Whiting Turner
9 that listed out everybody that they needed releases from, and
10 Cashman was on there. The only way they would know that is
11 through the preliminary notice because we had no contact with
12 Whiting Turner. So it did its job.

13 And I would note the -- we call it the Fonturan
14 [phonetic] doctrine, kind of a made-up name. It was the
15 original case that says you don't even have to have a prelim if
16 there's actual knowledge. That was reaffirmed as recent as
17 2010 by the Supreme Court. It was -- and the reason that that
18 date is important is because the -- in 2005 there was another
19 wholesale revision of the mechanic's lien law, and they added
20 some language that said you can't waive any of your rights or
21 obligations under these statutes. The Supreme Court has said,
22 yeah, even that language, we're going to review this very, very
23 liberally.

24 And a good case that talks about how liberally we
25 want to interpret the law here in Nevada is the Fontainebleau

1 case that came down in October of 2012 that dealt with
2 mechanic's lien rights. It was -- I'm gloating because I was
3 involved in the case -- but it was a very interesting case. It
4 talked about the rights of mechanics and claimants.

5 Setoffs and Your Honor has asked about those. How do
6 we treat them? And what should we really do with them? Well,
7 Your Honor, the legislature has addressed this as well. Under
8 some statutes that are referred to as the Prompt Pay Act,
9 624.626 subparagraph 9 talks about this and it says if you
10 have -- and I'll just kind of look right at the language -- if
11 you -- and this involves lower-tiered subcontractors or
12 suppliers. In fact, it actually applies to sureties, too, for
13 that matter -- stop their work for a reasonable basis in law or
14 fact, then damages cannot be assessed against that person who
15 has stopped in good faith and for good reason.

16 We are trying to protect the lower tiers, and the
17 reason for that is they are the most vulnerable on a project
18 like this. The bigger the project, the further down the chain
19 you go the more vulnerable the claimant is. This is kind of
20 what I call the Golden Rule. He who has the gold makes the
21 rules, and they can dictate the terms of payment, or at a
22 minimum they certainly have the ability and the power to
23 negotiate. So if somebody stops in good faith because of
24 nonpayment, they shouldn't be punished for that because that's
25 kind of adding insult to injury. They're not paid, and you're

1 going to punish them for not performing work?

2 THE COURT: All right. Pursuant to this Prompt Pay
3 Act setoff preclusion argument, you've nonetheless decided to
4 take a lien reduction of about 67,000 for the batteries.

5 MR. PEZZILLO: Yes, we did that as a mitigation.

6 THE COURT: All right. So if they have evidence that
7 they spent 142,000 to do things that you would've done had you
8 not stopped construction, that takes us to about 75,000; do you
9 agree?

10 MR. PEZZILLO: I agree.

11 THE COURT: So is that your argument that that
12 75,000 -- again that's the one, forty-two minus the sixty-seven
13 or so for the batteries --

14 MR. PEZZILLO: Right.

15 THE COURT: -- that they don't have the right to a
16 set off of the 75,000 under 624.626; is that what you're
17 saying?

18 MR. PEZZILLO: Not against Cashman, against CAM they
19 do.

20 THE COURT: Against Cashman?

21 MR. PEZZILLO: Against Cashman they do not.

22 THE COURT: Well, you're here for Cashman. So that's
23 all I'm talking to you about.

24 MR. PEZZILLO: That's correct.

25 THE COURT: Okay.

1 MR. PEZZILLO: Yes.

2 THE COURT: So that's what you're saying to me is
3 that I should not pursuant to this law engage in a thought
4 process designed to give them a setoff because they put that
5 extra effort in because you stopped because you are protected
6 from that under the law; is that what you're saying?

7 MR. PEZZILLO: Protected, yes, in part protected by
8 it under the law to answer your question very directly, and the
9 fact that we are not the ones who contracted with them. The
10 contract is with CAM, and they have to look to CAM to do that.

11 I recognize the fiction of that in a sense, but
12 nevertheless they are standing on that contract with CAM when
13 they don't issue a joint check. You can't then ignore it when
14 you want to collect offset damages -- maybe collect isn't the
15 right word -- but assert offset damages against somebody as
16 well. You can't kind of have your cake and eat it too, but,
17 yes, the statute would prevent that.

18 THE COURT: Interesting. Okay.

19 MR. PEZZILLO: There's been a lot of kind of a fact
20 versus fiction. I think when we break it down there are some
21 assertions that we can look at, and we just to kind of cut
22 through the chase and look at what are the real facts.

23 Cashman chose CAM to save money and put money -- and
24 put profits in its pocket. Your Honor, that's not what Cashman
25 did. Cashman didn't want to use them because Cashman

1 actually -- that half of a percent comes out of Cashman's
2 pocket. Cashman has the dubious honor of having paid CAM \$3700
3 to steal their money. I mean, that's kind of what picking CAM
4 got them.

5 The reason CAM was chosen is because there was a
6 requirement on the project for it, and somebody was going to be
7 used, and the one that was going to cost the project the least
8 amount of money and had some history with Mojave was picked,
9 and, frankly, like I said before, both Mojave and Whiting
10 Turner testified even though it wasn't a strict requirement,
11 obviously they want the next project, and ignoring this on this
12 City Hall project was going to be very detrimental to business.

13 Cashman knowingly accepted a postdated check which is
14 contained in the trial brief. Shane Norman testified
15 explicitly, he said, I didn't know. I didn't notice until I
16 got back to the office, and even if you did, it's really not
17 relevant because it doesn't constitute any sort of importance,
18 satisfaction or promissory note.

19 Mojave had to hire some contractors to finish
20 Cashman's work. No, Mojave had to hire contractors to finish
21 CAM's work. Had CAM paid their bill then Cashman would've been
22 performing through CAM, and it's just a very important
23 distinction to make because if we start ignoring that, then
24 contracts kind of start to become irrelevant.

25 And at one time in this case we heard arguments that

1 Mojave had a contract with Cashman. That was in there. That's
2 been abandoned at this point. It was abandoned in the pretrial
3 memo, and with that goes certain rights. If there had been a
4 contract, then maybe there are soft averages. Maybe you can
5 claim something, but there isn't a contract.

6 Cashman has no evidence that it ever served statutory
7 prelien notices on the owner. Well -- I guess I'm a couple
8 slides behind -- and there they are, and in fact there stamped
9 for us to see. We received these actually in the document
10 production from Whiting Turner, and thus the questions how we
11 ended up with them and how Whiting Turner ended up with them.
12 They were forwarded from the owner, and the owner's rep stated,
13 Yes, we got the address right. Yeah, that's our stamp. Yes,
14 that's ML, Ms. Legina I believe was her name who was in charge,
15 and the initials match. So they exist, and they're there.

16 And, Your Honor, I won't belabor this one because I
17 think you have asked the question about it, the offsets, the
18 66,000 was removed as mitigation, and if there had been any
19 other items, if we could have sold -- well, if we had had
20 possession of one of the generators and been able to sell, that
21 would've been mitigation as well. That's Cashman's duty.

22 Once that was raised in the trial brief -- as
23 Ms. Lloyd has already stated -- it was the first time it had
24 ever become an issue in this litigation. We read it. We
25 immediately contacted the client and did some checking, figured

1 out, oh, it's not under this project. It's with Codale. We
2 made the change immediately because that is mitigation, and
3 we're not seeking to recover that.

4 There's been an allegation that Cashman has recovered
5 property from CAM, Carvalho, Janel Rennie including the house
6 and car, went back and double checked just to make sure we had
7 the wording right. The order from this Court actually didn't
8 award a car. At the time that the judgment was issued by this
9 Court the car was already gone. We have a judgment for
10 \$38,000. It's a money judgment against Ms. Rennie. So we have
11 to collect that. The car doesn't exist. We don't have
12 possession of it. The house we don't have possession of.

13 We are endeavoring as recently as an hour before
14 arriving here -- and I'm actually sure as we're speaking --
15 trying to get the recorder's office and the assessor's to
16 record the documents -- because they were talking about wanting
17 an amended judgment -- to add some more information to it. So
18 it's like I said, everything that could happen in this case has
19 happened including the fact that we are recording documents
20 that apparently nobody's ever really kind of seen, they just
21 don't have to deal with very often, and those have been some of
22 the very attendant circumstances we're dealing with.

23 And I will tell you we endeavored as best as we could
24 to address Your Honor's concerns and questions, and when we
25 were dealing with the accounting, one of the problems that we

1 run into in terms of giving you a truly accurate number is that
2 literally as we speak it's an ongoing expense trying to
3 recover, and with regard to the house and things of that
4 nature, Your Honor made the observation that your judgment has
5 to have some value to it, and it would.

6 I would submit to you it's probably kind of inchoate
7 value because we just don't know what to give it yet because of
8 the carrying cost. Our client has to pay the taxes on this
9 property now, the recording fees. They -- if there's any
10 things that have to be -- anything that has to be fixed, they
11 have to pay that to get it in order to be able to sell and
12 market, get it into a marketable condition. They're going to
13 have to pay a commission to somebody to sell this.

14 So there's a lot of expenses. It's actually not as
15 simple as saying, you know, even if you wanted to say, well,
16 it's a hundred thousand dollars. It's not as simple as
17 necessarily saying that because all the expenses that haven't
18 been incurred yet but will be in trying to get this done.

19 And we don't know how much Rennie is really going to
20 respond. Obviously she's still living there as best as we
21 know, and we're going to have to evict her. We're going to
22 have to go through the eviction proceedings to get her out. So
23 it's -- people are making it as difficult as they possibly can,
24 but we're endeavoring.

25 Right now particularly with the offsets -- and I

1 think this is been addressed, but I just want to make sure that
2 it is fully addressed -- and that is joint and several
3 liability works, and it's an adequate solution to the problem
4 because we can't -- we being Cashman -- cannot double collect,
5 can't get a windfall. Nobody can do that, and anything dollar
6 for dollar that we collect we have to reduce everybody's
7 judgment. We don't get to pick whose judgment we reduce.
8 Everybody gets the credit.

9 And so if a judgment is awarded against Mojave or
10 against Western Surety, then as we collect on the house, let's
11 say we sell it for a hundred thousand. Hey, maybe we'll get
12 lucky and they did improvements and it's 300,000. Well, then
13 everybody gets a partial satisfaction of judgment in that
14 amount, and the hope is certainly that it's gone up in value.
15 We really hope for that given the fact of all the horror
16 stories you hear about what people do when they're evicted from
17 their homes. We just simply don't know.

18 Finally, it's kind of interesting -- to be perfectly
19 honest, I almost forgot about this counterclaim for intentional
20 misrepresentation. I'm not sure what was misrepresented.
21 There really wasn't any evidence submitted to the Court on that
22 issue. I think this probably deals with the presentation of an
23 unconditional release, but we've seen from the statutory
24 language that really Mr. Norman thought he was getting paid,
25 and he gave that release and good faith. He expected to be

1 paid. He expected to go to the bank within days and have
2 \$755,000 to make Cashman whole. He didn't know that
3 Mr. Carvalho was going to steal the money and run off.

4 As a matter of law the release then becomes void.
5 That's the term of the statutes. There's no misrepresentation
6 that's been made. Everything was done in good faith as the
7 Court's noted repeatedly, and I am in agreement with. The bad
8 actor here was Mr. Carvalho and certainly misrepresentation is
9 there.

10 So in conclusion after deducting the amount of money
11 that's been collected, after deducting the battery that's been
12 sold to Codale we would ask for judgment in the amount of six
13 hundred eighty-three thousand, seven, twenty-six, eighty-nine,
14 and any offsets that could come from criminal restitution,
15 other sources of recovery certainly everybody gets the benefit
16 of that and it would reduce any amounts.

17 THE COURT: All right. Do you have the 4th amended
18 complaint handy?

19 MS. LLOYD-ROBINSON: Your Honor, it wasn't included
20 as part of the exhibits, and I took the binder home last night
21 and didn't bring it back.

22 THE COURT: The reason I ask for that was is you want
23 joint and several liability. As a matter of clarity, I'd like
24 for you to identify the defendants that you think would be part
25 of this joint and several liability. There's quite a few of

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 CASHMAN EQUIPMENT COMPANY,
5 a Nevada corporation,

6 Appellant,

7 vs.

8
9 WEST EDNA ASSOCIATES, LTD., dba
10 MOJAVE ELECTRIC, a Nevada
11 corporation; WESTERN SURETY
12 COMPANY, a surety; THE WHITING
13 TURNER CONTRACTING
14 COMPANY, a Maryland corporation;
15 FIDELITY AND DEPOSIT COMPANY
16 OF MARYLAND, a surety;
17 TRAVELERS CASUALTY AND
18 SURETY COMPANY OF AMERICA, a
19 surety; QH LAS VEGAS LLC, a foreign
20 limited liability company; PQ LAS
21 VEGAS, LLC, a foreign limited liability
22 company; L W T I C SUCCESSOR LLC,
23 an unknown limited liability company;
24 FC/LW VEGAS, a foreign limited
25 liability company;

26 Respondents.

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District Court Case Nos.: **A642583 &
 A653029**

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Jennifer R. Lloyd, Esq.
Nevada Bar No. 9617
Marisa L. Maskas, Esq.
Nevada Bar No. 10928
Pezzillo Lloyd
6725 Via Austi Pkwy., Suite 290
Las Vegas, Nevada 89119
Attorneys for Appellant

Brian W. Boschee, Esq.
Nevada Bar No. 7612
William N. Miller, Esq.
Nevada Bar No. 11658
Holley, Driggs, Walch, Puzey & Thompson
400 S. Fourth St., 3rd Fl.
Las Vegas, NV 89101
Attorneys for Respondents

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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

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5	3	Affidavits of Service on Angelo Carvalho and Janel Rennie aka Janel Carvalho	09/29/2011	1	JA00028 - 33
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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

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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

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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

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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
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27	Defendants' Answer to Third Amended Complaint,	06/28/2012	2	JA000305-31

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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

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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
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12	61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
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23	106	Judgment	08/18/2014	32	JA0007789-91
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25	101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
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27	94	Motion for Relief Pursuant to NRCP	03/20/2014	29	JA0007099-7112
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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
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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

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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

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
60	Notice of Entry of Order Granting Motion to Amend Complaint	01/09/2013	5	JA0001149-53
16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
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
57	Notice of Posting Bond	11/07/2012	5	JA0001112-16

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
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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
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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

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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
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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