



ORIGINAL

FILED

2015 DEC -4 P 1: 08

Electronically Filed  
Dec 10 2015 08:45 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Christopher H. Byrd, Esq. (No. 1633)  
Brenoch R. Wirthlin, Esq. (No. 10282)  
FENNEMORE CRAIG, P.C.  
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Las Vegas, Nevada 89101  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Proimtu MMI LLC*

FIFTH DISTRICT COURT

NYE COUNTY, NEVADA

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited  
liability company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

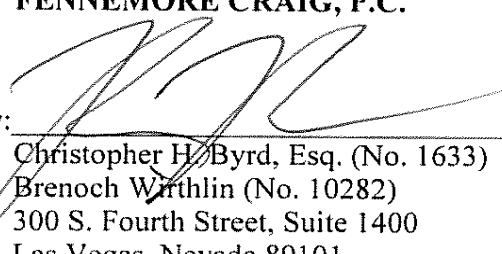
NOTICE OF APPEAL

Notice is hereby given that Proimtu MMI LLC ("Proimtu"), Respondent above named,  
appeals to the Supreme Court of Nevada from the Order Granting Motion for Attorney Fees  
entered in this action on the 12th day of November, 2015.

DATED this 3rd day of December, 2015.

FENNEMORE CRAIG, P.C.

By:


  
Christopher H. Byrd, Esq. (No. 1633)  
Brenoch Wirthlin (No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101

*Attorneys for Respondent Proimtu MMI LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 3rd day of December, 2015, I served a copy of the **NOTICE**  
3 **OF APPEAL** upon the parties to this action by mailing a copy thereof, postage prepaid, via  
4 regular U.S. Mail, addressed as follows:

5 Becky A. Pintar, Esq.  
6 Bryan L. Albiston, Esq.  
7 Pintar Albiston LLP  
8 6053 S. Fort Apache Road, Suite 120  
9 Las Vegas, NV 89148  
10 *Attorneys for Petitioner*

11   
12 \_\_\_\_\_  
13 An employee of Fennemore Craig, P.C.  
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ORIGINAL

Christopher H. Byrd, Esq. (No. 1633)  
Brenoch R. Wirthlin, Esq. (No. 10282)  
FENNEMORE CRAIG, P.C.  
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e-mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Proimtu MMI LLC*

FILED

2015 DEC -4 P 1:08

*amp*  
CLERK  
DEPUTY

FIFTH DISTRICT COURT

NYE COUNTY, NEVADA

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited  
liability company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

CASE APPEAL STATEMENT

Appellant Proimtu MMI LLC ("Proimtu"), Respondent above named, pursuant to NRAP 3(f), hereby submits its Case Appeal Statement as follows:

1. **Name of appellant filing this case appeal statement:** Proimtu MMI, LLC, a Nevada limited liability company.

2. **Identify the judge issuing the decision, judgment, or order appealed from:**  
Judge Steven Elliott; Order Granting Motion for Attorney Fees entered in this action on the 12th day of November, 2015 ("Order").

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11082524.1/034514.0013

1           **3. Identify each appellant and the name and address of counsel for each**  
2 **appellant:**

3           Proimtu MMI, LLC - Appellant  
4           Christopher H. Byrd, Esq. (No. 1633)  
5           Brenoch R. Wirthlin, Esq. (No. 10282)  
6           FENNEMORE CRAIG, P.C.  
7           300 S. Fourth Street, Suite 1400  
8           Las Vegas, Nevada 89101  
9           Telephone: (702) 692-8000  
10          Facsimile: (702) 692-8099  
11          e-mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
12                 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

13           **4. Identify each respondent and the name and address of appellate counsel, if**  
14 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**  
15 **indicate as much and provide the name and address of that respondent's trial counsel):**

16           TRP International, Inc. ("TRP")  
17           Becky A. Pintar, Esq.  
18           Nevada State Bar No. 7867  
19           Bryan L. Albiston, Esq.  
20           Nevada State Bar No. 12679  
21           PINTAR ALBISTON LLP  
22           6053 S. Fort Apache Road, Suite 120  
23           Las Vegas, NV 89148  
24           702-685-5255 - phone  
25           702-202-6329 - fax  
26           [Becky@PintarAlbiston.com](mailto:Becky@PintarAlbiston.com)

27           **5. Indicate whether any attorney identified above in response to question 3 or 4**  
28 **is not licensed to practice law in Nevada and, if so, whether the district court granted that**  
29 **attorney permission to appear under SCR 42 (attach a copy of any district court order**  
30 **granting such permission): All attorneys are licensed to practice law in Nevada.**

31 ///

32 ///

33 ///



1           **6.       Indicate whether appellant was represented by appointed or retained counsel**  
2 **in the district court:** Appellant was represented by retained counsel in the district court,  
3 Fennemore Craig, P.C.

4           **7.       Indicate whether appellant is represented by appointed or retained counsel on**  
5 **appeal:** Appellant is represented by retained counsel on appeal, Fennemore Craig, P.C.

6           **8.       Indicate whether appellant was granted leave to proceed in forma pauperis,**  
7 **and the date of entry of the district court order granting such leave:** Appellant did not apply  
8 for and was not granted leave to proceed in forma pauperis.

9           **9.       Indicate the date the proceedings commenced in the district court (e.g., date**  
10 **complaint, indictment, information, or petition was filed):** TRP's Motion for Attorney Fees  
11 ("Motion") was filed on July 6, 2015.

12           **10.      Provide a brief description of the nature of the action and result in the district**  
13 **court, including the type of judgment or order being appealed and the relief granted by the**  
14 **district court:** In or around October 16, 2012, Proimtu entered into that certain contract  
15 ("Contract") with Petitioner for the erection of heliostats for the Crescent Dunes Thermosolar  
16 Power Plant ("Project"). Pursuant to the Contract, Proimtu agreed to perform "[h]eliostat  
17 assembly and field erection of heliostats." TRP was the contractor on the Project. TRP filed its  
18 Petition ("Petition") to expunge Proimtu's lien on certain real property arising out of TRP's  
19 failure to pay Proimtu for Proimtu's work on the Project. After the Petition was improperly  
20 granted, TRP sought and was awarded attorneys' fees, which forms the basis of this appeal.

21           **11.      Indicate whether the case has previously been the subject of an appeal to or**  
22 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
23 **docket number of the prior proceeding:** This case has previously been the subject of an appeal

1 to or writ proceeding in the Supreme Court. The caption of the previous appeal is *Proimtu MMI*  
2 *LLC vs. TRP International, Inc.*, case no.: 68942.

3 **12. Indicate whether this appeal involves child custody or visitation:** This appeal  
4 does not involve child custody or visitation.

5 **13. If this is a civil case, indicate whether this appeal involves the possibility of**  
6 **settlement:** This is a civil case and Proimtu is not opposed to the possibility of settlement.  
7

8 DATED this 3rd day of December, 2015.

9 **FENNEMORE CRAIG, P.C.**

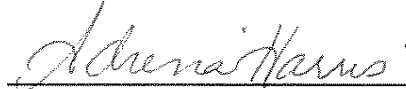
10  
11 By: 

12 Christopher H. Byrd, Esq. (No. 1633)  
13 Brenoch Wirthlin (No. 10282)  
14 300 S. Fourth Street, Suite 1400  
15 Las Vegas, Nevada 89101  
16 *Attorneys for Respondent Proimtu MMI LLC*  
17  
18  
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28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 3rd day of December, 2015, I served a copy of the **CASE**  
3 **APPEAL STATEMENT** upon the parties to this action by mailing a copy thereof, postage  
4 prepaid, via regular U.S. Mail, addressed as follows:

5 Becky A. Pintar, Esq.  
6 Bryan L. Albiston, Esq.  
7 Pintar Albiston LLP  
8 6053 S. Fort Apache Road, Suite 120  
9 Las Vegas, NV 89148  
10 *Attorneys for Petitioner*

11   
12 \_\_\_\_\_  
13 An employee of Fennemore Craig, P.C.  
14  
15  
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Case #: CV-0036431

Judge: WANKER, KIMBERLY A.

Date Filed: 12/12/14 Department: 01

Case Type: CAJOTH CONT/ACCT/JUDG/OTHER

Title/Caption: TRP INTERNATIONAL, INC. a foreign corp.  
vs  
PROIMTU MMI LLC, a Nevada Limited  
Liability Company

Comments: FILE IN TONOPAH

Defendant(s)  
PROIMTU MMI LLC

Attorney(s)  
BYRD, CHRISTOPHER H.

Plaintiff(s)  
TRP INTERNATIONAL, INC.

Attorney(s)  
PINTAR, BECKY A.

Filings:

Date	Pty	Filing	Fees
12/12/14	P	PETITION TO EXPUNGE LIEN - ARBITRATION EXEMPT: AFFECTS TITLE TO REAL PROPERT	245.00
1/08/15	C	ORDER FOR HEARING ON PETITION TO EXPUNGE LIEN	
1/20/15	P	CERTIFICATE OF SERVICE	
2/02/15	R	RESPONDENT PROIMTU MMI LLC'S OPPOSITION TO PETITION TO EXPUNGE LIEN	198.00
2/09/15	P	REPLY TO OPPOSITION TO PETITION TO EXPUNGE LIEN	
2/13/15	C	ORDER OF RECUSAL AND REQUEST FOR SENIOR JUDGE	
2/25/15	R	RESPONDENT PROIMTU MMI LLC'S OBJECTION TO UNTIMELY DISCLOSURE OF SUPPLEMENTAL DOCUMENTS TO SUPPORT THE PETITION TO EXPUNGE	
3/03/15	C	ORDER	
4/16/15	P	REQUEST FOR RULING ON PETITION TO EXPUNGE LIEN,OR IN THE ALTERNATIVE, TO PLACE ON CALENDAR	
7/06/15	P	MOTION FOR ATTORNEY FEES	
7/06/15	P	MEMORANDUM OF COSTS AND DISBURSEMENTS	
7/20/15	D	OPPOSITION TO PETITIONERS MOTION FOR ATTORNEY'S FEES	
7/23/15	P	RESPONDENT PROIMTU MMI, LLC'S EMERGENCY MOTION TO STAY	
7/27/15	P	REPLY TO OPPOSITION TO MOTION FOR ATTORNEY FEES	
8/12/15	P	RE-NOTICE OF HEARING ON RESPONDENT PROIMTU MMI, LLC'S EMERGENCY MOTION TO STAY	
8/20/15	P	OPPOSITION TO RESPONDENT PROIMTU'S EMERGENCY MOTION TO STAY	
8/27/15	P	DISCLOSURE OF SUPPLEMENTAL DOCUMENTS TO SUPPORT THE PETITION TO EXPUNGE	
9/02/15	D	RESPONDENT PROIMTU MMI, LLC'S REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY	
9/09/15	P	SUPPLEMENT TO MOTION FOR ATTORNEY FEES	
9/09/15	C	FINDINGS OF FACT, CONCLUSIONA OF LAW AND ORDER ON PETITION EXPUNGE LIEN	
10/05/15	D	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PETITION TO EXPUNGE LIEN	
10/05/15	D	NOTICE OF APPEAL	
10/05/15	D	CASE APPEAL STATEMENT	
10/16/15	S	RECEIPT FOR DOCUMENTS	

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14:04:51

Case Summary

Page 2  
DC2100

11/12/15	P	SUPPLEMENT TO REPLY TO OPPOSITION TO MOTION TO DISMISS COMPLAINT	
11/12/15	C	ORDER DENYING MOTION FOR EMERGENCY STAY	
11/12/15	P	NOTICE OF ENTRY ORDER DENYING MOTION FOR EMERGENCY STAY	
11/12/15	C	ORDER GRANTING MOTION FOR ATTORNEY FEES	
11/12/15	P	NOTICE OF ENTRY ORDER GRANTING MOTION FOR ATTORNEY FEES	
12/04/15	D	NOTICE OF APPEAL	500.00
12/04/15	D	CASE APPEAL STATEMENT	24.00

Case #: CV-0036431

Judge: WANKER, KIMBERLY A.

Date Filed: 12/12/14 Department: 01

Case Type: CAJOTH CONT/ACCT/JUDG/OTHER

Title/Caption: TRP INTERNATIONAL, INC. a foreign corp.  
vs  
PROIMTU MMI LLC, a Nevada Limited  
Liability Company

Comments: FILE IN TONOPAH

Defendant(s)  
PROIMTU MMI LLC

Attorney(s)  
BYRD, CHRISTOPHER H.

Plaintiff(s)  
TRP INTERNATIONAL, INC.

Attorney(s)  
PINTAR, BECKY A.

Hearings:

Date Time Hearing  
2/12/15 10:00 PETITION TO EXPUNGE LIEN  
JUDGE: KIMBERLY A WANKER  
CLERK: AMY DOWERS

Reference  
TONOPAH

APP: BECKY PINTAR FOR TRP INTERNATIONAL, INC; BRENOCK WIRTHLIN FOR PROIMTU MMI LLC;

THE COURT ADVISES THE PARTIES THAT SENIOR JUDGE STEVEN ELLIOT HAS BEEN ASSIGNED TO THE CASE AND THAT HE IS AWARE OF THE PENDING TRIAL DATES INVOLVING CV36431, CV36323, AND CV35217. THE COURT QUESTIONS COUNSEL CONCERNING A CLAUSE IN PARAGRAPH 34 WHICH STATES THAT ANY DISPUTES BETWEEN THE PARTIES WILL BE SUBMITTED TO ARBITRATION IN MADRID, SPAIN AND THAT THE CONTRACT SHALL BE INTERPRETTED SUBJECT TO SPANISH LAW AND WAIVE ANY OTHER LEGAL REMEDY. MS. PINTAR STATES THAT ONCE THE LIEN WAS RECORDED THEN THE LIEN HAD TO BE ARGUED UNDER NEVADA LAW. MS. PINTAR STATES THAT THE LIEN ATTACHES TO THE PROPERTY AND SO NOW THE OWNER OF THE PROPERTY AND THE GENERAL CONTRACTOR INVOLVED. MR. WIRTHLIN STATES THAT HE DOES NOT BELIEVE THAT THE ARBITRATION CLAUSE PROHIBITS HIS CLIENT FROM AVAILING ITSELF OF NEVADA LAW IN ORDER TO PROCURE PAYMENT. MR. WIRTHLIN REFERS TO NRS 108.2457 WHICH STATES THAT ANY TERM OF A CONTRACT THAT ATTEMPTS TO LIMIT THE LIEN RIGHTS IS VOID. MS. PINTAR STATES THAT THE LIEN HAS BEEN BONDED AROUND AND BECAUSE OF THE LIEN THE GENERAL CONTRACTOR, COBRA, HAS WITHHELD PAYMENT FROM TRP. MS. PINTAR STATES THAT BECAUSE OF THAT ACTION THEY WERE FORCED TO FILE THE PETITION UNDER NEVADA LAW TO EXPUNGE THE LIEN SO THAT THE DISPUTE CAN BE HANDLED AS SET FORTH IN THE CONTRACT. MR. WIRTHLIN POINTS OUT THAT THE ISSUE OF JURISDICTN WAS NOT RAISED PRIOR TO TODAY. THE COURT CONFIRMS THAT SHE IS THE ONE THAT RAISED THE ISSUE OF JURISDICTION. MR. WIRTHLIN REQUEST THAT PROIMTU HAVE THE OPPORTUNITY TO BRIEF THE ISSUE. MR. WIRTHLIN POINTS OUT THAT IF THE ISSUE IS NOT WORKED OUT WITHIN 30 DAYS THEN YOU SUBMIT TO SPANISH ARBITRATION BUT THE LIEN IS NOT AFFECTED BECAUSE OF NEVADA LAW AND NEEDS TO BE DECIDED ON THE MERRIT. MS. PINTAR ADDRESSES THE COURT CONCERNING MECHANICS LIENS. MS. PINTAR SPEAKS TO THE DEFENDANT'S FIRST AGRUEMENT WHICH STATES THEY PROVIDED LABOR ONLY. MS. PINTAR DISPUTES THAT PROIMTU ONLY SUPPLIES LABOR. MS. PINTAR PROVIDES A SUPPLEMENTAL DISCLOSURE FOR THE COURT THAT CONTAINS INVOICES SHOWING PROIMTU RENTED CRANES AND CHARGE FOR SUPPLIES. MS. PINTAR ARGUES THAT PROIMTU PROVIDE MORE THAT LABOR AND THAT THEY ACTED AS A SUBCONTRACT

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13:26:48

Case Summary

Page 2  
DC2100

THEREFORE THEY ARE REQUIRED TO PROVIDE A PRELIMINARY NOTICE TO THE OWNER OF THE LIEN. MS. PINTAR STATES THAT PROIMTU DID NOT NOTIFY THE OWNER THAT THEY ARE ON THE PROPERTY. MS. PINTAR STATES THAT CLEARLY THERE IS PREJUDICE TO THE OWNER. MR. WIRTHLIN STATES LIBERAL INTERPRETATION AND SUBSTANTIAL COMPLIANCE ARE REQUIRED WHEN DEALING WITH MECHANICS LIENS. MR. WIRTHLIN STATES THAT THE WORK WAS DONE AND PROIMTU HAS NOT BEEN PAID.

6/18/15 9:00 PETITION TO EXPUNGE LIEN (JUDGE ELLIOT)

9/09/15 9:00 PROIMTU'S EMERGENCY MOTION TO STAY

JUDGE: STEVEN P ELLIOT

CLERK: AMY DOWERS

APP: BECKY PINTAR FOR TRP INTERNATIONAL WITH GUSTAVO CALZADO; BRENOCK WIRTHLIN FOR PRIOMTU LLC; DONNA DI MAGGIO FOR COBRA THERMOSOLAR PLANTS AND TONOPAH SOLAR RESERVE;

\*\*\*\*\*SEE FILE FOR MINUTES\*\*\*\*\*

9/09/15 9:00 MOTION FOR ATTORNEY'S FEES (TRP INTERNATIONAL

\*\*\*\*\*SEE FILE FOR MINUTES\*\*\*\*\*

1 Becky A. Pinta, Esq.  
2 Nevada State Bar # 7867  
3 PINTAR ALBISTON LLP  
4 6053 S. Fort Apache Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 (702) 685-5255  
7 (702) 202-6329 fax  
8 Becky@PintarAlbiston.com

9 Attorneys for Plaintiff  
10 TRP INTERNATIONAL, INC.

11 **FIFTH DISTRICT COURT**  
12 **NYE COUNTY, NEVADA**

13 TRP INTERNATIONAL, INC., a foreign  
14 corporation,

15 Petitioner,

16 v.

17 PROIMTU MMI LLC, a Nevada limited liability  
18 company,

19 Respondent.

Case No.: CV-36431  
Dept.: I

**NOTICE OF ENTRY ORDER GRANTING  
MOTION FOR ATTORNEY FEES**

20 PLEASE TAKE NOTICE that on November 12, 2015, an Order granting Motion for  
21 Attorney Fees was entered in the above-referenced matter. A true and correct copy is attached  
22 hereto.

23 DATED: November 12, 2015 PINTAR ALBISTON LLP

24 By: Becky A. Pinta

25 Becky A. Pinta, Esq.  
26 Nevada State Bar # 7867  
27 Bryan L. Albiston, Esq.  
28 Nevada State Bar #12679  
6053 S. Fort Apache Rd., Ste. 120  
Las Vegas, Nevada 89148  
Attorneys for Plaintiff TRP INTERNATIONAL, INC.

**FILED**  
FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Amo Deputy



1 Becky A. Pinta, Esq.  
 Nevada State Bar # 7867  
 2 PINTAR ALBISTON LLP  
 6053 S. Fort Apache Road, Suite 120  
 3 Las Vegas, Nevada 89148  
 (702) 685-5255  
 4 (702) 202-6329 fax  
 Becky@PintaAlbiston.com

5 Attorneys for Plaintiff  
 6 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT  
 NYE COUNTY, NEVADA**

8 TRP INTERNATIONAL, INC., a foreign  
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9 Petitioner,

10 v.

11 PROIMTU MMI LLC, a Nevada limited liability  
 company,

12 Respondent.

Case No.: CV-36431  
 Dept.: I

**ORDER GRANTING MOTION FOR  
 ATTORNEY FEES**

13  
 14  
 15 The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Motion  
 16 for Attorney Fees, as against Respondent PROIMTU MMI LLC ("Proimtu") and all pleadings on  
 17 file, and after hearing oral argument, the Court makes the following findings and order:

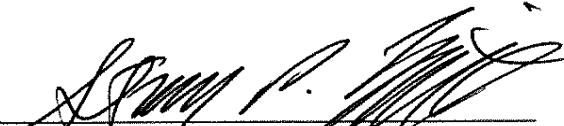
- 18 1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
- 19 2. The Court previously found that the lien recorded by Proimtu was not valid and
- 20 ordered it expunged in an order filed on July 6, 2015.
- 21 3. The Court also found that TRP was also entitled to its costs and reasonable
- 22 attorney's fees for bringing the Petition the amount to be determined upon briefing with the Court.
- 23 4. TRP submitted documentation of fees incurred in the amount of \$16,240.00.
- 24 5. Proimtu argued certain fees were not reasonable, including those incurred for travel.
- 25 6. However, the Court found that all fees incurred by TRP were valid and reasonable
- 26 and the *Brunzell* factors were satisfied.

27 IT IS THEREFORE ORDERED that the Motion for Attorney Fees is granted.  
 28

1 IT IS FURTHER ORDERED that the \$16,240.00 in attorney fees is awarded to TRP and the  
2 amount is hereby reduced to judgment.  
3

4 **IT IS SO ORDERED.**

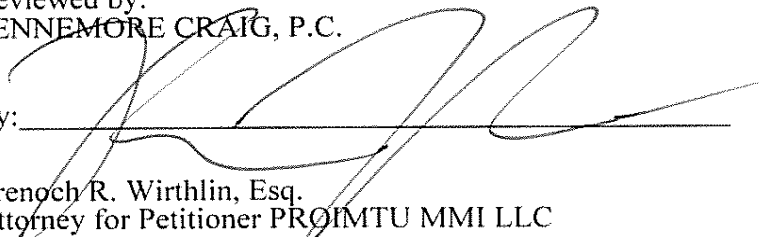
5 Dated: Nov 12, 2015

6   
7 JUDGE OF THE DISTRICT COURT

8 Respectfully submitted by:  
9 PINTAR ALBISTON LLP

10 By: Becky A. Pinta  
11 Becky A. Pinta, Esq., NSB # 7867  
12 Attorney for Petitioner TRP INTERNATIONAL, INC.

13 Reviewed by:  
14 FENNEMORE CRAIG, P.C.

15 By:   
16 Brenoch R. Wirthlin, Esq.  
17 Attorney for Petitioner PROIMTU MMI LLC  
18  
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28

**OFFICE OF THE NYE COUNTY CLERK  
SANDRA L. MERLINO**

**Tonopah Office**  
Nye County Courthouse  
P.O. Box 1031  
101 Radar Road  
Tonopah, Nevada 89049  
Phone (775) 482-8127  
Fax (775) 482-8133



**Pahrump Office**  
Government Complex  
1520 East Basin Avenue  
Pahrump, Nevada 89060  
Phone (775) 751-7040  
Fax (775) 751-7047

December 4, 2015

NOTICE OF  
DEFICIENCY:

VIA E-FILE

Supreme Court Clerk  
201 S. Carson Street, #201  
Carson City, NV 89701-4702

Re: CV 36431

TRP INTERNATIONAL, INC.  
VS  
PROIMTU MMI LLC

Dear Ms. Lindeman:

I am enclosing the documentation required to submit the above-referenced matter on appeal.

This is a civil case. I will be forwarding the fee of \$250.00 via US Mail.

If I can be of any assistance, please feel free to contact me at our Tonopah office.

Sincerely,

SANDRA L. MERLINO  
NYE COUNTY CLERK

By:   
AMY DOWERS, Deputy Clerk / Tonopah

**FILED**

FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Deputy

Becky A. Pintar, Esq.  
Nevada State Bar # 7867  
PINTAR ALBISTON LLP  
6053 S. Fort Apache Road, Suite 120  
Las Vegas, Nevada 89148  
(702) 685-5255  
(702) 202-6329 fax  
Becky@PintarAlbiston.com

Attorneys for Plaintiff  
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT  
NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Case No.: CV-36431  
Dept.: I

Petitioner,

v.

**NOTICE OF ENTRY ORDER GRANTING  
MOTION FOR ATTORNEY FEES**

PROIMTU MMI LLC, a Nevada limited liability  
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Respondent.

PLEASE TAKE NOTICE that on November 12, 2015, an Order granting Motion for  
Attorney Fees was entered in the above-referenced matter. A true and correct copy is attached  
hereto.

DATED: November 12, 2015 PINTAR ALBISTON LLP

By:

*Becky A. Pintar*

Becky A. Pintar, Esq.  
Nevada State Bar # 7867  
Bryan L. Albiston, Esq.  
Nevada State Bar #12679  
6053 S. Fort Apache Rd., Ste. 120  
Las Vegas, Nevada 89148  
Attorneys for Plaintiff TRP INTERNATIONAL, INC.

1 Becky A. Pinar, Esq.  
 Nevada State Bar # 7867  
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 3 Las Vegas, Nevada 89148  
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 Becky@PintarAlbiston.com

5 Attorneys for Plaintiff  
 6 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT  
 NYE COUNTY, NEVADA**

8 TRP INTERNATIONAL, INC., a foreign  
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Case No.: CV-36431  
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**ORDER GRANTING MOTION FOR  
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- 26 6. However, the Court found that all fees incurred by TRP were valid and reasonable  
 27 and the *Brunzell* factors were satisfied.

28 IT IS THEREFORE ORDERED that the Motion for Attorney Fees is granted.

**FILED**  
 FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Deputy

1 IT IS FURTHER ORDERED that the \$16,240.00 in attorney fees is awarded to TRP and the  
2 amount is hereby reduced to judgment.  
3

4 IT IS SO ORDERED.

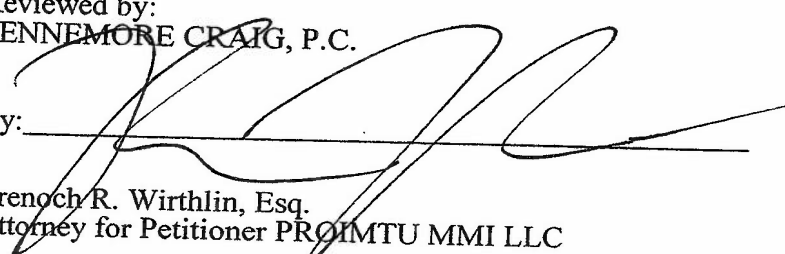
5 Dated: Nov 12, 2015

6   
7 JUDGE OF THE DISTRICT COURT

8 Respectfully submitted by:  
9 PINTAR ALBISTON LLP

10 By: Becky A. Pinta  
11 Becky A. Pinta, Esq., NSB # 7867  
12 Attorney for Petitioner TRP INTERNATIONAL, INC.

13 Reviewed by:  
14 FENNEMORE CRAIG, P.C.

15 By:   
16 Brenoch R. Wirthlin, Esq.  
17 Attorney for Petitioner PROIMTU MMI LLC  
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**FILED**  
FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Deputy

Becky A. Pintar, Esq.  
Nevada State Bar # 7867  
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Becky@PintarAlbiston.com

Attorneys for Plaintiff  
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT  
NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Case No.: CV-36431  
Dept.: I

Petitioner,

v.

**ORDER GRANTING MOTION FOR  
ATTORNEY FEES**

PROIMTU MMI LLC, a Nevada limited liability  
company,

Respondent.

The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Motion for Attorney Fees, as against Respondent PROIMTU MMI LLC ("Proimtu") and all pleadings on file, and after hearing oral argument, the Court makes the following findings and order:

1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
2. The Court previously found that the lien recorded by Proimtu was not valid and ordered it expunged in an order filed on July 6, 2015.
3. The Court also found that TRP was also entitled to its costs and reasonable attorney's fees for bringing the Petition the amount to be determined upon briefing with the Court.
4. TRP submitted documentation of fees incurred in the amount of \$16,240.00.
5. Proimtu argued certain fees were not reasonable, including those incurred for travel.
6. However, the Court found that all fees incurred by TRP were valid and reasonable and the *Brunzell* factors were satisfied.

IT IS THEREFORE ORDERED that the Motion for Attorney Fees is granted.

1 IT IS FURTHER ORDERED that the \$16,240.00 in attorney fees is awarded to TRP and the  
2 amount is hereby reduced to judgment.

3  
4 IT IS SO ORDERED.

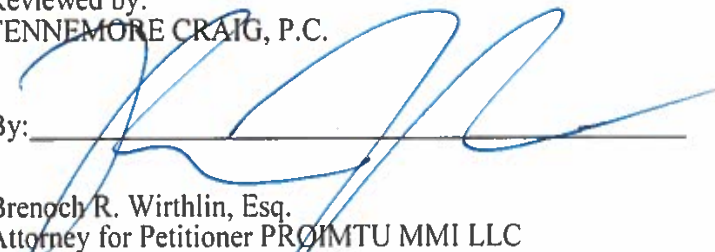
5 Dated: Nov 12, 2015

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7 JUDGE OF THE DISTRICT COURT

8 Respectfully submitted by:  
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12 Attorney for Petitioner TRP INTERNATIONAL, INC.

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15 By:   
16 Brenoch R. Wirthlin, Esq.  
17 Attorney for Petitioner PROIMTU MMI LLC

PINTAR ALBISTON LLP



1 Christopher H. Byrd, Esq. (No. 1633)  
2 Brenoch R. Wirthlin, Esq. (No. 10282)  
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10 Attorneys for Proimtu MMI LLC

FILED  
FIFTH JUDICIAL DISTRICT COURT

OCT 05 2015

NYE COUNTY DEPUTY CLERK  
DEPUTY \_\_\_\_\_

Veronica Aguilar

FIFTH DISTRICT COURT

NYE COUNTY, NEVADA

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited  
liability company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

**NOTICE OF APPEAL**

15 Notice is hereby given that Proimtu MMI LLC ("Proimtu"), Respondent above named,  
16 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order  
17 on Petition to Expunge Lien entered in this action on the 9<sup>th</sup> day of September, 2015.

18 DATED this 2nd day of October, 2015.

FENNEMORE CRAIG, P.C.

By: 

Christopher H. Byrd, Esq. (No. 1633)

Brenoch Wirthlin (No. 10282)

300 S. Fourth Street, Suite 1400

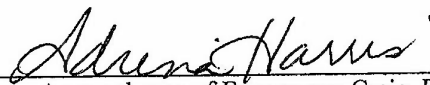
Las Vegas, Nevada 89101

Attorneys for Respondent Proimtu MMI LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 2nd day of October, 2015, I served a copy of the **NOTICE OF**  
3 **APPEAL** upon the parties to this action by mailing a copy thereof, postage prepaid, via regular  
4 U.S. Mail, addressed as follows:

5 Becky A. Pinar, Esq.  
6 Bryan L. Albiston, Esq.  
7 Pinar Albiston LLP  
8 6053 S. Fort Apache Road, Suite 120  
9 Las Vegas, NV 89148  
10 *Attorneys for Petitioner*

11   
12 \_\_\_\_\_  
13 An employee of Fennemore Craig, P.C.  
14  
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OCT 05 2015

NYE COUNTY DEPUTY CLERK  
DEPUTY \_\_\_\_\_

Veronica Aguilar

Christopher H. Byrd, Esq. (No. 1633)  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Proimtu MMI LLC*

**FIFTH DISTRICT COURT**

**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited  
liability company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

**NOTICE OF ENTRY OF FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
AND ORDER ON PETITION TO  
EXPUNGE LIEN**

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law and Order on  
Petition to Expunge Lien was entered in the above-referenced matter on September 9, 2015. A  
copy of which is attached hereto.

DATED this 2nd day of October, 2015.

**FENNEMORE CRAIG, P.C.**

By: \_\_\_\_\_

Christopher H. Byrd, Esq. (No. 1633)  
Brenoch Wirthlin (No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101

*Attorneys for Respondent Proimtu MMI LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 2nd day of October, 2015, I served a copy of the **NOTICE**  
3 **OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON**  
4 **PETITION TO EXPUNGE LIEN** upon the parties to this action by mailing a copy thereof,  
5 postage prepaid, via regular U.S. Mail, addressed as follows:

6 Becky A. Pintar, Esq.  
7 Bryan L. Albiston, Esq.  
8 Pintar Albiston LLP  
9 6053 S. Fort Apache Road, Suite 120  
10 Las Vegas, NV 89148  
11 *Attorneys for Petitioner*

12   
13 An employee of Fennemore Craig, P.C.  
14  
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1 Becky A. Pinter, Esq.  
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 2 Bryan L. Albiston, Esq.  
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 3 PINTAR ALBISTON LLP  
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 4 Las Vegas, Nevada 89148  
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 5 (702) 202-6329 fax  
 Becky@PintarAlbiston.com

6 Attorneys for Plaintiff  
 7 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**

**NYE COUNTY, NEVADA**

10 TRP INTERNATIONAL, INC., a foreign  
 11 corporation,

12 Petitioner,

13 v.

14 PROIMTU MMI LLC, a Nevada limited liability  
 company,

15 Respondent.

Case No.: CV-36431  
 Dept.: I

**FINDINGS OF FACT, CONCLUSIONS OF  
 LAW AND ORDER ON PETITION TO  
 EXPUNGE LIEN**

17 The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Petition to  
 18 Expunge Lien ("Petition"), as against Respondent PROIMTU MMI LLC ("Proimtu") and all  
 19 pleadings on file, and after hearing oral argument, the Court makes the following Findings of Fact,  
 20 Conclusions of Law and Order.

**FINDINGS OF FACT**

21  
 22 1. TRP is a company based in Spain that constructs solar projects and it entered into a  
 23 contract with the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and erect  
 24 heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant  
 25 (the "Project").

26  
 27 2. In turn, TRP and Respondent PROIMTU MMI LLC ("Proimtu") entered into a contract  
 28 for heliostat assembly and field erection ("Contract").

3. In the Contract, TRP is referred to as the Contractor and Proimtu is referred to as the

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E. Westerlund

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1 Subcontractor, with the scope of work including:

- 2 • Close monitoring of the procedure to assemble heliostats, according to the requirements
- 3 issued by the client.
- 4 • Monitoring of all documentary and procedural requirements required by the customer
- 5 • Care, maintenance and use of the tools provided to do the job.
- 6 • Strictly following the procedures defined for the tasks, included as ANNEX by TRP for
- 7 each point on the assembly line and the implementation of appropriate controls to ensure the
- 8 proper execution of the work.
- 9 • Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet
- 10 customer requirements.
- 11 • Comply with the quality requirements imposed by the client in the assembly of heliostats.
- 12 • Establish and incorporate shifts working staff needed to produce 400 heliostats a week,
- 13 having also the possibility of increasing its resources to a production of 500 heliostats a
- 14 week without any additional cost to TRP.
- 15 • Meet calibrations according to the specifications of the quality plan approved by the client.
- 16 Using stations verification and calibration equipment needed for 100% of the heliostats
- 17 within tolerances.
- 18 • Use of the means provided by the Contractor for quality control and traceability of
- 19 heliostats mounted.
- 20 • Transport from the assembly line to the final erection on site. Includes all equipment and
- 21 lifts, vehicles and manpower needed to carry out the implementation on the foundation of the
- 22 pedestals or heliostats corresponding (sic)
- 23 • Preparation and submission for approval of procedures by TRP pedestal and heliostat
- 24 erection on field.
- 25 • Providing tools, hand tools, jigs and other equipment of any kind to be established in the
- 26 lifting procedure once approved by TRP to perform transport and lifting the heliostat s on the
- 27 site. This equipment must be in good condition for the implementation of the scope defined
- 28 in this contract.

- 1 • Maintenance of all equipment according to the instructions of TRP
- 2 • Strict monitoring of lifting procedures, and generating reports and monitoring quality
- 3 control to ensure the smooth implementation of the lifting.
- 4 • Final and perfect leveling and alignment of heliostat according to the specifications of
- 5 COBRA.
- 6 • Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement
- 7 of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional
- 8 cost to TRP.
- 9 • Previous verification of screws already in the solar field to confirm you have the correct
- 10 position and verticality and that are on the side of tolerance
- 11 • Reporting quality control and production control applications to ensure the smooth
- 12 implementation of the lifting.
- 13 • Final leveling and fit and alignment pedestals and heliostats according to specifications.
- 14 • Final reports Quality Control
- 15 • Re-Galvanization of damaged items during the course of the work if necessary .
- 16 • Preparation of Risk Assessment for the work required and must be approved by the
- 17 contractor before the work begins.
- 18 • Preparation of Environmental Management Reports and waste required by the Customer.
- 19 Strict monitoring of environmental management Standards required by the client.
- 20 • Certificates of materials used if it is the case.
- 21 • Issuance of Certificates of Inspection of equipment that require own.
- 22 • Generation and contribution in a timely manner of the documentation required by the
- 23 American authorities and the client on the recruits.
- 24 • Completion of Documents and Project Quality required.
- 25 • Implementation of temporary facilities as OSHA requirements and health and safety by the
- 26 subcontractor.
- 27 • Lights when necessary work areas, exterior or interior and means to do so if outdoors.
- 28 Excluding general vials, responsibility. (sic)

1 • All activities necessary to conduct the proper execution of the work according to the  
2 conditions, which are considered by the subcontractor are included.

3 • Contribution in case of personnel certificates

4 • In compliance with the operational requirements of the site, including:

5 Wage Requirements as Davis Bacon as indicated in Annex 4.

6 • Delivery of the required data from DBA & STA indicated In Annex 4 regularly.

7 4. Ultimately, a dispute arose between TRP and Proimtu regarding the payments each side  
8 alleged were due under the Contract.

9 5. Due to the dispute for payment, Proimtu subsequently recorded a mechanics lien,  
10 pursuant to NRS 108.222 (the "Lien") in the amount of \$2,357,977 against the real property more  
11 commonly known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and  
12 012-131-04 (the "Real Property") in Nye County, Doc # 823637, on November 12, 2014.

13 6. On January 2, 2015, Cobra posted a bond, Bond No. 915209, in the amount of  
14 \$3,536,965.50, recorded as Doc # 825596 in Nye County, pursuant to NRS 108.413 to 108.2425, to  
15 release the lien from the Real Property.

16 7. TRP argues that the Lien is invalid and should be expunged, pursuant to 108.2275, as  
17 Proimtu has allegedly failed to comply with mandatory statutory requirements for a valid lien by-by  
18 allegedly failing to serve a notice of right to lien pursuant to NRS 108.245.

19 8. Proimtu argues that NRS 108.245(1) provides an exception to the requirements of NRS  
20 108.245 to provide a notice of intent to lien if the lien claimant only provides labor to the  
21 construction project.

22 9. Proimtu argues that it only provided labor to the Project.

23 10. In the alternative, Proimtu argues that if the Court finds that it did not provide only labor  
24 to the Project, thereby exempting it from compliance with NRS 108.245, then "a lien claimant  
25 substantially complies with NRS 108.245's pre-lien requirement when the property owner has actual  
26 knowledge of the potential lien claim and is not prejudiced." *Hardy Cos. v. SNMARK, LLC*, 126  
27 Nev. Adv. Rep. 49, 245 P.3d 1149 (2010).

28 11. Proimtu also argues that, pursuant to NRS 108.22104, an "agent of the owner" means



1 every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor  
 2 or other person having charge or control of the property, improvement or work of improvement of  
 3 the owner, or any part thereof. Therefore, if Cobra, the general contractor, had notice of Proimtu  
 4 being on the Project, then that knowledge should be imputed to the owner to satisfy the requirements  
 5 of NRS 108.245 to provide a notice of intent to lien. At the hearing on this matter TRP  
 6 acknowledged that Cobra had notice of Proimtu's involvement in the Project.

7 12. As set forth in Proimtu's opposition to the Petition and at the hearing on this matter,  
 8 Proimtu supported its arguments through an email sent by TRP to Cobra dated November 30, 2012,  
 9 in which TRP introduced Proimtu as a subcontractor for the Project. In that email, TRP states that it  
 10 is asking for "authorization for contracting the company Proimtu to provide assembly-related labor  
 11 services at the Tonopah plant."

12 13. At the hearing on this matter TRP stipulated that Kevin Smith, the owner's  
 13 representative and CEO, was physically present at the Project at the time Proimtu was working on  
 14 the Project and knew of Proimtu's work and involvement on the Project at the time Proimtu was  
 15 retained.

#### 16 CONCLUSIONS OF LAW

17 1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.

18 2. NRS Chapter 108.245 provides that,

19 ...every lien claimant, other than one who performs only labor, who claims  
 20 the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the  
 21 first delivery of material or performance of work or services under a  
 22 contract, deliver in person or by certified mail to the owner of the property a  
 23 notice of right to lien...

24 3. NRS Chapter 108 does not provide a definition of labor.

25 4. NRS 624.020 provides that a contractor is defined as:

26 A contractor is any person, except a registered architect or a licensed  
 27 professional engineer, acting solely in a professional capacity, who in any  
 28 capacity other than as the employee of another with wages as the sole  
 compensation, undertakes to, offers to undertake to, purports to have the  
 capacity to undertake to, or submits a bid to, or does himself or herself or by  
 or through others, construct, alter, repair, add to, subtract from, improve,  
 move, wreck or demolish any building, highway, road, railroad, excavation or  
 other structure, project, development or improvement, or to do any part

thereof, including the erection of scaffolding or other structures or works in connection therewith.

5. The Court finds that Proimtu was acting as a contractor in its scope of work with TRP pursuant to NRS 624.020 and therefore was required to serve a notice of right to lien to the owner pursuant to NRS 108.245.

6. The Court finds that Proimtu failed to comply with NRS 108.245 by failing to serve a notice of right to lien to the owner.

7. The Court also finds that even if Cobra, the general contractor, had actual notice of Proimtu being on the Project, that knowledge cannot be imputed to the owner and was not sufficient to put the owner on actual notice of either the scope of work being performed by Proimtu.

8. The Court also finds that TRP is also entitled to its at costs and reasonable attorney's fees for bringing the Petition the amount to be determined after a Motion for Attorney Fees is filed with the Court.

IT IS THEREFORE ORDERED that the lien is expunged.

IT IS FURTHER ORDERED that the bond, recorded on January 2, 2015 as Doc # 825596 in Nye County, Bond No. 915209, in the amount of \$3,536,965.50, is hereby exonerated and released upon recording of this Order in Nye County.

IT IS FURTHER ORDERED that the Petitioner shall be awarded its costs and reasonable attorney fees, the amount to be determined after briefing.

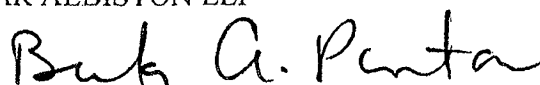
IT IS SO ORDERED.

Dated: September 9, 2015

  
JUDGE OF THE DISTRICT COURT

Respectfully submitted by:  
PINTAR ALBISTON LLP

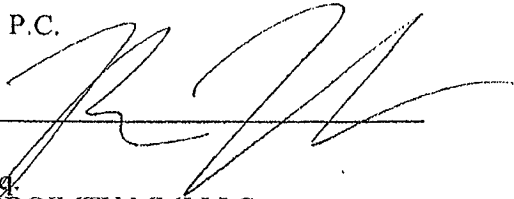
By:

  
Becky A. Pintar, Esq., NSB # 7867  
Attorney for Petitioner TRP INTERNATIONAL, INC.

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Reviewed by:  
FENNEMORE CRAIG, P.C.

By: \_\_\_\_\_



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Attorney for Petitioner PROIMTU MMI LLC

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6 Attorneys for Plaintiff  
 7 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**  
**NYE COUNTY, NEVADA**

10 TRP INTERNATIONAL, INC., a foreign  
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12 Petitioner,

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14 PROIMTU MMI LLC, a Nevada limited liability  
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15 Respondent.

Case No.: CV-36431  
 Dept.: I

**FINDINGS OF FACT, CONCLUSIONS OF  
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17 The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Petition to  
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 19 pleadings on file, and after hearing oral argument, the Court makes the following Findings of Fact,  
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**FINDINGS OF FACT**

22 1. TRP is a company based in Spain that constructs solar projects and it entered into a  
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 24 heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant  
 25 (the "Project").

26 2. In turn, TRP and Respondent PROIMTU MMI LLC ("Proimtu") entered into a contract  
 27 for heliostat assembly and field erection ("Contract").

28 3. In the Contract, TRP is referred to as the Contractor and Proimtu is referred to as the

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- 2 • Close monitoring of the procedure to assemble heliostats, according to the requirements
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- 4 • Monitoring of all documentary and procedural requirements required by the customer
- 5 • Care, maintenance and use of the tools provided to do the job.
- 6 • Strictly following the procedures defined for the tasks, included as ANNEX by TRP for
- 7 each point on the assembly line and the implementation of appropriate controls to ensure the
- 8 proper execution of the work.
- 9 • Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet
- 10 customer requirements.
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- 12 • Establish and incorporate shifts working staff needed to produce 400 heliostats a week,
- 13 having also the possibility of increasing its resources to a production of 500 heliostats a
- 14 week without any additional cost to TRP.
- 15 • Meet calibrations according to the specifications of the quality plan approved by the client.
- 16 Using stations verification and calibration equipment needed for 100% of the heliostats
- 17 within tolerances.
- 18 • Use of the means provided by the Contractor for quality control and traceability of
- 19 heliostats mounted.
- 20 • Transport from the assembly line to the final erection on site. Includes all equipment and
- 21 lifts, vehicles and manpower needed to carry out the implementation on the foundation of the
- 22 pedestals or heliostats corresponding (sic)
- 23 • Preparation and submission for approval of procedures by TRP pedestal and heliostat
- 24 erection on field.
- 25 • Providing tools, hand tools, jigs and other equipment of any kind to be established in the
- 26 lifting procedure once approved by TRP to perform transport and lifting the heliostat s on the
- 27 site. This equipment must be in good condition for the implementation of the scope defined
- 28 in this contract.

- 1 • Maintenance of all equipment according to the instructions of TRP
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- 26 subcontractor.
- 27 • Lights when necessary work areas, exterior or interior and means to do so if outdoors.
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- All activities necessary to conduct the proper execution of the work according to the conditions, which are considered by the subcontractor are included.
- Contribution in case of personnel certificates
- In compliance with the operational requirements of the site, including:
  - Wage Requirements as Davis Bacon as indicated in Annex 4.
- Delivery of the required data from DBA & STA indicated In Annex 4 regularly.

4. Ultimately, a dispute arose between TRP and Proimtu regarding the payments each side alleged were due under the Contract.

5. Due to the dispute for payment, Proimtu subsequently recorded a mechanics lien, pursuant to NRS 108.222 (the "Lien") in the amount of \$2,357,977 against the real property more commonly known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and 012-131-04 (the "Real Property") in Nye County, Doc # 823637, on November 12, 2014.

6. On January 2, 2015, Cobra posted a bond, Bond No. 915209, in the amount of \$3,536,965.50, recorded as Doc # 825596 in Nye County, pursuant to NRS 108.413 to 108.2425, to release the lien from the Real Property.

7. TRP argues that the Lien is invalid and should be expunged, pursuant to 108.2275, as Proimtu has allegedly failed to comply with mandatory statutory requirements for a valid lien by allegedly failing to serve a notice of right to lien pursuant to NRS 108.245.

8. Proimtu argues that NRS 108.245(1) provides an exception to the requirements of NRS 108.245 to provide a notice of intent to lien if the lien claimant only provides labor to the construction project.

9. Proimtu argues that it only provided labor to the Project.

10. In the alternative, Proimtu argues that if the Court finds that it did not provide only labor to the Project, thereby exempting it from compliance with NRS 108.245, then "a lien claimant substantially complies with NRS 108.245's pre-lien requirement when the property owner has actual knowledge of the potential lien claim and is not prejudiced." *Hardy Cos. v. SNMARK, LLC*, 126 Nev. Adv. Rep. 49, 245 P.3d 1149 (2010).

11. Proimtu also argues that, pursuant to NRS 108.22104, an "agent of the owner" means

1 every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor  
 2 or other person having charge or control of the property, improvement or work of improvement of  
 3 the owner, or any part thereof. Therefore, if Cobra, the general contractor, had notice of Proimtu  
 4 being on the Project, then that knowledge should be imputed to the owner to satisfy the requirements  
 5 of NRS 108.245 to provide a notice of intent to lien. At the hearing on this matter TRP  
 6 acknowledged that Cobra had notice of Proimtu's involvement in the Project.

7 12. As set forth in Proimtu's opposition to the Petition and at the hearing on this matter,  
 8 Proimtu supported its arguments through an email sent by TRP to Cobra dated November 30, 2012,  
 9 in which TRP introduced Proimtu as a subcontractor for the Project. In that email, TRP states that it  
 10 is asking for "authorization for contracting the company Proimtu to provide assembly-related labor  
 11 services at the Tonopah plant."

12 13. At the hearing on this matter TRP stipulated that Kevin Smith, the owner's  
 13 representative and CEO, was physically present at the Project at the time Proimtu was working on  
 14 the Project and knew of Proimtu's work and involvement on the Project at the time Proimtu was  
 15 retained.

#### 16 CONCLUSIONS OF LAW

- 17 1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
- 18 2. NRS Chapter 108.245 provides that,  
 19 ...every lien claimant, other than one who performs only labor, who claims  
 20 the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the  
 21 first delivery of material or performance of work or services under a  
 22 contract, deliver in person or by certified mail to the owner of the property a  
 23 notice of right to lien...
- 24 3. NRS Chapter 108 does not provide a definition of labor.
- 25 4. NRS 624.020 provides that a contractor is defined as:  
 26 A contractor is any person, except a registered architect or a licensed  
 27 professional engineer, acting solely in a professional capacity, who in any  
 28 capacity other than as the employee of another with wages as the sole  
 compensation, undertakes to, offers to undertake to, purports to have the  
 capacity to undertake to, or submits a bid to, or does himself or herself or by  
 or through others, construct, alter, repair, add to, subtract from, improve,  
 move, wreck or demolish any building, highway, road, railroad, excavation or  
 other structure, project, development or improvement, or to do any part



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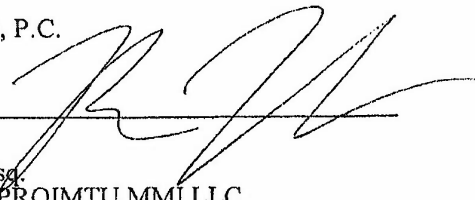
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Reviewed by:  
FENNEMORE CRAIG, P.C.

By: \_\_\_\_\_

Brenoch R. Wirthlin, Esq.  
Attorney for Petitioner PROIMTU MMI LLC



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2015 SEP -9 A 8:40

E. Westerlund

CLERK

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Becky@PinterAlbiston.com

Attorneys for Plaintiff  
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**

**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited liability  
company,

Respondent.

Case No.: CV-36431  
Dept.: I

**SUPPLEMENT TO MOTION FOR  
ATTORNEY FEES**

COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Supplement to Motion for Attorney Fees.

Since the Motion for Attorney Fees was filed, PROIMTU MMI LLC ("Proimtu") has filed a motion to stay the ruling of the Court ordering the bond released. As a result, TRP as incurred an additional \$3,360 in fees for a total of \$16,240.00. **See Exhibit 1, attached hereto,**

DATED: September 8, 2015

PINTAR ALBISTON LLP

By:

*Becky A. Pinter*

Becky A. Pinter, Esq., NSB # 7867  
Attorney for Petitioner TRP INTERNATIONAL, INC.

**EXHIBIT 1****DECLARATION IN SUPPORT OF ATTORNEY FEES**

I, BECKY A. PINTAR, being duly sworn, states: that affiant is the attorney for TRP INTERANTIONAL, INC. and has personal knowledge of the above costs and disbursements expended; that the items contained in the attached Statement are true and correct to the best of this Declarant's knowledge and belief; and that the said fees have been necessarily incurred in this action.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 8<sup>th</sup> day of September, 2015

By: 

Becky A. Pintar, Esq.  
Nevada State Bar # 7867  
6053 S. Fort Apache Rd. #120  
Las Vegas, Nevada 89148  
(702) 685-5255

# EXHIBIT 1

# EXHIBIT 1

***Pintar Albiston LLP***  
6053 S. Fort Apache Road, #120  
Las Vegas, NV 89148 USA

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Fax:702-202-6329

TRP International, Inc.

September 8, 2015

'Neftali Munoz Herrera' <nmunoz@stsolar.eu>

**Attention:** Neftali Munoz

File #: 318

Inv #: 5352

**RE:** Expunge Proimtu lien

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-28-15	Review motion for emergency stay; draft update to client	0.50	175.00	BAP
Aug-12-15	Draft opposition to motion for emergency stay	5.60	1,960.00	BAP
Aug-13-15	Review/revise opposition to motion for emergency stay	2.00	700.00	BAP
Aug-19-15	Draft final revisions to opposition to stay	1.50	525.00	BAP
	Totals	9.60	\$3,360.00	

**DISBURSEMENTS**

Aug-27-15	Lexis/Westlaw	73.74
	Postage for pleadings to Nye County	10.92
	Totals	\$84.66

**Total Fee & Disbursements**

**\$3,444.66**

Previous Balance

13,631.53

**Balance Now Due**

**\$17,076.19**

TAX ID Number 46-1573461

## PINTAR BISTON LLP

**Fees via personal service:**

Bark A. Pinta  
PINTAR ALBISTON LLP

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AMY DOWERS

NYE COUNTY CLERK  
BY DEPUTY

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Becky@PinterAlbiston.com  
6 Bryan@PinterAlbiston.com

7 Attorneys for Defendant  
TRP INTERNATIONAL, INC.

8  
9 **FIFTH JUDICIAL DISTRICT COURT**  
10 **NYE COUNTY, NEVADA**

11 PROIMTU MMI LLC, a Nevada limited liability  
company

12 Plaintiff,

13 v.

14 TRP INTERNATIONAL, INC., a Delaware  
corporation; TONOPAH SOLAR ENERGY, LLC,  
15 a Delaware limited liability company; COBRA  
THERMOSOLAR PLANTS, INC., a Nevada  
16 Corporation; STATE OF NEVADA ex rel. the  
NEVADA STATE CONTRACTORS BOARD,  
17 THE INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA, a Pennsylvania  
corporation, DOES I-X, ROE COMPANIES I-X;

18 Defendants.  
19

CASE NO. CV36747  
DEPT. NO.: 1

**CERTIFICATE OF SERVICE FOR  
MOTION FOR ATTORNEY FEES**

20 The undersigned hereby certifies that on August 25, 2015 she served the notice of hearing on  
21 **September 9, 2015 at 9 am on Motion for Attorney Fees** that was served via USPS on August 19,  
22 2015, via email and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at  
23 Las Vegas, Nevada, said envelope(s) addressed to:

24 ///

25 ///

26 ///

27 ///

28 ///



1 Christopher H. Byrd, Esq.  
2 Brenoch R. Wirthlin, Esq.  
3 FENNEMORE CRAIG, P.C.  
4 300 S. Fourth Street, Suite 1400  
5 Las Vegas, Nevada 89101  
6 T: 702-692-8000  
7 F: 702-692-8099  
8 cbyrd@fclaw.com  
9 bwirthlin@fclaw.com  
10 Counsel for Plaintiff  
11  
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PINTAR ALBISTON LLP

By: Becky A. Pinta  
Becky A. Pinta, Esq.



Case No. CV36747

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

PROIMTU MMI LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

**ORDER OF RECUSAL  
AND REQUEST FOR  
SENIOR JUDGE**

TRP INTERNATIONAL, INC., A  
Delaware Corporation; Tonopah Solar  
Energy, LLC, a Delaware limited  
liability company; COBRA  
THERMOSOLAR PLANTS, INC.,  
A Nevada corporation; STATE OF  
NEVADA ex rel. The NEVADA  
STATE CONTRACTORS BOARD,  
THE INSURANCE COMPANY OF  
THE STATE OF PENNSYLVANIA,  
a Pennsylvania corporation, DOES  
I-X, ROE COMPANIES I-X.

Defendants.

This is a related case to CV35217 HALL v. MT. GRANT ELECTRIC which this Court has recused itself because of the congested Court calendar. This Judge must also recuse itself from this case for the same reasons and to allow the related cases to be heard by the same Judge, therefore it is requested that Senior Judge Stephen Elliott be appointed to handle the above case.

DATED this 20<sup>th</sup> day of June 2015.

  
KIMBERLY A. WANKER  
DISTRICT JUDGE

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that on the 27 day of August 2015, she mailed (or hand delivered) copies of the foregoing Order to the following:

Fenemore Craig, P.C.  
Christopher H. Byrd, Esq.  
Breboch Wirthlin, Esq.  
300 South Fourth Street, Suite 1400  
Las Vegas, Nv. 89101  
*Attorneys for Plaintiff*

William J. Wray, Esq.  
Glenn F. Meier, Esq.  
Rachel E. Donn, Esq.  
Donna Dimaggio, Esq.  
Holley Driggs Walch Fine Wray Puzey & Thompson  
400 South Fourth Street, Third Floor  
Las Vegas, Nv. 89101  
*Attorneys for the Insurance Company of the State of Pennsylvania.*

Becky A. Pintar, Esq.  
Bryan L. Albiston, Esq.  
6053 S. Fort Apache Road, Suite 120  
Las Vegas, Nv. 89148  
*Attorneys for TRP International, Inc.*

State of Nevada Contractors Board  
The Office of the Attorney General  
Civil Division  
100 N. Carson St.  
Carson City, Nv 89710

  
GERIE CLIFFORD, Secretary to  
DISTRICT JUDGE



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AMY DOWERS

NYE COUNTY CLERK  
BY DEPUTY

1 Becky A. Pintar, Esq.  
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2 Bryan L. Albiston, Esq.  
Nevada State Bar # 12679  
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4 Las Vegas, Nevada 89148  
(702) 685-5255  
5 (702) 202-6329 fax  
Becky@PintarAlbiston.com

6 Attorneys for Plaintiff  
7 TRP INTERNATIONAL, INC.

8 **FIFTH DISTRICT COURT**

9 **NYE COUNTY, NEVADA**

10  
11 TRP INTERNATIONAL, INC., a foreign  
12 corporation,

Case No.: CV-36431  
Dept.: I

13 Petitioner,

14 v.

**REPLY TO OPPOSITION TO MOTION  
FOR ATTORNEY FEES**

15 PROIMTU MMI LLC, a Nevada limited liability  
company,

16 Respondent.

17  
18 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their  
19 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Reply to Opposition  
20 to Motion for Attorney Fees. This reply substantiates that TRP has fully complied with all statutory  
21 and procedural requirements, and that its fees are reasonable and necessarily incurred.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **A. TRP has Complied with All Requirements to be Awarded it Attorney Fees**

24 The Court, pursuant to NRS 108.2275(6) has already found that TRP is entitled to its  
25 reasonable fees. This matter required extensive briefing and two hearings, each at least an hour long.  
26 TRP has complied with all requirements to be awarded the fees incurred, all reasonable and  
27 necessarily incurred in the amount of \$12,880.00.

28 PROIMTU MMI LLC ("Proimtu") makes two arguments against TRP being awarded it fees,

1 or its fees with a substantial reduction. First, Proimtu argues that the fees should be denied in their  
2 entirety because counsel failed to include an affidavit stating that the fees were actually and  
3 necessarily incurred, pursuant to NRCP 54(d)(2)(b). Second, Promitu argues that TRP is not entitled  
4 to fees incurred for travel time from Las Vegas to Tonopah for the hearings. Neither argument is  
5 valid.

6 **B. NRCP 54 is not Applicable**

7 The first argument utilized by Proimtu is that counsel has failed to include an affidavit stating  
8 that the fees were actually and necessarily incurred, pursuant to NRCP 54(d)(2)(b). NRCP  
9 54(d)(2)(b) is not applicable in this case. NRCP 54(d)(2)(b) is applicable to fees being sought after  
10 final judgment. There is not final judgment in this case but an order expunging a lien. The fees being  
11 applied for are pursuant to NRS 108.2275(6).

12 Even if an affidavit is not required, counsel has nonetheless attached a declaration, pursuant  
13 to NRS 53.045, to support the incurred fees as **Exhibit 1**. Therefore, regardless if NRCP 54(d)(2)(b)  
14 is applicable or not, it has been complied with and is not a valid basis to deny fees from being  
15 awarded.

16 **C. Travel Time is Expressly Allowed**

17 Promitu next argues that travel time is not allowed from Las Vegas to Tonopah for the two  
18 hearings and the fees should be reduced by 18 hours or \$6,300. However, the billing was block for  
19 both travel, meeting with the client and attendance at the hearing.

20 Counsel for Proimtu argues that *Comcast of Ill. X, LLC v. Kwak*, 2010 U.S. Dist. LEXIS 105809,  
21 2010 WL 3781768 (D. Nev. Sept. 20, 2010) supports the argument that fees incurred for travel are  
22 expressly disallowed. Counsel for Proimtu should be admonished for misrepresenting the TRP's  
23 billing as well as the case law. Promitu counsel takes the ruling from *Comcast* out of context and  
24 misapplies the facts to this case. The ruling in *Comcast* was unique to the set of facts and travel time  
25 was not allowed in that specific instance. However, the facts in *Comcast* are readily extinguished  
26 from those in this case.

27 *Comcast* never made any ruling that travel time in general is not allowed. In fact, *Comcast* stated  
28 specifically that, "[t]he Ninth Circuit has established that travel time and clerical tasks are

1 reasonably compensated at normal hourly rates if such is the custom in the relevant legal  
2 market.” *Id.* at 17 (emphasis added). Proimtu counsel not only fails to provide the entire relevant  
3 ruling but also fails to distinguish the facts in *Comcast* from the current case. *Comcast* had local  
4 counsel but billed for counsel to travel in from out of state to perform work that local counsel could  
5 have handled. The court then disallowed the travel time. The court went on further, and stated that  
6 local counsel does not have to be utilized if they are, “unable to perform because they lack the  
7 degree of experience, expertise, or specialization required to handle properly the case.” It is highly  
8 unlikely that Tonopah had local counsel with the necessary expertise to handle this case nor was any  
9 local counsel as familiar with the project and work as TRP’s counsel from Las Vegas. Even Proimtu  
10 used Las Vegas counsel and I am sure if they had prevailed, they would be seeking fees for travel  
11 time! Proimtu’s counsel’s argument is very disingenuous.

12 Moreover, *Comcast* is not the most applicable case to support that a party is entitled to be  
13 awarded attorney fees for travel. The better case to cite for expressly allowing travel costs is *Ilick v.*  
14 *Miller*, 68 F. Supp. 2d 1169 (D. Nev. 1999). In that case, the court specifically states:

15 The court believes that it is appropriate to allow compensation for travel time,  
16 because the attorney traveling on a case during business hours loses the opportunity  
17 to work productively on other matters. Hence, an attorney is entitled to bill for “lost  
18 productivity” time while traveling, irrespective of whether work is actually completed  
19 during the travel time.

20 *Id.* at 1178 (emphasis added)

21 In that case, counsel was traveling from Las Vegas to rural Nevada, specifically Ely State Prison.  
22 The court found that the rationale to award travel time as valid attorney fees was “to compensate  
23 attorneys for hours which they would otherwise apply to other tasks.” However, the court did limit  
24 travel time to six hours in a 24 hour period.

25 TRP is not seeking more than six hours of travel time as that is the time it takes to drive from Las  
26 Vegas to Tonopah. The block billing of nine hours was for both travel time, meeting with the client  
27 to review for the hearing and the attendance at the hearing. Therefore the hours billed are both  
28 reasonable and expressly allowable. TRP has attached a Declaration and amended Statement for  
attorney fees in the amount of \$12,880, including additional fees for this reply, as **Exhibit 1**.

1           **D. Conclusion**

2           As the foregoing reply, as well as the initial motion for fees demonstrates, TRP's attorney's fees  
3 are reasonable, according to the four part test enumerated in the case of *Brunzell*, including fees for  
4 travel time, pursuant to *Ilick v. Miller*, 68 F. Supp. 2d 1169 (D. Nev. 1999), and complies with  
5 NRCP 54(d)(2)(b). Therefore it is respectfully requested that fees be awarded in the amount of  
6 \$12,880.00.

7  
8 DATED: July 23, 2015

PINTAR ALBISTON LLP

9 By: Becky A. Pintar

10 Becky A. Pintar, Esq., NSB # 7867

11 Attorney for Petitioner TRP INTERNATIONAL, INC.  
12  
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**EXHIBIT 1****DECLARATION IN SUPPORT OF ATTORNEY FEES**

I, BECKY A. PINTAR, being duly sworn, states: that affiant is the attorney for TRP INTERANTIONAL, INC. and has personal knowledge of the above costs and disbursements expended; that the items contained in the attached Statement are true and correct to the best of this Declarant's knowledge and belief; and that the said fees have been necessarily incurred in this action.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 23<sup>rd</sup> day of July, 2015

By: \_\_\_\_\_

*Becky A. Pintar*  
Becky A. Pintar, Esq.  
Nevada State Bar # 7867  
6053 S. Fort Apache Rd. #120  
Las Vegas, Nevada 89148  
(702) 685-5255



***Pintar Albiston LLP***  
6053 S. Fort Apache Road, #120  
Las Vegas, NV 89148 USA

Ph:702-685-5255

Fax:702-202-6329

TRP International, Inc.

July 23, 2015

Neftali Munoz Herrera' <nmunoz@stsolar.eu>

**Attention:** Neftali Munoz

File #: 318

Inv #: 5106

**RE:** Expunge Proimtu lien

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-01-14	Review response from counsel for Proimtu re: lien; telephone conference with client re: same	0.50	175.00	BAP
Dec-03-14	Draft petition to expunge lien	4.00	1,400.00	BAP
Jan-05-15	Telephone conference with Pahrump court and Tonopah court re: petition to expunge lien	0.30	105.00	BAP
Jan-20-15	Draft certificate of service for petition to expunge lien	0.30	105.00	BAP
Jan-26-15	Telephone conference with Tonopah court re: lien actions	0.60	210.00	BAP
Jan-27-15	Review email chain from lien attorneys; draft update to client; telephone conference with Cobra attorney	0.50	175.00	BAP
Feb-03-15	Review opposition to expunge lien; draft reply	3.00	1,050.00	BAP
Feb-10-15	Review invoices; meeting with Neftali to review facts	2.00	700.00	BAP
Feb-12-15	Travel to and from Tonopah	6.00	2,100.00	BAP
	Meeting with client to review for hearing; attend hearing and present oral argument	3.00	1,050.00	BAP

Mar-10-15	Review order; draft update to client	0.30	105.00	BAP
Mar-26-15	Draft request for ruling	0.50	175.00	BAP
Jun-12-15	Review and confirm communication from court re: hearing; draft update to client	0.30	105.00	BAP
Jun-18-15	Travel to and from Tonopah	6.00	2,100.00	BAP
	Meeting with client to review for hearing; attend hearing and present oral argument	2.00	700.00	BAP
Jun-22-15	Draft proposed findings of fact and conclusions of law	2.00	700.00	BAP
Jul-02-15	Review proposed revisions to order; draft memorandum of costs and motion for attorney fees	2.50	875.00	BAP
Jul-23-15	Review opposition to attorney fees; conduct legal research; draft reply	3.00	1,050.00	BAP
	Totals	36.80	\$12,880.00	

**DISBURSEMENTS**

	Lexis/Westlaw	77.47
	Photocopies	42.80
	Postage	7.17
Dec-09-14	Postage for motion to expunge lien	24.15
	Filing Fee for motion to expunge lien	245.00
Feb-11-15	Photocopies for hearing	11.40
Jun-18-15	Travel to Tonopah (mileage)	232.10
	Travel to Tonopah (motel)	108.44
Jul-02-15	Court clerk fee to certify order	3.00
	Totals	\$751.53

**Total Fee & Disbursements****\$13,631.53****Balance Now Due****\$13,631.53**

TAX ID Number 46-1573461

## PINTAR BISTON LLP

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Las Vegas, NV 89101

An employee of  
PINTAR ALBISTON LLP

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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

*Attorneys for Plaintiff Proimtu MMI LLC*

**FIFTH JUDICIAL DISTRICT COURT**  
**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited  
liability company,

Respondent.

Case No.: CV-36431

Dept. No.: 1

**OPPOSITION TO PETITIONER'S**  
**MOTION FOR ATTORNEY'S FEES**

Plaintiff, *Proimtu MMI LLC*, ("Proimtu") by and through its counsel of record, Fennemore Craig, hereby submits its Opposition ("Opposition") to Petitioner TRP International ("Petitioner") Motion For Attorney's Fees ("Motion").

As set forth in this Opposition, Petitioner has failed to comply with the strict, and strictly construed, requirements of NRCPP 54(d). Further, Petitioner's Motion contains time for travel entries for which it is not entitled to recover. This Opposition is based upon the attached Memorandum of Points and Authorities, all exhibits thereto, any oral argument the Court chooses to entertain at a hearing on this matter, and all papers and pleadings on file herein.

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MEMORANDUM OF POINTS AND AUTHORITIES

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

First and foremost, Petitioner has failed to comply with the strict requirements of Nevada Rules of Civil Procedure 54(d)(2)(b) detailing that an affidavit of counsel is required in a motion for attorney's fees. On that basis alone, Petitioner's Motion must be denied in its entirety. Second, even assuming Petitioner had properly complied with the requirements of the Nevada Rules of Civil Procedure – which it has not – Petitioner has failed to attached the so-called "Client Fees Listing" which would enable counsel to determine the reasonableness of the fees sought. Despite this, Petitioner states in its Motion that it is billing for two trips of (9) hours. Accordingly, while Proimtu reserves the right to further object to any fees sought, it is clear that Petitioner has wrongly sought reimbursement for non-compensable travel time.

Given Petitioner's clear failure to comply with the requirements of the applicable rules, Petitioner's Motion must be denied in its entirety, or cut by 18 hours.

**II. LAW AND ARGUMENT**

**A. Petitioner has failed to comply with Nevada Rule of Civil Procedure 54(d) in failing to include an affidavit of counsel in its Motion. Accordingly, on this ground alone Petitioner's Motion must be denied.**

NRCP 54(d)(2)(b) provides in relevant part as follows:

**(B) Timing and Contents of the Motion.** Unless a statute provides otherwise, the motion must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it; **and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, documentation concerning the amount of fees claimed,** and points and authorities addressing appropriate factors to be considered by the court in deciding the motion. The time for filing the motion may not be extended by the court after it has expired. (Emphasis added).

Accordingly, where – as here – no statute excuses the requirement of an affidavit of counsel swearing that the fees sought were actually and necessarily incurred and were reasonable, this affidavit is required of counsel, along with documentation of the fees claimed. Petitioner has failed to comply with this Rule in at least two (2) crucial respects. First, the Petitioner failed to attach an affidavit of counsel swearing that the fees were actually and necessarily incurred and were reasonable. *See* Petitioner's Motion for Attorney's Fees on file herein. Additionally, even if

1 Petitioner's attorney were to execute the required affidavit under NRCP 54(d)(2)(b), the Petitioner  
2 has still failed to adequate "...documentation concerning the amount of fees claimed." NRCP  
3 54(d)(2)(b). Petitioner purportedly attached a "Client Fees Listing" to the Motion, and will likely  
4 argue this suffices as the required documentation. However, no such document was attached to the  
5 Motion received by Proimtu, and unless it includes more than simply a listing of the fees sought,  
6 would not meet the requirements of the rule.

7 Accordingly, Petitioner has failed to comply with NRCP 54(d)(2). This ground alone  
8 requires that the Petitioner's Motion be denied in its entirety.

9 **B. Even if Petitioner's failure to comply with NRCP 54(d)(2)(b) was not fatally**  
10 **defective, Petitioner wrongly included approximately 18 hours of non-billable**  
11 **time in its calculations.**

12 In *Comcast of Ill. X, LLC v. Kwak*,<sup>1</sup> the Nevada District Court held that travel time for an  
13 attorney outside of the forum is not compensable where the party seeking reimbursement has not  
14 shown that local counsel could have been used. There the court held as follows:

15 Additionally, while evidence of local custom would shed some light on the  
16 appropriateness of the travel time billed by Mr. Platt for conducting Defendant's  
17 deposition, **here, if local counsel was used, there would be no charges for travel**  
18 **time charged for travel to and from court hearings.** Further, Mr. Platt has billed  
19 his full hourly rate for travel time. The Court finds that on the current record, there  
20 is no evidence supporting recovery of Mr. Platt's travel time to attend court  
21 hearings in Las Vegas, Nevada, the local forum. Plaintiff has failed to show that it  
22 was necessary to use Mr. Platt, a Chicago attorney, rather than local counsel, and  
23 therefore the Court will not award travel costs.<sup>2</sup>

24 *See also, Hart v. Bourque*, 798 F.2d 519, 523 (1st Cir. Mass. 1986) (Court upheld district  
25 court's elimination of time spent traveling as "unnecessary" time). Petitioner's Motion seeks fees  
26 for **two 9-hour trips** to Tonopah to attend hearings. Neither of these are compensable. *See*  
27 Motion at p. 3. While the billings of counsel are not detailed or provided, the Motion represented  
28 a total of 35 hours on this matter at a billable rate of \$350 an hour, **including 18 hours of travel**  
**time.** This 18 hours represents a necessary deduction of \$6,300 in Petitioner's fees, bringing  
Petitioner's total requested fees from \$12,180 to \$5,880.

///

<sup>1</sup> 2010 U.S. Dist. LEXIS 105809, \*17-21, 2010 WL 3781768 (D. Nev. Sept. 20, 2010).

<sup>2</sup> *Id.*

1 As Petitioner has failed to comply with the strict provisions of NRCP 54(d)(2)(b), its  
2 Motion must be denied in its entirety. Alternatively, the amount Petitioner has requested should  
3 be discounted by at least 18 hours (\$6,300), while reserving the right to object to any other  
4 excessive fees sought in this matter.

5 **III. CONCLUSION**

6 For all these reasons, Plaintiff respectfully requests that this Court deny Petitioner's Motion  
7 for Attorney's Fees in its entirety, and grant such other and further relief as the Court deems  
8 necessary and proper.

9 DATED this 17th day of July, 2015.

10  
11 

FENNEMORE CRAIG, P.C.

Christopher H. Byrd, Esq. (No. 1633)

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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

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**CERTIFICATE OF SERVICE**

The undersigned, an employee of the law firm of FENNEMORE CRAIG, P.C., hereby certifies that on July 17, 2015, I served a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEY'S FEES** by placing a copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Becky A. Pintar, Esq.  
Bryan L. Albiston, Esq.  
PINTAR ALBISTON LLP  
6053 S. Fort Apache Road, Suite 120  
Las Vegas, Nevada 89148  
*Attorneys for TRP International, Inc.*

By:

  
An employee of FENNEMORE CRAIG



## TROTTER, LUCY

---

**From:** trackingupdates@fedex.com  
**Sent:** Monday, July 20, 2015 11:56 AM  
**To:** TROTTER, LUCY  
**Subject:** FedEx Shipment 774082699389 Delivered

# Your package has been delivered

Tracking # 774082699389

Ship date:  
**Fri, 7/17/15**  
Lucy Trotter  
Fennemore Craig  
Las Vegas, NV 89101  
US




Delivery date:  
**Mon, 7/20/15 11:51 am**  
Clerk's Office  
Fifth Judicial District Court  
1520 E. Basin Ave. Suite 108  
PAHRUMP, NV 89060  
US



## Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	<u>774082699389</u>
Status:	Delivered: 07/20/2015 11:51 AM Signed for By: V.AGUARLIA
Reference:	034514.0013
Signed for by:	V.AGUARLIA
Delivery location:	PAHRUMP, NV
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday

 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 1:56 PM CDT on 07/20/2015.

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All weights are estimated.

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Lucy Trotter

FedEx® Tracking

**774082699389**Ship date:  
**Fri 7/17/2015**Fennemore Craig  
Lucy Trotter  
Suite 1400  
300 S. Fourth St.  
Las Vegas, NV US 89101  
702 692-8031**Delivered**

Signed for by: V. AGUARLIA

Actual delivery:  
**Mon 7/20/2015 11:51 am**Fifth Judicial District Court  
Clerk's Office  
Suite 108  
1520 E. Basin Ave.  
PAHRUMP, NV US 89060  
775 751-7057

## Travel History

Date/Time	Activity	Location
7/20/2015 - Monday		
11:51 am	Delivered	PAHRUMP, NV
8:22 am	On FedEx vehicle for delivery	LAS VEGAS, NV
7/18/2015 - Saturday		
7:57 am	At local FedEx facility	LAS VEGAS, NV
7:57 am	At local FedEx facility Package not due for delivery	LAS VEGAS, NV
7/17/2015 - Friday		
6:37 pm	At destination sort facility	LAS VEGAS, NV
6:00 pm	Left FedEx origin facility	NORTH LAS VEGAS, NV
4:58 pm	Shipment information sent to FedEx	
4:19 pm	Picked up	NORTH LAS VEGAS, NV

## Shipment Facts

Tracking number	774082699389	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Delivery attempts	1
Delivered To	Receptionist/Front Desk	Total pieces	1
Total shipment weight	0.5 lbs / 0.23 kgs	Terms	Not Available
Shipper reference	034514.0013	Packaging	FedEx Envelope
Special handling section	Deliver Weekday		

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[Ancillary Clearance Services](#)**Other Resources**  
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1 Becky A. Pinta, Esq.  
 Nevada State Bar # 7867  
 2 Bryan L. Albiston, Esq.  
 Nevada State Bar # 12679  
 3 PINTAR ALBISTON LLP  
 6053 S. Fort Apache Road, Suite 120  
 4 Las Vegas, Nevada 89148  
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 5 (702) 202-6329 fax  
 Becky@PintarAlbiston.com

6 Attorneys for Plaintiff  
 7 TRP INTERNATIONAL, INC.

8 **FIFTH DISTRICT COURT**  
 9 **NYE COUNTY, NEVADA**

10  
 11 TRP INTERNATIONAL, INC., a foreign  
 corporation,

12 Petitioner,

13 v.

14 PROIMTU MMI LLC, a Nevada limited liability  
 company,

15 Respondent.

Case No.: CV-36431  
 Dept.: I

**MOTION FOR ATTORNEY FEES**

17 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their  
 18 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Motion for Attorney  
 19 Fees. This Motion is based upon NRS 108.2275(6) that provides that Petitioner is entitled to its  
 20 attorney fees once the Court ordered the lien expunged.

21 This Motion is based upon the following Memorandum of Points and Authorities, exhibit,  
 22 and pleadings on file herein, and any oral argument the Court may require.

23 DATED this 2<sup>nd</sup> day of July, 2015.

24 PINTAR ALBISTON LLP

25 By:

26 Becky A. Pinta  
 27 Becky A. Pinta, Esq.

FILED

2015 JUL -6 P 3:08

**E. Westerlund**  
 NYE COUNTY CLERK  
 BY DEPUTY

PINTAR, BISTON LLP

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3 PLEASE TAKE NOTICE that on the 9 day of Sept, 2015 at 9:00 a.m.,  
4 TRP International, Inc.'s Motion for Attorneys' Fees will be heard in Department I.

6 Dated: July 2, 2015

6 Dated: July 2, 2015 PINTAR ALBISTON LLP

8 By: Becky A. Pinter  
0 Becky A. Pinter, Esq.

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

12 **A. TRP is Seeking a Reasonable Amount of Fees**

TRP is seeking \$12,180 in fees, for a total of almost 35 hours at \$350/hour. ***See Client Fees Listing, attached hereto.*** All fees incurred were necessary and reasonable given the complexity of the matter. Moreover, the Petition required two hearings which were held in Tonopah, Nevada, a round trip from Las Vegas of 450 miles. This which required a full day of travel.

## B. Procedural Background

During a hearing on TRP's Petition to Expunge the Lien, held on June 18, 2015, the Court found that the lien was not valid and ordered it expunged. The Court also awarded TRP its attorney fees upon application, pursuant to NRS 108.2275(6).

TRP tried to resolve this issue with PROIMTU MMI LLC (“Proimtu”) to remove its lien prior to initiating legal action. Thereafter, TRP initiated legal action. The following procedural summary provides support that the fees sought are reasonable considering the amount of work done.

5 **November 21, 2014:** TRP drafts letter to Proimtu requesting it to remove its invalid lien from  
6 the project which is rejected by Proimtu.

**December 12, 2014:** Petition to Expunge Lien is filed; hearing set for February 12, 2015.

**January 30, 2015:** Respondent files an Opposition that included nine exhibits.

1     **February 9, 2015:** TRP files a Reply.

2     **February 12, 2015:** TRP completes a supplemental disclosure and presents oral argument to  
3     Judge Wanker; the hearing, along with travel to and from Las Vegas is nine hours.

4     **March 3, 2015:** Judge Wanker declines to issue a ruling resulting in a second hearing.

5     **April 16, 2015:** TRP files a Request to Place Petition on for Rehearing.

6     **June 18, 2015:** Judge Elliott hears oral argument and rules in TRP's favor. This is a second trip  
7     to Tonopah, resulting in another nine hour round trip.

8     **June 22, 2015:** TRP presents its proposed findings of fact and conclusions of law to opposing  
9     counsel.

10    **July 2, 2015:** Proposed findings of fact and conclusions of law are finalized between counsel.

11    TRP made every effort to resolve the lien issue without the Court's intervention but said attempts  
12    were unsuccessful and resulted in TRP commencing the instant action. TRP's attorney's fees and  
13    costs are reasonable and necessary and therefore this Court should award said fees to TRP.

## 14                   II.    ARGUMENT

### 15    A.   Court has Awarded Attorney's Fees Pursuant to the Express Provisions of 16       NRS 108.2275(6)

17       NRS 108.2275(6) provides:

18       If, after a hearing on the matter, the court determines that:

19       (a) The notice of lien is frivolous and was made without reasonable cause, the court  
20       shall make an order releasing the lien and awarding costs and reasonable attorney's  
      fees to the applicant for bringing the Petition.

### 21    B.   Plaintiff's Attorney's Fees are Reasonable and Justified

22       The reasonableness of TRP's request for an award of attorney's fees is measured and  
23    determined by the holding in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).  
24    In *Brunzell*, the court focused on four (4) general factors which include: (1) the qualities of the  
25    advocate: his or her ability, training, education, experience, professional standing and skill; (2) the  
26    character of the work to be done: its difficulty, its intricacy, its importance, time and skill required,  
27    the responsibility imposed and the prominence and character fo the parties where they affect the  
28    importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and

1 attention given to the work; and (4) the result: whether the attorney was successful and what benefits  
2 were derived.

3 The analysis which follows, coupled with the facts and procedural posture of this case,  
4 including that the Court ruled in TRP's favor, finding the lien was invalidly recorded, clearly  
5 demonstrate that TRP is entitled to reasonable attorney's fees incurred as a result of filing the instant  
6 action.

### 7 1. Qualities of the Advocate

8 Becky A. Pintar, has been a licensed attorney in the state of Nevada for almost 14 years and  
9 her qualities are well known in the community. She has conducted numerous trials at both the Justice  
10 Court and District Court levels, as well as appellate work, and has produced successful results for  
11 many of her clients throughout the last 14 years. From 2001 through 2012, almost 80 percent of the  
12 legal work she performed was related to construction. She has considerable amount of training and  
13 education and is in good professional standing with the State Bar of Nevada. Ms. Pintar's qualities  
14 and training as TRP's attorney are what ultimately led to the lien being expunged.

### 15 2. Character of Work

16 The character of work performed by Becky A. Pintar for TRP, including analysis, research of  
17 the applicable law, drafting of all pleadings, and all argument and preparation the hearings  
18 demonstrate that the second factor enumerated in *Brunzell* has been satisfied.

### 19 3. Work Performed

20 The work actually performed by counsel for TRP is evidenced by the pleadings filed and the  
21 oral argument provided at the hearing, all resulting in the Court ruling in TRP's favor.

### 22 4. Result

23 The end result of the work performed on behalf of TRP is self-evident: TRP was successful  
24 in its argument that the lien was filed without Proimtu satisfying the statutory requirements.

## 26 III. CONCLUSION

27 As the foregoing analysis demonstrates, TRP's attorney's fees are reasonable according to the  
28 four part test enumerated in the case of *Brunzell* and therefore Plaintiff Patterson respectfully

1 requests this Court award attorney's fees to him in the amount of \$12,180 for almost 35 hours of  
2 work performed at the reasonable rate of \$350/hour.  
3  
4

5 DATED: July 2, 2015

PINTAR ALBISTON LLP

6  
7 By: Becky A. Pinta  
8 Becky A. Pinta, Esq., NSB # 7867  
9 Bryan L. Albiston, Esq., NSB # 12679  
10 6053 S. Fort Apache Rd. #120  
11 Las Vegas, Nevada 89148  
12 Attorney for Petitioner TRP INTERNATIONAL, INC.  
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Pintar Albiston LLP  
Client Fees Listing  
ALL DATES  
Working Lawyer

Date	Entry #	Fee / Time Explanation	Hours	Amount	Inv#	Billing Status
	1058	TRP International, Inc.				
	318	Expunge Proimtu lien				
Dec 1/2014	20527	Lawyer: BAP 0.50 Hrs X 350.00	0.50	175.00	5092	Billed
		Review response from counsel for Proimtu re: lien; telephone conference with client re: same				
Dec 3/2014	20528	Lawyer: BAP 4.00 Hrs X 350.00	4.00	1400.00	5092	Billed
		Draft petition to expunge lien				
Jan 5/2015	18243	Lawyer: BAP 0.30 Hrs X 350.00	0.30	105.00	5092	Billed
		Telephone conference with Pahrump court and Tonopah court re: petition to expunge lien				
Jan 20/2015	18242	Lawyer: BAP 0.30 Hrs X 350.00	0.30	105.00	5092	Billed
		Draft certificate of service for petition to expunge lien				
Jan 26/2015	18241	Lawyer: BAP 0.60 Hrs X 350.00	0.60	210.00	5092	Billed
		Telephone conference with Tonopah court re: lien actions				
Jan 27/2015	18240	Lawyer: BAP 0.50 Hrs X 350.00	0.50	175.00	5092	Billed
		Review email chain from lien attorneys; draft update to client; telephone conference with Cobra attorney				
Feb 3/2015	18238	Lawyer: BAP 3.00 Hrs X 350.00	3.00	1050.00	5092	Billed
		Review opposition to expunge lien; draft reply				
Feb 10/2015	18235	Lawyer: BAP 2.00 Hrs X 350.00	2.00	700.00	5092	Billed
		Review invoices; meeting with Neftali				
Feb 12/2015	20200	Lawyer: BAP 9.00 Hrs X 350.00	9.00	3150.00	5092	Billed
		Travel to and from Tonopah; attend court hearing				
Mar 10/2015	18330	Lawyer: BAP 0.30 Hrs X 350.00	0.30	105.00	5092	Billed
		Review order; draft update to client				
Mar 26/2015	18551	Lawyer: BAP 0.50 Hrs X 350.00	0.50	175.00	5092	Billed
		Draft request for ruling				
Jun 12/2015	20197	Lawyer: BAP 0.30 Hrs X 350.00	0.30	105.00	5092	Billed
		Review and confirm communication from court re: hearing; draft update to client				
Jun 18/2015	20198	Lawyer: BAP 9.00 Hrs X 350.00	9.00	3150.00	5092	Billed
		Travel to and from Tonopah; attend hearing				
Jun 22/2015	20199	Lawyer: BAP 2.00 Hrs X 350.00	2.00	700.00	5092	Billed
		Draft proposed findings of fact and conclusions of law				
Jul 2/2015	20526	Lawyer: BAP 2.50 Hrs X 350.00	2.50	875.00	5092	Billed
		Review proposed revisions to order; draft memorandum of costs and motion for attorney fees				
Unbilled:			0.00	0.00		
Billed:			34.80	12180.00		
Total:			34.80	12180.00		
Percent Billed:			100.00	100.00		



## PINTAR BISTON LLP

Brenoch R. Wirthlin, Esq.  
FENNEMORE CRAIG PC  
300 S. Fourth St., Suite 1400  
Bank of America Plaza  
Las Vegas, NV 89101

An employee of  
PINTAR ALBISTON LLP

DISTRICT COURT  
NYE COUNTY, NEVADA

FILED

2015 DEC -4 A 11: 55

TRP INTERNATIONAL, )

)

Plaintiff, )

)

Debra L. Melott

CLERK  
DEPUTY

vs. ) CASE NO. CV-36431

)

PROIMTU MMI LLC, )

)

Defendant. )

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

BEFORE THE HONORABLE STEVEN ELLIOTT  
SENIOR JUDGE

HELD ON JUNE 18, 2015

9:00 AM

PAHRUMP, NEVADA

APPEARANCES:

FOR THE PLAINTIFF: BECKY PINTAR, ESQ.

FOR THE DEFENDANT: BRENOCH WIRTHLIN,  
ESQ.

REPORTED BY: SARA BERNSTEIN

Page 1

Veritext Legal Solutions  
877-955-3855

1 PAHRUMP, NEVADA, JUNE 18, 2015

2 9:06 A.M.

3

4 \* \* \* \* \*

5 THE COURT: I was there last week  
6 and I noted that the chair's kind of low.  
7 I should have raised it up when I had the  
8 chance.

9 Okay. Well, I'll introduce myself.  
10 I'm Senior Judge Steve Elliott from Reno.  
11 I served seventeen years in the Second  
12 Judicial District, doing general  
13 jurisdiction work, although it seems like  
14 the majority of my senior judging has  
15 been in Vegas doing Family Court. I was  
16 there most of the summer last summer and  
17 had a great time.

18 Well, we're here on TRP  
19 International's motion to expunge the  
20 lien of Proimtu MMI. And this is for  
21 work that, as I understand it, is  
22 basically assembling heliostats, moving  
23 them over to their proper place in the  
24 array, and installing them. And I have  
25 to admit, all this work that you two

Page 2

1 parties have done with regard to what is  
2 labor is really fascinating. It's almost  
3 like, well, what is the definition of  
4 "is". You know, what do we mean by this?

5 So I've kind of gone back forth and,  
6 you know, I've been thinking about it and  
7 studying and I wish there was some more  
8 case law as to what did the legislature  
9 mean by the term "labor" in this statute  
10 NRS 108.245. But anyway, I'm eager to  
11 hear you explain this to me so that I  
12 might be able to figure that one out.

13 And I guess we would go to TRP and  
14 I'm assuming that's at this table?

15 MS. PINTAR: Yes, Your Honor.

16 THE COURT: Is that right? And  
17 would you be Ms. Pintar?

18 MS. PINTAR: I am. Becky Pintar. I  
19 also have with me Gustavo Calzado (ph.),  
20 who came from Spain to Tonopah just for  
21 this, and Mr. Naftali Menuoz (ph.), who  
22 is based in the United States but was on  
23 his way to Spain when he got the call  
24 that the hearing was set. So this was  
25 very important to TRP International.

1 THE COURT: Okay.

2 MS. PINTAR: So that's who I have  
3 with me today. All right.

4 Your Honor, obviously, you're aware  
5 of the background of this dispute. This  
6 goes to the lien statutes, which we know  
7 mechanic's lien are a statutory NRS  
8 Chapter 108. So we have to look to the  
9 statute because that's what creates the  
10 ability to record a lien on a property.  
11 One of the requirements is the  
12 preliminary notice, 108.245, with an  
13 exception for labor. And I'm glad the  
14 Court looked at that first because, you  
15 know, we too have been -- you know, you  
16 want to find something that says labor is  
17 this.

18 So if we look at, really, two  
19 statutes, one is we have a lien claimant.  
20 And a lien claimant is the performance of  
21 worker services under its contract. So  
22 we know that Proimtu may be a lien  
23 claimant, but to be a valid lien  
24 claimant, you must satisfy the  
25 preliminary notice, with exceptions.

Page 4

1           One exception is if you supply  
2           directly to the owner, which is not  
3           applicable. The second one is what the  
4           Court brought up, labor. Interestingly  
5           enough, as I was just sitting out front,  
6           I'm looking again at my pleadings, NRS  
7           624.020. So we're looking at the  
8           definition of labor. I would submit to  
9           the Court that a labor is done by  
10          laborers, which is an individual that  
11          comes to work on a construction project,  
12          is not paid by whatever entity employs  
13          him, and then he has a lien claim for  
14          that labor he supplied against the owner,  
15          without a preliminary notice. That's  
16          what makes sense. It's not for a  
17          company.

18          A subcontractor, by every definition  
19          of the word -- to try to circumvent the  
20          statute and say, oh, we didn't do a  
21          preliminary notice. And I know why they  
22          didn't do a preliminary notice because we  
23          didn't either -- TRP International --  
24          because when this project started, no one  
25          was sure -- these are two Spanish

1 companies, as is COBRA, the general  
2 contractor.

3 These two companies came in from  
4 Spain; they're not really aware of the  
5 U.S. and Nevada law. And at the time,  
6 both Proimtu and TRP International were  
7 not licensed in the State of Nevada.  
8 They have since both been licensed. So,  
9 we weren't sure if they needed to be  
10 licensed to be doing this work because  
11 this was -- most of the contracts were  
12 done in Spain. Then they came over here  
13 and started performing work.

14 During the course of this, it was  
15 subject to the Bacon-Davis (sic) Law --  
16 the federal law -- for wages, as well as  
17 the Nevada State Contractors Board got  
18 involved and in fact, was going to cite  
19 TRP International for not being licensed  
20 as -- I don't know if they were Proimtu  
21 either but there was some subcontracts to  
22 try to circumvent the Nevada State  
23 Contractors Board because I dealt with it  
24 with Proimtu, where they were contracting  
25 through another entity that was licensed.

Page 6

1 And that's why there was no preliminary  
2 notice, because we didn't want to bring  
3 attention to the fact that we were not  
4 licensed.

5 Ultimately, the federal government  
6 said to the Nevada State Contractors  
7 Board they don't have to be licensed  
8 because it's being -- the loan is being  
9 guaranteed by the federal government. So  
10 ultimately, there was a ruling, by the  
11 Nevada State Contractors Board because  
12 federal contracts allow contractors to  
13 perform work without being licensed in  
14 the State of Nevada, one of the few  
15 exceptions.

16 So then -- but by then, the work was  
17 almost done. There was no preliminary --  
18 that's why there was no preliminary  
19 notice. So now, Proimtu records a lien  
20 anyway because they're trying to secure  
21 their claim with a claim on the property.  
22 It's now been bonded around so there's a  
23 bond there. So, labor should not be a  
24 subcontractor. So, let's look at NRS  
25 624.020. This is a definition of a



1 contractor.

2 THE COURT: So this is in your  
3 reply, right?

4 MS. PINTAR: Yes. This is in my  
5 reply on page 2. This is the definition  
6 and there it is, staring us in the face,  
7 exactly what labor is. A contractor is  
8 any person, except a registered architect  
9 or a licensed professional engineer,  
10 acting solely in a professional  
11 capacity."

12 That's exactly what Proimtu was  
13 doing, acting solely in a professional  
14 capacity. That's what they do, is erect  
15 these big stands for these solar  
16 reflectors -- who in any capacity, other  
17 than as an employee of another with wages  
18 as the sole compensation. I would submit  
19 to this Court, that is the definition of  
20 labor. It is an employee of another that  
21 comes on. They're just due wages and  
22 they don't get paid. The statute then  
23 allows them to record a lien to secure  
24 that payment against the owner, without  
25 the preliminary notice.

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1       Other than that sole exception, it's  
2       a contractor. A contractor is someone  
3       who constructs, alters, repairs, adds to,  
4       subtracts from, improves, move, wreck, or  
5       demolish any building, highway, road,  
6       railroad, excavation, or other structure  
7       project development or improvement.

8       Really broad definition of a contractor,  
9       really broad, with one small exception,  
10      an employee of another with wages as his  
11      sole compensation. That's what that  
12      exception is for, labor. That's a  
13      laborer, someone that comes on. They  
14      have no other way of getting paid. They  
15      don't get paid. They have a lien without  
16      a preliminary notice.

17      What Proimtu is trying to argue is  
18      that they're not a contractor, when  
19      clearly, they are. And by their own  
20      opposition, on page 3, the Court just has  
21      to look at this to see that their  
22      monitoring procedures. Their monitoring  
23      documentary and procedural requirements.  
24      They have care, maintenance, and use of  
25      the tools. They're installing. They

1 have to comply with quality requirements.  
2 They have to establish and incorporate  
3 shifts. They have to meet calibrations,  
4 quality control. They have to do  
5 transportation from the assembly line to  
6 the final erection site. They have to  
7 prepare and submit approval for  
8 procedures. They provide all the tools,  
9 including huge cranes that were out  
10 there, maintenance of all equipment,  
11 strict monitoring of lifting procedures,  
12 final and perfect levelling and  
13 alignment, regalanization, preparation  
14 of risk assessment, preparation of  
15 environmental manage reports, certificates  
16 of materials used, issuance of  
17 certificates of inspection,  
18 implementation of temporary facilities to  
19 meet OSHA requirements, lights, when  
20 necessary, in the work areas. This is  
21 not labor; this is a job. It's a  
22 contract; it's a subcontractor.

23 If this is categorized as labor,  
24 every single contractor would be eligible  
25 for this exception and that's ludicrous

1 because every contractor, probably at  
2 least fifty percent is labor they supply,  
3 depending -- general contractor, that's--  
4 really, all they supply is labor. They  
5 contract everything else. They rarely  
6 supply any materials. It's labor. It's  
7 supervision. That's what general  
8 contractors do. They have to comply with  
9 the statute, as does the subcontractor.

10 The labor exception, I would submit  
11 to the Court, is clear. It's a person  
12 who comes on and their sole compensation  
13 is wages. That's what labor is. That's  
14 labor.

15 Their next exception is, well -- and  
16 you're going to see a video and a flow  
17 chart and it's very convoluted. The  
18 owner had actual notice. And there is an  
19 exception and there's a case law and this  
20 is case law. It's not statute; it's case  
21 law. So we're going to look at a video  
22 and there's a hardhat with their name on  
23 it. Any construction project's going to  
24 have hardhats with names on it. What  
25 they're missing, though -- and I hate to

1 call it a dog-and-pony show but that's  
2 really what it is. What's missing here  
3 is why don't they have an actual  
4 affidavit from the owner saying, yes, we  
5 had actual notice? And it's not just,  
6 did they know this company was there?

7 What is the purpose of a preliminary  
8 notice? Number one, the scope of the  
9 work that they're going to do. The owner  
10 is entitled to know. Just because they  
11 know someone named Proimtu is on the  
12 site, doesn't mean they know the scope of  
13 work.

14 Number two, the value of that work.  
15 Those are the two requirements of a  
16 preliminary notice. It's to protect the  
17 owner. That's not there. They -- you  
18 know, if they truly wanted to confirm  
19 that the owner had actual notice, they  
20 should have went to the owner and got a  
21 statement from the owner. And they could  
22 have certainly done that since February.  
23 That's not here. I think that would be  
24 the evidence to show that the owner had  
25 actual notice, not the video, not the

1 flow chart, not a hardhat with Proimtu's  
2 name on it.

3 This is -- and the reason we have  
4 these representatives here is this has  
5 been a huge hardship on TRP  
6 International -- this lien, not the  
7 dispute with Proimtu because they're  
8 ready to solve the dispute. COBRA had to  
9 post a bond because of the contract they  
10 had with the owner. They now have held  
11 that amount, three-and-a-half million  
12 dollars from TRP International and  
13 because that money is being withheld, it  
14 doesn't even allow TRP International to  
15 negotiate with Proimtu to try to get this  
16 resolved.

17 Now, last time we came to court in  
18 February, there were a courtroom of lien  
19 claimants. I was just talking to  
20 counsel, I said, you know what's  
21 happened? His understanding is most of  
22 those have settled out with COBRA. This  
23 is still standing because we actually --  
24 TRP was the subcontractor with COBRA but  
25 then they're a sub-subcontractor.

1           So TRP can't resolve it until they  
2       get this resolved. They can't resolve it  
3       with COBRA until they get this resolved  
4       so they know how much money is being  
5       released to them. Then they can  
6       negotiate with Proimtu. Proimtu is not  
7       releasing their claim. This is not going  
8       to the merits of their claim. It is  
9       simply going to the statutory  
10      requirements.

11          Now, Proimtu argues substantial  
12      compliance. This is not substantial  
13      compliance; this is no compliance. And  
14      in our reply, the Supreme Court of Nevada  
15      has stated that we do not think that the  
16      rules of lien may be so liberally  
17      construed as to condone the total  
18      elimination of a specific requirement of  
19      the statute. There's no doubt that there  
20      was no preliminary notice. There is the  
21      total elimination. Labor is not a valid  
22      exception and I think counsel knows that  
23      because now they've come with this  
24      alternate theory of actual notice.  
25      That's not substantial compliance either;

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1     that's no compliance.

2             So what we're asking is that this  
3     lien be released, the bond be exonerated.  
4     That would now allow COBRA to release the  
5     funds to TRP, who then could negotiate  
6     with Proimtu. Regardless if they resolve  
7     it or not, they still have their contract  
8     claim against TRP International. This is  
9     not getting rid of their claim. It's not  
10    going to the merits. It's a legal and  
11    factual determination of have they  
12    complied with NRS 108 to have a valid  
13    lien?

14            Our argument is they simply have  
15    not. It is not a labor exception. It's  
16    not actual notice. So therefore, this  
17    Court should rule that the lien should be  
18    released from the bond. The bond should  
19    be exonerated. And then these two  
20    parties can resolve their claims.

21            If there's no questions -- oh, and  
22    the other thing, if it's found not valid  
23    at the end, we're also requesting out  
24    attorneys' fee under 108.2275, paragraph  
25    6.



1 Any questions for me, Your Honor?  
2 THE COURT: Not right now, Ms.  
3 Pintar.  
4 MS. PINTAR: Okay, thank you.  
5 THE COURT: But you certainly will  
6 be afforded an opportunity to speak  
7 again.  
8 MS. PINTAR: Thank you.  
9 THE COURT: And then would you be  
10 Mr. Byrd?  
11 MR. WIRTHLIN: No, sir.  
12 THE COURT: No?  
13 MR. WIRTHLIN: No, Your Honor, Mr.  
14 Wirthlin.  
15 THE COURT: Okay.  
16 MR. WIRTHLIN: Brenoch Wirthlin.  
17 THE COURT: Okay. Then why don't  
18 you go ahead and explain the Proimtu  
19 position.  
20 MR. WIRTHLIN: Certainly. And Your  
21 Honor, we'd like to state just a couple  
22 of things for the record. This hearing  
23 is incredibly important for Proimtu. Mr.  
24 Gonzalez, who executed the affidavit, is,  
25 I believe, in Chile. He travels very

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1 extensively to be able to keep up with  
2 Proimtu's obligations.

3 Secondly, we would, of course,  
4 object -- put an objection on the record  
5 to any argument that wasn't set forth in  
6 the briefing or the prior hearing and  
7 request an opportunity to respond.

8 That being said, if the Court  
9 doesn't have any questions -- I'd be  
10 happy to address any questions that the  
11 Court has. Otherwise, I'd like to just  
12 hit, kind of, the key points that I think  
13 are important.

14 THE COURT: Okay. And I heard you  
15 have the video so of course I want to see  
16 that.

17 MR. WIRTHLIN: Sure. Absolutely,  
18 Your Honor. We do have the video. And I  
19 think -- I can show that now or towards  
20 the end of the presen -- however the  
21 Court would like me to do that.

22 THE COURT: Well, I hate to tell you  
23 what order makes the most sense. So -- I  
24 mean, I'm not sure how you're organized  
25 here.

1 MR. WIRTHLIN: Certainly. Okay.  
2 Well, I'll just go through then and when  
3 we get to the video, we'll get there  
4 and --

5 THE COURT: Okay.

6 MR. WIRTHLIN: -- you know, it does  
7 definitely tie some things together that  
8 we talked about earlier.

9 So, the way counsel has phrased  
10 those issues, generally, we agree with  
11 that. The exception is labor and if the  
12 Court -- even if the Court were to  
13 determine that Proimtu provided something  
14 other than labor -- which I think would  
15 be very difficult in this case -- we have  
16 the exception of actual notice, which we  
17 can show in multitude of ways.

18 There are a couple of legal issues,  
19 though, I think that should be kind of  
20 straightened out from the pleadings. In  
21 the reply, TRP mentions -- they cite a  
22 case of Fisher Brothers (ph.) that holds  
23 that -- or appears to hold that strict  
24 compliance with mechanics lien laws is  
25 required. That has been overruled.

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1           The 2010 -- the Nevada Supreme  
2   Court, in Fontainebleau made very clear  
3   that Nevada's longstanding case law  
4   supports a liberal interpretation of the  
5   mechanics lien statutes that allow  
6   substantial performance of statutory  
7   requirements to perfect a lien. And  
8   that's -- I'm sorry, that's Hardy v.  
9   SNMARK 245 P.3d 1149. And one thing  
10   about Hardy -- that Hardy points out that  
11   I think is really important to remember  
12   here, the mechanics lien statutes are for  
13   subcontractors in the position of  
14   Proimtu, to protect them from getting --  
15   to make sure that they get paid.

16           And counsel's correct. If the Court  
17   were to expunge the lien, that doesn't  
18   necessarily get rid of the contract  
19   claim, but it would dramatically decrease  
20   Proimtu's ability to get that payment and  
21   to negotiate that payment. I think there  
22   was kind of a suggestion that Proimtu has  
23   been difficult or doesn't want to  
24   negotiate. That's all they want to do.  
25   They just want this resolved. And the

1 mechanics lien statute, as the Nevada  
2 Supreme Court set out in Hardy, is  
3 specifically set up so that they can do  
4 that. So that they can't -- so that they  
5 don't end up in the situation which  
6 they're in, where they go do work -- and  
7 there's no dispute they did the work.  
8 There's no dispute they weren't paid and  
9 then have no recourse. And that's  
10 essentially what TRP -- the position that  
11 TRP wants to put us in.

12 Secondly, I think it's important to  
13 note -- and that also is in  
14 Fontainebleau, Your Honor, 289 P.3d 1199.  
15 The legislature substantially provides  
16 mechanics lien statutes with the intent  
17 "to facilitate payments to lien  
18 claimants".

19 Secondly, a subcontractor -- as  
20 counsel's already noted, a subcontractor  
21 can supply only labor. NRS 108.245  
22 requires "every lien claimant, other than  
23 one who performs labor, is required to  
24 serve a prelien notice." So then we have  
25 to jump back to 108.224 -- or excuse me,

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1 2214, subsection 1, how is lien claimant  
2 defined? TRP wants to erase Proimtu from  
3 that definition.

4 But that's not how the statutes  
5 read. The statute says, specifically,  
6 the term "lien claimant" includes,  
7 without limitation, every artisan,  
8 builder, contractor, laborer, lessor, or  
9 renter of equipment, material, miner,  
10 subcontractor, or other person who  
11 provides work, material, or equipment."  
12 No question Proimtu provided work and got  
13 that installation done.

14 And to just to back up a little bit,  
15 Your Honor is correct. That's what  
16 Proimtu did. They went out there and  
17 they installed the heliostats. Now, that  
18 is labor; I don't know what else could be  
19 labor. Certainly, they had the tools  
20 that they had to screw in the bulbs and  
21 other things. But that is labor. They  
22 did not manufacture those heliostats;  
23 they just installed them once they were  
24 done.

25 THE COURT: Well, didn't they

1 actually go to an assembly area and do  
2 some assembly of the heliostat?

3 MR. WIRTHLIN: Yeah. The parts came  
4 in --

5 THE COURT: And then moved in an  
6 assembled position out to their proper  
7 spot in the array?

8 MR. WIRTHLIN: Yes. And, Your  
9 Honor, it shows it in the video that  
10 we're going to watch. The heliostats are  
11 massive. They couldn't -- I don't think  
12 they could even shift it.

13 Plus, they're a kind of material --  
14 I'm not sure exactly what it is but  
15 certainly, you couldn't just stack them  
16 in a truck and ship them out. But it's  
17 like a -- the parts are out there and the  
18 parts are shipped out there. The parts  
19 are manufactured; Proimtu had nothing to  
20 do with any of that. All they do is  
21 screw the bolts together, take them out  
22 and set them up.

23 And I believe, in the video, the  
24 manager of the site says that it takes  
25 about eleven minutes to install one

1 heliostat in the circular rings that  
2 they're set up in. And the question --  
3 the Court raised a good question about  
4 what is labor and that there's not a lot  
5 of case law in Nevada. That's true.

6       However, we cited in our hearing, a  
7 case that's very relevant from the  
8 Supreme Court of Indiana, 101 N.E. 296,  
9 Moore-Mansfield Construction v.  
10 Indianapolis. The Court says this about  
11 labor in the lien claimant context, "It  
12 is not any less labor within the general  
13 meaning of the word that it is done by a  
14 person who is fitted by special training  
15 and skill for its performance. The  
16 language quoted makes no distinction  
17 between skilled and unskilled labor or  
18 between mere manual labor and the labor  
19 of one who supervises, directs, and  
20 applies the labor of others."

21       We would submit, Your Honor, if this  
22 isn't labor, I don't know what could be  
23 because all we did was show up, assemble  
24 the heliostats, and that was it. That  
25 was our job. So certainly, we would



1     argue, Your Honor -- I'm sorry, go ahead.  
2     Your Honor had a question?

3           THE COURT: Well, I would relate  
4     that as I prepared for this hearing, of  
5     course I read the TRP brief first, where  
6     they're saying you're not just labor,  
7     that you shouldn't be afforded the  
8     benefit of that exclusion. And then your  
9     brief saying, you know, well, we're all  
10    in labor.

11           So then I went back to read the  
12    initial brief again to see, well, I  
13    wonder how they're getting out of this.  
14    And I read that while we're not just  
15    labor, you know, these are skilled  
16    positons, electricians and whatnot. And  
17    I was thinking, I don't think I can buy  
18    that that somehow you have to be a member  
19    of the Laborers' International Union to  
20    comply with this.

21           And I'm somewhat familiar with, you  
22    know, construction sites because my  
23    father was a general contractor and I was  
24    a laborer. I mean, I know the difference  
25    between, you know, a journeyman, plumber,

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1 electrician, carpenter, you know,  
2 bricklayer/mason. And, you know, I  
3 worked one summer with a mason and I was  
4 the hod carrier. Well, I think a hod  
5 carrier is a laborer. It's not a skilled  
6 position; he just carries the mortar out  
7 to -- you know, from the mixer to the  
8 bricklayer.

9 But I accept your position on this.  
10 You know I couldn't buy that, well, if  
11 you're a skilled position -- you know, if  
12 you're a skilled journeyman of one of  
13 these trades, then somehow that's not  
14 labor. It's still labor.

15 MR. WIRTHLIN: Right.

16 THE COURT: You know, it's something  
17 else which is what Ms. Pintar mentioned  
18 in her reply. And then what she's  
19 promoting today is that a subcontractor  
20 who has, you know, control over the  
21 actions of the workers and is paid under  
22 a contract, not wages, well, a  
23 subcontractor is not labor.

24 MR. WIRTHLIN: Um-hum.

25 THE COURT: So I think that's a

1 position that still has to be debated but  
2 I just want to say that before coming in  
3 here, I was pretty sure that I wasn't  
4 going along with the initial brief by TRP  
5 that skilled work is not labor; only  
6 laborers are labor. So, you know, I just  
7 wanted to clarify that I've given some  
8 thought to that.

9 MR. WIRTHLIN: Absolutely and thank  
10 you for kind of directing me that way.  
11 To address what counsel said today about,  
12 I guess, the subcontractor -- the entity  
13 not being, you know, providing labor or  
14 being a laborer, I would submit that  
15 would completely eviscerate the statute.

16 If it had to be an individual who  
17 just showed up for work and it couldn't  
18 be the group of individuals that works  
19 under the entity that hires them and sets  
20 everything up, I don't think there'd be  
21 any purpose of the statute. An  
22 individual would just have to, kind of,  
23 wander in and look for work. Otherwise,  
24 how else would they be just a laborer?

25 Clearly, Proimtu is providing

1 services only in the character of labor.  
2 And the other thing that I would point  
3 out to the Court is that despite -- I  
4 understand TRP's position at this point,  
5 but prior to this, there was an  
6 understanding -- and we';; get into the  
7 interrelatedness of the companies. But  
8 there was -- it's an opposing prior  
9 admission. We submitted it in our e-  
10 mail, which was Exhibit C to our  
11 opposition --

12 THE COURT: Um-hum.

13 MR. WIRTHLIN: -- in which TRP and  
14 it's Ignacio Albodayef (ph.). I'm  
15 probably butchering that but he sends an  
16 e-mail back in 2012 -- it's Exhibit C to  
17 our opposition -- to Grupo COBRA, which  
18 we'll show is interrelated with  
19 SolarReserve and Tonopah Solar. They're  
20 all working together.

21 And this is what it says, we had an  
22 official translation done of that e-mail.  
23 "Dear sirs" -- again, this is from TRP.  
24 "Pursuant to that which has been  
25 established in the contract between TRP

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1 and CPI, we are requesting your  
2 authorization for contracting the company  
3 Proimtu to provide assembly-related labor  
4 services and the Tonopah plant." So  
5 there it is in TRP's own words. We're  
6 hiring Proimtu to perform assembly-  
7 related labor services. That's exactly  
8 what they did.

9 And, of course, going -- Tonopah  
10 Solar comes back and says, sounds good,  
11 you know, have them set up -- whatever,  
12 gives their approval. So in TRP's own  
13 words, what Proimtu was out there to do  
14 was to provide labor. They take a  
15 different position now, I understand  
16 that, parsing the statute, trying to  
17 come to a different conclusion, I  
18 understand that. But in their own words,  
19 they retained Proimtu solely to provide  
20 labor.

21 Third point, I'm moving on to kind  
22 of the heart of the second issue, notice,  
23 because obviously, the point of the  
24 mechanics lien statute is to put those  
25 against whom the lien can be filed on

1 notice. The statute's directed to  
2 protect the lien claimant but also to  
3 provide notice to the individual entity  
4 against whom the lien is recorded.

5 We have notice in this case, Your  
6 Honor, in multiple ways. There's, in  
7 fact, three specific ways that we get  
8 there. First and foremost, that e-mail.  
9 That e-mail is critical. It's as close  
10 to a smoking gun as I think this case  
11 could have. In that e-mail, back in  
12 2012, again, from TRP to Grupo COBRA,  
13 saying we're going to hire Proimtu to  
14 provide assembly-related labor services.

15 Now they're trying to say, well,  
16 they had hardhats and yeah, they said  
17 Proimtu but, you know, notice wasn't  
18 there. They had notice. They're the  
19 ones who went to Grupo COBRA and said,  
20 hey, can we hire Proimtu? They do this  
21 kind of thing; they're kind of expert --  
22 well, I don't think they said they're  
23 experts -- but they do installation of  
24 heliostats. Can we hire them to do this  
25 and Grupo COBRA says, sure, yeah, they

1 look like they'll do a good job. Go  
2 ahead and hire them. That's back in  
3 2012.

4 So we have notice clearly coming  
5 from TRP so how they can say there was no  
6 notice, I have no idea. Grupo COBRA,  
7 again, is the agent of SolarReserve. And  
8 we'll see -- in fact, there's a little  
9 chart -- if the Court wouldn't mind if I  
10 approach and pull that up on the screen?

11 THE COURT: Sure.

12 MR. WIRTHLIN: We attached these to  
13 our pleadings on the interrelatedness but  
14 there's kind of a brief chart. You've  
15 got -- SolarReserve is the -- excuse me,  
16 I'll go back to my table here.  
17 SolarReserve is the majority owner but  
18 you've got, as you can see, COBRA -- and  
19 COBRA has several different entities --  
20 as partners, board members, parents,  
21 agents.

22 And in fact, in the press release  
23 that we attached as Exhibit I to our  
24 opposition, ACS COBRA's Nevada-based  
25 affiliate COBRA Thermosolar Plants is

1 constructing this facility as the general  
2 contractor. Now there was an issue in  
3 the reply, in which TRP stated that a  
4 general contractor is not the agent of  
5 the owner. Well, a couple of problems  
6 with that. In addition to the fact that,  
7 as we'll show, there's an individual out  
8 there with "SolarReserve" on his hat,  
9 COBRA on the side, they're entities that  
10 are working together on multiple  
11 projects, including this one.

12 But in addition to that,  
13 statutorily, NRS 108.22104 provides that  
14 agent of the owner means every architect,  
15 builder, contractor, engineer, geologist,  
16 et cetera and so forth, or other person  
17 having charge or control of the property  
18 improvement, or work of improvement of  
19 the owner, or any part thereof. So to  
20 say that TRP or Grupo COBRA or COBRA  
21 Thermosolar is not the agent of the owner  
22 is statutorily incorrect. And that  
23 notice is imputed, as we pointed out in  
24 our opposition, from TRP, from Grupo  
25 COBRA to SolarReserve.



1           Finally, Your Honor, we get to --  
2   we'll go ahead and get to the video  
3   because it does show just kind of a wrap-  
4   up and it will give the Court -- I don't  
5   know if the Court's had the opportunity  
6   to see those -- see the actual  
7   heliostats. If I could approach, Your  
8   Honor --

9           THE COURT: Sure.

10          MR. WIRTHLIN: -- (indiscernible)?

11          Now I have to stop it at a few  
12   different points.

13          Can you see that, Your Honor?

14          THE COURT: Not yet.

15          MR. WIRTHLIN: Not yet, okay. It's  
16   up on mine so --

17          THE COURT: Do I need to do  
18   something?

19          MR. WIRTHLIN: Is it gone to dark?

20          THE COURT: It's just dark.

21          MR. WIRTHLIN: (Indiscernible)  
22   mouse? I'm not sure about  
23   (indiscernible).

24          THE COURT: How about if -- sound's  
25   coming up.

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1 MR. WIRTHLIN: (Indiscernible).  
2 THE COURT: I don't know what to do.  
3 MR. WIRTHLIN: I thought we had it  
4 working earlier.  
5 THE COURT: Now this had something  
6 on. I just don't know -- when I first  
7 came up, there was, you know, like a logo  
8 on it.  
9 MR. WIRTHLIN: Right.  
10 THE COURT: And the logo's gone  
11 away.  
12 MR. WIRTHLIN: It looks like it went  
13 into sleep mode.  
14 THE CLERK: (Indiscernible) work on  
15 it. I don't understand those monitors.  
16 MR. WIRTHLIN: Is it up on the other  
17 one?  
18 THE COURT: No.  
19 THE CLERK: The other one's not  
20 (indiscernible).  
21 MS. PINTAR: Is it just this  
22 monitor? (Indiscernible)?  
23 MR. WIRTHLIN: Okay. I didn't know  
24 what to do.  
25 THE CLERK: No, that's fine. It

1 signed itself off or something so let's  
2 see.  
3 Is it -- can you lift up here?  
4 MR. WIRTHLIN: Yeah.  
5 THE CLERK: Thank you.  
6 MR. WIRTHLIN: (Indiscernible)  
7 there?  
8 MS. PINTAR: No, you're good.  
9 Amy, you are my witness. We watched  
10 it.  
11 MR. WIRTHLIN: (Indiscernible).  
12 THE CLERK: Judge, were you able to  
13 see the chart that he put up prior to the  
14 video?  
15 THE COURT: No.  
16 MR. WIRTHLIN: Oh. I apologize,  
17 Your Honor.  
18 THE COURT: I didn't see any chart.  
19 MR. WIRTHLIN: May I approach and  
20 set a copy over there?  
21 There's nothing?  
22 THE CLERK: Yeah, it's --  
23 MR. WIRTHLIN: (Indiscernible).  
24 THE CLERK: It's something, yeah.  
25 Something here should --

1 I apologize, Your Honor.

2 Are we going to have to turn that  
3 around so he can look at it until I  
4 can --

5 MR. WIRTHLIN: Okay.

6 THE CLERK: -- (indiscernible) see  
7 if he can --

8 THE COURT: Well, I'm sure this will  
9 be real good.

10 Well, I was thinking that the worst  
11 video that I ever saw was once when I had  
12 a dust damage case when they basically  
13 redid runways at the Reno Airport  
14 together with drainage systems. And  
15 there are businesses to the north of the  
16 airport, basically, across the street  
17 from the north end of the runway. And  
18 during the course of construction, they'd  
19 have some big runs and some dust blew  
20 off, over the road to allegedly damage  
21 some of these businesses with dust. And  
22 we had a jury trial and we watched at  
23 least two hours of somebody who just set  
24 up a camera with a tripod and we were  
25 looking at the street, where occasionally

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1     you'd see some dust blowing across the  
2     street.

3             MR. WIRTHLIN:   Wow.

4             THE COURT:   And --

5             MR. WIRTHLIN:   Two hours, huh?

6             THE COURT:   That was pretty grim.

7             MR. WIRTHLIN:   Well this will not be  
8     two hours.   I promise that.

9             Can you see that (indiscernible)  
10    closer?

11            THE COURT:   Yes.   I can see --

12            MR. WIRTHLIN:   All right.

13            THE COURT:   -- your design there.

14            MR. WIRTHLIN:   The design?   Okay,  
15    good.

16            (Video playback begins)

17            "We're here at the" --

18            MR. WIRTHLIN:   So these are just the  
19    heliostats when they're (indiscernible)  
20    assembled.

21            -- "Crescent Dune solar energy  
22    project that utilizes molten salt for  
23    energy storage.   Given that the plant is  
24    the first of its kind in this technology  
25    in the world" --

1 MR. WIRTHLIN: This is Mr. Painter,  
2 project technical engineer. You can see  
3 in that picture -- I don't know if it's  
4 close enough for the Court. It's a  
5 little bit small but you can see the  
6 front of his hardhat there, SolarReserve.  
7 Can you see that?

8 THE COURT: Yes.

9 MR. WIRTHLIN: To the side there, on  
10 the left-hand corner, COBRA. A little  
11 difficult to read; it's small print.

12 THE COURT: Yes. I can see it.

13 MR. WIRTHLIN: Excellent. He is the  
14 project technical director.

15 "There's an urgency to get this  
16 plant up and running. It's a very  
17 exciting opportunity to bring new  
18 technology online."

19 (Indiscernible) further down.

20 "The construction period, from the  
21 first shovel in the ground to having  
22 electricity delivered to the homes is  
23 about a thirty-month process.

24 We have about 600 construction  
25 workers on-site, all working very long

1 shifts to complete the process. They've  
2 completed all of the heavy civil work and  
3 all the pieces are in place."

4 MS. PINTAR: Can you just step aside  
5 a little bit?

6 MR. WIRTHLIN: Sure.

7 "My name is Emily and I'm a  
8 resident" --

9 (Video playback ends)

10 MS. PINTAR: And Mr. Wirthlin, can  
11 you just turn your screen up just a  
12 little bit. It's (indiscernible).

13 MR. WIRTHLIN: Yeah, kind of a glare  
14 on it?

15 MS. PINTAR: Yeah, there you go.  
16 Perfect, right there. Thanks.

17 MR. WIRTHLIN: And that's where  
18 we'll end unless the Court would like to  
19 see more video. But that right there --  
20 I don't know if the Court can see. It's  
21 probably very difficult to see from there  
22 but it's what we showed last time. If  
23 you can see, can you read the top of that  
24 hardhat, Your Honor?

25 THE COURT: No, I can't.

1 MR. WIRTHLIN: (Indiscernible)  
2 difficult to read on there. I'll see if  
3 I can scooch this just a little bit  
4 closer. Top one there -- top sticker  
5 there. Can you make that out?  
6 THE COURT: I still can't.  
7 MR. WIRTHLIN: (Indiscernible)  
8 Proimtu on there. It's easier to see on  
9 my screen if you'd like to see  
10 (indiscernible).  
11 THE COURT: Okay. I think I can  
12 make out the Proimtu at the very top.  
13 And then at the bottom, it looks like --  
14 sort of like MACA.  
15 MR. WIRTHLIN: Um-hum.  
16 THE COURT: I'm not sure.  
17 MR. WIRTHLIN: That is Emily Deck  
18 who was a Tonopah resident hired to go  
19 work on the project.  
20 THE COURT: And now if we're done  
21 with the video --  
22 MR. WIRTHLIN: Yeah.  
23 THE COURT: -- this needs to go  
24 away.  
25 MR. WIRTHLIN: And I apologize, Your

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1 Honor. (Indiscernible). Can you see  
2 (indiscernible)?

3 THE COURT: Yes.

4 MR. WIRTHLIN: What that video  
5 showed -- just kind of tying up what we  
6 talked about before. Again, I don't  
7 think there's really any dispute about  
8 what Proimtu did on the project. They  
9 assembled the heliostats. That's what we  
10 did. We didn't manufacture them; we  
11 provided the labor necessary to get them  
12 assembled and set them up. That was it.  
13 In TRP's own words, we provided assembly-  
14 related labor.

15 And as far as notice, again, that e-  
16 mail is critical. TRP, Grupo COBRA, and  
17 therefore, SolarReserve had -- clearly  
18 were aware and clearly had notice --  
19 actual notice we were on the project. We  
20 were doing that assembly-related labor  
21 services. If there was any question,  
22 that video kind of sums that up, makes it  
23 clear Proimtu's out there. They're doing  
24 the heliostat labor installation.  
25 COBRA's out there. SolarReserve's out

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1     there.  Everybody knows what's going on  
2     because it's up to Proimtu to get those  
3     installed.

4             Unless the Court has any questions,  
5     we would rely on our pleadings, our prior  
6     hearing and request attorneys' fees.

7             THE COURT:  So it sounds like all  
8     you really have as notice to the owner,  
9     which is SolarReserve or perhaps Tonopah  
10    Solar Energy -- but I think nowadays,  
11    SolarReserve is referred to as the owner,  
12    isn't it?

13            MR. WIRTHLIN:  Yes.

14            THE COURT:  And -- but you're saying  
15    that this one e-mail is all you have as  
16    proof of any direct contact to the owner?

17            MR. WIRTHLIN:  No, Your Honor.  In  
18    fact, if you'd like me to, further on  
19    down the video, Kevin Smith, who is the  
20    CEO of SolarReserve, which is the  
21    majority owner, shows up on the video, at  
22    the site during the same timeframe.  So  
23    you have the owner's representative at  
24    the site at which Proimtu is doing the  
25    heliosat construction.

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1           Again, there was really no question  
2           who was doing that heliostat assembly.  
3           It was Proimtu from the beginning. And  
4           in fact, if the Court would like me to, I  
5           can certainly go to that portion of the  
6           video. It's just -- it shows Mr. Smith  
7           there. I'll do that really quickly.

8           THE COURT: Well, I --

9           MS. PINTAR: Your Honor, we'll  
10          stipulate --

11          THE COURT: I can --

12          MS. PINTAR: -- that Mr. Smith was  
13          there.

14          MR. WIRTHLIN: Okay. Frankly, Your  
15          Honor -- I think that's the end of the  
16          issue. The -- well, there's also that e-  
17          mail that they attached to their  
18          motion -- I'm sorry, not the e-mail, the  
19          press release in an article in VEGASINC.  
20          Again, Mr. Smith, who they've stipulated  
21          is in the video, he certainly shows up  
22          there. A representative of -- CEO of the  
23          project, SolarReserve, states that he  
24          agrees with the original job  
25          classification that Proimtu had. The

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1 article relates to labor laws and whether  
2 or not there were labor laws broken by  
3 Proimtu. The investigation that was  
4 done, as counsel stated, resulted in a  
5 finding of no guilt for Proimtu, or TRP,  
6 or anybody.

7 But Mr. Smith is out there, saying  
8 in the article they attached to their  
9 pleading, oh, sure, we knew about the  
10 classification of Proimtu's laborers and  
11 the original classification and we agreed  
12 with that. I mean, so you've got Kevin  
13 Smith, who's out there saying, on the  
14 project where Proimtu's doing the  
15 installation. You do have the e-mail.  
16 You have the article. You have the press  
17 release. And you have the fact that they  
18 don't dispute that they knew that Proimtu  
19 was out there doing the installation.

20 Really, there's no question, Your  
21 Honor -- and it's really not a dispute.  
22 I understand that TRP is trying to make  
23 it seem like there's some dispute about  
24 notice or maybe they didn't -- you know,  
25 there wasn't a letter sent or something

1     like this that was mentioned. But there  
2     are multiple ways -- in fact, I don't  
3     think that -- frankly, I would challenge  
4     them to assert that these are not true,  
5     that Mr. Smith was not on the site, that  
6     they didn't send the e-mail that we have  
7     as the exhibit. And frankly, they  
8     attached the article in VEGASINC in which  
9     the CEO of SolarReserve says, oh, yeah, I  
10    knew about the classification originally  
11    and was okay with it.

12           So, there are multiple ways that we  
13    can show notice from the inception of  
14    Proimtu labor on the project, Your Honor.  
15    I don't think we get there. I think the  
16    labor issue resulted but even if we go to  
17    the notice, clearly, the owner had  
18    notice.

19           And again, just in closing, I think  
20    it's important to remember the overall  
21    scheme of what we're talking about here.  
22    TRP claims prejudice if Proimtu's lien  
23    remains. But what about Proimtu? What  
24    about Proimtu's employees, like Ms. Deck,  
25    who are out there, doing the work.

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1     There's no dispute the work was done --  
2     and simply didn't get paid. That is the  
3     entire purpose of the lien statute.  
4     We've got them on labor because that's  
5     all we did. We've got them on notice  
6     because there's no question they knew  
7     about it several ways. So we would  
8     submit, based on that, Your Honor, that  
9     the Court deny the motion to expunge the  
10    lien.

11           Thank you.

12           THE COURT: I'm just thinking, you  
13    know -- I mean, I have this VEGASINC  
14    article and is this an article that --  
15    well, is the issue here one of the -- no,  
16    it's when you have a State project, you  
17    have to have this, you know, prevailing  
18    wage. You know, prevailing wages have to  
19    be figured out. Basically, union wages  
20    are figured out and then well, everybody  
21    has to get this prevailing wage. Is that  
22    what the Davis-Bacon Act application is  
23    about?

24           MS. PINTAR: It is, Your Honor.

25           MR. WIRTHLIN: Yeah. That's what

1       this article --

2           MS. PINTAR:   The article --

3           MR. WIRTHLIN:   Yeah, the article  
4       is --

5           MS. PINTAR:   (Indiscernible).

6           MR. WIRTHLIN:   That's right.   The  
7       article is related to a separate issue,  
8       not when did SolarReserve have notice?  
9       But in that article, Mr. Smith -- Kevin  
10      Smith, CEO of the project, SolarReserve,  
11      says, oh, yeah, we knew about the  
12      classification of Proimtu's workers --  
13      the original classification.   We were  
14      good with it.   He's out on the project,  
15      multiple notice through multiple ways.  
16      That's the point of this article, Your  
17      Honor.   I don't think that's why they  
18      attached it but that's what it shows.

19           If the Court has any other  
20      questions, I'm happy to address them.

21           THE COURT:   Not right now, thank  
22      you.

23           MS. PINTAR:   All right.   I've got to  
24      give counsel credit.   He tried his best  
25      but to say there is no question that they

1 meet either labor or actual notice just  
2 eviscerates the statute, as well as  
3 mechanics lien statute. There's no  
4 question they're a subcontractor and I  
5 don't think they get there with -- they  
6 can't get there with the labor. You look  
7 at their own pleadings, this was so much  
8 more than labor. It was management,  
9 supervision, equipment. A subcontractor  
10 must provide a preliminary notice.

11 And --

12 THE COURT: Well, you talk about  
13 equipment and I was hoping to see the  
14 cranes and things in the video. I didn't  
15 get see that.

16 MS. PINTAR: You know, we've got --  
17 Naftali was out there and he can tell you  
18 they provide the cranes. And that's  
19 part -- they had to move this equipment.  
20 That was part of their contract scope, is  
21 they brought their cranes out because  
22 they had to move these huge stands from  
23 the assembly out to the site to assemble  
24 them. They're not going to put them in  
25 the back of a pickup truck, you know?

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1 They had cranes and these are -- I don't  
2 know if the Court has seen the project  
3 out there but these are huge. You know,  
4 great, big --

5 THE COURT: I've only seen it from  
6 Highway 95 so all I can see is the tower.

7 MS. PINTAR: It's amazing when you  
8 get up to it. These are huge and there's  
9 thousands of them.

10 Again, go back to 624.020, what a  
11 contractor is. It's anyone, except an  
12 employee of another, with wages as the  
13 sole compensation. That's what labor is  
14 and for counsel to suggest that this  
15 Emily Decker (sic) didn't get paid, I'm  
16 sure Emily Decker got paid. Emily Decker  
17 could record the lien if she didn't get  
18 paid because she was a laborer and I will  
19 backtrack from -- and the Court's  
20 absolutely right. Skilled versus  
21 nonskilled, don't care. Either one would  
22 have a lien as a laborer. And I would  
23 absolutely backtrack from skilled labor  
24 versus unskilled labor.

25 Regardless, labor is for a laborer,

1 someone, an individual who gets wages as  
2 compensation to make sure because it  
3 makes sense that they wouldn't have to  
4 provide notice to the owner. And -- so,  
5 a subcontractor is a (indiscernible).

6 As far as substantial or strict  
7 compliance, I can argue that before this  
8 Court because it is substantial  
9 compliance. I would agree with counsel  
10 it is substantial compliance and the lien  
11 statute should be liberally interpreted.  
12 But they shouldn't be so liberally  
13 interpreted to get rid of a statutory  
14 requirement and that's what Proimtu is  
15 asking you to do. To say everybody knows  
16 what's going on, everything that counsel  
17 has brought forth for actual notice takes  
18 place on any construction project.  
19 You're going to have e-mails where the  
20 owner is CC'ed on. You're going to have  
21 the owner visiting the site, where the  
22 subcontractors are working. They may  
23 know in their head, okay, there's a  
24 contractor but it doesn't give the scope  
25 of their work and it doesn't provide the

1 value of the work.

2 Those are two key provisions which  
3 counsel didn't even address in all of  
4 these. We've got the video, we've got --  
5 and to say an e-mail that says "labor-  
6 related services" as the smoking gun is  
7 really going above and beyond any -- I  
8 mean, any contractor supplies labor, any  
9 of them. And it may somewhere to use  
10 labor in their contract but that is not  
11 what this exception is for. It's for an  
12 individual laborer. It's to protect the  
13 individual, not the subcontractor.

14 Now, counsel also said there was no  
15 dispute they did the work; that's true.  
16 There's no dispute that they did not get  
17 paid. There is a dispute. There is a  
18 dispute between these parties. They're  
19 claiming much more than their contract  
20 amount. That's why we're here today.  
21 And to say that Proimtu is prejudiced if  
22 you release this lien? They still have  
23 their claim. They're just using it as  
24 leverage. That's exactly why they're  
25 here, arguing it. They're using it as

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1 leverage. TRP is much more prejudiced  
2 because they're being withheld three-and-  
3 a-half million dollars. Proimtu did not  
4 comply with the statute.

5 Exhibit -- we talked about the e-  
6 mail. There's notice in multiple ways.  
7 Again, we go to the scope and work and  
8 let's go to the agent of this -- where  
9 the general contractor is an agent. I  
10 think if Proimtu is using an agency  
11 argument, that that should have been  
12 briefed because an agent -- it doesn't  
13 say the owner -- it doesn't an agent of  
14 the owner needs notice because the  
15 general contractor's going to have  
16 notice.

17 Clearly, the general contractor knew  
18 Proimtu was out there but that's -- the  
19 general contractor doesn't own the  
20 property. They don't have control of the  
21 property. So to say in a statute,  
22 they're an agent of the owner so  
23 therefore, that should suffice. It  
24 should've been an agency argument. An  
25 agent means they can act on behalf of the

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1 owner. General contractor can act under  
2 their contract on behalf of the owner but  
3 certainly can't bind the owner to  
4 anything. That's what an agency argument  
5 is.

6 So, to say because COBRA knew about  
7 Proimtu, somehow that now imputes to the  
8 owner as an agent of the owner, does not  
9 fly. It should've been an agency  
10 argument; that was never made. And  
11 simply -- clearly, there was a contract  
12 between COBRA and the owner, not an  
13 agency.

14 Who's prejudiced here? Well,  
15 clearly the owner's prejudiced. Well,  
16 not so much because COBRA, under  
17 contract, had to post the bond to release  
18 the lien. So clearly, COBRA has been  
19 inconvenienced but also, they're going to  
20 pass that cost on down to TRP.

21 So, it's really TRP that's been  
22 prejudiced by them not complying with the  
23 statute. This is our second time out  
24 here. The argument is clear on both  
25 times. They simply have not met the

1 statutory requirements. The lien should  
2 be expunged from the bond and the bond  
3 should be exonerated. And Proimtu can  
4 then proceed with their claim.

5 And the parties have been  
6 negotiating. They have been talking.  
7 They've even had some -- legal  
8 jurisdiction is supposed to be in Spain.  
9 They've even had -- they've been in the  
10 courts in Spain. So, Proimtu's not  
11 giving up their claim. They're giving up  
12 the leverage but they're not giving up  
13 their claim. It should be resolved the  
14 way it was supposed to have been in the  
15 beginning, through a contract claim  
16 against TRP. I think they have been bad  
17 faith, involved the owner in bad faith,  
18 involved COBRA. And counsel even  
19 admitted it's to provide leverage to try  
20 to get TRP to coerce them to resolve the  
21 claim (indiscernible).

22 Therefore, I would submit that we  
23 have met our burden and the lien should  
24 be expunged.

25 Any questions, Your Honor?

1 THE COURT: No. I think, you've  
2 done a --

3 MS. PINTAR: Okay.

4 THE COURT: -- you know, a good job,  
5 hit at all the points.

6 Now, let me start by looking at the  
7 prelien statute, the NRS 108.245. And  
8 this is the major place here. It reads,  
9 "except as otherwise provided in  
10 subsection 5, every person, firm,  
11 partnership, corporation, or other legal  
12 entity other than one who performs only  
13 labor, who claims the benefit, et cetera,  
14 shall within thirty-one days after the  
15 first delivery of material or performance  
16 of work or services, under his contract,  
17 deliver in person or by certified mail to  
18 the owner or reputed owner of the  
19 property this notice of materials, or  
20 work, or services performed."

21 So there is a statutory form of  
22 notice and it seems to me that in reading  
23 this annotated version here that has a  
24 supplement, I think, actually, this  
25 notice has changed recently or changed in

1 the 2011 pocket part so things are  
2 happening on this statute and you know,  
3 it's so fascinating to determine what is  
4 it that is meant by "one who performs  
5 only labor".

6 And as I previously stated, I  
7 clearly don't believe that it's somebody  
8 that's unskilled labor. And, you know,  
9 it's skilled or unskilled, whatever it  
10 is, but it's labor. And in looking in  
11 general at the scope of work, again, as I  
12 stated previously, the basic work Proimtu  
13 is to provide is to assemble heliostats,  
14 I assume, in some area of assembly and  
15 then move them out to the position in the  
16 array of heliostats or mirrors and put  
17 them properly, you know, into their spot.

18 So, you look at and it's basically  
19 labor that is being performed. But it  
20 looks like Proimtu is providing some  
21 conditions of labor and equipment that is  
22 going into the assembly and the movement  
23 installation. But there is a lot of  
24 management involved in what they're  
25 doing. They're not simply sending out,



1     okay, you know, you have a request for a  
2     hundred laborers and okay, here's your  
3     guys, you manage them.

4             I think Proimtu is doing the  
5     management, more along the lines of an  
6     ordinary independent contractor role  
7     where they're hired to do certain work  
8     and they control their own labor and  
9     they're getting paid a set price for  
10    this. We're not talking wages for  
11    people. And I think the reply by TRP is  
12    the correct way to view this. I don't  
13    think it's appropriate to say that this  
14    type of contract is the exemption  
15    contemplated by the words, "one who  
16    performs only labor".

17            So I'm ruling in favor of TRP on  
18    this issue that this is a subcontractor  
19    who is controlling their own employees,  
20    who's supplying certain equipment and,  
21    you know, direction to a major  
22    subcontracting job. It's more than just  
23    labor, even though they're not  
24    contributing material but in the way that  
25    this subcontractor is working, it's not

1 simply providing labor to be managed by  
2 somebody else, you know, and simply  
3 getting wages to those employees.

4 Then we have the issue of is there,  
5 you know, the substantial notice to the  
6 owner. That's the other argument here.  
7 And then we have the case law. I think  
8 Durable Developers was the first one so  
9 that's a 1986 case, I think. I wrote  
10 that down; Durable is 1986. And it talks  
11 about how the owner had actual notice and  
12 then that was followed with Hardy  
13 Company's case in 2010 and that talks  
14 about the substantial compliance with the  
15 prelien notice is sufficient if the  
16 property owner is not prejudiced.

17 And then you made reference in the  
18 reply brief to two cases, which are  
19 Stanfield and Schofield, talking about  
20 how the basic law is still -- you know,  
21 you want to give notice by way of the  
22 prelien notice and that we shouldn't be  
23 too liberal with regard to this.

24 Let me see your brief here. Well,  
25 you make reference to the Stanfield,

1     which is a federal appeals court from  
2     1980. That's over everything else we've  
3     seen here, talking about the general rule  
4     is that the failure to give a prelien  
5     notice is fatal so that predates our  
6     State Supreme Court rulings that were in  
7     Hardy and Durable Developers. And the  
8     other case was Schofield v. Copeland  
9     Lumber Yards. That's a 1985 case,  
10    stating we do not think that a notice of  
11    lien may be so liberally construed as to  
12    condone the total elimination of a  
13    specific requirement of the statute.

14           In this case, what you have is you  
15    have communication between TRP, who is in  
16    contract with COBRA, the general  
17    contractor that, you know, we're hiring  
18    or have already hired Proimtu. But I'm  
19    not seeing, you know, the kind of notice  
20    that one, I think, ought to have to give  
21    substantial compliance with the statute  
22    to the owner, who is SolarReserve or some  
23    prior name that was Tonopah Solar Energy.

24           Like I say, from what I understand  
25    here, SolarReserve came up later.

1 Tonopah Solar Energy or something along  
2 that lines, I think, was the original  
3 name in these contracts. But I'm seeing,  
4 you know, basically, a subcontractor to a  
5 subcontractor. There is quite a bit of  
6 distance here between Proimtu and  
7 SolarReserve, the owner of the project.  
8 And I don't think some of these  
9 communications are quite enough to meet  
10 the conditions of those two cases that I  
11 referred to, the Durable Developers and  
12 the Hardy Company's. Both of those have  
13 a lot more notice to the owner than what  
14 we have here. I think there is a  
15 substantial difference.

16 So, I'm going to rule against  
17 Proimtu on that regard as well that they  
18 didn't really -- they didn't have any  
19 connection enough as a subcontractor to a  
20 subcontractor to give notice to the owner  
21 to tell them the important things, as Ms.  
22 Pintar has pointed out, like, what is the  
23 scope of work and what is the price of  
24 contract to this subcontractor.

25 So for that reason, I'm going to

1 grant the motion to expunge the lien on  
2 the real estate out there. So I don't  
3 know if you need to prepare finders of  
4 fact, conclusions of law or simply that,  
5 you know, that is the order of Court. I  
6 know I had a case last week and they  
7 said, we're going to debate the finders  
8 of fact and conclusions of law for a lot  
9 more work than we have coming into this  
10 case.

11 So I don't know if you need that but  
12 we would certainly need some kind of a  
13 written order that should be prepared for  
14 my signature on this.

15 MS. PINTAR: I understand, Your  
16 Honor. And it -- the -- and I'm not sure  
17 if Proimtu's going to appeal it but it is  
18 an appealable order so it may be good to  
19 do findings of fact and conclusions of  
20 law, based on what -- and based on the  
21 record, I can get a copy of the  
22 transcript and we can do it from that.  
23 I -- Proimtu's going to appeal it.  
24 That's why it might be a good --

25 THE COURT: Okay. Well, maybe we

1     need to do that.

2           MR. WIRTHLIN:   If I could be heard  
3     on one single issue with that second  
4     ruling?

5           One single issue I think may have  
6     been -- what counsel said in the reply --  
7     and I understand it's her motion -- that  
8     we didn't brief the agency issue.   We  
9     didn't brief that because it didn't come  
10    up until the reply.

11          Your Honor, I would say that e-mail  
12    was to COBRA.   COBRA is the general  
13    contractor and it's NRS 108.22104 that  
14    says specifically, agent of the owner is  
15    that general contractor.   Any contractor  
16    that has control of the contract.

17          So, Your Honor, I would say that is  
18    a statutory definition that Proimtu fits  
19    into because that notice, as far as the  
20    labor-related services, all of that was  
21    given to the general contractor and  
22    notice is imputed.   We cited that in our  
23    brief, under binding Nevada precedent, to  
24    the owner.

25          So I wouldn't say if the Court is --

1     insisted on that order, we would ask that  
2     there be findings of fact and conclusions  
3     of law, if the Court sees fit to do that.

4           THE COURT:   Okay.   Well I still feel  
5     that the communication that's been to  
6     shown to COBRA is still inadequate to  
7     give appropriate notice, even under an  
8     agency situation.   It doesn't give, even  
9     Cobra, adequate notice of the scope of  
10    work and the price of the contract and I  
11    still like there's just a lot of distance  
12    when you're dealing with a subcontractor  
13    of a subcontractor and the prelien notice  
14    should be given.

15           MS. PINTAR:   Your Honor, the only  
16    other issue is the attorneys' fees.   Did  
17    you want that by separate motion?

18           THE COURT:   Maybe it should be.   I  
19    mean --

20           MS. PINTAR:   I mean --

21           THE COURT:   I don't know.

22           MS. PINTAR:   And if we could, I  
23    would love to appear telephonically.

24           THE COURT:   I guess you are the  
25    prevailing party so I guess you're

1     entitled to some money.  Maybe that's  
2     satisfied, but the amount of the money,  
3     that has --  
4             MS. PINTAR:  Right.  
5             THE COURT:  -- to be figured out.  
6             MS. PINTAR:  And that's why I'm  
7     saying would you -- or just a memorandum  
8     of fees --  
9             THE COURT:  But I will say -- yes,  
10    as the prevailing party, you are entitled  
11    to some attorneys' fees.  
12             MS. PINTAR:  Okay.  And I'll do that  
13    by motion -- by separate motion?  
14             THE COURT:  Yup.  
15             MS. PINTAR:  Okay, Thank you.  
16             THE COURT:  Yeah, because, I mean,  
17    the other side has the right to question  
18    the amount of the fee.  
19             MS. PINTAR:  Correct, Your Honor.  
20             THE COURT:  But you are entitled to  
21    fees.  I would rule in favor of that  
22    position, yes.  
23             MS. PINTAR:  Very good.  Thank you,  
24    Your Honor.  
25             MR. WIRTHLIN:  Thank you, Your

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1 Honor.

2 THE COURT: All right. We will  
3 stand in recess.

4 THE CLERK: All rise.

5 (Whereupon these proceedings were  
6 concluded)

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I N D E X

THE COURT

Motion to expunge lien 60

on TRP International, Granted

Attorney's fees to be paid to 63

TRP International

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C E R T I F I C A T I O N

I, Sara Bernstein, hereby certify that the foregoing is a true and correct transcription, to the best of my ability, of the sound recorded proceedings submitted for transcription.

I further certify that I am not employed by nor related to any party to this action.

In witness whereof, I hereby sign this date:

November 23, 2015

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Sara Bernstein

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[contact - elimination]

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[know - motion]

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[solve - today]

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[tonopah - yup]

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TRP INTERNATIONAL, INC.

8 **FIFTH DISTRICT COURT**

9 **NYE COUNTY, NEVADA**

10  
11 TRP INTERNATIONAL, INC., a foreign  
corporation,

12 Petitioner,

13 v.

14 PROIMTU MMI LLC, a Nevada limited liability  
company,

15 Respondent.  
16

Case No.: CV-36431  
Dept.: I

**REQUEST FOR RULING ON PETITION  
TO EXPUNGE LIEN, OR IN THE  
ALTERNATIVE, TO PLACE ON  
CALENDAR**

17  
18 COMES NOW, Petitioner TRP INTERNATIONAL, INC. ("TRP"), by and through their  
19 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Request for Ruling on  
20 Petition to Expunge Lien, or in the Alternative, to Place on Calendar.

21 On February 12, 2015, the above referenced Court heard oral arguments on Petitioner TRP's  
22 Petition to Expunge Lien. The Court indicated that it would issue a ruling within a week.

23 On March 3, 2015, the Court issued an Order that the matter was being assigned to a Senior  
24 Judge. The Order stated that the Court had decided to reserve ruling on the issue and transfer the  
25 matter to Senior Judge Elliott for determination.

26 The lack of ruling is causing a great hardship on Petitioner as millions of dollars are being  
27 held by the general contractor, Cobra Thermosolar Plants, Inc. that are due to Petitioner. Therefore,  
28 Petitioner now seeks a ruling from Senior Judge Elliott based on the record. In the alternative,

1 Petitioner seeks a hearing date, in Reno, NV if possible, should Judge Elliott want to hear additional  
2 arguments prior to issuing a ruling.  
3

4 DATED: March 27, 2015

PINTAR ALBISTON LLP

5  
6 By: Becky A. Pinta

7 Becky A. Pinta, Esq., NSB # 7867

8 Bryan L. Albiston, Esq., NSB # 12679

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10 Las Vegas, Nevada 89148

11 Attorney for Petitioner TRP INTERNATIONAL, INC.  
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An employee of  
**PINTAR ALBISTON LLP**

Case No. CV36431  
Dept. 1

FILED

2015 MAR -3 P 2:44  
TANNER DAVIS  
NYE COUNTY CLERK  
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

TRP INTERNATIONAL, INC., a Foreign  
Corporation,

Petitioner,

**ORDER**

vs.

PROIMTU MMI LLC, a Nevada Limited  
Liability Company,


Respondent.

TRP International, Inc. (TRP) filed a Petition to Expunge Lien. Proimtu MMI, LLC  
filed an Opposition, and TRP filed its' Reply.

The Court advised the parties that the matter was being assigned to a Senior Judge.

After speaking with Sr. Judge Steven Elliott, and to avoid the possibility of an  
inconsistent determination since Judge Elliott is hearing all of the litigation cases concerning  
the Solar Reserve Project in Tonopah, the District Court has decided to reserve ruling on the  
issue and transfer the matter to Judge Elliott for determination.

Dated this 3<sup>rd</sup> day of March 2015.

  
KIMBERLY WANKER  
DISTRICT JUDGE

1 **CERTIFICATION OF SERVICE**

2 The undersigned hereby certifies that on the 32<sup>D</sup> day of March 2015, she mailed  
3 via U.S. mail a copy of the foregoing ORDER to the following:

4 Becky Pintar, Esq.  
5 PINTAR ALBISTON  
6 6053 S. Fort Apache Road, Suite 120  
7 Las Vegas, Nevada 89148

8 Christopher Byrd, Esq.  
9 FENNEMORE CRAIG, P.C.  
10 300 S. Fourth Street, Suite 1400  
11 Las Vegas, Nevada 89101



CHRISTEL RAIMONDO, Clerk to  
DISTRICT JUDGE

12 **AFFIRMATION**

13 The undersigned hereby affirms that this Court Order does not contain the social  
14 security number of any person.



CHRISTEL RAIMONDO, Clerk to  
DISTRICT JUDGE



1 Christopher H. Byrd, Esq. (No. 1633)  
2 Bradley J. Richardson, Esq. (No. 1159)  
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11 *Attorneys for Respondent*  
12 *Proimtu MMI LLC*

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FIFTH DISTRICT COURT  
NYE COUNTY, NEVADA

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited liability  
company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

**RESPONDENT PROIMTU MMI  
LLC'S OBJECTION TO UNTIMELY  
DISCLOSURE OF SUPPLEMENTAL  
DOCUMENTS TO SUPPORT THE  
PETITION TO EXPUNGE**

Hearing Date: February 12, 2015

Hearing Time: 10:00 a.m.

Respondent Proimtu MMI LLC ("Proimtu"), by and through counsel, Fennemore Craig, P.C., objects to TRP International, Inc.'s ("TRP") Disclosure ("Disclosure") of Supplemental Documents to Support the Petition to Expunge ("Petition"). The documents attached are the same documents to which Proimtu timely objected at the hearing. Seeking to file the documents post hearing does not cure Proimtu's original objection.

In addition, the untimely production and filing of documents violates not only the procedures in the lien statute, but also the District Court Rules for the presentation of a motion and evidence. NRS 108.2275 requires TRP's Petition to be supported by: "A notarized affidavit signed by the applicant setting forth a concise statement of the facts upon which the motion is based; and (2) **Documentary evidence in support of the affidavit, if any.**" NRS 108.2275(2) (emphasis added). The Disclosure documents were not part of the Petition or the Reply, and were never authenticated with any affidavit, or even translated into English in some cases. Under this

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1 statute TRP had the burden to timely and properly authenticate any evidence to support its  
2 position and was required to include the Disclosure with the Petition, or certainly with the Reply,  
3 giving Proimtu a chance to respond.

4 Furthermore, the District Court Rules do not allow for any briefs or supporting evidence  
5 to be submitted post hearing and without authentication. DCR 13 allows only a motion and a  
6 reply from the moving party. The filing of the Disclosure after the briefing was complete and  
7 after the hearing constitutes a sur-reply to the arguments and evidence presented and is not  
8 permitted by the rules of this Court.

9 Accordingly, the Disclosure should be stricken and not considered by the Court in  
10 deciding the Petition.

11 DATED this 24<sup>th</sup> day of February, 2015.

12  
13 **FENNEMORE CRAIG, P.C.**

14  
15  
16 By: \_\_\_\_\_

17 Christopher H. Byrd, Esq. (No. 1633)  
18 Bradley J. Richardson, Esq. (No. 1159)  
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20 300 S. Fourth Street, Suite 1400  
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22 *Attorneys for Respondent*  
23 *Proimtu MMI LLC*  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 24<sup>th</sup> day of February, 2015, I served a copy of the  
3 RESPONDENT PROIMTU MMI LLC'S OBJECTION TO DISCLOSURE OF  
4 SUPPLEMENTAL DOCUMENTS TO SUPPORT THE PETITION TO EXPUNGE upon  
5 the parties to this action by mailing a copy thereof, postage prepaid, via regular U.S. Mail,  
6 addressed as follows:

7  
8 Becky A. Pintar, Esq.  
9 Bryan L. Albiston  
10 Pintar Albiston LLP  
11 6053 S. Fort Apache Road, Suite 120  
12 Las Vegas, NV 89148  
13 *Attorneys for Petitioner*

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An employee of Fennemore Craig Jones Vargas

1 site manager who -- I believe his name  
2 Brian Smith -- I'm getting my Smiths  
3 mixed up but I believe his first name is  
4 Brian. He has on a hardhat,  
5 SolarReserve. He's out on the project.  
6 He's talking about the project. You see  
7 he turns, he's got a COBRA sticker,  
8 basically, on his hardhat as well.

9 About a minute into the video, you  
10 see they interview one of the Proimtu  
11 employees. They're all, you know,  
12 wearing vests but it's far away and it's  
13 hard to tell but they actually interview  
14 one and you can see, hopefully, if the  
15 resolution is good enough on my laptop,  
16 that it actually has a Proimtu  
17 designation on the hardhat. So clearly  
18 they're out there. They're installing  
19 these heliostats. SolarReserve has its  
20 project manager out there. COBRA -- so  
21 the idea is that there's no notice -- no  
22 actual notice, not only do we have  
23 imputed, but we have actual. So I'll go  
24 ahead and I'll show that if that's okay.

25 (Video playback begins)

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1           "So we're here at the Crescent Dune  
2   solar energy project that utilizes molten  
3   salt for energy storage. Given that the  
4   plant is the first of its kind in this  
5   technology in the world" --

6           MR. WIRTHLIN: And this is Mr.  
7   Painter.

8           THE COURT: I know him.

9           MR. WIRTHLIN: Okay, you do? Oh,  
10   good.

11          THE COURT: I stay at the Mizpah  
12   frequently and he's there.

13          MR. WIRTHLIN: Okay.

14          THE COURT: I've known him over the  
15   last, probably, two-and-a-half years.

16          MR. WIRTHLIN: I apologize for  
17   (indiscernible), Your Honor.

18          You see it right there. His  
19   SolarReserve hat, COBRA on the side.  
20   He's on the project, talking about the  
21   project. Obviously, there are numerous  
22   videos. We just wanted to focus on this  
23   one.

24          And then I'm going to skip ahead  
25   here.



1           "-- about 600 construction workers  
2 on-site, all working very long shifts to  
3 complete the process. They've completed  
4 all of the heavy civil work and all the  
5 pieces are in place.

6           My name is Emily and I'm a resident  
7 of" --

8           (Video playback ends)

9           MR. WIRTHLIN: Okay.

10          THE COURT: I know Emily as well.

11          MR. WIRTHLIN: You know Emily. If  
12 you can see it -- it's hard to see it;  
13 it's a little blurry there. She's got a  
14 Proimtu sign on her hat. That's -- and  
15 I'm sorry I couldn't provide it more  
16 (indiscernible).

17          THE COURT: On the front of the --

18          MR. WIRTHLIN: Yes, on the top. It  
19 looks like there's two stickers.

20          THE COURT: Right.

21          MR. WIRTHLIN: The top one says  
22 Proimtu.

23          THE COURT: Okay.

24          MR. WIRTHLIN: So that -- all that  
25 shows, Your Honor, is that not only were

1 they on the project, we're doing  
2 interviews, we're installing heliostats,  
3 we're doing the assembly-related labor  
4 that TRP hired us to do. And frankly,  
5 everyone knows about it.

6 So I would submit to the Court that  
7 first of all, I believe that the motion  
8 can be denied. But absent that, I would  
9 submit that we be given a chance to  
10 perform further briefing and also some  
11 discovery with respect to Mr. Smith and  
12 some other issues, including documentary  
13 evidence that we just received today.  
14 But that -- if the Court saw fit to deny  
15 the petition, I believe there is a basis  
16 to do that.

17 Thank you.

18 THE COURT: Okay, thank you.

19 Ms. Pintar?

20 MS. PINTAR: Yes, just a few  
21 responses, Your Honor.

22 Again, certainly, the case law  
23 supports substantial compliance and --  
24 but this is no compliance. There was  
25 absolutely no preliminary notice so --

1 and it clearly distinguishes between  
2 substantial compliance and no compliance.

3 So now we have the two narrow  
4 exceptions, labor -- and here, we have  
5 someone even called a technician. I  
6 don't think we get there on the labor  
7 or -- I think it is somewhat dispositive  
8 that the Nevada State Contractors Board,  
9 who knows what a contractor is, was  
10 investigating Proimtu for being a  
11 contractor. On this project, though, you  
12 didn't need to be licensed because it was  
13 on federal land and so that is why they  
14 didn't take any action.

15 THE COURT: Did they make a finding?

16 MS. PINTAR: Yes -- or they are a  
17 licensed contractor now. Proimtu is a  
18 licensed contractor. They have an A  
19 license in engineering.

20 THE COURT: Okay.

21 MS. PINTAR: So they are a  
22 contractor --

23 THE COURT: Okay.

24 MS. PINTAR: -- a licensed  
25 contractor in the State of Nevada, as is

1 TRP International.

2 THE COURT: Right.

3 MS. PINTAR: When this first  
4 started, there were certain entities out  
5 there that were not licensed and -- from  
6 Spain, mostly. These were all from  
7 Spain -- and have subsequently, got  
8 licensed.

9 But during that time, because TRP  
10 was involved in that same investigation  
11 of contracting without a license, when  
12 Proimtu was also investigated and  
13 basically, they were going to forward  
14 with a criminal misdemeanor citation and  
15 then they backed off, saying, we've been  
16 told it's federal land; we don't have  
17 jurisdiction.

18 So ultimately, there wasn't a  
19 finding that they were a contractor but  
20 they were going to do a misdemeanor  
21 citation on both TRP and Proimtu that was  
22 resolved through finding that it was  
23 federal land. But ultimately, they did  
24 get their license and they are a licensed  
25 contractor, as we stand here today.

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1           Secondly -- or finally, the video,  
2           again, stickers on hardhats doesn't  
3           necessarily mean who they work for.  
4           Heliostat assembly technician, they could  
5           have worked for Proimtu but again, it's  
6           not just actual knowledge; it's  
7           prejudice.

8           We have to go to that second step.  
9           And I don't think they've shown that  
10          there's no prejudice. You can't say  
11          there's not been prejudice to the owner  
12          that 1.8 million dollar lien, even though  
13          there's millions of dollars' worth of  
14          liens on the project, still it has been  
15          prejudicial to the owner, it's been  
16          prejudicial to COBRA -- they posted the  
17          bond -- and certainly, to TRP  
18          International, who has now been withheld  
19          three-and-a-half million dollars in  
20          payment, because of this lien.

21          So I think we get there today, where  
22          this can be granted and that -- then, the  
23          bond can be released, TRP can get paid,  
24          and then they can settle their dispute.  
25          It doesn't get rid of their claim against

1 TRP, it simply just gets rid of the bond  
2 that has been posted for this particular  
3 lien.

4 Thank you.

5 THE COURT: Question, I'm still  
6 having some difficulty understanding your  
7 definition of labor. So, could you maybe  
8 enlighten me a little more? Because my  
9 understanding is what you're saying is  
10 that because in order to perform the  
11 labor -- in order to perform the  
12 assembly -- if you will -- of TRP's  
13 product, that your interpretation is that  
14 they do just that, just labor.

15 But if they do anything to assist in  
16 performing the labor, like bringing in a  
17 lift, bringing anything else --

18 MS. PINTAR: Um-hum.

19 THE COURT: -- then that somehow  
20 transforms it into --

21 MS. PINTAR: A contractor. And I --  
22 and what I tried to do in my reply is I  
23 said, okay, we don't know what labor is;  
24 let's look at what a contractor is.  
25 Because a contractor clearly has to

1 provide a preliminary notice. That's in  
2 statute. It says except for labor only.  
3 So clearly, if you're a contractor, a  
4 preliminary notice is a requirement  
5 unless you're in contract directly with  
6 the owner, as COBRA was.

7 So COBRA doesn't have to do a  
8 preliminary notice. But everyone, from  
9 COBRA on down, should supply a  
10 preliminary notice to the owner so when  
11 the owner pays COBRA, they know that all  
12 of these subcontractors or suppliers down  
13 the chain get paid. That's all what it's  
14 about.

15 THE COURT: But they weren't a  
16 supplier in this case. They were doing  
17 the assembly of -- they were providing  
18 the assembly service. And in connection  
19 therewith, they were -- they had to bring  
20 in equipment. I mean, I've driven by  
21 SolarReserve. I've never toured  
22 SolarReserve but I have been on Poeline  
23 (ph.) Road a number of times and gone by  
24 there. And you can't tell me that this  
25 isn't a project, given the dollar amount

1 of the labor involved, when you're going  
2 to -- for lack of a better term -- bus a  
3 group of unskilled folks out there and  
4 here you go.

5 MS. PINTAR: And that's --

6 THE COURT: It's a highly  
7 complicated --

8 MS. PINTAR: Absolutely.

9 THE COURT: -- technical type of  
10 project.

11 MS. PINTAR: And that -- that right  
12 there, confirms our point. It's not just  
13 about labor only; it's about skills.

14 And --

15 THE COURT: Well, what about skilled  
16 labor?

17 MS. PINTAR: Well -- and then I'm  
18 reading NRS 624.020 defines what a  
19 contractor is. If they're a contractor,  
20 they're not just supplying labor. They  
21 are required, as a contractor, to do a  
22 preliminary notice.

23 So a contractor is anyone that  
24 constructs, alters, repairs, adds to,  
25 subtracts from, improves, move, wreck, or



1 demolish any building, highway, road,  
2 railroad, excavation, or other structure,  
3 project, development, or improvement. So  
4 clearly, they were doing that.

5 THE COURT: Let me ask you a  
6 question.

7 MS. PINTAR: Uh-huh?

8 THE COURT: You know, I guess we're  
9 kind of -- I see it a little differently  
10 in the sense this is, is X a Y for the  
11 purpose of Z? In this circumstance, is  
12 X, who we know is a contractor -- has a  
13 contractor's license --

14 MS. PINTAR: Um-hum.

15 THE COURT: -- performing Y, labor  
16 or are they providing contracting  
17 services for the purposes of this  
18 project, right?

19 MS. PINTAR: Right.

20 THE COURT: So you're saying -- what  
21 I hear you saying -- and I just want to  
22 be sure I understand this correctly. I  
23 hear you saying that they're a  
24 contractor. Therefore, they're a  
25 contractor all the time so therefore,

1     whatever they provide, it must not be  
2     labor.

3           MS. PINTAR:   And that's not what I'm  
4     saying, Your Honor.

5           THE COURT:    Okay.

6           MS. PINTAR:   I'm saying --

7           THE COURT:    So now -- the issue, I  
8     think, is a very narrow one here.

9           MS. PINTAR:   Right.

10          THE COURT:    Is X -- is the service  
11     that they provide -- or Proimtu -- a Y,  
12     labor, or is it something else for the  
13     purpose of this agreement?

14          MS. PINTAR:   Okay.   So -- and let me  
15     go on with the statute on a contractor  
16     because -- and I'm not saying --  
17     obviously, they're a contractor now;  
18     they're licensed.   So the State has  
19     recognized them as a contractor.

20          During the performance of this  
21     project, were they a contractor or a  
22     supplier of labor only?   If they're a  
23     contractor, the statute requires them to  
24     do -- or a subcontractor in this point --  
25     the statute requires them to do a

1 preliminary notice.

2 So -- and I'm not making the  
3 argument, oh, they're a contractor now;  
4 therefore, they must have been a  
5 contractor then. I'm looking at the work  
6 they did here and under the statute --  
7 because labor's not defined but  
8 contractor is.

9 THE COURT: Okay.

10 MS. PINTAR: So if we look at what  
11 contractor is and we say, oh, they meet  
12 the definition of contractor, therefore,  
13 they're beyond just labor because labor  
14 has to be a narrow -- obviously, a narrow  
15 exception. It's never -- apparently,  
16 never even been litigated, but it says  
17 evidence of the securing -- and it goes  
18 on to permit and everything -- or the  
19 employment of any person on a  
20 construction project must be accepted by  
21 the Board or any court of this State as  
22 prima facie evidence that the person  
23 securing that permit or employing any  
24 person on a construction project is  
25 acting in the capacity of a contractor.

1           Okay, so -- and then it goes on to  
2   number three, a contractor includes a  
3   subcontractor or specialty contractor but  
4   does not include anyone who merely  
5   furnishes any materials or supplies  
6   without fabricating them or consuming  
7   them in the performance of the work of a  
8   contractor. Clearly, we have fabricating  
9   and consuming them in the performance of  
10   this contract. They were taking these  
11   different components and they were  
12   assembling them in the performance of the  
13   work as a contractor.

14           THE COURT: How were they  
15   fabricating them? Wasn't the  
16   fabrication --

17           MS. PINTAR: Well, they're taking  
18   separate components and putting them  
19   together.

20           THE COURT: But wasn't the  
21   fabrication done by your clients and all  
22   they were doing was assembling --

23           MS. PINTAR: No.

24           THE COURT: -- them?

25           MS. PINTAR: Well -- and we can say

1 assembling but it says fabricating them  
2 into or consuming them. Clearly, these  
3 components are being consumed into the  
4 project. They're going from separate  
5 components. They're putting them  
6 together. They're trucking them out to  
7 the site. They've got a crane out there.  
8 They're lifting them off and then they're  
9 consuming them into the project. In  
10 other words, when they walk away, they've  
11 now been left on the project.

12 So, that's statute -- that's  
13 624.020, the definition of a contractor.  
14 If we have a contractor at -- what  
15 they're claiming there is they're not a  
16 contractor. Well, the Department of  
17 Labor saw that they were actually doing  
18 steelwork, cranes, and again, if you  
19 look -- the second, I think, compelling  
20 argument is if you look at the disclosure  
21 of our supplemental documents --

22 THE COURT: This is what you filed  
23 today or yesterday?

24 MS. PINTAR:

25 MR. WIRTHLIN: Yes, yes.

1 THE COURT: Okay.

2 MS. PINTAR: Just this morning, Your  
3 Honor.

4 THE COURT: Okay.

5 MS. PINTAR: I'm just looking about  
6 the fourth page down, a conditional lien  
7 waiver. And it says, the second  
8 paragraph down, this release covers a  
9 progress payment for the work, materials,  
10 and equipment furnished by the  
11 undersigned to the property.

12 Again, NRS 108, a laborer is not  
13 going to be supplying equipment. They're  
14 not going to be supplying, typically,  
15 materials. They could bring their own  
16 tools. I agree, they could bring their  
17 own tools. But clearly, once you supply  
18 equipment, once you supply materials --  
19 and now it doesn't even say "labor"; it  
20 says "work". Is work the same as labor?

21 THE COURT: Only lawyers would be --

22 MS. PINTAR: I know.

23 THE COURT: -- analyzing these --

24 MS. PINTAR: Well --

25 THE COURT: -- these to death.

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1     Okay.

2           MS. PINTAR:   You know, so, they have  
3     these cranes out there.  They're erecting  
4     these components -- and it's erection.  
5     You know, this is steel erection.  This  
6     is beyond labor, even by -- and they're  
7     the ones that provided these lien  
8     waivers, conditional, and so they're  
9     agreeing.  And if you look at the  
10    invoices, yes, there are material --  
11    there were equipment that was supplied.  
12    They're doing wiring installation in one  
13    point.  That's just beyond -- then you're  
14    arguing any electrician could just be a  
15    laborer because they're just wiring.

16           THE COURT:   Well, wait a minute.

17           MS. PINTAR:   Um-hum.

18           THE COURT:   What did your client  
19    contract -- what did they contract  
20    Proimtu to do?  Wasn't it to provide the  
21    labor to assemble the product that your  
22    client had because that was their  
23    specialty?

24           MS. PINTAR:   Yes.  Yes, but it  
25    wasn't labor only.  In other words, it

1 wasn't just send some men out there and  
2 put these together. We're also relying  
3 on you to supply whatever equipment you  
4 need and they went out and rented trucks.  
5 They rented cranes. That goes beyond  
6 just labor. And hand tools are one thing  
7 but when you're putting cranes, when  
8 you're putting trucks, when you're  
9 putting all of these -- when you're  
10 acting as a con -- if it looks like a  
11 contractor, they're acting like a  
12 contractor, it is a contractor.

13 THE COURT: Well, they --

14 MS. PINTAR: So, just to say because  
15 they used the word "labor" in this e-  
16 mail, I can't --

17 THE COURT: Didn't you use it in the  
18 contract too? I thought I came across  
19 that in the contract, somewhere in the  
20 contract when I read the contract last  
21 night.

22 MS. PINTAR: They had an office  
23 there. They had a site manager. They  
24 had their own supervision.

25 To me, a laborer -- and again, is



1 someone that comes on site and is  
2 directed by, in this case, TRP. If TRP  
3 was just hiring labor, it would really be  
4 under their direction. It's kind of like  
5 an independent contractor versus a  
6 contractor. Independent contractor, they  
7 come in and --

8 THE COURT: Oh, there's a big  
9 difference between a contractor and an  
10 independent contractor.

11 MS. PINTAR: There is, Your Honor.  
12 That's what I'm saying.

13 THE COURT: Huge.

14 MS. PINTAR: And there's a big  
15 difference between just labor and acting  
16 as a contractor. Just labor can come  
17 in -- and it doesn't just have to be  
18 digging ditches but it would -- clearly,  
19 they brought their own company in. They  
20 had their own office on site. They had  
21 their own management team.

22 And yes, one component -- but, maybe  
23 sixty percent of the contract was labor  
24 only. The other forty percent was cost  
25 for renting equipment -- so now we're

1 going beyond labor in the contract. And  
2 under the exact definition -- and now,  
3 these materials are being consumed into  
4 the project. Statute says they're a  
5 contractor. They're acting as a  
6 contractor. They have to be held to the  
7 same standards of a contractor. And  
8 therefore, the labor should be a narrow  
9 exception and it should be labor only,  
10 not equipment.

11 Clearly, the conditional release  
12 shows work, materials, and equipment. If  
13 you supply those, you're no longer just a  
14 laborer; you're a contractor by statute.  
15 That's what they did. This contract --  
16 and if you look at -- they had to do  
17 schedules. They had to do analysis.  
18 They had to do testing. They had to do  
19 all of these things. They're acting as a  
20 contractor. And if the Court allows them  
21 just to say labor, what other companies  
22 can come in and say, oh, it's just labor.  
23 General contractors, that's pretty much  
24 all they do. They supervise the work of  
25 others. It's really just labor. They

1 don't really do any materials. They  
2 don't really do any equipment. They are  
3 supervising, but they need to be  
4 licensed.

5 The statute -- substantial  
6 compliance is one thing. This is no  
7 compliance. They're a contractor and for  
8 them to argue otherwise is disingenuous  
9 to this Court and it's disingenuous to  
10 the construction industry to try to make  
11 that argument just to keep a lien because  
12 they still have their action against TRP  
13 but this is just to put more pressure on  
14 TRP.

15 It's simply -- you know, it's a  
16 manipulative action to put more pressure  
17 on TRP but you know what? It's just not  
18 affected TRP. COBRA posted a bond; the  
19 owner's been affected and this argument  
20 does not fly. I've been in construction  
21 law for fifteen years. I've never heard  
22 this argument. This is the first time  
23 I'm hearing it and I bet it's the first  
24 time a lot of these people in the  
25 audience -- because these are all

1 experienced construction attorneys that  
2 you're looking at and I know most of  
3 them. It's not a valid argument and I  
4 hope this Court does not adopt it.

5 MR. WIRTHLIN: Your Honor, if I  
6 could briefly just for one minute? I  
7 think this might be dispositive but I  
8 think --

9 THE COURT: Okay.

10 MR. WIRTHLIN: -- the other way, you  
11 have a printout from the Nevada State  
12 Contractors Board if the Court would like  
13 to see that --

14 THE COURT: I would.

15 MR. WIRTHLIN: -- pointing to what  
16 is not a licensed subcontractor at the  
17 time of this contract.

18 THE COURT: Thank you.

19 MR. WIRTHLIN: Also there is --  
20 that's the finding from the State  
21 Contractors Board.

22 THE COURT: Great, Thank you.

23 MR. WIRTHLIN: (Indiscernible) back  
24 to the investigation. Proimtu was not a  
25 licensed subcontractor. What they did

1 was come on and assemble. We need to  
2 bring our tools on. These are obviously  
3 enormous pieces we're working with. We  
4 need some tools, we need a frame,  
5 whatever they needed and they got it  
6 done; that is labor.

7 Secondly, Your Honor, the issue of  
8 prejudice, I think, is mistaken. It's  
9 not prejudice. Any contractor who has a  
10 lien filed against him -- them because  
11 they didn't pay, is prejudiced to a  
12 degree. It's undue prejudice. Did we  
13 unduly prejudice them? And the answer to  
14 that is no, there's no dispute Proimtu  
15 did the work.

16 Finally, the last thing I want to  
17 say we talk about who's affected; COBRA's  
18 affected, the owner's affected, Emily  
19 Deck's affected, Proimtu's affected.  
20 That's the entire purpose of the statute,  
21 so that people who come on and perform  
22 work can be paid. That's the purpose of  
23 the mechanics lien statute.

24 Thank you, Your Honor.

25 THE COURT: So what we're trying to

1 do is essentially take a contract that is  
2 defined and interpreted under Spanish law  
3 and try to argue what it means under  
4 Nevada law. That's what we're doing.

5 But my question for you two is, this  
6 contract was to be interpreted under the  
7 laws of Spain, right? I mean, if I look  
8 at this correctly, I don't think anybody  
9 has disagreed the contract, through scope  
10 of application shall be governed by  
11 Spanish law and be interpreted in  
12 accordance therewith.

13 So it's nice that we've argued about  
14 what a contractor is and what a  
15 contractor isn't under Nevada law but  
16 wouldn't we go back and look under the  
17 laws where this contract was drafted to  
18 make that determination?

19 MR. WIRTHLIN: I think, Your Honor,  
20 the only thing I would say is with  
21 respect to that, Spanish law  
22 (indiscernible) if there's a dispute  
23 about payment, which there's --

24 THE COURT: We do.

25 MR. WIRTHLIN: Well, there's

1     certainly an undisputed nonpayment but  
2     the forum selection clause is Spain.  
3     This though, is, I believe, a separate  
4     sphere, which is Nevada lien law, which  
5     applies regardless of that provision.  
6     And again, we can submit briefs on that  
7     (indiscernible) Court would like.

8           THE COURT:    Okay, Thank you.

9           MR. MEIER:    Your Honor, can I just  
10    be heard real briefly --

11          THE COURT:    Sure.

12          MR. MEIER:    -- on behalf of TSE, the  
13    owner?

14          THE COURT:    Sure.

15          MR. MEIER:    Because obviously, this  
16    is Ms. Pintar's motion but we are a very  
17    interested party in this.  And I just had  
18    a couple of things that appeared to maybe  
19    get glossed over that I wanted to  
20    highlight.

21          One is that Ms. Pintar pointed out  
22    that in the contract, that there was a  
23    price breakdown not just for labor, but  
24    for labor and materials.  So if that's  
25    what they've contracted for, then I'm not

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1 really sure why we go beyond that and  
2 spend all this other time.

3 As far as the issue about owner's  
4 notice, you know, I've heard a lot of  
5 what sounds like evidence to me and a  
6 distinct lack of witnesses, just lawyers  
7 talking. And I would certainly, on  
8 behalf of the owners, say that if the  
9 Court is at all inclined to think that  
10 the owner's notice issue is dispositive  
11 that -- or is something that needs to be  
12 considered in ruling on Ms. Pintar's  
13 motion -- or petition, that the case is  
14 simply not in a posture where you can do  
15 that because you haven't heard any  
16 evidence of supposed owner's notice.  
17 You've heard counsel make representations  
18 about what they think the evidence would  
19 show. That's it and that's insufficient  
20 for you to make that argument.

21 So if you think that that is a  
22 thread that needs to be followed -- and I  
23 am not, by any stretch of the  
24 imagination, suggesting that is but if  
25 you disagree with me, as judges sometimes



1 do, then I would just point out that you  
2 absolutely cannot deny Ms. Pintar's  
3 petition on that basis because you have a  
4 lack of evidence. You would have to, in  
5 our view, set that matter out for further  
6 hearing.

7 MR. WIRTHLIN: Your Honor, if I  
8 can -- two minutes? I would object to  
9 any type of argument considered because  
10 no briefing, I believe, was filed by that  
11 entity. But to the extent the Court  
12 wants to address that, page 15 of the  
13 subcontract, I believe, is the provision  
14 that was referred to. All it says is all  
15 invoices have to have a "clear price  
16 breakdown between materials and  
17 services".

18 In other words, if there are  
19 materials, you have to separate them out.  
20 It's not saying that there are but if  
21 there are, you have to spread them out.  
22 You have to break that down.

23 Secondly, I would disagree entirely  
24 that the Court has not heard evidence.  
25 That e-mail between COBRA and TPS was

1 authenticated in the briefing -- in the  
2 reply brief. TR -- I'm sorry, TRP says,  
3 hey, yeah, that's an e-mail between COBRA  
4 and TRP but it doesn't matter because the  
5 general contractor's not the agent of the  
6 owner for purposes of Chapter 108, that's  
7 incorrect.

8 So I would submit to the Court there  
9 is more than sufficient evidence that  
10 Proimtu provided only labor.

11 MS. PINTAR: And the last thing -- I  
12 don't know why they haven't addressed it,  
13 in this contract with TRP, they are  
14 referred to as subcontractor. And I  
15 think that's a compelling point that has  
16 not been addressed and that goes back to  
17 the contract. They're addressed as a  
18 subcontractor because that's what they  
19 are.

20 THE COURT: Okay. Anybody want to  
21 say anything else?

22 MR. WIRTHLIN: I would simply say  
23 this is a formal contract  
24 (indiscernible). Also --

25 THE COURT: That's what I love about

1 a group of lawyers. Nobody trusts that  
2 we're done.

3 I'm going to take it under  
4 submission.

5 MS. PINTAR: Thank you, Your Honor.

6 THE COURT: Okay?

7 (Whereupon these proceedings were  
8 concluded)

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C E R T I F I C A T I O N

I, Sara Bernstein, hereby certify that the foregoing is a true and correct transcription, to the best of my ability, of the sound recorded proceedings submitted for transcription.

I further certify that I am not employed by nor related to any party to this action.

In witness whereof, I hereby sign this date:  
November 23, 2015

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Sara Bernstein

[1 - aware]

<b>1</b>	<b>a</b>		
<b>1</b> 13:11	<b>a.m.</b> 2:2	<b>albrechts</b> 1:19 3:19	31:10,23 32:19,24
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[legislative - news]

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[trp - zimbelman]

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1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2           PROIMTU MMI LLC, a Nevada limited  
3           liability company,

4                                   Appellant,

5                                   vs.

6           TRP INTERNATIONAL, INC., a foreign  
7           corporation,

8                                   Respondent.  
9  
10

Case No. 68942

District Court Case No. CV-36431

Electronically Filed  
Feb 02 2016 09:30 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

11                   **JOINT APPENDIX TO OPENING BRIEF**

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**JOINT APPENDIX TO OPENING BRIEF**

	<b>DOCUMENTS</b>	<b>BATES STAMP NO.</b>	<b>VOL.</b>
1.	Certificate of Service for Motion for Attorney Fees dated August 27, 2015.	0402-0403	2
2.	Certificate of Service of Petition to Expunge Lien and Order for Hearing dated January 15, 2014(sic)	0076	1
3.	Disclosure of Supplemental Documents to Support the Petition to Expunge dated February 12, 2015	0186-0204	1
4.	Findings of Fact, Conclusions of Law and Order on Petition to Expunge Lien dated September 9, 2015	0409-0415	2
5.	Motion for Attorney Fees dated July 2, 2015	0378-0384	2
6.	Notice of Appeal dated December 10, 2015	0432-0446	2
7.	Notice of Appeal dated October 5, 2015	0417-0418	2
8.	Notice of Entry of Findings of Fact, Conclusions of Law and Order on Petition to Expunge Lien dated October 5, 2015	0416-0424	2
9.	Notice of Entry of Order Granting Motion for Attorney Fees dated November 12, 2015	0429-0431	2
10.	Objection to Untimely Disclosure of Supplemental Documents to Support the Petition to Expunge dated February 25, 2015 (PART 2 of 2)	0293-0295	2
11.	Opposition to Petition to Expunge Lien dated February 2, 2015	0077-0179	1
12.	Opposition to Petitioner's Motion for Attorney's Fees dated July 17, 2015	0385-0391	2
13.	Order (transferring matter to Judge Elliott) dated March 3, 2015	0296-0297	2
14.	Order for Hearing on Petition to Expunge Lien dated January 8, 2015	0074-0075	1
15.	Order Granting Motion for Attorney Fees dated November 12, 2015	0427-0428	2
16.	Order of Recusal and Request for Senior Judge dated August 24, 2015	0400-0401	2
17.	Petition to Expunge Lien dated December 12, 2014	0001-0073	1

18.	Reply to Opposition to Motion for Attorney Fees dated July 23, 2015	0392-0399	2
19.	Reply to Opposition to Petition to Expunge Lien dated February 3, 2015	0180-0185	1
20.	Reporter's Transcript of Proceedings before the Honorable Kimberly A. Wanker held on February 12, 2015 (PART 1 of 2)	0205-0250	1
21.	Reporter's Transcript of Proceedings before the Honorable Kimberly A. Wanker held on February 12, 2015 (PART 2 of 2)	0251-0292	2
22.	Reporter's Transcript of Proceedings before the Honorable Steven Elliott held on June 18, 2015	0301-0377	2
23.	Request for Ruling on Petition to Expunge Lien, or in the Alternative, to Place on Calendar dated March 27, 2105	0298-0300	2
24.	Supplement to Motion for Attorney Fees dated September 9, 2015	0404-0408	2