

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

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



COPY

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AMY DOWERS

NYE COUNTY CLERK
BY DEPUTY

1 Becky A. Pinter, Esq.
Nevada State Bar # 7867
2 Bryan L. Albiston, Esq.
Nevada State Bar #12679
3 PINTAR ALBISTON LLP
6053 S. Fort Apache Road, #120
4 Las Vegas, Nevada 89148
(702) 685-5255
5 F: (702) 202-6329
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
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8 cbyrd@fclaw.com
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10 Counsel for Plaintiff
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12
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15
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28

PINTAR ALBISTON LLP

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

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2015 SEP -9 A 8:40

E. Westerlund

CLERK

Becky A. Pinter, Esq.
Nevada State Bar # 7867
Bryan L. Albiston, Esq.
Nevada State Bar # 12679
PINTAR ALBISTON LLP
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Las Vegas, Nevada 89148
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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 8th 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

Ph:702-685-5255

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

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
 (702) 685-5255
 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

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 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

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)

- 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

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

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

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

CONCLUSIONS OF LAW

1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
2. NRS Chapter 108.245 provides that,

...every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or performance of work or services under a contract, deliver in person or by certified mail to the owner of the property a notice of right to lien...
3. NRS Chapter 108 does not provide a definition of labor.
4. NRS 624.020 provides that a contractor is defined as:

A contractor is any person, except a registered architect or a licensed professional engineer, acting solely in a professional capacity, who in any 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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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.

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.

IT IS THEREFORE ORDERED that the lien is expunged.

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

Dated: September 9, 2015

Steven P. Galt
JUDGE OF THE DISTRICT COURT

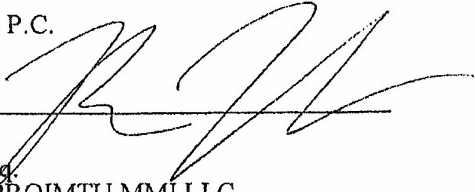
By: Becky A. Pinta
Becky A. Pinta, Esq., NSB # 7867
Attorney for Petitioner TRP INTERNATIONAL, INC.

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Reviewed by:
FENNEMORE CRAIG, P.C.

By: _____

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



OCT 05 2015

NYE COUNTY DEPUTY CLERK
DEPUTY _____

Veronica Aguilar

Christopher H. Byrd, Esq. (No. 1633)
Brenoch R. Wirthlin, Esq. (No. 10282)
FENNEMORE CRAIG, P.C.
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Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
e-mail: cbyrd@fclaw.com
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.
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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

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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
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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

21
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 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").

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E. Westerlund

CLERK

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- 2 • Close monitoring of the procedure to assemble heliostats, according to the requirements
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- 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
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- 17 within tolerances.
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- 21 lifts, vehicles and manpower needed to carry out the implementation on the foundation of the
- 22 pedestals or heliostats corresponding (sic)
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- 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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- 3 control to ensure the smooth implementation of the lifting.
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- 5 COBRA.
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- 7 of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional
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- 17 contractor before the work begins.
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- 21 • Issuance of Certificates of Inspection of equipment that require own.
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- 23 American authorities and the client on the recruits.
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- 26 subcontractor.
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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.

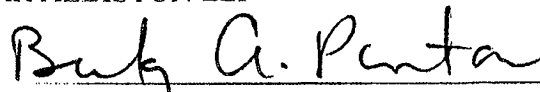
IT IS SO ORDERED.

Dated: September 9, 2015


JUDGE OF THE DISTRICT COURT

Respectfully submitted by:
PINTAR ALBISTON LLP

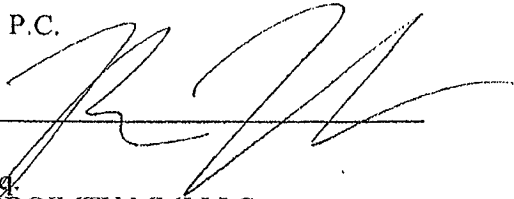
By:


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

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Reviewed by:
FENNEMORE CRAIG, P.C.

By: _____



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

1 Christopher H. Byrd, Esq. (No. 1633)
2 Brenoch R. Wirthlin, Esq. (No. 10282)
3 FENNEMORE CRAIG, P.C.
4 300 S. Fourth Street, Suite 1400
5 Las Vegas, Nevada 89101
6 Telephone: (702) 692-8000
7 Facsimile: (702) 692-8099
8 e-mail: cbyrd@fclaw.com
9 bwirthlin@fclaw.com
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 9th 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

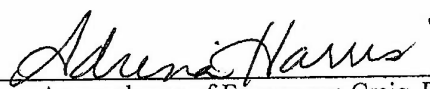
Attorneys for Respondent Proimtu MMI LLC

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CERTIFICATE OF SERVICE

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

Becky A. Pinar, Esq.
Bryan L. Albiston, Esq.
Pinar Albiston LLP
6053 S. Fort Apache Road, Suite 120
Las Vegas, NV 89148
Attorneys for Petitioner


An employee of Fennemore Craig, P.C.

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.

**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

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

PINTAR ALBISTON LLP

FILED

FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Deputy

Becky A. Pintar, Esq.
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(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
company,

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
 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@PintarAlbiston.com

5 Attorneys for Plaintiff
 6 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT
 NYE COUNTY, NEVADA**

8 TRP INTERNATIONAL, INC., a foreign
 corporation,

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**

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

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

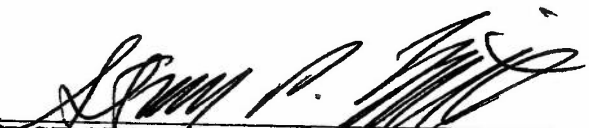
Nye County Clerk

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.

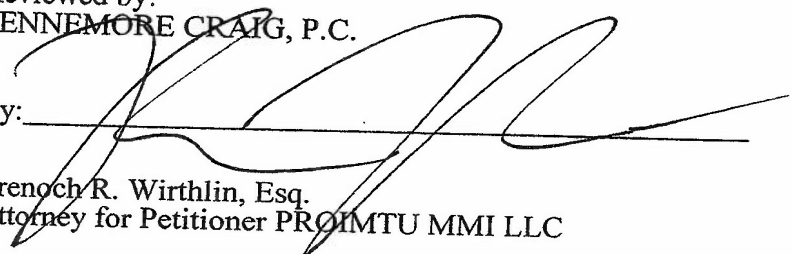
5 Dated: Nov 12, 2015

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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PINTAR ALBISTON LLP



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.
300 S. Fourth Street, Suite 1400
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e-mail: cbyrd@fclaw.com
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

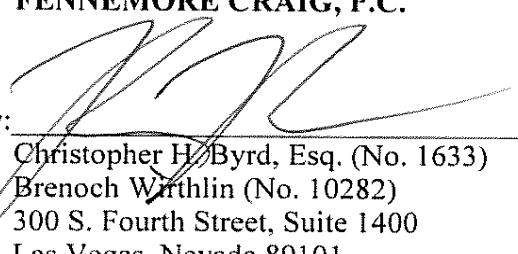
NOTICE OF APPEAL

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. 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.
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ORIGINAL

Christopher H. Byrd, Esq. (No. 1633)
Brenoch R. Wirthlin, Esq. (No. 10282)
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
e-mail: cbyrd@fclaw.com
bwirthlin@fclaw.com
Attorneys for Proimtu MMI LLC

FILED

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amp
CLERK
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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

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
12 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

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.**

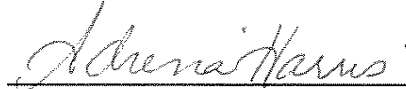
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11 By: 

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
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20
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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.
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Case Summary

Page 1
DC2100

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

Run: 12/04/15
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:

25 Becky A. Pinta
26 Becky A. Pinta, Esq.
27 Nevada State Bar # 7867
28 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.

FILED
FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Amo Deputy

1 Becky A. Pinta, Esq.
 Nevada State Bar # 7867
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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
 corporation,

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

FILED
 FIFTH JUDICIAL DISTRICT

NOV 12 2015

AMP 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.**

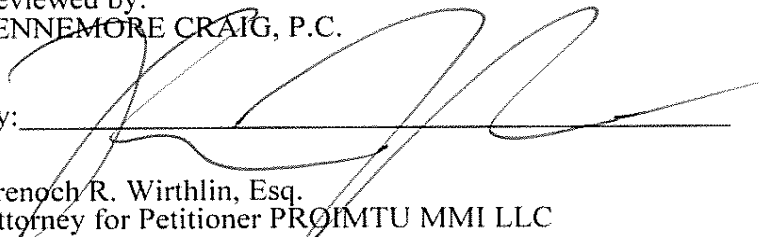
5 Dated: Nov 12, 2015

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
18
19
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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

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,

Page 48

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

Page 50

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

Page 51

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

Page 54

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,

Page 57

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

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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Page 64

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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

Sara Bernstein

[1 - beginning]

1	9	airport 35:13,16	46:1,2,3,7,9,16
1 21:1	95 48:6	albodayef 27:14	artisan 21:7
101 23:8	9:00 1:15	alignment 10:13	aside 38:4
108 4:8 15:12	9:06 2:2	allegedly 35:20	asking 15:2 49:15
108.22104 31:13	a	allow 7:12 13:14	assemble 23:23
61:13	a.m. 2:2	15:4 19:5	47:23 55:13
108.224 20:25	ability 4:10 19:20	allows 8:23	assembled 22:6
108.2275 15:24	66:5	alternate 14:24	36:20 40:9,12
108.245 4:12 20:21	able 3:12 17:1 34:12	alters 9:3	assembling 2:22
108.245. 3:10 54:7	absolutely 17:17	amazing 48:7	assembly 10:5 22:1
1149 19:9	26:9 48:20,23	amount 13:11 50:20	22:2 28:3,6 29:14
1199 20:14	accept 25:9	63:2,18	40:13,20 42:2 47:23
18 1:14 2:1	acs 30:24	amy 34:9	55:14,22
1980 58:2	act 45:22 51:25 52:1	annotated 54:23	assert 44:4
1985 58:9	acting 8:10,13	anybody 43:6	assessment 10:14
1986 57:9,10	action 66:10	anyway 3:10 7:20	assume 55:14
2	actions 25:21	apologize 34:16	assuming 3:14
2 8:5	actual 11:18 12:3,5	35:1 39:25	attached 30:12,23
2010 19:1 57:13	12:19,25 14:24	appeal 60:17,23	42:17 43:8 44:8
2011 55:1	15:16 18:16 32:6	appealable 60:18	46:18
2012 27:16 29:12	40:19 47:1 49:17	appeals 58:1	attention 7:3
30:3	57:11	appear 62:23	attorney's 65:7
2015 1:14 2:1 66:14	addition 31:6,12	appearances 1:17	attorneys 15:24
2214 21:1	address 17:10 26:11	appears 18:23	41:6 62:16 63:11
23 66:14	46:20 50:3	applicable 5:3	authorization 28:2
245 19:9	adds 9:3	application 45:22	aware 4:4 6:4 40:18
289 20:14	adequate 62:9	applies 23:20	b
296 23:8	admission 27:9	approach 30:10	back 3:5 20:25
3	admit 2:25	32:7 34:19	21:14 24:11 27:16
3 9:20	admitted 53:19	appropriate 56:13	28:10 29:11 30:2,16
36431 1:6	affidavit 12:4 16:24	62:7	47:25 48:10
5	affiliate 30:25	approval 10:7 28:12	background 4:5
5 54:10	afforded 16:6 24:7	architect 8:8 31:14	backtrack 48:19,23
6	agency 51:10,24	area 22:1 55:14	bacon 6:15 45:22
6 15:25	52:4,9,13 61:8 62:8	areas 10:20	bad 53:16,17
60 65:4	agent 30:7 31:4,14	argue 9:17 24:1 49:7	based 3:22 30:24
600 37:24	31:21 51:8,9,12,13	argues 14:11	45:8 60:20,20
624.020 48:10	51:22,25 52:8 61:14	arguing 50:25	basic 55:12 57:20
624.020. 5:7 7:25	agents 30:21	argument 15:14	basically 2:22 35:12
63 65:7	agree 18:10 49:9	17:5 51:11,24 52:4	35:16 45:19 55:18
	agreed 43:11	52:10,24 57:6	59:4
	agrees 42:24	array 2:24 22:7	becky 1:18 3:18
	ahead 16:18 24:1	55:16	beginning 42:3
	30:2 32:2	article 42:19 43:1,8	53:15
		43:16 44:8 45:14,14	

[begins - construed]

begins 36:16 behalf 51:25 52:2 believe 16:25 22:23 55:7 benefit 24:8 54:13 bernstein 1:25 66:3 66:19 best 46:24 66:5 beyond 50:7 big 8:15 35:19 48:4 bind 52:3 binding 61:23 bit 21:14 37:5 38:5 38:12 39:3 59:5 blew 35:19 blowing 36:1 board 6:17,23 7:7 7:11 30:20 bolts 22:21 bond 7:23 13:9 15:3 15:18,18 52:17 53:2 53:2 bonded 7:22 bottom 39:13 brenoch 1:19 16:16 bricklayer 25:2,8 brief 24:5,9,12 26:4 30:14 57:18,24 61:8 61:9,23 briefed 51:12 briefing 17:6 bring 7:2 37:17 broad 9:8,9 broken 43:2 brothers 18:22 brought 5:4 47:21 49:17 builder 21:8 31:15 building 9:5 bulbs 21:20 burden 53:23 businesses 35:15,21 butchering 27:15 buy 24:17 25:10	byrd 16:10 c c 27:10,16 66:1,1 calibrations 10:3 call 3:23 12:1 calzado 3:19 camera 35:24 capacity 8:11,14,16 care 9:24 48:21 carpenter 25:1 carrier 25:4,5 carries 25:6 case 1:6 3:8 11:19 11:20,20 18:15,22 19:3 23:5,7 29:5,10 35:12 57:7,9,13 58:8,9,14 60:6,10 cases 57:18 59:10 categorized 10:23 cc'ed 49:20 ceo 41:20 42:22 44:9 46:10 certain 56:7,20 certainly 12:22 16:5 16:20 18:1 21:19 22:15 23:25 42:5,21 52:3 60:12 certificates 10:15,17 certified 54:17 certify 66:3,9 cetera 31:16 54:13 chair's 2:6 challenge 44:3 chance 2:8 changed 54:25,25 chapter 4:8 character 27:1 charge 31:17 chart 11:17 13:1 30:9,14 34:13,18 chile 16:25 circular 23:1 circumvent 5:19 6:22	cite 6:18 18:21 cited 23:6 61:22 civil 38:2 claim 5:13 7:21,21 14:7,8 15:8,9 19:19 50:23 53:4,11,13,15 53:21 claimant 4:19,20,23 4:24 20:22 21:1,6 23:11 29:2 claimants 13:19 20:18 claiming 50:19 claims 15:20 44:22 54:13 clarify 26:7 classification 42:25 43:10,11 44:10 46:12,13 clear 11:11 19:2 40:23 52:24 clearly 9:19 26:25 30:4 40:17,18 44:17 51:17 52:11,15,18 55:7 clerk 33:14,19,25 34:5,12,22,24 35:6 64:4 close 29:9 37:4 closer 36:10 39:4 closing 44:19 cobra 6:1 13:8,22,24 14:3 15:4 27:17 29:12,19,25 30:6,18 30:19,25 31:9,20,20 31:25 37:10 40:16 52:6,12,16,18 53:18 58:16 61:12,12 62:6 62:9 cobra's 30:24 40:25 coerce 53:20 come 14:23 61:9 comer 28:17 comes 5:11 8:21 9:13 11:12 28:10	coming 26:2 30:4 32:25 60:9 communication 58:15 62:5 communications 59:9 companies 6:1,3 27:7 company 5:17 12:6 28:2 company's 57:13 59:12 compensation 8:18 9:11 11:12 48:13 49:2 complete 38:1 completed 38:2 completely 26:15 compliance 14:12 14:13,13,25 15:1 18:24 49:7,9,10 57:14 58:21 complied 15:12 comply 10:1 11:8 24:20 51:4 complying 52:22 concluded 64:6 conclusion 28:17 conclusions 60:4,8 60:19 62:2 conditions 55:21 59:10 condone 14:17 58:12 confirm 12:18 connection 59:19 constructing 31:1 construction 5:11 11:23 23:9 24:22 35:18 37:20,24 41:25 49:18 constructs 9:3 construed 14:17 58:11
--	--	--	--

[contact - elimination]

contact 41:16 contemplated 56:15 context 23:11 contract 4:21 10:22 11:5 13:9 15:7 19:18 25:22 27:25 47:20 50:10,19 52:2 52:11,17 53:15 54:16 56:14 58:16 59:24 61:16 62:10 contracting 6:24 28:2 contractor 6:2 8:1,7 9:2,2,8,18 10:24 11:1,3 21:8 24:23 31:2,4,15 48:11 49:24 50:8 51:9,17 51:19 52:1 56:6 58:17 61:13,15,15 61:21 contractor's 51:15 contractors 6:17,23 7:6,11,12 11:8 contracts 6:11 7:12 59:3 contributing 56:24 control 10:4 25:20 31:17 51:20 56:8 61:16 controlling 56:19 convoluted 11:17 copeland 58:8 copy 34:20 60:21 corner 37:10 corporation 54:11 correct 19:16 21:15 56:12 63:19 66:4 cost 52:20 counsel 13:20 14:22 18:9 26:11 43:4 46:24 48:14 49:9,16 50:3,14 53:18 61:6 counsel's 19:16 20:20	county 1:2 couple 16:21 18:18 31:5 course 6:14 17:3,15 24:5 28:9 35:18 court 1:1 2:5,15 3:16 4:1,14 5:4,9 8:2,19 9:20 11:11 13:17 14:14 15:17 16:2,5,9,12,15,17 17:8,11,14,21,22 18:5,12,12 19:2,16 20:2 21:25 22:5 23:3,8,10 24:3 25:16,25 27:3,12 30:9,11 32:4,9,14 32:17,20,24 33:2,5 33:10,18 34:15,18 35:8 36:4,6,11,13 37:4,8,12 38:18,20 38:25 39:6,11,16,20 39:23 40:3 41:4,7 41:14 42:4,8,11 45:9,12 46:19,21 47:12 48:2,5 49:8 54:1,4 58:1,6 60:5 60:25 61:25 62:3,4 62:18,21,24 63:5,9 63:14,16,20 64:2 65:3 court's 32:5 48:19 courtroom 13:18 courts 53:10 cpi 28:1 cranes 10:9 47:14 47:18,21 48:1 creates 4:9 credit 46:24 crescent 36:21 critical 29:9 40:16 cv 1:6	damage 35:12,20 dark 32:19,20 date 66:13 davis 6:15 45:22 days 54:14 dealing 62:12 dealt 6:23 dear 27:23 debate 60:7 debated 26:1 deck 39:17 44:24 decker 48:15,16,16 decrease 19:19 defendant 1:8,19 defined 21:2 definitely 18:7 definition 3:3 5:8,18 7:25 8:5,19 9:8 21:3 61:18 deliver 54:17 delivered 37:22 delivery 54:15 demolish 9:5 deny 45:9 depending 11:3 design 36:13,14 despite 27:3 determination 15:11 determine 18:13 55:3 developers 57:8 58:7 59:11 development 9:7 difference 24:24 59:15 different 28:15,17 30:19 32:12 difficult 18:15 19:23 37:11 38:21 39:2 direct 41:16 directed 29:1 directing 26:10 direction 56:21	directly 5:2 director 37:14 directs 23:19 dispute 4:5 13:7,8 20:7,8 40:7 43:18 43:21,23 45:1 50:15 50:16,17,18 distance 59:6 62:11 distinction 23:16 district 1:1 2:12 documentary 9:23 dog 12:1 doing 2:12,15 6:10 8:13 40:20,23 41:24 42:2 43:14,19 44:25 55:25 56:4 dollars 13:12 51:3 doubt 14:19 drainage 35:14 dramatically 19:19 due 8:21 dune 36:21 durable 57:8,10 58:7 59:11 dust 35:12,19,21 36:1
			e
			e 27:9,16,22 29:8,9 29:11 40:15 41:15 42:16,18 43:15 44:6 49:19 50:5 51:5 61:11 65:1 66:1 eager 3:10 earlier 18:8 33:4 easier 39:8 either 5:23 6:21 14:25 47:1 48:21 electrician 25:1 electricians 24:16 electricity 37:22 eleven 22:25 eligible 10:24 elimination 14:18 14:21 58:12

[elliott - grupo]

elliott 1:12 2:10 emily 38:7 39:17 48:15,16,16 employed 66:9 employee 8:17,20 9:10 48:12 employees 44:24 56:19 57:3 employs 5:12 ends 38:9 energy 36:21,23 41:10 58:23 59:1 engineer 8:9 31:15 37:2 entire 45:3 entities 30:19 31:9 entitled 12:10 63:1 63:10,20 entity 5:12 6:25 26:12,19 29:3 54:12 environmental 10:15 equipment 10:10 21:9,11 47:9,13,19 55:21 56:20 erase 21:2 erect 8:14 erection 10:6 esq 1:18,19 essentially 20:10 establish 10:2 established 27:25 estate 60:2 et 31:16 54:13 everybody 41:1 45:20 49:15 evidence 12:24 eviscerate 26:15 eviscerates 47:2 exactly 8:7,12 22:14 28:7 50:24 excavation 9:6 excellent 37:13 exception 4:13 5:1 9:1,9,12 10:25	11:10,15,19 14:22 15:15 18:11,16 50:11 exceptions 4:25 7:15 exciting 37:17 exclusion 24:8 excuse 20:25 30:15 executed 16:24 exemption 56:14 exhibit 27:10,16 30:23 44:7 51:5 exonerated 15:3,19 53:3 expert 29:21 experts 29:23 explain 3:11 16:18 expunge 2:19 19:17 45:9 60:1 65:4 expunged 53:2,24 extensively 17:1	fee 15:24 63:18 feel 62:4 fees 41:6 62:16 63:8 63:11,21 65:7 fifty 11:2 figure 3:12 figured 45:19,20 63:5 filed 28:25 final 10:6,12 finally 32:1 find 4:16 finders 60:3,7 finding 43:5 findings 60:19 62:2 fine 33:25 firm 54:10 first 4:14 24:5 29:8 33:6 36:24 37:21 54:15 57:8 fisher 18:22 fit 62:3 fits 61:18 fitted 23:14 flow 11:16 13:1 fly 52:9 followed 57:12 fontainebleau 19:2 20:14 foregoing 66:4 foremost 29:8 form 54:21 forth 3:5 17:5 31:16 49:17 found 15:22 frankly 42:14 44:3,7 front 5:5 37:6 funds 15:5 further 37:19 41:18 66:9	51:19 52:1 55:11 58:3,16 61:12,15,21 generally 18:10 geologist 31:15 getting 9:14 15:9 19:14 24:13 56:9 57:3 give 32:4 46:24 49:24 57:21 58:4,20 59:20 62:7,8 given 26:7 36:23 61:21 62:14 gives 28:12 giving 53:11,11,12 glad 4:13 glare 38:13 go 3:13 16:18 18:2 20:6 22:1 24:1 30:1 30:16 32:2 38:15 39:18,23 42:5 44:16 48:10 51:7,8 goes 4:6 going 6:18 11:16,21 11:23 12:9 14:7,9 15:10 22:10 26:4 28:9 29:13 35:2 41:1 47:24 49:16,19 49:20 50:7 51:15 52:19 55:22 59:16 59:25 60:7,17,23 gonzalez 16:24 good 23:3 28:10 30:1 34:8 35:9 36:15 46:14 54:4 60:18,24 63:23 government 7:5,9 grant 60:1 granted 65:5 great 2:17 48:4 grim 36:6 ground 37:21 group 26:18 grupo 27:17 29:12 29:19,25 30:6 31:20 31:24 40:16
	f		
	f 66:1 face 8:6 facilitate 20:17 facilities 10:18 facility 31:1 fact 6:18 7:3 29:7 30:8,22 31:6 41:18 42:4 43:17 44:2 60:4,8,19 62:2 factual 15:11 failure 58:4 faith 53:17,17 familiar 24:21 family 2:15 far 40:15 49:6 61:19 fascinating 3:2 55:3 fatal 58:5 father 24:23 favor 56:17 63:21 february 12:22 13:18 federal 6:16 7:5,9 7:12 58:1	g	
		general 2:12 6:1 11:3,7 23:12 24:23 31:1,4 51:9,15,17	

[guaranteed - know]

<p>guaranteed 7:9 guess 3:13 26:12 62:24,25 guilt 43:5 gun 29:10 50:6 gustavo 3:19 guys 56:3</p>	<p>hires 26:19 hiring 28:6 58:17 hit 17:12 54:5 hod 25:4,4 hold 18:23 holds 18:22 homes 37:22 honor 3:15 4:4 16:1 16:13,21 17:18 20:14 21:15 22:9 23:21 24:1,2 29:6 32:1,8,13 34:17 35:1 38:24 40:1 41:17 42:9,15 43:21 44:14 45:8,24 46:17 53:25 60:16 61:11 61:17 62:15 63:19 63:24 64:1 honorable 1:12 hoping 47:13 hours 35:23 36:5,8 huge 10:9 13:5 47:22 48:3,8 huh 36:5 hum 25:24 27:12 39:15 hundred 56:2</p>	<p>includes 21:6 including 10:9 31:11 inconvenienced 52:19 incorporate 10:2 incorrect 31:22 incredibly 16:23 independent 56:6 indiana 23:8 indianapolis 23:10 indiscernible 32:10 32:21,23 33:1,14,20 33:22 34:6,11,23 35:6 36:9,19 37:19 38:12 39:1,7,10 40:1,2 46:5 49:5 53:21 individual 5:10 26:16,22 29:3 31:7 49:1 50:12,13 individuals 26:18 initial 24:12 26:4 insisted 62:1 inspection 10:17 install 22:25 installation 21:13 29:23 40:24 43:15 43:19 55:23 installed 21:17,23 41:3 installing 2:24 9:25 intent 20:16 interestingly 5:4 international 1:4 3:25 5:23 6:6,19 13:6,12,14 15:8 24:19 65:5,8 international's 2:19 interpretation 19:4 interpreted 49:11 49:13 interrelated 27:18 interrelatedness 27:7 30:13</p>	<p>introduce 2:9 investigation 43:3 involved 6:18 53:17 53:18 55:24 issuance 10:16 issue 28:22 31:2 42:16 44:16 45:15 46:7 56:18 57:4 61:3,5,8 62:16 issues 18:10,18 i'm 32:22</p>
<p>h</p> <p>half 13:11 51:3 hand 37:10 happened 13:21 happening 55:2 happy 17:10 46:20 hardhat 11:22 13:1 37:6 38:24 hardhats 11:24 29:16 hardship 13:5 hardy 19:8,10,10 20:2 57:12 58:7 59:12 hat 31:8 hate 11:25 17:22 head 49:23 hear 3:11 heard 17:14 61:2 hearing 3:24 16:22 17:6 23:6 24:4 41:6 heart 28:22 heavy 38:2 held 1:14 13:10 heliostat 22:2 23:1 40:24 41:25 42:2 heliostats 2:22 21:17,22 22:10 23:24 29:24 32:7 36:19 40:9 55:13,16 hey 29:20 highway 9:5 48:6 hire 29:13,20,24 30:2 hired 39:18 56:7 58:18</p>	<p>i</p> <p>idea 30:6 ignacio 27:14 implementation 10:18 important 3:25 16:23 17:13 19:11 20:12 44:20 59:21 improvement 9:7 31:18,18 improves 9:4 imputed 31:23 61:22 imputes 52:7 inadequate 62:6 inception 44:13</p>	<p>j</p> <p>job 10:21 23:25 30:1 42:24 54:4 56:22 journeyman 24:25 25:12 judge 1:12 2:10 34:12 judging 2:14 judicial 2:12 jump 20:25 june 1:14 2:1 jurisdiction 2:13 53:8 jury 35:22</p>	<p>k</p> <p>keep 17:1 kevin 41:19 43:12 46:9 key 17:12 50:2 kind 2:6 3:5 17:12 18:19 19:22 22:13 26:10,22 28:21 29:21,21 30:14 32:3 36:24 38:13 40:5,22 58:19 60:12 knew 43:9,18 44:10 45:6 46:11 51:17 52:6 know 3:4,6 4:6,15 4:15,22 5:21 6:20 12:6,10,11,12,18 13:20 14:4 18:6 21:18 23:22 24:9,15</p>

[know - motion]

24:22,24,25 25:1,2 25:7,10,11,16,20 26:6,13 28:11 29:17 32:5 33:2,6,7,23 37:3 38:20 43:24 45:13,17,18 47:16 47:25 48:2,3 49:23 54:4 55:2,8,17 56:1 56:21 57:2,5,20 58:17,19 59:4 60:3 60:5,6,11 62:21 knows 14:22 41:1 49:15	laws 18:24 43:1,2 left 37:10 legal 15:10 18:18 53:7 54:11 legislature 3:8 20:15 lessor 21:8 letter 43:25 levelling 10:12 leverage 50:24 51:1 53:12,19 liberal 19:4 57:23 liberally 14:16 49:11,12 58:11 licensed 6:7,8,10,19 6:25 7:4,7,13 8:9 lien 2:20 4:6,7,10,19 4:20,22,23 5:13 7:19 8:23 9:15 13:6 13:18 14:16 15:3,13 15:17 18:24 19:5,7 19:12,17 20:1,16,17 20:22 21:1,6 23:11 28:24,25 29:2,4 44:22 45:3,10 47:3 48:17,22 49:10 50:22 52:18 53:1,23 58:11 60:1 65:4 lift 34:3 lifting 10:11 lights 10:19 limitation 21:7 line 10:5 lines 56:5 59:2 little 21:14 30:8 37:5 37:10 38:5,12 39:3 llc 1:7 loan 7:8 logo 33:7 logo's 33:10 long 37:25 longstanding 19:3 look 4:8,18 7:24 9:21 11:21 26:23 30:1 35:3 47:6 55:18	looked 4:14 looking 5:6,7 35:25 54:6 55:10 looks 33:12 39:13 55:20 lot 23:4 55:23 59:13 60:8 62:11 love 62:23 low 2:6 ludicrous 10:25 lumber 58:9	45:13 50:8 62:19,20 63:16 meaning 23:13 means 31:14 51:25 meant 55:4 mechanic's 4:7 mechanics 18:24 19:5,12 20:1,16 28:24 47:3 meet 10:3,19 47:1 59:9
l		m	member 24:18
labor 3:2,9 4:13,16 5:4,8,9,14 7:23 8:7 8:20 9:12 10:21,23 11:2,4,6,10,13,14 14:21 15:15 18:11 18:14 20:21,23 21:18,19,21 23:4,11 23:12,17,18,18,20 23:22 24:6,10,15 25:14,14,23 26:5,6 26:13 27:1 28:3,7 28:14,20 29:14 40:11,14,20,24 43:1 43:2 44:14,16 45:4 47:1,6,8 48:13,23 48:24,25 50:5,8,10 54:13 55:5,8,10,19 55:21 56:8,16,23 57:1 61:20 laborer 9:13 21:8 24:24 25:5 26:14,24 48:18,22,25 50:12 laborers 5:10 24:19 26:6 43:10 56:2 language 23:16 law 3:8 6:5,15,16 11:19,20,21 19:3 23:5 57:7,20 60:4,8 60:20 62:3			members 30:20 memorandum 63:7 mentioned 25:17 44:1 mentions 18:21 menuoz 3:21 mere 23:18 merits 14:8 15:10 met 52:25 53:23 million 13:11 51:3 mind 30:9 mine 32:16 miner 21:9 minutes 22:25 mirrors 55:16 missing 11:25 12:2 mixer 25:7 mmi 1:7 2:20 mode 33:13 molten 36:22 money 13:13 14:4 63:1,2 monitor 33:22 monitoring 9:22,22 10:11 monitors 33:15 month 37:23 moore 23:9 mortar 25:6 motion 2:19 42:18 45:9 60:1 61:7 62:17 63:13,13 65:4

[mouse - plant]

mouse 32:22 move 9:4 47:19,22 55:15 moved 22:5 movement 55:22 moving 2:22 28:21 multiple 29:6 31:10 44:2,12 46:15,15 51:6 multitude 18:17	14:24 15:16 18:16 20:24 28:22 29:1,3 29:5,17,18 30:4,6 31:23 40:15,18,19 41:8 43:24 44:13,17 44:18 45:5 46:8,15 47:1,10 49:4,17 51:6,14,16 54:19,22 54:25 57:5,11,15,21 57:22 58:5,10,19 59:13,20 61:19,22 62:7,9,13	opposition 9:20 27:11,17 30:24 31:24 order 17:23 60:5,13 60:18 62:1 ordinary 56:6 organized 17:24 original 42:24 43:11 46:13 59:2 originally 44:10 osha 10:19 ought 58:20 overall 44:20 overruled 18:25 owner 5:2,14 8:24 11:18 12:4,9,17,19 12:20,21,24 13:10 30:17 31:5,14,19,21 41:8,11,16,21 44:17 49:4,20,21 51:13,14 51:22 52:1,2,3,8,8 52:12 53:17 54:18 54:18 57:6,11,16 58:22 59:7,13,20 61:14,24 owner's 41:23 52:15	partners 30:20 partnership 54:11 parts 22:3,17,18,18 party 62:25 63:10 66:10 pass 52:20 payment 8:24 19:20 19:21 payments 20:17 people 56:11 percent 11:2 perfect 10:12 19:7 38:16 perform 7:13 28:6 performance 4:20 19:6 23:15 54:15 performed 54:20 55:19 performing 6:13 performs 20:23 54:12 55:4 56:16 period 37:20 person 8:8 11:11 21:10 23:14 31:16 54:10,17 ph 3:19,21 18:22 27:14 phrased 18:9 pickup 47:25 picture 37:3 pieces 38:3 pintar 1:18 3:15,17 3:18,18 4:2 8:4 16:3 16:4,8 25:17 33:21 34:8 38:4,10,15 42:9,12 45:24 46:2 46:5,23 47:16 48:7 54:3 59:22 60:15 62:15,20,22 63:4,6 63:12,15,19,23 place 2:23 38:3 49:18 54:8 plaintiff 1:5,18 plant 28:4 36:23 37:16
n	november 66:14 nowadays 41:10 nrs 3:10 4:7 5:6 7:24 15:12 20:21 31:13 54:7 61:13 number 12:8,14 nye 1:2	o	ph
n 65:1 66:1 n.e. 23:8 naftali 3:21 47:17 name 11:22 13:2 38:7 58:23 59:3 named 12:11 names 11:24 necessarily 19:18 necessary 10:20 40:11 need 32:17 60:3,11 60:12 61:1 needed 6:9 needs 39:23 51:14 negotiate 13:15 14:6 15:5 19:21,24 negotiating 53:6 nevada 1:2,16 2:1 6:5,7,17,22 7:6,11 7:14 14:14 19:1 20:1 23:5 30:24 61:23 nevada's 19:3 never 52:10 new 37:17 nonskilled 48:21 north 35:15,17 note 20:13 noted 2:6 20:20 notice 4:12,25 5:15 5:21,22 7:2,19 8:25 9:16 11:18 12:5,8 12:16,19,25 14:20	o 66:1 object 17:4 objection 17:4 obligations 17:2 obviously 4:4 28:23 occasionally 35:25 official 27:22 oh 5:20 15:21 34:16 43:9 44:9 46:11 okay 2:9 4:1 16:4,15 16:17 17:14 18:1,5 32:15 33:23 35:5 36:14 39:11 42:14 44:11 49:23 54:3 56:1,2 60:25 62:4 63:12,15 once 21:23 35:11 one's 33:19 ones 29:19 online 37:18 opportunity 16:6 17:7 32:5 37:17 opposing 27:8	p	p
		p.3d 19:9 20:14 page 8:5 9:20 pahrump 1:16 2:1 paid 5:12 8:22 9:14 9:15 19:15 20:8 25:21 45:2 48:15,16 48:18 50:17 56:9 65:7 painter 37:1 paragraph 15:24 parents 30:20 parsing 28:16 part 31:19 47:19,20 55:1 parties 3:1 15:20 50:18 53:5	

[plants - release]

<p>plants 30:25</p> <p>playback 36:16 38:9</p> <p>pleading 43:9</p> <p>pleadings 5:6 18:20 30:13 41:5 47:7</p> <p>plumber 24:25</p> <p>plus 22:13</p> <p>pocket 55:1</p> <p>point 27:2,4 28:21 28:23 46:16</p> <p>pointed 31:23 59:22</p> <p>points 17:12 19:10 32:12 54:5</p> <p>pony 12:1</p> <p>portion 42:5</p> <p>position 16:19 19:13 20:10 22:6 25:6,9 26:1 27:4 28:15 55:15 63:22</p> <p>positon 25:11</p> <p>positons 24:16</p> <p>post 13:9 52:17</p> <p>precedent 61:23</p> <p>predates 58:5</p> <p>prejudice 44:22</p> <p>prejudiced 50:21 51:1 52:14,15,22 57:16</p> <p>prelien 20:24 54:7 57:15,22 58:4 62:13</p> <p>preliminary 4:12,25 5:15,21,22 7:1,17 7:18 8:25 9:16 12:7 12:16 14:20 47:10</p> <p>preparation 10:13 10:14</p> <p>prepare 10:7 60:3</p> <p>prepared 24:4 60:13</p> <p>presen 17:20</p> <p>press 30:22 42:19 43:16</p> <p>pretty 26:3 36:6</p> <p>prevailing 45:17,18 45:21 62:25 63:10</p>	<p>previously 55:6,12</p> <p>price 56:9 59:23 62:10</p> <p>print 37:11</p> <p>prior 17:6 27:5,8 34:13 41:5 58:23</p> <p>probably 11:1 27:15 38:21</p> <p>problems 31:5</p> <p>procedural 9:23</p> <p>procedures 9:22 10:8,11</p> <p>proceed 53:4</p> <p>proceedings 1:11 64:5 66:6</p> <p>process 37:23 38:1</p> <p>professional 8:9,10 8:13</p> <p>proimtu 1:7 2:20 4:22 6:6,20,24 7:19 8:12 9:17 12:11 13:7,15 14:6,6,11 15:6 16:18,23 18:13 19:14,22 21:2,12,16 22:19 26:25 28:3,6 28:13,19 29:13,17 29:20 39:8,12 40:8 41:2,24 42:3,25 43:3,5,18 44:14,23 49:14 50:21 51:3,10 51:18 52:7 53:3 55:12,20 56:4 58:18 59:6,17 61:18</p> <p>proimtu's 13:1 17:2 19:20 40:23 43:10 43:14 44:22,24 46:12 53:10 60:17 60:23</p> <p>project 5:11,24 9:7 36:22 37:2,14 39:19 40:8,19 42:23 43:14 44:14 45:16 46:10 46:14 48:2 49:18 59:7</p>	<p>project's 11:23</p> <p>projects 31:11</p> <p>promise 36:8</p> <p>promoting 25:19</p> <p>proof 41:16</p> <p>proper 2:23 22:6</p> <p>properly 55:17</p> <p>property 4:10 7:21 31:17 51:20,21 54:19 57:16</p> <p>protect 12:16 19:14 29:2 50:12</p> <p>provide 10:8 28:3 28:14,19 29:3,14 47:10,18 49:4,25 53:19 55:13</p> <p>provided 18:13 21:12 40:11,13 54:9</p> <p>provides 20:15 21:11 31:13</p> <p>providing 26:13,25 55:20 57:1</p> <p>provisions 50:2</p> <p>pull 30:10</p> <p>purpose 12:7 26:21 45:3</p> <p>pursuant 27:24</p> <p>put 17:4 20:11 28:24 34:13 47:24 55:16</p>	<p>r</p> <p>r 66:1</p> <p>railroad 9:6</p> <p>raised 2:7 23:3</p> <p>rarely 11:5</p> <p>read 21:5 24:5,11,14 37:11 38:23 39:2</p> <p>reading 54:22</p> <p>reads 54:8</p> <p>ready 13:8</p> <p>real 35:9 60:2</p> <p>really 3:2 4:18 6:4 9:8,9 11:4 12:2 19:11 40:7 41:8 42:1,7 43:20,21 50:7 52:21 59:18</p> <p>reason 13:3 59:25</p> <p>recess 64:3</p> <p>record 4:10 8:23 16:22 17:4 48:17 60:21</p> <p>recorded 29:4 66:6</p> <p>records 7:19</p> <p>recourse 20:9</p> <p>redid 35:13</p> <p>reference 57:17,25</p> <p>referred 41:11 59:11</p> <p>reflectors 8:16</p> <p>regalvanization 10:13</p> <p>regard 3:1 57:23 59:17</p> <p>regardless 15:6 48:25</p> <p>registered 8:8</p> <p>relate 24:3</p> <p>related 28:3,7 29:14 40:14,20 46:7 50:6 61:20 66:10</p> <p>relates 43:1</p> <p>release 15:4 30:22 42:19 43:17 50:22 52:17</p>
		<p>q</p> <p>quality 10:1,4</p> <p>question 21:12 23:2 23:3 24:2 40:21 42:1 43:20 45:6 46:25 47:4 63:17</p> <p>questions 15:21 16:1 17:9,10 41:4 46:20 53:25</p> <p>quickly 42:7</p> <p>quite 59:5,9</p> <p>quoted 23:16</p>	

[released - solely]

released 14:5 15:3 15:18 releasing 14:7 relevant 23:7 rely 41:5 remains 44:23 remember 19:11 44:20 reno 2:10 35:13 renter 21:9 repairs 9:3 reply 8:3,5 14:14 18:21 25:18 31:3 56:11 57:18 61:6,10 reported 1:25 reporter's 1:9 reports 10:15 representative 41:23 42:22 representatives 13:4 reputed 54:18 request 17:7 41:6 56:1 requesting 15:23 28:1 required 18:25 20:23 requirement 14:18 49:14 58:13 requirements 4:11 9:23 10:1,19 12:15 14:10 19:7 53:1 requires 20:22 resident 38:8 39:18 resolve 14:1,2 15:6 15:20 53:20 resolved 13:16 14:2 14:3 19:25 53:13 respond 17:7 resulted 43:4 44:16 retained 28:19 rid 15:9 19:18 49:13 right 3:16 4:3 8:3 16:2 25:15 33:9 36:12 38:16,19 46:6	46:21,23 48:20 63:4 63:17 64:2 rings 23:1 rise 64:4 risk 10:14 road 9:5 35:20 role 56:6 rule 15:17 58:3 59:16 63:21 rules 14:16 ruling 7:10 56:17 61:4 rulings 58:6 running 37:16 runs 35:19 runway 35:17 runways 35:13 s salt 36:22 sara 1:25 66:3,19 satisfied 63:2 satisfy 4:24 saw 35:11 saying 12:4 24:6,9 29:13 41:14 43:7,13 63:7 says 4:16 21:5 22:24 23:10 27:21 28:10 29:25 44:9 46:11 50:5 61:14 scheme 44:21 schofield 57:19 58:8 scooch 39:3 scope 12:8,12 47:20 49:24 51:7 55:11 59:23 62:9 screen 30:10 38:11 39:9 screw 21:20 22:21 second 2:11 5:3 28:22 52:23 61:3 secondly 17:3 20:12 20:19	secure 7:20 8:23 see 9:21 11:16 17:15 24:12 30:8,18 32:6 32:6,13 34:2,13,18 35:6 36:1,9,11 37:2 37:5,7,12 38:19,20 38:21,23 39:2,8,9 40:1 47:13,15 48:6 57:24 seeing 58:19 59:3 seen 48:2,5 58:3 sees 62:3 send 44:6 sending 55:25 sends 27:15 senior 1:12 2:10,14 sense 5:16 17:23 49:3 sent 43:25 separate 46:7 62:17 63:13 serve 20:24 served 2:11 services 4:21 27:1 28:4,7 29:14 40:21 50:6 54:16,20 61:20 set 3:24 17:5 20:2,3 22:22 23:2 28:11 34:20 35:23 40:12 56:9 sets 26:19 settled 13:22 seventeen 2:11 shift 22:12 shifts 10:3 38:1 ship 22:16 shipped 22:18 should've 51:24 52:9 shovel 37:21 show 12:1,24 17:19 18:17 23:23 27:18 31:7 32:3 44:13 showed 26:17 38:22 40:5	shown 62:6 shows 22:9 41:21 42:6,21 46:18 sic 6:15 48:15 side 31:9 37:9 63:17 sign 66:12 signature 60:14 signed 34:1 simply 14:9 15:14 45:2 52:11,25 55:25 57:1,2 60:4 single 10:24 61:3,5 sir 16:11 sirs 27:23 site 10:6 12:12 22:24 37:25 41:22,24 44:5 47:23 49:21 sites 24:22 sitting 5:5 situation 20:5 62:8 skill 23:15 skilled 23:17 24:15 25:5,11,12 26:5 48:20,23 55:9 sleep 33:13 small 9:9 37:5,11 smith 41:19 42:6,12 42:20 43:7,13 44:5 46:9,10 smoking 29:10 50:6 snmark 19:9 solar 8:15 27:19 28:10 36:21 41:10 58:23 59:1 solarreserve 27:19 30:7,15,17 31:8,25 37:6 40:17 41:9,11 41:20 42:23 44:9 46:8,10 58:22,25 59:7 solarreserve's 40:25 sole 8:18 9:1,11 11:12 48:13 solely 8:10,13 28:19
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[solve - today]

<p>solve 13:8</p> <p>somebody 35:23 55:7 57:2</p> <p>somewhat 24:21</p> <p>sorry 19:8 24:1 42:18</p> <p>sort 39:14</p> <p>sound 66:6</p> <p>sound's 32:24</p> <p>sounds 28:10 41:7</p> <p>spain 3:20,23 6:4,12 53:8,10</p> <p>spanish 5:25</p> <p>speak 16:6</p> <p>special 23:14</p> <p>specific 14:18 29:7 58:13</p> <p>specifically 20:3 21:5 61:14</p> <p>spot 22:7 55:17</p> <p>stack 22:15</p> <p>stand 64:3</p> <p>standing 13:23</p> <p>stands 8:15 47:22</p> <p>stanfield 57:19,25</p> <p>staring 8:6</p> <p>start 54:6</p> <p>started 5:24 6:13</p> <p>state 6:7,17,22 7:6 7:11,14 16:21 45:16 58:6</p> <p>stated 14:15 31:3 43:4 55:6,12</p> <p>statement 12:21</p> <p>states 3:22 42:23</p> <p>stating 58:10</p> <p>statute 3:9 4:9 5:20 8:22 11:9,20 14:19 20:1 21:5 26:15,21 28:16,24 45:3 47:2 47:3 49:11 51:4,21 52:23 54:7 55:2 58:13,21</p> <p>statute's 29:1</p>	<p>statutes 4:6,19 19:5 19:12 20:16 21:4</p> <p>statutorily 31:13,22</p> <p>statutory 4:7 14:9 19:6 49:13 53:1 54:21 61:18</p> <p>step 38:4</p> <p>steve 2:10</p> <p>steven 1:12</p> <p>sticker 39:4</p> <p>stipulate 42:10</p> <p>stipulated 42:20</p> <p>stop 32:11</p> <p>storage 36:23</p> <p>straightened 18:20</p> <p>street 35:16,25 36:2</p> <p>strict 10:11 18:23 49:6</p> <p>structure 9:6</p> <p>studying 3:7</p> <p>sub 13:25</p> <p>subcontracting 56:22</p> <p>subcontractor 5:18 7:24 10:22 11:9 13:24,25 20:19,20 21:10 25:19,23 26:12 47:4,9 49:5 50:13 56:18,25 59:4 59:5,19,20,24 62:12 62:13</p> <p>subcontractors 19:13 49:22</p> <p>subcontracts 6:21</p> <p>subject 6:15</p> <p>submit 5:8 8:18 10:7 11:10 23:21 26:14 45:8 53:22</p> <p>submitted 27:9 66:6</p> <p>subsection 21:1 54:10</p> <p>substantial 14:11,12 14:25 19:6 49:6,8 49:10 57:5,14 58:21 59:15</p>	<p>substantially 20:15</p> <p>subtracts 9:4</p> <p>suffice 51:23</p> <p>sufficient 57:15</p> <p>suggest 48:14</p> <p>suggestion 19:22</p> <p>summer 2:16,16 25:3</p> <p>sums 40:22</p> <p>supervises 23:19</p> <p>supervision 11:7 47:9</p> <p>supplement 54:24</p> <p>supplied 5:14</p> <p>supplies 50:8</p> <p>supply 5:1 11:2,4,6 20:21</p> <p>supplying 56:20</p> <p>supports 19:4</p> <p>supposed 53:8,14</p> <p>supreme 14:14 19:1 20:2 23:8 58:6</p> <p>sure 5:25 6:9 17:17 17:24 19:15 22:14 26:3 29:25 30:11 32:9,22 35:8 38:6 39:16 43:9 48:16 49:2 60:16</p> <p>systems 35:14</p> <p>t</p> <p>t 66:1,1</p> <p>table 3:14 30:16</p> <p>take 22:21 28:14</p> <p>takes 22:24 49:17</p> <p>talk 47:12</p> <p>talked 18:8 40:6 51:5</p> <p>talking 13:19 44:21 53:6 56:10 57:19 58:3</p> <p>talks 57:10,13</p> <p>technical 37:2,14</p> <p>technology 36:24 37:18</p>	<p>telephonically 62:23</p> <p>tell 17:22 47:17 59:21</p> <p>temporary 10:18</p> <p>term 3:9 21:6</p> <p>thank 16:4,8 26:9 34:5 45:11 46:21 63:15,23,25</p> <p>thanks 38:16</p> <p>theory 14:24</p> <p>thereof 31:19</p> <p>thermosolar 30:25 31:21</p> <p>thing 15:22 19:9 27:2 29:21</p> <p>things 16:22 18:7 21:21 47:14 55:1 59:21</p> <p>think 12:23 14:15 14:22 17:12,19 18:14,19 19:11,21 20:12 22:11 24:17 25:4,25 26:20 29:10 29:22 39:11 40:7 41:10 42:15 44:3,15 44:15,19 46:17 47:5 51:10 53:16 54:1,24 56:4,11,13 57:7,9 58:10,20 59:2,8,14 61:5</p> <p>thinking 3:6 24:17 35:10 45:12</p> <p>third 28:21</p> <p>thirty 37:23 54:14</p> <p>thought 26:8 33:3</p> <p>thousands 48:9</p> <p>three 13:11 29:7 51:2</p> <p>tie 18:7</p> <p>time 2:17 6:5 13:17 38:22 52:23</p> <p>timeframe 41:22</p> <p>times 52:25</p> <p>today 4:3 25:19 26:11 50:20</p>
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[tonopah - yup]

<p>tonopah 3:20 27:19 28:4,9 39:18 41:9 58:23 59:1</p> <p>tools 9:25 10:8 21:19</p> <p>top 38:23 39:4,4,12</p> <p>total 14:17,21 58:12</p> <p>tower 48:6</p> <p>trades 25:13</p> <p>training 23:14</p> <p>transcript 1:9 60:22</p> <p>transcription 66:5,7</p> <p>translation 27:22</p> <p>transportation 10:5</p> <p>travels 16:25</p> <p>trial 35:22</p> <p>tried 46:24</p> <p>tripod 35:24</p> <p>trp 1:4 2:18 3:13,25 5:23 6:6,19 13:5,12 13:14,24 14:1 15:5 15:8 18:21 20:10,11 21:2 24:5 26:4 27:13,23,25 29:12 30:5 31:3,20,24 40:16 43:5,22 44:22 51:1 52:20,21 53:16 53:20 56:11,17 58:15 65:5,8</p> <p>trp's 27:4 28:5,12 40:13</p> <p>truck 22:16 47:25</p> <p>true 23:5 44:4 50:15 66:4</p> <p>truly 12:18</p> <p>try 5:19 6:22 13:15 53:19</p> <p>trying 7:20 9:17 28:16 29:15 43:22</p> <p>turn 35:2 38:11</p> <p>two 2:25 4:18 5:25 6:3 12:14,15 15:19 35:23 36:5,8 50:2 57:18 59:10</p>	<p>tying 40:5</p> <p>type 56:14</p> <p>u</p> <p>u.s. 6:5</p> <p>ultimately 7:5,10</p> <p>um 25:24 27:12 39:15</p> <p>understand 2:21 27:4 28:15,18 33:15 43:22 58:24 60:15 61:7</p> <p>understanding 13:21 27:6</p> <p>union 24:19 45:19</p> <p>united 3:22</p> <p>unskilled 23:17 48:24 55:8,9</p> <p>urgency 37:15</p> <p>use 9:24 50:9</p> <p>utilizes 36:22</p> <p>v</p> <p>v 19:8 23:9 58:8</p> <p>valid 4:23 14:21 15:12,22</p> <p>value 12:14 50:1</p> <p>vegas 2:15</p> <p>vegasinc 42:19 44:8 45:13</p> <p>version 54:23</p> <p>versus 48:20,24</p> <p>video 11:16,21 12:25 17:15,18 18:3 22:9,23 32:2 34:14 35:11 36:16 38:9,19 39:21 40:4,22 41:19 41:21 42:6,21 47:14 50:4</p> <p>view 56:12</p> <p>visiting 49:21</p> <p>vs 1:6</p> <p>w</p> <p>wage 45:18,21</p>	<p>wages 6:16 8:17,21 9:10 11:13 25:22 45:18,19 48:12 49:1 56:10 57:3</p> <p>wander 26:23</p> <p>want 4:16 7:2 17:15 19:23,24,25 26:2 57:21 62:17</p> <p>wanted 12:18 26:7</p> <p>wants 20:11 21:2</p> <p>watch 22:10</p> <p>watched 34:9 35:22</p> <p>way 3:23 9:14 18:9 26:10 53:14 56:12 56:24 57:21</p> <p>ways 18:17 29:6,7 44:2,12 45:7 46:15 51:6</p> <p>we've 45:4,5 47:16 50:4,4 58:2</p> <p>week 2:5 60:6</p> <p>went 12:20 21:16 24:11 29:19 33:12</p> <p>whatnot 24:16</p> <p>whereof 66:12</p> <p>wirthlin 1:19 16:11 16:13,14,16,16,20 17:17 18:1,6 22:3,8 25:15,24 26:9 27:13 30:12 32:10,15,19 32:21 33:1,3,9,12 33:16,23 34:4,6,11 34:16,19,23 35:5 36:3,5,7,12,14,18 37:1,9,13 38:6,10 38:13,17 39:1,7,15 39:17,22,25 40:4 41:13,17 42:14 45:25 46:3,6 61:2 63:25</p> <p>wish 3:7</p> <p>withheld 13:13 51:2</p> <p>witness 34:9 66:12</p> <p>wonder 24:13</p>	<p>word 5:19 23:13</p> <p>words 28:5,13,18 40:13 56:15</p> <p>work 2:13,21,25 5:11 6:10,13 7:13 7:16 10:20 12:9,13 12:14 20:6,7 21:11 21:12 26:5,17,23 31:18 33:14 38:2 39:19 44:25 45:1 49:25 50:1,15 51:7 54:16,20 55:11,12 56:7 59:23 60:9 62:10</p> <p>worked 25:3</p> <p>worker 4:21</p> <p>workers 25:21 37:25 46:12</p> <p>working 27:20 31:10 33:4 37:25 49:22 56:25</p> <p>works 26:18</p> <p>world 36:25</p> <p>worst 35:10</p> <p>wow 36:3</p> <p>wrap 32:3</p> <p>wreck 9:4</p> <p>written 60:13</p> <p>wrote 57:9</p> <p>x</p> <p>x 65:1</p> <p>y</p> <p>yards 58:9</p> <p>yeah 22:3 29:16,25 34:4,22,24 38:13,15 39:22 44:9 45:25 46:3,11 63:16</p> <p>years 2:11</p> <p>yup 63:14</p>
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13 **FIFTH DISTRICT COURT**
14 **NYE COUNTY, NEVADA**

15 TRP INTERNATIONAL, INC., a foreign
16 corporation,

17 Petitioner,

18 v.

19 PROIMTU MMI LLC, a Nevada limited liability
20 company,

21 Respondent.

Case No.: CV-36431
Dept.: I

MOTION FOR ATTORNEY FEES

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

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

28 DATED this 2nd day of July, 2015.

PINTAR ALBISTON LLP

By: Becky A. Pinta

Becky A. Pinta, Esq.

FILED

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E. Westerlund
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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		

CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PINTAR ALBISTON LLP, hereby certifies that on July 2, 2015, she served a copy of the foregoing **Motion for Attorney Fees** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

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

/s/ Fallon Bunton

An employee of
PINTAR ALBISTON LLP

FENNEMORE CRAIG, P.C.
Christopher H. Byrd, Esq. (No. 1633)
Brenoch Wirthlin, Esq. (No. 10282)
Mary Bacon, Esq. (No. 12686)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (602) 916-5000
Email: cbyrd@fclaw.com
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 NRCP 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*,¹ 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.²

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.

///

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

² *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)

Brenoch Wirthlin, Esq. (No. 10282)

Mary Bacon, Esq. (No. 12686)

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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: 774082699389

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

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Lucy Trotter

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Fri 7/17/2015Actual delivery:
Mon 7/20/2015 11:51 am

Fennemore Craig
Lucy Trotter
Suite 1400
300 S. Fourth St.
Las Vegas, NV US 89101
702 692-8031

**Delivered**

Signed for by: V. AGUARLIA

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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AMY DOWERS

NYE COUNTY CLERK
BY DEPUTY

1 Becky A. Pintar, 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
(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.
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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 23rd 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	Telehone 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

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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 20th day of June 2015.


KIMBERLY A. WANKER
DISTRICT JUDGE

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)

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.

Page 52

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.

Page 61

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.

Page 62

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

Page 71

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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Page 75

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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

Sara Bernstein

[1 - aware]

1	a		
1 13:11	a.m. 2:2	albrechts 1:19 3:19	31:10,23 32:19,24
1.8 34:4,9 53:12	ability 76:5	3:21	32:25 33:11 59:3
101 38:1	able 12:2 37:4 46:3	allowed 20:9	61:20 67:11,19,22
108 15:2 30:8 33:12	absent 50:8	allows 66:20	68:3 72:20 73:9
33:15 37:19 43:5	absolutely 9:1,2	alters 56:24	argumentation 7:2
62:12 74:6	11:25 50:25 56:8	amount 22:5 55:25	arguments 7:5
108.2214. 43:10	73:2	analysis 29:18 66:17	20:13,14,21 34:22
108.2457 13:10	accepted 59:20	analyzing 62:23	article 32:4 45:13,13
11:00 1:15	acs 45:3	answer 69:13	45:15
11:26 2:2	acting 59:25 64:10	anybody 70:8 74:20	asking 14:23
12 1:14 2:1	64:11 65:15 66:5,19	anymore 39:1	assemble 24:5,16
15 30:9 73:12	action 9:8,16 13:22	anyone's 13:22	30:24 45:1 63:21
1976 35:12	15:13,21 17:15 18:6	apologize 43:9	69:1
2	18:21 20:2 51:14	46:19 48:16	assembling 60:12,22
2010 35:14	67:12,16 76:10	apparently 5:4	61:1
2012 39:20 42:17,24	actual 31:15,24	59:15	assembly 24:20,21
44:2	32:10,20,21 33:24	appearances 1:17	29:25 40:12,18
2014 25:9	34:2,13,21 46:17	2:18	42:19,23 44:3 50:3
2015 1:14 2:1 76:14	47:22,23 53:6	appeared 71:18	53:4 54:12 55:17,18
22104 43:10	addition 12:13	applicability 10:19	assertion 35:9 43:3
23 76:14	address 5:12 10:13	application 6:22 8:5	assign 5:2
23rd 4:25 25:9	13:1 18:23 73:12	70:10	assigned 4:16
2457 15:2	addressed 12:6	applies 19:22 71:5	assist 54:15
296 38:2	20:16 37:21 74:12	apply 18:20 20:4	assumed 28:25
3	74:16,17	applying 14:22	attached 13:3 33:6
317 37:12	adds 56:24	appointment 7:24	39:14
34 6:15,16	administration 7:23	approach 23:17	attaches 8:23
35 8:4	admission 39:20	46:23	attempts 13:12
36431 1:6 5:17	adopt 68:4	approached 24:7	attention 4:19 12:24
3rd 42:17	africa 24:11	approval 42:21	20:11
4	afternoon 4:10	approves 44:4	attorneys 68:1
44 30:9	agent 43:4,6,15 74:5	arbiter 7:25	attributing 37:15
5	ago 2:6	arbitration 7:8,11	audience 67:25
5 2:12 25:1,4 45:17	agree 7:7 8:1,11 9:1	7:13,18,22,24 8:9	audio 2:5
6	12:21 19:22 62:16	10:17 14:10 19:20	authenticated 74:1
600 49:1	agreed 45:16,17,19	arbitrational 8:1	authorization 40:11
624.020 56:18 61:13	45:23 46:12,15	architect 43:16	avail 11:6 12:2
8	agreeing 63:9	area 42:2	available 4:25
8 2:13	agreement 16:15,15	argue 8:21 43:23	availing 11:17
828 37:13	33:7,9 58:13	67:8 70:3	award 7:11
	agreements 8:10	argued 10:17 37:23	aware 21:1 39:4
	ahead 47:24 48:24	70:13	45:24,24,25
		arguing 63:14	
		argument 15:10	
		17:14 22:12,25 25:2	

[back - con]

<p>b</p> <p>back 2:13 14:18 15:1 17:19 23:6 33:3 39:20 41:2 42:12,14 44:1 68:23 70:16 74:16</p> <p>backed 52:15</p> <p>based 9:19,25 10:3</p> <p>bases 24:4</p> <p>basically 23:25 47:8 52:13</p> <p>basis 8:9 50:15 73:3</p> <p>becky 1:17 3:1</p> <p>begins 2:5 47:25</p> <p>behalf 2:19,23 3:1,4 3:8,12,16,21 71:12 72:8</p> <p>belies 22:14</p> <p>believe 10:16,16 11:13 41:19 47:1,3 50:7,15 71:3 73:10 73:13</p> <p>believed 9:7</p> <p>benefit 41:20</p> <p>bernstein 1:25 76:3 76:19</p> <p>best 41:17 76:5</p> <p>bet 67:23</p> <p>better 56:2</p> <p>beyond 29:15 30:17 33:23 59:13 63:6,13 64:5 66:1 72:1</p> <p>big 24:4 30:19 65:8 65:14</p> <p>bit 2:10 40:23</p> <p>blurry 49:13</p> <p>board 28:15,22 45:4 51:8 59:21 68:12,21</p> <p>bodies 26:14</p> <p>boils 33:16</p> <p>bond 17:8,25 18:11 33:18 34:16 53:17 53:23 54:1 67:18</p>	<p>bonded 17:8,9 34:17</p> <p>bottom 40:4</p> <p>bound 8:12</p> <p>break 73:22</p> <p>breakdown 30:10 71:23 73:16</p> <p>brenoch 1:18 3:16</p> <p>brian 47:2,4</p> <p>bridge 25:12</p> <p>brief 19:11 20:19 36:12,16 44:8 46:18 74:2</p> <p>briefed 20:22</p> <p>briefing 11:12 12:25 19:1 20:8 50:10 73:10 74:1</p> <p>briefly 10:15 68:6 71:10</p> <p>briefs 71:6</p> <p>bring 4:18 9:7,15 12:8 20:15 55:19 62:15,16 69:2</p> <p>bringing 15:13,20 18:20 19:24 54:16 54:17</p> <p>broke 45:21</p> <p>brought 12:23,25 13:21,24 14:20 17:22 20:3 22:16 23:24 42:25 65:19</p> <p>brown 1:20 3:4,4</p> <p>builder 43:16</p> <p>building 57:1</p> <p>bus 56:2</p> <p>c</p> <p>c 1:20 39:14 76:1,1</p> <p>calendar 2:14</p> <p>call 4:5</p> <p>called 41:3 51:5</p> <p>capacity 59:25</p> <p>carry 38:20</p> <p>case 1:6 4:16,17 5:13,24 9:12 12:9 15:11 18:19 20:2,5</p>	<p>32:14,16 34:1 35:19 38:14 39:17 43:25 50:22 55:16 65:2 72:13</p> <p>cases 4:12</p> <p>caught 20:11</p> <p>ceo 45:7 46:12</p> <p>certain 52:4</p> <p>certainly 10:12 11:11 12:22 21:19 30:16 40:22 50:22 53:17 71:1 72:7</p> <p>certified 39:15</p> <p>certify 76:3,9</p> <p>chain 45:3 55:13</p> <p>chance 2:7 19:11 36:12,15 39:22 42:3 50:9</p> <p>chapter 30:7 37:19 43:5 74:6</p> <p>charge 43:19</p> <p>chart 44:8,16,18</p> <p>choice 17:13,17</p> <p>circular 15:10</p> <p>circumstance 57:11</p> <p>citation 35:12 52:14 52:21</p> <p>cite 45:14</p> <p>cited 35:15</p> <p>civil 7:21 49:4</p> <p>claim 15:12 18:19 27:16 53:25</p> <p>claiming 61:15</p> <p>classification 45:18 45:20,25 46:13,16</p> <p>clause 71:2</p> <p>clear 9:22 12:3 30:9 38:13,16 46:8 73:15</p> <p>clearly 28:17 29:15 34:15 45:25 47:17 51:1 54:25 55:3 57:4 60:8 61:2 62:17 65:18 66:11</p> <p>clerk 44:12</p>	<p>client 63:18,22</p> <p>clients 60:21</p> <p>close 5:20</p> <p>clue 28:4</p> <p>cobra 1:23 2:20 17:10 18:4 40:7 42:17 44:2,24 45:2 47:7,20 48:19 53:16 55:6,7,9,11 67:18 73:25 74:3</p> <p>cobra's 69:17</p> <p>column 45:16</p> <p>come 2:16 21:18 22:18 33:9,22 35:25 39:11 41:2 45:1 65:7,16 66:22 69:1 69:21</p> <p>comes 11:21 15:1 28:10,11 42:1 65:1</p> <p>communicating 4:21</p> <p>companies 32:18 44:11 66:21</p> <p>company 22:17 24:10 35:14 40:11 45:4 65:19</p> <p>compelled 17:24</p> <p>compelling 28:14 61:19 74:15</p> <p>complete 42:21 49:3</p> <p>completed 49:3</p> <p>compliance 31:17 31:18 32:17 33:1 35:9,17 50:23,24 51:2,2 67:6,7</p> <p>complicate 17:6</p> <p>complicated 56:7</p> <p>comply 46:5</p> <p>component 65:22</p> <p>components 24:8,9 24:19 29:25 60:11 60:18 61:3,5 63:4</p> <p>compulsory 8:2</p> <p>con 64:10</p>
---	---	--	---

[concerns - department]

concerns 20:17 concluded 75:8 conclusion 33:22 conditional 26:8 62:6 63:8 66:11 confirm 31:3 confirms 56:12 confusing 44:11 connection 55:18 consider 18:7 considered 72:12 73:9 considers 7:4 constitute 38:24 constructed 39:2 construction 26:2 27:9 28:16 30:2 32:15 34:12 49:1 59:20,24 67:10,20 68:1 constructs 56:24 consumed 61:3 66:3 consuming 60:6,9 61:2,9 contact 44:24 contacted 4:10 context 37:7 conti 1:22 3:8 contract 6:10,14,16 6:21 7:16 8:4 9:21 9:21 10:4,20,25 11:8,15 12:3 13:5,8 13:12 15:14 16:4,14 16:22 17:20 22:8,13 23:4 26:21 27:9 29:10,13,15 31:9,19 31:21 36:11 40:9 41:4 55:5 60:10 63:19,19 64:18,19 64:20,20 65:23 66:1 66:15 68:17 70:1,6 70:9,17 71:22 74:13 74:17,23 contracted 71:25	contracting 40:11 52:11 57:16 contractor 6:19 8:10 9:6 13:13 16:21 17:11 18:4 26:2,3,5 27:16,18 28:18 29:1,9 31:3,6 34:19 43:4,6,17,23 46:10 51:9,11,17,18 51:22,25 52:19,25 54:21,24,25 55:3 56:19,19,21,23 57:12,24,25 58:15 58:17,19,21,23 59:3 59:5,8,11,12,25 60:2,3,8,13 61:13 61:14,16 64:11,12 64:12 65:5,6,6,9,10 65:16 66:5,6,7,14 66:20 67:7 69:9 70:14,15 contractor's 29:5 57:13 74:5 contractors 6:9 21:3 28:15,21 42:1 51:8 66:23 68:12,21 contracts 42:1 control 43:19,24 convoluted 31:24 32:24 copy 43:11 corporations 6:9 correct 6:12 9:3 13:9 36:22 43:2 45:14 76:4 correctly 57:22 70:8 cost 34:18 65:24 couldn't 18:10 49:15 counsel 2:15 6:4 10:9 15:21 21:9,17 27:23 44:17 46:14 72:17 counsel's 33:11 36:19 38:21 40:21	45:14 county 1:2 4:14,14 couple 5:11 46:22 46:23 71:18 course 10:6 26:13 34:3 court 1:1,12 2:6,8 2:21,25 3:3,6,10,14 3:18,23 4:2,15 5:21 5:23 6:3,13 7:22 8:19 9:15 10:8,10 10:14 11:12,18,21 12:14,15 13:3,6,16 13:24 14:14,23 15:7 16:3,8,13,25 18:14 18:22 19:3,7,9,14 20:7,10,20 21:1,6,9 21:12,16,18,20 22:19,22,25 23:3,11 23:14,16,18 25:13 25:17 26:13 27:25 28:4,9,19 29:12 30:5 31:5 33:21 35:2,4,13,16,18,21 37:10,12,13,21,24 38:1,2 39:21,23 40:1,5 41:15,20 42:5 43:8,11,13 44:7,14 46:19 48:8 48:11,14 49:10,17 49:20,23 50:6,14,18 51:15,20,23 52:2 54:5,19 55:15 56:6 56:9,15 57:5,8,15 57:20 58:5,7,10 59:9,21 60:14,20,24 61:22 62:1,4,21,23 62:25 63:16,18 64:13,17 65:8,13 66:20 67:9 68:4,9 68:12,14,18,22 69:25 70:24 71:7,8 71:11,14 72:9 73:11 73:24 74:8,20,25 75:6	courts 8:13 9:3,13 10:5 covers 62:8 cpi 40:10 crane 25:12 26:18 61:7 cranes 23:24 24:14 24:17 27:10,12 30:19,20 61:18 63:3 64:5,7 crescent 48:1 criminal 12:16 52:14 critical 39:17 42:13 cv 1:6 5:17
d			
d 1:22,24 date 42:15 76:13 dates 4:23 5:1 day 7:7 12:16 days 19:17,18 33:4 dear 40:3,6 death 62:25 december 42:17 decide 19:9 decided 5:8 20:6 decision 8:2 deck's 69:19 defendant 1:8,18 defendants 2:20 defer 10:7 define 37:19 defined 25:21,24 59:7 70:2 defines 37:18 56:18 definition 54:7 59:12 61:13 66:2 degree 69:12 demolish 57:1 denied 50:8 deny 50:14 73:2 department 25:5 32:6,7 61:16			

[depose - far]

depose 46:4 design 38:17 designation 47:17 designing 38:13 41:6 determination 15:23 70:18 determine 41:15 development 57:3 dictionary 27:7 difference 65:9,15 different 30:1 31:2 38:12,13 42:10 60:11 differently 57:9 difficult 43:23 45:22 difficulty 54:6 dig 26:15 digging 65:18 directed 65:2 directing 26:24 27:1 29:7 direction 30:14 65:4 directly 22:8 55:5 disagree 11:18 36:20 72:25 73:23 disagreed 70:9 disagreement 6:18 7:1 16:20 disclosure 23:11 41:24 61:20 discovery 50:11 discuss 2:8 discussed 14:11 35:20,21 discussing 13:19 disingenuous 67:8,9 dismissed 20:4 dispose 5:16 dispositive 51:7 68:7 72:10 dispute 6:17 7:1,12 9:11,11,20,23 10:25 11:5 16:19 17:1,20 33:6,8 36:2 41:18	53:24 69:14 70:22 disputed 40:20 disputer 17:2 disputes 16:17 distinct 72:6 distinction 38:8 distinguishes 51:1 distracted 21:14,22 district 1:1,12 4:14 ditch 26:15 ditches 65:18 divided 36:21 docket 12:13 document 12:11 19:7 documentary 50:12 documentation 7:3 42:21 documents 12:6,20 20:12 41:23 61:21 doing 28:16 29:14 29:21 34:11 38:23 44:3 50:1,3 55:16 57:4 60:22 61:17 63:12 70:4 dollar 10:11 34:5 53:12 55:25 dollars 18:2 31:20 53:13,19 domicile 8:14 doubt 27:9 drafted 70:17 driven 55:20 drug 2:8 12:14,14 due 36:14 dune 48:1 duties 25:10	either 7:14 18:17 20:1 electric 1:22,22,24 3:8,9 4:1 electrical 25:11 electrician 63:14 elliott 4:15 5:7 emily 49:6,10,11 69:18 employed 76:9 employees 47:11 employing 59:23 employment 59:19 ends 49:8 energy 1:23 48:2,3 engineer 43:17 engineering 51:19 english 23:22 enlighten 54:8 enormous 69:3 entire 69:20 entirely 73:23 entities 35:25 52:4 entitle 7:13 entitled 7:10 8:15 10:2 11:6,24 41:21 entity 27:1 73:11 entrusted 7:23 equipment 24:17,24 26:7,11 27:13,19 29:18 30:23 55:20 62:10,13,18 63:11 64:3 65:25 66:10,12 67:2 erecting 63:3 erection 63:4,5 eric 1:24 2:23 especially 17:24 esq 1:17,18,19,20,21 1:22,23,24,24 essentially 70:1 established 8:10 40:9 everybody 2:16	everyone's 4:19 evidence 38:14,15 46:7 50:13 59:17,22 72:5,16,18 73:4,24 74:9 evidentiary 41:21 eviscerate 27:14 exact 66:2 exactly 16:12 38:10 41:22 excavating 1:20 3:22 excavation 57:2 exception 30:7 31:7 31:13,14,16 32:14 59:15 66:9 exceptions 22:7 51:4 excuse 42:8 43:10 exhibit 13:4 25:1,4 39:14 45:17 existence 6:25 experienced 68:1 expressing 7:2 expressly 8:1,11,13 22:2 31:22 expunge 14:21 17:3 18:23 expunged 41:9 extent 37:4 73:11 extremely 44:11
f			
f 76:1 fabricating 60:6,8 60:15 61:1 fabrication 60:16,21 facie 59:22 fact 24:25 35:14 46:14 factual 41:18 fails 31:10 familiar 16:8 far 9:14 14:9 47:12 72:3			

[fascinating - imply]

<p>fascinating 12:9 february 1:14 2:1 4:25 federal 51:13 52:16 52:23 felt 8:25 fifteen 67:21 file 9:19 10:3 filed 9:17 13:25 17:2 61:22 69:10 73:10 files 4:18 filing 14:4 finally 4:5,9 46:17 53:1 69:16 find 14:23 21:12,13 46:6 finding 51:15 52:19 52:22 68:20 finds 15:7 first 2:7 4:3,19 6:4 22:11 31:10 42:12 46:25 47:3 48:4 50:7 52:3 67:22,23 fit 31:6 50:14 fitted 38:5 fly 67:20 focus 48:22 folks 56:3 follow 28:20 followed 72:22 following 38:2 fondren 32:15,16 fontainebleau 35:19 forefront 20:15 foregoing 76:4 formal 74:23 former 4:14 forth 23:6 35:20 forty 65:24 forum 7:9 8:14 11:23 13:18,19 14:9 15:12,16 16:16 18:18 71:2 forward 52:13</p>	<p>four 10:10 fourth 62:6 frame 69:4 frankly 13:20 50:4 frequently 48:12 front 49:17 fulfill 7:11 furnished 62:10 furnishes 60:5 further 45:3 50:10 73:5 76:9</p> <p>g</p> <p>general 9:6 17:10 18:4 25:6,18 27:17 34:18 38:3 40:7 43:4,6,23 44:24 46:10 66:23 74:5 geologist 43:17 getting 26:17 36:3 47:2 give 2:14 4:4 39:21 given 19:11 36:15 48:3 50:9 55:25 glenn 1:23 2:19 glossed 71:19 go 10:2 11:1,1 16:9 17:19 23:22 24:4 26:14,15,16 30:25 31:12 40:14 41:11 42:15,22 44:4 45:6 47:23 53:8 56:4 58:15 70:16 72:1 goes 7:17 8:3,8 29:15 30:17 33:3 34:1 59:17 60:1 64:5 74:16 going 2:15 4:3,4 11:19 13:20 16:16 21:12 22:3,6 24:5 29:6,22 44:10,25 45:12 48:24 52:13 52:20 56:1 61:4 62:13,14 66:1 75:3</p>	<p>good 2:22 3:11,15 3:20,24 5:10 47:15 48:10 goodyear 37:12 governed 8:5 70:10 grabs 38:25 grant 1:24 4:1 granted 53:22 great 21:21 68:22 group 30:16 56:3 75:1 guess 2:16 5:7 23:19 57:8</p> <p>h</p> <p>half 18:1 48:15 53:19 hand 64:6 handle 16:17 handled 9:23 happy 13:1 20:13 hard 37:2,3 41:1 47:13 49:12 hardhat 47:4,8,17 hardhats 53:2 hardy 35:14 hat 48:19 49:14 haven't 42:2 hawaii 5:6 hawthorne 4:11 hear 5:15 6:3 20:12 20:13,20 57:21,23 heard 67:21 71:10 72:4,15,17 73:24 hearing 4:11 41:21 67:23 73:6 heavy 12:12 29:25 49:4 held 1:14 66:6 heliostat 53:4 heliostats 38:17 39:2 42:24 45:2 47:19 50:2 helix 1:22 3:8</p>	<p>hello 42:20 helps 23:19 hey 11:3 40:14,24 44:25 74:3 highlight 71:20 highly 56:6 highway 57:1 hired 50:4 hiring 65:3 history 28:1,2 37:1 holding 6:23 honest 44:9 honor 2:23 3:11,20 3:24 5:25 6:12 8:18 10:13 12:23 13:10 14:13 15:5 17:6 18:15 19:6 20:18,25 21:11,25 23:9,25 35:1,6 36:11,18 37:6,22 39:13 41:13 44:6,18 46:17 48:17 49:25 50:21 58:4 62:3 65:11 68:5 69:7,24 70:19 71:9 73:7 75:5 honor's 36:22 honorable 1:12 hope 68:4 hopefully 46:20 47:14 huge 65:13 huh 22:24 25:16 57:7 hum 16:7 23:2 54:18 57:14 63:17</p> <p>i</p> <p>idea 43:3 47:21 ignacio 42:20 imagination 72:24 immediately 6:24 impair 13:13 impairs 14:12 imply 45:21</p>
--	--	---	--

[important - legal]

important 8:25 36:6 39:5 improvement 43:20 43:21 57:3 improves 56:25 improving 22:4,6 imputed 32:11 46:8 47:23 inaccurate 35:11 inclined 72:9 include 60:4 includes 60:2 including 7:3 24:17 50:12 inconvenient 40:22 incorrect 74:7 independent 65:5,6 65:10 india 5:6,7 indiana 38:1 indianapolis 37:25 indiscernible 13:7 37:11 44:13 48:17 49:16 68:23 70:22 71:7 74:24 industrial 1:21 3:12 30:1 industry 67:10 install 24:6,8 installation 63:12 installed 24:22 installing 47:18 50:2 insufficient 72:19 insurance 31:2 intent 21:3 interest 21:5 interested 71:17 international 1:4 3:2 5:18 6:20 9:2,13 24:3 52:1 53:18 interpret 30:6 interpretation 6:22 12:21 19:23 26:1,14 27:6,23 29:4,16 35:16 36:19 38:22	54:13 interpreted 8:6 14:7 31:5 70:2,6,11 interpreting 37:13 interrelations 44:10 interview 47:10,13 interviews 50:2 inundating 46:19 invalid 17:16 18:8 investigated 28:15 28:24 52:12 investigates 28:22 investigating 51:10 investigation 32:7,8 52:10 68:24 invoices 23:5,7,8,23 24:2 27:11 63:10 73:15 invoke 9:9 14:17 15:2,15 17:17 involved 8:24 9:5,6 52:10 56:1 ironworking 25:11 26:17 issue 6:17 7:1,5 9:4 11:13 13:20,21 16:18,19 19:1,10,12 19:15,18 20:5,10 36:10,17 37:22 38:4 39:10,18 40:23 41:7 41:14 42:4 58:7 69:7 72:3,10 issued 7:11 issues 50:12	judges 5:4 72:25 jurisdiction 8:12 15:3 52:17 jurisdictional 9:4 jury 12:17	39:11,18 40:12,18 40:25 41:3,3,16 42:6,19,23 44:4 45:22 50:3 51:4,6 54:7,11,14,16,23 55:2 56:1,13,16,20 57:15 58:2,12,22 59:13,13 61:17 62:19,20 63:6,21,25 64:6,15 65:3,15,16 65:23 66:1,8,9,21 66:22,25 69:6 71:23 71:24 74:10 labor's 37:20 59:7 laborer 26:12 62:12 63:15 64:25 66:14 laborers 24:25 30:13,15 45:20 46:16 lack 56:2 72:6 73:4 land 43:17 51:13 52:16,23 language 7:20 10:1 38:7 laptop 44:5 47:15 large 22:18 24:8,9 30:24 31:19 39:18 las 25:8 late 2:10 law 7:8,18,20 8:6,22 9:24 10:19 11:7,17 12:2 14:5,13,17,22 15:13 16:6 17:17 18:18,20 19:22 20:1 20:4 26:9 50:22 67:21 70:2,4,11,15 70:21 71:4 laws 45:22 70:7,17 lawyers 62:21 72:6 75:1 leads 45:11 left 2:11 61:11 legal 7:9 8:14 9:12 11:22
	j	keep 36:7 67:11 kevin 45:6,15 key 46:11 kimberly 1:12 kind 31:24 37:2 39:10 48:4 57:9 65:4 kinds 28:22 knew 25:3 32:1,5,23 34:6,8 46:6,7 know 11:14 12:4 13:18 14:18 22:9,19 23:4 26:16 29:12,19 30:18 31:20,21 34:7 34:10 37:2,16,17 39:7 40:15 42:6,13 46:2 47:11 48:8 49:10,11 54:23 55:11 57:8,12 62:22 63:2,5 67:15,17 68:2 72:4 74:12 knowledge 31:15 32:10,12 34:2 53:6 known 48:14 knows 27:24 32:15 50:5 51:9	
	j	labor 22:11,12,15 23:1 25:5,6,18,19 25:20,22,23 26:1,3 26:6,18,25 27:3,8,8 27:14,17,18,24 29:2 29:3,6,16,22 30:4,6 30:8,18,22 31:4,6,8 31:11 32:6,8 33:20 33:23 36:17 37:7,24 37:24 38:3,9,11,11 38:12,16,23,24 39:1	
	j		
	j 1:21 jeff 3:20 jeffrey 1:19 jerry 4:10 job 45:18,19,25 46:13,15 judge 1:12 4:8,9,15 4:16,22 5:3 12:8		

[legislative - news]

legislative 21:2 28:1 28:2 36:25 legislature 28:5 lessee 43:18 liberal 35:16 license 28:16 29:5 51:19 52:11,24 57:13 licensed 51:12,17,18 51:24 52:5,8,24 58:18 67:4 68:16,25 lien 8:21,22 9:5,8,17 9:19 10:3 13:13,25 14:5,8,12,16,17,20 14:21,24 15:8,15,22 15:24,25 16:2,5 17:2,4,7,12,16,19,23 18:7,8,23 19:21 21:2 27:4 33:13,16 33:17,19 34:5,9,16 34:24 35:10,17,22 36:5 41:8 53:12,20 54:3 62:6 63:7 67:11 69:10,23 71:4 lien's 17:9 liens 53:14 life 5:5 lift 29:24 54:17 lifting 61:8 likewise 7:25 limited 17:15 18:6 30:5,6 limits 10:18 18:17 line 24:20,21 34:24 liquidation 33:7 listening 21:21 literally 46:4 litigate 18:9,10 litigated 59:16 little 2:10 40:23 49:13 54:8 57:9 llc 1:7,23 3:17 5:21 long 49:2 longer 66:13	look 16:9 22:20 23:12 24:1 25:1,3 25:25 26:8 27:11,25 28:23 29:13,23 30:3 36:25 42:14 44:15 44:18 45:16 54:24 59:10 61:19,20 63:9 66:16 70:7,16 looked 25:14 39:23 looking 29:19 59:5 62:5 68:2 looks 9:22 49:19 64:10 lot 32:17 67:24 72:4 love 74:25 lpr 1:20,24 2:23 3:5 luxury 5:5 lynn 1:21 3:11,12	67:1 71:24 73:16,19 matter 5:14 7:8 73:5 74:4 maui 1:19 3:21 meacham 1:22 3:7,7 mean 11:10 16:18 28:23 35:24 37:1,7 53:3 55:20 70:7 meaning 37:15,15 38:4 means 26:25 43:16 70:3 mechanics 21:1 35:10,22 36:5 69:23 meet 2:7 30:25 33:12,14,20,23 59:11 meier 1:23 2:19,19 71:9,12,15 member 45:4 men 27:2 64:1 mercantile 7:22 merely 60:4 merits 18:24 20:6 mid 2:5 million 18:1 34:4,9 53:12,19 millions 31:20 53:13 mind 36:7 miner 43:18 minimum 46:3 minute 21:7 28:19 28:20 46:21 47:9 63:16 68:6 minutes 73:8 mirrors 24:4 30:25 misdemeanor 52:14 52:20 mistaken 69:8 mixed 47:3 mizpah 48:11 mmi 1:7 3:16 5:19 molten 48:2 monday 4:6 12:15	money 22:5 34:19 months 2:6 moore 37:25 morning 2:10,12,22 3:11,15,20,24 4:3 62:2 motion 18:23 39:15 43:2 50:7 71:16 72:13 move 56:25 mt 1:24 3:25 mullinnex 45:9 mushy 40:23
n			
n 76:1 n.e. 38:1 name 3:25 47:1,3 49:6 narrow 22:7 31:16 32:13 51:3 58:8 59:14,14 66:8 nature 35:22 necessarily 53:3 need 2:16 19:25 21:17 29:5 40:14,25 51:12 64:4 67:3 69:1,4,4 needed 12:7 69:5 needs 20:5 72:11,22 nevada 1:2,16 2:1 4:7 6:10 8:22 10:4 10:19 11:7,17 12:2 14:5,13,22 15:4,13 17:17 18:11,20 19:22 20:4 26:9 28:10,14,21 35:12 35:15 36:22 37:10 51:8,25 68:11 70:4 70:15 71:4 nevada's 35:10 never 20:3 55:21 59:15,16 67:21 news 5:10			

[nice - posture]

nice 70:13 night 64:21 nonpayment 71:1 northern 4:7 note 36:9 39:5 notice 6:25 17:18 22:2,3 27:15 31:23 31:24 32:20,21 33:1 33:2,20,24 34:13,22 41:14 42:4,7,9,10 44:2,21 46:9,18 47:21,22 50:25 55:1 55:4,8,10 56:22 59:1 72:4,10,16 notifying 27:4 november 25:9 42:24 76:14 nrs 30:7 33:12,15 43:9 56:18 62:12 number 55:23 60:2 numerous 48:21 nye 1:2	62:1,4 63:1 68:9 71:8 74:20 75:6 once 8:20 9:4 38:25 62:17,18 ones 30:19 63:7 operation 25:12 26:18 opportunity 12:19 opposing 39:19 44:17 opposition 45:5 order 54:10,11 organization 30:4 original 28:11 45:18 45:19 46:13,15 originally 25:6 39:5 osha 31:1 owner 8:24 9:5 17:23 22:3,9 25:2 27:4 31:15,21 32:9 32:10,21,22 33:25 34:3,6,10,15 42:6 42:10 43:5,7,16,21 44:20 46:9,11 53:11 53:15 55:6,10,11 71:13 74:6 owner's 67:19 69:18 72:3,10,16 owners 72:8	paragraph 6:15,16 13:11 62:8 parent 45:4 part 25:2 27:8 30:15 32:2,3 39:19 42:16 43:21,24 particular 54:2 parties 7:6,13,25 8:3 13:6 17:21 19:16 partly 39:18 party 6:23 7:4 39:19 71:17 76:10 pay 10:21 11:4 18:2 23:14 36:4 69:11 payment 10:23,23 17:11 53:20 62:9 70:23 payments 23:6 pays 55:11 people 67:24 69:21 percent 25:22 65:23 65:24 perform 40:25 42:23 50:10 54:10 54:11 69:21 performance 7:14 10:20 38:7 58:20 60:7,9,12 performed 7:19 11:8 25:10 performing 42:19 54:16 57:15 performs 26:3 period 7:7 permit 59:18,23 person 38:5 43:19 59:19,22,24 peter 1:20 3:4 petition 14:21 17:15 50:15 72:13 73:3 ph 55:23 pieces 49:5 69:3 pintar 1:17 3:1,1 5:20,22 6:1,12 8:17 8:20 10:6,9 13:15	14:2,15 15:7 16:7 16:12,24 17:5 20:24 21:8,23,24 22:24 23:2,9,15,17,21 24:15 25:16,20 28:3 28:7,13 29:2 35:3 50:19,20 51:16,21 51:24 52:3 54:18,21 56:5,8,11,17 57:7 57:14,19 58:3,6,9 58:14 59:10 60:17 60:23,25 61:24 62:2 62:5,22,24 63:2,17 63:24 64:14,22 65:11,14 71:21 74:11 75:5 pintar's 71:16 72:12 73:2 place 41:22 49:5 plain 37:14 plaintiff 1:5 plaintiffs 1:17 plant 30:2 48:4 play 15:1 playback 47:25 49:8 pleadings 6:5 43:1 please 10:14 23:18 42:20 plumber 26:5 poeline 55:22 point 14:15 19:14 19:19 22:14 35:8,24 40:21,22 42:8 46:24 56:12 58:24 63:13 73:1 74:15 pointed 71:21 pointing 68:15 points 35:7 portion 45:11 position 41:18 positon 15:19 posted 18:11 53:16 54:2 67:18 posture 72:14	
o	o 76:1 object 73:8 obligation 7:15 obviate 37:16 obviously 5:13 8:23 18:9 22:9 23:5 48:21 58:17 59:14 69:2 71:15 office 64:22 65:20 oh 7:17 11:18 27:17 46:12 48:9 59:3,11 65:8 66:22 okay 2:21,25 3:3,6 3:10,14,18,23 4:2 6:3,13 11:20,20 18:14 20:23 21:22 25:13 39:23 40:1 44:7,15 47:24 48:9 48:13 49:9,23 50:18 51:20,23 54:23 58:5 58:14 59:9 60:1	p p.3d 37:12 pads 24:22 page 7:18 29:19 30:9 62:6 73:12 pahrump 1:16 2:1 12:14 paid 21:4 25:6 27:3 33:10 36:1,3 53:23 55:13 69:22 painter 48:7 painting 25:12 panels 40:15 paper 2:8 25:8 44:17		

[practice - requirements]

practice 43:2	11:3,16 17:22 18:3	provisions 6:14	receive 41:22
prefer 11:12	19:9,11 22:16 23:24	purpose 36:5 41:10	received 50:13
prejudice 34:2,4,14	24:6,9,23 25:7,8	57:11 58:13 69:20	receives 44:2
34:15,20 53:7,10,11	28:15 32:5 33:8	69:22	recognize 28:17
69:8,9,12,13	34:7,11 35:25 40:12	purposes 43:5 57:17	recognized 58:19
prejudiced 69:11	40:16 41:1 42:9,18	74:6	record 2:18
prejudicial 53:15,16	42:20,22 44:3 45:1	pursuant 40:8	recorded 8:20 17:23
preliminarily 35:8	45:21 47:10,16	put 22:3 38:19 39:6	34:5 76:6
36:9	49:14,22 51:10,17	39:8 64:2 67:13,16	referred 29:11,20
preliminary 17:18	52:12,21 53:5 58:11	putting 39:12 41:5	73:14 74:14
22:2 27:15 31:23	63:20 68:24 69:14	60:18 61:5 64:7,8,9	regard 6:21 16:22
33:1,2,19 50:25	74:10		regarding 36:8
55:1,4,8,10 56:22	proimtu's 10:22	q	regardless 33:18
59:1	41:8 69:19	question 6:6,6 8:16	71:5
prepared 12:11	project 11:7 18:12	9:17,25 10:11 54:5	rehashing 42:14
21:18	32:9 43:25 44:22	57:6 70:5	related 40:12,18
preparing 12:16	47:5,6,20 48:2,20	questions 35:1	42:19,23 44:3 50:3
present 1:19	48:21 50:1 51:11	quick 35:7	76:10
presentation 31:25	53:14 55:25 56:10	quickly 5:17	release 33:15 62:8
president 45:9	57:3,18 58:21 59:20	quote 27:7 32:14	66:11
pressure 67:13,16	59:24 61:4,9,11	quoted 38:7	released 53:23
presupposes 15:22	66:4	r	releases 26:8
pretty 5:16,20 66:23	projects 21:4 22:19	r 1:19 76:1	releasing 26:10
prevent 14:4	30:2	railroad 57:2	relying 64:2
previously 4:24	proper 15:12	raised 11:14 19:1,3	remedial 35:22
price 30:9 71:23	property 8:23 15:25	19:12 36:11,13	rent 23:24
73:15	22:4,6 33:17 34:6	37:22	rented 30:19 64:4,5
prima 59:22	34:25 40:16 43:20	rarely 28:10 36:23	renting 65:25
printed 22:17	62:11	rates 25:6	repairs 56:24
printout 68:11	protect 10:22 21:3	read 10:1 11:19 12:6	reply 54:22 74:2
priomtu 5:19	35:24 41:10	12:10,19 13:7 16:18	reported 1:25
probably 5:16 19:24	protected 41:12	19:15 23:20 29:13	reporter's 1:9
20:21 25:22 48:15	provide 26:6,7 28:4	37:3 64:20	represent 3:25
problem 21:24	40:12 49:15 55:1	reading 13:11 19:4	representations
proceedings 1:11	58:1,11 63:20	20:11 23:4 56:18	72:17
75:7 76:6	provided 63:7 74:10	real 71:10	request 19:8,10 20:8
process 36:14 49:3	provides 26:6	reality 12:12	36:13
product 21:2 54:13	providing 38:16	really 21:13 27:18	requesting 40:10
63:21	55:17 57:16	37:17 65:3 66:25	require 36:15
program 2:9 4:8,22	provision 9:9 10:18	67:1,2 72:1	required 35:11,18
progress 62:9	10:24 11:15,25	reason 17:6	56:21
prohibit 11:3	13:23 14:3,6,11,19	reasonable 26:1	requirement 10:21
prohibits 11:16 20:2	15:1 16:18 18:17	29:16	27:15 33:21,24 55:4
proimtu 1:7 3:16	19:14 36:10 71:5	reasons 12:7	requirements 22:1
6:21 9:12,18 10:21	73:13		33:12,14

[requires - statute]

requires 58:23,25 resident 49:6 resolution 47:15 resolve 11:2 13:20 resolved 7:6 19:16 52:22 respect 36:10,17,18 41:13 42:4 46:24 50:11 70:21 respectfully 36:20 respond 36:16 responds 42:18 response 42:17 responses 50:21 result 17:1 review 42:3 43:9,12 reviewed 6:5 rid 9:8 17:16,19 18:7 53:25 54:1 right 9:10 10:22 11:25 12:24 14:1 15:11,25 18:19 20:24 23:13 30:21 41:11 46:21 48:18 49:20 52:2 56:11 57:18,19 58:9 70:7 rights 13:13 14:9,12 14:20 15:15 27:4 road 55:23 57:1 routinely 25:10 rude 21:13 rules 7:21 ruling 72:12 run 12:13 running 2:9	65:12 73:20 says 6:16 11:22 14:5 14:9 15:3,14,16 16:4,16,17,19 24:7 25:4 26:9,15 30:8 32:4 37:13 38:2 41:4 43:15 44:4 49:21 55:2 59:16 61:1 62:7,20 66:4 73:14 74:2 schedules 29:17 66:17 scheduling 30:4 scope 8:4 70:9 screw 40:15 second 4:20 5:14 22:10 32:19 53:8 61:19 62:7 secondly 19:13 36:8 41:13 53:1 69:7 73:23 section 8:3 11:19 secured 21:5 securing 59:17,23 see 5:23 6:7 23:22 37:1,8 39:13,20 45:22 46:25 47:6,10 47:14 48:18 49:12 49:12 57:9 68:13 seen 41:23 selection 14:10 15:17 71:2 send 64:1 sends 39:21 senior 4:8,9,16,22 5:3,4 12:8 45:9 sense 57:10 sentence 2:5 separate 60:18 61:4 71:3 73:19 serve 6:24 service 55:18 58:10 services 1:21 3:13 30:10,12 40:13,18 57:17 73:17	set 4:24 5:1,23 35:20 40:16 44:5 73:5 settle 53:24 shifts 49:2 show 46:17 47:24 72:19 showing 38:22 42:9 shown 53:9 shows 49:25 66:12 side 23:1 45:6 48:19 sift 37:3 sign 49:14 76:12 similar 38:4 simply 12:9,18 14:9 22:14 25:21 30:17 38:22 39:1 54:1 67:15 72:14 74:22 single 12:11 sirs 40:3,6 site 26:2 34:12 47:1 49:2 61:7 64:23 65:1,20 situation 38:10 six 12:16 sixty 10:10 25:22 65:23 skill 38:6 skilled 24:25 25:10 30:13,23 37:23 38:8 56:15 skills 56:13 skip 48:24 small 31:12 smith 45:7,15,17 46:4,6 47:2 50:11 smiths 47:2 solar 1:23 30:1 44:21 45:8,10 48:2 solarreserve 44:20 45:7,10 47:5,19 48:19 55:21,22 sole 7:25 somebody 4:24 39:11 40:14,25	someplace 28:12 somewhat 51:7 sorry 21:10,15,23 43:1 44:16 46:9,22 49:15 74:2 sound 76:6 sounds 72:5 south 24:11 spain 9:3,23 11:1 18:10 52:6,7 70:7 71:2 spain's 9:24 spanish 6:8 7:19,20 8:5 18:18,18 19:20 20:1 23:20,20 24:10 41:25,25 70:2,11,21 speak 23:19 41:25 speaker 5:25 6:2 21:10,15,19 24:14 special 38:6 specialized 39:10 42:2 specialty 60:3 63:23 specific 11:19 37:22 specifically 6:15 14:8 25:7 44:23 spend 72:2 spending 12:15 sphere 71:4 spread 73:21 square 14:18 stand 52:25 standards 31:1 66:7 stands 24:16 30:24 started 52:4 starting 12:17 22:13 state 10:24 28:14,21 51:8,25 58:18 59:21 68:11,20 states 36:24 statue 29:4 statute 16:9 21:2 25:24 27:21 31:18 36:6,22 37:14 41:10 43:8 55:2 58:15,23
s			
salt 48:3 sara 1:25 76:3,19 saw 50:14 61:17 saying 11:3 16:4,10 25:17 28:21,24 32:22 40:24 46:12 52:15 54:9 57:20,21 57:23 58:4,6,16			

[statute - trp]

<p>58:25 59:6 61:12 66:4,14 67:5 69:20 69:23 statute's 37:17 statutes 35:10,17,23 46:5 stay 48:11 steel 63:5 steelwork 61:18 step 53:8 steven 1:22 3:7 4:15 45:8 sticker 47:7 stickers 49:19 53:2 stop 21:6 25:13 storage 48:3 stretch 72:23 strict 35:9 structure 57:2 subcontract 30:17 73:13 subcontractor 8:11 13:14 16:21 29:11 29:20 43:18 58:24 60:3 68:16,25 74:14 74:18 subcontractors 6:19 27:20 55:12 submission 7:12 75:4 submit 7:7 11:10,11 16:1 18:16 19:20 20:19 21:20 36:14 38:15 41:7,17 50:6 50:9 71:6 74:8 submits 9:2 submitted 45:5 76:6 subpoena 46:6 subsequently 52:7 subsidiary 8:9 substantial 31:17 32:16 34:18 35:17 50:23 51:2 67:5 subtracts 56:25</p>	<p>suddenly 38:25 sufficient 74:9 suggesting 72:24 suggests 46:14 supervise 66:24 supervising 67:3 supervision 26:19 26:20 64:24 supervisors 24:13 26:22 supplemental 20:19 23:11 61:21 supplied 22:12 23:1 26:11 27:10,11,12 27:13 29:18 31:8 63:11 supplier 13:14 26:4 31:4 55:16 58:22 suppliers 55:12 supplies 27:18 60:5 supply 22:11 27:19 29:6 31:11 55:9 62:17,18 64:3 66:13 supplying 27:2 29:3 30:11,12,12,22,23 56:20 62:13,14 support 7:4 24:2 supports 50:23 supposed 11:4 72:16 supreme 35:12,15 37:10 38:1 sure 12:20 28:20 39:25 40:2 42:22 43:13 44:7 46:12 57:22 71:11,14 72:1 surprised 12:5 surveyor 43:18 survive 5:8,9 suspend 7:14</p>	<p>takes 30:21 talk 45:12 69:17 talking 47:6 48:20 72:7 team 1:21 3:12 24:12 26:24 65:21 technical 56:9 technician 51:5 53:4 technology 48:5 tell 2:17 47:13 55:24 term 13:11 36:19,21 37:18 56:2 terms 7:15 10:20 19:23 37:20 testing 66:18 thank 20:24 21:22 21:25 23:18 35:3,4 35:5 43:13,14 50:17 50:18 54:4 68:18,22 69:24 71:8 75:5 thereof 43:22 therewith 8:7 55:19 70:12 thermosolar 44:24 thing 4:4 5:14 18:25 19:13 21:16 42:25 64:6 67:6 69:16 70:20 74:11 things 2:13 4:21 5:12 29:14 36:23,24 38:21 41:5 46:22,24 66:19 71:18 think 5:14,15 8:21 9:18 10:2 11:24 12:3 13:17,21 15:6 15:9,10 19:24 27:23 28:7,13 31:5,10,25 32:18 33:21 34:12 34:21 36:6 39:3,4 39:16 40:20 41:16 42:5,7,13 43:22 46:3,7,10 51:6,7 53:9,21 58:8 61:19 68:7,8 69:8 70:8,19 72:9,18,21 74:15</p>	<p>thinking 5:18 28:6 thirty 7:6 19:16,18 33:4 thomas 1:21 3:12 thought 37:5 64:18 thread 72:22 three 2:13 5:5 18:1 53:19 60:2 time 6:18 12:18 16:20 33:3 52:9 57:25 67:22,24 68:17 72:2 times 55:23 today 2:17 5:12 20:14 41:23 50:13 52:25 53:21 61:23 told 4:22 52:16 tonopah 1:23 5:9 12:14 44:21 45:8,10 tools 38:20,23 62:16 62:17 64:6 69:2,4 top 42:16 49:18,21 torres 37:12 toured 55:21 tps 73:25 tr 74:2 trades 25:11 training 38:6 transcript 1:9 transcription 76:5,7 transforms 54:20 translation 39:16 trial 12:17 tried 54:22 trp 1:4 3:2 5:17 6:20 9:1,13 11:4 17:3,11 18:2,16 19:12 24:3 24:15 26:15,21 27:1 31:9 33:6,8 34:20 36:3,13 37:23 38:16 39:6,20 40:7,9,24 42:8 44:2,23 50:4 52:1,9,21 53:17,23 54:1 65:2,2 67:12 67:14,17,18 74:2,4</p>
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[trp - zimbelman]

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			z 57:11 zimbelman 1:24 2:22,23

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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 24th day of February, 2015.

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

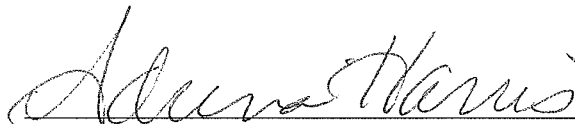
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16 By: _____

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 24th 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

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 3rd day of March 2015.


KIMBERLY WANKER
DISTRICT JUDGE

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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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PINTAR ALBISTON LLP

CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PINTAR ALBISTON LLP, hereby certifies that on March 31, 2015, she served a copy of the foregoing **Request for Ruling on Petition to Expunge Lien, or in the Alternative, to Place on Calendar** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Christopher H. Byrd, Esq.
FENNEMORE CRAIG JONES VARGAS
300 S. Fourth St., Suite 1400
Bank of America Plaza
Las Vegas, NV 89101
cbyrd@fclaw.com



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

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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.

Page 8

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, regalvanization, preparation
14 of risk assessment, preparation of
15 environmental mange 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;

Page 14

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

Page 16

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.

Page 18

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,

Page 20

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,

Page 24

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

Page 27

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.

Page 32

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

Page 35

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

Page 37

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

Page 39

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

Page 40

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.

Page 41

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

Page 42

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.

Page 44

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?

Page 47

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
7 foreign corporation,

8 Respondent.

9 PROIMTU MMI LLC, a Nevada limited
10 liability company,

11 Appellant,

12 vs.

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

15 Respondent.

Case No. 68942

District Court Case No. CV-36431

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May 18 2016 09:24 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 69336

District Court Case No. CV-36431

16 **JOINT APPENDIX TO OPENING BRIEF**
17 **IN CASE NO. 69336**

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Proimtu MMI, LLC

1 **JOINT APPENDIX TO OPENING BRIEF**

2

	DOCUMENTS	BATES STAMP NO.	VOL.
3	1. Certificate of Service for Motion for Attorney Fees	0402-0403	2
4	dated August 27, 2015.		
5	2. Certificate of Service of Petition to Expunge Lien	0076	1
6	and Order for Hearing dated January 15, 2014(sic)		
7	3. Disclosure of Supplemental Documents to Support	0186-0204	1
8	the Petition to Expunge dated February 12, 2015		
9	4. Findings of Fact, Conclusions of Law and Order on	0409-0415	2
10	Petition to Expunge Lien dated September 9, 2015		
11	5. Motion for Attorney Fees dated July 2, 2015	0378-0384	2
12	6. Notice of Appeal dated December 10, 2015	0432-0446	2
13	7. Notice of Appeal dated October 5, 2015	0417-0418	2
14	8. Notice of Entry of Findings of Fact, Conclusions of	0416-0424	2
15	Law and Order on Petition to Expunge Lien dated		
16	October 5, 2015		
17	9. Notice of Entry of Order Granting Motion for	0429-0431	2
18	Attorney Fees dated November 12, 2015		
19			
20			

1	10.	Objection to Untimely Disclosure of Supplemental	0293-0295	2
2		Documents to Support the Petition to Expunge		
3		dated February 25, 2015 (PART 2 of 2)		
4	11.	Opposition to Petition to Expunge Lien dated	0077-0179	1
5		February 2, 2015		
6	12.	Opposition to Petitioner's Motion for Attorney's	0385-0391	2
7		Fees dated July 17, 2015		
8	13.	Order (transferring matter to Judge Elliott) dated	0296-0297	2
9		March 3, 2015		
10	14.	Order for Hearing on Petition to Expunge Lien	0074-0075	1
11		dated January 8, 2015		
12	15.	Order Granting Motion for Attorney Fees dated	0427-0428	2
13		November 12, 2015		
14	16.	Order of Recusal and Request for Senior Judge	0400-0401	2
15		dated August 24, 2015		
16	17.	Petition to Expunge Lien dated December 12, 2014	0001-0073	1
17	18.	Reply to Opposition to Motion for Attorney Fees	0392-0399	2
18		dated July 23, 2015		
19				
20				

1	19.	Reply to Opposition to Petition to Expunge Lien	0180-0185	1
2		dated February 3, 2015		
3	20.	Reporter's Transcript of Proceedings before the	0205-0250	1
4		Honorable Kimberly A. Wanker held on February		
5		12, 2015 (PART 1 of 2)		
6	21.	Reporter's Transcript of Proceedings before the	0251-0292	2
7		Honorable Kimberly A. Wanker held on February		
8		12, 2015 (PART 2 of 2)		
9	22.	Reporter's Transcript of Proceedings before the	0301-0377	2
10		Honorable Steven Elliott held on June 18, 2015		
11	23.	Request for Ruling on Petition to Expunge Lien, or	0298-0300	2
12		in the Alternative, to Place on Calendar dated		
13		March 27, 2105		
14	24.	Supplement to Motion for Attorney Fees dated	0404-0408	2
15		September 9, 2015		