

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELIX ELECTRIC OF NEVADA, LLC; AND  
NATIONAL WOOD PRODUCTS, INC., A  
UTAH CORPORATION,

Appellants,

vs.

APCO CONSTRUCTION, INC., A NEVADA  
CORPORATION,

Respondent.

No. 76276

District Court No. 08A571228

Electronically Filed  
Nov 27 2018 08:05 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**AMENDED DOCKETING STATEMENT  
CIVIL APPEALS**

**1. District Court:**

Eighth Judicial District Court, Department XIII, Clark County, Judge Mark Denton, District Court

Case No. A571228

**2. Attorney filing this docketing statement:**

Attorney: Eric B. Zimbelman Telephone: (702) 990-7272  
Firm: PEEL BRIMLEY LLP  
Address: 3333 E. Serene Ave, Suite 200, Henderson, NV 89074  
Client(s): Helix Electric of Nevada, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorneys: John H. Mowbray, Esq. Telephone: (702) 408-3411  
John Randall Jeffries, Esq.  
Mary E. Bacon, Esq.  
Firm: SPENCER FANE LLP  
Address: 400 S. Fourth Street, Suite 500, Las Vegas, NV 89101  
Client(s): APCO Construction, Inc.

Attorneys: Jack Chen Min Juan, Esq.  
Micah Echols, Esq.  
Cody S. Mounteer, Esq.

Telephone: (702) 207-6089

Firm: MARQUIS AURBACH COFFING  
Address: 10001 Park Run Drive, Las Vegas, NV 89145  
Client(s): APCO Construction, Inc.

**4 Nature of disposition below (check all that apply)**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify):                               |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition                              |
|  | (specify): _____  |

**5 Does this appeal raise issues concerning any of the following? No.**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

**6 Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1. Case No. 75197, APCO Construction, Inc. v. Zitting Bros. Constr., Inc.
2. Case No. 61131, APCO Construction, Inc. v. Dist. Ct. (Scott Financial).
3. Case No. 57641, Club Vista Financial Services v. Dist. Ct. (Scott Financial).
4. Case No. 57784, Club Vista Financial Services v. Dist. Ct. (Scott Financial).

**7 Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Appellant Helix Electric of Nevada, LLC ("Helix") hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney's fees and costs to the Respondent.

**8 Nature of the action.** Briefly describe the nature of the action and the result below:

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney’s fees and costs to the Respondent.

**9 Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney’s fees and costs to the Respondent. As such, Helix adds the following additional Issue on Appeal to the list provided in the original Docketing Statement.

Whether the District Court erred in awarding attorney’s fees and costs, or the amount thereof, to Respondent.

**10 Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney’s fees and costs to the Respondent.

**11 Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A



- ☐ Yes  
☐ No

If not, explain:

**12. Other issues. Does this appeal involve any of the following issues:**

- ☒ Reversal of well-settled Nevada precedent (identify the case(s))  
☐ An issue arising under the United States and/or Nevada Constitutions  
☐ A substantial issue of first impression  
  
☒ An issue of public policy  
☐ An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions  
☐ A ballot question If so, explain:

Appellant Helix Electric of Nevada, LLC ("Helix") hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney's fees and costs to the Respondent.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17 and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant Helix Electric of Nevada, LLC ("Helix") hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney's fees and costs to the Respondent.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? Six (6) days.

Was it a bench or jury trial? **Bench trial.**

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Helix does not intend to file a motion to disqualify or to have a justice recuse him/herself.

## **TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from.**

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgment appealed from and granting attorney’s fees and costs to the Respondent.

In addition, Helix’s Amended Notice of Appeal was filed on October 25, 2018 within 30 days of entry of the post-trial Order and amended judgment awarding fees and costs to Respondent (entered on September 28, 2018).

**17. Date written notice of entry of judgment or order was served.**

Service of the original Notice of Entry of Judgment in the Clark County District Court was served was no sooner than June 1, 2018. Service of Notice of Entry of the Amended Judgment was served no sooner than September 28, 2018.

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)**

No.

**19. Date notice of appeal filed**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Helix filed its original Notice of Appeal on June 28, 2018 and its Amended Notice of Appeal on October 25, 2018.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

## SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          |                                       |

- (b) Explain how each authority provides a basis for appeal from the judgment or order:

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney’s fees and costs to the Respondent.

22. **List all parties involved in the action or consolidated actions in the district court:**

Appellant Helix Electric of Nevada, LLC (“Helix”) hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney’s fees and costs to the Respondent.

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

*See Section 7, supra.*

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- ☒ Yes  
☐ No



25. If you answered "No" to question 24, complete the following:

Not Applicable

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Not Applicable

27. Attach file-stamped copies of the following documents:

Appellant Helix Electric of Nevada, LLC ("Helix") hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement. Helix filed an Amended Notice of Appeal to incorporate and include its objections to and desire to appeal a post-trial Order amending the Judgement appealed from and granting attorney's fees and costs to the Respondent.

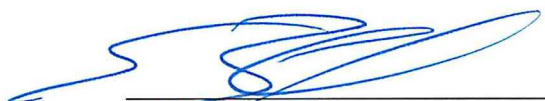
#### VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

\_\_\_\_\_  
Helix Electric of Nevada, LLC  
Name of appellant

\_\_\_\_\_  
Eric B. Zimbelman, Esq.  
Name of counsel of record

\_\_\_\_\_  
11-26-2018  
Date

\_\_\_\_\_  
  
Signature of counsel of record

\_\_\_\_\_  
Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the this 27th day of November, 2018, I served a copy of this completed **DOCKETING**

**STATEMENT** upon all counsel of record:

☐

By personally serving it upon him/her; or



By mailing it by first class mail with sufficient postage prepaid to the following address(es):  
(NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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*Attorneys for Appellant  
National Wood Products, Inc.*

**Settlement Judge:**

Stephen E. Haberfeld  
8224 Blackburn Ave, Suite 100  
Los Angeles, CA 90048

Dated this 26<sup>th</sup> day of November, 2018.



\_\_\_\_\_  
Signature