

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  
Mar 08 2019 02:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
SECOND 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 NRC 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 checked="" type="checkbox"/> Other disposition (specify):_Award of Attorney's Fees and Costs |

**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 also 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.

**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 also 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):

Issues on Appeal include, but are not necessarily limited to:

1. Whether the District Court erred in concluding that Section 3.8 of the Subcontract contains enforceable conditions precedent to APCO’s obligation to pay Helix its unpaid retention because (among other things):
  - a. The conditions precedent to payment of retention (including Section 3.8 and the obligation to bill for retention) are either “pay-if-paid” agreements (which the District Court previously ruled on summary judgment was not available to APCO as a defense) or are entirely futile and otherwise outside of Helix’s control;
  - b. Such provisions constitute conditions, provisions or stipulations of a contract that are prohibited by NRS 108.2453(2), NRS 108.2457(1) and/or NRS 624.628(3) because they (i) deprive Helix of its rights pursuant to NRS Chapter 108 and NRS Chapter 624 and (ii) are against public policy and are void and unenforceable; and
  - c. Section 3.8 is not a “payment schedule” permitted by NRS 624.624 because the “schedule” would be “when paid by the owner.” “Pay-if-paid,” which is unenforceable in Nevada, cannot be a “payment schedule” contemplated by NRS Chapter 624.

2. Whether the District Court erred by relying on “pay-if-paid” provisions, inconsistent with the District Court’s summary judgment barring such defenses and its decision granting summary judgment to Zitting Brothers, which is at issue in Case No. 75197.
3. Whether the District Court erred in failing to recognize that termination of APCO’s contract with the Owner triggered Section 9.4 of the Subcontract (rendering Section 3.8 irrelevant), which entitled Helix to be paid “the amount due from the Owner to the Contractor [APCO] for the Subcontractor’s completed work” to that point in time. Among other things:
  - a. Helix’s retention is an “amount due from the Owner to [APCO]” because, among other things, APCO was statutorily entitled to the retention through the date of termination. Specifically, but without limitation:
    1. The District Court expressly found that “APCO properly terminated the [prime] contract for cause in accordance with NRS 624.610” (i.e., pursuant to its Stop Work Notice and subsequent statutory Notice of Termination); and
    2. Pursuant to NRS 624.610(6)(a), APCO is (upon statutory termination) entitled to, among other things “The cost of all work, labor, materials, equipment and services furnished by and through the prime contractor, including any overhead the prime contractor and his or her lower-tiered subcontractors and suppliers incurred and profit the prime contractor and his or her lower-tiered subcontractors and suppliers earned through the date of termination...” and
  - b. In addition, and while payment pursuant to Section 9.4 was also conditioned on actual “payment by the Owner to the Contractor,” such a condition is void and unenforceable as a “pay-if-paid” provision.
4. Whether the District Court erred in finding and concluding that Helix entered into the written subcontract agreement with APCO (“the APCO Subcontract”) and a Ratification Agreement with Camco, who replaced APCO as the general contractor on the project, when:

- a. There were no signed agreements;
  - b. Helix offered amendments that were never agreed to; and
  - c. Helix never waived its right to seek payment from APCO, especially for moneys owed while APCO was on site.
5. Whether the District Court erred in concluding that Helix “knowingly replaced Camco for APCO” when this was a condition imposed on Helix after APCO left the project.
6. Whether the District Court erred in concluding that Helix’s subcontract was “assigned to [the Project Owner] Gemstone” where, among other things:
  - a. Gemstone is not a licensed contractor and cannot take such an assignment; and
  - b. The assignment provision of the prime contract (Section 10.04) “is effective only after termination of the Agreement by [Gemstone] for cause pursuant to Section 10.02” but the District Court expressly found that APCO terminated the contract pursuant to its rights under NRS 624.610.
7. 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.

**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.

**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.

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)

- ☒ NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☐ NRAP 3A(b)(3)
- ☐ Other (specify)

- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

(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.

**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.**

Appellant Helix Electric of Nevada, LLC ("Helix") hereby adopts and incorporates by reference the information provided in this Section of its original Docketing Statement.

In addition, and specifically in response to this Court's Order to File Amended Docketing Statement dated February 6, 2019, please see **Appendix A** hereto. Appendix A is a table that identifies the specific district court case number from which the judgment Helix is appealing from arises (District Court Case No. 09A587168) and the various causes of action asserted therein by the parties who commenced or intervened in that action before that action (and others) were consolidated into Case No. 08A571228 ("the Consolidated Case").

**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

March 8, 2019

/s/ Eric B. Zimbelman, Esq.

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the this 8th day of March, 2019, I served a copy of this completed **SECOND**

**AMENDED 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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-and-

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*APCO Construction, Inc.*

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John B. Taylor, Esq. (CA Bar No. 126400)  
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[jhirahara@caddenfuller.com](mailto:jhirahara@caddenfuller.com)

*Attorneys for Appellant  
National Wood Products, Inc.*

**Settlement Judge:**

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

Dated this 8<sup>th</sup> day of March, 2019.



\_\_\_\_\_  
Signature

# APPENDIX A

# Second Amended Docketing Statement

## Appendix A

Case No. 09A587168 Commenced April 7, 2009<sup>1</sup>

<u>Role in Case</u>	<u>Party</u>	<u>Causes of Action</u>	<u>Disposition</u>
Plaintiff	Accuracy Glass	Substantially identical claims to Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention, See below	Notice of Entry of Granting Plaintiff's Oral Motion to Dismiss filed September 21, 2017, See original Docketing Statement, Appendix Exhibit C at Pages 550 - 556
Defendant	APCO Construction		
	First Cause of Action:	Breach of Contract	
	Third Cause of Action:	Breach of Implied Covenant of Good Faith and Fair Dealing	
	Fourth Cause of Action:	Unjust Enrichment or in the Alternative <i>Quantum Meruit</i>	
Defendant	CAMCO Pacific Construction Company, Inc.		
	Second Cause of Action:	Breach of Contract	

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<sup>1</sup> On April 21, 2009 APCO filed Motion to Consolidate Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, and A587168 with 08A571228 (Lead Case)

## Second Amended Docketing Statement Appendix A

Plaintiff-in-Intervention Defendant	Third Cause of Action:	Breach of Implied Covenant of Good Faith and Fair Dealing			Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>
	Fourth Cause of Action:	Unjust Enrichment or in the Alternative <i>Quantum Meruit</i>			
	Seventh Cause of Action:	Claim Against Bond			
			<u>Causes of Action<sup>2</sup></u>	<u>Disposition</u>	
Helix Electric of Nevada, LLC APCO Construction	First Cause of Action:	Breach of Contract		Dismissed after trial	
	Third Cause of Action:	Breach of Implied Covenant of Good Faith and Fair Dealing		Dismissed after trial	Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>
	Fifth Cause of Action:	Unjust Enrichment or in the Alternative <i>Quantum Meruit</i>		Dismissed after trial	Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>

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<sup>2</sup> Helix Electric's Amended Statement of Facts Constituting a Lien and Third-Party Complaint filed June 24, 2009

## Second Amended Docketing Statement

### Appendix A

	Sixth Cause of Action:	Foreclosure of Mechanic's Lien	Dismissed after trial	Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>
	Seventh Cause of Action:	Claim of Priority	Partial Summary Judgment May 7, 2012	Affirmed by the Supreme Court filed September 24, 2015 Supreme Court Case No. 61131, 131 Nev., Advanced Opinion 70
	Ninth Cause of Action:	Violation of NRS 624	Dismissed after trial	Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>
	Eleventh Cause of Action:	Declaratory Judgment	Dismissed after trial	Notice of Entry of Judgment filed June 1, 2018, <i>See original Docketing Statement, Appendix Exhibit H, Pages 713-724</i>
Defendant	CAMCO Pacific Construction Company, Inc.			
	Second Cause of Action:	Breach of Contract	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018

## Second Amended Docketing Statement

### Appendix A

Fourth Cause of Action:	Breach of Implied Covenant of Good Faith and Fair Dealing	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018
Fifth Cause of Action:	Unjust Enrichment or in the Alternative <i>Quantum Meruit</i>	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018
Sixth Cause of Action:	Foreclosure of Mechanic's Lien	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018
Seventh Cause of Action:	Claim of Priority	Partial Summary Judgment	Affirmed by the Supreme Court filed September 24, 2015 Supreme Court Case No. 61131, 131 Nev., Advanced Opinion 70
Eighth Cause of Action:	Claim Against Bond	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018 (enforceable up to pro rata share of penal sum of the bond)
Tenth Cause of Action:	Violation of NRS 624	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018



## Second Amended Docketing Statement Appendix A

Plaintiff-in-Intervention	Cactus Rose	Eleventh Cause of Action: Declaratory Judgment	Judgment after trial	Monetary Judgment: \$1,277,601.82 May 30, 2018
Plaintiff-in-Intervention	Cactus Rose	Statement of Facts Constituting Lien and Complaint-in-Intervention filed April 1, 2010	Substantially identical claims to Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	Notice of Entry of Judgment Against CAMCO filed May 31, 2018 <i>See original Docketing Statement Appendix Exhibit D, Pages 558 -579</i>
Plaintiff in Intervention	Interstate Plumbing & Air Conditioning, Inc.	Statement of Facts Constituting Lien and Complaint-in-Intervention and Third-Party Complaint filed April 5, 2010	Pursued claims only against CAMCO at trial	Stipulation and Order Dismiss Third-Party Complaint of Interstate Plumbing Against APCO Construction with Prejudice filed February 5, 2018
Plaintiff-in-Intervention	Bruin Painting Corp.	Amended Statement of Facts Constituting Lien and Complaint-in-Intervention and Third-Party Complaint filed June 24, 2009	Substantially identical claims as Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	No later than October 7, 2016, Bruin Painting ceased to be a party, <i>See Attachment 1, Special Master Report Regarding Remaining Parties to the Litigation</i>

## Second Amended Docketing Statement Appendix A

Plaintiff-in-Intervention	Heinaman Contract Glazing	Amended Statement of Facts Constituting Lien and Complaint-in-Intervention and Third-Party Complaint filed June 24, 2009	Substantially identical claims as Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	Notice of Entry of Judgment Against CAMCO filed May 31, 2018 See <i>original Docketing Statement, Appendix Exhibit D at Pages 609 -631</i>
			Pursued claims only against CAMCO at trial	
Plaintiff-in-Intervention	HD Supply Waterworks LP	Amended Statement of Facts Constituting Lien and Complaint-in-Intervention and Third-Party Complaint filed June 24, 2009	Substantially identical claims to Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	Voluntary Dismissal of Platte River filed April 5, 2010  Judgment January 5, 2012 (Edelstein)
Plaintiff in Intervention	WRG, Inc.	Amended Statement of Facts Constituting Lien and Complaint-in-Intervention filed June 25, 2009	Substantially identical claims to Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	Stipulation and Order Dismissal filed September 20, 2017

# Second Amended Docketing Statement

## Appendix A

### ADDITIONAL INFORMATION RELATING TO CLAIMS CASE NO. 09A587168

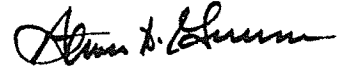
August 5, 2009	APCO filed its Answer to Helix's Statement of Facts Constituting Lien and Third-Party Complaint	<i>See original Docketing Statement Appendix Exhibit J at Pages 752 -767</i>	
September 10, 2009	CAMCO filed its Answer to Helix's Statement of Facts Constituting Lien and Third-Party Complaint and CAMCO's Counterclaim	<i>See original Docketing Statement Appendix Exhibit J at Pages 768 -790</i>	Cross-Claims not pursued at Trial
June 22, 2012	Joint Petition for Writ of Mandamus, or in the Alternative, Prohibition	Dismissal Affirmed by the Supreme Court on September 24, 2015 in Supreme Court Case No. 61131 as 131 Nev., Advanced Opinion 70	
May 5, 2018	APCO filed Motion for Fees and Costs	Granted	
June 1, 2018	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff-in-Intervention National Wood Products, Inc. Against APCO Construction, Inc.]		
September 27, 2018	Order Granting APCO's Motion for Fees and Costs	Monetary Judgment	Awarded Fees and Costs Against Helix in the amount of \$103,307.54
June 28, 2018	Notice of Appeal filed by Helix		
June 29, 2018	Notice of Appeal filed by National Wood Products, Inc.		

## **Second Amended Docketing Statement**

### **Appendix A**

October 25, 2018	Amended Notice of Appeal filed by Helix
October 26, 2018	Notice of Cross-Appeal filed by APCO (Case No. 77320)
January 17, 2019	Motion to Consolidate filed by APCO (Case No. 76276 and 77320)

# **EXHIBIT 1**



CLERK OF THE COURT

1 SMRO  
2 FLOYD A. HALE, ESQ.  
3 Nevada Bar No. 1873  
4 JAMS  
5 3800 Howard Hughes Pkwy, 11<sup>th</sup> Fl.  
6 Las Vegas, NV 89169  
7 Ph: (702) 457-5267  
8 Fax: (702) 437-5267  
9 *Special Master*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 APCO CONSTRUCTION, a Nevada corporation, ) CASE NO. A571228  
10 ) DEPT NO. XIII  
11 )  
12 Plaintiff, )  
13 ) Consolidated with:  
14 v. )  
15 ) A574391; A574792; A577623; A583289;  
16 GEMSTONE DEVELOPMENT WEST, INC., ) A587168; A580889; A584730; A589195;  
17 a Nevada corporation, ) A595552; A597089; A592826; A589677;  
18 ) A596924; A584960; A608717; A608718;  
19 Defendant, ) and A590319  
20 )  
21 )  
22 AND ALL RELATED MATTERS, )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

SPECIAL MASTER REPORT REGARDING REMAINING PARTIES  
TO THE LITIGATION, SPECIAL MASTER RECOMMENDATION AND  
DISTRICT COURT ORDER AMENDING CASE AGENDA

APCO Construction filed a first Amended Complaint on December 8, 2008, seeking damages for construction services performed for the construction of the Manhattan West mixed use development project, located at 9205 W. Russell Road, Clark County, Nevada. The Amended Complaint, in addition to seeking monetary damages, sought a declaration from the Court ranking the priority of all lien claims and secured claims and other declaratory relief, including a requested foreclosure sale. Since that time, numerous lienclaimants have joined the litigation which has now been consolidated. A Special Master was appointed on June 9, 2016, by the District Court.

RECEIVED

OCT 25 2016

2016

1 Special Master Report:

2 Pursuant to a prior Special Master Order, the parties were required to complete Questionnaire  
3 by electronic service in this litigation by September 23, 2016. That Questionnaire, drafted by counsel  
4 in this litigation and approved by the Special Master, was to limit unnecessary discovery requests and  
5 to document what parties were remaining in this litigation. The September 1, 2016, Special Master  
6 Order indicated, "It will be assumed the parties that do not respond to the Questionnaire have  
7 abandoned any claim related to this litigation. The following parties provided a timely Questionnaire  
8 and have provided NRCP 16.1 documentation by September 23, 2016, or subsequently obtained  
9 approval of the Special Master to extend the deadline. It is being Recommended to the District Court  
10 that the only remaining parties that have claims in this consolidated litigation are the following parties  
11 which did provide the necessary NRCP 16.1 documents and a completed Questionnaire:  
12  
13

14	APCO Construction	Camco Pacific Construction Co.
	Steel Structures, Inc.	Nevada Prefab Engineers, Inc.
15	Unitah Investments, LLC	Noorda Sheet Metal
	E&E Fire Protection	Insulpro Projects, Inc.
16	SWPP Compliance Solutions, LLC	Interstate Plumbing and Air Conditioning, LLC
	Helix Electric of Nevada, Inc.	Heinaman Contract Glazing, Inc.
17	Fast Glass, Inc.	Cardo WRG fka WRG Design, Inc.
	Buchele, Inc.	Cactus Rose Construction, Inc.
18	Accuracy Glass & Mirror Co.	National Wood Products, Inc.
19	Zitting Brothers Construction, Inc.	United Subcontractors dba Sky Line Insulation

20 Due to the delay in completing the Questionnaire format, and obtaining response to the  
21 Questionnaire, it was agreed that the Case Agenda or discovery schedule submitted to the District Court  
22 on August 2, 2016, by the Special Master and approved by the District Court on August 4, 2016,  
23 required amendment. The parties also acknowledged that the designated depository for this litigation  
24 is Litigation Services, located at 3770 Howard Hughes Parkway, #300, Las Vegas, Nevada, 89169.  
25 Under the amended Case Agenda, initial expert disclosures will be required by January 9, 2017, with  
26 rebuttal expert disclosures to be deposited by February 13, 2017. The discovery cut-off date for the  
27  
28

1 litigation will be May 15, 2017, with the earliest trial date being July 10, 2017. There will be no Stay  
2 of discovery, however, the Special Master will consider requests to limit discovery requests to the  
3 parties.

4 IT IS RECOMMENDED that the Court enter the following Order:  
5

6 1. That the only remaining parties that have claims in this consolidated litigation are the parties  
7 listed in this Special Master Report as having responded to the Questionnaire and having provided  
8 NRCP 16.1 documents;

9 2. That the designated document depository for this litigation is Litigation Services, located at  
10 3770 Howard Hughes Parkway, #300, Las Vegas, Nevada, 89169;

11 3. The Court adopts and approves the Amended Case Agenda attached hereto as Exhibit "A."  
12

13 RECOMMENDED this 4<sup>th</sup> day of October, 2016.

14 By: 

FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Pkwy, 11<sup>th</sup> Fl.  
Las Vegas, NV 89169  
Special Master

15  
16  
17  
18 IT IS SO ORDERED this 6<sup>th</sup> day of October, 2016.

19  
20 By: 

DISTRICT COURT JUDGE  
21  
22  
23  
24  
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28



**APCO CONSTRUCTION v. GEMSTONE DEVELOPMENT**

**Case No. A571228**

**(Pursuant to September 29, 2016, Special Master Hearing)**

8/1/16 3:30 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
8/31/16	Parties to provide documents and all information required to be produced pursuant to NRS 16.1
9/29/16 4:00 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
1/9/17	Initial expert disclosures to be served
2/13/17	Rebuttal expert disclosures to be served
2/16/17 2:00 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
5/15/17	Discovery cut-off
7/10/17	Earliest date to schedule trial

**EXHIBIT "A"**