

EXHIBIT 12
Second Amended Docketing Statement

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

SECOND AMENDED DOCKETING STATEMENT

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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*Attorneys for Appellant
National Wood Products, Inc.*

Settlement Judge:

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

Dated this 8th day of March, 2019.



Signature

APPENDIX A

Second Amended Docketing Statement

Appendix A

Case No. 09A587168 Commenced April 7, 2009¹

<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, <i>See below</i>	All claims dismissed
Defendant	APCO Construction		Notice of Entry of Granting Plaintiff's Oral Motion to Dismiss filed September 21, 2017, <i>See original Docketing Statement, Appendix Exhibit C at Pages 550 - 556</i>
	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	

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

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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</i> <i>Docketing Statement, Appendix</i> <i>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>Role in Case</u>	<u>Party</u>	<u>Causes of Action²</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</i> <i>Docketing Statement, Appendix</i> <i>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</i> <i>Docketing Statement, Appendix</i> <i>Exhibit H, Pages 713-724</i>

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

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Defendant	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>
	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

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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	Pursued claims only against CAMCO at trial	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	Substantially identical claims to Helix's Statement of Facts Constituting Lien and Complaint-in-Intervention	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

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Appendix A

ADDITIONAL INFORMATION RELATING TO CLAIMS CASE NO. 09A587168

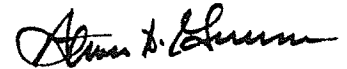
August 5, 2009	APCO filed its Answer to Helix's Statement of Facts Constituting Lien and Third-Party Complaint	<i>See original Docketing Statement Appendix Exhibit J at Pages 752 -767</i>	
September 10, 2009	CAMCO filed its Answer to Helix's Statement of Facts Constituting Lien and Third-Party Complaint 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.		

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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, 11th 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

20 APCO Construction filed a first Amended Complaint on December 8, 2008, seeking damages
21 for construction services performed for the construction of the Manhattan West mixed use development
22 project, located at 9205 W. Russell Road, Clark County, Nevada. The Amended Complaint, in addition
23 to seeking monetary damages, sought a declaration from the Court ranking the priority of all lien claims
24 and secured claims and other declaratory relief, including a requested foreclosure sale. Since that time,
25 numerous lienclaimants have joined the litigation which has now been consolidated. A Special Master
26 was appointed on June 9, 2016, by the District Court.
27
28

RECEIVED

OCT 25 2016

CLERK OF COURT

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 4th day of October, 2016.

14 By: 

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

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18 IT IS SO ORDERED this 6th day of October, 2016.

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20 By: 

DISTRICT COURT JUDGE
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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 th 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 th 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 th Floor, Las Vegas, Nevada
5/15/17	Discovery cut-off
7/10/17	Earliest date to schedule trial

EXHIBIT "A"

EXHIBIT 11
Respondent's Docketing Statement

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

2 APCO CONSTRUCTION, INC., A
3 NEVADA CORPORATION,

4 Cross Appellant/Respondent
5 vs.

6 HELIX ELECTRIC OF NEVADA,
7 LLC,

8 Cross Respondent/Appellant

Case No. 77320

District Court Case No. A-571228

Appeal from the Eighth Judicial
District Court, the Honorable Mark
Denton

Electronically Filed
Mar 04 2019 11:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

9 1. Eighth Judicial District Court, Department 13, Clark County, Judge
10 Mark Denton, District Court Case No. A-571228.

11 2. **Attorney Filing this Docket Statement:**

12 John Randall Jefferies, Esq., Nevada Bar #3512

13 Christopher H. Byrd, Esq., Nevada Bar #1633

14 Fennemore Craig, P.C.

15 300 South Fourth St. 14th Floor

16 Las Vegas, NV 89101

17 Telephone: (702) 692-8000

18 Facsimile: (702) 692-8099

19 Email: rjefferies@fclaw.com

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Attorneys for Cross Appellant/Respondent APCO Construction, Inc.

7
8 **3. Attorney(s) Representing Cross Respondent/Appellant:**

9 Eric B. Zimbelman, Esq., Nevada Bar #9407
10 Peel Brimley LLP
11 3333 E. Serene Ave. Suite 200
12 Henderson, NV 89074
13 Telephone: (702) 990-7272
14 Facsimile: (702) 990-7273
15 E-mail: ezimbelman@peelbrimley.com
16 *Attorney for Helix Electric of Nevada, LLC*

17 **4. Nature of Disposition (check all that apply):**

- 18 ☐ Judgment after bench trial ☐ Dismissal:
19 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
☐ Summary judgment ☐ Failure to state a claim
☐ Default judgment ☐ Failure to prosecute
☐ Grant/Denial of NRCP 60(b) relief ☐ Other (specify):
☐ Grant/Denial of injunction ☐ Divorce Decree:
☐ Grant/Denial of declaratory relief ☐ Original ☐ Modification
☐ Review of Agency determination ☐ Other disposition
(specify): Post Judgment Special
Order denying attorneys' fees and costs.

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

2 ☐ Child Custody

3 ☐ Venue

4 ☐ Termination of parental rights

5 **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:

6 1. Docket No. 75197, APCO Construction, Inc. v Zitting Bros.
Constr., Inc.

7 2. Docket No. 61131, APCO Construction, Inc. v. Dist. Ct. (Scott
Financial).

8 3. Docket No. 57641, Club Vista Financial Services v. Dist. Ct.
(Scott Financial).

9 4. Docket No. 57784, Club Vista Financial Services v. Dist. Ct.
(Scott Financial).

10 5. Docket No. 76276, Helix Electric of NV, LLC, et. al. v APCO
Construction, Inc.

11 **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:

12 APCO refers to and incorporates by reference Section 7 of Helix
13 Electric of Nevada, LLC's Docketing Statement and referenced pleadings,
14 filed August 8, 2018, in Docket No 76276.

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

16 APCO refers to and incorporates by reference Section 8 of Helix
17 Electric of Nevada, LLC's Docketing Statement and referenced pleadings,
18 filed August 8, 2018, in Docket No 76276.

19 APCO further states that this Cross Appeal is to appeal post trial
orders denying APCO attorneys' fees pursuant to the relevant contract
documents and refusing to award APCO all of its costs.

- 1 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal
(attach separate sheets as necessary):
- 2 1. Whether the District Court erred in failing to determine APCO
was entitled to attorneys' fees under relevant subcontract provisions
3 governing the award of attorneys' fees? and
4 2. Whether the District Court erred in failing to award APCO all
of its recoverable costs?
- 5 **10. Pending proceedings in this court raising the same or similar**
issues. If you are aware of any proceeding presently pending before
6 this court which raises the same or similar issues raised in this appeal,
list the case name and docket number and identify the same or similar
7 issues raised:
1. Helix Electric of Nevada LLC and National Wood Products,
8 Inc. v. APCO Construction Inc., Docket No. 76276. Helix Electric
amended its notice of appeal to appeal the same award of fees and
9 costs to APCO that are at issue in this appeal.
- 10 **11. Constitutional issues:** If this appeal challenges the constitutionality
of a statute, and the state, any state agency, or any officer or
11 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
12 44 and NRS 30.130?
☐ N/A
13 ☐ Yes
☐ No
14 If not, explain:
- 15 **12. Other issues.** Does this appeal involve any of the following issues?
☐ Reversal of well-settled Nevada precedent (identify the case(s))
16 ☐ An issue arising under the United States and/or Nevada
Constitutions
17 ☐ A substantial issue of first-impression
☐ An issue of public policy
18 ☐ An issue where en banc consideration is necessary to maintain
uniformity of this court's decisions
19 ☐ A ballot question

1 If so, explain:

2 The issue is whether equity bars a party to a contract that has an
3 attorneys' fee provision from avoiding liability for fees on claims
4 arising from the contract unsuccessfully asserted the assignor of the
5 contract. APCO's award of full fees pursuant to the relevant
6 subcontract was denied because Helix argued APCO could not collect
7 fees under the subcontract since APCO assigned the subcontract to
8 the replacement contractor and thus, was not a party to the contract.
9 APCO argued its fees were permitted pursuant to equitable estoppel
10 because Helix's claims were all contract based and Helix would have
11 been entitled to its fees had it prevailed.

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

20 The issue regarding the award of fees and costs in a post judgment
21 motion requires that these issues be assigned presumptively to the
22 Court of Appeals. NRAP 17(b)(7). However, APCO believes the
23 Supreme Court should retain this case because it provides an issue of
24 public policy. The issue is whether equity bars a party to a contract
25 that has an attorneys' fee provision from avoiding liability for fees on
26 claims arising from the contract unsuccessfully asserted the assignor
27 of the contract. APCO's award of full fees pursuant to the relevant
28 subcontract was denied because Helix argued APCO could not
29 collect fees under the subcontract since APCO assigned the
30 subcontract to the replacement contractor and thus, was not a party to
31 the contract. APCO argued its fees were permitted pursuant to
32 equitable estoppel because Helix's claims were all contract based and
33 Helix would have been entitled to its fees had it prevailed.

34 **14. Trial.** If this action proceeded to trial, how many days did the trial

1 last?

2 The issues on this appeal arise from post judgment motions for
3 attorneys' fees and costs.

4 Was it a bench or jury trial? The underlying action was a six day
5 bench trial.

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

9 No

10 **TIMELINESS OF NOTICE OF APPEAL**

11 **16. Date of entry of written judgment or order appealed from**
12 September 28, 2018.

13 **Attach a copy. If more than one judgment or order is appealed**
14 **from, attach copies of each judgment or order from which appeal**
15 **is taken.**

16 See Exhibit "1".

17 (a) If no written judgment or order was filed in the district court,
18 explain the basis for seeking appellate review:

19 N/A

20 **17. Date written notice of entry of judgment or order was served:**
21 September 28, 2018.

22 Was service by:

23 ☐ Delivery ☐ Unknown ☐ Mail/Electronic/Fax.

24 **18. If the time for filing the notice of appeal was tolled by a post-**
25 **judgment motion (NRCP 50(b), 52(b), or 59). N/A.**

26 (a) Specify the type of motion, the date and method of service of

1 the motion, and the date of filing. N/A.

2 ☐ NRCP 50(b) Date of Filing _____

3 ☐ NRCP 52(b) Date of Filing: _____

4 ☐ NRCP 59 Date of Filing: _____

5 NOTE: Motions made pursuant to NRCP 60 or motions for
6 rehearing or reconsideration may toll the time for filing a notice of
7 appeal. See AA Primo Builders v Washington, 126 Nev. ____,
8 245 P.3d 1190 (2010).

9 (b) Date of entry of written order resolving tolling motion _____

10 (c) Date written notice of entry of order resolving tolling motion
11 was served _____

12 Was service by:

13 ☐ Delivery

14 ☐ Mail

15 **19. Date notice of appeal was filed**

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

19 APCO filed its Notice of Cross Appeal on October 26, 2018. Helix
Electric of Nevada, LLC's Amended Notice of Appeal was filed in Docket
76276 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)(2). This cross appeal was filed within 14 days after Helix
Electric Of Nevada LLC's Amended Notice of Appeal, which
appealed the District Court's decision of the post judgment orders for
attorneys' fees and costs.

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

4 APCO contends that it was entitled to attorneys' fees under the terms
5 of the relevant subcontracts, NRS 108.237(3) and NRCP 68 and costs
6 pursuant to the Judgment as prevailing party and the Verified Cost
7 Memorandum filed below.

8 All issues regarding attorneys' fees and costs were resolved by the
9 Order, written notice of which was given September 28, 2018.

10 As to the claims in the underlying action, APCO refers to and
11 incorporates by reference Section 7 and 22(b) of Helix Electric of Nevada's
12 Docketing Statement and the referenced pleadings, filed August 8, 2018, in
13 Docket No 76276.

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

17 ☐ Yes

18 ☐ No

19 **25. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed
from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant
to NRCP 54(b), that there is no just reason for delay and an
express direction for the entry of judgment?

☐ Yes

☐ No

1 **26. If you answered “No” to any part of question 24, explain the basis**
2 **for seeking appellate review (e.g., order is independently**
3 **appealable under NRAP 3A(b)): N/A**

4 **27. Attached file-stamped copies of the following documents: The**
5 **latest-filed complaint, counterclaims, cross-claims, and third-**
6 **party claims; any tolling motion(s) and order(s) resolving tolling**
7 **motion(s); orders of NRCP 41(a) dismissals formally resolving**
8 **each claim, counterclaims, cross-claims and/or third-party claims**
9 **asserted in the action or consolidated action below, even if not at**
10 **issue on appeal; any other order challenged on appeal; and**
11 **notices of entry for each attached order.**

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See **Exhibit “1”**. For the pleadings related to the underlying action, APCO refers to and incorporates by reference the Appendix filed by APCO in its Docketing Statement in Case No. 75197, filed April 3, 2018, and Exhibits “1”, and “C” through “I” to Helix Electric of Nevada, LLC’s Docketing Statement, filed August 8, 2018, in Docket No 76276.

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Name of Appellant/Cross-Respondent


APCO Construction, Inc.

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Facsimile: (702) 382-5816
Email: mechols@maclaw.com
cmounteer@maclaw.com
tstewart@maclaw.com

Dated this 29th day of
January, 2019.


Signature of counsel of record

State and county where
signed:
Clark County, Nevada

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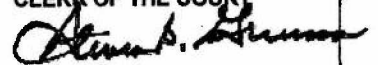
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Exhibit 1



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Attorneys for Apco Construction, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF ENTRY OF ORDER (1)
GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS (2) GRANTING APCO
CONSTRUCTION, INC.'S
MEMORANDUM OF COSTS IN PART
(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF

**INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO
RETAX IN PART AND DENYING IN
PART AND (5) GRANTING NATIONAL
WOOD PRODUCTS, INC.'S MOTION
TO FILE A SURREPLY**

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 27th day of September, 2018, a **ORDER (1) GRANTING APCO CONSTRUCTION, INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5) GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY** was entered in the above case. A copy is attached.

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon

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Facsimile: (702) 408-3401
Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**

10 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCF
11 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
12 prepaid for non-registered users, on this 28th day of September, 2018, as follows:
13

14
15 **Counter Claimant: Camco Pacific Construction Co Inc**

16 Steven L. Morris (steve@gmdlegal.com)

17 **Intervenor Plaintiff: Cactus Rose Construction Inc**

18 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

19 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

20 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

21 **Intervenor: National Wood Products, Inc.'s**

22 Dana Y Kim (dkim@caddenfuller.com)

23 Richard L Tobler (rltldck@hotmail.com)

24 Richard Reincke (rreincke@caddenfuller.com)

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26 Tammy Cortez (tcortez@caddenfuller.com)

27 **Other: Chapter 7 Trustee**

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Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

Plaintiff: Apco Construction

Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

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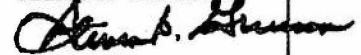
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10 Michael R. Ernst . (mre@juww.com)
11 Michael Rawlins . (mrawlins@rookerlaw.com)
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/s/ *Elizabeth Kuchman*
An employee of Spencer Fane LLP



ODR

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Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718 and
A590319

ORDER:

**(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS**

**(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART**

**(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART**

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT# 13

1 (4) GRANTING PLAINTIFF IN
2 INTERVENTION NATIONAL WOOD
3 PRODUCTS LLC'S MOTION TO RETAX
4 IN PART AND DENYING IN PART

5 -AND-

6 (5) GRANTING NATIONAL WOOD
7 PRODUCTS, INC.'S MOTION TO FILE A
8 SURREPLY

9 AND ALL RELATED MATTERS

10 On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s
11 Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs
12 [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products,
13 Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re:
14 Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against
15 Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada,
16 LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
17 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
18 Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte
19 Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply
20 to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for
21 Attorneys' Fees and Costs.

22 John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane
23 appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law
24 firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John
25 Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler,
26 Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National
27 Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the
records and documents on file in the above-entitled matter and being fully advised on the
premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

1 **1. APCO Construction, Inc.'s Motion for Attorneys Fees and Costs Against**
2 **Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**
3 **and APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix**
4 **Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.].**

5 APCO requested attorney's fees from Helix and National Wood pursuant to the
6 subcontracts at issue and pursuant to APCO's November 13, 2018 offers of judgment. APCO
7 also sought an award of attorney's fees against Helix pursuant to NRS 108.237(3). The Court
8 finds that although there are certainly viable bases supporting APCO's contention that
9 contractual provisions in the repesective subcontracts and equitable estoppel can support an
10 award of attorney's fees going back in time to a point long before making of the November 13,
11 2018 offers of judgment, the Court determines, in the context of this complex case, involving
12 multiple parties and claims and consolidation of cases and periodic party alignments and
13 realignments and contractual reconfigurations, that the best basis for attorney fee awards is
14 NRCP 68.

15 NRCP 68 provides in part that at "any time more than 10 days before trial, any party may
16 serve an offer in writing to allow judgment to be taken in accordance with its terms and
17 conditions."¹ "If the offer is not accepted within 10 days after service, it shall be considered
18 rejected by the offeree and deemed withdrawn by the offeror."² And "[i]f the offeree rejects an
19 offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or
20 attorney's fees and shall not recover interest for the period after the service of the offer and
21 before the judgment; and (2) the offeree shall pay the offeror's post-offer costs, applicable
22 interest on the judgment from the time of the offer to the time of entry of the judgment and
23 reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of
24 the offer."³

25 The purpose of NRCP 68 is to promote and encourage settlement and save time and
26 money for the court system, the parties, and the taxpayers.⁴ It rewards a party who makes a

27 ¹ NRCP 68(a).

28 ² NRCP 68(e).

29 ³ NRCP 68(f).

30 ⁴ *Muije v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 "NRCP 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees."⁶ In reviewing an application for an award of attorney's fee
6 pursuant to NRCP 68, "the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount."⁷ "After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested."⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court's award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO's offer.

18 Preliminarily, APCO's offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that "[t]rial of this consolidated matter commenced on October
22 30, 2012," and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*
30 *Comm'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41-42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

22
23
24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
27 deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

28 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
29 *Construction, Inc.'s Supplement to its* of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
30 in Support of its Motion for Attorney's Fees and related briefing.

1 2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax
2 Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and
3 Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder
4 by Helix Electric of Nevada, LLC

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
16 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
17 Intervention National Wood Products, Inc.

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.
24
25
26
27
28

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

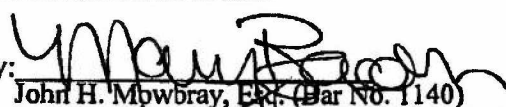
8 IT IS SO ORDERED.

9 DATED this ____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 SPENCER FANE LLP

15 By: 
16 John H. Mowbray, Esq. (Bar No. 1140)
17 John Randall Jefferies, Esq. (Bar No. 3512)
18 Mary E. Bacon, Esq. (Bar No. 12686)
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22 Facsimile: (702) 408-3401
23 Attorneys for Apco Construction, Inc.

24 Approved as to form by:

25 RICHARD L. TOBLER, LTD.

26 PEEL BRIMLEY

27 By: 
28 Richard L. Tobler, Esq.
29 Nevada Bar No. 4070
30 3654 N. Rancho Drive, Suite 102
31 Las Vegas, Nevada 89130
32 Attorneys for Plaintiff in Intervention,
33 NATIONAL WOOD PRODUCTS, INC.

34 ERIC B. ZIMBELMAN,
35 Nevada Bar No. 9407
36 RICHARD L. PEEL, ESQ.
37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 SPENCER FANE LLP

14 By:

15 John H. Mowbray, Esq. (Bar No. 1140)
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25 PEEL BRIMLEY

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37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

EXHIBIT 10

**Order to File Amended Docketing
Statement**

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

FILED

FEB 06 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

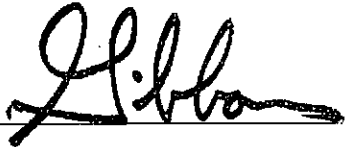
ORDER TO FILE AMENDED DOCKETING STATEMENT

Review of appellants' docketing statements reveals that they are incomplete. Appellants do not provide a complete response to item 23. Appellants must list each separate claim, counterclaim, cross-claim, or third-party claim made in the underlying district court action and the date of formal disposition of each claim (i.e. entry of a written order). Appellants should also identify the specific district court case number the judgment they are appealing from arises from (not simply the lead case number). Appellants need not list all claims asserted in all of the consolidated cases; a list of the claims asserted in the district court case from which the judgment on appeal arises will be sufficient.

Appellants shall have 30 days from the date of this order to file and serve amended docketing statements that provide complete responses to all items, including item 23, identify the specific district court case the

judgment arises from, and have copies of all required documents attached. Failure to comply with this order may result in the imposition of sanctions. NRAP 14(c).

It is so ORDERED.

 C.J.

cc: Peel Brimley LLP/Henderson
Cadden & Fuller LLP
Law Office of Richard L. Tobler, Ltd.
Fennemore Craig, P.C./Las Vegas
Marquis Aurbach Coffing
Spencer Fane LLP/Las Vegas
Fennemore Craig, P.C./Phoenix

EXHIBIT 9
Motion to Consolidate Appeals

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELIX ELECTRIC OF NEVADA, LLC,

Appellant/Cross-Respondent,

vs.

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Respondent/Cross-Appellant.

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Appellant/Cross-Respondent,

vs.

HELIX ELECTRIC OF NEVADA, LLC,

Respondent/Cross-Appellant.

Case No.: 76276 Electronically Filed
Jan 17 2019 11:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable Mark Denton
Presiding

Case No.: 77320

Appeal from the Eighth Judicial District
Court, the Honorable Mark Denton
Presiding

MOTION TO CONSOLIDATE APPEALS

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Attorneys for Appellant, APCO Construction, Inc.

MOTION TO CONSOLIDATE APPEALS

Respondent/Cross-Appellant, APCO Construction, Inc., by and through its attorneys of record, Marquis Aurbach Coffing and Spencer Fane, LLP, hereby moves this Court to consolidate Supreme Court Case Nos. 76276 and 77320. Both appeals arise from the same District Court case, involve the same parties, and Case No. 77320 involves an order granting fees and costs incurred in the litigation that spurred Case No. 76276. As such, the issues of both appeals are interrelated.

Based upon NRAP 3(b)(2), this Court should consolidate these two appeals for purposes of judicial economy. Additionally, this Court recently ordered joint briefing in Case No. 77320, allowing APCO to file a combined answering brief on appeal and opening brief on cross-appeal, and Helix to file a combined reply brief on appeal and answering brief on cross-appeal. *See Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, Docket No. 77320 (Order Reinstating Briefing, Jan. 9, 2019). As a result, APCO respectfully requests this Court adopt the briefing schedule for Case No. 77320 for the consolidated case to allow sufficient time for review of the transcripts and completion of briefing.

Therefore, this Court should formally consolidate Supreme Court Case Nos. 77320 and 76276 with the briefing schedule outlined in this Court's recent order reinstating briefing. *See Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, Docket No. 77320 (Order Reinstating Briefing, Jan. 9, 2019). This motion is made in good faith and not for the purpose of delay

Dated this 17th day of January, 2019.

MARQUIS AURBACH COFFING

By: /s/Cody S. Munteer, Esq.

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10001 Park Run Drive

Las Vegas, Nevada 89145

*Attorneys for Appellant, APCO
Construction, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO CONSOLIDATE APPEALS** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Peel Brimley LLP

Eric B. Zimbelman (ezimbelman@peelbrimley.com)

Richard L. Peel (rpeel@peelbrimley.com)

Spencer Fane LLP

John Randall Jefferies (rjefferies@spencerfane.com)

Mary E. Bacon (mbacon@spencerfane.com)

John H. Mowbray (jmowbray@spencerfane.com)

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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

/s/ Michelle Monkarsh

Michelle Monkarsh, an employee of
Marquis Aurbach Coffing

EXHIBIT 8

Order Reinstating Briefing

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELIX ELECTRIC OF NEVADA, LLC,
Appellant/Cross-
Respondent,
vs.
APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,
Respondent/Cross-
Appellant.

No. 77320

FILED

JAN 09 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER REINSTATING BRIEFING

Pursuant to NRAP 16, the settlement judge has filed a report with this court indicating that the parties were unable to agree to a settlement. Accordingly, we reinstate the deadlines for requesting transcripts and filing briefs. See NRAP 16.

Appellant/cross-respondent (appellant) and respondent/cross-appellant (respondent) shall each have 15 days from the date of this order to file and serve a transcript request form. See NRAP 9(a).¹ Further, appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix on appeal.² Respondent shall have 30 days from service of appellant's opening brief to file and serve a combined answering brief on appeal and opening brief on cross-appeal. Appellant shall have 30 days from service of respondent's combined brief to file and serve a combined reply brief on appeal and answering brief on cross-appeal.

¹If no transcript is to be requested, appellant and respondent shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

²In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.

Respondent shall have 14 days from service of appellant's combined brief to file and serve a reply brief on cross-appeal, if deemed necessary. *See* NRAP 28.1.

Finally, appellant and respondent have failed to file a docketing statement when due. *See* NRAP 14(b). Appellant and respondent shall, within ten days from the date of this order, file a docketing statement. Failure to comply timely with this order may result in the imposition of sanctions. *See* NRAP 14(c).

It is so ORDERED.

 C.J.

cc: Stephen E. Haberfeld, Settlement Judge
Peel Brimley LLP/Henderson
Spencer Fane LLP/Phoenix
Marquis Aurbach Coffing
Spencer Fane LLP/Las Vegas

EXHIBIT 7
Partial Joinder and Amended
Docketing Statement

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELIX ELECTRIC OF NEVADA, LLC;
Appellant,

vs.

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Respondent.

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,
Cross-Appellant,

vs.

HELIX ELECTRIC OF NEVADA, LLC;
Cross-Respondent.

Case No. ~~77320~~ 76276
District Court Case No. A606429

FILED

JAN 04 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**PARTIAL JOINDER TO HELIX
ELECTRIC OF NEVADA'S
DOCKETING STATEMENT AND
AMENDED DOCKETING
STATEMENT**

APCO Construction, Inc. ("APCO"), through the law firms Spencer Fane and Marquis Aurbach Coffing, hereby joins Helix Electric of Nevada, LLC's ("Helix") August 8, 2018 Docketing Statement and November 27, 2018 Amended Docketing Statement (collectively referred to as Helix's "Docking Statement").¹ APCO joins Helix's Docketing Statement with respect to categories numbered 1-8,

¹ Helix appealed first and, in that appeal, filed a docketing statement and an amended docketing statement. See *Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, Docket No. 76276 (Docketing Statement, Aug. 8, 2018); *id.* (Amended Docketing Statement, Nov. 27, 2018). APCO cross-appealed from a final order in the same underlying district court action. See *Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, Docket No. 77320 (Notice of Cross-Appeal, Nov. 5, 2018). APCO's cross-appeal was assigned a different docket number (Docket No. 77320) than Helix's appeal (Docket No. 76276). In this motion, APCO, in Docket No. 77320, moves to partially join Helix's docketing statement and amended docketing statement filed in Docket No. 76276.

1 10-11, 13-15, 18, and 20-26. As to the remaining categories, APCO responds as
2 described below.

3 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach
4 separate sheets as necessary): (1) Whether the district court erred in failing to
5 determine APCO was entitled to attorney's fees under the relevant subcontract's
6 attorneys fees provision? (2) Whether the district court erred in failing to award
7 APCO all of its requested costs?

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

- 9 ☐ Reversal of well-settled Nevada precedent (identify the case(s))
10 ☐ An issue arising under the United States and/or Nevada Constitutions
11 ☐ A substantial issue of first-impression
12 ☒ An issue of public policy
13 ☐ An issue where en banc consideration is necessary to maintain
14 uniformity of this court's decisions
15 ☐ A ballot question

16 If so, explain:

17 ☒ N/A

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

19 **Attach a copy. If more than one judgment or order is appealed from,
20 attach copies of each judgment or order from which appeal is taken.**

21 APCO is appealing the Order Granting APCO Construction, Inc.'s Motion
for Attorney's Fees and Costs, (2) Granting APCO Construction, Inc.'s
Memorandum of Costs in Part, (3) Granting Helix Electric of Nevada LLC's

1 Motion to Retax in Part, (4) Granting Plaintiff in Intervention National Wood
2 Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting
3 National Wood Product, Inc.'s Motion to File a Surreply, entered on September
4 28, 2018. A copy is attached as **Exhibit A**.

5 (a) If no written judgment or order was filed in the district court, explain
6 the basis for seeking appellate review:

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

8 The notice of entry of order was served on September 28, 2018.

9 Was service by:

☐ Delivery ☐ Unknown ☒ Mail/Electronic/Fax

10 **19. Date notice of appeal was filed**

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

14 APCO filed its notice of appeal on October 26, 2018. Helix filed its
15 original Notice of Appeal on June 28, 2018 and its Amended Notice of Appeal on
16 October 25, 2018.

17 **27. Attach copies of the last-filed version of all complaints, counterclaims,
18 and/or cross claims filed in the district court, any tolling motion, the order
19 challenged on appeal and written notice of entry for any attached orders.**

20 APCO incorporates the documents provided in Helix's Docketing
21 Statement. In addition, a copy of the order APCO is appealing, the Order Granting
APCO Construction, Inc.'s Motion for Attorney's Fees and Costs, (2) Granting

1 APCO Construction, Inc.'s Memoradum of Costs in Part, (3) Granting Helix
2 Electric of Nevada LLC's Motion to Retax in Part, (4) Granting Plaintiff in
3 Intervention National Wood Products, LLC's Motion to Retax in Part and Denying
4 in Part and (5) Granting National Wood Product, Inc.'s Motion to File a Surreply,
5 is attached as **Exhibit B.**²

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19 ² Notice of Entry of Order for the Order Granting APCO Construction, Inc.'s
20 Motion for Attorney's Fees and Costs, (2) Granting APCO Construction, Inc.'s
21 Memoradum of Costs in Part, (3) Granting Helix Electric of Nevada LLC's
Motion to Retax in Part, (4) Granting Plaintiff in Intervention National Wood
Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting
National Wood Product, Inc.'s Motion to File a Surreply is attached as **Exhibit A.**

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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.

Name of Appellant:

Apco Construction, Inc.

Name of counsel of record:

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Mary Bacon, Esq. (Bar No. 12686)

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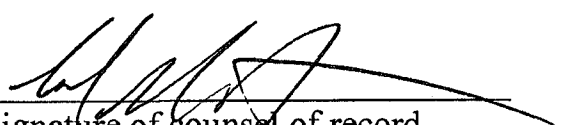
Las Vegas, NV 89145

Telephone: (702) 207-6089

Email: MEchols@maclaw.com

CMounteer@maclaw.com

Dated this 3rd day of December, 2018.


Signature of counsel of record

State and county where signed:

Clark County, Nevada


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Exhibit A



SPENCER FANE LLP

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Attorneys for Apco Construction, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF ENTRY OF ORDER (1)
GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS (2) GRANTING APCO
CONSTRUCTION, INC.'S
MEMORANDUM OF COSTS IN PART
(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF

**INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO
RETAX IN PART AND DENYING IN
PART AND (5) GRANTING NATIONAL
WOOD PRODUCTS, INC.'S MOTION
TO FILE A SURREPLY**

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 27th day of September, 2018, a **ORDER (1) GRANTING APCO CONSTRUCTION, INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5) GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY** was entered in the above case. A copy is attached.

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon

John H. Mowbray, Esq. (Bar No. 1140)
John Randall Jefferies, Esq. (Bar No. 3512)
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Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**

10 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRC
11 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
12 prepaid for non-registered users, on this 28th day of September, 2018, as follows:
13

14
15 **Counter Claimant: Camco Pacific Construction Co Inc**

16 Steven L. Morris (steve@gmdlegal.com)

17 **Intervenor Plaintiff: Cactus Rose Construction Inc**

18 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

19 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

20 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

21 **Intervenor: National Wood Products, Inc.'s**

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23 Richard L Tobler (rltdck@hotmail.com)

24 Richard Reincke (rreincke@caddenfuller.com)

25 S. Judy Hirahara (jhirahara@caddenfuller.com)

26 Tammy Cortez (tcortez@caddenfuller.com)

27 **Other: Chapter 7 Trustee**

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Gianna Garcia (ggarcia@sullivanhill.com)

Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

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3 **Third Party Plaintiff: E & E Fire Protection LLC**
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/s/ Elizabeth Kuchman
An employee of Spencer Fane LLP

Steven D. Grierson

ODR

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Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718 and
A590319

ORDER:

**(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS**

**(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART**

**(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART**

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT#13

1 (4) GRANTING PLAINTIFF IN
2 INTERVENTION NATIONAL WOOD
3 PRODUCTS LLC'S MOTION TO RETAX
4 IN PART AND DENYING IN PART

5 -AND-

6 (5) GRANTING NATIONAL WOOD
7 PRODUCTS, INC.'S MOTION TO FILE A
8 SURREPLY

9 AND ALL RELATED MATTERS

10 On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s
11 Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs
12 [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products,
13 Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re:
14 Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against
15 Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada,
16 LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
17 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
18 Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte
19 Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply
20 to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for
21 Attorneys' Fees and Costs.

22 John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane
23 appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law
24 firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John
25 Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler,
26 Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National
27 Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the
28 records and documents on file in the above-entitled matter and being fully advised on the
29 premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

1 **1. APCO Construction, Inc.'s Motion for Attorneys Fees and Costs Against**
2 **Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**
3 **and APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix**
4 **Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.].**

5 APCO requested attorney's fees from Helix and National Wood pursuant to the
6 subcontracts at issue and pursuant to APCO's November 13, 2018 offers of judgment. APCO
7 also sought an award of attorney's fees against Helix pursuant to NRS 108.237(3). The Court
8 finds that although there are certainly viable bases supporting APCO's contention that
9 contractual provisions in the repesective subcontracts and equitable estoppel can support an
10 award of attorney's fees going back in time to a point long before making of the November 13,
11 2018 offers of judgment, the Court determines, in the context of this complex case, involving
12 multiple parties and claims and consolidation of cases and periodic party alignments and
13 realignments and contractual reconfigurations, that the best basis for attorney fee awards is
14 NRCP 68.

15 NRCP 68 provides in part that at "any time more than 10 days before trial, any party may
16 serve an offer in writing to allow judgment to be taken in accordance with its terms and
17 conditions."¹ "If the offer is not accepted within 10 days after service, it shall be considered
18 rejected by the offeree and deemed withdrawn by the offeror."² And "[i]f the offeree rejects an
19 offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or
20 attorney's fees and shall not recover interest for the period after the service of the offer and
21 before the judgment; and (2) the offeree shall pay the offeror's post-offer costs, applicable
22 interest on the judgment from the time of the offer to the time of entry of the judgment and
23 reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of
24 the offer."³

25 The purpose of NRCP 68 is to promote and encourage settlement and save time and
26 money for the court system, the parties, and the taxpayers.⁴ It rewards a party who makes a

27 ¹ NRCP 68(a).

28 ² NRCP 68(e).

29 ³ NRCP 68(f).

30 ⁴ *Mulje v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 "NRCp 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees."⁶ In reviewing an application for an award of attorney's fee
6 pursuant to NRCp 68, "the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount."⁷ "After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested."⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court's award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO's offer.

18 Preliminarily, APCO's offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that "[t]rial of this consolidated matter commenced on October
22 30, 2012," and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*
30 *Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41-42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

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23
24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
27 deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

28 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
Construction, Inc.'s Supplement to its of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
in Support of its Motion for Attorney's Fees and related briefing.

1 2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax
2 Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and
3 Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder
4 by Helix Electric of Nevada, LLC

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
16 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
17 Intervention National Wood Products, Inc.

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.
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1 **4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to**
2 **Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply**
3 **to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.**

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

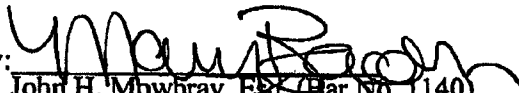
8 IT IS SO ORDERED.

9 DATED this _____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 **SPENCER FANE LLP**

15 By: 
16 John H. Mowbray, Esq. (Bar No. 1140)
17 John Randall Jefferies, Esq. (Bar No. 3512)
18 Mary E. Bacon, Esq. (Bar No. 12686)
19 300 S. Fourth Street, Suite 950
20 Las Vegas, NV 89101
21 Telephone: (702) 408-3411
22 Facsimile: (702) 408-3401
23 Attorneys for Apco Construction, Inc.

24 Approved as to form by:

25 **RICHARD L. TOBLER, LTD.**

26 **PEEL BRIMLEY**

27 By: 
28 Richard L. Tobler, Esq.
29 Nevada Bar No. 4070
30 3654 N. Rancho Drive, Suite 102
31 Las Vegas, Nevada 89130
32 Attorneys for Plaintiff in Intervention,
33 NATIONAL WOOD PRODUCTS, INC.

34 **ERIC B. ZIMBELMAN,**
35 Nevada Bar No. 9407
36 **RICHARD L. PEEL, ESQ.**
37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 SPENCER FANE LLP

14 By:

15 John H. Mowbray, Esq. (Bar No. 1140)
16 John Randall Jefferies, Esq. (Bar No. 3512)
17 Mary E. Bacon, Esq. (Bar No. 12686)
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34 ERIC B. ZIMBELMAN,
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37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

Exhibit B

Steven D. Grierson

ODR

Spencer Fane LLP

John H. Mowbray, Esq. (Bar No. 1140)

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RJefferies@spencerfane.com

MBacon@spencerfane.com

-and-

Marquis Aurbach Coffing

Jack Chen Min Juan, Esq. (Bar No. 6367)

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Las Vegas, Nevada 89145

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Facsimile: (702) 382-5816

jjuan@maclaw.com

cmounteer@maclaw.com

Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;

A587168; A580889; A584730; A589195;

A595552; A597089; A592826; A589677;

A596924; A584960; A608717; A608718 and

A590319

ORDER:

**(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS**

**(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART**

**(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART**

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT#13

**(4) GRANTING PLAINTIFF IN
INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART**

-AND-

**(5) GRANTING NATIONAL WOOD
PRODUCTS, INC.'S MOTION TO FILE A
SURREPLY**

AND ALL RELATED MATTERS

On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada, LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler, Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the records and documents on file in the above-entitled matter and being fully advised on the premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

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1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 "NRCp 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees."⁶ In reviewing an application for an award of attorney's fee
6 pursuant to NRCp 68, "the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount."⁷ "After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested."⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court's award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO's offer.

18 Preliminarily, APCO's offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that "[t]rial of this consolidated matter commenced on October
22 30, 2012," and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*
30 *Comm'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41-42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

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24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
27 deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

28 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
Construction, Inc.'s Supplement to its of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
in Support of its Motion for Attorney's Fees and related briefing.

1 2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax
2 Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and
3 Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder
4 by Helix Electric of Nevada, LLC

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
16 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
17 Intervention National Wood Products, Inc.

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.
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1 **4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to**
2 **Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply**
3 **to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.**

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.


8 IT IS SO ORDERED.

9 DATED this _____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 **SPENCER FANE LLP**

15 By: 
16 John H. Mowbray, Esq. (Bar No. 1140)
17 John Randall Jefferies, Esq. (Bar No. 3512)
18 Mary E. Bacon, Esq. (Bar No. 12686)
19 300 S. Fourth Street, Suite 950
20 Las Vegas, NV 89101
21 Telephone: (702) 408-3411
22 Facsimile: (702) 408-3401
23 Attorneys for Apco Construction, Inc.

24 Approved as to form by:

25 **RICHARD L. TOBLER, LTD.**

PEEL BRIMLEY

26 By: 
27 Richard L. Tobler, Esq.
28 Nevada Bar No. 4070
29 3654 N. Rancho Drive, Suite 102
30 Las Vegas, Nevada 89130
31 Attorneys for Plaintiff in Intervention,
32 **NATIONAL WOOD PRODUCTS, INC.**

ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Attorneys for Helix Electric of Nevada,
LLC,

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 SPENCER FANE LLP

14 By:

15 John H. Mowbray, Esq. (Bar No. 1140)
16 John Randall Jefferies, Esq. (Bar No. 3512)
17 Mary E. Bacon, Esq. (Bar No. 12686)
18 300 S. Fourth Street, Suite 950
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22 Attorneys for Apco Construction, Inc.

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24 RICHARD L. TOBLER, LTD.

25 PEEL BRIMLEY

26 By:

27 Richard L. Tobler, Esq.
28 Nevada Bar No. 4070
29 3654 N. Rancho Drive, Suite 102
30 Las Vegas, Nevada 89130
31 Attorneys for Plaintiff in Intervention,
32 NATIONAL WOOD PRODUCTS, INC.


33 
34 ERIC B. ZIMBELMAN,
35 Nevada Bar No. 9407
36 RICHARD L. PEEL, ESQ.
37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

EXHIBIT 6
Amended Docketing Statement

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:

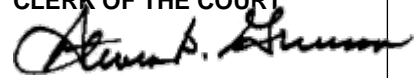
Stephen E. Haberfeld
8224 Blackburn Ave, Suite 100
Los Angeles, CA 90048

Dated this 26th day of November, 2018.



Signature

EXHIBIT 5
Notice of Cross-Appeal



**NOAS
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Attorneys for Apco Construction, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

AND ALL RELATED MATTERS

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF CROSS-APPEAL

NOTICE IS HEREBY GIVEN that APCO Construction, Inc. (“APCO”) by and through its undersigned counsel of record, the law firms of SPENCER FANE LLP and MARQUIS AURBACH COFFING, appeals to the Supreme Court of Nevada from the Order Granting APCO Construction, Inc.’s Motion for Attorney’s Fees and Costs, (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part, (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part, (4) Granting Plaintiff in Intervention National Wood Products, LLC’s Motion to Retax in Part and Denying in Part and (5) Granting National Wood Product, Inc.’s Motion to File a Surreply, entered on September 28, 2018, attached as **Exhibit A**.

Dated this 26th day of October, 2018.

MARQUIS AURBACH COFFING

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Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Marquis Aurbach Coffing and that a copy
3 of the foregoing **NOTICE OF CROSS-APPEAL** was served by electronic transmission
4 through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by
5 mailing a copy to their last known address, first class mail, postage prepaid for non-
6 registered users, on this 26th day of October, 2018, as follows:

7 **Counter Claimant: Camco Pacific Construction Co Inc**

8 Steven L. Morris (steve@gmdlegal.com)

9 **Intervenor Plaintiff: Cactus Rose Construction Inc**

10 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

11 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

12 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

13 **Intervenor: National Wood Products, Inc.'s**

14 Dana Y Kim (dkim@caddenfuller.com)

15 Richard L Tobler (rltldck@hotmail.com)

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17 S. Judy Hirahara (jhirahara@caddenfuller.com)

18 Tammy Cortez (tcortez@caddenfuller.com)

19 **Other: Chapter 7 Trustee**

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22 Jennifer Saurer (Saurer@sullivanhill.com)

23 Jonathan Dabbieri (dabbieri@sullivanhill.com)

24 **Plaintiff: Apco Construction**

25 Rosie Wesp (rwesp@maclaw.com)

26 **Third Party Plaintiff: E & E Fire Protection LLC**

27 TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

Other Service Contacts

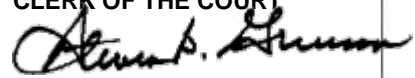
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12 Timother E. Salter . (tim.salter@procopio.com)
13 Wade B. Gochmour . (wbg@h2law.com)

14 /s/ Taylor Fong
15 an employee of Marquis Aurbach Coffing
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A



SPENCER FANE LLP

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-and-

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Attorneys for Apco Construction, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF ENTRY OF ORDER (1)
GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS (2) GRANTING APCO
CONSTRUCTION, INC.'S
MEMORANDUM OF COSTS IN PART
(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF

**INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO
RETAX IN PART AND DENYING IN
PART AND (5) GRANTING NATIONAL
WOOD PRODUCTS, INC.'S MOTION
TO FILE A SURREPLY**

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 27th day of September, 2018, a **ORDER (1) GRANTING APCO CONSTRUCTION, INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5) GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY** was entered in the above case. A copy is attached.

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon

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Facsimile: (702) 408-3401
Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**
10

11 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCR
12 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
13 prepaid for non-registered users, on this 28th day of September, 2018, as follows:

14
15 **Counter Claimant: Camco Pacific Construction Co Inc**

16 Steven L. Morris (steve@gmdlegal.com)

17 **Intervenor Plaintiff: Cactus Rose Construction Inc**

18 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

19 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

20 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

21 **Intervenor: National Wood Products, Inc.'s**

22 Dana Y Kim (dkim@caddenfuller.com)

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26 Tammy Cortez (tcortez@caddenfuller.com)

27 **Other: Chapter 7 Trustee**

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Gianna Garcia (ggarcia@sullivanhill.com)

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Jonathan Dabbieri (dabbieri@sullivanhill.com)

Plaintiff: Apco Construction

Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

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Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228
Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718 and
A590319

ORDER:

**(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS**

**(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART**

**(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART**

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DISTRICT COURT DEPT#13

**(4) GRANTING PLAINTIFF IN
INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART**

-AND-

**(5) GRANTING NATIONAL WOOD
PRODUCTS, INC.'S MOTION TO FILE A
SURREPLY**

AND ALL RELATED MATTERS

On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada, LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler, Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the records and documents on file in the above-entitled matter and being fully advised on the premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

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1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 “NRCP 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees.”⁶ In reviewing an application for an award of attorney’s fee
6 pursuant to NRCP 68, “the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount.”⁷ “After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested.”⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court’s award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO’s offer.

18 Preliminarily, APCO’s offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that “[t]rial of this consolidated matter commenced on October
22 30, 2012,” and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep’t Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*
30 *Comm’n’s, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41–42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994–95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994–95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

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24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
27 deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

28 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
Construction, Inc.'s Supplement to its of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
in Support of its Motion for Attorney's Fees and related briefing.

1 **2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax**
2 **Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and**
3 **Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder**
4 **by Helix Electric of Nevada, LLC**

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 **3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO**
16 **Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in**
17 **Intervention National Wood Products, Inc.**

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.
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1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.


8 IT IS SO ORDERED.

9 DATED this ____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 **SPENCER FANE LLP**


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41 *Attorneys for Helix Electric of Nevada,*
42 *LLC,*

1 **4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to**
2 **Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply**
3 **to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.**

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:

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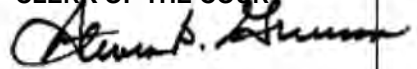
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EXHIBIT 4
Amended Notice of Appeal



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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs.
13

14 GEMSTONE DEVELOPMENT WEST,
INC., Nevada corporation; NEVADA
15 CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
16 CORPORATION, a North Dakota
corporation; COMMONWEALTH LAND
17 TITLE INSURANCE COMPANY; FIRST
18 AMERICAN TITLE INSURANCE
COMPANY and DOES I through X,
19

20 Defendants.

21 AND ALL RELATED MATTERS
22

23 ///

24 ///

25 ///

Case No. : 08A571228

Dept. No. : XIII

Consolidated with:

A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

AMENDED NOTICE OF APPEAL

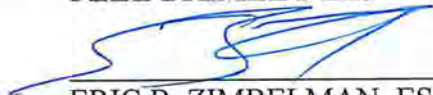
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AMENDED NOTICE OF APPEAL

Notice is hereby given that HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys, Eric B. Zimbelman, Esq. and Peel Brimley, LLP, hereby appeals to the Supreme Court of Nevada from (i) the Judgment as to the Claims of Helix Electric of Nevada, LLC and Plaintiff-in-Intervention National Wood Products, Inc. against APCO Construction, Inc. entered in this action June 1, 2018, a true and correct copy of which is attached hereto as Exhibit "A"¹ and (ii) Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys Fees and Costs, (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part, and (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part entered in this action September 28, 2018, a true and correct copy of which is attached as Exhibit "B."²

DATED this 25th day of October, 2018.

PEEL BRIMLEY LLP



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Attorneys for Helix Electric of Nevada LLC

¹ Notice of Entry of Order entered June 1, 2018 and original Notice of Appeal filed June 28, 2018.

² Notice of Entry of Order entered September 28, 2018

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 25th day of October, 2018, I caused the above and foregoing document, **AMENDED NOTICE OF APPEAL**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

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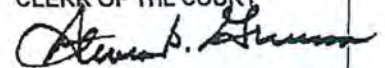
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EXHIBIT A



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13 Attorneys for APCO Construction, Inc.

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,
12
13 Plaintiff,
14
15 v.
16 GEMSTONE DEVELOPMENT WEST, INC., A
17 Nevada corporation,
18
19 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:
A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

NOTICE OF ENTRY OF JUDGMENT

**[AS TO THE CLAIMS OF HELIX
ELECTRIC OF NEVADA, LLC AND
PLAINTIFF IN INTERVENTION
NATIONAL WOOD PRODUCTS, INC.'S
AGAINST APCO CONSTRUCTION, INC.]**

20 AND ALL RELATED MATTERS

22 PLEASE TAKE NOTICE that a JUDGMENT [AS TO THE CLAIMS OF HELIX
23 ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL WOOD
24 PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.] was filed on May 31, 2018, a

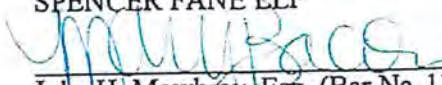
25 ///

27 ///

1 copy of which is attached as **Exhibit A**.

2
3 Dated this 1st day of June, 2018.

4 SPENCER FANE LLP

5 
6 John H. Mowbray, Esq. (Bar No. 1140)
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11 *Attorneys for APCO Construction, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Spencer Fane LLP and that a copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT [AS TO THE CLAIMS OF HELIX ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL WOOD PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.]** was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 1st day of June, 2018, as follows:

Counter Claimant: Camco Pacific Construction Co Inc

Steven L. Morris (steve@gmdlegal.com)

Intervenor Plaintiff: Cactus Rose Construction Inc

Eric B. Zimbelman (ezimbelman@peelbrimley.com)

Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc

Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

Intervenor: National Wood Products, Inc.'s

Dana Y Kim (dkim@caddenfuller.com)

Richard L Tobler (rltdck@hotmail.com)

Richard Reincke (rreincke@caddenfuller.com)

S. Judy Hirahara (jhirahara@caddenfuller.com)

Tammy Cortez (tcortez@caddenfuller.com)

Other: Chapter 7 Trustee

Elizabeth Stephens (stephens@sullivanhill.com)

Gianna Garcia (ggarcia@sullivanhill.com)

Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

Plaintiff: Apco Construction

Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

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EXHIBIT A



1 JUDGE
2 SPENCER FANE LLP
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12 MBacon@spencerfane.com
13 Attorneys for Apco Construction, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

14 GEMSTONE DEVELOPMENT WEST, INC., A
15 Nevada corporation,

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

JUDGMENT

AS TO THE CLAIMS OF HELIX
ELECTRIC OF NEVADA, LLC AND
PLAINTIFF IN INTERVENTION
NATIONAL WOOD PRODUCTS, INC.'S
AGAINST APCO CONSTRUCTION, INC.]

20 AND ALL RELATED MATTERS

22 This matter having come on for a non-jury trial on the merits on January 17-19, 23,
23 24 and February 6, 2018, APCO Construction, Inc. ("APCO"), appearing through Spencer
24 Fane, LLP and Marquis & Aurbach; Camco Construction, Inc., ("Camco") through Grant
25 Morris Dodds; National Wood Products, Inc. ("National Wood" or "CabineTec") through
26 Cadden & Fuller LLP and Richard L. Tobler, Ltd.; United Subcontractors, Inc. through
27 Fabian Vancott; and Helix Electric of Nevada, LLC ("Helix"), SWPP Compliance
28 Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all

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MAY 23 2018

DISTRICT COURT DEPT# 13

1 through Peel Brimley; and, the Court having heard the testimony of witnesses through
2 examination and cross-examination by the parties' counsel, having reviewed the evidence
3 provided by the parties, having heard the arguments of counsel, and having read and
4 considered the briefs of counsel, the parties' pleadings, and various other filings, and good
5 cause appearing; the Court hereby makes the following:

6 The Court having taken the matter under consideration and advisement;

7 The Court having entered its April 25, 2018 Findings of Fact and Conclusions of
8 Law as to the Claims of Helix Electric and CabineTec against APCO, incorporated
9 herein by this reference ("the APCO FFCL");

10 The Court enters the following Judgment as to the claims of Helix and National
11 Wood against APCO;

12 IT IS ORDERED, ADJUDGED, AND DECREED that, as set forth on the APCO
13 FFCL, judgment is to be entered in favor of APCO and against Helix and National Wood
14 on all of Helix's and National Wood's claims against APCO and that (i) Helix's April 14,
15 2009 Statement of Facts Constituting Notice of Lien and Third-Party Complaint, (ii)
16 Helix's June 24, 2009 Amended Statement of Facts Constituting Notice of Lien and Third-Party
17 Complaint and (iii) CabineTec's February 6, 2009 Statement of Facts Constituting Lien
18 Claim and Complaint in Intervention shall be dismissed with prejudice, but only to the
19 extent they state claims against APCO.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court may
21 issue an amended judgment after the Court has heard and decided APCO's Motion for
22 Attorney's Fees and Costs Against Helix and National Wood and any related motion to


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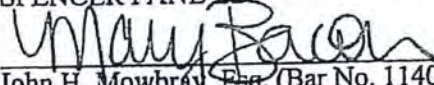
1 determine APCO's costs, currently pending before the Court.¹

2
3 Dated this 29th day of May, 2018.

4 
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6
7 DISTRICT COURT JUDGE

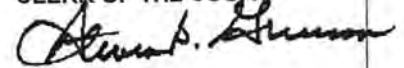
8 Respectfully submitted by:

9 SPENCER FANE LLP

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13 Mary E. Bacon, Esq. (Bar No. 12686)
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16 Attorneys for Apco Construction, Inc.

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28 ¹ The amended judgment will be in accordance with the court's decisions on the pending motion for attorney's fees and any motion/pleadings for costs.

EXHIBIT B



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Attorneys for Apco Construction, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF ENTRY OF ORDER (1)
GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS (2) GRANTING APCO
CONSTRUCTION, INC.'S
MEMORANDUM OF COSTS IN PART
(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF

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**INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO
RETAX IN PART AND DENYING IN
PART AND (5) GRANTING NATIONAL
WOOD PRODUCTS, INC.'S MOTION
TO FILE A SURREPLY**

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 27th day of
September, 2018, a **ORDER (1) GRANTING APCO CONSTRUCTION, INC. MOTION
FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING HELIX ELECTRIC
OF NEVADA LLC'S MOTION TO RETAX IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD PRODUCTS
LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)
GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A
SURREPLY** was entered in the above case. A copy is attached.

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon
John H. Mowbray, Esq. (Bar No. 1140)
John Randall Jefferies, Esq. (Bar No. 3512)
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300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**

10 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCR
11 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
12 prepaid for non-registered users, on this 28th day of September, 2018, as follows:
13

14 **Counter Claimant: Camco Pacific Construction Co Inc**

15 Steven L. Morris (steve@gmdlegal.com)

16 **Intervenor Plaintiff: Cactus Rose Construction Inc**

17 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

18 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

19 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

20 **Intervenor: National Wood Products, Inc.'s**

21 Dana Y Kim (dkim@caddenfuller.com)

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25 Tammy Cortez (tcortez@caddenfuller.com)

26 **Other: Chaper 7 Trustee**

27 Elizabeth Stephens (stephens@sullivanhill.com)

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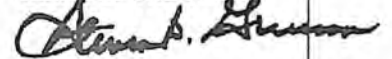
Jonathan Dabbieri (dabbieri@sullivanhill.com)

1 **Plaintiff: Apco Construction**
2 Rosie Wesp (rwesp@maclaw.com)
3 **Third Party Plaintiff: E & E Fire Protection LLC**
4 TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)
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/s/ Elizabeth Kuchman
An employee of Spencer Fane LLP



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Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

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A596924; A584960; A608717; A608718 and
A590319

ORDER:

(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS

(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART

(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT# 13

1 (4) GRANTING PLAINTIFF IN
2 INTERVENTION NATIONAL WOOD
3 PRODUCTS LLC'S MOTION TO RETAX
4 IN PART AND DENYING IN PART

5 -AND-

6 (5) GRANTING NATIONAL WOOD
7 PRODUCTS, INC.'S MOTION TO FILE A
8 SURREPLY

9 AND ALL RELATED MATTERS

10 On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s
11 Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs
12 [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products,
13 Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re:
14 Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against
15 Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada,
16 LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
17 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
18 Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte
19 Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply
20 to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for
21 Attorneys' Fees and Costs.

22 John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane
23 appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law
24 firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John
25 Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler,
26 Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National
27 Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the
28 records and documents on file in the above-entitled matter and being fully advised on the
29 premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

1 **1. APCO Construction, Inc.'s Motion for Attorneys Fees and Costs Against**
2 **Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**
3 **and APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix**
4 **Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.].**

5 APCO requested attorney's fees from Helix and National Wood pursuant to the
6 subcontracts at issue and pursuant to APCO's November 13, 2018 offers of judgment. APCO
7 also sought an award of attorney's fees against Helix pursuant to NRS 108.237(3). The Court
8 finds that although there are certainly viable bases supporting APCO's contention that
9 contractual provisions in the repesective subcontracts and equitable estoppel can support an
10 award of attorney's fees going back in time to a point long before making of the November 13,
11 2018 offers of judgment, the Court determines, in the context of this complex case, involving
12 multiple parties and claims and consolidation of cases and periodic party alignments and
13 realignments and contractual reconfigurations, that the best basis for attorney fee awards is
14 NRCP 68.

15 NRCP 68 provides in part that at "any time more than 10 days before trial, any party may
16 serve an offer in writing to allow judgment to be taken in accordance with its terms and
17 conditions."¹ "If the offer is not accepted within 10 days after service, it shall be considered
18 rejected by the offeree and deemed withdrawn by the offeror."² And "[i]f the offeree rejects an
19 offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or
20 attorney's fees and shall not recover interest for the period after the service of the offer and
21 before the judgment; and (2) the offeree shall pay the offeror's post-offer costs, applicable
22 interest on the judgment from the time of the offer to the time of entry of the judgment and
23 reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of
24 the offer."³

25 The purpose of NRCP 68 is to promote and encourage settlement and save time and
26 money for the court system, the parties, and the taxpayers.⁴ It rewards a party who makes a

27 ¹ NRCP 68(a).

28 ² NRCP 68(e).

29 ³ NRCP 68(f).

30 ⁴ *Muije v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 “NRCP 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees.”⁶ In reviewing an application for an award of attorney's fee
6 pursuant to NRCP 68, “the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount.”⁷ “After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested.”⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court's award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO's offer.

18 Preliminarily, APCO's offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that “[t]rial of this consolidated matter commenced on October
22 30, 2012,” and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*

30 *Comm'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41–42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994–95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

22
23
24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

27 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
Construction, Inc.'s Supplement to its of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
in Support of its Motion for Attorney's Fees and related briefing.

1 2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax
2 Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and
3 Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder
4 by Helix Electric of Nevada, LLC

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
16 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
17 Intervention National Wood Products, Inc.

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.
24
25
26
27
28

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this ____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:

14 SPENCER FANE LLP

15 By: 

16 John H. Mowbray, Esq. (Bar No. 1140)
17 John Randall Jefferies, Esq. (Bar No. 3512)
18 Mary E. Bacon, Esq. (Bar No. 12686)
19 300 S. Fourth Street, Suite 950
20 Las Vegas, NV 89101
21 Telephone: (702) 408-3411
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23 *Attorneys for Apco Construction, Inc.*

24 Approved as to form by:

25 RICHARD L. TOBLER, LTD.

26 PEEL BRIMLEY

27 By: 

28 Richard L. Tobler, Esq.
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32 *Attorneys for Plaintiff in Intervention,*
33 *NATIONAL WOOD PRODUCTS, INC.*

34 ERIC B. ZIMBELMAN,
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37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 *Attorneys for Helix Electric of Nevada,*
41 *LLC,*

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 SPENCER FANE LLP

14 By:

15 John H. Mowbray, Esq. (Bar No. 1140)
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17 Mary E. Bacon, Esq. (Bar No. 12686)
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EXHIBIT 3
Docketing Statement

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
Aug 08 2018 02:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**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:

The docket for the district court case is attached as **Exhibit A**. This matter was consolidated with the following cases in the Eighth Judicial District Court: A571228, A574391, A574792, A577623, A579963, A580889, A583289, A584730, A587168, A589195, A589677, A590319, A592826, A596924, A597089, A606730, A608717, A608718. The district court case involved approximately 90 parties. [See **Exhibit B**, Consolidated Case List]. The claims of all parties can

generally be described as claims related to payment of either labor or materials provided to the Project. The district court action was initiated in 2008 during the economic recession, endured three appeals, and lasted approximately ten years. As such, on September 5, 2017, there was a calendar call on the claims of the remaining parties in the case.¹ During the calendar call, APCO, Helix, and other parties orally moved to dismiss those parties that had not filed their pre-trial disclosures.² The Court set the final pre-trial disclosure date for Friday, September 8, 2017.³ The Court set a follow-up hearing on the matter for September 11, 2017.⁴ At that hearing, and pursuant to the Court's order, the only parties that remained in the litigation were:

- Helix Electric of Nevada, Inc. (trial completed, judgment appealed from here);
- National Wood Products, Inc. (trial completed, judgment appealed from here);
- APCO Construction, Inc. (trial completed, judgments appealed from here and in Case No. 75197)
- Zitting Brothers Construction, Inc. (judgment entered against APCO on January 2, 2018; appeal pending, Case No. 75197);
- Camco Pacific Construction, Co. (trial completed, judgments entered against Camco in favor of multiple parties, including Helix and National Wood Products. Camco's appeal deadline has elapsed)⁵;
- E&E Fire Protection, LLC (proceeded to trial. Judgment entered against Camco. Camco's appeal deadline has elapsed)⁶;
- SWPPP Compliance Solutions, LLC (proceeded to trial. Judgment entered against Camco. Camco's appeal deadline has elapsed)⁷;
- Fast Glass, Inc. (proceeded to trial. Judgment entered against Camco. Camco's appeal deadline has elapsed)⁸;
- Heinaman Contract Glazing, Inc. (proceeded to trial. Judgment entered against Camco. Camco's appeal deadline has elapsed)⁹;
- Cactus Rose Construction, Inc. proceeded to trial. Judgment entered against Camco. Camco's appeal deadline has elapsed)¹⁰;
- Interstate Plumbing and Air Conditioning, LLC (subsequently dismissed by stipulation)¹¹;

¹ See September 21, 2017 Notice of Entry of Order Granting Plaintiffs Oral Motion to Dismiss, attached as **Exhibit C**.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Notices of Entry of Judgment against Camco, **Exhibit D**.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See **Exhibit E**.

- Nevada Prefab Engineers, Inc. (subsequently dismissed by stipulation)¹²;
- Steel Structures, Inc. (subsequently dismissed by stipulation)¹³;
- Unitah Investments, LLC. (subsequently dismissed by stipulation)¹⁴; and
- United Subcontractors dba Sky Line Insulation (motion to enforce settlement pending).¹⁵

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

This action arises out of a failed construction project that closed, incomplete, in 2008. After years of litigation, stays and prior Writ Petitions, a trial was held in February 2018 relating to the claims of the subcontractors on their claims against the project's general contractors, including APCO. This is an appeal by Helix and National Wood Products of the Findings of Fact and Conclusions of Law and Judgment denying all relief to Helix and National Wood Products (as against APCO) and dismissing all of Helix's and National Wood Products' claims following trial.

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)

¹² See **Exhibit F**.

¹³ *Id.*

¹⁴ *Id.* Unitah is the successor in interest to the claims of Gerdau Reinforcing Steel.

¹⁵ See **Exhibit G**. United Subcontractors dba Sky Line Insulation only had claims against Camco, not APCO.

- 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 and rendered Section 3.8 irrelevant). Section 9.4 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 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 “[t]he 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. Although Section 9.4 also conditioned payment to Helix on “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 legally 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” (emphasis added) but the District Court expressly found that APCO terminated the contract pursuant to its rights under NRS 624.610.

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:

Case No. 75197, APCO Construction, Inc. v. Zitting Bros. Constr., Inc. Based upon APCO’s Docketing Statement in Case No. 75197, it appears that the application and enforceability of “pay-if-paid” agreements are also at issue there.

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:

In *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008), this Court held that “pay-if-paid” agreements are against public policy, void and unenforceable except in very limited circumstances not present here. In reliance upon *Bullock* and NRS 624.624(1), the District Court purported to reject “pay-if-paid” agreements by way of summary judgment (favoring Helix, National Wood Products and Zitting Brothers). However, the District Court’s findings and conclusions necessarily required it to ignore *Bullock* and NRS 624.624(1). By way of its appeal in Case No. 75197 and in defense of Helix’s and National Wood Products’ claims in this case, APCO argues for reversal of *Bullock* and/or an interpretation of NRS 624.624(1) that is contrary to the public policy of Nevada as set forth in *Bullock*. Helix will ask this Court to affirm and/or clarify its well-settled precedent.

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:

Pursuant to NRAP 17(b)(9), this case is presumptively assigned to the Court of Appeals because it involves statutory lien matters under NRS Chapter 108. However, Helix respectfully submits that this case should be assigned to the Supreme Court because it raises a question of statewide importance (i.e.,

the continuing prohibition of “pay-if-paid” agreements and this Court’s long-standing recognition that “Nevada’s public policy favors securing payment for labor and material contractors.” *Bullock*, 124 Nev. at 1117-18). In addition, APCO’s Docketing Statement in Case No. 75197 asserts that an unpublished decision of this Court, *Padilla Construction Company of Nevada v. Big-D Construction Corp.*, 386 P.3d 982, 2016 Nev. Unpub. Lexis 958 (Case Nos. 68683 and 67397) stands for the proposition that “payment preconditions are valid preconditions to payment under a payment schedule” in spite of *Bullock* and NRS 624.624(1). Here, at APCO’s urging, the District Court relied in *Padilla* to affirm the payment preconditions of Section 3.8 of the APCO Subcontract even though such provisions contain (and are inextricably intertwined with) a pay-if-paid agreement.

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.**

Helix is appealing the Judgment [as to the claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. against APCO Construction, Inc.], which was entered on June 1, 2018. A copy of the Notice of Entry of Judgment is attached as **Exhibit H**.

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

Service of the Notice of Entry of Judgment in the Clark County District Court is electronic. Accordingly, the date the written notice of entry was served was no sooner than June 1, 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 Notice of Appeal on June 28, 2018.

National Wood Products filed its Notice of Appeal on June 29, 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) and (for National Wood Products) NRAP 4(a)(2).

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:

The judgment appealed from resolves all claims between the parties. All other claims involving all other parties in the consolidated proceeding have been dismissed or brought to judgment. Accordingly, the judgment appealed from is a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered pursuant to NRAP 3A(b)(1).

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

(a) Parties: This case represents the consolidation of approximately 90 parties. Parties include:

- 2. Apco Construction, Inc.
- 3. Asphalt Products Corporation
- 4. Cactus Rose Construction
- 5. Camco Pacific Construction Co, Inc.
- 6. Club Vista Financial Services, LLC
- 7. Gemstone Development West, Inc.
- 8. Insulpro Projects, Inc.
- 9. Tharaldson Motels II, Inc.
- 10. Gary D. Tharaldson

11. Accuracy Glass & Mirror Company, Inc.
12. Ahern Rentals, Inc.
13. Arch Aluminum and Glass Co.
14. Atlas Construction Supply, Inc.
15. Bank of Oklahoma NA
16. Bruin Painting Corporation
17. Buchele, Inc.
18. Cabintec, Inc.
19. Cellcrete Fireproofing of Nevada, Inc.
20. Concrete Visions, Inc.
21. Creative Home Theatre, LLC
22. Dave Peterson Framing, Inc.
23. E & E Fire Protection, LLC
24. Executive Plastering, Inc.
25. EZA P.C.
26. Fast Glass, Inc.
27. Ferguson Fire and Fabrication, Inc.
28. Gerdau Reinforcing Steel
29. Granite Construction Company
30. Harsco Corporation
31. HD Supply Waterworks LP
32. Heinaman Contract Glazing
33. Helix Electric of Nevada, LLC
34. Hydropressure Cleaning, Inc.
35. Inquipco
36. Insulpro Projects, Inc.
37. Interstate Plumbing & Air Conditioning
38. John Deere Landscape, Inc.
39. Las Vegas Pipeline, LLC
40. Masonry Group Nevada, Inc.
41. Nevada Construction Services
42. Nevada Prefab Engineers
43. Nevada Prefab Engineers, Inc.
44. Noord Sheet Metal Company
45. Noorda Sheet Metal Company
46. Northstar Concrete, Inc.
47. Pape Materials Handling
48. Patent Construction Systems
49. Professional Door and Mill Works, LLC
50. Professional Doors and Millworks, LLC
51. Ready Mix, Inc.
52. Renaissance Pools & Spas, Inc.
53. Republic Crane Service, LLC
54. Scott Financial Corporation
55. Bradley J. Scott
56. Selectbuild Nevada, Inc.
57. Steel Structures, Inc.
58. Supply Network, Inc.
59. The Pressure Grout Company

60. Tri City Drywall, Inc.
61. WRG Design, Inc.
62. Zitting Brothers Construction, Inc.
63. Commonwealth Land Title Insurance Co
64. First American Title Insurance Co
65. Oz Architecture of Nevada, Inc.
66. Pape Rents
67. Power Plus!
68. Viking Supplynet
69. Cell Crete Fireproofing Of NV, Inc.
70. Custom Select Billing, Inc.
71. Dave Peterson Framing, Inc.
72. National Wood Products, Inc.'s
73. Pressure Grout Co
74. Fidelity & Deposit Company Of Maryland
75. Fidelity And Deposit Co Of Maryland
76. First American Title Insurance Co
77. Jeff Heit Plumbing Co., LLC
78. Kelly Marshall
79. Old Republic Surety
80. Arch Aluminum And Glass Co Now Known As Arch Aluminum and Glass LLC
81. Cactus Rose Construction Inc
82. Harsco Corporation
83. S R Bray Corp
84. Selectbuild Nevada, Inc.
85. Sunstate Companies, Inc.
86. SWPPP Compliance Solutions LLC
87. Graybar Electric Company
88. PCI Group, LLC
89. RLMW Investments, LLC
90. United Subcontractors Inc Doing Business As Skyline Insulation
91. Wiss, Janney, Elstner Associates, Inc.

See also, Exhibit B, *supra*, (Consolidated Case List).

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

See Section 7, *supra*.

- 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:

(a) Specify the claims remaining pending below:

Post-trial motions for fees and costs as between APCO and Helix and National Wood Products are still pending. However, such motions do not extend the time for appeal and do not affect this Court's jurisdiction.

(b) Specify the parties remaining below:

None, other than APCO, Helix and National Wood Products with respect to post-trial motions for fees and costs.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

However, a NRCP 54(b) certification was entered as it relates to the claims between Zitting Brothers and APCO. (See **Exhibit I**) Because all other claims have subsequently been resolved, Helix believes that certification to be irrelevant to this appeal.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

As between Zitting Brothers and APCO only. *See* Section 25(c), *supra*.

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)):

The only claims and issues remaining at the District Court are post-trial motions for fees and costs as between APCO and Helix and National Wood Products. However, such motions do not extend the time for appeal and do not affect this Court's jurisdiction pursuant to NRAP 3A(b)(1).

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

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims:

See **Exhibit I** (relevant pleadings)

- Any tolling motion(s) and order(s) resolving tolling motion(s)”

N/A

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross- claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal:

N/A

- Any other order challenged on appeal

N/A

- Notices of entry for each attached order

See Exhibits C through I, inclusive.

In addition, APCO has provided the Court with an extensive Appendix of documents potentially responsive to these items by way of its Docketing Statement in Case No. 75197, which Helix adopts by reference in the interest of brevity in addition to above.


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

August 8, 2018
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the this ____ day of August, 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

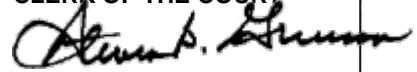
Dated this 5th day of August, 2018.



Signature

EXHIBIT 2

Notice of Appeal



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7 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12
13 vs.

14 GEMSTONE DEVELOPMENT WEST,
INC., Nevada corporation; NEVADA
15 CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
16 CORPORATION, a North Dakota
corporation; COMMONWEALTH LAND
17 TITLE INSURANCE COMPANY; FIRST
18 AMERICAN TITLE INSURANCE
COMPANY and DOES I through X,

19 Defendants.
20

21 AND ALL RELATED MATTERS
22

23 ///

24 ///

25 ///

Case No. : 08A571228

Dept. No. : XIII

Consolidated with:

*A571792, A574391, A577623, A580889,
A583289, A584730, and A587168*

NOTICE OF APPEAL

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PEEL BRIMLEY LLP
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DATED this 28th day of June, 2018.

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Attorneys for Helix Electric of Nevada, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY,**
3 **LLP**, and that on this 28th day of June, 2018, I caused the above and foregoing document,
4 **NOTICE OF APPEAL**, to be served as follows:

- 5 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
6 envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
7 ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing
8 system;
9 ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
10 ☐ to be hand-delivered; and/or
11 ☐ other _____

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17 Steven Morris (steve@gmdlegal.com)

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21 Tracy Truman (district@trumanlegal.com)

22 **Interstate Plumbing & Air Conditioning Inc:**

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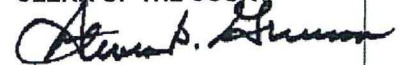
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An employee of PEEL BRIMLEY, LLP

EXHIBIT A



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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

14 GEMSTONE DEVELOPMENT WEST, INC., A
15 Nevada corporation,

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

NOTICE OF ENTRY OF JUDGMENT

**[AS TO THE CLAIMS OF HELIX
ELECTRIC OF NEVADA, LLC AND
PLAINTIFF IN INTERVENTION
NATIONAL WOOD PRODUCTS, INC.'S
AGAINST APCO CONSTRUCTION, INC.]**

20 AND ALL RELATED MATTERS

22 PLEASE TAKE NOTICE that a JUDGMENT [AS TO THE CLAIMS OF HELIX
23 ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL WOOD
24 PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.] was filed on May 31, 2018, a


25 ///

27 ///

1 copy of which is attached as **Exhibit A**.

2
3 Dated this 1st day of June, 2018.

4 SPENCER FANE LLP

5 
6 John H. Mowbray, Esq. (Bar No. 1140)
7 John Randall Jefferies, Esq. (Bar No. 3512)
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9 300 S. Fourth Street, Suite 950
10 Las Vegas, NV 89101
11 *Attorneys for APCO Construction, Inc.*

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am an employee of Spencer Fane LLP and that a copy of the
4 foregoing **NOTICE OF ENTRY OF JUDGMENT [AS TO THE CLAIMS OF HELIX**
5 **ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL**
6 **WOOD PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.]** was served by
7 electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and
8 EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
9 prepaid for non-registered users, on this 1st day of June, 2018, as follows:

10 **Counter Claimant: Camco Pacific Construction Co Inc**

11 Steven L. Morris (steve@gmdlegal.com)

12 **Intervenor Plaintiff: Cactus Rose Construction Inc**

13 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

14 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

15 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

16 **Intervenor: National Wood Products, Inc.'s**

17 Dana Y Kim (dkim@caddenfuller.com)

18 Richard L Tobler (rltdck@hotmail.com)

19 Richard Reincke (rreincke@caddenfuller.com)

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22 **Other: Chapter 7 Trustee**

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25 Jennifer Saurer (Saurer@sullivanhill.com)

26 Jonathan Dabbieri (dabbieri@sullivanhill.com)

27 **Plaintiff: Apco Construction**

28 Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC


TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

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EXHIBIT A



1 JUDGE
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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

14 GEMSTONE DEVELOPMENT WEST, INC., A
15 Nevada corporation,

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

JUDGMENT

AS TO THE CLAIMS OF HELIX
ELECTRIC OF NEVADA, LLC AND
PLAINTIFF IN INTERVENTION
NATIONAL WOOD PRODUCTS, INC.'S
AGAINST APCO CONSTRUCTION, INC.]

20 AND ALL RELATED MATTERS

21
22 This matter having come on for a non-jury trial on the merits on January 17-19, 23,
23 24 and February 6, 2018, APCO Construction, Inc. ("APCO"), appearing through Spencer
24 Fane, LLP and Marquis & Aurbach; Camco Construction, Inc., ("Camco") through Grant
25 Morris Dodds; National Wood Products, Inc. ("National Wood" or "CabineTec") through
26 Cadden & Fuller LLP and Richard L. Tobler, Ltd.; United Subcontractors, Inc. through
27 Fabian Vancott; and Helix Electric of Nevada, LLC ("Helix"), SWPP Compliance
28 Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all

1 through Peel Brimley; and, the Court having heard the testimony of witnesses through
2 examination and cross-examination by the parties' counsel, having reviewed the evidence
3 provided by the parties, having heard the arguments of counsel, and having read and
4 considered the briefs of counsel, the parties' pleadings, and various other filings, and good
5 cause appearing; the Court hereby makes the following:

6 The Court having taken the matter under consideration and advisement;

7 The Court having entered its April 25, 2018 Findings of Fact and Conclusions of
8 Law as to the Claims of Helix Electric and CabineTec against APCO, incorporated
9 herein by this reference ("the APCO FFCL");

10 The Court enters the following Judgment as to the claims of Helix and National
11 Wood against APCO;

12 IT IS ORDERED, ADJUDGED, AND DECREED that, as set forth on the APCO
13 FFCL, judgment is to be entered in favor of APCO and against Helix and National Wood
14 on all of Helix's and National Wood's claims against APCO and that (i) Helix's April 14,
15 2009 Statement of Facts Constituting Notice of Lien and Third-Party Complaint, (ii)
16 Helix's June 24, 2009 Amended Statement of Facts Constituting Notice of Lien and Third-Party
17 Complaint and (iii) CabineTec's February 6, 2009 Statement of Facts Constituting Lien
18 Claim and Complaint in Intervention shall be dismissed with prejudice, but only to the
19 extent they state claims against APCO.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court may
21 issue an amended judgment after the Court has heard and decided APCO's Motion for
22 Attorney's Fees and Costs Against Helix and National Wood and any related motion to

23 ///

26 ///

28 ///

1 determine APCO's costs, currently pending before the Court.¹

2

3 Dated this 29th day of May, 2018.

4


DISTRICT COURT JUDGE

5

6

7 Respectfully submitted by:

8

SPENCER FANE LLP

9



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¹ The amended judgment will be in accordance with the court's decisions on the pending motion for attorney's fees and any motion/pleadings for costs.

EXHIBIT 1
Order to Show Cause

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

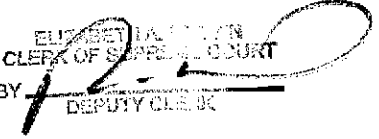
APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Respondent.

No. 76276

FILED

MAR 21 2019

ELIZABETH A. CLARK
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court order entering judgment against appellants. Review of the docketing statements and documents before this court reveals potential jurisdictional defects.¹ It is not clear whether the district court has entered a final judgment resolving all claims against all parties in the underlying district court case. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). Although appellant Helix Electric of Nevada has filed an amended docketing statement and second amended docketing statement, it does not appear that it has provided all information required. Helix's

¹On February 6, 2019, this court ordered appellant National Wood Products to file an amended docketing statement by March 8, 2019, containing complete responses to all items and having copies of all necessary documents attached. To date, National Wood has failed to comply. Counsel for National Wood is admonished for failing to comply with this court's order.


second amended docketing statement states that it only identifies the causes of action asserted before the underlying case was consolidated with another case. But appellants are required to identify all claims, counterclaims, cross-claims, or third party claims asserted in an action. See Docketing Statement Item 23. Further, it is unclear from the information provided whether the district court has entered orders formally resolving all of the claims asserted. For example, Helix indicates in its docketing statement that some of the causes of action asserted by plaintiffs in intervention Cactus Rose and Heinaman Contract Glazing were not pursued at trial. But the fact that parties were not inclined to pursue their claims does not operate as a formal dismissal of those claims. See *KDI Sylvan Pools, Inc. v. Workman*, 107 Nev. 340, 343, 810 P.2d 1217, 1219 (1991).

Accordingly, appellants shall each have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. The underlying district court case is extraordinarily complex, involving dozens of parties and multiple consolidated cases. Thus, in responding to this order, in addition to points and authorities, appellants must provide a list of, and copies of, each of the latest-filed complaints, counterclaims, cross-claims, third-party complaints, and complaints in intervention filed in the underlying district court case (A587168), even if those documents were filed after consolidation, and even if they relate to parties other than the parties to this appeal. Appellants must also identify the date each pleading was filed and provide copies of each of the district court orders formally resolving each of the claims, counterclaims, cross-claims, third-party claims, and claims in intervention. Respondent may file any reply within 14 days of service of the latest-filed response. Failure to

demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

Briefing of this appeal is suspended pending further order of this court.

It is so ORDERED.

 C.J.

cc: Peel Brimley LLP/Henderson
Cadden & Fuller LLP
Law Office of Richard L. Tobler, Ltd.
Fennemore Craig, P.C./Las Vegas
Marquis Aurbach Coffing
Spencer Fane LLP/Las Vegas
Fennemore Craig, P.C./Phoenix

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320

Electronically Filed
Apr 08 2019 05:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

HELIX ELECTRIC OF NEVADA, LLC

Appellant/Cross-Respondent

v.

APCO CONSTRUCTION, INC, A NEVADA CORPORATION,

Respondent/Cross-Appellant.

Appeal from Judgment
Eighth Judicial District Court, Clark County
The Honorable Mark Denton, District Court Judge
District Court Case No. **08A571228**

**MOTION TO SUSPEND BRIEFING PENDING OUTCOME OF ORDER
TO SHOW CAUSE IN SUPREME COURT CASE NO. 76276**

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INTRODUCTION

Two appeals arising from the same matter involving the same parties are currently pending before this Court: this Case, Supreme Court Case No. 77320 and Supreme Court Case No. 76276. Case No. 76276 appeals of the dismissal of Appellant Helix Electric Nevada, LLC's ("Helix") claims ("the Primary Case") against Respondent APCO Construction ("APCO") while Case No. 77320 was created by the Court when Helix filed an Amended Notice of Appeal seeking review of the Primary Case and the Court's subsequent award of attorney's fees and costs to APCO ("the Attorney's Fees Case"), for which APCO filed a Cross-Appeal.

On January 17, 2019, APCO filed a Motion to Consolidate with this Court seeking to combine the two cases in order to preserve judicial economy, which motion remains pending. Recently, this Court issued an Order to Show Cause in the Primary Case asking for Appellant Helix Electric of Nevada, LLC ("Helix") to demonstrate to the Court "why [the Primary Case] should not be dismissed for lack of jurisdiction."¹ These two appeals are inextricably intertwined and, as the Court has noted, the underlying case is "extraordinarily complex."² While Helix believes it can demonstrate to the Court's satisfaction that appellate jurisdiction exists in the Primary Case, if the Court lacks jurisdiction to consider the Primary Case, the Attorney's Fees Case would inevitably suffer the same flaw.

Accordingly, Helix requests, in the interest of non-duplication of briefing in these related appeals and for the sake of preserving judicial economy, that briefing in the Attorney's Fees Case be suspended pursuant to NRAP 2 for such a time as needed for the Order to Show Cause in the Primary Case to be resolved. Helix further requests that the Court suspend Helix's obligation to issue a docketing statement in

¹ A true and correct copy of the Order to Show Cause issued by this Court on March 21, 2019 in Appeal No. 76276 is attached hereto as **Exhibit 1**.

² *Id.* at 2

the Attorney's Fees Case until the Court issues its ruling on the Show Cause Order in the Primary Case because (as part of its response to the Show Case Order) Helix is preparing (but has not yet completed³) a revised docketing statement that it proposes for file in both actions. Alternatively, if all other relief is denied, Helix respectfully requests that it be granted an extension of 60 days to file an opening brief and 30 days to submit a docketing statement in the Attorney's Fees Case.

STATEMENT OF FACTS

Appellant filed its original Notice of Appeal on June 28, 2018, challenging the District Court's ruling after trial in favor of APCO on Helix' claims as they related to APCO. This Notice of Appeal led the Court to create the Primary Case (Appeal No. 76276).⁴ On August 8, 2018, Helix filed its original Docketing Statement.⁵ After the District Court entered and awarded attorney fees and cost in favor of APCO, Helix filed an Amended Notice of Appeal on October 25, 2018.⁶ On October 26, 2018, APCO filed its Notice of Cross-Appeal.⁷ On November 5, 2018, the Court created the Attorney's Fees Case (Appeal No. 77320) consisting of Helix' Amended Notice of Appeal and APCO's Notice of Cross-Appeal.

In response to the Court's request, Helix filed an Amended Docketing Statement relating to the Primary Case on November 27, 2018.⁸ APCO then filed a Partial Joinder to Helix Electric of Nevada's Docketing Statement and Amended

³ Helix's Response to the Show Cause Order is due on Monday April 22, 2019.

⁴ A true and correct copy of the Notice of Appeal in Appeal No. 76276 filed on June 28, 2018 is attached hereto as **Exhibit 2**.

⁵ A true and correct copy of the Docketing Statement in Appeal No. 76276 filed on August 8, 2018 is attached hereto as **Exhibit 3**.

⁶ A true and correct copy of the Amended Notice of Appeal in Appeal No. 77320 filed on October 25, 2018 is attached hereto as **Exhibit 4**.

⁷ A true and correct copy of the Notice of Cross Appeal in Appeal 77320 filed on October 26, 2018 is attached hereto as **Exhibit 5**.

⁸ A true and correct copy of the Amended Docketing Statement in Appeal 76276 filed on November 27, 2018 is attached hereto as **Exhibit 6**.

Docketing Statement on January 4, 2019.⁹ On January 9, 2019, the Court filed an Order Reinstating Briefing Pursuant to NRAP 16 because the parties were unable to agree to a settlement.¹⁰

On January 17, 2019, APCO filed a Motion to Consolidate Appeals seeking to combine the Attorney's Fees Case and Primary Case because both appeals arise from the same District Court trial.¹¹ On February 6, 2019, in the Primary Case, the Court issued an Order to File Amended Docketing Statement.¹² On March 4, 2019 APCO filed a Docketing Statement in the Attorney's Fees Case.¹³ In response to the Court's February 6, 2019 Order to File Amended Docketing Statement in the Primary Case, Helix filed its Second Amended Docketing Statement on March 8, 2019.¹⁴

On March 21, 2019, in the Primary Case, the Court issued an Order to Show Cause ordering Helix to show cause within 30 days why the Primary Case should not be dismissed for lack of jurisdiction.¹⁵ The Order to Show Cause suspended briefing in the Primary Case until further order of this Court. On April 3, 2019, in

⁹ A true and correct copy of the Partial Joinder to Helix Electric of Nevada's Docketing Statement and Amended Docketing Statement in Appeal No. 76276 filed on January 4, 2019 is attached hereto as **Exhibit 7**.

¹⁰ A true and correct copy of the Order Reinstating Briefing in Appeal No. 77320 filed on January 9, 2019 is attached hereto as **Exhibit 8**.

¹¹ A true and correct copy of the Motion to Consolidate Appeals in Appeal 76276 filed on January 19, 2019 is attached hereto as **Exhibit 9**. One of the grounds for appeal of the Attorneys Fees Case is that if the Court reverses the underlying judgment in the Primary Case, there would be no grounds for an award of fees to APCO.

¹² A true and correct copy of the Order to File Amended Docketing Statement in Appeal 76276 filed on February 6, 2019 is attached hereto as **Exhibit 10**.

¹³ A true and correct copy of Respondent's Docketing Statement in Appeal No. 77320 filed on March 4, 2019 is attached hereto as **Exhibit 11**.

¹⁴ A true and correct copy of the Second Amended Docketing Statement in Appeal 76276 filed on March 8, 2019 is attached hereto as **Exhibit 12**.

¹⁵ **Exhibit 1**.

the Attorney's Fees Case the Court filed an Order to File Document because "appellant/cross-respondents have failed to file the docketing statement"¹⁶

ARGUMENT

Nevada Rule of Appellate Procedure 2 gives this Court the discretion to suspend any provision of the Rules governing Appeals for "good cause." Here, Helix requests that the Court suspend all briefing in the Attorneys Fees Case pending the outcome of the Order to Show Cause in the related Primary Case. APCO's Motion to Consolidate these two appeals remains pending before this Court and the Court has expressed concern that it lacks jurisdiction over the Primary Case. The only difference between the Primary Case and the Attorney's Fees Case is the additional issues on review relating to the District Court's award of attorney's fees and costs and the cases are otherwise procedurally identical. Accordingly, if the Court lacks jurisdiction over the Primary Case, the Court may similarly lack jurisdiction over the Attorney's Fees Case. In this event, briefing in the Attorney's Fees Case would be moot.

Rather than require the parties and Court to move forward with the Attorney's Fees Case while the jurisdictional fate of the Primary Case remains uncertain, it would be far more economical for the Court to effectively pause the proceedings in the Attorney's Fees Case until a decision has been with respect to the Show Cause Order in the Primary Case.¹⁷ As such, it would create a burdensome logistical situation if one portion of the appeal was moving forward into its briefing phase, while the underlying judgment is still facing jurisdictional concerns. In the event the Court allows the Primary Case to move forward, it makes sense for the Primary Case

¹⁶ A true and correct copy of the Order to File Document in Appeal 77320 filed on April 3, 2019 is attached hereto as **Exhibit 13**.

¹⁷ Additionally, Helix joins APCO in the belief that these two appeals should be consolidated

and the Attorney's Fees Case to move forward together (as appears was originally intended), rather than on separate tracks with duplicative and repetitive briefing.

Helix also requests that it be granted an extension to file its docketing statement in the Attorney's Fees Case, which docketing statement will largely mirror its docketing statement (to be amended in response to the Show Cause Order) in the Primary Case. Helix does not wish to file an unsatisfactory docketing statement in the Attorney's Fees Case while it is working to correct the confusion created by its submission of that same document in the Primary Case. Helix intends to file an amended docketing statement in the Primary Case as part of its Response to the Show Cause Order and respectfully requests that it be allowed to submit that same or substantially similar) amended docketing statement in the Attorney's Fees Case.

Alternatively, and to the extent the Court denies the present motion, Helix respectfully requests that it be granted (1) an extension of 30 days to file a docketing statement in the Primary Case (Case No. 76726) and (2) an extension of 60 days to file an opening brief in the Attorney's Fees Case (Case No. 77320).

CONCLUSION

For the foregoing reasons, Helix respectfully requests:

- (i) That the briefing be suspended in the Attorney's Fees Case (Case No. 77320) until resolution of the Show Cause proceedings in the Primary Case (Case No. 76726);
- (ii) That Helix be granted an extension to file its docketing statement in the Attorney's Fees Case (Case No. 77320) until it files its Response to the Show Cause Order in the Primary Case (Case No. 76726), which will include an amended docketing statement, and
- (iii) Alternatively (if the other relief is denied), that Helix be granted an extension of 60 days to file its opening brief in the Attorney's Fees Case

(Case No. 77320) and an extension of 30 days to file its docketing statement in the Attorney's Fees Case (Case No. 77320).

Respectfully submitted this 8th day of April, 2019.

PEEL BRIMLEY LLP

/s/ Eric B. Zimbelman

ERIC B. ZIMBELMAN, ESQ. (9407)

RICHARD L. PEEL, ESQ. (4359)

3333 E. Serene Avenue, Suite 200

Henderson, NV 89 A571228074-6571

Attorneys for Appellant/Cross-Respondent

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 5th day of April, 2019, I caused the above and foregoing document, **MOTION TO SUSPEND BRIEFING PENDING OUTCOME OF ORDER TO SHOW CAUSE IN SUPREME COURT CASE NO. 76276**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Nevada Supreme Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

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