

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
Consolidated with 80508

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Elizabeth A. Brown
Clerk of Supreme Court

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

**JOINT APPENDIX
VOLUME 25**

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CHRONOLOGICAL APPENDIX OF EXHIBITS

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¹ Filed January 31, 2018

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	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

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	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
01-18-18	Transcript – Bench Trial (Day 2)²	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)³	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80

² Filed January 31, 201879

³ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁴	JA005820- JA005952	81
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	APCO Construction Inc.’s Post-Trial Brief	JA006059- JA006124	82/83
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
03-23-18	Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief	JA006173- JA006193	84
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85

⁴ Filed January 31, 201883

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05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
06-01-18	Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

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	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
06-15-18	APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs	JA006615- JA006637	90/91
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007095- JA007120	97/98
06-15-18	Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007121- JA007189	98
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007190- JA007192	99
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238- JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262- JA007280	100
09-28-18	Notice of Entry of (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313- JA007315	101

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10MM – Scott Financial Corporation’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
08-29-19	Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)	JA009117- JA009123	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119
01-29-20	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
02-11-20	Case Appeal Statement	JA009157- JA009163	120
02-11-20	APCO's Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
		JA006442	
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
06-06-13	APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
02-11-20	APCO’s Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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	JA009168- JA009182	114

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
11-06-17	APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction Company, Inc.'s Counterclaim		
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs	JA006615- JA006637	90/91
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions <i>in Limine</i> Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	APCO Construction Inc.'s Post-Trial Brief	JA006059- JA006124	82/83
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i>	JA001133 JA001148	21

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	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
04-26-10	CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim	JA000031- JA000041	1
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
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06-15-18	Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007121- JA007189	98
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
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08-06-19	Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109

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	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction’s Answer to WRG Design Inc.’s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.’s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc’s Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.’s Answer to Camco Pacific Construction Company, Inc.’s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction’s Counterclaim	JA008531- JA008551	111

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	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing’s Motion for Attorneys’s Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112

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	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment	JA006964- JA006978	96

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	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA007085- JA007087	97
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
11-14-17	Helix Electric of Nevada’s Opposition to APCO Construction’s Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
08-29-19	Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-	JA009117- JA009123	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225- JA007237	100
03-23-18	Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief	JA006173- JA006193	84
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
01-04-18	Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-29-20	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
09-28-18	Notice of Entry of Order (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001178- JA001186	22
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238- JA007245	100
01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion <i>in Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
09-28-17	Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA00418	7
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001552- JA001560	27
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition	JA007190- JA007192	99

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007095- JA007120	97/98
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

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	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		

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	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	Transcript Bench Trial (Day 1)⁵	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

⁵ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36
01-18-18	Transcript – Bench Trial (Day 2)⁶	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)⁷	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80

⁶ Filed January 31, 201879

⁷ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁸	JA005820- JA005952	81
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101

⁸ Filed January 31, 2018

125. Intentionally omitted (Expunged Case 08-A571228-B)

126. Intentionally omitted (Expunged Case 08-A571228-B)

127. Intentionally omitted (Expunged Case 08-A571228-B)

128. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY,
recorded March 3, 2009 in Book 20090303 of Official Records as document
number 00057.

Amount: \$79,420.00

An action commenced in the District Court, dated May 4, 2009, Case No.
A571228, entitled, "NOTICE OF LIS PENDENS", THE PRESSURE GROUT
COMPANY, A CALIFORNIA CORPORATION -vs- APCO CONSTRUCTION,
A NEVADA CORPORATION; AND, GEMSTONE DEVELOPMENT WEST,
INC., A NEVADA CORPORATION; DOES I-X; AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 6, 2009 in Book 20090506
as Document No. 04009 of Official Records.

An action commenced in the District Court, dated April 15, 2010, Case No.
A571228, AND ALL CONSOLIDATED CASES, entitled, "THE PRESSURE
GROUT COMPANY'S AMENDED NOTICE OF PENDENCY OF ACTION",
THE PRESSURE GROUT COMPANY, A CALIFORNIA CORPORATION -vs-
APCO CONSTRUCTION, A NEVADA CORPORATION; AND, GEMSTONE
DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I-X;
AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504
as Document No. 00985 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010
in Book 20100504 as Document No. 00986 of Official Records.
New Amount: \$79,420.61

129. A claim of Mechanic's Lien by CUSTOM SELECT BILLING, INC., recorded
March 3, 2009 in Book 20090303 of Official Records as document number
03785.

Amount: \$153,765.25

The above lien was amended by Amended and Restated Notice of Lien recorded
August 13, 2009 in Book 20090813 as Document No. 04380 of Official Records.

130. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded
March 6, 2009 in Book 20090306 of Official Records as document number
0004245.

Amount: \$23,307.87

131. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.

Amount: \$212,444.00

132. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02343.

Amount: \$110,731.00

133. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.

Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE; ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records

134. Intentionally omitted (Expunged Case 08-A571228-B)

135. Intentionally omitted (Expunged A571228)

136. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.

Amount: \$496,043.86

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded April 8, 2009 in Book 20090408 as Document No. 03269 of Official Records.

The above lien was amended by Amended Notice and Claim of Lien recorded April 13, 2010 in Book 20100413 as Document No. 03544 of Official Records.

137. Intentionally omitted (Expunged Case 08-A571228-B)

138. Intentionally omitted (Expunged Case 08-A571228-B)

139. Intentionally omitted (Expunged Case 08-A571228-B)

140. Intentionally omitted (Expunged A571228)

141. Intentionally omitted (Case 08-A571228-B)

142. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.
Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE, ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records.

143. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.
Amount: \$238,627.22

144. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.
Amount: \$103,955.04

145. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded April 22, 2009 in Book 20090422 as Document No. 02306 of Official Records;
Debtor: CONCRETE VISIONS, INC., A NEVADA CORPORATION;

SELINA CISNEROS, INDIVIDUALLY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH X, ROE CORPORATIONS 1 THROUGH X, INCLUSIVE

Creditor: AHERN RENTALS, INC., A NEVADA CORPORATION

Court: District

County: Clark

Case No.: A574792

Filing Date: April 14, 2009

Amount: \$66,140.04, plus costs and interest

Attorney for Plaintiff: D. Shane Clifford, Esq. and Anjuli B. Woods, Esq.

146. Intentionally omitted (Case 08-A571228-B)

147. Dedications and Easements as shown on the recorded Reversionary Map referred to herein, on file in Book 141 of Plats, Page 93, of Official Records.

148. An action commenced in the District Court, dated July 17, 2009, Case No. A-09-59552-C, entitled, "LIS PENDENS", CONTAINMENT SOLUTIONS, INC., A DELAWARE CORPORATION -vs- E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; PLATTE RIVER INSURANCE COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH 10, INCLUSIVE; AND ROE CORPORATIONS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded August 3, 2009 in Book 20090803 as Document No. 00902 of Official Records.

149. An action commenced in the District Court, dated August 26, 2009, Case No. A-09-598102-C, entitled, "LIS PENDENS", WADLEY CONSTRUCTION, INC. DBA IMPACT SAND & GRAVEL, A NEVADA CORPORATION -vs- LAS VEGAS PIPELINE, LLC, A NEVADA LIMITED LIABILITY COMPANY; WESTERN SURETY COMPANY, A SURETY; MARK LEE BLACKWELL, AN INDIVIDUAL; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 - 10, INCLUSIVE; AND ROE CORPORATIONS 1 - 10, INCLUSIVE

Notice of Pendency of said Action was recorded September 1, 2009 in Book 20090901 as Document No. 00252 of Official Records.

150. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.

Amount: \$121,063.00

151. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.

Amount: \$238,627.22

An action commenced in the District Court, dated April 1, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "CACTUS ROSE CONSTRUCTION'S NOTICE OF LIS PENDENS", CACTUS ROSE CONSTRUCTION, INC., AN ARIZONA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407 as Document No. 02810 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01816 of Official Records.

152. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official Records as document number 01085.

Amount: \$3,376,600.45

An action commenced in the District Court, dated April 5, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING & AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I

THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407
as Document No. 02809 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book
20120723 as Document No. 01811 of Official Records.

153. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR
CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official
Records as document number 01086.
Amount: \$738,161.63

An action commenced in the District Court, dated April 5, 2010, Lead Case No.
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,
A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR
CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING
& AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY
COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA
CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION;
CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA
CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA
CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND;
SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA
CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407
as Document No. 02809 of Official Records.

154. A claim of Mechanic's Lien by S.R. BRAY CORP. D/B/A POWER PLUS1,
recorded May 6, 2010 in Book 20100506 of Official Records as document
number 03905.
Amount: \$65,180.00

An action commenced in the District Court, dated May 7, 2010, Lead Case No.
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,
A584730 AND A587168, entitled, "S.R. BRAY CORP.'S NOTICE OF LIS
PENDENS", S.R. BRAY CORP., A CALIFORNIA CORPORATION D/B/A
POWER PLUS1 -vs- GEMSTONE DEVELOPMENT WEST, INC., NEVADA
CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH
DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02297 of Official Records.

155. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.

Amount: \$117,470.00

An action commenced in the District Court, dated May 10, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "SWPPP COMPLIANCE SOLUTIONS, LLC'S NOTICE OF LIS PENDENS", SWPPP COMPLIANCE SOLUTIONS, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02296 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01810 of Official Records.

156. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded September 22, 2010 in Book 20100922 as Document No. 02754 of Official Records;

Debtor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT, LLC, A NEVADA LIMITED-LIABILITY COMPANY; GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED-LIABILITY COMPANY; DOES I THROUGH X, AND ROE BUSINESS ENTITIES XI THROUGH XX, INCLUSIVE

Creditor: PCI GROUP, LLC, A NEVADA LIMITED-LIABILITY COMPANY

Court: District

County: Clark

Case No.: A584960

Filing Date: August 6, 2010

Amount: \$34,729.09

Attorney for Plaintiff: R. Christopher Reade, Esq. and Dana L. Howell, Esq.

157. Water rights, claims or title to water, whether or not shown by the public records.

158. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

159. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

160. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as disclosed by an inspection of said premises.

161. REQUIREMENT: In the event this file converts to a request for title insurance, please advise the Title Department at least one week prior to close of the transaction.

We reserve the right to make additional exceptions and/or requirements.

NOTE: This report is a preliminary investigation only of the property contained herein. This is not an abstract, it is a report derived from our review of various documents of record. No reliance should be placed on the contents hereof without first obtaining the approval of an Officer of the Company.

SB

SCHEDULE C
OFFICE NOTES

1.

SCHEDULE D

Privacy Notice (15 U.S.C. 6801 and 16 CFR Part 313): Nonpublic personal information about you is provided to us from information you submit on forms and documents and from others who are involved in your transaction. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. If you want a full page explanation of our privacy policy, or if you have questions, please contact us.

Exhibit B

Exhibit B

LV 418787007v1

JA001368

EXHIBIT "B"

A. Mechanics Liens

1. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.
Amount: \$217,911.29
2. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.
Amount: \$374,262.70

The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.
3. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.
Amount: \$69,260.04
4. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.
Amount: \$79,420.00
5. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.
Amount: \$754,618.89
6. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.
Amount: \$420,157.90
7. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.
Amount: \$20,782,659.95

The above lien was amended by Amended Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.
8. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.
Amount: \$161,000.00
9. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199
Amount: \$1,001,790.15

10. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.
Amount: \$461,795.78
11. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.
Amount: \$586,642.07
12. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. – AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.
Amount: \$30,383.68
13. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.
Amount: \$400,000.00
14. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.
Amount: \$1,956,902.53
15. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.
Amount: \$373,892.42
16. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.
Amount: \$641,748.33

The above lien was amended by Amended Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.
17. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01598.
Amount: \$199,000.00
18. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.
Amount: \$57,611.11
19. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$57,611.11
20. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$85,260.82

21. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$63,362.02
22. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$3,685.15
23. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$3,257.73
24. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.
Amount: \$788,405.41
25. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.
Amount: \$25,441.40
26. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.
Amount: \$50,000.00
27. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.
Amount: \$95,659.36
28. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.
Amount: \$77,220.70
29. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. – CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.
Amount: \$5,868.00
30. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. – CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.
Amount: \$62,250.50
31. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.
Amount: \$4,300.00
32. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document Number 02970.
Amount: \$109,032.00

33. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.
Amount: \$945,351.40
34. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.
Amount: \$8,625.00
35. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.
Amount: \$242,608.00
36. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.
Amount: \$20,596.03
37. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.
Amount: \$3,186,102.67
38. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.
Amount: \$79,420.00
39. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official Records as document number 03919.
Amount: \$3,376,600.45
40. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official Records as document number 00331.
Amount: \$20,311,853.16
41. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official Records as document number 01512.
Amount: \$783,161.63
42. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 20, 2009 in Book 20090120 of Official Records as document number 04864.
Amount: \$9,494.23
43. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.
Amount: \$22,176.01
44. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.
Amount: \$20,156.25

45. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.
Amount: \$582,966.86
46. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC., recorded January 30, 2009 in Book 20090130 of Official Records as document number 0002909.
Amount: \$89,474.70
47. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA, INC., recorded February 2, 2009 in Book 20090202 of Official Records as document number 03407.
Amount: \$111,629.00
48. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded February 3, 2009 in Book 20090203 of Official Records as document number 00318.
Amount: \$185,319.09
- The above lien was amended by Amended Notice of Lien recorded April 9, 2009 in Book 20090409 as Document No. 01355 of Official Records.
49. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.
Amount: \$127,822.00
50. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.
Amount: \$3,795,218.91
51. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC., recorded February 4, 2009 in Book 20090204 of Official Records as document number 02241.
Amount: \$756,647.12
52. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC., recorded February 10, 2009 in Book 20090210 of Official Records as document number 02713.
Amount: \$90,932.76
53. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04321.
Amount: \$314,085.66
- The above lien was amended by Amended Notice of Lien recorded April 27, 2009 in Book 20090427 as Document No. 00107 of Official Records.
54. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.
Amount: \$159,478.55
55. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded March 3, 2009 in Book 20090303 of Official Records as document number 00057.

Amount: \$79,420.00

56. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded March 6, 2009 in Book 20090306 of Official Records as document number 04245.
Amount: \$23,307.87
57. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.
Amount: \$212,444.00
58. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document 02343.
Amount: \$110,731.00
59. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.
Amount: \$245,971.07
60. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.
Amount: \$496,043.86
61. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.
Amount: \$245,971.07
62. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.
Amount: \$238,627.22
63. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.
Amount: \$103,955.04
64. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.
Amount: \$121,063.00
65. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.
Amount: \$238,627.22
66. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.
Amount: \$117,470.00

67. A claim of Mechanic's Lien by SR BRAY, recorded May 6, 2010 in Book 20100506 of Official Records as document number 03905.
Amount: \$65,180.00
68. A claim of Mechanic's Lien by CUSTOM SELECT, recorded August 13, 2009 in Book 20090813 of Official Records as document number 04380.
Amount: \$153,765.25
- 8. Deeds of Trust**
1. A First Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004264.
Amount: \$15,000,000.00
2. A Junior Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004265.
Amount: \$10,000,000.00
3. A Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004266.
Amount: \$13,000,000.00
4. A Junior Deed of Trust Amendment in favor of SCOTT FINANCIAL CORPORATION, recorded May 22, 2007 in Book 20070522 of Official Records as document number 0004011.
Amount: \$8,000,000.00
5. An Amendment to Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded October 24, 2007 in Book 20071024 of Official Records as document number 0004182.
Amount: \$10,000,000.00
6. A Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing in favor of SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 0001482.
Amount: \$110,000,000.00

Exhibit E

EXHIBIT 8

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CLERK OF THE COURT

1 Mark E. Ferrario (NV Bar No. 1625)
2 Moorca L. Katz (NV Bar No. 12007)
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9 Facsimile: (702) 792-9002
10 *Attorneys for Defendants Club Vista Financial Services, LLC*
11 *and Tharaldson Motels II, Inc.*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **APCO CONSTRUCTION, a Nevada**
15 **corporation,**

16 **Plaintiffs,**

17 **v.**

18 **GEMSTONE DEVELOPMENT WEST,**
19 **INC., a Nevada corporation; NEVADA**
20 **CONSTRUCTION SERVICES, a**
21 **Nevada corporation; SCOTT**
22 **FINANCIAL CORPORATION, a North**
23 **Dakota corporation;**
24 **COMMONWEALTH LAND TITLE**
25 **INSURANCE COMPANY; FIRST**
26 **AMERICAN TITLE INSURANCE**
27 **COMPANY; and DOES I through X**

28 **Defendants.**

AND ALL RELATED CASES AND
MATTERS

Case No.: A571228
Dept. No.: XIII

CONSOLIDATED CASES:
A571792, A574397, A574792,
A577623, A579963, A580889,
A583289, A584730, A587168,
A589195, A589677, A590319,
A592826, A596924, A597089,
A606730, A608717, and A608718

ORDER RELEASING SALE
PROCEEDS FROM COURT-
CONTROLLED ESCROW
ACCOUNT

29 On or about April 23, 2013, the Court issued an Order Approving Sale of Property
30 ("Sale Order"). Pursuant to the Sale Order, the Court approved the purchase and sale of the
31 Manhattan West Property ("Property") free and clear of all liens and ordered that all liens on
32 the Property identified in a title report attached to the Sale Order be transferred to the net
33 proceeds from the sale. The Court further ordered that the net proceeds from the sale be
34 transferred to an interest-bearing account "pending final resolution of the mechanic lien

Page 1

LV 420655574v1 133821:010100

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1 claimants' Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the
2 Supreme Court of Nevada on June 22, 2012, or upon resolution of any appeal brought with
3 respect to the net proceeds from the sale." Id. Furthermore, the Court ordered that "[t]he
4 contents of the Account are to remain subject to Court control until the Court orders the
5 distribution of the contents to the party or parties the Nevada Supreme Court determines has a
6 first priority lien on the proceeds or as may otherwise be agreed upon by the parties." Id.

7 The Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the
8 Supreme Court of Nevada on June 22, 2012 and referenced in the Sale Order was denied by the
9 Supreme Court of Nevada on or about September 24, 2015 in 131 Nev. Adv. Op. 70.
10 Specifically, the Supreme Court of Nevada determined that the mechanic liens on the
11 Manhattan West Property remained junior to a lien against the Property securing construction
12 financing and which was recorded against the Property prior to the attachment of the mechanic
13 liens. Accordingly, the Supreme Court of Nevada determined that Scott Financial Corporation
14 had a first priority lien against the Property to the extent of the \$38,000,000 initial financing.
15 See *id.* at *12-13. The parties all agree that the net proceeds from the sale are less than
16 \$38,000,000.

17 On or about October 19, 2015, the mechanic lien claimants petitioned the Supreme
18 Court of Nevada for rehearing, which the Supreme Court of Nevada denied on or about
19 November 24, 2015.

20 On or about December 17, 2015, the mechanic lien claimants petitioned the Supreme
21 Court of Nevada for en banc reconsideration, which the Supreme Court of Nevada denied on or
22 about February 16, 2016.

23 ///

24 ///

25 ///

26 ///

27 ///

DATED this 14th day of April, 2016.

By: Moorea L. Katz
Mark E. Ferrario (Bar No. 1625)
Moorea L. Katz (Bar No. 12007)
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
*Attorneys for Defendants Club Vista
Financial Services, LLC*

EXHIBIT 9

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: MANHATTAN WEST
MECHANIC'S LIEN LITIGATION

No. 61131

FILED

FEB 19 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

APCO CONSTRUCTION, A NEVADA
CORPORATION; ACCURACY GLASS &
MIRROR COMPANY, INC.; BUCHELE,
INC.; BRUIN PAINTING
CORPORATION; CACTUS ROSE
CONSTRUCTION; FAST GLASS, INC.;
HD SUPPLY WATERWORKS, LP;
HEINAMAN CONTRACT GLAZING;
HELIX ELECTRIC OF NEVADA, LLC;
INTERSTATE PLUMBING & AIR
CONDITIONING; SWPPP
COMPLIANCE SOLUTIONS, LLC; AND
WRG DESIGN, INC.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN SCANN, DISTRICT JUDGE,
Respondents,

and

SCOTT FINANCIAL CORPORATION, A
NORTH DAKOTA CORPORATION;
AHERN RENTALS, INC.; ARCH
ALUMINUM AND GLASS CO.; ATLAS
CONSTRUCTION SUPPLY, INC.;
BRADLEY J. SCOTT; CABINETEC,
INC.; CELLCRETE FIREPROOFING OF
NEVADA, INC.; CAMCO PACIFIC
CONSTRUCTION CO., INC.; CLUB
VISTA FINANCIAL SERVICES, LLC;

CONCRETE VISIONS, INC.; CREATIVE HOME THEATRE, LLC; CUSTOM SELECT BILLING, INC.; DAVE PETERSON FRAMING, INC.; E&E FIRE PROTECTION, LLC; EZA, P.C.; FERGUSON FIRE AND FABRICATION, INC.; GEMSTONE DEVELOPMENT WEST, INC.; GRANITE CONSTRUCTION COMPANY; HARSCO CORPORATION; HYDROPRESSURE CLEANING; INQUIPCO; INSULPRO PROJECTS, INC.; JEFF HEIT PLUMBING, CO., LLC; JOHN DEERE LANDSCAPE, INC.; LAS VEGAS PIPELINE, LLC; NEVADA PREFAB ENGINEERS; NOORDA SHEET METAL COMPANY; NORTHSTAR CONCRETE, INC.; PAPE MATERIAL HANDLING; PATENT CONSTRUCTION SYSTEMS; PROFESSIONAL DOOR AND MILL WORKS, LLC; READY MIX, INC.; RENAISSANCE POOLS & SPAS, INC.; REPUBLIC CRANE SERVICE, LLC; STEEL ENGINEERS, INC.; SUPPLY NETWORK, INC.; SUNSTATE COMPANIES, INC.; THARALDSON MOTELS II, INC.; THE PRESSURE GROUT, COMPANY; TRI CITY DRYWALL, INC.; UINTAH INVESTMENTS, LLC; AND ZITTING BROTHERS CONSTRUCTION, INC.,
Real Parties in Interest.

ORDER DENYING EN BANC RECONSIDERATION

Having considered the petition on file herein, we have

concluded that en banc reconsideration is not warranted. NRAP 40A.
Accordingly, we

ORDER the petition DENIED.¹

Hardesty, A.C.J.
Hardesty

Douglas, J.
Douglas

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

CHERRY, J., dissenting: I would grant reconsideration in this matter, for
the reasons set forth in my previous dissents.

Cherry, J.
Cherry

¹The Honorable Ron Parraguirre, Chief Justice, did not participate
in the decision of this matter.

cc: Sterling Law, LLC
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Howard & Howard Attorneys PLLC
Marquis Aurbach Coffing
Peel Brimley LLP/Henderson
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T. James Truman & Associates
Tony Ditty, Esq.
Eighth District Court Clerk

EXHIBIT 10

ORIGINAL

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Steven D. Grierson
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Steven D. Grierson

1 **ORDR**

2 ERIC B. ZIMBELMAN, ESQ.

3 Nevada Bar No. 9407

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13 Attorneys for Various Lien Claimants

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 vs.

20 GEMSTONE DEVELOPMENT WEST, INC.,
21 Nevada corporation; NEVADA
22 CONSTRUCTION SERVICES, a Nevada
23 corporation; SCOTT FINANCIAL
24 CORPORATION, a North Dakota
25 corporation; COMMONWEALTH LAND
26 TITLE INSURANCE COMPANY; FIRST
27 AMERICAN TITLE INSURANCE
28 COMPANY and DOES I through X,

Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**ORDER GRANTING PEEL BRIMLEY
LIEN CLAIMANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
PRECLUDING DEFENSES BASED
ON PAY-IF-PAID AGREEMENTS**

AND ALL RELATED MATTERS.

This matter came on for hearing November 16, 2017, before the Honorable Mark Denton in Dept. 13 on the Peel Brimley Lien Claimants' ("PB Lien Claimants")¹ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements ("the Motion"). Joinders were filed by Zitting Brothers, Construction, Inc., William A. Leonard/Interstate Plumbing and Air Conditioning LLC, National Wood Products, Inc., E&E Fire Protection LLC, and United Subcontractors, Inc. (collectively, "the Joining

¹ The Peel Brimley Lien Claimants are: Cactus Rose Construction, Fast Glass Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance Solutions, LLC, and Buchele, Inc. The Peel Brimley law firm has since withdrawn from representation of Buchele, Inc.

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RECEIVED

DEC 27 2017

DISTRICT COURT DEPT#13

JA001387

Case Number: 08A571228

1 Subcontractors”) APCO Construction (“APCO”) and Camco Pacific Construction, Inc.
2 (“Camco”) opposed the Motion. The issues having been well-briefed and argued and the Court
3 being fully advised in the premises, the Court is persuaded that the Motion has merit and should
4 be granted.

5 A. Findings of Fact.

6 Specifically, but without limitation, there are no genuine issues of material fact as
7 follows:

8 1. This action arises out of a construction project in Las Vegas, Nevada known as
9 the Manhattan West Condominiums Project (“the Project”) located at West Russell Road and
10 Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005,
11 163-32-101-010 and 163-32-101-014 (the “Property” and/or “Project”), owned by Gemstone
12 Development West, Inc. (“Gemstone” or the “Owner”).

13 2. The Owner hired APCO and, subsequently, Camco as its general contractors,
14 who in turn entered into subcontract agreements with various subcontractors including the PB
15 Lien Claimants and the Joining Subcontractors. In December 2008 the Owner suspended the
16 Project and advised the various contractors that the Owner’s lender did not expect to disburse
17 further funds for construction. Numerous contractors, including the PB Lien Claimants, the
18 Joining Subcontractors, APCO and Camco recorded mechanic’s liens against the Property.

19 3. After several years of litigation and a Writ Action to determine the priority of the
20 various lienors (during which the Property was sold, the proceeds of the same held in a blocked
21 account and this action was stayed), the Nevada Supreme Court ruled that the Owner’s lenders
22 had priority over the proceeds of the sale of the Property, holding that the NRS Ch. 108
23 mechanic’s liens were junior to the lenders’ deeds of trust. The Court subsequently ordered the
24 proceeds be released to the lender. Thereafter, the stay was lifted and the PB Lien Claimants,
25 Joining Subcontractors and others continued to pursue claims for non-payment from APCO and
26 Camco.

27 ///

28 ///

1 4. APCO and Camco assert defenses to the various subcontractor claims based on
2 so-called "pay-if-paid agreements" (hereinafter referred to generally as "Pay-if-Paid").
3 Specifically but without limitation, APCO and Camco rely on language in the APCO
4 Subcontract Agreement that was adopted by way of a Ratification Agreement between Camco
5 and some of the subcontractors, that APCO and Camco have no obligation to pay the
6 subcontractors for the work materials and equipment they furnished to the Project ("the Work")
7 unless and until the Owner pays APCO and Camco for the Work. APCO and Camco claim that
8 they have not been paid, in whole or in part, for the Work and/or that the Owner by-passed them
9 by making or intending to make payments to subcontractors through a voucher control
10 company, Nevada Construction Services ("NCS"). Among other provisions, APCO and Camco
11 rely upon the following:

12 *3.4 Any payments to Subcontractor shall be conditioned upon receipt of the*
13 *actual payments by Contractor from Owner. Subcontractor herein agrees to*
14 *assume the same risk that the Owner may become insolvent that Contractor*
has assumed by entering into the Prime Contract with the Owner.

15 *3.5 Progress payments will be made by Contractor to Subcontractor within 15*
16 *days after Contractor actually receives payment for Subcontractor's work from*
17 *Owner. Any payments to Subcontractor shall be conditioned upon receipt of*
18 *the actual payments by Contractor from Owner. Subcontractor herein agrees*
to assume the same risk that the Owner may become insolvent that Contractor
has assumed by entering into the Prime Contract with the Owner.

19 *3.8 The 10 percent withheld retention shall be payable to Subcontractor upon,*
20 *and only upon the occurrence of all the following events, each of which is a*
21 *condition precedent to Subcontractor's right to receive final payment*
hereunder and payment of such retention: ... (c) Receipt of final payment by
Contractor from Owner.

22 *3.9 Subcontractor agrees that Contractor shall have no obligation to pay*
23 *Subcontractor for any changed or extra work performed by Subcontractor*
24 *until or unless Contractor has actually been paid for such Work by the owner.*

25 *4.2 The Owner's payment to Contractor of extra compensation for any such*
26 *suspension, delay, or acceleration shall be a condition precedent to*
27 *Subcontractor's right, if any, to receive such extra compensation from*
28 *Contractor.*

///

1 5. Each of these provisions represents or contains Pay-if-Paid such that, if enforced,
2 may allow APCO and Camco to deny payment to their subcontractors for work performed on
3 the grounds that APCO and Camco have not been paid.

4 6. Any finding of fact herein that is more appropriately deemed a conclusion of law
5 shall be treated as such.

6 **B. Conclusions of Law.**

7 As discussed below, Pay-if-Paid is void and unenforceable in Nevada and, as a result,
8 the Motion to Preclude Defenses based on Pay-if-Paid Agreements in GRANTED.

9 1. In 2008 the Nevada Supreme Court declared Pay-if-Paid void and unenforceable
10 as against Nevada's public policy because "Nevada's public policy favors securing payment for
11 labor and material contractors." *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124
12 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008). The *Bullock* Court noted that "because
13 a pay-if-paid provision limits a subcontractor's ability to be paid for work already performed,
14 such a provision impairs the subcontractor's statutory right to place a mechanic's lien on the
15 construction project." 124 Nev. at 1117 n. 51 (citing *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 15
16 Cal. 4th 882, 64 Cal. Rptr. 2d 578, 938 P.2d 372, 376 (Cal. 1997)

17 2. Nevada's statutory schemes designed to secure payment to contractors and
18 subcontractors in the construction industry as a whole are remedial. *See Hardy Companies, Inc.*
19 *v. W.E. O'Neil Const. Co.*, 245 P.3d 1149, 1155 (Nev. 2010) (citing *Las Vegas Plywood v. D &*
20 *D Enterprises*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)). As stated in *Bullock*:

21 Underlying the policy in favor of preserving laws that provide contractors secured
22 payment for their work and materials is the notion that contractors are generally in a
23 vulnerable position because they extend large blocks of credit; invest significant time,
24 labor, and materials into a project; and have any number of workers vitally depend
25 upon them for eventual payment. *We determine that this reasoning is persuasive as it*
26 *accords with Nevada's policy favoring contractors' rights to secured payment for*
27 *labor, materials, and equipment furnished.*

28 *Bullock*, 124 Nev. at 1116 (emphasis added).

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1 3. Despite the fact that the *Bullock* decision involved mechanic's liens, the Court
2 rejects as without merit the argument that the public policy rationale of *Bullock* is limited to the
3 concept of security or does not apply when there is no security such as in the present case, where the
4 Property has been sold and the proceeds have been released to senior lienors. Among other things,
5 the term "secured payment" utilized by *Bullock*, at 1116, uses "secured" as an adjective and
6 "payment" as a noun.

7 4. By way of a footnote, the *Bullock* Court noted that the Nevada Legislature
8 "amended NRS Chapter 624 to include the prompt payment provisions contained in NRS 624.624
9 through 624.626. Pay-if-paid provisions entered into subsequent to the Legislature's amendments
10 are enforceable only in limited circumstances and are subject to the restrictions laid out in these
11 sections." 124 Nev. at 1117 n. 50. No such "limited circumstances" exist in this case.

12 5. NRS 624.624(1) provides for the obligation of prompt payment by a higher-tiered
13 contractor (such as APCO and Camco) to a lower-tiered subcontractor (such as the PB Lien
14 Claimants), as follows:

15 Except as otherwise provided in this section, if a higher-tiered contractor enters into:

16 (a) A written agreement with a lower-tiered subcontractor that includes a schedule for
17 payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:

18 (1) On or before the date payment is due; or

19 (2) Within 10 days after the date the higher-tiered contractor receives payment
20 for all or a portion of the work, materials or equipment described in a request
21 for payment submitted by the lower-tiered subcontractor,

22 ↪ whichever is earlier.

23 (b) A written agreement with a lower-tiered subcontractor that does not contain a
24 schedule for payments, or an agreement that is oral, the higher-tiered contractor shall
25 pay the lower-tiered subcontractor:

26 (1) Within 30 days after the date the lower-tiered subcontractor submits a
27 request for payment; or

28 (2) Within 10 days after the date the higher-tiered contractor receives payment
for all or a portion of the work, labor, materials, equipment or services
described in a request for payment submitted by the lower-tiered subcontractor,

↪ whichever is earlier.

NRS 624.624(1) (emphasis added).

///

///

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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

6. Stated simply, if there is a "schedule of payments" in an otherwise enforceable written agreement, the higher-tiered contractor must pay the lower-tiered subcontractor – at the latest – on the date payment is due. If there is no enforceable written agreement containing a schedule of payments, the payment is due to the lower-tiered subcontractor – at the latest - within 30 days of its request for payment. Under either circumstance it has been approximately nine years since payments on the Project ceased to be made.

6. The Court also rejects the argument that the "schedule of payments" delays the obligation of payment until "within 15 days after Contractor actually receives payment for Subcontractor's work from Owner." Because the expiration of 15 days is itself dependent upon payment being received from the Owner, this is not a "schedule of payments" but rather simply another form of Pay-if-Paid.

7. Any conclusion of law herein that is more appropriately deemed a question of fact shall be treated as such.

IT IS THEREFORE ORDERED as follows:

1. The Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements GRANTED; and
2. APCO and Camco may not assert or rely upon any defense to their payment obligations, if any, to the PB Lien Claimants and the Joining Subcontractors that is based on a pay-if-paid agreement.

IT IS SO ORDERED this 29th day of December, 2017.


DISTRICT COURT JUDGE

Submitted by:

PEEL BRIMLEY LLP


ERIC B. ZIMBELMAN, ESQ. (9407)

RICHARD L. PEEL, ESQ. (4359)

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Attorneys for Various Lien Claimants.

EXHIBIT 11


CLERK OF THE COURT

NJUD
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*Attorneys for Defendant/Counterclaimant
Big-D Construction Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

Plaintiff,

vs.

BIG-D CONSTRUCTION CORP., a Utah
corporation, FIDELITY & DEPOSIT
COMPANY OF MARYLAND, a Maryland
corporation, DOE CORPORATION I through
DOE CORPORATION V, and ROE I through
ROE V individuals;

Defendants.

BIG-D CONSTRUCTION CORP., a Utah
corporation,

Counter-Claimant,

vs.

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

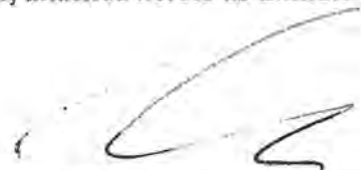
Counter-Defendant.

CASE NO.: A-10-609048-C
DEPT. NO.: XIII

NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
AND
JUDGMENT

PLEASE TAKE NOTICE that the Court entered a *Findings of Fact and Conclusions of
Law*, attached hereto as Exhibit "1," and a *Judgment*, attached hereto as Exhibit "2," on the 22nd
day of January, 2015.

DATED: January 23, 2015.


Melissa A. Beutler, Esq. (10948)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Big-D Construction

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of January, 2015, I served a true and correct copy of the attached **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** by placing a true and correct copy of the aforementioned in the U.S. mail, postage prepaid in full, addressed to the following:

Bruce R. Mundy, Esq. (6068)
200 South Virginia St., Eighth Fl.
Reno, Nevada 89511
Attorneys for Padilla Construction Co. of Nevada

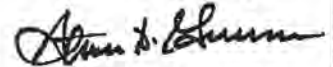


An Employee of Holland and Hart, LLP

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EXHIBIT “1”

EXHIBIT “1”


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

Plaintiff,

vs.

BIG-D CONSTRUCTION CORP., a Utah
corporation, FIDELITY & DEPOSIT
COMPANY OF MARYLAND, a Maryland
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PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

Counter-Defendant.

CASE NO.: A-10-609048-C
DEPT. NO.: XIII

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER having come on for non-jury trial on December 2 and 3, 2014,
Plaintiff, PADILLA CONSTRUCTION COMPANY OF NEVADA, appearing by and through
BRUCE R. MUNDY, ESQ., and Defendants, BIG-D CONSTRUCTION CORP. and
FIDELITY & DEPOSIT COMPANY OF MARYLAND, appearing by and through, MELISSA
BEUTLER, ESQ. of the Law Firm, HOLLAND & HART, LLP;

AND, the Court having heard the testimony of witnesses, having reviewed the evidence
provided by the Parties, having heard the arguments of counsel, and having read and considered
the briefs of counsel and good cause appearing;

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89156

JA001397

1 NOW, therefore, the Court hereby enters the following

2 **FINDINGS OF FACT**

3 **A. The Project**

4 1. International Game Technology ("IGT") constructed a show place
5 international headquarters in Las Vegas, Nevada (the "Project"). Pretrial Order, Stipulated Fact
6 ¶ 1.

7 2. In June 2006, Big-D entered into a construction agreement with IGT (the
8 "Construction Agreement") to act as the general contractor on the Project. *Id.* at ¶ 2.

9 3. The Project's design called for a significant portion of the exterior and
10 the interior lobby to be finished with large sandstone panels to be installed over a two-coat
11 stucco system. *Id.* at ¶ 3.

12 4. IGT occupied the nearly completed Project in the summer of 2008. *Id.* at
13 ¶ 4.

14 5. After a piece of large stone tile fell from a high elevation on the exterior
15 of the Project in December 2008, IGT initiated an investigation into the installation of the stone
16 work during the spring of 2009. *Id.* at ¶ 5.

17 6. IGT determined the original stone installation was unsafe and rejected
18 the work. IGT required Big-D to remove and replace all of the interior and exterior stone work
19 (with the exception of a few isolated areas of low-elevation, interior stone). IGT prepared
20 design documents from the stone replacement project in June 2009. *Id.* at ¶ 6.

21 7. However, because the stone could not be removed without damaging the
22 underlying stucco substrate, IGT also directed Big-D to remove and replace the original, two-
23 coat stucco system in addition to replacing the stone installation (the "Stone Replacement
24 Project"). *Id.* at ¶ 7.

25 **B. Padilla Subcontract Agreement**

26 8. In August, 2009, prior to receiving confirmation that Big-D would
27 perform the Stone Replacement Project, IGT contacted Padilla Construction Company of
28

1 Nevada ("Padilla") about performing the stucco work for the Stone Replacement Project. In
2 early August 2009, after Big-D agreed to perform the Stone Replacement Project, Padilla
3 contacted Big-D directly to inquire about performing the stucco portion of the Stone
4 Replacement Project. Testimony of Brent Brinkerhoff (Big-D).

5 9. On August 13, 2009, Padilla provided Big-D written information on its
6 company, including a description of its experience and references. Trial Exhibit 13. Big-D
7 reviewed the information, checked the references, and determined that Padilla was qualified to
8 complete the Work. Testimony of Brent Brinkerhoff (Big-D).

9 10. On August 18, 2009, Padilla, IGT, Ian Chin (IGT's expert consultant),
10 HDR (the architect), and Big-D attended a meeting on the Project site to discuss the
11 replacement project, including its schedule and quality control requirements. Trial Exhibit 15.

12 11. Subsequent to the meeting, on August 19, 2009, Big-D issued a notice to
13 proceed with the work to Padilla and further advised Padilla that it intended to issue it a
14 subcontract agreement. Trial Exhibit 23.

15 12. On August 24, 2009, Padilla entered into the Subcontract Agreement
16 with Big-D to furnish all labor, materials, equipment, and necessary services to install complete
17 exterior and interior stucco (Plaster) including, lath, scratch, and brown coat (the "Padilla
18 Work") for the Stone Replacement Project. Trial Exhibit 1, Subcontract Agreement; Pretrial
19 Order, Stipulated Facts ¶ 8.

20 13. The Padilla Work was required to conform to the Plans and
21 Specifications which are included as Trial Exhibit 3, Plans and Trial Exhibit 4, Specifications.
22 Pretrial Order, Stipulated Facts ¶ 9.

23 14. Under the terms of the Subcontract Agreement, Big-D was to pay Padilla
24 \$214,868 for the completion of the Padilla Work. Pretrial Order, Stipulated Fact ¶ 10; Trial
25 Exhibit 1.

26 15. On August 25, 2009, Big-D paid Padilla a \$25,000 initial payment prior
27 to Padilla commencing the Padilla Work. Pretrial Order, Stipulated Fact ¶ 11; Trial Exhibit 5.

1 16. Big-D was required to complete the Stone Replacement Project by the
2 beginning of October 2009—in time for IGT to host a large customer event at the Project. The
3 schedule was aggressive but achievable and all parties, including Padilla, were aware of the
4 schedule requirements. Testimony of Brent Brinkerhoff (Big-D).

5 **C. Stucco Installation Process**

6 17. The two-coat stucco system in the Padilla Work involved an initial coat
7 (called the scratch coat) and a second coat (called the brown coat). Pretrial Order, Stipulated
8 Fact ¶ 18.

9 18. A metal lath system was to be installed underneath the two-coats of
10 stucco material. *Id.* at 19.

11 19. The stucco material was to be purchased as a preblended cement + sand
12 mixture provided in bag form from a supplier. *Id.* at 20.

13 20. After the scratch coat was installed, it was to cure (properly dry) before
14 the brown coat was installed. *Id.* at 21.

15 21. To adhere the brown coat to the scratch coat, the scratch coat was to be
16 scored with grooves, and then the brown coat was to be installed on top of the scratch coat and
17 pressed firms into the grooves. *Id.* at 22.

18 22. Once the brown coat was installed, it was to cure before the stone
19 veneer was installed. *Id.* at 23.

20 23. The Specifications included specific requirements regarding the
21 installation of the Padilla Work, including the following:

22 a. Minimum plaster thicknesses as specified [in included chart].
23 Trial Exhibit 4, Section 09220 at 3.4G.

24 b. The scratch coat was to be “[h]orizontally cross-rake[d] to
25 provide key for second Base Coat (brown coat).” *Id.* at Section 09220 at 3.4C.

26 c. The base coat was to be “[a]pplied so that it meets the required
27 total thickness” and “not vary more than 1/4 IN.” *Id.* at Section 09220 at 3.4D 1, 2.

1 d. Remove and replace unacceptable plaster and base. *Id.* at Section
2 09220 at 3.10D.

3 24. The Specifications, at Section 092200 at 1.1.A, provided that the Padilla
4 Work was to comply with the following plastering standards: (a) ASTM-C926, Trial Exhibit
5 89; (b) Portland Cement Association Plaster (Stucco) Manual, Trial Exhibit 90; and (c) per
6 Building Code, as locally adopted, Trial Exhibit 91. *Trial Exhibit 4*, Section 09220 at 1.1.A.

7 **D. Stucco Mix Selection/Determination of Cure Time.**

8 25. On August 26, 2009, Padilla requested approval for the stucco mix
9 identified as Expo MX³. Pretrial Order, Stipulated Fact ¶ 25; Trial Exhibit 26.

10 26. That same day, HDR, IGT's architect approved use of the EXPO MX3
11 stucco mix product. Pretrial Order, Stipulated Fact ¶ 26; Trial Exhibit 28.

12 27. Pursuant to both the Subcontract Agreement and industry practice,
13 Padilla was responsible for determining the appropriate cure time to be allowed between the
14 two coats of the stucco and prior to installation of stone. Testimony of Ian Chin (IGT);
15 Testimony of Brent Brinkerhoff (Big-D).

16 28. As part of the Architect's approval of the product, the Architect (HDR)
17 directed that Padilla install the stucco product in accordance with the manufacturer's cure
18 instructions. Trial Exhibit 31. On or about August 26, 2009, Padilla consulted with the EXPO
19 representative. In response, the EXPO representative provided information to Padilla on
20 August 26, , 2009, that specified that "standard cure times" applied. Trial Exhibit 32. Standard
21 cure times were at least 1 day for the scratch coat and 7 days for the brown coat. Trial Exhibit
22 37; 38-2.

23 29. IGT further requested Mr. Chin review the proposed cure times to
24 confirm they were appropriate. Trial Exhibit 38-2. On September 2, 2009, Mr. Chin confirmed
25 that the standard cure times were consistent with published industry materials and compliant
26 with local building codes. *Id.*

27
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1 **E. Performance of the Work.**

2 30. Padilla started onsite work on August 31, 2009, at 1:00 p.m., with lath
3 installation. Pretrial Order, Stipulated Fact ¶ 27; Trial Exhibit 17, (PADILLA000100).

4 31. Padilla's on-site superintendent prepared and maintained daily logs of
5 the progress of Padilla's work. Pretrial Order, Stipulated Fact ¶ 29; Trial Exhibit 17,
6 (PADILLA000083-102).

7 32. After Padilla installed the brown coat on each area of the exterior, Big-D
8 caused the brown coat to be marked with the date and time so that it could ensure that the
9 brown coat was allowed to cure for the full seven day period. Testimony of Brent Brinkerhoff.

10 **F. Padilla Work on Exterior Separates.**

11 33. On September 10, 2009, project representatives observed separation
12 between the brown and scratch coats during installation of stone on two exterior columns
13 (XC@X4 and XC@X3). Pretrial Order, Stipulated Fact ¶ 30. In addition, Padilla's on-site
14 superintendent reported separation to Padilla management. *Id.*; Trial Exhibit 17
15 (PADILLA000090).

16 34. On September 10, 2009, IGT informed Ian Chin of Wiss Janey, its
17 consultant, of the separation and requested his professional opinion as to how to proceed. Trial
18 Exhibit 403. Mr. Chin reviewed photographs of the work and observed the following visual
19 deficiencies in the Padilla Work: (a) the Padilla Work was not appropriately "scored" in a
20 manner that would allow proper bonding between the brown coat and the scratch coat as
21 required by the Plans and Specifications; and (b) the Padilla Work did not appear to be properly
22 hydrated for the brown coat to become cementitious. Trial Exhibits 403, 404, 405, 446-450.

23 35. Mr. Chin further requested that IGT provide him samples of the installed
24 product for testing. Pursuant to his request, IGT removed portions of the Padilla Work and
25 overnighted them to Mr. Chin's laboratory for testing. Testimony of Ian Chin (IGT).

26 36. On September 11, 2009, Padilla's on-site superintendent reported
27 separation issues to Padilla management. Pretrial Order, Stipulated Fact ¶ 31; Trial Exhibit 21.

1 37. That same day, IGT provided Mr. Chin with photographs of the
2 separations. Testimony of Ian Chin (IGT).

3 38. Even though IGT, Big-D and Padilla were all aware of the separation, as
4 of the morning of September 14, 2009, both Padilla and Big-D believed that any issues with
5 separation were only incidental issues and did not indicate a wide-spread problem with the
6 Padilla Work. Testimony of Brent Brinkerhoff (Big-D); Trial Exhibit 400.

7 39. As the stone work continued over the Padilla Work on September 14,
8 2014, it became evidence that there was a global failure in the Padilla Work.

9 40. It is undisputed that Padilla was actively aware of the separation issues
10 as they were occurring. In fact, field notes by Padilla's superintendent show that Padilla's
11 crews reported the separation to Padilla management. Rather than investigate and seek to
12 remediate, Padilla management simply instructed its crews to keep working. Trial Exhibit 17,
13 PADILLA000090 to 96. Padilla's field notes indicate as follows:

Date	Notation
September 10, 2009	"The brown is pulling from the scratch on the first two columns that we scratch and brown after the mock-up."
September 11, 2009	"We have the same problem on the brown coat on the second column when the stone installers do the bonding test the brown pulls from the scratch. Call Joe [Lopez] let him know. Also, Joe [Padilla management] says for me to keep doing the production."
September 15, 2009	"Today, 3 more areas where install stone when stone installers pull it to check bonding, brown coat came loose from scratch coat. Joe Lopez [Padilla management] let him know what happened. His response was for me to keep doing what I was doing and that nothing was wrong."
September 16, 2009	"Today, two more areas came loose."

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24 *Id.* (emphasis added). Padilla management instructed the Padilla crews to keep working,
25 despite the indications of failure in Padilla's Work. *Id.* at PADILLA00091 and 95.

26 41. On September 15, 2009, in addition to the dialogue at the project site
27 regarding the separation, Big-D's management informed Padilla's management of the then
28

1 wide spread failure of the Padilla Work. Big-D requested Padilla to investigate and enlist the
2 support of the manufacturer of the product. (forward IGT's report of separation). Pretrial
3 Order, Stipulated Fact ¶ 32; Trial Exhibit 44. Padilla placed a telephone call to the EXPO
4 representative Mark Arriolla to discuss the issues. Pretrial Order, Stipulated Fact ¶ 32; Trial
5 Exhibit 47.

6 42. Mr. Chin received the results of laboratory testing, evaluating the
7 installed Padilla Work on September 15, 2009. Testimony of Ian Chin; Trial Exhibit 406. The
8 laboratory testing results provided technical support for the failures in the Padilla Work that
9 were readily visible on the Project site and identified the following deficiencies in the Padilla
10 Work:

11 a. Hydration. Padilla failed to properly hydrate its stucco mix.
12 Without adequate water, the Padilla stucco failed to activate the cement. In turn, the
13 cement did not turn into a paste to bind all of the components –i.e., the sand and other
14 aggregate components in the stucco- to form a solid mass. Testimony of Ian Chin
15 (IGT).

16 b. Compaction. Padilla failed to properly compact the Padilla
17 Work. The second coat of stucco must be applied with sufficient pressure against the
18 first coat. Padilla did not install the brown coat with sufficient pressure against a scratch
19 coat to make sure that it was properly bonded to the scratch coat.

20 c. Scoring. Padilla failed to properly “score” the first layer of
21 stucco. The first layer of stucco should have created a “key” for the second layer of
22 stucco to bond firmly to. The scoring on the first layer of stucco was insufficient to
23 create such a “key” and therefore, the second layer of stucco could not bond to it.
24 Testimony of Ian Chin (IGT).

25 d. Contamination. Padilla conceded that the Padilla Work
26 contained contaminants in the form of “raisin-like” particles that adhered to the Other
27
28

1 Subcontractor Work. Pretrial Order at 14:11,18-20, Designated Testimony, Lopez
2 Deposition at 32:5-37:7¹; 43:1-45:20.

3 The failure to properly hydrate the mixture and properly score the scratch coat were so
4 apparent they can be confirmed by visual inspection of the photographs of the Padilla Work.
5 Exhibits 402, 403, and 404.

6 43. The separate issue culminated with a meeting on site on September 16,
7 2009, at 11:00 a.m.. Pretrial Order, Stipulated Fact ¶ 34; Trial Exhibit 46. IGT, HDR (the
8 Architect); Mr. Chin; Big-D; and Padilla representatives were all on site for the meeting. Trial
9 Exhibit 15.

10 44. Based upon his visual observations and the results of the laboratory
11 testing, Mr. Chin advised IGT that the Padilla Work on the exterior of the building should be
12 rejected. Testimony of Ian Chin. IGT rejected the Padilla Work on the exterior of the building
13 pursuant to Mr. Chin's advice, including but not limited to Mr. Chin's belief that if the exterior
14 of the building was not installed to the standards, there should be diminished confidence in the
15 system's ability to take and handle future application of stone. Pretrial Order at 18:16-19;
16 Designated Testimony, IGT Deposition at pp. 85-88.²

17 45. Padilla was present at the Project site on September 16, 2009 when IGT
18 rejected the Padilla Work on the exterior of the building. Therefore, it is undisputed that
19 Padilla was immediately aware that IGT had rejected its work. That same day, Big-D
20 requested that IGT allow testing of the interior Padilla Work prior to rejecting it. Big-D made
21

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23
24 ¹ "A: I saw in the cement what appeared to be chunks of brown clay....The speculation was that
25 when they mixed the cement for this project, this pre-sanded cement, they had left in the barrel
26 for the mixing process some leftover stucco in that barrel and that is what we were seeking, was
the remnants of them not having a clean bowl." Id. at 32:5-35:10.

27 ² Mr. Stecker was designated by IGT as a Rule 30(b)(6) witness and provided deposition testimony. Portions of
28 that deposition testimony have been designated to be included with the trial record. *Exhibit D*, IGT Deposition
(excerpts) (Stipulated Designation, Pretrial Memorandum at pp 17-19).

1 arrangements for the testing to occur on September 23, 2009 and Padilla requested the
2 manufacturer of the stucco product to send representatives to participate in and observe the
3 testing.

4 **G. IGT Directs Different Exterior System After Rejection of Padilla Work.**

5 46. Because the IGT Stone Repair was required to be completed by October
6 2009, IGT determined on September 17, 2009 that there was insufficient time to replace the
7 rejected Padilla Work on the exterior of the building with a similar two-coat stucco system. As
8 a result, IGT decided to replace the Padilla Work with a cement board product instead. The
9 cement board product would not require cure time prior to installation of the exterior stone.

10 47. At IGT's direction, Big-D and its subcontractors immediately
11 demolished the rejected Padilla Work on the exterior of the building on September 17, 2009.

12 **H. Big-D Defends Padilla Work on Interior of Building.**

13 48. On September 16, 2009, when IGT rejected the Padilla Work on the
14 exterior of the Project, Big-D defended the Padilla Work on the interior of the Project. Big-D
15 maintained that it believed that the interior Padilla Work was compliant with the Plans and
16 Specifications. IGT and Big-D agreed to perform testing on the interior of the Project to
17 determine whether the interior Padilla Work was in fact suitable. They scheduled the testing
18 for September 23, 2009. Pretrial Order, Stipulated Fact ¶ 36; Trial Exhibit 55.

19 49. On September 17, 2009, Ian Chin performed various tests on the interior
20 of the Project to evaluate the Padilla Work. The testing revealed that the interior Padilla Work
21 was also insufficient and failed to comply with the Plans and Specifications.

22 a. Mr. Chin took 14, 3-inch diameter core samples of the Padilla
23 Work.

24 b. Of those samples, 3 were un-usable.

25 c. Of the 11 usable samples, on 8 samples, the brown coat was not
26 properly bonded to the scratch coat. The brown coat was only bonded to the scratch
27 coat on 3 of the usable samples.

1 d. In addition, on 7 of those samples, the scratch coat was not
2 properly roughened to receive the brown coat.

3 e. On 1 sample, only 50% of the brown coat was bonded to the
4 scratch coat.

5 In addition, on nearly all samples the thickness of the brown coat and the scratch coat failed to
6 conform to the thickness required by the Plans and Specifications.

7 50. On September 23, 2009, Big-D performed various additional pull tests
8 on the interior Padilla Work. HDR, IGT, Padilla, Big-D, Mr. Chin, two representatives from
9 EXPO (the stucco product manufacturer), and the experts retained by Big-D to perform the
10 testing were all present.

11 51. Based on these further tests, Mr. Chin further determined that the interior
12 Padilla Work also failed to comply with the Plans and Specifications. Mr. Chin further advised
13 IGT to reject the interior Padilla Work. Pretrial Order, Stipulated Fact ¶ 37; Trial Exhibit 52.
14 IGT followed Mr. Chin's advice and rejected the Padilla Work on the interior of the building
15 that same day. Padilla was on the Project site at the time IGT rejected the Padilla Work on the
16 interior of the building and it is undisputed that Padilla was aware that the work had been
17 rejected.

18 52. Given the relevant time constraints, IGT became concerned that the work
19 could impact its upcoming customer meetings. IGT believed there was not sufficient time for
20 the Padilla Work on the interior of the Project to be removed and replaced before the customer
21 meetings. As a result, the parties developed a temporary installation solution by which Big-D
22 would place a decorative colored solution over the Padilla Work on the interior of the building
23 in lieu of the stone that was specified under the Construction Agreement. Pretrial Order,
24 Stipulated Fact ¶ 38; Trial Exhibit 51.

25 53. Big-D completed of the modified Stone Repair Project in October 10,
26 2009.

1 **I. Big-D Requests Padilla to Assist in Defending Interior Work**

2 54. Both IGT and Big-D specifically and repeatedly requested Padilla to
3 participate in testing to determine whether the Padilla Work was suitable. Trial Exhibits 44-46.
4 These invitations were made both *during the construction and after the Padilla Work was*
5 *rejected.*

6 55. Yet, Padilla did nothing to investigate. Padilla concedes it did not
7 investigate whether the brown coat mixture was too stiff, Pretrial Order at 16:13, Designated
8 Testimony, Lopez Deposition at 129:2-9; Padilla concedes it did nothing to investigate whether
9 the two layers of its stucco were sufficiently compacted., *Id.* at 129:10-13, and Padilla concedes
10 it did not investigate whether the water content of the brown coat was sufficient at the time that
11 it was applied. *Id.* at 132:18-22.

12 56. Big-D requested that Padilla assist it in convincing IGT that the interior
13 Padilla Work was suitable. To this end, Big-D and Padilla participated in a conference call on
14 September 29, 2009. Trial Exhibit 53.

15 57. Big-D's project manager testified that the call was postponed for a week
16 after IGT's initial rejection of the interior Padilla Work on September 23, 2009 until September
17 29, 2009 specifically so that Ralph Padilla, the president of Padilla, could be participate. (Mr.
18 Padilla had been out of the country hunting birds in the previous weeks). Testimony of Brent
19 Brinkerhoff (Big-D). Big-D's project manager testified that during the conference call, Padilla
20 committed to get the EXPO product tested to determine whether the product was the cause of
21 the failure in the Padilla Work. Padilla committed to follow-up with Big-D once the tests were
22 completed and it had additional information.

23 58. In November 2009, Big-D again requested that Padilla assist Big-D to
24 defend its work. Big-D further advised Padilla that it was withholding payment until the issues
25 with the Padilla Work had been resolved with IGT. Trial Exhibit 58.

26 59. In response, Padilla stated that it unequivocally refused to participate
27 with Big-D in either providing additional information or participating in testing. Trial Exhibit
28

1 59. Rather, Padilla demanded that it receive immediate payment for the Padilla Work even
2 though IGT had rejected the work. Pretrial Order at 14:18, Designated Testimony, Lopez at
3 43-45. Padilla did not take any action to investigate the product because "*that cost money.*"
4 *Id.* at 44:1-2 (emphasis added).

5 60. Padilla's executive responsible for the Project made clear "we weren't
6 going to participate" in the testing and investigation of Padilla's Work. Pretrial Order at 15:14,
7 Designated Testimony, Lopez at 84: 12-17; *Id.* at 82-84; *Id.* at Exhibit 5.

8 Q. And do you recall, did Big-D in fact request Padilla to assist it to investigate the cause
9 of the failures of the product?

10 A. Yes

11 Q. And what, if anything, did Padilla do to assist Big-D to investigate the cause of the
12 product failure?

13 A. Ask for our money.

14 *Id.*, Lopez at 135:16-23.

15 61. Big-D continued to defend the Padilla Work for weeks after Padilla
16 refused to participate.

17 62. Ultimately, Big-D determined it had not identified any basis on which to
18 convince IGT that the Padilla Work on the interior of the building was suitable and proceeded
19 to resolve its dispute with IGT.

20 **J. IGT Settlement.**

21 63. After the removal and replacement of the Padilla Work, there was a
22 dispute between IGT and Big-D regarding amounts owed to Big-D for the Project. IGT
23 claimed it was entitled to backcharge Big-D for costs incurred, including costs related to the
24 rejected Padilla Work. As a result of the dispute, IGT withheld nearly \$2 million due to Big-D
25 under the Construction Agreement. Pretrial Order, Stipulated Fact ¶ 52.

26 64. In January 2011, Big-D and IGT agreed to settle their dispute and the
27 settlement was memorialized in a settlement agreement (the "IGT Settlement"). Pretrial Order,
28 Stipulated Fact ¶ 53; Exhibit 78

1 65. The IGT Settlement provided that Big-D would be paid amounts due for
2 the Project and IGT would back-charge Big-D for costs in the amount of \$945,054.00, which
3 amount included costs associated with the original failed stone work and the rejected Padilla
4 Work (the "IGT Backcharges"). Pretrial Order, Stipulated Fact ¶ 54.

5 66. The IGT Backcharges included the costs to remove and replace the
6 Interior Temporary Work with the work that was specified under the Construction Agreement.
7 IGT removed and replaced the Interior Temporary Work months after it was completed.
8 Pretrial Order, Stipulated Fact ¶ 55.

9 **K. Big-D Stops Payment.**

10 67. On September 25, 2009, Padilla prepared a payment request for
11 \$185,991.85. Pretrial Order, Stipulated Fact ¶ 39; Trial Exhibit 9. The payment request
12 indicated that Padilla had completed 85% of the Padilla Work and requested corresponding
13 payment from Big-D.

14 68. On September 29, 2009, Big-D's project manager (Brent Brinkerhoff)
15 signed the payment application in the approved box as he agreed that Padilla had in fact
16 completed 85% of the work. Trial Exhibit 9; Testimony of Brent Brinkerhoff. This was an
17 internal approval that allowed for Big-D's accounting department to "post" the cost of the work
18 completed by Padilla so that Big-D could internally track project cost incurred as of that date.

19 69. Upon this internal approval, Big-D's accounting department was to
20 verify that Padilla's payment application had properly credited amounts previously paid. In
21 mid-October, Big-D's accounting department identified that Padilla's payment application had
22 failed to credit Big-D for the \$25,000 initial payment to Padilla and would require correction.
23 Trial Exhibit 9 (see handwritten note); Testimony of Brent Brinkerhoff (Big-D). At that time,
24 Brent Brinkerhoff advised Big-D accounting department to hold on processing a correction to
25 the payment application amount as outstanding issues still remained with the Padilla Work.

26 70. Big-D placed several telephone calls to Padilla to inquire into the status
27 of testing on the interior Padilla Work that Padilla had committed to provide during the
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1 September 29, 2009 teleconference. Several of these calls went unreturned and Padilla did not
2 otherwise respond with any update. At the end of October 2009, Big-D spoke with Padilla and
3 indicated that it was holding payment until the issues with the Padilla Work had been resolved.
4 See Trial Exhibit 57.

5 71. On October 28, 2009, Padilla sent Big-D a letter demanding payment of
6 \$174,657.00. Pretrial Order, Stipulated Fact ¶ 40; Trial Exhibit 57.

7 72. Big-D responded to the letter on November 3, 2009. Big-D advised
8 Padilla that IGT was taking the position that the Padilla Work had failed. As a result, Big-D
9 requested from Padilla information to defend the Padilla Work. Big-D indicated that it would
10 not release "any further" payment to Padilla until Padilla "assist[ed] Big-D in establishing that
11 Padilla met all of its obligations under the Subcontract Agreement and that the failure of the
12 product furnished and installed by Padilla was due to factors outside of Padilla's contractual
13 obligations." Pretrial Order, Stipulated Fact ¶ 41; Trial Exhibit 58.

14 73. On November 11, 2009, Padilla responded to Big-D's request for
15 information by stating, "it is Padilla Construction Company of Nevada's position that without
16 third party confirmation that its' [sic] work is sub-standard, Padilla Construction Company of
17 Nevada expects to be paid for its' [sic] work." Trial Exhibit 59. Padilla further stated:
18 "Without proper documentation supporting the allegations, Padilla Construction Company of
19 Nevada must decline [to participate in investigation or testing]." Pretrial Order, Stipulated Fact
20 ¶ 42; Trial Exhibit 59.

21 74. Brent Brinkerhoff testified that in early November, when reviewing his
22 weekly report to mark payments for subcontractors, he inadvertently marked for a check to be
23 released to Padilla. As a result, Big-D prepared a check in the amount of the invoice of
24 \$185,991.95. Pretrial Order, Stipulated Fact ¶ 43; Trial Exhibit 11.

25 75. During a subsequent teleconference between Big-D and Padilla
26 regarding the status of the Padilla work, Padilla referenced the payment received for the
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1 Project. Mr. Brinkerhoff immediately investigated how payment was released to Padilla
2 because he had not intended for a check to be released.

3 76. On November 18, 2009, Big-D advised Padilla, both via electronic mail
4 and voicemail, that it inadvertently mailed the check and further advised that Big-D would be
5 putting a stop payment on the check. Pretrial Order, Stipulated Fact ¶ 44; Trial Exhibit 61.

6 77. Big-D stopped payment on the check prior to it clearing the bank. The
7 check was returned by Padilla's bank marked: "Return Reason -C Stop Payment." Pretrial
8 Order, Stipulated Fact ¶ 45; Trial Exhibit 12.

9 78. The evidence indicated that the release of the payment to Padilla was in
10 fact a mistake because:

11 a. The check drawn to Padilla failed to correct for the \$25,000
12 initial payment made to Padilla, causing an overpayment to Padilla;

13 b. The correspondence of October 28 and November 3, 2009 made
14 clear that Big-D was withholding payment to Padilla until issues with the Padilla Work
15 had been resolved; and

16 c. Both Brent Brinkerhoff (Project Manager) and Forrest McNabb
17 (Senior Vice President) adamantly testified that they had not intended to release
18 payment, were very surprised when they learned a check had been released,
19 immediately notified Padilla of the mistake, and immediately cancelled the check.

20 **L. Evidence Regarding Padilla Work.**

21 79. There was no evidence presented that there was a design flaw or other
22 design issues in the Plans and Specifications for the Padilla Work.

23 80. There is no evidence that any party imposed improper cure times upon
24 Padilla. Further, there was no credible evidence presented that the failures in the Padilla Work
25 were in any part caused by inadequate accommodation of cure times by Big D or that Big D did
26 anything after application of the brown coat in defiance of any clear admonition from Padilla to
27 the effect that anything that Big D was doing was inconsistent with the proper cure time.

1 81. Rather, the evidence presented was that the specific cure times were 2
2 days for the scratch coat and then 7 days for the brown coat (prior to installation of stone). The
3 evidence was that this is consistent with the cure times both recommended by the manufacturer
4 and the requirements of local building code. The evidence was that Big-D imposed quality
5 assurance procedures to ensure that the stone contractor did not install stone work over the
6 Padilla Work until after the 7-day cure time had elapsed.

7 Any of the foregoing Findings of Fact, that would more appropriately be
8 considered to be Conclusions of Law shall be so deemed.

9 From the foregoing Findings of Fact, the Court makes the following:

10 **CONCLUSIONS OF LAW**

11 **I. Padilla's Claims for Relief against Big-D All Fail**

12 In the operative pleading, Padilla's First Amended Complaint, Padilla has asserted three
13 claims for relief against Big-D: breach of contract (First Cause of Action); breach of the
14 implied covenant of good faith and fair dealing (Second Cause of Action); negligence per se
15 (Third Cause of Action). Padilla has also asserted a single claim for relief against F&D
16 ("Claim against Lien Release Bond").

17 **A. First Cause of Action (Breach of Subcontract Agreement)**

18 1. Padilla's First Cause of Action for breach of the Subcontract Agreement
19 fails because Padilla failed to demonstrate an essential element of its claim—that is performed
20 all obligations required under the Subcontract Agreement.

21 2. In Nevada, there are four elements to a claim for breach of contract: "(1)
22 formation of a valid contract; (2) performance or excuse of performance by the plaintiff; (3)
23 material breach by the defendant; and (4) damages." *Laguerre v. Nevada System of Higher*
24 *Education*, 837 F.Supp.2d 1176, 1180 (D. Nev. 2011).

25 3. "If there is anything well settled, it is that the party who commits the first
26 breach of the contract cannot maintain an action against the other for a subsequent failure to
27 perform." *Bradley v. Nevada-California-Oregon Railway*, 42 Nev. 411, 421, 178 P. 906, 908
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1 (1919). "Payment of the purchase price is excused where respondent's breach was material."
2 *Thornton v. Agassiz Constr.*, 106 Nev. 676, 678, 799 P.2d 1106, 1108 (Nev. 1990) (citing 4 A.
3 Corbin, Corbin on Contracts § 977; *Hinckley v. Pittsburgh Bessemer Steel Co.*, 121 U.S. 264
4 (1886)).

5 4. As a condition precedent to payment, the Subcontract Agreement
6 required Padilla to properly complete the Padilla Work in accordance with the contract
7 documents and in a good and workmanlike manner:

- 8 • As outlined in "the *drawings and specifications*, including all addenda and
9 modifications issued prior to the execution of this Subcontract." Trial Exhibit
10 1, Section 1.1 (emphasis added).
- 11 • Including "that work generally set forth in the Subcontract, as well as all other
12 related work, including *all work reasonably necessary for a complete Project*,
13 and normally performed by your trade." *Id.*, Section 1.2 (emphasis added).
- 14 • "Every part of [Padilla's] work shall be executed in accordance with the
15 Subcontract Documents *in a workmanlike and skillful manner*." *Id.*, Section
16 1.15 (emphasis added).
- 17 • Padilla also agreed that, "all work shall be done in strict accordance with the
18 Subcontract Documents, *subject to the final approval of [Big-D], the Owner,*
19 *and Architect*." *Id.*, Section 1.1.5 (emphasis added).

20 5. Further, even if these express contractual provisions did not exist,
21 Nevada law is clear that, "[c]ommon law imposes an *implied warranty of workmanlike manner*
22 [on subcontractors], which has been defined as a duty to perform to a reasonably skillful
23 standard. *Olson v. Richard*, 120 Nev. 240, 247, 89 P.3d 31, 35 (Nev. 2004). "Moreover,
24 because contractors and subcontractors understand and accept these duties as a part of their
25 business, they cannot claim surprise when they are sued for a failure to act in a workmanlike
26 manner." *Id.*; see also *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev.
27 113, 642 P.2d 1086 (Nev. 1982) (upholding instruction to jury that a contractor "had an implied
28 duty to perform in a workmanlike manner").

6. The evidence is clear that the Padilla Work on both the interior and the
exterior of the Project failed for a number of reasons. As a result, Padilla has failed to prove

1 that it properly performed all work under the Subcontract Agreement and its First Claim for
2 Relief for breach of contract fails as a matter of law.

3 7. Because Big-D succeeded in proving that the Padilla Work did not
4 comply with the requirements of the Subcontract Agreement or Padilla's implied warranty to
5 perform in a workmanlike manner, Padilla is deemed to be the party who "first breached" the
6 Subcontract Agreement, excusing Big-D from performance in the form of payment to Padilla.

7 8. Because IGT rejected the Padilla Work and it was removed and replaced,
8 neither law nor equity require that Big-D pay Padilla *any* amount for work that was rejected
9 and removed. As a result, Padilla's claim for payment under the Subcontract Agreement fails
10 and judgment in favor of Big-D on Padilla's First Claim for Relief for Breach of Contract is
11 appropriate.

12 9. Padilla contends that Big-D breached the Subcontract Agreement
13 because Big-D failed to give Padilla written notice and an opportunity to cure prior to rejecting
14 the Padilla Work. This argument fails for several reasons:

15 a. In the Subcontract Agreement, Padilla agreed to be subject to the
16 Owner's decisions and actions and that Big-D "shall have all rights, remedies, powers,
17 and privileges as to, or against You which the Owner has against us," Trial Exhibit 1,
18 Section 1.1. Big-D, itself, was denied the opportunity to remove and replace the Padilla
19 Work on the interior of the building. IGT refused to allow Big-D to perform that work
20 and instead charged Big-D for the costs of such repair.

21 b. It was IGT—the Owner—not Big-D who rejected the Padilla
22 Work. Big-D, in fact, sought to defend the Padilla Work for some time after IGT's
23 direction to remove and replace the Work.

24 c. Further, even if the removal and replacement of the Padilla Work
25 on the exterior of the Project had been at Big-D's own initiative (which it was not), Big-
26 D had authority to remove and replace the Padilla Work under the emergency provision
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1 of Section 3.5 of the Subcontract Agreement because it presented a safety risk given the
2 large panels of stone installed over the faulty Padilla Work.

3 d. Perhaps most glaringly, any failure of Big-D to allow Padilla an
4 opportunity to repair the Padilla Work on the exterior of the Project was without
5 prejudice given that Padilla adamantly refused to participate in the investigation and
6 remediation process on the interior Padilla Work—demonstrating the Padilla would not
7 have sought to repair the Padilla Work on the exterior of the building.

8 **B. Second Cause of Action (Breach of Implied Covenant of Good Faith and**
9 **Fair Dealing)**

10 1. Similarly, Padilla's Second Claim for Relief for breach of the implied
11 covenant of good faith and fair dealing also fails.

12 2. In Nevada, "[e]very contract imposes upon each party a duty of good
13 faith and fair dealing in its performance and enforcement." *A.C. Shaw Cont., Inc. v. Washoe*
14 *Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9 (Nev. 1989) (quoting Nevada Revised Statute
15 ("N.R.S.") 104.1203. This implied covenant requires that parties "act in a manner that is
16 faithful to the purpose of the contract and the justified expectations of the other party." *Morris*
17 *v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 n. 2 (Nev. 1994) (internal
18 quotation marks omitted).

19 3. A breach of the implied covenant of good faith and fair dealing occurs
20 when the terms of a contract are complied with but one party to the contract deliberately
21 contravenes the intention of the contract. *See Hilton Hotels v. Butch Lewis Prods.*, 107 Nev.
22 226, 232, 808 P.2d 919, 923 (Nev. 1991). To prevail on a theory of breach of the covenant of
23 good faith and fair dealing, a plaintiff must establish: (1) plaintiff and defendants were parties
24 to a contract; (2) defendants owed a duty of good faith to the plaintiff; (3) defendants breached
25 that duty by performing in a manner that was unfaithful to the purpose of the contract; and (4)
26 plaintiff's justified expectations were denied. *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d
27 335, 338 (Nev. 1995).

1 4. The Nevada Supreme Court has held that good faith is a question of fact.
2 *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971
3 P.2d 1251, 1256 (Nev. 1998).

4 5. Padilla failed to present any evidence that Big-D failed to act in good
5 faith under the Subcontract Agreement. While it is undisputed that Big-D did not pay Padilla
6 for the rejected work, there is no evidence that this failure was in bad faith. Rather, the
7 evidence suggested that Big-D did not pay Padilla for the Padilla Work because IGT had
8 rejected the Padilla Work. Big-D made extensive efforts to both: (a) defend the Padilla Work
9 and (b) to get Padilla to participate in the process. The evidence indicates that, notwithstanding
10 the existence of a dispute, Big-D acted in good faith.

11 6. As a result, Padilla's Second Claim for Breach of the Implied Covenant
12 of Good Faith and Fair Dealing in the Subcontract Agreement fails.

13 C. Third Cause of Action (Negligence Per Se)

14 1. NRS 624.624 is designed to ensure that general subcontractors promptly
15 pay subcontractors after the general contractor receives payment from the Owner associated
16 with work performed by the subcontractor.

17 2. By its own terms, NRS 624.624 yields to (a) payment schedules
18 contained in subcontract agreements and (b) contractual rights to withhold payments from a
19 subcontractor arising from deficient work.

20 3. Specifically, NRS 624.624 provides payments are due from a higher-
21 tiered contractor under "[a] written agreement with a lower-tiered subcontractor that includes a
22 schedule for payments," as follows:

- 23 (1) On or before the date payment is due; or
24 (2) Within 10 days after the date the higher-tiered contractor
25 receives payment for all or a portion of the work, materials or
26 equipment described in a request for payment submitted by the
27 lower-tiered subcontractor,
28 ↪ whichever is earlier
NRS 624.624(1)(a).

1 4. Further, a general contractor has the right to withhold payment for
2 "[c]osts and expenses reasonably necessary to correct or repair any work which is the subject of
3 the request for payment ..." NRS 624.624(2)(a)(2)(II). NRS 624.624 does require that a
4 general contractor provide written notice to the subcontractor as to the basis for withholding
5 "on or before the date the payment is due." *Id.* at (3).

6 5. Here, it is undisputed that the Subcontract Agreement is a written
7 agreement between Big-D and Padilla. Accordingly, pursuant to NRS 624.624(1)(a) payment
8 is due to Padilla on the date specified in the Subcontract Agreement.

9 a. The Subcontract provided that Padilla was to be paid within ten
10 (10) days after IGT paid Big-D and after IGT accepted the Padilla Work. Trial Exhibit
11 1.³

12 b. Specifically, "we must have first received from the Owner the
13 corresponding periodic payment, *including the approved portion of your monthly*
14 *billing*, unless the Owner's failure to make payment was caused exclusively by us." *Id.*
15 , at Section 4.2.

16 6. The Subcontract Agreement provided as follows:

17 a. Payment would be withheld from Padilla for "defective work not
18 remedied" and "your failure to perform any obligation made by You in this
19 Subcontract." *Id.* at Section 4.4(2) and (5).

20 b. "We may offset against any sums we owe You the amount of any
21 money You owe us." *Id.* at Section 4.5.

22 c. Padilla agreed to "indemnify and save harmless [Big-D]"
23 associated with claims arising from "the performance of work under this Subcontract or
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27 ³ "Contractor will issue payment to Subcontractor by US Mail ... within ten (10) days of receiving payment from
28 the Owner." Section D.

1 any of the obligations contained in this Subcontract." *Id.* at Section 3.6.

2 7. Here, it is undisputed that IGT never accepted the Padilla Work.
3 Accordingly, payment to Padilla never became due. In fact, Padilla was aware on September
4 16, 2009 that IGT had rejected its work and had directed Big-D to remove and replace it work.
5 Notwithstanding this, Padilla submitted an Application for Payment on September 25, 2009.
6 Padilla had no reasonable expectation that Big-D would pay the September 25, 2009
7 application for payment given that Padilla was aware that its work had been rejected and
8 removed from the Project for failures.

9 8. Even if the payments to Padilla for the rejected Padilla Work had
10 become due, Big-D provided repeated written notices to Padilla of the failures in the Padilla
11 Work that complied with the requirements of NRS 624.624 including the following:

12 a. On September 11, 2009, Big-D provided Padilla management
13 immediate notice of the failures observed in the Padilla Work. Padilla's own project
14 records also demonstrate that Padilla's crews were aware of the separation issue and
15 had, themselves, advised Padilla management.

16 b. On September 15, 2009, Big-D provided Padilla additional notice
17 of the failures and requested that Padilla have the Expo product representative visit the
18 site to observe the work.

19 c. On September 16, 2009, Padilla was physically on the project site
20 and involved in the meeting when IGT gave the direction that the Padilla Work on the
21 exterior of the building was rejected as non-compliant.

22 d. On September 23, 2009, Padilla was on the site with Big-D and
23 two representatives from the EXPO product manufacturer to test the Padilla Work on
24 the interior of the building. Padilla was advised that day that the Padilla Work on the
25 interior of the building was rejected by IGT.
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1 e. On September 29, 2009, Padilla participated in a telephone
2 conference with Big-D representatives in which Padilla committed to provide additional
3 information to Big-D to defend the Padilla Work.

4 f. In a teleconference between Padilla and Big-D in late October
5 2009, Big-D advised Padilla that Big-D would not release payment to Padilla until
6 issues with the Padilla Work had been resolved by IGT. Padilla confirmed that
7 teleconference conversation in a letter dated October 28, 2009.

8 g. Big-D unequivocally advised Padilla by a letter dated November
9 3, 2009 that Big-D (i) was requesting Padilla's help to defend the Padilla work and (ii)
10 was withholding payment from Padilla until the issues with the Padilla Work had been
11 resolved.

12 9. Padilla's claim under NRS 624.624 is based on the following:

13 a. Padilla submitted its Application for Payment to Big-D on
14 September 25, 2009.

15 b. Big-D's letter repeating previous conversations regarding
16 withholding was received on November 3, 2009.

17 c. Padilla is entitled to payment as a matter of law under NRS
18 624.624 because Big-D's letter formally advising of the withholding was sent 39 days
19 after Padilla submitted its application for payment.

20 d. Padilla contends that NRS 624.624 imposed a requirement that
21 written notice of withholding be provided within 30 days and Big-D did not provide
22 notice until 39 days after submission of the September 25, 2009 Application for
23 Payment.

24 10. Padilla's argument fails for several reasons:

25 a. First, even if the 30-day requirement for subcontracts without a
26 written schedule for payments were to apply, it is undisputed that Big-D advised Padilla
27 within 30-days that the Padilla work was failing or had been rejected. Big-D notified
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1 Padilla via several contemporaneous project emails. This correspondence is sufficient
2 to meet NRS 624.624's mandate to provide written notice of withholding because a
3 subcontractor has no reasonable expectation of payment for work that it has been
4 advised is rejected and is to be replaced.

5 b. Second, even if the only written notice that could be considered
6 for purposes of NRS 624.624's written notice requirement were Big-D's November 3,
7 2009 letter advising Padilla it would not be paid until the dispute over workmanship had
8 been resolved, this letter is still sufficient to constitute required written notice to justify
9 withholding payment.

10 i. The issues with resolving the dispute over the Padilla
11 Work were ongoing between September 2009 and November 2009—with an
12 active investigation and dialogue proceeding between Big-D and IGT and Big-D
13 actively requesting participating and information from Padilla.

14 ii. Big-D formally advised Padilla unequivocally in writing
15 that it intended to withhold payment 39 days after Padilla's submission of the
16 Application for Payment.

17 iii. The active dialogue, combined with the November 3,
18 2009 written notice, constitutes sufficient notice to meet the requirements of
19 NRS 624.624.

20 11. Notably, even if this Court were to determine that NRS 624.624 did
21 require payment from Big-D to Padilla associated with the September 25, 2009 Application for
22 Payment (which it does not determine), the following additional factors would be required to be
23 considered:

24 a. First, a determination that payment is due pursuant to NRS
25 624.624 because a contractor's failure to provide timely written notice of withholding to
26 a subcontractor does not bar the contractor from claiming backcharges or damages
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1 against the subcontractor. As a result, Big-D's counterclaim against Padilla would
2 remain unaffected by Padilla's Third Claim for Relief.

3 b. Second, the evidence indicates that Padilla's September 25, 2009
4 application for payment failed to credit Big-D for the \$25,000 initial payment to Padilla.
5 As a result, Big-D would be entitled to an offset of \$25,000 for amounts claimed in the
6 September 25, 2009.

7 **II. Padilla Claim for Relief Against F&D Fails**

8 Although F&D's renewed Motion for Judgment as a Matter of Law at the close
9 of the case is not meritorious as to the bases on which it is made insofar as it relates to the
10 mechanic's lien and bond issues, Padilla's claim for relief against F&D fails because Padilla
11 has not proved that it is entitled to any additional payment from Big-D (as discussed in Section
12 II *supra*). In fact, because this Court is awarding damages to Big-D (rather than Padilla), there
13 are no damages to collect against F&D under the bond.

14 **III. Big-D Is Entitled to a Judgment in the Amount of \$600,000.00 on Its Counterclaim**
15 **against Padilla**

16 Big-D's First Claim for Relief in its Counterclaim is for Breach of Contract against
17 Padilla. Big-D asserts that Padilla failed to properly install the Padilla Work and that Big-D
18 incurred substantial damages associated with removing and replacing the Padilla Work. Based
19 upon the foregoing Findings of Fact, Big-D succeeded in proving that it is entitled to damages
20 against Padilla as follows:

21 1. First, the evidence indicates that Padilla failed to install the Padilla Work
22 in compliance with the Plans and Specifications in several material respects, including: failing
23 to properly hydrate the stucco product, failing to properly score the scratch coat, failing to
24 install the brown and scratch coats at the proper thickness, and failing to properly compact the
25 brown coat against the scratch coat.

1 2. The Subcontract Agreement required Padilla to perform the work in
2 compliance with the plans and specifications and to provide a complete and functional stucco
3 system.

4 3. Given that a material requirement of the Subcontract Agreement was for
5 Padilla to install the Padilla Work in a good and workmanlike manner and in accordance with
6 the Plans and Specifications, this failure constitutes a material breach of the Subcontract
7 Agreement that entitles Big-D to recover damages against Padilla.

8 4. Second, even if these express contractual provisions did not exist,
9 Nevada law is clear that, "[c]ommon law imposes an implied warranty of workmanlike manner
10 [on subcontractors], which has been defined as a duty to perform to a reasonably skillful
11 standard. *Olson*, 120 Nev. at 247, 89 P.3d at 35. "Moreover, because contractors and
12 subcontractors understand and accept these duties as a part of their business, they cannot claim
13 surprise when they are sued for a failure to act in a workmanlike manner." *Id.*; see also *Daniel*,
14 *Mann, Johnson & Mendenhall*, 98 Nev. 113, 642 P.2d 1086, 1087 (upholding instruction to
15 jury that a contractor "had an implied duty to perform in a workmanlike manner"). By failing
16 to provide an acceptable stucco system, Padilla breached the Subcontract Agreement. As a
17 result, Padilla is not entitled to payment from Big-D for work that was not compliant with the
18 Subcontract Agreement and was ultimately rejected by the project owner, IGT.

19 5. Third, the Subcontract Agreement also required Padilla to "indemnify
20 and save harmless [Big-D]" associated with claims arising from "the performance of work
21 under this Subcontract or any of the obligations contained in this Subcontract." Trial Exhibit I
22 at Section 3.6.

23 6. It is undisputed that Padilla did not pay Big-D any amounts associated
24 with damage caused by the Padilla Work—constituting a material breach of Padilla's obligation
25 to indemnify Big-D.

26 7. This Court determines that Big-D proved that it was required by IGT to
27 remove and replace the Padilla Work. Big-D proved that it incurred costs to replace the Padilla
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1 Work and to replace other work that was damaged by the Padilla Work, including portions of
2 stone work.

3 8. Accordingly, this Court determines that Big-D proved it is entitled to
4 recover damages against Padilla. Because the parties stipulated as to the amount of damages to
5 be awarded to Big-D if Big-D were to prevail upon its Counterclaim, Big-D is entitled to a
6 judgment against Padilla in the amount of \$600,000—the stipulated damage figure. *See* Joint
7 Stipulation as to Damages (filed December 3, 2014).

8 **IV. No Spoliation Instruction Is Appropriate or Required.**

9 No spoliation remedy is appropriate for five independent reasons:

10 1. First, Nevada recognizes an “adverse inference” for negligent destruction
11 of evidence.

12 a. An “adverse inference” “is permissible, not required, and it does
13 not shift the burden of proof.” *Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103,
14 106-07 (Nev. 2006). An “adverse inference” instruction informs a jury that it is
15 “permitted” to draw an inference that such evidence may have been unfavorable to the
16 destroying party.

17 b. Here, Padilla, Big-D, and IGT witnesses observed the separation
18 of the Padilla Work. Contemporaneous photographs capture the separation of the
19 Padilla Work. Both Big-D and IGT retained expert consultants to test the Padilla Work.
20 And, finally, there are existing samples remaining of the Padilla Work (without stone
21 installed over top).

22 As a result, there were several pieces of admissible evidence that this Court observed at trial
23 and testimony it consider to determine the Padilla Work failed. Even if this Court allowed
24 itself the “permission” to infer that the portions of the Padilla Work that were discarded may
25 have contained unfavorable evidence to Big-D, this permissible inference does not counter the
26 large amount of evidence that the Padilla Work failed.

1 2. Second, Padilla is not entitled to a spoliation remedy because it failed to
2 seasonably request or demand such a remedy. *Cf. Gault v. Nabisco Biscuit Co.*, 184 F.R.D.
3 620, 622 (D. Nev. 1999) (a party who waits an unreasonable period of time before moving to
4 enforce discovery waives enforcement remedies). Here, Padilla was notified in September
5 2009 that IGT had ordered Big-D to remove and replace its work. Further, Padilla initiated this
6 action in January 2010—at a time when portions of the Padilla Work (without stone) remained
7 installed at the Project. Discovery in this case closed in July 2012. As a result, Padilla was
8 provided a meaningful opportunity to participate in any testing and inspections sufficient to
9 make a spoliation instruction inappropriate.

10 3. Third, it is improper to issue a spoliation sanction against Big-D for
11 removing and destroying the portions of the Padilla Work on which stucco was installed—Big-
12 D did not have custody and control over the evidence.

13 a. Spoliation sanctions are only appropriately issued to a party
14 “controlling the evidence.” *Bass-Davis*, 122 Nev. at 450. “Obviously, the party
15 charged with spoliation must have been in the possession, custody, or control of the
16 evidence in order for the duty to preserve to arise. The party requesting sanctions for
17 spoliation has the burden of proof on such a claim.” *Hammann v. 800 Ideas, Inc.*, 2010
18 U.S. Dist. LEXIS 131097 at *21 (D. Nev. 2010) (denying motion for spoliation related
19 to records of certain 1-800 numbers when there was no evidence that party was in the
20 “possession, custody, or control” of relevant documents, even when party had business
21 relationship with party in control of such documents); *see also Rhodes v. Robinson*, 399
22 Fed. Appx. 160, 165 (9th Cir. 2010) (discussing required proof that “the party with
23 control over [evidence] had a duty to preserve it”) (emphasis added).

24 b. The evidence was clear that IGT—not Big-D—controlled the
25 Project site and that Big-D was directed to remove and replace the Padilla Work on an
26 expedited basis. Padilla was invited to participate in the testing that Big-D did perform
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1 and there is no evidence that Big-D excluded Padilla from any available opportunities to
2 inspect the Padilla Work.

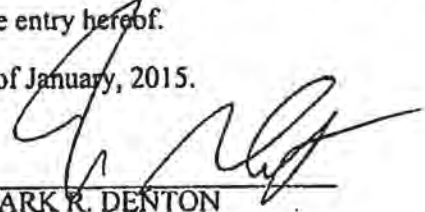
3 4. Finally, and perhaps most compelling, Padilla refused to participate in
4 testing or investigation to defend the Padilla Work to IGT—even after several requests from
5 Big-D for Padilla's assistance. In fact, Padilla's representatives were clear that Padilla did not
6 intend to participate in any such testing or investigation. As a result, it would be improper to
7 order a spoliation remedy when Padilla did not intend to take additional advantage of additional
8 inspection opportunities even if they had been available.

9 Any of the foregoing Conclusions of Law that would more appropriately be
10 considered to be Findings of Fact should be so deemed.

11 NOW, THEREFORE, IT IS HEREBY SO FOUND AND CONCLUDED; and

12 IT IS FURTHER ORDERED that Big D shall have judgment accordingly, the
13 same to be entered concurrently with the entry hereof.

14 DATED this 22nd day of January, 2015.

15
16 
MARK R. DENTON
DISTRICT JUDGE

17
18 CERTIFICATE

19 I hereby certify that on or about the date filed, and as a courtesy not comprising formal written
20 notice of entry, this document was e-served or a copy of this document was placed in the attorney's folder in the
21 Clerk's Office or mailed to:

22 Bruce R. Mundy, Esq.
23 200 South Virginia Street, Eighth Floor
24 Post Office Box 18811
Reno, NV 89511-0811

25 HOLLAND & HART
26 Attn: Melissa A. Beutler, Esq.

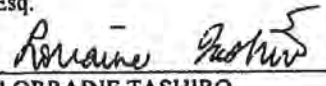
27 
LORRAINE TASHIRO
28 Judicial Executive Assistant
Dept. No. XIII

EXHIBIT “2”

EXHIBIT “2”

1 JUDG

2

DISTRICT COURT

3

CLARK COUNTY, NEVADA

4

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

5

Plaintiff,

6

7 vs.

8

BIG-D CONSTRUCTION CORP., a Utah
corporation, FIDELITY & DEPOSIT
COMPANY OF MARYLAND, a Maryland
corporation, DOE CORPORATION I through
DOE CORPORATION V, and ROE I through
ROE V individuals;

10

11

Defendants.

12

BIG-D CONSTRUCTION CORP., a Utah
corporation,

13

14

Counter-Claimant,

15

vs.

16

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

17

Counter-Defendant.

18

19

This matter having come on for a trial on the merits beginning on December 2, 2014.

20

Plaintiff Padilla Construction Company of Nevada ("Padilla"), appearing by and through its
counsel, Bruce Mundy, Esq.; Defendant/Counter-Claimant/Third Party-Plaintiff BIG D

21

22

CONSTRUCTION CORP. ("Big-D") and Defendant FIDELITY & DEPOSIT COMPANY OF

23

MARYLAND ("F&D"), appearing by and through their counsel of record, Melissa A. Beutler,
Esq. of Holland & Hart LLP.

24

25

The Court having received the testimony of witnesses through examination and cross-

26

examination by the Parties' counsel, received, reviewed, and considered all admissible

27

28

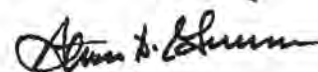
MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

CASE NO.: A-10-609048-C
DEPT. NO.: XIII

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JUDGMENT



CLERK OF THE COURT

JA001428

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
Consolidated with 80508

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 26

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Attorneys for Respondent

CHRONOLOGICAL APPENDIX OF EXHIBITS

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
04-26-10	CAMCO and Fidelity's Answer and CAMCO's Counterclaim	JA000031- JA000041	1
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
06-06-13	APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
11-06-17	Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	APCO Construction, Inc.’s Omnibus Motion in Limine	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCF Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine	JA001133 JA001148	21

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6	JA001161- JA001169	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i>	JA001178- JA001186	22
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
01-04-18	Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order	JA001552- JA001560	27

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
01-17-18	Transcript Bench Trial (Day 1)¹	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (<i>Admitted</i>)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (<i>Admitted</i>)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (<i>Admitted</i>)	JA001869- JA001884	30

¹ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record (<i>Admitted</i>)	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks (<i>Admitted</i>)	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment (<i>Admitted</i>)	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP (<i>Admitted</i>)	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner (<i>Admitted</i>)	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement (<i>Admitted</i>)	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

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	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
01-18-18	Transcript – Bench Trial (Day 2)²	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)³	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80

² Filed January 31, 201879

³ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO <i>(Admitted)</i>	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec <i>(Admitted)</i>	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) <i>(Admitted)</i>	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence <i>(Admitted)</i>	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien <i>(Admitted)</i>	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁴	JA005820- JA005952	81
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	APCO Construction Inc.’s Post-Trial Brief	JA006059- JA006124	82/83
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
03-23-18	Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief	JA006173- JA006193	84
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85

⁴ Filed January 31, 201883

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05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
06-01-18	Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
06-15-18	APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs	JA006615- JA006637	90/91
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007095- JA007120	97/98
06-15-18	Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007121- JA007189	98
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007190- JA007192	99
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225- JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238- JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262- JA007280	100
09-28-18	Notice of Entry of (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313- JA007315	101

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10MM – Scott Financial Corporation’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
08-29-19	Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)	JA009117- JA009123	119

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	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119
01-29-20	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
02-11-20	Case Appeal Statement	JA009157- JA009163	120
02-11-20	APCO's Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
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		JA006442	
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounter, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
06-06-13	APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
02-11-20	APCO’s Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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	JA009168- JA009182	114

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
11-06-17	APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

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	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
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	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions <i>in Limine</i> Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	APCO Construction Inc.'s Post-Trial Brief	JA006059- JA006124	82/83
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i>	JA001133 JA001148	21

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	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
04-26-10	CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim	JA000031- JA000041	1
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
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06-15-18	Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007121- JA007189	98
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
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08-06-19	Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109

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	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

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	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing’s Motion for Attorneys’s Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112

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	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113

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	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
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	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment	JA006964- JA006978	96

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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97

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	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA007085- JA007087	97
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
11-14-17	Helix Electric of Nevada’s Opposition to APCO Construction’s Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
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03-23-18	Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief	JA006173- JA006193	84
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
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	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
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	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
01-04-18	Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
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	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120

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05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
09-28-18	Notice of Entry of Order (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001178- JA001186	22
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01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119

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01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
09-28-17	Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA00418	7
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001552- JA001560	27
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition	JA007190- JA007192	99

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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
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	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
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	APCO Related Exhibits:		
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	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
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	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
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	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
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	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
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	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
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	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

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	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
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	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
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	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
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	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
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	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
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	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

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	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
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	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
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	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
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	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
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	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	Transcript Bench Trial (Day 1)⁵	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

⁵ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36
01-18-18	Transcript – Bench Trial (Day 2)⁶	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)⁷	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80

⁶ Filed January 31, 201879

⁷ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁸	JA005820- JA005952	81
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101

⁸ Filed January 31, 2018

1 evidence, as well as received, reviewed, and considered the Parties' pleadings and other various
2 filings;

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

4 The Court having entered Findings of Fact and Conclusions of Law;

5 The Court enters the following Judgment as to all claims in this matter:

6 IT IS ORDERED, ADJUDGED, AND DECREED that judgment is to be entered in
7 favor of Big-D and against Padilla on Big-D's First Claim for Relief against Padilla on its
8 Counterclaim in the principal amount of \$600,000.00 plus any interest, costs, and attorneys'
9 fees permitted by applicable law or contract requirements, in accordance with, and subject to,
10 the Joint Stipulation and Order thereon entered herein on December 3, 2014.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Padilla's Fourth
12 Claim for Relief against Defendant F&D be, and the same hereby is, DISMISSED WITH
13 PREJUDICE, and (a) the lien recorded by Padilla on November 12, 2009 (Instrument Number
14 200911120000338) in the amount of \$164,674.15 is hereby RELEASED AND
15 DISCHARGED; and (b) the bond issued by Defendant F&D as surety and Big-D as principal
16 on February 24, 2010 (and recorded as Instrument Number 201002240003862) in the amount of
17 \$247,011.22 is hereby RELEASED AND DISCHARGED; and

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following claims
19 in Padilla's First Amended Complaint be, and the same hereby are, DISMISSED WITH
20 PREJUDICE:

- 21 a. First Claim for Relief—Breach of Contract
22 b. Second Claim for Relief—Breach of Implied Covenant of Good Faith
23 c. Third Claim for Relief—Negligence Per Se
24 d. Four Claim for Relief— Claim Against Lien Release Bond; and

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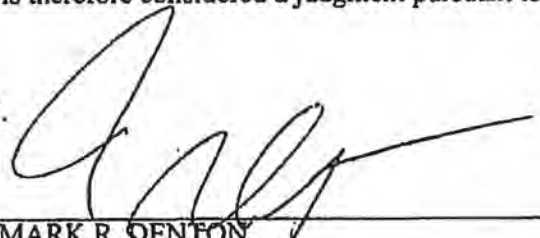
MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the within Judgment shall be the Final Judgment in this matter and is therefore considered a judgment pursuant to NRCIP 54.

Dated this 22^d day of January, 2015.


MARK R. DENTON
DISTRICT JUDGE

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

EXHIBIT 12


CLERK OF THE COURT

ORDR

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*Attorneys for Defendant/Counter-Claimant,
Big-D Construction Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

PADILLA CONSTRUCTION COMPANY OF
NEVADA, a Nevada corporation,

Plaintiff,

vs.

BIG-D CONSTRUCTION CORP., a Utah
corporation, FIDELITY & DEPOSIT
COMPANY OF MARYLAND, a Maryland
corporation, DOE CORPORATION I through
DOE CORPORATION V, and ROE I through
ROE V individuals,

Defendants.

BIG-D CONSTRUCTION CORP., a Utah
corporation,

Counter-Claimant,

Case No. A-10-609048-C

Dept.: XIII

ORDER

Hearing Date: May 26, 2015
Hearing Time: 9:00 a.m.

1 vs.

2 PADILLA CONSTRUCTION COMPANY OF
3 NEVADA, a Nevada corporation,

4 Counter-Defendant.
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10 Defendant/Counterclaimant BIG-D CONSTRUCTION CORP.'s Motion for Attorneys'
11 Fees, Costs, and Interest Pursuant to Judgment and to Amend Judgment came before this court
12 for hearing on May 26, 2015.

13 On March 6, 2015, Big-D filed a Motion for Attorneys' Fees, Costs, and Interest
14 Pursuant to Judgment and to Amend Judgment in the amount of \$1,234,678.55. This Motion
15 sought to Amend the Judgment in the following amounts plus post-judgment interest on those
16 amounts:

17

Category	Amount
Attorneys Fees	\$383,399.00
Expert Fees	\$38,882.34
Bond Fees	\$24,700.00
Other Costs	\$6,344.99
Pre-Judgment Interest	\$164,921.92

23

24 On its Reply on May 18, 2015, Big-D voluntarily removed its claim for Pre-Judgment Interest
25 in response to Padilla's Opposition.

26 Defendant/Counterclaimant BIG-D CONSTRUCTION CORP. was present by and
27 through its counsel of record, Melissa A. Beutler, Esq. Plaintiff/Counterclaimant PADILLA
28

1 CONSTRUCTION COMPANY OF NEVADA was present telephonically by and through its
2 counsel of record, Bruce R. Mundy, Esq. The Court, having fully considered the Motion, the
3 papers on file therein, hearing oral argument, and for good cause appearing, enters the
4 following *having rendered its Decision filed June 16, 2015.*

5 IT IS HEREBY ORDERED THAT Big-D Construction Corp.'s Motion for Attorneys'
6 Fees, Costs, and Interest Pursuant to Judgment and to Amend Judgment is Granted IN PART
7 and Denied IN PART.

8 IT IS HEREBY FURTHER ORDERED THAT Big-D Corp.'s Motion for bond fees is
9 ²GRANTED and Big-D is awarded bond fees in the amount of \$24,700.00.

10 IT IS HEREBY FURTHER ORDERED THAT Big-D Corp.'s Motion for costs to
11 depose Padilla's expert is GRANTED and Big-D is awarded costs to depose Padilla's expert in
12 the amount of \$2,730.00.

13 IT IS HEREBY FURTHER ORDERED THAT Big-D Corp.'s Motion to recover costs
14 incurred to maintain samples is GRANTED and Big-D is awarded costs to maintain the
15 samples in the amount of \$ \$3,614.99.

16 IT IS HEREBY FUTHER ORDERED that Big-D Corp.'s Motion for expert fees is
17 DENIED IN PART.

18 IT IS HEREBY FURTHER ORDERED that Big-D Corp.'s Motion for attorney's fees
19 are recoverable in whole and Big-D is awarded attorneys fees in the amount of \$383,399.00.

20 In summary, the following additional amounts are awarded to Big-D in this ORDER:

Category	Amount
Attorneys Fees	\$383,399.00
Fees to Depose Padilla's Expert	\$2,730.00 (fn. 1)
Bond Fees	\$24,700.00 (fn. 2)
Storage of Stucco	\$3,614.99 (fn. 3)

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¹ The supporting documentation for this cost was included as Exhibit B (at July 31, 2012) to the Motion.

² This supporting documentation for this cost was included as Exhibit C to the Motion.

EXHIBIT 13

Case Nos. 67397 & 68683

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 29 2016 11:30 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**PADILLA CONSTRUCTION COMPANY OF NEVADA,
A NEVADA CORPORATION,**

Appellant,

vs.

BIG-D CONSTRUCTION CORP., A UTAH CORPORATION,

Respondent.

**APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

**THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE
A-10-609048-C**

APPELLANT'S OPENING BRIEF

Bruce R. Mundy, NSB #6068
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Post Office Box 18811
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reno-attorney@sbcglobal.net
(775) 851-4228

Attorney for the Appellant

Rule 26.1 Disclosure

Pursuant to NRAP 26.1, the undersigned counsel certifies that Appellant, Padilla Construction Company of Nevada, is a Nevada corporation in good standing, no parent company nor any publicly held company owns any interest in the corporation, and is and has been exclusively represented in this matter by Bruce R. Mundy, Nevada State Bar number 6068, a sole practitioner.

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Jurisdictional Statement

This Court has jurisdiction pursuant to NRAP 3A(b)(1): “A final judgment entered in an action of proceeding commenced in the court in which the judgment is rendered.” The Judgments appealed from include the district court’s Findings of Fact and Conclusions of Law (JA Vol. VII., pg. 813) and Order Granting Attorneys’ Fees, Costs and Interest (JA Vol. VII., pg. 905).

Routing Statement

This appeal is presumptively retained by the Supreme Court because it is an Appeal of a Judgment issued by the business court, Department XIII of the District Court, Clark County, Nevada and Appellant believes an issue involved in the Appeal raises a question of first impression involving the US Bankruptcy Court: Whether a state court has subject matter jurisdiction to award judgment in excess of the Bankruptcy Court’s Chapter 11 approved claim amount.

Statement of Issues for Review

1. Whether Respondent met its burden to prove-up causation in a breach of contract matter?
2. Whether Respondent violated Nevada law, NRS 624.624, for failure to provide the requisite notice prior to withholding payment to Appellant?
3. Whether district court had subject matter jurisdiction to award Judgment in an amount in excess of the Bankruptcy Court Chapter 11 approved claim?

Statement of the Case

The Appellant filed its First Amended Complaint March 9, 2010. Amended, solely to drop a Defendant, the construction project owner, after Respondent construction company posted a bond in lieu of the Appellant’s mechanics’ and materialmen’s Lien. The Complaint alleges Breach of Contract, Breach of Implied

Covenant of Good Faith and Fair Dealing, Negligence per se and a Claim against the lien release bond. The Respondent filed its Answer and Counterclaim April 8, 2010 citing claims for Breach of Contract and Negligence. The Respondent stipulated to dismiss its negligence claim and the district court entered Stipulation and Order to Dismiss August 10, 2015. The case proceeded to a bench trial December 2 & 3, 2014. The court entered its Findings of Facts and Conclusions of Law and Judgment January 22, 2015 for the Respondent in the amount of \$600,000.00. Subsequently, Respondent filed a Motion for Attorneys' Fees, Costs and Interest, which was granted July 22, 2015 in the amount of \$414,433.99 plus interest in the amount of \$59.61 per day starting January 22, 2015.

Statement of Facts

Respondent Big-D Construction Corp. ("Big-D") entered into a construction agreement to build a facility for IGT in Las Vegas, which included a stone façade glued to stucco both on the exterior of the building as well as some parts of the interior. Shortly after the job was finished and IGT occupied the building, stones fell off the exterior façade. IGT's consultant, Ian Chin, a Nevada licensed Architect and Structural Engineer, and Big-D investigated the falling stones and found deficiencies in the adhesive used to bond the stone to the stucco. It was further determined that the stones and underlying stucco needed to be removed and replaced. In preparation for the second stone installation, Big-D entered into a Subcontract in September¹ of 2009 with Appellant, Padilla Construction Company of Nevada ("Padilla").

The second stone installation project commenced with Padilla installing the stucco on the exterior and interior walls where stone panels would be glued. In mid-September, during the stone adhesion coverage process, when stones were pulled

¹ Trial Exhibit, JA Vol. 1, pg. 91

back to check the adhesive coverage, there were several events² when the stone pulled the second (brown) coat of the stucco from the first (scratch) coat. Padilla's theory of the cause of the separations was Big-D's scheduling of the stone installation did not allow its stucco to properly dry (cure)³. At that time, Big-D did not have a theory of cause.⁴ After inspections and conferences between IGT and Big-D, it was decided to substitute a prefabricated cement board that was better suited to the stone adhesive coverage pulling and did not require a cure time.⁵ Padilla left the job and submitted its Payment Request, which was approved⁶, and Big-D issued a check in payment only to stop payment due to unresolved disputes⁷ with Padilla.

Big-D retained the services of IGT's former consultant, Ian Chin, after the conclusion of his relationship with IGT. In the absence of a settlement of the dispute between Big-D and Padilla, Padilla filed a Complaint⁸ March 9, 2010 alleging claims for Breach of Contract, Breach of Implied Covenant of Good Faith and Fair Dealing, Negligence per se and a Claim against the lien release bond. Big-D responded with an Answer and Counterclaim⁹ April 8, 2010 citing claims for Breach of Contract and Negligence. Big-D stipulated to dismiss its negligence claim and the district court entered Stipulation and Order to Dismiss August 10, 2015. The case proceeded to a bench trial December 2 & 3, 2014. The district court entered its Findings of Facts and Conclusions of Law and Judgment¹⁰ January 22, 2015 for the Respondent in the amount of \$600,000.00. Subsequently, Respondent filed a Motion for Attorneys' Fees, Costs and Interest, which was granted¹¹ July 22, 2015 in the amount of

² Trial Exhibit, JA Vol. 3, pg. 261

³ Lopez depo, JA Vol. V., pg. 411, lines 10-25

⁴ TSRCP 1, JA Vol. V., pg. 469, lines 10-23.

⁵ Lopez depo, JA Vol. V., pg. 413, lines 17-21

⁶ TEXH 9, JA Vol. II., pg. 215

⁷ TEXH 61, JA Vol. III., pg. 281

⁸ Complaint, JA Vol. 1, pg. 1

⁹ Answer and Counterclaim, JA Vol. 1, pg. 10.

¹⁰ FF&CL, Judgment, JA Vol. 7, pg. 813

¹¹ Order, JA Vol. 7, pg. 905

\$414,433.99 plus interest in the amount of \$59.61 per day starting January 22, 2015.

Summary of the Argument

Respondent failed to meet its burden to prove causation by a preponderance of evidence; that a Padilla commission or omission caused the complained of separations of its stucco. Appellant also argues Respondent's withholding payment to Padilla, when at the same time admitting it did not know what caused the separations, was a breach of the Subcontract as well as Nevada law, NRS 624.624. In addition, Appellant argues the district court awarded judgment and attorneys' fees, costs and interest in violation of the parties' Stipulation and in excess of the Bankruptcy Court's Chapter 11 allowed claim

Argument

I. STANDARD OF REVIEW FOR FINDINGS AND CONCLUSIONS OF LAW

The district court's factual findings will be upheld if not clearly erroneous, and if supported, by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 231 P.3d 699 (2009). In the absence of evidence to support the trial court's findings, they are clearly erroneous. *Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456 (1984). This Court has defined substantial evidence as evidence that a reasonable mind might accept as adequate to support a conclusion. *Cook v. Sunrise Hospital & Medical Center*, 124 Nev. 997, 1004, 194 P.3d 1214 (2008). The Court reviews conclusions of law de novo. *Grosjean v. Imperial Palace*, 125 Nev. 349, 359, 212 P.3d 1067 (2009).

II. BIG-D FAILED TO CARRY ITS BURDEN OF PROOF

As the Counterclaimant, it is Big-D's duty to present evidence and argument to prove its allegation that Padilla Construction breached the Subcontract. *Nassiri and Johnson v. Chiropractic Physicians' Board*, 130 Nev. Adv. Op., No. 27, pg. 4

(2014). The standard for Big-D's proof is the general civil standard: a preponderance-of-the-evidence. *Id.* at pg. 6. A preponderance of evidence is not a measurement of the greatest number of witnesses, instead, it's the persuasive weight of evidence to lead a trier of fact to find the existence of the contested fact is more probable than its nonexistence. *Brown v. State*, 107 Nev. 164, 166, 807 P.2d 1379 (1991).

The proof elements for a breach of contract claim are: (1) The existence of an enforceable agreement between the parties; (2) Plaintiff/Counter-claimant's performance; (3) Defendant/Counter-defendant's unjustified or unexcused failure to perform; and (4) Damages resulting from the unjustified or unexcused failure to perform. *Nevada Jury Instructions*, (2011) Instruction 13CN.1. A breach of contract claim for damages requires a failure to perform that is material; that the failure to perform defeats the purpose of the contract. *Id.* at Instruction 13CN.42. Integral to the proof of damages is proximate cause, causation: "That is if the damage of which the promisee [Big-D] complains would not have been avoided by the promisor's [Padilla Construction] not breaking [its] promise, the breach cannot give rise to damages." *Clark Cty. Sch. Dist. V Richardson Constr.*, 123 Nev. 383, 396, 168 P.3d 87 (2007). The existence of a valid agreement between the parties was never in dispute. Trial Exhibit¹² (TEXH") 1, Subcontract JA Vol. I. pg. 91.

III. NO EVIDENCE PADILLA CAUSED DAMAGES

The complained of damages arise from the separation of the second (brown) coat of stucco from the first (scratch) coat during the process to check for proper stone adhesive coverage when an installed stone was pulled back from the brown coat to visually check the adhesive coverage. Padilla does not dispute the separations occurred and were observed by everyone involved with the IGT stone project.

What is not known, and the primary focus of the trial, is the causation of the

¹² As stipulated by the parties, Trial Exhibits 1-91 were admitted, JA Vol. V, pg. 456, L 9-24.

separations. Between the parties, there was no dispute the trial was about causation: (1) “the reason we are here today is why did the separations occur” (Padilla Opening, Trial Transcript Day 1 (“TSRCP 1”, JA Vol. V., pg. 440, lines 24-25); (2) “as Mr. Mundy [Padilla trial counsel] characterized this is, frankly, a trial related to causation” (Big-D Opening, TSRCP 1, JA Vol. V., pg. 445, lines 4-5); and (3) the court, “is that [trial related to causation] correct” directed to Mr. Mundy, “That is correct”, the court “All right. The record will so reflect.” TSRCP 1, JA Vol. V., pg. 445, lines 6-11.

It is Padilla’s position the separations were caused by the premature installation of the stone on the stucco before it was fully dry (cured). TSRCP 1, JA Vol. V., pg. 440, line 25 – pg. 441, line 4. According to EXPO, the stucco mix supplier to this job, “Proper curing is essential” and “Proper curing is important especially in hot or windy conditions.” It’s not unduly speculative to imagine the Las Vegas jobsite as hot, and maybe even windy in September. TEXH 26, JA Vol. II., pg. 111, CURING heading). Each stone panel measured four feet wide and thirty inches high and weighed close to forty pounds. TSRCP 1, JA Vol. VI., 597, lines 3-9. Padilla’s analogy was the cause of the separations was no different than the damage caused by parking your car on your new concrete driveway before it fully dried (cured). TSRCP 1, JA Vol. V., pg. 441, lines 2-4. According to Chin, in answer to the question of what the Architect’s plan instruction to determine the most effective procedures for curing and lapse time between coats based on climatic and job conditions, meant:

It means that it’s important to make sure that, first of all, the scratch coat is – has sufficient cure time before you apply the brown coat to it. It’s also – and it talks about making sure that the brown coat has sufficient cure time – as well as the other times involved before you apply anything to it.

So this is very important because you want to make sure that the strength of the materials are up to the point where

you can apply materials to it without causing any damage to the [stucco] system. TSRCP 2, JA Vol. VI., pg. 682, line 22 – pg. 683, line 6.

III. A. CURE TIMES NEVER SETTLED

As will be evident, cure times were far from settled and an ongoing controversy. Chin testified that according to the project specifications, the parties responsible for specifying the cure time included the “contractor, the subcontractor, and the [stucco] materials supplier . . .” TSRCP 2, JA Vol. VI., pg. 29, lines 7 – 13. Lopez, Chief Operating Officer for Padilla Construction Company of Nevada, who worked in the lath and plastering business (stucco) all his adult life including 13 years with Padilla, (Lopez depo, JA Vol. V., pg. 415, lines 1-3, pg. 410, line 21), testified he told Brinkerhoff the brown coat needed to cure 28 days before installing the stone on it. Lopez depo, Vol. V., pg. 416, lines 19-25, pg. 417, lines 1 – 4. After Lopez observed some of the separations, Brinkerhoff testified Lopez’s only response was “the product should have cured for 30 days before the stone was allowed to be installed on it.” TSRCP 1, Vol. V., pg. 593, lines 22-24.

Chin, in his role as an IGT consultant (TSRCP 2, JA Vol. VI., pg. 742, line 20), informed IGT’s counsel, Ferrario, that the scratch coat should cure one day and the brown coat twenty-one days, unless the stucco mix was mixed with latex, then it would require seven to fourteen days. (T Exh 38-1) Chin testified at trial he didn’t believe latex was used in the stucco mix. (TSRCP 2, JA Vol. VI., pg. 741, line 3) Then, IGT’s counsel Ferrario reports “The stucco cure issue continues to evolve. Right now we are operating under a 2 day scratch 7 day brown cure. This is consistent with the county requirements” (verified as minimum intervals, cure time, between plaster coats in the Clark County Building Code, (TEXH 450¹³, JA Vol. V. pg. 400, Table 2512.6) and asks for Chin’s thoughts. TEXH 38, JA Vol. III, pg. 259 Ferrario 09/04/09 email. In response, Chin agrees the seven day cure is consistent

¹³ Admitted, JA Vol., VII, pg. 784, line 2.

with the low published cure time he has reviewed so he doesn't think that it can be shortened; however, he notes that while the two day cure for the scratch coat is consistent with the high published time he has reviewed, he thinks there is a possibility to lower the scratch cure time to one day with a stucco subcontractor inspection after one day to determine if its rigid enough to install the brown coat. TEXH 38, JA Vol. III., pg. 259, Chin 09/04/09 email.

Meanwhile, Brinkerhoff, advised IGT's Stecker on August 28th: (1) "[s]tone installation on Wednesday is contingent on 48 hours cure time" (TEXH 400¹⁴, JA Vol. IV., pg. 368, paragraph four) and in the same paragraph advises he has sent the approved plaster product (EXPO MX3) data to ABB Engineers, PSI Engineering, and the product manufacturer (EXPO) for cure time recommendations. Subsequently, Brinkerhoff testified he received a reply from EXPO (TSRCP 1, JA Vol. VI, pg. 631, lines 6-13) that "normal curing and applications are required." TEXH 32, JA Vol. III., pg. 250. Although he acknowledged receiving cure time recommendations from ABB and PSI, he didn't remember what they were. T Trans D-1, pg. 190, lines 5-15. In answer to the question did he ever find out what the normal curing time was, he answered "We used two days and seven days." TSRCP 1, JA Vol. VI., pg. 631, line 24 - pg. 632, line 2.

Nowhere, is there any evidence of a 'summit' meeting between IGT, Big-D, EXPO and Padilla to resolve the obvious dispute as to the critical cure times. Instead, it appears as the person solely responsible for scheduling work, Brinkerhoff arbitrarily set the cure time to two days for the scratch coat and seven days for the brown coat. During trial, Brinkerhoff testified he had exclusive responsibility for scheduling the work of all subcontractors; Q. Would it be fair to say that, if you didn't schedule it, it was not going to happen? A. Yes, absolutely. TSRCP 1 JA Vol.

¹⁴ Admitted, JA Vol., VI, ;g. 567, line 2

V., pg. 462, lines 12-14.

III. B. BIG-D NEVER TESTED FAILED STUCCO FOR CAUSATION

Big-D never determined the cause of the separations. According to Big-D's Brinkerhoff, answering the question why Big-D didn't terminate the Subcontract with Padilla: "[W]e made a decision based on the rejection of Padilla's work by IGT. We didn't know cause." TSRCP 1, JA Vol. V., pg. 469, lines 10-23. In a letter to Padilla's Lopez dated November 3, 2009, Big-D's counsel, Hurley, stated Big-D "is looking to Padilla to assist in investigating the cause of the failure." TEXH 58, JA Vol. III., pg. 276, paragraph 3. On November 18, 2009, when questioned whether he had released the check to Padilla, Big-D's McNabb responded: "No way. Why would I? Their work is failing. We still don't know who's at fault." TSRCP 1, JA Vol. VI, pg. 650, lines 12-13, TEXH 61, JA Vol. III., pg. 281.

III. C. CHIN'S TESTS WHILE CONSULTANT TO IGT

On April 8, 2010, Big-D filed its Counterclaim alleging "Padilla's Work was substandard and improperly installed and did not comply with the plans and specifications for the Project and/or ASTM Standards." Counterclaim, JA Vol. I., pg. 16, lines 27-28. Nearly seven months after Padilla was informed the project was going in a different direction (Lopez depo, JA Vol. V., pg. 413, lines 1-2) with a concrete board that didn't require a cure time and four months after finding out its payment for the work completed was being held ransom (TEXH 59, JA Vol. III., pg. 277, last paragraph, first sentence) pending Padilla's assistance to find the cause of the separations; Big-D first divulged its allegations as to why the separations occurred.

In support of the Counterclaim, Chin testified at trial about his observations of the stucco separations but failed to put forth evidence that any of the alleged deviations from the plans and specifications were material; caused the separations. For example, Chin's testimony included several references to the thickness of the

stucco coats vs. the project's plans and specifications, but then admitted "whether the brown coat was 2 inches or a quarter of an inch, scratch coat an inch or one-quarter of an inch, it did not affect the bond strength", the strength of the connection between the scratch and brown coats. TSRCP 2, JA Vol. VI., pg. 735, lines 18-21.

As to claims the scratch coats were not properly roughened; nowhere did Chin show any measurement of the grooves; determine whether they were the "approximately 1/8 inch" specified by EXPO. TEXH 37, JA Vol. III., pg. 256, paragraph 3.39B, NOTE. After admitting he never saw grooving of the scratch coat in more than one direction at the jobsite (TSRCP 2, JA Vol., pg. 712, lines 9-11) and commenting on Trial Exhibit 448 (TEXH 448¹⁵, JA Vol. V., pg. 391), three photographs of the same separation showing a minor amount of grooving in a second direction, TSRCP 2, JA Vol. VI., pg. 711, lines 13-14), Chin was unable to identify a percentage of wrong direction grooving that would cause a failure of the bond. TSRCP 2, JA Vol. VII., pg. 749, lines 10-14. He eventually admitted the wrong direction grooving only "maybe contributing to" the lack of bond between the brown coat and the scratch coat. TSRCP, JA Vol. VI., pg. 712, lines 17-19. For Trial Exhibit 438¹⁶, Chin sites no grooving of the scratch coat is evident (TSRCP 2, Vol. VI., pg. 718, lines 24-25), however, admits that he didn't use a 3D camera that can capture the depth dimension, but when questioned, he claimed to have put his hand on the scratch coat at the bottom of the three inch diameter¹⁷ core hole (TSRCP 2, JA Vol. VII., pg. 750, lines 10 – 15); perhaps the grooving, dark shadows on the scratch coat, was more readily observed in (TEXH 438-4, JA Vol. V., pg. 386) with the close-up photograph of the scratch coat and the apparent more direct lighting?

In all instances, when Chin noted no bond between the scratch and brown coats,

¹⁵ TEXH 448, Admitted for limited purpose: not for the truth of the matter asserted, JA Vol. VI., pg. 717, line 13.

¹⁶ Admitted, JA Vol. VI., pg. 720, line 18.

¹⁷ TSRCP 2, JA Vol. VI., pg. 717, line 20.

he admitted no knowledge of when the brown coat had been installed; where in the curing period the stucco might have been or whether sampling/testing was done before the brown coat fully cured? For Trial Exhibit 438, photos of coring/testing on the inside of the building September 17th (TSRCP 2, JA Vol. VI., pg. 720, lines 20-22) as well as trial exhibit (TEXH 15-7, JA Vol. II., pg. 232), which summarizes Chins notes for the 17th testing; Chin admitted he did not know when the brown coat had been installed. TSRCP 2, JA Vol. pg. 749, line 24 – pg. 750, line 2.

Similarly for Trial Exhibit 449¹⁸, (JA Vol. V., pg. 395), the references to the September 22nd testing, Chin admitted he did not know when either the scratch or brown were installed. TSRCP 2, Vol. VII., pg. 751, lines 17-18. Both of the admissions of no knowledge when the relevant stucco was installed also applies to (TEXH 60, JA Vol. III., pg. 279), Chin's November 17, 2009 email to IGT's counsel, Ferrario, reporting on both the September 17th and 22nd testing. Neither TEXH 406¹⁹ nor TEXH 446²⁰ were admitted for the truth of the matter asserted, so neither contributed any evidence of a material breach.

In summary, Big-D failed to carry its burden to present a preponderance of evidence that Padilla's alleged deviations from the plan and specifications were material and caused the complained of damages. That the damage of which Big-D complains would not have been avoided by Padilla not breaking its promise to furnish stucco in compliance with the plans and specifications.

IV BIG-D'S STOP PAYMENT OF CHECK BREACHED THE SUBCONTRACT

The proof elements for a breach of contract claim are: (1) The existence of an enforceable agreement between the parties; (2) Plaintiff/Counter-claimant's

¹⁸ Admitted, JA Vol. VII., pg. 717, line 13.

¹⁹ Admitted for limited purpose: not for the truth of the matter asserted, JA Vol. VI., pg. 709, line 19.

²⁰ Admitted for limited purpose: not for the truth of the matter asserted, JA Vol. VI, pg. 695, line 7-9.

performance; (3) Defendant/Counter-defendant's unjustified or unexcused failure to perform; and (4) Damages resulting from the unjustified or unexcused failure to perform. *Nevada Jury Instructions*, (2011) Instruction 13CN.1. A breach of contract claim for damages requires a failure to perform that is material; that the failure to perform defeats the purpose of the contract. *Id.* at Instruction 13CN.42. Integral to the proof of damages is proximate cause, causation: "That is if the damage of which the promisee [Big-D] complains would not have been avoided by the promisor's [Padilla Construction] not breaking [its] promise, the breach cannot give rise to damages." *Clark Cty. Sch. Dist. V Richardson Constr.*, 123 Nev. 383, 396, 168 P.3d 87 (2007). The existence of a valid agreement between the parties was never in dispute. SUBCONTRACT AGREEMENT, TEXH 1, JA Vol. I., pg. 91.

After leaving the project in mid-September because "they were going in a different direction" (Lopez depo, JA Vol. V., pg. 413, lines 1-2) with a prefabricated cement "board that can handle the pressure of them [stone installers] pulling on it, plus they could install that board and immediately start installing the stone [no cure time]." (*Id.* at pg. 413, lines 17-21), Padilla submitted a Big-D Payment Request form as specified by the Subcontract (TEXH 1, JA Vol. I., pg. 92, paragraph D) for the work completed to date of the 'going in a different direction' notice. Padilla's performance was confirmed by Big-D's Brinkerhoff. Q: Describe for the Court the process of what happens from the time you receive a payment application until the time that a check goes out the door. TSRCP 1, JA Vol. V., pg. 490, lines 22-24. A: "I approved this [TEXH 9, JA Vol. II., pg. 215, Padilla's 09/25 Payment Request] at 82 percent complete, absolutely did. I felt like Padilla had installed 82 percent of the product." TSRCP 1, JA Vol. V., pg. 491 lines 8-10. Brinkerhoff approved the September 25, 2009 Payment Request in the amount of \$185,991.85 for payment

October 25, 2009. TEXH 9, JA Vol. II., pg. 215²¹.

Big-D failed to perform; to pay Padilla in accordance with the approved Payment Request without justification or excuse. According to the district court, Big-D's performance was excused by Padilla's breach of the Subcontract, which occurred before Big-D's alleged breach (Conclusion of Law ("CL") JA Vol. VII., pg.831, lines 5-6); that payment was excused because IGT rejected Padilla's work (CL, JA Vol. VII pg. 831, lines 7-10), and; Big-D was excused from giving the Subcontract mandated notice of default and opportunity to cure because Padilla refused to participate in the investigation of the cause of the failures and any remediation. CL, JA Vol. pg. 831, line 12, pg. 832, line 7.

Notwithstanding Big-D's failure to present a preponderance of evidence that Padilla's alleged deviations from the plans and specifications caused the complained of separations, Padilla's breach could not have been prior to Big-D's. Big-D stopped payment November 18, 2009 of the payment check for the work Brinkerhoff affirmed Padilla had completed in September (TEXH 61, JA Vol. III., pg. 281) and at a time when Big-D admittedly did not know the cause of the separations. On November 18, 2009, when questioned whether he had released the check to Padilla, Big-D's McNabb responded: "No way. Why would I? Their work is failing. We still don't know who's at fault." TSRCP 1, JA Vol. VI, pg. 650, lines 12-13.

There was no justification to withhold Padilla's payment because IGT rejected the stucco in the absence of an erroneous assumption there was only one cause of the separations, Padilla. The assumption of a single potential cause was contradicted by Brinkerhoff:

[A]t the time, we made the decision [substitute cement board in place of stucco] based on the rejection of Padilla's work by IGT. We didn't know the cause. We didn't know whether it was labor related. We didn't know whether it

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was material related. We didn't know whether it was weather condition related." TSRCP, JA Vol. V., 469, lines 18-23.

Additionally, Padilla complained the cause was Big-D's scheduling the installation of the stone before its stucco properly cured²², which was never disputed until April 8, 2010 when Big-D filed its Counterclaim alleging deviations from the plans and specifications caused the damages; rejection of the stucco requiring the removal and replacement. CC, JA Vol. I., pgs. 16 & 17, paragraphs 11-13. Not when Big-D notified Padilla in mid-September 2009 that the project was going in a new direction (Lopez depo, JA Vol. V., pg. 413, lines 1-2) with a cement board that could better stand the stone pulling forces and didn't require a cure time (*Id.* at 413, lines 17-21) nor in Big-D's counsel, Hurley's November 3rd letter stating "Big-D is looking to Padilla to assist in investigating the cause of the failure." TEXH 58, JA Vol. III., pg. 276, third paragraph, last sentence. IGT's rejection of the stucco was not justification to withhold Padilla's payment in November when Big-D admittedly had no knowledge Padilla caused the separations.

Padilla neither refused to participate in the investigation of the failure or remediation. Upon receipt of Big-D's counsel, Hurley's November 3rd letter stating "Big-D is looking to Padilla to assist in investigating the cause of the failure" (TEXH 58, JA Vol. III., pg. 276, third paragraph, last sentence), Padilla responded stating that "without third party confirmation that its work is sub-standard" it expected to be paid. TEXH 59, JA Vol. III., pg. 278. Big-D never responded to the letter, including suggestions for a third party expert to verify the cause of the separations and a proposal for the fair sharing of the costs. The reason? The reality of the situation in November 2009, there was nothing for anyone to investigate. Lopez

²² Padilla's Lopez testified he told Brinkerhoff the brown coat needed to cure 28 days before installing the stone on it. Lopez depo, Vol. V., pg. 416, lines 19-25, pg. 417, lines 1-4. After Lopez observed some of the separations, Brinkerhoff testified Lopez's only response was "the product should have cured for 30 days before the stone was allowed to be installed on it." TSRCP 1, Vol. V., pg. 593, lines 22-24

testified that the same day Brinkerhoff told him the project was going in a different direction, Big-D was “destroying the product [stucco] and ripping stone off the wall and starting over.” (Lopez depo, JA Vol. V., pg. 413, lines 1-2, pg. 412, lines 17-22). Brinkerhoff’s calendar shows “Demo Padilla Substrate” September 14-16, 2009. (TEXH 74, JA Vol. III., pg. 294). As for refusing to participate in the remedial work, installation of the cement board (Durock), Padilla was never asked. Big-D’s Brinkerhoff testified he didn’t “specifically recall that conversation” asking Padilla if they would install the Durock. (TSRCP 1, JA Vol. VI., pg. 504, lines 4-5), nor could Big-D’s McNabb produce proof that a request for proposal, standard in the construction industry for requesting work/materials beyond the terms of the contract, was issued to Padilla for the installation of the Durock. TSRCP 1, JA Vol. VI., pg. 530, lines 21-25. Big-D’s withholding Padilla’s payment at a time when it admittedly did not know the cause of the separations was a material breach of the Subcontract that caused damages to Padilla in the amount of the payment due for its services, and as approved by Big-D’s Brinkerhoff. TEXH 9, JA Vol. II., pg. 215.

V. BIG-D’S FAILURE TO PROVIDE PADILLA NOTICE OF DEFAULT AND OPPORTUNITY TO CURE WAS ANOTHER BREACH

Big-D’s failure to provide Padilla written notice of an alleged defect of its work and resulting opportunity to inspect and to cure the defect is a breach of the implied covenant of good faith and fair dealing. “In every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party impliedly agrees not to do anything to destroy or injure the right of the other to receive the benefits of the contract. Thus, each party has the duty not to prevent or hinder performance by the other party.” *Hilton Hotels v. Butch Lewis Productions*, 107 Nev. 226, 234 808 P.2d 919 (1991). Padilla’s position is the failure of Big-D to provide Padilla written notice of an alleged defect of its work and resulting opportunity to inspect and to cure the defect as provided by the terms of the Subcontract, section

5.1 and Exhibit “Z”, prior to withholding payment, prevented Padilla’s performance and denied it the benefit (payment) of the Subcontract; a breach of the of the implied covenant of good faith and fair dealing. Joint Pre-Trial Memorandum Pursuant to EDCR 2.67. JA Vol. I., pg. 64, lines 12 – 21.

In mid-September 2009²³, Padilla was informed by Big-D’s Brinkerhoff that installation of the stucco, Padilla’s work, was stopped because “they were going in a different direction” (Lopez depo, JA Vol. V., pg. 413, lines 1-2) with a prefabricated cement “board [Durock] that can handle the pressure of them [stone installers] pulling on it, plus they could install that board and immediately start installing the stone [no cure time].” (Lopez depo, JA Vol. V., pg. 413, lines 17-21) This change in material from stucco to a prefabricated cement board didn’t surprise Lopez who had been adamant to that point the only problem with the stucco was the premature installation of the stone before the stucco was allowed to properly cure. Concerned that the stucco wasn’t being allowed to cure properly, when asked who at Big- D he communicated that concern to, he replied “Everyone.” Lopez depo, JA Vol. V., pg. 411, lines 10-25. A switch to a substrate that didn’t require curing time was understandable because Lopez knew Big-D was under pressure from IGT to finish the project in time for some type of IGT event at the project site. Lopez depo, JA Vol. V., pg. 413, line 22 – pg. 414, line 3.

There was no evidence that at the time of the mid-September announcement of going in a new direction that Big-D alleged the separations were caused by a Padilla commission or omission. To the contrary, reference to the advantage of no cure time for the cement board indicated adequate cure time was an issue. Further, trial testimony made it apparent that in mid-September, Big-D couldn’t have given

²³ Lopez testified that the same day Brinkerhoff told him the project was going in a different direction, Big-D was “destroying the product [stucco] and ripping stone off the wall and starting over.” (Lopez depo, JA Vol. V., pg. 413, lines 1-2, pg. 412, lines 17-22). Brinkerhoff’s calendar shows “Demo Padilla Substrate” September 14-16, 2009. (TEXH 74, JA Vol. III., pg. 294).

Padilla notice of a defect/deficiency in their work causing the separations; Big-D was not aware of any. According to Big-D's Brinkerhoff, answering the question why Big-D didn't terminate the Subcontract with Padilla: "[W]e made a decision [substitute cement board in place of stucco] based on the rejection of Padilla's work by IGT. We didn't know cause." TSRCP 1, JA Vol. V., pg. 469, lines 10-23. In a letter to Padilla's Lopez dated November 3, 2009, Big-D's counsel, Hurley, stated Big-D "is looking to Padilla to assist in investigating the cause of the failure." TEXH 58, JA Vol. III., pg. 276, third paragraph, last sentence. On November 18, 2009, when questioned whether he had released the check to Padilla, Big-D's McNabb responded: "No way. Why would I? Their work is failing. We still don't know who's at fault." TSRCP 1, JA Vol. VI, pg. 650, lines 12-13, TEXH 61, JA Vol. III., pg. 281.

According to the pertinent language of Section 5.1 of the Subcontract titled Notice to Cure:

If you [subcontractor] are guilty of a material breach of a provision of this Subcontract, you may be deemed in default of this Subcontract. If you fail, within three (3) days after written notification, to commence and continue satisfactory correction of such default, then at your expense, we will: (a) Provide the most expeditious correction of the default (b) Supply labor, materials, equipment . . . necessary for the satisfactory correction of your default . . . (c) Withhold payment of moneys due you until the work is fully completed and accepted by the Owner. TEXH 1, JA Vol. I., pgs. 101-102, Section 5.1.

When a contract is clear on its face, it will be construed from the written language and enforced as written. *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599 (2005). Clear on its face, Section 5.1 required Big-D provide a written notice to Padilla of a material default and three days for Padilla to commence and continue satisfactory correction of the alleged default before Big-D was entitled to withhold payment to Padilla. In addition to Padilla's Section 5.1 right to inspect, inherent in the right to commence and continue correction of an alleged default is

Nevada Exhibit "Z" right to inspect a claimed defect in its work. The fourth paragraph states in part:

There shall not be any back charge or deduction from the contract price due Padilla for expense alleged to have been caused by Padilla without prior written notice to Padilla, and Padilla having been given a reasonable opportunity to inspect the claimed defect. TEXH 1, JA Vol. I., pg. 106, 4th paragraph. Note – Brinkerhoff stipulated he initialed the Subcontract on behalf of the Big-D. TSRCP 1, JA Vol. V, pg. 464, lines 18-19.

Big-D's failure to give the requisite written notice of a material breach/defect deceived Padilla to any need to defend its work; to have their expert inspect the failed work, and take samples necessary for laboratory analysis while the alleged failed work was available and before the six month shelf life of the EXPO MX3 expired precluding the scientifically necessary control samples. What else would Padilla believe under the circumstances that its work was being replaced with material that doesn't require cure time and without any notice alleging a breach of the contract or that its work is defective? Padilla's state of mind that inadequate cure time was the problem, and a problem over which Padilla had no control was unchallenged. The stone installation was exclusively scheduled by Big-D. During trial, Brinkerhoff testified he had exclusive responsibility for scheduling the work of all subcontractors; Q: "Would it be fair to say that, if you didn't schedule it, it was not going to happen?" A: "Yes, absolutely." TSRCP 1 JA Vol. V., pg. 462, lines 12-14.

A couple of problems arise from the lack of the Section 5.1 written notice: Padilla was denied an opportunity to cure and mitigate the damages, but this pales in comparison to the denial of Padilla's opportunity to defend its work while the evidence of failed stucco was still available. Neither of which were fair or in good faith, therefore, Big-D breached the implied covenant of good faith and fair dealing in the Subcontract.

VI. BIG-D VIOLATED NEVADA LAW WITHHOLDING PAYMENT TO PADILLA

Nevada Revised Statute 624.624 (JA Vol. V., pg. 425) specifies the law for payments or withholding payments to subcontractors. “When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.” *Nevada Dept. of Corrections v. York Claims Services*, 131 Nev. Adv. Op., No. 25, pg. 7 (2015). This Court reviews issues of statutory construction de novo. *A.F. Constr. Co. v. Virgin River Casino*, 118 Nev. 699, 703, 56 P.3d 887 (2002). A violation of a statute constitutes negligence per se if the injured party belongs to the class of persons that the statute was intended to protect, and the injury suffered is of the type the statute was intended to prevent. *Vega v. E. Courtyard Associates*, 117 Nev. 436, 440, 24 P.3d 219 (2001).

Big-D and Padilla executed a Subcontract for the IGT project September 3, 2009. TEXH 1, JA Vol. I. pg. 93. After the mid-September “going in a new direction” notice from Big-D, Padilla submitted its Payment Request September 25th to Big-D, which Big-D’s Brinkerhoff acknowledged he signed September 30th with the notation payment was due in thirty days on October 25th. TEXH 9, JA Vol. II., pg. 215, TSRCP 1, JA Vol. V., pg. 474, line 17 – pg. 475, line 10.

NRS 624.624(1), JA Vol. V., pg. 425, pertains to written agreements between a higher-tiered contractor [Big-D] and a lower-tiered subcontractor [Padilla]. Accordingly, if the written agreement [Subcontract] includes a schedule for payments, Big-D

shall pay [Padilla] (1) On or before the date payment is due, or (2) Within 10 days after the date [Big-D] received payment for all or a portion of the work, materials, or equipment described in a request for payment . . . ,
Whichever is earlier.” NRS 624.624(1)(a), Emphasis Added

If the Subcontract does not include a schedule for payments, Big-D

“shall pay [Padilla] (1) Within 30 days after the date the

[Padilla] submits a request for payment, or (2) Within 10 days after the date [Big-D] received payment for all or a portion of the work, labor, or equipment described in a request for payment . . .” **Whichever is earlier.**” NRS 624.624(1)(b), Emphasis Added

The district court concluded NRS 624.624 was designed to ensure general contractors pay subcontractors after the general contractor receives payment from the Owner of the project [IGT]. CL, JA Vol. VII., pg. 833, lines 14-16, Emphasis Added. This is contrary to the plain language of the statute. The relevance of the Owner’s payment to the general contractor in either subsection 1, paragraph a. or b., is the potential to shorten the time for payment if the Owner were to pay either before the payment to the subcontractor is due, (a.), or before 30 days after the subcontractor submits a request for payment, (b). In this instance, the Subcontract did not contain a schedule for payments, therefore, as Brinkerhoff stated as standard practice (TSRCP 1, JA Vol. V., pg. 474, line 18 – pg. 475, line 7), payment was due within 30 days after the date Padilla submitted their Payment Request. TEXH 9, JA Vol. II., pg. 216.

Similarly, the district court concluded “Padilla was to be paid . . . after IGT paid Big-D” according to a term of the Subcontract. CL, JA Vol. VII., pg. 834, lines 9-10. This conclusion is contrary to this Court’s finding that “pay-if-paid provisions are unenforceable because they violate public policy.” *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1117-1118, 197. P.3d 1032 (2008). Also noted in the Subcontract, Section 4.2 (TEXH 1, JA Vol. pg. 101), paragraph above Section 4.3), which contains the statement “As an absolute condition precedent to you receiving payment . . . we must have first received from the Owner the corresponding periodic payment”, there is the handwritten notation, “Nevada Law will take precedence” and initialed by Big-D’s Brinkerhoff.²⁴

²⁴ Brinkerhoff stipulated he initialed the Subcontract on behalf of the Big-D. TSRCP 1, JA Vol. V, pg. 464, lines 18-19.

Big-D had no lawful right to withhold Padilla's payment. Pursuant to NRS 624.624(2), Big-D's right to withhold Padilla's payment was contingent on compliance with subsection 3. According to NRS 624.624(3), if Big-D intended to withhold any amount from its payment to Padilla, Big-D must have given, on or before the date payment was due, a written notice to Padilla of any amount that will be withheld and give a copy of the notice to all other contractors and the Owner. The written notice must:

- (a) Identify the amount of the request for payment that will be withheld from the lower-tiered subcontractor;
- (b) Give a reasonably detailed explanation of the condition or the reason the higher-tiered contract will withhold that amount, including, without limitation, a specific reference to the provision of section of the agreement with the lower-tiered subcontractor, and any documents relating thereto, and the applicable building code, law or regulation with which the lower-tiered subcontractor has failed to comply; and
- (c) Be signed by an authorized agent of the higher-tiered contractor. NRS 624.624(3)(a), (b), (c).

Accordingly, Big-D's NRS 624.624 written notice to Padilla of its intent to withhold payment was due October 25, 2009, in accordance with Brinkerhoff's calculation of the payment due date. TSRCP 1, JA Vol. V., pg. 474, line 18 – pg. 475, line 7, TEXH 9, JA Vol. II., pg. 216. Such notice never occurred, instead, Big-D, citing "unresolved disputes with Padilla" stopped payment November 18th on its check in the amount of Padilla's requested payment. TEXH 12, JA Vol. II., pg. 222, TEXH 61, JA Vol. III., pg. 281. The district court found Big-D's counsel letter dated November 3 (TEXH 58, JA Vol. III., pg. 276) was "sufficient to constitute required written notice to justify withholding payment." CL, JA Vol. VII., pg. 837, lines 8-9. The letter does not conform substantially with the NRS 624.624 written notice requirement; notably, there is no specific reference to the provision or section of the agreement with the lower-tiered subcontractor, and any documents relating thereto, and the applicable building code, law or regulation with which the lower-tiered

subcontractor has failed to comply, which is not surprising, when the gist of the letter is “looking to Padilla to assist in investigating the cause of the failure.” TEXH 58, JA Vol. III., pg. 276, third paragraph, last sentence, Emphasis Added.

In addition to the NRS 624.624 requisite notice before withholding payment, NRS 624.624(4) provides the subcontractor an opportunity to cure alleged reasons for withholding payment. A subcontractor who receives a notice of withholding may: “Correct any condition or reason for the withholding described in the notice of withholding . . .” NRS 624.624(4)(b).

It is obvious the intent of NRS 624.624 is to protect subcontractors’ payments from irrational and undefined reasons for withholding payment and to provide a subcontractor an opportunity to cure, that in the instant matter, Padilla was denied by Big-D’s failure to provide the requisite written notice of the reasons for withholding payment and withholding payment when Big-D admitted it did not know the cause of the separations nor that Padilla was culpable for all potential causes. According to Big-D’s Brinkerhoff:

[A]t the time, we made the decision [substitute cement board in place of stucco] based on the rejection of Padilla’s work by IGT. We didn’t know the cause. We didn’t know whether it was labor related. We didn’t know whether it was material related. We didn’t know whether it was weather condition related.” TSRCP 1, JA Vol. V., pg. 469, lines 10-23.

And according to Big-D’s McNabb, when questioned whether he had released the check to Padilla, Big-D’s McNabb responded: “No way. Why would I? Their work is failing. We still don’t know who’s at fault.” TSRCP 1, JA Vol. VI , pg. 650, lines 12-13.

Big-D’s stopping Padilla’s payment was in violation of NRS 624.624 causing injury in the way of non-payment of the amount Big-D agreed was due for the work performed on the IGT Stone Replacement project. TSRCP 1, JA Vol. V., pg.491 lines 8-10. Big-D was negligent per se.

VII. NO DUTY FOR PADILLA TO INDEMNIFY

According to the district court, Padilla had a duty to indemnify, defend, and hold harmless pursuant to Section 3.6 of the Subcontract. CL pg. 22, lines 22-23. Pursuant to the express language of this section, Padilla's duty arises solely from its acts or omissions, willful or negligent conduct, which as noted above, Big-D has failed to prove-up.

VIII. PADILLA'S CLAIM AGAINST F&D CONTINGENT ON AWARD OF DAMAGES

Although the district court found Big-D's Motion for Judgment as a Matter of Law on the issue of Padilla's claim against the bond posted to release Padilla's lien on the IGT building was not meritorious, it found the issue was moot under the circumstances of the court's denial of Padilla's damages. CL, JA Vol. VII, pg. 838, lines 8-13. In the instance that Padilla shall prevail in this appeal and a finding it is entitled to damages, its claim against F&D should be restored.

IX. PADILLA ENTITLED TO SPOILIATION INSTRUCTION

According to the district court, "it would be improper to order a spoliation remedy when Padilla did not intend to take additional advantage of additional inspection opportunities even if they had been available." CL, JA Vol. VII., pg. 842, lines 6-7. The obstacle to finding the truth in this matter, what caused the separations, is the lack of evidence, more specifically, the absence of any samples of failed stucco: stucco that cured the two and seven day periods specified by Big-D and failed during the stone installation adhesive test; that is, the stone pulled the second coat of stucco from the first coat of stucco after the stucco was properly cured. All of which was the result of Big-D's failure to obtain valid samples when they were available, and to give Padilla fair notice that it needed to obtain samples for a defense.

Big-D had a prelitigation duty to preserve samples of the failed stucco when litigation was reasonably foreseeable. *Bass-Davis v. Davis*, 122 Nev. 442, 450, 134 P.3d 103 (2006). Nothing should have been more apparent to Big-D, at the time of

the stucco separations and IGT's rejection of the stucco, that litigation was imminent and the failed stucco would be relevant. Big-D's McNabb testified that at the time of first event of a stone pulling the stucco apart "our counsel [Bill Hurley] was involved in every communication because it was such a controversial issue. They [IGT] had Mark [Ferrario], their attorney, everything was Mark and Bill and then Valerie [Higgins], their [IGT's] internal counsel. TSRCP 1, JA Vol. VI., pg. 647, lines 17-23. And, at a time when Big-D admitted it didn't know the cause of the separations, and as noted below, IGT was commanding the removal and replacement of the failed stucco, the evidence, its incomprehensible Big-D wouldn't have preserved samples of the failed stucco for both their defense and to prosecute an action if it was established the cause was a third party, such as Padilla.

According to the district court, spoliation sanctions are only appropriate to a party controlling the evidence, which Big-D didn't have because it was IGT that directed Big-D "to remove and replace the Padilla Work on an expedited basis." CL, JA Vol. VII. pg. 841, lines 24 – 26. There is no showing that IGT's order to remove and replace the Padilla Work prohibited IGT from preserving samples of failed work.

According to the district court, Padilla was invited to participate in the testing Big-D performed, and there wasn't any evidence Big-D excluded Padilla from any available opportunities to inspect the Padilla Work. CL, JA Vol. VII., pg. 841, line 26 – pg. 842, line 2. There isn't any evidence that Big-D ever tested failed work that it could have invited Padilla to participate in. As evidenced by the appearance of Chin, former IGT consultant, at trial and Big-D's exclusive reliance on him for proof of Padilla's culpability; there wasn't any Big-D's testing for causation. However, Big-D did exclude Padilla from inspecting failed work with their failure to preserve samples and to give any notice to Padilla of its culpability; alerted to the prospect Padilla would need a defense. Instead, Padilla received notice the project was "going in a different direction" (Lopez depo, JA Vol. V., pg. 413, lines 1-2) with a

prefabricated cement “board that can handle the pressure of them [stone installers] pulling on it, plus they could install that board and immediately start installing the stone [no cure time]” (Lopez depo, JA Vol. V., pg. 413, lines 1-2); nothing that even implies suspicion of Padilla’s culpability.

Brinkerhoff’s calendar shows “Demo Padilla Substrate” September 14-16, 2009. TEXH 74, JA Vol. III., pg. 294. Two weeks before Brinkerhoff approved Padilla’s Payment request (TSRCP 1, JA Vol. V., pg.491 lines 8-10) and seven weeks before Big-D’s counsel’s letter conditioning further payment to Padilla on assistance establishing Padilla met all its obligations under the Subcontract Agreement. TEXH 58, JA Vol. III., pg. 277, last paragraph. Additionally, when Padilla requested “third party confirmation that its work is sub-standard”, Big-D never responded. TEXH 59, JA Vol. III., page 278, last paragraph. In the absence of valid samples, what could be scientifically investigated by anyone? Not once in the course of discovery did Big-D put forth a sample of failed stucco with information of installation dates to confirm specified cure times.

Big-D breached its duty to preserve the failed stucco, at least valid samples, when litigation was reasonably foreseeable and samples of the failed would be relevant. Therefore, Padilla was entitled to an adverse inference instruction that the district court may draw an inference that if samples of the failed stucco were available for testing, the results would have been unfavorable to Big-D.

X. BIG-D NOT ENTITLED TO JUDGMENT
IN THE AMOUNT OF \$600,000.00

The district court found Big-D proved it was entitled to recover damages against Padilla, and according to the Joint Stipulation, “judgment against Padilla in the amount of \$600,000.00.” CL, JA Vol. VII., pg. 840, lines 5-6. The district court misread the stipulation: “Padilla stipulates to entry of judgment in the amount of the Allowed Claim (\$123,091.39).” Stipulation (“STIP”), JA Vol. V., pg. 430, lines 1-

2.

Pursuant to Eighth Judicial District Court Rule 7.50, a stipulation is effective if it is in writing subscribed by the party against whom the same shall be alleged. In an effort to reduce trial time, counsel for both Big-D and Padilla discussed the futility of the time proving up alleged damages of more than \$750,000.00, when the fact was the most Big-D could recover pursuant to the Bankruptcy Court's allowed claim and approved Chapter 11 plan, was \$123,091.39²⁵. STIP, JA Vol. V., pg. 430, lines 1-2. Accordingly, counsel for Big-D drafted a Joint Stipulation as to Damages on Big-D Construction Corporation's Counterclaim which was in writing, signed by the President of Padilla Construction Company of Nevada, announced to the court (TSRCP JA Vol. V., pg. 444, line 24 – pg. 445, lines 1-11) and filed December 3, 2014. STIP, JA Vol. V., pg. 427. A settlement agreement is a contract governed by the general principles of contract law, the interpretation of such is reviewed de novo. "We have stated that contracts will be construed from their written language and enforced as written." *The Power Company v. Henry*, 130 Nev. Adv. Op., No. 21, pgs. 6-7 (2014).

According to the Stipulation, pages 3 & 4, paragraph, 6:

Given that any recovery by Big-D against Padilla is limited to the Stipulated Payment, in the event that this Court determines Padilla is liable to Big-D for costs to remove and replace the Padilla Work, Padilla stipulates to entry of judgment in the amount of the Allowed Claim, (\$123,091.39) . . . STIP, JA Vol. V., pg. 429, line 18 – pg. 430, line 2.

The district court misstated the amount of the stipulated judgment as \$600,000.00, which must be corrected to \$123,091.39, the parties' stipulation.

²⁵ During the course of the instant matter, Padilla Construction Company of Nevada filed a Chapter 11 Petition October 11, 2011, after which Big-D and Padilla stipulated to a contingent claim upon Big-D prevailing in the instant manner of a maximum \$600,000.00, to be paid according to the approved plan, which parties agreed, was \$123,091.38. See following Argument, XI.

XI. BIG-D NOT ENTITLED TO ATTORNEY'S FEES, COSTS, INTEREST

Post judgment, Big-D submitted a motion for Attorneys' Fees, Costs and Interest Pursuant to Judgment and to Amend Judgment to \$1,234,678.55. Motion, JA Vol. VII., pg. 854 line 13. Padilla filed an Opposition contesting the district court's jurisdiction to award a judgment in excess of the maximum amount of the Bankruptcy Court's allowed claim, \$600,000.00. Opposition, JA Vol. VII., pg. 865, lines 8-10. Big-D responded that the costs, fees and interest are post-petition debts not impacted by the bankruptcy action. REPLY, JA Vol. VII., pg. 887, lines 12-16. The district court issued an Order awarding Big-D Fees and Costs in the amount of \$414,433.99 and post judgment interest at a daily rate of \$59.61. ORDER, JA Vol. VII., pg. 908 lines 2-7.

Padilla argued the Bankruptcy Court had retained jurisdiction over any and all disputes regarding the operation and interpretation of the Plan and this Order [Confirming Debtors' First Amended Joint Plan of Reorganization, JA Vol. VII., pg. 896, lines 18-22]. TSRCP, JA Vol. VI., pg. 30, lines 23-28. Therefore, whether the fees, costs and interest sought by Big-D was post-petition or not subject to the stipulated claim, was for the Bankruptcy Court to decide, and not the Eighth Judicial District Court. Trans pg. 23, line 23 – pg. 7, line 2.

[W]here the judgment or decree of the Federal court determines a right under a Federal statute, that decision is final . . . and an adjudication under the reorganization provisions of the Bankruptcy Act, effect as res judicata is to be given the Federal order. *Stoll v. Gottlieb*, 305 U.S. 165 (1938).

In the absence of the district court's subject matter jurisdiction to determine Big-D's request for an Amended Judgment exceeding the Bankruptcy Court's allowable claim against Padilla, the district court's Order entered July 22, 2015 is void. *Landreth v. Malik*, 127 Nev. Adv. Op., No. 16, pg. 4 (2011)

XII. CONCLUSION

The district court overlooked Big-D's numerous admissions, by word and conduct, that there is no evidence that a Padilla commission or omission caused the complained of separations. Equally sure, is the fact that the responsibility of no evidence of the cause of the separations is exclusively Big-D's. Big-D's failure to retain samples of the failed stucco was neither precluded nor restrained by IGT's command to remove and replace the stucco. Equally certain, is the fact that Big-D's failure to give Padilla notice required by both Subcontract and Nevada law denied Padilla critical notice of potential culpability for the separations and the need to inspect, investigate, potentially cure, and most importantly, be alerted to the need to prepare a defense. Accordingly, Padilla is entitled to judgment against Big-D for breach of the Subcontract, breach of the implied covenant of good faith and fair dealing, and violation of Nevada law. Irrespective of the Court's decision of liability, the district court's misunderstanding of the stipulated judgment must be corrected and its award of attorney's fees, costs, and interest without subject matter jurisdiction must be voided.

NRAP 28.2 Attorney's Certificate/NRAP 32(8)(A)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and type style of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft 2013 Word in 14 font size and Times New Roman.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of

my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of January 2016.

/s/ Bruce R. Mundy

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EXHIBIT 14

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

PADILLA CONSTRUCTION
COMPANY OF NEVADA, A
NEVADA CORPORATION,

Appellant,

v.

BIG-D CONSTRUCTION CORP., A
UTAH CORPORATION,

Respondents.

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RULE 26.1 DISCLOSURE

Pursuant to Nev. R. App. Proc. 26.1, the undersigned counsel certifies that Respondent Big-D Construction Corp. is a Utah Company licensed to perform construction in Nevada. The parent company is Big-D Corporation, a Wyoming Company. Big-D is represented by its in-house counsel, Melissa A. Beutler, Esq. (Bar No. 10809) and Nicole E Lovelock (Bar No. 11187) of Holland & Hart LLP.

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I. STATEMENT OF THE ISSUES¹

1. Did the District Court clearly err in determining that the stucco work performed by Padilla was defective?
2. Did the District Court clearly err in finding that Big-D gave proper notice of withholding to Padilla pursuant to NRS 624.624?
3. Did the District Court abuse its discretion in declining to give itself a spoliation instruction?
4. Did the District Court have the authority to award attorneys' fees and costs to Big-D to defend the Padilla Action?

II. STATEMENT OF THE CASE

Padilla Construction Company of Nevada ("Padilla") commenced a mechanic's lien action in the Eighth Judicial District Court for Clark County (the "Padilla Action"). Padilla was a subcontractor to Big-D Construction Corp. ("Big-D"), who was acting as the general contractor for IGT to construct its office headquarters and related facilities on South Buffalo Drive in Las Vegas, Nevada ("the "Project"). Padilla performed stucco work on the Project (the "Padilla Work"). IGT rejected the Padilla Work and required Big-D to remove and replace it.

¹ The defined terms set forth in the Statement of the Issues are defined in the Statement of the Case.

In January 2010, Padilla initiated the Padilla Action even though it is undisputed that the Padilla Work had been rejected by IGT and Big-D had removed and replaced the Padilla Work at IGT's direction. Big-D filed a counterclaim related to the nearly \$1 million incurred by Big-D to remove and replace the Padilla Work and the adjacent work damaged by the defective Padilla Work (the "Big-D Counterclaim").

In October 2011, Padilla filed a Chapter 11 bankruptcy action in the Central District of California (the "Padilla Bankruptcy"). Padilla continued to prosecute the Padilla Action, as it was not stayed by the Padilla Bankruptcy. Big-D filed a proof of claim in the Padilla Bankruptcy and received relief from the automatic stay to continue to prosecute the Big-D Counterclaim. Subsequently, Big-D stipulated to the reorganization plan in the Padilla Bankruptcy, which capped the maximum amount of Big-D's Counterclaim for pre-confirmation claims at \$600,000—subject to actual proof and liquidation in the Padilla Action.

Big-D and Padilla stipulated to nearly all operative facts—except causation. Padilla agrees that the Padilla Work failed but contends that the failure was not the result of workmanship. Critically, Big-D and Padilla stipulated the amount of costs incurred by Big-D to remove and replace the defective Padilla Work exceeded the \$600,000 allowed claim (in order to avoid the need for additional trial time to prove these damages). As a result of the stipulations, the only

remaining issue for trial was causation—was Padilla responsible for the failures in the Padilla Work. If yes, then pursuant to the parties’ stipulations, Big-D was entitled to damages in the principal amount of \$600,000.00.

The Padilla Action proceeded to a three-day bench trial in December 2014. Judge Denton issued detailed Findings of Fact and Conclusions of Law and a Judgment in favor of Big-D. The District Court’s factual findings were supported by substantial evidence that Padilla failed, in several independent ways, to construct the Padilla Work in compliance with the plans and specifications. Subsequently, Judge Denton awarded Big-D its post-petition costs and fees associated with defending the Padilla Action.

III. STATEMENT OF THE FACTS

The parties stipulated to nearly all operative facts in the Joint Pretrial Memorandum. JA Vol. 1, pg. 45-52. Padilla’s Opening Brief mischaracterizes the context of those facts—the most material of which are explained below. Notably, the “Joint Appendix” filed by Padilla selectively omits a number of admitted trial exhibits that were included with the substantial evidence that Padilla’s Work was defective. Those exhibits are now included with Respondent’s Appendix.

A. The Padilla Work Was Defective; The Owner Directed Big-D to Remove and Replace the Padilla Work.

The Project. Between 2006 and 2008, Big-D acted as the general contractor for the Project—IGT’s corporate headquarters. JA Vol. 1, pg. 46:10-7, Pre-Trial

Memorandum, Stipulated Facts. The centerpiece of the Project was an office building constructed with large sandstone panels installed on the exterior and in the interior lobby. IGT took occupancy of the Project in the early summer of 2008. *Id.* at 46:17-22.

After deficiencies were identified with the stone work performed in the initial construction, IGT directed Big-D to remove and replace the original stone work. *Id.* Because the stone could not be removed without damaging the underlying two-coat stucco system, Big-D was required to remove the stucco system as well as the stone. *Id.* at 46: 23-25. IGT directed Big-D to perform the repair work in August and September 2009, with a firm finish deadline to enable IGT to entertain customers in town for the G2E convention in mid-October 2009. *Id.* at 46:27-47:11.

The Padilla Subcontract. Padilla was not involved in the original construction of the Project. In August 2009, Padilla contacted Big-D and requested the opportunity to submit a proposal for the stucco portion of the replacement work. JA Vol. VI, pp. 555:14-557:13 (Brinkerhoff Testimony); JA Vol. II, pp. 223-225 (Tr. Ex. 13). The stucco scope of work required an initial metal lath layer, followed by a two-coat stucco system (the “Padilla Work”). JA Vol. 1, pg. 48:10-19, Pre-Trial Memorandum, Stipulated Facts. Big-D ultimately contracted with Padilla to perform the Padilla Work and the parties executed a

subcontract agreement (the “Subcontract Agreement”). *Id.* at 46:27-47:4. JA Vol. I, pp. 91-107, (Tr. Ex. 1, Subcontract Agreement).

The Subcontract Agreement required Padilla to furnish “all labor, materials, equipment, and necessary services to install complete exterior and interior stucco (plaster) including lath, scratch, and brown coat.” JA Vol. 1, pp. 91-93 (Tr. Ex. 1, Subcontract Agreement). The Subcontract Agreement required Padilla to perform the Padilla Work in compliance with the Plans and Specifications for the Project, which included specific parameters, including the following:

- Minimum plaster thicknesses as specified [in included chart]. JA Vol. 1, pg. 456, (Tr. Ex. 4, Section 09220 at 3.4G).
- The scratch coat was to be “horizontally cross-rake[d] to provide key for second Base Coat (brown coat).” *Id.* at Section 09220 at 3.4C.
- The base coat was to be “applied so that it meets the required total thickness” and “not vary more than 1/4 in.” *Id.* at Section 09220 at 3.4D 1, 2.
- Remove and replace unacceptable plaster and base. *Id.* at Section 09220 at 3.10D.
- Comply with specified plastering standards.²

² The Specifications, at Section 092200 at 1.1 .A, provided that the Padilla Work was to comply with the following plastering standards: (a) ASTM-C926, [contained at JA. Vol. 4, pg. 352-61, Trial Exhibit 89]; (b) Portland Cement Association Plaster (Stucco) Manual, Trial Exhibit 90, [contained at RA. Vol II, pg. 277-325 (Tr. Ex. 90)]; and (c) per Building Code, as locally adopted,

Cure Times. As the specialty subcontractor with substantial expertise in stucco, Padilla was required to both (i) select the stucco product for approval by the Architect [JA Vol. VI, pp. 559:24-566:1 (Brinkerhoff Testimony)] and (ii) control the means and methods of the Padilla Work, including setting the required “cure” times between the stucco coats and before stone work was to be installed over the Padilla Work. JA Vol. VI, pp. 620:10-631:17 (Brinkerhoff Testimony); JA Vol. VI, pp. 682:12-683:13 (Chin Testimony).

Contrary to Padilla’s claim that “cure times were far from settled and an ongoing controversy,” [Opening Br. at 7], the record is clear that the cure times were set at (i) two days between scratch coat and brown coat and (ii) seven days between brown coat and stone installation. JA Vol. VI, pp. 620:10-631:10 (Brinkerhoff Testimony); JA Vol. VI, pp. 685:16-687:11 (Chin Testimony). In fact, IGT’s consultant testified, he was “very comfortable with [the 2-day/7-day cure times] because it was consistent with the Code and all other standards and, especially, the stucco manufacturer’s recommendation.” *Id.* at 685:4-11. Further, Padilla’s assertion that there was no “summit meeting between IGT, Big-D, EXPO and Padilla” related to cure times is inapposite. Opening Br. at 8. Rather, all

[contained at RA. Vol. II, pg. 326-327,(Tr. Ex. 91); JA Vol. 1, pg. 456 (Tr. Ex. 4., Section 09220 at 1.1 .A).

parties understood that Padilla was responsible for the cure times—and no party objected to the cure times. JA Vol. VI, pp. 739:14-24 (Chin Testimony).

Although the Architect and IGT *reviewed* the proposed cure times, neither party disputed them; they allowed the means and methods to remain in Padilla's hands, as the 2-day/7 day time periods presented no concerning deviation from industry standard or local code. JA Vol. VI, pp. 620:10-631:10 (Brinkerhoff Testimony); JA Vol. VI, pp. 742:14-25 (Chin testimony). In addition, Big-D implemented quality control measures to ensure the stone contractor did not install stone over the Padilla Work until after the seven-day period expired. JA Vol. VI, pp. 583:2-584:8 (Brinkerhoff Testimony).

Failures of the Padilla Work. Shortly after Padilla commenced its work, the two layers of the Padilla Work began to separate from each other. JA Vol. 1, pg. 49:9-13, Pre-Trial Memorandum, Stipulated Facts; RA Vol. 1, pg. 137-156, Tr. Ex. 17 (Padilla's crew's daily logs); RA Vol. 1, pg. 173-202; Tr. Ex. 21 (email to Padilla management). IGT's consultant, Ian Chin, reported that Padilla's Work failed to comply with the Plans and Specification in several respects. JA Vol. VII, pp. 743-786 (Chin Testimony). The testing revealed multiple, independent causes of the failures, including (a) improper thicknesses of the stucco; (b) failure to adequately hydrate the stucco mix; (c) failure to adequately compact the brown and scratch coats; (d) contaminated materials within the stucco mix; and (e) failure to

adequately score the scratch coat to allow the brown coat to bond. *Id.*; JA Vol. IV, pp. 380-382 (Tr. Ex. 406). Any of these failures, alone, would have been a sufficient basis to reject the work.

Padilla was involved in the on-site meetings and invited to all testing sessions. Further, information regarding IGT's testing and results were communicated real-time to Padilla. Accordingly, Padilla's assertion in its Opening Brief that it first learned of the basis for IGT rejecting the stucco in Big-D's counterclaim is false.

Stucco Failures Widespread; Unrelated to Stone Installation. Contrary to Padilla's characterization, the failures in the Padilla Work were widespread. The Padilla Work failed in all of its locations. Although the failures were initially observed during the stone installation, the failures were not limited to areas in which stone was installed over the stucco. Rather, the same failures were identified throughout the entire project—including the interior of the building where it is undisputed that no stone work was installed over the Padilla Work. JA Vol. VI, pp. 722:1-728:25 (Chin Testimony); JA Vol. V, pg. 480:16-481:16 (Brinkerhoff Testimony); JA Vol. III, pp. 279-80 (Tr. Ex. 60). As Big-D's project manager testified regarding the interior stucco, "as we started taking these cores out, you could simply twist them like a mason jar and separate the brown coat from

the scratch coat....there was just no adhesion between the scratch and the brown.”
JA Vol. V, pg. 480:16-481:16 (Brinkerhoff Testimony).

IGT Directs Big-D to Remove and Replace the Padilla Work. IGT made the decision to reject the Padilla Work both in the interior and exterior of the Project. JA. Vol. V, pg. 421-24 (IGT Deposition). The basis for IGT’s decision included the recommendation of Mr. Chin that “he didn’t believe it was installed to the standards that would give him high confidence that the system would be able to take and handle stone.” *Id.* As a result, it is undisputed that IGT made the decision to reject the Padilla Work because it determined Padilla failed to comply with the Plans and Specifications. *Id.*; JA Vol. VI, pp. 722:1-728:25 (Chin Testimony); JA Vol. V, pg. 480:16-481:16 (Brinkerhoff Testimony). The Padilla Work on the site further presented a safety concern that required immediate remove and replacement because 40 lb stone panels had been installed over the top of portions of the Padilla work that was failing. JA Vol. VI, pp. 526-27 (McNabb Testimony).

B. Big-D Gave Padilla *Repeated* Notice of the Failures in the Padilla Work and Requested Padilla’s Assistance to Defend the Work.

Padilla was regularly and repeatedly advised of failures of its work both during *and* after the Project. JA Vol. 1, pg. 49:9-50:13, Pre-Trial Memorandum, Stipulated Facts. In addition, Padilla’s own crew advised Padilla management of the failures in the Padilla Work. *Id.* at 49:9-27; RA Vol. 1, pg. 137-156, Tr. Ex. 17 (Daily Field Logs of Padilla’s crew).

During the Project. Both IGT and Big-D specifically and repeatedly requested Padilla to participate in testing to determine whether the Padilla Work was suitable. JA Vol. I, pg. 50:1-28, Stipulated Facts; JA Vol. III, pg. 265, Tr. Ex. 46 (email informing Padilla “we have another area of separation between the brown and scratch coat” and requesting a telephone call to discuss). JA Vol. V, pp. 486:14-23, 487:4-15 (Brinkerhoff Testimony). Padilla was present during testing performed on-site on September 16 and 23 and was present when the demolition of the Padilla Work commenced. JA Vol. V, pg. 476:24-477:15, 480:2-25 (Brinkerhoff testimony).

These invitations were made both during the construction and after the Padilla Work was rejected. Yet, Padilla did nothing to investigate. Padilla did not investigate whether the brown coat that it was using was too stiff. RA. Vol. II, pg. 352-353 (Lopez Deposition at 129:2-9). Padilla did not investigate whether the two layers of its stucco were sufficiently compacted. *Id.* (Lopez Deposition at 129:10-13). Padilla did not investigate whether the water content of the brown coat was sufficient at the time that it was applied. *Id.* (Lopez Deposition at 132:18-22). When Padilla first became aware of the presence of chunks in its stucco work, its expert, Mr. Roberts, recommended that it investigate the product mix to identify the source of contaminates. *Id.* at 335 (Lopez Deposition at 43-45). Padilla did

not take any action to investigate the product because “*that cost money.*” *Id.* (Lopez Deposition at 44:1-2) (emphasis added).

Padilla’s executive responsible for the Project made clear “we weren’t going to participate” in testing and investigation of Padilla’s Work. *Id.* at 342 (Lopez Deposition at 84: 12-17; 82-84).

Q. And do you recall, did Big-D in fact request Padilla to assist it to investigate the cause of the failures of the product?

A. Yes

Q. And what, if anything, did Padilla do to assist Big-D to investigate the cause of the product failure?

A. Ask for our money.

Id. at 354 (Lopez Deposition at 135:16-23).

After the Project. Even with Padilla’s failure to assist, Big-D continued to defend the Padilla Work for a period of weeks and requested Padilla’s assistance and participation in its efforts. JA Vol. 1, pg. 50:1-7 Stipulated Facts; RA Vol. 1, pg. 237-238, Tr. Ex. 52; JA Vol. 3, pg. 272, Tr. Ex. 55; JA. Vol. III, pg. 268, Tr. Ex. 53 (email confirming teleconference between Big-D and Padilla to discuss plan to defend work); JA Vol V, pg. 469:10-24 (Brinkerhoff Testimony); JA Vol VI, pg. 497-502 (Brinkerhoff Testimony).

This included the following measures: (i) a request for a meeting immediately after IGT rejected the Padilla Work (which was scheduled for September 29, 2009); (ii) several telephone calls from Big-D to Padilla to follow up on the September 29 meeting, JA Vol. 5, pg. 473:13-18 (Brinkerhoff testimony)

and (iii) a formal letter that stated, “Big-D is looking to Padilla to assist in investigating the cause of the failure...It would be a tremendous assistance if Padilla would furnish Big-D with any documentation or other evidence at its disposal which relates to the involvement of IGT or its consultant, Ian Chin.” JA Vol. III, pg. 275- 77, Tr. Ex. 58 (letter from Big-D requesting that Padilla assist Big-D to defend the Padilla work to IGT; confirming payment to be withheld unless and until work could be defended). Padilla unequivocally declined unless it was immediately paid in full for the removed and rejected work. JA Vol. III, pg. 278 (Tr. Ex. 275); JA Vol VI, pg. 497-502 (Brinkerhoff Testimony); RA Vol. II, pp. 352-354 (Lopez Deposition at 135:16-23).

Padilla’s Crews’ Knowledge.

It was no secret that the Padilla work was failing. Even Padilla’s own crews identified the separation. RA Vol. 1, pg. 137-156, Tr. Ex. 17 (Daily Field Logs of Padilla’s crew). Padilla’s field notes indicate as follows:

Date	Notation
September 10, 2009	“The brown is pulling from the scratch on the first two columns that we scratch and brown after the mock-up.”
September 11, 2009	“We have the same problem on the brown coat on the second column when the stone installers do the bonding test the brown pulls from the scratch. Call Joe [Lopez] let him know. Also, Joe [Padilla management] says for me to keep doing the production. ”
September 15, 2009	“Today, 3 more areas where install stone when stone installers pull it to check bonding, brown coat came loose

Date	Notation
	from scratch coat. Joe Lopez [Padilla management] let him know what happened. His response was for me to keep doing what I was doing and that nothing was wrong."
September 16, 2009	"Today, two more areas came loose."

Id. (emphasis added). Padilla management brazenly instructed the Padilla crews to keep working, in spite of identified instances of failure in Padilla's Work. *Id.*

C. Big-D Gave Padilla *Repeated* Notice of the Failures in the Padilla Work and Requested Padilla's Assistance to Defend the Work.

IGT did not give Big-D the opportunity to remove and replace the Padilla Work. JA Vol. VI, pp. 525-536 (McNabb Testimony). On the outside of the building, IGT immediately directed Big-D to place an alternate system. Because there was no longer time to allow the two-coat stucco system to cure before IGT needed the project for its international client event, IGT directed Big-D to use an alternate, slightly less desirable method of construction using a cement board base for the stone instead of the stucco.³ JA Vol. 1, pg. 50:7-13, Pre-Trial Memorandum, Stipulated Facts; JA. Vol. V, pg. 421-24 (IGT Deposition); JA Vol 5, pg. 489-90 (Brinkerhoff testimony); JA Vol. VI, pp. 525-536 (McNabb).

³ Again, Padilla brazenly misrepresents the evidence on this issue. Opening Br. at 3. Contrary to Padilla's representation that Big-D and IGT determined the cement board "was better suited to the stone adhesive coverage pulling," all evidence indicates that the sole basis for the switch was timing and IGT firmly believed it was a less desirable solution than the stucco—not some sort of improvement. JA. Vol. V, pg. 421-24 (IGT Deposition); JA Vol 5, pg. 489-90 (Brinkerhoff testimony)

Months later, IGT informed Big-D that it refused to allow Big-D the opportunity to replace the Padilla Work on the interior of the building. JA Vol. VI, pp. 517-18 (McNabb Testimony); JA Vol. III, pp. 286-290. In fact, the failure of the Padilla Work formed the basis for a dispute between Big-D and IGT and resulted in Big-D paying substantial damages to IGT. JA Vol. VI, pp. 524-26 (McNabb Testimony); JA Vol. III, pp. 283-285 (Tr. Ex. 64).

By a mistaken accounting error, Big-D released a check to Padilla in October 2009. JA Vol. V, pp. 490:20-492:25 (Brinkerhoff Testimony); JA Vol. VI, pp. 494:1-498:1, 507:18-511:8 (Brinkerhoff Testimony); JA Vol. II, pp. 215-220, Tr. Ex. 9 (Payment Request); JA Vol. II, pp. 291-292, Tr. Ex. 73 (Big-D AP History). Big-D immediately stopped payment on the check and called Padilla to advise that the check was released in error and that payment was to be withheld pending further investigation into the causes of the failure of the Padilla Work. JA Vol. VI, pp. 494:1-498:1, 507:18-511:8 (Brinkerhoff Testimony); JA Vol. III, pp. 281-282, Tr. Ex. 61 (Email).

D. District Court Relied on Substantial Evidence that the Padilla Work Was Defective.

Based upon the presentation of the evidence, the District Court considered substantial factual evidence that the Padilla Work was defective and was not constructed in compliance with the Plans and Specifications. This included evidence from:

(i) On-site investigation: JA. Vol. 3, pg. 261-266 (Tr. Ex. 43, 44, 46); RA Vol I, pg. 231-238 (Tr. Ex. 45, 47, 48, 49, 51); ; JA Vol. 5, pg. 48-85; [Chin testimony]

(ii) Photographs of the defective work as it was observed, JA Vol. IV, pp. 374-384, Tr. Ex. 404 and 405;

(iii) Testimony of Big-D on-site project manager, Brent Brinkerhoff, JA Vol. V, pp. 480-86 (Brinkerhoff Testimony); JA Vol. VI, pp. 498-503 (Brinkerhoff Testimony);

(iv) Testimony of Big-D's principal in charge who was onsite, Forrest McNabb, JA Vol. V, pp. 527 (McNabb Testimony);

(v) Testimony of Padilla's executive responsible, Joseph Lopez, JA Vol. V, pp. 407-417 (Lopez Testimony); RA Vol. II, pp. 328-356 (Lopez testimony);

(vi) Testimony of IGT's responsible executive, Robert Stecker, JA Vol. V, pp. 418-424 (IGT Testimony); RA Vol. II, pp. 357-384 (IGT testimony);

(vii) Testimony of IGT's designated on-site expert based upon personal observation and investigation, Ian Chin, JA Vol. VII, pp. 734-784 (Chin Testimony);

(viii) testimony regarding findings of IGT's off-site petrographic analysis, *Id.* and JA. Vol. IV, pp. 380-381 (Tr. Ex. 406); and

(ix) further extensive analysis after the Padilla Work was removed and replaced. JA Vol. VI, pp. 498-503 (Brinkerhoff Testimony).

Chronologically, this included the following sequence of events relied upon by the District Court to determine that the Padilla Work was defective.

On **September 10, 2009**, visual review of the Padilla Work confirmed that the first layer of the Padilla Work was not adequately “scored” to allow bonding to the second layer; Finding of Fact 34 (citing Tr. Ex. 404⁴, 405⁵, 446-50); JA Vol. VI, pp. 696:12-697:8 (Chin Testimony).

On **September 10, 2009**, visual review of the Padilla Work confirmed that it was not properly hydrated with enough water to activate the cementitious properties of the material. Finding of Fact 34 (citing Tr. Ex. 403, 404, 405, 446-50); JA Vol. VI, pp. 702:3-704:1 (Chin Testimony). Big-D immediately contacted Padilla and asked Padilla to investigate the failures. JA. Vol. V, pp. 484:12-24.

On **September 14, 2009**, photographs of the failed work demonstrated that, in contravention of the plans and specifications, the grooving of the Padilla Work is in two directions. JA Vol. VI, pp. 711:12-712:4 (Chin Testimony).

On **September 15, 2009**, Ian Chin’s petrographer reported that microscopic examination of the Padilla Work was consistent with Mr. Chin’s conclusions based

⁴ Contained at JA Vol. 4, pg. 369-73.

⁵ Contained at JA Vol. 4, pg. 374-79.

upon on-site investigation. JA Vol. VI, pp. 702:3-704:1, 704:9-706:20 (Chin Testimony); JA Vol. IV, pp. 380-381 (Tr. Ex. 406).

On **September 16, 2009**, Mr. Chin conducted an on-site investigation of the failed conditions. JA Vol. VI, pp. 707:11-708:15.

On **September 17, 2009**, Mr. Chin analyzed, 3-inch diameter core samples of the Padilla Work. JA Vol. VI, pp. 716-720 (Chin Testimony); JA Vol. IV, pp. 383-386 (Tr. Ex. 438); JA Vol IV, pp. 395-397 (Tr. Ex. 449). Of the 11 samples, the following results were identified: (i) on eight of the samples, the brown coat had failed to bond to the scratch coat; (ii) on seven samples, the scratch coat was not properly scored to receive the brown coat; and (iii) on an eighth sample, the scratch coat was only 50% bonded to the brown coat. JA Vol. IV, pp. 383-386 (Tr. Ex. 438); JA Vol. III, pp. 279-80 (Tr. Ex. 60).

On **September 23, 2009**, Big-D performed testing of several interior areas of the building to determine whether it could defend the Padilla Work. JA Vol. VI, pp. 722:1-728:25 (Chin Testimony); JA Vol. V, pg. 480:16-481:16 (Brinkerhoff Testimony). Those investigations revealed the same types of failures as identified on the exterior of the building. JA Vol. III, pp. 279-80 (Tr. Ex. 60).

E. District Court Awarded Big-D Its Attorneys Fees and Costs as Prevailing Party in the Padilla Action.

On March 6, 2015, Big-D filed a Motion for Attorneys' Fees, Costs, and Interest Pursuant to Judgment and to Amend Judgment in the amount of

\$1,234,678.55. This Motion sought to Amend the Judgment in the following amounts plus post-judgment interest on those amounts:

Category	Amount
Attorneys Fees	\$383,399.00
Expert Fees	\$38,882.34
Lien Release Bond Fees	\$24,700.00
Other Costs	\$6,344.99
Pre-Judgment Interest	\$164,921.92

JA Vol. VII, pg. 849. In its Reply on May 18, 2015, Big-D voluntarily removed its claim for Pre-Judgment Interest in response to Padilla's Opposition; Big-D acknowledged the pre-judgment interest claim was barred by the Padilla Bankruptcy. JA Vol. VII, pg. 885.

The District Court entered an order awarding Big-D the following:

Category	Amount
Attorneys' Fees	\$383,399.00
Fees to Depose Padilla's Expert	\$2,730.00
Bond Fees	\$24,700.00
Storage of Stucco	\$3,614.99
Subtotal	\$414,433.99

JA Vol. VII, pp. 905. Padilla has represented that the Padilla claim was abandoned by the Padilla Bankruptcy and that Padilla, itself, is entitled to any affirmative recovery from the Padilla Action (and that such funds are not to be paid into the Padilla Bankruptcy). As a result, the District Court entered the fee award as Big-D has a contractual right to attorneys' fees in prevailing on defending against the

Padilla claim—which claim was not impacted by the Padilla Bankruptcy. JA Vol. VII, pp. 905.

IV. SUMMARY OF ARGUMENT

The District Court relied on substantial evidence in support of its determination that the Padilla Work was defective. As a result, the District Court's determination is not clearly erroneous and must be upheld. Accordingly, Padilla is not entitled to payment for defective work that Big-D was required to remove and replace immediately after it was installed. Rather, Padilla is responsible to Big-D for the costs to remove and replace the Padilla Work (in the amount stipulated by the parties prior to trial).

Because IGT rejected the Padilla Work and ordered Big-D to remove and replace it, payment to Padilla never became due. Further, even if payment had become due, Big-D complied with the mandate of NRS 624.624 by providing Padilla regular and repeated notice that the Padilla Work failed—and Padilla had actual knowledge.

Further, the District Court did not abuse its discretion in declining to give itself a spoliation instruction based upon Padilla's assertion that Big-D failed to preserve adequate samples of the Padilla Work.

Finally, as the prevailing party in defending against the Padilla Action, Big-D is contractually entitled to its costs and attorneys fees pursuant to the

Subcontract Agreement (and post-judgment interest on such amounts). These costs and fees were not barred by the Padilla bankruptcy.

V. STATEMENT OF THE STANDARD OF REVIEW

As to the factual determination that the Padilla Work was defective, the District Court made specific and detailed factual findings that the Padilla Work was defective. Thus, rather than the preponderance standard proposed by Padilla, this Court must only review whether those factual findings are clearly erroneous. “Where a question of fact has been determined by the trial court, this court will not reverse unless the judgment is clearly erroneous and not based on substantial evidence.” *Kockos v. Bank of Nevada*, 90 Nev. 140, 143 (1974). Accordingly, the correct standard is whether the District Court’s own detailed and extensive factual findings were clearly erroneous.

Regarding the District Court’s evidentiary ruling in declining to give itself a spoliation instruction regarding whether Big-D preserved adequate samples of the Padilla Work, this Court should only disrupt the District Court’s ruling if the District Court abused its discretion. *Sheehan & Sheehan v. Nelson Mallev & Co.*, 121 Nev. 481, 492 (2005) (specifying that a district court’s evidentiary rulings shall not be overturned “absent an abuse of discretion”).

VI. ARGUMENT

A. The District Court Did Not Clearly Err Because It Based Its Determination that the Padilla Work Was Defective Upon Substantial Evidence.

The District Court made two distinct categories of factual conclusions that are both supported by substantial evidence—the Padilla Work was defective and Padilla failed to present reliable evidence to the contrary. The trial judge has “the opportunity to hear and perceive the witnesses,” as a result, he or she is “better able to consider and balance the equities than [is this Court] relying solely on the cold record.” *Cunningham v. Cunningham*, 61 Nev. 93 (1941). “It is not [this Court’s] province to determine the credibility of witnesses. It is the exclusive province of the trial court, sitting without a jury, to determine the facts on conflicting evidence and its finding will not be disturbed *unless it is clear that a wrong conclusion was reached*. *Ormachea v. Ormachea*, 67 Nev. 273, 280 (1950) (emphasis added). As a result, there was no clear error.

i. Substantial Evidence Thoroughly Demonstrated the Padilla Work Was Defective.

The District Court’s factual determination that the Padilla Work was defective is supported by the overwhelming weight of the evidence. Accordingly, this Court must determine there was no clear error.

First, Padilla contractually agreed to perform the Padilla Work in compliance with the Subcontract Agreement. This included an agreement to meet

the requirements of the plans and specifications, including very precise specifications regarding the thickness of the layers, the method of “scoring” of the base layer, the compaction, and the hydration. *See* §III, Statement of Facts (“SOF”) pp 3-4.

Second, visual examination on the project site indicated that the Padilla Work failed to comply with the contract provisions. SOF pp. 5-6. This evidence was further supported by the testimony of Ian Chin explaining the on-site pictures. As even an untrained eye can see from the pictures, Padilla failed to score the base layer of the stucco to a sufficient depth to create a “key” for bonding. Similarly, the variation in thicknesses is also apparent. In addition, Padilla failed to score the base layer in a single direction as required by the contract. The District Court noted these obvious nonconformities from the pictures at trial. SOF pp. 5-8.

Third, petrographic analysis of the stucco during the Project revealed that the Padilla Work has at least three independent defects: (a) incorrect thickness, (b) failure to uniformly score, and (c) inadequate hydration to activate the cement properties. This was further supported by the testimony of IGT’s consultant that he commissioned petrographic analysis of the Padilla Work; the petrographic report was consistent with his conclusions based upon visual examination; and relied upon the results to determine the Padilla Work was defective. SOF pp. 5-6, 11-12.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
Consolidated with 80508

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 27

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CHRONOLOGICAL APPENDIX OF EXHIBITS

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
04-26-10	CAMCO and Fidelity's Answer and CAMCO's Counterclaim	JA000031- JA000041	1
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
06-06-13	APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
11-06-17	Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCB Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine	JA001133 JA001148	21

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	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6	JA001161- JA001169	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i>	JA001178- JA001186	22
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
01-04-18	Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

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	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order	JA001552- JA001560	27

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	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
01-17-18	Transcript Bench Trial (Day 1)¹	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (<i>Admitted</i>)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (<i>Admitted</i>)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (<i>Admitted</i>)	JA001869- JA001884	30

¹ Filed January 31, 2018

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	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

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	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record (<i>Admitted</i>)	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks (<i>Admitted</i>)	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment (<i>Admitted</i>)	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP (<i>Admitted</i>)	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner (<i>Admitted</i>)	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement (<i>Admitted</i>)	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36

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	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

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	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

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	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
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	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

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	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

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	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

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	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
01-18-18	Transcript – Bench Trial (Day 2)²	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)³	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80

² Filed January 31, 201879

³ Filed January 31, 2018

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	Trial Exhibit 320 – June-August Billings—not paid to APCO <i>(Admitted)</i>	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec <i>(Admitted)</i>	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) <i>(Admitted)</i>	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence <i>(Admitted)</i>	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien <i>(Admitted)</i>	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁴	JA005820- JA005952	81
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	APCO Construction Inc.’s Post-Trial Brief	JA006059- JA006124	82/83
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
03-23-18	Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief	JA006173- JA006193	84
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85

⁴ Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

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	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
06-01-18	Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
06-15-18	APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs	JA006615- JA006637	90/91
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

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	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

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	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

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06-15-18	Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007095- JA007120	97/98
06-15-18	Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007121- JA007189	98
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007190- JA007192	99
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262- JA007280	100
09-28-18	Notice of Entry of (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313- JA007315	101

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08-06-19	Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

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	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
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	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
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	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

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	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

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	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

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	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

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	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
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	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

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	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
08-29-19	Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)	JA009117- JA009123	119

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01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119
01-29-20	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
02-11-20	Case Appeal Statement	JA009157- JA009163	120
02-11-20	APCO's Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
06-06-13	APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
02-11-20	APCO’s Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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	JA009168- JA009182	114

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	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
11-06-17	APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

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	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119

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	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in <i>Limine</i> Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	APCO Construction Inc.'s Post-Trial Brief	JA006059- JA006124	82/83
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06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
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	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
04-26-10	CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim	JA000031- JA000041	1
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
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	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
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06-15-18	Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007121- JA007189	98
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04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
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	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
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08-06-19	Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
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	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

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	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
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	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
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	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
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	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

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	Exhibit 10U – APCO Construction’s Answer to WRG Design Inc.’s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.’s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc’s Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.’s Answer to Camco Pacific Construction Company, Inc.’s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction’s Counterclaim	JA008531- JA008551	111

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	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
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	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
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	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
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	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
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	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97

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	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA007085- JA007087	97
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	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
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03-23-18	Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief	JA006173- JA006193	84
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
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	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
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	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
09-28-18	Notice of Entry of Order (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001178- JA001186	22
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238- JA007245	100
01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion <i>in Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
09-28-17	Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA00418	7
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001552- JA001560	27
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition	JA007190- JA007192	99

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007095- JA007120	97/98
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	Transcript Bench Trial (Day 1)⁵	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

⁵ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36
01-18-18	Transcript – Bench Trial (Day 2)⁶	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)⁷	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80

⁶ Filed January 31, 201879

⁷ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁸	JA005820- JA005952	81
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101

⁸ Filed January 31, 2018

Fourth, persons on-site could literally peel one layer of the Padilla Work from the other with bare hands and minimal force—indicating a serious defect. Both Mr. Chin and Brent Brinkerhoff (Big-D) testified of this condition. SOF pp. 4-6, 11-13.

Fifth, the parties took several samples of the stucco work on the interior of the building to perform further tests. Of the eleven usable core samples, eight exhibited serious defects in the form of incorrect thickness of the layers and failure of the layers to bond together. SOF pp. 13.

Sixth, after IGT rejected the Big-D Work, Big-D commissioned an expert to perform further testing and analysis of the Padilla Work in attempt to defend the work as acceptable. Brent Brinkerhoff and Forrest McNabb (Big-D) both testified they were unable to identify a defensible basis to assert to IGT that the Padilla Work was acceptable. SOF pp. 11-13.

Seventh, Mr. Chin testified, unequivocally, that the reason the Padilla Work failed was because the workmanship deviated from the Plans and Specifications. He also testified unequivocally that the length of the cure times both (i) between the first and second coat of the Padilla Work and (ii) between the second coat of the Padilla Work and the exterior stone application had *no bearing* on the failures in the Padilla Work. In fact, Mr. Chin indicated that this conclusion is further reinforced by the fact that the Padilla Work on the interior of the buildings—that

was tested *weeks* after the cure period expired and *never had any stone installed over it*—exhibited the same weakness as the work over which stone was installed. The cure times—the responsibility of Padilla to determine—were, in fact, in compliance with applicable local code. SOF pp. 4-6, 11-13.

Eighth, Big-D requested that Padilla provide any information or analysis to support Padilla’s position that the Padilla work failed for reasons other than workmanship. Padilla indicated that it had samples of the material that it would test to determine whether the material, itself, was defective. Padilla never provided any information or took any steps to defend the Padilla Work. SOF pp. 7-10.

ii. **Padilla’s Counter-Argument Regarding Causation Is Supported by Minimal Evidence and No Expert Testimony.**

Padilla’s factual assertions that, (a) the cause of the failures in the Padilla work was not known, and (b) the cause of the failures in the Padilla work was failure to cure, both mischaracterize the record.

a. **Substantial Evidence Supports the Finding that the Padilla Work Was Defective.**

Contrary to Padilla’s assertion, the Padilla Work was rejected by IGT because of workmanship issues. SOF pp. 3-5, 11-13. IGT had petrographically examined the Padilla Work and had its consultant (Ian Chin) investigate the work on site. As a result, (i) IGT knew that the basis for rejecting Padilla’s Work was

Padilla's failure to comply with the plans and specification and (ii) Big-D presented substantial evidence in support of this at trial.

First, Padilla's assertion that the "causation of the separations" in the Padilla Work "is not known" is false. Opening Br. at 5. The record is clear that IGT was very firm; it rejected the Padilla Work because the work failed to conform to the Plans in Specifications in several respects: (i) inadequate hydration, (ii) failure to score the first layer sufficiently, and (iii) failure to compact. SOF pp. 3-5, 11-13. At the time the work was rejected, Big-D still disputed IGT's rejection of the Padilla Work on the interior of the building and arduously requested Padilla to step up and defend its work. Later, after months of investigation, Big-D concluded that the Padilla Work was in fact defective and could not be defended to IGT. SOF pp. 11-13. Accordingly, the District Court did not clearly error.

Second, Padilla falsely asserts that Big-D "failed to put forth evidence that any of the alleged deviations from the plans and specifications were material; caused the separations." Opening Br. at 9. In fact, Big-D presented substantial evidence demonstrating that the Padilla Work's failures were caused by the failure to follow the plans and specifications. SOF pp. 7-11. Accordingly, the District Court did not clearly err.

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b. Substantial Evidence Indicates the Failures in the Padilla Work Were Unrelated to Cure Time.

The District Court relied upon the substantial evidence to determine the cause of the failure in the Padilla work was *not* a result of cure times. While Padilla asserts, “It is Padilla’s position the separations were caused by the premature installation of the stone on the stucco before it was fully dry (cured),” this assertion is directly contrary to the weight of the evidence. SOF 3-5, 11-13.

Padilla did not present an expert to offer an opinion in support of this causation. In fact, in support of its assertion, Padilla cites not to evidence in the record but to statements of its counsel during argument to support its “failure to cure theory.” The only evidence in the trial record supporting Padilla’s “failure to cure” theory are citations to the deposition testimony of former Padilla COO, Joseph Lopez. The District Court, as the fact finder, is the proper party to weigh the evidence and determine which factual theory has the most evidence. The District Court did this exercise and relied upon the substantial evidence to make a factual finding that the Padilla Work failed because it was defective and Padilla did not construct the Padilla Work in compliance with the plans and specifications. SOF 1-5, 11-13. As a result, the District Court’s express factual finding that the failures in the Padilla Work were not caused by the cure time are not clearly erroneous and must be upheld.

B. Big-D Had No Obligation to Pay Padilla For the Padilla Work that Was Removed and Rejected; NRS 624.624 Does Not Provide Otherwise.

Big-D is not required by either the subcontract agreement or Nevada's prompt payment statute (NRS 624.624) to pay Padilla for defective work that the Owner rejected and directed Big-D to remove.

i. The Subcontract Does Not Require Big-D to Pay Padilla for Defective Work that Was Rejected by the Project Owner.

As a matter of law, Big-D's obligation to pay Padilla under the Subcontract Agreement was excused because Padilla materially breached the contract by installing defective work. Further, the District Court correctly determined that no implied covenant or equitable theory requires Big-D to pay Padilla for work that was rejected by the Project owner and which Big-D was required to remove and replace on its own dime. Again, this determination was also based upon the factual finding supported by substantial evidence that Padilla's work was defective. Accordingly, there is no basis to find that Big-D breached the express or implied obligation in the Subcontract Agreement.

ii. Big-D Had No Obligation to Give Padilla an Opportunity to "Cure" Work.

Padilla's argument that Big-D must pay Padilla because Padilla was not given an opportunity to cure its work also fails for four reasons. First, Big-D gave Padilla written notice and request to cure the defective Padilla work when the failures were first identified. SOF 7-8. Second, Big-D was obligated to follow the

directions of IGT who directed the Padilla stucco work be removed and replaced with a cement board system (making any further cure request impracticable). SOF 6-7, 10. Third, the safety risk posed by the stone panels on Padilla's Work further excused any required notice to cure. SOF 10. Fourth, Padilla was unwilling to take any actions to investigate or cooperate—making any additional request to cure futile. SOF 8-9. Accordingly, the District Court did not clearly err in determining that Big-D did not have an additional obligations to request Padilla to cure its defaults.

iii. NRS 624.624 Does Not Require Payment to a Subcontractor for Defects of which It Was Aware and Notified.

Nothing in Nevada's prompt payment statutes, NRS 624.624, requires Big-D to pay Padilla for work that the Owner rejected and required Big-D to remove and replace. Padilla argues it is entitled to payment for rejected work claim pursuant to NRS 624.624 based upon two *false* factual assertions: (i) payment to Padilla "was due on October 25, 2009" and (ii) Big-D's first notice of withholding was not provided to Padilla until November 3, 2009.

a. Payment to Padilla Was Not "Due" on October 25, 2009.

The District Court did not clearly err in its factual determination that payment to Padilla was not due on October 25, 2009. The Subcontract provided that Padilla was to be paid within ten (10) days after IGT paid Big-D *and* after IGT

accepted the Padilla Work. JA Vol. 1, pg. 91-104, Trial Exhibit 1.⁶ Specifically, Big-D “must have first received from the Owner the corresponding periodic payment, *including the approved portion of your monthly billing*, unless the Owner’s failure to make payment was caused exclusively by us.” *Id.* at Section 4.2.

NRS 624.624 does not change the timing of when payment is due under a subcontract. The statute is designed to ensure that general subcontractors promptly pay subcontractors after the general contractor receives payment from the Owner associated with work performed by the subcontractor. NRS 624.624 is clear that its provisions yields to (a) payment schedules contained in subcontract agreements and (b) contractual rights to withhold payments from a subcontractor arising from deficient work. Specifically, NRS 624.624 provides payments are due to a subcontractor under “[a] written agreement with a lower-tiered subcontractor that includes a schedule for payments,” that payments are due as follows:

(1) On or before the date payment is due; or

(2) Within 10 days after the date the higher-tiered contractor receives payment for all or a portion of the work, materials or equipment described in a request for payment submitted by the lower-tiered subcontractor,

whichever is earlier

⁶ “Contractor will issue payment to Subcontractor by US Mail ... within ten (10) days of receiving payment from the Owner.” Section D.

NRS 624.624(1)(a).

Further, even after such due date, a general contractor has the right to withhold payment for “[c]osts and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment ...” NRS 624.624(2)(b). NRS 624.624 does require that a general contractor provide written notice to the subcontractor as to the basis for withholding “on or before the date the payment is due.” *Id.* at (3).

Here, it is undisputed that the Subcontract Agreement is a written agreement between Big-D and Padilla. Accordingly, pursuant to NRS 624.624(1)(a), payment is due to Padilla as specified in the Subcontract Agreement—after IGT accepted the Padilla Work.

Padilla dated its Application for Payment on September 25, 2009 and it was received by Big-D on September 30, 2009. Padilla erroneously contends that the payment was “due” on October 29, 2009. This assertion is incorrectly based upon a notation by Big-D’s project manager on an internal accounting document tracking received project payments—which Padilla misconstrues and takes out of context. Yet, the District Court did not clearly err in its factual finding that Padilla’s work had not been approved by IGT by October 29th (and, in fact, had been rejected by IGT on September 20th and replaced by Big-D by October 9, 2009). As a result, because IGT has not accepted Padilla’s work by October 29,

2009, payment to Padilla was not due at that time. As a result, there is no basis to use October 29, 2009 as a payment due date for purposes of NRS 624.624.

b. Big-D Provided Padilla Repeated Written Notice of the Defects in the Padilla Work.

The District Court did not clearly err in determining that Padilla received repeated written notice that its work was defective. Rather, the District Court relied on substantial evidence that Padilla had actual and direct notice of the potential defects in the Padilla Work including the following:

- Real-time notice by Padilla's own crews that the work was separating from itself, SOF 9-10;
- Written notice from Big-D to Padilla requesting that Padilla immediately investigate its work on several occasions, SOF 7-8;
- Telephone notice from Big-D to Padilla following up on Big-D's requests that Padilla investigate the failures in the Padilla Work, SOF 11-13;
- Meetings on-site with the product manufacturer and IGT's consultants discussing the failures in the Padilla Work, SOF 11-13;
- Real-time information that IGT had rejected the Padilla Work and directed Big-D to remove and replace it, SOF 11-13; and
- Finally, formal written notice from Big-D on November 3, 2009 informing Padilla that no payment would be processed unless and until Padilla could assist Big-D to demonstrate that the failures in Padilla's work were caused by factors other than Padilla (which Padilla took no efforts to do), SOF 8-9.

Assuming *arguendo* that payments to Padilla for the rejected Padilla Work had become due, Big-D provided repeated written notices to Padilla of the failures in the Padilla Work. Further, Big-D was authorized by the Subcontract Agreement to withhold payment from Padilla for "defective work not remedied" and "your

failure to perform any obligation made by You in this Subcontract.” JA Vol. 1, pg. 91-104, Trial Exhibit 1, at Section 4.4(2) and (5). As a result, NRS 624.624(3) authorizes Big-D to withhold sums due to Padilla amounts to remove and replace the Padilla Work. Accordingly, NRS 624.624 does not override the subcontract terms to impose any affirmative payment obligations upon Big-D to pay Padilla for work that was rejected and removed.

iv. Padilla’s Reliance on *Lehrer McGovern Bovis* Is Inapposite.

Padilla’s reliance on dicta in *Lehrer McGovern Bovis* is inapposite—it had no bearing on determining whether Big-D gave time notice of withholding to Padilla pursuant to NRS 624.624. *See* Opening Br. at 20. First, NRS 624 was not in effect or being interpreted in *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.* 124 Nev. 1102, 1117 (2008). Second, the issue here is not whether the payment schedule in the Big-D subcontract is a pay-if-paid clause that would excuse Big-D’s obligation to pay Padilla *if* the owner failed to pay Big-D for Padilla’s work. Rather, the issue is, for the purposes of NRS 624.624 notice of withholding, when was the payment from Big-D to Padilla due. The Subcontract Agreement contained a schedule for payments—payment to Padilla was due after IGT approved Padilla’s work *and* after Big-D received payment attributable to Padilla’s work.

This is not a “pay-if-paid case.” Rather, this is a case where payment to a subcontractor is excused when the subcontractor performs defective work that is rejected by the Owner and which the general contractor is required to remove and replace. The legal rights and obligations in such a circumstance are governed by clear contract provisions and case law interpreting when obligations for payment under a subcontract are excused. Nothing in NRS 624.624 or *Lehrer McGovern Bovis* determine that payment is required when an Owner rejects a subcontractor’s work and requires it to be removed and replaced. This is a contract compliance issue not a prompt payment issue.

v. It Is Undisputed that Padilla’s Application for Payment Is Overstated Even If Padilla Were Entitled to Payment.

Further, even if Padilla were entitled to payment (which it is not), it is undisputed that Padilla’s Application for Payment dated September 25, 2015 is overstated. The Application for Payment fails to credit Big-D for the initial \$25,000.00 deposit made to Padilla prior to starting work. JA Vol. 6, pp. 494-497 (Brinkerhoff testimony). Further, it is undisputed that Big-D was required to pay one of Padilla’s material suppliers directly after the material supplier filed a mechanic’s lien against the Project. Nothing in NRS 624.624 provides that Padilla is entitled to payment for an overstated application for payment. Accordingly, even if Padilla were entitled to payment for the defective and rejected work (which it is not), the amount of damages would be reduced by amounts that Padilla had

previously been paid and amounts that Big-D was required to pay Padilla's subcontractors.

C. The District Court Did Not Abuse Its Discretion in Declining to Give Itself a Spoliation Instruction.

The District Court did not abuse its discretion in electing not to give itself a spoliation instruction. *Sheehan & Sheehan v. Nelson Mallev & Co.*, 121 Nev. 481, 492 (2005) (specifying that a district court's evidentiary rulings shall not be overturned "absent an abuse of discretion"). Padilla asserts it is entitled to a spoliation instruction based on Padilla's contention that Big-D did not retain enough samples of the rejected Padilla Work. For five reasons, the District Court did not abuse its discretion.

First, Padilla does not contend that Big-D failed to preserve stucco samples of Padilla's Work for its testing and investigation. It is undisputed that several stucco samples were preserved and provided to Padilla. Rather, Padilla contends that Big-D failed to retain portions of the stucco over which stone was installed. This argument is a red herring because it is premised upon Padilla's incorrect argument that only the stucco over which stone installation had commenced failed. This is incorrect. IGT was clear that its basis to reject the Padilla Work related to its testing and inspection of Padilla Work over which no stone was installed—including on the interior of the building where no stone was installed. The failures in the Padilla Work were widespread and there is no evidence of any kind that the

Padilla stucco over which stone was installed performed any differently than the stucco (over which no stone was installed) that was rejected by IGT.

Second, the remedy that Padilla requests—tantamount to a direction by the Court that the Padilla Work is not defective—is not supported by Nevada law. Rather, Nevada recognizes an “adverse inference” for negligent destruction of evidence. An “adverse inference” “is permissible, not required, and it does not shift the burden of proof.” *Bass-Davis v. David*, 122 Nev. 442, 449, 34 P.3d 103, 107 (2006). An “adverse inference” instruction informs a jury that it is “permitted” to draw an inference that such evidence may have been unfavorable to the destroying party. Here, Padilla, Big-D, and IGT witnesses observed the separation of the Padilla Work. Contemporaneous photographs demonstrate the separation of the Padilla Work. Both Big-D and IGT retained expert consultants to test the Padilla Work. And, there are existing samples remaining of the Padilla Work that were provided to Padilla during discovery. Even if the district court allowed itself the “permission” to infer that the portions of the Padilla Work that were discarded may have contained unfavorable evidence to Big-D, this permissible inference does not counter the mountain of evidence relied upon by the District Court that the Padilla Work failed.

Third, the concept of an adverse inference instruction is to provide evidentiary balance to a proceeding and ensure the jury understands the scope of

inferences it is permitted to draw based upon the availability of evidence. Such an explanation is not necessary when the fact finder is a sophisticated district court judge—who is well equipped to make such determinations himself. “Adverse inference instructions generally are not appropriate sanctions in bench trials.” *See Thompson v. U.S. Dep’t of Hous. and Urban Dev.*, 219 F.R.D. 93, 105 (D. Md. 2003) (holding the district judge was sophisticated enough to factor in any spoliation issues in its own factual findings).

Fourth, Padilla failed to timely request or demand such a spoliation remedy. When a party waits until trial to seek a remedy that equates to a declaration of victory on an issue, it is appropriate to deny the request. *See JOM, Inc. v. Adell Plastics, Inc.*, 193 F.3d 47, 49-50 (1st Cir. 1999); *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999).

Fifth, Big-D did not have custody and control over the evidence and had the same access to such evidence as did Padilla. Spoliation sanctions are only appropriately issued to a party “controlling the evidence.” *Bass-Davis*, 122 Nev. at 450.⁷ IGT was the Owner of the Project and required Big-D to remove and replace

⁷ “Obviously, the party charged with spoliation must have been in the possession, custody, or control of the evidence in order for the duty to preserve to arise. The party requesting sanctions for spoliation has the burden of proof on such a claim.” *Hammann v. 800 Ideas, Inc.*, 2010 U.S. Dist. LEXIS 131097 at *21 (D. Nev. 2010) (denying motion for spoliation related to records of certain 1-800 numbers when there was no evidence that party was in the “possession, custody, or control” of relevant documents, even when party had business relationship with party in

the Padilla Work on an expedited basis. Both Big-D and Padilla were on the project site at the time that the order was issued. Had Big-D not removed and replaced the Work, IGT would have inevitably done so. Big-D did not have the option to leave Padilla Work on the exterior of the building for an extended period—meaning that it is not proper to issue a spoliation sanction against Big-D.

As a result, for these five reasons, the District Court did not abuse its discretion in failing to give itself a spoliation instruction.

D. Big-D Is Entitled to Recover Its Attorneys’ Fees, Costs, and Interest.

The District Court had jurisdiction to award Big-D attorneys’ fees and costs related to post-petition matters and costs to defend against Padilla’s affirmative claim. Padilla’s bankruptcy action did not, as a matter of law, impact Big-D’s right to post-petition attorney’s fees and costs to defend Padilla’s affirmative claim or post-petition costs to maintain an NRS 108 bond related to Padilla’s mechanic’s lien.

Post-confirmation “debts” are liabilities of reorganized Chapter 11 debtor and are not affected by the bankruptcy proceeding. 11 U.S.C. Section 1141(d); *In re Nuttall Equipment Co., Inc.*, 188 B.R. 732 (Bkrtcy.W.D.N.Y.1995); *Rozel*, 120 B.R. at 949 (“Generally, a claim or debt must be found to be absolutely owing at

control of such documents). *See also Rhodes v. Robinson*, 399 Fed. Appx. 160, 166 (9th Cir. 2010) (discussing required proof that “the party *with control* over [evidence] had a duty to preserve it”) (emphasis added).

the time of the filing of the petition to be considered a pre-petition item.”). A Chapter 11 plan and confirmation order does not preclude a claimant from seeking post-petition attorneys’ fees. *In re Mariner Post Acute Network, Inc.* 312 B.R. 520 (Bankr. D. Del. 2004). For example, confirmation of a debtor’s chapter 11 plan did not terminate a mortgage agreement or impact the mortgagee’s contractual right to recover attorney fees incurred in litigating its rights under agreement. *In re Sure-Snap Corp.*, 983 F.2d 1015 (11th Cir. 1993). Rather, the effect of the Chapter 11 plan was only to prevent the mortgagee from enforcing the terms of the mortgage agreement against the debtor to collect a pre-confirmation debt. *Id.* Similarly, a creditors post-petition claim against a Chapter 11 debtor was not impacted by plan confirmation when the actions that formed the basis for the claim occurred post-petition, even though the contract was executed pre-petition. *In re Texaco, Inc.*, 218 B.R. 1 (S.D.N.Y. 1998).

Here, the attorneys’ fees and costs that Big-D seeks are post-petition fees not impacted by the bankruptcy action. The bankruptcy petition did not modify Big-D’s contractual right to its attorneys’ fees in defending against Padilla’s claim. *See e.g., In re Sure-Snap Corp.*, 983 F.2d 1015 (11th Cir. 1993). Attorneys’ fees incurred by Big-D post-petition to defend Padilla’s affirmative claim for relief are not impacted by the bankruptcy petition, which only impacts pre-confirmation debts. Padilla prosecuted a mechanic’s lien claim against Big-D.

Further, Big-D was required by IGT to procure a bond to prevent the Padilla lien from being a cloud on the title to the Project. This bond incurred an annual fee of approximately \$5,000—which Big-D was required to pay each year between 2010 and 2015 during the duration of the case. This bond cost has no relation to the Big-D Counterclaim—it arises exclusively from the Padilla mechanic’s lien claim. Further, Big-D did not incur any attorneys’ fees or costs in support of the Big-D Counterclaim that were not necessary to defend the Padilla Action.

As a result, Big-D is entitled to collect its fees and costs against the reorganized Padilla.

VII. CONCLUSION

Accordingly, for the foregoing reasons, this Court should uphold the District Court’s decision and affirm the judgment entered in favor of Big-D.

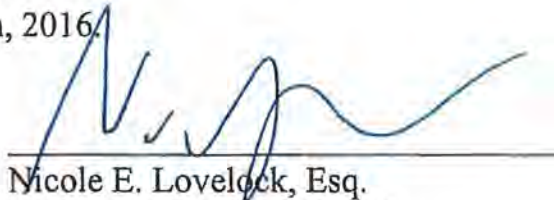
VIII. CERTIFICATE OF COMPLIANCE

I certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. The Brief complies with the formatting requirements of NRAP 32(a)(4)-

(6) and the type-volume limitation stated in NRAP 32(a)(7) because it is presented in a 14-point Times New Roman font, contains 1,071 lines and 10,024 words, including headings and footnotes, as counted by Microsoft Word—the program used to prepare this brief.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of March, 2016,

A handwritten signature in blue ink, appearing to read 'Nicole E. Lovelock', is written over a horizontal line.

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EXHIBIT 15

Case Nos. 67397 & 68683

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

PADILLA CONSTRUCTION COMPANY OF NEVADA,
A NEVADA CORPORATION,

Appellant,

vs.

BIG-D CONSTRUCTION CORP., A UTAH CORPORATION,

Respondent.

APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

A-10-609048-C

APPELLANT'S REPLY BRIEF

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Rule 26.1 Disclosure

Pursuant to NRAP 26.1, the undersigned counsel certifies that Appellant, Padilla Construction Company of Nevada (“Padilla”), is a Nevada corporation in good standing, no parent company nor any publicly held company owns any interest in the corporation, and is and has been exclusively represented in this matter by Bruce R. Mundy, Nevada State Bar number 6068, a sole practitioner.

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ARGUMENT

I. NO SUBSTANTIAL EVIDENCE PADILLA OMISSION OR COMMISSION CAUSED THE SEPARATIONS

In its Answering Brief (“AB”), Respondent, Big-D Construction Corp. (“Big-D”), states the District Court made two distinct categories of factual conclusions: (1), that Padilla’s Work was defective and (2), Padilla failed to present reliable evidence to the contrary.¹ The district court’s factual findings will be upheld, if not clearly erroneous, and if supported, by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 231 P.3d 699 (2009).

The trial issue, as recognized by the District Court, was causation.² Not whether Padilla’s work deviated from the projects plans and specifications, but instead, whether the alleged deviations were material³, *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259 (2000); caused the claimed damages. The District Court: “is that [trial related to causation] correct” directed to Padilla Counsel; “That is

¹ RAB pg. 21, section A., first sentence.

² RAB pg. 2, last paragraph, first sentence.

³ A failure to perform is material if it defeats the purpose of the contract. Nevada Jury Instruction, 13CN.42.

correct”; the District Court “All right. The record will so reflect.” TSRCP 1, JA Vol. V., pg. 445, lines 6-11. Causation is an essential element of a claim for breach of contract. *Clark Cty. Sch. Dist. V Richardson Constr.*, 123 Nev. 383, 396, 168 P.3d 87 (2007). Causation is defined as the act by which an effect is produced. *Black’s Law Dictionary* 221 (6th ed. 1990). And further, “That is if the damage of which the promisee [Big-D] complains [separations of stucco coats] would not have been avoided by the promisor’s [Padilla] not breaking [its] promise [to complete all work in accordance with the project plans and specification], the breach cannot give rise to damages.” *Clark Cty. Sch. Dist. at 396*.

II. DEFECTIVE IS NOT UNEQUIVOCALLY CAUSATION

According to Big-D, the District Court’s factual determination that the Padilla Work was defective is supported by the overwhelming weight of the evidence.⁴ “A product is ‘defective’ if it is not fit for the ordinary purpose for which such articles are sold and used.” *Black’s Law Dictionary* 418 (6th ed. 1990). At no point has

⁴ RAB pg. 21, section A.i., first sentence.

Padilla denied its Work (product), in some instances, failed to support the stone facade, the purpose for which it was intended. Instead, as agreed by all parties, the disputed issue before the court was not if the product failed, but instead, **what caused the product failure**: Big-D claimed it was because of deviations from the plans and specifications for the project;⁵ and Padilla claimed it was because its product was not allowed to cure long enough before installing the stone facade.⁶

Evidence of causation by Padilla's alleged deviations from the plans and specifications doesn't exist as argued in Padilla's Opening Brief⁷, which is supplemented here, and because Chin's testing was flawed. Contrary to Big-D's assertion, there is no evidence as to compaction, hydration, nor petrographic analysis.⁸ The only exhibit alleging a petrographic study and containing the words hydration or compaction is trial exhibit 406⁹, which Padilla objected to as hearsay¹⁰

⁵ Joint Appendix ("JA") Vol. 1, pg. 000017, paragraphs 12 & 13.

⁶ JA Vol. V, pg. 000411, lines 10-25.

⁷ AOB pg. 9, last paragraph – pg. 10, last full paragraph.

⁸ RAB pg. 22, first partial paragraph, third line of text; last partial paragraph, first sentence.

⁹ JA Vol. IV, pgs. 380-381.

¹⁰ JA Vol. VI, pg. 000704, lines 15-16.

and the District Court allowed “limited admission, not for the truth of the matter asserted, but for what happened in his [Chin’s] mind as to why he acted the way he did.”¹¹ A statement merely offered to show that a statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted is admissible as non-hearsay. *Grosjean v. Imperial Palace*, 125 Nev. 349, 362, 212 P.3d 1068 (2009). Consequently, the alleged truth of the matters asserted as to petrographic studies, compaction or hydration in trial exhibit 406 were not admitted into evidence.

There wasn’t any testing of the failed product; stucco that had been allowed to cure the requisite time, and was found to have separations between the first coat (scratch) and the second coat (brown). Despite the controversy regarding the correct cure time, there isn’t any evidence of testing of stucco when the scratch coat cured two days and the brown coat cured seven days as specified by Big-D¹² and the bond between the two coats failed. There is nothing in the record relating to any of the

¹¹ JA Vol. VI, pg. 000709, lines 19-23.

¹² JA Vol. VI, pg. 631, line 24 – pg. 632, line 2.

observations/testing Chin¹³ performed, September 17th and 22nd,¹⁴ showing the installation dates of either the scratch or the brown coat, and, Chin testified he didn't know when Padilla installed the examined/tested stucco.¹⁵ The cure time is critical to the strength of the bond between the scratch and the brown coats. According to Chin, in answer to the question of what the Architect's plan instruction to determine the most effective procedures for curing and lapse time between coats based on climatic and job conditions, meant:

It means that it's important to make sure that, first of all, the scratch coat is – has sufficient cure time before you apply the brown coat to it. It's also – and it talks about making sure that the brown coat has sufficient cure time – as well as the other times involved before you apply anything [stone] to it.

So this is very important because you want to make sure that the strength of the materials are up to the point where you can apply materials to it without causing any damage to the [stucco] system. TSRCP 2, JA Vol. VI., pg. 682, line 22 – pg. 683, line 6.¹⁶ Emphasis added.

While Big-D's Project Manager, Brinkerhoff, described a project procedure that the date Padilla finished a scratch coat or brown coat was marked on the wall so they knew when the cure time started, Big-D never produced evidence showing dates

¹³ AOB pg. 2, pg. 3, Ian Chin was IGT's consultant during the IGT project and subsequently, Big-D's consultant.

¹⁴ JA Vol. VII pg. 000751; Vol. V, TEXH 449, pg. 000395.

¹⁵ JA Vol. VII, pg. 000749, line 24 – pg. 000750, line 2; pg. 000751, lines 15-19.

¹⁶ AOB pgs. 6-7.

marked on the walls that were the subject of Chin's examinations/tests. Instead, the only evidence of any date markings were on stucco samples provided to Padilla's expert in March of 2012 that were marked "Brown coat Finished 9/14", "Sample date 9/18¹⁷." Obviously, rendering any examination/testing of those samples invalid in the absence of the 7 days cure time specified by Big-D for the brown coat. Given Chin's assertion that proper curing is important to the strength of the stucco and the absence of any evidence that the examined/tested stucco had been properly cured, it shouldn't be a surprise that Chin could report he peeled stucco coats apart with his hands¹⁸ and Big-D's Brinkerhoff reported "you could just twist" the stucco coats apart.¹⁹

The absence of documentation for the stucco installation corrupted the veracity of any conclusions drawn from Chin's examination/testing as to the cause of the separations of the two coats of stucco. For instance, if a sample of stucco exhibited a separation of the two coats of stucco and exhibited a deviation from the plans and

¹⁷ JA Vol. VII, pgs. 000793-000796.

¹⁸ JA Vol. VI, pg. 000707, lines 18-20.

¹⁹ JA Vol. VI, pg. 000589, lines 7-9.

specifications, e.g. the scratch coat wasn't grooved the specified one-eighth inch, and the brown coat was only cured four days instead of the specified seven days; what valid conclusion could be made as to the cause of the separations; the lack of proper grooving or the lack of proper curing?

III. NO DUTY FOR PADILLA TO PRESENT CONTRARY EVIDENCE

Big-D's assignment of the burden of proof to Padilla to present reliable evidence contrary to Big-D's alleged proof²⁰ that Padilla's work was defective ignores the lawful assignment of the burden of proof. Instead, it was Big-D's exclusive burden to present evidence and argument to prove the allegations of its Counterclaim. *Nassiri and Johnson v. Chiropractic Physicians' Board*, 130 Nev. Adv. Op., No. 27, pg. 3 (2014). That, pursuant to *Clark Cty. Sch. Dist.*, at 396, but for Padilla's alleged deviations from the project plans and specifications, the complained of separations of the stucco would not have occurred.

Additionally, how was Padilla going to obtain the reliable evidence? Padilla

²⁰ RAB pg. 21, section A. first sentence.

never received any samples of the ‘failed’ work, nor had the opportunity to obtain them.²¹

IV. DUTY TO PAY PADILLA ACCORDING TO TERMS OF THE SUBCONTRACT

Big-D asserts it had no obligation under the terms of the Subcontract to pay Padilla in light of Padilla’s material breaches and IGT’s rejection of the stucco.²² In addition to its AOB argument²³, Padilla asserts that at the time that Padilla was owed a written notice of a material breach/default of the Subcontract or payment²⁴, Big-D did not possess knowledge of a Padilla material breach. As late as November 18, 2009²⁵, when Big-D stopped payment on its check and two months after Padilla left the project, Big-D’s Project Principal-In-Charge McNabb,²⁶ admitted Big-D didn’t know the cause of the failures: “We still don’t know who’s at fault.”²⁷

Big-D’s argument that IGT’s rejection of the stucco justifies not paying Padilla;

²¹ AOB pg. 24, last paragraph, last full sentence – pg. 25, second paragraph.

²² RAB pg. 27, section i.

²³ AOB pg. 15, section V. – pg.18.

²⁴ AOB pg. 17 section 5.1 of Subcontract, pg. 18 Exhibit “Z” to the Subcontract.

²⁵ JA Vol III, pgs. 000281-000282.

²⁶ JA Vol. VI, pg. 000513, line 16.

²⁷ AOB pg. 9, section III. B. last sentence.

ignores the differing justifications for rejection and withholding payment. IGT had a right to reject Padilla's work merely on the premise that it wasn't fit for the purpose IGT was purchasing it for, it was defective, *Black's Law Dictionary* 418 (6th ed. 1990), which under the circumstances of instances when the stucco would not hold the stone facade, it was. According to Chin, his recommendation to IGT was the stucco was not suitable and should be rejected.²⁸ IGT didn't consider the cause of the separations, only that it wasn't fit for IGT's intended use.

On the other hand, withholding payment requires a material breach of the Subcontract and proof of several elements, including causation, *Clark County School Dist. at 396*, which as argued above, there isn't any evidence that a Padilla omission or commission was the cause of the separations.

V. DUTY TO PROVIDE PADILLA AN OPPORTUNITY TO CURE
ACCORDING TO THE TERMS OF THE SUBCONTRACT

Big-D argues it "gave Padilla written notice and request to cure the defective Padilla work when the failures were first identified. SOF 7-8."²⁹ A review of the

²⁸ JA Vol. VI, pg. 000714, lines 13-15.

²⁹ AOB pg. 27. Section ii, second sentence.

cites to the record in the Answering Brief's Statement of Facts ("SOF") on pages 7-8 does not find any record that Big-D gave Padilla written notice and request to cure. Not surprising, in that the record as a whole does not contain a written notice to Padilla to cure; an issue raised in its Opening Brief.³⁰

Big-D asserts it "was obligated to follow the directions of IGT who directed the Padilla work be removed and replaced with a cement board system (making any further cure request impractical). SOF 6-7, 10."³¹ Again, the cites to the record in the SOF 6-7, 10, do not support an obligation to IGT to remove and replace Padilla's work to the detriment of Padilla's right to cure. There is nothing in the record indicating that IGT prevented Big-D from providing the requisite written notice of default as specified in Section 5.1 of the Subcontract,³² or mandated Big-D to breach its Subcontract with Padilla.

Big-D's assertion that a safety risk excused any required notice to cure³³ is

³⁰ AOB pg. 15, section V., first sentence; pg. 18, last paragraph, first sentence.

³¹ AOB pg. 27, last sentence beginning with the word "Second" – pg. 28, remainder of sentence.

³² AOB pg. 17, single spaced indented paragraph, Section 5.1 of the Subcontract.

³³ AOB pg. 28, first partial paragraph, sentence beginning with the word "Third."

unsupported by the cites to the record at SOF 10. Lastly, Big-D states “Padilla was unwilling to take any actions to investigate or cooperate-making any additional request to cure futile. SOF 8-9.”³⁴ None of the cites to the record in SOF pgs. 8 and 9 support the statement that Padilla was unwilling to take any actions to investigate or cooperative; except, JA Vol. 1, pg. 49, lines 18-19 that states Padilla made a telephone call to the stucco mix manufacturer to discuss the separations in response to Big-D’s email notice of the separations.

VI. PAYMENT WAS DUE TO PADILLA IN THE ABSENCE
OF WRITTEN NOTICE CONFORMING WITH NRS 624.624(3)

According to Big-D, Padilla wasn’t due payment in conformance with the provisions of NRS 624.624 because payment wasn’t due on October 25, 2009 or because Big-D’s notice of withholding wasn’t given until November 3, 2009.³⁵ In addition to the argument put forth on the issue of NRS 624.624 payment in its opening brief,³⁶ Padilla adds the following.

According to Big-D, payment to Padilla wasn’t due on October 25, 2009 because

³⁴ AOB pg. 28, first partial paragraph, sentence beginning with the work “Fourth.”

³⁵ RAB pg. 28, section iii, first paragraph.

³⁶ AOB pgs. 19-22.

the Subcontract provided Padilla was to be paid within 10 days after Big-D received payment from IGT and after IGT accepted the Padilla work.³⁷ This assertion ignores the plain language of NRS 624.624(1)(a) or (b)³⁸, which clearly limits the condition of when, if ever, the higher-tiered contractor (Big-D) receives payment for the Subcontractor's (Padilla) work from the project owner (IGT) to influencing the date payment is made to the Subcontractor, "whichever is earlier." In the instance of a subcontract with a schedule of payments, the NRS 624.624(1)(a) date payment was due would be prescribed in the schedule of payments, and if earlier than when the Contractor received payment from the project owner, if ever, the date payment was due to the Subcontractor. In the instance of a Subcontract without a NRS 624.624(1)(b) schedule of payments, the due date for payments is dictated by the relevant provisions of the Subcontract, and again, if earlier than when the Contractor received payment from the project owner, if ever, the date payment was due to the Subcontractor. To the extent that Big-D's argument relies on the single factor of

³⁷ RAB pg. 28, section a.

³⁸ JA Vol. V, pg. 425.

when, if ever, it received payment from IGT³⁹, as the excuse not to pay Padilla, it is void as a matter of law. Contract provisions that contravene the law do not create a right of action and must be severed if it does not destroy the symmetry of the contract. *Vincent v. Santa Cruz*, 98 Nev. 338, 341 (1982) The ‘pay if paid’ provision of Section 4.2, including its waiver if Big-D exclusively caused the Owner’s failure to make the payment, was specifically and expressly subordinated to Nevada law by the parties: “Nevada Law will take precedence.”⁴⁰ According to *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1117-1118, 197 P.3d 1032 (2008), “pay-if-paid provisions are unenforceable because they violate public policy.”

Big-D’s reliance on the NRS 624.624(1)(a) provision for agreements “that includes a schedule for payments”⁴¹ is inconsistent with the plain language of the Big-D – Padilla Subcontract⁴²; which does not contain a schedule of payments.

Instead of a Schedule of Payments, the Subcontract provides for monthly

³⁹ RAB pg. 29, first partial paragraph, first full sentence.

⁴⁰ JA Vol. I, pg. 101, handwritten text at end of section 4.2, initialed by Big-D’s Brinkerhoff; JA Vol. V. pg. 461, lines 18-19: “We’ll stipulate that every edit in this contract Mr. Brinkerhoff has initialed.”

⁴¹ RAB pg. 29, second full paragraph, last sentence before indented quoted text.

⁴² JA Vol. I, pgs. 91-107.

payments:

4.2 Billings/Payments⁴³

We agree to make monthly payments to You for that portion of the work satisfactorily performed in the preceding month in accordance with monthly billings prepared by you and approved by us, Architect and Owner . . . on approved forms, with a schedule of values and conditional waivers submitted to us on or before the date outlined in your Subcontract.

D: Payments⁴⁴

[P]ayment Request form, with Schedule of Values and Big-D's Conditional Lien Waiver submitted to Contractor before the **25th** day of each month.

Padilla submitted its payment request on the specified Big-D Construction Payment Request form, 9/25/09.⁴⁵ As Brinkerhoff testified⁴⁶, Padilla's work had been satisfactorily performed. The language which conditions payment approval, in addition to Big-D, also on the Architect and Owner, is ambiguous in practice given the content of the specified payment request and its sole approval by Big-D's Brinkerhoff without anything in the record indicating, although Brinkerhoff had approved the payment request, a final approval was contingent on the approval of

⁴³ JA Vol. I, pg. 101, section 4.2, first two sentences.

⁴⁴ JA Vol. I, pg. 92, paragraph D, first sentence.

⁴⁵ JA Vol. II, pg. 215.

⁴⁶ JA Vol. V, pg. 491, lines 11-12.

both the Architect's and IGT's. Instead, Brinkerhoff testified:

I approved this [Payment Request] at 82 percent complete, absolutely did. I felt like Padilla has installed 82 percent of the product. Was I convinced that the product was going to continue to fail or was failing? No.⁴⁷

Consistent with the conditions of section 4.21 and paragraph D of the Subcontract, above, Padilla was entitled to payment October 25, 2009; as Brinkerhoff testified:

Q It says approved it [Payment Request] and, above, it says payment date 10/25

A Payment date is reflective of the 9/25 date on your pay application. That's just - -

Q Right

A - - standard procedure.⁴⁸

VII. PADILLA NEVER RECEIVED REQUISITE
NOTICE WITHHOLDING PAYMENT⁴⁹

Big-D argues it "provided repeated written notices of the failures in the Padilla

⁴⁷ JA Vol. V, pg. 491, lines 8-12.

⁴⁸ JA Vol. V., pg. 475, lines 1-6.

⁴⁹ RAB pg. 31, a., Padilla's response.

Work.”⁵⁰ According to section 5.1 Notice to Cure provision of the Subcontract, if you (subcontractor):

are guilty of a material breach of a provision of this Subcontract, You may be deemed in default of this Subcontract. If You fail, within three (3) days **after written notification**, to commence and continue satisfactory correction of such default, then at your expense, we will: (a) . . . (b) . . . (c) Withhold payment of moneys due You until the work is fully completed and accepted by the Owner. Emphasis added.

Pursuant to NRS 624.624(3): if a Contractor intends to withhold any amount from a payment to be made to a Subcontractor, **the Contractor must give, on or before the date the payment is due, a written notice** to the Subcontractor.

The written notice of withholding must:

(a) Identify the amount of the request for payment that will be withheld from the [Subcontractor];

(b) Give a reasonably detailed explanation of the condition or the reason the [Contractor] will withhold that amount, including, without limitation, a specific reference to the provision or section of the agreement with the [Subcontractor], and any documents relating thereto, and the applicable building code, law or regulation with which the [Subcontractor] has failed to comply; and

(c) Be signed by an authorized agent of the [Contractor].

None of the documents cited by Big-D meet the criteria for notices as described in either the Subcontract or NRS 624.624 as condition precedent to withholding the

⁵⁰ RAB pg. 31, last partial paragraph, first sentence.

October 25th payment due Padilla.

Big-D's document list:⁵¹

1. "Real time notice by Padilla's own crews that the work was separating itself. SOF 9-10." In the face of Padilla's complaints that its product wasn't allowed to cure long enough, this wasn't notice of a material breach as required by the Subcontract or specific reference required by NRS 624.624, but rather a confirmation by Padilla's stucco crew of the peril of the premature installation of the stone façade.
2. "Written notice from Big-D to Padilla requesting that Padilla immediately investigate its work on several occasions, SOF 7-8." A review of the record cites found in the designated pages of the Answering Brief's Statement of Facts did not disclose any written notice to Padilla in conformity to either the requirements of the Subcontract or NRS 624.624.
3. "Telephone notice from Big-D to Padilla" On its face, this is not a written

⁵¹ RAB pg. 31.

notice.

4. "Meetings on-site with the product manufacturer and IGT consultants discussing the failures in the Padilla work, SOF 11-13." A review of the record cites found in the designated pages of the Answering Brief's Statement of Facts did not disclose any written notice to Padilla in conformity to either the requirements of the Subcontract or NRS 624.624.
5. "Real-time information that IGT had rejected the Padilla Work and direct Big-D to remove and replace it, SOF 11-13." A review of the record cites found in the designated pages of the Answering Brief's Statement of Facts did not disclose any written notice to Padilla in conformity to either the requirements of the Subcontract or NRS 624.624.
6. "Finally, formal written notice from Big-D on November 3, 2009 informing Padilla that no payment would be processed unless and until Padilla could assist Big-D demonstrate that the failures in Padilla work were caused by factors other than Padilla (which Padilla took no efforts to do), SOF 8-9." A review of the

record cites found in the designated pages of the Answering Brief's Statement of Facts did not disclose any written notice to Padilla in conformity to either the requirements of the Subcontract or NRS 624.624. Additionally, see this Reply Brief pg. 8, and reference, footnote 21.

Big-D's withholding Padilla's payment it approved September 29th in the absence of the requisite written notice before withholding was both a breach of the Subcontract and NRS 624.624.

VIII. BIG-D NOT ENTITLED TO CLAIMED DEDUCTIONS

According to Big-D, even if Padilla is entitled to payment for its work, it overstated the payment due in its September 25th Payment request.⁵² Big-D admits a \$25,000.00 payment before Padilla started work on the project was precontract⁵³, then at trial first made a claim for a \$25,000.00 credit against the contract amount. There's nothing in the record that the payment was part of the contract amount shown on the Payment Request, which Brinkerhoff approved September 25th.⁵⁴

⁵² RAB pg. 33, section v., first sentence.

⁵³ JA Vol. VI., pg. 494, lines 24-25.

⁵⁴ JA Vol. II, pg. 216

As to the alleged payment of one of Padilla's material suppliers, there is nothing in the record that Big-D ever contacted Padilla to verify, if in fact, it received the materials, and if so, whether Padilla had paid the bill. Instead, in the absence of any cite to the record, Big-D claims "it is undisputed that Big-D was required to pay one of Padilla's material suppliers."⁵⁵

IX. PADILLA WAS ENTITLED TO A SPOILIATION INSTRUCTION

According to Big-D, Padilla contends that Big-D failed to retain portions of the stucco over which stone was installed and that is a red herring because it is premised upon Padilla's incorrect argument that only the stucco over which stone installation had commenced failed.⁵⁶ Fundamental forensics starts with an examination of the failure. According to Chin in response to the question whether he would start his investigation looking at the failed pieces: "Yes. We would do an inspection of the failed site, not just the failed piece, but also the location on the building where the failure occurred to see what was supporting the piece."⁵⁷ Q. [Y]ou're starting with

⁵⁵ RAB pg. 33, section v., third sentence.

⁵⁶ RAB pg. 34, section C., second paragraph, third and fourth sentence.

⁵⁷ JA Vol. VI, pg. 734, lines 11-17.

the failure and working out from there? A. "In the case of failure, that's –we start from – the failure initiates the investigation."⁵⁸

As argued, above, the alleged deviations from the plans and specifications were not material; did not cause the separations from which this case arises.⁵⁹ Testing of samples that had not failed would thwart any possibility to identify a nexus between the failure and the cause: deviation from the plans and specifications, premature installation of the stone, etc. Even Big-D admitted there was the possibility of causes unrelated to the plans and specifications. According to Brinkerhoff in answer to the question why Big-D never terminated the Subcontract with Padilla: "[W]e made a decision based on the rejection of Padilla's work by IGT. We didn't know the cause. We didn't know whether it was labor related. We didn't know whether it was material related. We didn't know whether it was weather condition related. We didn't know the cause."⁶⁰ While IGT never determined causation, Big-D acquiesced and never put them to their proof: that the alleged deviations from the plans and

⁵⁸ JA Vol. VI, pg. 734, lines 18-21.

⁵⁹ Reply Brief, pgs. 2-4.

⁶⁰ JA Vol. V, pg. 469, lines 10-24.

specifications were material; caused the separations, the defect. This unilaterally prejudiced Padilla's defense in that by the time Padilla received written notice⁶¹ that Big-D believed the cause of the separations was the alleged deviations from the plans and specifications, no samples of the failed stucco were available, having been destroyed, according to Brinkerhoff's calendar, September 14 – 16th.⁶² In fact, the only samples provided to Padilla were marked "Brown coat Finished 9/14", "Sample date 9/18⁶³." The brown coat had been cured far less than the seven days specified by Big-D.

Big-D argues that the requested adverse inference is not necessary for a sophisticated judge⁶⁴ and Padilla's request was not timely.⁶⁵ Both of these arguments were made in Opposition to Padilla's Motion in Limine II. February 5, 2014, resulting in the District Court deferring its ruling "until all evidence is heard."⁶⁶

⁶¹ JA Vol. I, pg. 10; pg. 16, lines 27-28; pg. 17, lines 13.

⁶² JA Vol. III, pg. 294.

⁶³ JA Vol. VII, pgs. 000793-000796.

⁶⁴ RAB pg. 36, first partial paragraph, first sentence.

⁶⁵ RAB pg. 36, first full paragraph, first sentence.

⁶⁶ Appellant's Supplemental Brief, pg. 000912.

Finally, Big-D argues that sanction in the way of an adverse inference are only appropriately issued to a party ‘controlling the evidence.’” There isn’t anything in the record that Big-D didn’t control the failed stucco. While it is true they were directed to demolish the stucco⁶⁷ to make way for installation of the replacement cement board to mount the stone façade on, there isn’t anything in the record that IGT prohibited them from preserving samples of the failed stucco for future defense, either theirs or Padilla’s. Therefore, their lack of control argument fails.

X. CLAIMED ATTORNEYS’ FEES, COSTS, AND INTEREST
ARE NOT POST CONFIRMATION DEBT

Padilla supplements its Opening Brief argument relevant to Attorney’s Fees, Costs, and Interest⁶⁸ to address the issue of post confirmation debt. According to Big-D, the District Court had jurisdiction to award Big-D attorneys’ fees and costs because post confirmation “debts are liabilities of reorganized Chapter 11 debtor and are not affected by the bankruptcy proceeding.”⁶⁹

⁶⁷ JA Vol. III, pg. 294.

⁶⁸ AOB pg. 27.

⁶⁹ RAB pg. 37, section D., first partial paragraph, first sentence.

According to *In re Vickie Lynn Marshall*, 273 B.R. 822, 830 (Bankr.C.D.Cal., 2002), the court found that attorneys' fees and costs arising out of prepetition litigation rooted in prepetition conduct must be treated as prepetition debt, not postpetition debt citing Ninth Circuit cases: *In re Kadjevich*, 220 F. 3d 1016 (9th Cir. 2000) and *In re Abercrombie*, 139 F.3d 755 (9th Cir. 1998). In the instant matter, the prepetition conduct occurred in September 2009, the prepetition litigation was filed March 9, 2010 and Padilla's bankruptcy petition was filed October 14, 2011. As a result, and according to *In re Marshall*, Big-D's fees and costs are prepetition debt and subject to the discharge, *In re Marshall*, at 830-831, Padilla received in its bankruptcy case.

XI. CONCLUSION

The District Court's finding of fact that Padilla's omission or commission caused the complained of damages; the separations of the first coat from the second coat of stucco, is not supported by substantial evidence and must be reversed, including those determinations arising from the erroneous findings, Judgment for Big-D and

the associated award of attorney's fees and costs. Instead, there is substantial evidence that Big-D breached the Subcontract, and therefore, Padilla is entitled to Judgment in the amount of the stopped payment check, \$185,991.95.⁷⁰ In the alternative, should this Court determine that Big-D is entitled to money damages, then the District Court's misunderstanding of the Stipulated Judgment and its jurisdiction to award judgment in excess of the claim authorized by the United States Bankruptcy Court must be addressed.

Note: On page 3 of the Respondent's Answering Brief, Respondent points out Appellant's Joint Appendix ("JA") omits a number of admitted trial exhibits. It was agreed between counsels that the JA would include all admitted Trial Exhibits. Our investigation indicates the error arose from the scanning process to create the Joint Appendix PDF Volumes that was not noticed when the Table of Contents was subsequently created. While undersigned counsel takes full responsibility for the administrative error, there was no intention to hide any evidence, and after review

⁷⁰ JA Vol. 2, pg. 221, Trial Exhibit 11.

of the Respondents Appendix and the missing Exhibits, our error did not prejudice the Respondent's Argument.

NRAP 28.2 Attorney's Certificate/NRAP 32(8)(A)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and type style of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft 2013 Word in 14 font size and Times New Roman.

2. I further certify that this brief complies with the volume limitations of NRAP 32(a)(7)(A)(ii) because it does not contain more than 7,000 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of April 2016.

/s/ Bruce R. Mundy

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DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs

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

Defendants.

AND ALL RELATED MATTERS.

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

**PEEL BRIMLEY LIEN CLAIMANTS'
OPPOSITION TO APCO
CONSTRUCTION'S MOTION FOR
RECONSIDERATION OF ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT PRECLUDING DEFENSES
BASED ON PAY-IF-PAID
AGREEMENTS**

COME NOW the Lien Claimants represented by the undersigned counsel of the law firm of PEEL BRIMLEY LLP ("the Peel Brimley Lien Claimants")¹ and do hereby submit the following Opposition to Plaintiff/Cross-Claim Defendant APCO Construction's ("APCO") Motion for Reconsideration of the Court's Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements ("the Reconsideration Motion").

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¹ The Peel Brimley Lien Claimants are: Cactus Rose Construction; Fast Glass Inc.; Heinaman Contract Glazing; Helix Electric of Nevada, LLC; and SWPPP Compliance Solutions, LLC.

1 This Opposition is based on the following Memorandum of Points and Authorities, the
2 pleadings and papers on file, and such matters as may be considered by the Court.

3 DATED this 9th day of January 2018.

4 **PEEL BRIMLEY LLP**

5
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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 APCO's Reconsideration Motion asserts no claims or arguments not previously asserted,
20 offers no new evidence and in no way justifies a hearing on its Motion, much less reconsideration
21 and reversal of this Court's well-considered Order. "Pay-if-Paid" agreements are void and
22 unenforceable under controlling Nevada case authority. Further, NRS 624 plainly requires prompt
23 payment and provides no excuse for non-payment based on Pay-if-Paid. The Court should
24 summarily deny the Reconsideration Motion.

25 "A district court may reconsider a previously decided issue if substantially different
26 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*
27 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,
28 489 (1997) (emphasis added). Citing *Little Earth of United Tribes v. Department of Housing*, 807
F.2d 1433, 1441 (8th Cir.1986); and *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244,
246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting
a ruling contrary to the ruling already reached should a motion for rehearing be granted.")
(Emphasis added).² Here, APCO offers no new evidence and there have been no intervening case

² In *Masonry & Tile Contractors*, a new District Court judge properly reconsidered a decision by
a since-deceased predecessor judge because of "new clarifying case law." 113 Nev. at 741.

1 decisions that might alter the Court’s analysis. Even if it were entitled to do so (it is not) APCO
2 offers no legal argument or analysis that is did not present in briefing and/or at oral argument.³
3 The Court’s well-reasoned Order was not clearly erroneous.⁴

4 It is beyond dispute that the Nevada Supreme Court declared “pay if paid” provisions in
5 construction contracts void and unenforceable as against Nevada’s public policy because
6 “Nevada’s public policy favors securing payment for labor and material contractors,” *see Lehrer*
7 *McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042
8 (Nev. 2008). This Court’s Order correctly follows controlling case authority and should not be
9 reconsidered or altered in any way.

10 While the *Bullock* decision involved mechanic’s liens, this Court also properly rejected
11 APCO’s contention that the public policy rationale of *Bullock* is limited to the concept of security
12 or does not apply when there is no security, such as in the present case where the property and
13 proceeds were released to a senior lienor. If indeed Nevada public policy favors securing payment
14 for labor and material contractors (as it clearly does – see *Bullock*, 124 Nev. at 1117-18), such
15 policy is not advanced by precluding pay-if-paid agreements only when security for a lien exists
16 while permitting such anti-contractor provisions when the security has been lost. No valid
17 justification exists for making such a distinction. Further, as the Nevada Supreme Court has
18 repeatedly held, “whether work is entitled to a lien pursuant to NRS 108.22184 and whether it is
19 entitled to priority over other encumbrances pursuant to NRS 108.225 are two entirely separate
20 issues.” *J.E. Dunn Northwest, Inc. v. Corus Const. Venture, LLC*, 127 Nev. 72, 81, 249 P.3d 501,
21 507 (2011). Simply stated, the loss of security does not mean the loss of lien or of the rights
22 afforded a lien claimant pursuant to NRS Chapter 108. It certainly does not mean that an
23

24
25 ³ As more fully discussed below, APCO first presented argument at the hearing regarding the
26 unpublished decision in *Padilla Construction Company of Nevada v. Big-D Construction Corp.*,
386 P.3d 982 (Nev. 2016 (unpublished)). To the extent APCO suggests this case constitutes
relevant intervening case law, it is badly mistaken (*see discussion infra*) and, in any event, was
argued, considered and rejected by this Court at oral argument.

27 ⁴ APCO’s reliance on NRCP 59(e) is inapposite. That rule only prescribes the time limit within
28 which a motion for reconsideration must be filed. Any such motion must still be supported by one
of the grounds set forth in NRCP 59(a) (including “newly discovered evidence”) for which APCO
offers not support. APCO’s reliance on NRCP 60(b) fails for the same reason.

1 otherwise odious, void and unenforceable contract provision such as pay-if-paid ceases to be
2 contrary to the public policy of Nevada.

3 Finally, and as this Court properly concluded, NRS 624.624(1) provides for the obligation
4 of prompt payment by a higher-tiered contractor (such as APCO and Camco) to a lower-tiered
5 subcontractor (such as the Peel Brimley Lien Claimants) and provides no exception or allowance for
6 pay-if-paid agreements.⁵ As repeatedly argued, and as adopted by this Court as its Order, NRS
7 624.624(1) plainly states that if there is a “schedule of payments” in an otherwise enforceable written
8 agreement, the higher-tiered contractor must pay the lower-tiered subcontractor – at the latest – on the
9 date payment is due; If there is no enforceable written agreement containing a schedule of payments,
10 the payment is due to the lower-tiered subcontractor – at the latest - within 30 days of its request for
11 payment. Under either circumstance it has been approximately nine years since payments on the
12 Project ceased to be made.

13 Finally, and despite having presented this Court with oral argument relating to the
14 unpublished decision of *Padilla Construction Company of Nevada v. Big-D Construction Corp.*,
15 386 P.3d 982 (Nev. 2016 (unpublished)), APCO now (for the first time) presents written argument
16 relating to that inapposite case. First, it is plainly apparent from the face of this unpublished

17 ⁵ NRS 624.624(1) provides:

18 Except as otherwise provided in this section, if a higher-tiered contractor enters into:

19 (a) A written agreement with a lower-tiered subcontractor that includes a schedule for
20 payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:

21 (1) On or before the date payment is due; or

22 (2) Within 10 days after the date the higher-tiered contractor receives payment
for all or a portion of the work, materials or equipment described in a request
for payment submitted by the lower-tiered subcontractor,

23 → whichever is earlier.

24 (b) A written agreement with a lower-tiered subcontractor that does not contain a
schedule for payments, or an agreement that is oral, the higher-tiered contractor shall
pay the lower-tiered subcontractor:

25 (1) Within 30 days after the date the lower-tiered subcontractor submits a
request for payment; or

26 (2) Within 10 days after the date the higher-tiered contractor receives payment
for all or a portion of the work, labor, materials, equipment or services
described in a request for payment submitted by the lower-tiered subcontractor,

27 → whichever is earlier.
28

1 decision that the Supreme Court did not consider the applicability of *Bullock* and its prohibition
2 on pay-if-paid, presumably because neither party raised the issue. *See Nye Cty. v. Washoe Med.*
3 *Ctr.*, 108 Nev. 490, 493, 835 P.2d 780, 782 (1992) (Generally, an issue which is not raised in the
4 district court is waived on appeal). There is also no indication from the Supreme Court decision in
5 *Padilla* that pay-if-paid was brought to the attention of the District Court.

6 In addition, the District Court's decision in *Padilla* – reviewed and affirmed on a
7 “substantial evidence” standard - hinged on the fact that the subcontractor (Padilla) materially
8 breached the subcontract before any payment was owed because of its improper installation of
9 stucco materials. Here not only is there no evidence of such a breach, this Court has granted
10 motions *in limine* prohibiting the introduction of evidence or argument if such breaches. Simply
11 stated, there is no evidence of any defective or non-confirming work by any of the Peel Brimley
12 Lien Claimants.

13 To the extent the Court wishes to consider intervening case decisions, the court should
14 consider *Cashman Equipment Company v. West Edna Associates, Ltd.*, 380 P.3d 844 (2016), 132
15 Nev. Adv. Op. 69 (2016). *Cashman* is a 2016 **published** decision that relied on and reaffirmed
16 *Bullock*. *Cashman* rejected the argument that a lower-tiered subcontractor's unconditional lien
17 release waived its right to lien when in fact it never received payment, holding: “the waiver is
18 void. Just as we refused to enforce the pay-if-paid provision in [*Bullock*] we likewise refuse to
19 enforce *Cashman's* release.” 380 P.3d at 849. In other words, *Bullock* remains good law and this
20 Court's Order was proper and should not be reconsidered.

21 ///

22 ///

23 ///

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CONCLUSION

Based on the foregoing, the Peel Brimley Lien Claimants respectfully request that the Court deny APCO's Motion for Reconsideration.

DATED this 9th day of January 2018.

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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 9th day of January 2018, I caused the above and foregoing document entitled **PEEL BRIMLEY LIEN CLAIMANTS' OPPOSITION TO APCO CONSTRUCTION'S MOTION FOR RECONSIDERATION OF ORDER GRANTING PARTIAL SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS** 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 to the party(ies) and/or attorney(s) listed below; and/or
- ☒ to registered parties via Wiznet, 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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22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 APCO CONSTRUCTION, a Nevada
25 corporation,

26 Plaintiff,

27 v.

28 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

**REPLY IN SUPPORT OF MOTION FOR
RECONSIDERATION OF COURT'S
ORDER GRANTING PEEL BRIMLEY
LIEN CLAIMANTS' PARTIAL MOTION
FOR SUMMARY JUDGMENT TO
PRECLUDE DEFENSES BASED ON PAY-
IF-PAID PROVISIONS ON AN ORDER
SHORTENING TIME**

AND ALL RELATED MATTERS

APCO Construction, Inc. ("APCO"), by and through its undersigned counsel of record, the
law firms of SPENCER FANE LLP and MARQUIS AURBACH COFFING, submits the

1 following Reply in Support of its Motion for Reconsideration of the Court's Order Granting the
2 Peel Brimley Lien Claimants Partial Motion for Summary Judgment to Preclude Defenses based
3 on Pay-if-Paid Provisions. This Reply addresses National Wood's and Peel Brimley's
4 Oppositions.

5 APCO's Motion should be granted because National Wood's Opposition exclusively relies
6 on its misplaced argument that this Court and the Nevada Supreme Court did not decide *Padilla*
7 *Construction Co. of Nevada v. Big-D Construction Corp.*¹ ("*Padilla v. Big-D*") based upon the
8 payment schedule (and corresponding lack of payment from the owner to the general contractor
9 for the subcontractor's work). Instead, National Wood claims that this Court and the Nevada
10 Supreme Court decided the case solely on a different condition precedent: whether Padilla's work
11 was accepted by the owner. This reading is contrary to the plain language of both this Court's
12 order in *Padilla v. Big-D* and the Nevada Supreme Court's decision. The Nevada Supreme Court
13 decided *Padilla v. Big-D* for two separate and independent reasons: (1) Padilla's work was not
14 accepted by the owner; *and* (2) because Big-D was never paid for Padilla's work by the owner.

15 APCO's Motion should be granted because the Nevada Supreme Court has found that pay-
16 if-paid provisions are valid conditions precedent to a general contractor's obligation to pay a
17 subcontractor without a mechanic's lien waiver. There have been no waiver of lien rights in this
18 instance, and all parties agreed to valid preconditions to payment.

19 DATED: January 10, 2018.

SPENCER FANE LLP

20
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¹ 286 P.3d 982 (2016)

1 **I. National Wood’s Opposition**²

2 **A. *Padilla v. Big-D* is exactly on point.**

3 The Court’s analysis in *Padilla v. Big-D* applies to the facts of this case. While National
4 Wood’s Opposition presents a two-step analysis that it believes the Nevada Supreme Court
5 followed in its decision in *Padilla v. Big-D*, its position is wholly unsupported. *See* Opposition at
6 2 (“First, the subcontractor had to show that it actually properly performed its work under the
7 subcontract. Second, if it passed the first hurdle, the subcontractor had to show that the pay-if-paid
8 provision was invalid.”). National Wood’s reading of this Court’s and the Nevada Supreme
9 Court’s alleged two-step analysis contains no citations to the decisions and ignores both this
10 Court’s and the Nevada Supreme Court’s specific findings regarding when Big-D, the general
11 contractor, had to pay Padilla, the subcontractor. Accordingly, this Court should consider *Padilla*
12 *v. Big-D* as persuasive authority pursuant to Nev. R. App. P. 36(3) and apply its reasoning to this
13 case.³

14 **B. This Court found Big-D’s payment to Padilla was never triggered because two**
15 **conditions precedent to payment were not met.**

16 After trial in the *Padilla v. Big-D* matter, this Court found that: (1) NRS 624.624 was
17 designed to ensure that general contractors pay subcontractors *after* the owner pays the general;⁴
18 (2) NRS 624.624 yields to a schedule of payments;⁵ (3) the subcontract confirmed that Padilla
19
20

21 ² While APCO is separating its Reply by headings addressing National Wood’s and Peel
22 Brimley’s Oppositions, all of its arguments in both sections are meant to address both
23 Oppositions.

24 ³ *See* Nev. R. App. P. 36(3) (“A party may cite for its persuasive value, if any, an unpublished
25 disposition issued by this court on or after January 1, 2016.”).

26 ⁴ Exhibit 11 to Motion for Reconsideration, Findings of Fact and Conclusions of Law and
27 Judgment at 21:14-16 (emphasis added) (“NRS 624.624 is designed to ensure that general
28 subcontractors promptly pay subcontractor after the general contractor receives payment from the
Owner associated with work performed by the subcontract.”).

⁵ *Id.* at 21: 17-19 (“By its own terms, NRS 624.624 yields to (a) payment schedules contained in
subcontract agreements and (b) contractual rights to withhold payments from a subcontractor after
arising from deficient work.”); *id.* at 22:6-9 (“Here, it is undisputed that the Subcontract
Agreement is a written agreement between Big-D and Padilla. Accordingly, pursuant to NRS
624.624(1)(a) payment is due to Padilla on the date specified in the Subcontract Agreement.”).

1 would get paid after the owner accepted and paid the prime contractor for the work;⁶ and (4) the
2 owner never accepted the work so Big-D's payment to Padilla never became due.⁷ *This Court did*
3 *not proclaim any two-step analysis or refuse to decide when payment would be due under the*
4 *schedule of payments, as National Wood would have this Court believe.* Instead, it decided the
5 issue of when Big-D's payment to Padilla would come due head on: it ruled on NRS 624.624
6 regarding when payments to subcontractors are due, it acknowledged the subcontract contained a
7 schedule of payments, confirmed when payment was due under that schedule of payments, and
8 determined that payment never became due because the owner never paid Big-D for Padilla's
9 work.⁸ If this Court wanted to punt the issue, those findings of fact and conclusions of law would
10 have been unnecessary.

11 **C. The Nevada Supreme Court held that Big-D's payment to Padilla was never**
12 **triggered because two conditions precedent to payment were not met.**

13 Next, unlike National Wood's representation that the Nevada Supreme Court did not
14 address the second "hurdle,"⁹ the pay-if-paid provision, it is clear that the Nevada Supreme
15 Court's decision accounted for the same two separate conditions precedent which were not met
16 (the owner never accepted the subcontractor's work, and the owner never paid the general for the
17 subcontractor's work) in determining that Big-D's payment obligation never became due:

18 Because the parties' subcontract contained a payment
19 schedule that required that Padilla be paid within ten days after
20 IGT accepted Padilla's work and paid Big-D for that work and it
21 is undisputed that **IGT never accepted Padilla's work and never
paid Big-D for Padilla's work**, the district court correctly found
that payment never became due to Padilla under the subcontract
or NRS 624.624(1)(a).¹⁰

22 National Wood's position is even more tenuous given the Nevada Supreme Court's
23 proclivity to explicitly state when it is resting its decision on one dispositive issue, and not
24 _____

25 ⁶ *Id.* at 22:9-11 ("The Subcontract provided that Padilla was to be paid within ten (10) days after
26 IGT paid Big-D and after IGT accepted the Padilla work.").

27 ⁷ See Findings of Fact and Conclusions of Law and Judgment. at 23:2-3 ("Here, it is undisputed
that IGT never accepted the Padilla work. Accordingly, payment to Padilla never became due.").

28 ⁸ See *id.*

⁹ National Wood's Opposition at 3:17-24.

¹⁰ 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958 (emphasis added).

1 deciding other issues.

2 **D. *Lehrer* is not dispositive.**

3 National Wood also misunderstands APCO's position of *Lehrer McGovern Bovis, Inc. v.*
4 *Bullock Insulation, Inc.*¹¹ As APCO explained in its Motion, when considering the pay-if-paid
5 provision *in conjunction with the preemptive waiver of mechanic's lien rights*, the *Lehrer* court
6 stated in dicta that pay-if-paid provisions are against public policy when they impair a
7 subcontractor's right to place a mechanic's lien on the property and have the same practical effect
8 of waiving a right to a mechanic's lien.¹² The rationale in *Lehrer* is inapplicable in this case
9 because the subcontracts at issue did not contain a waiver or impairment of the Subcontractors'
10 mechanic's lien rights. The Subcontractors maintained such rights and liened the property to get
11 paid for their labor and materials.¹³ So even if pay-if-paid language was stricken in *Lehrer*, the
12 rationale (of impairing mechanic's lien rights) remains. That logic and rationale should not be
13 applicable in this instance since the pay-if-paid language does not impair mechanic's lien rights.
14

15
16 Further, National Wood tries to distinguish *Lehrer* from the instant case by pointing out the
17 *Lehrer* court struck down the mechanic's lien waiver, and arguing there was no "effective waiver
18 of a mechanic's lien." National Wood's argument is unpersuasive. First, this argument fails to
19 account for APCO's position that the rationale of *Lehrer* should not control this case (as explained
20 above). Second, it ignores the fact that when the Court analyzes a waiver of a mechanic's lien in
21 conjunction with pay-if-paid language, the subcontractor has no remedy. It cannot lien the
22 property, and it cannot pursue the general contractor. However, when the subcontract only
23 contains pay-if-paid language, the subcontractor has a remedy: it can lien the property. And as the
24 Nevada Supreme Court pointed out in *Padilla v. Big-D*, when the subcontract only contains pay-
25 if-paid language within a schedule of payments, the pay-if-paid language is a valid condition
26

27 ¹¹ 124 Nev. 1102 (2008).

28 ¹² *Lehrer McGovern Bovis v. Bullock Insulation*, 197 P.3d 1032, 124 Nev. 1102 (Nev. 2008)
(internal citations omitted).

¹³ See Exhibits 4-6.

precedent to payment.

II. Peel Brimley's Opposition

Peel Brimley is correct in that NRS 624 requires prompt payment to subcontractors. However, as this Court has previously ruled, NRS 624.624 was designed to ensure that general contractors pay subcontractors *after* the owner pays the general contractor for the subcontractor's work.¹⁴ Since it is undisputed that the owner never paid APCO for the Subcontractors' work, APCO's payment obligation under the respective Subcontracts or NRS 624 was not triggered.¹⁵

Helix conflates the *Lehrer* decision beyond its holding in an attempt to merge contract and lien rights into one body of law. Specifically, Helix argues that the policy discussed in *Bullock* is not advanced by precluding pay-if-paid agreements only when there is security of lien. Converse to Helix's assertion, there is a valid justification for making the distinction, because if the distinction is not made, and by following Helix's rational, every general contractor in the State of Nevada has now become a personal guarantor of payment under NRS 108 when a project fails, the property is sold, priority to the proceeds are determined, and there are remaining contractors/subcontractors who have purported outstanding balances owed to them. Of the utmost importance, nowhere does NRS 108 state the security afford there under obligates a general contractor in any form or fashion to be liable or guarantee such NRS 108 securities.

Helix cites to *J.E. Dunn Northwest, Inc. v. Corus Const. Venture, LLC*,¹⁶ for the proposition that the Supreme Court of Nevada has already found that the "loss of security does not mean the loss of lien rights afforded a lien claimant pursuant to NRS 108."¹⁷ Helix's reliance on *J.E. Dunn* is misplaced, as *J.E. Dunn* specifically addresses lien priorities between various lien claimants, which has already been done by the Supreme Court in the instant case. What is not

¹⁴ **Exhibit 11** to Motion for Reconsideration, Findings of Fact and Conclusions of Law and Judgment at 21:14-16 (emphasis added). ("NRS 624.624 is designed to ensure that general subcontractors promptly pay subcontractor after the general contractor receives payment from the Owner associated with work performed by the subcontract.").

¹⁵ See *Padilla*, 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958.

¹⁶ 127 Nev. 72, 81, 249 P.3d 501, 507 (2011)

1 found anywhere in *J.E. Dunn*, or any other case cited by Helix, is how a general contractor is still
2 liable to a subcontractor pursuant to NRS 108 once the priority and lien rights have been
3 determined. Thus, these two bodies of law must be kept distinctly separate, and is why a case-by-
4 case analysis of the factors enunciated in NRS 624.628 must be analyzed by the Court.

5 And while *Lehrer* concluded that the pay-if-paid provision in that subcontract was
6 unenforceable, it did so for reasons that are not applicable here because in this case, the
7 Subcontractors did not waive their lien rights. In *Lehrer*, the combination of a waiver of a
8 subcontractor's mechanic's lien rights and the pay-if-paid language left the subcontractor without
9 a remedy against either the owner's property and the general. As such, *Padilla v. Big-D* is far more
10 similar in that it contained pay-if-paid language, and no waiver of lien rights. So the
11 Subcontractors had a remedy in both *Padilla v. Big-D* and the instant case: they could lien the
12 property.

13 Peel Brimley argues that "the Supreme Court did not consider the applicability of *Bullock*
14 [*Lehrer*] and its prohibition on pay-if-paid, presumably because neither party raised the issue."¹⁸
15 Peel Brimley is incorrect. APCO's Motion chronicled the parties' detailed briefing on pay-if-paid
16 provisions, and even *Lehrer* specifically.¹⁹

17 Next, Peel Brimley contends that the *Padilla v. Big-D* decision "hinged on the fact that
18 Padilla materially breached the subcontract."²⁰ This Court does not need to consider Peel
19 Brimley's speculation on the basis of the Court's decision because the Court explained the basis
20 for its decision:

21
22 Because the parties' subcontract contained a payment
23 schedule that required that Padilla be paid within ten days after
24 IGT accepted Padilla's work and paid Big-D for that work and it
25 is undisputed that **IGT never accepted Padilla's work and never
26 paid Big-D for Padilla's work**, the district court correctly found

27 ¹⁷ Opposition at 3:21-22

28 ¹⁸ See Opposition at 5:1-2.

¹⁹ See Motion for Reconsideration at 12:10-13:22.

²⁰ See Opposition at 5:7-8.

1 that payment never became due to Padilla under the subcontract
2 or NRS 624.624(1)(a).²¹

3 Lastly, Peel Brimely contends that the Court should consider *Cashman Equipment*
4 *Company v. West Edna Associates, Ltd.*²² *Cashman* is inapposite and consideration of *Cashman*
5 would not change the Court's analysis. As APCO presented in its Motion, there are essentially
6 three categories of provisions that are important to keep in mind: (1) a waiver of a mechanic's lien
7 rights; (2) a waiver of a mechanic's lien rights in conjunction with a pay-if-paid provision; and (3)
8 a pay-if-paid provision which does not impair a subcontractor's mechanic's lien rights. The
9 Nevada Supreme Court addressed the first two categories in the *Lehrer* case.²³ The Nevada
10 Supreme Court did not address pay-if-paid provisions in subcontracts that did not waive, impair,
11 or have the practical effect of waiving or impairing a subcontractor's right to place a mechanic's
12 lien on the property in *Lehrer*. Instead, it addressed them in *Padilla v. Big-D*, and found the pay-
13 if-paid language to be a valid condition precedent to payment.²⁴

14 The instant case is a category 3 case: a pay-if-paid provision which does not impair a
15 subcontractor's mechanic's lien rights. *Cashman* is inapposite since it is a category 1 case which
16 only involved a mechanic's lien waiver. Further, its mere mention of pay-if-paid provisions being
17 unenforceable as against public policy is unpersuasive because as set forth above, that case and its
18 rationale did not account for the situation in the instant case: pay-if-paid language without a
19 waiver of a mechanic's lien. Only the *Padilla v. Big-D* Court has decided a category 3 case.

20
21
22
23
24
25 ²¹ 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958 (emphasis added). Further, this Court will hear
26 arguments at trial regarding how the Subcontractors did not meet its other conditions precedent to
27 payment pursuant to sections 3 and 4 of their respective Subcontracts. Thus, to Helix's argument,
28 this Court's ultimate decision could be that the Subcontractors did not meet two (or more) of the
29 conditions precedent to payment, like the Court ruled in *Padilla*.

30 ²² 380 P.3d 844 (2016), 132 Nev. Adv. Op. 26 (2016).

31 ²³ *Lehrer*, 197 P.3d at 1040-44.

32 ²⁴ 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958

1 **III. Conclusion**

2 This Court and the Nevada Supreme Court analyzed pay-if-paid language without a waiver
3 of a mechanic's lien in *Padilla v. Big-D* and enforced a similar condition precedent to payment
4 requiring the owner's payment to the general contractor before the general contractor is required to
5 pay a subcontractor. The Court's reasoning should be the same in this case; any other decision
6 would be inconsistent. In light of the foregoing, APCO respectfully requests that this Court grant
7 the instant Motion for Reconsideration.

8 DATED: January 10, 2018.

9 **SPENCER FANE LLP**

10
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20
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28

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 **REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S**
4 **ORDER GRANTING PEEL BRIMLEY LIEN CLAIMANTS' PARTIAL MOTION FOR**
5 **SUMMARY JUDGMENT TO PRECLUDE DEFENSES BASED ON PAY IF PAID**
6 **PROVISIONS ON AN ORDER SHORTENING TIME** was served by electronic transmission
7 through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a
8 copy to their last known address, first class mail, postage prepaid for non-registered users, on this
9 10th day of January, 2018, as follows:

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

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

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

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

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

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

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

18 Dana Y Kim (dkim@caddenfuller.com)

19 Richard L Tobler (rltldck@hotmail.com)

20 Richard Reincke (rreincke@caddenfuller.com)

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

22 Tammy Cortez (tcortez@caddenfuller.com)

23 **Other: Chapter 7 Trustee**

24 Elizabeth Stephens (stephens@sullivanhill.com)

25 Gianna Garcia (ggarcia@sullivanhill.com)

26 Jennifer Saurer (Saurer@sullivanhill.com)

27 Jonathan Dabbieri (dabbieri@sullivanhill.com)

28 **Plaintiff: Apco Construction**

Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

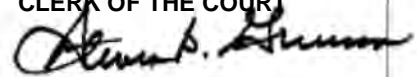
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DISTRICT COURT

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*

JOINT PRE-TRIAL MEMORANDUM
[for APCO Construction, Inc., the Peel
Brimley Lien Claimants, and National Wood
Products, LLC ONLY]

Date of Trial: January 17, 2018

Time of Trial: 9 A.M.

AND ALL RELATED MATTERS

Apco Construction, Inc. ("Apco"); Helix Electric of Nevada, LLC, and National Wood

1 Products, LLC, by and through their attorneys of record, hereby submit the following Joint Pre-
2 Trial Memorandum pursuant to EDCR 2.67. A conference between the parties was held on
3 Monday, November 20, 2017 at 10 A.M., with John Randall Jefferies, Esq. and Cody S.
4 Mounteer, Esq. in attendance for APCO, Eric Zimbelman, Esq. in attendance for Helix Electric of
5 Nevada, LLC, SWPP Compliance Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., and
6 Heinaman Contract Glazing, John Taylor for National Wood Products, LLC, and Steve Morris for
7 Camco Construction, Inc. This matter is set for a bench trial to start on January 17, 2018.

8 **I. STATEMENT OF FACTS (STIPULATED)**

9 **The Project**

- 10 1. This action arises out of a construction project in Las Vegas, Nevada known as the
11 Manhattan West Condominiums Project ("the Project") located at West Russell Road and
12 Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-
13 005, 163-32-101-010 and 163-32-101-014 (the "Property" and/or "Project"), owned by
14 Gemstone Development West, Inc. ("Gemstone" or the "Owner").
- 15 2. The original general contractor on the Project was APCO.
- 16 3. Gemstone and APCO entered into the ManhattanWest General Construction Agreement
17 for GMP (the "APCO Agreement") on or about September 6, 2006.
- 18 4. The Project would be constructed in two phases, with the first phase consisting of building
19 nos. 2, 3, 7, 8 and 9.

20 **Subcontracts**

- 21 5. APCO entered into a subcontract with Helix for electrical work on April 8, 2008 (the
22 "Helix Subcontract").
- 23 6. APCO entered into a subcontract with CabineTec¹ on April 28, 2008 for the delivery and
24 installation of cabinets on the Project.

25 **Camco became the Prime Contractor**

- 26 7. The APCO Agreement was terminated, and Gemstone contracted with Camco to complete
27

28 ¹ National Wood is a Plaintiff in Intervention in this case on behalf of CabineTec's claims. As
such, the parties have often referred to them interchangeably.

1 the Project.

2 8. CabineTec signed a ratification agreement with Camco.

3 9. Helix continued on as the electrical subcontractor.

4 10. On September 9, 2008, APCO brought an action against Gemstone for breach and
5 nonpayment and Gemstone counterclaimed alleging that APCO breached the Agreement.

6 11. In December 2008 the Owner suspended the Project and advised the various contractors
7 that the Owner's lender did not expect to disburse further funds for construction.

8 12. Helix filed an amended notice of mechanic's lien on January 29, 2009 and CabineTec filed
9 a mechanic's lien on February 2, 2009.

10 13. Each of the remaining parties brought an action associated with the Project, and all cases
11 were consolidated to the instant action.

12 14. On April 21, 2010, Judge Delaney filed an Order to Show Cause Why Default Judgment
13 should not be entered against Gemstone for failure to give reasonable attention, obtain new
14 counsel, and appear at hearings.

15 15. On April 27, 2010, Gemstone together with Alexander Edelstein file a Response to Order
16 to Show Cause Why Default Judgment should not be entered against Gemstone for failure
17 to give reasonable attention, obtain new counsel, and appear at hearings.

18 16. On May 26, 2010, Judge Delaney filed an Order Striking Defendant Gemstone
19 Development West, Inc.'s Answer and Counterclaims, and Entering Default for failure to
20 give reasonable attention to matters, failure to obtain new counsel, failure to appear at
21 hearings.

22 17. On June 6, 2013, APCO filed a motion for summary judgment against Gemstone only.

23 a. That Motion confirmed that APCO complied with all terms of the Agreement and
24 that Gemstone materially breached the Agreement by, among other things:

- 25 i. Failing to make payments due to APCO;
26 ii. Interfering with APCO's relationships with its subcontractors;
27 iii. Refusing to review, negotiate, or consider change order requests in good
28 faith;

- 1 iv. Removing APCO from the Project without valid or appropriate grounds;
2 and
3 v. Otherwise breaching the terms of the Agreement.
- 4 b. APCO also represented that Gemstone owes APCO the principal amount of
5 \$20,782,659.95 under the terms of the Agreement for work performed by APCO.
- 6 c. On June 13, 2013, the Court granted that motion. The parties cannot locate a
7 written order.
- 8 18. The Project lender filed a motion for summary judgment as to lien priority, and the Court
9 granted the bank's motion. This Court ordered that the "Property shall be sold free and
10 clear of all liens including but not limited to all liens as shown on Preliminary Title
11 Report...".
- 12 19. All the sale proceeds then went to the lenders. The Writ Petition was denied in September
13 2015.
- 14 20. Thereafter, the stay was lifted and the subcontractors continued to pursue claims for non-
15 payment from APCO and Camco.
- 16 **II. CLAIMS FOR RELIEF AGAINST APCO**
- 17 **A. Helix Electric's Claims for Relief against APCO:**
- 18 1. See Discussion in Section VII, B only below.
- 19 **B. National Wood's Claims for Relief:**
- 20 1. See Discussion in Section VIII below.
- 21 **III. APCO's AFFIRMATIVE DEFENSES**
- 22 **A. APCO's Affirmative Defenses against Helix's Claims:**
- 23 1. Helix has failed to state a claim against APCO upon which relief can be granted and
24 cannot meet is burden of proof as being entitled to the payment requested. Among other
25 things, Helix agreed that payment would not be due unless and until payment for its work
26 was received by APCO from the Owner.
27
28

2. Helix waived its claims against APCO by continuing to work for Camco and including all retention in its billings to Camco and Gemstone, and never submitted its billings to APCO.
3. No monies are due Helix at this time as APCO has not received payment for Helix's work from Gemstone that have not been paid to Helix. All billings from Helix to APCO as approved by Gemstone were paid by APCO. Further, APCO could not have received payment for Helix's work because Helix continued on in the Project with Camco.
4. Any and all damages sustained by Helix are the result of negligence, breach of contract and/or breach of warranty, express and/or implied, of a third-party over whom APCO has no control, and for whose acts APCO is not responsible or liable to Helix.
5. At the time and place under the circumstances alleged by the Helix, Helix had full and complete knowledge and information with regard to the conditions and circumstances then and there existing, and through Helix's own knowledge, conduct, acts and omissions, assumed the risk attendant to any condition there or then present.
6. Whatever damages, if any, were sustained by Helix, were caused in whole or in part or were contributed to by reason of Helix's own actions and assumption of the risk and waiver.
7. The damages alleged by Helix were caused by and arose out of the risk which Helix had knowledge of and which Helix assumed by entering into the Subcontract with APCO and by subsequently continuing to work with Camco and/or Gemstone after APCO's termination of the Contract.
8. The alleged damages complained of by Helix were caused in whole or in part by a new, independent and intervening cause over which APCO had no control. Said independent, intervening cause was the result of any alleged damages resulting to Helix.
9. APCO's obligations to Helix have been satisfied, excused or waived.
10. The claim for breach of contract is barred as a result of Helix's failure to satisfy conditions precedent. Per the Subcontract, retention was not due unless and until five

preconditions were met. They were not met and Helix is not entitled to recover from APCO.

11. The claims, and each of them, are premature.

12. Any obligations or responsibilities of APCO under the subcontract with Helix, if any, have been replaced, terminated, voided, cancelled or otherwise released by the ratification entered into between Helix, Gemstone and/or Camco. Helix entered into a ratification and amendment of subcontract agreement with Camco on September 4, 2008.

13. APCO never received billings for the amounts Helix is requesting in this action.

14. Helix has failed to comply with the requirements of NRS 624.

15. Helix overbilled and was overpaid by APCO for Helix's improper billing of its general conditions costs, for light fixtures delivered and installed on the Project while APCO was the prime contractor, and for Helix's over billing given its actual percentage of completion as of the date of termination of the prime contract. APCO is entitled to a setoff against Helix.

16. APCO is informed and believes and thereon alleges that it fully performed all of its obligations under its subcontract with Helix.

17. Helix's claims may be barred by the doctrines of waiver and estoppel.

18. Helix's claims may be barred by the express terms of its contract.

19. Helix's claims may be barred because it may have failed to mitigate any damages allegedly sustained and has otherwise incurred damages as a consequence of its own actions and/or inactions.

20. Helix's claims may be barred by the doctrines of setoff and recoupment.

B. APCO's Affirmative Defenses against National Wood's Claims:

1. National Wood has failed to state a claim against APCO upon which relief can be granted and cannot meet its burden of proof as being entitled to the payments requested. Among other things, National Wood agreed that payment would not be due unless and until payment for its work was received by APCO from Gemstone.

2. National Wood waived its claims against APCO by continuing to work for Camco and including all retention in its billings to Camco and Gemstone.
3. No monies are due National Wood at this time as APCO has not received payment for National Wood's work from Gemstone that have not been paid to National Wood. All billings from National Wood to APCO as approved by Gemstone were paid by APCO.
4. Any and all damages sustained by National Wood are the result of negligence, breach of contract and/or breach of warranty, express and/or implied, of a third-party over whom APCO has no control, and for whose acts APCO is not responsible or liable to National Wood.
5. At the time and place under the circumstances alleged by the National Wood, National Wood had full and complete knowledge and information with regard to the conditions and circumstances then and there existing, and through National Wood's own knowledge, conduct, acts and omissions, assumed the risk attendant to any condition there or then present.
6. Whatever damages, if any, were sustained by National Wood, were caused in whole or in part or were contributed to by reason of National Wood's own actions and assumption of the risk and waiver.
7. The damages alleged by National Wood were caused by and arose out of the risk which National Wood had knowledge of and which National Wood assumed by entering into the Subcontract with APCO and by subsequently continuing to work with Camco and/or Gemstone after APCO's termination of the Contract.
8. The alleged damages complained of by National Wood were caused in whole or in part by a new, independent and intervening cause over which APCO had no control. Said independent, intervening cause was the result of any alleged damages resulting to National Wood.
9. APCO's obligations to National Wood have been satisfied, excused or waived.
10. The claim for breach of contract is barred as a result of National Wood's failure to satisfy conditions precedent. Per the Subcontract, retention was not due unless and until

1 five preconditions were met. They were not met and National Wood is not entitled to
2 recover from APCO.

3 11. The claims, and each of them, are premature.

4 12. Any obligations or responsibilities of APCO under the subcontract with National Wood,
5 if any, have been replaced, terminated, voided, cancelled or otherwise released by the
6 ratification entered into between National Wood, Gemstone and/or Camco.

7 13. APCO never received billings for the amounts National Wood is requesting in this action.

8 14. National Wood has failed to comply with the requirements of NRS 624.

9 15. CabineTec was overpaid by APCO for materials that were not installed by CabineTec
10 when APCO was acting as the prime contractor.

11 16. APCO is informed and believes and thereon alleges that it fully performed all of its
12 obligations under its subcontract with National Wood.

13 17. National Wood's claims may be barred by the doctrines of waiver and estoppel.

14 18. National Wood's claims may be barred by the express terms of its contract.

15 19. National Wood's claims may be barred because it may have failed to mitigate any damages
16 allegedly sustained and has otherwise incurred damages as a consequence of its own
17 actions and/or inactions.

18 20. National Wood's claims may be barred by the doctrines of setoff and recoupment.

19 **IV. CLAIMS FOR RELIEF AGAINST CAMCO**

20 National Wood's claims against Camco are discussed in Section VIII, below. The Peel Brimley
21 Lien Claimant's Claims for Relief against Camco are in Section VII below.

22 **V. CAMCO'S AFFIRMATIVE DEFENSES**

23 **Camco will not be joining in this pre-trial brief.**

24 **VI. CLAIMS OR DEFENSES TO BE ABANDONED**

25 No claims or defenses have been abandoned.

26 **VII. CLAIMS FOR RELIEF BY THE PEEL BRIMLEY LIEN CLAIMANTS**

27 **A. All Peel Brimley Lien Claimants:**
28

1 Each of the Peel Brimley Lien Claimants², represented by the law firm of Peel Brimley LLP,
2 was a subcontractor to APCO Construction ("APCO") and/or Camco Pacific Construction, Inc.
3 ("Camco"). They each assert entitlement to payment from APCO and/or Camco and to foreclosure
4 of their mechanic's liens. The Peel Brimley Lien Claimants assert entitlement to payment on
5 several non-exclusive grounds, including:

6 Breach of Contract

7 Breach of the Implied Covenant of Good Faith and Fair Dealing

8 Unjust Enrichment/Quantum Meruit

9 Mechanic's Lien Foreclosure

10 Violation of NRS 624.606 through 624.630 et seq.

11 Claim on Contractor's Bond (against Camco)

12 Each of the Peel Brimley Lien Claimants will provide up the amounts of their claims against
13 APCO and Camco (and for lien foreclosure) as presented below. Helix is the only Peel Brimley
14 Lien Claimant with a claim against APCO. The Peel Brimley Lien Claimants also seek interest,
15 costs and reasonable attorney's fees pursuant to written contracts and/or NRS 108.237.

16 **B. Helix Electric of Nevada LLC (Against APCO and Camco)**

17 Helix Electric of Nevada, LLC ("Helix") was initially hired by APCO to perform electrical
18 work on the Project. Although there is a written Subcontract Agreement containing signatures of
19 Helix and APCO, Helix's signature on the same was conditioned upon APCO's agreement to a
20 contract amendment known as the Helix Amendment. However, it appears that Helix and APCO
21 never reached a meeting of the mind as to the so-called Helix Amendment before APCO ceased
22 work on the Project and terminated its contract with the Project Owner on or about August 14,
23 2008. The Project Owner then hired Camco to replace APCO and many of the subcontractors,
24 including Helix, continued work on the Project. Some subcontractors entered into Ratification
25 Agreements with Camco that, among other things, purport to substitute Camco for APCO.
26 However, Helix contends that it never entered into the Ratification Agreement or some other

27 _____
28 ² The Peel Brimley Lien Claimants are: Cactus Rose Construction, Fast Glass Inc., Heinaman
Contract Glazing, Helix Electric of Nevada, LLC, and SWPPP Compliance Solutions, LLC.

1 written subcontract agreement with Camco. Helix nonetheless continued to work at Camco's
2 direction while the Ratification Agreement remained under negotiation and until work stopped on
3 the Project.

4 Helix asserts entitlement to recovery of all unpaid sums due and owing and/or the unpaid
5 balance of the reasonable value of the work it performed. With respect to work performed while
6 APCO was the general contractor, Helix asserts an unpaid principal balance of \$505,021.00,
7 exclusive of interest, costs and attorney's fees. With respect to work performed while Camco, was
8 the general contractor, Helix has an unpaid principal balance of \$584,692.78 exclusive of interest,
9 costs and attorney's fees. Helix further contends that APCO is liable to Helix for all monies
10 earned and/or the reasonable value of the work performed after APCO ceased work on the Project.

11 **C. Heinaman Contract Glazing, Inc. (Against Camco Only)**

12 Heinaman Contract Glazing, Inc. was hired by Camco and the Project Owner, Gemstone, to
13 provide glazing work on the Project by way of a Letter of Intent to Proceed with the Work and
14 Memorandum of Understanding Regarding Terms and Conditions ("the Heinaman Agreement").
15 By way of the Heinaman Agreement, Camco and Gemstone agreed to be jointly and severally
16 liable for payment of Heinaman's invoices, to be paid without retention. By its terms the
17 Heinaman Agreement "shall be binding on the parties until a different contract is signed by all
18 Parties." No different contract was ever signed by all Parties.

19 Heinaman asserts entitlement to recovery of all unpaid sums due and owing and/or the unpaid
20 balance of the reasonable value of the work it performed. Specifically, Heinaman asserts an unpaid
21 principal balance of \$187,525.26, exclusive of interest, costs and attorney's fees.

22 Heinaman intends to call the following witnesses

23 1. Mark Heinaman

24 Heinaman reserves the right to call the following witnesses:

25 2. John Heinaman

26 3. Any person identified in Heinaman's NRCP 16.1 Disclosure, as amended

27 4. Any person identified in any other party's NRCP 16.1 Disclosures

28 5. Any person who has testified in deposition in this matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
Consolidated with 80508

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 28

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CHRONOLOGICAL APPENDIX OF EXHIBITS

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
04-26-10	CAMCO and Fidelity's Answer and CAMCO's Counterclaim	JA000031- JA000041	1
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
06-06-13	APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
11-06-17	Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCF Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine	JA001133 JA001148	21

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6	JA001161- JA001169	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i>	JA001178- JA001186	22
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
01-04-18	Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order	JA001552- JA001560	27

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
01-17-18	Transcript Bench Trial (Day 1)¹	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (<i>Admitted</i>)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (<i>Admitted</i>)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (<i>Admitted</i>)	JA001869- JA001884	30

¹ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record (<i>Admitted</i>)	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks (<i>Admitted</i>)	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment (<i>Admitted</i>)	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP (<i>Admitted</i>)	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner (<i>Admitted</i>)	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement (<i>Admitted</i>)	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

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	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
01-18-18	Transcript – Bench Trial (Day 2)²	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)³	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80

² Filed January 31, 201879

³ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁴	JA005820- JA005952	81
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	APCO Construction Inc.’s Post-Trial Brief	JA006059- JA006124	82/83
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
03-23-18	Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief	JA006173- JA006193	84
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85

⁴ Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
06-01-18	Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
06-15-18	APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs	JA006615- JA006637	90/91
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007095- JA007120	97/98
06-15-18	Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007121- JA007189	98
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA007190- JA007192	99
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225- JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238- JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262- JA007280	100
09-28-18	Notice of Entry of (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313- JA007315	101

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 10MM – Scott Financial Corporation’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
08-29-19	Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)	JA009117- JA009123	119

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	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119
01-29-20	Notice of Appeal	JA009132- JA009136	119/120
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
02-11-20	Case Appeal Statement	JA009157- JA009163	120
02-11-20	APCO's Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA000016 – JA000030	1
05-08-18	APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA006265- JA006284	85
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
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	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
06-06-13	APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time	JA000044- JA000054	1
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
02-11-20	APCO’s Notice of Cross Appeal	JA009164- JA010310	120
	Exhibit 1 – Notice of Entry of Order (1) 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	JA009168- JA009182	114

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
11-06-17	APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i>	JA000590 JA000614	9
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

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	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
03-23-18	APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law	JA006125- JA006172	83/84
08-16-19	APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA008811- JA008821	114
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
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	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in <i>Limine</i> Nos. 1-4	JA000929- JA000940	13/14
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	APCO Construction Inc.'s Post-Trial Brief	JA006059- JA006124	82/83
11-15-17	APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i>	JA001133 JA001148	21

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	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
06-29-18	APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.	JA007198- JA007220	99
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
04-26-10	CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim	JA000031- JA000041	1
11-14-17	Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6	JA000898- JA000905	12
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
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06-15-18	Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007121- JA007189	98
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
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08-06-19	Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – 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 and all related matters (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	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109

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	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

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	Exhibit 10R – 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.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing’s Motion for Attorneys’s Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112

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	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113

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	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
05-08-18	Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements	JA006509- JA006521	89
06-21-18	Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs	JA007193- JA007197	99
06-15-18	Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs	JA006917 – JA006942	96
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	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment	JA006964- JA006978	96

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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97

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	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA007085- JA007087	97
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
11-14-17	Helix Electric of Nevada’s Opposition to APCO Construction’s Omnibus Motion in Limine	JA000994- JA001008	20
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
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03-23-18	Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief	JA006173- JA006193	84
06-24-09	Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint	JA000001- JA000015	1
01-12-18	Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]	JA001574- JA001594	27/28
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
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	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
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	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
03-08-18	Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law	JA005986- JA006058	8/821
03-08-18	Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law	JA005953- JA005985	81
01-04-18	Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time	JA001199- JA001217	22
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
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	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120

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05-31-18	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]	JA006522 JA006540	89
06-01-18	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.]	JA006541 JA006550	90
09-28-18	Notice of Entry of Order (1) Granting APCO Construction, Inc.'s 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 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	JA007281- JA007299	100
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001178- JA001186	22
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01-03-20	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification	JA009124- JA009131	119

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01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
09-28-17	Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA00418	7
01-09-18	Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001552- JA001560	27
06-18-18	Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition	JA007190- JA007192	99

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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
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	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
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	APCO Related Exhibits:		
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	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
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	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
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	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
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	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
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	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
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	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

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	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	Zitting Brothers Related Exhibits:		
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	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
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	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
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	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
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	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
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	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

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	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
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	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	CAMCO Related Exhibits:		
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	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
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	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
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	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	Helix Trial Exhibits:		

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	Transcript Bench Trial (Day 1)⁵	JA001668- JA001802	29/30
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

⁵ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO (<i>Admitted</i>)	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice (<i>Admitted</i>)	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice (<i>Admitted</i>)	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors (<i>Admitted</i>)	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions (<i>Admitted</i>)	JA002189 – JA002198	36
01-18-18	Transcript – Bench Trial (Day 2)⁶	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) (<i>Admitted</i>)	JA005371- JA005623	78/79/80
01-19-18	Transcript – Bench Trial (Day 3)⁷	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint (<i>Admitted</i>)	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone (<i>Admitted</i>)	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO (<i>Admitted</i>)	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec (<i>Admitted</i>)	JA005806-	80

⁶ Filed January 31, 201879

⁷ Filed January 31, 2018

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 536 – Lien math calculations (handwritten) (<i>Admitted</i>)	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence (<i>Admitted</i>)	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien (<i>Admitted</i>)	JA005817- JA005819	81
01-24-18	Transcript – Bench Trial (Day 5)⁸	JA005820- JA005952	81
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300- JA007312	100/101

⁸ Filed January 31, 2018

1 **D. Cactus Rose Construction (Against Camco Only)**

2 Cactus Rose Construction, Inc. was hired by Camco and the Project Owner, Gemstone, to
3 provide work on the Project by way of a Time and Material Authorization ("the Cactus Rose
4 Agreement"). Cactus Rose performed work and submitted Invoices and Change/Field Orders
5 totaling \$363,591.44, of which a principal balance of \$238,627.25 remains unpaid, exclusive of
6 interest, costs and attorney's fees. Cactus Rose subsequently filed for bankruptcy protection. Its
7 claims in this action are controlled, authorized and asserted in the name of Cactus Rose by the
8 bankruptcy Trustee.

9 Cactus Rose intends to call the following witnesses

10 1. Dave Hofelich

11 Cactus Rose reserves the right to call the following witnesses:

- 12 2. Any person identified in Cactus Rose's NRCP 16.1 Disclosure, as amended
13 3. Any person identified in any other party's NRCP 16.1 Disclosures
14 4. Any person who has testified in deposition in this matter.

15 **E. Fast Glass, Inc. (Against Camco Only)**

16 Fast Class, Inc. was hired by Camco to provide glazing work on the Project by way of a
17 Subcontract Agreement ("the Fast Glass Agreement"). By way of the Fast Glass Agreement,
18 Camco agreed to pay Fast Glass the sum of \$199,000.00, all of which is unpaid and outstanding.
19 As such, Fast Glass seeks the principal balance of \$199,000.00 exclusive of interest, costs and
20 attorney's fees.

21 Fast Glass intends to call the following witnesses

22 1. Clay Jorgenson

23 Fast Glass reserves the right to call the following witnesses:

- 24 2. Any person identified in Fast Glass' NRCP 16.1 Disclosure, as amended
25 3. Any person identified in any other party's NRCP 16.1 Disclosures
26 4. Any person who has testified in deposition in this matter.

27 **F. SWPPP Compliance Solutions (Against Camco Only)**

1 SWPPP Compliance Solutions ("SWPPP") was hired by Camco and the Project Owner,
2 Gemstone, to provide work on the Project by way various Bid Proposals ("the SWPPP
3 Agreement"). SWPPP performed work and submitted Invoices and Statements, of which a
4 principal balance of \$117,470.00 remains unpaid, exclusive of interest, costs and attorney's fees.

5 SWPPP intends to call the following witnesses

6 1. Anthony Vizl

7 SWPPP reserves the right to call the following witnesses:

8 2. Any person identified in SWPPP's NRCP 16.1 Disclosure, as amended

9 3. Any person identified in any other party's NRCP 16.1 Disclosures

10 4. Any person who has testified in deposition in this matter.

11 **VIII. CLAIMS FOR RELIEF BY NATIONAL WOOD PRODUCTS, INC.**

12 National Wood Products, Inc., plaintiff in intervention ("National Wood"), has sued in the
13 place of plaintiff in intervention and lien claimant, Cabinetec, Inc. ("Cabinetec"), who was a
14 subcontractor to APCO Construction ("APCO") and/or Camco Pacific Construction Company, Inc.
15 ("CAMCO"). National Wood's claims entitlement to payment as against APCO and CAMCO,
16 jointly and severally, on the following grounds:

17 Breach of Contract

18 Breach of Implied Covenant of Good Faith and Fair Dealing

19 Unjust Enrichment

20 Violation of NRS 624

21 Monies Due and Owing

22 Quantum Meruit

23 Account Stated

24 **IX. COUNTERCLAIMS FOR RELIEF BY CAMCO AGAINST NATIONAL WOOD**

25 1. First Cause of Action – Breach of Contract.

26 2. Second Cause of Action – Breach of Covenant of Good Faith and Fair Dealing.

27 **X. NATIONAL WOOD'S AFFIRMATIVE DEFENSES AGAINST CAMCO'S**
28 **COUNTERCLAIMS**

- 1 1. CAMCO's counterclaim fails to state a claim against National Wood.
- 2 2. Cabinetec is informed and believes and thereon alleges that it fully performed all of
- 3 its obligations under its contract.
- 4 3. Cabinetec is informed and believes and thereon alleges that CAMCO breached the
- 5 terms of its contract by failing to perform the obligations required therein.
- 6 4. CAMCO's claims may be barred by the doctrines of waiver and estoppel.
- 7 5. CAMCO's claims may be barred by the doctrine of release.
- 8 6. CAMCO's claims may be barred by the doctrine of laches.
- 9 7. CAMCO's claims may be barred by the express terms of its contract.
- 10 8. CAMCO may be precluded from recovering damages because of its own acts or
- 11 omissions or as a result of the acts or omission is of third person over which National Wood has
- 12 had no control.
- 13 9. CAMCO's claims may be barred because it may have failed to mitigate any
- 14 damages allegedly sustained and has otherwise incurred damages as a consequence of its own
- 15 actions and/or inactions.
- 16 10. CAMCO's claims may be barred by the doctrines of setoff and recoupment.
- 17 11. If any agreement, contract, or other obligation as alleged in the Counterclaim was
- 18 breached, CAMCO's failure to fulfill its contractual and/or other responsibilities excused any
- 19 obligation of performance on National Wood's part.
- 20 12. Counterclaimants are barred and void as by Nevada public policy.

21 **XI. EXHIBITS**

22 **A. LIST OF APCO's STIPULATED EXHIBITS (except as noted)**

23 *See Exhibit 1, attached hereto.*

24 **C. LIST OF HELIX'S STIPULATED EXHIBITS**

25 *See Exhibit 2, attached hereto.*

26 **D. LIST OF NATIONAL WOOD'S STIPULATED EXHIBITS**

27 *See Exhibit 3, attached hereto.*

28 **E. LIST OF CACTUS ROSE'S NON-STIPULATED EXHIBITS**

1 See **Exhibit 4**, attached hereto.

2 **F. LIST OF HEINAMAN'S NON-STIPULATED EXHIBITS**

3 See **Exhibit 5**, attached hereto.

4 **G. LIST OF FAST GLASS' NON-STIPULATED EXHIBITS**

5 See **Exhibit 6**, attached hereto.

6 **H. LIST OF SWPPP'S NON-STIPULATED EXHIBITS**

7 See **Exhibit 7**, attached hereto.

8 **XII. OTHER EXHIBITS**

9 The following are all documents and/or exhibits, which the Parties expect to offer at trial if the
10 need arises: Any document produced by either party and identified in a supplement to that party's
11 Rule 16.1 disclosures during the discovery period in this action, or any pleadings from their
12 matter.

13 **XIII. OBJECTIONS TO EXHIBITS**

14 The parties reserve their right to object to the above documents as to the admissibility at
15 trial.

16 **XIV. COURT ORDERS ON THE LIMITATION/EXCLUSION OF EVIDENCE**

- 17 1. Order on APCO's Motion in Limine. On December 29, 2017, Judge Denton issued an
18 order on motions in limine brought by APCO. A copy of that Order is attached as **Exhibit**
19 **8**. On January 7, 2018, Judge Denton also signed a Nunc Pro Tunc Order regarding
20 APCO's Motion in Limine No. 7. A copy of that Order is attached as **Exhibit 9**.
- 21 2. Order on Helix's Motion in Limine Against APCO. On December 29, 2017 Judge Denton
22 issued an order on motions in limine brought by Helix against APCO. A copy of that Order
23 is attached as **Exhibit 10**.
- 24 3. Order on Peel Brimley's Motion in Limine Against Camco. On December 29, 2017 Judge
25 Denton issued an order on motions in limine brought by Peel Brimley Against Camco. A
26 copy of that Order is attached as **Exhibit 11**.
- 27
28

1 4. Order on National Wood's Motion in Limine. On January 3, 2018, Judge Denton issued an
2 order on motions in limine brought by APCO. A copy of that Order is attached as **Exhibit**
3 **12.**

4 5. Order on Peel Brimley Lien Claimant's Motion for Partial Summary Judgment Precluding
5 Defenses Based on Pay-if-Paid Agreements. On January 3, 2018, Judge Denton issued an
6 order on the Peel Brimley Lien Claimants Motion for Partial Summary Judgment. A copy
7 of that Order is attached as **Exhibit 13.**

8 The parties have not agreed to any additional limitations or exclusions of evidence.

9 **XV. WITNESSES**

10 **A. APCO's Witness List**

11 Plaintiff will call the following individuals as witnesses during the trial.

12 1. Joe Pelan
13 APCO Construction
14 c/o Spencer Fane
15 300 S. Fourth Street, Suite 700
16 Las Vegas, NV 89101

17 2. Mary Jo Allen
18 APCO Construction
19 c/o Spencer Fane
20 300 S. Fourth Street, Suite 700
21 Las Vegas, NV 89101

22 3. Brian Benson
23 APCO Construction
24 c/o Spencer Fane
25 300 S. Fourth Street, Suite 700
26 Las Vegas, NV 89101

27 4. Lisa Lynn
28 APCO Construction
c/o Spencer Fane
300 S. Fourth Street, Suite 700
Las Vegas, NV 89101

5. Andrew Rivera
Helix Electric of Nevada, LLC
c/o Peel Brimley
Henderson, NV 89052

6. Person Most Knowledgeable
Helix Electric of Nevada, LLC
c/o Peel Brimley
Henderson, NV 89052
7. Person Most Knowledgeable
CabineTec, Inc.
c/o Richard Tobler
3654 N. Racho Drive, Suite 102
Las Vegas, NV 89130
8. Person Most Knowledgeable
National Wood Products, LLC
c/o Richard Tobler
3654 N. Racho Drive, Suite 102
Las Vegas, NV 89130
9. Person Most Knowledgeable
Camco Construction
c/o Steve Morris
2520 St. Rose Pkwy., Suite 319
Henderson, NV 89074

Each of these individuals, and their respective addresses, were previously disclosed. APCO also reserves the right to call any rebuttal or impeachment witnesses. In addition, APCO reserves the right to call as a witness any person disclosed by any other party.

B. Helix's Witness List

Helix intends to call the following witnesses

1. Robert D. Johnson
2. Andrew Rivera

Helix reserves the right to call the following witnesses:

1. Victor Fuchs
2. Any person identified in Helix's NRCP 16.1 Disclosure, as amended.
3. Any person who has testified in deposition in this matter.

Each of these individuals, and their respective addresses, were previously disclosed. Helix also reserves the right to call any rebuttal or impeachment witnesses. In addition, Helix reserves the right to call as a witness any person disclosed by any other party.

C. National Wood's Witness List

1 National Wood intends to call the following individuals as witnesses during the trial.

- 2 1. Kurt Micek;
- 3 2. Nicholas Cox
- 4 3. Robert Thompson
- 5 4. David E. Parry (Live or Deposition Transcript
- 6 5. Mary Jo Alen (Live or Deposition Transcript)
- 7 6. Brian Benson (Live or Deposition Transcript)

8 Each of these individuals, and their respective addresses, were previously disclosed.

9 National Wood also reserves the right to call any rebuttal or impeachment witnesses. In addition,

10 National Wood reserves the right to call as a witness any person disclosed by any other party.

11 **D. Heinaman's Witness List**

12 Heinaman intends to call the following witnesses

- 13 1. Mark Heinaman

14 Heinaman reserves the right to call the following witnesses:

- 15 2. John Heinaman
- 16 3. Any person identified in Heinaman's NRCP 16.1 Disclosure, as amended
- 17 4. Any person who has testified in deposition in this matter.

18 Each of these individuals, and their respective addresses, were previously disclosed.

19 Heinaman also reserves the right to call any rebuttal or impeachment witnesses. In addition,

20 Heinaman reserves the right to call as a witness any person disclosed by any other party.

21 **E. Cactus Rose's Witness List**

22 Cactus Rose intends to call the following witnesses

- 23 1. Dave Hofelich

24 Cactus Rose reserves the right to call the following witnesses:

- 25 2. Any person identified in Cactus Rose's NRCP 16.1 Disclosure, as amended
- 26 3. Any person who has testified in deposition in this matter.

27 Each of these individuals, and their respective addresses, were previously disclosed.

28 Cactus Rose also reserves the right to call any rebuttal or impeachment witnesses. In addition,

1 Cactus Rose reserves the right to call as a witness any person disclosed by any other party.

2 **F. Fast Glass' Witness List**

3 Fast Glass intends to call the following witnesses

4 1. Clay Jorgenson

5 Fast Glass reserves the right to call the following witnesses:

6 2. Any person identified in Fast Glass' NRCP 16.1 Disclosure, as amended

7 3. Any person who has testified in deposition in this matter.

8 Each of these individuals, and their respective addresses, were previously disclosed. Fast
9 Glass also reserves the right to call any rebuttal or impeachment witnesses. In addition, Fast Glass
10 reserves the right to call as a witness any person disclosed by any other party.

11 **G. SWPPP's Witness List**

12 SWPPP intends to call the following witnesses

13 1. Anthony Vizl

14 SWPPP reserves the right to call the following witnesses:

15 2. Any person identified in SWPPP's NRCP 16.1 Disclosure, as amended

16 3. Any person who has testified in deposition in this matter.

17 Each of these individuals, and their respective addresses, were previously disclosed. Helix
18 also reserves the right to call any rebuttal or impeachment witnesses. In addition, Helix reserves
19 the right to call as a witness any person disclosed by any other party.

20 **XVI. ISSUES OF LAW**

21 **A. APCO's ISSUES OF LAW**

22 1. Whether APCO is responsible for work performed under the direction and for the benefit
23 of Camco and/or Gemstone?

24 2. Whether APCO violated NRS 624?

25 3. Whether APCO is liable for labor and material provided to the Project after it left the
26 Project?
27
28

4. Whether Helix's representation in its complaint that it signed a ratification agreement and subcontract with Camco constitutes a judicial admission?
5. Whether Helix and CabineTec ratified their respective subcontracts with Camco?
6. Whether novations occurred with respect to either the Helix or CabineTec respective subcontracts?
7. Whether Helix and CabineTec waived their rights to pursue APCO?
8. Whether owner payment preconditions are valid conditions precedent to payment?
9. Whether any amount became due under the payment schedules set forth in the Helix or CabineTec subcontract?
10. Whether Helix and CabineTec can pursue unjust enrichment claims against APCO when each had a subcontract with APCO?
11. Whether Helix's and CabineTecs retention payments ever became due?
12. Whether APCO is entitled to a setoff against either Helix's or CabineTec's claims?

B. PEEL BRIMLEY LIEN CLAIMANTS' ISSUES OF LAW

1. Whether each of the Peel Brimley Lien Claimants is entitled to the unpaid balance of its contract(s) and/or the reasonable value of its work.
2. Whether each of the Peel Brimley Lien Claimants is entitled to have its lienable amount adjudged and foreclosed.
3. Whether each of the Peel Brimley Lien Claimants is entitled to interest, costs and reasonable attorney's fees pursuant to their contracts and/or NRS 108.237.
4. Whether each of the Peel Brimley Lien Claimants is entitled to foreclose on Camco's Contractors' Bond.

C. NATIONAL WOOD'S ISSUES OF LAW

1. Whether National Wood, as successor to Cabinetec, is entitled to the unpaid balance of Cabinetec's contract(s) and/or the reasonable value of its work.
2. Whether National Wood, as successor to Cabinetec, is entitled to have Cabinetec's lienable

1 amount adjudged and foreclosed.

- 2 3. Whether National Wood, as successor to Cabinetec, is entitled to interest, costs and
3 reasonable attorney's fees pursuant to Cabinetec's contracts and/or NRS 108.237.

4 **XVII. TRIAL ESTIMATE**

5 The trial is currently set from January 17, 2018 until January 26, 2018. The parties believe this
6 will be sufficient time for trial.

7 **XVIII. MISCELLANEOUS MATTERS**

- 8 1. The parties are going to proceed with trial as the Project would have proceeded in
9 chronological order. As such, the parties believe that the trial will proceed as follows:
10 APCO's opening, APCO's general case-in-chief as to the background of the Project,
11 Helix Electric's prove-up its claims against APCO, CabineTec's prove-up against
12 APCO, and then APCO will present its defenses to the Helix and CabineTec evidence
13 and claims, a day for closing arguments if requested by the Court.
- 14 2. Camco has advised the Court and the other parties that its attorney will be out of the
15 country and not available for trial until January 23, 2018. Once Camco's counsel
16 becomes available, the Parties with claims against Camco intend to prove up those
17 claims at that time.
- 18 3. The parties have agreed that original deposition transcripts are not required.

19 Dated this 12th day of January, 2018.

20 **SPENCER FANE LLP**

PEEL BRIMLEY

21 By: /s/ Mary Bacon
22 John H. Mowbray, Esq. (Bar No. 1140)
23 John Randall Jefferies, Esq. (Bar No. 3512)
24 Mary E. Bacon, Esq. (Bar No. 12686)
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Construction, Fast Glass, Inc. and SWPPP
Compliance Solutions*

1 **RICHARD L. TOBLER, LTD.**

2 By _____

3 Richard L. Tobler, Esq.
4 Nevada Bar No. 4070
5 3654 N. Rancho Drive, Suite 102
6 Las Vegas, Nevada 89130
7 Telephone: (702) 256-6000
8 Attorneys for Plaintiff in Intervention,
9 NATIONAL WOOD PRODUCTS, INC.
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Exhibit 1

EXHIBIT LIST

CASE NO. A571228

TRIAL DATE: JANUARY 17, 2018

[CONSOLIDATED WITH A574391; A574792; A577623;
A583289; A587168; A58088L; A584730; A589195;
A595552; A597089; A592826; A589677; A596924;
A584960; A608717; A608718; AND A590319]

DEPT. NO.: XIII

JUDGE: MARK R. DENTON
COURT CLERK: MARWANDA KNIGHT
REPORTER: JENNIFER GEROLD

Plaintiff: APCO Construction

vs.

Defendant: Gemstone Development West, Inc., et al.

Counsel: Cody S. Mounteer;
J. Randall Jeffries

Counsel: Unrepresented.

Related Cases:

Plaintiff-in-Intervention: National Wood Products, Inc.

vs.

Defendant-in-Intervention: APCO Construction

Defendant-in-Intervention: Camco Pacific Construction
Company, Inc.

Counsel: Richard L. Tobler; John B. Taylor;
S. Judy Hirahara

Counsel: Cody Mounteer; J. Randall Jeffries

Counsel: Steven L. Morris

Counter Claimant: Camco Pacific Construction
Company, Inc.

vs.

Counter Defendant: National Wood Products, Inc.

TRIAL BEFORE COURT

PLAINTIFF APCO CONSTRUCTION'S EXHIBITS¹

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		APCO GENERAL				
1	04/17/07	Grading Agreement between Gemstone and Apco	APCO033494- APCO033515			

¹ APCO reserves the right to use any exhibits it lists against any party, regardless of the party headings in the document.

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
2	09/06/07	Apco/Gemstone General Construction	ZBCI002099-002141			
3	10/15/07	Nevada/Gemstone Cost Plus/GMP Contract Disbursement Agreement	APCO033539-APCO033553			
4	06/30/08	Apco Pay Application No. 9 Submitted to Gemstone	APCO034867-APCO034954			
5	07/18/08	Letter from J. Barker to A. Edelstein re: Apco's Notice of Intent to Stop Work	ZBCI001151-ZBCI001154			
6	07/28/08	Letter from J. Barker to A. Edelstein re: Apco's Notice of Intent to Terminate Contract	SIERRA000128-SIERRA000129			
7	07/30/08	Letter from Scott Financial to Apco re: loan status	CAMCO-MW00042			
8	07/31/08	Apco Pay Application No. 10 as submitted to Owner	APCO035144-APCO035179			
9	07/31/08	Apco Pay Application No. 10 – NCS/Owner Approved with NCS Report for bank	04215-04313			
10	08/11/08	Letter from J. Barker to A. Edelstein re: Notice of Intent to Stop Work	NVPE000241-NVPE000246			
11	08/11/08	Email from a. Bergman to J. Olivares, et al. re: Pay Application No. 9 – NCS-Owner Approved with NCS Report for Bank	04333-04423			
12	08/12/08	Email from C. Colligan to subcontractors re: Gemstone's financing	NVPE000247-NVPE000248			
13	08/15/08	Letter from A. Edelstein to R. Nickerl re: Termination for Cause	12418-12431			
14	08/15/08	Letter from W. Gochnour to Sean Thueson re: response to Termination for Cause	APCO106381-APCO106388			
15	08/19/08	Letter from R. Nickerl to A. Edelstein re: 48 hour notice	APCO106389-APCO106391			
16	08/19/08	Email from J. Horning to A. Berman and J. Olivares re: joint cheks	12342			
17	08/20/08	Video – Roof Top/Common Corridor/Unit 455 (3:40-7:08 clip) -Drywall not complete (not even put on walls – shows bare framing and insulation) -Still needs clean up from framing sub	APCO0104410			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
18	08/20/08	Video – Unit 462 (2:36 minutes) -Drywall not complete (taping of drywall not complete) -Lighting trim & fixtures not installed	APCO104416			
19	08/20/08	Video – 2 nd Floor/Common Corridor (2:56 minutes) -Drywall not complete (not even put on walls – shows bare framing and insulation exposed)	APCO104468			
20	08/20/08	Video – Unit 165 (2:44 minutes) -Drywall not complete -Lighting trim & fixtures not installed -No cabinets installed (APCO was billed and paid for installation of this unit)	APCO104471			
21	08/20/08	Video – Unit 161 (2:12 minutes) -Drywall not complete -Lighting trim & fixtures not installed -No cabinets installed (APCO billed and paid for installation of this unit)	APCO104478			
22	08/20/08	Video – Common Corridor (3:00) -Drywall not complete (not even put on walls-shows bare framing and insulation exposed)	APCO104490			
23	08/21/08	Apco Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein re: Notice of Stopping Work & Notice of Intent to Terminate Contract	APCO106287-102288			
24	08/22/08	Letter from R. Nickerl to Clark County re: notification of APCO's withdrawal as General Contractor of Record	03932-03938			
25	08/25/08	Amended and Restated General Construction Agreement between Gemstone and Camco	CAMCO-MW01320-CAMCO-MW01361			
26	08/28/08	Email from J. Gisondo to subcontractors re: June checks	NVPE000254			
27	08/28/08	Letter from A. Edelstein to R. Nickerl re: June progress payment	12357-12412			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
28	09/05/08	Letter from J. Barker to A. Edelstein re: Termination of Agreement for GMP	NVPE000255			
29	09/05/08	Email from J. Robbins to Subcontractors re: billing cut-off for August billing	NVPE000256			
30	10/20/08	Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	00372-00396			
31	10/30/08	Transmission of Apco's Pay Application No. 11 as Submitted to Owner	APCO035436-APCO035473			
32	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed and no electrical trim or fixture installed	APCO0102299			
33	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed	APCO0102300			
34	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed	APCO0102321			
35	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed and no electrical trim or fixtures installed	APCO0102328			
36	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed and no electrical trim or fixtures installed	APCO0102341			
37	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed and no electrical trim or fixtures installed	APCO0102345			
38	11/20/08	Photo re: Building 8 & 9, Interior – Showing drywall still not completed and no electrical trim or fixtures installed	APCO0102346			
39	12/15/08	Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	ZBCI001117			
40	12/22/08	Letter from D. Parry to Subcontractors re: funding withdrawn	APCO106398			
		*HELIX				
41		Demonstrative: Billing and Payments Status Summary	NONE			
42		Demonstrative: Materials Stored Billing Status Summary Sheet	NONE			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
43		Demonstrative: Payments and Releases through August 2008 (Pay Applications No. 1-12)	VARIOUS			
44		Demonstrative: Helix Billing/Payment Chart for APCO for Manhattan West Phase 1 with Helix Correction	HELIX00400			
45	04/17/07	Subcontract Agreement between Apco and Helix	APCO039520-APCO039547			
46	05/31/08	Helix Pay Application No. 16713-008R1 with Proof of Payment	APCO039611-APCO039624			
47	06/30/08	Helix Pay Application No. 16713-009R1 with Proof of Payment	VARIOUS			
48	07/29/08	Email from R. Nickerl to B. Johnson re: Work Suspension Directive	HELIX00588			
49	07/31/08	Helix Pay Application No. 16713-010R2 with Proof of Payment	HELIX00339-HELIX00343			
50	07/31/08	Unconditional Waiver and Release re: Pay Application No. 8 w/copy of payment	HELIX00232-00233			
51	08/20/08	Photo re: Building 8 & 9, South – No exterior fixtures installed. Helix billed out at 90%.	APCO0102495			
52	08/20/08	Photo re: Building 8 & 9, North – No exterior fixtures installed. Helix billed out at 90%.	APCO0102498			
53	08/20/08	Photo re: Building 2 & 3, West – No exterior fixtures installed. Helix billed out at 90%.	APCO0102502			
54	08/20/08	Photo re: Building 2 & 3, East – No exterior fixtures installed. Helix billed out at 90%.	APCO0102504			
55	08/20/08	Photo re: Building 2 & 3, East – No exterior fixtures installed. Helix billed out at 90%.	APCO0102506			
56	08/20/08	Photo re: Building 8 & 9, North – No exterior fixtures installed. Helix billed out at 90%.	APCO0102507			
57	08/20/08	Photo re: Building 2 & 3, and 8 & 9, North – No exterior fixtures installed. Helix billed out at 90%	APCO0102508			
58	08/31/08	Helix Pay Application No. 16713-011R1 submitted to Owner	APCO035513-APCO035521			
59	08/31/08	Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	VARIOUS			
60	08/31/08	Helix Retention Rolled to Camco	VARIOUS			
61	09/03/08	Unconditional Waiver and Release	HELIX00282-			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		re: all invoices through 06/30/08 w/proof of payment	HELIX00284			
62	09/05/08	Photo re: Building 8 & 9, South – No exterior fixtures installed. Helix billed out at 90%.	APCO0102516			
63	09/05/08	Photo re: Building 2 & 3, West – No exterior fixtures installed. Helix billed out at 90%.	APCO0102517			
64	09/05/08	Photo re: Building 2 & 3, West – No exterior fixtures installed. Helix billed out at 90%. Drywall not complete.	APCO102531			
65	09/05/08	Photo re: Building 2 & 3, South – No exterior fixtures installed. Helix billed out at 90%. Drywall not complete.	APCO0102532			
66	09/29/08	Letter of transmittal from Helix to Apco re: Helix Pay Application No. 16713-011R1	VARIOUS			
67	10/01/08	Photo re: Building 8 & 9, West – No exterior fixtures installed. Helix billed out at 90%.	APCO0102578			
68	10/01/08	Photo re: Building 8 & 9, West – No exterior fixtures installed. Helix billed out at 90%.	APCO0102579			
69	10/01/08	Photo re: Building 2 & 3, East – No exterior fixtures installed. Helix billed out at 90%.	APCO0102594			
70	10/01/08	Photo re: Building 8 & 9, South – No exterior fixtures installed. Helix billed out at 90%.	APCO0102625			
71	10/10/08	Photo re: Building 8 & 9, West – No exterior fixtures installed. Helix billed out at 90%.	APCO102627			
72	10/10/08	Photo re: Building 2 & 3, East – No exterior fixtures installed. Helix billed out at 90%.	APCO0102642			
73	10/17/08	Photo re: Building 8 & 9, West – No exterior fixtures installed. Helix billed out at 90%.	APCO0102655			
74	10/17/08	Photo re: Building 2 & 3, East – No exterior fixtures installed. Helix billed out at 90%.	APCO0102671			
75	10/27/08	Unconditional Release re: Pay Application No. 16713-011R1 w/proof of payment	HELIX00372- HELIX00377			
76	01/29/09	Amended Notice of Lien	APCO0103562- APCO0103576			
77	04/14/09	Helix Statement of Facts Constituting Notice of Lien and	NONE			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		Third-Party Complaint				
78	03/24/14	Helix Contract with Martin Harris re: Building 2 & 3	MHC3457-MHC3473			
79	04/16/14	Helix Contract with Martin Harris re: Building 8 & 9	MHC3401-MHC3418			
80	04/29/15	Martin Harris Subcontractor Change Order No. 00042	MHC5321			
81	08/31/16	Helix Initial Disclosure Statement	NONE			
		*ZITTING BROTHERS				
82		Contract Terms re: Retention	APCO044592-044608; APCO044620-044621			
83		Change Orders initialed	ZBCI002059-ZBCI002077			
84	04/17/07	Subcontract Agreement between Apco and Zitting; and Exhibit "B" to subcontract	APCO044592-APCO044624			
85	11/30/07-04/04/08	Lumber Entries	NONE			
86	12/12/07-04/11/08	Roy Zitting Daily Reports	VARIOUS			
87	03/26/08	Apco Change Order No. 00037	APCO035926			
88	04/18/08	Letter from J. Pelan to Zitting re: change order	APCO044771			
89	04/29/08	Apco Change Order No. 00001	APCO044588			
90	05/12/08	Email from R. Zitting to L. Lynn re: extras and work orders	APCO106337			
91	05/21/08	Email from J. Griffith to R. Nickerl, et al. re: structural change order comments and dispositions	APCO106338-APCO106343			
92	05/30/08	Zitting Change Order with \$30 hourly rate	APCO106344-APCO106351			
93	05/30/08	Zitting Pay Application No. 503	VARIOUS			
94	05/31/08	Zitting Supplier Releases	APCO044637-APCO044642			
95	06/13/08	Check No. 13956 payable to Zitting (\$156,574.60) – Progress Payment No. 6	APCO044667-APCO044668			
96	06/24/08	Unconditional Lien Release re: Zitting	APCO044651			
97	06/25/08	Zitting Pay Application with Change Order billing rre: Change Order No. 1-4	APCO035128-APCO035136			
98	07/01/08-10/11/08	Zitting Job Costing	VARIOUS			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
99	07/01/08-02/28/09	Zitting Job Costing After Billing 100%; and Zitting Change Orders	APCO106352-APCO106355			
100	07/28/08	Check No. 14392 payable to Zitting (\$27,973.80); – Progress Payment No. 7	APCO044643; and APCO044644			
101	07/30/08	Email from R. Nickerl to R. Zitting re: change orders	APCO106356-APCO106357			
102	08/07/08	Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	APCO106358-APCO106359			
103	08/08/08	Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	APCO106360			
104	08/08/08	Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	APCO106361-APCO106380			
105	08/08/08	Ex. C to the Ratification – Zitting Quotes	ZBCI002098			
106	08/08/08	Unconditional Lien Release – Zitting (\$27,973.80)	APCO044636			
107	08/12/08	Email from C. Colligan to Subcontractors re: subcontractor concerns	NVPE000247-NVPE000248			
108	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104410 (01)			
109	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104410 (02)			
110	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104412			
111	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104441			
112	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104490 (01)			
113	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104490 (02)			
114	08/20/08	Photo of Video that contradicts claim for retention language	APCO0104490 (03)			
115	08/22/08	Progress Payment No. 9 Remitted to Zitting	APCO106189			
116	08/26/08	Ratification and Amendment of Subcontract Agreement between Buchele and Camco	09714-09717			
117	08/26/08	Exhibit C to the Ratification	ZBCI002098			
118	08/26/08	Q&A from Gemstone to subcontracts	APCO106392-APCO106394			
119	08/28/08	Check No. 528388 payable to Apco (\$33,847.55) – Progress Payment No. 8.1 and 8.2	APCO044625-APCO044627			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
120	08/31/08	Tri-City Drywall Pay Application No. 7 to Apco as submitted to Owner. Show percentage complete for Zitting.	APCO035649- APCO035651			
121	09/15/08	Field Change Directive	ZBCI002082- ZBCI002086			
122	09/18/08	Conditional Lien Release – Zitting (\$33,847.55)	07930			
123	09/22/08	Email from N. Zitting to J. Olivares re: release from Wojan	07905			
124	10/09/08	Email from L. Lynn to R. Zitting, et al. re: Final Project Summary Statement	APCO106395- APCO106397			
125	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102299			
126	11/20/08	Photo of Video that contradicts claim for retention language	ACPO0102300			
127	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102301			
128	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102321			
129	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102329			
130	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102341			
131	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102345			
132	11/20/08	Photo of Video that contradicts claim for retention language	APCO0102346			
133	12/15/08	Zitting Change Request Log – Outstanding	ZBCI001178			
134	12/22/08	Letter from D. Parry to G. Hall re: project suspension	CAMCO- MW01979- CAMCO- MW01980			
135	12/23/08	Notice of Lien filed by Zitting against Apco	ZBCI001965- ZBCI001972			
136	01/30/09	Fax from Zitting to Apco re: remaining contract work with change orders	ZBCI002030- ZBCI002041			
137	03/09/09	Zitting Accounting Sheet - JC Entries by Job	ZBCI001734			
138	04/28/09	Memo from Scott Financial to Nevada State Contractor's Board re: explanation of project payment process	CAMCO- MW00029- CAMCO- MW00037			
139	04/30/09	Zitting's Complaint re: Foreclosure	NONE			
140	04/06/10	Zitting Aging Detail by Contract	ZBCI000120- ZBCI000121			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
141	04/06/10	Statement of Account as of April 6, 2010	ZBCI000117-ZBCI000121			
142	04/07/10	Zitting Amended Notice of Lien	ZBCI001976-ZBCI001986			
143	09/01/16	Zitting's Initial Disclosure Statement	NONE			
144	02/08/17	Zitting's First Supplemental Disclosure	NONE			
145	06/30/17	Zitting's Second Supplemental Disclosure	NONE			
146	10/23/17	Apco's Second Amended Notice of Deposition re: PMK for Zitting	NONE			
		*NATIONAL WOOD/CABINETEC				
147		Demonstrative: Payments & Releases	VARIOUS			
148		Invoices from CabineTec to Apco	NWP00001-NWP00002			
149	04/17/07	Subcontract Agreement between Apco and CabineTec	APCO036976-APCO036992			
150	08/05/08	CabineTec delivery ticket and invoices (signed by Apco)	NWP00133; NWP00235; NWP00214			
151	08/08/08	CabineTec Pay Application to Apco with proof of payment	VARIOUS			
152	08/11/08	Terms & Conditions modified by Apco, invoices and check payment	NWP00721-NWP00726			
153	08/31/08	Contract Agreement Progress Payment No. 2	APCO104865-104866			
154	09/22/08	Check No. 529407 (\$161,262) from NCS to Apco	APCO104867			
155	02/02/09	CabineTec Notice of Lien against Apco and Camco	APCO103366-APCO103368			
156	02/06/09	CabineTec' Statement of Facts Constituting Lien Claim and Complaint in Intervention	NONE			
157	09/30/16	National Wood's initial disclosure statement	NONE			
158	03/03/17	National Wood's first supplemental disclosure	NONE			
159	11/13/17	National Wood's second supplemental disclosure	NONE			
160		Documents provided for settlement	VARIOUS		NRS 48.105	
		*CAMCO				
161		Camco Buildings 8 & 9 Schedule Start Date 08/29/08	APCO104561-APCO104562			
162	08/25/08	Amended and Restated General Construction Agreement between	CAMCO-MW01320-			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		Gemstone and Camco	CAMCO-MW01361			
163	09/30/08	Camco Pay Application No. 12 to Gemstone	CAMCO-MW01249-CAMCO-MW01286			
164	12/16/08	Email from B. Scott to J. Olivares re: no further draws being approved	CAMCO-MW00036			
165	12/19/08	Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	CAMCO-MW02699			
166	12/22/08	Letter from D. Parry to G. Hall re: withdrawal of funding	CAMCO-MW01979-CAMCO-MW01980			
167	12/31/08	Camco Pay Application No. 15 to Gemston	CAMCO-MW01249-CAMCO-MW01288			
168	04/28/09	Memo from Scott Financial to Nevada State Contractor's Board re: payment process for project	CAMCO-MW02702-CAMCO-MW02704			
		**HELIX				
169		Helix Exhibit to Standard Subcontract Agreement with Camco	HELIX00882-HELIX00892			
170	08/26/08	Subcontract Agreement between Helix and Camco (unsigned)	HELIX00837-HELIX00892			
171	08/26/08	Work Order No. 100	HELIX00689-HELIX00692			
172	09/04/08	Letter from J. Griffith to Victor Fuchs re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	HELIX00893-HELIX00903			
173	09/30/08	Helix Pay Application No. 16713-012 to Camco with proof of payment	01933-01941; HELIX00657-HELIX00661			
174	10/06/08	Helix Change Order Request No. 28	HELIX00761			
175	10/29/08	Change Notice No. 41	HELIX00710-HELIX00712			
176	10/31/08	Helix Pay Application No. 16713-013 to Camco	01391-01399; HELIX00597-HELIX00606			
177	12/04/08	Helix Pay Application No. 16713-014 to Camco	HELIX00631-HELIX00640			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
178	12/15/08	Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	HELIX00643- HELIX00656			
		**ZITTING BROTHERS				
179		Camco Schedule reflecting framing inspection not complete	CAMCO- MW02190- CAMCO- MW02194			
180	09/04/08- 10/08/08	Zitting's Change Order Requests and Field Change Directives to Camco	ZBCI002078- ZBCI002097			
181	11/18/08	Change Order No. 3 re: options at buildings 8 and 9	ZBCI000046			
		**NATIONAL WOOD/ CABINETEC				
182		Invoices from CabineTec to Camco	NWP00003- NWP00030			
183	08/26/08	Ratification and Amendment of Subcontract Agreement between CabineTec and Camco	NWP00609- NWP00612			
184	08/26/08	Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	CAMCO- MW01648- CAMCO- MW01674			
185	10/24/08	CabineTec Pay Application No. 1024411-IN to Camco with NCS approved amount	01172-01213			
186	11/11/08	Email from A. Edelstein to L. Duckstein, et al. re: payment	NWP00705- NWP00708			
187	11/21/08	Email from A. Edelstein to J. Robbins, et al. re: CabineTec comfort letter/difference in billing amounts	NWP00700- NWP00703			
188	12/01/08	Email from A. Edelstein to R. Trickett re: December 5 th payment	NWP00699			
189	12/01/08	Letter from Scott Financial to L. Duckstein re: October Payment Application	CAMCO- MW00034			
190	12/15/08	Email from A. Adelstein to L. Duckstein re: funding cut-off	NWP00692- NWP00696			
		*BUCHELE				
191		Buchele Business License	APCO106322			
192		Buchele Contractor's License (reflecting out of business, prior to death)	APCO106323			
193		Buchele Obituary information	APCO106324			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
194		Payment information from NV Construction Services on behalf of Camco	APCO106325-APCO106336			
195	06/05/08	Subcontract Agreement between Apco and Buchele	APCO036938-APCO036954			
196	06/30/08	Buchele Pay Application No. 1 to Apco with proof of payment	VARIOUS			
197	08/18/08	Buchele Pay Application No. 2 to Apco with proof of payment	VARIOUS			
198	08/26/08	Ratification and Amendment of Subcontract Agreement between Buchele and Camco	09714-09717			
199	09/29/08	Camco transmittal cover sheet to Buchele re: contract	CAMCO-MW01559			
200	09/30/08	Buchele Payment Request No. 2 to Camco with proof of payment	01682-01683; 01692			
201	10/21/08	Buchele Billing Statement No. 3 to Camco	BUCH0084-BUCH0086			
202	10/21/08	Buchle Pay Application No. 3 to Camco	01167-01171			
203	11/08/17	Buchele Billing Statement No. 4 to Camco	BUCH00104-BUCH00112			
204	12/22/08	Letter from D. Parry to T. Buchele re: funding withdrawn	BUCH00117-BUCH00118			
205	12/30/08	Buchele Notice of Lien	APCO106401-APCO106402			
206	06/01/09	Statement of Facts Constituting Lien on Behalf of Buchele	NONE			
207	05/03/10	Declaration of Thomas Buchele	BUCH00141-BUCH00143			
208	08/31/16	Buchele Initial Disclosure Statement	NONE			
		*GENERAL				
209	05/31/08	InsulPro Progress Payment No. 12	APCO103135-APCO103138			
210	06/30/08	Zitting Invoice NO. 73828	APCO104233-APCO			
211	06/30/08	Zitting Pay Application No. 509	ZBCI002037-ZBCI002038			
212	07/02/08	Letter from Edelstein to R. Nickler re: NRS 624 Notic	04592-04595			
213	07/08/08	Letter from J. Barker to A. Edelstein re: NRS 624 Notice	04596-04599			
214	07/31/08	InsulPro Progress Payment No. 3.1	APCO10139-APCO103141			
215	08/15/08	Email from C. Colligan to subcontractors re: 48 hour termination notice	NONE			
216	08/18/08	Email from C. Colligan re:	NONE			

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		meeting with subcontractors				
217	08/21/08	InsulPro Invoice No. 0008927P5	APCO103142- APCO103146			
218	08/31/08	Camco/Owner Pay Application No. 11 w/backup	CAMCO- MW00045- CAMCO-MW			
219	09/09/08	APCO Complaint against Gemstone	NONE		Improper use of pleading	
220	09/30/08	Camco/Owner Pay Application No. 12 w/backup	CAMCO- MW00249- CAMCO- MW00552			
221	10/31/08	Camco/Owner Pay Application No. 13 w/backup	CAMCO- MW00553- CAMCO- MW01005			
222	11/30/08	Camco/Owner Pay Application No. 14 w/backup	CAMCO- MW01006- CAMCO- MW01248			
223	12/08/08	APCO's First Amended Complaint	NONE		Improper use of pleading	
224	12/24/08	MASCO 15 day Notice of Intent to Lien	APCO103147- APCO103150			
225	12/31/08	Camco/Owner Pay Application No. 15	CAMCO- MW01249- CAMCO- MW01288			
226	01/15/09	Gemstone's Answer to APCO Complaint and Counterclaim	NONE		Improper use of pleading	
227	02/04/09	APCO's Reply to Gemstone's Counterclaim	NONE		Improper use of pleading	
228	03/16/09	APCO's Answer to Cabinetec's Statement of Facts	NONE		Improper use of pleading	
229	06/10/09	APCO's Answer to Zitting's Complaint	NONE		Improper use of pleading	
230	06/22/09	Gemstone's Answer to APCO's Cross-Claim Contained in its Answer to Steel's Amended Statement of Facts	NONE		Improper use of pleading	
231	06/24/09	Helix's Amended Statement of Facts	NONE		Improper use of pleading	
232	08/05/09	APCO's Answer to Helix's	NONE		Improper	

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		Amended Statement of Facts			use of pleading	
233	01/26/10	Case Management Order	NONE		Improper use of pleading	
234	03/17/10	APCO's Initial Disclosure Statement	NONE		Improper use of discovery	
235	03/25/10	APCO's First Supplemental Disclosure Statement	NONE		Improper use of discovery	
236	04/12/10	APCO's Response to Zitting's Request for Admissions	NONE		Improper use of discovery	
237	04/29/10	APCO's Response to Zitting's Interrogatories	NONE		Improper use of discovery	
238	07/29/10	APCO's Third Supplemental Disclosure Statement	NONE		Improper use of discovery	
239	07/29/10	InsulPro's Response to APCO's Request for Admissions	NONE		Improper use of discovery	
240	09/27/10	APCO's Fourth Supplemental Disclosure Statement	NONE		Improper use of discovery	
241	12/14/10	Notice of Entry of Order Granting Scott Financial's Motion to Stay	NONE		Improper use of pleading	
242	11/30/12	Notice of Entry of Order Staying Case, Except for the Sale of the Property	NONE		Improper use of pleading	
243	04/23/13	Order Approving Sale of Property	NONE		Improper use of pleading	
244	11/24/15	Order Denying Rehearing	NONE		Improper use of pleading	
245	02/19/16	Order Denying En Banc Reconsideration	NONE		Improper use of pleading	
246	04/14/16	Order Releasing Sale Proceeds	NONE		Improper use of pleading	
247	06/06/16	APCO's Fifth Supplemental Disclosure Statement	NONE		Improper use of discovery	
248	08/08/16	Special Master Report, Recommendation and Order	NONE		Improper use of discovery	

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
249	08/31/16	APCO's Sixth Supplemental Disclosure Statement	NONE		Improper use of discovery	
250	09/22/16	Unitah Special Master Questionnaire	NONE		Improper use of discovery	
251	09/23/16	National Wood's Response to Special Master Questionnaire	NONE		Improper use of discovery	
252	02/14/17	Zitting Verification to Responses to APCO's First Set of Interrogatories	NONE		Improper use of discovery	
253	03/03/17	APCO's Answers to National Wood's Requests for Interrogatories	NONE		Improper use of discovery	
254	03/03/17	APCO's Answers to National Wood's Requests for Admissions	NONE		Improper use of discovery	
255	03/03/17	National Wood's Responses to APCO's First Set of Interrogatories	NONE		Improper use of discovery	
256	03/03/17	National Wood's Responses to APCO's First Set of Request for Production of Documents	NONE		Improper use of discovery	
257	03/14/17	Nevada State Contractor's Board Search re: Uintah Investments	NONE			
258	03/14/17	Nevada Secretary of State's Search re: Uintah Investments	NONE			
259	03/29/17	Helix PMK – Notice of Deposition	NONE		Improper use of discovery	
260	03/29/17	National Wood PMK – Notice of Deposition	NONE		Improper use of discovery	
261	03/29/17	Zitting PMK Notice of Deposition	NONE		Improper use of discovery	
262	05/08/17	Special Master Report Regarding Discovery Status	NONE		Improper use of discovery	
263	05/11/17	Amended Notice of Deposition re: APCO, and Request for Production of Documents	NONE		Improper use of discovery	
264	05/12/17	APCO's Answer to Zitting's First Requests for Interrogatories	NONE		Improper use of discovery	
265	05/12/17	APCO's Answer to Zitting's First Requests for Admissions	NONE		Improper use of discovery	

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
266	05/15/17	APCO's Answer to Helix's First Requests for Interrogatories	NONE		Improper use of discovery	
267	05/15/17	APCO's Response to Helix's First Set of Requests for Admissions	NONE		Improper use of discovery	
268	05/16/17	Helix PMK – Notice of Deposition	NONE		Improper use of discovery	
269	05/23/17	National Wood PMK – Notice of Deposition	NONE		Improper use of discovery	
270	06/02/17	APCO's Seventh Supplemental Disclosure Statement	NONE		Improper use of discovery	
271	06/05/17	APCO's Eighth Supplemental Disclosure Statement	NONE		Improper use of discovery	
272	06/05/17	APCO's PMK Deposition Transcript	NONE		Improper use of discovery	
273	06/07/17	Helix PMK - Amended Notice of Deposition	NONE		Improper use of discovery	
274	06/26/17	APCO's Motion for Summary Judgment re: NRS 108 Claim	NONE		Improper use of pleading	
275	06/30/17	APCO's Ninth Supplemental Disclosure Statement	NONE		Improper use of discovery	
276	07/17/17	APCO PMK Notice of Deposition	NONE		Improper use of discovery	
277	07/18/17	APCO PMK Deposition Transcript	NONE		Improper use of discovery	
278	07/19/17	APCO PMK Deposition Transcript	NONE		Improper use of discovery	
279	07/20/17	Helix PMK Deposition Transcript	NONE		Improper use of discovery	
280	07/31/17	Zitting Motion for Partial Summary Judgment Against APCO	NONE		Improper use of pleading	
281	08/21/17	APCO's Opposition to Zitting's Motion for Partial Summary Judgment	NONE		Improper use of pleading	
282	08/21/17	Mary Jo Allen Declaration in Support of APCO's Opposition to	NONE		Improper use of	

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		Zitting's Motion for Partial Summary Judgment			pleading	
283	08/30/17	APCO's Tenth Supplemental Disclosure Statement	NONE		Improper use of discovery	
284	10/05/17	Transcript of Hearing re: All Pending Motions	NONE		Improper use of pleading	
285	10/16/17	M. Bacon email to E. Zimbelman	NONE			
286	10/17/17	E. Zimbelman email to M. Bacon	NONE			
287	10/17/17	M. Bacon email to E. Zimbelman	NONE			
288	10/18/17	National Wood PMK - Amended Notice of Deposition	NONE		Improper use of discovery	
289	10/18/17	Zitting PMK - Amended Notice of Deposition	NONE		Improper use of discovery	
290	10/20/17	National Wood PMK - Second Amended Notice of Deposition	NONE		Improper use of discovery	
291	10/23/17	Zitting PMK – Second Amended Notice of Deposition	NONE		Improper use of discovery	
292	10/26/17	Buchele PMK – Notice of Deposition	NONE		Improper use of discovery	
293	10/26/17	Order Reopening Discovery	NONE		Improper use of pleading	
294	10/27/17	National Wood PMK – Notice of Continued Notice of Deposition	NONE		Improper use of discovery	
295	10/30/17	Notice of Entry of Order re: Peel Brimley's Motion for Partial Summary Judgment	NONE		Improper use of pleading	
296	11/03/17	National Wood PMK – Third Amended Notice of Deposition	NONE		Improper use of discovery	
297	11/06/17	National Wood PMK – Notice of Vacating Notice of Deposition	NONE		Improper use of discovery	
298	11/07/17	APCO's Supplemental Answers to Helix's First Requests for Interrogatories	NONE		Improper use of discovery	
299	11/07/17	APCO's Supplemental Answers to Zitting's First Requests for Admissions	NONE		Improper use of discovery	
300	11/07/17	APCO's Supplemental Answers to	NONE		Improper	

Exhibit No.	Date	Exhibit Description	Bates No.	Date Offered	Objection	Date Admitted
		Zitting's First Request for Interrogatories			use of discovery	
301	11/08/17	APCO's Supplemental Answers to National Wood's Request for Interrogatories	NONE		Improper use of discovery	
302	11/08/17	APCO's Supplemental Response to Helix's First Set of Requests for Admissions	NONE		Improper use of discovery	
303	11/08/17	APCO's Supplemental Response to National Wood's Requests for Admissions	NONE		Improper use of discovery	
304	11/08/17	APCO's Supplemental Response to Zitting's First Requests for Admissions	NONE		Improper use of discovery	
305	11/27/17	APCO's Eleventh Supplemental Disclosure Statement	NONE		Improper use of discovery	
306	01/02/18	APCO's Court Docket	NONE		Improper use of pleading	
307		Demonstrative: Helix Overpayments Documentation	VARIOUS			
308		Zitting's Accounting Records	VARIOUS			
309		Zitting's Conditional Waivers	VARIOUS			
310	01/2008	Helix June 2008 Pay Application	07296; 07465-07476			
311		Demonstrative: Helix Billings Submitted to Owner by APCO	VARIOUS			
312	05/31/08	APCO/Owner Pay Application No. 8	04535-04548			
313	08/06/08	Letter from A. Edlstein to R. Nickerl re: NRS 624 Notice	NONE			
314	05/05/10	Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgement against Gemstone	NONE		Improper use of pleading	
315	12/10/13	Helix Bid Proposal re: The Gramercy Phase 1 Completion	MHC3512-MHC3516			
316	02/10/14	Gramercy Project Documents List/Drawing Log	MCH342-MHC3435			
317	04/10/14-10/20/14	Martin Harris Subcontractor Change Orders 00001-00013	MHC4892-MHC5000			
318	12/09/14-04/29/15	Martin Harris Subcontractor Change Orders 00014-00052	MHC5001-MHC5382			
319	12/09/14-04/29/15	Martin Harris Subcontractor Change Orders 00014-00052 continued	MHC5383-MHC3950			

Exhibit 2

HELIX TRIAL EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Bates Begin</u>	<u>Bates End</u>	<u>Admitted</u>	<u>Authentic</u>	<u>Other Objection</u>
HELIX-TR-EX-501	Payment Records - APCO	HELIX00008	HELIX00400			
HELIX-TR-EX-502	Change Order Records - APCO	HELIX00401	HELIX00463			
HELIX-TR-EX-503	Change Order No. 1	HELIX00568	HELIX000569			
HELIX-TR-EX-504	Electrical Design Proposal	HELIX00528	HELIX00530			
HELIX-TR-EX-505	Subcontract Agreement document (APCO)	APCO104915	APCO104940			
HELIX-TR-EX-506	July 7, 2011 Email and Contract revisions	HELIX00579	HELIX587			
HELIX-TR-EX-507	July 29, 2008 correspondence re: work suspension	HELIX00588	HELIX00589			
HELIX-TR-EX-508	Payment Application and Payment Records - Camco	HELIX00596	HELIX 00674			
HELIX-TR-EX-509	Work Directives, Change Notices and Change Order Requests	HELIX00675	HELIX00791			
HELIX-TR-EX-510	Contract documents - Camco	HELIX00792	HELIX00903			
HELIX-TR-EX-511	Helix First Day/Last Day records	HELIX00904	HELIX00907			
HELIX-TR-EX-512	Helix Lien Notice and Perfection Documents	HELIX00908	HELIX00983			
HELIX-TR-EX-513	Payment Application Records	APCO00034154	APCO00035521			
HELIX-TR-EX-514	Various Documents produced by APCO	APCO00039494	APCO39839			
HELIX-TR-EX-515	Progress Photos produced by APCO	APCO104492	APCO104562			
HELIX-TR-EX-516	Progress Photos and other documents produced by APCO	APCO106289	APCO106314			
HELIX-TR-EX-517	December 15, 2008 email from Edelstein	CAMCO-MW 00001				
HELIX-TR-EX-518	December 18, 2008 letter from Camco counsel	CAMCO-MW 00002				
HELIX-TR-EX-519	March 2, 2009 letter from Camco counsel	CAMCO-MW 00003	CAMCO-MW 00004			
HELIX-TR-EX-520	May 8, 2009 letter from Camco counsel	CAMCO-MW 00038	CAMCO-MW 00039			
HELIX-TR-EX-521	June 9, 2008 letter from Scott Financial	CAMCO-MW 00041				
HELIX-TR-EX-522	Camco billing records	CAMCO-MW 00045	CAMCO-MW 01288			
HELIX-TR-EX-523	Misc. Camco-produced billing documents re: Helix	CAMCO-MW 02068	CAMCO-MW02083			
HELIX-TR-EX-524	Martin Harris Contract 5 documents	MHC 3457	MHC 3462			
HELIX-TR-EX-525	Martin Harris Contract 6 documents	MHC 3401	MHC 3407			
HELIX-TR-EX-526	Deposition Transcript of Mary Jo Allen and Exhibits	n/a				
HELIX-TR-EX-527	Deposition Transcript of Brian Benson and Exhibits	n/a				
HELIX-TR-EX-528	Deposition Transcript of Dave Parry and Exhibits	n/a				
HELIX-TR-EX-529	APCO Responses to Helix's Interrogatories	n/a				
HELIX-TR-EX-530	APCO Responses to Helix's Requests for Production	n/a				
HELIX-TR-EX-531	APCO Responses to Helix's Requests for Admission	n/a				
HELIX-TR-EX-532	Camco Responses to Helix's Interrogatories					
HELIX-TR-EX-533	Camco Responses to Helix's Requests for Production	n/a				
HELIX-TR-EX-534	Camco Responses to Helix's Requests for Admission	n/a				
HELIX-TR-EX-535	Deposition Transcript of Andrew Rivera and Exhibits	n/a				
HELIX-TR-EX-536	RESERVED					
HELIX-TR-EX-537	RESERVED					
HELIX-TR-EX-538	RESERVED					

Exhibit 3

EXHIBIT LIST

CASE No. A571228

TRIAL DATE: JANUARY 9, 2018

[Consolidated with A574391; A574792; A577623;
A583289; A587168; A580881; A584730; A589195;
A595552; A597089; A592826; A589677; A596924;
A584960; A608717; A608718; and A590319]

DEPT. No.: XIII

JUDGE: MARK R. DENTON
COURT CLERK: MARWANDA KNIGHT
REPORTER: JENNIFER GEROLD

PLAINTIFF: APCO Construction

vs.

DEFENDANT: Gemstone Development West, Inc., et al.

COUNSEL: Cody S. Mounteer;

J. Randall Jeffries

COUNSEL: Unrepresented.

RELATED CASES:

PLAINTIFF-IN-INTERVENTION: National Wood Products, Inc.

vs.

Defendant-in-Intervention: APCO Construction

Defendant-in-Intervention: Camco Pacific Construction
Company, Inc.

COUNSEL: Richard L. Tobler; John B. Taylor;
S. Judy Hirahara

COUNSEL: Cody Mounteer; J. Randall Jeffries

COUNSEL: Steven L. Morris

COUNTER CLAIMANT: Camco Pacific Construction

Company, Inc.

vs.

COUNTER DEFENDANT: National Wood Products, Inc.

TRIAL BEFORE COURT

PLAINTIFF IN INTERVENTION, NATIONAL WOOD PRODUCTS, INC.'S EXHIBITS

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3001	09/06/07	Manhattan West General Construction Agreement for GMP between Gemstone Development West, Inc. and Asphalt Products Corporation dba APCO Construction			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3002	04/28/08	Subcontract Agreement between APCO Construction and Cabinetec, Inc.			
3003	07/31/08	Cabinetec's Invoice No. 1023635-IN to APCO for Building 8 Unit 152 Plan P-B4A			
3004	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023635			
3005	07/31/08	Cabinetec's Invoice No. 1023636-IN to APCO for Building 8 Unit 153 Plan P-B3			
3006	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023636			
3007	07/31/08	Cabinetec's Invoice No. 1023637-IN to APCO for Building 8 Unit 154 Plan P-B1			
3008	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023637			
3009	07/31/08	Cabinetec's Invoice No. 1023638-IN to APCO for Building 8 Unit 155 Plan P-B5			
3010	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023638			
3011	07/31/08	Cabinetec's Invoice No. 1023639-IN to APCO for Building 8 Unit 156 Plan P-B6			
3012	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023639			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3013	07/31/08	Cabinetec's Invoice No. 1023640-IN to APCO for Building 8 Unit 158 Plan P-A1			
3014	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023640			
3015	07/31/08	Cabinetec's Invoice No. 1023641-IN to APCO for Building 8 Unit 160 Plan P-B4B			
3016	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023641			
3017	07/31/08	Cabinetec's Invoice No. 1023642-IN to APCO for Building 8 Unit 161 Plan P-B3			
3018	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023642			
3019	07/31/08	Cabinetec's Invoice No. 1023643-IN to APCO for Building 8 Unit 162 Plan P-B4B			
3020	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023643			
3021	07/31/08	Cabinetec's Invoice No. 1023644-IN to APCO for Building 8 Unit 164 Plan P-B4ANSI			
3022	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023644			
3023	07/31/08	Cabinetec's Invoice No. 1023645-IN to APCO for Building 8 Unit 166 Plan P-B6			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3024	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023645			
3025	07/31/08	Cabinetec's Invoice No. 1023646-IN to APCO for Building 8 Unit 167 Plan P-B5			
3026	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023646			
3027	07/31/08	Cabinetec's Invoice No. 1023647-IN to APCO for Building 8 Unit 168 Plan P-B1			
3028	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023647			
3029	07/31/08	Cabinetec's Invoice No. 1023648-IN to APCO for Building 8 Unit 168 Plan P-B3			
3030	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023648			
3031	07/31/08	Cabinetec's Invoice No. 1023649-IN to APCO for Building 9 Unit 152 Plan P-B4S			
3032	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023649			
3033	07/31/08	Cabinetec's Invoice No. 1023650-IN to APCO for Building 9 Unit 153 Plan P-B3			
3034	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023650			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3035	07/31/08	Cabinetec's Invoice No. 1023651-IN to APCO for Building 9 Unit 154 Plan P-B1			
3036	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023651			
3037	07/31/08	Cabinetec's Invoice No. 1023652-IN to APCO for Building 9 Unit 155 Plan P-B5			
3038	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023652			
3039	07/31/08	Cabinetec's Invoice No. 1023653-IN to APCO for Building 9 Unit 156 Plan P-B6			
3040	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023653			
3041	07/31/08	Cabinetec's Invoice No. 1023654-IN to APCO for Building 9 Unit 158 Plan P-A1			
3042	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023654			
3043	07/31/08	Cabinetec's Invoice No. 1023655-IN to APCO for Building 9 Unit 160 Plan P-B4P			
3044	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023655			
3045	07/31/08	Cabinetec's Invoice No. 1023656-IN to APCO for Building 9 Unit 161 Plan P-B3			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3046	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023656			
3047	07/31/08	Cabinetec's Invoice No. 1023657-IN to APCO for Building 9 Unit 162 Plan P-B4B			
3048	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023657			
3049	07/31/08	Cabinetec's Invoice No. 1023658-IN to APCO for Building 9 Unit 164 Plan P-B4A			
3050	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023658			
3051	07/31/08	Cabinetec's Invoice No. 1023659-IN to APCO for Building 9 Unit 166 Plan P-B6			
3052	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023659			
3053	07/31/08	Cabinetec's Invoice No. 1023660-IN to APCO for Building 9 Unit 167 Plan P-B5			
3054	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023660			
3055	07/31/08	Cabinetec's Invoice No. 1023661-IN to APCO for Building 9 Unit 168 Plan P-B1			
3056	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023661			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3057	07/31/08	Cabinetec's Invoice No. 1023662-IN to APCO for Building 9 Unit 169 Plan P-B3			
3058	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023662			
3059	07/31/08	Cabinetec's Invoice No. 1023663-IN to APCO for Building 8 Unit 151 Plan P-S			
3060	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023663			
3061	07/31/08	Cabinetec's Invoice No. 1023664-IN to APCO for Building 8 Unit 159 Plan P-C1			
3062	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023664			
3063	07/31/08	Cabinetec's Invoice No. 1023665-IN to APCO for Building 8 Unit 163 Plan P-C1			
3064	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023665			
3065	07/31/08	Cabinetec's Invoice No. 1023666-IN to APCO for Building 8 Unit 165 Plan P-C2			
3066	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023666			
3067	07/31/08	Cabinetec's Invoice No. 1023667-IN to APCO for Building 8 Unit 177 Plan P-C2A			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3068	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023667			
3069	07/31/08	Cabinetec's Invoice No. 1023668-IN to APCO for Building 8 Unit 187 Plan P-C2B			
3070	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023668			
3071	07/31/08	Cabinetec's Invoice No. 1023669-IN to APCO for Building 9 Unit 151 Plan P-S			
3072	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023669			
3073	07/31/08	Cabinetec's Invoice No. 1023670-IN to APCO for Building 9 Unit 159 Plan P-C1			
3074	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023670			
3075	07/31/08	Cabinetec's Invoice No. 1023671-IN to APCO for Building 9 Unit 163 Plan P-C1			
3076	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023671			
3077	07/31/08	Cabinetec's Invoice No. 1023672-IN to APCO for Building 9 Unit 165 Plan P-C2			
3078	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023672			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3079	07/31/08	Cabinetec's Invoice No. 1023673-IN to APCO for Building 9 Unit 177 Plan P-C2A			
3080	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023673			
3081	07/31/08	Cabinetec's Invoice No. 1023674-IN to APCO for Building 9 Unit 187 Plan P-C2B			
3082	07/31/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023674			
3083	07/31/08	APCO worksheet of work performed by Cabinetec through 7/31/2008			
3084		APCO Subcontractor Summary July 2008 Application #10			
3085		APCO Line Item Consolidation July 2008 Application #10			
3086		APCO Subcontractor Payment Summary July 2008 Application #10			
3087	08/05/08	Gemstone's acknowledgement of receipt of cabinet delivery for Floor One of Building 8 and 9 to Manhattan West Job site and invoices on 08/01/08			
3088	08/05/08	APCO's acknowledgement of receipt of cabinet delivery for Floor One of Building 8 and 9 to Manhattan West Job site and invoices on 08/01/08			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3089	08/06/08	Letter Agreement between APCO and Cabinetec for storage of cabinets at Manhattan West job site.			
3090	08/08/08	Cabinetec's Statement of Account to APCO			
3091		Cabinetec's Statement of Invoices to APCO in the sum of \$88,545.00 for cabinets delivered on 08/01/08			
3092		Cabinetec's Statement of Invoices to APCO in the sum of \$90,675.00 for cabinets delivered on 08/01/08			
3093	08/21/08	Notice to all Manhattan (sic) West Subcontractors from APCO regarding APCO's Notice of Stopping Work and Notice of Intent to Terminate Contract for nonpayment			
3094	08/21/08	Letter to Alexander Edelstein, CEO, Gemstone Development, from James M. Barker, Corporate Counsel for APCO			
3095	08/25/08	Amended and Restated Manhattan West General Construction Agreement			
3096	08/26/08	Ratification and Amendment of Subcontract Agreement Cabinetec			
3097	09/11/08	Transmittal Coversheet from Gemstone to Cabinetec attaching Ratification to Subcontract Agreement revised 9/10/08			
3098	09/23/08	Email from Jennifer Olivares of Nevada Construction Services to Audrie Bergman, cc: Jim Horning; Jill Gisondo; Craig Colligan; Jennifer Griffith; Yfarren; Mary Jo Allen; Randy Nickerl Subject: Manhattan West July Checks			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3099	09/23/08	Joint check from Nevada Construction Services to APCO and Cabinetec			
3100		Nevada Construction Services Progress Payment #1 summary sheet			
3101		Manhattan West Contractor Pay Application #12 for September 2008			
3102	10/15/08	Nevada Construction Services Construction Progress Report for Manhattan West Condominiums			
3103	10/17/08	Cabinetec's Invoice No. 1023635RT to Camco for unpaid retention			
3104	10/17/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1023635RT to Camco for unpaid retention			
3105	10/24/08	Cabinetec's Invoice No. 1024411-IN to Camco for Building 7 Floor 2 All Units			
3106	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024411			
3107	10/24/08	Cabinetec's Invoice No. 1024412-IN to Camco for Building 7 Floor 2			
3108	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024412			
3109	10/24/08	Cabinetec's Invoice No. 1024413-IN to Camco for Building 7 Floor 3 All Units			
3110	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024413			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3111	10/24/08	Cabinetec's Invoice No. 1024414-IN to Camco for Building 7 Floor 3			
3112	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024414			
3113	10/24/08	Cabinetec's Invoice No. 1024415-IN to Camco for Building 7 Floor 4			
3114	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024415			
3115	10/24/08	Cabinetec's Invoice No. 1024416-IN to Camco for Building 7 Floor 4			
3116	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024416			
3117	10/24/08	Cabinetec's Invoice No. 1024417-IN to Camco for Building 8 Floor 4			
3118	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024417			
3119	10/24/08	Cabinetec's Invoice No. 1024418-IN to Camco for Building 8 Floor 4			
3120	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024418			
3121	10/24/08	Cabinetec's Invoice No. 1024419-IN to Camco for Building 9 Floor 4 All Units			
3122	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024419			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3123	10/24/08	Cabinetec's Invoice No. 1024420-IN to Camco for Building 9 Floor 4			
3124	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024420			
3125	10/24/08	Cabinetec's Invoice No. 1024421-IN to Camco for Building 8 Floor 2 All Units			
3126	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024421			
3127	10/24/08	Cabinetec's Invoice No. 1024422-IN to Camco for Building 8 Floor 2			
3128	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024422			
3129	10/24/08	Cabinetec's Invoice No. 1024423-IN to Camco for Building 8 Floor 2			
3130	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024423			
3131	10/24/08	Cabinetec's Invoice No. 1024424-IN to Camco for Building 8 Floor 3			
3132	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024424			
3133	10/24/08	Cabinetec's Invoice No. 1024425-IN to Camco for Building 9 Floor 3			
3134	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024425			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3135	10/24/08	Cabinetec's Invoice No. 1024426-IN to Camco for Building 9 Floor 2			
3136	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024426			
3137	10/24/08	Cabinetec's Invoice No. 1024427-IN to Camco for Building 8 Floor 3			
3138	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024427			
3139	10/24/08	Cabinetec's Invoice No. 1024428-IN to Camco for Building 9 Floor 3			
3140	10/24/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024428			
3141	10/27/08	Email from Janice Robbins of Gemstone to subcontractors, Camco representatives and Gemstone representatives Subject: Red Tag Alert			
3142	10/28/08	Email from Yvonne Farren of Camco to Jill Gisondo and Jennifer Griffith, cc: Janice Robbins, Craig Colligan and Audrie Bergman Subject: Oct Application 13 10 31 08			
3143	10/31/08	Contractor Pay Application #13			
3144	11/11/08	Email from Craig Colligan to Janice Robbins and Jennifer Griffith			
3145	11/11/08	Email from Janice Robbins of Gemstone to Craign Colligan and Jennifer Griffith			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3146	11/11/08	Email from Alex Edelstein, CEO of Gemstone, to Leo Duckstein and Rob Trickett of Cabinetec, cc: Jennifer Griffith, Janice Robbins, Craig Colligan Re: Cabinetec payment			
3147	11/12/08	Cabinetec's Invoice No. 1024529-IN to Camco for Building 7 Floor 5			
3148	11/12/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024529			
3149	11/12/08	Cabinetec's Invoice No. 1024530-IN to Camco for Building 7 Floor 6			
3150	11/12/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024530			
3151	11/12/08	Cabinetec's Invoice No. 1024532-IN to Camco for Building 7 Floor 6			
3152	11/12/08	Cabinetec's Conditional Waiver & Release Upon Progress Payment for Invoice No. 1024532			
3153	11/18/08	Email from Alex Edelstein, CEO of Gemstone, to Craig Colligan and Jennifer Griffith cc: Leo Duckstein Subject: Cabinetec Comfort Letter			
3154	11/18/08	Email from Craig Colligan to Alex Edelstein and Jennifer Griffith, cc: Leo Duckstein Subject: Cabinetec Comfort Letter			
3155	11/20/08	Email from Leo Duckstein to Alex Edelstein Subject: Cabinetec Comfort Letter			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3156	11/20/08	Email from Alex Edelstein to Leo Duckstein and Janice Robbins cc: Craig Colligan Subject: Cabinetec Comfort Letter			
3157	11/21/08	Email from Janice Robbins to Alex Edelstein and Leo Duckstein, cc: Craig Colligan and Yvonne Farren Subject: Cabinetec Comfort Letter			
3158	11/21/08	Email from Alex Edelstein to Janice Robbins and Leo Duckstein cc: Craig Colligan and Yvonne Farren Subject: Cabinetec Comfort Letter			
3159	11/21/08	Email from Leo Duckstein to Alex Edelstein Subject: Cabinetec Comfort Letter			
3160	12/01/08	Email from Rob Trickett to Alex Edelstein cc: Leo Duckstein Subject: Cabinetec Dec 5th Payment			
3161	12/01/08	Email from Alex Edelstein to Rob Trickett cc: Leo Duckstein Subject RE: Cabinetec DEC 5th Payment			
3162	12/01/08	Letter from Brad J. Scott, President, Scott Financial Corporation to Leo Duckstein, Cabinetec, Inc.			
3163	12/03/08	Nevada Construction Services Construction Progress Report for Manhattan West Condominiums			
3164	12/08/08	Transmittal of one fully executed copy of Ratification and Amendment of Subcontract Agreement Cabinetec from Yvonne Farren of Camco to Laura Cox of Cabinetec			

EXHIBIT NO.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3165	12/15/08	Email from Alex Edelstein to Leo Duckstein Subject: RE: Cabinetec Comfort Letter			
3166	12/15/08	Email from Janice Robbins of Gemstone to subcontractors, Camco representatives and Gemstone representatives Subject: Building Department Remaining Red Tag Notices Lifted			
3167	12/15/08	Email from Kenner Costen, Camco Pacific Site Safety Director, Subject: Closure Manhattan West Project			
3168	12/15/08	Email from Brad Scott to Anne Dwyer and Jennifer Olivares, cc: Alex Edelstein, Peter Smith, Jim Horning, parry@camcopacific.com Subject: FW: Manhattan West			
3169	12/16/08	Email from Brad Scott to Jennifer Olivares, cc: Margo Scott, Jason Ulmer, Patricia Curtis, Tim James Subject: ManhattanWest Status			
3170	12/18/08	Letter from Woodbury, Morris & Brown to Alexander Edelstein cc: Peter Smith and David Parry			
3171	01/12/09	Notice of Intent to Lien to Gemstone, APCO and Camco from Cabinetec			
3172	02/02/09	Notice of Lien Recorded with Clark County Recorder			
3173	02/06/09	Cabinetec, Inc.'s Statement of Facts Constituting Lien Claim and Complaint in Intervention			
3174	03/02/09	Letter from Woodbury, Morris & Brown to Alexander Edelstein cc: Gregory S. Gilbert, David Parry and Patricia Petersen			

EXHIBIT No.	DATE	EXHIBIT DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
3175	04/28/09	Letter from Brad Scott, President, Scott Financial Corporation to Nevada State Contractor's Board, with attachments			

Exhibit 4

CACTUS ROSE TRIAL EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Bates Begin</u>	<u>Bates End</u>	<u>Admitted</u>	<u>Authentic</u>	<u>Other Objection</u>
CATCUS-TR-EX-601	Time & Material Authorization	CACTUS00001				
CATCUS-TR-EX-602	Notice of Lien	CACTUS00002	CACTUS00004			
CATCUS-TR-EX-603	Notice of Lis Pendens	CACTUS00005	CACTUS00010			
CATCUS-TR-EX-604	Declaration of D. Hofelich and Exhibits	CACTUS00011	CACTUS00052			
CATCUS-TR-EX-605	Amended Notice of Lis Pendens	CACTUS00053	CACTUS00055			
CATCUS-TR-EX-606	Notices of Intent to Lien	CACTUS00056	CACTUS00062			
CATCUS-TR-EX-607	Additional Lien Perfection Documents	CACTUS00063	CACTUS00119			
CATCUS-TR-EX-608	Progress Photos produced by APCO	APCO104492	APCO104562			
CATCUS-TR-EX-609	Progress Photos and other documents produced by APCO	APCO106289	APCO106314			
CATCUS-TR-EX-610	December 15, 2008 email from Edelstein	CAMCO-MW 00001				
CATCUS-TR-EX-611	December 18, 2008 letter from Camco counsel	CAMCO-MW 00002				
CATCUS-TR-EX-612	March 2, 2009 letter from Camco counsel	CAMCO-MW 00003	CAMCO-MW 00004			
CATCUS-TR-EX-613	May 8, 2009 letter from Camco counsel	CAMCO-MW 00038	CAMCO-MW 00039			
CATCUS-TR-EX-614	June 9, 2008 letter from Scott Financial	CAMCO-MW 00041				
CATCUS-TR-EX-615	Camco billing records	CAMCO-MW 00045	CAMCO-MW 01288			
CATCUS-TR-EX-616	Deposition Transcript of Mary Jo Allen and Exhibits	n/a				
CATCUS-TR-EX-617	Deposition Transcript of Brian Benson and Exhibits	n/a				
CATCUS-TR-EX-618	Deposition Transcript of Dave Parry and Exhibits	n/a				
CATCUS-TR-EX-619	Camco Responses to Fast Glass' Interrogatories	n/a				
CATCUS-TR-EX-620	Camco Responses to Fast Glass' Requests for Production	n/a				
CATCUS-TR-EX-621	Camco Responses to Fast Glass' Requests for Admission	n/a				
CATCUS-TR-EX-622	Order Authorizing Trustee to Employ Special Counsel	n/a				
CATCUS-TR-EX-623	RESERVED					
CATCUS-TR-EX-624	RESERVED					
CATCUS-TR-EX-625	RESERVED					
CATCUS-TR-EX-626	RESERVED					
CATCUS-TR-EX-627	RESERVED					

Exhibit 5

HEINAMAN TRIAL EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Bates Begin</u>	<u>Bates End</u>	<u>Admitted</u>	<u>Authentic</u>	<u>Other Objection</u>
HEIN-TR-EX-701	Letter of Intent and Memorandum of Understanding	HCG000001	HCG000002			
HEIN-TR-EX-702	Invoices and Payments	HCG000003	HCG0000012			
HEIN-TR-EX-703	Lien documents	HCG000013	HCG000081			
HEIN-TR-EX-704	RFIs	HCG000082	HCG000103			
HEIN-TR-EX-705	Proposals	HCG000104	HCG000167			
HEIN-TR-EX-706	Billings and Vendor Correspondence	HCG000168	HCG000273			
HEIN-TR-EX-707	Drawings and Shipping Manifests	HCG000274	HCG001513			
HEIN-TR-EX-708	Field Reports and Minutes	HCG001514	HCG001686			
HEIN-TR-EX-709	Lien Documents	HCG001687	HCG001813			
HEIN-TR-EX-710	Progress Photos produced by APCO	APCO104492	APCO104562			
HEIN-TR-EX-711	Progress Photos and other documents produced by APCO	APCO106289	APCO106314			
HEIN-TR-EX-712	December 15, 2008 email from Edelstein	CAMCO-MW 00001				
HEIN-TR-EX-713	December 18, 2008 letter from Camco counsel	CAMCO-MW 00002				
HEIN-TR-EX-714	March 2, 2009 letter from Camco counsel	CAMCO-MW 00003	CAMCO-MW 00004			
HEIN-TR-EX-715	May 8, 2009 letter from Camco counsel	CAMCO-MW 00038	CAMCO-MW 00039			
HEIN-TR-EX-716	June 9, 2008 letter from Scott Financial	CAMCO-MW 00041				
HEIN-TR-EX-717	Camco billing records	CAMCO-MW 00045	CAMCO-MW 01288			
HEIN-TR-EX-718	Misc. Camco-produced billing documents re: Heinaman	CAMCO-MW 02064	CAMCO-MW 02067			
HEIN-TR-EX-719	Deposition Transcript of Mary Jo Allen and Exhibits	n/a				
HEIN-TR-EX-720	Deposition Transcript of Brian Benson and Exhibits	n/a				
HEIN-TR-EX-721	Deposition Transcript of Dave Parry and Exhibits	n/a				
HEIN-TR-EX-722	Camco Responses to Heinaman's Interrogatories	n/a				
HEIN-TR-EX-723	Camco Responses to Heinaman's Requests for Production	n/a				
HEIN-TR-EX-724	Camco Responses to Heinaman's Requests for Admission	n/a				
HEIN-TR-EX-725	RESERVED	n/a				
HEIN-TR-EX-726	RESERVED	n/a				
HEIN-TR-EX-727	RESERVED	n/a				

Exhibit 6

FAST GLASS TRIAL EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Bates Begin</u>	<u>Bates End</u>	<u>Admitted</u>	<u>Authentic</u>	<u>Other Objection</u>
FG-TR-EX-801	Subcontract Documents	FG 00001	FG 00040			
FG-TR-EX-802	Preliminary Lien Documents	FG 00041	FG 00047			
FG-TR-EX-803	Invoices and Quotes	FG 00048	FG 00098			
FG-TR-EX-804	Camco Correspondence	FG 00099	FG 00105			
FG-TR-EX-805	Notice of lien and Perfection Documents	FG 00106	FG 00111			
FG-TR-EX-806	Correspondence re: Demand for Payment	FG 00112	FG 00119			
FG-TR-EX-807	Fast Glass Job File re: Labor	FG 00120	FG 00167			
FG-TR-EX-808	Fast Glass Job File re: Materials, specifications, etc.	FG 00168	FG 00733			
FG-TR-EX-809	Progress Photos produced by APCO	APCO104492	APCO104562			
FG-TR-EX-810	Progress Photos and other documents produced by APCO	APCO106289	APCO106314			
FG-TR-EX-811	December 15, 2008 email from Edelstein	CAMCO-MW 00001				
FG-TR-EX-812	December 18, 2008 letter from Camco counsel	CAMCO-MW 00002				
FG-TR-EX-813	March 2, 2009 letter from Camco counsel	CAMCO-MW 00003	CAMCO-MW 00004			
FG-TR-EX-814	May 8, 2009 letter from Camco counsel	CAMCO-MW 00038	CAMCO-MW 00039			
FG-TR-EX-815	June 9, 2008 letter from Scott Financial	CAMCO-MW 00041				
FG-TR-EX-816	Camco billing records	CAMCO-MW 00045	CAMCO-MW 01288			
FG-TR-EX-817	Misc. Camco-produced billing documents re: Fast Glass	CAMCO-MW 01982	CAMCO-MW 02063			
FG-TR-EX-818	Deposition Transcript of Mary Jo Allen and Exhibits	n/a				
FG-TR-EX-819	Deposition Transcript of Brian Benson and Exhibits	n/a				
FG-TR-EX-820	Deposition Transcript of Dave Parry and Exhibits	n/a				
FG-TR-EX-821	Camco Responses to Fast Glass' Interrogatories	n/a				
FG-TR-EX-822	Camco Responses to Fast Glass' Requests for Production	n/a				
FG-TR-EX-823	Camco Responses to Fast Glass' Requests for Admission	n/a				
FG-TR-EX-824	RESERVED	n/a				
FG-TR-EX-825	RESERVED					
FG-TR-EX-826	RESERVED					
FG-TR-EX-827	RESERVED					
FG-TR-EX-828	RESERVED					
FG-TR-EX-829	RESERVED					

Exhibit 7

SWPPP TRIAL EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Bates Begin</u>	<u>Bates End</u>	<u>Admitted</u>	<u>Authentic</u>	<u>Other Objection</u>
SWPPP-TR-EX-901	Billing pre-11/04/2008	SWPPP 00001	SWPPP 00007			
SWPPP-TR-EX-902	Billing pre-12/16/2008	SWPPP 00008	SWPPP 00035			
SWPPP-TR-EX-903	Bid Proposal	SWPPP 00036	SWPPP 00039			
SWPPP-TR-EX-904	Invoices	SWPPP 00039	SWPPP 00074			
SWPPP-TR-EX-905	Lien Documents	SWPPP 00075	SWPPP 00082			
SWPPP-TR-EX-906	Statement	SWPPP 00083	SWPPP 00084			
SWPPP-TR-EX-907	Progress Photos produced by APCO	APCO104492	APCO104562			
SWPPP-TR-EX-908	Progress Photos and other documents produced by APCO	APCO106289	APCO106314			
SWPPP-TR-EX-909	December 15, 2008 email from Edelstein	CAMCO-MW 00001				
SWPPP-TR-EX-910	December 18, 2008 letter from Camco counsel	CAMCO-MW 00002				
SWPPP-TR-EX-911	March 2, 2009 letter from Camco counsel	CAMCO-MW 00003	CAMCO-MW 00004			
SWPPP-TR-EX-912	May 8, 2009 letter from Camco counsel	CAMCO-MW 00038	CAMCO-MW 00039			
SWPPP-TR-EX-913	June 9, 2008 letter from Scott Financial	CAMCO-MW 00041				
SWPPP-TR-EX-914	Camco billing records	CAMCO-MW 00045	CAMCO-MW 01288			
SWPPP-TR-EX-915	Deposition Transcript of Mary Jo Allen and Exhibits	n/a				
SWPPP-TR-EX-916	Deposition Transcript of Brian Benson and Exhibits	n/a				
SWPPP-TR-EX-917	Deposition Transcript of Dave Parry and Exhibits	n/a				
SWPPP-TR-EX-918	RESERVED					
SWPPP-TR-EX-919	RESERVED					
SWPPP-TR-EX-920	RESERVED					
SWPPP-TR-EX-921	RESERVED					

Exhibit 8

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13 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 vs

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

23 Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:
A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

**ORDER GRANTING IN PART AND
DENYING IN PART APCO
CONSTRUCTION'S OMNIBUS
MOTION IN LIMINE**

24 **AND ALL RELATED MATTERS.**

25 This matter came on for hearing November 16, 2017, before the Honorable Mark
26 Denton in Dept. 13 on Apco Construction's ("APCO") Omnibus Motion in Limine ("the
27 Motion"). Various parties Opposed and joined in oppositions to various portions of the Motion.
28 Having taken the matters under advisement, the Court grants the Motion in part and denies the
29 Motion in part as follows:

30 ///

31 ///

32 ///

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HENDERSON, NEVADA 89074
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DISTRICT COURT DEPT. 13

JA001645

Case Number: 08A571228

1 1. MIL No. 1 (seeking to exclude evidence of the topics that the PMK witness for
2 Zitting Bros. ("Zitting") could not address) is **DENIED WITHOUT PREJUDICE** to objections
3 made to evidentiary proffers at trial that the Court can consider in context.

4 2. MIL No. 2 (seeking to strike pleadings of parties that do not appear at the pre-
5 trial conference is **GRANTED IN PART** to the extent that it addresses parties which, as APCO
6 puts it, have "chosen not to participate in trial..." (Reply, p. 4, ll. 21-22), but it is **DENIED IN**
7 **PART** as to parties which have participated.

8 3. MIL No. 3 (seeking to exclude evidence of unjust enrichment damages) is
9 **DENIED** as it essentially seeks a summary adjudication without reference to any specific
10 evidence. Furthermore, unjust enrichment is commonly pleaded in the alternative and its
11 viability relates to development of the evidence.

12 4. MIL No. 4 (seeking to exclude evidence of purported changes that were not in
13 writing and signed by Zitting and APCO) is **DENIED WITHOUT PREJUDICE** to objections
14 to specific evidence proffered.

15 5. MIL No. 5 (seeking to exclude evidence of claims that were not delineated on
16 lien releases) is **DENIED WITHOUT PREJUDICE** to objections to specific evidence
17 proffered.

18 6. MIL No. 6 (seeking to strike evidence of damages of parties that were not made
19 available for a deposition) is **GRANTED** to the extent that it seeks to preclude witnesses who
20 should have been, but were not, properly disclosed. Of course, making any such determination
21 requires a witness-by-witness inquiry.

22 ///

23 ///

24 ///

25

26

27

28

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1 7. MIL No. 7 (seeking to strike evidence or argument of damages greater than what
2 the parties listed in their special master questionnaires or official damage disclosures) is
3 **GRANTED** to the extent that it seeks to preclude evidence in excess of damages in a party's
4 official damage disclosures that should have been, but was not, properly disclosed. Of course,
5 making any such determination will require an examination of the disclosure history of any
6 specific evidence proffered.

7 **IT IS SO ORDERED** this 27th day of December, 2017.

8
9 
DISTRICT COURT JUDGE

10
11 Submitted by:

12 **PEEL BRIMLEY LLP**

13 
14 ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

15 RICHARD L. PEEL, ESQ.

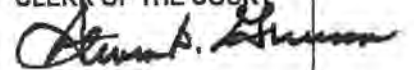
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16 3333 E. Serene Avenue, Suite 200

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17 *Attorneys for Helix Electric of Nevada, LLC*
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19
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Exhibit 9



1 **AMoR**

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18 Attorneys for Plaintiff in Intervention,
19 NATIONAL WOOD PRODUCTS, INC.,
20 a Utah corporation

21 DISTRICT COURT
22 CLARK COUNTY, NEVADA

23 APCO CONSTRUCTION, a Nevada
24 corporation,

25 Plaintiff,

26 vs.

27 GEMSTONE DEVELOPMENT WEST, INC.,
28 a Nevada corporation, et al.,

Defendants.

) LEAD 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

29 AND ALL RELATED MATTERS.

30 AMENDED NUNC PRO TUNC ORDER REGARDING APCO CONSTRUCTION, INC'S
31 OMNIBUS MOTION IN LIMINE -- MOTION IN LIMINE NO. 7

32 The Court's Order of December 28, 2017 regarding APCO Construction, Inc.'s ("APCO")
33 Omnibus Motion in Limine is amended nunc pro tunc with regard to APCO's Motion in Limine
34 No. 7, as follows:

1 APCO's Motion in Limine No. 7 (seeking to strike evidence or argument of damages
2 greater than what the parties listed in their special master questionnaires or official damage
3 disclosures) is **GRANTED** to the extent that it seeks to preclude evidence that should have been,
4 but was not, properly disclosed. Of course, making any such determination will require an
5 examination of the disclosure history of any specific evidence proffered.

6
7 ORDER

8 IT IS SO ORDERED.

9
10 Dated: January 2, 2018

11
12 
13 _____
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 RICHARD L. TOBLER, LTD.

17
18 By: 

19 Richard L. Tobler, Esq.
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21 3654 N. Rancho Drive, Suite 102
22 Las Vegas, Nevada 89130
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24 Attorneys for Plaintiff in Intervention,
25 NATIONAL WOOD PRODUCTS, INC.
26
27
28

Exhibit 10

ORIGINAL

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CLERK OF THE COURT

Steven D. Grierson

1 **ORDR**

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13 *Attorneys for Helix Electric of Nevada, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 vs.

20 GEMSTONE DEVELOPMENT WEST, INC.,

21 Nevada corporation; NEVADA

22 CONSTRUCTION SERVICES, a Nevada

23 corporation; SCOTT FINANCIAL

24 CORPORATION, a North Dakota

25 corporation; COMMONWEALTH LAND

26 TITLE INSURANCE COMPANY; FIRST

27 AMERICAN TITLE INSURANCE

28 COMPANY and DOES I through X,

29 Defendants.

30 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

A571792, A574391, A577623, A580889,

A583289, A584730, and A587168

**ORDER GRANTING IN PART AND
DENYING IN PART HELIX
ELECTRIC OF NEVADA, LLC's
MOTIONS IN LIMINE (against APCO
Construction)**

31
32 This matter came on for hearing November 16, 2017, before the Honorable Mark
33 Denton in Dept. 13 on Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4 ("the
34 MILs") against Apco Construction ("APCO"). APCO opposed the Motion. Having taken the
35 matters under advisement, the Court grants MIL Nos. 1-3 and denies MIL No. 4 without
36 prejudice subject to objections at trial as follows:

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DISTRICT COURT DEPT. 13

JA001652

Case Number: 08A571228

1. MIL No. 1 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Manhattan West Project that is the subject of this action ("the Project") was defective.

2. MIL No. 2 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Project was not done in a workmanlike manner.

3. MIL No. 3 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Project was not done in compliance with the terms of the parties' agreement.

4. MIL No. 4 (seeking to preclude APCO from asserting or offering any evidence that any of the pay applications submitted by Helix – and the amounts claimed to be earned on the same - were in any way incorrect, overstated or otherwise subject to dispute) is **DENIED** without prejudice to Helix's objections at trial.

IT IS SO ORDERED this 27th day of December, 2017.

DISTRICT COURT JUDGE

Submitted by:

PEEL BRIMLEY LLP

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Attorneys for Helix Electric of Nevada, LLC

Exhibit 11

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13 *Attorneys for Various Lien Claimants*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 vs.

20 GEMSTONE DEVELOPMENT WEST, INC.,
21 Nevada corporation; NEVADA
22 CONSTRUCTION SERVICES, a Nevada
23 corporation; SCOTT FINANCIAL
24 CORPORATION, a North Dakota
25 corporation; COMMONWEALTH LAND
26 TITLE INSURANCE COMPANY; FIRST
27 AMERICAN TITLE INSURANCE
28 COMPANY and DOES I through X,

Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**ORDER GRANTING PEEL BRIMLEY
LIEN CLAIMANTS' MOTIONS IN
LIMINE LIMINE NOs. 1-6 (against
Camco Pacific Construction, Inc.)**

AND ALL RELATED MATTERS.

This matter came on for hearing November 16, 2017, before the Honorable Mark Denton in Dept. 13 on the Peel Brimley Lien Claimants' ("PB Lien Claimants")¹ Motions in Limine Nos. 1-6 ("the Motions") against Camco Pacific Construction, Inc. ("Camco") Camco opposed the Motion. Having taken the matters under advisement, the Court finds that the Motions relate to evidence and disclosures while the Opposition relates to legal contentions. As

¹ The Peel Brimley Lien Claimants are: Cactus Rose Construction, Fast Glass Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance Solutions, LLC, and Buchele, Inc. The Peel Brimley law firm has since withdrawn from representation of Buchele, Inc.

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DISTRICT COURT DEPT#13

JA001655

Case Number: 08A571228

1 such, the Court concludes that the Motions should be granted as follows:

- 2 1. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien
3 Claimants' work on the Manhattan West Project that is the subject of this action
4 ("the Project") was defective;
- 5 2. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien
6 Claimants' work on the Project was not done in a workmanlike manner; and
- 7 3. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien
8 Claimants' work on the Project was not done in compliance with the terms of the
9 parties' agreement.
- 10 4. Camco may not assert or offer evidence at trial that the Peel Brimley Lien
11 Claimants have breached their agreements with Camco other than with respect to
12 pay-if-paid agreements ("Pay-if-Paid").²
- 13 5. Camco may not assert or offer evidence at trial to dispute the amounts invoiced,
14 paid and that remain to be owed as asserted by the Peel Brimley Lien Claimants
15 in their respective Requests for Admission.
- 16 6. Camco may not assert or offer evidence at trial that any liens recorded by the
17 Peel Brimley Lien Claimants were in any way defective or unperfected and are
18 otherwise valid and enforceable.

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27 ² By separate Order the Court has granted the PB Lien Claimants' Motion for Partial Summary
28 Judgment that precludes Camco from asserting a defense based upon Pay-if-Paid. Accordingly,
nothing in the present Order shall be deemed to contradict the Court's summary judgment or
otherwise permit Camco to assert Pay-if-Paid.

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1 **IT IS THEREFORE ORDERED** that the Peel Brimley Lien Claimants' Motions in
2 Limine Nos. 1-6 are GRANTED.

3 **IT IS SO ORDERED** this 27th day of December, 2017.

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DISTRICT COURT JUDGE

Submitted by:
PEEL BRIMLEY LLP

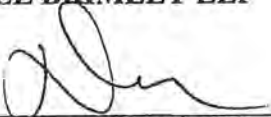
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Exhibit 12

Steven D. Grierson

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11 Attorneys for Plaintiff in Intervention,
NATIONAL WOOD PRODUCTS, INC.,
12 a Utah corporation

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15
16 APCO CONSTRUCTION, a Nevada
corporation,

17 Plaintiff,

18 vs.

19 GEMSTONE DEVELOPMENT WEST, INC.,
20 a Nevada corporation, et al.,

21 Defendants.

) LEAD 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

22 AND ALL RELATED MATTERS.
23

24 ORDER GRANTING PLAINTIFF IN INTERVENTION, NATIONAL WOOD
25 PRODUCTS, INC.'S MOTION IN LIMINE

26 This matter came on for hearing before this court on November 16, 2017, at 9:00 a.m., the
27 Court having heard the oral arguments, considered the moving and opposing papers, taken the
28 matter under advisement, and for good cause shown,

1 IT IS HEREBY ORDERED that plaintiff in intervention, National Wood Products, Inc.'s
2 motion in limine to exclude evidence, testimony, documents and things not properly produced by
3 defendant, APCO Construction, in discovery is GRANTED to the extent that proffered evidence
4 was not properly produced in discovery. This determination will require an examination of the
5 disclosure history of any specific evidenced proffered.

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8 ORDER

9 IT IS SO ORDERED.

10
11 Dated: January 3, 2018

12 
13 DISTRICT COURT JUDGE

14
15 Respectfully submitted by:

16 
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18 By:

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Exhibit 13