

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 118**

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CHRONOLOGICAL APPENDIX OF EXHIBITS

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04-26-10	CAMCO and Fidelity's Answer and CAMCO's Counterclaim	JA000031- JA000041	1
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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

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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

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		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

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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 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
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 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
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 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

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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
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	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
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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
	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
	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

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		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

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	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:		

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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



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

~~Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

JA008983

Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]
Sent: Tuesday, December 16, 2008 9:38 AM
To: Jennifer Olivares
Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'
Subject: ManhattanWest Status
Importance: High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to **no further draws being approved**.

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

Brad J. Scott
Scott Financial Corporation
15010 Sundown Drive
Bismarck, ND 58503
W: 701.255.2215
M: 701.220.3999
F: 701.223.7299
brad@scottfinancialcorp.com

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

4/1/2009

JA008985

Jennifer Olivares

From: Brad Scott (brad@scottfinancialcorp.com)

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Dwyer; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispensed funds held on account at NCS in the amount of \$993,886.72 back to SFC using the attached wiring instructions.

This amount includes the current General Payment request of \$68,827.28 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
Scott Financial Corporation
 16010 Sundown Drive
 Bismarck, ND 58503
 W: 701.255.2215
 M: 701.220.3999
 F: 701.223.7299
brad@scottfinancialcorp.com



Brad J. Scott, CRE	15010 Sundown Drive
President	Bismarck, ND 58503
brad@scottfinancialcorp.com	Office: 701.255.2215
	Fax: 701.223.7299
	Cell: 701.220.3999

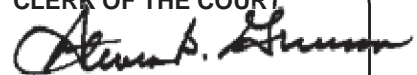
A licensed and bonded corporate finance company.

Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

JA008986

Exhibit 9



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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:
A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO THE
CLAIMS OF HELIX ELECTRIC OF
NEVADA, LLC AGAINST CAMCO
PACIFIC CONSTRUCTION, INC.**

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

JA008988

Case Number: 08A571228

CLERK OF THE COURT

RECEIVED
APR 26 2018

40

Cactus Rose Construction Co., Inc. ("Cactus Rose")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law Firm of Cadden & Fuller LLP
E&E Fire Protection, LLC ("E&E").	T. James Truman, Esq. of the Law Firm of T. James Truman, & Associates

A. Procedural History.

1. This is one of the oldest cases on the Court's docket. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums Project ("the Project") located at West Russell Road and Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005, 163-32-101-010 and 163-32-101-014 (the "Property" and/or "Project"), owned by Gemstone Development West, Inc. ("Gemstone" or "the Owner").

2. Gemstone hired APCO, and, subsequently, Camco as its general contractors, who in turn entered into subcontract agreements with various subcontractors. In December 2008 the Owner suspended the Project and advised the various contractors that Gemstone's lender did not expect to disburse further funds for construction. The Project was never completed. Numerous contractors, including the parties hereto, recorded mechanic's liens against the Property.

3. After several years of litigation and a Writ Action to determine the priority of the various lienors (during which the Property was sold, the proceeds of the same held in a blocked account and this action was stayed), the Nevada Supreme Court ruled that the Owner's lenders had priority over the proceeds of the sale of the Property, holding that the NRS Ch. 108 mechanic's liens were junior to the lenders' deeds of trust. The Court subsequently ordered the proceeds be released to the lenders. Thereafter, the stay was lifted and many of the trade contractors continued to pursue claims for non-payment from

1 APCO and Camco. The trial focused on these claims. The Court has separately treated
2 Helix's claims against APCO and has made or is making separate Findings of Fact and
3 Conclusions of Law regarding the same.

4 **B. Significant Pre-Trial Orders**

5 1. **Order Granting Partial Summary Judgment re: Pay-if-Paid.** On
6 January 2, 2018, this Court issued an Order granting a Motion for Partial Summary
7 Judgment brought by a group of subcontractors represented by the Peel Brimley Law Firm
8 (the "Peel Brimley Lien Claimants"¹) and joined in by others. Generally, but without
9 limitation, the Court concluded that, pursuant to NRS 624.624 and *Lehrer McGovern*
10 *Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev.
11 2008), higher-tiered contractors, such as APCO and Camco, are required to pay their
12 lower-tiered subcontractors within the time periods set forth in NRS 624.626(1) and may
13 not fail to make such payment based on so-called "pay-if-paid" agreements ("Pay-if-Paid")
14 that are against public policy, void and unenforceable except under limited circumstances.
15 Accordingly, the Court ruled that APCO and Camco may not assert or rely on a defense to
16 their payment obligations to the party subcontractors that is based on a pay-if-paid
17 agreement.

18 2. **Order on Peel Brimley Lien Claimants' Motion in Limine Against**
19 **Camco.** On December 29, 2017 the Court issued an order on motions *in limine* brought by
20 the Peel Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco
21 from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on
22 the Project was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in
23 compliance with the terms of the parties' agreement because Camco's person most
24 knowledgeable was not aware of, and Camco did not otherwise offer, any evidence to
25 support such claims. For the same reason, the Court also precluded Camco from asserting
26 or offering evidence at trial that the Peel Brimley Lien Claimants have breached their

27 _____
28 ¹ The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.

1 agreements other than with respect to pay-if-paid agreements, evidence and argument of
2 which is otherwise precluded by the Partial Summary Judgment discussed above. For the
3 same reason, the Court also precluded Camco from asserting or offering evidence at trial to
4 dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel
5 Brimley Lien Claimants in their respective Requests for Admission. For the same reason,
6 the Court also precluded Camco from asserting or offering evidence at trial that any liens
7 recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected
8 and are otherwise valid and enforceable.

9 **C. Findings of Fact.**

10 Having received evidence and having heard argument of counsel, the Court makes
11 the following Findings of Fact:

12 1. The original general contractor on the Project was APCO. Gemstone and
13 APCO entered into the ManhattanWest General Construction Agreement for GMP (the
14 "APCO-Gemstone Agreement") on or about September 6, 2006. [See **Exhibit 2**].

15 2. After APCO ceased work on the Project, Gemstone hired Camco to be its
16 general contractor pursuant to an Amended and Restated ManhattanWest General
17 Construction Agreement effective as of August 25, 2008 ("the Camco-Gemstone
18 Agreement"). [See **Exhibit 162**].

19 3. Camco continued the same payment application format and numbering and
20 same schedule of values that APCO had been following. [See **Exhibit 218**; TR5-30:21-
21 31:4].² Like APCO before it, Camco compiled and included in its payment applications to
22 Gemstone the amounts billed by its subcontractors, including Helix. [See *e.g.*, **Exhibit**
23 **522-001-011**]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone
24 Agreement required Camco, upon receipt of a progress payment from Gemstone, to
25 "promptly pay each [subcontractor] the amount represented by the portion of the
26 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-

27 _____
28 ² Testimony of Dave Parry.

1 010, ¶7.03(e)].³ It is only after Gemstone announced that the Project would be suspended
2 that Camco asserted otherwise.

3 4. Camco's initial letter to subcontractors following Gemstone's
4 announcement demonstrates both that it believed it had subcontracts (because it purported
5 to terminate the same) and that it intended to continue to forward payment applications to
6 Gemstone. [See e.g., Exhibit 804-003-004]. Specifically, Camco wrote:

7 Camco is left with no choice but to terminate our agreement with Gemstone
8 and all subcontracts on the Project, including our agreement with your
9 company. Accordingly, we have terminated for cause our agreement with
10 Gemstone, effective December 19, 2008, and we hereby terminate for
11 convenience our subcontract with your company, effective immediately.

12 Please submit to Camco all amounts you believe are due and owing on your
13 subcontract. We will review and advise you of any issues regarding any
14 amounts you claim are owed. For all amounts that should properly be billed to
15 Gemstone, Camco will forward to Gemstone such amounts for payment y
16 Gemstone. If your claims appear to be excessive, we will ask you to justify
17 and/or revise the amount.

18 [See e.g., Ex. 804-003-004].

19 5. Camco quickly retracted its initial communication and replaced it with a
20 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to "please disregard
21 previous letter which was sent in error." [See e.g., Ex. 804-005]. Among other things,
22 Camco's second letter:

- 23 • Deleted its statement that it had terminated the Camco-Gemstone
24 Agreement (while continuing to terminate the subcontractors);
- 25 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk
26 of non-payment from the owner (which is also Pay-if-Paid); and,
- 27 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus
28 agreement wherein the subcontractors and suppliers were paid directly by
Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.

³ Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be paid to Camco (though retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].

1 804-007].

2 While Gemstone eventually did make partial payment through NCS and not Camco [*see*
3 discussion, *infra*], the Camco-Gemstone Agreement expressly required Camco, upon
4 receipt of a progress payment from Gemstone, to “promptly pay each [subcontractor] the
5 amount represented by the portion of the Percentage of the Work Completed that was
6 completed by such [subcontractor].” [Ex. 162-010, ¶7.03(e)].

7 6. Some subcontractors stopped working after APCO left the Project. Others,
8 such as Helix, continued to work on the Project and began working for Camco as the
9 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started
10 working on the Project only after APCO left and worked only for Camco.

11 7. Camco presented some subcontractors with a standard form subcontract
12 Agreement (“the Camco Subcontract”), a representative example of which is Camco’s
13 subcontract with Fast Glass. [See **Exhibit 801-007-040**; TR5-57:8-16].⁴ Among other
14 provisions, the Camco Subcontract (consistent with the Camco-Gemstone Agreement),
15 requires Camco, no later than 10 days after receiving payment from Gemstone in response
16 to its payment applications, to “pay to Subcontractor, in monthly progress payments, 90%⁵
17 of labor and materials placed in position by Subcontractor during [the month preceding a
18 payment application].” [See Ex. 701-012, ¶ II(C)].

19 8. Despite and contrary to the payment provisions of the Camco-Gemstone
20 Agreement [*see supra* and Ex. 162-010, ¶7.03(e)] and the Camco Subcontract [See Ex.
21 701-012, ¶ II(C)], no monies were ever distributed to the subcontractors through Camco.
22 Instead, and until it ceased making payments, Gemstone released funds to NCS, which
23 issued checks “on behalf of Camco Pacific” to some of the subcontractors and/or joint
24 checks to the subcontractors and their lower tiers, including Helix and its lower tiers. [See
25 e.g., Exhibit 508-062 (NCS check no. 531544 to Helix and its lower tier, Graybar Electric
26 “on behalf of Camco Pacific.”)].

27 ⁴ Testimony of Dave Parry.

28 ⁵ i.e., less retention.

1 9. Camco also presented subcontractors who had previously worked for
2 APCO, including Helix and Cabintec (National Wood), with a document titled Ratification
3 and Amendment of Subcontract Agreement ("the Camco Ratification"). [See e.g., Exhibit
4 3164].

5 10. Helix admitted in its Complaint and in its lien documents that it entered into
6 the Camco Subcontract and the Camco Ratification.

7 11. As it was instructed to do, Camco continued to perform the work it had
8 agreed to perform on the Project until Gemstone suspended work on December 15, 2008.
9 As it was also instructed to do, Helix submitted payment applications to Camco using the
10 same forms and same procedures as it had employed while APCO was still on the Project.
11 [See e.g., Ex. 508-067-074]. Camco in turn submitted its pay applications to Gemstone in
12 the same way, and using the same forms, as APCO had used. [See e.g., Ex. 522-001-011].

13 12. Helix submitted gross payment applications to Camco totaling
14 \$1,010,255.25 (i.e., inclusive of retention). [See Ex. 508-001-002; 037-038; 049; 068-
15 069].⁶ Helix was paid only \$175,778.80 and is owed the balance, \$834,476.45.

16 13. The Court finds that Helix and Camco entered into a
17 contractor/subcontractor relationship and agreement whereby they agreed on the material
18 terms of a contract – i.e., the work to be performed, the price for the work and Camco's
19 obligation to pay. The Court finds that Camco breached its obligation to pay Helix the sum
20 of \$834,476.45.

21 14. Helix provided undisputed testimony that the amounts it billed were
22 reasonable for the work performed. [TR2-71:22-72:3].⁷ Because (i) this testimony was
23 undisputed, (ii) Camco submitted these amounts on its certified pay applications to
24 Gemstone, and (iii) Helix was paid in part for these amounts, the Court finds that the
25 amounts Helix billed Camco for its work were reasonable for the work performed.

26

27 ⁶ See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See
28 TR3-68:17-69:7].

⁷ Testimony of Andy Rivera.

1 15. Helix presented undisputed evidence, and the Court finds, that Helix timely
2 recorded a mechanic's lien, as amended ("the Helix Lien"), pursuant to NRS Chapter 108
3 and perfected the same. [See **Exhibit 512**]. The Helix Lien identified both APCO and
4 Camco as the "person by whom the lien claimant was employed or to whom the lien
5 claimant furnished or agreed to furnish work, materials or equipment." [See *e.g.*, Ex. 512-
6 007, 009].

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

9 FROM the foregoing Findings of Fact, the Court hereby makes the following

10 **B. Conclusions of Law.**

11 1. "Basic contract principles require, for an enforceable contract, an offer and
12 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,
13 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have
14 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d
15 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context
16 and also on the subsequent conduct of the parties, including the dispute which arises and
17 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a
18 contract exists is a question of fact and the District Court's findings will be upheld unless
19 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,
20 119 P.3d at 1257.

21 2. The Court concludes that Camco and Helix entered into a contract whereby
22 they agreed on the material terms of a contract – i.e., the work to be performed, the price
23 therefore and Camco's obligation to pay. The Court further concludes that Camco failed to
24 pay Helix the undisputed sum of \$834,476.45 without excuse (other than Camco's reliance
25 on Pay-if-Paid, which the Court has previously rejected).

26 3. Camco did not dispute Helix's testimony that the amounts it billed were a
27 reasonable value for the work performed, and the reasonableness thereof was demonstrated
28

1 by Camco's payment in part and its inclusion of Helix's billings in its own payment
2 applications to Gemstone. The court therefore concludes that the unpaid value of Helix's
3 work while Camco was on site as the general contractor is \$834,476.45 and that Helix
4 should be awarded that principal amount against Camco for that principal amount.

5 4. The Court rejects Camco's argument that it is not liable to Helix (and other
6 subcontractors) because it never received payment from Gemstone who instead made
7 payments to subcontractors through the disbursement company, NCS. Camco's position
8 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract
9 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO
10 Subcontract) payments to subcontractors were intended to flow through the general
11 contractor. Camco presented no evidence that Helix or any other subcontractor consented
12 in advance to Gemstone's eventual decision to release payments (in part) through NCS and
13 not Camco.

14 5. Similarly, the Court rejects Camco's contention that the Court's decision on
15 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and
16 other subcontractors. Camco presented no evidence that it, for example, declared
17 Gemstone to be in breach for failing to make payments through Camco rather than through
18 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract
19 and, at least until Gemstone announced that it was suspending construction, continued to
20 process subcontractor payment applications and submit them to Gemstone. Camco's
21 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public
22 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

23 6. Helix is entitled to the principal sum of \$834,476.45 against Camco which
24 will be the subject of a judgment to be entered by the Court.

25 7. The Court denies all of Camco's affirmative defenses.

26 8. Helix is entitled to prejudgment interest pursuant to NRS 108.237 and/or
27 NRS 17.130.

28

9. Helix is the prevailing party and/or prevailing lien claimant as to Camco and Helix and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237 and/or the Camco Subcontract. Helix is granted leave to separately apply for the same.

10. As the prevailing party, Helix may also apply for an award of costs against Camco in accordance with the relevant statutes and for judgment as to the same.

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

ORDER

NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact and Conclusions of Law; and

IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and Conclusions of Law, and those made regarding the other parties and claims involved in the consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the same at the appropriate time subject to further order of the Court.

DATED this 24 day of April, 2018,

DISTRICT COURT JUDGE

CERTIFICATE

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List.

LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

Exhibit 10



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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO THE
CLAIMS OF CACTUS ROSE
CONSTRUCTION CO., INC.**

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Cactus Rose Construction Co., Inc. ("Cactus Rose")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP

CLERK OF THE COURT

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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

JA008999

Case Number: 08A571228

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SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law Firm of Cadden & Fuller LLP
E&E Fire Protection, LLC ("E&E")	T. James Truman, Esq. of the Law Firm of T. James Truman, & Associates

A. Procedural History.

1. This is one of the oldest cases on the Court's docket. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums Project ("the Project") located at West Russell Road and Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005, 163-32-101-010 and 163-32-101-014 (the "Property" and/or "Project"), owned by Gemstone Development West, Inc. ("Gemstone" or "the Owner").

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.....

1 **B. Significant Pre-Trial Orders**

2 1. **Order Granting Partial Summary Judgment re: Pay-if-Paid.** On

3 January 2, 2018, this Court issued an Order granting a Motion for Partial Summary
4 Judgment brought by a group of subcontractors represented by the Peel Brimley Law Firm
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6 limitation, the Court concluded that, pursuant to NRS 624.624 and *Lehrer McGovern*
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18 from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on
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7 Having received evidence and having heard argument of counsel, the Court makes
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10 APCO entered into the ManhattanWest General Construction Agreement for GMP (the
11 "APCO-Gemstone Agreement") on or about September 6, 2006. [See Exhibit 2].

12 2. Among other things, and in exchange for a guaranteed maximum price
13 ("GMP") of \$153,472,300.00 as forth in the APCO-Gemstone Agreement (Ex. 2, ¶
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- 15 • "Complete the work" required by the APCO-Gemstone Agreement,
16 "furnish efficient business administration and superintendence" and "use its
17 best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- 18 • "...engage contractors, subcontractors, sub-subcontractors, service
19 providers, [and others, collectively referred to as "Third-Party Service
20 Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- 21 • Monthly submit to Gemstone "applications for payment for the previous
22 month on forms similar to AIA G702 and G703 and a corresponding
23 approved Certificate for Payment;" [Ex 2., ¶ 5.05(a)]. Each payment
24 application was to be "based on a Schedule of Values [that] shall allocate
25 the entire GMP among the various portions of the Work" with APCO's fee
26 to be shown as a separate line item." [Ex 2., ¶ 5.05(b)]; The payment
27 applications were to "show the Percentage of Completion of each portion of
28

1 the Work as of the end of the period covered by the Application for
2 Payment. [Ex 2., ¶ 5.05(c)]; and

- 3 • Upon receipt of a monthly progress payment, “promptly pay each Third-
4 Party Service Provider the amount represented by the portion of the
5 Percentage of the Work Completed that was completed by such Third-Party
6 Service Provider² during the period covered by the corresponding Progress
7 Payment.” [Ex 2., ¶ 5.05(g)];

8 3. APCO in turn hired various subcontractors to perform certain scopes of
9 work and provided its form Subcontract Agreement to its subcontractors (“the APCO
10 Subcontract”). Cactus Rose did not work for APCO on the Project and only first provided
11 work after APCO ceased work on the project and, as discussed below, Gemstone hired
12 Camco as the general contractor to replace APCO. APCO ceased work on the Project in or
13 about the end of August 2008. APCO and Gemstone each claim to have terminated the
14 other.

15 4. After APCO ceased work on the project, Gemstone hired Camco to be its
16 general contractor pursuant to an Amended and Restated ManhattanWest General
17 Construction Agreement effective as of August 25, 2008 (“the Camco-Gemstone
18 Agreement”). [See Exhibit 162].

19 5. On cross examination, Camco’s Dave Parry could not point to any portion
20 of the Camco-Gemstone Agreement that required Camco to supervise the work of the
21 subcontractors. [TR5-50:17-51:9]. Nothing in Article II (“General Contractor
22 Responsibilities”) obligates Camco to supervise the work or the subcontractors. [See Ex.
23 162, ¶Article II]. Parry did not deny that Camco was “essentially ... there to lend [its]
24 license” to Gemstone. [TR5-50:15-17].

25 6. Mr. Parry described Camco as “more of a construction manager at this point
26

27 ² Because the only Third-Party Service Providers at issue on this trial were subcontractors, the Court
28 will herein use the terms “subcontractor” and “Third-Party Service Provider” interchangeably and
synonymously.

1 than a general contractor" [TR5-31:10-11³]. Nonetheless, the Camco-Gemstone
2 Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone
3 Agreement also requires Camco, in the same way that APCO did, to aggregate payment
4 applications from subcontractors and prepare and submit to Gemstone payment
5 applications for the amounts represented by the subcontractor payment applications and
6 Camco's fee. [See Ex. 162-008-010; ¶7.01].

7 7. Camco continued the same payment application format and numbering and
8 same schedule of values that APCO had been following. [See **Exhibit 218**; TR5-30:21-
9 31:4⁴]. Like APCO before it, Camco compiled and included in its payment applications to
10 Gemstone the amounts billed by its subcontractors, including Cactus Rose. [See *e.g.*,
11 **Exhibit 522-001-011**]. Also, like the APCO-Gemstone Agreement, the Camco-Gemstone
12 Agreement required Camco, upon receipt of a progress payment from Gemstone, to
13 "promptly pay each [subcontractor] the amount represented by the portion of the
14 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-
15 010, ¶7.03(e)].⁵ It is only after Gemstone announced that the Project would be suspended
16 that Camco asserted otherwise.

17 8. Camco's initial letter to subcontractors following Gemstone's
18 announcement demonstrates both that it believed it had subcontracts (because it purported
19 to terminate the same) and that it intended to continue to forward payment applications to
20 Gemstone. [See *e.g.*, Exhibit 804-003-004]. Specifically, Camco wrote:

21 Camco is left with no choice but to terminate our agreement with Gemstone and
22 all subcontracts on the Project, including our agreement with your company.
23 Accordingly, we have terminated for cause our agreement with Gemstone,
24 effective December 19, 2008, and we hereby terminate for convenience our
subcontract with your company, effective immediately.

25 Please submit to Camco all amounts you believe are due and owing on your
subcontract. We will review and advise you of any issues regarding any amounts

26 ³ Testimony of Dave Parry.

27 ⁴ Testimony of Dave Parry.

28 ⁵ Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be
paid to Camco (through retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].

1 you claim are owed. For all amounts that should properly be billed to Gemstone,
2 Camco will forward to Gemstone such amounts for payment y Gemstone. If your
3 claims appear to be excessive, we will ask you to justify and/or revise the amount.
4 [See e.g., Ex. 804-003-004].

5 9. Camco quickly retracted its initial communication and replaced it with a
6 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to “please disregard
7 previous letter which was sent in error.” [See e.g., Ex. 804-005]. Among other things,
8 Camco’s second letter:

- 9 • Deleted its statement that it had terminated the Camco-Gemstone
- 10 Agreement (while continuing to terminate the subcontractors);
- 11 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk
- 12 of non-payment from the owner (which is also Pay-if-Paid); and,
- 13 • Stated, inaccurately, that “Camco’s contract with Gemstone is a cost-plus
- 14 agreement wherein the subcontractors and suppliers were paid directly by
- 15 Gemstone and/or its agent Nevada Construction Services.” [See e.g., Ex.
- 16 804-007].

17 While Gemstone eventually did make partial payment to some subcontractors through
18 NCS and not Camco [see discussion, *infra*], the Camco-Gemstone Agreement expressly
19 required Camco, upon receipt of a progress payment from Gemstone, to “promptly pay
20 each [subcontractor] the amount represented by the portion of the Percentage of the Work
21 Completed that was completed by such [subcontractor].” [Ex. 162-010, ¶7.03(e)].

22 10. Some subcontractors stopped working after APCO left the Project. Others,
23 such as Helix, continued to work on the Project and began working for Camco as the
24 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started
25 working on the Project only after APCO left and worked only for Camco.

26 11. Camco presented some subcontractors with a standard form subcontract
27 Agreement (“the Camco Subcontract”), a representative example of which is Camco’s
28

1 subcontract with Fast Glass. [See **Exhibit 801-007-040**; TR5-57:8-16⁶].

2 12. However, Cactus Rose and Camco never entered into the Camco
3 Subcontract. Instead, the agreement between Cactus Rose and Camco is memorialized by a
4 Time & Material Authorization ("the Cactus Rose Agreement") by which Camco agreed to
5 hire Cactus Rose to perform certain scopes of work (specifically, replacing non-compliant
6 firestopping and other related work) in exchange for payment of Cactus Roses' costs for
7 (1) labor (at stated standard, overtime and double time rates), (2) materials plus a 30%
8 markup and equipment (at stated daily rates). [See **Exhibit 601**].

9 13. Cactus Rose submitted multiple invoices to Camco totaling \$363,591.44,
10 was paid \$124,964.19 and is still owed \$238,627.25 for its work on the Project. [See
11 **Exhibit 604-007-019**].

12 14. Cactus Rose presented undisputed evidence that Cactus Rose timely
13 recorded a mechanic's lien, as amended ("the Cactus Rose Lien"), pursuant to NRS
14 Chapter 108 and perfected the same. [See **Exhibits 605, 606, 607**]. The Cactus Rose Lien
15 identified both Camco as the "person by whom the lien claimant was employed or to
16 whom the lien claimant furnished or agreed to furnish work, materials or equipment." [See
17 Ex. 606-002].

18 15. After the project closed, Cactus Rose entered bankruptcy. Its Trustee
19 authorized and employed the Peel Brimley firm to prosecute Cactus Rose's claims in this
20 action. [See **Exhibit 622**].

21 16. Owing to the passage of time, no live witness was available to testify on
22 Cactus Rose's behalf. However, the Court admitted without objection the Declaration of
23 Cactus Rose's president, Dave Hofelich, which was signed in May 2010 attesting to the
24 foregoing facts ("the Hofelich Declaration"). Camco has not disputed these facts or offered
25 any contrary evidence.

26 17. Based on the foregoing, the Court finds, as attested by the Hofelich

27 _____
28 ⁶ Testimony of Dave Parry.

1 Declaration and as set forth in the other admitted exhibits relating to Cactus Rose, that (i)
2 Camco agreed to pay Cactus Rose for its work, (ii) Cactus Rose performed and invoiced
3 Camco for its work consistent with the Cactus Rose Agreement, (iii) Camco breached the
4 Cactus Rose Agreement by failing without excuse to pay Cactus Rose the sum of
5 \$238,627.25 and (iv) Cactus Rose recorded and perfected the Cactus Rose Lien .

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

8 FROM the foregoing Findings of Fact, the Court hereby makes the following

9 **B. Conclusions of Law.**

10 1. "Basic contract principles require, for an enforceable contract, an offer and
11 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,
12 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have
13 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d
14 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context
15 and also on the subsequent conduct of the parties, including the dispute which arises, and
16 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a
17 contract exists is a question of fact and the District Court's findings will be upheld unless
18 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,
19 119 P.3d at 1257.

20 2. The Court concludes that Camco entered into and breached the Cactus Rose
21 Agreement by failing, without excuse, to pay Cactus Rose in full for the invoices it
22 submitted and for the work it performed in the amount of \$238,627.25 and that Cactus
23 Rose is entitled to judgment for that amount, exclusive of interest, costs and attorney's
24 fees.

25 3. Alternatively, the Court concludes that there is an implied contract between
26 Cactus Rose and Camco and that Cactus Rose is entitled *quantum meruit* damages for
27 recovery of the full and reasonable value of the work it has performed. See *Certified Fire*
28

1 *Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 257 (2012) (“*quantum*
2 *meruit*’s first application is in actions based upon contracts implied-in-fact.”). A contract
3 implied-in-fact must be “manifested by conduct.” *Id.* at 380 citing *Smith v. Recrion Corp.*,
4 91 Nev. 666, 668, 541 P.2d 663, 664 (1975); *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d
5 672, 674 (1984). It “is a true contract that arises from the tacit agreement of the parties.”
6 *Id.* To find a contract implied-in-fact, the fact-finder must conclude that the parties
7 intended to contract and promises were exchanged, the general obligations for which must
8 be sufficiently clear. *Id.* Here, Cactus Rose and Camco clearly intended to enter into a
9 contract whereby Cactus Rose would perform work for Camco and Camco would pay
10 Cactus Rise for its work.

11 4. Where an implied-in-fact contract exists “*quantum meruit* ensures the
12 laborer receives the reasonable value, usually market price, for his services.” *Precision*
13 *Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment
14 § 31 cmt. e (2011), *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) (“The
15 doctrine of *quantum meruit* generally applies to an action ... involving work and labor
16 performed which is founded on a[n] oral promise [or other circumstances] on the part of
17 the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor
18 in the absence of an agreed upon amount.”). Cactus Rose is therefore entitled *quantum*
19 *meruit* damages in the amount of \$238,627.25 for recovery of the full and reasonable value
20 of the work it performed. *See Certified Fire Prot.*, 128 Nev. at 380.

21 5. The Court rejects Camco’s argument that it is not liable to Cactus Rose (and
22 other subcontractors) because it never received payment from Gemstone who instead made
23 payments to subcontractors through the disbursement company, NCS. Camco’s position
24 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract
25 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO
26 Subcontract) payments to subcontractors were intended to flow through the general
27 contractor. Camco presented no evidence that Cactus Rose or any other subcontractor
28

1 consented in advance to Gemstone's eventual decision to release payments (in part)
2 through NCS and not Camco.

3 6. Similarly, the Court rejects Camco's contention that the Court's decision on
4 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and
5 other subcontractors. Camco presented no evidence that it, for example, declared
6 Gemstone to be in breach for failing to make payments through Camco rather than through
7 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract
8 and, at least until Gemstone announced that it was suspending construction, continued to
9 process subcontractor payment applications and submit them to Gemstone. Camco's
10 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public
11 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

12 7. Specific to Cactus Rose, the Court concludes that Camco's reliance on any
13 form of Pay-if-Paid (i.e., even if the same could be deemed permissible under Nevada law)
14 is inapplicable to its relationship with Cactus Rose because nothing in the Cactus Rose
15 Agreement sets forth any Pay-if-Paid Agreement and Cactus Rose did not agree to the
16 Camco Subcontract.

17 8. Cactus Rose is therefore awarded the principal sum of \$238,627.25 (i.e.,
18 exclusive of interest, costs and attorney's fees) against Camco and may apply for judgment
19 as to the same.

20 9. The Court denies all of Camco's affirmative defenses.

21 10. Cactus Rose is entitled to prejudgment interest pursuant to NRS 108.237
22 and/or NRS 17.130 and is granted leave to apply for the same by way of an amendment or
23 supplement to these Findings of Fact and Conclusions of Law and for judgment as to the
24 same.

25 11. Cactus Rose is the prevailing party and/or prevailing lien claimant as to
26 Camco and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237.
27 Cactus Rose is granted leave to apply for the same by way of an amendment or supplement
28

1 to these Findings of Fact and Conclusions of Law and for judgment as to the same.

2 12. As the prevailing party, Cactus Rose may also apply for an award of costs
3 in accordance with the relevant statutes and for judgment as to the same.

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

6 ORDER

7 NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of
8 Fact and Conclusions of Law; and

9 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and
10 Conclusions of Law, and those made regarding the other parties and claims involved in the
11 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the
12 same at the appropriate time subject to further order of the Court.

13 IT IS SO ORDERED this 24th day of April, 2018.

14 
15 DISTRICT COURT JUDGE

16
17 CERTIFICATE

18 I hereby certify that on or about the date filed, this document was
19 Electronically Served to the Counsel on Record on the Clark County E-File Electronic
20 Service List.

21 
22 LORRAINE TASHIRO
23 Judicial Executive Assistant
24 Dept. No. XIII
25
26
27
28

Exhibit 11



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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO THE
CLAIMS OF HEINAMAN CONTRACT
GLAZING**

AND ALL RELATED MATTERS.

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

JA009012

Case Number: 08A571228

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12 Accordingly, the Court ruled that APCO and Camco may not assert or rely on any defense
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10 APCO entered into the ManhattanWest General Construction Agreement for GMP (the
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17 best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- 18 • "...engage contractors, subcontractors, sub-subcontractors, service
19 providers, [and others, collectively referred to as "Third-Party Service
20 Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- 21 • Monthly submit to Gemstone "applications for payment for the previous
22 month on forms similar to AIA G702 and G703 and a corresponding
23 approved Certificate for Payment;" [Ex 2., ¶ 5.05(a)]. Each payment
24 application was to be "based on a Schedule of Values [that] shall allocate
25 the entire GMP among the various portions of the Work" with APCO's fee
26 to be shown as a separate line item." [Ex 2., ¶ 5.05(b)]; The payment
27 applications were to "show the Percentage of Completion of each portion of
28

1 the Work as of the end of the period covered by the Application for
2 Payment. [Ex 2., ¶ 5.05(c)]; and

- 3 • Upon receipt of a monthly progress payment, “promptly pay each Third-
4 Party Service Provider the amount represented by the portion of the
5 Percentage of the Work Completed that was completed by such Third-Party
6 Service Provider² during the period covered by the corresponding Progress
7 Payment.” [Ex 2., ¶ 5.05(g)];

8 3. APCO in turn hired various subcontractors to perform certain scopes of
9 work and provided its form Subcontract Agreement to its subcontractors (“the APCO
10 Subcontract”). Heinaman did not work for APCO on the Project and only first provided
11 work after APCO ceased work on the project and, as discussed below, Gemstone hired
12 Camco as the general contractor to replace APCO. APCO ceased work on the Project in or
13 about the end of August 2008. APCO and Gemstone each claim to have terminated the
14 other.

15 4. After APCO ceased work on the project, Gemstone hired Camco to be its
16 general contractor pursuant to an Amended and Restated ManhattanWest General
17 Construction Agreement effective as of August 25, 2008 (“the Camco-Gemstone
18 Agreement”). [See Exhibit 162].

19 5. On cross examination, Camco’s Dave Parry could not point to any portion
20 of the Camco-Gemstone Agreement that required Camco to supervise the work of the
21 subcontractors. [TR5-50:17-51:9]. Nothing in Article II (“General Contractor
22 Responsibilities”) obligates Camco to supervise the work or the subcontractors. [See Ex.
23 162, ¶Article II]. Parry did not deny that Camco was “essentially ... there to lend [its]
24 license” to Gemstone. [TR5-50:15-17].

25 6. Mr. Parry described Camco as “more of a construction manager at this point

26
27 ² Because the only Third-Party Service Providers at issue on this trial were subcontractors, the Court
28 will herein use the terms “subcontractor” and “Third-Party Service Provider” interchangeably and
synonymously.

1 than a general contractor" [TR5-31:10-11³]. Nonetheless, the Camco-Gemstone
2 Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone
3 Agreement also requires Camco, in the same way that APCO did, to aggregate payment
4 applications from subcontractors and prepare and submit to Gemstone payment
5 applications for the amounts represented by the subcontractor payment applications and
6 Camco's fee. [See Ex. 162-008-010; ¶7.01].

7 7. Camco continued the same payment application format and numbering and
8 same schedule of values that APCO had been following. [See **Exhibit 218**; TR5-30:21-
9 31:4⁴]. Like APCO before it, Camco compiled and included in its payment applications to
10 Gemstone the amounts billed by its subcontractors, including Heinaman. [See e.g., **Exhibit**
11 **522-001-011**]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone
12 Agreement required Camco, upon receipt of a progress payment from Gemstone, to
13 "promptly pay each [subcontractor] the amount represented by the portion of the
14 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-
15 010, ¶7.03(e)].⁵ It is only after Gemstone announced that the Project would be suspended
16 that Camco asserted otherwise.

17 8. Camco's initial letter to subcontractors following Gemstone's
18 announcement demonstrates both that it believed it had subcontracts (because it purported
19 to terminate the same) and that it intended to continue to forward payment applications to
20 Gemstone. [See e.g., Exhibit 804-003-004]. Specifically, Camco wrote:

21 Camco is left with no choice but to terminate our agreement with Gemstone
22 and all subcontracts on the Project, including our agreement with your
23 company. Accordingly, we have terminated for cause our agreement with
24 Gemstone, effective December 19, 2008, and we hereby terminate for
convenience our subcontract with your company, effective immediately.

25 Please submit to Camco all amounts you believe are due and owing on your
subcontract. We will review and advise you of any issues regarding any

26 ³ Testimony of Dave Parry.

27 ⁴ Testimony of Dave Parry.

28 ⁵ Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be
paid to Camco (through retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].

1 amounts you claim are owed. For all amounts that should properly be billed to
2 Gemstone, Camco will forward to Gemstone such amounts for payment y
3 Gemstone. If your claims appear to be excessive, we will ask you to justify
and/or revise the amount.

4 [See e.g., Ex. 804-003-004].

5 9. Camco quickly retracted its initial communication and replaced it with a
6 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to "please disregard
7 previous letter which was sent in error." [See e.g., Ex. 804-005]. Among other things,
8 Camco's second letter:

- 9 • Deleted its statement that it had terminated the Camco-Gemstone
10 Agreement (while continuing to terminate the subcontractors);
- 11 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk
12 of non-payment from the owner (which is also Pay-if-Paid); and,
- 13 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus
14 agreement wherein the subcontractors and suppliers were paid directly by
15 Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.
16 804-007].

17 While Gemstone eventually did make partial payment to some subcontractors through
18 NCS and not Camco [see discussion, *infra*], the Camco-Gemstone Agreement expressly
19 required Camco, upon receipt of a progress payment from Gemstone, to "promptly pay
20 each [subcontractor] the amount represented by the portion of the Percentage of the Work
21 Completed that was completed by such [subcontractor]." [Ex. 162-010, ¶7.03(e)].

22 10. Some subcontractors stopped working after APCO left the Project. Others,
23 such as Helix, continued to work on the Project and began working for Camco as the
24 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started
25 working on the Project only after APCO left and worked only for Camco.

26 11. Camco presented some subcontractors with a standard form subcontract
27 Agreement ("the Camco Subcontract"), a representative example of which is Camco's
28

1 subcontract with Fast Glass. [See Exhibit 801-007-040; TR5-57:8-16⁶].

2 12. However, Heinaman and Camco never entered into the Camco Subcontract.
3 Instead, the agreement between Camco and Heinaman is memorialized by a Letter of
4 Intent to proceed with the Work and Memorandum of Understanding Regarding Terms
5 and Conditions between Heinaman, Camco and Gemstone. [Exhibit 701 - "the Heinaman
6 Agreement"]. The Heinaman Agreement provides, among other things:

- 7 • "CAMCO and Gemstone both promise to pay and to be liable to
- 8 [Heinaman] ..."
- 9 • "CAMCO and Gemstone agree to be jointly and severally liable for
- 10 payment of [Heinaman's invoices]" and to "pay [Heinaman on the fifth day
- 11 after receipt of an Invoice from [Heinaman];"
- 12 • "Each [Heinaman] invoice shall be paid without retention;"
- 13 • "Each invoice shall be [prepared on a Time and Material basis plus 15%
- 14 standard mark up on each invoice for Overhead and 10% mark up on each
- 15 invoice for Profit;"
- 16 • CAMCO and Gemstone authorize [Heinaman] to proceed with the scope of
- 17 work as referenced herein.;" and
- 18 • The Parties understand that this document shall be binding on all Parties
- 19 until a different contract is signed by all parties."

20 [Ex. 701].

21 13. Heinaman's representative, Mark Heinaman, testified that there is no
22 "different contract signed by all Parties." Camco did not dispute this testimony or offer any
23 contract signed by Heinaman, Camco and Gemstone.

24 14. In fact, Heinaman offered, and the Court admitted, a separate agreement
25 between Camco, Gemstone, Scott Financial Corporation ("SCF" - Gemstone's lender) and
26 Nevada Construction Services, Inc. ("NCS") titled ManhattanWest Heinaman Contract

27 _____
28 ⁶ Testimony of Dave Parry.

1 Glazing Funding Instruction Agreement ("the Heinaman Funding Agreement") that
2 confirms:

- 3 • "[I]t is in the best interests if the project to engage Heinaman ...," and
- 4 • "Heinaman has demanded the right to invoice Camco weekly and requires
5 that Camco pay each invoice within five calendar days."

6 [Exhibit 718-002]. In addition, the Heinaman Funding Agreement identifies a source of
7 payments to Heinaman (monies in the NCS account previously "earmarked" to pay a
8 terminated glazing contractor) and sets forth a procedure as between Camco, Gemstone,
9 Scott and NCS to make payments to Heinaman for its work. [Ex. 718-002-004] Heinaman
10 was not a party to the Heinaman Funding Agreement.

11 15. Consistent with the Heinaman Agreement (i.e., time and materials plus 15%
12 overhead and 10% profit), Heinaman submitted multiple invoices to Camco, some of
13 which were paid [see Exhibit 702-001-003] and some of which were unpaid [see Ex. 702-
14 004-007]. Heinaman's unpaid invoices total \$187,525.26. The Court finds that Camco
15 agreed to pay all of Heinaman's invoices, breached the Heinaman Agreement by failing to
16 pay the unpaid invoices and owes Heinaman the principal sum (i.e., exclusive of interest,
17 costs and attorney's fees) of \$187,525.26.

18 16. The Court further finds that Heinaman performed the work for which it
19 invoiced. [See e.g., Exhibits 704, 705, 706, 707 and 708 (project record documents)].
20 Based in part on the undisputed testimony of Mark Heinaman the Court finds that
21 Heinaman's invoices represent a reasonable value for the work performed.

22 17. Heinaman presented undisputed evidence, and the Court finds, that
23 Heinaman timely recorded a mechanic's lien, as amended ("the Heinaman Lien"), pursuant
24 to NRS Chapter 108 and perfected the same. [See Exhibit 703]. The Heinaman Lien
25 identified both Camco as the "person by whom the lien claimant was employed or to
26 whom the lien claimant furnished or agreed to furnish work, materials or equipment." [See
27 Ex. 703-038].

1 18. Any finding of fact herein that is more appropriately deemed a conclusion
2 of law shall be treated as such.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4 **B. Conclusions of Law.**

5 1. "Basic contract principles require, for an enforceable contract, an offer and
6 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,
7 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have
8 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d
9 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context
10 and also on the subsequent conduct of the parties, including the dispute which arises, and
11 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a
12 contract exists is a question of fact and the District Court's findings will be upheld unless
13 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,
14 119 P.3d at 1257.

15 2. The Court concludes that Camco entered into and breached the Heinaman
16 Agreement by failing, without excuse, to pay Heinaman in full for the invoices it
17 submitted and for the work it performed in the amount of \$187,525.26 and that Heinaman
18 is entitled to judgment for that amount, exclusive of interest, costs and attorney's fees.

19 3. Alternatively, the Court concludes that there is an implied contract between
20 Heinaman and Camco and that Heinaman is entitled *quantum meruit* damages for recovery
21 of the full and reasonable value of the work it has performed. See *Certified Fire Prot. Inc.*
22 *v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 257 (2012) ("*quantum meruit's*
23 *first application is in actions based upon contracts implied-in-fact.*"). A contract implied-
24 in-fact must be "manifested by conduct." *Id.* at 380 citing *Smith v. Recrion Corp.*, 91 Nev.
25 666, 668, 541 P.2d 663, 664 (1975); *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674
26 (1984). It "is a true contract that arises from the tacit agreement of the parties." *Id.* To find
27 a contract implied-in-fact, the fact-finder must conclude that the parties intended to
28

1 contract and promises were exchanged, the general obligations for which must be
2 sufficiently clear. *Id.* Here, Heinaman and and Camco clearly intended to enter into a
3 contract whereby Heinaman would perform work for Camco and Camco would pay
4 Heinaman for its work.

5 4. Where an implied-in-fact contract exists “*quantum meruit* ensures the
6 laborer receives the reasonable value, usually market price, for his services.” *Precision*
7 *Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment
8 § 31 cmt. e (2011), *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) (“The
9 doctrine of *quantum meruit* generally applies to an action ... involving work and labor
10 performed which is founded on a[n] oral promise [or other circumstances] on the part of
11 the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor
12 in the absence of an agreed upon amount.”). Here, the only and undisputed testimony was
13 that the monies Heinaman billed for its work were a reasonable value for the work
14 performed. Moreover, Camco’s submission of at least some of those amounts to Gemstone
15 as part of its own pay application estopps Camco from disputing the reasonable value of
16 Heinaman’s work. Heinaman is therefore entitled *quantum meruit* damages in the amount
17 of \$187,525.26 for recovery of the full and reasonable value of the work it performed. *See*
18 *Certified Fire Prot.*, 128 Nev. at 380.

19 5. The Court rejects Camco’s argument that it is not liable to Heinaman (and
20 other subcontractors) because it never received payment from Gemstone who instead made
21 payments to subcontractors through the disbursement company, NCS. Camco’s position
22 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract
23 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO
24 Subcontract) payments to subcontractors were intended to flow through the general
25 contractor. Camco presented no evidence that Heinaman or any other subcontractor
26 consented in advance to Gemstone’s eventual decision to release payments (in part)
27 through NCS and not Camco.

1 6. Similarly, the Court rejects Camco's contention that the Court's decision on
2 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and
3 other subcontractors. Camco presented no evidence that it, for example, declared
4 Gemstone to be in breach for failing to make payments through Camco rather than through
5 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract
6 and, at least until Gemstone announced that it was suspending construction, continued to
7 process subcontractor payment applications and submit them to Gemstone. Camco's
8 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public
9 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

10 7. Specific to Heinaman, the Court concludes that Camco's reliance on any
11 form of Pay-if-Paid (i.e., even if the same could be deemed permissible under Nevada law)
12 is inapplicable to its relationship with Heinaman. Pursuant to the Heinaman Agreement,
13 Camco expressly agreed to be liable to Heinaman "jointly and severally with Gemstone.
14 Accordingly, even if (as Camco urges) the subcontractors as a whole are required to look
15 solely to the defunct Gemstone for payment (which, for the reasons explained above, they
16 are not), Camco has expressly agreed to be liable to Heinaman in the same way that
17 Gemstone is liable.

18 8. Heinaman is therefore awarded the principal sum of \$187,525.26 (i.e.,
19 exclusive of interest, costs and attorney's fees) against Camco and may apply for judgment
20 as to the same.

21 9. The Court denies all of Camco's affirmative defenses.

22 10. Heinaman is entitled to prejudgment interest pursuant to NRS 108.237
23 and/or NRS 17.130 and is granted leave to apply for the same by way of an amendment or
24 supplement to these Findings of Fact and Conclusions of Law and for judgment as to the
25 same.

26 11. Heinaman is the prevailing party and/or prevailing lien claimant as to
27 Camco and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237.
28

1 Heinaman is granted leave to apply for the same by way of an amendment or supplement
2 to these Findings of Fact and Conclusions of Law and for judgment as to the same.

3 12. As the prevailing party, Heinaman may also apply for an award of costs in
4 accordance with the relevant statutes and for judgment as to the same.

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

7 ORDER

8 NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of
9 Fact and Conclusions of Law; and

10 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and
11 Conclusions of Law, and those made regarding the other parties and claims involved in the
12 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the
13 same at the appropriate time subject to further order of the Court.

14 IT IS SO ORDERED this 24th day of April, 2018.

15
16 
DISTRICT COURT JUDGE

17
18 CERTIFICATE

19 I hereby certify that on or about the date filed, this document was
20 Electronically Served to the Counsel on Record on the Clark County E-File Electronic
21 Service List.


22 
23 LORRAINE TASHIRO
24 Judicial Executive Assistant
25 Dept. No. XIII
26
27
28

Exhibit 12



CLERK OF THE COURT

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SCOTT FINANCIAL CORPORATION

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **In Re Manhattan West Mechanic's Lien
Litigation,**

12 **APCO CONSTRUCTION, INC., a Nevada
corporation,**

13 **Plaintiff,**

14 **vs.**

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

20 **Defendants.**

21
22 **And all Related and Consolidated Claims.**

Case No. 08-A571228-B
Dept. No. XXIX

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

Date: April 4, 2012
Time: 11:00 a.m.

**NOTICE OF ENTRY OF DECISION,
ORDER AND JUDGMENT ON
DEFENDANT SCOTT FINANCIAL
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AS TO
PRIORITY OF LIENS**

23 PLEASE TAKE NOTICE that on the 7th day of May, 2012, Decision, Order and
24 Judgment on Scott Financial Corporation's Motion for Summary Judgment as to Priority of

25 ///

26 ///

27 ///

28

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1 Liens was entered in the above-captioned matter, a copy of which is annexed hereto.

2 Dated: May 7, 2012.

3 MEIER & FINE, LLC

4
5 

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SCOTT FINANCIAL CORPORATION

11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that I am an Employee of the law firm of MEIER & FINE,
13 LLC, and that on May 7, 2012, I served the above and foregoing **NOTICE OF ENTRY OF**
14 **SCOTT FINANCIAL CORPORATIONS FINDINGS OF FACT AND CONCLUSIONS**
15 **OF LAW AND JUDGMENT** in accordance with EDCR 7.26(a)(3) by sending a true and
16 correct copy of same via facsimile transmission as indicated below, by electronic means via the
17 court's website ("Wiznet"), as indicated below to the parties on the attached E-Service List.

18
19 

20 An employee of MEIER & FINE, LLC

**E-Service Master List
For Case**

null - Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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Allen D. Lamm

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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re Manhattan West Mechanic's Lien
Litigation,

Case No. 08-A571228-B
Dept. No. XXIX

APCO CONSTRUCTION, INC., a Nevada
corporation,

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

Plaintiff,
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,

**DECISION, ORDER AND JUDGMENT
ON DEFENDANT SCOTT FINANCIAL
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AS TO
PRIORITY OF LIENS**

Defendants.

Date: April 4, 2012
Time: 11:00 a.m.

And all Related and Consolidated Claims.

Defendant SCOTT FINANCIAL CORPORATION'S ("SFC") re-hearing of its Motion
for Summary Judgment as to Priority of Liens having come on for hearing on March 21, 2012,
and after reviewing all of the moving papers, oppositions, joinders and replies filed as a result of
both the original and the re-hearing; and having entertained arguments of counsel;

///

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08-58-12 P05-08 18

1 The following is the Court's DECISION:

2 As threshold finding, the Court finds that this issue is ripe for summary judgment as there
3 are no genuine issues of material fact. The following are the undisputed facts material to the
4 resolution of the issue of lien priority:

5 **UNDISPUTED FACTS**

6 1. At issue in this motion is the relative priority of competing liens encumbering
7 certain real property in Clark County, Nevada commonly referred to as 9205 W. Russell Road,
8 Clark County, Nevada. The property at issue was initially identified by Assessor Parcel
9 Numbers: 163-32-101-003; 163-32-101-004; 163-32-101-005; 163-32-101-010; and 163-32-101-
10 014, but were later identified by the Clark County Assessor's Office as Assessor Parcel Number:
11 163-32-101-019. The parcel was subsequently sub-divided into parcels numbered 163-32-101-
12 019; 163-32-101-020; 163-32-101-022; and 163-32-101-023 and those are the parcel numbers as
13 assigned by the Clark County Assessor's office as of the date of this order. ("Subject Property").

14 2. The priority issues decided in this motion deal with the relative priority of two
15 groups of liens. The first group of liens are represented by numerous deeds of trust securing
16 purchase money and construction loans while the second are mechanics' liens asserted by
17 various contractors who have claimed to furnish labor and materials in support of improving
18 the Subject Property and assert liens pursuant to Chapter 108 of the Nevada Revised Statutes.

19 3. The Subject Property was acquired by Gemstone Apache, LLC in July 5, 2006,
20 and this acquisition was financed by two Purchase Money Deeds of Trust in favor of SFC in
21 the amount of \$15 million and \$10 million, respectively, and a third line of Credit Deed of
22 Trust in the amount of \$13 million.

23 4. The loans referenced above were secured by three separate Deeds of Trust. A
24 First Deed of Trust for \$15,000,000.00, was recorded in Book Number 20060705 as Instrument
25 Number 0004264 on July 5, 2006. A Junior Deed of Trust for \$10,000,000.00 was recorded in
26 Book Number 200607045 as Instrument Number 0004265 on July 5, 2006, and a Third Deed of
27 Trust for \$13,000,000.00 recorded as Book Number 20060705 as Instrument Number 0004266
28 on July 5, 2006 in the Official Records of the Clark County Recorder for Clark County, Nevada

(collectively, the "Original Mezzanine Deeds of Trust").

5. No work commenced until April 2007, well after Original Mezzanine Deeds of Trust were properly recorded.

6. On or about May 22, 2007 SFC extended additional financing in the amount of \$8,000,000.00 to Gemstone and such financing was secured by way of an Amendment to the above-referenced Junior Deed of Trust. The Junior Deed of Trust Amendment was recorded in Book Number 20070522 as Instrument Number 0004011 in the Official Records of the Clark County Recorder for Clark County, Nevada, on May 22, 2007. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of \$8,000,000.00 was new money for the Manhattan West project.

7. On or about October 24, 2007 SFC extended additional financing in the amount of \$10,000,000.00 secured by way of an Amendment to the Third Deed of Trust which was recorded in Book Number 20071024 as Instrument Number 0004182 in the Official Records of the Clark County Recorder for Clark County, Nevada. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of \$10,000,000.00 was new money for the Manhattan West project.

8. On January 22, 2008 an Assumption Agreement was executed and entered with SFC as Lender, Gemstone Apache, LLC and Gemstone Development West, LLC in which Gemstone Apache conveyed its interest in the Subject Property to Gemstone Development West, LLC and Gemstone Development West, LLC assumed the Senior Deed of Trust, Junior Deed of Trust and Third Deed of Trust with the amendments thereto. The Assumption Agreement was recorded on February 7, 2008 on Book Number 20080207 as Instrument Number 0001483 in the Official Records of the Clark County Recorder for Clark County, Nevada.

9. On January 22, 2008 a First Amendment to the Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing (Line of Credit) (Mezzanine) was executed ("Senior Deed of Trust Amendment"). The Senior Deed of Trust Amendment was recorded on February 7, 2008 in Book Number 20080207 as Document Number 0001484.

10. On January 22, 2008 a Second Amendment to the Junior Deed of Trust and

1 Security Agreement with the Assignment of Rents and Fixture Filing was executed and recorded
2 on February 7, 2008 in Book Number 200080207 as Document Number 0001485. The Senior
3 Deed of Trust Amendment and the Junior Deed of Trust Second Amendment were renamed the
4 Mezzanine Trust Deeds. This additional funding provided by SFC simply introduced new
5 money to the project and did not constitute a new loan or a refinance of any existing debt.

6 11. On January 28, 2008 the Senior Deed of Trust and Security Agreement with
7 Assignment of Rents and Fixture Filings for \$110,000,000.00 was executed ("Construction Deed
8 of Trust"). SFC was the beneficiary of the Construction Deed of Trust which was recorded on
9 February 7, 2008 in Book Number 20080207 as Document Number 00014882. This was not a
10 refinance of the existing debt, nor was the original loan paid off. This additional funding
11 provided by SFC simply introduced new money to the project and did not constitute a new loan
12 or a refinance of any existing debt.

13 12. In addition to the execution of the above-referenced Deeds of Trust, on January
14 22, 2008 a Mezzanine Deed of Trust Subordination Agreement was executed ("Subordination
15 Agreement") solely by Gemstone and SFC and provided that the Construction Deed of Trust was
16 to be deemed superior and hold a first security interest as between these two entities. The
17 Subordination Agreement was recorded on February 7, 2008 in Book Number 20080207 as
18 Document Number 0001486.

19 13. In July of 2006, prior to the commencement of construction for any work of
20 improvement on the Subject Property, the Original Mezzanine Deeds of Trusts secured
21 obligations totaling \$38,000,000.00. In May of 2007 the total amount secured by all Mezzanine
22 Deeds of Trust (including post-April 2007 amendments) was \$46,000,000.00, and in October of
23 2007 the total amount again increased to \$56,000,000.00. In February of 2008 the Construction
24 Deed of Trust added an additional \$110,000,000.00 of financing for the Subject Project to the
25 \$56,000,000.00 which was already in existence. At that time, all the Mezzanine Deeds of Trust
26 were subordinated to the Construction Deed of Trust pursuant to the Subordination Agreement.

27 14. The Original Mezzanine Deeds of Trust were never released or reconveyed.

28 15. In all amendments to the Original Mezzanine Deeds of Trust, all Mezzanine

1 Deeds of Trust were affirmed, and all Notes and Trust Deeds were amended and not replaced.

2 16. The express purpose of the Subordination Agreement is to place the
3 \$110,000,000.00 Construction Deed in a senior priority position to the Mezzanine Trust Deeds.

4 17. The clear language of the Subordination Agreement when read in its entirety
5 demonstrates that the language in paragraph 1 page 2 of the Subordination Agreement modifies
6 and references the \$110,000,000.00 Construction Deed in reference to the Mezzanine Trust
7 Deeds and does not subordinate the Mezzanine Trust Deeds to any other interest in the Subject
8 Property. No language in the Subordination Agreement evidences a clear intent for the parties to
9 the Subordination Agreement to benefit any non-party to the Subordination Agreement.

10 CONCLUSIONS OF LAW

11 20. Pursuant to NRS § 108.225, encumbrances that are of record prior to the date that
12 construction commences on any work of improvement (as that term is used in NRS Chapter 108)
13 are entitled to priority over any mechanic lien claims asserted pursuant to NRS Chapter 108.
14 The Original Mezzanine Deeds of Trust with principal amounts totaling \$38,000,000.00 were
15 recorded before the commencement of construction for the project at issue and are therefore
16 entitled to a senior priority lien position over any mechanics lien claims at issue in this case.

17 21. The fact that SFC obtained title insurance as part of the loan transactions is
18 irrelevant and is common procedure. SFC's purchase of title insurance does not operate in any
19 way to waive any claim it would have to priority under any of the Deeds of Trust at issue in this
20 case.

21 22. This case presents an issue of first impression in Nevada, specifically, whether the
22 Subordination Agreement operates to alter the priority positions of any non-parties to that
23 Agreement, in this case, specifically the mechanics lien claimants.

24 ///

25 ///

26 ///

27 ///

28 ///

23. The mechanics lien claimants in this case have argued that as the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust, were subordinated to the Construction Loan Deed of Trust that was recorded after the commencement of construction for the work of improvement at issue, that the effect of the Subordination Agreement is to subordinate the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust to both the Construction Loan Deed of Trust and the mechanics lien claims.

24. The clear intent of the Subordination Agreement when read in its entirety reveals no intent to do anything other than ensure that the \$110,000,000.00 Construction Deed of Trust would be paid prior to the Mezzanine Deeds of Trust.

25. The clear intent of the Subordination Agreement would be contradicted by placing mechanic's liens in higher priority than the Construction Deed of Trust.

26. The Subordination Agreement does not evidence any expressed or implied intent to benefit any third-party and specifically evidences no intent to benefit the mechanics lien claimants.

27. It is undisputed that lien claimants had actual and/or constructive knowledge that they were commencing construction on a project already subject to a \$38,000,000.00 lien.

28. This Court adopts the reasoning of Bratcher v. Buckner, 90 Cal. App. 4th 1177 (2001) and as such the Subordination Agreement does not change the lien claimants' priority.

29. The lien claimants commenced work subject to a \$38,000,000.00 lien when they started work on the Manhattan West project. To place them in a more advantageous position due to a subordination agreement they were not a party to would be to grant them a windfall.

28. The lien claimants received benefit from the construction funding including the funds advanced and secured by the Construction Deed of Trust.

29. The reasoning provided in the AmSouth Bank v. J&D Financing Corp., 679 So. 2d 695 (Ala. 1996) is not persuasive and the Bratcher case more correctly and fairly describes the issue of circuity of liens in line with the policies and laws of the state of Nevada.

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1 30. Specifically under Bratcher assuming that there are three liens respectively in
2 priority (referred to for convenience herein as liens A, B, and C), subordinating A to C does not
3 result in the subordinating of A to B. The legal effect of the Subordination Agreement in this
4 context is that A and C have switched places in priority but only to the amount of A's lien
5 against the property. B's interest in the property is neither benefited nor burdened by this result
6 since B's interest in the property is still subordinate to a lien of the same amount as it was when
7 its lien attached to the property.

8 31. This reasoning was likewise adapted by Nevada's neighbor Arizona in 2002 in In
9 re Price Waterhouse, Ltd, 202 Ariz. 379 (2002) and appears to be the majority view nationally.

10 IT IS THEREFORE ORDERED ADJUDGED AND DECREED SFC's Motion for
11 Partial Summary Judgment as to Priority of Liens is GRANTED as reconsidered and/or reheard
12 by this Court;

13 IT IS FURTHER ORDERED ADJUDGED AND DECREED that SFC's loan of
14 \$110,000,000.00 is in first position priority regarding the other claimants in the principal amount
15 of \$38,000,000.00. Thereafter, the mechanic lien claimants are in second position and the
16 remainder of SFC's \$110,000,000.00 principal amount loan, namely \$72,000,000.00 in principal
17 is in third position, and the Original Mezzanine Deeds of Trust along with the post-April 2007
18 Mezzanine Deeds of Trust are in junior priority position to the aforementioned encumbrances;

19 IT IS FURTHER ORDERED ADJUDGED AND DECREED a further stay of this
20 litigation is granted pending a petition to the Nevada Supreme Court provided such is timely
21 filed and for which no bond is required; and

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS FURTHER ORDERED ADJUDGED AND DECREED this matter is set for a
2 status check on May 9, 2012 at 10:00 a.m.

3 Dated: ~~April~~ May, 2012.

4 
5 
6 _____
DISTRICT COURT JUDGE

7 Submitted by:

8 MEIER & FINE, LLC

9 
10 _____
GLENN F. MEIER, ESQ.

11 Nevada Bar No. 006059

RACHEL E. DONN, ESQ.

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13 Las Vegas, Nevada 89102

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Exhibit 13

Steven D. Grierson

FFCO

DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: 08A571228
Dept. No.: XIII

Consolidated with:

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

AND ALL RELATED MATTERS

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AS TO THE CLAIMS OF HELIX ELECTRIC
AND CABENETEC AGAINST APCO

This matter having come on for a non-jury trial on January 17-19, 23, 24, and February 6, 2018, APCO Construction, Inc., appearing through Spencer Fane, LLP and Marquis & Aurbach; Camco Construction, Inc., through Grant Morris Dodds; National Wood Products, LLC through Cadden Fuller and Richard L. Tobler, Ltd.; United Subcontractors, Inc. through Fabian Vancott; and Helix Electric of Nevada, LLC, SWPP Compliance Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all through Peel Brimley; 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; the Court hereby makes the following:

I. FINDINGS OF FACT

A. The Project

1. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums project in Clark County Nevada, (the "Project").

2. Gemstone Development West, Inc. ("Gemstone") was the owner and developer of the Project that contracted APCO to serve as the prime contractor.

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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

JA009040

Case Number: 08A571228

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1 3. On or about September 6, 2007, Gemstone and APCO entered into the
2 Manhattan West General Construction Contract for GMP (the "Contract")¹.

3 4. The Contract included Phase 1 and Phase 2 and consisted of nine buildings, with
4 five of the nine buildings in Phase 1 (buildings 2, 3, 7, 8 and 9).²

5 5. The Contract price for Phase 1 was \$78,938,160.00.³ APCO started work on the
6 Project in September, 2007.⁴

7 **B. The Contract**

8 6. The following are several critical Contract provisions that relate to the current
9 claims.

10 1. **Completion**

11 7. Section 2.10 of the Contract defines completion as follows:

12 (a) The Work within or related to each Building shall be deemed
13 completed upon the (i) completion of the Work in such Building
14 and the Corresponding Common Area; (ii) issuance of the
15 Certificate of Occupancy for such Building; (iii) completion of
16 any corrections that are requested by Developer, set forth on a
17 Developer Punch List; and (iv) delivery of the applicable
Completion Documents (collectively, a "Building Completion").
The Project shall be deemed completed upon the Building
Completion of each Building (collectively "Final Completion").⁵

18 8. Given the ultimate disputes between APCO and Gemstone, APCO did not meet
19 this definition of completion.⁶

20

21 _____
22 ¹ Exhibit 2. Gemstone and APCO also entered into a grading contract on April
17, 2007 but that contract is not the subject of this lawsuit. Exhibit 1.

23 ² Testimony of Joe Pelan (APCO) Day 1, pp. 19 and 22; Exhibit 13, p.1. Joe
24 Pelan is the General Manager of APCO Construction.

25 ³ Testimony of Joe Pelan (APCO), Day 1, p. 28.

26 ⁴ Testimony of Joe Pelan (APCO), Day 1, p. 28. APCO first started work under
the grading contract. Exhibit 1.

27 ⁵ Exhibit 2, Section 2.10.

28 ⁶ Testimony of Joe Pelan (APCO), Day 1, p. 23.

1 2. **Progress Payments.**

2 9. Section 5.05 outlined the progress payment process as follows:

3 (a) On the first business day of each month, General Contractor
4 and the Developer shall meet to review the Work that was
5 completed during the previous month and the corresponding
6 payment required for such Work.

7 ...

8 (e) Upon receipt of an Application for Payment that is acceptable
9 to Developer pursuant to Sections 5.05(a-d), Developer shall,
10 within 12 calendar days, submit, to Developer's lender or such
11 lender's authorized designee, the corresponding draw application
12 for the undisputed amount to be paid pursuant to such
13 Application for Payment (the "Draw Application"). Thereafter,
14 Developer shall take such actions as are necessary for the
15 payment of the amount owed to General Contractor pursuant to
16 such Draw Application of the amount owed to the General
17 Contractor pursuant to such Draw Application (the "Progress
18 Payment"). In the event that a Draw Application is not submitted
19 to Developer's lender or such lender's authorized designee within
20 the above 12 calendar day period, Developer shall pay to General
21 Contractor \$5,000 for each day that the submission of the Draw
22 Application is delayed after such 12 calendar day period.

23 ...

24 (g) Upon receipt of the Progress Payment, General Contractor
25 shall promptly pay each Third-Party Service Provider the amount
26 represented by the portion of the Percentage of Work Completed
27 that was completed by such Third-Party Service Provider during
28 the period covered by the corresponding Progress Payment.
General Contractor shall, by appropriate agreement with each
Third-Party Service Provider, require each Third-Party Service
Provider to make payment to sub-contractors in a similar
manner.⁷

⁷ Exhibit 2 at Section 5.05. The Contract defines APCO's subcontractors as a
"Third Party Service Provider." Exhibit 2, Section 2.02(a).

1 10. Per this provision, on the 20th of each month subcontractors submitted their
2 billings to APCO for the current month (including a projection of what each intended to
3 complete through the end of that month).⁸

4 11. APCO would then provide all of these documents to Gemstone.⁹

5 12. Gemstone would then walk the Project and determine the percentage each
6 subcontractor had completed.¹⁰

7 13. Gemstone would adjust each subcontractor's billings to match its estimate of the
8 percentage complete.¹¹

9 14. Gemstone would give the revised billings back to APCO, and APCO would
10 return them to each subcontractor to revise.¹²

11 15. Once revised, the subcontractors would submit them to APCO, APCO would
12 submit them to Gemstone, and Gemstone would submit them to its construction funds control
13 company, Nevada Construction Services ("NCS") for further review and payment.¹³

14 16. NCS would then send an inspector to verify the work was complete.¹⁴

15 17. NCS would then request funds from the lender and pay the total amount directly
16 to APCO.¹⁵

17 18. APCO then paid the subcontractor the final amount received from Gemstone.¹⁶

18 19. As discussed more fully below, this process continued until June 2008.¹⁷

19
20 ⁸ Testimony of Joe Pelan (APCO), Day 1, p. 24.

21 ⁹ Testimony of Joe Pelan (APCO), Day 1, p. 24.

22 ¹⁰ Testimony of Joe Pelan (APCO), Day 1, p. 24.

23 ¹¹ Testimony of Joe Pelan (APCO), Day 1, p. 24.

24 ¹² Testimony of Joe Pelan (APCO), Day 1, p. 24.

25 ¹³ Testimony of Joe Pelan (APCO), Day 1, p. 24; Exhibit 3, Nevada Construction
26 Services Agreement.

27 ¹⁴ Testimony of Joe Pelan (APCO), Day 1, p. 25.

28 ¹⁵ Testimony of Joe Pelan (APCO), Day 1, p. 25, and 59.

¹⁶ Testimony of Joe Pelan (APCO), Day 1, p. 25.

¹⁷ Testimony of Joe Pelan (APCO), Day 1, p. 25.

1 **3. Final Payment**

2 20. Per the payment schedule in Section 5.06, Gemstone was required to make final
3 payment when the following preconditions were met:

4 (c) ...Prior to final payment, and as a condition precedent,
5 General Contractor shall furnish Developer with the following
6 (the "Completed Documents"):

7 (i) All maintenance and operating manuals;

8 (ii) Marked set of drawings and specifications reflecting "as-
9 built" conditions, upon which General Contractor shall have
10 transferred all changes in the location of concealed utilities...

11 (iii) the documents set forth in Section 2.06(e)

12 (iv) Any assignment and/or transfer of all guaranties and
13 warranties from Third-Party Service Providers, vendors or
14 suppliers and manufacturers;

15 (v) A list of the names, address and phone numbers of all parties
16 providing guarantes and warranties, and

17 (vi) verification that all waivers that should be issued to
18 Developer concurrent with Final payment.¹⁸

19 21. APCO admitted that none of these preconditions were met while APCO was on
20 the Project.¹⁹

21 **4. Retainage**

22 22. Section 5.07 contained the Contract's retention (or retainage) payment
23 schedule.²⁰

24 23. Retainage is essentially an "escrow account" representing a temporarily
25 withheld portion of a billing that is retained by Gemstone to ensure that the work is completed

26 ¹⁸ Exhibit 2 at Section 5.06(c).

27 ¹⁹ Testimony of Joe Pelan (APCO), Day 1, p. 63.

28 ²⁰ Exhibit 2 at Section 5.07.

properly, that all material suppliers are paid and lien releases have been provided, and that all certificates of occupancy were issued.²¹

24. APCO and the subcontractors tracked the 10% retention in their billings each month.²²

25. APCO never held or otherwise received any subcontractor's retention withheld by Gemstone and kept by the lender for the Project.²³

26. Section 5.07(f) sets forth the preconditions for APCO to receive its retention:

(f) Any remaining Standard Retainage, Monthly Retainage, and Milestone Retainage shall be released to General Contractor on the date that (i) Final Completion is attained and (ii) all outstanding disputes between Developer and General Contractor and Developer and any Third Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed.²⁴

27. APCO admits that it never met any of the milestones or preconditions to be entitled to its retention from Gemstone.²⁵

28. Accordingly, APCO never billed and did not receive any retention from Gemstone.²⁶

5. Termination for Convenience

29. Section 10.01 of the Contract is entitled "**Termination by the Developer Without Cause.**"²⁷

²¹ Testimony of Joe Pelan (APCO), Day 1, p. 25; Exhibit 2 at Section 5.07; Helix's Post-Trial Brief, p. 3, ll. 10-11.

²² Testimony of Joe Pelan (APCO), Day 1, pp. 25-26.

²³ Testimony of Joe Pelan (APCO), Day 1, p. 26.

²⁴ Exhibit 2 at Section 5.07(f).

²⁵ Testimony of Joe Pelan (APCO), Day 1, pp. 1-4, 26.

²⁶ Testimony of Mary Jo Allen (APCO), Day 3, p. 127. Mary Jo Allen is a bookkeeper for APCO, and has been a bookkeeper for approximately 40 years. Testimony of Mary Jo Allen (APCO), Day 3, p. 121. She assisted in preparing the pay applications to Gemstone for the Project. Testimony of Mary Jo Allen (APCO), Day 3, p. 121.

1 30. In the construction industry, this is known as a "termination for convenience."²⁸

2 31. Gemstone never terminated the Contract for convenience.

3 6. **Termination for Cause**

4 32. Section 10.02 of the Contract is entitled "**Termination by Developer With**
5 **Cause**" and states:

6 ...

7 (b) When any of the reasons set forth in Section 10.02(a) exist,
8 Developer may without prejudice to any other rights or remedies
9 available to Developer and after giving General Contractor seven
10 days' written notice (in addition to the 48 hours notice for
11 purposes of Section 10.02 (a)(vi)), terminate employment of
12 General Contractor and may do the following:

13 ...

14 (ii) Accept assignment of any Third-Party Agreements pursuant
15 to Section 10.04.²⁹

16 33. Although Gemstone purported to terminate the Contract for cause,³⁰ the
17 undisputed evidence established that APCO was not in default.³¹

18 7. **Assignment**

19 34. The Contract contained an assignment provision confirming that upon the
20 Contract's termination, APCO's subcontracts would be assigned to Gemstone.

21 35. At that point, Gemstone would be responsible for any amounts that Gemstone
22 had not already paid APCO for the subcontractors' work:

23 **10.04 Assignment.** Each Third-Party Agreement for a portion of
24 the Work is hereby assigned by General Contractor to Developer
25 provided that such assignment is effective only after termination
26 of the Agreement by Developer for cause pursuant to Section
27

28 ²⁷ Exhibit 2 at Section 10.01.

²⁸ Testimony of Joe Pelan (APCO), Day 1, p. 27.

²⁹ Exhibit 2 at Section 10.02(b)(2).

³⁰ Testimony of Joe Pelan (APCO), Day 1, p. 27.

³¹ Testimony of Joe Pelan (APCO), Day 1, p. 100.

1 10.02 and only for those Third-Party Agreements which
2 Developer accepts by notifying General Contractor and the
3 applicable Third Party Service Provider in writing. General
4 Contractor shall execute and deliver all such documents and take
5 all such steps as Developer may require for the purpose of fully
6 vesting in Developer the rights and benefits of General
7 Contractor under such documents. Upon the acceptance by
8 Developer of any Third-Party Agreement, subject to the other
9 terms of this Article X, Developer shall pay to the corresponding
10 Third-Party Service Provider any undisputed amounts owed for
11 any Work completed by such Third Party Provider, prior to the
12 underlying termination for which Developer had not yet paid
13 General Contractor prior to such underlying termination.³²

14 36. Despite its dispute with Gemstone, APCO could not have terminated its
15 subcontracts or it would have been in breach of the Contract.³³

16 37. Notably, the Contract and this assignment clause were incorporated into the
17 APCO subcontracts.³⁴

18 38. And before APCO left the Project, Gemstone and APCO ensured that all
19 subcontractors were properly paid up through that last period.³⁵

20 C. Subcontracts

21 1. Helix

22 39. Helix Electric of Nevada, LLC ("Helix") was originally selected and retained by
23 Gemstone and performed work on the Project prior to APCO becoming the general
24 contractor.³⁶

25 ³² Exhibit 2, Section 10.04 (p. 36).

26 ³³ Testimony of Joe Pelan (APCO), Day 1, p. 75.

27 ³⁴ Exhibit 45 (Helix Subcontract) and Exhibit 149 (CabineTec Subcontract),
28 Section 1.1.

³⁵ Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67, and 82.
Testimony of Mary Jo Allen (APCO), Day 3, pp. 127-128.

³⁶ Testimony of Joe Pelan (APCO), Day 1, p. 58.

1 40. Specifically, Helix's Vice President, Bob Johnson,³⁷ admitted Helix participated
2 in preparing engineering and design services for Gemstone on the Project's electrical scope of
3 work.³⁸

4 41. So at Gemstone's direction, APCO entered into a subcontract with Helix for the
5 electrical work (the "Helix Subcontract") required on the Project.³⁹

6 42. Helix's scope of work included "electrical installation for the project, which
7 consists of distribution of power, lighting, power for the units, connections to equipment that
8 required electrical."⁴⁰

9 43. So Helix's work was based, in part, on the electrical drawings that Helix
10 prepared under contract to Gemstone.⁴¹

11 44. The Helix subcontract included the following relevant provisions:

- 12 ○ Section 1.1: The subcontract incorporates the Contract including all
- 13 exhibits and attachments, specifically including the Helix exhibit.
- 14 ○ Section 1.3: Helix was bound to APCO to the same extent and duration
- 15 that APCO was bound to Gemstone.
- 16 ○ Section 3.4 outlined the agreed upon progress payment schedule as
- 17 follows: Progress Payments
- 18 ▪ The progress payment to Subcontractor shall be one
- 19 hundred percent (100%) of the value of Subcontract work
- 20 completed (less 10% retention) during the preceding
- 21 month as determined by the Owner, less such other
- 22 amounts as Contractor shall determine as being properly
- 23 withheld as allowed under this Article or as provided
- 24

25 ³⁷ Bob Johnson is the Vice President of the major projects group at Helix.
26 Testimony of Bob Johnson (Helix), Day 1, p. 106. Mr. Johnson has negotiated more
27 than 50 subcontracts in his career, three to four of which have been with APCO.
28 Testimony of Bob Johnson (Helix), Day 2, p. 17. Mr. Johnson was involved in the
negotiation and execution of the final terms and conditions of Helix's subcontract with
APCO for the Project. Testimony of Bob Johnson (Helix), Day 1, p. 107. Mr. Johnson
admitted Andy Rivera received most of the project related correspondence and had the
most information on Helix's damages claim. Testimony of Bob Johnson (Helix), at Day
2, p. 24.

³⁸ Testimony of Bob Johnson (Helix) Day 2, p. 6.

³⁹ Exhibit 45, Helix Subcontract; Testimony of Joe Pelan (APCO), Day 1, p. 58.

⁴⁰ Testimony of Bob Johnson (Helix) at Day 2, p. 10.

⁴¹ Testimony of Bob Johnson (Helix) Day 2, p. 7.

1 elsewhere in this Subcontract. The estimates of Owner as
2 to the amount of Work completed by Subcontractor shall
3 be binding upon Contractor and Subcontractor and shall
4 conclusively establish the amount of Work performed by
5 Subcontractor. As a condition precedent to receiving
6 partial payments from Contractor for Work performed,
7 Subcontractor shall execute and deliver to Contractor,
8 with its application for payment, a full and complete
9 release (Forms attached) of all claims and causes of action
10 Subcontractor may have against Contractor and Owner
11 through the date of the execution of said release, save and
12 except those claims specifically listed on said release and
13 described in a manner sufficient for Contractor to Identify
14 such claim or claims with certainty. Upon the request of
15 Contractor, Subcontractor shall provide an Unconditional
16 Waiver of Release in form required by Contractor for any
17 previous payment made to Subcontractor. Any payment to
18 Subcontractor shall be conditioned upon receipt of the
19 actual payments by Contractor from Owner.
20 Subcontractor herein agrees to assume the same risk that
21 the Owner may become insolvent that Contractor has
22 assumed by entering Into the Prime Contract with the
23 Owner.

24 ○ 3.5 Progress Payments

- 25 ■ Progress payments will be made by Contractor to
26 Subcontractor within 15 days after Contractor actually
27 receives payment for Subcontractor's work from
28 Owner.... The estimate of owner as to the amount of
Work completed by Subcontractor be binding upon
Contractor and Subcontractor and shall conclusively
establish the amount of Work performed by
Subcontractor...⁴²

45. Of critical importance to the present action and claims, the Helix Subcontract
contained the following agreed upon retention payment schedule:

○ Section 3.8: Retainage

The 10 percent withheld retention shall be payable to Subcontractor
upon, and only upon the occurrence of all the following events, each of
which is a condition precedent to Subcontractor's right to receive final
payment hereunder and payment of such retention: (a) Completion of the

⁴² Exhibit 45.

1 entire project as described in the Contract Documents; (b) The approval
2 of final acceptance of the project Work by Owner, (c) Receipt of final
3 payment by Contractor from Owner; (d) Delivery to Contractor from
4 Subcontractor all as-built drawings for it's (*sic*) scope of work and other
5 close out documents; (e) Delivery to Contractor from Subcontractor a
6 Release and Waiver of Claims from all of Subcontractor's laborers,
7 material and equipment suppliers, and subcontractors, providing labor,
8 materials or services to the Project.⁴³

9 46. As documented below, Helix admitted that these preconditions were not met
10 while Apco was the contractor.⁴⁴

11 47. In its lien documents,⁴⁵ Complaint against APCO,⁴⁶ and its Amended
12 Complaint, Helix has unequivocally admitted that it had a binding subcontract with APCO.⁴⁷

13 48. In fact, Victor Fuchs, the President of Helix,⁴⁸ also confirmed the following in
14 an affidavit attached to Helix's May 5, 2010 Motion for Summary Judgment Against Gemstone
15 Development West (and corresponding errata) filed with this Court:

16 4. On or around April 17, 2007 [the date of Exhibit 45],
17 APCO contracted with Helix to perform certain work on the
18 Property.

19 5. Helix's relationship with APCO was governed by a
20 subcontract, which provided the scope of Helix's work and
21 method of billing and payments to Helix for work performed on
22 the Property (the "Subcontract"). A true and correct copy of the
23 Subcontract is attached hereto as Exhibit 1.

24 6. Helix also performed work and provided equipment and
25 services directly for and to Gemstone, namely design engineering
26 and temporary power.

27 ⁴³ Exhibit 45.

28 ⁴⁴ Testimony of Bob Johnson, Day 2, pp. 36 and 37.

⁴⁵ Exhibits 512 pp. 5-6, 7-9, 10-11.

⁴⁶ Exhibit 77.

⁴⁷ Exhibit 231.

⁴⁸ Testimony of Bob Johnson (Helix), Day 1, p. 108.

1 7. Camco Pacific Construction Company, Inc. ("Camco")
2 replaced APCO as the general contractor. Thereafter, Helix
3 performed its Work for Gemstone and/or Camco...⁴⁹

4 Exhibit 1 to the declaration was the first fifteen pages of Exhibit 45.⁵⁰

5 49. And notwithstanding Helix's proposed interlineations to the subcontract, Helix's
6 Mr. Johnson admitted he did not change the retention payment schedule in the subcontract:

7 Q. Okay. Would you turn to page 4 [of Exhibit 45] And
8 directing your attention to paragraph 3.8?

9 A. Okay.

10 Q. Do you recognize that as the agreed-upon retention
11 payment schedule in the subcontract?

12 A. I do.

13 Q. And in fairness to you and the record, you did propose
14 a change to paragraph 3.8. Could you turn to page 16 of the
15 exhibit, Exhibit 45? And directing your attention to paragraph 7,
16 does this reflect your proposed change to the retention payment
17 schedule in the original form of Exhibit 45?

18 A. In the original form, yes.

19 Q. Okay. And APCO accepted your added sentence that if
20 the retention was reduced on the Project, the same would be
21 passed on to the subcontractor, correct?

22 A. Correct.

23 Q. Through your change in paragraph 7, on page 16 of
24 Exhibit 45, you did not otherwise modify the preconditions in the
25 retention payment schedule of 3.8, did you?

26 A. We did not.⁵¹

27 50. Mr. Johnson, also admitted that Exhibit 45 represented the APCO agreement
28 that Helix alleges APCO somehow breached:

 Q. Okay, sitting here today, is it your contention that
APCO breached a contract with Helix?

 A. I would say they did in the respect that we haven't
been paid.

 Q. Okay. And which contract is it in your opinion that
APCO breached?

⁴⁹ Exhibit 314.

⁵⁰ Helix Electric's May 5, 2010 Motion for Partial Summary Judgment Against
Gemstone Development West (and corresponding errata).

⁵¹ Testimony of Bob Johnson, Day 2, pp. 17-18.

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A. For the Manhattan West project.
Q. Is there a document?
A. There is a document.
Q. Okay. And, sir, would you turn—if you could, grab Exhibit 45. You spent some time talking about this yesterday.
A. Okay.
The Court: Which item is it, counsel?
Mr. Jefferies: Exhibit 45.
Q. Is it your position that APCO breached this agreement?
A. My assumption would be they breached it, yes.
Q. Okay. But this is the document that represents the agreement between APCO and Helix for the project?
A. It is the agreement between APCO and Helix.⁵²

51. Notably, the Helix Subcontract did not contain a provision purporting to waive Helix's statutory lien rights.

2. CabineTec

52. Gemstone also selected CabineTec, Inc. ("CabineTec") to serve as APCO's cabinet subcontractor.⁵³ Plaintiff in Intervention National Wood Products, Inc. ("National Wood") is a judgment creditor of CabineTec which has assigned all of its right, title, and interest in the project to National Wood. Such parties are collectively referred to herein as "CabineTec."

53. APCO entered into a subcontract with CabineTec on April 28, 2008 for the delivery and installation of cabinets on the Project (the "CabineTec Subcontract")⁵⁴

54. CabineTec's Subcontract contained the same retention and progress payment schedules quoted above from the Helix Subcontract.⁵⁵

⁵² Testimony of Bob Johnson (Helix), Day 2, p. 9.

⁵³ Testimony of Joe Pelan (APCO), Day 1, p. 89.

⁵⁴ Exhibit 149, CabineTec Subcontract.

⁵⁵ Exhibit 149.

1 55. CabineTec's Nicholas Cox⁵⁶ admitted CabineTec did not change the retention
2 payment schedule found in Section 3.8.⁵⁷

3 56. CabineTec and APCO also signed an August 6, 2008 letter regarding Terms &
4 Conditions.⁵⁸

5 57. That letter confirmed that CabineTec would be paid when "APCO receives
6 payment from Gemstone per subcontract."⁵⁹

7 58. The CabineTec Subcontract does not contain a waiver of CabineTec's right to
8 place a mechanic's lien on the Project.

9 **D. The Contract was terminated.**

10 59. APCO did not finish the Project as the general contractor.⁶⁰

11 60. Despite APCO's performance, issues with Gemstone's payments started in May
12 2008 and Gemstone reduced the May Pay Application to exclude any money for APCO.⁶¹

13 61. "...Gemstone will withhold \$226,360.88 from the May Progress Payment (the
14 "Withheld Amount") in addition to the 10% retainage that was already being withheld. The
15 Withheld Amount represents the APCO Construction Contractor's Fee line-item from the May
16 Progress Payment."⁶²

17 62. As a result, Gemstone only paid the subcontractors for the May time period.

18 63. Given the wrongful withholding, APCO provided Gemstone with written notice
19 of its intent to stop work pursuant to NRS 624.610 if APCO was not paid in full.⁶³

20 _____
21 ⁵⁶ Mr. Cox was the president of CabineTec during the Project. Testimony of
Nicholas Cox (CabineTec) Testimony Day 3, p. 13.

22 ⁵⁷ Testimony of Nicholas Cox (CabineTec), Day 3, p. 29.

23 ⁵⁸ Exhibit 152.

24 ⁵⁹ Exhibit 152.

25 ⁶⁰ Testimony of Brian Benson (APCO) at Day 3, p. 50; Testimony of Mary Jo
Allen (APCO), Day 3, p. 122.

26 ⁶¹ Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 31.

27 ⁶² Exhibit 212-1.

28 ⁶³ Exhibit 5.

1 64. On or about July 18, 2008, APCO submitted its pay application for the month
2 ending June 30, 2008, and requested \$6,566,720.38 (the "June Application").⁶⁴

3 65. The cover page of the June Application, like all other pay applications, tracked
4 the total value of the Contract, the total requested for that month, subcontractor billings and
5 retention.⁶⁵

6 66. The June Application shows Gemstone was withholding \$4,742,574.01 in
7 retainage as of that date.⁶⁶

8 67. On July 18, 2008, APCO sent Gemstone a notice of intent to stop work for its
9 failure to pay the May Application as follows.

10 Specifically, Gemstone has failed to pay \$3,434,396.50 for
11 Application for Payment No. 8, Owner Draw No. 7, which was
12 submitted to Gemstone on June 20, 2008, and was due no later
13 than July 11, 2008 pursuant to NRS 624.609(A). Accordingly,
14 THIS LETTER SHALL SERVE AS APCO'S NOTICE OF
15 INTENT TO STOP WORK PURSUANT TO NRS 624.609
16 THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS
17 PAID THE TOTAL AMOUNT OF \$3,434,396.50 FOR ITS
18 WORK ON THE PROJECT... Accordingly, pursuant to NRS
19 624.609(1)(b), payment was due to APCO within 21 days of its
20 request for payment (again, no later than July 11, 2008). To date,
21 no payment has been made... If APCO has not been paid for
22 Application for Payment No. 8, Owner Construction Draw No. 7,
23 in the amount of \$3,434,396.50 by the close of business on
24 Monday, July 28, 2008, APCO reserves the right to stop work on
25 the Project anytime after that date. While APCO is willing to
26 continue to work with Gemstone to get these issues resolved,
27 APCO is not waiving its right to stop work any time after July 28,
28 2008, if APCO continues to work on the Project or otherwise
 attempts to resolve these issues with Gemstone.⁶⁷

22 68. On July 28, 2008, APCO sent a letter confirming that APCO would stop
23 working unless Gemstone made full payment to APCO for all past due amounts:

24 _____
25 ⁶⁴ Exhibit 4.

26 ⁶⁵ Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 29; Exhibit 4.

27 ⁶⁶ Exhibit 4; Testimony of Joe Pelan (APCO), Day 1, p. 30.

28 ⁶⁷ Exhibit 5.

1 As you area aware, on July 17, 2008, APCO provided Gemstone
2 with written notice that unless APCO was paid the full amount of
3 \$3,434,396 by the close of business on Monday, July 28, 2008,
4 that APCO would stop work on the Project. Gemstone failed to
5 make full payment and has improperly withheld \$203,724.29,
6 despite having no good faith or proper statutory basis for
7 withholding the payment. AS a result, APCO is stopping work on
8 the Manhattan West Project effective immediately.
9 In addition to stopping work on the project, APCO hereby asserts
10 its rights to terminate the contract pursuant to NRS 624.610(2).
11 THIS LETTER SHALL SERVICE AS APCO'S NOTICE OF
12 INTENT TO TERMINATE THE MANHATTAN WEST
13 GENERAL CONSTRUCTION CONTRACT FOR GMP
14 PURSUANT TO NRS 624.606 THROUGH NRS 624.630,
15 INCLUSIVE, PURSUANT TO THE TERMS OF THE NRS
16 624.610, THE CONTRACT SHALL BE TERMINATED AS OF
17 AUGUST 14, 2008.⁶⁸

18 69. Helix was aware that shortly after a July 11, 2008 email,⁶⁹ APCO began issuing
19 stop work notices to Gemstone on the Project.⁷⁰

20 70. Gemstone ultimately paid APCO for May.⁷¹

21 71. In addition, on July 29, 2008, APCO sent the following letter to its
22 subcontractors:

23 As most of you are now aware, APCO Construction and
24 GEMSTONE are embroiled in an unfortunate contractual dispute
25 which has resulted in the issuance of a STOP WORK NOTICE to
26 GEMSTONE. While it is APCO Construction's desire to
27 amicably resolve these issues so work may resume, it must also
28 protect its contractual and legal rights. This directive is to advise
all subcontractors on this project that until further notice, all work
on the Manhattan West project will remain suspended.
THIS SUSPENSION IS NOT A TERMINATION OF THE
GENERAL CONTRACT AT THIS TIME AND AS SUCH ALL
SUBCONTRACTORS ARE STILL CONTRACTUALLY
BOUND TO THE TERMS OF THEIR RESPECTIVE
SUBCONTRACTS WITH APCO CONSTRUCTION.

68 Exhibit 6.

69 Exhibit 506, p. 1.

70 Testimony of Bob Johnson (Helix), Day 1, p. 113.

71 Testimony of Joe Pelan (APCO) Day 1, p. 31.

1 Additionally, the subcontractors are advised that, at the present
2 time they are not obligated to perform any subcontract work on
3 the project at the direction or insistence of Gemstone.
4 We will keep all subcontractors advised on a timely basis if the
5 status of the work suspension changes. Should you have any
6 questions, feel free to call.⁷²

7 72. On July 30, 2008, Scott Financial, the Project's lender, sent a letter to APCO
8 confirming the loan for the Project was in good standing.⁷³

9 73. On or about August 6, 2008, Gemstone provided APCO notice of its intent to
10 withhold the sum of \$1,770,444.28 from APCO for the June Application.⁷⁴

11 74. Accordingly, APCO sent Gemstone another notice of intent to stop work on
12 August 11, 2008, noting that if APCO was not paid by August 21, 2008, APCO would suspend
13 work on the Project:

14 On July 18, 2008, APCO Construction submitted its Progress
15 Payment for June 2008 pursuant to the terms of the General
16 Construction Agreement for GMP, dated September 6, 2007 in
17 the amount of \$6,566,720.38. This number has since been
18 adjusted on your submittal to the lender to reflect \$5,409,029.42
19 currently due to APCO Construction. We understand this number
20 reflects certain upward adjustments to change orders made after
21 the Progress Payment was submitted on July 18, 2008. Pursuant
22 to NRS 624.609(1), this payment was due on or before August 8,
23 2008. By way of good faith agreement extended by APCO
24 Construction to Peter Smith, this deadline was extended for three
25 (3) days as a result of what were intended to be "good faith"
26 efforts to fully resolve certain change order issues. While APCO
27 Construction does not feel at this time that Gemstone participated
28 in good faith, we will nevertheless honor our commitment to you
 to extend the deadline. Accordingly, and pursuant to the
 aforementioned statute and agreement, deadline for payment for
 the June Progress Payment was close of business Monday,
 August 11, 2008.

...
...
...

⁷² Exhibit 48.

⁷³ Exhibit 7.

⁷⁴ Exhibit 313.

1 In review of your August 6, 2008 correspondence you have
2 provided a "withholding breakdown" wherein you have given
3 notice of your intent to withhold \$1,770,444.28, allegedly
4 pursuant to NRS 624.609(3) and Section 5.05(d) and 5.05(f)(vii)
5 of the Agreement.

6 **As such, the correct amount of the June Progress Payment**
7 **should be \$6,183,445.24.** As of this date, Gemstone has failed
8 and/or refused to pay the June Progress Payment.

9 THIS LETTER SHALL SERVE AS APCO'S NOTICE OF
10 INTENT TO STOP WORK PURSUANT TO NRS 624.606
11 THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS
12 PAID THE TOTAL AMOUNT OF \$6,183,445.24 FOR ITS
13 WORK ON THE PROJECT.

14 IF APCO CONSTRUCTION HAS NOT BEEN PAID FOR
15 PAYMENT NO. 9 OWNER CONSTRUCTION DRAW NO. 8,
16 IN THE AMOUNT OF \$6,183,445.24 BY CLOSE OF
17 BUSINESS ON THURSDAY, AUGUST 21, 2008, APCO
18 CONSTRUCTION RESERVES THE RIGHT TO STOP WORK
19 ON THE PROJECT ANYTIME AFTER THAT DATE.

20 As we have previously demonstrated, APCO Construction will
21 continue to work with Gemstone to resolve the various issues
22 affecting this project, however, we will not waive our right to
23 stop work anytime after August 21, 2008. We trust you will give
24 this Notice appropriate attention.⁷⁵

25 75. All subcontractors were copied on this notice.⁷⁶

26 76. APCO informed all subcontractors that it intended to terminate the Contract as
27 of September 5, 2008.⁷⁷

28 77. Helix's Project Manager, Andy Rivera,⁷⁸ admitted that he received APCO's stop
work notice and possible termination.⁷⁹

⁷⁵ Exhibit 10; Testimony of Joe Pelan (APCO) Day 1, pp. 30 and 32.

⁷⁶ Testimony of Joe Pelan (APCO), Day 1, p. 31; Exhibit 10.

⁷⁷ Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 74.

⁷⁸ Andy Rivera was Helix's Project Manager. Testimony of Andy River (Helix),
Day 2, p. 48. As the Project Manager, he was in charge of labor, materials,

1 78. After receipt of APCO's written notice, Gemstone sent a letter on Friday,
2 August 15, 2008, claiming that APCO was in breach of contract and that Gemstone would
3 terminate the Contract for cause if the alleged breaches were not cured by Sunday, August 17,
4 2008.⁸⁰

5 79. That letter divided APCO's alleged breaches into curable breaches and non-
6 curable breaches⁸¹ and also confirmed that upon termination: "(a) all Third-Party Agreements
7 shall be assigned to Gemstone and (b) APCO must execute and deliver all documents and take
8 such steps as Gemstone may require for the purpose of fully vesting in Gemstone the rights and
9 benefits of such assigned Third-Party Agreements."⁸²

10 80. APCO's counsel responded to the letter the same day, August 15, 2008.⁸³

11 81. That letter refuted Gemstone's purported basis for termination for cause,⁸⁴ as
12 there was no factual basis for any of the alleged defaults in Gemstone's letter:

13 Gemstone's demand is factually incorrect as APCO is not in
14 default of the agreement, and even if APCO was in default of the
15 Agreement as alleged, the issues set forth by Gemstone would
16 not support a termination of the contract...APCO has provided
17 Gemstone with a 10 day Notice of Intent to Stop Work on the
18 project due to Gemstone's failure to pay the June 2008
Application. Instead of making the payment that is due,
Gemstone is seeking to terminate the contract on or before the
date that APCO will stop work on the project...APCO has

19
20 subcontractors, labor reports, billings, change orders, submittals, requests for
21 information, and most other documents on the Project. Mr. Rivera reported to Robert
22 Johnson. Testimony of Andy Rivera (Helix), Day 2, p. 48. Andy Rivera prepared
23 Helix's pay applications. Testimony of Bob Johnson (Helix), Day 2, p. 8. So while
24 Robert Johnson signed the pay applications for Helix, Mr. Andy Rivera had the most
25 personal knowledge of the financial aspects of the Project for Helix and was actually
26 designated as Helix's PMK on Helix's claim. Testimony of Andy Rivera, Day 2, p. 73.

27 ⁷⁹ Testimony of Bob Johnson (Helix), Day 1, p. 113.

28 ⁸⁰ Exhibit 13; Testimony of Joe Pelan (APCO), Day 1, pp. 35-36.

⁸¹ Exhibit 13 - 1-13.

⁸² Exhibit 13, p. 14, Section C.3.

⁸³ Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 36.

⁸⁴ Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, pp. 37 and 79.

1 received a copy of the e-mail sent to APCO's subcontractors by
2 Gemstone. The e-mail notes that Gemstone has a replacement
3 General Contractor in place. Obviously, Gemstone's intent is to
4 improperly declare APCO in default and then attempt to move
5 forward with the project using APCO's subcontractors... Items
(ii), (iii), (iv) and (v) were all complete months ago as part of the
normal job process.⁸⁵

6 82. There was no evidence presented at trial rebutting Mr. Pelan's testimony that
7 APCO was not in default.

8 83. And since the Court has stricken Gemstone's answer and counterclaim against
9 APCO,⁸⁶ the Court must find that APCO was not in breach.

10 84. On or about August 15, 2008, prior to its purported termination, Gemstone
11 improperly contacted APCO's subcontractors and notified them that Gemstone was terminating
12 APCO as of Monday, August 18, 2008.⁸⁷

13 85. Gemstone confirmed it had already retained a replacement general contractor.⁸⁸
14 Gemstone advised the APCO subcontractors as follows:

15 In the event that APCO does not cure breaches to Gemstone's
16 satisfaction during the cure period, Gemstone will proceed with a
17 new general contractor. This GC has been selected and they are
18 ready to go. We do not expect any delays or demobilizations in
19 this event... If APCO does not cure all breaches, we will be
providing extensive additional information on the transition to a
new GC in 48 hours time.⁸⁹

20 86. The replacement contractor turned out to be Camco.⁹⁰

21
22
23 ⁸⁵ Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 100.

24 ⁸⁶ Docket at May 26, 2010 Order Striking Defendant Gemstone Development
West, Inc.'s Answer and Counterclaims, and Entering Default.

25 ⁸⁷ Exhibit 215; Testimony of Joe Pelan (APCO), Day 1, pp. 34 and 35.

26 ⁸⁸ Exhibit 215.

27 ⁸⁹ Exhibit 215-2.

28 ⁹⁰ Exhibit 162, Camco/Gemstone Prime Contract.

1 87. On August 18, 2008, APCO emailed Gemstone objecting to such direct
2 communications with the subcontractors: "The APCO Construction GMP and Grading
3 Contracts are still in effect and as such Gemstone shall not meet with our subcontractors. Please
4 read the contract and other correspondence closely. If APCO didn't (and APCO did) cure the
5 breach, Gemstone must issue a seven day notice of termination. You are disrupting my ability
6 to perform the work."⁹¹

7 88. That same day, APCO submitted its July 2008 pay application for
8 \$6,307,487.15.⁹²

9 89. The next day on August 19, 2008, APCO sent Gemstone a letter noting
10 Gemstone's breaches:

11 [I]t was and is my clear position that any termination of our
12 contract would be a breach of the agreement. Then today before I
13 could send my letter I received a letter from your lawyer saying
14 our contract was over.... As with the other changes, it is
15 impossible to fully account for the delays and full impacts to our
16 schedule at this stage. Consistent with the (2) two change orders
17 that Alex signed after Pete initially rejected them for the HVAC
18 deltas, I would propose that we hold the time issues for now... I
19 also find it interesting that you have sent us letters to terminate
20 the contract all within the time that we were allowed to provide
21 you notice of our intent to suspend the work if the change orders
22 on the June pay application were not paid. That was to elapse on
23 Thursday and now your lawyer is proposing that we agree to a
24 termination before that date. We will not agree and intend to fully
25 proceed with our contract obligations... Yesterday morning, Alex
26 came in and asked me what we were still doing on site because
27 there was nothing that we could do to satisfy Gemstone. That
28 would be consistent with the email that was sent to all of our
subcontractors on Friday advising that we were being removed
from the project before we even had a chance to respond to the
48 hour notice... Craig also told me that Gemstone had
previously selected Camco to complete the project.⁹³

⁹¹ Exhibit 216-1.

⁹² Exhibit 8.

⁹³ Exhibit 15.

1 90. On August 19, 2008, Gemstone confirmed that joint checks to the
2 Subcontractors and Apco would be written for the June 2008's pay application: "I'd like to
3 have dual checks cut for this [June, 2008] pay application directly to the subs and the general. I
4 believe this is different than what we have historically done on Manhattan West, but similar to
5 how we have paid some Manhattan Pay Apps in the past."⁹⁴

6 91. Gemstone confirmed that all future payments would essentially go directly from
7 Nevada Construction Control to the subcontractors.⁹⁵

8 92. Although it disagreed with Gemstone's conduct, APCO cooperated in this post
9 termination process to ensure that all subcontractors were properly paid for work performed on
10 APCO's watch:

11 An APCO representative has to sign all of the subcontractor
12 checks due to Gemstone's request to prepare the "joint checks".
13 An APCO signer should be doing that by the end of today or
14 tomorrow morning. At that time, NCS will contact all of the
15 subcontractors to pick up their checks. Furthermore, today the
16 APCO's July pay application was submitted to NCS. As
17 mentioned in the meeting on Monday, August 25, 2008, enclosed
18 is the contact information for Camco Pacific regarding pay
19 applications... Please forward your July and August pay requests
20 to Yvonne. Obviously, July was already submitted to NCS but we
21 would like Camco to have record of the most current pay
22 requests.⁹⁶

23 93. None of the joint checks that NCS and Gemstone issued and that APCO
24 properly endorsed included any funds for APCO.⁹⁷

25 94. And none of the joint checks accounted for any APCO or subcontractor
26 retention because retention had not been earned under either the Contract or the various
27 subcontracts.⁹⁸

28 ⁹⁴ Exhibit 16; Testimony of Joe Pelan (APCO), Day 1, p. 38.

⁹⁵ Testimony of Joe Pelan (APCO), Day 1, p. 38.

⁹⁶ Exhibit 26. Testimony of Joe Pelan (APCO), Day 1, pp. 38 and 41.

⁹⁷ Testimony Day 1, p. 38.

⁹⁸ Testimony of Joe Pelan (APCO), Day 1, pp. 38-39.

1 95. As of the end of August, the Project was only about 74% complete.⁹⁹
2 96. Ultimately, APCO was not paid for its share of June Application even though
3 the subcontractors received their money.¹⁰⁰

4 97. On August 21, 2008, APCO sent a letter to its subcontractors informing them
5 that APCO would stop work on the Project on August 21, 2008:

6 Attached hereto is APCO Construction's Notice of Stopping
7 Work and Notice of Intent to Terminate Contract for
8 nonpayment. As of 5:00p.m., Thursday, August 21, 2008 all
9 work in furtherance of the subcontracts you have with APCO
10 CONSTRUCTION on the Manhattan West project is to stop until
11 you are advised otherwise, in writing, by APCO
12 CONSTRUCTION... If a prime contractor terminates an
13 agreement pursuant to this section, all such lower tiered
14 subcontractors may terminate their agreements with the prime
15 contractor... Pursuant to statute, APCO CONSTRUCTION is
16 only stopping work on this project. At this time it has not
17 terminated its contract with Gemstone. As such, all
18 subcontractors, until advised in writing by APCO
19 CONSTRUCTION, remain under contract with APCO
20 CONSTRUCTION.¹⁰¹

21 98. On August 21, 2008 APCO also provided Gemstone with written notice of
22 APCO's intent to terminate the Contract as of September 5, 2008.¹⁰²

23 99. APCO's last work on the Project was August 21, 2008.¹⁰³

24 100. On August 22, 2008, APCO sent a letter to the Clark County Building
25 Department advising that APCO was withdrawing as the general contractor for the Project.¹⁰⁴

26

27

28 ⁹⁹ Exhibit 218-10; Testimony of Steven Parry (Camco), Day 5, pp. 31-32. Mr.
Parry was Camco's project manager for the approximate four months that Camco
worked on the Project. Testimony of Steven Parry (Camco), Day 5, p. 24.

¹⁰⁰ Testimony of Joe Pelan (APCO), Day 1, p. 33.

¹⁰¹ Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 32.

¹⁰² Exhibit 23.

¹⁰³ Testimony of Brian Benson (APCO), Day 3, p. 50; Testimony of Joe Pelan
(APCO), Day 1, p. 40.

¹⁰⁴ Exhibit 24; Testimony of Joe Pelan (APCO), Day 1, p. 40.

1 101. APCO was required to cancel its current building permits so the Project permits
2 could be issued and transferred to Camco.¹⁰⁵

3 102. In an August 28, 2008 letter, Gemstone advised that APCO was terminated for
4 cause as of August 24, 2008:

5 Furthermore, pursuant to the ManhattanWest's August 15, 2008
6 notice regarding Termination of Phase 1 for Cause, and APCO's
7 failure to cure the breaches set forth in the notice prior to August
8 17, 2008, the Contract terminated for cause on August 24, 2008.
9 Consequently, pursuant to Section 10.02(c) of the Contract,
10 APCO is not entitled to receive any further payments until the
11 Work [as defined in the Contract] is finished. Later today,
12 Gemstone will issue joint checks to the subcontractors pursuant
13 to the June Progress Payment; however, payment will not include
14 any fees or general conditions to APCO.¹⁰⁶

15 103. APCO contested Gemstone's purported termination and APCO's evidence was
16 uncontested on that issue that it was not in default.¹⁰⁷

17 104. APCO properly terminated the Contract for cause in accordance with NRS
18 624.610 and APCO's notice of termination since Gemstone did not pay the June Application,
19 as of September 5, 2008.¹⁰⁸

20 105. Helix and CabineTec both received a copy of the termination letter.¹⁰⁹ APCO
21 considered its notice of termination to be effective as of September 5, 2008.¹¹⁰

22 106. But Gemstone proceeded with the Project as if it had terminated the Contract
23 with APCO.¹¹¹ APCO was physically asked to leave the Project as of the end of August,
24 2008.¹¹²

25 ¹⁰⁵ Testimony of Joe Pelan (APCO), Day 1, p. 100.

26 ¹⁰⁶ Exhibit 27; Testimony of Joe Pelan (APCO), Day 1, p. 41.

27 ¹⁰⁷ Testimony of Joe Pelan (APCO), Day 1, p. 42.

28 ¹⁰⁸ Exhibit 28; Testimony of Joe Pelan (APCO), Day 1, pp. 73 and 80.

¹⁰⁹ Exhibit 28; Testimony of Bob Johnson (Helix), Day 1, p. 113.

¹¹⁰ Testimony of Joe Pelan (APCO), Day 1, pp. 42-43.

¹¹¹ Testimony of Joe Pelan (APCO), Day 1, pp. 100-101; Exhibit 29.

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 119

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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

<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>
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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

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	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
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	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

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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
	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
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	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
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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

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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

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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
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>
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	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

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	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

<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

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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 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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<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

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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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
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	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
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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
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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
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	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
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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

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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
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	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
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	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 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
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	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 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
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	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
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	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
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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
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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
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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
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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
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	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
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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
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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
	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
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	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
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	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
	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

1 107. And all subcontractors received notice from Gemstone that APCO was
2 terminated on August 26, 2008 and would not be returning to the Project.¹¹³

3 E. Gemstone owed APCO \$1.4 million when APCO left the Project.

4 108. Even though the subcontractors had received all amounts billed through August
5 2008, Gemstone owed APCO \$1,400,036.75 for APCO's June, July, and August 2008 payment
6 applications.¹¹⁴

7 109. Gemstone also owed APCO \$200,000.00 from various reimbursements.¹¹⁵

8 110. APCO has never received payment in any form from any entity for these pay
9 applications or the \$200,000.00 in reimbursements.¹¹⁶

10 111. The \$1,400,036.75 does not reflect any of the retention that Gemstone withheld
11 from APCO on the Project because the retention never became due.¹¹⁷

12 112. Ultimately, Gemstone would not accept APCO's final August 2008 pay
13 application.¹¹⁸

14
15 ¹¹² Testimony of Joe Pelan (APCO) Day 3, p. 150.

16 ¹¹³ Exhibit 118.

17 ¹¹⁴ Exhibit 320/321, Summary of June, July and August 2008 payment
18 applications to Gemstone that were not paid; Testimony of Joe Pelan (APCO) Day 1, p.
19 67; Testimony of Mary Jo Allen (APCO) Day 3, p. 144. Exhibit 4 is APCO's June
20 Application. Testimony of Mary Jo Allen (APCO), Day 3, p. 124. APCO's share of the
21 June Pay Application was \$700,802.90, which was not paid. Testimony of Mary Jo
22 Allen (APCO), Day 3, pp. 125-127. Exhibit 8 is APCO's July pay application.
23 Testimony of Mary Jo Allen (APCO), Day 3, p. 125. APCO's share of the July 2008
24 pay application was \$431,183.67, which was not paid. Testimony of Mary Jo Allen
25 (APCO), Day 3, pp. 125-127. Exhibit 31 was APCO's August 2008 pay application and
26 its final pay application. Accordingly, the August 2008 application shows everything
27 that was done by APCO and its subcontractors through the end of August 2008.
28 Testimony of Mary Jo Allen (APCO) Day 3, p. 135. APCO's share of the August 2008
pay application was \$268,050.18, which was not paid. Testimony of Joe Pelan (APCO)
Day 1, p. 46; Testimony of Mary Jo Allen (APCO), Day 3, pp. 126-127. In total,
Gemstone owed APCO \$1,400,036.75 for its last three pay applications. Testimony of
Mary Jo Allen (APCO), Day 3, p. 122.

¹¹⁵ Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

¹¹⁶ Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

¹¹⁷ Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

¹¹⁸ Testimony of Joe Pelan (APCO), Day 1, pp. 44-45. Exhibit 31.

1 113. So Camco submitted APCO's August 2008 billing so APCO's subcontractors
2 would get paid.¹¹⁹

3 114. Camco's August 2008 pay application tracked the full retention from the Project
4 (including APCO's)¹²⁰ and APCO's full contract amount.¹²¹

5 115. As of its last pay application, APCO believed it was 76% complete with the
6 Project.¹²²

7 116. Despite the amounts owed to APCO, the evidence was uncontested that the
8 subcontractors received all of their billed amounts, less retention, up through August 2008.¹²³

9 **F. APCO did not terminate the Helix or CabineTec Subcontracts.**

10 117. During this dispute, APCO did not terminate the Helix or CabineTec
11 subcontracts,¹²⁴ but advised its subcontractors that they could suspend work on the Project in
12 accordance with NRS Chapter 624.¹²⁵

13 118. If APCO wanted to terminate its subcontractors, it had to do so in writing.¹²⁶

14 119. Helix admitted it knew APCO was off the Project as of August 28, 2008¹²⁷ and
15 that neither APCO nor Helix terminated the Helix Subcontract.¹²⁸

16
17
18 ¹¹⁹ Exhibit 218; Testimony of Joe Pelan (APCO), Day 1, pp. 43-44.

19 ¹²⁰ Testimony of Joe Pelan (APCO), Day 1, p. 44; Exhibit 218-2.

20 ¹²¹ Exhibit 218-10.

21 ¹²² Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.

22 ¹²³ Testimony of Mary Jo Allen (APCO) Day 3, pp. 127-129 and 144; Testimony
23 of Andy Rivera (Helix) Day 2, pp. 73 and 75; Testimony of Joe Pelan (APCO) Day 3,
p. 150; Exhibit 26; Exhibit 152; Testimony of Joe Pelan (APCO) Day 1, pp. 26, 46, 67
and 82.

24 ¹²⁴ Testimony of Joe Pelan (APCO), Day 1, p. 39.

25 ¹²⁵ Exhibit 23.

26 ¹²⁶ Testimony of Joe Pelan (APCO) Day 1, p. 71.

27 ¹²⁷ Testimony of Andy Rivera (Helix) Day 2, p. 62.

28 ¹²⁸ Testimony of Joe Pelan (APCO) Day 1 at p. 126; Testimony of Bob Johnson
(Helix) Day 2, p. 33.

1 120. Additionally, Helix admitted it never issued a stop work notice to APCO
2 pursuant to NRS 624 because it had no payment disputes with APCO.¹²⁹

3 121. In fact, per Gemstone's notice dated August 15, 2008, Gemstone gave APCO
4 notice that it exercised its right under Contract Section 10.04 to accept an assignment of the
5 APCO subcontracts.¹³⁰

6 122. Accordingly, any purported termination of a subcontract by APCO would have
7 breached the Contract.¹³¹

8 123. During August 2008, subcontractors on the Project were getting information
9 directly from Gemstone.¹³²

10 124. Helix and CabineTec both continued work on the Project for Gemstone and
11 Camco, and submitted their August billings to Camco.¹³³

12 **G. Status of the Project when APCO was off the Project**

13 125. Before APCO was asked to leave the Project on August 19 and 20, 2008, APCO
14 documented the as-built conditions and confirmed that Helix and CabineTec were not
15 anywhere close to completing their respective scopes of work.¹³⁴

16 126. So the evidence was undisputed that at the time APCO left the Project,
17 Gemstone did not owe APCO or the subcontractors their retention.

18

19

21 ¹²⁹ Testimony of Bob Johnson (Helix) Day 1, p. 127.

22 ¹³⁰ Exhibit 13.

23 ¹³¹ Testimony of Joe Pelan (APCO) Day 1, p. 75.

24 ¹³² Testimony of Andy Rivera (Helix) Day 2, p. 76.

25 ¹³³ Exhibit 29; Exhibit 173, Helix's first payment application to Camco; Exhibits
182/185, CabineTec's first payment application to Camco.

26 ¹³⁴ Testimony of Brian Benson (APCO) Day 3, pp. 50-58, 63-64 and 97. Those
27 videos are a correct and accurate representation and reproduction of the status of the
28 Project on August 19 and August 20, 2008. Testimony of Brian Benson (APCO) Day 3,
p. 52.

1 **H. Camco became the Prime Contractor.**

2 127. Camco and Gemstone had several meetings and Gemstone contracted with
3 Camco to complete the Project on August 25, 2008.¹³⁵

4 128. In terms of the plans, specifications and technical scope of work, Camco's work
5 was the same as APCO's.¹³⁶

6 129. In fact, Camco used the same schedule of values and cost coding that APCO had
7 been using on the Project.¹³⁷

8 130. Camco obtained permits in its own name to complete the Project.¹³⁸

9 131. Camco's Steve Parry confirmed that Exhibit E to the Camco contract
10 represented the state of the Project when Camco took over.¹³⁹

11 132. Gemstone and Camco estimated the Project to be 74% complete for Phase 1.¹⁴⁰
12 Those estimates also confirmed that:

- 13 • The first floor drywall taping in building 8 was 70% complete.¹⁴¹
- 14 • The first floor drywall taping in building 9 was 65% complete.¹⁴²

15 133. Among other things, the Camco contract required that Camco "shall engage the
16 Third-Party Service Providers listed on Exhibit C (the "Existing Third-Party Service
17 Providers)."¹⁴³

18
19
20 ¹³⁵ Exhibit 162, Camco/Gemstone Prime Contract; Testimony of Steve Parry
(Camco) Day 5, pp. 25-26.

21 ¹³⁶ Exhibit 162; Testimony of Joe Pelan (APCO) Day 1, pp. 45 and 98;
22 Testimony of Steve Parry (Camco) Day 5, p. 31.

23 ¹³⁷ Testimony of Steve Parry (Camco) Day 5, pp. 30-31.

24 ¹³⁸ Testimony of Steve Parry (Camco) Day 5, p. 37.

25 ¹³⁹ Testimony of Steve Parry (Camco) Day 5, p. 27.

26 ¹⁴⁰ Exhibit 218, p. 10; Testimony of Steven Parry (Camco) Day 5, p. 31-32.

27 ¹⁴¹ Exhibit 160-3.

28 ¹⁴² Exhibit 160-3.

¹⁴³ Exhibit 162-2.

1 134. Helix and CabineTec are both listed as Existing Third-Party Service Providers
2 on Exhibit C.¹⁴⁴

3 135. And Camco had worked with Helix before.¹⁴⁵

4 136. Camco's Steve Parry admitted that Camco was assuming the subcontracts that
5 APCO had with Helix and CabineTec:

6 [Exhibit 162 was on the elmo]

7 Q. ..I've highlighted a sentence that says, "General contractor
8 shall engage third-party service providers." Do you see that?

9 A. Yes.

10 Q. Okay. What did you understand that to mean?

11 A. That we would use subcontractors on the site that had already
12 been under contract to perform work on the project.

13 Q. Okay. So you were assuming the Subcontracts that APCO had
14 issued on the Project; is that right?

15 A. Yes.

16 Q. And, sir, if you would, turn to Exhibit C within the exhibit.
17 Those assumed contracts from APCO included CabineTec and
18 Helix; correct?

19 A. Yes.

20 Q. And, sir, if you would, turn to Exhibit C within the exhibit.
21 Those assumed subcontracts from APCO included CabineTec
22 and Helix; correct?

23 A. Yes.¹⁴⁶

24 137. After Camco became the general contractor, it was responsible to pay
25 subcontractors for work performed under it.¹⁴⁷

26 138. Camco never had any contact or involvement with APCO on the Project,¹⁴⁸ nor
27 did APCO provide any direction or impose any scheduling requirements on subcontractors
28 proceeding with their work.¹⁴⁹

¹⁴⁴ Exhibit 162-23.

¹⁴⁵ Testimony of Steve Parry (Camco) Day 5, pp. 13-14.

¹⁴⁶ Testimony of Steve Parry (Camco) Day 5, p. 26.

¹⁴⁷ Testimony of Joe Pelan (APCO) Day 1, p. 99.

¹⁴⁸ Testimony of Steve Parry (Camco) Day 5, p. 27.

¹⁴⁹ Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Joe Pelan
(APCO) Day 3, p. 150; Testimony of Steve Parry (Camco) Day 5, p. 27.

1 139. APCO played no role in the pay application process or the actual field work on
2 the Project from September-December 2008.¹⁵⁰

3 140. And no Helix nor CabineTec representative ever approached APCO with
4 questions or concerns about proceeding with work on the Project after APCO's termination.¹⁵¹

5 141. So APCO did not receive any benefit from the work or materials that Helix or
6 CabineTec performed or provided to the Project after August 21, 2008.¹⁵²

7 142. Camco's first pay application was for the period through August 31, 2008.¹⁵³

8 143. That billing reflected Gemstone retainage account for APCO's work:

9 Q. Now, I have highlighted the retainage line item of
10 \$5,337,982.74 [on Exhibit 218]. Do you see that?

11 A. Yes.

12 Q. What did that figure represent?

13 A. The retainage that was being withheld on the Project.

14 Q. And who was the retainage being withheld by?

15 A. Gemstone, the owner.

16 ...

17 Q. Okay. So my point simply was what you're depicting
18 here in the retainage is the accounting of the retainage that was
19 withheld from APCO as you're going forward on the Project.

20 A. That's correct.¹⁵⁴

21 So all parties knew that the subcontract retention amounts were maintained with Gemstone
22 after APCO was terminated.

23 **I. CabineTec entered into a ratification agreement with Camco.**

24 144. After APCO left the Project, CabineTec signed a ratification agreement with
25 Camco whereby CabineTec agreed to complete its original scope of work for Camco.¹⁵⁵

26 ¹⁵⁰ Testimony of Joe Pelan (APCO) Day 1, p. 98.

27 ¹⁵¹ Testimony of Joe Pelan (APCO) Day 1, p. 98.

28 ¹⁵² Testimony of Joe Pelan (APCO) Day 3, pp. 149-150.

¹⁵³ Testimony of Steve Parry (Camco) Day 5, p. 29.

¹⁵⁴ Testimony of Steve Parry (Camco) Day 5, p. 30.

1 145. CabineTec understood the ratification to mean that "you guys [APCO] were
2 stepping out and Camco was stepping in."¹⁵⁶

3 146. CabineTec further clarified its understanding of the ratification agreement as
4 follows:

5 Q. Okay. Sir, but going forward from and after the point that
6 CabineTec signed the ratification agreement with Camco, you
7 knew and understood that Camco was going to be the
8 "contractor", as that term was used in the original subcontract
9 that Cabinetec had for the project, correct?

10 A. So APCO was going away and Camco was coming on. That's
11 what was happening.¹⁵⁷

12 147. In addition, the signed ratification agreement contained the following terms:

- 13 • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to
14 the terms of the Subcontract Agreement, whereby Camco will replace
15 APCO as the "Contractor" under the Subcontract Agreement but, subject
16 to the terms of this Ratification, all other terms and conditions of the
17 Subcontract Agreement will remain in full force and effect."¹⁵⁸
- 18 • The ratification agreement acknowledged that \$264,395.00 of work
19 remained to be finished on Building 8 and \$264,395.00 on Building 9.¹⁵⁹
- 20 • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the
21 Subcontract Agreement (as amended by this Ratification and including
22 all Amendments, Previously Approved Change Orders, and the Camco
23 Schedule) will govern their relationship regarding the Project, (b) Camco
24 will be the "Contractor" under the Subcontract Agreement, and (c)
25 Subcontractor and Camco agree to perform and fulfill all of the
26 executory terms, covenants, conditions and obligations required to be
27 performed and fulfilled thereunder by Subcontractor and Camco,
28 respectively."¹⁶⁰

Accordingly, all retention and future payments to CabineTec, which were executory
obligations, were Camco's responsibility.

¹⁵⁵ Exhibit 3096; Testimony of Nicholas Cox (CabineTec) Day 3, p. 34;
Testimony of Mr. Thompson (CabineTec) Day 5, p. 60.

¹⁵⁶ Testimony of Nicholas Cox (CabineTec) Day 3, p. 35.

¹⁵⁷ Testimony of Nicholas Cox (CabineTec) Day 3, p. 36.

¹⁵⁸ Exhibit 183-1.

¹⁵⁹ Exhibit 183-2.

1 148. After Gemstone could no longer pay Camco, CabineTec filed a complaint
2 against APCO and Camco and alleged that it entered into a ratification agreement with Camco:

3 10. On or about August 26, 2008, pursuant to Gemstone's request
4 CABINETEC entered into a Ratification and Amendment of
5 Subcontract Agreement (the "Ratification") with CAMCO,
6 whereby CAMCO agreed to the terms of the APCO Subcontract
7 and to replace APCO as the "Contractor" under the APCO
8 Contract. . .

9 14. CABINETEC entered into the Ratification with CAMCO,
10 pursuant to Gemstone's request, wherein CAMCO agreed to pay
11 CABINETEC for the services and materials on the Project.

12 15. Pursuant to, and in reliance upon, the aforementioned
13 Subcontract, Ratification and representations, CABINETEC
14 performed the work of providing services and materials (the
15 "Work.")...¹⁶¹

16 APCO had no liability for the materials CabineTec provided to Camco and Gemstone after
17 termination.

18 149. The fact is, APCO paid (and even overpaid) CabineTec for materials delivered
19 to the Project while APCO was contractor.¹⁶²

20 150. CabineTec did not dispute this overpayment at trial.

21 151. CabineTec submitted two invoices while APCO was on the Project.¹⁶³

22 152. Exhibit 148 is CabineTec's first invoice to Camco for \$70,836.00.¹⁶⁴

23 153. CabineTec's second invoice is for \$72,540.00.¹⁶⁵

24 154. The total amount due to CabineTec, less retention, was \$129,038.40.¹⁶⁶

25 ¹⁶⁰ Exhibit 172-5.

26 ¹⁶¹ Exhibit 156 at ¶ 10-15.

27 ¹⁶² Testimony of Mary Jo Allen (APCO) Day 3, pp. 131-132.

28 ¹⁶³ Exhibits Nos. 148, 150, 151, and 320-321, Calculation of CabineTec
overpayment; Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

¹⁶⁴ Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

¹⁶⁵ Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

¹⁶⁶ Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

1 155. But APCO actually paid CabineTec a total of \$161,262.00 for these two
2 invoices.¹⁶⁷

3 156. As such, CabineTec was overpaid \$32,223.60 by APCO on the Project.

4 157. CabineTec did not submit a pay application for August 2008.¹⁶⁸

5 158. APCO is entitled to credit for this over payment.

6 J. CabineTec Claims retention against APCO.

7 159. When CabineTec originally filed suit CabineTec disclosed \$19,547.00 in
8 damages against APCO in its complaint:

9 "50. As a result of the foregoing, and in accordance with the
10 principles of equity and common law, CABINETEC is entitled to
11 judgment in its favor, and against APCO in the amount of
12 \$19,547.00, together with interest thereon at the highest legal
13 rate."¹⁶⁹

14 160. And, CabineTec's initial and first supplemental disclosures only disclosed
15 \$30,110.95 in damages against APCO: "...National Wood seeks to recover those damages
16 claimed by CabineTec in its complaint in intervention against APCO in the amount of
17 \$30,110.95 and CAMCO in the amount of \$1,125,374.94..."¹⁷⁰ The \$30,110.95 represented
18 \$19,547.00 in alleged retention, and \$10,563.95 in interest and fees.¹⁷¹

19 161. Those were the only two disclosures CabineTec made before the close of
20 discovery, as was extended by the Court. Then on the eve of trial, CabineTec attempted to
21 disclose and seek \$1,154,680.40 in damages against APCO.¹⁷²

22 ¹⁶⁷ Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

23 ¹⁶⁸ Testimony of Mary Jo Allen (APCO) Day 3, p. 134.

24 ¹⁶⁹ Exhibit 156-8.

25 ¹⁷⁰ Exhibit 157 (CabineTec's Initial Disclosure); Exhibit 158 (CabineTec's First
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's Second Supplemental
27 Disclosure).

28 ¹⁷¹ Compare Exhibit 156, CabineTec's Complaint to Exhibit 157, CabineTec's
Initial Disclosure.

¹⁷² Exhibit 159-6.

1 162. Aside from the late disclosure there is no basis for that amount as it is
2 undisputed that CabineTec was paid every dollar it billed APCO, less retention,
3 notwithstanding the overpayment.¹⁷³

4 K. Helix's claim for \$505,021.00 in retention.

5 163. Helix's designated PMK and Project Manager, Andy Rivera, confirmed that
6 Helix's only claim in this litigation against APCO was for the retention of \$505,021.00.¹⁷⁴

7 164. Helix's counsel admitted this limited claim in its opening statement.¹⁷⁵

8 165. And then at trial, Mr. Rivera confirmed Helix was only seeking retention and
9 not the unpaid invoices submitted to Camco:

10 Q. Sir, could you pull out Exhibit 44. And I want to make
11 sure my record's clear. Exhibit 44 that I marked is, in fact, the
12 same summary that was found in Exhibit 535, page 252, that you
and Mr. Zimbleman went over; is that—

13 A. Correct.

14 Q. Okay. And does Exhibit 44 represent the damages that
you are seeking from APCO in this matter?

15 A. Yes.

16 Q. And do you recall if you were designated as the person
most knowledgeable for one of the topics being the damages that
Helix was seeking from APCO in these proceedings, correct?

17 A. Correct.

18 Q. And would you agree that as the PMK, you identified a
figure of \$505,021 as the amount that Helix in this lawsuit claims
APCO owes it, correct?

19 A. Correct.

20 Q. And there are no other amounts that you identified in
your PMK depo as being APCO's liability on this Project,
correct?

21 A. Correct.

22 Q. Okay. And we are in agreement that the 505—that's
your handwriting, where you wrote: Retention?

23 A. Yes.

24 ¹⁷³ Exhibit 147 summarizing payments and releases.

25 ¹⁷⁴ Exhibit 279, Testimony of Andy Rivera (Helix) Day 2, pp. 63-65; Helix's
PMK Deposition at p. 52.

26 ¹⁷⁵ Testimony, Day 1 at p. 10. ("...Helix remains to be unpaid \$505,021, while
27 APCO was the general contractor. This is to say amounts still owing from pay
applications submitted to APCO, and yes, that is essentially our retention.").

1 Q. And would it be fair to conclude that that retention
2 represents retention that had been accounted for and accrued
3 while APCO was serving as the prime contract – prime contractor
4 on the Project?

5 A. Yes.

6 Q. Prior to today has Helix ever billed APCO for that
7 retention?

8 A. No. No. I'm sorry.

9 Q. Do you have any information to suggest that APCO
10 ever received Helix's retention from Gemstone?

11 A. I would not know.

12 Q. Okay. You don't have any information to suggest that
13 APCO has collected Helix's retention but not forwarded it on to
14 Helix, correct?

15 A. Correct.

16 Q. Okay. And in light of your summary within Exhibit 44,
17 would it be fair to conclude that all of the amounts that Helix
18 billed to APCO were, in fact, paid but for retention?

19 A. Yes.¹⁷⁶

20 166. Helix received direct payments from APCO through May 2008.¹⁷⁷

21 167. After May 2008, Helix received payment for its APCO billings directly from
22 NCS through joint checks to Helix and APCO, which APCO endorsed over to Helix.¹⁷⁸

23 168. Helix's first billing to Camco was on September 19, 2008.¹⁷⁹

24 169. Mr. Rivera admitted Helix is only seeking \$505,021.00 in retention from APCO,
25 which Helix never billed APCO.¹⁸⁰

26

27

28 ¹⁷⁶ Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

¹⁷⁷ Testimony of Andy Rivera (Helix) Day 2, p. 61.

¹⁷⁸ Testimony of Andy Rivera (Helix) Day 2, pp. 61-64

¹⁷⁹ Exhibit 508, p. 1; Testimony of Andy Rivera (Helix) Day 2 at p. 65.

¹⁸⁰ Testimony of Andy Rivera (Helix) Day 2, pp. 50 and 58. Exhibit 501, p. 393
is the spreadsheet Helix created of payments it applied for and received from APCO.
Helix's Mr. Rivera admitted Helix was paid a total of \$4,626,186.11 on the Project by
and through APCO, which reflected payment for work billed (and retention) through
August 31, 2008. Testimony of Andy Rivera (Helix) Day 2, pp. 58-59; Exhibits 46-47,

1 L. Retention never became due to Helix or CabineTec from APCO.

2 170. As noted above, both the Helix Subcontract and the CabineTec Subcontract
3 included an agreed upon retention payment schedule in Paragraph 3.8.

4 171. The evidence was undisputed, and even acknowledged by Helix and CabineTec,
5 that the level of completion and other preconditions of the retention payment schedule were not
6 met while APCO was the general contractor.

7 172. More specifically, Helix's Mr. Johnson admitted Helix did not meet the
8 preconditions in Section 3.8 of the Subcontract to be entitled to retention:¹⁸¹

9 Q. Well, let me ask it this way: Did Helix satisfy any of
10 these preconditions found in paragraph 3.8 while APCO was the
11 general contractor on the project?

12 A. Not to my knowledge.¹⁸²

13 173. CabineTec's Mr. Thompson admitted that the buildings had to be drywalled and
14 painted before the cabinets were installed¹⁸³ and he had no documentation (daily reports,
15 photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in Phase 1
16 for APCO.¹⁸⁴

17 174. It is undisputed that neither Helix nor CabineTec presented *any* testimony that
18 they met the valid conditions precedent to payment to be entitled to retention.

19 175. *See Lucini-Parish Ins. v. Buck*,¹⁸⁵ (a party who seeks to recover on a contract has
20 the burden of establishing any condition precedent to the respective contract).

21 176. Instead, the Court saw pictures¹⁸⁶ and videos¹⁸⁷ confirming that Helix's and
22 CabineTec's work was not completed.

23 Helix May and June billings; Exhibit 49-50; APCO Checks to Helix, Exhibit 58, Exhibit
24 59, Exhibit 60, Exhibit 61, Exhibit 66, Exhibit 75.

25 ¹⁸¹ Testimony of Bob Johnson (Helix) Day 2, pp. 36-37.

26 ¹⁸² Testimony of Bob Johnson (Helix) Day 2, p. 19.

27 ¹⁸³ Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

28 ¹⁸⁴ Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

¹⁸⁵ 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

1 177. The Court also heard unrefuted testimony that APCO was never paid from
2 Gemstone for Helix's or CabineTec's retention.¹⁸⁸

3 178. The fact is APCO and its subcontractors never got to the point where they could
4 request retention while APCO was the contractor.¹⁸⁹

5 179. To that end, Helix's Mr. Johnson admitted that Helix did not present a claim to
6 APCO for any additional compensation for disputed claims or changes while APCO was on the
7 Project.¹⁹⁰

8 180. Helix's Mr. Rivera admitted Helix *has never* billed APCO for retention, and that
9 all amounts that Helix did bill APCO were paid, less retention.¹⁹¹

10 181. The fact that Helix did not bill retention confirms that Helix recognized that
11 retention never became due from APCO under the retention payment schedule which governed
12 the same.

13 182. Both Helix and CabineTec rolled their retention account over to Camco and
14 Gemstone in their post-APCO billings as it was truly a Project and Gemstone liability.¹⁹²

15 183. APCO's responsibility for retention under the subcontract's retention payment
16 schedule was governed by the same.

17 184. That is confirmed by Helix's and Camco's conduct at the Project level through
18 their pay applications.¹⁹³

19
20 ¹⁸⁶ Exhibit 32-38, 51-57, 108-114, 62-65, 67-74, 125-132, Pictures of Status of
21 Project; Testimony of Brian Benson (APCO) Day 3, pp. 53-71.

22 ¹⁸⁷ Exhibits 17-22, Videos of Project.

23 ¹⁸⁸ Testimony of Mary Jo Allen (APCO) Day 3, p. 144; Testimony of Joe Pelan
24 (APCO) Day 1, p. 26.

25 ¹⁸⁹ Testimony of Joe Pelan (APCO) Day 1, pp. 60 and 82; Testimony of Bob
26 Johnson (Helix) Day 2, pp. 36-37; Testimony of Joe Pelan (APCO) Day 3, p. 151.

27 ¹⁹⁰ Testimony of Bob Johnson (Helix) Day 2, p. 31.

28 ¹⁹¹ Testimony of Andy Rivera (Helix) Day 2, p. 74; Exhibits 43, 50, 61 and 75.

¹⁹² Exhibits 170-177, Helix billings to Camco and Exhibit 185, CabineTec's
billings to Camco; Testimony of Mary Jo Allen (APCO) Day 3, pp. 129-130; Testimony
of Andy Rivera (Helix) Day 2, p. 74.

- 1 M. Similarly, APCO never earned or received its retention.
- 2 185. Gemstone and/or its lender maintained the retention account.¹⁹⁴
- 3 186. APCO's August 2008 pay application did not bill Gemstone for APCO's
- 4 retention.¹⁹⁵
- 5 187. In fact, APCO never billed Gemstone for retention¹⁹⁶ because APCO had not
- 6 earned the retention and thus was not entitled to it.¹⁹⁷
- 7 188. And APCO never billed or received the retention funds from Gemstone for any
- 8 of the subcontractors.¹⁹⁸
- 9 189. APCO never received CabineTec's or Helix's retention from Gemstone.¹⁹⁹
- 10 190. Helix's Mr. Johnson admitted that Gemstone, not APCO, was holding its
- 11 retention.²⁰⁰
- 12 191. And Helix admitted it had no information to suggest that APCO was ever paid
- 13 Helix's retention.²⁰¹
- 14 192. Neither Helix nor CabineTec ever billed APCO for any of the materials or work
- 15 it performed after Camco signed its prime contract with Gemstone.²⁰²

16

17 ¹⁹³ Compare Exhibit 58, Helix's August 2008 pay application to APCO, to

18 reflecting \$513,120.71 in retention to Exhibit 173, Helix's September 2008 payment

19 application to Camco reflecting \$553,404.81 in retention. See also, Exhibit 151 pgs. 1, 2

20 CabineTec's last pay application to APCO for \$179,180.00 reflecting \$17,918.00 in

retention, to Exhibit-185, CabineTec's first payment application to Camco showing

approved amount of \$537,404.80 less \$53,740.48 in retention. See also Exhibit 30

(Camco's August 2008 draw request confirming retention was being held for the entire

project).

- 21 ¹⁹⁴ Testimony of Joe Pelan (APCO) Day 1, p. 30.
- 22 ¹⁹⁵ Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.
- 23 ¹⁹⁶ Testimony of Joe Pelan (APCO) Day 1, p. 30.
- 24 ¹⁹⁷ Testimony of Joe Pelan (APCO) Day 1, p. 83.
- 25 ¹⁹⁸ Testimony of Mary Jo Allen (APCO) Day 3, p. 128.
- 26 ¹⁹⁹ Testimony of Joe Pelan (APCO) Day 3, p. 150.
- 27 ²⁰⁰ Testimony of Bob Johnson (Helix) Day 2, p. 19.
- 28 ²⁰¹ Testimony of Bob Johnson (Helix) Day 2, p. 20.
- ²⁰² Testimony of Joe Pelan (APCO) Day 1, p. 97.

1 193. And notably, neither Helix nor CabineTec billed APCO nor submitted a claim
2 letter for the retention they now claim.²⁰³

3 194. In fact, CabineTec actually billed Camco for the retention it incurred under
4 APCO.²⁰⁴

5 N. Helix also entered into a ratification agreement with Camco.

6 195. Helix's Project Manager, Mr. Rivera understood that Gemstone purported to
7 terminate the Contract:

8 Q. Wouldn't it be fair to say that based on
9 communications, both written and verbal, that you received from
10 APCO and/or Gemstone, you knew that Gemstone had purported
to terminate APCO's prime contract?

11 A. We knew they were having issues.

12 Q. Okay. And those issues had culminated in APCO
purporting to terminate the prime contract and/or Gemstone
purporting to terminate the prime contract, correct?

13 A. Correct.²⁰⁵

14 196. In fact, during the August 2008 timeframe, Helix was getting information
15 directly from Gemstone.²⁰⁶

16 197. Mr. Rivera admitted Helix was copied on certain communications between
17 APCO and Gemstone:

18 Q. And wouldn't it be fair to say that you received copies
19 of certain communications from APCO to the owner, Gemstone,
20 whereby APCO indicated that we're having payment issues and
we're giving notice of our intent to exercise statutory rights to
suspend and/or terminate?

21 A. Something to that effect, yes.²⁰⁷

22 _____
23 ²⁰³ Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Mary Jo Allen
(APCO) Day 3, p. 128 (as to CabineTec); Testimony of Joe Pelan (APCO) Day 3, p.
150.

24 ²⁰⁴ Exhibit 3103 confirming CabineTec billed Camco for its retention. Testimony
25 of Nicholas Cox (CabineTec) Day 3, p. 38-39.

26 ²⁰⁵ Testimony of Andy Rivera (Helix) Day 2, p. 75.

27 ²⁰⁶ Testimony of Andy Rivera (Helix) Day 2, p. 76.

28 ²⁰⁷ Testimony of Andy Rivera (Helix) Day 2, p. 76.

1
2 Q. Okay. But do you recall receiving APCO generated
3 correspondence indicating to the owner, which was sent to
4 subcontractors as well, that APCO was suspending and/or
5 terminating its work, correct?

6 A. Correct.²⁰⁸

7 198. Mr. Rivera also admitted Helix was performing work under Gemstone's
8 direction by August 26, 2008:

9 Q. And from and after about August 26, 2008, Helix was
10 taking its direction from Gemstone and/or Camco, correct?

11 A. Gemstone.

12 Q. Okay. APCO was not directing, requesting any work
13 on behalf of Helix after September 5, 2008, correct?

14 A. Correct.

15 Q. And based on your personal involvement with
16 Gemstone and Camco, did you understand that, in fact, Camco
17 was replacing APCO as the prime contractor?

18 A. At that time did not know exactly how that was—the
19 agreement was going to be.

20 Q. Did you come to find out?

21 A. Yes.

22 Q. that was, in fact, the case?

23 A. Yes.²⁰⁹

24 199. Helix was directed to hook up power to the Camco trailer on August 26, 2008.²¹⁰

25 200. Gemstone provided Helix with the Camco subcontract and Camco pay
26 applications,²¹¹ and directed Helix to start directing its payment applications to Camco.²¹²

27 201. On August 26, 2008 Camco sent Helix a checklist for starting work.²¹³ Among
28 the provisions included:

- **RETENTION MONIES** Final retention monies will only be released to Camco Pacific from Owner when all Punch list

208 Testimony of Andy Rivera (Helix) Day 2, p. 77.

209 Testimony of Andy Rivera (Helix) Day 2, pp. 76-77. *See also* Testimony of Bob Johnson (Helix) Day 2, p. 25.

210 Exhibit 171; Testimony of Bob Johnson (Helix) Day 2, p. 25.

211 Exhibit 170.

212 Testimony of Andy Rivera (Helix) Day 2, p. 66.

213 Exhibit 170.

1 Items, Contract Items, and Close-Out Documents have been
2 fully completed and inspected by the owner. Any delay by a
3 single Subcontractor in completing this will delay the entire
4 project's final payment. PLEASE DO NOT DELAY IN
5 COMPLETING YOUR PUNCHLIST ITEMS. Exhibit 170-3.
6 ...

- 7 • **D. Final Payment.** Subcontractor shall not be entitled to
8 payment of the balance of the Contract Price, including,
9 without limitation, the Retainage, until (1) the Contract Work
10 has been completed to the satisfaction of Contractor, (2)
11 Subcontractor has submitted to Contractor an invoice for the
12 final payment accompanied by (i) a final complete list of all
13 suppliers and subcontractors whose materials or services have
14 been utilized by Subcontractor, (ii) all closeout documents
15 including, warranties, guarantees, as-builts, drawings,
16 operating and maintenance manuals and such other items
17 required of Subcontractor have been provided and such have
18 been accepted by Owner, (iii) executed unconditional lien
19 releases and waivers from Subcontractor and all of its
20 mechanics, subcontractors, and suppliers for the Contract
21 Work covered by all preceding progress payments, and (iv)
22 executed unconditional lien releases and waivers upon final
23 payment from all mechanics, subcontractors, and suppliers
24 who have previously received final payment, and conditional
25 lien releases and waivers upon final payment from
26 Subcontractor and each mechanic, subcontractor, and supplier
27 from which an unconditional lien release and waiver upon
28 final payment has not been submitted to Contractor, (3)
Contractor has received the corresponding final payment
from Owner, (4) Contractor has received evidence of
Subcontractor's insurance required to be in place, (5) 45 days
have elapsed after a Notice of Completion has been recorded
or if a valid Notice of Completion is not recorded, upon
Subcontractor's receipt of a written notice of acceptance of
the Contract Work that shall be given by Contractor not later
than 91 days after Contractor determines in good faith that the
Contract Work has been performed completed and in
acceptable manner and (6) all outstanding disputes related to
the Project have been resolved, and any liens against the
Project have been removed.²¹⁴

²¹⁴ Exhibit 170-11, 170-12.

1 Having received these requirements, Helix continued on as the electrical subcontractor for
2 Camco after APCO's termination.

3 202. Helix's Andy Rivera admitted Helix's technical scope of work remained the
4 same under Camco:

5 Q. Would it be fair to conclude the technical scope of
6 work remained the same as you transitioned to work with
Camco—

7 A. Yeah.

8 Q. —for Helix?

8 A. Yes.²¹⁵

9 203. During the transition of APCO to Camco, Helix had a meeting with
10 Gemstone.²¹⁶

11 204. The purpose of that meeting was to: "represent that work was still proceeding,
12 nothing had changed with our contracts with the current APCO relationship, and that we were
13 to take direction for construction from Camco, and they wanted to negotiate a contract."²¹⁷

14 205. Helix never sent APCO a letter or requested that APCO clarify or provide any
15 information to Helix on the status of its relationship to the Project.²¹⁸

16 206. Camco presented Helix with a ratification agreement.²¹⁹

17 207. It was Camco's intent and understanding that it was replacing APCO in the
18 Helix-APCO subcontract.²²⁰

19 208. Helix had a copy of the ratification agreement by at least September 3, 2008.²²¹

22 ²¹⁵ Testimony of Andy Rivera (Helix) Day 2, p. 78.

23 ²¹⁶ Testimony of Bob Johnson (Helix) Day 2, p. 22.

24 ²¹⁷ Testimony of Bob Johnson (Helix) Day 2, pp. 22-23.

25 ²¹⁸ Testimony of Bob Johnson (Helix) Day 2, p. 23.

26 ²¹⁹ Testimony of Bob Johnson (Helix) Day 1, p. 124.

27 ²²⁰ Testimony of Steve Parry (Camco) Day 5, pp. 28, 29 and 60.

28 ²²¹ Exhibit 172. Testimony of Bob Johnson (Helix) Day 2, p. 27.

1 209. Helix understood the purpose of the ratification agreement as follows: "...they
2 [Camco] were stepping in as construction management for the project and that they were using
3 that agreement in order to proceed with – hold us as the subcontractor going forward."²²²

4 210. Camco's understanding was the same, i.e. the ratification agreement formed the
5 basis of Camco's agreement in allowing Helix to proceed on the Project.²²³

6 211. Helix continued working on the Project after receiving the ratification agreement
7 from Gemstone.²²⁴

8 212. Camco sent Helix the ratification agreement with a September 4, 2008 letter that
9 included the following representations: "The conditional acceptance of this work is based on
10 the execution of a standard Camco Pacific Ratification Agreement... We have provided you a
11 copy of the Camco Pacific Ratification Agreement for your review and acceptance."

12 213. The Ratification Agreement contained the following additional terms:

- 13 • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to
14 the terms of the Subcontract Agreement, whereby Camco will replace
15 APCO as the "Contractor" under the Subcontract Agreement but, subject
16 to the terms of this Ratification, all other terms and conditions of the
17 Subcontract Agreement will remain in full force and effect."
- 18 • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the
19 Subcontract Agreement (as amended by this Ratification and including
20 all Amendments, Previously Approved Change Orders, and the Camco
21 Schedule) will govern their relationship regarding the Project, (b) Camco
22 will be the "Contractor" under the Subcontract Agreement, and (c)
23 Subcontractor and Camco agree to perform and fulfill all of the
24 executory terms, covenants, conditions and obligations required to be
25 performed and fulfilled thereunder by Subcontractor and Camco,
26 respectively."²²⁵

27 ²²² Testimony of Bob Johnson (Helix) Day 1, p. 124.

28 ²²³ Exhibit 172. Testimony of Steve Parry (Camco) Day 5, p. 29.

²²⁴ Testimony of Bob Johnson (Helix) Day 2, p. 28.

²²⁵ Exhibit 172-5.

1 214. Helix admitted it entered into a ratification agreement with Camco on
2 September 4, 2008 to continue on and complete the APCO scope of work.²²⁶

3 215. Helix even added a document to the ratification entitled "Helix Electric's
4 Exhibit to the Ratification and Amendment."²²⁷

5 216. The Helix Exhibit to the Ratification and Amendment contained language
6 confirming that APCO was removed as the general contractor and that Helix submitted
7 \$994,025.00 in change orders to APCO prior to August 26, 2008, the date Camco was using for
8 its ratification agreement.²²⁸

9 217. Helix included a total contract price of \$5.55 million for the Project, which was
10 its original contract price with APCO for Phase 1, and added \$480,689.00 as approved change
11 orders under APCO to the total contract price.²²⁹

12 218. The proposed Helix Amendment to the ratification agreement also included the
13 following term: "All close out documents must be turned in before Camco Pacific can release
14 final payment."²³⁰

15 219. And although Helix has not produced a signed copy of the ratification
16 agreement, Helix has admitted entering into its ratification and amended subcontract agreement
17 in its complaint as follows:

18 18. On or about September 4, 2008, Helix entered into the
19 Ratification and Amendment of Subcontract Agreement ("CPCC
20 Agreement") with Camco who replaced APCO as the general
21 contractor on the Project, to continue the work for the Property
22 ("CPCC Work").

23 19. Helix furnished the CPCC Work for the benefit of and at the
24 specific instance and request of CPCC and/or Owner.

25 ²²⁶ Exhibit 77, Helix Complaint, ¶18.

26 ²²⁷ Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, p. 42.

27 ²²⁸ Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, pp. 42-43.

28 ²²⁹ Exhibit 170-54; Testimony of Bob Johnson (Helix) Day 2, p. 44; Exhibit 169-
8.

²³⁰ Exhibit 169-1.

1 20. Pursuant to the CPCC Agreement, Helix was to be paid an
2 amount in excess of Ten Thousand Dollars (\$10,000.00)
3 (hereinafter "CPCC Outstanding Balance") for the CPCC Work.
4 21. Helix furnished the CPCC Work and has otherwise performed
5 its duties and obligations as required by the CPCC Agreement.
6 22. CPCC has breached the CPCC Agreement...
7 CPCC breached its duty to act in good faith by performing the
8 Ratification Agreement in a manner that was unfaithful to the
9 purpose of the Ratification Agreement, thereby denying Helix's
10 justified expectations...²³¹

11 Helix's Mr. Johnson admitted that Exhibit 172, the Ratification Agreement, was the document
12 that Helix referenced in its complaint (Exhibit 77) as the Ratification.²³²

13 220. Helix sought \$834,476.45 against Camco.²³³

14 221. Helix also admitted it had a contract with Camco/Gemstone for \$8.6 million in
15 its lien documents.²³⁴

16 222. The scope of work that Helix and CabineTec undertook on the Project was the
17 same as each had previously contracted with APCO for.²³⁵

18 223. Helix did not have any further communication with APCO after Camco took
19 over the Project.²³⁶

20 224. That is because both knew that APCO was no longer involved and had no
21 further liability.

22 225. In fact, both Helix and CabineTec rolled their retention over into the Camco
23 billings.²³⁷

24 ²³¹ Exhibit 77.
25 ²³² Testimony of Bob Johnson (Helix) at Day 2, p. 28.
26 ²³³ Testimony of Joe Pelan (APCO) Day 1 at p. 10.
27 ²³⁴ Exhibit 512; Testimony of Bob Johnson (Helix) at Day 2, p. 29.
28 ²³⁵ Exhibit 314 and Testimony of Bob Johnson (Helix) Day 2, p. 10.
²³⁶ Testimony of Bob Johnson (Helix) Day 2, p. 14.
²³⁷ Compare Exhibit 58, Helix's last pay application to APCO to Exhibit 173,
Helix's first payment application to Camco. See also Exhibit 176 and 177 showing
Helix's retention rolled over. See also, Exhibit 150, CabineTec's last pay application to
APCO, to Exhibit 185, CabineTec's first payment application to Camco showing

1 226. Helix's Andy Rivera specifically admitted that it rolled its \$505,000.00 in
2 retention billings over to Camco.²³⁸

3 227. After Helix and CabineTec went to work for Camco, neither sent APCO any
4 further pay applications or billings for work they performed on the Project.²³⁹

5 228. And it is undisputed that Helix submitted its September 2008 pay application
6 for \$354,456.90 to Camco.²⁴⁰

7 229. That pay application tracked Helix's full retainage of \$553,404.81 for the
8 Project, not just work completed under Camco.²⁴¹

9 230. Helix also submitted its October 2008 billing for \$361,117.44,²⁴² its
10 November 2008 pay application for \$159,475.68,²⁴³ and its December 2008 billing for
11 \$224,805.30 to Camco.²⁴⁴

12 O. **Camco never completed the Project.**

13 231. Camco never finished the Project²⁴⁵ and was never paid retention by
14 Gemstone.²⁴⁶

15 232. In its letter to the subcontractors dated December 22, 2008, Camco advised the
16 subcontractors as follows:

17 [I]t has come to Camco Construction, Inc.'s attention that
18 funding for the completion of the Manhattan West project (the

19 CabineTec's retention rolled over. See also, Exhibit 30 (Camco's August 2008 draw
20 request confirming retention was being held for the entire Project).

21 ²³⁸ Testimony of Andy Rivera (Helix) Day 2, p. 74.

22 ²³⁹ Testimony of Mary Jo Allen (APCO) Day 3, at pp. 127-128; Testimony of
23 Andy Rivera (Helix) Day 2, p. 76.

24 ²⁴⁰ Exhibit 173-1.

25 ²⁴¹ Exhibit 173-2

26 ²⁴² Exhibit 176-2.

27 ²⁴³ Exhibit 177-4.

28 ²⁴⁴ Exhibit 178-4.

²⁴⁵ Testimony of Steve Parry (Camco) Day 5, p. 36.

²⁴⁶ Testimony of Steven Parry (Camco) Day 5, p. 36.

1 "Project") has been withdrawn. Camco recently received the
2 following email from [Gemstone]...As a result, Gemstone does
3 not have funds sufficient to pay out the October draw or other
4 obligations...Based on the foregoing facts and circumstances,
5 Camco has no other alternative but to immediately terminate all
6 subcontracts on the Project, including the agreement with your
7 company... you have acknowledged that Camco is not liable to
8 you for payment unless and until Camco receives the
9 corresponding payment from the Owner...Camco's contract with
10 Gemstone is a cost plus agreement wherein the subcontracts and
11 supplies were paid directly by Gemstone and/or its agent, Nevada
12 Construction Services, based on the invoices and/or payment
13 applications submitted through voucher control... Therefore,
14 Camco has no contractual and/or statutory obligation to pay any
15 claim that may be alleged by any of the subcontractors and/or
16 suppliers on the Project... any claim for payment alleged against
17 Camco will result in additional fees, costs ...Therefore, all claims
18 for payment must be directed to and/or alleged against Gemstone
19 and the Project.²⁴⁷

20 233. Camco's Parry was not able to tell if CabineTec billed Camco in August 2008,
21 Exhibit 218 and Camco's first pay app to Gemstone.²⁴⁸

- 22 • Exhibit 220 is Camco's second pay application for the Project, through
23 September 30, 2008.²⁴⁹ That pay application accounted \$6,004,763.00 in
24 retention.²⁵⁰ Camco's Parry admitted that Exhibit 220 does include
25 billings from Helix to Camco that Camco was passing on to
26 Gemstone.²⁵¹
- 27 • Exhibit 221 is Camco's billing to Gemstone through October 31, 2008;
28 reflecting a total retention of \$6,928,767.84 in retention.
- Exhibit 163 is Camco's November 2008 billing, reflecting a total
retention of \$7,275,991.08.

20 234. Based on Camco's last billing,²⁵² Exhibit 163, Camco's best estimate of the
21 work completed on Phase 1 was 86%.²⁵³

22 ²⁴⁷ Exhibit 40 and Exhibit 39.

23 ²⁴⁸ Exhibit 218; Testimony of Steven Parry (Camco) Day 5, p. 34.

24 ²⁴⁹ Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

25 ²⁵⁰ Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

26 ²⁵¹ Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 33.

27 ²⁵² Testimony of Steve Parry (Camco), Day 5, p. 36.

28 ²⁵³ Exhibit 163; Testimony of Steven Parry (Camco), Day 5, p. 36.

1 P. The litigation.

2 235. On September 9, 2008, APCO brought an action against Gemstone for breach of
3 Contract and nonpayment.²⁵⁴

4 236. Gemstone counterclaimed alleging that APCO breached the Contract.²⁵⁵

5 237. On November 4, 2008, the Project lender confirmed that it was reviewing
6 September's pay application, and confirmed that the subcontractors would be paid for the work
7 performed for Camco.²⁵⁶

8 238. In December 2008 Gemstone suspended work on the Project and advised Camco
9 and its various subcontractors that the lender was halting all financing for the Project.²⁵⁷

10 239. That led to the onslaught of liens and the related priority litigation.

11 240. On December 16, 2008, Camco officially terminated its prime contract with
12 Gemstone:

13 Pursuant to your notice to Camco on December 15, 2008,
14 Gemstone (a) has lost its funding for the ManhattanWest project
15 and (b) will be unable to meet its payment obligations pursuant to
16 Article VI of the Engagement Agreement. Furthermore,
17 Gemstone has failed to make payments to Camco pursuant to
18 Article VI of the Engagement Agreement for October 2008,
19 November 2008, and December 2008, and such failures are a
20 material breach of the Engagement Agreement. As Gemstone has
21 no means of curing such material breach in a timely manner, the
22 Engagement Agreement is terminated for cause, effective
23 December 19, 2008. Pursuant to our discussions, we understand
24 that you agree with the termination
25 and the effective date of termination.

26 ...

27 Pursuant to our discussions and with Gemstone's consent, Camco
28 will immediately send notices to all of the subcontractors to
 terminate their subcontract agreements. In Camco's termination
 notice, we will ask the subcontractors to submit their payment
 applications to Camco. Camco will review the payment

25 ²⁵⁴ Exhibit 219.

26 ²⁵⁵ Exhibit 226.

27 ²⁵⁶ Exhibit 138.

28 ²⁵⁷ Exhibit 48; Exhibit 138.

1 applications and, if they appear proper, Camco will forward them
2 to Gemstone for payment.²⁵⁸

3 In response, Camco terminated the subcontracts with its subcontractors on December 22,
4 2008.²⁵⁹

5 241. On May 26, 2010, Judge Kathleen Delaney filed an Order Striking Defendant
6 Gemstone Development West, Inc.'s Answer and Counterclaims, and Entering Default for
7 failure to give reasonable attention to matters, failure to obtain new counsel, failure to appear at
8 hearings.²⁶⁰

9 242. On June 6, 2013, APCO filed a motion for summary judgment against
10 Gemstone. That Motion confirmed that APCO complied with all terms of the Agreement and
11 that Gemstone materially breached the Agreement by, among other things: (1) failing to make
12 payments due to APCO; (2) interfering with APCO's relationships with its subcontractors; (3)
13 refusing to review, negotiate, or consider change order requests in good faith; (4) removing
14 APCO from the Project without valid or appropriate grounds; and (5) otherwise breaching the
15 terms of the Agreement.²⁶¹

16 243. On June 13, 2013, the Court (Judge Susan Scann) granted that motion.²⁶² The
17 record does not reflect an order or judgment.

18 244. APCO did not receive any funds associated with its work from June, July or
19 August 2008 on the Project and never received its or any subcontractor's retention.

20 245. APCO did cooperate with Gemstone to see that all subcontractors, including
21 Helix and CabineTec were paid all progress payments that were billed and due while APCO
22 was in charge.

23 ²⁵⁸ Exhibit 165.

24 ²⁵⁹ Exhibit 166-2.

25 ²⁶⁰ Docket at May 26, 2010 Order Striking Defendant Gemstone Development
26 West, Inc.'s Answer and Counterclaims, and Entering Default.

27 ²⁶¹ Docket at June 6, 2013, Motion for Summary Judgment against Gemstone.

28 ²⁶² Docket at Minutes from June 13, 2013.

1 246. Despite APCO's efforts, Helix and CabineTec are seeking to hold APCO
2 responsible for retention.

3 247. Any of the foregoing findings of fact that would be more appropriately
4 considered conclusions of law should be deemed so.

5 FROM the foregoing Findings of Fact, the Court makes the following

6 **II. CONCLUSIONS OF LAW**

7
8 **Helix's Claims Against APCO**

9 **A. Breach of Contract**

10 1. In Nevada, there are four elements to a claim for breach of contract: "(1)
11 formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3)
12 material breach by the defendant, and (4) damages."²⁶³

13 2. Exhibit 45 is the Helix Subcontract, which represents the valid, final written
14 agreement between APCO and Helix.

15 3. Helix's claim against APCO is for \$505,021.00 in alleged retention.²⁶⁴ As a
16 condition precedent to payment for retention, the Helix Subcontract required Helix to properly
17 comply with the retention payment schedule in Section 3.8.²⁶⁵ Specifically, Section 3.8
18 required: (1) completion of the entire project, (2) owner acceptance, (3) final payment from
19 owner to APCO, (4) final as-built drawings, and (5) releases.²⁶⁶

20 4. A party who seeks to recover on a contract has the burden of establishing any
21 condition precedent to the respective contract.²⁶⁷

22 5. Parties can agree to a schedule of payments.²⁶⁸

23
24 ²⁶³ *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180
(D. Nev. 2011).

25 ²⁶⁴ Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

26 ²⁶⁵ Exhibit 45 at Section 3.8.

27 ²⁶⁶ Exhibit 45 at Section 3.8.

28 ²⁶⁷ *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

- 1 6. Parties can agree to proper conditions precedent to payment.²⁶⁹
- 2 7. Under Nevada precedent and legislative action, acceptance provisions are valid
- 3 conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.
- 4 270
- 5 8. NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after
- 6 the owner paid the general for the subcontractor's work.²⁷¹
- 7 9. In the present action, the Helix Subcontract: (1) incorporated the Contract,²⁷² (2)
- 8 confirmed that the subcontractors would be bound to Gemstone to the same extent APCO
- 9 was,²⁷³ and (3) contained a schedule of payments for both retention and change orders with
- 10 preconditions before APCO had an obligation to pay the subcontractors.²⁷⁴
- 11 10. Only one of those preconditions involved Gemstone's payment of retention to
- 12 APCO. The others concerned the right to receive payment, not the fact of payment.
- 13 11. Pursuant to NRS 624.624(1)(a), payment was due to Helix in accordance with
- 14 the retention payment schedule or within 10 days after APCO received payment from
- 15 Gemstone:

16 **NRS 624.624 Payment of lower-tiered subcontractor;**

17 **grounds and procedure for withholding amounts from**

18

- 19 ²⁶⁸ NRS 624.624(1)(a).
- 20 ²⁶⁹ *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386
- 21 P.3d 982 (Nev. 2016) (unpublished) ("Because the parties' subcontract contained a
- 22 payment schedule that required that Padilla be paid within ten days after IGT accepted
- 23 Padilla's work and paid Big-D for that work and it is undisputed that IGT never
- 24 accepted Padilla's work . . . the district court correctly found that payment never
- 25 became due to Padilla under the subcontract or NRS 624.624(1)(a); see generally,
- 26 NRS 624.626.
- 27 ²⁷⁰ *Id.*
- 28 ²⁷¹ *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386
- 29 P.3d 982 (Nev. 2016) (unpublished).
- 30 ²⁷² Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.
- 31 ²⁷³ Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.
- 32 ²⁷⁴ *Id.* at Section 3.8 and Article 4.

1 payment; rights and duties after notice of withholding, notice
2 of objection or notice of correction.

3 1. Except as otherwise provided in this section, if a
4 higher-tiered contractor enters into:

5 (a) A written Contract with a lower-tiered
6 subcontractor that includes a schedule for payments, the
7 higher-tiered contractor shall pay the lower-tiered
8 subcontractor:

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

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

15 → whichever is earlier.

16 12. These provisions place a time obligation on a higher-tiered contract to make
17 payment, but they do not restrict the right of the lower-tiered contractor to receive payment if
18 the higher-tiered contractor has not been paid. Section 3.8 of the Helix Subcontract contained a
19 retention payment schedule that was acknowledged and affirmed by Helix and APCO at trial.
20 As such, Helix needed to show that applicable and enforceable conditions precedent were
21 satisfied before APCO had to pay retention. *See Lucini-Parish Ins. v. Buck*,²⁷⁵ (a party who
22 seeks to recover on a contract has the burden of establishing any condition precedent to the
23 respective contract).

24 13. Helix admitted that it did not comply with the applicable and enforceable
25 conditions precedent to be entitled to its retention payments from APCO.²⁷⁶

26 ²⁷⁵ 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

27 ²⁷⁶ See Testimony of Helix's Bob Johnson, Day 2 at pg. 19 ("Q. Well, let me ask
28 it this way: Did Helix satisfy any of these preconditions found in paragraph 3.8 while
APCO was the general contractor on the project? A. Not to my knowledge.")

1 14. Helix did not show: (1) completion of the entire Project, (2) final acceptance of
2 the Project by Gemstone, (3) receipt of final payment from Gemstone to APCO, (4) delivery of
3 all as-builts and close out document, and (5) delivery of all final waivers and releases.

4 15. Helix never sent APCO an invoice or billing for its retention.

5 16. Accordingly, Helix's retention payment was not due from APCO at the time
6 APCO was removed from the project.

7 17. As a result, Helix's first claim for relief for breach of contract for failing to pay
8 retention fails as a matter of law.

9 18. Lastly, there is no contractual obligation for APCO to pay Helix for the work it
10 performed for Gemstone and/or Camco after APCO left the Project. Helix knowingly replaced
11 APCO with Camco under the Helix Subcontract on all executory obligations, including
12 payment for future work and retention.

13 **B. Breach of the Implied Covenant of Good Faith and Fair Dealing**

14 19. Helix's second claim for relief for breach of the covenant of good faith and fair
15 dealing also fails.

16 20. In Nevada, "[e]very contract imposes upon each party a duty of good faith and
17 fair dealing in its performance and enforcement."²⁷⁷ This implied covenant requires that parties
18 "act in a manner that is faithful to the purpose of the contract and the justified expectations of
19 the other party."²⁷⁸

20 21. A breach of the implied covenant of good faith and fair dealing occurs when the
21 terms of a contract are complied with but one party to the contract deliberately contravenes the
22 intention of the contract.²⁷⁹

23
24 ²⁷⁷ *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9
(Nev. 1989) (quoting NRS 104.1203).

25 ²⁷⁸ *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2
26 (Nev. 1994) (internal quotations omitted).

27 ²⁷⁹ See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d
28 919,923 (Nev. 1991).

1 22. To prevail on a theory of breach of the covenant of good faith and fair dealing, a
2 plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2) defendants
3 owed a duty of good faith to the plaintiff, (3) defendants breached that duty by performing in a
4 manner that was unfaithful to the purpose of the contract, and (4) plaintiff's justified
5 expectations were denied.²⁸⁰

6 23. The Nevada Supreme Court has held that good faith is a question of fact.²⁸¹

7 24. Helix claims APCO breached its duty of good faith and fair dealing by
8 "performing in a manner that was unfaithful to the purpose of the APCO Agreement."²⁸²

9 25. APCO acted in good faith with respect to Helix:

10 a. APCO paid Helix all sums Helix billed APCO through August 2008
11 (when APCO left the Project),²⁸³

12 b. APCO signed joint checks so that its subcontractors, including Helix,
13 would get paid, even though APCO was not getting paid,²⁸⁴

14 c. APCO pulled its general contractor permits so that Camco could get
15 permits for the Project and APCO's subcontractors could continue on
16 with the Project (less retention),²⁸⁵ and

17 d. APCO also financed the related appeal to obtain priority for Helix and
18 the other subcontractors once Gemstone shut the Project down.

19
20
21 ²⁸⁰ *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

22 ²⁸¹ *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev..
1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

23 ²⁸² Exhibit 231, Helix's amended complaint at ¶ 27.

24 ²⁸³ Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1 at pg. 67; Testimony
of Mary Jo Allen (APCO), Day 3 pg. 127 (as to Helix) and Testimony of Mary Jo Allen
25 (APCO), Day 3 at pg. 128; Testimony of Joe Pelan (APCO), Day 1 at pg. 46; Testimony
of Joe Pelan (APCO), Day 1 at pg. 82.

26 ²⁸⁴ Exhibit 26. See also: Testimony of Joe Pelan (APCO), Day 1 at pg. 38;
Testimony of Joe Pelan (APCO), Day 1 at pg. 41.

27 ²⁸⁵ Testimony of Joe Pelan (APCO), Day 1 at pg. 100.

1 26. Helix failed to present any evidence that APCO failed to act in good faith under
2 the Helix Subcontract or these circumstances. While it is undisputed that APCO did not pay
3 Helix the retention, there is no evidence that this non-payment was in bad faith.

4 27. As a result, Helix's second claim for breach of the implied covenant of good
5 faith and fair dealing of the subcontract fails as a matter of law.

6 C. Unjust Enrichment/Quantum Meruit

7 28. Helix asserted breach of contract *and* unjust enrichment claims against
8 APCO.²⁸⁶

9 29. APCO had a subcontract with Helix, Exhibit 45. Helix admitted the same in its
10 complaints, at trial, and in its May 10, 2010 Motion for Partial Summary Judgment Against
11 Gemstone (and corresponding errata), on file with this Court.

12 30. An action based upon a theory of unjust enrichment is not available when there
13 is an express, written contract because no contract can be implied when there is an express
14 contract.²⁸⁷ However, frustration of an express contract's purpose can make unjust enrichment
15 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

16 31. Even if the Helix Subcontract did not preclude an unjust enrichment/*quantum*
17 *meruit* theory of recovery (which it does), APCO was not unjustly enriched by Helix's work.
18 The undisputed evidence confirms that APCO was not paid any amounts for Helix's work that
19 it did not transmit to Helix, and APCO did not get to keep the property. Instead, APCO remains
20 unpaid \$1,400,036.75 from the failed Project.²⁸⁸

21 32. As such, APCO was not unjustly enriched by Helix's work.

22

23

24
25 ²⁸⁶ See Exhibit 45, Helix Subcontract, and Exhibit 149, CabineTec Subcontract.

26 ²⁸⁷ *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182
(1997).

27 ²⁸⁸ Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

1 D. Mechanic's Lien Foreclosure

2 33. Helix's fourth claim for relief was of a mechanic's lien foreclosure, which also
3 fails.

4 34. APCO was not the owner of the Project.

5 35. The Project has already been foreclosed upon and the proceeds were awarded to
6 the lender. The Nevada Supreme Court affirmed the decision of the trial court that the lender
7 was entitled to keep the Project and related proceeds, and the subcontractors (and APCO) were
8 left with nothing. Thus, Helix cannot foreclose upon the property.

9 36. APCO is not legally liable for any deficiency judgment because it is not the
10 party responsible for any deficiency.²⁸⁹

11 E. Violation of NRS 624.606 through 624.630 et seq.

12 37. NRS 624.624 is designed to ensure that general contractors promptly pay
13 subcontractors after the general contractor receives payment from the owner for the work
14 performed by the subcontractor.

15 38. Here, it is undisputed that Exhibit 45, the Helix Subcontract is a written
16 agreement between APCO and Helix and contained a retention payment schedule in Section
17 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified in the
18 subcontract.

19 39. The Helix Subcontract confirmed that Helix would get paid retention after it
20 met the five conditions precedent in the retention payment schedule.

21 40. It is undisputed that Helix never met the five preconditions in the subcontract's
22 payment schedule.²⁹⁰ Accordingly, payment of retention to Helix never became due under NRS
23 624 and Helix's claim for a violation of NRS 624 fails.

24

25

26 ²⁸⁹ NRS 108.239(12); *Nev. Nat'l Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d
27 560, 563 (1992).

28 ²⁹⁰ Testimony of Bob Johnson (Helix) Day 2 at pg. 36 and 37

1 41. Additionally, Helix never billed APCO for its retention and APCO never
2 received Helix's retention from Gemstone.

3 **CabineTec's claims against APCO**

4 **A. Breach of Contract**

5 42. In Nevada, there are four elements to a claim for breach of contract: "(1)
6 formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3)
7 material breach by the defendant, and (4) damages."²⁹¹

8 43. Exhibit 149 is the CabineTec Subcontract, which represents the valid, final
9 written agreement between APCO and CabineTec.

10 44. Exhibit 156, CabineTec's Complaint (page 7, paragraph 50) confirms that
11 CabineTec's principal claim against APCO is for \$19,547.00 for retention.

12 45. As a condition precedent to payment for retention, the CabineTec Subcontract
13 required CabineTec to properly comply with the retention payment schedule in Section 3.8.²⁹²
14 Specifically, Section 3.8 required: (1) completion of the entire project, (2) owner acceptance,
15 (3) final payment from owner to APCO, (4) final as-built drawings, and (5) releases.²⁹³

16 46. A party who seeks to recover on a contract has the burden of establishing any
17 condition precedent to the respective contract.²⁹⁴

18 47. Parties can agree to a schedule of payments.²⁹⁵

19 48. Parties can agree to proper conditions precedent to payment.²⁹⁶

20
21 ²⁹¹ *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180
(D. Nev. 2011).

22 ²⁹² Exhibit 149, CabineTec Subcontract at Section 3.8.

23 ²⁹³ Exhibit 149, CabineTec Subcontract at Section 3.8.

24 ²⁹⁴ *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

25 ²⁹⁵ NRS 624.624(1)(a).

26 ²⁹⁶ *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386
27 P.3d 982 (Nev. 2016) (unpublished)("Because the parties' subcontract contained a
28 payment schedule that required that Padilla be paid within ten days after IGT accepted
Padilla's work and paid Big-D for that work and it is undisputed that IGT never
accepted Padilla's work the district court correctly found that payment never became

1 49. Under Nevada precedent and legislative action, acceptance provisions are valid
2 conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.

3 ²⁹⁷

4 50. NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after
5 the owner paid the general for the subcontractor's work.²⁹⁸

6 51. In the present action, the CabineTec Subcontract: (1) incorporated the
7 Contract,²⁹⁹ (2) confirmed that the subcontractors would be bound to Gemstone to the same
8 extent APCO was,³⁰⁰ and (3) contained a schedule of payments for both retention and change
9 orders with preconditions before APCO had an obligation to pay the subcontractors.³⁰¹

10 52. Only one of those preconditions involved Gemstone's payment of retention to
11 APCO, which never occurred. The others concerned the right to receive payment, not the fact
12 of payment.

13 53. Pursuant to NRS 624.624(1)(a), payment was due to CabineTec in accordance
14 with the retention payment schedule or within 10 days after APCO received payment from
15 Gemstone:

16 **NRS 624.624 Payment of lower-tiered subcontractor;**
17 **grounds and procedure for withholding amounts from**
18 **payment; rights and duties after notice of withholding, notice**
 of objection or notice of correction.

19 1. Except as otherwise provided in this section, if a
20 higher-tiered contractor enters into:

21
22 due to Padilla under the subcontract or *NRS 624.624(1)(a)*; *see generally*, NRS
23 624.626.

24 ²⁹⁷ *Id.*

25 ²⁹⁸ *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386
26 P.3d 982 (Nev. 2016) (unpublished).

27 ²⁹⁹ Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.

28 ³⁰⁰ Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.

³⁰¹ *Id.* at Section 3.8 and Article 4.

1 (a) A written Contract with a lower-tiered
2 subcontractor that includes a schedule for payments, the
3 higher-tiered contractor shall pay the lower-tiered
4 subcontractor:

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

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

11 → whichever is earlier.

12 These provisions place a time obligation on a higher-tiered contractor to make
13 payment but they do not restrict the right of a lower-tiered contractor to receive
14 payment if the higher-tiered contractor has not been paid.

15 54. Section 3.8 of the CabineTec Subcontract contained retention payment
16 schedules that were acknowledged and affirmed by CabineTec and APCO at trial. As such,
17 CabineTec needed to show that applicable and enforceable conditions precedent were satisfied
18 before APCO had to pay retention. *See Lucini-Parish Ins. v. Buck*,³⁰² (a party who seeks to
19 recover on a contract has the burden of establishing any condition precedent to the respective
20 contract).

21 55. CabineTec did not even attempt to show: (1) completion of the entire Project,
22 (2) final acceptance of the Project by Gemstone, (3) receipt of final payment from Gemstone to
23 APCO, (4) delivery of all as-builts and close out document, and (5) delivery of all final waivers
24 and releases.

25 56. CabineTec did not meet its burden of proof and APCO never received
26 CabineTec's retention to trigger the 10 day period.

27 57. Accordingly, CabineTec's retention payment never became due from APCO.

28
302 108 Nev. 617, 620, 836 P.2d 627, 629 (1992)

1 58. As a result, CabineTec's first claim for relief for breach of contract fails as a
2 matter of law.

3 59. There is no contractual obligation for APCO to pay CabineTec for the work it
4 performed for Gemstone and/or Camco after APCO left the Project. CabineTec knowingly
5 replaced APCO with Camco under the CabineTec Subcontract on all executory obligations,
6 including payment for future work and retention.

7 60. NRCP 16.1(a)(1)(c) requires that a plaintiff "**must, without awaiting a discovery**
8 **request, provide to other parties . . . [a] a computation of any category of damages claimed**
9 **by the disclosing party, making available for inspection and copying under Rule 34 of the**
10 documents or other evidentiary matter... on which such computation is based, including
11 materials bearing on the nature and extent of injuries suffered..."³⁰³

12 61. A plaintiff "is not excused from making its disclosures because it has not fully
13 completed its investigation of the case."³⁰⁴

14 62. NRCP 16.1(a)(c) requires that parties voluntarily disclose "[a] computation of
15 any category of damages claimed by the disclosing party" and documents to support the
16 computation.³⁰⁵

17 63. Under NRCP 26(e)(1), a plaintiff must immediately supplement its initial
18 damages computation if it "learns that in some material respect the information disclosed is
19 incomplete or incorrect."³⁰⁶ *See Keener v. United States*,³⁰⁷ (finding a second disclosure so
20 substantially different from the first that it could not qualify as a correction of an incomplete or
21 inaccurate expert report).

22
23
24 ³⁰³NRCP 16.1(a)(1)(c)(emphasis added).

25 ³⁰⁴*Id.*

26 ³⁰⁵NRCP 16.1(a)(1)(c).

27 ³⁰⁶NRCP 26(e)(1).

28 ³⁰⁷181 F.R.D. 639, 640 (D. Mont. 1998)

1 64. CabineTec's complaint alleged \$19,547.00 against APCO.³⁰⁸

2 65. CabineTec's initial, and first supplemental disclosures disclosed \$30,110.95 in
3 damages against APCO, which included interest and fees on the retention amount of
4 \$19,547.00.³⁰⁹

5 66. Those were the only disclosures that CabineTec made prior to the close of
6 discovery, as extended by the Court.

7 67. CabineTec's damage claims against APCO are limited to \$30,110.95.

8 68. National Wood's Second Supplemental Disclosure containing amended
9 damages was filed on November 13, 2017, two weeks before a November 28 trial date. This
10 supplement increases the damages from \$30,110.95 to \$1,154,680.40, a 3600% increase.

11 69. APCO has been prejudiced as a result of this late disclosure as APCO described
12 in its motion in limine, and National Wood's error in not disclosing its damages pursuant to
13 these rules was not harmless.

14 70. CabineTec/National Wood has no adequate justification for its repeated failure
15 to comply with Rule 16.1(a)'s disclosure requirements.

16 71. CabineTec did not present any testimony confirming it met any of the conditions
17 in Section 3.8. Instead, CabineTec's Mr. Thompson admitted that the buildings had to be
18 drywalled and painted before the cabinets were installed³¹⁰ and he had no documentation (daily
19 reports, photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in
20 Phase 1 for APCO.³¹¹

21

22

23
24 ³⁰⁸ Exhibit 156-8.

25 ³⁰⁹ Exhibits 157 (CabineTec's initial disclosures); Exhibit 158 (CabineTec's First
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's second supplemental
disclosure).

27 ³¹⁰ Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

28 ³¹¹ Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

1 **B. Breach of the Implied Covenant of Good Faith and Fair Dealing**

2 72. In Nevada, “[e]very contract imposes upon each party a duty of good faith and
3 fair dealing in its performance and enforcement.”³¹² This implied covenant requires that
4 parties “act in a manner that is faithful to the purpose of the contract and the justified
5 expectations of the other party.”³¹³

6 73. A breach of the implied covenant of good faith and fair dealing occurs when the
7 terms of a contract are complied with but one party to the contract deliberately contravenes
8 the intention of the contract.³¹⁴

9 74. To prevail on a theory of breach of the covenant of good faith and fair dealing, a
10 plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2)
11 defendants owed a duty of good faith to the plaintiff, (3) defendants breached that duty by
12 performing in a manner that was unfaithful to the purpose of the contract, and (4) plaintiff’s
13 justified expectations were denied.³¹⁵

14 75. The Nevada Supreme Court has held that good faith is a question of fact.³¹⁶

15 76. APCO acted in good faith with respect to CabineTec:

- 16 a. APCO paid CabineTec all sums CabineTec billed APCO through August
17 2008 (when APCO left the Project),³¹⁷
18 b. APCO signed joint checks so that its subcontractors, including
19 CabineTec, would get paid, even though APCO was not getting paid,³¹⁸

20
21 ³¹² *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9
(Nev. 1989) (quoting NRS 104.1203).

22 ³¹³ *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2
(Nev. 1994) (internal quotations omitted).

23 ³¹⁴ See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d
24 919,923 (Nev. 1991).

25 ³¹⁵ *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

26 ³¹⁶ *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev..
1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

27 ³¹⁷ Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67 and 82;
28 Testimony of Mary Jo Allen (APCO) Day 3, p. 128.

- 1 c. APCO pulled its general contractor permits so that Camco could get
2 permits for the Project and APCO's subcontractors could continue on
3 with the Project (less retention),³¹⁹ and
4 d. APCO also financed the related appeal to obtain priority for CabineTec
5 and the other subcontractors once Gemstone shut the Project down.

6 77. CabineTec failed to present any evidence that APCO failed to act in good faith
7 under the CabineTec Subcontract. While it is undisputed that APCO did not pay CabineTec the
8 retention, there is no evidence that this non-payment was in bad faith.

9 78. As a result, CabineTec's second claim for breach of the implied covenant of
10 good faith and fair dealing of the subcontract fails as a matter of law.

11 C. Unjust Enrichment/Quantum Meruit

12 79. CabineTec asserted breach of contract *and* unjust enrichment/ *quantum meruit*
13 claims against APCO.³²⁰

14 80. APCO had a subcontract with CabineTec, **Exhibit 149**.

15 81. An action based upon a theory of unjust enrichment is not available when there
16 is an express, written contract because no contract can be implied when there is an express
17 contract.³²¹ However, frustration of an express contract's purpose can make unjust enrichment
18 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

19 82. Even if the CabineTec Subcontract did not preclude an unjust
20 enrichment/*quantum meruit* theory of recovery (which it does), APCO was not unjustly
21 enriched by CabineTec's work. The undisputed evidence confirms that APCO was not paid any
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23
24 ³¹⁸ Exhibit 26. See also: Trial Testimony of Joe Pelan (APCO) Day 1 at p. 38;
Testimony of Joe Pelan (APCO) Day 1 at p. 41.

25 ³¹⁹ Testimony of Joe Pelan (APCO) Day 1 at p. 100.

26 ³²⁰ See Exhibit 149, CabineTec Subcontract.

27 ³²¹ *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182
(1997).

1 amounts for CabineTec's work that it did not transmit to CabineTec, and APCO did not get to
2 keep the property. Instead, APCO remains unpaid \$1,400,036.75 from the failed Project.³²²

3 83. As such, APCO was not unjustly enriched by CabineTec's work.

4 **D. Violation of NRS 624.606 through 624.630 et seq.**

5 84. NRS 624.624 is designed to ensure that general contractors promptly pay
6 subcontractors after the general contractor receives payment from the Owner for the work
7 performed by the subcontractor.

8 85. Here, it is undisputed that Exhibit 149, the CabineTec Subcontract is a written
9 agreement between APCO and CabineTec and contained a retention payment schedule in
10 Section 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified
11 in the subcontract.

12 86. The CabineTec Subcontract confirmed that CabineTec would get paid retention
13 after it met the five conditions precedent in the retention payment schedule.

14 87. It is undisputed that CabineTec never met the five preconditions in the
15 subcontract's payment schedule. Accordingly, payment of retention to CabineTec never
16 became due under NRS 624 and CabineTec's claim for a violation of NRS 624 fails.

17 88. Additionally, CabineTec never billed APCO for its retention and APCO never
18 received CabineTec's retention from the Owner. CabineTec rolled its retention over to Camco
19 as a Project liability, and actually billed its retention to Camco.

20 **E. Monies Due and Owing**

21 89. CabineTec has failed to prove that it is due monies from APCO.

22 90. "The word due always imports a fixed and settled obligation or liability."³²³

23 91. Exhibit 149 governed the relationship between the parties and it was subject to
24 the retention payment schedule in Section 3.8.

25
26 ³²² Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

27 ³²³ *Black's Law Dictionary*, Sixth Edition, 1990.

1 92. Payment never became due under Section 3.8 for the reasons set forth above.

2 **F. Account Stated**

3 93. CabineTec's claim for account stated fails.

4 94. In Nevada, "[a]n account stated may be broadly defined as an agreement based
5 upon prior transactions between the parties with respect to the items composing the account and
6 the balance due, if any, in favor of one of the parties."³²⁴

7 95. "To effect an account stated, the outcome of the negotiations must be the
8 recognition of a sum due from one of the parties to the other with a promise, express or
9 implied, to pay that balance."³²⁵

10 96. "The genesis of an account stated is the agreement of the parties, express or
11 implied."³²⁶ APCO and CabineTec had an express written agreement that governed their
12 relationship.

13 97. APCO and CabineTec did not have any prior transactions with respect to the
14 items composing any account.

15 98. No evidence was presented that APCO agreed that any sum was due. Instead,
16 APCO disputed any payment obligation.

17 99. APCO and CabineTec have not agreed to any other payment provisions outside
18 of Exhibit 149 and this claim fails.

19 **Helix and CabineTec ratified their subcontracts with Camco.**

20
21 100. "Ratification of a contract occurs when one approves, adopts, or confirms a
22 contract previously executed by another..."³²⁷

23
24

³²⁴ *Old W. Enterprises, Inc. v. Reno Escrow Co.*, 86 Nev. 727, 729, 476 P.2d 1, 2
25 (1970).

26 ³²⁵ *Id.*

27 ³²⁶ *Id.*

28 ³²⁷ *Id.*

1 101. Ratification may be express or implied by the conduct of the parties.³²⁸ The
2 party to be charged with ratification of such a contract must have acted voluntarily and with full
3 knowledge of the facts.³²⁹

4 102. "A person ratifies an act by manifesting assent that the act affects the person's
5 legal relations or conduct that justifies a reasonable assumption that the person so consents."³³⁰

6 103. "Any conduct which indicates assent by the purported principal to become a
7 party to the transaction or which is justifiable only if there is ratification is sufficient, and even
8 silence with full knowledge of the facts may operate as a ratification."³³¹

9 104. "If a person makes a manifestation that the person has ratified another's act and
10 the manifestation, as reasonably understood by a third party, induces the third party to make a
11 detrimental change in position, the person may be estopped to deny the ratification."³³²

12 105. "A valid ratification by the principal relieves the agent from any liability to the
13 principal which would otherwise result from the fact that the agent acted in an unauthorized
14 way or without authority."³³³

15 106. Helix legally admitted it ratified the Helix/APCO subcontract to the Court and to
16 APCO in its complaint, thereby replacing Camco for APCO in all executory obligations under
17 the Helix Subcontract, including payment for retention and future work.

18 107. CabineTec signed a ratification agreement with Camco.

19 108. After APCO left the Project, Helix and CabineTec took direction from
20 Gemstone or Camco, not APCO.

21
22
23 ³²⁸ 17A Am Jur 2d Contracts § 10.

24 ³²⁹ *Id.*

25 ³³⁰ 3 Am Jur 2d Agency § 169.

26 ³³¹ *Id.*

27 ³³² 3 Am Jur 2d Agency § 171.

28 ³³³ 2A C.J.S. Agency § 85.

1 109. Helix and CabineTec submitted billings to Camco including rolling over the
2 retention they now seek from APCO, and each performed work under the ratified original
3 scope of work.

4 110. None of the ongoing work was done for or on behalf of APCO and there is no
5 legal authority that would make APCO liable for their ongoing work on the Project, or the
6 Project retention.

7 111. Helix never billed APCO for retention because it never became due.³³⁴

8 112. Helix and CabineTec waived all claims against APCO by knowingly contracting
9 to work on the Project for Camco/Gemstone and rolling their retention over to Camco and
10 Gemstone.

11 113. When Helix and CabineTec ratified their subcontracts with Camco, they
12 replaced APCO. See *Foley Co. v. Scottsdale Ins. Co.*,³³⁵ ("The ratification, by subcontractor's
13 liability insurer, of its general agent's allegedly unauthorized placement of coverage released
14 the general agent from liability to the insurer."); *Brooks v. January*,³³⁶ (holding that because a
15 dissident faction of a church congregation ratified their pastor's unauthorized sale of property,
16 the pastor was relieved from liability to the church); *Southwest Title Ins. Co. v. Northland*
17 *Bldg.*,³³⁷ (holding that because the title insurance company ratified its agent's arguably
18 unauthorized actions, the agent could not be held liable to the title insurance company);
19 *Rakestraw v. Rodrigues*,³³⁸ (holding that because a wife ratified forgery of her name on a deed
20 of trust, the agent was relieved of liability to the principal).

21
22
23 ³³⁴ CabineTec admittedly sent one billing for the full amount of CabineTec's
24 delivered (but uninstalled) cabinets that incorrectly included retention. Retention clearly
25 was not due under the retention payment schedule.

26 ³³⁵ 28 Kan. App. 2d 219, 15 P.3d 353 (2000)

27 ³³⁶ 116 Mich.App. 15, 321 N.W.2d 823 (1982)

28 ³³⁷ 542 S.W.2d 436 (Tex.App.1976), *rev'd in part on other grounds* 552 S.W.2d
425 (Tex.1977)

³³⁸ 8 Cal.3d 67, 104 Cal.Rptr. 57, 500 P.2d 1401 (1972)

1 114. CabineTec and Helix ratified their subcontracts with Camco and discharged
2 APCO.

3
4 The Subcontracts were assigned to Gemstone.

5 115. The following factors are relevant in determining whether an assignment of a
6 construction contract took place: which party was responsible for the administration of the
7 project, which party ensured the design was correctly carried out, who paid the subcontractors
8 and materialmen, which party answered questions from the owner, which parties were on the
9 job site, which party had ongoing involvement with the project, and which party was
10 corresponding with the owner.³³⁹

11 116. These factors weigh in APCO's favor. Each party's behavior is consistent with
12 the assignment of the Helix and CabineTec Subcontracts to Gemstone:

- 13 • **Gemstone:** Gemstone attempted to "terminate" the APCO/Gemstone prime
14 contract and stopped giving direction and/or orders to APCO. Gemstone told the
15 subcontractors to stop working for APCO and that their contracts would be
16 assumed by Camco. Gemstone also ordered APCO off the site.
- 17 • **Camco:** Camco started giving direction to the subcontractors and dictating their
18 work. Camco sent subcontracts and/or Ratification agreements to both Helix and
19 CabineTec. It engaged in negotiations of the respective subcontracts, and it
20 received billings directly from Helix and CabineTec, including the rollover of
21 their retention.
- 22 • **Helix:** Helix did not contact APCO after August 2008 and remained on-site
23 working directly for Gemstone and Camco. It engaged in subcontract
24 negotiations for the same scope of work as it had initially subcontracted for with
25 APCO with Camco, and took direction and performed work under Camco's and
26 Gemstone's direction. Helix submitted pay applications to Camco and even
27 rolled its retention account over to Camco billings. Helix also represented that it
28 signed a ratification Contract and subcontract with Camco in its complaint and
its amended complaint.
- **CabineTec:** CabineTec did not contact APCO after August 2008 and remained
on-site working for Camco. It engaged in subcontract negotiations for the same
scope of work as it had initially subcontracted for with APCO with Camco, and
took direction and performed work under Camco's direction. CabineTec

339 *J. Christopher Stuhmer, Inc. v. Centaur Sculpture Galleries, Ltd., Inc.*, 110
Nev. 270, 274, 871 P.2d 327, 330 (1994)

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submitted pay applications to Camco including all retention. CabineTec also signed a ratification agreement with Camco.

- **APCO:** APCO was off-site and did not dictate or control the subcontractors' work. It did not have any communication with Gemstone or the subcontractors after August 2008. It did not participate in construction related meetings, did not receive billings from subcontractors, or submit payment applications on behalf of subcontractors. In fact, Helix never invoiced APCO for its retention.

117. The Contract contained a subcontract assignment provision that assigned Gemstone APCO's subcontracts upon termination of the Contract.³⁴⁰

118. The Contract was incorporated into the subcontracts.³⁴¹

119. Once APCO left the Project, the Helix and CabineTec Subcontracts were assigned to Gemstone per Gemstone's written notice to APCO.

120. Once Gemstone had those Subcontracts, it facilitated Camco's assumption of those subcontracts.³⁴²

121. After the subcontracts were assigned, Gemstone/Camco were responsible for all executory obligations including payments for retention and future work.³⁴³

122. An assignment took place thereby making Gemstone/Camco the party responsible for payment to the subcontractors.

Helix and CabineTec waived any right to pursue APCO.

123. "Waiver requires the intentional relinquishment of a known right."³⁴⁴

124. "If intent is to be inferred from conduct, the conduct must clearly indicate the party's intention."³⁴⁵

³⁴⁰ Exhibit 2 at 10.4.

³⁴¹ See Sections 1.1 of Helix and CabineTec subcontracts. Helix's Mr. Johnson admitted it was Helix's practice to request and review an incorporated prime contract. Testimony of Bob Johnson (Helix) Day 2, p.16.

³⁴² See Exhibit 170/169 Helix's subcontract and Helix Amendment with Camco; and Exhibit 184, CabineTec's subcontract with Camco.

³⁴³ See Exhibit 2, Section 10.4.

³⁴⁴ *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007) (internal citations omitted).

125. “Thus, the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”³⁴⁶

126. In this case, CabineTec's and Helix's intent was clear: they understood that APCO left the Project. They entered into ratification agreements with Camco and continued working for Camco and Gemstone on the Project without any further dealings with APCO.

127. Helix and CabineTec did not negotiate entirely new contracts and their subsequent billings to Camco depicted their retention that was being held by Gemstone, not APCO. They took orders and direction from Camco employees. They sent billings to Camco. They submitted change orders to Camco. They showed up to the Project at Camco's direction and Camco ultimately informed them the Project had shut down. By pursuing this course of action, it was clear that none of the parties believed APCO was the general contractor on the Project. This conduct is entirely inconsistent with any claim that APCO was the general contractor and was responsible for retention or other future payments. APCO paid Helix and CabineTec all amounts due while APCO was the general contractor.

Any of the foregoing conclusions of law that would more appropriately be considered to be findings of fact shall be so deemed.

ORDER

NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact and Conclusions of Law; and

IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and Conclusions of Law, and those made regarding the other parties and claims involved in the

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• • • • •

345 *Id.*

346 *Id.*

1 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the
2 same at the appropriate time subject to further order of the Court.

3 DATED this 24th day of April, 2018.

4 
5 _____
6 DISTRICT COURT JUDGE

7 **CERTIFICATE**

8 I hereby certify that on or about the date filed, this document was Electronically
9 Served to the Counsel on Record on the Clark County E-File Electronic Service List.


10 
11 _____
12 LORRAINE TASHIRO
13 Judicial Executive Assistant
14 Dept. No. XIII
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Exhibit 14



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16 *Attorneys for Fidelity and Deposit Company of Maryland*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada corporation,
13 Plaintiff,
14 vs.

15 GEMSTONE DEVELOPMENT WEST, INC., a Nevada
16 corporation; et al.
17 Defendants.

Case No.: A571228
Dept. No.: XIII

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

**ORDER GRANTING MOTION TO
DEPOSIT BOND PENAL SUM WITH
COURT, EXONERATION OF BOND,
AND DISMISSAL**

20 AND ALL RELATED MATTERS.

Case No.: A571228
Dept. No.: XIII

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

ORDER

Fidelity and Deposit Company of Maryland's ("Fidelity") Motion to Deposit Bond Penal Sum with the Court, for Exoneration of Bond, and for Dismissal of Fidelity (the "Motion") from this action came for oral argument before the Court on July 19, 2018 at 9:00 a.m.

GOOD CAUSE APPEARING THEREFORE and no opposition having been filed, the Court grants Fidelity's Motion and orders as follows:

- 1) Fidelity is to deposit \$50,000.00, the full penal sum of Bond No. 8739421, with the Clerk of the Court;
- 2) Bond No. 8739421 is exonerated and discharged, and;
- 3) Fidelity & Deposit Company of Maryland is dismissed from this action with prejudice.

Dated this 19th day of July, 2018.


DISTRICT COURT JUDGE

Respectfully submitted:

THE FAUX LAW GROUP

By: 

Kurt C. Faux, Esq.

Jordan F. Faux, Esq.

1540 W. Warm Springs Rd., Suite 100

Henderson, NV 89014

Attorneys for Fidelity & Deposit Company of Maryland

JA009113

Exhibit 15



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

13 APCO CONSTRUCTION, a Nevada
14 corporation,

15 Plaintiff,

16 vs.

17 GEMSTONE DEVELOPMENT WEST,
18 INC., and DOES I through X,

19 Defendant

Case No. A571228
Dept No. XIII

(Consolidated with Case Nos. A574391;
A574792; A583289; A587168; AF89195;
A597089; A577623; A584730; A580889;
A571792)

**ORDER APPROVING DISTRIBUTION
OF FIDELITY AND DEPOSIT
COMPANY OF MARYLAND'S BOND**

20 AND ALL RELATED MATTERS
21 /

22 This matter coming on for hearing on the 19th day of July, 2018, at the hour of 9:00 a.m., with
23 T. James Truman & Associates appearing on behalf of Judgment creditor E&E Fire Protection; The
24 Faux Law Group appearing for Fidelity and Deposit Company of Maryland; and Eric Zibelman, Esq.
25 of the law firm of Peel Brimley, appearing for Cactus Rose Construction, Inc., Fast Glass Inc.,
26 Heinaman Contract Glazing, Helix Electric of Nevada, LLC and SWPPP Compliance Solutions,
27 LLC, hereinafter collectively known as the "PB Judgment Creditors, and the Court having review
28 the pleadings and papers on file relative to E&E Fire Protection's Motion for Order Approving
Distribution of Fidelity and Deposit Company of Maryland's Bond, said hearing taking place on
Order Shortening Time, and there being no opposition to the Motion presented at the hearing,

IT IS HEREBY ORDERED that the Motion to Deposit Bond Penal Sum be approved and

JAO09115

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1 said \$50,000.00 Bond be deposited with the court and upon said deposit, the bond shall be
2 exonerated; and

3 IT IS FURTHER ORDERED, that such \$50,000.00 bond proceeds shall be distributed to the
4 various claimants as follows:

5 Claimant	Total Judgment	% of total	% of \$50,000 Bond
6 E&E Fire	\$6,547,509.47	73.96%	\$36,980.00
7 Cactus Rose	\$ 326,244.84	3.68%	\$ 1,841.00
8 Fast Glass	\$ 280,927.71	3.17%	\$ 1,586.00
9 Heineman	\$ 262,010.64	2.95%	\$ 1,486.00
10 Helix	\$1,277,601.82	14.43%	\$ 7,216.00
11 SWPPP	\$ 157,846.63	1.78%	\$ 891.00
	\$8,852,141.11		\$50,000.00

12 IT IS FURTHER ORDERED that the Clerk of the Court is directed to distribute the
13 interpleader funds to the parties in accordance with the foregoing schedule and that upon final
14 distribution of the bond funds, this case shall be dismissed as to E & E's Claims against Fidelity and
15 Deposit Company of Maryland, and the PB Judgment Creditors' claims against Fidelity and Deposit
16 Company of Maryland, with prejudice.

17 IT IS SO ORDERED this 19th day of July, 2018.

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20 
DISTRICT COURT JUDGE

21 Submitted by:

22 T. JAMES TRUMAN & ASSOCIATES

23 By: 

24 T. James Truman, Esq.
25 Nevada State Bar No. 003620
26 3654 N. Rancho Dr., Suite 101
27 Las Vegas, Nevada 89130
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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.

CASE NO. : A571228
DEPT. NO. : XIII

Consolidated with:

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

AND ALL RELATED MATTERS.

**HELIX ELECTRIC OF NEVADA, LLC'S REPLY TO APCO'S OPPOSITION TO
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**

Hearing Date: September 9, 2019
Hearing Time: 9:00 AM

Helix Electric of Nevada, LLC ("Helix") by and through its counsel of record, the law firm of PEEL BRIMLEY LLP, hereby respectfully submits the following Reply to APCO Construction, Inc.'s ("APCO") Opposition to Helix's Motion to (I) Re-Open Statistically Closed Case, (II) Deem All Constituent Case Claims Resolved and/or, (III) in the Alternative, for a Rule 54(b) Certification as to Helix and APCO (the "Motion").

JA009117

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

REPLY MEMORANDUM

Despite the invitation and right to do so, APCO never responded to the Show Cause Order from the Nevada Supreme Court¹ (or to Helix's Response thereto) that eventually resulted in dismissal of Helix's appeal on the grounds that the appeal of the underlying judgment was premature, because this Court did not enter a final judgment in the Constituent Case (as defined in the Motion).² Specifically but without limitation, the Nevada Supreme Court concluded that although several claims and counterclaims involving other parties were abandoned and therefore not expressly resolved at trial, the Nevada Supreme Court concluded that "the fact that a party was not inclined to pursue a claim does not operate as a formal dismissal of that claim"³

Despite its silence before the Nevada Supreme Court, APCO now opposes Helix' efforts to remove this jurisdictional hurdle and render the Helix/APCO Orders final and appealable by suggesting that the Unresolved Claims (as defined in the Motion) were in fact resolved. APCO's belated argument with the Nevada Supreme Court notwithstanding, APCO is simply wrong. The Nevada Supreme Court has concluded that there are loose ends precluding a final, appealable judgment in the Constituent Case pursuant to NRAP 3A(b)(1).⁴ Other than to now argue that (by implication, at best) the Unresolved Claims were (or, more accurately, should have been) resolved, APCO does not and cannot dispute that this Court has and should exercise the authority to enter an Order resolving those Unresolved Claims.

By way of example only, APCO argues that CAMCO's cause of action alleging abuse of process against Helix and Cactus Rose was "resolved" by way of this Court's Findings of Fact and Conclusions of Law (and resulting monetary judgments) that demonstrate the viability of Helix's and Cactus Rose's claims against CAMCO. While Helix's and Cactus Rose's judgments against CAMCO certainly suggest that their claims against CAMCO did not abuse process, this Court never entered a judgment confirming that legal conclusion. Similarly, this Court's summary judgment precluding CAMCO (and APCO) from asserting a "Pay-if-Paid" defense, while

¹ See Motion, **Exhibit 7**.

² See Motion, **Exhibit 8**.

³ See *Id.*, citing *KDI Sylvan Pools, Inc. v. Workman*, 107 Nev. 340, 342, 810 P.2d 1217, 1219 (1991).

⁴ NRAP 3A(b)(1) allows an appeal to be taken from a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered."

1 beneficial to Helix's defense of CAMCO's claim for breach of contract, did not result in an Order
2 dismissing CAMCO's claim.

3 As noted in the Motion, CAMCO never pursued its claims at time of trial. Though
4 apprised of this fact, the Nevada Supreme Court concluded that CAMCO's failure to pursue the
5 claims "does not operate as a formal dismissal of that claim"⁵ Accordingly, the Order and
6 judgment for APCO was "not appealable as a final judgment."⁶ APCO does not argue that the
7 Unresolved Claims should not be dismissed; rather that they *have* been dismissed, for which there
8 is no Order upon which the Nevada Supreme Court could rely to retain jurisdiction of the appeal.
9 The present Motion seeks a simple (and what should be uncontroversial) solution to the problem
10 that will allow the appellate process to resume.

11 APCO also does not address and, pursuant to E.D.C.R 2.20(e), therefore should be deemed
12 to have conceded, ⁷ Helix's request for a certification pursuant to Nev. R. Civ. P. 54(b) that "there
13 is no just reason for delay and upon express direction for the entry of judgment" respecting the
14 Helix/APCO Claims (as defined in the Motion). As noted in the Motion, APCO has itself sought
15 and benefitted from a Rule 54(b) certification in this case,⁸ which presumably explains its
16 reluctance to oppose Helix's request. Regardless of the reason for APCO's decision not to oppose
17 this portion of the Motion, there is in fact no just reason for delay. Except for the judgment this
18 Court certified as final between APCO and Zitting Bros. that is currently on appeal,⁹ there are no
19 other active claims or parties in the consolidated action, much less the Constituent Case. A
20 certificate of finality could not prejudice any party. See e.g., *Mallin v. Farmers Ins. Exch.*, 106
21 Nev. 606, 611, 797 P.2d 978, 981 (1990) reversed on other grounds, *Matter of Estate of Sarge*,
22 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018).

23 ///

24 ///

25 _____
⁵ See Motion, Exhibit 8.

26 ⁶ See *Id.*

27 ⁷ E.D.C.R. 2.20(e) provides in part that the failure of the opposing party to serve and file written opposition may be
construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

28 ⁸ See Motion, Exhibit 16.

⁹ See Motion, Exhibit 17. Zitting Bros. also recently appealed from this Court's order relating to the potential
disqualification of counsel.


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CONCLUSION

Based on the foregoing, this Court should (I) re-open the administratively closed Constituent Case, (II) deem the Unresolved Claims abandoned and dismiss the same; and/or (III) in the alternative, issue a certification pursuant to Nev. R. Civ. P. 54(b) that there is no just reason for delay to direct entry of a final judgment as to one or more, but fewer than all, claims or parties - specifically as to the claims of, by and between Helix and APCO as resolved by the Helix/APCO Orders.

Respectfully submitted this 28th day of August, 2019.

PEEL BRIMLEY LLP



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Telephone: (702) 990-7272
Attorneys for Helix Electric of Nevada, LLC

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 29th day of August, 2019, I caused the above and foregoing document entitled **HELIX ELECTRIC OF NEVADA, LLC'S REPLY TO APCO'S OPPOSITION TO 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**, 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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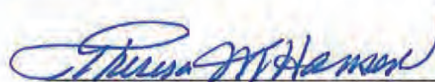
United Subcontractors Inc:

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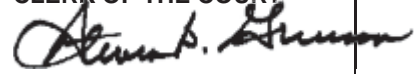
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DISTRICT COURT

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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification* was filed on **January 3, 2020**, a copy of which is attached as Exhibit 1

DATED this 3rd day of January 2020.

PEEL BRIMLEY LLP

/s/ Eric Zimbelman

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Attorneys for Helix Electric of Nevada, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 3rd day of January 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

to the attorney(s) and/or party(ies) listed below:

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/s/ Amanda Armstrong

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Exhibit 1



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Attorneys for Various Lien Claimants

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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**ORDER GRANTING HELIX
ELECTRIC OF NEVADA'S MOTION
FOR RULE 54(b) CERTIFICATION**

AND ALL RELATED MATTERS.

This matter came on for hearing September 9, 2019, before the Honorable Mark Denton in Dept. 13 on the Motion of Helix Electric of Nevada, LLC ("Helix") 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 Construction ("APCO"). Helix appeared through Eric Zimbelman, Esq. of Peel Brimley LLP and APCO appeared through Christopher H. Byrd, Esq. of Fennemore Craig, P.C. Having received and reviewed Helix' Motion, APCO's Opposition and Helix's Reply, and having heard argument of counsel the Court finds that no just reason for delay exists to certify the Judgments set forth below as final and for good cause

JA009129

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DISTRICT COURT DEPT#13

1 shown:

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that Helix's Motion for
3 NRCP 54(b) Certification is GRANTED;

4 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
5 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
6 the entry of judgment as to the Judgment [as to the Claims of Helix Electric of Nevada, LLC
7 and Plaintiff in Intervention National Wood Products, Inc.'s (sic) against APCO Construction,
8 Inc.] filed May 31, 2018 and entered June 1, 2018, which incorporated by reference the
9 Findings of Fact, Conclusions of Law and Order as to the Claims of Helix Electric and
10 Cabinetec Against APCO filed April 25, 2018, and which Judgment is hereby certified as final
11 pursuant to NRCP 54(b);

12 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
13 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
14 the entry of judgment as to the Order filed September 27, 2018 and entered September 28, 2018
15 (1) Granting APCO Construction, Inc. (sic) Motion for Attorneys Fees and Costs, (2) Granting
16 APCO Construction, Inc.'s Memorandum of Costs in Part, (3) Granting Helix Electric of
17 Nevada LLC's Motion to Retax in Part and Denying in Part, (4) Granting Plaintiff in
18 Intervention National Wood Product LLC's Motion to Retax in Part and Denying in Part, and
19 (5) Granting National Wood Products, Inc's Motion to File a Surreply, which is hereby certified
20 as final pursuant to NRCP 54(b).

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1 IT IS FURTHER ORDERED that Helix shall have thirty days from the notice of entry
2 of this Order to post a bond for the full amount of the Judgment in favor of APCO, \$103,307.54,
3 whereupon execution of said Judgment shall be stayed pending appeal.


4 IT IS SO ORDERED this 17th day of December, 2019.

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DISTRICT COURT JUDGE

Respectfully submitted by:

PEEL BRIMLEY LLP

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Electronically Filed
Jan 30 2020 11:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs.

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

19 Defendants.

20 AND ALL RELATED MATTERS

Case No. : 08A571228

Dept. No. : XIII

Consolidated with:

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

21
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NOTICE OF APPEAL

Notice is hereby given that HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys, Eric B. Zimbelman, Esq. and Peel Brimley, LLP, hereby appeals to the Supreme Court of Nevada from (i) the Judgment as to the Claims of Helix Electric of Nevada, LLC and Plaintiff-in-Intervention National Wood Products, Inc. against APCO Construction, Inc. entered in this action June 1, 2018, a true and correct copy of which is attached hereto as Exhibit "A," (ii) 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, and (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part entered in this action September 28, 2018, a true and correct copy of which is attached as Exhibit "B" and (iii) Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification entered in this action on January 3, 2020 ("Final Judgment"), a true and correct copy of which is attached as Exhibit "C."

DATED this 29th day of January, 2020.

PEEL BRIMLEY LLP


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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 29th day of January, 2020, I caused the above and foregoing document, **NOTICE OF APPEAL**, to be served as follows:

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

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

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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 120

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CHRONOLOGICAL APPENDIX OF EXHIBITS

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	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
	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

<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

<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

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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. 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>
	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

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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 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 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Precluding Defenses Based on Pay-if-Paid Agreements		
	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
	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 in Limine 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:		

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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

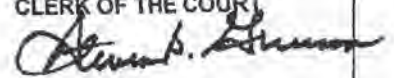
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EXHIBIT A

JA009137



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

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

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

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

NOTICE OF ENTRY OF JUDGMENT

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

20 **AND ALL RELATED MATTERS**

21
22 PLEASE TAKE NOTICE that a JUDGMENT [AS TO THE CLAIMS OF HELIX
23 ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL WOOD
24 PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.] was filed on May 31, 2018, a

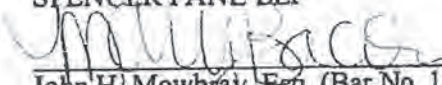
25 ///

26
27 ///

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

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

4 SPENCER FANE LLP

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CERTIFICATE OF SERVICE

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

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Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc

Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

Intervenor: National Wood Products, Inc.'s

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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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EXHIBIT A

Steven D. Grierson

1 JUDGE
2 SPENCER FANE LLP
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14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 v.

20 GEMSTONE DEVELOPMENT WEST, INC., A
21 Nevada corporation,

22 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

JUDGMENT

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

23 AND ALL RELATED MATTERS

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

RECEIVED

MAY 23 2018

DISTRICT COURT DEPT#13

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

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

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

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

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

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

23 ///

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

2

3

Dated this 29th day of May, 2018.

4


DISTRICT COURT JUDGE

5

6

7 Respectfully submitted by:

8

SPENCER FANE LLP

9



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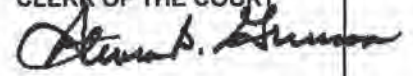
27

28

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

EXHIBIT C

JA009148



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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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification* was filed on **January 3, 2020**, a copy of which is attached as Exhibit 1

DATED this 3rd day of January 2020.

PEEL BRIMLEY LLP

/s/ Eric Zimbelman

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and
3 that on this 3rd day of January 2020, I caused the above and foregoing document entitled
4 **NOTICE OF ENTRY OF ORDER** to be served as follows:
5

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

14 to the attorney(s) and/or party(ies) listed below:

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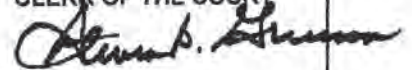
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/s/ Amanda Armstrong

An employee of PEEL BRIMLEY, LLP

Exhibit 1



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4 RICHARD L. PEEL, ESQ.
5 Nevada Bar No. 4359
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13 *Attorneys for Various Lien Claimants*

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.

24 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**ORDER GRANTING HELIX
ELECTRIC OF NEVADA'S MOTION
FOR RULE 54(b) CERTIFICATION**

25 This matter came on for hearing September 9, 2019, before the Honorable Mark Denton
26 in Dept. 13 on the Motion of Helix Electric of Nevada, LLC ("Helix") to (I) Re-Open
27 Statistically Closed Case, (II) Dismiss all Unresolved Claims and/or, (III) in the Alternative, for
28 a Rule 54(B) Certification as to Helix and APCO Construction ("APCO"). Helix appeared
through Eric Zimbelman, Esq. of Peel Brimley LLP and APCO appeared through Christopher
H. Byrd, Esq. of Fennemore Craig, P.C. Having received and reviewed Helix' Motion, APCO's
Opposition and Helix's Reply, and having heard argument of counsel the Court finds that no
just reason for delay exists to certify the Judgments set forth below as final and for good cause

PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

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DISTRICT COURT, DEPT# 13

JA009154

Case Number: 08A571228

JA009154

1 shown:

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that Helix's Motion for
3 NRCP 54(b) Certification is GRANTED;

4 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
5 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
6 the entry of judgment as to the Judgment [as to the Claims of Helix Electric of Nevada, LLC
7 and Plaintiff in Intervention National Wood Products, Inc's (sic) against APCO Construction,
8 Inc.] filed May 31, 2018 and entered June 1, 2018, which incorporated by reference the
9 Findings of Fact, Conclusions of Law and Order as to the Claims of Helix Electric and
10 Cabinetec Against APCO filed April 25, 2018, and which Judgment is hereby certified as final
11 pursuant to NRCP 54(b);

12 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
13 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
14 the entry of judgment as to the Order filed September 27, 2018 and entered September 28, 2018
15 (1) Granting APCO Construction, Inc. (sic) Motion for Attorneys Fees and Costs, (2) Granting
16 APCO Construction, Inc.'s Memorandum of Costs in Part, (3) Granting Helix Electric of
17 Nevada LLC's Motion to Retax in Part and Denying in Part, (4) Granting Plaintiff in
18 Intervention National Wood Product LLC's Motion to Retax in Part and Denying in Part, and
19 (5) Granting National Wood Products, Inc's Motion to File a Surreply, which is hereby certified
20 as final pursuant to NRCP 54(b).

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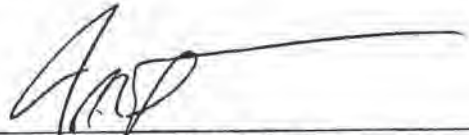
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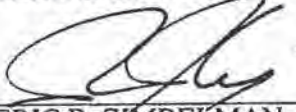
PEEL BRIMLEY LLP
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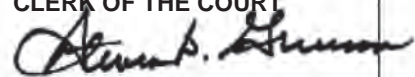
1 IT IS FURTHER ORDERED that Helix shall have thirty days from the notice of entry
2 of this Order to post a bond for the full amount of the Judgment in favor of APCO, \$103,307.54,
3 whereupon execution of said Judgment shall be stayed pending appeal.

4 IT IS SO ORDERED this 17th day of December, 2019.

5
6
7 
DISTRICT COURT JUDGE

8
9 Respectfully submitted by:
10 PEEL BRIMLEY LLP

11  BAR 12723
FDR
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6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 APCO CONSTRUCTION, a Nevada
9 corporation,

10 Plaintiff,

11 v.

12 GEMSTONE DEVELOPMENT WEST, INC.,
a Nevada corporation,

13 Defendant.

Case No. : 08A571228

Dept. No.: XIII

Consolidated with:

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

14 AND ALL RELATED MATTERS.
15

CASE APPEAL STATEMENT

16 Plaintiff APCO Construction, Inc. ("APCO"), by and through its attorneys of record,
17 Fennemore Craig, P.C., hereby submit its Case Appeal Statement pursuant to NRAP 3(f):

18 **1. Name of cross appellant filing this Case Appeal Statement:**

19 APCO Construction, Inc. ("APCO")

20 **2. Identify the Judge issuing the decision, judgment, or order appealed from:**

21 Honorable Mark Denton

22 **3. Identify each cross appellant and the name and address of counsel for each cross**
23 **appellant:**

24 Cross-Appellant APCO is represented by:

25 John Randall Jefferies, Esq. (Bar No. 3512)
26 Christopher H. Byrd, Esq. (Bar No. 1633)
27 **FENNEMORE CRAIG, P.C.**
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JA009157

EBASSETT/15538796.1/015810.0012

1 Jack Chen Min Juan, Esq. (Bar No. 6367)
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8 jjuan@maclaw.com; cmounteer@maclaw.com; tstewart@maclaw.com

- 6 **4. Identify each cross respondent and the name and address of appellate counsel, if**
7 **known, for each cross respondent (if the name of a respondent's appellate counsel**
8 **is unknown, indicate as much and provide the name and address of that cross**
9 **respondent's trial counsel):**

9 Cross-Respondent Helix Electric of Nevada, LLC is represented on appeal by:

10 Eric B. Zimbelman, Esq.
11 **PEEL BRIMLEY LLP**
12 3333 E. Serenè Avenue, Suite 200
Henderson, Nevada 89074

- 13 **5. Whether any attorney identified above in response to question 3 or 4 is not licensed**
14 **to practice law in Nevada):**

15 No.

- 16 **6. Was cross appellant was represented by appointed counsel in the district court:**

17 No.

- 18 **7. Is cross appellant represented by appointed counsel on appeal:**

19 No.

- 20 **8. Was cross appellant granted leave to proceed in forma pauperis:**

21 No.

- 22 **9. The date the proceedings commenced in the district court (e.g., date complaint,**
23 **indictment, information, or petition was filed):**

24 This is a consolidated proceeding. The first action was commenced on September 9,
25 2008. The constituent case, Case No. A09587168 was commenced on April 7, 2009.

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

This action arises out of a construction project in Las Vegas, Nevada known as Manhattan West Condominiums Project ("the Project"). APCO contracted with Gemstone Development West, Inc. ("Gemstone") to serve as the prime contractor for the Project. APCO entered into a subcontract with Helix Electric to provide electrical services on the Project. Gemstone did not pay APCO for its June, July or August 2008 billings, terminated APCO from the Project in August 2008 and hired a replacement general contractor, Camco Construction, Inc. ("Camco"). APCO ensured payment to Helix through its August 2008 billings submitted to APCO before APCO left the Project. Helix continued working on the Project for Camco and brought an action against APCO alleging non-payment of retention when the Project shutdown several months later. The district court held a trial on the merits and entered judgment in favor of APCO, finding APCO had no liability to Helix. After trial, APCO filed a motion for attorneys fees seeking fees pursuant to (1) the subcontract, (2) mechanic's lien statute, and (3) an offer of judgment.

APCO cross-appeals from the district court's (1) Order Granting APCO Construction Inc.'s Motion for Attorneys' Fees and Costs; the Order Granting APCO Construction Inc.'s Memorandum of Costs in Part; the Order Granting Helix Electric of Nevada LLC's Motion to Retax in Part; all of which were entered on September 28, 2018; and (2) Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification, granted January 3, 2020.

11. **Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

Yes.

Docket No.	Caption	Disposition
61131	APCO Construction, Inc. v. Dist. Ct.	Opinion Denying Petition
75197	APCO Construction, Inc. v. Zitting Bros. Construction, Inc.	Pending
76276	Helix Elec. of Nevada v. APCO Const., Inc.	Order Dismissing Appeal
77320	Helix Elec. of Nevada v. APCO Constr, Inc.	Pending
79301	Zitting Bros. Constr, Inc. v. Fennemore Craig, P.C.	Order Dismissing Appeal
80508	Helix Electric of Nevada v. APCO Construction, Inc.	Settlement Notice issued; briefing suspended.

12. **Whether this appeal involves child custody or visitation:**

No.

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13. Whether this appeal involves the possibility of settlement:

Yes. The parties continue to explore settlement options.

Dated this 11th day of February, 2020.

FENNEMORE CRAIG, P.C.

/s/Christopher H. Byrd, Esq.

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CERTIFICATE OF SERVICE

Pursuant to EDCR 8.05(a) and 8.05(f) and Rule 9 of N.E.F.C.R., I hereby certify that I am an employee of the law firm of FENNEMORE CRAIG, P.C., and that on the 11th day of February, 2020, I caused to be served a true and correct copy of the document described herein to the following addressed entities by the method stated below:

Document Served: **CASE APPEAL STATEMENT**

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5 Attorneys for APCO Construction, Inc.

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 APCO CONSTRUCTION, a Nevada
corporation,

9 Plaintiff,

10 v.

11 GEMSTONE DEVELOPMENT WEST, INC.,
12 a Nevada corporation,

13 Defendant.

Case No. : 08A571228

Dept. No.: XIII

Consolidated with:

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

14 AND ALL RELATED MATTERS.
15

NOTICE OF CROSS APPEAL

16 **NOTICE IS HEREBY GIVEN** that Plaintiff APCO Construction, Inc. ("APCO"), by
17 and through its attorney of record, Fennemore Craig, P.C., hereby cross appeals to the Supreme
18 Court of Nevada from the Order Granting APCO Construction Inc.'s Motion for Attorneys' Fees
19 and Costs; the Order Granting APCO Construction Inc.'s Memorandum of Costs in Part; the Order
20 Granting Helix Electric of Nevada LLC's Motion to Retax in Part; all of which were entered on
21 September 28, 2018 (See **Exhibit "1"**); and the Order Granting Helix Electric of Nevada's Motion
22 for Rule 54(b) Certification, entered January 2, 2020 (See **Exhibit "2"**).

23 Dated this 11th day of February, 2020.

24 **FENNEMORE CRAIG, P.C.**

25 /s/Christopher H. Byrd, Esq.

26 John Randall Jefferies, Esq. (No. 3512)
Christopher H. Byrd, Esq. (No. 1633)
27 300 South Fourth St. 14th Floor
Las Vegas, NV 89101
28 Attorneys for APCO Construction, Inc.

CERTIFICATE OF SERVICE

Pursuant to EDCR 8.05(a) and 8.05(f) and Rule 9 of N.E.F.C.R., I hereby certify that I am an employee of the law firm of FENNEMORE CRAIG, P.C., and that on the 11th day of February, 2020, I caused to be served a true and correct copy of the document described herein to the following addressed entities by the method stated below:

Document Served: **NOTICE OF CROSS APPEAL**

VIA E-SERVICE:

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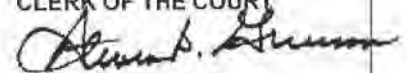
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Attorneys for Apco Construction, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

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

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

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

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

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon
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Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**
10
11 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCF
12 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
13 prepaid for non-registered users, on this 28th day of September, 2018, as follows:

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

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

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

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

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

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1 **Plaintiff: Apco Construction**

2 Rosie Wesp (rwesp@maclaw.com)

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

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Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228
Dept. No.: XIII

Consolidated with:

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

ORDER:

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

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

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

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT#13

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

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

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

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

27 ¹ NRCP 68(a).

28 ² NRCP 68(e).

29 ³ NRCP 68(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 APCO is awarded \$18,307.54 in costs against Helix.

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

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


8 IT IS SO ORDERED.

9 DATED this _____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 **SPENCER FANE LLP**

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LLC,

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

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

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 **SPENCER FANE LLP**

14 By:

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16 John Randall Jefferies, Esq. (Bar No. 3512)
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18 300 S. Fourth Street, Suite 950
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20 Telephone: (702) 408-3411
21 Facsimile: (702) 408-3401
22 *Attorneys for Apco Construction, Inc.*

23 Approved as to form by:

24 **RICHARD L. TOBLER, LTD.**

25 **PEEL BRIMLEY**

26 By:

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28 Nevada Bar No. 4070
29 3654 N. Rancho Drive, Suite 102
30 Las Vegas, Nevada 89130
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32 **NATIONAL WOOD PRODUCTS, INC.**



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

EXHIBIT 2



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7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs

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

18 Defendants.

19 **AND ALL RELATED MATTERS.**

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:
A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

NOTICE OF ENTRY OF ORDER

20 PLEASE TAKE NOTICE that an *Order Granting Helix Electric of Nevada's Motion for*
21 *Rule 54(b) Certification* was filed on **January 3, 2020**, a copy of which is attached as Exhibit I

22 DATED this 3rd day of January 2020.

PEEL BRIMLEY LLP

/s/ Eric Zimbelman

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 3rd day of January 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

to the attorney(s) and/or party(ies) listed below:

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Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Fidelity & Deposit Company Of Maryland:

Steven Morris (steve@gmdlegal.com)

E & E Fire Protection LLC:

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Interstate Plumbing & Air Conditioning Inc:

Jonathan Dabbieri (dabbieri@sullivanhill.com)

National Wood Products, Inc.'s:

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/s/ Amanda Armstrong

An employee of **PEEL BRIMLEY, LLP**

Exhibit 1



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Attorneys for Various Lien Claimants

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.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

**ORDER GRANTING HELIX
ELECTRIC OF NEVADA'S MOTION
FOR RULE 54(b) CERTIFICATION**

AND ALL RELATED MATTERS.

This matter came on for hearing September 9, 2019, before the Honorable Mark Denton in Dept. 13 on the Motion of Helix Electric of Nevada, LLC ("Helix") 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 Construction ("APCO"). Helix appeared through Eric Zimbelman, Esq. of Peel Brimley LLP and APCO appeared through Christopher H. Byrd, Esq. of Fennemore Craig, P.C. Having received and reviewed Helix' Motion, APCO's Opposition and Helix's Reply, and having heard argument of counsel the Court finds that no just reason for delay exists to certify the Judgments set forth below as final and for good cause

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RECEIVED
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DISTRICT COURT DEPT#13

1 shown:

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that Helix's Motion for
3 NRCP 54(b) Certification is GRANTED;

4 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
5 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
6 the entry of judgment as to the Judgment [as to the Claims of Helix Electric of Nevada, LLC
7 and Plaintiff in Intervention National Wood Products, Inc.'s (sic) against APCO Construction,
8 Inc.] filed May 31, 2018 and entered June 1, 2018, which incorporated by reference the
9 Findings of Fact, Conclusions of Law and Order as to the Claims of Helix Electric and
10 Cabinetec Against APCO filed April 25, 2018, and which Judgment is hereby certified as final
11 pursuant to NRCP 54(b);

12 IT IS FURTHER ORDERED that because no just reason for delay exists, and with
13 respect to the claims and defenses of Helix and APCO, this Court enters an express direction for
14 the entry of judgment as to the Order filed September 27, 2018 and entered September 28, 2018
15 (1) Granting APCO Construction, Inc. (sic) Motion for Attorneys Fees and Costs, (2) Granting
16 APCO Construction, Inc.'s Memorandum of Costs in Part, (3) Granting Helix Electric of
17 Nevada LLC's Motion to Retax in Part and Denying in Part, (4) Granting Plaintiff in
18 Intervention National Wood Product LLC's Motion to Retax in Part and Denying in Part, and
19 (5) Granting National Wood Products, Inc.'s Motion to File a Surreply, which is hereby certified
20 as final pursuant to NRCP 54(b).

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1 IT IS FURTHER ORDERED that Helix shall have thirty days from the notice of entry
2 of this Order to post a bond for the full amount of the Judgment in favor of APCO, \$103,307.54,
3 whereupon execution of said Judgment shall be stayed pending appeal.

4 IT IS SO ORDERED this 17th day of December, 2019.

5
6
7 
DISTRICT COURT JUDGE

8
9 Respectfully submitted by:
10 PEEL BRIMLEY LLP

11  *BAR 12723*
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