

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

2 APCO CONSTRUCTION, INC., A
3 NEVADA CORPORATION; AND
4 SAFECO INSURANCE COMPANY
 OF AMERICA,

5 Appellants,

6 vs.

7 HELIX ELECTRIC OF NEVADA,
8 LLC, A NEVADA LIMITED
 LIABILITY COMPANY,

9 Respondent.

Case No. 80177

Electronically Filed
Mar 19 2021 05:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **APPEAL**

11 from the Eighth Judicial District Court, Clark County
12 The Honorable ELIZABETH GOFF GONZALEZ, District Judge
 District Court Case No. A-16-730091-B

13 Joint Appendix
14 Volume V

15 John Randall Jefferies, Esq. (SBN 3512)
16 Christopher H. Byrd, Esq. (SBN 1633)
 Elizabeth J. Bassett (SBN 9013)
 FENNEMORE CRAIG, P.C.
17 300 South 4th Street, 14th Floor
 Las Vegas, Nevada 89101
18 Telephone: (702) 692-8000

19 *Attorneys for Appellants APCO Construction, Inc.
 and Safeco Insurance Company of America*

ALPHABETICAL TABLE OF CONTENTS TO JOINT APPENDIX

Vol.	Pages	Date	Document
IV	JA626- JA645	11/27/2018	APCO Construction, Inc. and Safeco Insurance Company of America's Motion to Continue Trial (Second Request)
VI	JA1007- JA1012	5/31/2019	APCO Construction, Inc.'s Trial Memorandum Pursuant to EDCR 7.27 re: Potential Evidentiary Issues
I	JA19- JA26	4/11/2017	APCO's Answer to Complaint
VI	JA803- JA912	3/29/2019	Appendix to Helix Electric of Nevada, LLC's Opposition to APCO Construction's and Safeco Insurance Company of America's Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4 to Preclude any Evidence of Helix's Accounting Date or Job Cost Reports
VII	JA1044- JA1259	6/3/2019	Bench Trial Transcript, Day 1
VIII	JA1262- JA1504	6/4/2019	Bench Trial Transcript, Day 2
IX	JA1506- JA1638	6/5/2019	Bench Trial Transcript, Day 3
VI	JA1036- JA1041	6/3/2019	Clerk's Exhibit List
I	JA1- JA12	1/12/2016	Complaint
I	JA65	5/17/2017	Court Minutes
I	JA174- JA175	6/9/2017	Court Minutes
II	JA302	7/26/2017	Court Minutes
IV	JA646	11/28/2018	Court Minutes
IV	JA655	12/4/2018	Court Minutes

Vol.	Pages	Date	Document
V	JA779	3/4/2019	Court Minutes
VI	JA921	5/13/2019	Court Minutes
VI	JA922	5/14/2019	Court Minutes
VII	JA1042- JA1043	6/3/2019	Court Minutes
VII	JA1260- JA1261	6/4/2019	Court Minutes
VIII	JA1505	6/5/2019	Court Minutes
XVII	JA3484	6/21/2019	Court Minutes
XVII	JA3485	7/5/2019	Court Minutes
XX	JA4127	8/19/2019	Court Minutes
XXI	JA4196	9/30/2019	Court Minutes
XXI	JA4202	10/4/2019	Court Minutes
IV	JA647- JA654	11/29/2018	Declaration in Support of Omnibus Motion in Limine 1-2
I	JA56- JA64	5/10/2017	Defendant's Reply in Support of Motion to Dismiss Plaintiff's Claims against Bond and Countermotion for Fees and Costs of Motion
XVII	JA3401- JA3425	6/3/2019	Defendant's Trial Exhibit DX201
XVII	JA3426- JA3431	6/3/2019	Defendant's Trial Exhibit DX202
XVII	JA3432- JA3435	6/3/2019	Defendant's Trial Exhibit DX203
XVII	JA3436- JA3452	6/3/2019	Defendant's Trial Exhibit DX204
XVII	JA3453- JA3454	6/3/2019	Defendant's Trial Exhibit DX205
XVII	JA3455- JA3456	6/3/2019	Defendant's Trial Exhibit DX206
XVII	JA3457- JA3463	6/3/2019	Defendant's Trial Exhibit DX207
XVII	JA3464- JA3466	6/3/2019	Defendant's Trial Exhibit DX208

Vol.	Pages	Date	Document
XVII	JA3467- JA3472	6/3/2019	Defendant's Trial Exhibit DX209
XVII	JA3473- JA3477	6/3/2019	Defendant's Trial Exhibit DX210
XVII	JA3478- JA3479	6/3/2019	Defendant's Trial Exhibit DX211
XVII	JA3480- JA3481	6/3/2019	Defendant's Trial Exhibit DX212
XVII	JA3482- JA3483	6/3/2019	Defendant's Trial Exhibit DX213
XXI	JA4128- JA4194	9/12/2019	Defendants' Opposition to Motion for Attorneys' Fees, Costs and Interest
IV	JA611- JA625	11/21/2018	Defendants Reply in Support of Motion in Limine 1-2
XVIII	JA3676- JA3710	7/15/2019	Defendants' Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law
I	JA66- JA173	5/23/2017	Defendants' Motion for Partial Summary Judgment
V	JA661- JA778	12/23/2018	Defendants' Motion In Limine No. 3 To Preclude The Introduction Of Evidence Related To Helix's Extended General Conditions And Motion In Limine No. 4 To Preclude Any Evidence Of Helix's Accounting Data Or Job Cost Reports
VI	JA929- JA954	5/22/2019	Defendants' Motion to Exclude the Testimony of Kurt Williams on Order Shortening Time
III	JA321- JA453	7/20/2018	Defendants' Omnibus Motion in Limine 1-2
XX	JA3881- JA4104	8/12/2019	Defendants' Opposition to Helix's Countermotion for Amendment to Findings of Fact and Conclusions of Law; and Reply in Support of Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law

Vol.	Pages	Date	Document
VI	JA995- JA1006	5/31/2019	Defendants' Pre-Trial Memorandum
VI	JA1013- JA1035	5/31/2019	Defendants' Proposed Findings of Fact and Conclusions of Law
II	JA283- JA301	6/21/2017	Defendants' Reply in Support of Motion for Partial Summary Judgment
VI	JA913- JA920	4/8/2019	Defendants' Reply in Support of: Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4
XXI	JA4203- JA4205	11/6/2019	Final Judgment
XVII	JA3486- JA3508	7/8/2019	Findings of Fact and Conclusions of Law
I	JA48- JA55	4/28/2017	Helix Electric of Nevada, LLC's Opposition to Safeco Insurance Company of America's (i) Motion to Dismiss, and (ii) Countermotion for Fees and Costs
XVIII	JA3711- JA3765	7/29/2019	Helix Electric of Nevada, LLC's (I) Opposition to APCO Construction, Inc.'s and Safe Insurance Company of America's Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law; and (II) Countermotion for Amendment to Findings of Fact and Conclusions of Law
XVIII	JA3536- JA3675	7/12/2019	Helix Electric of Nevada, LLC's Memorandum of Costs and Disbursements
XIX	JA3766- JA3880	7/31/2019	Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Costs and Interest
XX	JA4105- JA4126	8/15/2019	Helix Electric of Nevada, LLC's Reply in Support of Helix's Countermotion for Amendment to Findings of Facts and Conclusions of Law

Vol.	Pages	Date	Document
XXI	JA4165- JA4195	9/23/2019	Helix Electric of Nevada, LLC's Reply in Support of its Motion for Attorneys' Fees, Costs and Interest
XXI	JA4197- JA4201	10/1/2019	Helix Electric of Nevada, LLC's Supplement to its Motion for Attorneys' Fees, Costs and Interest
IV	JA656- JA660	12/14/2018	Helix Opposition to APCO Motion to Continue Trial
VI	JA955- JA972	5/24/2019	Joint Pre-Trial Memorandum
IX	JA1639- JA1642	6/3/2019	Joint Trial Exhibit JX001
X, XI	JA1643- JA1896	6/3/2019	Joint Trial Exhibit JX002
XI	JA1897- JA1899	6/3/2019	Joint Trial Exhibit JX003
XI, XII	JA1900- JA2171	6/3/2019	Joint Trial Exhibit JX004
XII, XIII	JA2172- JA2509	6/3/2019	Joint Trial Exhibit JX005
XIII	JA2510- JA2577	6/3/2019	Joint Trial Exhibit JX006
XIII	JA2578- JA2579	6/3/2019	Joint Trial Exhibit JX007
XIII	JA2580- JA2581	6/3/2019	Joint Trial Exhibit JX008
XIII	JA2582- JA2584	6/3/2019	Joint Trial Exhibit JX009
XIII	JA2585- JA2599	6/3/2019	Joint Trial Exhibit JX010
XIII	JA2600- JA2640	6/3/2019	Joint Trial Exhibit JX011
XIII	JA2641- JA2642	6/3/2019	Joint Trial Exhibit JX012
XIV	JA2643- JA2645	6/3/2019	Joint Trial Exhibit JX013

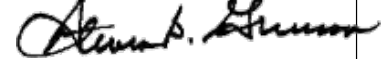
Vol.	Pages	Date	Document
XIV	JA2646- JA2652	6/3/2019	Joint Trial Exhibit JX014
XIV	JA2653- JA2665	6/3/2019	Joint Trial Exhibit JX015
XIV	JA2666- JA2672	6/3/2019	Joint Trial Exhibit JX016
XIV	JA2673- JA2674	6/3/2019	Joint Trial Exhibit JX017
XIV	JA2675- JA2677	6/3/2019	Joint Trial Exhibit JX018
XIV	JA2678- JA2681	6/3/2019	Joint Trial Exhibit JX019
XIV	JA2682- JA2686	6/3/2019	Joint Trial Exhibit JX020
XIV	JA2687- JA2697	6/3/2019	Joint Trial Exhibit JX021
XIV	JA2698- JA2701	6/3/2019	Joint Trial Exhibit JX022
XIV	JA2702- JA2707	6/3/2019	Joint Trial Exhibit JX023
XIV	JA2708- JA2713	6/3/2019	Joint Trial Exhibit JX024
XIV	JA2714- JA2728	6/3/2019	Joint Trial Exhibit JX025
XIV	JA2729- JA2738	6/3/2019	Joint Trial Exhibit JX026
XIV	JA2739- JA2743	6/3/2019	Joint Trial Exhibit JX027
XIV	JA2744- JA2745	6/3/2019	Joint Trial Exhibit JX028
XIV	JA2746- JA2749	6/3/2019	Joint Trial Exhibit JX029
XIV	JA2750- JA2777	6/3/2019	Joint Trial Exhibit JX030
XIV	JA2778- JA2779	6/3/2019	Joint Trial Exhibit JX031

Vol.	Pages	Date	Document
XIV	JA2780- JA2781	6/3/2019	Joint Trial Exhibit JX032
XIV	JA2782- JA2786	6/3/2019	Joint Trial Exhibit JX033
XIV	JA2787- JA2789	6/3/2019	Joint Trial Exhibit JX034
XIV	JA2790- JA2794	6/3/2019	Joint Trial Exhibit JX035
XIV	JA2795- JA2799	6/3/2019	Joint Trial Exhibit JX036
XIV	JA2800- JA2801	6/3/2019	Joint Trial Exhibit JX037
XIV	JA2802- JA2804	6/3/2019	Joint Trial Exhibit JX038
XIV	JA2805- JA2806	6/3/2019	Joint Trial Exhibit JX039
XIV	JA2807- JA2808	6/3/2019	Joint Trial Exhibit JX040
XIV	JA2809- JA2811	6/3/2019	Joint Trial Exhibit JX041
XIV	JA2812- JA2815	6/3/2019	Joint Trial Exhibit JX042
XIV	JA2816- JA2819	6/3/2019	Joint Trial Exhibit JX043
XIV	JA2820- JA2825	6/3/2019	Joint Trial Exhibit JX044
XIV	JA2826	6/3/2019	Joint Trial Exhibit JX045
XIV	JA2827- JA2829	6/3/2019	Joint Trial Exhibit JX046
XIV	JA2830- JA2833	6/3/2019	Joint Trial Exhibit JX047
XIV	JA2834- JA2835	6/3/2019	Joint Trial Exhibit JX048
XIV	JA2836- JA2845	6/3/2019	Joint Trial Exhibit JX049

Vol.	Pages	Date	Document
XIV, XV	JA2846- JA2954	6/3/2019	Joint Trial Exhibit JX050
XV, XVI	JA2955- JA3160	6/3/2019	Joint Trial Exhibit JX051
XVI	JA3161- JA3166	6/3/2019	Joint Trial Exhibit JX052
XVI	JA3167- JA3176	6/3/2019	Joint Trial Exhibit JX053
XVI	JA3177- JA3182	6/3/2019	Joint Trial Exhibit JX054
XVI	JA3183- JA3188	6/3/2019	Joint Trial Exhibit JX055
XVI	JA3189- JA3195	6/3/2019	Joint Trial Exhibit JX056
XVI	JA3196- JA3202	6/3/2019	Joint Trial Exhibit JX057
XVI	JA3203- JA3208	6/3/2019	Joint Trial Exhibit JX058
XVI	JA3209- JA3214	6/3/2019	Joint Trial Exhibit JX059
XVI	JA3215- JA3220	6/3/2019	Joint Trial Exhibit JX060
XVI	JA3221- JA3226	6/3/2019	Joint Trial Exhibit JX061
XVI	JA3227- JA3232	6/3/2019	Joint Trial Exhibit JX062
XVI	JA3233- JA3238	6/3/2019	Joint Trial Exhibit JX063
XVI	JA3239- JA3243	6/3/2019	Joint Trial Exhibit JX064
XVI	JA3244- JA3248	6/3/2019	Joint Trial Exhibit JX065
XVI	JA3249- JA3250	6/3/2019	Joint Trial Exhibit JX066
XVI	JA3251- JA3259	6/3/2019	Joint Trial Exhibit JX067

Vol.	Pages	Date	Document
XVI	JA3260- JA3272	6/3/2019	Joint Trial Exhibit JX068
XVI	JA3273- JA2389	6/3/2019	Joint Trial Exhibit JX069
XVI	JA3290- JA3298	6/3/2019	Joint Trial Exhibit JX070
XVI	JA3299- JA3312	6/3/2019	Joint Trial Exhibit JX071
XVI	JA3313- JA3320	6/3/2019	Joint Trial Exhibit JX072
XVI	JA3321- JA3328	6/3/2019	Joint Trial Exhibit JX073
XVI	JA3329- JA3336	6/3/2019	Joint Trial Exhibit JX074
XVI	JA3337- JA2245	6/3/2019	Joint Trial Exhibit JX075
XVI	JA3346- JA3353	6/3/2019	Joint Trial Exhibit JX076
XVI	JA3354- JA3364	6/3/2019	Joint Trial Exhibit JX077
XVI	JA3365- JA3366	6/3/2019	Joint Trial Exhibit JX078
XXI	JA4212- JA4251	12/6/2019	Notice of Appeal
V	JA780- JA781	3/19/2019	Notice of Departmental Sealing and/or Redacting Procedures
XXI	JA4206- JA4211	11/6/2019	Notice of Entry of Final Judgment
XVII	JA3509- JA3535	7/10/2019	Notice of Entry of Findings of Facts and Conclusions of Law and Order
II	JA314- JA320	9/7/2017	Notice of Entry Order Denying Motion for (i) Motion to Dismiss and (ii) Order for Fees and Costs
II	JA310- JA313	9/7/2017	Notice of Entry Order Denying Motion for Partial Summary Judgment

Vol.	Pages	Date	Document
V	JA782- JA802	3/29/2019	Opposition to APCO Construction's and Safeco Insurance Company of America's Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4 to Preclude any Evidence of Helix's Accounting Date or Job Cost Reports
VI	JA973- JA994	5/31/2019	Opposition to APCO Construction's and Safeco Insurance Company of America's Motion to Exclude the Testimony of Kurt Williams
II	JA176- JA282	6/9/2017	Opposition to Motion for Summary Judgment
IV	JA454- JA610	11/20/2018	Opposition to Omnibus Motion in Limine 1-2
II	JA305- JA309	9/7/2017	Order Denying (i) Motion to Dismiss and (ii) Order for Fees and Costs
II	JA303- JA304	9/7/2017	Order Denying Motion for Partial Summary Judgment
XVI	JA3367- JA3372	6/3/2019	Plaintiff's Trial Exhibit PX101
XVI, XVII	JA3373- JA3400	6/3/2019	Plaintiff's Trial Exhibit PX102
I	JA13- JA15	1/19/2016	Proof of Service of Summons on Defendant APCO Construction, Inc.
I	JA16- JA18	1/20/2016	Proof of Service of Summons on Defendant Safeco Insurance Company of America
VI	JA923- JA928	5/16/2019	Safeco Insurance Company of America's Answer to Plaintiff's Complaint
I	JA27- JA47	4/11/2017	Safeco's Motion to Dismiss Plaintiff's Claims Against Bond and Countermotion for Fees and Costs of Motion



MIL
SPENCER FANE LLP
John Randall Jefferies, Esq. (Bar No. 3512)
Mary E. Bacon, Esq. (Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
E-mail: RJefferies@spencerfane.com
MBacon@spencerfane.com
*Attorneys for APCO Construction, Inc.
and Safeco Insurance Company of America*

DISTRICT COURT
CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

v.

APCO CONSTRUCTION, a Nevada
corporation; SAFECO INSURANCE
COMPANY OF AMERICA; DOES I through
X; and BOE BONDING COMPANIES, I
through
X, Defendants.

Case No.: A-16-730091-C
Dept. No.: XVII

APCO CONSTRUCTION, INC. AND
SAFECO INSURANCE COMPANY OF
AMERICA'S MOTION IN LIMINE NO. 3
TO PRECLUDE THE INTRODUCTION OF
EVIDENCE RELATED TO HELIX'S
EXTENDED GENERAL CONDITIONS
AND
MOTION IN LIMINE NO. 4 TO PRECLUDE
ANY EVIDENCE OF HELIX'S
ACCOUNTING DATA
OR JOB COST REPORTS

APCO Construction, Inc. ("APCO"), by and through its attorneys, Spencer Fane LLP, hereby moves to preclude Plaintiff Helix Electric of Nevada, LLC ("Helix") from introducing evidence related to claim for extended general conditions. After noticing Helix's NRCP 30(b)(6) deposition to testify on this topic, Helix's designees were unable to answer even the most basic questions about the claim or damage calculation. So after two NRCP 30(b)(6) depositions on

1 Helix's claims and demand for extended general conditions, APCO is left severely prejudiced and
2 unable to defend itself against Helix's claim. The Court should exclude evidence related to
3 Helix's extended general conditions claim. Alternatively, APCO moves to bind Helix to the
4 answers it gave during its Rule 30(b)(6) deposition, so that it cannot introduce any evidence at trial
5 that would change its answers from the "I don't knows" that were rampant at its NRCP 30(b)(6)
6 deposition.

7 APCO also moves to exclude Helix from using any accounting documentation or job cost
8 reports at trial. Despite its independent discovery obligations and APCO's discovery requests
9 asking for this information, Helix only produced incomplete records and reports. Without
10 complete job cost reports, APCO could not fully analyze Helix's claim for additional costs. As
11 such—and because such failure to produce its full job cost was voluntary—APCO moves to
12 exclude the incomplete copies from being used at trial.

13 This Motion is made and based upon NRCP 30 and 37, the attached Declaration of Mary
14 E. Bacon, Esq., the following Memorandum of Points and Authorities, the exhibits attached
15 hereto, the papers and pleadings filed herein, and any argument presented at the time of hearing on
16 this matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring APCO CONSTRUCTION, INC.'S AND SAFE INSURANCE COMPANY OF AMERICA'S MOTIONS IN LIMINE 3-4 for hearing on the 23 of January 2019, in Department XVII of the above-entitled Court at the hour of 8:30 AM, or as soon thereafter as counsel may be heard.

DATED: December 23, 2018.

SPENCER FANE LLP

By /s/ John Randall Jefferies
John Randall Jefferies, Esq. (Bar No. 3512)
Mary E. Bacon, Esq. (Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
*Attorneys for APCO Construction, Inc.
and Safeco Insurance Company of America*

1
2 **DECLARATION OF MARY BACON, ESQ. IN SUPPORT OF**
3 **APCO'S MOTIONS IN LIMINE**

4 **I, MARY BACON, ESQ.,** do hereby declare:

5 1. I am an attorney duly licensed to practice law in the State of Nevada.

6 2. I am an attorney at the law firm of Spencer Fane LLP, and am an attorney for
7 APCO in the above-captioned action.

8 3. If called upon to testify, I could and would testify competently to the following
9 facts that are true within my personal knowledge.

10 4. On December 21, 2018, I had a meet and confer telephone conference with counsel
11 for Helix Electric of Nevada, LLC ("Helix"), during which the parties attempted to resolve the
12 issues presented in this motion.

13 5. The parties were unable to resolve these issues. The parties fundamentally
14 disagreed on both: (1) whether Helix's two 30(b)(6) designees adequately testified to the topics in
15 APCO's 30(b)(6) notice and (2) whether Helix was under an obligation to produce complete job
16 cost and accounting documents. To date, complete job costing and accounting documents have
17 not been produced.

18 I declare under penalty of perjury that the foregoing is true and correct.
19

20 EXECUTED this 23rd day of December 2018.
21

22 /s/ Mary Bacon
23 MARY BACON, ESQ.
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. STATEMENT OF PERTINENT FACTS**

3 On July 3, 2018, APCO noticed the Rule 30(b)(6) deposition of the person most
4 knowledgeable at Helix,¹ (the "Notice") to address the following seven topics that relate to Helix's
5 claims, the parties' payment processes including releases, its contract with APCO, and most
6 critically, its claim for extended general conditions:

- 7 1. Your claims and facts as alleged against APCO;
8 2. Documents that you have disclosed in support of your claims
9 against APCO;
10 3. Your assertion that APCO is liable for any portions of your
11 general and/or bond claims;
12 4. The payment process, payment details, scope of payments,
13 parties involved, and standard practices of payment, including,
14 but not limited to, all payment applications, approvals, amounts,
15 checks, and releases;
16 5. Each fact related to your contract agreement with APCO in
17 regard to the Craig Ranch ("Project") at issue in this matter,
18 including, but not limited to original contact(s), change orders,
19 and ratification agreement(s);
20 6. Each fact related to your scope of work at the Project; and
21 7. **Your claimed damages against APCO, more specific, but not
22 limited to, your assertions of damages as they relate to
23 Helix's general extended conditions.**²

24 Helix is seeking \$138,151 in damages in this action, all related to Helix's claim for extended
25 general conditions,³ so APCO's seventh topic was critical. Helix did not object to any of the topics
26 in the Notice nor did it seek a protective order. Helix first designated Mr. Eric Rainer Pritzel to
27 testify on its behalf.⁴ Mr. Pritzel was Helix's field superintendent on the Project. When asked
28 which of the seven topics he was designated to testify about, Mr. Pritzel responded:

29 A. The -- I was the field superintendent. So anything that needed to be
30 coordinated out in the field, construction-wise, you know, conduit, wire, pulling,

31 _____
32 ¹ Exhibit 1, Notice of Deposition of Helix's PMK.

33 ² Exhibit 1, Notice of Deposition of Helix's PMK.

34 ³ Exhibit 2, Helix's Initial List of Witnesses and Documents at pg. 12.

35 ⁴ Exhibit 3, Deposition of Eric Rainer Pritzel.

1 trenching, stuff like that, then that's what I can answer for you. Any type of
2 equipment stuff like that.

3 Q. Okay. How about project billing?

4 A. That's -- I'm not the guy for that.

5 Q. Okay. How about project job cost accounting?

6 A. That would not be me.

7 Q. Okay. What about notice of claims?

8 A. That's not my scope of work.⁵

9 When asked what he did to prepare for the deposition, Mr. Pritzel first answered that he did
10 "nothing," and then clarified that he reviewed "some of the cost accrued, the amount of time we
11 had, the trailer, the forklifts, the wire pullers, you know, pulling trailer right there, any of those
12 sheets where we had those accrued costs,"⁶ but confirmed he did **nothing** to investigate the seven
13 topics in the Notice:

14 Q. Okay. Did you take any steps to investigate any topics on the
15 deposition notice for today?

16 A. No.⁷

17 Mr. Pritzel's lack of preparation was obvious throughout his deposition. Even though one of the
18 topics in the PMK notice was the Subcontract between APCO and Helix, Mr. Pritzel testified:

19 Q. Are you familiar with the subcontract between Helix and APCO
20 for the project?

21 A. No.⁸

22 ...

23 Would you agree, to the extent that the city was holding Helix up,
24 that Helix had an obligation to so notify Apco?

25 THE WITNESS: I don't think I can honestly answer that. I -- I
26 don't know. Yeah. No.⁹

27 ⁵ Deposition of Eric Rainer Pritzel (Oct. 4, 2018) at 5:6-21.

28 ⁶ *Id.* at 8:5-17.

⁷ Deposition of Eric Rainer Pritzel at 12:6-9.

⁸ Deposition of Eric Pritzel at 14:11-14.

⁹ Deposition of Eric Rainer Pritzel at 40.

1 The fifth topic in the Notice was the Project's change orders.¹⁰ But Helix's PMK did not
2 have any information on the Project's change orders:
3

4 Q. Did you ever submit a change order or request additional time
from --

5 A. I can't recall -- sorry.

6 Q. Let me make sure my record is clear. Did Helix ever submit a
claim or request for additional time because of that?

7 HELIX'S COUNSEL: Object to the form of the question.

THE WITNESS: I can't honestly answer that.

8 BY APCO'S COUNSEL:

Q. Okay.¹¹

9 ...

10 Q. Okay. As you sit here today, do you know if Helix ever
submitted a request for additional time?

11 A. That wouldn't be me.

12 Q. Okay.¹²

13 ...

14 Q. Did Helix ever ask for additional time and general conditions on
any extra work change orders that may have been submitted?

15 [objection to the form of the question]

16 THE WITNESS: That wouldn't be me.¹³

17 ...

18 Q. Do you have any way to quantify how, if at all, performing that
extra work delayed Helix on the project?

19 HELIX'S COUNSEL: Object to the form of the question.

20 THE WITNESS: That would be through my project manager.

21 BY APCO'S COUNSEL:

Q. Okay. And I respect that. I guess I'm asking -- okay. Sitting here
today, you do not?

22 A. Correct.¹⁴

23 ...

24
25 ¹⁰ See Notice.

26 ¹¹ Deposition of Eric Rainer Pritzel at 56.

27 ¹² Deposition of Eric Rainer Pritzel at 59.

¹³ Deposition of Eric Rainer Pritzel at 63.

1 Q. Did you ever prepare any documents or information to be
2 submitted to the project manager for billing purposes, i.e.,
percentage complete on items or quantities of items completed?

3 A. No, that's his -- that's him.

4 Q. So you have no personal knowledge of any outstanding or
submitted change order requests?

5 A. No.

6 Q. No involvement in the pay application process?

7 A. No.¹⁵

8 Another topic in the Notice was Helix's claim for extended general conditions.¹⁶ Mr.
9 Pritzle could not answer even the most basic questions related to Helix's claim:

10 Q. Do you know what Helix's original anticipated duration for the
project was?

11 A. No.¹⁷

12 Without exploring how long Helix anticipated in its Project estimate, APCO cannot determine
13 when Helix allegedly started accruing its alleged extended general conditions. Further, when
14 asked about whether Helix had a budget for general conditions, Mr. Pritzel responded, "That's not
15 my scope of work."¹⁸ When asked whether he could identify any delay on the Project specifically
16 attributable to APCO, Mr. Pritzel testified "I—I personally, as a – as a field superintendent, no."¹⁹
17 But Mr. Pritzel wasn't being deposed personally—he was being deposed as Helix's 30(b)(6)
designee.

18 When Mr. Pritzle was asked whether certain man-hours were included in Helix's claim, he
19 did not know:

20 Q. And I know – since you're accounting for these additional man-
21 hours, do you know if Helix was paid for that?

22
23
24 ¹⁴ Pritzle at 64.

25 ¹⁵ Pritzle at 94-95.

26 ¹⁶ See Notice at Topic 7.

27 ¹⁷ Deposition of Eric Rainer Pritzel at 29.

28 ¹⁸ *Id.* at 29:24-30: 2.

¹⁹ Deposition of Eric Rainer Pritzel at 32.

1 **A. I don't know.**²⁰

2 And Helix's claim for extended general conditions directly relates to when its work was
3 substantially complete in relation to when the Project was supposed to finish, but Helix's PMK did
4 not know that information either:

5 Q. Does that indicate to you that your work is substantially complete at
6 or about that point?

7 **A. I can't – can't comment on substantially complete. That would**
8 **be the PM. I mean, that could just be tools that I'm just not using anymore.**²¹

9 ...

10 Q. The fact that you're calling off the Connex, does that indicate to you
11 that, from your perspective in the field, you're substantially complete as of July 24,
12 2013?

13 **A. I can't answer that. That would have to be the project**
14 **manager....**²²

15 Because of the limited nature of what Mr. Pritzel was able to testify about, APCO allowed
16 Helix to produced Mr. Robert Johnson on November 28, 2018 as its second Rule 30(b)(6)
17 designee confirming that, "...he is here to cover those topics that weren't covered in the prior
18 30(b)(6) depositions. There were a few in there."²³

19 Mr. Johnson is Helix's Senior Vice President.²⁴ To prepare for the deposition, he reviewed
20 one deposition transcript and the pleadings in the case.²⁵ He also testified that he had recently
21 reviewed some corporate records related to equipment lists, but not for purposes of the Rule
22 30(b)(6) deposition.²⁶ In fact, he did not review any corporate records for his deposition:

23

24 ²⁰ *Id.* at 71:16-21.

25 ²¹ *Id.* at 87:14-21.

26 ²² *Id.* at 92:9-15.

27 ²³ Exhibit 4, Deposition of Bob Johnson Deposition at 5.

28 ²⁴ Deposition of Robert Johnson (November 28, 2018) at 5:8.

²⁵ *Id.* at 7:3-18.

²⁶ *Id.* at 7:19-8:3.

1 Q. Okay. So in preparation for today's deposition you didn't review
2 any corporate records?

3 A. No.²⁷

4 Like Mr. Pritzel, Mr. Johnson was unable to answer questions related to the topics in the
5 Notice, the most critical being his lack of knowledge of Helix's extended general conditions which
6 account for all \$138,000 in damages Helix seeks in this case. For example, Mr. Johnson could not
7 testify how Helix even arrived at the calculation of its damages or which cost components went
8 into its extended general condition damages:

9 Q. Sitting here today, you can't tell me what cost components go into
10 that \$108,000 general condition line item in Exhibit 1, can you?

11 A. No, not the details no.²⁸

12 The truth is Helix's PMK did not know or care how its extended general conditions were
13 calculated:

14 Sitting here today, what would you go review to determine how the
15 line item of \$108,040 for general conditions was prepared?

16 A. How would I review it?

17 Q. Yes.

18 A. When I reviewed this as a senior VP getting this delivered to me?

19 Q. We can do it that way.

20 A. It's not relevant to me. All I care about is what are we billing,
21 what are our overall costs to date. Individual line items is up to the
22 PM to negotiate with his counterpart at Apco. It's not relevant to me
23 how any one of these individual ones are arrived at.²⁹

24 To highlight just how cavalier Helix was about its damages, it brazenly testified that its damages
25 could "be anything" and it would depend on how the project manager built the job, but the second
26 designee did not know how they were calculated on this Project:

27 Q. Now go to line item 35. It says, "General conditions." What does
28 that line item represent?

²⁷ Deposition of Robert Johnson at 8.

²⁸ *Id.* at 13:23-14:1.

²⁹ Deposition of Robert Johnson at 10-12.

1 A. It would be anything related to cost to be on site. It could be a
2 whole bunch of stuff. **What they comprised into that dollar**
3 **amount I don't know**, but it could be equipment, it could be --
4 project management could be in there for his time. It could be a
5 number of things. **We'd have to find out how the particular**
6 **project manager built this particular one up.**

7 Q. Okay. How would you make that determination?

8 A. For the general conditions?

9 Q. Yeah.

10 A. I wouldn't. The project manager would, so number one. Two, it
11 varies from job to job. You got -- again, I'll go back to you got the
12 contract documents that allow so much to be billed
13 for general conditions, that allow so much for (inaudible), tell you
14 sometimes what you can or cannot put into general conditions. **So**
15 **you're asking me some specifics on something I can't answer**
16 **here today because I just got numbers and I don't know how the**
17 **numbers were comprised.**³⁰

18 The Notice asked for specific information related to the Craig Ranch Project and Helix's claims
19 against APCO, not just how Helix generally prepares general conditions.³¹ And when APCO tried
20 to discern which cost components could have gone into the claim, Helix could not answer:

21 Q. You're not including any of those costs, are you, in your general
22 conditions claim against Apco?

23 A. **I don't know if we are or we aren't, to be honest with you.**³²

24 Since it was clear that Helix's PMK could not testify to its damages, APCO sought documents to
25 try and confirm whether the alleged damages were substantiated. But APCO's efforts were in
26 vein:

27 Q. Okay. Is there documentation that you could go review within
28 Helix's business records that would show you how somebody
calculated the \$108,000 for general conditions?

A. I don't know that answer.³³

³⁰ Deposition of Robert Johnson at pg. 11.

³¹ Exhibit 1, Notice of Deposition to Helix's PM.

³² Deposition of Robert Johnson at 46:20-24.

³³ Deposition of Robert Johnson at 12.

1 And there are no documents to reflect the original budget for extended general conditions
2 which could have helped APCO determine how much over the general conditions budget Helix
3 was. *See* Deposition of Johnson at 16 (“Q. And is there a document that would reflect the original
4 budget for general conditions? A. No.”) More importantly, a claim for extended general
5 conditions would only start after the time Helix estimated under the contract would run—but
6 Helix did not even know when it first mobilized to the Project:

7 Q. Okay. Can you tell me when Helix fully mobilized to the project?

8 A. I can't recall the date, no.³⁴

9 Helix's responses make it impossible to tell when Helix started and finished its contract
10 work. Next, APCO tried to reverse engineer Helix's damages by mathematically trying to figure
11 out the cost of Helix's general conditions per each month under its original bid to try and
12 determine what its extended general conditions would be during a delay. But Helix was not able to
13 assist in that either:

14 Q. Okay. Sitting -- strike that. Are you able to do the math given
15 the percent complete on the general conditions of period the original
16 line item assumed that Helix would be on site?

17 A. Say that again.

18 Q. Sure. Mathematically for this 30-day period, you are billing
19 \$7,500 for general conditions; correct?

20 A. Correct.

21 Q. Can you take that number and mathematically determine, if that
22 rate was used every 30 days, what period of time Helix assumed it
23 would be on site?

24 A. I can't do that sitting here, no.

25 Q. Why?

26 A. Why? Because I'd have to know when the job started and move
27 mathematically backwards to see if it is every period like you're
28 asking. So I can't tell you and I'm not going to try to figure it in my
head, especially since I don't know the date we were exactly on site.
So, no, I can't.

Q. As a matter of practice, would the \$108,040 shown on the pay
application that I've marked as Exhibit 1 be based upon Helix's
budget for the project?

A. Not necessarily.³⁵

³⁴ Deposition of Robert Johnson at 14.

1 In fact, to Helix, the general conditions are just "a dollar to bill against, it's not allocated by any
2 time period."³⁶ That makes it impossible for APCO to determine Helix's damages because Helix
3 picked a number out of thin air. To make matters worse, Helix confirmed it never bothered to
4 check its own total cost accounting on the Project to determine Helix's actual damages. *See*
5 Johnson Deposition at 18 ("Q. Okay. At any time during this case have you gone back to Helix's
6 accounting system to look at the cost coding of the total costs on the project? A. No.").

7 Since Helix does not have any explanation for how it calculated its damages, APCO tried
8 to obtain an understanding of its damages through Helix's expected job costs versus its actual job
9 costs, documents Helix maintains in its ordinary course of business. But Helix refused to produce
10 those documents:

11 Q. How does Helix determine if it made money on the project?

12 A. By determining the amount of margin in dollars and percentage
13 based on what we anticipated.

14 Q. Based on what you anticipated in terms of cost?

15 A. In terms of cost, correct.

16 Q. And that type of a calculation is not reflected in Exhibit 3
17 [Helix's Job Costing- Transaction Report]?

18 A. No.

19 Q. What document would reflect that information?

20 A. It would be a report from our accounting system that would show
21 project cost total versus contract amount.

22 Q. And I assume that you still have access to that information for
23 the project?

24 A. Should.

25 APCO'S COUNSEL: [Helix's counsel], are you willing to look for
26 and produce that?

27 HELIX'S COUNSEL: A total -- a loss/profit type analysis? What is
28 it you're looking for exactly?

APCO'S COUNSEL: I'm looking for calculation of costs versus
budgets or contract amounts.

HELIX'S COUNSEL: I guess I will reserve the right to respond to
that. I don't -- I mean discovery's come and gone. It wasn't
something that was specifically asked for. And it sounds like it's a
report that has to be generated, it isn't something that already exists,

³⁵ Deposition of Robert Johnson at 15-16.

³⁶ Deposition of Robert Johnson at 15.

1 such as this one had to be generated. So I guess we'll discuss that
2 off the record.

3 APCO'S COUNSEL: Well, let me make sure our record's clear.

4 BY APCO'S COUNSEL:

5 Q. The information that compares your total cost for the project
6 versus budget or contract amounts, that currently exists in your
7 accounting system; correct?

8 A. There is some version of it within our -- it may be outside of our
9 accounting system, but there is a version of it.

10 APCO'S COUNSEL: All right. I'm going to request that you look
11 into that and produce that to us.³⁷

12 But as explained more below in APCO's Motion in Limine No. 4, those documents were never
13 produced to APCO.

14 Helix claim is for extended general conditions from January through October 2013.³⁸ But
15 as of May 2013, Helix had not billed all of its general conditions yet:

16 Q. Okay. Well, if that's the case, why is it that through Exhibit 2, up
17 through the end of May 2013, Helix still hasn't billed all of its
18 general conditions?

19 A. That's a good question, because we should have. Now, why the
20 project manager didn't, we'd have to ask him.³⁹

21 This is troublesome because Helix could not have started incurring "extended" general conditions
22 before it had finishing billing all of its original contractual general conditions. Then again, this
23 answer was not surprising because Helix did not even know how long it actually anticipated the
24 Project to take in the first place:

25 Q. Sitting here today, do you know what Helix's bid assumed in terms
26 of the time that Helix would be required to be on the Project?

27 A. I don't know the exact time as in duration. I do know that the
28 original contract was early January of 2013. When it started I don't know,
and the duration of it I don't recall.⁴⁰

³⁷ Deposition of Robert Johnson at 22-24.

³⁸ Deposition of Bob Johnson at 24.

³⁹ Deposition of Robert Johnson at 24.

⁴⁰ *Id.* at 8:6-13.

1 In short, Helix's PMK did not care what the general conditions were, they were just numbers to
2 him.⁴¹ In response to a question about submittals for the Project, Helix's PMK responded:

3 A. We don't know what's all in the submittals. There's our
4 submittal, there's our subcontractor submittals. I don't know if he
5 put our submittals in with the general conditions or he put ours in
6 with the submittals, or are they just the subcontractors'. **We can
talk all day long about numbers, but they're just numbers to me.
I don't know what's in them.**⁴²

7 But the problem is, they're not just numbers to APCO. They represent a serious claim that is being
8 litigated. To add insult to injury, Helix did not even understand which personnel were on the
9 Project and what time each person spent on the Project, a component of its extended general
10 conditions claim:

11 Q. Who was your project manager for the project?

12 A. Kirk Williams.

13 Q. And during the time of the project, how many other projects
was he working on?

14 A. I don't recall.

15 Q. Okay. It would be more than the project; right?

16 A. Not necessarily.

17 Q. Okay. Do you know?

18 A. I don't. I already answered.⁴³

19 And since the PMK did not know, APCO asked if there were documents to confirm, but Helix did
20 not even know that:

21 Q. What documents does Mr. Williams generate as a matter of
Helix's standard practice and procedure to allocate his time spent on
any one project?

22 A. That I can't tell you because this is 2014.⁴⁴

23 Helix could not testify as to what personnel were included in its claim:

24 **Q. And these are people in the home office?**

25 ⁴¹ Deposition of Robert Johnson at 26.

26 ⁴² Deposition of Robert Johnson at 26.

27 ⁴³ Deposition of Robert Johnson at 26.

⁴⁴ Deposition of Robert Johnson at 27.

1 A. Could be on the site, could be in the home office. I would tend
2 to think these were probably home office.

3 **Q. You're not including any of those costs, are you, in your**
4 **general conditions claim against Apco?**

5 A. I don't know if we are or we aren't, to be honest with you.⁴⁵

6 And once again, there were no source documents for APCO to confirm what personnel were
7 included in Helix's claim:

8 **Q. And what source documents would exist to tell us what they**
9 **were doing in relation to the project and how much time was**
10 **spent?**

11 A. By then I don't know, especially after four years I don't know.⁴⁶
12 ...

13 Q. Okay. Based on Helix's practice during the time period that it
14 was working on the project, would Mr. Williams have filled out a
15 time card allocating his time to the project or any other project he
16 may have been working on?

17 A. Possibly.

18 Q. Do you know?

19 A. I don't.⁴⁷

20 Q. Now, did there come a point in time when Mr. Prietzel was
21 the only person on site?

22 A. Very possible, but I wouldn't be able to tell you that.

23 Q. Okay. So sitting here today, you don't know.

24 A. I don't know.⁴⁸

25 In the limited job cost coding that Helix did produce, Helix couldn't testify as to what the entries it
26 produced meant:

27 Q. Okay. Well, I noticed in reviewing the job cost that I marked
28 as Exhibit 3, that there were some charges for Mr. Williams on page
– Bates label 042 within Exhibit 3. And there are – I believe those
are labor hours to the right after Mr. Williams' name; correct?

A. The first thing I see to the right is trade codes. So let me keep
looking, reference. There is a quantity LS. It just says lump sum.

⁴⁵ Deposition of Robert Johnson at 46.

⁴⁶ Deposition of Robert Johnson at 47.

⁴⁷ Deposition of Robert Johnson at 28.

⁴⁸ *Id.* at 45:19-25.

1 **I'm not sure what it's indicating.**⁴⁹

2 Further, Helix could not tell when it started coding the claimed trailer to the Project, and instead
3 found mobile phone costs:

4 Q. Okay. In looking at this [cost] report, when is the first charge
5 for the on-site trailer?

6 A. I really don't know. But you're going to want me to look, aren't
7 you?

8 Q. Yes, sir.

9 A. For this report, hopefully I got the right one, February 8.

10 Q. And can you tell me --

11 A. And it's really not even the trailer. It's an AT&T cost, but it's
12 under the trailer code.⁵⁰

13 And even though Helix identified project code 15502 as a general extended condition
14 (parking lot lights) in one of the job cost reports it produced,⁵¹ its PMK does not consider parking
15 lot lights to be an extended general condition:

16 Q. Okay. I want to follow up and ask you about some of these.
17 The first you mentioned was 15502. Why do you consider parking
18 lot lights to be a general condition?

19 A. I don't personally consider parking lot lights to be a general
20 condition.⁵²

21 After exhaustive analysis and questioning regarding how Helix calculated its delay, it
22 became clear that Helix's claim has nothing to do with actual costs it incurred:

23 Q. Okay. And sitting here today, have you ever done any type of
24 analysis to determine how much more Helix spent on general
25 conditions than was budgeted?

26 A. No. What we did is we prepared our extended general
27 conditions claim on a cost per day basis based on amount of days
28 that we sought in the delay.

**Q. So your claim is not tied to your actual costs or your actual
budget or an actual loss?**

A. Not to my knowledge.⁵³

26 ⁴⁹ Deposition of Robert Johnson at 27-28.

27 ⁵⁰ Deposition of Robert Johnson at 33.

1 In fact, none of the numbers Helix was requesting as damages tie out to the numbers it provided in
2 its supporting documentation or have any relation to Helix's actual costs or tracked costs:

3 BY APCO'S COUNSEL:

4 Q. Let's pick -- I'm looking at a third page of Exhibit 7 [Helix's
5 Letter re: Schedule Delay/Extended Overhead], and if we go to
6 April, the project manager, there is a \$5200 line item cost. **Can you
tie that figure out to any of the costs in Exhibit 3** [Helix's Job
Costing -- Transaction Report]?

7 **A. I don't know if I can or not. Not directly, no.**

8 Q. In fact, as I look at your job cost report for the project manager,
9 it shows a total of \$651 for April 2013; correct?

10 A. You're in April?

11 Q. Yes, sir.

12 A. I'm sorry. I'm not.

13 Q. Bates label 059.

14 A. Okay. Yeah, I see what you said.

15 Q. So just so I'm -- and I'm reading your report correctly, would
16 you agree that for April 2013, your job cost shows only \$651.28 in
17 project management costs?

18 A. Part says 651, correct.

19 Q. So my statement's correct?

20 A. Yeah, the statement that it shows that in there is correct.

21 Q. Okay. What is the total job cost for project manager for March
22 2013 as depicted in Exhibit 3?

23 A. Exhibit 3, project management code, \$705.54.

24 Q. And --

25 A. But that doesn't mean that's his only time on the job.

26 Q. I don't understand your answer.

27 A. That doesn't mean that's his only time on the job. You asked
28 earlier if he had other jobs. It's very possible he did. I don't recall.
He allocates his time how he sees it fit to the jobs. It's not to track
his actual time on the job. It's to put his costs where he was, to
cover his costs. So if he had two other jobs that were a lot more
project management cost in it, he might have allocated it there, but it
doesn't change the fact that he's working on this job.

29 Q. What Bates page are you on?

30 A. Forty-two.

31 Q. Okay. **So your actual cost as tracked by Mr. Williams was
\$705 versus the claimed 5200; correct?**

32 ⁵¹ Deposition of Robert Johnson at 38-39

33 ⁵² Deposition of Robert Johnson at 39.

34 ⁵³ Deposition of Robert Johnson at 44.

1 **A. Not tracked. That's the time he submitted against this**
2 **project in that particular month, but is not documenting his**
3 **actual time on the project.**

4 Q. Well, how would he determine what time he's going to allocate
5 to this project?

6 A. That's his individual call. He could have allocated zero here
7 and put it all in another job, it would have been fine by us. This isn't
8 here for tracking his exact time on the job. It's just for costs that he
9 is allocating to this project at that moment.⁵⁴

10 As the deposition continued, it was clear that none of Helix's claimed costs were tethered to
11 reality:

12 Q. All right. Okay. Well, the fact is the amounts that have been
13 claimed for project manager don't tie out to the actual job costs for
14 the project; correct?

15 A. No, they don't, but it wasn't intended for that purpose.⁵⁵

16 But Helix produced the job cost reports to quantify and substantiate its claim against APCO—so
17 Helix should have intended them for that purpose in producing them.

18 Helix produced Mr. Johnson as a second Rule 30(b)(6) designee because Mr. Pritzel was
19 unable to testify about the majority of the topics in the Notice, including Helix's damages for its
20 extended general conditions. Mr. Johnson turned out to be equally unprepared, prohibiting APCO
21 from gathering relevant, discoverable information about Helix's alleged claims and damages from
22 Helix. The fact is, Helix was equally unprepared for the other topics in the Notice such as the
23 Subcontract and the Project's change orders.⁵⁶

24 ⁵⁴ Deposition of Robert Johnson at 63-66.

25 ⁵⁵ Deposition of Robert Johnson at 60.

26 ⁵⁶ Q. From and after that and the city rejected it, did Helix ever demand or request that
27 Apco escalate or prosecute that claim against the city?

28 A. I believe we did, but I'm not personally knowledgeable of that happening, so I'm
29 not the best person to answer. But yeah, I do know we wanted to pursue that and I believe
30 that might have been done with our president.

31 Q. Okay. You personally don't know of any direction or requests to Apco that Apco
32 appeal or prosecute the denial of Helix's general condition claim against the city; correct?

33 A. Not anything specific formal, no.

34 Q. All right. Did Helix ever submit a formal change order request for general
35 conditions?

1 Helix brings several claims against APCO and seeks over \$138,000 in damages for its
2 extended general conditions, yet it could not produce and prepare two Rule 30(b)(6) designees to
3 answer questions about its claim. As outlined above, Helix cannot answer questions about how
4 long it anticipated to be the Project, how long its general conditions were budgeted to last, how
5 long they actually did last, when it started incurring extended general conditions, what cost
6 components went into that claim, which personnel are a part of that claim, or how that claim was
7 quantified. Accordingly, Helix should be barred from presenting information related to its
8 extended general conditions claim. APCO has been severely prejudiced because it is heading into
9 trial completely blind about Helix's extended general conditions damages. But it was never
10 APCO's job to disclose or know this information—it was Helix's. Because Helix failed to meet
11 the requirements of NRCP 30(b)(6) and thus could not provide sufficient testimony regarding the
12 topics set forth in the Notice, this Court should preclude Helix from introducing evidence at trial
13 related its extended general conditions claim or damages, or in the alternative, bind Helix to its
14 testimony and limit any evidence that would change or expand upon that testimony.

15 II. LEGAL ARGUMENT

16 "The trial court is vested with broad discretion in determining the admissibility of
17 evidence."⁵⁷ Accordingly, this Court should preclude Helix from introducing evidence at trial
18 related to the topics in the Notice pursuant to NRCP 37(d). *See Bahena v. Goodyear Tire &*
19

20 A. I don't recall.

21 Q. Do you know?

22 A. Don't know, don't recall.

23 Q. Do you know the cause of any delay on the project?

24 A. Nothing specific. *Deposition of Bob Johnson*. at 82-84

25 ...

26 Q. Are you aware of any provision of the subcontract that Apco breached in your opinion?

27 MR. DOMINA: Objection, calls for a legal conclusion.

28 THE WITNESS: I can't answer a legal question like that. *Deposition of Bob Johnson at*
83.

⁵⁷ *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1095,
1098 (1976).

1 *Rubber Co.*,⁵⁸ (affirming harsh sanctions imposed under NRCP 37(d)); *Foster v. Dingwall*,⁵⁹
2 (same). In the alternative, APCO requests that the Court order that Helix is bound and limited to
3 the answers it gave in the Rule 30(b)(6) deposition.

4 **A. Helix failed to meet the requirements of NRCP 30(b)(6).**

5 NRCP 30(b)(6) requires that a corporate organization designate individuals to testify on its
6 behalf. Their testimony represents the knowledge of the organization, not of the individual
7 deponent, which is why the corporation has a duty to prepare its designees on matters known to it
8 or reasonably available to it based upon the topics identified in the notice.⁶⁰ “The corporation
9 appears vicariously through its designees.”⁶¹ While a Rule 30(b)(6) deposition is not a “memory
10 contest,” “a corporation has ‘a duty to make a conscientious, good-faith effort to designate
11 knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally
12 answer questions about the designated subject matter.’”⁶² This duty “goes beyond matters
13 personally known to the witness or to matters in which the designated witness was personally
14 involved.”⁶³ Rather, the corporation must prepare its designees with the matters reasonably
15 known by it—the responding party.⁶⁴

16 A Rule 30(b)(6) designee must be “thoroughly educated about the noticed deposition
17 topics.”⁶⁵ A Rule 30(b)(6) designee “may not take the position that its documents state the
18
19

20 ⁵⁸ 126 Nev. 243, 255, 235 P.3d 592, 600 (2010).

21 ⁵⁹ 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010)

22 ⁶⁰ NRCP 30(b)(6).

23 ⁶¹ *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 688 (S.D. Fla. 2012) (“The testimony of a
24 Rule 30(b)(6) witness represents the collective knowledge of the corporation, not of the specific individual
deponents. A Rule 30(b)(6) designee presents the corporation’s position on the listed topics. The
corporation appears vicariously through its designees.”).

25 ⁶² *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 539 (D. Nev. 2008) (quoting
Starlight International, Inc. v. Herlihy, 186 F.R.D. 626, 639 (D. Kan. 1999); *Dravo Corp. v. Liberty Mut.*
Ins. Co., 164 F.R.D. 70, 75 (D.Neb.1995)).

26 ⁶³ *Id.*

27 ⁶⁴ *Id.*

28 ⁶⁵ *Id.*

1 company's position."⁶⁶ Adequately preparing a Rule 30(b)(6) designee can be burdensome,
2 however, "this is merely the result of the concomitant obligation from the privilege of being able
3 to use the corporate form in order to conduct business."⁶⁷ To prepare, the deponent must, if
4 necessary, "use documents, past employees, and other resources."⁶⁸ "[E]ven if the documents are
5 voluminous and the review of those documents would be burdensome, the deponents are still
6 required to review them in order to prepare themselves to be deposed."⁶⁹

7 Here, the Notice specifically seeks information related to Helix's extended general
8 conditions claim and damages. These matters should be "reasonably known" to Helix, as it is the
9 party that brought the claims. Helix's claim for extended general conditions are directly relevant
10 to this case, and APCO is entitled to gather discoverable information about them, including
11 testimony of Helix itself. Yet, when asked questions related to its claim for extended general
12 conditions, Helix's designees repeatedly responded that they were not the person who could
13 answer the question and did not know the answer.⁷⁰ Notably, both designees also admitted that
14 they did very little to prepare for the Rule 30(b)(6) deposition. Helix's lack of preparedness
15 contradicts the entire purpose of Rule 30(b)(6). NRCP 30(b)(6) compels Helix to produce and
16 prepare witness(es) to offer binding testimony on its behalf related to the information requested.
17 Helix did nothing to prepare or educate its designees on the seven topics in the Notice, and as a
18 result, it failed to meet the requirements of NRCP 30(b)(6).

19 **B. Helix should be precluded from introducing evidence or testimony related to**
20 **its claim for extended general conditions.**

21 This Court has the clear authority and obligation to preclude Helix, as the offending party,
22 "from offering evidence at trial on the subjects of examination [Helix's Rule 30(b)(6) designees]
23
24

25 ⁶⁶ *Id.*

26 ⁶⁷ *Id.* at 540 (internal quotation marks omitted).

27 ⁶⁸ *Briddell v. Saint Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D. Mass. 2005).

28 ⁶⁹ *Bd. Of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 524, 526 (C.D. Cal. 2008).

⁷⁰ See Section I *supra*.

1 could not address.”⁷¹ While this is a harsh remedy, Helix should not be permitted to benefit from
2 its repeated violation of NRCP 30(b)(6). In *Elan Microelectronics Corp. v. Pixcir*
3 *Microelectronics Co. Ltd.*, the District Court for the District of Nevada granted Elan’s motion to
4 prohibit Pixcir “at trial or in motion practice from offering any evidence concerning its costs that
5 would be deducted from revenue to reduce profits it has made from any alleged infringing sales,”
6 because Pixcir’s Rule 30(b)(6) designee “was not only unable to answer the majority of questions
7 directly related to topic 6, but disavowed knowledge of the contents of documents the corporation
8 produced in discovery on the topic, and whether the information was accurate.”⁷² That is exactly
9 what Helix has done here and APCO is entitled to similar relief.

10 Helix may contend that it has produced documents and discovery responses in this case
11 sufficient to disclose its theories, making its 30(b)(6) testimony not critical. This argument should
12 be ignored because “[p]roducing documents and responding to written discovery is not a substitute
13 for providing a thoroughly educated Rule 30(b)(6) deponent.”⁷³ Helix had a duty to prepare
14 individuals to provide binding testimony on its behalf. It failed to do so.

15 **C. In the alternative, Helix should not be permitted to offer evidence that changes**
16 **the answers in its Rule 30(b)(6) testimony.**

17 In the alternative, the Court should limit Helix from introducing evidence that changes the
18 answers provided by Helix’s NRCP 30(b)(6) designees. NRCP 37(d) provides that if a Rule
19 30(b)(6) designee fails to appear at its Rule 30(b)(6) deposition, a court may, inter alia, “prohibit[]
20 that party from introducing designated matters in evidence.”⁷⁴ Producing an unprepared 30(b)(6)
21 designee “is tantamount to a failure to appear.”⁷⁵ See also *Resolution Trust Corp. v. S. Union*

22 ⁷¹ *Great Am. Ins. Co. of New York*, 251 F.R.D. at 539. See also NRCP 37(d) (stating that the Court can take
23 any action set forth in subpart (b)(2), which including prohibiting the offending “party from introducing
24 designated matters in evidence.”

25 ⁷² *Elan Microelectronics Corp. v. Pixcir Microelectronics Co. Ltd.*, 2:10-CV-00014-GMN, 2013 WL
4101811, at **8-9 (D. Nev. Aug. 13, 2013).

26 ⁷³ *Great Am. Ins. Co. of New York*, 251 F.R.D. at 541.

27 ⁷⁴ NRCP 37(d) (quoting NRCP 37(b)(2)(B)).

28 ⁷⁵ 4 *Great Am. Ins. Co.*, 251 F.R.D. at 542 (citing *Black Horse Lane Assoc., L.P. v. Dow Chem. Corp.*, 228
F.3d 275, 304 (3d Cir. 2000))

1 Co.,⁷⁶ (concluding that an unprepared 30(b)(6) designee amounted to a non-appearance); *Bank of*
2 *New York v. Meridien BIAO Bank Tanzania Ltd.*,⁷⁷ (same).

3 “When a corporation’s designee legitimately lacks the ability to answer relevant questions
4 on listed topics and the corporation cannot better prepare that witness or obtain an adequate
5 substitute, then the ‘we-don’t-know’ response can be binding on the corporation and prohibit it
6 from offering evidence at trial on those points.”⁷⁸ Said another way, “the lack of knowledge
7 answer is itself an answer which will bind the corporation at trial.”⁷⁹ Helix produced Mr. Johnson
8 as a second 30(b)(6) designee because Mr. Pritzel could not answer questions about its claim for
9 extended general conditions and had not been prepared to do so. Mr. Johnson turned out to be
10 equally unprepared and also could not answer questions within the scope of the Notice as it relates
11 to Helix’s claim for extended general conditions. Should the Court not be inclined to preclude all
12 evidence related to the topics in the Notice, then it should bind Helix to its answers and prohibit it
13 from offering additional evidence on topic 7 that would change, explain or enlarge its answers.

14 For the reasons stated herein, APCO respectfully requests that this Court enter an order
15 precluding Helix from either introducing evidence related to Helix’s claim for extended general
16 conditions or limiting Helix’s evidence to the relevant answers provided by Helix’s NRCP
17 30(b)(6) designees.

18 **III. MOTION IN LIMINE NO. 3 TO EXCLUDE HELIX OF INTRODUCING**
19 **EVIDENCE OF ITS ACCOUNTING DOCUMENTS OR JOB COST REPORTS**

20 NRCP 16.1(a)(1)(b) requires that parties voluntarily disclose “[a] copy of...all documents,
21 data compilations, and tangible things that are in the possession, custody, or control of the party

22 ⁷⁶ 985 F.2d 196, 197 (5th Cir. 1993)

23 ⁷⁷ 171 F.R.D. 135, 151 (S.D.N.Y. 1997)

24 ⁷⁸ *QBE Ins. Corp.*, 277 F.R.D. at 690.

25 ⁷⁹ *Id.* See also *Strategic Decisions, LLC v. Martin Luther King, Jr. Ctr. for Nonviolent Soc. Change, Inc.*,
26 1:13-CV-2510-WSD, 2015 WL 2091714, at *9 (N.D. Ga. May 5, 2015) (granting the plaintiff’s motion in
27 limine to exclude evidence that “contradicts, alters, supplements, amends or explains” the Rule 30(b)(6)
28 testimony at trial because the defendant failed to provide a knowledgeable representative to testify about
the Rule 30(b)(6) topics).

1 and which are discoverable under Rule 26(b).”⁸⁰ Under NRCP 26(e)(1-2), a plaintiff must
2 immediately supplement its NRCP 16.1 disclosures and its discovery if it learns of additional
3 relevant information that it failed to produce. Pursuant to NRCP 37(c)(1), “[a] party that without
4 substantial justification fails to disclose information required by Rule 16.1 or 26(e)(1), or to
5 amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is
6 harmless, permitted to use as evidence at trial... any witness or information not so disclosed.”
7 Additionally, NRCP 37(b)(2) empowers the Court to sanction parties that “fail [] to make a
8 disclosure required by Rule 16.1(a).” “Under NRCP 37(b)(2), a district court has discretion to
9 sanction a party for its failure to comply with a discovery order, which includes document
10 production under NRCP 16.1.”⁸¹

11 Pursuant to NRCP 16.1, Helix had an obligation to produce a copy of its full accounting
12 records and job cost documents with its initial disclosures since they are relevant and discoverable.
13 Helix only produced partial copies. On December 28, 2016, APCO requested “all accounting
14 documents, including, but not limited to, all receipts, invoices, and other related documents You
15 claim support the damages asserted through Your causes of action.”⁸² Helix did not produce the
16 full accounting or job cost documents. Then on November 13, 2017, APCO sent Helix another
17 request for production, requesting “all accounting documents for the Craig Ranch Park” Project.⁸³
18 But again, Helix did not produce a full set of these documents.⁸⁴

19 Because Helix’s claim is one for extended general conditions, its accounting and job
20 costing (to confirm what costs it budgeted and actually incurred during the Project) obviously
21 came up at its PMK deposition. At the deposition, Helix admitted that it only produced incomplete
22 job reports and confirmed that it would not be supplementing the record with a full copy of the job
23 cost reports:

24 _____

25 ⁸⁰ NRCP 16.1(a)(1)(c).

26 ⁸¹ *Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 391, 168 P.3d 87, 93 (2007).

27 ⁸² Exhibit 5, APCO’s First Request for Production of Documents at Request No. 4.

28 ⁸³ Exhibit 6, APCO’s Second Request for Production of Documents.

1 Q. Okay. Is it your testimony here today that Helix had job costs
2 for the project prior to the February dates that you've identified in
3 your prior testimony [from Exhibit 3- Helix's Job Cost- Transaction
4 Report]?

5 A. We have job costs prior to this date, correct.

6 ..
7 APCO'S COUNSEL: Okay. All right. Cary, I guess rather than
8 give you the opportunity, I'm going to request that you go back and
9 supplement the job cost report, because if his testimony is
10 correct, then you guys have just admitted you've given us an
11 incomplete document.

12 HELIX'S COUNSEL: That's not true. What we provided is the job
13 cost report for the time period that we're claiming our extended
14 [general conditions for] -- in other words, a job cost report prior to
15 January of 2013 has no bearing on our claim.

16 BY APCO'S COUNSEL:

17 Q. Okay. Sir, when is the first labor --

18 APCO'S COUNSEL: Well, before I ask the next question and
19 before I move off that, I'm going to maintain my request.

20 BY APCO'S COUNSEL:

21 **Q. In looking at Exhibit 3, when is the first labor charged to
22 the project by Helix?**

23 **A. I can't tell by this report.**

24 Q. Why?

25 A. Because you just asked me the first labor charged to the job.
26 This is only covering labor charged in this time period [when Helix
27 alleges its claim for extended general conditions started].⁸⁵

28 Shockingly, as the deposition continued, Helix objected to answering APCO's questions
about its job costs because the reports were not complete and the testimony would not be accurate:

29 Q. In looking at the job cost report that I've marked as Exhibit 3,
30 can you tell me when Helix first started charging costs to the
31 project?

32 A. Not without a whole lot of work, because you have to go to
33 every one of these pages and find the earliest date.

34 ...

35 HELIX'S COUNSEL: **Are we sure this is a complete job cost
36 report, by the way?** They have in the monthlies at the end of each
37 report it says starting date, end date. It looks like it's a monthly

38 ⁸⁴ Declaration of Mary Bacon, Esq., *supra*.

39 ⁸⁵ Deposition of Bob Johnson at 34-36.

1 accrual starting, you know, perhaps it was just the extended general
2 conditions type, I don't know, **but I'm not sure that's a full report.**

3 APCO'S COUNSEL: All I know is I think this is what the extent of
4 the reporting you guys produced to us.

5 HELIX'S COUNSEL: Right. And I think I remember the request
6 was from prior counsel provide us a job cost report for 2013 on the
7 project, like from the date that the project was not completed. I don't
8 see anything prior to 2013, which is why I'm saying that, and the
9 way that it's reported on a monthly basis.

10 APCO'S COUNSEL: Well, obviously if there is -- if you need to
11 supplement, I'll allow you to supplement so you can -- it's up to you.

12 HELIX'S COUNSEL: **If it's not a complete record, then I just**
13 **don't want to have testimony that's not accurate if we're dealing**
14 **with only part of the cost report.** Then Bob can let us know what
15 he's seeing there.

16 THE WITNESS: All I'm looking for is the earliest date.

17 HELIX'S COUNSEL: For instance, Exhibit 1 -- no, I'm just saying
18 we're obviously wasting time because we're not -- we're looking at a
19 document that's incomplete. **So I don't think you need to be**
20 **asking him questions about, hey, does this have all of your costs**
21 **in it, when we know it doesn't.**

22 Exhibit 1 is a pay app for April 2013, but it's pay app 15. That
23 means there were 14 prior monthly pay apps. **Obviously Helix was**
24 **on the job prior to 2013, yet we don't have that in here.**

25 APCO'S COUNSEL: It's my understanding that this Exhibit 3 was
26 produced to support your claim.

27 HELIX'S COUNSEL: Right. Again, so just the latter part, the
28 extended part.⁸⁶

Given the dispute, APCO offered to allow Helix the opportunity to supplement the record even though discovery was closed. Helix rejected this request even though it admitted reviewing the incomplete job cost reports it produced to APCO was a waste of time:

APCO'S COUNSEL: So I'm giving you the invitation on the record if you want to supplement your job cost coding or reporting, go for it.

HELIX'S COUNSEL: That's all we need to produce is documents to support our claim, not necessarily what was incurred previously. So I'm not saying that, but I don't want you asking him questions as if this is the complete report, which you were.

⁸⁶ Deposition of Bob Johnson at 28-30.

1 APCO'S COUNSEL: Okay. Well, I'll deal with that with the
witness.
2 HELIX'S COUNSEL: I'll make objections then, I'm just saying.
Little break -- no, I'm not done.
3 APCO'S COUNSEL: Okay.
4 ...
5 HELIX'S COUNSEL: It's a waste of time. We're just wasting
time.⁸⁷

6 Helix's objection to producing these records appeared particularly unfounded since the documents
7 were business records and could easily be printed out:

8 Q. Okay. And we had this little debate earlier, but you are able to
9 sit down at your computer system and print out all of the costs for
the job from the time you first started on the project; correct?
10 A. Yeah, we should be able to, correct.
11 APCO'S COUNSEL: Yeah. All right. I'm going to request that
you produce a complete job cost.
12 ...
13 APCO'S COUNSEL: And your costs are extremely relevant.
14 ...
15 APCO'S COUNSEL: Okay. Anyway, I'm making my request.
16 HELIX'S COUNSEL: Denied.⁸⁸

17 As discussed more thoroughly in APCO's Motion in Limine No. 3, *supra*, Helix also failed
18 to produce a full copy of its accounting records which explain Helix's expected job costs versus its
19 actual job costs. Once again, this was surprising because Helix maintains this document in the
20 ordinary course of its business and because APCO gave it an opportunity to supplement its
21 disclosures to account for the full records.

22 Q. How does Helix determine if it made money on the project?
23 A. By determining the amount of margin in dollars and percentage
24 based on what we anticipated.
25 ...
26 Q. What document would reflect that information?
27 A. It would be a report from our accounting system that would show
28 project cost total versus contract amount.
...

⁸⁷ Deposition of Bob Johnson at 30-32.

⁸⁸ Deposition of Bob Johnson at 62-63.

1 APCO'S COUNSEL: [Helix's counsel], are you willing to look for
and produce that?
2 HELIX'S COUNSEL: A total -- a loss/profit type analysis? What is
3 it you're looking for exactly?... I guess I will reserve the right to
4 respond to that. I don't -- I mean discovery's come and gone. It
5 wasn't something that was specifically asked for. And it sounds like
6 it's a report that has to be generated, it isn't something that already
exists, such as this one had to be generated. So I guess we'll discuss
that off the record.
7 APCO'S COUNSEL: Well, let me make sure our record's clear.
BY APCO'S COUNSEL:
8 Q. The information that compares your total cost for the project
versus budget or contract amounts, that currently exists in your
accounting system; correct?
9 A. There is some version of it within our -- it may be outside of our
accounting system, but there is a version of it.
10 APCO'S COUNSEL: All right. I'm going to request that you look
11 into that and produce that to us.⁸⁹

12 As provided above, Helix has no adequate justification for its repeated failure to comply
13 with Rule 16.1's disclosure or NRCP 26's supplementing requirements. Similarly, Helix also has
14 no excuse for not producing these documents in response to APCO's two requests for production,
15 or APCO's good faith requests that Helix supplement its documents. Because Helix's complete
16 accounting record and job cost documents are relevant to its claim for extended general conditions
17 and because Helix has complete copies of these documents but is refusing to produce them, Helix
18 should be prohibited from using the incomplete copies it disclosed at trial.

19
20
21 ///

22
23 ///

24
25 ///

26
27 ⁸⁹ Deposition of Robert Johnson at 22-24.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

In short, the Court should exclude all evidence of Helix’s accounting documents or job costs pursuant to to NRCP 37 as the referenced and missing documents relate directly to the type and amount of Helix’s damage claims.


DATED: December 23, 2018.

SPENCER FANE LLP

By /s/ John Randall Jefferies
John Randall Jefferies, Esq. (Bar No. 3512)
Mary E. Bacon, Esq. (Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
*Attorneys for APCO Construction, Inc.
and Safeco Insurance Company of America*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the foregoing **APCO CONSTRUCTION, INC.'S MOTIONS IN LIMINE 3-4** 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 23rd day of December, 2018, as follows:

"Avece M. Higbee, Esq." . (ahigbee@maclaw.com)	 
"Cody Mouniteer, Esq." . (cmouniteer@marquisaubach.com)	 
Amanda Armstrong . (aarmstrong@peelbrimley.com)	 
Cary B. Domina . (cdomina@peelbrimley.com)	 
Jennifer Case (jcase@maclaw.com)	 
Penny Williams . (pwilliams@maclaw.com)	 
Rosey Jeffrey . (rjeffrey@peelbrimley.com)	 
Terri Hansen . (thansen@peelbrimley.com)	 

/s/ Mary Bacon

An employee of Spencer Fane LLP

Exhibit 1

1 **Marquis Aurbach Coffing**
Avece M. Higbee, Esq.
2 Nevada Bar No. 3739
Cody S. Mounteer, Esq.
3 Nevada Bar No. 11220
Kathleen A. Wilde, Esq.
4 Nevada Bar No. 12522
10001 Park Run Drive
5 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
6 Facsimile: (702) 382-5816
ahigbee@maclaw.com
7 cmounteer@maclaw.com
kwilde@maclaw.com
8 *Attorneys for Defendants*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

Case No.: A-16-730091-C
Dept. No.: XVII

vs.

14 APCO CONSTRUCTION, a Nevada
15 corporation; SAFECO INSURANCE
16 COMPANY OF AMERICA; DOES I through X;
and BOE BONDING COMPANIES, I through
17 X,

Defendants.

18 **NOTICE OF TAKING NRCP RULE 30(B)(6) DEPOSITION OF PERSON MOST**
19 **KNOWLEDGEABLE FOR HELIX ELECTRIC OF NEVADA LLC**

20 PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Nevada Rules of Civil
21 Procedure, Defendant, APCO Construction, by and through its attorneys, Marquis Aurbach
22 Coffing, will take the deposition of Helix Electric of Nevada LLC upon oral examination on
23 **July 17th, 2018 at 9:30a.m.** before a Notary Public, or before some other officer authorized by
24 law to administer oaths.

25 The deposition will take place at **Marquis Aurbach Coffing, 10001 Park Run Drive,**
26 **Las Vegas, NV 89145.**

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Pursuant to NRCP 30(b)(6), Plaintiffs are to required to designate one or more officers,
2 directors, managing agents or other consenting persons most knowledgeable to testify on its
3 behalf with respect to the topics set forth in the attached **Exhibit A**.

4 The deposition will be recorded by stenographic means, and oral examination will
5 continue from day to day until completed. You are invited to attend and cross-examine.

6 Dated this 3rd day of July, 2018.

7
8 MARQUIS AURBACH COFFING


9
10 By 
11 Avece M. Higbee, Esq.
12 Nevada Bar No. 3739
13 Cody S. Mounteer, Esq.
14 Nevada Bar No. 11220
15 Kathleen A. Wilde, Esq.
16 Nevada Bar No. 12522
17 10001 Park Run Drive
18 Las Vegas, Nevada 89145
19 Attorney(s) for APCO CONSTRUCTION
20
21
22
23
24
25
26
27
28

EXHIBIT A**RULE 30. DEPOSITIONS BY ORAL EXAMINATION****(B) NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; METHOD OF PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.**

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

[As amended; effective January 1, 2005.]

TOPICS

1. Your claims and facts as alleged against APCO;
2. Documents that you have disclosed in support of your claims against APCO;
3. Your assertion that APCO is liable for any portions of your general and/or bond claims;
4. The payment process, payment details, scope of payments, parties involved, and standard practices of payment, including, but not limited to, all payment applications, approvals, amounts, checks, and releases;
5. Each fact related to your contract agreement with APCO in regard to the Craig Ranch ("Project") at issue in this matter, including, but not limited to original contact(s), change orders, and ratification agreement(s);
6. Each fact related to your scope of work at the Project; and
7. Your claimed damages against APCO, more specific, but not limited to, your assertions of damages as they relate to Helix's general extended conditions.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF TAKING NRCP RULE 30(B)(6) DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR HELIX ELECTRIC OF NEVADA LLC** was submitted electronically for service with the Eighth Judicial District Court on the 3rd day of July 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Peel Brimley LLP

Contact

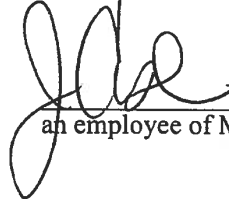
Amanda Armstrong
Cary B. Domina
Rosey Jeffrey
Terri Hansen

Email

aarmstrong@peelbrimley.com
cdomina@peelbrimley.com
rjeffrey@peelbrimley.com
thansen@peelbrimley.com

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

N/A



an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 2

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, SUITE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

1 **ECWD**
2 RICHARD L. PEEL ESQ.
3 Nevada Bar No. 4359
4 CARY B. DOMINA, ESQ.
5 Nevada Bar No. 10567
6 **PEEL BRIMLEY LLP**
7 3333 E. Serene Avenue, Suite 200
8 Henderson, Nevada 89074-6571
9 Telephone: (702) 990-7272
10 Fax: (702) 990-7273
11 rpeel@peelbrimley.com
12 cdomina@peelbrimley.com
13 *Attorneys for Plaintiff*
14 *Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 HELIX ELECTRIC OF NEVADA, LLC, a
12 Nevada limited liability company,

13 Plaintiff,

14 vs.

15 APCO CONSTRUCTION, a Nevada
16 corporation; SAFECO INSURANCE
17 COMPANY OF AMERICA; DOES I
18 through X; and BOE BONDING
19 COMPANIES I through X,

18 Defendants

Case No. : A-16-730091-C
Dept. No. : XVII

**PLAINTIFF'S INITIAL LIST OF
WITNESSES AND DOCUMENTS
PURSUANT OT NEV. R. CIV. P. 16.1
DISCLOSURES**

20 Plaintiff, Helix Electric of Nevada, LLC, by and through their attorneys of record,
21 PEEL BRIMLEY LLP and hereby submits its Initial List of Witnesses and Documents
22 pursuant to Nev. R. Civ. P. 16.1 as follows:

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. WITNESSES

1. Robert Johnson
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Johnson is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

2. Victor Fuchs
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Fuchs is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

3. Rainer Prietzel
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Prietzel is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

4. Richard Clement
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

1 Mr. Clement is expected to testify regarding his knowledge of the facts and
2 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
3 2017.

4
5 5. Cody Wright
6 Helix Electric of Nevada (Plaintiff)
7 c/o PEEL BRIMLEY LLP
8 3333 E. Serene Ave, Suite 200
9 Henderson, NV 89074
10 Telephone: (702) 990-7272

11 Mr. Wright is expected to testify regarding his knowledge of the facts and
12 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
13 2017.

14 6. Omar Diaz
15 Helix Electric of Nevada (Plaintiff)
16 c/o PEEL BRIMLEY LLP
17 3333 E. Serene Ave, Suite 200
18 Henderson, NV 89074
19 Telephone: (702) 990-7272

20 Mr. Diaz is expected to testify regarding his knowledge of the facts and
21 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
22 2017.

23 7. Charles Wooten, Jr.
24 Helix Electric of Nevada (Plaintiff)
25 c/o PEEL BRIMLEY LLP
26 3333 E. Serene Ave, Suite 200
27 Henderson, NV 89074
28 Telephone: (702) 990-7272

Mr. Wooten is expected to testify regarding his knowledge of the facts and
circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
2017.

8. Mark Smith
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074

Telephone: (702) 990-7272

Mr. Smith is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

9. Kurk Williams
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Williams is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

10. Juan Barajas
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Barajas is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

11. Alexander Gelfer
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Gelfer is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

///

///

///

12. Adine Bagby
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Ms. Bagby is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

13. 30(b)(6) Designee
Helix Electric of Nevada (Plaintiff)
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

The 30(b)(6) Person(s) designated by Helix Electric is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

14. 30(b)(6) Designee
APCO Construction (Defendant)
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 382-0711

The 30(b)(6) Person(s) designated by APCO is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

15. Joe Pelan
APCO Construction (Defendant)
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 382-0711

///

///

1 Mr. Pelan is expected to testify regarding his knowledge of the facts and
2 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
3 2017.

4 16. Brian Bohn
5 APCO Construction (Defendant)
6 MARQUIS AURBACH COFFING
7 10001 Park Run Drive
8 Las Vegas, NV 89145
9 Telephone: (702) 382-0711

10 Mr. Bohn is expected to testify regarding his knowledge of the facts and
11 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
12 2017.

13 17. Randy Nickerl
14 APCO Construction (Defendant)
15 MARQUIS AURBACH COFFING
16 10001 Park Run Drive
17 Las Vegas, NV 89145
18 Telephone: (702) 382-0711

19 Mr. Nickerl is expected to testify regarding his knowledge of the facts and
20 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
21 2017.

22 18. Jim Barker
23 APCO Construction (Defendant)
24 MARQUIS AURBACH COFFING
25 10001 Park Run Drive
26 Las Vegas, NV 89145
27 Telephone: (702) 382-0711

28 Mr. Barker is expected to testify regarding his knowledge of the facts and
circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
2017.

///

///

///

1 19. Mark Yoakum
2 APCO Construction (Defendant)
3 MARQUIS AURBACH COFFING
4 10001 Park Run Drive
5 Las Vegas, NV 89145
6 Telephone: (702) 382-0711

7 Mr. Yoakum is expected to testify regarding his knowledge of the facts and
8 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
9 2017.

10 20. Kim Stevenson
11 APCO Construction (Defendant)
12 MARQUIS AURBACH COFFING
13 10001 Park Run Drive
14 Las Vegas, NV 89145
15 Telephone: (702) 382-0711

16 Kim Stevenson is expected to testify regarding his or her knowledge of the facts and
17 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
18 2017.

19 21. Mary Jo Allen
20 APCO Construction (Defendant)
21 MARQUIS AURBACH COFFING
22 10001 Park Run Drive
23 Las Vegas, NV 89145
24 Telephone: (702) 382-0711

25 Ms. Allen is expected to testify regarding her knowledge of the facts and
26 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
27 2017.

28 22. 30(b)(6) Designee
 Safeco Insurance Company of America (Defendant)
 MARQUIS AURBACH COFFING
 10001 Park Run Drive
 Las Vegas, NV 89145
 Telephone: 702) 382-0711

///

///

1 The 30(b)(6) Person(s) designated by Safeco is expected to testify regarding their
2 knowledge of the facts and circumstances surrounding the allegations set forth in Plaintiff's
3 Complaint filed January 12, 2017.

4 23. 30(b)(6) Designee
5 City of North Las Vegas

6 The 30(b)(6) Person(s) designated by the City of North Las Vegas is expected to
7 testify regarding their knowledge of the facts and circumstances surrounding the allegations
8 set forth in Plaintiff's Complaint filed January 12, 2017.

9 24. Joemel Llamado
10 City of North Las Vegas

11 Mr. Llamado is expected to testify regarding their knowledge of the facts and
12 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
13 2017.

14 25. Jeffrey L. Buchanan
15 City of North Las Vegas

16 Mr. Buchanan is expected to testify regarding their knowledge of the facts and
17 circumstances surrounding the allegations set forth in Plaintiff's Complaint filed January 12,
18 2017.

19 26. Drew Ray
20 Hill International

21 Mr. Ray is expected to testify regarding his knowledge of the facts and circumstances
22 surrounding the allegations set forth in Plaintiff's Complaint filed January 12, 2017.

23 Plaintiff reserves its right to supplement its List of Witnesses pursuant to Nev. R. Civ.
24 P. 16.1 as additional information becomes known throughout discovery. Further, Plaintiff
25 specifically reserves its right at the time of trial to call any and all witnesses identified by any
26 and all parties hereto.

27 **A. LIST OF DOCUMENTS**

28 Plaintiff produces the following documents Bates Stamped Nos. HEL000001 through
HEL000530.

1 Plaintiff reserves its right to supplement its List of Documents pursuant to Nev. R.
2 Civ. P. 16.1 as additional information becomes known throughout discovery. Further,
3 Plaintiff specifically reserves its right at the time of trial to introduce into evidence any
4 documents produced by any party to this action.

<u>DOCUMENT(S)</u>	<u>BATES NOS.</u>
Project Manager's Costs by Month (September – October)	HEL000001 – HEL00004
Forklift Costs for the Period December 31, 2012 through March 1, 2013	HEL000005 – HEL000009
Helix Monthly Cost Reports Comparison of Actual PM & PE to Kurk W Cost in Claim	HEL000010 – HEL000101
Certified Payroll Report Forms for the Period January through November 2013	HEL000102 – HEL000205
Subcontract with APO Construction signed April 2012	HEL000206 – HEL000223
Helix Electric Bid Proposal dated October 26, 2011	HEL000224 – HEL000225
Nevada State Contractors Board License Search Details printed December 20, 2011	HEL000226 – HEL000227
APCO Construction Daily Time and Material Report for the Craig Ranch Regional Park – Phase II	HEL000228
Certificate of Liability Insurance dated January 18, 2011 marked "Sample"	HEL000229 – HEL000231
Application and Certificate for Payment	HEL000232 – HEL000233
APCO Construction Labor Payment Affidavit (Blank)	HEL000234 – HEL000235
APCO Construction Unconditional Waiver and Release Upon Progress Payment (Blank)	HEL000236

1 APCO Construction Unconditional HEL000237
2 Waiver and Release Upon Final
3 Payment (Blank)
4 APCO Construction Conditional Waiver HEL000238
5 and Release Upon Progress Payment
6 (Blank)
7 APCO Construction Conditional Waiver HEL000239
8 and Release Upon Final Payment
9 (Blank)
10 W-9 for Helix Electric HEL000240
11 Helix Electric Exhibit to the Subcontract HEL000241 – HEL000245
12 dated April 2012
13 Craig Ranch Summary HEL000246
14 Various E-mails HEL000247 – HEL000530
15 Plaintiff also includes any documents in the disclosures of other Parties to this action.
16 Plaintiff specifically reserves the right to supplement this Initial Disclosure to add
17 relevant documents, if subsequent information and investigation so warrants.
18 B. COMPUTATION OF DAMAGES
19 Preliminarily, and without waiving its rights to seek such sums as may be provided
20 at time of trial, Plaintiff sees the following sums as damages and as part of its claim against
21 Defendants: \$138,151, exclusive of costs, interest and reasonable attorney's fees. Discovery
22 is ongoing and Plaintiff will update its Damages if and when additional information becomes
23 available.
24 ///
25 ///
26 ///
27
28

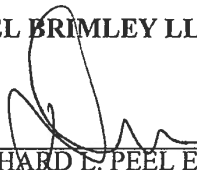
PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, SUITE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

1 **C. INSURANCE AGREEMENTS**

2 Plaintiff has a commercial general liability policy which is not in dispute in the Case.
3 Plaintiff reserves its right to supplement this portion of its Nev. R. Civ. P. 16.1 Disclosure as
4 additional information becomes known throughout discovery.

5 Dated this 2 day of October, 2017.

6 **PEEL BRIMLEY LLP**

7 
8
9 RICHARD L. PEEL ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
rpeel@peelbrimley.com
cdomina@peelbrimley.com

10
11 *Attorneys for Plaintiff*
12 *Helix Electric of Nevada, LLC*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, SUITE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

CERTIFICATE OF SERVICE

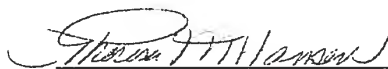
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 2nd day of October, 2017, I caused the above and foregoing document, **PLAINTIFF'S INITIAL LIST OF WITNESSES AND DOCUMENTS PURSUANT OT NEV. R. CIV. P. 16.1 DISCLOSURES**, to be served as follows:

- ☐ 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 at the address, facsimile number, and/or email as indicated below:

E-Service Master List For Case
Helix Electric of Nevada LLC, Plaintiff(s) vs. APCO Construction, Defendant(s)
Marquis Aurbach Coffing

Contact	Email
Avece M. Higbee, Esq.	ahigbee@maclaw.com
Cody Mounteer, Esq.	cmounteer@marquisaurbach.com
Jennifer Case	jcase@maclaw.com
Penny Williams	pwilliams@maclaw.com



An employee of PEEL BRIMLEY, LLP

Exhibit 3

In the Matter Of:
A-16-730091-C
HELIX ELECTRIC OF NEVADA
VS
APCO CONSTRUCTION, et al.

Transcript Of The 30(b)(6) For:

*HELIX ELECTRIC,
ERIC RAINER PRITZEL*

October 04, 2018

envision
legal solutions
702-805-4800
scheduling@envision.legal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA,)	
LLC, a Nevada limited)	
liability company,)	
)	
Plaintiff,)	CASE NO.
)	A-16-730091-C
vs.)	DEPT. NO. XVII
)	
APCO CONSTRUCTION, a)	
Nevada corporation; SAFECO)	
INSURANCE COMPANY OF)	
AMERICA; DOES I through X;)	
and BOE BONDING COMPANIES,)	
I through X,)	
)	
Defendants.)	

DEPOSITION OF ERIC RAINER PRITZEL

Helix Electric 30(b)(6)

Taken at the Law Offices of
SPENCER FANE LLP
300 South Fourth Street, Suite 950
Las Vegas, Nevada 89101
On October 4, 2018
At 10:03 a.m.

Job No: 1782
Reported by: JENNIFER M. DALY, CRR, RPR, CCR, CSR
License No.: 766

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 2..5

<p>1 APPEARANCES:</p> <p>2 PEEL BRIMLEY LLP</p> <p>3 BY: CARY B. DOMINA, ESQ.</p> <p>4 cdomina@peelbrimley.com</p> <p>5 3333 E. Serene Avenue</p> <p>6 Suite 200</p> <p>7 Henderson, Nevada 89074</p> <p>8 702.990.7272</p> <p>9 On behalf of the Plaintiff;</p> <p>10</p> <p>11 SPENCER FANE LLP</p> <p>12 BY: JOHN RANDALL JEFFERIES, ESQ.</p> <p>13 rjefferies@spencerfane.com</p> <p>14 300 South Fourth Street</p> <p>15 Suite 950</p> <p>16 Las Vegas, Nevada 89101</p> <p>17 702.408.3411</p> <p>18 On behalf of the Defendant,</p> <p>19 Apco Construction, Inc.</p> <p>20</p> <p>21</p> <p>22</p> <p>23 * * * * *</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 4, 2018</p> <p>2 10:03 A.M.</p> <p>3 -000-</p> <p>4 WHEREUPON --</p> <p>5 (IN AN OFF-THE-RECORD DISCUSSION HELD PRIOR TO THE</p> <p>6 COMMENCEMENT OF THE PROCEEDINGS, COUNSEL AGREED TO</p> <p>7 WAIVE THE COURT REPORTER'S REQUIREMENTS UNDER NEVADA</p> <p>8 RULES OF CIVIL PROCEDURE, RULE 30(B) (4), OR FEDERAL</p> <p>9 RULES OF CIVIL PROCEDURE, RULE 30(B) (5), AS</p> <p>10 APPLICABLE.)</p> <p>11 (WITNESS SWORN.)</p> <p>12 Whereupon,</p> <p>13 ERIC RAINER PRITZEL,</p> <p>14 having been first duly sworn to testify to the</p> <p>15 truth, the whole truth, and nothing but the truth,</p> <p>16 was examined and testified as follows:</p> <p>17 DIRECT EXAMINATION</p> <p>18 BY MR. JEFFERIES:</p> <p>19 Q. Sir, will you state your full name for</p> <p>20 the record, please.</p> <p>21 A. Eric Rainer Pritzel. Everyone calls me</p> <p>22 Ray.</p> <p>23 Q. Do you mind if I call you Ray?</p> <p>24 A. Go right ahead.</p> <p>25 Q. We had some discussion before we went on</p>
<p>Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS: ERIC RAINER PRITZEL</p> <p>3 EXAMINATION PAGE</p> <p>4 BY MR. JEFFERIES 4</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (NO EXHIBITS MARKED)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 the record. I have marked as Exhibit 1, and I do</p> <p>2 want to show you, and Cary has a copy, this is a</p> <p>3 Notice of Deposition where we identify topics to be</p> <p>4 addressed, and it's my understanding that you've</p> <p>5 been designated by Helix to talk about certain</p> <p>6 topics, and my first question to you is what topics</p> <p>7 do you believe you're being designated to testify</p> <p>8 about?</p> <p>9 A. The -- I was the field superintendent.</p> <p>10 So anything that needed to be coordinated out in the</p> <p>11 field, construction-wise, you know, conduit, wire,</p> <p>12 pulling, trenching, stuff like that, then that's</p> <p>13 what I can answer for you. Any type of equipment</p> <p>14 stuff like that.</p> <p>15 Q. Okay. How about project billing?</p> <p>16 A. That's -- I'm not the guy for that.</p> <p>17 Q. Okay. How about project job cost</p> <p>18 accounting?</p> <p>19 A. That would not be me.</p> <p>20 Q. Okay. What about notice of claims?</p> <p>21 A. That's not my scope of work.</p> <p>22 Q. Okay. All right. Well, in fairness to</p> <p>23 you and the record, to the extent I touch on a topic</p> <p>24 that you think goes beyond your -- what you've been</p> <p>25 designated for and/or your personal knowledge,</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 6..9

<p style="text-align: right;">Page 6</p> <p>1 please tell me.</p> <p>2 A. Sure.</p> <p>3 Q. Have you ever had your deposition taken</p> <p>4 before?</p> <p>5 A. No.</p> <p>6 Q. Okay. Let me go over a few of the ground</p> <p>7 rules. As you can see, the court reporter is taking</p> <p>8 down everything that is said in the room, so it's</p> <p>9 important that only one of us speak at a time. In</p> <p>10 conversation, we tend to know where the other person</p> <p>11 is going, and if you live in my house, everybody</p> <p>12 talks over each other, so we need to try and avoid</p> <p>13 that.</p> <p>14 So if you let me finish my question</p> <p>15 before you start your answer, I'm going to let you</p> <p>16 finish your answer before I move on to my next</p> <p>17 question, okay?</p> <p>18 A. Understood.</p> <p>19 Q. So if I say, "Were you through with your</p> <p>20 answer," I'm not trying to be rude. I just want to</p> <p>21 make sure you were complete before I move on, okay?</p> <p>22 A. Yes, sir.</p> <p>23 Q. You're doing a great job so far. It's</p> <p>24 important we give audible responses to my questions.</p> <p>25 It's hard for her to take down a shake or</p>	<p style="text-align: right;">Page 8</p> <p>1 A. None at all.</p> <p>2 Q. Do you have any questions about the</p> <p>3 process?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. What did you do to prepare for</p> <p>6 your deposition today?</p> <p>7 A. Nothing.</p> <p>8 Q. Okay. Did you review any records?</p> <p>9 A. I reviewed some of the records. Just</p> <p>10 minor, but they're -- pretty much what I've reviewed</p> <p>11 is accurate.</p> <p>12 Q. That's a good thing, but number two, what</p> <p>13 did you review?</p> <p>14 A. Just some of the cost accrued, the amount</p> <p>15 of time we had, the trailer, the forklifts, the wire</p> <p>16 pullers, you know, pulling trailer right there, any</p> <p>17 of those sheets where we had those accrued costs.</p> <p>18 Q. You reviewed, like, a Helix job cost</p> <p>19 report?</p> <p>20 A. It was just a minor -- it -- just a minor</p> <p>21 sheet. Hey, this is the material and stuff that you</p> <p>22 had from, I believe, that January date on. Can you</p> <p>23 verify this, and yes, to the best of my knowledge,</p> <p>24 those are 100 percent accurate.</p> <p>25 Q. I'm not entitled to, and nor do I want</p>
<p style="text-align: right;">Page 7</p> <p>1 a nod of the head or a "uh-huh" or "uh-uh." When</p> <p>2 you read it on paper, it just makes for an unclear</p> <p>3 record.</p> <p>4 So, again, if I say, "Was that a yes or a</p> <p>5 no," I'm not trying to be rude. I just want to make</p> <p>6 sure we both have a clear record, okay?</p> <p>7 A. I understand.</p> <p>8 Q. Okay. If you don't understand any of my</p> <p>9 questions, let me know, and I'll try to clarify it</p> <p>10 for you. If you answer the question, I'm going to</p> <p>11 assume that you understood it as asked, okay?</p> <p>12 A. Understood.</p> <p>13 Q. You'll quickly figure out that we're</p> <p>14 pretty informal here, so if you want to take a break</p> <p>15 at any time, let me know. My only request is that</p> <p>16 you not ask for a break if I've got a question</p> <p>17 pending; let's get your answer in the record, then</p> <p>18 we can take a break, okay?</p> <p>19 A. Not a problem. Yes.</p> <p>20 Q. Are you on any type of medication that</p> <p>21 would affect your testimony today?</p> <p>22 A. None.</p> <p>23 Q. Okay. Personally or professionally, are</p> <p>24 there things in your life that make this just a</p> <p>25 terrible day to have your deposition taken?</p>	<p style="text-align: right;">Page 9</p> <p>1 to, ask about any communications you may have had</p> <p>2 with Cary.</p> <p>3 So excluding discussions you had with</p> <p>4 him, did you discuss the items you just referenced</p> <p>5 with anybody at Helix outside of Cary's presence?</p> <p>6 A. No.</p> <p>7 Q. Other than what sounds like a summary of</p> <p>8 the claimed costs, if I'm understanding what -- was</p> <p>9 it a one-page summary?</p> <p>10 A. Yes.</p> <p>11 MR. DOMINA: I'll just tell you, it was</p> <p>12 -- one of the invoices that Helix submitted on the</p> <p>13 back, there was a spreadsheet that broke down --</p> <p>14 itemized the general conditions.</p> <p>15 MR. JEFFERIES: Okay.</p> <p>16 MR. DOMINA: It's part of the record,</p> <p>17 what you guys have seen.</p> <p>18 BY MR. JEFFERIES:</p> <p>19 Q. Is that the only document you reviewed?</p> <p>20 A. Yes, I saw some of this stuff, but that's</p> <p>21 the only one that would really pertain to me.</p> <p>22 Q. This stuff you're referring to,</p> <p>23 Exhibit 1?</p> <p>24 A. The daily reports.</p> <p>25 Q. Okay. That's what those are.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 10..13

<p style="text-align: right;">Page 10</p> <p>1 Have you reviewed Exhibit 1 before, the</p> <p>2 topics that I'm going to be asking about?</p> <p>3 A. No.</p> <p>4 Q. Just so our record is clear --</p> <p>5 MR. DOMINA: I don't know if -- this is</p> <p>6 the document. This is what I showed you this</p> <p>7 morning.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. DOMINA: I don't think he's familiar</p> <p>10 with what it looks like, but it's the Notice of</p> <p>11 Deposition, the topics that we went through.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. DOMINA: I don't mind putting that on</p> <p>14 the record, just to clarify, so it's accurate, his</p> <p>15 testimony is accurate.</p> <p>16 MR. JEFFERIES: Okay.</p> <p>17 MR. DOMINA: What you're looking at is an</p> <p>18 amended version of it, right? What is he --</p> <p>19 MR. JEFFERIES: I think the exhibit</p> <p>20 stayed the same -- I mean, the topics stayed the</p> <p>21 same.</p> <p>22 Let me make sure my record is clear.</p> <p>23 MR. DOMINA: This isn't -- this isn't --</p> <p>24 this is, like, a Target case.</p> <p>25 This isn't even the right case that you</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Is that a yes?</p> <p>2 A. Yes. Sorry.</p> <p>3 Q. Anything else that you reviewed to</p> <p>4 prepare for your deposition today?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you take any steps to</p> <p>7 investigate any topics on the deposition notice for</p> <p>8 today?</p> <p>9 A. No.</p> <p>10 Q. Did you -- strike that.</p> <p>11 Excluding communications with your</p> <p>12 counsel, did you take any steps to talk to other</p> <p>13 Helix people to investigate any of the topics in the</p> <p>14 notice for today?</p> <p>15 A. No.</p> <p>16 Q. Sir, can you describe for me your</p> <p>17 educational background?</p> <p>18 A. If you want me to go back to just high</p> <p>19 school, high school graduate, and then been working</p> <p>20 for Helix Electric for 23 years.</p> <p>21 Q. Okay. Any post-high school education?</p> <p>22 A. No. Helix offers classes for continuing</p> <p>23 education, like OSHA 30 cards, qualified electrical</p> <p>24 workers, motor controls, underground forklifts</p> <p>25 scissors lifts. So those are the classes we do to</p>
<p style="text-align: right;">Page 11</p> <p>1 got here.</p> <p>2 MR. JEFFERIES: Oh.</p> <p>3 MR. DOMINA: That's why when I saw him</p> <p>4 flipping through, he's shaking his head like, "What</p> <p>5 is all that?" There were, like, five categories of</p> <p>6 topics.</p> <p>7 MR. JEFFERIES: Oh, I grabbed the wrong</p> <p>8 one.</p> <p>9 MR. DOMINA: That's why he was confused,</p> <p>10 as was I.</p> <p>11 BY MR. JEFFERIES:</p> <p>12 Q. You haven't studied these?</p> <p>13 A. No, I can build a Target; I can build</p> <p>14 anything you want in this town.</p> <p>15 (Short break was taken.)</p> <p>16 MR. JEFFERIES: With your permission,</p> <p>17 when I get the other one, I'm going to substitute</p> <p>18 it.</p> <p>19 MR. DOMINA: That's fine.</p> <p>20 BY MR. JEFFERIES:</p> <p>21 Q. We can keep going.</p> <p>22 I want to get a sense for -- you reviewed</p> <p>23 the summary of costs and a deposition notice,</p> <p>24 correct?</p> <p>25 A. Mm-hmm.</p>	<p style="text-align: right;">Page 13</p> <p>1 renew our licenses or further our education through</p> <p>2 Helix.</p> <p>3 Q. 23 years with Helix; is that right?</p> <p>4 A. Yes, that's correct.</p> <p>5 Q. What's your current position?</p> <p>6 A. I am a foreman, lead man, on -- working</p> <p>7 at Conquistador, Tompkins Elementary School.</p> <p>8 Q. Are your titles within the Helix</p> <p>9 organization job specific, or do you have just kind</p> <p>10 of a general --</p> <p>11 A. They would be job specific.</p> <p>12 Q. Okay. Have you ever served as a project</p> <p>13 manager on a project for Helix?</p> <p>14 A. No.</p> <p>15 Q. Okay. Have you ever served as a project</p> <p>16 engineer for Helix?</p> <p>17 A. No.</p> <p>18 Q. Have you ever served as a general</p> <p>19 superintendent for a project for Helix?</p> <p>20 A. No.</p> <p>21 Q. How -- okay. I'm going to shorthandedly</p> <p>22 use the term, "the project," and when I do, sir, I'm</p> <p>23 referring to the Craig Ranch Road Park, Phase II,</p> <p>24 that Apco constructed for the city, okay?</p> <p>25 A. Understood.</p>

Envision Legal Solutions

702-805-4800

scheduling@envision.legal

JA715

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 14..17

<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. Prior to the project, had you 2 performed any work with or for Apco before? 3 A. I don't believe I did, no. I believe 4 that was the first job with Apco. 5 MR. DOMINA: Are you referring to Helix, 6 in general, or him? 7 THE WITNESS: Helix in general. 8 BY MR. JEFFERIES: 9 Q. Yourself personally. 10 A. No, I have not. 11 Q. Are you familiar with the subcontract 12 between Helix and Apco for the project? 13 A. No. 14 Q. As part of -- let me make sure I'm clear. 15 You were a foreman on the project? 16 A. Yes. 17 Q. Okay. Did that role ever change? 18 A. No. 19 Q. As part of your duties as foreman, were 20 you ever required to review the subcontract between 21 Helix and Apco? 22 A. No. 23 Q. Were you ever involved in the scheduling 24 of Helix's work on the project? 25 A. Did your question mean scheduling as with</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Mark Yoakum, and towards the end, it 2 would be Noah Holmes. 3 Q. Those are Apco employees? 4 A. Yes, sir. 5 Q. Who did you report to directly within the 6 Helix organization regarding the project? 7 A. Would be our project manager. 8 Q. And who was that? 9 A. At the time, that would be Kirk Williams. 10 Q. Was he the only project manager that you 11 dealt with on the project? 12 A. On that project, yes. 13 Q. Who was R. Clement? 14 A. Rick Clement. He started the job. He 15 set up the trailer, and stuff like that. He was the 16 original superintendent, and then I took over for 17 him as he went to another job. 18 Q. Do you recall when -- strike that. 19 Do you recall during what time periods 20 Mr. Clement was actually working on site? 21 A. He was probably there maybe a couple 22 months before me, maybe -- 23 Q. Okay. 24 A. -- and that's it. Then they called me to 25 the job, and that's when I was there.</p>
<p style="text-align: right;">Page 15</p> <p>1 Apco saying, "Hey, we require this to be done at 2 certain times?" We would have weekly meetings, and 3 we would discuss our scheduling that they would want 4 to try to meet. 5 Q. Let me make sure my record is clear. 6 You attend -- did you personally attend 7 weekly meetings with Apco at which scheduling of 8 activities was discussed? 9 A. Yes. Weekly meetings, yes, sir. 10 Q. Can you describe for me how Helix staffed 11 the project, and let's start at the beginning 12 because I realize it may have changed over time, but 13 at the beginning, how did Helix staff the project? 14 A. Through the dailies. It was like our 15 four- or five-man project. We were able to use that 16 pretty much through the duration of that project. 17 It stayed pretty consistent. There may have been a 18 few more workers that showed up to the site as we 19 were installing those hundred foot Musco light poles 20 around, you know, the baseball fields, skate parks. 21 We needed a few more people as hands to set those; 22 otherwise, if you look at the reports, they pretty 23 much stayed consistent to about that five-man crew. 24 Q. Who did you report to directly on the 25 project?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. When would you have started work, 2 personally, on the project? 3 A. I don't know the exact date. I'd have to 4 go back and recall those -- 5 Q. Okay. 6 A. -- but it was early in the project, very 7 early because I'm on that first page right there. 8 Q. Yeah, I'm going to -- let me see if I got 9 this copy. As I mentioned, Cary, before we went on 10 the record, I have one set of what I believe are the 11 daily reports generated by Helix. I'm going to have 12 the witness confirm that. 13 I don't intend to mark it as an exhibit. 14 What I do have has been Bates labeled as Apco 745, 15 which has a date of February 28 of '12, through Apco 16 1081, which has a July 26, '13, date, and I'll 17 represent to you, sir, that that is -- these are all 18 the dailies that I could find for Helix that have 19 been produced in the litigation. 20 So I'm not going to mark it as an 21 exhibit, but I am going to put those in front of you 22 to the extent it helps refresh your memory and 23 answers some of my questions, okay? 24 A. Mm-hmm. Yes. 25 Q. Did you prepare these daily -- Helix</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 18..21

<p style="text-align: right;">Page 18</p> <p>1 daily reports?</p> <p>2 A. I did some of them, yes. I can tell by</p> <p>3 my handwriting where I started.</p> <p>4 Q. Some of them are signed just as I flip</p> <p>5 through them.</p> <p>6 Is that your signature?</p> <p>7 A. Yep, that's me.</p> <p>8 Q. Some of them are not signed. Would you</p> <p>9 have prepared those that do not have your signature?</p> <p>10 A. It could have been. I could have turned</p> <p>11 in the daily report and just, "Oh, shoot, I need to</p> <p>12 turn in the daily," and then turned it in without.</p> <p>13 Q. And your -- to your earlier point,</p> <p>14 Mr. Clement is shown on the daily report for</p> <p>15 February 28, '12.</p> <p>16 Using these daily reports, my question to</p> <p>17 you is: Can you tell me what time period</p> <p>18 Mr. Clement was involved with the project?</p> <p>19 A. Using these reports, yes.</p> <p>20 Q. Take a minute and tell me when you've</p> <p>21 reviewed them sufficiently to answer my question,</p> <p>22 and then we'll just put the question and answer on</p> <p>23 the record, so take your time.</p> <p>24 A. Complete.</p> <p>25 Q. All right. Having reviewed the Helix</p>	<p style="text-align: right;">Page 20</p> <p>1 April 23rd, Rick Clement's name is back up there</p> <p>2 with myself.</p> <p>3 MR. DOMINA: Tell him the Bates number.</p> <p>4 THE WITNESS: Oh, Apco 781.</p> <p>5 BY MR. JEFFERIES:</p> <p>6 Q. Any others?</p> <p>7 A. I'd have to go through all the documents</p> <p>8 real quick.</p> <p>9 I'm pretty sure there were. Yeah,</p> <p>10 May 1st, 2012, document 787. Looks like here also</p> <p>11 788, 789.</p> <p>12 Would you like me to go through all of</p> <p>13 these?</p> <p>14 Q. No.</p> <p>15 A. It's -- I would just -- for the record, I</p> <p>16 would have his name up here, and it would be dated,</p> <p>17 and all that stuff, so...</p> <p>18 Q. Okay. Was there another superintendent</p> <p>19 assigned to the project after March 30, 2012, other</p> <p>20 than Mr. Clement?</p> <p>21 A. No.</p> <p>22 Q. Okay. And it sounds like, from the daily</p> <p>23 reports, he was coming in on an as-needed basis, to</p> <p>24 the extent you needed, or called him in; is that</p> <p>25 fair?</p>
<p style="text-align: right;">Page 19</p> <p>1 daily reports, during what time period was</p> <p>2 Rick Clement involved with the project?</p> <p>3 A. February 28th, 2012 -- that would be</p> <p>4 March 30th, 2012.</p> <p>5 Q. From and after March 30, 2012, did you</p> <p>6 have any dealings with Mr. Clement regarding the</p> <p>7 project?</p> <p>8 A. Yes.</p> <p>9 Q. And what was that?</p> <p>10 A. It -- he started the project, so I would</p> <p>11 have any questions with Rick, "Hey, how would you</p> <p>12 like to approach this," you know, "How do you</p> <p>13 want" -- Rick's very knowledgeable, and he's -- he's</p> <p>14 very helpful. I love Rick. Working with Rick is</p> <p>15 great, and, you know, I had questions, and he was</p> <p>16 there for support for me, as I did the same for</p> <p>17 Rick.</p> <p>18 Q. But he wasn't working on the project</p> <p>19 after March 30, 2012, correct?</p> <p>20 A. According to my daily reports here, there</p> <p>21 are days where he came to help and fill in on</p> <p>22 certain situations.</p> <p>23 There's some dates back in here where</p> <p>24 Rick's name would be on those. This is where it had</p> <p>25 them, and then here was -- if you notice on</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes.</p> <p>2 Q. After March 30, 2012, who did you report</p> <p>3 to directly on the project?</p> <p>4 A. Would that be for Helix or for Apco?</p> <p>5 Q. For Helix.</p> <p>6 A. Would be Kirk Williams.</p> <p>7 Q. Kirk Williams, okay.</p> <p>8 And what was his role?</p> <p>9 A. Project manager.</p> <p>10 Q. Did you ever consult with anybody that</p> <p>11 you considered to be a project engineer?</p> <p>12 A. No. Kirk -- nope. Kirk Williams would</p> <p>13 be my only contact I had with that.</p> <p>14 Q. All right. If I asked you this before, I</p> <p>15 apologize. We've talked about Mr. Clement, but was</p> <p>16 there a point in time when Mr. Williams did not</p> <p>17 serve as the project manager?</p> <p>18 A. No.</p> <p>19 Q. Was Mr. Williams ever on site?</p> <p>20 A. Yes.</p> <p>21 Q. If he were on site, would it have been</p> <p>22 your standard practice to document that in your</p> <p>23 daily reports?</p> <p>24 A. No.</p> <p>25 Q. Do you, as the foreman on the project,</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 22..25

<p style="text-align: right;">Page 22</p> <p>1 have any way to track the time that 2 Mr. Kirk Williams may have spent on the project? 3 A. Just memory. 4 Q. Which may not be very good back to 2012 5 and '13, correct? 6 A. Correct. 7 Q. So let me ask you a different question. 8 Is there any way, in reviewing the Helix 9 daily reports, to determine when and for how long 10 Mr. Williams may have been on site? 11 A. No. 12 Q. Did Mr. Williams attend the Helix Apco 13 weekly meetings? 14 A. He did attend some of the meetings, yes. 15 Q. So would it be fair to say that after 16 March 30, 2012, with the exceptions noted in your 17 daily reports, that your direct supervisor would 18 have been Kirk Williams for the project? 19 A. Yes. 20 Q. In looking at the Helix daily reports, 21 your first day on site would have been approximately 22 February 28, 2012? 23 A. Correct. 24 Q. How did Helix staff the field crews 25 on site with equipment, trailer, manpower?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes. It's, basically, a trailer with a 2 set up so you could put a large spindle and large 3 spools of wire, as you may see NV Energy doing, and 4 stuff, because we had large spools of wire. 5 Q. Did you track -- strike that. 6 Did you generate any documents that would 7 track the actual equipment on site? 8 A. We would have received probably a monthly 9 tool list, which would track some of those. So 10 there would be a tool list. 11 Q. Okay. Describe that for me, because I 12 don't think I've seen that. 13 A. It's any of our site trucks that are 14 Helix vehicles or anything Helix owned. We would 15 have a monthly report issued to us so the 16 superintendents can check that off, say, "Yes, this 17 is still on our job." So it's just, basically, a 18 monthly checklist that says, "Yes, this tool is 19 still here." 20 Q. And you're using the term "tool" to 21 include the trucks, forklifts, wire pulling? 22 A. That is correct. Yes, they are tools, 23 equipment. 24 Q. I don't think -- and I'll confirm with 25 Cary, but I don't think we've seen anything that</p>
<p style="text-align: right;">Page 23</p> <p>1 A. As needed. 2 Q. All right. At the beginning of the 3 project, did Helix have a trailer? 4 A. Yes. 5 Q. And describe that trailer. Trailer for 6 what? 7 A. Office, blueprints, copies, daily 8 reports, storage. 9 Q. And was there a time during construction 10 that that trailer was removed from the site? 11 A. No. 12 Q. Describe for me the equipment that Helix 13 used for the project, and I realize it may have 14 changed over time, so let's start generally at the 15 beginning of the project? 16 A. Site truck. It was a large project; 17 needed a site truck. 18 Q. Site truck? 19 A. Site truck, the work truck to get around 20 the site, forklift to haul materials, wire pulling 21 trailer, large spools of wire. 22 We had multiple site trucks. I had four 23 at a time. So there were four site trucks. 24 Q. I'm sorry, did you say a wire pulling 25 piece of equipment?</p>	<p style="text-align: right;">Page 25</p> <p>1 looks like that, but you can take that for what it's 2 worth right now because I don't know is the 3 honest... 4 This monthly tool list would show on-site 5 equipment for the project? 6 A. It would -- that is correct, to a certain 7 degree. Any rental equipment, we would have it 8 through a rental agreement, and that would be 9 documented separately from the Helix tool lists. 10 Q. Okay. So I understand, the Helix -- 11 strike that. 12 The monthly tool list is for Helix-owned 13 equipment, correct? 14 A. Owned or if they possibly rented it. 15 Q. Okay. So it would include rental 16 equipment? 17 A. Yeah. I -- that's where I'm out of the 18 picture on that. I don't know, you know. I just 19 know we received it. It's, basically, my checklist, 20 "Is this still on your site?" "Yes." 21 Q. But this is a document that you're given 22 by somebody in the main office to check off, "Yes, 23 this is here, this is here"? 24 A. Mm-hmm. 25 Q. It's still at the --</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 26..29

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. -- site?</p> <p>3 A. Yes.</p> <p>4 Q. So given that fact -- strike that.</p> <p>5 Given that process, it would be your</p> <p>6 understanding that you would have access to</p> <p>7 documents that would show when the trailer was</p> <p>8 mobilized to the site and when it left, and the same</p> <p>9 question for the forklift and the other equipment?</p> <p>10 MR. DOMINA: Object to the form of the</p> <p>11 question.</p> <p>12 Assumes facts not in evidence.</p> <p>13 MR. JEFFERIES: Let me rephrase.</p> <p>14 BY MR. JEFFERIES:</p> <p>15 Q. Whatever the piece of equipment, you, as</p> <p>16 the foreman, should have access to Helix-generated</p> <p>17 records that would show when a piece of equipment</p> <p>18 came to the project and left the project?</p> <p>19 A. That's correct.</p> <p>20 Q. I think I might have interrupted you and</p> <p>21 asked you a question.</p> <p>22 You were describing for me the equipment</p> <p>23 that was generally on site for Helix near the</p> <p>24 beginning of the project, and I have site trucks,</p> <p>25 forklift, the wire pulling equipment, and related</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Correct.</p> <p>2 Q. Did you, as the foreman, ever review that</p> <p>3 overall project schedule that Apco would have</p> <p>4 generated for the project?</p> <p>5 A. I would have reviewed it, yes.</p> <p>6 Q. And the scheduling was discussed at the</p> <p>7 weekly meetings, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Generally a two- to three-week -- two- to</p> <p>10 three-week look-ahead schedule?</p> <p>11 A. Yes.</p> <p>12 Q. Did Apco, to your knowledge, or based on</p> <p>13 your observations, ever intentionally prevent,</p> <p>14 obstruct, hinder or interfere with Helix's</p> <p>15 performance of its work?</p> <p>16 A. I'm not -- on purpose or what are you --</p> <p>17 rephrase that one more time.</p> <p>18 MR. JEFFERIES: I can never do them the</p> <p>19 same twice. I'm going to have her reread it.</p> <p>20 (Requested record was read.)</p> <p>21 THE WITNESS: Intentionally, no.</p> <p>22 BY MR. JEFFERIES:</p> <p>23 Q. Okay. Did you ever provide notice to</p> <p>24 Apco that you were -- you, being Helix, were being</p> <p>25 delayed in the completion of some item of work?</p>
<p style="text-align: right;">Page 27</p> <p>1 trailer.</p> <p>2 Was there anything else?</p> <p>3 A. I mean, we can go down to minute tools,</p> <p>4 torches, flam box, flammable containers, stuff like</p> <p>5 that, but that's probably about it.</p> <p>6 Q. You would -- that latter category, would</p> <p>7 you consider those, kind of, the small tools?</p> <p>8 A. Ladders, yes.</p> <p>9 Q. Were you on the project up through the</p> <p>10 time that Helix completed its work on the project?</p> <p>11 A. Yes.</p> <p>12 Q. So sitting here today, would it be</p> <p>13 accurate to say that you were the foreman for pretty</p> <p>14 much the general start of Helix's work up through</p> <p>15 final completion?</p> <p>16 A. Yes.</p> <p>17 Q. During that time, did Apco ever do</p> <p>18 anything to interfere with or specifically delay</p> <p>19 your activities in the field?</p> <p>20 A. Besides, like, scheduling? Or do you</p> <p>21 mean "Hey, I can't do this because you're in the</p> <p>22 way"?</p> <p>23 Q. Let me try and rephrase.</p> <p>24 Obviously, there's an overall project</p> <p>25 schedule.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. It would have been the project manager.</p> <p>2 Q. I respect that. Let me make sure my</p> <p>3 record is clear.</p> <p>4 So given your defined role on the</p> <p>5 project --</p> <p>6 A. Okay. I'll rephrase it. I'll say we</p> <p>7 have discussed it, but it would have been his job to</p> <p>8 have been -- reported that.</p> <p>9 Q. What predecessor activity to Helix's work</p> <p>10 was ever delayed that delayed Helix?</p> <p>11 MR. DOMINA: Object to the form of the</p> <p>12 question, vague.</p> <p>13 THE WITNESS: I would say that would be</p> <p>14 vague also because there's so many weather</p> <p>15 conditions; there's too many.</p> <p>16 BY MR. JEFFERIES:</p> <p>17 Q. Okay. So you're sustaining his</p> <p>18 objection?</p> <p>19 A. Whatever.</p> <p>20 Q. I'm being a wiseacre. Let me rephrase.</p> <p>21 Do you know what Helix's original</p> <p>22 anticipated duration for the project was?</p> <p>23 A. No.</p> <p>24 Q. Did Helix have an anticipated budget for</p> <p>25 general conditions, and by that, I mean, project</p>

<p style="text-align: right;">Page 30</p> <p>1 fixed costs?</p> <p>2 A. That's not my scope of work.</p> <p>3 Q. Okay. In response to my "delay"</p> <p>4 question, you referenced weather.</p> <p>5 Let me ask it to you this way: Was there</p> <p>6 ever a point in time when you went to Apco or, to</p> <p>7 your knowledge, Mr. Clement went to Apco, and said,</p> <p>8 "We are being" -- "We, Helix, are being delayed</p> <p>9 because of X or Y"?</p> <p>10 A. It would have been the project manager.</p> <p>11 Q. So you and Mr. Clement would not have</p> <p>12 done that?</p> <p>13 A. I wouldn't have, no.</p> <p>14 Q. Sitting here today, can you identify any</p> <p>15 cause of any delay to Helix on the project?</p> <p>16 MR. DOMINA: Object to the form of the</p> <p>17 question, foundation.</p> <p>18 If you know, go ahead. If not, then...</p> <p>19 THE WITNESS: So you want me to, what,</p> <p>20 anything that -- repeat that one more time.</p> <p>21 BY MR. JEFFERIES:</p> <p>22 Q. Sure. Was Helix delayed on the project?</p> <p>23 A. It's vague, but I'll say yes.</p> <p>24 Q. Do you know why?</p> <p>25 A. Numerous issues or items.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Would analyzing include, like, change</p> <p>2 orders or work like that?</p> <p>3 Q. Yes, sir.</p> <p>4 A. I would have analyzed them first, and I</p> <p>5 would have discussed with the project manager.</p> <p>6 Q. So you would have been involved in change</p> <p>7 order requests for Helix to Apco?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever get involved in analyzing or</p> <p>10 participating in generating any change order</p> <p>11 requests for delay costs for the project?</p> <p>12 A. I can't recall. I don't think I would</p> <p>13 have been.</p> <p>14 Q. Sitting here today, can you identify any</p> <p>15 delay that you would attribute specifically to Apco?</p> <p>16 A. I -- I personally, as a -- as a field</p> <p>17 superintendent, no.</p> <p>18 Q. Okay.</p> <p>19 A. I don't think -- that's what I can think</p> <p>20 of -- recall right now.</p> <p>21 Q. Now, your -- while we're on the topic,</p> <p>22 your daily report actually has a section that talks</p> <p>23 about potential claims -- well, I'm reading the</p> <p>24 Apco 745, the first daily report. I think this</p> <p>25 category appears to be on all of them. It says,</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Can you identify those?</p> <p>2 THE WITNESS: Are you okay with that?</p> <p>3 MR. DOMINA: You're -- just so you</p> <p>4 know --</p> <p>5 THE WITNESS: I mean, it would be</p> <p>6 weather, equipment failure, excavating. You can</p> <p>7 say, "Hey, the steel's not here."</p> <p>8 Obstacles found while excavating, loose</p> <p>9 soil. Conditions change that way.</p> <p>10 So, I mean, it just -- there's, like,</p> <p>11 circumstances. Failure of some equipment. Maybe,</p> <p>12 you know, someone called in sick. There's numerous</p> <p>13 delays you can have on the job.</p> <p>14 BY MR. JEFFERIES:</p> <p>15 Q. Okay. And I respect what you're saying.</p> <p>16 There can be a whole host of issues --</p> <p>17 A. Right.</p> <p>18 Q. -- a lot of which are just standard.</p> <p>19 They're going to occur on every project, right?</p> <p>20 A. Yes.</p> <p>21 Q. Let me try and approach it this way.</p> <p>22 Were you involved in analyzing,</p> <p>23 assembling, or presenting any claims for additional</p> <p>24 work or delays that Helix may have submitted on the</p> <p>25 project?</p>	<p style="text-align: right;">Page 33</p> <p>1 "Describe any information which could be valuable in</p> <p>2 recovering costs via claims or protection against</p> <p>3 claims by others, interference by other contractors,</p> <p>4 et cetera."</p> <p>5 If there was a delay event that you felt</p> <p>6 was impacting Helix, would you have noted it in that</p> <p>7 section on your daily reports?</p> <p>8 A. Yes.</p> <p>9 Q. I don't think this is going to be as</p> <p>10 unreasonable as it sounds, but what I'd like for you</p> <p>11 to do is look at your daily reports, and tell me</p> <p>12 when you note a delay event that impacted Helix.</p> <p>13 A. You'd like me to go through all of these?</p> <p>14 Q. I would. And I don't think it's as</p> <p>15 unreasonable as it may sound because when I flipped</p> <p>16 through your dailies, some of them don't have</p> <p>17 anything in that section, and sometimes, in most</p> <p>18 cases, the writing just looks to be documenting what</p> <p>19 you did as opposed to a delay event. So that's why</p> <p>20 I want you to review them.</p> <p>21 Every time you write something in there,</p> <p>22 I don't want you to put it in the record. My</p> <p>23 question to you is: Look at your dailies and tell</p> <p>24 me when you note an activity, a problem, an issue</p> <p>25 that you felt delayed Helix in the field, okay?</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 34..37

<p style="text-align: right;">Page 34</p> <p>1 A. I will do that.</p> <p>2 Q. I'll follow along with you, and we'll</p> <p>3 talk about it if you think it's truly a delay event.</p> <p>4 A. 751, "No trenching or backfilling." It</p> <p>5 was too windy because you'll have dust control and</p> <p>6 all those issues there. Mother nature.</p> <p>7 766, Apco Page 766, on April 2nd, 2012,</p> <p>8 "Water line was hit on the east side. Trench filled</p> <p>9 up with water; conduits will need to be cleaned</p> <p>10 out."</p> <p>11 Q. While you're there, can you tell who hit</p> <p>12 the water line?</p> <p>13 A. Apco did all the trenching and digging</p> <p>14 for Helix on that job.</p> <p>15 Water line hit -- the next day -- excuse</p> <p>16 me, 767, 4/3/2012, "Six-inch water line hit, and</p> <p>17 two-inch sprinkler line hit by the backhoe."</p> <p>18 Q. You moved on past those two entries.</p> <p>19 Any way that you can tell if or how long</p> <p>20 that delayed Helix?</p> <p>21 A. It would vary per -- per the situation,</p> <p>22 but it could be days because water fills up, conduit</p> <p>23 needs to dry, vacuum, getting the mud out. If that</p> <p>24 mud and water goes down in that conduit, you may</p> <p>25 have to dig it up in another area to remove that</p>	<p style="text-align: right;">Page 36</p> <p>1 conduits, so that would have required opening up</p> <p>2 light poles, finding these conduits, removing that</p> <p>3 wire, repairing the conduit, installing strings,</p> <p>4 installing the wire, re-terminating them, turning on</p> <p>5 the panels, making sure those lights work again.</p> <p>6 So it's a little bit of a process.</p> <p>7 Q. Sure.</p> <p>8 A. Just wanted that to be noted.</p> <p>9 Q. I understand. Would you have submitted a</p> <p>10 change order for those extra costs?</p> <p>11 A. Possibly -- probably should have and</p> <p>12 would have been.</p> <p>13 Q. Okay. Let me make sure.</p> <p>14 To the extent you had to do the rework in</p> <p>15 an area that you just described, wouldn't it have</p> <p>16 been Helix's practice to assemble those costs and</p> <p>17 submit a change order?</p> <p>18 A. It would be Helix policy to -- I'm trying</p> <p>19 to remember. It's been five years, and I'm</p> <p>20 picturing that. How would I have done that?</p> <p>21 I -- I don't -- I'm pretty -- I'm trying</p> <p>22 to remember how I would have repaired some of those.</p> <p>23 I may have noted them done on another</p> <p>24 sheet of paper, but I don't think I put them on my</p> <p>25 daily reports with quantities and items that were</p>
<p style="text-align: right;">Page 35</p> <p>1 pipe, retrench it, install other conduit.</p> <p>2 Q. And it sounds like those are</p> <p>3 possibilities?</p> <p>4 A. Yes.</p> <p>5 Q. My question was simply, in looking at</p> <p>6 these, do you quantify how, if at all, Helix was</p> <p>7 delayed?</p> <p>8 A. I can.</p> <p>9 Q. You can or cannot?</p> <p>10 A. I can. I'm knowledgeable enough and have</p> <p>11 been doing this long enough. I can --</p> <p>12 Q. Okay.</p> <p>13 A. -- nail it pretty much.</p> <p>14 Q. Okay. How long would these two pipe</p> <p>15 issues have delayed Helix?</p> <p>16 A. I would probably say they would be a two-</p> <p>17 to three-day span.</p> <p>18 Q. Was there other work available to</p> <p>19 Helix --</p> <p>20 A. Now, if -- I'm sorry. I apologize. I</p> <p>21 know I'm not supposed to interrupt you.</p> <p>22 As I remember stuff, my gears start</p> <p>23 spinning.</p> <p>24 Some of these instances, there was</p> <p>25 existing cable, or something, in some of these</p>	<p style="text-align: right;">Page 37</p> <p>1 used to repair that fix.</p> <p>2 Q. I guess that's my question. If something</p> <p>3 was material enough and involved rework, it would</p> <p>4 have been your practice, be it in your dailies or on</p> <p>5 a separate sheet, to track the extra costs and</p> <p>6 submit them to Apco, correct?</p> <p>7 A. I may have submitted them and gave them</p> <p>8 to the project manager for him to submit those to</p> <p>9 Apco.</p> <p>10 I would say 769, on the 5th, "Waiting for</p> <p>11 an answer for backfill on the trenches. The</p> <p>12 inspector wants better dirt for the backfill.</p> <p>13 Numerous trenches are not backfilled. Probably need</p> <p>14 to reschedule."</p> <p>15 So that would be something where the dirt</p> <p>16 processing would have had to have been done better,</p> <p>17 you know. So that would have been a delay.</p> <p>18 Q. Do you know the amount of any delay in</p> <p>19 the daily report?</p> <p>20 A. I did not put an exact time, no.</p> <p>21 Next day also, 4/6/12, Apco 770,</p> <p>22 "Repaired damaged PVC and wire for east side path</p> <p>23 lights."</p> <p>24 My bad, I should have been more specific.</p> <p>25 Q. Well, in your defense, further up, you do</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 38..41

<p>Page 38</p> <p>1 have "Repair broken conduit and wire on east side." 2 A. Mm-hmm. 3 Q. "PVC and wire was hit when water line was 4 installed." 5 Is there any way for you to quantify any 6 delay to Helix, determine the amount of delay to 7 Helix? 8 A. I can get you pretty close. 9 Q. Okay. What is it? 10 A. On that one right there, that would have 11 probably been at least a couple of days on that. 12 I'm getting -- I remember some of these. 13 Q. Apco 771, the inspections have now 14 passed -- 15 A. Mm-hmm. 16 Q. -- correct? 17 A. "Inspections on trenches at MS1 passed by 18 Juan, North Las Vegas inspector." Now, there's 19 multiple trenches that are open. This is probably 20 another trench in a certain area where some of that 21 repair wasn't done. 22 It will note where the damage was done. 23 That may not have been new -- you know, that's 24 probably new work crossing that, but it's probably 25 not going -- I could probably get inspections on</p>	<p>Page 40</p> <p>1 boxes," and stuff like that, that should have been 2 determined right. There we're determining what 3 needs to be done. Why don't I have these answers 4 already? You're holding me up. 5 Q. Would you agree, to the extent that the 6 city was holding Helix up, that Helix had an 7 obligation to so notify Apco? 8 MR. DOMINA: Object to the form of the 9 question, calls for a legal conclusion. 10 BY MR. JEFFERIES: 11 Q. You can go ahead and answer. He's going 12 to make some objections for the record, but you can 13 go ahead and answer unless he instructs you not to 14 answer, okay? 15 A. What was the question again? 16 Q. Reread it. 17 (Requested record was read as 18 follows: Would you agree, to the 19 extent that the city was holding 20 Helix up, that Helix had an 21 obligation to so notify Apco?) 22 THE WITNESS: I don't think I can 23 honestly answer that. I -- I don't know. 24 Yeah. No. 25 ///</p>
<p>Page 39</p> <p>1 other trenches, so... 2 773, "Backfilling trenches shutdown to 3 the wind again." 4 On 781, if you just wanted to read it, 5 "Material and wire take off. Meet with City of 6 North Las Vegas for communication run for the Wi-Fi 7 around the park. Discuss conduit and pull boxes 8 sizes. As-built prints." 9 Just communication that's -- you know, 10 we're determining answers. How are we doing this, 11 or things that could not be started, we're waiting 12 for answers on some of these issues, so just... 13 Q. Well, that -- you don't note any delay on 14 that in your daily report, do you? 15 A. Well, if I noted it on that, it's holding 16 me back. It's just -- I mean, I just have a 17 conversation on that, so I'm just... 18 Q. Okay. Where -- okay. 19 Where in that entry do you suggest that 20 you're being held up? 21 A. Well, when I'm meeting with the City of 22 North Las Vegas for the communication run and Wi-Fi, 23 these are issues that should have already been on 24 the blueprints. I should have already known where 25 to go with those. "Discuss conduit and pull size</p>	<p>Page 41</p> <p>1 BY MR. JEFFERIES: 2 Q. Okay. 3 A. I mean, I'm just -- I'm in high gear. 4 I'm ready to go install pipe and get things going. 5 If something is holding me up, man, I -- I just got 6 to go. 7 I install. I'm a fieldworker. 8 Q. Okay. 9 A. I see your gears grinding. 10 Take that off the record. 11 MR. DOMINA: This is actually a low key 12 depo. Don't -- 13 THE WITNESS: Dude, I'm a worker. You 14 can write this, I put on my tools, I rock and roll 15 down there, and I can build you whatever you want, 16 you know, and that's -- I mean, I'm going to go 17 through these. I don't pull any punches. I'm not a 18 bullshitter. 19 BY MR. JEFFERIES: 20 Q. Okay. And I respect everything you just 21 said. If -- let me ask you just a field-type 22 question. 23 If, in fact, Helix did not have any -- 24 strike that. 25 To the extent you, as the foreman in the</p>

<p style="text-align: right;">Page 42</p> <p>1 field, were being delayed in a particular area, 2 would you refocus your efforts and crews on areas on 3 the project where you were not impacted? 4 A. I would have tried to. 5 Q. Okay. And so if you were unable to do 6 productive contract work, because you were being 7 delayed in a particular area, would you have pulled 8 your crews or would you just keep them out there 9 being inefficient? 10 A. It would have been noted it was delaying 11 me because the amount of time to relocate people to 12 go to another area to get that material and set up, 13 it's still time consuming, and it's a delay. 14 Q. Okay. And those delays would be noted in 15 here, your dailies? 16 A. Not every -- I know it wouldn't have been 17 noted on every single daily. 18 Q. Okay. My question was a little bit 19 different. To the extent you concluded, as the 20 foreman, there is no meaningful contract work that 21 Helix can get done today, would you have demobilized 22 your crews for that day? 23 A. Maybe not demobilized, maybe reinstructed 24 them to do something else. 25 Fair enough?</p>	<p style="text-align: right;">Page 44</p> <p>1 productive contract work 2 available to you to complete?) 3 THE WITNESS: Productive and it would 4 have been noted on the daily reports. It would have 5 to, you know, been documented. 6 BY MR. JEFFERIES: 7 Q. So is the answer yes or no? 8 A. Yeah. 9 Q. Okay. 10 A. Yes. Sorry. 11 Q. Were you ever proactive in asking RFI's 12 prior to work being done at the weekly meetings? 13 A. Proactive asking RFI's before they were 14 issued, is that -- what are you -- 15 Q. Posing questions through the RFI process 16 regarding issues that you had identified before you 17 got to the point and they were a delay. 18 A. Oh, yeah. 19 Q. Okay. What was your personal role in the 20 RFIs? 21 A. Coming up with a solution. 22 Q. Okay. 23 A. Any issues found, I would have brought up 24 to my project manager, and then it would have been 25 brought up to Apco. This is the solution we think</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Do something else productive on site? 2 Yes? 3 A. Yes. 4 Q. So given -- if that's your practice, to 5 the extent Helix and the daily reports show you and 6 your crews are working on site, would it be fair to 7 conclude that there was productive contract work 8 available to you to complete? 9 MR. DOMINA: Object to the form of the 10 question. 11 THE WITNESS: I don't know how to 12 honestly answer that. It's -- I could go all over 13 the place with that. 14 BY MR. JEFFERIES: 15 Q. Okay. I think I'm asking you a yes-or-no 16 question. Let me have her reread it. 17 A. Okay. 18 Q. I'm going to repose the question to you. 19 (Requested record was read as 20 follows: So given -- if that's 21 your practice, to the extent 22 Helix and the daily reports show 23 you and your crews are working on 24 site, would it be fair to 25 conclude that there was</p>	<p style="text-align: right;">Page 45</p> <p>1 would probably suit us best. 2 Q. Okay. If you identified a problem, would 3 you report it to Mr. Williams to generate a RFI to 4 Apco? 5 A. Yes, I would have let him know. Yes. 6 Q. All right. What date are we on? 7 A. May 1st. 8 May 7, Apco 791, "Windy today. No 9 trenching due to dust and the weather." 10 Q. But there was other work you were doing, 11 other than trenching, right? 12 A. Yes. 13 Apco 792, 5/8, "Two men, one hour to 14 repair PVC and re-pull some wire." 15 Not documented where, but... 16 795 Apco, "Repaired conduit, placed wire 17 at light polls." 18 Q. Do you note whether that delayed you at 19 all? 20 A. I'm sorry? 21 Q. Did you note whether that delayed Helix 22 at all? 23 A. No, I didn't note it. 24 Q. Okay. 25 A. 5/14, Apco 796, "Repair data conduit at</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 46..49

<p style="text-align: right;">Page 46</p> <p>1 MS3 location." 2 Apco 797, May 15th, "Trail light conduit 3 and wire hit by the backhoe. Re-pull new wire. 4 Repair conduit." 5 Q. Can you tell who hit that? 6 A. I can't honestly tell you which trade hit 7 that, but it was not Helix. 8 Q. Okay. 9 A. 798, "Repair conduit and wire at the 10 trail lights at the central plaza. Hit by the 11 backhoe." 12 Also, there's noted there was no stakes. 13 Those would be survey stakes at the tennis courts of 14 the parking lot for the site lighting. So by not 15 having survey stakes or those there, there's no -- 16 you can't install conduit and PVC. You need the 17 stakes to do the trenching and all that, so that's 18 pertinent information. You can't perform that work. 19 Q. Okay. 20 A. Going as quick as I can. 21 Q. No, no, no, that's -- I understand. 22 Do you want to take a break? 23 A. I'm fine. 24 You had a question about RFI's. Earlier 25 here, on 815, "Turned in an RFI for the baseball</p>	<p style="text-align: right;">Page 47</p> <p>1 rest room panels," blah, blah, blah blah. So you 2 can see RFIs were worked together with, so I don't 3 know if that matters. 4 Q. You don't show any delay -- note any 5 delay on that daily report, do you? 6 A. No. But this will make me change my 7 daily reports. It is what it is. 8 6/19, Apco Number 820, "Needed the sewer 9 line at the ball fields backfilled in order to lay 10 out trenches. Need the pole bases set on the north 11 and east parking lots," which Apco was responsible 12 for. So that was just noted as another delay. 13 Whatever. Sorry. 14 Q. I want to ask you about that. 15 You don't note it as a delay. You note 16 it as a coordination issue, right? 17 MR. DOMINA: Object to the form of the 18 question. 19 THE WITNESS: Yeah, I can't -- to me, 20 that's a delay. 21 BY MR. JEFFERIES: 22 Q. Okay. You -- you don't use the term 23 "delay" or note that you're being hindered, do you, 24 in your write-up? 25 A. No.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And in looking at the work described up 2 above, you -- Helix was, in fact, doing other work, 3 correct? 4 A. Yes. 5 Q. Okay. 6 MR. DOMINA: The box says, "Put stuff 7 here if you think you have a claim." So, anyway... 8 We're going to spend a lot of time going 9 through these, if that's the argument we're making 10 to identify every little delay, but whatever you 11 want to do. 12 MR. JEFFERIES: Right on. 13 MR. DOMINA: Okay. 14 THE WITNESS: We can say on June 20th, 15 821, "Called Century Link for field meeting. Pull 16 box has slurry around it. Need an alternative to 17 install the two-inch conduit." So we need somebody 18 to come up with an alternate there. 19 BY MR. JEFFERIES: 20 Q. That didn't delay your other work that 21 you noted in the field, did it? 22 A. It's not noted, but -- it's not noted. 23 Q. Okay. 24 A. 7/16, 837, Apco 837, "The switch gear was 25 broken into, and the wire was cut and stolen.</p>	<p style="text-align: right;">Page 49</p> <p>1 Informed Apco of the incident." So -- 2 Q. Did that delay you? 3 A. Yep. 4 Q. Okay. 5 A. Yes. Sorry. 6 Q. Okay. It looks -- 7 A. The wire would have been short or would 8 have to have been pulled out of the conduit, 9 re-pulled, reordered. MS1 is a piece of switch 10 gear, which would have been broken into, so if 11 you're asking me, yes. 12 Q. Sounds like you had to do extra work to 13 repair it, right? 14 A. Yes. 15 Q. Did that extra work delay Helix's 16 critical path, given the other work that you're 17 showing being done on July 16th, 2012? 18 MR. DOMINA: Object to the form of the 19 question. 20 THE WITNESS: I believe it would have 21 delayed me, yes. 22 BY MR. JEFFERIES: 23 Q. Okay. And do you note that between -- 24 A. Is it written, no. 25 Q. Okay.</p>
--	---	---	--

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 50..53

<p style="text-align: right;">Page 50</p> <p>1 A. I'm learning a lot. Thank you. Thank 2 you. Now I know why I didn't stay in medical 3 school. 4 Sorry, I'm just having fun. 5 Apco 846, on July 30th, 2012, "Repaired 6 damaged PVC and pole base in the garden area, 7 Patriot Excavating hit the pole base with their 8 grader." 9 Q. In light of the other work that you 10 describe on that same daily report, did that delay 11 your work that day? 12 A. I couldn't -- I didn't note it. 13 Q. Okay. 14 A. 7/31, 847, "Raining today. Inspection on 15 NV Energy pad. Waiting on pole bases to be set." 16 So I believe that would have been a delay. 17 Q. But you were -- strike that. 18 That did not delay you in performing work 19 on that day, given the other activities you describe 20 above on the same daily report, correct? 21 A. Stayed busy. 22 Q. Is the answer to my question yes? 23 I'm going to have her reread it, and I'm 24 going to repose the question to you. 25 (Requested record was read as</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And I totally respect that. And to the 2 extent that was extra work, you would have submitted 3 a change order, correct? 4 MR. DOMINA: Object to the form of the 5 question. 6 THE WITNESS: That would have been 7 through the project manager. 8 BY MR. JEFFERIES: 9 Q. Okay. To the extent you determined that 10 these repair efforts, damaged PVC, the damage that 11 was done by Patriot on or about August 6th, 2012, 12 you would have advised your project manager that we, 13 Helix, should get a change order for repairing these 14 items, correct? 15 MR. DOMINA: Same objection. 16 THE WITNESS: One more time, please. 17 BY MR. JEFFERIES: 18 Q. If you're doing extra work to fix damage 19 caused by others, wouldn't you advise your project 20 manager that we should -- we, Helix, should submit a 21 change order? 22 A. Yes, it wouldn't have been done that 23 date, but okay. Yes. 24 Q. Okay. 25 A. Sorry.</p>
<p style="text-align: right;">Page 51</p> <p>1 follows: That did not delay you 2 in performing work on that day, 3 given the other activities you 4 describe above on the same daily 5 report, correct?) 6 THE WITNESS: No. 7 MR. JEFFERIES: When you do the 8 transcript, will you plug in the question you're 9 rereading so I don't have to wonder what we're 10 rereading? 11 THE WITNESS: 848, Apco. "Six hours 12 spent pulling out damaged wire, wire that was 13 stolen." That was on 8/1/2012. 14 Go to Apco 851 on 8/6, "Need the water 15 feature. MCC submittals, the load calc's required. 16 Anchor bolts were bent over at the dog park pay 17 Patriot's grader. Also, PVC stub up at the light 18 pole was damaged." 19 Q. Did that delay your work on that date? 20 A. It may not have delayed me on that day, 21 but it would have affected me on another day down 22 the road. That would be typical on all those other 23 incidents. If we -- even though that my daily 24 report it didn't, I would have to go back and make 25 all those repairs on all the other noted damages.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And -- okay. 2 A. 8/8/2012, Apco 853, "Light pole near the 3 rose garden was installed in the wrong location. 4 The light pole was removed, relocated conduit, and 5 wire needed to be replaced. T&M ticket." So 6 there's the totals on all of that stuff. 7 Q. So that represented extra work that you 8 were tracking on a time and material basis, correct? 9 A. Yes, T&M is time and material. 10 Q. And that did not delay your work, as you 11 note on that day, correct? 12 A. On that day, correct. 13 Q. Okay. 14 A. 8/27/2012, Apco 866, "Check wire and gear 15 for vandalism." 16 Also, "Equipment on site was vandalized. 17 Batteries were stolen out of heavy equipment over 18 the weekend. Helix was not affected; Valley Crest 19 and Apco equipment were hit." Noted. 20 Q. That didn't delay Helix, did it? 21 A. Apco couldn't dig for me. 22 Q. Did you note a delay? 23 A. Not written on the dailies. 24 Q. Okay. In fact, your -- you described 25 other work that was going on on that date, correct?</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 54..57

<p style="text-align: right;">Page 54</p> <p>1 A. On the dailies, yes.</p> <p>2 Q. Okay.</p> <p>3 A. 8/29, 868, "Needs surveying done to lay</p> <p>4 out underground conduit -- conduit runs. Waiting on</p> <p>5 surveying."</p> <p>6 Q. That didn't delay your work in the field,</p> <p>7 did it, that day?</p> <p>8 A. Not noted on that day.</p> <p>9 Q. Okay.</p> <p>10 A. Could be...</p> <p>11 Q. Could be later on?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay.</p> <p>14 A. Sorry.</p> <p>15 8/30, 869, "Existing underground conduit</p> <p>16 hit by Valley Crest. Had to repair PVC, re-pull</p> <p>17 wire, make up light poles, two men," and there's a</p> <p>18 time and material on that.</p> <p>19 Q. One and a half hours each?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. Vague, but on 9/4/2012, Apco 871, noted,</p> <p>23 "Need surveying done."</p> <p>24 Q. But on that date, you're still performing</p> <p>25 other work, correct?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. It would have been noted as piping</p> <p>2 conduits for MCC, but it wouldn't have been noted as</p> <p>3 -- underground conduits would have been quicker and</p> <p>4 easier. This delayed me because now I have to build</p> <p>5 racks, pipe stuff overhead, so that's where the</p> <p>6 delay comes in.</p> <p>7 Q. Did you ever submit a change order or</p> <p>8 request additional time from --</p> <p>9 A. I can't recall -- sorry.</p> <p>10 Q. Let me make sure my record is clear.</p> <p>11 Did Helix ever submit a claim or request</p> <p>12 for additional time because of that?</p> <p>13 MR. DOMINA: Object to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I can't honestly answer</p> <p>16 that.</p> <p>17 BY MR. JEFFERIES:</p> <p>18 Q. Okay.</p> <p>19 A. 9/12, Apco 877, just it's noted "Site is</p> <p>20 muddy from the rain.</p> <p>21 Q. Did it delay you that day?</p> <p>22 A. Not noted.</p> <p>23 Q. In fact, you're performing other work,</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes. Noted the next date, on 9/5/2012,</p> <p>2 Apco 872, "Need surveying done." Same as previous.</p> <p>3 Work is being done that date; that surveying still</p> <p>4 is not complete.</p> <p>5 9/10, the date, Apco 875, "MCC is set at</p> <p>6 the irrigation building. Underground conduits will</p> <p>7 have to be piped overhead due to not receiving MCC</p> <p>8 cutsheets for the contractor."</p> <p>9 Q. Did that delay you?</p> <p>10 A. On that day, no, but in the future past</p> <p>11 it, yes.</p> <p>12 Q. And -- okay.</p> <p>13 A. Yes, it would have increased the work.</p> <p>14 Q. Okay. So it should be so noted when we</p> <p>15 get to that point in your daily reports, correct?</p> <p>16 MR. DOMINA: Object to the form of the</p> <p>17 question. Assumes facts not in evidence. Probably</p> <p>18 calls for a legal conclusion as well.</p> <p>19 THE WITNESS: Um -- yeah.</p> <p>20 BY MR. JEFFERIES:</p> <p>21 Q. I'll rephrase it.</p> <p>22 To the extent this activity you just</p> <p>23 identified delays you in the future, it would have</p> <p>24 been your practice to note that in your daily</p> <p>25 report, correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. In fact, you had a crew of six people for</p> <p>2 eight hours a piece, correct?</p> <p>3 A. Mm-hmm.</p> <p>4 Q. Yes?</p> <p>5 A. Yes. Yes.</p> <p>6 MR. DOMINA: Efficiency can be a delay</p> <p>7 but that's not...</p> <p>8 THE WITNESS: I believe it says 9/13,</p> <p>9 Apco 878, "Need another crew to backfill trenches</p> <p>10 for the trail lights. No backhoe digging this</p> <p>11 morning." That's -- Apco does the backfilling and</p> <p>12 trenching.</p> <p>13 BY MR. JEFFERIES:</p> <p>14 Q. Okay. Did that delay you on that day?</p> <p>15 A. It's not noted, but I know it did.</p> <p>16 I -- whatever good that is.</p> <p>17 Following day, 9/14, Apco 879, "No</p> <p>18 trenching for the trail lights. Monday trenching</p> <p>19 should resume. No inspection yet on the light poles</p> <p>20 or pull boxes. It was called in one week ago," from</p> <p>21 9/14.</p> <p>22 Q. Given the size of the crew and the hours</p> <p>23 worked, those activities did not prevent you from</p> <p>24 doing contract work on that date, correct?</p> <p>25 MR. DOMINA: Object to the form of the</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 58..61

<p style="text-align: right;">Page 58</p> <p>1 question.</p> <p>2 THE WITNESS: I -- we worked that day.</p> <p>3 BY MR. JEFFERIES:</p> <p>4 Q. The issues that you identified in the</p> <p>5 daily report for September 14, 2012, did not prevent</p> <p>6 you from doing other contract work, correct?</p> <p>7 A. On that day, correct.</p> <p>8 Q. Okay.</p> <p>9 A. We'll note 9/20, Apco 883, "Need</p> <p>10 inspections on trenches, light poles and pull boxes.</p> <p>11 Called in two weeks ago."</p> <p>12 Work was performed on that day.</p> <p>13 Q. Okay. So that lack of inspection did not</p> <p>14 prevent you from performing contract work on 9/20,</p> <p>15 correct?</p> <p>16 A. On 9/20 is correct.</p> <p>17 Q. Okay.</p> <p>18 A. I don't know if I had -- I'll keep my</p> <p>19 mouth shut.</p> <p>20 9/25/2012, Apco 886, "Survey stakes had</p> <p>21 the wrong offsets on them. Had to redo layout, dig</p> <p>22 up risers and reroute conduit, blow new strings,</p> <p>23 three men, eight hours each."</p> <p>24 MR. DOMINA: Any chance we can take a</p> <p>25 quick break, just bathroom break?</p>	<p style="text-align: right;">Page 60</p> <p>1 would have sent them home for their safety.</p> <p>2 Q. Okay.</p> <p>3 A. 10/22, Apco 903, "Conduit hit at the</p> <p>4 wedding chapel. Pulled out wire, repaired conduit.</p> <p>5 Two men, three hours."</p> <p>6 Q. Given the fact -- strike that.</p> <p>7 Would you agree that where you were able</p> <p>8 to quantify time spent or lost on an issue, you</p> <p>9 would have quantified it in your daily reports?</p> <p>10 MR. DOMINA: Object to the form of the</p> <p>11 question.</p> <p>12 That's outside the scope of his testimony</p> <p>13 today, even --</p> <p>14 MR. JEFFERIES: It's his -- I'm asking</p> <p>15 about his practice in preparing these daily reports.</p> <p>16 MR. DOMINA: Right, but that doesn't mean</p> <p>17 that it's his obligation to do that, per se.</p> <p>18 MR. JEFFERIES: I didn't -- I didn't use</p> <p>19 that term.</p> <p>20 BY MR. JEFFERIES:</p> <p>21 Q. Let me make sure we're clear.</p> <p>22 There's been several points in your daily</p> <p>23 reports when you've said, Six hours spent on an item</p> <p>24 that you believe was either extra work or a delay,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. JEFFERIES: Let's do it.</p> <p>2 (Short break was taken.)</p> <p>3 THE WITNESS: 9/27, Apco 888, "Need</p> <p>4 backhoe to complete underground trenching."</p> <p>5 Not delayed on that date, but I feel it</p> <p>6 would have delayed us.</p> <p>7 BY MR. JEFFERIES:</p> <p>8 Q. Okay. As you sit here today, do you know</p> <p>9 if Helix ever submitted a request for additional</p> <p>10 time?</p> <p>11 A. That wouldn't be me.</p> <p>12 Q. Okay.</p> <p>13 A. October 11, 2012, Apco 897, "Rain today;</p> <p>14 slippery and wet conditions."</p> <p>15 Q. Did you do some work that day?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. In fact, you have four hours for</p> <p>18 most of the crew, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So would it be fair so say that if you</p> <p>21 determined that there was not sufficient work</p> <p>22 available for your crews to do that, you would have</p> <p>23 sent people home?</p> <p>24 A. On that day, being rainy and slippery, it</p> <p>25 would have been a safety issue, so it would -- I</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes.</p> <p>2 Q. My question simply is, when you were</p> <p>3 able, was it your practice to identify how much time</p> <p>4 was lost or spent on something that you considered</p> <p>5 to be a delay or extra work?</p> <p>6 A. When I was able, if it was small enough.</p> <p>7 Q. Okay. The answer is yes?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 MR. DOMINA: If it was small enough.</p> <p>11 THE WITNESS: If it was small enough.</p> <p>12 MR. DOMINA: Conditioned.</p> <p>13 THE WITNESS: My project manager would</p> <p>14 have been notified of the issues.</p> <p>15 BY MR. JEFFERIES:</p> <p>16 Q. Okay. How would you have notified him?</p> <p>17 A. Could have been verbally.</p> <p>18 Q. Okay. Did you have a practice of sending</p> <p>19 e-mails from the field office --</p> <p>20 A. No.</p> <p>21 Q. -- to the main office?</p> <p>22 A. No. 10/24, Apco 905, "Century Link box</p> <p>23 was hit; we'll have to replace the top section and</p> <p>24 the lid. Two men, two hours each on that lid -- two</p> <p>25 men, two hours each and the lid cost."</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 62..65

Page 62	Page 64
<p>1 Q. Okay.</p> <p>2 A. 11/9/2012, Apco 916, "Three men, three</p> <p>3 hours to repair bollards. One man, two and a half</p> <p>4 hours to chip up concrete out at the PVC.</p> <p>5 Q. Okay.</p> <p>6 A. 11/13, Apco 917, "No trenching done today</p> <p>7 at ball fields, light pole bases not set to grade."</p> <p>8 Q. Did any of those items delay your work on</p> <p>9 that day?</p> <p>10 A. Not on that day, but I had to relocate</p> <p>11 people to other areas, so it would have -- I had to</p> <p>12 relocate people to other areas.</p> <p>13 Q. Within the project?</p> <p>14 A. Within the project.</p> <p>15 Q. Okay.</p> <p>16 A. 11/14, "Repair PVC at ball fields. Fence</p> <p>17 post was dug too deep. Two men, one hour each."</p> <p>18 11/28, Apco 927, "Surveying not correct</p> <p>19 for skate park Musco lighting."</p> <p>20 Q. Did that delay your work on that day?</p> <p>21 A. Caused me to relocate men to other areas.</p> <p>22 Q. Did you make any attempt to quantify any</p> <p>23 hours lost in re-coordinating or moving them around?</p> <p>24 A. It's not documented on the dailies.</p> <p>25 Q. Okay. Do you know if -- and if I asked</p>	<p>1 courts. 50-foot of PVC, 340 feet of wire. Two men,</p> <p>2 two hours. Grade was too low."</p> <p>3 Q. Do you have any way to quantify how, if</p> <p>4 at all, performing that extra work delayed Helix on</p> <p>5 the project?</p> <p>6 MR. DOMINA: Object to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: That would be through my</p> <p>9 project manager.</p> <p>10 BY MR. JEFFERIES:</p> <p>11 Q. Okay. And I respect that. I guess I'm</p> <p>12 asking -- okay. Sitting here today, you do not?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Go ahead.</p> <p>15 A. I don't know if this pertains to</p> <p>16 anything, but I'd like to just read it. 12/17,</p> <p>17 Apco 940, "Received a verbal from Apco on</p> <p>18 transformer location at the skate park service</p> <p>19 pedestals. Mount outside of the skate park by main</p> <p>20 pull box." Just a verbal. I don't know. I just</p> <p>21 wanted to read it.</p> <p>22 Q. Okay. Sitting here, do you have any --</p> <p>23 did that delay Helix at all?</p> <p>24 A. Not on that date.</p> <p>25 Q. Okay.</p>
Page 63	Page 65
<p>1 you this, I apologize. Did Helix ever ask for</p> <p>2 additional time and general conditions on any extra</p> <p>3 work change orders that may have been submitted?</p> <p>4 MR. DOMINA: Object --</p> <p>5 THE WITNESS: That wouldn't be --</p> <p>6 MR. DOMINA: Let me get an objection in.</p> <p>7 Object to the form of the question.</p> <p>8 THE WITNESS: That wouldn't be me.</p> <p>9 BY MR. JEFFERIES:</p> <p>10 Q. Okay.</p> <p>11 A. 12/5/2012, 932, "One man eight hours to</p> <p>12 adjust the Musco lights. New coordinations were</p> <p>13 needed. Also had to use an 80-foot knuckle boom to</p> <p>14 adjust those lights."</p> <p>15 12/10, Apco 935, "Replace Number 7 pull</p> <p>16 box at picnic shelter east of the ball fields.</p> <p>17 Damaged by the snorkel lift by the ironworkers. Two</p> <p>18 men, one hour, and the cost of a Number 7 pull box.</p> <p>19 Repair the PVC at the rose garden tennis courts.</p> <p>20 Hit by the grader. Two men, two hours and</p> <p>21 re-pulling the wire."</p> <p>22 12/11/2012, Apco 936, "Two men, two hours</p> <p>23 to repair PVC. Excavation was too deep; hit the</p> <p>24 conduits."</p> <p>25 12/12, Apco 937, "Repair PVC at tennis</p>	<p>1 A. But I -- I guess on future dates, it did.</p> <p>2 On 12/18, Apco 941, "Rain today. The</p> <p>3 site was slippery."</p> <p>4 Q. So did it delay you on that day?</p> <p>5 A. We relocated to other areas.</p> <p>6 Q. Okay. You still worked a full day that</p> <p>7 day, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay.</p> <p>10 A. 12/20, Apco 942, "Repair damaged PVC and</p> <p>11 wire by Buchele. Two men, two hours each. Located</p> <p>12 north of main switch gear number two."</p> <p>13 January 1st, 2013, "Need trenching done</p> <p>14 at the shade structures and trail lights."</p> <p>15 So the trenching was not complete.</p> <p>16 Q. Did you say January 1?</p> <p>17 A. Second, 1/2/2013.</p> <p>18 Q. Okay. Did that delay you on that day?</p> <p>19 A. Not on that day.</p> <p>20 Q. Okay.</p> <p>21 A. 1/9/2013, Apco 949, "Repaired broken PVC</p> <p>22 and wire hit by Valley Crest. Existing trail light</p> <p>23 conduit was damaged."</p> <p>24 Q. You don't even note any time spent on</p> <p>25 that, do you?</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 66..69

<p style="text-align: right;">Page 66</p> <p>1 A. No, I didn't. 2 1/14/2013, Apco 952, "One man, 3 three hours. Repair damaged PVC wire and existing 4 lights located out at central to the lot. Wire 5 total was 300 feet. Repair broken pipe and damaged 6 wire hit by Valley Crest at central plaza. Two men, 7 two hours each, 960 feet of wire." 8 MR. DOMINA: A lot of trade damage on 9 this one. 10 THE WITNESS: Yeah. 11 1/15/2013, Apco 953, "Holes are not cut 12 in the columns yet. Have requested for these to be 13 done for weeks." 14 BY MR. JEFFERIES: 15 Q. That didn't delay you, did it? 16 A. Not that day, but I had to relocate and 17 come back to it. 18 Q. Okay. 19 A. 1/24/2013, Apco 959, "Newly installed 20 light poles have been damaged by heavy equipment. 21 Also, fiberoptic box was crushed by the equipment." 22 Would have caused a delay for relocating 23 my men. Not on that day; that would have -- it 24 would have been relocating from that area. 25 Q. Okay. You don't -- I mean, other than</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Project manager would have. I would 2 have -- we would have had a discussion, and if it's 3 not noted on here, I could have verbally, over the 4 phone, discussed with him when that could have been 5 done. 6 Q. Okay. Keep going. 7 A. 1/29/13, Apco 962, "Need collars pulled 8 around the Century Link pull boxes. Informed Apco 9 of this. Two men, two hours each to repair damaged 10 PVC and wire. 100 feet PVC, 300 feet of wire." 11 1/31/2013, Apco 964, "Trellis not 12 complete at the rose garden in central plaza. 13 Cannot finish mounting the lights and energizing." 14 Q. Okay. Did that prevent or delay any work 15 on that day? 16 A. Delay, yes. I would have relocated to 17 another area. 18 Also, on that same day, "Repair PVC hit 19 by the backhoe." 20 Q. Well, it actually looks like you're -- on 21 January 31, 2013, you're actually doing work in the 22 rose garden area, right? 23 A. Yeah, it's kind of a large area, so there 24 would be other areas right there. So we'd be in 25 that area.</p>
<p style="text-align: right;">Page 67</p> <p>1 noting the damage, you don't note any delay, 2 correct? 3 A. On that day, correct. 4 Q. Okay. 5 A. Another day, 1/28/2013, Apco 961, another 6 "Fiberoptic box was damaged by heavy equipment. Dig 7 up and replace pull box." No time and material 8 noted. 9 Q. Did you ever bring in extra men to 10 perform repairs, so as not to delay the contract 11 work? 12 A. I would have kept some guys there longer 13 than anticipated to help repair some of that work. 14 Q. And to the extent -- and how would you 15 have quantified that, if at all? 16 A. As in -- 17 Q. Well, let me -- 18 A. Well, I needed them to repair. I needed 19 to keep people. Instead of cutting a couple people 20 loose a week, or so, early, "Hey, I need to keep you 21 here an extra few days," or whatever the amount of 22 time it was to repair that work before. 23 Q. To the extent that was necessary, you 24 would have been keeping track of the man-hours to do 25 the repairs, correct?</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. 2 A. Christ. Holy moly. 3 2/4/2013, Apco 966, Repaired conduit that 4 was broke when the pole base was raised. We had to 5 remove a light pole so pole base could be raised. 6 The elevation on the pole was too low, so it had to 7 be raised. Conduit was broken; had to be repaired. 8 Q. Looks like it was two man-hours, and 9 one hour of forklift? 10 A. If that's -- yeah, that's with that. 11 And then -- 12 Q. Okay. 13 A. 2/7/2013, Apco 969, "Removed three light 14 pole bases at the central to the lot for Apco pole 15 basis were set too low. New wire and pipe was 16 needed. Two men, two hours each and a forklift for 17 an hour." 18 2/11/2013, Apco 971, "Need the collars 19 poured for the utility pull boxes before wire can be 20 pulled." 21 Q. That didn't delay you on that day, did 22 it? 23 A. I would have had to relocate. I'd be set 24 up to do that work, so I'd have to relocate to go to 25 another area.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 70..73

Page 70	Page 72
<p>1 Q. Why would you set up for that area if you 2 knew you didn't have the collars poured? 3 A. We could man drill it for the NV Energy 4 underground, but then you wouldn't be able to pull 5 wires. 6 So that's for NV Energy to pull the wire. 7 They will not pull their cables unless you have 8 collars around NV Energy vaults. 9 What we can do is man drill them; they 10 can see that the conduits are good, and they're 11 swabbed. Then they'll be like, "All right. You 12 give us a call when those collars are poured, then 13 we can come out and pull the wire." That just 14 delays us on getting permanent power on that site in 15 that area. 16 Q. But that didn't delay Helix's time on the 17 project, correct? 18 A. It didn't delay me that day. 19 Q. Okay. 20 A. But -- 21 Q. Okay. 22 A. All right. We'll leave it at that. 23 February 12th, 2013, 972, "One man, 24 eight hours to repair the hit PVC and wire at the 25 central to the lot, 300 feet No. 10 wire, 30 feet of</p>	<p>1 for Apco. The pole base was raised." Means the 2 grade was too low. 3 2/26, Apco 981, "One man, three hours to 4 clean up vaults. Vaults were clean. Apco poured 5 the collars around the vaults, excess concrete fell 6 in the vaults. Had to chip up concrete and clean 7 out the vaults. Fiberoptic cable was concrete 8 encased. Had to carefully clean the cable." 9 MR. DOMINA: Read it slower because 10 she's -- 11 When you read it, you read too well. So 12 it's harder for her to type. 13 THE WITNESS: February 27th, Apco 982, 14 "Damaged crash cap on the light pole base, located 15 at the small picnic structure east side." 16 BY MR. JEFFERIES: 17 Q. Can you tell who damaged it from your 18 entry? 19 A. From my entry, no. Man, there's a lot of 20 damage here. 21 2/28/2013, Apco 983, "Damaged light pole 22 base at the east side picnic structure. New crash 23 cap will have to be ordered. Inspection on 24 Century Link pull boxes. Roof needs to be installed 25 at the pump house before wire can be pulled to the</p>
Page 71	Page 73
<p>1 PVC." 2 2/13, "One man, 3 hours 60 feet, 240 feet 3 No. 10 wire to repair damaged PVC lighting run." 4 I believe it was over at the -- to the 5 lot, central to the lot. 6 Q. Have you ever been asked by anybody 7 within Helix to determine how much time, if any, was 8 actually lost on Helix's project schedule due to 9 some of these individual repairs? 10 A. No. 11 Q. Okay. All right. Continue on, if you 12 would. 13 A. February 20th, Apco 977, "Cut PVC. 14 Removed wire so light pole can be raised. One man, 15 two hours to repair PVC and wire for Apco." 16 Q. And I know -- since you're accounting for 17 these additional man-hours, do you know if Helix was 18 paid that? 19 MR. DOMINA: Object to the form of the 20 question. 21 THE WITNESS: I don't know. 22 BY MR. JEFFERIES: 23 Q. Okay. 24 A. February 22nd, looks like 979 Apco, "One 25 man, one hour to set light pole, wire and hot check</p>	<p>1 phone board." 2 Q. That didn't delay you on that day, did 3 it? 4 A. Not on that day. 5 Q. Okay. 6 A. 3/8/2013, Apco 989, "Slippery conditions 7 on that site due to rain." Just wanted it to be 8 noted. Safety with men. 9 Q. You guys still worked a full day, though, 10 right? 11 A. We still work a full day, yes. 12 3/11/2013, Apco 990, "Manhours: 24. 13 Installed 6, 6-inch conduits, as per NV Energy, at 14 Craig Road for Apco Construction. Cleaned up the 15 trench, install PVC for Apco for NV Energy." 16 Q. How, if at all, did that delay you? 17 A. I had to pull men off of another job so 18 they could pass inspection so we could close up the 19 sidewalks and the road by Craig Ranch on Craig Road. 20 Q. You had to pull men from another job. 21 What do you -- 22 A. No from another area on that site over to 23 that. They were having a hard time passing 24 inspection the way -- for install, and we did it. 25 Q. Okay.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 74..77

<p style="text-align: right;">Page 74</p> <p>1 A. 3/12, "Installed 6-inch PVC for NV Energy 2 run on Craig Road." And this was extra work, yes. 3 It was -- we -- we ended up doing that 4 for Apco because of our inspection. We could -- 5 we're electricians, and we had -- Apco told us if we 6 could do that work, so... 7 Q. Okay. 8 A. That's continued on the 13th of March. 9 Also continued on the 14th of March. 10 3/26/13, Apco 1001. We had a discussion 11 with North Las Vegas over lighting for a holiday 12 tree, and added concrete path. We -- it's noted 13 here as Joemels tree. 14 It was -- one of the workers from North 15 Las Vegas really liked this pine tree, and we called 16 it -- this Christmas tree, it was Joemels tree, so 17 they wanted to do holiday lighting, so it was added 18 light poles for the trail light, and that's where I 19 came up with some mentions for RFI, how could they 20 get power there, and stuff like that. 21 Q. Sounds like extra work? 22 A. It's extra work, but like I said, it was 23 just the time doing that, so, kind of proud of that 24 one. 25 3/29, Apco 1004, "Remove skate park</p>	<p style="text-align: right;">Page 76</p> <p>1 That would have been through the project 2 manager. He would have priced that up. 3 4/12/2013, I repaired conduit at ballpark 4 shade structure, two men, two hours. 5 4/14/2013, Apco 1014, "High winds and 6 rain. Crew was sent home." 7 Q. Let me stop you there. 8 When you send the crew home, they each 9 bill -- strike that. 10 When you send the crew home on 11 April 14th, 2013, they both bill one hour, and 12 there's eight hours for you. 13 A. Mm-hmm. 14 Q. What would you have been doing on site? 15 A. I would have been probably ordering 16 material, doing some daily reports, going through 17 the prints. I'll just usually stay there until the 18 end of... 19 Q. Okay. 20 A. Gives me time to catch up on paperwork. 21 On 4/18, Apco 1018, "Phase I telephone 22 conduit to the existing kiosk could not be located. 23 Walked the site with Brett Miller of North Las Vegas 24 and reviewed the issue. North Las Vegas to review 25 this and inform us of any changes."</p>
<p style="text-align: right;">Page 75</p> <p>1 disconnect from the wall. Wall was anchored, and 2 installed wall as five inches too high and had to be 3 removed, disconnect had to be removed. Lift up the 4 wall, one man. One hour, plus five wedge anchors 5 was needed." 6 4/1, Apco 1005, "Need the concrete pads 7 poured for the rose garden pedestal and the MS1 8 housekeeping pads." 9 Q. That did not delay you on that day, did 10 it? 11 A. Not on that day, but it would have been a 12 delay down the road. It would have created -- this 13 was part of the -- on 4/9/2013, Apco 1010, 14 six man-hours. This was pertaining to the NV Energy 15 work on Craig Road. Had to move the 6-inch 90s and 16 the risers closer to the pole. 17 There was the pole numbers listed as U13 18 and 37. The inspector -- NV Energy inspector was 19 not happy with the distance the risers were 20 originally installed, so that was -- was that extra 21 work, yes. 22 Q. Okay. 23 A. April 10, Apco 1011, "Price up a change 24 needed for a fiber run, price up conduit and wire 25 run for interactive playground equipment."</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. That didn't delay you, did it? 2 A. That was a delay because we spent time 3 running around that whole site through pull boxes 4 trying to find these conduits where their existing 5 prints showed, and that's when we had the discussion 6 with Brett Miller, you know, if he knew where they 7 were at, so that was a wasted day. 8 Q. Well, when you say it was a wasted day, 9 you had a crew of three billing -- 10 A. They were -- 11 Q. -- eight hours of work on the other items 12 you noted -- 13 A. Mm-hmm. 14 Q. -- on that daily report, correct? 15 A. Correct. So they -- it wasn't a wasted 16 day. For me it was. 17 4/22, Apco 1020, "No fire watch at the 18 central plaza. Had to use our fire extinguishers to 19 put out a fire on the ironworkers welder. Fire was 20 started from sparks above welding, and fire was 21 around the gas cap of the welder. No injuries or 22 damage were done. Fire extinguisher will need to be 23 recharged." 24 Q. You don't know that that delayed your 25 performance, did you?</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 78..81

<p style="text-align: right;">Page 78</p> <p>1 A. It's not noted. 2 4/29/2013, Apco 1025, "Two men, three 3 hours each to repair PVC that was hit by the fencing 4 company." 5 5/8/2013, Apco 1032, "Surveying was wrong 6 for the service pedestals at the sports plaza. Had 7 to move the pedestal riser into a concrete ring." 8 Q. Did that delay you on that day? 9 Actually, you're the only one on site, correct? 10 A. Yeah, that's correct, so... 11 Q. Before you go too far, I show May 3, you 12 have a three-man crew? 13 A. Mm-hmm. 14 Q. And then -- 15 A. That was Friday. 16 Q. Looks like the following Monday, May 6, 17 2013, starts a series of reports where it's just you 18 on site? 19 A. Correct. 20 Q. At that point, had Helix substantially 21 completed its work? 22 A. Substantially? 23 Q. Let me -- for purpose of my question, 24 obviously there's a difference between final 25 completion --</p>	<p style="text-align: right;">Page 80</p> <p>1 confirm for me that from and after May 6th, 2013, 2 that the daily reports we have show you as the one 3 man crew? 4 A. Correct. 5 Q. Okay. So what was it that occurred that 6 you felt like you could get by with just yourself on 7 site? 8 A. I could finish the work there by myself. 9 I was -- I mean, I didn't need any help. 10 Q. Okay. As of that point, would -- you 11 wouldn't have four site trucks, would you? 12 A. No, sir. 13 Q. Okay. As of that point, you wouldn't 14 have had the forklift standing by, would you? 15 A. I would have, yes, because I was -- yes, 16 I would have. I -- I know I had the forklift there 17 moving around light poles, and stuff like that. I 18 don't know if I have it documented here or not, but 19 I couldn't -- I'd have to look and see exactly what 20 date I got rid of the forklift. 21 Q. What would you look at to -- 22 A. Probably our rental through the PM, 23 through, you know, whoever we rented it through at 24 that point. 25 Q. That would be reflected on a monthly tool</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Mm-hmm. 2 Q. -- and -- strike that. 3 Are you familiar with substantially 4 completing -- 5 A. Yes. 6 Q. -- your scope of work, punch lists, and 7 then final completion? 8 A. Yes. 9 Q. Okay. So given that kind of accepted 10 division in your industry, would it be fair to 11 conclude that as of May 6, 2013, when you go to a 12 one man crew, i.e., yourself, that Helix has 13 substantially completed its work? 14 MR. DOMINA: Object to the form of the 15 question. 16 THE WITNESS: I was still there for quite 17 a while, so I -- I know it's a yes-or-no answer. 18 I can't answer that. 19 BY MR. JEFFERIES: 20 Q. Okay. Well, what was it that allowed you 21 or made you determine that "I no longer need a 22 three-man crew; it will just be me on site for the 23 foreseeable future," I guess? 24 Well, that's not a very good question. 25 I'm going to withdraw that question, and will you</p>	<p style="text-align: right;">Page 81</p> <p>1 list, right? 2 A. That would probably be through a rental 3 agreement, through either Ahern or U.S. rentals. I 4 can't remember who we were using, Sunbelt, whoever 5 we were using at that time. 6 Q. Okay. So it's your testimony that the 7 forklift would have been rented? 8 A. Yes. 9 Q. Okay. What about the wire pulling 10 equipment and trailer, you wouldn't have needed that 11 when you went to a one-man crew, correct? 12 A. Correct. 13 Q. Okay. And the trailer on site, would you 14 have needed that for the one-man crew? 15 A. I'd have to see when I called that off. 16 I can't recall the date that it was called off. 17 Q. Okay. Little different question. 18 You wouldn't have needed a full blown 19 trailer just for you doing the work you were doing 20 by yourself, correct? 21 A. I would have needed it up to a certain 22 point to just -- for all my documentation and the 23 blueprints and everything, you know, to go towards 24 completing the job. 25 Q. Okay. I kind of interrupted you. Given</p>

<p style="text-align: right;">Page 82</p> <p>1 the time entries and the fact that you are out there 2 by yourself, when would you estimate that Helix had 3 substantially completed its work? 4 A. That would have to be the PM. I don't 5 know how. He would have considered it substantial 6 completion. 7 Q. Okay. Let's continue on -- I interrupted 8 this process. We were going through on May 8th, 9 2013. 10 A. Did you want to continue? 11 Q. Yes. What day are you on? 12 A. I'm on May 9th. 13 Q. Did we talk about May 8? Because you 14 do -- in fairness to you and the record, you do say, 15 "Surveying was wrong for service pedestal at sports 16 plaza. Had to move pedestal riser." 17 A. I read that one. That's okay. I'd have 18 to move the pedestal riser into the concrete ring. 19 Q. Okay. You don't note how much time you 20 spent on that, do you? 21 A. No. 22 Q. Okay. And you don't note it as being a 23 delay? 24 A. I didn't note it as a delay, but it 25 should have been.</p>	<p style="text-align: right;">Page 84</p> <p>1 pedestal pads are not poured at the skate park. NV 2 Energy still has not energized power to MS4 and 3 MS6." 4 Q. On those two days, May 28 and May 29, you 5 don't note any delay to your progress, do you? 6 A. Not noted, no. 7 Q. Okay. 8 A. Note on May 30th, Apco 1041, "Called off 9 maxis tugger. NV Energy still not on site. MS4 10 pump house gear termination not complete." 11 So maxis tugger is a wire puller, so 12 that's when it got called off. 13 Q. Okay. 14 A. Wanted you to be aware of that. 15 Q. So what I've been calling the wire 16 pulling equipment and related trailer, left the 17 project on May 30, 2013? 18 A. That would be just the tugger. The maxis 19 tugger is a different piece of equipment. The wire 20 trailer could have still been sitting there. 21 Q. Okay. Do you know? 22 A. I don't remember. 23 July -- June 3rd, 2013, Apco 1043, "Power 24 is still not turned on at the pump house and the 25 skate park." That would have been a delay from not</p>
<p style="text-align: right;">Page 83</p> <p>1 5/20/2013, Apco 1034, "Raised the 2 fiberoptic box. The grade was set too high at the 3 volleyball courts." 4 Q. Okay. Don't note any delay or additional 5 time spent, correct? 6 A. Delay not noted, but would have been... 7 Q. I noticed that, in the production, we go 8 from Apco 1033 to Apco 1034, and it's actually a gap 9 from May 9 to May 20. Do you know why that would 10 be? 11 A. No. 12 Q. Okay. 13 A. Weekly -- I turn in my things weekly, so 14 where they go, they go. 15 Q. So we're continuing our review of items. 16 You note in your daily reports that could 17 potentially be a delay to Helix. 18 A. Yes. 19 Q. So please continue. 20 A. May 28th, no roof -- Apco 1039. "No roof 21 being installed at the pump house. Main switch gear 22 six is still not energized by NV Energy. Could not 23 hot check the pump house." 24 May 29th, 2013, Apco 1040, "Roof is not 25 complete at the pump house. Service pad -- service</p>	<p style="text-align: right;">Page 85</p> <p>1 being able to hot check the equipment, and stuff, on 2 that, but it's not noted. 3 Q. Well, it's not really delaying you, is 4 it, because you're still pulling wire and 5 terminating fixtures, right? 6 A. In other areas, yes. 7 Q. Okay. Well, you're doing it at the pump 8 house? 9 A. Right. Mm-hmm. Yeah. 10 Q. Okay. All right. Let me make sure my 11 record is clear. 12 I appreciate the fact you're noting that 13 the power is not turned on -- 14 A. Right. 15 Q. -- at the pump house, but you were not 16 delayed in otherwise doing contract work at the pump 17 house, correct? 18 A. Correct. Correct. 19 Q. Okay. 20 A. June 4th, Apco 1044, "Apco hit a Number 5 21 pole pox at the south side of the skate park. Box 22 needs to be replaced." 23 Q. That didn't delay you that day, correct? 24 A. Not that day. 25 Q. Okay.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 86..89

<p style="text-align: right;">Page 86</p> <p>1 A. 6/17/2013, Apco 1053, "One man, six hours 2 to repair damaged PVC and wire." 3 Q. That one man is you? 4 A. I'm the one-man wrecking crew. 5 6/19, "Four hours to repair -- Apco 1055, 6 Four hours to repair three-inch PVC and pull boxes 7 that were hit. Century Link final inspection 8 passed." Just another pole box hit. 9 Just note through 6/21 and then 6/24, 10 would be Apco 1057, 1058, "Still no power at the MSA 11 switch gear located at the skate park." 12 Q. That fact did not stop you from 13 performing work at the skate park, correct? 14 A. For that day. 15 Q. My statement is correct? 16 A. Yes. Sorry. 17 Q. Okay. 18 A. Getting close. 19 6/28, Apco 1062, "Windmill structure not 20 assembled yet. Pumps not started up. Mesh not 21 installed in restrooms. Mechanical equipment not 22 set." 23 Q. That's not delaying you from performing 24 any work, is it? 25 A. Not on that day.</p>	<p style="text-align: right;">Page 88</p> <p>1 7/1, Apco 1063, "Swamp cooler pumps not 2 installed. Change order for swamp cooler needed. 3 Need starter or contractors installed for the 4 controls. Also T-stat and water lines not complete. 5 Riser room with the kiosk not poured; cannot install 6 fixtures." 7 Q. Okay. 8 A. 7/2, Apco 1064, "Need the slab poured in 9 the kiosk sprinkler room and the service pedestal 10 pads poured." Also, "Need the T-bar ceiling 11 installed in the kiosk to complete the lighting. 12 Windmill structure still not started yet." 13 Q. Let's pick this date as an example. It's 14 now July 2, 2013, and you spent 10 hours. Are you 15 doing work that was required by the Helix 16 subcontract? 17 A. Yes. 18 Q. Okay. 19 A. 7/8/2013, Apco 1067, "Conduit hit by 20 Valley Crest at the central plaza. Repaired PVC and 21 hot check. No change orders signed. Mechanical 22 equipment not installed at the restrooms or the pump 23 house." 24 Q. Okay. Let me -- would it be fair to say 25 that once you switched to a one-man crew, that being</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. In fact, on that day, 6/28/13, you write, 2 "Call off tools." 3 A. Yeah, our tool -- when we call off tools, 4 we have a tool department. Those tools would be, 5 like, smaller hand tools, rotor hammers, chipping 6 hammers, and stuff like that. Any larger tool would 7 have been called through the project manager. 8 Q. Okay. When we did this originally, I had 9 site trucks, forklift, wire pulling equipment and 10 small tools. 11 So are the small tools now being called 12 off as of June 28, '13? 13 A. Small tools, yes. 14 Q. Does that indicate to you that your work 15 is substantially complete at or about that point? 16 MR. DOMINA: Object to the form of the 17 question. 18 THE WITNESS: I can't -- can't comment on 19 substantially complete. That would be the PM. I 20 mean, that could just be tools that I'm just not 21 using anymore. 22 BY MR. JEFFERIES: 23 Q. Okay. And let's go through these, then 24 I'll ask you some more general questions. 25 A. All right.</p>	<p style="text-align: right;">Page 89</p> <p>1 yourself, you were either doing change order work or 2 work that was within your original Helix scope of 3 work? 4 A. It would have been contract work or 5 change order work. 6 Q. Okay. 7 A. 7/10, repair -- Apco 1069, "Repair PVC 8 that was hit by Valley Crest. Hot check lights 9 after repair." 10 On 7/11, "Called in for final inspections 11 on trail lights and parking lot lights." That's 12 Apco 1070. 13 Q. Thank you. The fact that you're -- 14 strike that. 15 As I look at the work that you're doing 16 in July, couldn't you have just had a larger crew 17 than yourself and knock this stuff out? 18 A. No, because when -- some of the delays we 19 were waiting on, need the power turned on, once that 20 power turns on, I'm getting that. So I have other 21 work lined up to keep me, you know, through that 22 point. So when that works, I can break back and get 23 that one going. So it was -- it was more efficient 24 for me to do that and cost imperative, I think me 25 just there doing that.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 90..93

<p>Page 90</p> <p>1 Q. Okay. So, for example -- and I just want 2 to -- I'm still on July 11. You put install PVC at 3 playground areas. 4 Helix could have brought on a larger crew 5 to perform this work, correct? 6 A. Well, at Helix, the superintendent's in 7 charge and makes the calls, kind of. 8 Q. Fair enough. I'm just -- as I look -- as 9 I look -- we can do July 11 and July 12. 10 A. Right. 11 Q. You're installing PVC at the east trail 12 realignment both days. 13 That work could have been completed 14 quicker with a larger crew, correct? 15 A. To an ex -- I don't know. I don't think 16 so. I think -- 17 Q. Was Mr. Williams involved with the 18 project on site at all? 19 A. Project managers are usually in the 20 office, but they swing by weekly to see progress. 21 Q. I don't -- I haven't seen you reference 22 him in any of -- 23 A. Not documented. 24 Q. Okay. All right. 25 Where -- I interrupted you, and you</p>	<p>Page 91</p> <p>1 were -- where were you at in your review of your 2 dailies? 3 A. We were at 7/11, so we can go to 7/12 4 now. We already did that. 5 7/15, "Fixture hit at the skate park, a 6 four-foot light fixture, and that main switch gear 7 four still not energized at the skate park." 8 Q. And the M -- the MS4 at the skate park, 9 you note that on July 15, 16, and 17, but that 10 didn't delay you from doing a full day's work on 11 those three days, correct? 12 A. Correct. 13 Go to 7/23. 14 Q. Okay. 15 A. "No power at MS4 still. Sprinkler room 16 at the kiosk not poured yet. Service pedestal pads 17 not poured yet. Mechanical equipment not installed 18 in all the buildings." 19 Q. Did that stop you from doing eight hours 20 of productive -- 21 A. No. 22 Q. -- subcontract work? 23 A. No. 24 And on 7/24/2013, Apco 1079, "Helix shop 25 truck was on site to pick up material, wire, and</p>	<p>Page 92</p> <p>1 shelving. Received deliveries and called off the 2 Connex No. 4452" on 7/24/2013. 3 Q. What is the Connex? 4 A. Our storage container. 5 Q. That's not the trailer? 6 A. No. 7 Q. Okay. The fact that you're doing -- 8 strike that. 9 The fact that you're calling off the 10 Connex, does that indicate to you that, from your 11 perspective in the field, you're substantially 12 complete as of July 24, 2013? 13 MR. DOMINA: Same objection, form. 14 THE WITNESS: I can't answer that. That 15 would have to be the project manager. 16 Looks like we're missing dailies. 17 "No power at MS4." It ends right there. 18 BY MR. JEFFERIES: 19 Q. Okay. Do you recall --the last daily 20 report I have from you is July 26 of '13. 21 Did you work on the site after that date? 22 A. I would say yes because there was still 23 no power at that MS4. 24 Q. Okay. But if you were out there, it 25 would have been your practice to fill out a daily</p>	<p>Page 93</p> <p>1 report? 2 MR. DOMINA: Object to the form of the 3 question. 4 We're saying because there's not a daily 5 report, he wasn't out there? 6 MR. JEFFERIES: No, that's not what I'm 7 saying at all. I asked him if it was his practice, 8 had he been there, we should have a daily report 9 there. 10 MR. DOMINA: You see it's his practice. 11 MR. JEFFERIES: That's all that has been 12 produced to us. Can you check on those? 13 MR. DOMINA: I definitely will. 14 BY MR. JEFFERIES: 15 Q. And as well as check on this monthly tool 16 list. 17 A. Yes. 18 MR. DOMINA: I already have that written 19 down. 20 BY MR. JEFFERIES: 21 Q. Now, we just went through all of your 22 daily reports. Did you ever note in any of the 23 daily reports that we looked at today, that your 24 work was suspended with no available subcontract 25 work to perform?</p>
---	---	---	---

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 94..97

<p style="text-align: right;">Page 94</p> <p>1 A. There was not noted, no.</p> <p>2 Q. Okay. You did have the one day where you</p> <p>3 sent the crew home, and you stayed. Other than</p> <p>4 that, can you think of a time, prior to substantial</p> <p>5 completion, when Helix was suspended and there was</p> <p>6 not other work that you could have been doing?</p> <p>7 A. No.</p> <p>8 Q. Okay. Other than the daily reports we</p> <p>9 went through, did you generate any other project</p> <p>10 related documents?</p> <p>11 A. Just timecards, which would be created</p> <p>12 through the daily reports.</p> <p>13 Q. Explain that to me.</p> <p>14 A. You have this right -- well, you see the</p> <p>15 guys have eight hours. They just fill them out, the</p> <p>16 eight hours on a time card, and they sign it.</p> <p>17 Q. I see. Okay. Do the timecards have any</p> <p>18 information on activities performed?</p> <p>19 A. That would all be on the daily reports.</p> <p>20 Q. Okay. Any other project records that you</p> <p>21 generated or received during the course of your</p> <p>22 work, other than the delays?</p> <p>23 A. No.</p> <p>24 Q. Did you ever prepare any documents or</p> <p>25 information to be submitted to the project manager</p>	<p style="text-align: right;">Page 96</p> <p>1 scope of work.</p> <p>2 BY MR. JEFFERIES:</p> <p>3 Q. To the extent you were personally</p> <p>4 involved, did you find that Apco treated you fairly</p> <p>5 in terms of what was extra work to Helix?</p> <p>6 MR. DOMINA: Object to the form.</p> <p>7 THE WITNESS: As -- as an installer out</p> <p>8 in the field, they treated me fairly. I mean, I got</p> <p>9 along with them.</p> <p>10 BY MR. JEFFERIES:</p> <p>11 Q. Different question. We've had -- you've</p> <p>12 noted times where something was damaged, it wasn't</p> <p>13 your fault --</p> <p>14 A. Right.</p> <p>15 Q. -- but you had to repair it.</p> <p>16 Did you feel like, in those instances,</p> <p>17 Apco treated Helix fairly in terms of acknowledging</p> <p>18 that we will pay you to fix an item that you</p> <p>19 repaired?</p> <p>20 MR. DOMINA: Object to the form of the</p> <p>21 question, foundation.</p> <p>22 THE WITNESS: Yeah, I -- I have nothing</p> <p>23 to do with pricing.</p> <p>24 BY MR. JEFFERIES:</p> <p>25 Q. Who generated the T&M sheets?</p>
<p style="text-align: right;">Page 95</p> <p>1 for billing purposes, i.e., percentage complete on</p> <p>2 items or quantities of items completed?</p> <p>3 A. No, that's his -- that's him.</p> <p>4 Q. So you have no personal knowledge of any</p> <p>5 outstanding or submitted change order requests?</p> <p>6 A. No.</p> <p>7 Q. No involvement in the pay application</p> <p>8 process?</p> <p>9 A. No.</p> <p>10 Q. Did you have Apco's staff sign extra work</p> <p>11 tickets that you wrote to send to the project</p> <p>12 manager for extra work you were seeking to get paid</p> <p>13 for?</p> <p>14 A. Would that be a T&M ticket?</p> <p>15 Q. Sure.</p> <p>16 A. Yeah, I would fill out T&M tickets and</p> <p>17 either have Mark or Noah sign them.</p> <p>18 Q. So to the extent you felt something was</p> <p>19 extra work and not your original responsibility,</p> <p>20 that's how it was handled, correct?</p> <p>21 MR. DOMINA: Object to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: That would be the project</p> <p>24 manager asking that because I'd have to ask him, "Is</p> <p>25 this the T&M ticket," or is this work sometimes, the</p>	<p style="text-align: right;">Page 97</p> <p>1 A. I would write the T&M sheets, get them to</p> <p>2 sign it, and then they were turned into the project</p> <p>3 manager, and that's where everything went through</p> <p>4 for them.</p> <p>5 Q. Okay. Did you ever present a T&M sheet</p> <p>6 to Apco for execution that Apco refused to sign, and</p> <p>7 you somehow objected?</p> <p>8 A. I can't remember because -- yeah, I can't</p> <p>9 remember that because there are some instances when</p> <p>10 sometimes things won't get signed, you know, before</p> <p>11 you -- but I would hand any issue like that to my</p> <p>12 project manager --</p> <p>13 Q. Okay.</p> <p>14 A. -- and they would go to Apco.</p> <p>15 Q. Sitting here today, can you recall an</p> <p>16 instance when you felt Apco incorrectly or wrongly</p> <p>17 refused to sign one of your T&M sheets?</p> <p>18 A. I can't recall that.</p> <p>19 Q. How did you handle the vandalism entries</p> <p>20 that we went over in the daily reports, where your</p> <p>21 Helix equipment was damaged?</p> <p>22 A. I believe they were noted in the dailies,</p> <p>23 and then the project manager would be informed, and</p> <p>24 then from there, any type of repairs, replacement,</p> <p>25 would be through the PM.</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 98..101

<p style="text-align: right;">Page 98</p> <p>1 Q. Okay. Did you ever analyze any of your 2 actual time spent on the project against a schedule? 3 A. Looking at the schedule? 4 Q. Yeah. 5 A. The project manager would go over that 6 schedule. That's how I believe this -- the extended 7 work from January came about. 8 Q. Okay. Different question. 9 I'm just -- I'm here today to just define 10 what you did. 11 A. Okay. 12 Q. Did you personally ever get involved in 13 analyzing your as-built durations versus a schedule? 14 A. No. 15 Q. Okay. Did Mr. Williams ever ask you 16 about delay time on any change orders that were 17 being submitted on the project? 18 A. No. 19 Q. Isn't it true that having gone through 20 the dailies, that the only time Helix could not 21 perform a full day's work of original subcontract 22 work was only because of weather? 23 MR. DOMINA: Object to the form of the 24 question, misstates evidence. 25 THE WITNESS: I'm not sure how to answer</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. JEFFERIES: Back on. 2 Given the limited nature of the topics 3 that you were able to testify about, I'm not going 4 to mark the PMK notice as an exhibit, so I'll 5 withdraw Exhibit 1. 6 BY MR. JEFFERIES: 7 Q. Other than -- I touched on this. I want 8 to make sure my record is clear. 9 If Mr. Clement was providing 10 superintendent services to you, would you have noted 11 that in your dailies? 12 A. Noted it, no. 13 Q. Well, I mean, if he came to the site to 14 help you with something, would it be noted? 15 A. Sometime -- no. I mean, sometimes he 16 showed up and helped me. 17 Q. I get that. Wouldn't it have been your 18 practice to note that Rick was on site? 19 A. Practice, yeah, if I followed through 20 with it. 21 Q. Okay. 22 A. I probably forgot some. 23 Q. Okay. From and after that initial time 24 period, and the record reflects what it is when he 25 was pretty active, would it be fair to say that Rick</p>
<p style="text-align: right;">Page 99</p> <p>1 that because I -- relocating, to me, from one area 2 to another is a delay, you know, just -- in some of 3 those instances, so... 4 BY MR. JEFFERIES: 5 Q. I respect your answer. My question is a 6 little different. 7 Isn't it true that the only time Helix 8 could not perform a full day's work was because of 9 weather on the project? 10 A. Through those, yes. 11 MR. DOMINA: That wasn't the first 12 question, though, by the way. You did say delay. 13 MR. JEFFERIES: I fixed -- 14 MR. DOMINA: All right. I'm just saying. 15 I see where he was struggling, so... 16 MR. JEFFERIES: I totally get it. 17 BY MR. JEFFERIES: 18 Q. Would you leave the wire puller that you 19 had on site at the project until it was needed at 20 another project? 21 A. No. 22 Q. Okay. Believe it or not, I think you're 23 going to get off easy. 24 MR. JEFFERIES: Let's go off the record. 25 (Short break was taken.)</p>	<p style="text-align: right;">Page 101</p> <p>1 was only involved in the project from and after that 2 point on a handful of times? 3 MR. DOMINA: Object to the form of the 4 question. 5 BY MR. JEFFERIES: 6 Q. And by that, I mean, less than ten? 7 A. I couldn't honestly answer less than ten 8 or -- I -- I -- he would swing by and help, you 9 know, and something -- I just didn't document. 10 Q. Okay. And I get that. Are you able to 11 estimate how many times -- strike that. 12 After the initial time period when he was 13 on site, after that, he was not actively involved in 14 construction, correct? 15 A. Correct. 16 Q. Okay. So given that fact, are you able 17 to estimate how many times he would have got 18 involved to provide you some assistance? 19 A. I couldn't even give -- I know -- yeah, 20 I -- 21 Q. Fair enough. If you can't, you can't. 22 Are you unable to? 23 A. Yes. 24 Q. Okay. Other than the change order work 25 for the extras, the man-hours that you noted and the</p>

October 04, 2018

Helix Electric, Eric Rainer Pritzel

30(b)(6)
Pages 102..105

Page 102	Page 104
<p>1 T&M tickets that were processed, would it be fair to 2 say that the entire time you were on site, there was 3 original subcontract work for you to do? 4 A. Yes. 5 Q. Okay. Did you perform what you 6 considered to be warranty work on site? 7 A. Yes. 8 Q. Approximately when would you have started 9 doing some warranty work? 10 A. Probably from the beginning of that year, 11 possibly, from -- or I'd have to see when I 12 installed some of the light poles, you know. 13 There's, I think, a daily report when the light 14 poles were energized, so if one of the ballasts or 15 lights didn't work, that would be my warranty call, 16 "Hey, I need to order a new ballast or a light 17 pole." I think it's documented in there on the date 18 when that happened. 19 Q. So you were performing warranty work at 20 or about the same time you were performing original 21 subcontract scope? 22 A. Minimal. 23 MR. JEFFERIES: I think that's all I 24 have. 25 MR. DOMINA: Okay. I don't have any</p>	<p>1 CERTIFICATE OF DEPONENT 2 PAGE LINE CHANGE REASON 3 4 5 6 7 8 9 10 11 12 13 * * * * * 14 I, ERIC RAINER PRITZEL, deponent herein, 15 do hereby certify and declare the within and 16 foregoing transcription to be my deposition in said 17 action; that I have read, corrected, and do hereby 18 affix my signature, under penalty of perjury, to 19 said deposition. 20 21 22 ERIC RAINER PRITZEL 23 Deponent 24 25</p>
Page 103	Page 105
<p>1 questions for him. 2 MR. JEFFERIES: Okay. 3 MR. DOMINA: Reserve. 4 MR. JEFFERIES: Sir, I was remiss. I 5 should have said this at the beginning, but part of 6 the process is she's going to send -- you want it to 7 go to you, Cary? 8 MR. DOMINA: Yeah, to our firm. 9 MR. JEFFERIES: She'll send the 10 transcript to Cary. 11 THE WITNESS: Okay. 12 MR. JEFFERIES: He will get it to you. 13 You have the opportunity to review the transcript 14 and make any changes you deem appropriate. 15 Understand that if this case goes to 16 trial, I will have the opportunity to comment on the 17 nature of your changes, okay? 18 THE WITNESS: Yes, sir. 19 (Whereupon the deposition concluded 20 at 1:06 p.m.) 21 22 23 24 25</p>	<p>1 REPORTER'S CERTIFICATE 2 STATE OF NEVADA) 3) ss 4 COUNTY OF CLARK) 5 I, JENNIFER M. DALY, a duly commissioned 6 and licensed Court Reporter, Clark County, State of 7 Nevada, do hereby certify: That I reported the 8 taking of the deposition of the witness, ERIC RAINER 9 PRITZEL, commencing on October 4, 2018, at the hour 10 of 10:03 a.m. 11 Prior to being examined, the witness was, 12 by me, duly sworn to testify to the truth. That I 13 thereafter transcribed my said shorthand notes into 14 typewriting and that the typewritten transcript of 15 said deposition is a complete, true and accurate 16 transcription of my said shorthand notes. 17 I further certify that I am not a 18 relative or employee of an attorney or counsel of 19 any of the parties, nor a relative or employee of an 20 attorney or counsel involved in said action, nor a 21 person financially interested in the action. 22 IN WITNESS WHEREOF, I have hereunto set my 23 hand, in my office, in the County of Clark, State of 24 Nevada, this 6th day of November, 2018. 25 <i>Jennifer Daly</i> JENNIFER M. DALY, CRR, RPR, CCR, CSR CSR No. 766</p>

Exhibit 4

In the Matter Of:

A-16-730091-C

HELIX ELECTRIC OF NEVADA

VS

APCO CONSTRUCTION

Deposition Of:

ROBERT JOHNSON

November 28, 2018



702-805-4800

scheduling@envision.legal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA,)	
LLC, a Nevada limited)	
liability company,)	
)	
Plaintiff,)	
)	Case No. A-16-730091-C
)	Dept. No. XVII
vs.)	
)	
APCO CONSTRUCTION, a Nevada)	
corporation; SAFECO)	
INSURANCE COMPANY OF)	
AMERICA; DOES I through X;)	
and BOE BONDING COMPANIES, I))	
through X,)	
)	
Defendants.)	
)	

DEPOSITION OF ROBERT JOHNSON
LAS VEGAS, NEVADA
TUESDAY, NOVEMBER 28, 2018
at 11:55 a.m.

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400
JOB NO: 2217

Page 2

1

DEPOSITION OF ROBERT JOHNSON, taken at 300

2

South Fourth Street, Suite 950, Las Vegas, Nevada, on

3

Tuesday, November 28, 2018, at 11:55 a.m., before

4

Lisa Makowski, Certified Court Reporter, in and for

5

the State of Nevada.

6

7

APPEARANCES:

8

For Apco Construction, Inc.:

9

SPENCER FANE LLP

10

BY: JOHN RANDALL JEFFERIES, ESQ.

11

BY: MARY BACON, ESQ.

12

300 South Fourth Street

13

Suite 950

14

Las Vegas, Nevada 89101

15

(702)408-3400

16

Rjefferies@spencerfane.com

17

18

19

For Helix Electric:

20

PEEL BRIMLEY LLP

21

BY: CARY DOMINA, ESQ.

22

3333 East Serene Avenue

23

Suite 200

24

Henderson, Nevada 89074

25

(702)990-7272

Also Present: Joe Pelan

Page 4

1

LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 28, 2018

2

11:55 a.m.

3

-o0o-

4

5

(The court reporter requirements under

6

Rule 30(b)(4) of the Nevada Rules of

7

Civil Procedure were waived.)

8

9

ROBERT JOHNSON,

10

having been first duly sworn, did testify as follows:

11

12

EXAMINATION

13

BY MR. JEFFERIES:

14

Q. Sir, will you state your full name for

15

the record, please.

16

A. Robert Johnson.

17

Q. How many times have you had your

18

deposition taken?

19

A. More than I can remember.

20

Q. Okay. You understand you are appearing

21

here today as the corporate designee to address the

22

items in, I think what is our fourth or third,

23

let's go with fourth amended notice of deposition?

24

A. Yes.

25

Q. Okay.

Page 3

1

INDEX

2

WITNESS

3

ROBERT JOHNSON

4

Examination by Mr. Jefferies

5

Examination by Mr. Domina

6

Further Examination by Mr. Jefferies

7

INDEX OF EXHIBITS

8

EXHIBIT

9

Exhibit 1 4/19/13 Invoice

10

Exhibit 2 5/31/13 Invoice

11

Exhibit 3 Job Cost Report

12

Exhibit 4 10/18/13 Invoice

13

Exhibit 5 Subcontract

14

Exhibit 6 Excerpt from General

15

Conditions of the Prime

16

Contract

17

Exhibit 7 1/28/13 Letter

18

Exhibit 8 E-mail

19

Exhibit 9 10/30/14 Letter

20

Exhibit 10 Bank Records

21

Exhibit 11 E-mail

22

-o0o-

Page 5

1

MR. DOMINA: And just to clarify, he is

2

here to cover those that weren't covered in the

3

prior 30(b)(6) depositions. There were a few in

4

there.

5

BY MR. JEFFERIES:

6

Q. What is your position with Helix

7

Electric?

8

A. Senior vice president.

9

Q. And how long have you held that position?

10

A. Probably the last ten years.

11

Q. Okay. I'm going to shorthandedly use the

12

term "the project," and when I do, sir, please

13

understand that I am referring to the Craig Ranch

14

Regional Park Phase 3 project that Apco did for the

15

city, okay?

16

A. Okay.

17

Q. What was your personal involvement with

18

the project?

19

A. As senior vice president over the

20

project. So superintendent, project manager work

21

in my group, so I have oversight from a higher

22

level of the project.

23

Q. Okay. Did you have any responsibility

24

for bidding the project?

25

A. No.

<p style="text-align: right;">Page 6</p> <p>1 Q. Do you know how many months Helix's bid 2 assumed that Helix would be working on the project? 3 A. No, but it would have been the contract 4 duration that was provided at bid time, whatever 5 that was. 6 Q. Okay. So were you involved in the pay 7 application process? 8 A. Yes, from the signing and the releases. 9 Q. Okay. And would the pay applications 10 have reflected Helix's anticipated time on the 11 project through the general condition related line 12 items? 13 A. I didn't quite follow that. Say that 14 again. 15 Q. Okay. Your pay applications include 16 general condition type billings; correct? 17 A. Typically, but not always. It depends on 18 if the contract allowed it. I don't recall in this 19 one, but go ahead. 20 Q. Would it have been Helix's practice to 21 spread the general conditions over the anticipated 22 time on the job? 23 A. Not necessarily. A lot of jobs you're 24 allowed to get general conditions earlier on 25 because it's mobilization costs that are in there.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Okay. So in preparation for today's 2 deposition you didn't review any corporate records? 3 A. No. 4 Q. I want to go back to one of my prior 5 questions and make sure my record is clear. 6 Sitting here today, do you know what Helix's bid 7 assumed in terms of the time that Helix would be 8 required to be on the project? 9 A. I don't know the exact time as in 10 duration. I do know that the original contract 11 completion was early January of 2013. When it 12 started I don't know, and the duration of it I 13 don't recall. 14 Q. Do you know how many times Helix bid this 15 job? 16 A. No, I don't recall. It's not relevant to 17 me as operations. 18 Q. What was your day-to-day involvement with 19 the project? 20 A. Day to day as needed for reviewing 21 billings, for doing lien releases, for discussing 22 monthly completion or status of the work. If 23 there's issues on the job, try to review labor 24 reports to see how the labor is, because we roll 25 them up and look at our total labor to see how much</p>
<p style="text-align: right;">Page 7</p> <p>1 So it's weighted different by a contract by what's 2 allowed, so it's different. 3 Q. Okay. What steps did you take to 4 investigate the topics in the notice for today's 5 depositions? 6 A. Basically just read some of the paperwork 7 transcripts that were provided from Ray's 8 testimony, or not testimony, but deposition, and 9 basically the filings on the case. 10 Q. Okay. Did you review any other 11 transcripts other than Ray's deposition? 12 A. No. 13 Q. Okay. Now, when you say filings in the 14 case, are you talking about pleadings? 15 A. Pleadings, yeah, and the back and forth 16 with the different filings. So I don't know the 17 legal terminology, but with the whole process our 18 attorneys kept us advised. 19 Q. Okay. Did you take any steps to review 20 any corporate records? 21 A. Not in preparation of this, but recently 22 went through some of the records at the request of 23 our attorney through you for some documents related 24 to some equipment lists. So I went back through 25 everything on that, but just specifically for that.</p>	<p style="text-align: right;">Page 9</p> <p>1 manpower we need. A variance of different things. 2 Q. Did you oversee the submission of the pay 3 applications? 4 A. I did. 5 (Exhibit 1 was marked for 6 identification.) 7 BY MR. JEFFERIES: 8 Q. Sir, showing you what I've marked as 9 Exhibit 1 to your deposition, can you identify this 10 for me, please? 11 A. It's an invoice, and it has a date and a 12 number on it. There was date 4/19/2013, so it's a 13 progress billing. 14 Q. Okay. And that's your signature on 15 page 2? 16 A. Yes, it is. 17 Q. If you would, sir, go to the third page 18 of the exhibit. 19 MR. DOMINA: Randy, if I can interrupt. 20 MR. JEFFERIES: Sure. 21 MR. DOMINA: Is there a reason why these 22 aren't Bates stamped? 23 MR. JEFFERIES: I don't know the answer. 24 MR. DOMINA: Do you know if they've been 25 produced?</p>

<p style="text-align: right;">Page 10</p> <p>1 MR. JEFFERIES: I don't know off the top 2 of my head. I asked Apco to send these over this 3 morning. So I mean, they're your documents, so it 4 shouldn't be a problem. You should have produced 5 them if anybody. 6 MR. DOMINA: I don't know if they are, 7 that's what I'm getting at, you know. That's why 8 we Bates stamp them, to track what's what. But go 9 ahead. 10 BY MR. JEFFERIES: 11 Q. Okay. Helix did prepare Exhibit 1; 12 correct? 13 A. This document, yes. 14 Q. And Helix did submit this to Apco in the 15 ordinary course of the project? 16 A. It definitely appears we did, yes. 17 Q. Okay. And do you assign this pay app a 18 number? 19 A. It's Application 15. 20 Q. Fifteen. Okay. If you would, go to the 21 third page of Exhibit 1. I see line item one is 22 mobilization and line item two are submittals. 23 You've kind of referenced those earlier; correct? 24 A. Correct. 25 Q. Now go to line item 35. It says,</p>	<p style="text-align: right;">Page 12</p> <p>1 answer. My question was not a very clear one. 2 Sitting here today, what would you go review to 3 determine how the line item of \$108,040 for general 4 conditions was prepared? 5 A. How would I review it? 6 Q. Yes. 7 A. When I reviewed this as a senior VP 8 getting this delivered to me? 9 Q. We can do it that way. 10 A. It's not relevant to me. All I care 11 about is what are we billing, what are our overall 12 costs to date. Individual line items is up to the 13 PM to negotiate with his counterpart at Apco. It's 14 not relevant to me how any one of these individual 15 ones are arrived at. 16 Q. Okay. Is there documentation that you 17 could go review within Helix's business records 18 that would show how somebody calculated the 19 \$108,000 for general conditions? 20 A. I don't know that answer. 21 Q. Okay. That line item is -- the general 22 conditions is what Helix is claiming in this case; 23 correct? 24 A. No, we're not claiming this line item. 25 We're claiming general conditions beyond the 108.</p>
<p style="text-align: right;">Page 11</p> <p>1 "General conditions." What does that line item 2 represent? 3 A. It would be anything related to cost to 4 be on site. It could be a whole bunch of stuff. 5 What they comprised into that dollar amount I don't 6 know, but it could be equipment, it could be -- 7 project management could be in there for his time. 8 It could be a number of things. We'd have to find 9 out how the particular project manager built this 10 particular one up. 11 Q. Okay. How would you make that 12 determination? 13 A. For the general conditions? 14 Q. Yeah. 15 A. I wouldn't. The project manager would, 16 so number one. Two, it varies from job to job. 17 You got -- again, I'll go back to you got the 18 contract documents that allow so much to be billed 19 for general conditions, that allow so much for 20 (inaudible), tell you sometimes what you can or 21 cannot put into general conditions. So you're 22 asking me some specifics on something I can't 23 answer here today because I just got numbers and I 24 don't know how the numbers were comprised. 25 Q. Okay. And my question -- I respect your</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Your -- strike that. 2 Helix is claiming extended costs above 3 108,000 for the line item general conditions shown 4 in Exhibit 1; correct? 5 A. We are claiming additional general 6 conditions, and if you want to correlate that to 7 this title being general conditions above the 108, 8 then yes, correct. 9 Q. Okay. So my record is clear, sitting 10 here today you can't tell me what time was assumed 11 in that general condition -- strike that. 12 Sitting here today, you can't tell me 13 what time on project Helix assumed in that general 14 conditions line item in Exhibit 1; correct? 15 A. That's not correct. I answered that. It 16 would be the contract duration provided in the bid 17 documents. 18 Q. Okay. 19 A. Which you are privy to and I'm sure you 20 can look it up or we can look it up and let you 21 know at a later date, but that's published 22 information with the bid. 23 Q. Okay. Sitting here today, you can't tell 24 me what cost components go into that \$108,000 25 general condition line item in Exhibit 1, can you?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. No, not the details, no.</p> <p>2 Q. Okay. Can you tell me when Helix fully</p> <p>3 mobilized to the project?</p> <p>4 A. I can't recall the date, no.</p> <p>5 Q. Can you tell me when Helix demobilized</p> <p>6 from the project such that the general conditions</p> <p>7 costs ceased?</p> <p>8 A. Best that I can remember, October window</p> <p>9 2013.</p> <p>10 Q. Okay. Now let's -- in looking at</p> <p>11 Exhibit 1, can you tell me what time period this</p> <p>12 billing is up and through?</p> <p>13 A. The application date was 4/19/2013 period</p> <p>14 through 4/30/2013.</p> <p>15 Q. Okay. And as of the end of April 2013,</p> <p>16 Helix had not billed all of its general conditions</p> <p>17 line item, all of the general conditions reflected</p> <p>18 on Item 35; correct?</p> <p>19 A. Yeah, correct. We billed all of it less</p> <p>20 than appears to be the -- my eyes are bad, hold on,</p> <p>21 I'll tell you the number -- \$8,040. Everything</p> <p>22 else was billed. So about 100,000 billed out of</p> <p>23 108,000.</p> <p>24 Q. Would this have just been billed on a</p> <p>25 30-day cycle?</p>	<p style="text-align: right;">Page 16</p> <p>1 every 30 days, what period of time Helix assumed it</p> <p>2 would be on site?</p> <p>3 A. I can't do that sitting here, no.</p> <p>4 Q. Why?</p> <p>5 A. Why? Because I'd have to know when the</p> <p>6 job started and move mathematically backwards to</p> <p>7 see if it is every period like you're asking. So I</p> <p>8 can't tell you and I'm not going to try to figure</p> <p>9 it in my head, especially since I don't know the</p> <p>10 date we were exactly on site. So, no, I can't.</p> <p>11 Q. As a matter of practice, would the</p> <p>12 \$108,040 shown on the pay application that I've</p> <p>13 marked as Exhibit 1 be based upon Helix's budget</p> <p>14 for the project?</p> <p>15 A. Not necessarily.</p> <p>16 (Exhibit 2 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. JEFFERIES:</p> <p>19 Q. Sir, showing you what I have marked as</p> <p>20 Exhibit 2 to your deposition, did Helix prepare</p> <p>21 this pay application?</p> <p>22 A. Yes.</p> <p>23 Q. And again, that's your signature on the</p> <p>24 second page?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Every 30-day, correct, monthly billings.</p> <p>2 Q. So the general condition line item would</p> <p>3 be a monthly charge; is that right?</p> <p>4 A. Not necessarily because it's not</p> <p>5 structured as a monthly charge, it's structured as</p> <p>6 a total lump sum dollars. It's as quick as we can</p> <p>7 get Apco to approve payment on. As far as I'm</p> <p>8 concerned, I'd like to see our guys bill it the</p> <p>9 first three months. In this case it looks like he</p> <p>10 didn't, so maybe he got some pushback on the</p> <p>11 overall billing. But to me it's a dollar to bill</p> <p>12 against, it's not allocated by any period of time.</p> <p>13 Q. Okay. Sitting -- strike that.</p> <p>14 Are you able to do the math given the</p> <p>15 percent complete on the general conditions of</p> <p>16 92.56 percent in Exhibit 1, and tell me what time</p> <p>17 period the original line item assumed that Helix</p> <p>18 would be on site?</p> <p>19 A. Say that again.</p> <p>20 Q. Sure. Mathematically for this 30-day</p> <p>21 period, you are billing \$7,500 for general</p> <p>22 conditions; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Can you take that number and</p> <p>25 mathematically determine, if that rate was used</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. So for this -- well, strike that.</p> <p>2 What time period does this billing</p> <p>3 represent, up through what?</p> <p>4 A. To 5/31/2013.</p> <p>5 Q. Okay. Am I reading this correctly that</p> <p>6 up through May 31, 2013, that Helix had not billed</p> <p>7 all of its assumed general conditions for the</p> <p>8 project?</p> <p>9 A. Correct.</p> <p>10 Q. In looking at page 3 of Exhibit 2, do you</p> <p>11 know how the \$2,000 general conditions billed for</p> <p>12 that time period was determined?</p> <p>13 A. No, I don't.</p> <p>14 Q. Sitting here today, are you able to tell</p> <p>15 me how much money Helix spent on general conditions</p> <p>16 over and above its original budget for the project?</p> <p>17 A. You know, the best I can recall is about</p> <p>18 138,000.</p> <p>19 Q. And is there a document that would</p> <p>20 reflect the original budget for general conditions?</p> <p>21 A. No. There would be a budget that</p> <p>22 reflects all kinds of costs. General conditions</p> <p>23 could be in some direct codes, it could be in some</p> <p>24 indirect codes. You'd have to look at it to see</p> <p>25 how it's billed. There's no one way to build any</p>

<p style="text-align: right;">Page 18</p> <p>1 one budget, and every PM builds their budgets 2 different, builds their billings different. 3 Q. Okay. Would it be accurate to state that 4 at the time Helix prepares its bid for this 5 project, that it had assumed a certain time period 6 on the job and included general condition costs for 7 that time period? 8 A. Yes, that would be the estimated 9 schedule, which I believe was to be done beginning 10 of January 2013, going back to the same thing 11 again. 12 Q. Okay. And you mentioned in your last 13 answer codes. What codes are you referring to? 14 A. Just codes where they track labor. 15 Q. Helix job cost codes? 16 A. Yeah, just our accounting system. 17 Q. Okay. And at any time in this case have 18 you gone back to Helix's accounting system to look 19 at the cost coding of the total costs on the 20 project? 21 A. No. 22 Q. Okay. 23 MR. JEFFERIES: Do you have this copy, 24 Cary? I gave you one. 25 MR. DOMINA: Yeah.</p>	<p style="text-align: right;">Page 20</p> <p>1 agree that as of June 6, 2016, that this would 2 reflect and account for all project related costs 3 for Helix? 4 A. I'd say it's probably pretty accurate 5 through the day. 6 Q. Okay. There's no other document that 7 would be more accurate, is there? 8 A. No, no. 9 MR. JEFFERIES: All right. I will have 10 this marked. 11 (Exhibit 3 was marked for 12 identification.) 13 BY MR. JEFFERIES: 14 Q. Sir, I have marked as Exhibit 3 to your 15 deposition the project's job cost transaction 16 report. Was this document maintained in Helix's 17 ordinary course of business? 18 A. Yes. 19 Q. Okay. Have you reviewed this prior to 20 today? 21 A. This document as it's printed here, no. 22 Q. Okay. I presume -- well, strike that. 23 Do you use this job cost report to 24 fulfill your duties as senior vice president? 25 A. No.</p>
<p style="text-align: right;">Page 19</p> <p>1 THE WITNESS: Do you know what the 2 number is? 3 MR. JEFFERIES: I'm going to see. I'm 4 going to have you identify it first. 5 BY MR. JEFFERIES: 6 Q. Sir, I'm showing you what's been Bates 7 labeled and produced to us as Helix 033 through 8 Helix 0101. Can you identify that for me, please. 9 A. Job costing transaction report. 10 Q. And what does this document or report 11 depict? 12 A. Job costs by different phase codes, by 13 labor and material. 14 Q. For the project? 15 A. Correct. 16 Q. Okay. This in the upper right-hand 17 corner, and I believe on all of the pages, has a 18 date of June 6, 2016. Do you know what that date 19 represents? 20 A. I believe it's the date the report was 21 ran. 22 Q. And did you run this report? 23 A. Did I personally run this report? I 24 don't recall running it. 25 Q. Just as a matter of practice, would you</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. Sir, would you go to the last page 2 of Exhibit 3. 3 A. Yep. 4 Q. And there is an end of report. It says, 5 "Operator B. Johnson." Is that you? 6 A. That would be me, correct. 7 Q. What does that mean? 8 A. I don't know. I assume possibly that I 9 printed the report. 10 Q. Okay. 11 A. Or somebody printed it on my behalf. I 12 don't recall. 13 Q. Okay. Does Exhibit 3 reflect the 14 anticipated -- strike that. 15 Does Exhibit 3 reflect the original 16 budget or estimated cost to complete the work? 17 A. It doesn't reflect either. It's 18 reflecting a cost to date from what I see. 19 Q. Okay. Would -- strike that. 20 Does Exhibit 3 reflect profit or loss on 21 the project? 22 A. No. It's indicating cost to date. 23 Q. Okay. Is there a document maintained by 24 Helix separate and apart from what I've marked as 25 Exhibit 3 that would reflect cost overruns that</p>

<p style="text-align: right;">Page 22</p> <p>1 Helix experienced on the project?</p> <p>2 A. That shows cost overruns, not that I'm</p> <p>3 aware of, because those cost overruns would be</p> <p>4 built in the costs to date. There's not a separate</p> <p>5 program that would show overruns separately.</p> <p>6 Q. How does Helix determine if it made money</p> <p>7 on the project?</p> <p>8 A. By determining the amount of margin in</p> <p>9 dollars and percentage based on what we</p> <p>10 anticipated.</p> <p>11 Q. Based on what you anticipated in terms of</p> <p>12 cost?</p> <p>13 A. In terms of cost, correct.</p> <p>14 Q. And that type of a calculation is not</p> <p>15 reflected in Exhibit 3?</p> <p>16 A. No.</p> <p>17 Q. What document would reflect that</p> <p>18 information?</p> <p>19 A. It would be a report from our accounting</p> <p>20 system that would show project cost total versus</p> <p>21 contract amount.</p> <p>22 Q. And I assume that you still have access</p> <p>23 to that information for the project?</p> <p>24 A. Should.</p> <p>25 MR. JEFFERIES: Cary, are you willing to</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. JEFFERIES: All right. I'm going to</p> <p>2 request that you look into that and produce that</p> <p>3 to us.</p> <p>4 BY MR. JEFFERIES:</p> <p>5 Q. Until looking at Exhibit 3, did Helix</p> <p>6 consult this type of data in submitting its claim</p> <p>7 for extended general conditions to Apco on the</p> <p>8 project?</p> <p>9 A. General conditions were worked up by our</p> <p>10 project manager, Kirk Williams. And to what degree</p> <p>11 he referenced this versus referencing days, because</p> <p>12 our claim is not a claim against lost dollars on</p> <p>13 the base work. It's a claim against being on the</p> <p>14 job longer than anticipated.</p> <p>15 Q. But you can't tell me how much longer</p> <p>16 than anticipated on the job, can you?</p> <p>17 A. Well, roughly. From January 2013 to</p> <p>18 October 2013.</p> <p>19 Q. Okay. Well, if that's the case, why is</p> <p>20 it that through Exhibit 2, up through the end of</p> <p>21 May 2013, Helix still hasn't billed all of its</p> <p>22 general conditions?</p> <p>23 A. That's a good question, because we should</p> <p>24 have. Now, why the project manager didn't, we'd</p> <p>25 have to ask him. But from my perspective we should</p>
<p style="text-align: right;">Page 23</p> <p>1 look for and produce that?</p> <p>2 MR. DOMINA: A total -- a loss/profit</p> <p>3 type analysis? What is it you're looking for</p> <p>4 exactly?</p> <p>5 MR. JEFFERIES: I'm looking for</p> <p>6 calculation of costs versus budgets or contract</p> <p>7 amounts.</p> <p>8 MR. DOMINA: I guess I will reserve the</p> <p>9 right to respond to that. I don't -- I mean</p> <p>10 discovery's come and gone. It wasn't something</p> <p>11 that was specifically asked for. And it sounds</p> <p>12 like it's a report that has to be generated, it</p> <p>13 isn't something that already exists, such as this</p> <p>14 one had to be generated. So I guess we'll discuss</p> <p>15 that off the record.</p> <p>16 MR. JEFFERIES: Well, let me make sure</p> <p>17 our record's clear.</p> <p>18 BY MR. JEFFERIES:</p> <p>19 Q. The information that compares your total</p> <p>20 cost for the project versus budget or contract</p> <p>21 amounts, that currently exists in your accounting</p> <p>22 system; correct?</p> <p>23 A. There is some version of it within our --</p> <p>24 it may be outside of our accounting system, but</p> <p>25 there is a version of it.</p>	<p style="text-align: right;">Page 25</p> <p>1 have billed it the first three months, like I said</p> <p>2 earlier.</p> <p>3 Q. Why do you keep saying that?</p> <p>4 A. Because we expend our general condition</p> <p>5 dollars early in the project. A lot of it is up</p> <p>6 front because you're doing all of your submittals,</p> <p>7 all your studying, all those things that aren't</p> <p>8 reflected throughout the execution. So for me, I</p> <p>9 go for it all if I was building the schedule of</p> <p>10 values.</p> <p>11 But it's up to each PM to get with their</p> <p>12 counterpart at Apco, what are you going to allow to</p> <p>13 bill, how are you going to allow to bill it, and</p> <p>14 then they do their progress billings. When it's a</p> <p>15 percentage item, it's not tied to duration. It's</p> <p>16 tied to what you can get approved.</p> <p>17 And sometimes the PM may not go for all</p> <p>18 of it just to appease the general contractor. It's</p> <p>19 got nothing to do with whether we're entitled to it</p> <p>20 or not. It's trying to get a billing approved.</p> <p>21 Q. And the items that you mentioned,</p> <p>22 submittals and I guess presumably also mobilization</p> <p>23 up front; right?</p> <p>24 A. Correct.</p> <p>25 Q. And if you look at Exhibits 1 and 2, you</p>

<p style="text-align: right;">Page 26</p> <p>1 actually have two line items, one for mobilization 2 and one for submittals; correct?</p> <p>3 A. We do.</p> <p>4 Q. And as of the date of Exhibit 1, those 5 are shown as 100 percent billed; right?</p> <p>6 A. We don't know what's all in the 7 submittals. There's our submittal, there's our 8 subcontractor submittals. I don't know if he put 9 our submittals in with the general conditions or he 10 put ours in with the submittals, or are they just 11 the subcontractors'. We can talk all day long 12 about numbers, but they're just numbers to me. I 13 don't know what's in them.</p> <p>14 Q. Okay. In looking at -- well, strike 15 that.</p> <p>16 Who was your project manager for the 17 project?</p> <p>18 A. Kirk Williams.</p> <p>19 Q. And during the time of the project, how 20 many other projects was he working on?</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. It would be more than the project; 23 right?</p> <p>24 A. Not necessarily.</p> <p>25 Q. Okay. Do you know?</p>	<p style="text-align: right;">Page 28</p> <p>1 I'm not sure what it's indicating.</p> <p>2 Q. Okay. Based on Helix's practice during 3 the time period that it was working on the project, 4 would Mr. Williams have filled out a time card 5 allocating his time to the project or any other 6 project he may have been working on?</p> <p>7 A. Possibly.</p> <p>8 Q. Do you know?</p> <p>9 A. I don't.</p> <p>10 Q. In looking at the job cost report that 11 I've marked as Exhibit 3, can you tell me when 12 Helix first started charging costs to the project?</p> <p>13 A. Not without a whole lot of work, because 14 you have to go to every one of these pages and find 15 the earliest date.</p> <p>16 Q. Okay. Well, you and I have been through 17 this before in court, so I would much rather spend 18 a few minutes doing it now than in front of the 19 judge and taking his time. I don't think it's as 20 difficult as it may initially seem, because I think 21 you can flip through the pages. And my question to 22 you as you do so, as you do review Exhibit 3, is 23 tell me when Helix first started charging costs to 24 the job.</p> <p>25 A. Do you have a pen I can use?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I don't. I already answered.</p> <p>2 Q. What documents does Mr. Williams generate 3 as a matter of Helix's standard practice and 4 procedure to allocate his time spent on any one 5 project?</p> <p>6 A. That I can't tell you because this is 7 2014. At that time he probably was assigned to 8 either our overhead account code or a job code. I 9 don't recall which it is, to be honest with you. 10 It could have been either way.</p> <p>11 So if he was assigned to a job, he would 12 put out a time card to get paid. If he wasn't, it 13 just goes to a general accounting code. No idea. 14 We've had both. We've been in transition. Some 15 jobs we do direct, some we don't. Just it depends 16 on the size of the job.</p> <p>17 Q. Okay. Well, I noticed in reviewing the 18 job cost that I marked as Exhibit 3, that there 19 were some charges for Mr. Williams on page -- Bates 20 label 042 within Exhibit 3. And there are -- I 21 believe those are labor hours to the right after 22 Mr. Williams' name; correct?</p> <p>23 A. The first thing I see to the right is 24 trade codes. So let me keep looking, reference. 25 There is a quantity LS. It just says lump sum.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Yes, sir.</p> <p>2 A. Can I mark this up?</p> <p>3 Q. Sure.</p> <p>4 A. (Witness reviewed the document.)</p> <p>5 MR. DOMINA: Are we sure this is a 6 complete job cost report, by the way? They have in 7 the monthlies at the end of each report it says 8 starting date, end date. It looks like it's a 9 monthly accrual starting, you know, perhaps it was 10 just the extended general conditions type, I don't 11 know, but I'm not sure that's a full report.</p> <p>12 MR. JEFFERIES: All I know is I think 13 this is what the extent of the reporting you guys 14 produced to us.</p> <p>15 MR. DOMINA: Right. And I think I 16 remember the request was from prior counsel provide 17 us a job cost report for 2013 on the project, like 18 from the date that the project was not completed. 19 I don't see anything prior to 2013, which is why 20 I'm saying that, and the way that it's reported on 21 a monthly basis.</p> <p>22 MR. JEFFERIES: Well, obviously if there 23 is -- if you need to supplement, I'll allow you to 24 supplement so you can -- it's up to you.</p> <p>25 MR. DOMINA: If it's not a complete</p>

<p style="text-align: right;">Page 30</p> <p>1 record, then I just don't want to have testimony 2 that's not accurate if we're dealing with only part 3 of the cost report. Then Bob can let us know what 4 he's seeing there. 5 THE WITNESS: All I'm looking for is the 6 earliest date. 7 MR. DOMINA: For instance, Exhibit 1 -- 8 no, I'm just saying we're obviously wasting time 9 because we're not -- we're looking at a document 10 that's incomplete. So I don't think you need to be 11 asking him questions about, hey, does this have all 12 of your costs in it, when we know it doesn't. 13 Exhibit 1 is a pay app for April 2013, 14 but it's pay app 15. That means there were 14 15 prior monthly pay apps. Obviously Helix was on the 16 job prior to 2013, yet we don't have that in here. 17 MR. JEFFERIES: It's my understanding 18 that this Exhibit 3 was produced to support your 19 claim. 20 MR. DOMINA: Right. Again, so just the 21 latter part, the extended part. 22 MR. JEFFERIES: So I'm giving you the 23 invitation on the record if you want to supplement 24 your job cost coding or reporting, go for it. 25 MR. DOMINA: That's all we need to</p>	<p style="text-align: right;">Page 32</p> <p>1 when we mobilized on the job, that's stupid, 2 because it's not true. 3 MR. JEFFERIES: Okay. I have been called 4 worse than stupid. 5 MR. DOMINA: I didn't say you were 6 stupid. I said that thought was stupid. 7 MR. JEFFERIES: And I get worse at home, 8 so this is not going to phase me. 9 MR. DOMINA: I wouldn't call you stupid, 10 Randy. I just said that the thought is. 11 THE WITNESS: I might. 12 MR. DOMINA: It's a waste of time. We're 13 just wasting time. 14 THE WITNESS: All right. I think I 15 captured the earliest date in here. Now, do you 16 mind restating your question, because I think I 17 lost track of what it was, especially with your 18 little debate here. 19 MR. JEFFERIES: Sure. Okay. I'll 20 rephrase. 21 BY MR. JEFFERIES: 22 Q. You have now had an opportunity to review 23 all the pages of Exhibit 3; correct? 24 A. Correct. 25 Q. And my question at the start of that</p>
<p style="text-align: right;">Page 31</p> <p>1 produce is documents to support our claim, not 2 necessarily what was incurred previously. So I'm 3 not saying that, but I don't want you asking him 4 questions as if this is the complete report, which 5 you were. 6 MR. JEFFERIES: Okay. Well, I'll deal 7 with that with the witness. 8 MR. DOMINA: I'll make objections then, 9 I'm just saying. Little break -- no, I'm not done. 10 MR. JEFFERIES: Okay. 11 MR. DOMINA: Take a little break. 12 (A brief off-the-record discussion was 13 held.) 14 MR. DOMINA: This whole exercise is you 15 trying to see when was the first time they got on 16 the job, but you're comparing apples to oranges. 17 MR. JEFFERIES: Why don't you just make 18 your objection for the record. 19 MR. DOMINA: Because I don't want to 20 waste time. I just want to get moving. This is a 21 waste of time. 22 MR. JEFFERIES: It is not a waste of 23 time. 24 MR. DOMINA: If you're asking him to find 25 the earliest date because you think that that's</p>	<p style="text-align: right;">Page 33</p> <p>1 process was, what was the earliest cost that Helix 2 has charged to the job in this report? 3 A. February. 4 Q. And what was that item? 5 A. I couldn't mark that many pages, keep my 6 fingers on them all. The earliest date is February 7 25, vendor equipment. 8 Q. I'm sorry. What page are you on? 9 A. Page 41, vendor equipment. The earliest 10 date was February 2013. 11 MR. DOMINA: If you want to mark that, 12 you can. Just tag it. 13 BY MR. JEFFERIES: 14 Q. Okay. In looking at this report, when is 15 the first charge for the on-site trailer? 16 A. I really don't know. But you're going to 17 want me to look, aren't you? 18 Q. Yes, sir. 19 A. For this report, hopefully I got the 20 right one, February 8. 21 Q. And can you tell me -- 22 A. And it's really not even the trailer. 23 It's an AT&T cost, but it's under the trailer code. 24 MR. DOMINA: What Bates number are you 25 looking at, Bob?</p>

<p style="text-align: right;">Page 34</p> <p>1 THE WITNESS: Forty.</p> <p>2 BY MR. JEFFERIES:</p> <p>3 Q. Okay. That \$127, is that what you're</p> <p>4 referring to?</p> <p>5 A. I believe it was.</p> <p>6 Q. Okay. That just makes it sound like it's</p> <p>7 some kind of -- well, AT&T Mobility. Can you tell</p> <p>8 from Exhibit 3 when Helix actually started cost</p> <p>9 coding the trailer that was on site?</p> <p>10 A. No, you can't tell that from this</p> <p>11 exhibit. This exhibit, like our attorney</p> <p>12 explained, is a period of time on a monthly report</p> <p>13 starting on this particular one. I can tell you</p> <p>14 what it was, but all the costs prior to that are</p> <p>15 not covered in here.</p> <p>16 Q. Okay.</p> <p>17 A. So the report date was March 1 to</p> <p>18 March 31, so.</p> <p>19 Q. Okay. What did you understand -- strike</p> <p>20 that.</p> <p>21 We have confirmed that you were the</p> <p>22 operator that printed out this report; right?</p> <p>23 A. Best as I recall. My name's there. It</p> <p>24 could have been printed on my behalf. Someone can</p> <p>25 log in to the computer and print it for me.</p>	<p style="text-align: right;">Page 36</p> <p>1 a job cost report prior to January of 2013 has no</p> <p>2 bearing on our claim.</p> <p>3 BY MR. JEFFERIES:</p> <p>4 Q. Okay. Sir, when is the first labor --</p> <p>5 MR. JEFFERIES: Well, before I ask the</p> <p>6 next question and before I move off that, I'm going</p> <p>7 to maintain my request.</p> <p>8 BY MR. JEFFERIES:</p> <p>9 Q. In looking at Exhibit 3, when is the</p> <p>10 first labor charged to the project by Helix?</p> <p>11 A. I can't tell by this report.</p> <p>12 Q. Why?</p> <p>13 A. Because you just asked me the first labor</p> <p>14 charged to the job. This is only covering labor</p> <p>15 charged in this time period.</p> <p>16 Q. Okay. Would you agree with me that based</p> <p>17 on Exhibit 3, that the first labor charges that are</p> <p>18 reflected herein are March 3, 2013?</p> <p>19 A. Without having gone through and</p> <p>20 personally come up with that being the earliest</p> <p>21 date, then I would say that sounds correct, but I</p> <p>22 don't know that to be factual. If you want me to</p> <p>23 go through it again and determine the earliest</p> <p>24 date, I will do that.</p> <p>25 Q. I don't think it's an unreasonable</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Wasn't it your intent to provide a</p> <p>2 summary of all costs incurred on the project?</p> <p>3 A. As I don't really recall running the</p> <p>4 report, I can't tell you my intent.</p> <p>5 Q. Okay. Is it your testimony here today</p> <p>6 that Helix had job costs for the project prior to</p> <p>7 the February dates that you've identified in your</p> <p>8 prior testimony?</p> <p>9 A. We have job costs prior to this date,</p> <p>10 correct.</p> <p>11 Q. Okay. So if that's the case, why didn't</p> <p>12 you generate a report that captured all of Helix's</p> <p>13 costs for the project?</p> <p>14 A. The answer is same as before. I don't</p> <p>15 recall running the report, so I don't recall the</p> <p>16 intent, so I can't answer that question.</p> <p>17 MR. JEFFERIES: Okay. All right. Cary,</p> <p>18 I guess rather than give you the opportunity, I'm</p> <p>19 going to request that you go back and supplement</p> <p>20 the job cost report, because if his testimony is</p> <p>21 correct, then you guys have just admitted you've</p> <p>22 given us an incomplete document.</p> <p>23 MR. DOMINA: That's not true. What we</p> <p>24 provided is the job cost report for the time period</p> <p>25 that we're claiming our extended -- in other words,</p>	<p style="text-align: right;">Page 37</p> <p>1 request because of the --</p> <p>2 A. No. It's three or five minutes, I'll go</p> <p>3 through it.</p> <p>4 Q. You didn't let me finish.</p> <p>5 Because of the way the report is set up,</p> <p>6 it looks like it flows chronologically by month</p> <p>7 starting in March. So as you look at Exhibit 3, my</p> <p>8 question to you is, if I'm correct, it looks like</p> <p>9 the first labor charged to the project is March 3.</p> <p>10 Would you agree with that?</p> <p>11 A. I'll agree as soon as I go through and</p> <p>12 confirm.</p> <p>13 (Witness reviewed the document.)</p> <p>14 THE WITNESS: Okay. Ask the question</p> <p>15 again.</p> <p>16 MR. JEFFERIES: Can you read it back.</p> <p>17 When you do the transcript, will you plug this back</p> <p>18 in, you know what I mean, like say the following</p> <p>19 question was re-read, not just question re-read?</p> <p>20 THE COURT REPORTER: Yes, I will do that.</p> <p>21</p> <p>22 (Whereupon, following question was read</p> <p>23 by the court reporter.)</p> <p>24 "Question: Because of the way the report</p> <p>25 is set up, it looks like it flows chronological by</p>

<p style="text-align: right;">Page 38</p> <p>1 month starting in March. So as you look at 2 Exhibit 3, my question to you is, if I'm correct, 3 it looks like the first labor charged to the 4 project is March 3. Would you agree with that?" 5 THE WITNESS: I agree. 6 BY MR. JEFFERIES: 7 Q. Okay. Did you ever compare Exhibit 3 to 8 the actual claim that was submitted to Apco in this 9 case? 10 A. I did not personally, no. 11 Q. Okay. Do you know if anybody did? 12 A. I don't. 13 Q. In looking at the cost coding, and it 14 looks to me without -- I'm not trying to be 15 argumentative or unreasonable. It looks to me like 16 it flows in terms of months. We have a March and 17 an April type report. Can you identify for me 18 within those monthly summaries what cost codes 19 would relate to general conditions? 20 A. I can try. Definitely time for 21 supervision on the labor. 22 Q. You're looking at March? 23 A. The first one, yeah, March. 24 Q. Okay. Can you give me the cost code 25 number?</p>	<p style="text-align: right;">Page 40</p> <p>1 performing that day, that week. So Ray Prietzel's 2 our on-site super, those are the codes he's 3 charging to. As you can see, he's populated all 4 over. He should not be there after the beginning 5 of January 2013. 6 Q. Okay. I guess the same answer would 7 apply to 15500? 8 A. Correct. 9 Q. The same for 16109? 10 A. Correct. 11 Q. Same for 1610? 12 A. Do you want me to confirm every one of 13 these? 14 Q. Well, maybe I can short-circuit it. Did 15 you identify those numbers just because 16 Mr. Prietzel was in there? 17 A. Correct. 18 Q. Okay. And he was filling out a time 19 card, slash, certified payroll; right? 20 A. Correct. 21 Q. And did he ever serve as the foreman on 22 the project? 23 A. He was the foreman on the project. 24 Q. Okay. Can you tell me what cost code the 25 job cost trailer is accounted for in?</p>
<p style="text-align: right;">Page 39</p> <p>1 A. The first cost code I see is 16109. 2 Actually, if you go right above it, cost code 15502 3 and 15500. So his name comes up in several. But 4 he also shows up in 16110, 16200, 16250. 5 MR. DOMINA: Are those under the source 6 column that you're looking at? 7 THE WITNESS: It's the phase code, which 8 is under job phase category. 9 MR. DOMINA: Okay. Got it. 10 THE WITNESS: 16300, 16350, 16400, 16500. 11 And I believe that's all the codes that shows up, 12 but I might have missed one. A lot of codes. 13 BY MR. JEFFERIES: 14 Q. Okay. I want to follow up and ask you 15 about some of these. The first you mentioned was 16 15502. Why do you consider parking lot lights to 17 be a general condition? 18 A. I don't personally consider parking lot 19 lights to be a general condition. I do consider 20 our superintendent, who has to be on the job after 21 the original completion date, extend to general 22 condition. He just happens to have to charge his 23 time to different codes. 24 He has to allocate his time somewhere, so 25 he puts it to the code that was what he was</p>	<p style="text-align: right;">Page 41</p> <p>1 A. For the first period, March? 2 Q. Any period, because I assume once I know 3 the cost code number I can track it throughout. 4 A. So if you go to Bates 41, phase code 5 88065, and there is a monthly charge there, Helix 6 equipment. 7 Q. Is that the job site trailer? 8 A. It would be whatever equipment was 9 included in that 700 charge. Trailer would be one 10 item. 11 Q. Okay. And then it looks like in cost 12 code 88056, you track equipment rental for the 13 project; correct? 14 A. Eighty-eight, what? 15 Q. 880 -- I'm sorry, 66, right below it. 16 A. Okay. 17 Q. Do you agree? 18 A. Yes. 19 Q. In looking at 88099 and 88105, it looks 20 like all of the fixed general condition type costs 21 are being tracked in the 8800 related codes. Would 22 you agree? 23 A. No, because Ray Prietzel's not in those, 24 and he is in the 1600 codes, so that's not correct. 25 But trailer, truck rental, yes, I believe that is</p>

<p style="text-align: right;">Page 42</p> <p>1 correct.</p> <p>2 Q. And Mr. Prietzel is not listed under</p> <p>3 project management, is he?</p> <p>4 A. No.</p> <p>5 Q. Okay. Just so my record's clear,</p> <p>6 excluding Mr. Prietzel's time, would you agree that</p> <p>7 Helix's job cost system tracks the general</p> <p>8 condition cost under the 8800 cost code?</p> <p>9 A. Not all of them, but I believe in this</p> <p>10 case what we got, correct. As a general statement,</p> <p>11 no. But for specifically this, what I see, yes.</p> <p>12 Q. What's the exception to my statement?</p> <p>13 A. Well, there is all kinds of general codes</p> <p>14 that could come up. We have things we buy as</p> <p>15 material and things -- the support people when they</p> <p>16 are extended, that wouldn't show up as a material</p> <p>17 cost. But I don't believe we put any of those in</p> <p>18 our claim, so that's why I said no for the answer.</p> <p>19 But for this specific job cost report, I believe,</p> <p>20 yes, and what our potential extended claim is, yes,</p> <p>21 it's covered in the 8800.</p> <p>22 Q. Okay. Let me try and make sure my record</p> <p>23 is clear and I understand your answer. For</p> <p>24 purposes of this litigation and your claim, would</p> <p>25 you agree that all of the general condition costs</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. And sitting here today, have you</p> <p>2 ever done any type of analysis to determine how</p> <p>3 much more Helix spent on general conditions than</p> <p>4 was budgeted?</p> <p>5 A. No. What we did is we prepared our</p> <p>6 extended general conditions claim on a cost per day</p> <p>7 basis based on amount of days that we sought in the</p> <p>8 delay.</p> <p>9 Q. So your claim is not tied to your actual</p> <p>10 costs or your actual budget or an actual loss?</p> <p>11 A. Not to my knowledge.</p> <p>12 MR. JEFFERIES: All right. Let's go off</p> <p>13 the record a minute. Let's take a quick break.</p> <p>14 (A brief recess was taken.)</p> <p>15 MR. JEFFERIES: Sir, let's go back on the</p> <p>16 record.</p> <p>17 BY MR. JEFFERIES:</p> <p>18 Q. You still have Exhibit 3 in front of you?</p> <p>19 A. I do.</p> <p>20 Q. If on the first page Mr. Prietzel is</p> <p>21 shown about the middle for March 10, 2013, he has a</p> <p>22 trade code designation of EL10, do you know what</p> <p>23 that is?</p> <p>24 A. Yeah. It's a pay category code, and the</p> <p>25 EL numbers are assigned for prevailing wage</p>
<p style="text-align: right;">Page 43</p> <p>1 are tracked in the 8800 or 88,000 cost code with</p> <p>2 the exception of Mr. Prietzel as you have</p> <p>3 identified them?</p> <p>4 A. I believe that's correct.</p> <p>5 Q. Now, is there a summary or a total cost</p> <p>6 at the end of the report that would show all of the</p> <p>7 total costs collected under project management, for</p> <p>8 example?</p> <p>9 A. There is a total cost for, I believe,</p> <p>10 every individual phase code, but I don't think</p> <p>11 there's a total for the whole report. You have to</p> <p>12 go to Bates 43. It appears there could be a total.</p> <p>13 I can't really tell without checking math, but it</p> <p>14 says under Craig Ranch Regional Phase 3 total,</p> <p>15 that's got a deductive amount which doesn't make</p> <p>16 sense to me, but ...</p> <p>17 Q. Okay. And that would appear to be a</p> <p>18 total through March 31; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is there -- my question was a little</p> <p>21 different. Is there a total for the entire job for</p> <p>22 the phase code, or would I have to add up the</p> <p>23 individual monthly costs?</p> <p>24 A. You'd have to add every one of these as a</p> <p>25 different monthly here, March, April, May, June.</p>	<p style="text-align: right;">Page 45</p> <p>1 purposes to track people, make sure we're paying</p> <p>2 correctly.</p> <p>3 Q. And below -- two people below him,</p> <p>4 Charles Woodson also had an EL10. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Now, would you agree with me that</p> <p>7 Mr. Prietzel's designation or classification on the</p> <p>8 project as EL10 never changed?</p> <p>9 A. Not to my knowledge, but I can't say it</p> <p>10 never changed, but I don't recall it changing.</p> <p>11 Q. Let's just for sake of time, if you go</p> <p>12 to -- well, let's go to Helix Bates 099 within</p> <p>13 Exhibit 3, and then on October 27, 2013,</p> <p>14 Mr. Prietzel is still shown as an EL10.</p> <p>15 Do you see that?</p> <p>16 A. You said Bates 99; right?</p> <p>17 Q. At the top.</p> <p>18 A. Okay. I see that.</p> <p>19 Q. Okay. Now, did there come a point in</p> <p>20 time when Mr. Prietzel was the only person on site?</p> <p>21 A. Very possible, but I wouldn't be able to</p> <p>22 tell you that.</p> <p>23 Q. Okay. So sitting here today, you don't</p> <p>24 know?</p> <p>25 A. I don't know.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. I just -- I just picked just for 2 purposes of my question, if you go to Bates label 3 HEL 075 within Exhibit 3, starting at the bottom 4 and continuing on for the next several pages you'll 5 see that Mr. Prietzel is the only person charged to 6 that job.</p> <p>7 Do you see that?</p> <p>8 A. Yeah, I see for that time period.</p> <p>9 Q. And then if I go to page Helix 079 within 10 Exhibit 3, I see a number of people who it looks 11 like they have a trade code of OFFPE. Do you know 12 what that is?</p> <p>13 A. I do.</p> <p>14 Q. What is it?</p> <p>15 A. It's an office employee code.</p> <p>16 Q. And these are people in the home office?</p> <p>17 A. Could be on the site, could be in the 18 home office. I would tend to think these were 19 probably home office.</p> <p>20 Q. You're not including any of those costs, 21 are you, in your general conditions claim against 22 Apco?</p> <p>23 A. I don't know if we are or we aren't, to 24 be honest with you.</p> <p>25 Q. Would you agree it would be inappropriate</p>	<p style="text-align: right;">Page 48</p> <p>1 A. No. The PM sets up this based on how he 2 sees his phase codes and progress bills based on 3 what they believe is a percentage complete. There 4 was no exact science to it. It's percentages.</p> <p>5 Q. How does the Helix project manager know 6 how much to bill during any one pay period?</p> <p>7 A. Job cost report you got, they can look at 8 it and see what they're spending. And then they go 9 and capture as much as they can, and their goal is 10 to get as much as possible to get cash ahead. So 11 again, they're after percentage of dollars to cover 12 costs and whatever else they can get approved based 13 on progress.</p> <p>14 Q. So they would consult Exhibit 3?</p> <p>15 A. They would definitely consult the job 16 costs.</p> <p>17 (Exhibit 4 was marked for 18 identification.)</p> <p>19 BY MR. JEFFERIES:</p> <p>20 Q. Sir, can you identify what I've marked as 21 Exhibit 4 to your deposition?</p> <p>22 A. An invoice dated 10/18/2013, for a period 23 through 10/31/2013.</p> <p>24 Q. And this -- I'm sorry. Did you say the 25 pay period?</p>
<p style="text-align: right;">Page 47</p> <p>1 to charge those office people to Apco?</p> <p>2 A. No. If they're working on the project, 3 it would be appropriate to charge them.</p> <p>4 Q. And what source documents would exist to 5 tell us what they were doing in relation to the 6 project and how much time was spent?</p> <p>7 A. By then I don't know, especially after 8 four years I don't know.</p> <p>9 Q. Okay. Question going back to Exhibit 2 10 to your deposition, and directing your attention to 11 page 3, where we have all of the individual line 12 items 1 through 35, my question to you is, is it 13 standard practice for a Helix project manager to 14 set up a cost coding to track Helix's costs in 15 relation to these individual line items?</p> <p>16 A. No.</p> <p>17 Q. What process does Helix use to determine 18 if it is making or losing money on an individual 19 item on the project?</p> <p>20 A. It gets back to those phase codes we've 21 talked about earlier here.</p> <p>22 Q. Okay. Is there any document that 23 correlates the job phase cost coding in Exhibit 3 24 to the individual line items in the pay 25 application?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I did date of the invoice stating the pay 2 period.</p> <p>3 Q. Does this represent -- strike that. 4 Does Exhibit 4 represent Helix's final 5 progress billing other than retention?</p> <p>6 A. 100 percent billing less retention.</p> <p>7 Q. Okay. And through Exhibit 4, this is 8 your final bill that brings the general conditions 9 line item to 100 percent by billing \$1,020; 10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Have you reviewed the subcontract 13 agreement between Apco and Helix for the project?</p> <p>14 A. Yes.</p> <p>15 Q. Did you participate in negotiating any of 16 that?</p> <p>17 A. Yes.</p> <p>18 (Exhibit 5 was marked for 19 identification.)</p> <p>20 BY MR. JEFFERIES:</p> <p>21 Q. Okay. Sir, I have put in front of you 22 Exhibit 5. Do you recognize this as the 23 subcontract between Apco and Helix for the project?</p> <p>24 A. I do.</p> <p>25 Q. And when did this -- well, let's see.</p>

<p style="text-align: right;">Page 50</p> <p>1 Did you understand that the subcontract 2 incorporated the prime contract requirements 3 between the City of North Las Vegas and Apco? 4 A. Yes. 5 Q. Just as a housekeeping matter, starting 6 at page Bates label HEL 236 through 239. 7 A. I don't have that number. 8 MR. DOMINA: You gave us your version of 9 it, the Apco Bates. 10 MR. JEFFERIES: Oh, okay. 11 THE WITNESS: Do you want to give me a 12 page number of the contract? 13 MR. JEFFERIES: Well, it's the 14 attachment. It's the exhibits that are the lien 15 release forms. 16 MR. DOMINA: 482, I think it is, Bob. 17 THE WITNESS: I've got one titled 18 Unconditional; is that what you're on? 19 BY MR. JEFFERIES: 20 Q. Yeah, there's four of them. 21 A. The first one I found that's not Spanish 22 is Unconditional. 23 Q. Did you use these forms of waiver during 24 the course of the project? 25 A. Yeah, they look familiar. I can't say</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Is that the delay payment schedule 2 proposed. I don't recall proposing the schedule to 3 Apco. Are you asking something different that I'm 4 hearing wrong? 5 Q. I don't know. In your addendum to 6 Section 6, this is your language controlling if and 7 when Helix gets paid for delays; correct? I'm 8 paraphrasing. 9 A. What's in Section 6 is four paragraphs. 10 Do you want me to read them to make sure I can 11 answer that correctly? 12 Q. Sure. And I'm referring to the first 13 paragraph. 14 A. Only the first paragraph? 15 Okay. Go ahead. 16 MR. JEFFERIES: Could you re-read my 17 question? 18 (The requested portion of the record was 19 read by the court reporter.) 20 THE WITNESS: It appears to be correct. 21 BY MR. JEFFERIES: 22 Q. And that additional payment is based upon 23 the costs and damages sustained by Helix for such 24 delay; correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 51</p> <p>1 verbatim every word is the same as what we 2 submitted, but it looks familiar. 3 Q. Okay. When you were submitting these 4 waivers with your pay applications, who was filling 5 them out, Helix or Apco? 6 A. These would be filled out by Helix. 7 Q. Okay. Sir, would you go to the -- what 8 are we calling this? It's the Helix addendum. 9 It's within the -- it's after those forms -- 10 A. After them? 11 Q. Yes, sir, I believe so. 12 A. The exhibit? 13 Q. Looking for a title. Yes, the Helix 14 Electric exhibit to the subcontract. What is your 15 Bates number? 16 A. 487. 17 Q. Directing your attention to Section 6, 18 who prepared -- well, strike that. 19 Who prepared the language reflected in 20 this exhibit to the subcontract? 21 A. I don't recall who prepared the language. 22 Q. But it would have been Helix; right? 23 A. Well, yes. It's our exhibit. 24 Q. Looking at Section 6, is that the delay 25 payment schedule you proposed to Apco?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And your entitlement to those additional 2 costs and damages is conditioned on Apco being paid 3 for those by the city; correct? 4 MR. DOMINA: Hold on one second. 5 Objection, calls for a legal conclusion. The pay 6 if paid clause has just been struck down by the 7 Supreme Court. Go ahead. You can answer whatever 8 you want. It won't mean anything. It won't. It's 9 a legal issue. 10 THE WITNESS: So the question again. 11 BY MR. JEFFERIES: 12 Q. Sure. I'll read your Helix language into 13 the record, then I'll ask my question. I'm going 14 to skip the first part of the clause, and it says, 15 "Then subcontractor shall be entitled to receive 16 from contractor payment representing the costs and 17 damages sustained by subcontractor for such delay 18 or acceleration providing said costs and damages 19 are first paid to contractor." 20 What did you intend by using the terms 21 and language "first paid to contractor"? 22 A. I can't answer real quickly. Let me read 23 it from the beginning. I hear what you just read, 24 so ... 25 I can't say what I thought at the time.</p>

<p style="text-align: right;">Page 54</p> <p>1 I can tell you what it says. It's pretty much what 2 you read.</p> <p>3 Q. Would you agree that it was your 4 intention that the language that I just read into 5 the record in that first Section 6 addition was 6 that Helix would be entitled to additional costs 7 for delay if the City of North Las Vegas paid Apco 8 for those same costs?</p> <p>9 A. Yeah, it appears that's what it reads.</p> <p>10 Q. Okay. I may be done with this. 11 (Exhibit 6 was marked for 12 identification.)</p> <p>13 BY MR. JEFFERIES:</p> <p>14 Q. Sir, showing you what I've marked as 15 Exhibit 6 to your deposition, as you can see from 16 the upper right-hand part of the page, this is an 17 excerpt from the general conditions of the prime 18 contract. Are you generally familiar with the City 19 of North Las Vegas' general conditions?</p> <p>20 A. Not generally. We haven't done work for 21 them for a while, but in the past, yes.</p> <p>22 Q. I'm going to ask you about the paragraph 23 B and C on page 2 of Exhibit 6. So if you'd take a 24 minute and just review those to yourself.</p> <p>25 A. Okay. Go ahead. I read them.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 Q. And did Helix do that?</p> <p>3 A. As it reads here, not to my knowledge, 4 nor was it asked of us by Apco.</p> <p>5 Q. You do recall Apco asking Helix for 6 backup for its individual claimed costs; correct?</p> <p>7 A. At some point that's correct.</p> <p>8 Q. Did Helix ever provide Apco with the 9 source documents or cost accounting to justify and 10 support any increased actual costs for delay?</p> <p>11 A. We did in the form of daily costs and 12 days incurred, yes.</p> <p>13 Q. And when you say that, you're referring 14 to just a summary of saying Helix is claiming X 15 dollars per day for?</p> <p>16 A. There was an actual breakout per day and 17 then a breakout by month that was presented to 18 them.</p> <p>19 Q. And upon receipt of that summary that you 20 just described, Apco asked for supporting 21 documents; correct?</p> <p>22 A. I don't recall on upon receipt of that 23 them asking that, no. I don't recall.</p> <p>24 Q. Did Helix ever have any direct 25 discussions with the City of North Las Vegas</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Do you agree that this procedure that's 2 outlined in Exhibit 6 would apply to Helix through 3 incorporation in the subcontract?</p> <p>4 MR. DOMINA: Object to the form of the 5 question, calls for a legal conclusion.</p> <p>6 THE WITNESS: In general, yes.</p> <p>7 BY MR. JEFFERIES:</p> <p>8 Q. In paragraph B, did Helix track its 9 actual increased costs that it was going to claim 10 for delay on the project?</p> <p>11 A. Through the accounting that you saw and 12 through our notices of the daily costs, yes.</p> <p>13 Q. And the accounting being Exhibit 3?</p> <p>14 A. Yes. And the daily costs we presented.</p> <p>15 Q. Did Helix submit accounting and related 16 support for costs to Apco on a weekly or daily 17 basis?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Looking at paragraph C of Exhibit 6, it 20 references costs incurred over a span of more than 21 30 days, it references a submission every month of 22 the claimed costs.</p> <p>23 Do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Yes?</p>	<p style="text-align: right;">Page 57</p> <p>1 regarding its delay claim?</p> <p>2 A. I didn't, and nobody to my knowledge.</p> <p>3 Q. At Helix did?</p> <p>4 A. At Helix.</p> <p>5 Q. During the course of the project or 6 throughout the payment claim process, did you ever 7 have any discussions with Mr. Pelan regarding lien 8 releases?</p> <p>9 A. I'm sure we did, but specifically I'm not 10 going to recall. Go ahead.</p> <p>11 Q. So sitting here today, you don't recall 12 having any discussion --</p> <p>13 A. Not any details of any discussions, no, 14 but I wouldn't be surprised if at some point we 15 didn't.</p> <p>16 Q. Okay. Let me make sure my record is 17 clear. You know where I'm going and I understand 18 your answer, but let me just make sure the record 19 is clear.</p> <p>20 Sitting here today, you don't recall 21 having any discussions with Mr. Pelan about lien 22 releases; correct?</p> <p>23 A. In general, no, not about lien releases.</p> <p>24 Q. Okay. Do you recall having any 25 discussions with Mr. Pelan in the 2013, 2014 time</p>

<p style="text-align: right;">Page 58</p> <p>1 period?</p> <p>2 A. Not specifically, but that's also time</p> <p>3 period that we're trying to get the final payment,</p> <p>4 different things. I just don't recall. Just a</p> <p>5 memory thing. If you've got something that</p> <p>6 supports it, I'd be happy to look at it and</p> <p>7 collaborate, but I don't recall.</p> <p>8 Q. During 2014, what bank did Helix use?</p> <p>9 A. Most likely Bank of Nevada.</p> <p>10 Q. Have you ever used Western Alliance Bank?</p> <p>11 A. Doesn't ring a bell.</p> <p>12 Q. Who is Richard Clement?</p> <p>13 A. He's a field superintendent.</p> <p>14 Q. Are you claiming his time in this case?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Okay. Is Mr. Clement above or below</p> <p>17 Mr. Prietzel?</p> <p>18 A. For this project they were equals.</p> <p>19 Q. Who is the project engineer on the</p> <p>20 project for Helix?</p> <p>21 A. We have many, and I don't remember in</p> <p>22 2014 who it was.</p> <p>23 Q. Would that person have filled out some</p> <p>24 form of time card allocating his time per project?</p> <p>25 A. I would suspect they would have, yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 BY MR. JEFFERIES:</p> <p>2 Q. Sir, I have put in front of you what has</p> <p>3 been marked as Exhibit 7, and I won't represent to</p> <p>4 you that the next two pages were attached, but they</p> <p>5 were Bates labeled in sequential order, and so I've</p> <p>6 marked them accordingly. Did you play any role in</p> <p>7 preparing the cost summaries that are attached or</p> <p>8 included in Exhibit 7?</p> <p>9 A. Not directly. Just aware that they were</p> <p>10 being prepared and presented in this format.</p> <p>11 Q. Okay. Do you know how the \$2,600 for</p> <p>12 project manager in January was determined?</p> <p>13 A. Only in general that it's prorated for a</p> <p>14 portion of time in January.</p> <p>15 Q. Okay. So prorated being --</p> <p>16 A. Meaning it wasn't the full month.</p> <p>17 Q. Okay. Do you know how the February</p> <p>18 \$5,200 was determined for the project manager?</p> <p>19 A. I'm sure it's his monthly costs for this</p> <p>20 portion of his workload at the time that he</p> <p>21 allocated to it.</p> <p>22 Q. Are these -- do you know what --</p> <p>23 Can you tell me, does the third page of</p> <p>24 Exhibit 7, does this represent January through</p> <p>25 August 2013?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Does Helix maintain that information in</p> <p>2 the ordinary course of its business?</p> <p>3 A. Well, if they are going to the job costs,</p> <p>4 it would be in the reports.</p> <p>5 Q. Let me make sure I understand. You're</p> <p>6 saying his time would be coded in Exhibit 3?</p> <p>7 A. I would think so, yes.</p> <p>8 Q. And my question was slightly different.</p> <p>9 Would there be a source document used by the</p> <p>10 project engineer to put his time in the Exhibit 3?</p> <p>11 A. There would have to have been at the</p> <p>12 time, but I can't answer as specifically what that</p> <p>13 is and I don't know if it's available.</p> <p>14 Q. Have you ever been asked to look for the</p> <p>15 timecards and source data to support the claimed</p> <p>16 delay costs in this case?</p> <p>17 A. I don't recall being asked, no.</p> <p>18 MR. DOMINA: Timecards have been</p> <p>19 produced.</p> <p>20 MR. JEFFERIES: Okay.</p> <p>21 MR. DOMINA: And you guys have them. I'm</p> <p>22 positive you do.</p> <p>23 (Exhibit 7 was marked for</p> <p>24 identification.)</p> <p>25 / / /</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And is this a forward looking</p> <p>3 pricing of the delay costs, or is this historical?</p> <p>4 A. I don't think it's forward looking if</p> <p>5 it's been presented. That's interesting, because</p> <p>6 the date of the letter is January 28th. I don't --</p> <p>7 I believe you're probably correct, these probably</p> <p>8 are not necessarily an attachment.</p> <p>9 Q. Okay.</p> <p>10 A. I don't think we would have looked for it</p> <p>11 out to October at that time.</p> <p>12 Q. If I look at Exhibit 3, and let's just</p> <p>13 take the time period for February 2013, you don't</p> <p>14 show any project manager costs for February 2013 in</p> <p>15 Exhibit 3, do you?</p> <p>16 A. Where are you coming up -- can you give</p> <p>17 me the number?</p> <p>18 Q. Sure.</p> <p>19 A. What are you looking at, Exhibit 3?</p> <p>20 Q. Exhibit 3.</p> <p>21 A. Yeah, but what Bates are you referring</p> <p>22 to?</p> <p>23 Q. Well, I --</p> <p>24 A. I don't recall a February in here. I see</p> <p>25 a March.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. And that was -- that's why I'm asking the 2 question. I'm trying to figure out where Helix 3 determined for let's say February, on the third 4 page of Exhibit 7 -- 5 A. Sure. 6 Q. -- it's 5200 bucks, where would that 7 number have come from? 8 A. That come from the PM structuring his 9 costs on a daily cost basis of time allocated, 10 which we presented, which there's another document 11 that breaks out the daily costs. And he would take 12 the amount of workdays in a month and use that to 13 come up with that amount. 14 Q. Okay. But Exhibit 3 does not reflect any 15 costs incurred for the project manager in February 16 2013, does it? 17 A. No, I don't think so. Considering their 18 part starts in March, we wouldn't need a February 19 report. 20 Q. Okay. And we had this little debate 21 earlier, but you are able to sit down at your 22 computer system and print out all of the costs for 23 the job from the time you first started on the 24 project; correct? 25 A. Yeah, we should be able to, correct.</p>	<p style="text-align: right;">Page 64</p> <p>1 Not directly, no. 2 Q. In fact, as I look at your job cost 3 report for the project manager, it shows a total of 4 \$651 for April 2013; correct? 5 A. You're in April? 6 Q. Yes, sir. 7 A. I'm sorry. I'm not. 8 Q. Bates label 059. 9 A. Okay. Yeah, I see what you said. 10 Q. So just so I'm -- and I'm reading your 11 report correctly, would you agree that for 12 April 2013, your job cost shows only \$651.28 in 13 project management costs? 14 A. Part says 651, correct. 15 Q. So my statement's correct? 16 A. Yeah, the statement that it shows that in 17 there is correct. 18 Q. Okay. What is the total job cost for 19 project manager for March 2013 as depicted in 20 Exhibit 3? 21 A. Exhibit 3, project management code, 22 \$705.54. 23 Q. And -- 24 A. But that doesn't mean that's his only 25 time on the job.</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. JEFFERIES: Yeah. All right. I'm 2 going to request that you produce a complete job 3 cost. 4 MR. DOMINA: Has Apco produced its job 5 cost in this action? 6 MR. JEFFERIES: Well, I'm not sure how 7 it's relevant if we don't have a claim against you. 8 MR. DOMINA: Precisely. 9 MR. JEFFERIES: And your costs are 10 extremely relevant. 11 MR. DOMINA: To the last year that we're 12 claiming. 13 MR. JEFFERIES: I disagree with that, so. 14 MR. DOMINA: We're not seeking for any 15 recovery of any monies prior to that year. 16 MR. JEFFERIES: Okay. Anyway, I'm making 17 my request. 18 MR. DOMINA: Denied. 19 BY MR. JEFFERIES: 20 Q. Let's pick -- I'm looking at a third page 21 of Exhibit 7, and if we go to April, the project 22 manager, there is a \$5200 line item cost. Can you 23 tie that figure out to any of the costs in 24 Exhibit 3? 25 A. I don't know if I can or not.</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. I don't understand your answer. 2 A. That doesn't mean that's his only time on 3 the job. You asked earlier if he had other jobs. 4 It's very possible he did. I don't recall. He 5 allocates his time how he sees it fit to the jobs. 6 It's not to track his actual time on the job. It's 7 to put his costs where he was, to cover his costs. 8 So if he had two other jobs that were a 9 lot more project management cost in it, he might 10 have allocated it there, but it doesn't change the 11 fact that he's working on this job. 12 Q. What Bates page are you on? 13 A. Forty-two. 14 Q. Okay. So your actual cost as tracked by 15 Mr. Williams was \$705 versus the claimed 5200; 16 correct? 17 A. Not tracked. That's the time he 18 submitted against this project in that particular 19 month, but is not documenting his actual time on 20 the project. 21 Q. Well, how would he determine what time 22 he's going to allocate to this project? 23 A. That's his individual call. He could 24 have allocated zero here and put it all in another 25 job, it would have been fine by us. This isn't</p>

<p style="text-align: right;">Page 66</p> <p>1 here for tracking his exact time on the job. It's 2 just for costs that he is allocating to this 3 project at that moment. 4 You could always depo him and he could 5 tell you how many meetings he went to, how often he 6 made trips to the site and so forth, and I'm sure 7 you'll find it's more than adequate to justify the 8 cost. 9 Q. The cost of 705 or the -- 10 A. The cost of 5200. 11 Q. That was argumentative. 12 A. Well, I took the argument. 13 Q. All right. Okay. Well, the fact is the 14 amounts that have been claimed for project manager 15 don't tie out to the actual job costs for the 16 project; correct? 17 A. No, they don't, but it wasn't intended 18 for that purpose. 19 Q. All right. So let's track, if we could, 20 still on the third page of Exhibit 7, let's go to 21 March, and you're claiming \$901.90. And what does 22 your job cost in Exhibit 3 show for the project 23 engineer for March 2013? 24 A. At a quick glance I don't see any, but to 25 me it's not really relevant.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Is potentially one of them. We have a 2 pool of engineers. I'd have to analyze who else on 3 here could have been working in that capacity, so 4 we'd have to do a more detailed analysis to figure 5 it out from that report. 6 Q. I was just looking at March, and I don't 7 see anybody with OFFPA other than Mr. Smith. Not a 8 question. I'm rambling. 9 Looking at the third page of Exhibit 7, 10 the next item is 28. Well, let's go to March of 11 2013. You've claimed \$5,600 for a superintendent. 12 A. Uh-huh. 13 Q. Can you go to Exhibit 3 and tell me where 14 that cost ties out? 15 A. I did that earlier with Ray Prietzel and 16 all the direct codes he was on. 17 Q. Okay. So is it your testimony that that 18 \$2,800 represents Mr. Prietzel's time? 19 A. What \$2,800? 20 Q. I'm sorry. I looked at the wrong 21 category. 5600 for superintendent for March 2013. 22 A. Yes, that would represent Ray. 23 Q. Okay. And would that be the same on that 24 item, that line item throughout January through 25 August 2013?</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. So my record is clear, your job cost 2 doesn't show any project engineer time for 3 March 2013; correct? 4 A. No, I didn't see any. But that again 5 doesn't mean somebody in there didn't get coded to 6 a direct code that was doing it. I just don't see 7 it right off the top. 8 Q. Well, let's make sure both of our records 9 are clear. 10 A. And the reason I say that, if you go to 11 16250 Bates 37, you see, "Mark Smith office PA." 12 That's project assistant engineering code. He's 13 charged eight hours on that direct phase code. So 14 he's not charging to a PE code, he's charging to 15 direct code. 16 So you'd have to analyze every one of 17 these labor codes and see whose office. Mark Smith 18 appears again on the next page additional hours. 19 So that's where you're going to get your project 20 assistant. 21 Q. And you say project assistant, that would 22 be a project engineer? 23 A. Harmonious, it means the same thing. 24 Q. And so it's your testimony that Mark 25 Smith is the project engineer?</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I believe that's correct. 2 Q. Okay. And wouldn't you agree that during 3 that time period, that Mr. Prietzel was serving as 4 the foreman doing billable contract work for Helix? 5 A. He perhaps could be doing some contract 6 work, he could be doing purely supervisory, but 7 from my perspective he shouldn't be there after a 8 certain date, and that's part of our costs for 9 being on site. 10 Q. But to the extent he's performing labor 11 in the field as an EL10, you're getting reimbursed 12 for that work through your schedule of value 13 billing; right? 14 A. Am I? 15 Q. I'm asking you. 16 A. You know that? Well, you made a 17 statement. 18 Q. Okay. Then it wasn't a good question. 19 Let me rephrase. Isn't it true, sir, that to the 20 extent Mr. Prietzel is performing contract work in 21 the field as an EL10, that Helix is being 22 reimbursed for his time through your pay 23 application when you bill the related line item? 24 A. And I say no, because he shouldn't be 25 there. He is doing work that's out of sequence</p>

<p style="text-align: right;">Page 70</p> <p>1 that's been put off way beyond the contract 2 completion, so he's actually at ineffective cost 3 that's helping get the work completed. 4 So I disagree. He's part of the impact 5 of being there after the fact. And I think most 6 impact books and publications on this type of 7 extension support that quite clearly. 8 Q. Is Mr. Prietzel hourly? 9 A. He's paid hourly. 10 Q. Okay. There's a note down below that the 11 project manager charges are based on four hours a 12 day at \$65 per hour. So wouldn't it be fair to 13 conclude that the project manager amounts that are 14 claimed in the table, the third page of Exhibit 7, 15 are not tied to Helix's actual project management 16 costs? 17 A. No, I wouldn't say that. We haven't done 18 that analysis. That's our chargeout rate with our 19 overhead and profit in it also, so you'd have to 20 factor that down. 21 Q. Who determined that for the 22 superintendent charges you were going to charge 23 Apco four hours for every day beyond January 2013? 24 A. The project manager, based on what he's 25 seeing going on out there and how productive he is</p>	<p style="text-align: right;">Page 72</p> <p>1 would be 563 rounded up. 2 Q. Did Helix have change orders on the 3 project that were, in fact, approved and paid by 4 the city? 5 A. I would be surprised there wasn't, but I 6 don't recall the change orders on the job. 7 Q. The mere fact that Helix is a 8 subcontractor on a City of North Las Vegas project, 9 that does not mean change orders don't get issued 10 for your scope of work and your costs; correct? 11 A. Don't get issued? Say that again. 12 Q. Yeah. Based on your experience with the 13 City of North Las Vegas, if there is a change that 14 impacts Helix's work as a subcontractor, the city 15 will in fact issue a change order and pay for that 16 change; correct? 17 MR. DOMINA: Objection, vague. Pay whom? 18 THE WITNESS: I can't really answer that. 19 I can tell you this. If they issue a request for 20 change and we price it and they accept it and issue 21 a change order, then yes. 22 BY MR. JEFFERIES: 23 Q. Sir, would you look at Exhibit 4, and go 24 to the fourth page within the exhibit. 25 A. Okay. Go ahead.</p>
<p style="text-align: right;">Page 71</p> <p>1 or isn't, and what they're seeing him being there 2 doing nothing basically other than baby-sitting a 3 job that should be done. 4 Q. So Mr. Prietzel was at times doing 5 nothing on the job? 6 A. I'd say at times he was doing what I 7 would consider nothing. What he was doing is what 8 he can get done at the time in the window allowed 9 based on the completion of the work. So that's my 10 terminology for what it is. 11 Q. In looking at Exhibit 3, are you able to 12 determine an hour -- strike that -- a daily cost 13 for the project manager? 14 A. Yeah, I would think so. 15 Q. Okay. Can you tell me what the job cost 16 reflects as the daily cost of a project manager? 17 A. It comes up to \$434 a day from the cost 18 in here. 19 Q. Okay. How about the superintendent, what 20 is that daily cost per the job cost report? 21 A. That's going to be a little harder to 22 determine because he is scattered throughout and 23 there is field payroll codes that are adding costs. 24 That's going to take some homework to do. 25 \$70 an hour. So on a daily basis here it</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. What does that page depict? 2 A. Change orders. 3 Q. Okay. And these would be change orders 4 that originated with the city; correct? 5 A. Correct. Potentially with the city. It 6 could have been some internal between us and Apco, 7 but I don't know that. It doesn't necessarily mean 8 they're city just because it's a change order. 9 Q. You would agree, sir, that some of these 10 change orders that you've billed for related to 11 city changes; correct? 12 A. They'd have to be, yes. 13 Q. Okay. And other than retention, it looks 14 like you were paid these changes; correct? 15 A. Correct. 16 Q. Okay. 17 (Exhibit 8 was marked for 18 identification.) 19 BY MR. JEFFERIES: 20 Q. Okay. Can you identify Exhibit 8 for me, 21 please. 22 A. An e-mail to Mary Jo Ellen from Eddie 23 Bennett. 24 Q. And what is -- what are the documents 25 that she's enclosed?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. The first document is a Helix invoice. 2 The second one is application certificate for 3 payment. Third page is the second page to that 4 application. And then a conditional waiver 5 release. 6 Q. Okay. And who filled out the information 7 on the conditional release, Helix or Apco? 8 A. I would tend to think it would be Helix. 9 It could be Apco and we agree to it and sign it, 10 but I really don't know for a fact. But 11 traditionally we do most of our lien releases. 12 Once in a while the generals insist they send them 13 and we agree or disagree. I don't recall. Joe 14 maybe recalls. 15 Q. But it was your practice on the project 16 to type in the information that's shown there; 17 correct? 18 A. Traditionally we would type it in, but I 19 can't guarantee if we typed this one in. 20 Regardless, we agreed to it, we signed it. 21 Q. Okay. So Exhibit 8 reflects your billing 22 for retention; correct? 23 A. The e-mail says it's a revised retention 24 billing, and the document appears to be a retention 25 billing.</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. JEFFERIES: Absolutely. 2 (A brief recess was taken.) 3 (Exhibit 9 was marked for 4 identification.) 5 BY MR. JEFFERIES: 6 Q. Sir, look at what I've marked as 7 Exhibit 9. 8 A. Okay. 9 Q. Exhibit 9 is your letter of October 30 to 10 Mr. Pelan; correct? 11 A. Correct. 12 Q. At any time prior to your delivery of 13 this letter, did you on behalf of Helix ever 14 rescind the conditional waiver that was signed for 15 the retention? 16 MR. DOMINA: Objection, calls for a legal 17 conclusion. 18 THE WITNESS: I would never rescind a 19 waiver, so my answer would be no. 20 BY MR. JEFFERIES: 21 Q. Okay. Prior to October 30, 2014, when 22 Helix delivered your letter, Exhibit 9, did you 23 have or can you recall having any discussions with 24 Joe Pelan about this issue? 25 MR. DOMINA: Objection, vague. What</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. As you sit here today, do you recall 2 discussing this form of release with anybody at 3 Apco? 4 A. I think you asked that earlier. I don't 5 recall having detailed discussions with anybody on 6 the release. 7 Q. Okay. I'm going to show you a document. 8 MR. JEFFERIES: I just want to know if 9 that's his handwriting. 10 MR. DOMINA: I know it's not, but ask the 11 witness. 12 BY MR. JEFFERIES: 13 Q. Is that your handwriting? 14 A. Can I see it a little closer? 15 Q. Sure. 16 A. What are you asking? 17 Q. Is that your handwriting at the bottom? 18 A. No. 19 MR. DOMINA: It's the City of North 20 Las Vegas guy that I deposed. His name is Joemel. 21 Randy, do you mind if we take a quick 22 restroom break -- 23 MR. JEFFERIES: Let's go for it. 24 MR. DOMINA: -- while you're peeking at 25 that?</p>	<p style="text-align: right;">Page 77</p> <p>1 issue? 2 MR. JEFFERIES: Fair enough. 3 BY MR. JEFFERIES: 4 Q. Prior to your delivery of Johnson 5 Exhibit 9, did you ever discuss the contents of 6 your letter or the form of release with Mr. Pelan? 7 A. I don't recall that. I do know there was 8 discussions going on then. I do know that Joe had 9 some with Victor in our office, and I do know that 10 had some effects on the lien releases. If I was 11 involved in a conversation with Joe, I don't recall 12 specifically, but I do know there was 13 conversations. 14 Q. But your testimony is you don't recall 15 being involved with Mr. Pelan directly? 16 A. I don't recall the direct conversation. 17 Q. Does Helix -- well, this isn't fair. 18 MR. JEFFERIES: Let me mark this. 19 (Exhibit 10 was marked for 20 identification.) 21 BY MR. JEFFERIES: 22 Q. Sir, I've marked as Exhibit 10 to your 23 deposition a document that we recently obtained to 24 try and confirm when the funds reflected in Check 25 No. 1473 to Helix cleared the bank. Does Helix</p>

<p style="text-align: right;">Page 78</p> <p>1 contest that it received the 105,679 in its account 2 on October 29, 2014?</p> <p>3 A. No. I believe we got it on that date.</p> <p>4 Q. All right. All right. Do you know if 5 Western Alliance Bank is the -- actually, it says 6 it right on there. If you look at Exhibit 10, it 7 actually is an affiliate of Bank of Nevada.</p> <p>8 Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Yes?</p> <p>11 A. Yes.</p> <p>12 Q. Now, was your bank --</p> <p>13 A. Bank of Nevada, yeah. That's what I 14 stated earlier.</p> <p>15 Q. All right.</p> <p>16 (Exhibit 11 was marked for 17 identification.)</p> <p>18 BY MR. JEFFERIES:</p> <p>19 Q. Sir, showing you what I have marked as 20 Exhibit 11 to your deposition, would you take a 21 minute and review this exchange of e-mail dated 22 January 29, 2016.</p> <p>23 A. Okay. I read it.</p> <p>24 Q. Did you prepare this e-mail?</p> <p>25 A. I did.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. And that -- is that the \$466, the 2 forklift?</p> <p>3 A. I can't tell you which is the forklift, 4 because it doesn't tell you that here. It just 5 tells you Hertz Equipment Rentals.</p> <p>6 Q. But there is a reference number. What is 7 that?</p> <p>8 A. Are you talking about the reference 9 description, reference --</p> <p>10 Q. Well, there's two.</p> <p>11 A. I have no idea what it is. It's an 12 accounting number. It's got no relationship to me.</p> <p>13 Q. Okay. Would it reflect an invoice?</p> <p>14 A. Perhaps.</p> <p>15 Q. Okay. Do you know if Helix has produced 16 those invoices?</p> <p>17 A. I don't.</p> <p>18 Q. Have you ever been asked to look for 19 those invoices?</p> <p>20 A. No.</p> <p>21 Q. In looking at your first paragraph under 22 supervision in Exhibit 11, are you in agreement 23 that Mr. Clement should not be included in any 24 claim to Apco?</p> <p>25 A. Yeah, based on February forward I don't</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. A couple of quick things. Are you 2 acknowledging that there should be no claimed 3 charge for the forklift after February 2013?</p> <p>4 A. What I recall is basically that forklift 5 couldn't have been on site February or March. It 6 was his assumption it was on site February for 7 light fixtures, but not for March. But it was not 8 on site for March, that's what I'm clarifying. I'm 9 not clarifying it's not on the site after March.</p> <p>10 Q. Okay. And that's why I'm asking you the 11 question. Given your response on that line item, 12 would you agree that the forklift should be removed 13 from your claimed cost after February 2013?</p> <p>14 A. No, just for March.</p> <p>15 Q. Is there a forklift shown in the job cost 16 report, Exhibit 3, for a forklift in March or April 17 of 2013?</p> <p>18 A. I have no idea.</p> <p>19 Q. Can you put it in front of you?</p> <p>20 A. Right. Did you say for March?</p> <p>21 Q. Yeah, let's do March, and we'll do April.</p> <p>22 A. Okay. So March there is Hertz Equipment 23 Rentals.</p> <p>24 Q. What page are you looking at?</p> <p>25 A. Bates 41.</p>	<p style="text-align: right;">Page 81</p> <p>1 know if he was part of it, if any of it's in 2 January. I just don't recall. But definitely from 3 the 28th on, no.</p> <p>4 Q. From January 28, 2013 going forward, 5 Mr. Clement should not be included in any claim 6 costs; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Now, you reference a time period 9 when you believe Mr. Prietzel's role on the project 10 changed. Can you find that date or week in 11 Exhibit 3, your job cost, and tell me if his 12 designation changed internally?</p> <p>13 A. It didn't change internally.</p> <p>14 Q. So he was still shown as an EL10 and 15 still was paid the same amount?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 A. If you want us to increase it to a 19 foreman's pay ^^ for certify it for the claim, we'd 20 be happy to adjust it.</p> <p>21 Q. Who made the decision to make 22 Mr. Prietzel a superintendent?</p> <p>23 A. Mr. Prietzel has always been a 24 superintendent with Helix. He was just now 25 designated the project at that date, and Rick</p>

<p style="text-align: right;">Page 82</p> <p>1 Clement left to do another project.</p> <p>2 MR. DOMINA: Randy, another cleanup. I</p> <p>3 went and looked, and there are invoices for the</p> <p>4 forklift. I just don't want you cluttering up</p> <p>5 the --</p> <p>6 MR. JEFFERIES: No. And I --</p> <p>7 MR. DOMINA: I just don't want to be</p> <p>8 doing fishing expeditions, because if you don't</p> <p>9 clean it up in a depo, it turns into a mess.</p> <p>10 MR. JEFFERIES: And I agree with you.</p> <p>11 Joe handed me a note that there were two Hertz</p> <p>12 invoices.</p> <p>13 MR. DOMINA: Okay.</p> <p>14 BY MR. JEFFERIES:</p> <p>15 Q. Okay. Did Helix ever advise Apco to</p> <p>16 appeal or prosecute the city's denial of Helix's</p> <p>17 general condition claim?</p> <p>18 A. I can't answer that specifically, but I</p> <p>19 do know we insisted that they push our claim</p> <p>20 through to the city.</p> <p>21 Q. And you do know that was done; right?</p> <p>22 A. It was done.</p> <p>23 Q. That's my question. From and after that</p> <p>24 and the city rejected it, did Helix ever demand or</p> <p>25 request that Apco escalate or prosecute that claim</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. JEFFERIES: Okay. Why don't we take</p> <p>2 a quick break and let me talk to my boss and see if</p> <p>3 I forgot anything.</p> <p>4 (A brief recess was taken.)</p> <p>5 MR. JEFFERIES: Back on the record.</p> <p>6 I do not have any further questions.</p> <p>7 MR. DOMINA: I don't generally do this to</p> <p>8 my own witness, but there are a few rebuttal issues</p> <p>9 that I think are important to clarify, since we're</p> <p>10 so close to trial, and I know how transcripts get</p> <p>11 used sometimes improperly at trial. But I'm going</p> <p>12 to go ahead and ask a couple of questions of the</p> <p>13 witness, Bob.</p> <p>14 THE WITNESS: Yep, go ahead.</p> <p>15</p> <p>16 EXAMINATION</p> <p>17 BY MR. DOMINA:</p> <p>18 Q. Earlier you were being questioned</p> <p>19 regarding whether or not a conditional or any lien</p> <p>20 releases had been rescinded. You're here appearing</p> <p>21 today as the PMK for Helix, the person most</p> <p>22 knowledgeable; correct?</p> <p>23 A. Correct.</p> <p>24 Q. In some of your responses today, were you</p> <p>25 providing testimony of your individual knowledge</p>
<p style="text-align: right;">Page 83</p> <p>1 against the city?</p> <p>2 A. I believe we did, but I'm not personally</p> <p>3 knowledgeable of that happening, so I'm not the best</p> <p>4 person to answer. But yeah, I do know we wanted to</p> <p>5 pursue that and I believe that might have been done</p> <p>6 with our president.</p> <p>7 Q. Okay. You personally don't know of any</p> <p>8 direction or requests to Apco that Apco appeal or</p> <p>9 prosecute the denial of Helix's general condition</p> <p>10 claim against the city; correct?</p> <p>11 A. Not anything specific formal, no.</p> <p>12 Q. All right. Did Helix ever submit a</p> <p>13 formal change order request for general conditions?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know?</p> <p>16 A. Don't know, don't recall.</p> <p>17 Q. Do you know the cause of any delay on the</p> <p>18 project?</p> <p>19 A. Nothing specific.</p> <p>20 Q. Are you aware of any provision of the</p> <p>21 subcontract that Apco breached in your opinion?</p> <p>22 MR. DOMINA: Objection, calls for a legal</p> <p>23 conclusion.</p> <p>24 THE WITNESS: I can't answer a legal</p> <p>25 question like that.</p>	<p style="text-align: right;">Page 85</p> <p>1 and not your -- and not in the capacity as the PMK</p> <p>2 for Helix?</p> <p>3 MR. JEFFERIES: I object to that. I</p> <p>4 object to your question, and if that's the -- I'll</p> <p>5 let him answer and then we'll figure out what the</p> <p>6 impact --</p> <p>7 MR. DOMINA: But you didn't clarify that</p> <p>8 and you went way off script and I let you, but this</p> <p>9 is why. This is what happens.</p> <p>10 MR. JEFFERIES: No, that's not -- I</p> <p>11 disagree. So go ahead.</p> <p>12 THE WITNESS: Okay. I'm sorry. Say that</p> <p>13 again.</p> <p>14 BY MR. DOMINA:</p> <p>15 Q. You had testified that you did nothing to</p> <p>16 rescind any lien releases?</p> <p>17 A. That question was asked, yes.</p> <p>18 Q. Right. Were you testifying about you</p> <p>19 personally, Bob, or were you talking in general</p> <p>20 that Helix did nothing to rescind the lien</p> <p>21 releases?</p> <p>22 A. Me personally.</p> <p>23 MR. JEFFERIES: And I object. You guys</p> <p>24 were going very quickly, so I couldn't get my</p> <p>25 objection. I object to the form. I think it</p>

<p style="text-align: right;">Page 86</p> <p>1 misstates my question, but go ahead.</p> <p>2 MR. DOMINA: Okay. Well, I'm just trying</p> <p>3 to recall what was said, and he had testified that</p> <p>4 he didn't do anything to rescind any lien releases.</p> <p>5 BY MR. DOMINA:</p> <p>6 Q. So Victor Fubes [phonetic] had</p> <p>7 discussions with Apco that you weren't privy to</p> <p>8 wherein additional agreements were made and</p> <p>9 concessions made, but you weren't testifying on</p> <p>10 behalf of Helix in general, just your knowledge</p> <p>11 as --</p> <p>12 A. My personal knowledge, yeah. I took the</p> <p>13 question as a direct question to me.</p> <p>14 MR. JEFFERIES: I object to the form of</p> <p>15 the question.</p> <p>16 MR. DOMINA: Okay.</p> <p>17 BY MR. DOMINA:</p> <p>18 Q. If you would, take a look at Exhibit 8 to</p> <p>19 the deposition. If you would, turn to the last</p> <p>20 page of that packet. It's Bates-numbered 69,</p> <p>21 Apco 69.</p> <p>22 A. Okay.</p> <p>23 Q. That's your signature down at the bottom;</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 88</p> <p>1 zero disputed claims?</p> <p>2 A. It was based on some discussions that the</p> <p>3 only way we would get the retention is if it had a</p> <p>4 zero amount there, but not that we were waiving any</p> <p>5 claims.</p> <p>6 Q. So by providing this, you never intended</p> <p>7 to waive --</p> <p>8 A. No, just to get the check, which we never</p> <p>9 got for a year.</p> <p>10 Q. Right.</p> <p>11 MR. DOMINA: I don't have any further</p> <p>12 questions.</p> <p>13 MR. JEFFERIES: Just a follow-up on that</p> <p>14 last exchange.</p> <p>15</p> <p style="text-align: center;">FURTHER EXAMINATION</p> <p>16 BY MR. JEFFERIES:</p> <p>17 Q. What is the basis of your statement that</p> <p>18 I think you said words to the effect you had to</p> <p>19 sign that to get the retention? Why do you -- what</p> <p>20 do you base that on?</p> <p>21 A. Based it on a direction that was given</p> <p>22 through our company that the only way we were going</p> <p>23 to get this money from Apco was by having a zero</p> <p>24 amount in there, but that our claim was remaining</p> <p>25 open. So what it amounted to was that the project</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. And this is dated October 18, 2013, and</p> <p>2 it's a conditional waiver and release upon final</p> <p>3 payment. And the undisputed amount that's</p> <p>4 identified in this amount is what?</p> <p>5 A. Zero.</p> <p>6 Q. As of October 18, 2013, was it APCO's</p> <p>7 [sic] position that it was waiving and releasing</p> <p>8 its claim for extended general conditions against</p> <p>9 Apco?</p> <p>10 MR. JEFFERIES: Form.</p> <p>11 MR. DOMINA: He's making an objection.</p> <p>12 THE WITNESS: Oh, you're throwing me off</p> <p>13 again. I think you're asking if Apco, and I think</p> <p>14 you meant if Helix.</p> <p>15 MR. DOMINA: Oh, I'm sorry.</p> <p>16 BY MR. DOMINA:</p> <p>17 Q. Do you want me to restate it?</p> <p>18 A. Yes. Restate it, please, because I'm</p> <p>19 confused.</p> <p>20 Q. As of October 18, 2013, did Helix intend</p> <p>21 to waive its claim for extended general conditions</p> <p>22 against Apco?</p> <p>23 A. Absolutely not.</p> <p>24 Q. Okay. Why, can I ask, did you sign this</p> <p>25 document on that date and indicate that there was</p>	<p style="text-align: right;">Page 89</p> <p>1 assistant at the time that did this made this a</p> <p>2 zero, asked me for a signature based on that</p> <p>3 statement within our company.</p> <p>4 Q. Okay. But you didn't participate in any</p> <p>5 such discussions with Apco to that effect, did you?</p> <p>6 A. Again, I don't recall me specifically, I</p> <p>7 don't.</p> <p>8 Q. Well, I respect that, but given your last</p> <p>9 answer, you're not testifying to that on your own</p> <p>10 personal knowledge, are you?</p> <p>11 MR. DOMINA: Objection, vague.</p> <p>12 BY MR. JEFFERIES:</p> <p>13 Q. You can't testify of your own personal</p> <p>14 knowledge that a person at Apco said you have to</p> <p>15 put zero in there in order for you to get your</p> <p>16 retention, can you?</p> <p>17 A. I can't say that I had any direct</p> <p>18 discussion with Apco, but it was definitely stated</p> <p>19 in our company there was someone who had direct</p> <p>20 discussion with Apco, and that it was directed to</p> <p>21 have zero in there in order for us to get the check</p> <p>22 but not waive our claim.</p> <p>23 Q. And you don't know who said that?</p> <p>24 A. My best assumption would be that</p> <p>25 discussion probably happened at a higher level,</p>

Page 90	Page 92
<p>1 probably with the president of our company.</p> <p>2 Q. Nobody wants you to speculate. My</p> <p>3 question is, do you know who said that on behalf of</p> <p>4 Apco?</p> <p>5 A. On behalf of Apco, Joe Pelan.</p> <p>6 Q. You know that as a fact?</p> <p>7 A. That's what was stated that Joe Pelan</p> <p>8 said, we would have to put zero in, in order to do</p> <p>9 this. But I did not have that conversation with my</p> <p>10 recollection to Joe.</p> <p>11 Q. And who did Joe --</p> <p>12 A. Again, our president.</p> <p>13 Q. Okay. So it's your testimony -- who told</p> <p>14 you that?</p> <p>15 A. That came through the project assistant</p> <p>16 that was preparing the lien release.</p> <p>17 Q. So the project assistant, Eddie --</p> <p>18 A. Right.</p> <p>19 Q. -- told you that Victor told him that Joe</p> <p>20 had --</p> <p>21 A. Her.</p> <p>22 Q. Oh, I'm sorry.</p> <p>23 A. That's okay.</p> <p>24 Q. All right. So it's your testimony today</p> <p>25 that Eddie told you that Victor or somebody had</p>	<p>1 consider our request and respond however you think</p> <p>2 appropriate.</p> <p>3 MS. BACON: I think the timecards was</p> <p>4 one.</p> <p>5 MR. DOMINA: I think I already responded,</p> <p>6 but we'll see.</p> <p>7 MR. JEFFERIES: Okay. We're off record.</p> <p>8 THE COURT REPORTER: Do you want a copy?</p> <p>9 MR. DOMINA: Yeah, for sure.</p> <p>10 (Thereupon, the taking of the deposition</p> <p>11 was concluded at 3:13 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 91	Page 93
<p>1 told her that Joe Pelan had told them that there</p> <p>2 had to be a zero in there in order to get</p> <p>3 retention?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 MR. JEFFERIES: All right. Sir, I forgot</p> <p>7 to mention this at the beginning. Well, I didn't</p> <p>8 forget, but you've been through it enough that I</p> <p>9 intentionally omitted the fact that you have the</p> <p>10 right to review this transcript and make any</p> <p>11 changes that you deem appropriate. I'm going to</p> <p>12 ask that you take advantage of the opportunity and</p> <p>13 do in fact review it to make sure that the record</p> <p>14 is as you intended.</p> <p>15 And from our position and standpoint,</p> <p>16 Cary, his testimony was as the 30(b)6 designee,</p> <p>17 and --</p> <p>18 MR. DOMINA: Yeah, when you were asking</p> <p>19 questions that were within the notice of the</p> <p>20 30(b) (6) designation.</p> <p>21 MR. JEFFERIES: I think they all were.</p> <p>22 It's pretty intentionally broad. Anyway, we'll go</p> <p>23 off the record. And I will be following up and</p> <p>24 asking that you -- I tried to make notes as to the</p> <p>25 look for some additional documents. You can</p>	<p>1 CERTIFICATE OF DEPONENT</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 * * *</p> <p>12 DECLARATION OF DEPONENT</p> <p>13 I, ROBERT JOHNSON, deponent herein, do hereby</p> <p>14 declare the within and foregoing transcription to be</p> <p>15 my deposition in said action under penalty of</p> <p>16 perjury; that I have read, corrected and do hereby</p> <p>17 affix my signature to said deposition this ____ day of</p> <p>18 _____, 2018.</p> <p>19 _____</p> <p>20 ROBERT JOHNSON</p> <p>21 Deponent</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>1 REPORTER'S DECLARATION</p> <p>2 STATE OF NEVADA)</p> <p>3 COUNTY OF CLARK)</p> <p>4 I, Lisa Makowski, CCR No. 345, declare as</p> <p>5 follows:</p> <p>6 That I reported the taking of the deposition of</p> <p>7 the witness, ROBERT JOHNSON, commencing on Tuesday,</p> <p>8 November 28, 2018, at the hour of 11:55 a.m.</p> <p>9 That prior to being examined, the witness was by</p> <p>10 me duly sworn to testify to the truth, the whole</p> <p>11 truth, and nothing but the truth; that, before the</p> <p>12 proceedings' completion, the reading and signing of</p> <p>13 the deposition has been requested by the deponent or</p> <p>14 a party.</p> <p>15 That I thereafter transcribed said shorthand</p> <p>16 notes into typewriting and that the typewritten</p> <p>17 transcript of said deposition is a complete, true and</p> <p>18 accurate transcription of said shorthand notes taken</p> <p>19 down at said time.</p> <p>20 I further declare that I am not a relative or</p> <p>21 employee of any party involved in said action, nor a</p> <p>22 person financially interested in the action.</p> <p>23 Dated at Las Vegas, Nevada this 5th day of</p> <p>24 December, 2018.</p> <p>25 <i>Lisa Makowski</i></p> <p> _____ Lisa Makowski, CCR 345</p>	

Exhibit 5

1 **Marquis Aurbach Coffing**
2 Avece M. Higbee, Esq.
3 Nevada Bar No. 3739
4 Cody S. Mounteer, Esq.
5 Nevada Bar No. 11220
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ahigbee@maclaw.com
11 cmounteer@maclaw.com
12 Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada
corporation; SAFECO INSURANCE
COMPANY OF AMERICA; DOES I through X;
and BOE BONDING COMPANIES, I through
X,

Defendants.

Case No.: A-16-730091-C
Dept. No.: XVII

(IN ARBITRATION)

**DEFENDANTS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND
THINGS TO HELIX ELECTRIC OF NEVADA**

TO: Cary Domina, Esq. of Peel Brimley LLP, Attorney for HELIX ELECTRIC OF
NEVADA,

In accordance with NRCP 34, APCO Construction and Safeco Insurance Company of
America, by and through their attorneys, Marquis Aurbach Coffing, hereby requests that PEEL
BRIMLEY LLP respond in writing and under oath, and serve upon the undersigned counsel for
Defendants, within thirty (30) days of the date of service thereof, its' responses to the Requests
for Production of Documents and Things set forth below.

...

...

...

INSTRUCTIONS AND DEFINITIONS

The following Instructions shall apply to each request:

1. The answer to each request for production shall include all knowledge as is within your possession, custody or control and/or in the possession, custody or control of your attorneys, agents, employees, investigators, and others acting on your behalf or under your direction or control and others associated with you.

2. You are required to disclose any matter or information, not privileged, which is relevant to the subject matters involved in this pending litigation, whether it relates to the claim or defenses of the parties seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial to be required for disclosure.

3. When you are asked to identify a person, you must state that person's full name, present or last known address, present or last known position and business affiliation, and relationship of this person to you. If this person is a corporation, you shall set forth the State of its incorporation.

4. **Procedure for Claiming Limitation on Discovery:** If you contend that any document, communication or information which is requested is privileged or otherwise subject to protection, you shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to this litigation to assess the applicability of the privilege or protection.

The following Definitions shall apply to each request:

1. **"Person"** as used herein, or its plural or any synonym thereof, is intended to and shall mean any natural person or legal entity, including but not limited to any corporation, partnership, business trust, agency, joint venture, association, estate, trust, receiver, syndicate or any other group or combination acting as a unit or acting as a form of a legal entity,

1 governmental agency (whether Federal, State, local, or any agency of the government of a
2 foreign country), or any other entity.

3 2. "You" and "Your" used herein, its plural, or any synonym thereof, is intended to
4 and shall embrace and include, in addition to the party or parties to whom this Request for
5 Production of Documents is addressed, and, in addition, the counsel for such party or parties, all
6 agents, servants, employees, representatives, officers, directors, shareholders, and others who are
7 in possession of or who may obtain information for or on behalf of the party or parties to whom
8 this Request for Production of Documents is addressed.

9 3. "Document" and "writing," as used herein, shall refer to any information
10 recorded on any tangible medium of expression, including all written, recorded or graphic
11 records of every kind or description however produced or reproduced whether in the form of a
12 draft, in final, original or reproduction, signed or unsigned, and regardless of whether approved,
13 sent, received, redrafted or executed, including but not limited to written communications,
14 letters, telegrams, correspondence, memoranda, notes, facsimiles, records, business records,
15 video recordings, photographs or films, microfiche or microfilms, tape or sound recordings,
16 transcripts or recordings, contracts, agreements, notations of telephone conversations or personal
17 conversations, diaries, calendars, desk calendars, reports, work sheets, computer records,
18 summaries, schedules, drawings, charts, graphs, blueprints, mylars, ozalids, minutes, forecasts,
19 appraisals, studies, computer programs or data, data compilations of any type or kind or material
20 similar to any of the foregoing however dominated and to whomever addressed. "Document"
21 shall not exclude exact duplicates when originals are available, but shall include all copies made
22 different from originals by virtue of any writings, notations, symbols, charters, impressions or
23 any marks thereon, or other graphic, symbolic, recorded or written material of any nature
24 whatsoever, along with all other data compilations from which information can be obtained and
25 all drafts and preliminary drafts thereof.

26 4. "Project" as used herein shall refer to the Craig Ranch Regional Park Phase II
27 project located in Clark County, Nevada.

28 ...

REQUESTS

REQUEST NO. 1:

Please produce and identify all Agreements between You and APCO for any work you conducted at the Project.

REQUEST NO. 2:

Please produce and identify all documents that evidence work on the Project You assert You were not paid for.

REQUEST NO. 3:

Please produce and identify all documents where You demanded payment from APCO for any purported outstanding balance due.

REQUEST NO. 4:

Please produce and identify all accounting documents, including, but not limited to, all receipts, invoices and other related documents You claim support the damages asserted through Your causes of action.

REQUEST NO. 5:

Please produce and identify all documents that support Your allegation that APCO benefitted, or received payment, as a result of Your Work conducted at the Property.

REQUEST NO. 6:

Please produce and identify any documents that evidence the last day You performed the labor on the Project You assert You were not paid for.

REQUEST NO. 7:

Please produce and identify any documents that evidence the last day You furnished materials for the Project You assert You were not paid for.

REQUEST NO. 8:

Please produce all documents used in preparing the answers to the interrogatories concurrently served herewith, and identify the particular responsive interrogatory.

...

...

REQUEST NO. 9:

Please produce and identify all Your insurance policies, bonds, etc. that may be available to pay any portion of fees or judgment resulting against You from this action should You not be deemed a prevailing party under the APCO Agreement.

REQUEST NO. 10:

Please produce and identify any documents demonstrating Mr. Prietzel was qualified to act as a Superintendent during Your work on the Project.

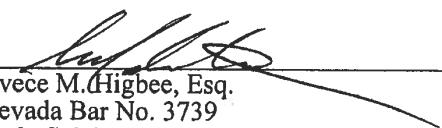
REQUEST NO. 11:

Please produce and identify all documents demonstrating the work You assert you were not paid for was not a part of the original scope under the Agreement.

Dated this 2nd day of December, 2016.

MARQUIS AURBACH COFFING

By


Avece M. Higbee, Esq.
Nevada Bar No. 3739
Cody S. Mounteer, Esq.
Nevada Bar No. 11220
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Defendants

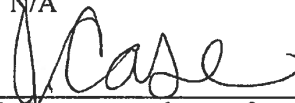
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO HELIX ELECTRIC OF NEVADA** was submitted electronically for service with the Eighth Judicial District Court on the 29 day of December, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Richard L. Peel, Esq.
Cary B. Domina, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Email: aarmstrong@peelbrimley.com
Email: cdomina@peelbrimley.com
Email: rjeffrey@peelbrimley.com
Attorneys for Plaintiff

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

N/A



J. Case, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 6

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach Coffing**
2 Avece M. Higbee, Esq.
3 Nevada Bar No. 3739
4 Cody S. Mounteer, Esq.
5 Nevada Bar No. 11220
6 Kathleen A. Wilde, Esq.
7 Nevada Bar No. 12522
8 10001 Park Run Drive
9 Las Vegas, Nevada 89145
10 Telephone: (702) 382-0711
11 Facsimile: (702) 382-5816
12 ahigbee@maclaw.com
13 cmounteer@maclaw.com
14 kwilde@maclaw.com
15 *Attorneys for Defendants*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 HELIX ELECTRIC OF NEVADA, LLC, a
12 Nevada limited liability company,

13 Plaintiff,

14 vs.

15 APCO CONSTRUCTION, a Nevada
16 corporation; SAFECO INSURANCE
17 COMPANY OF AMERICA; DOES I through X;
18 and BOE BONDING COMPANIES, I through
19 X,

20 Defendants.

Case No.: A-16-730091-C
Dept. No.: XVII

**DEFENDANTS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND
THINGS TO HELIX ELECTRIC OF NEVADA, LLC**

21 TO: Cary Domina, Esq., of Peel Brimley LLP, Attorney for HELIX ELECTRIC OF
22 NEVADA

23 In accordance with NRCP 34, Defendants, APCO Construction and Safeco Insurance
24 Company of America (collectively "Defendants"), by and through their attorneys, Marquis
25 Aurbach Coffing, hereby requests that Plaintiff, Helix Electric of Nevada, LLC ("Plaintiff")
26 respond in writing and under oath, and serve upon the undersigned counsel for Defendants,
27 within thirty (30) days of the date of service thereof, their responses to Defendants' Second
28 Requests for Production of Documents and Things set forth below.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

[illegible]

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

28
27
26
25
24
23
22
21
20
19
18

24
25
26
27
28

25
26
27
28

1 governmental agency (whether Federal, State, local, or any agency of the government of a
2 foreign country), or any other entity.

3 2. "You" used herein, its plural, or any synonym thereof, is intended to and shall
4 embrace and include, in addition to the party or parties to whom this Request for Production of
5 Documents is addressed, and, in addition, the counsel for such party or parties, all agents,
6 servants, employees, representatives, officers, directors, shareholders, and others who are in
7 possession of or who may obtain information for or on behalf of the party or parties to whom this
8 Request for Production of Documents is addressed.

9 3. "Document" and "writing," as used herein, shall refer to any information recorded
10 on any tangible medium of expression, including all written, recorded or graphic records of every
11 kind or description however produced or reproduced whether in the form of a draft, in final,
12 original or reproduction, signed or unsigned, and regardless of whether approved, sent, received,
13 redrafted or executed, including but not limited to written communications, letters, telegrams,
14 correspondence, memoranda, notes, facsimiles, records, business records, video recordings,
15 photographs or films, microfiche or microfilms, tape or sound recordings, transcripts or
16 recordings, contracts, agreements, notations of telephone conversations or personal
17 conversations, diaries, calendars, desk calendars, reports, work sheets, computer records,
18 summaries, schedules, drawings, charts, graphs, blueprints, mylars, ozalids, minutes, forecasts,
19 appraisals, studies, computer programs or data, data compilations of any type or kind or material
20 similar to any of the foregoing however dominated and to whomever addressed. "Document"
21 shall not exclude exact duplicates when originals are available, but shall include all copies made
22 different from originals by virtue of any writings, notations, symbols, charters, impressions or
23 any marks thereon, or other graphic, symbolic, recorded or written material of any nature
24 whatsoever, along with all other data compilations from which information can be obtained and
25 all drafts and preliminary drafts thereof.

26 ///

27 ///

28 ///

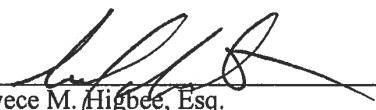
REQUESTS

REQUEST NO. 12:

Please produce and identify all of Helix's accounting documents for the Craig Ranch Park, *e.g.*, bids, invoices, payment requests, submissions, requests for payment, checks, lien releases, etc..

Dated this 17th day of October, 2017.

MARQUIS AURBACH COFFING

By 
Avece M. Higbee, Esq.
Nevada Bar No. 3739
Cody S. Munteer, Esq.
Nevada Bar No. 11220
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO HELIX ELECTRIC OF NEVADA, LLC** was submitted electronically for service with the Eighth Judicial District Court on the 13th day of October, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Peel Brimley LLP**Contact**

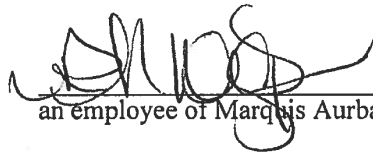
Amanda Armstrong
Cary B. Domina
Rosey Jeffrey
Terri Hansen

Email

aarmstrong@peelbrimley.com
cdomina@peelbrimley.com
rjeffrey@peelbrimley.com
thansen@peelbrimley.com

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

N/A



an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 04, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

March 04, 2019 9:00 AM Mandatory Rule 16 Conference

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

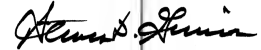
PARTIES

PRESENT: Domina, Cary Attorney for Plaintiff
 Jefferies, John R. Attorney for Defendants

JOURNAL ENTRIES

- Court inquired as to how long parties will need for discovery. Mr. Domina advised this is a very unique situation as they are done with discovery; the case started two years ago and they got all the way through arbitration; there was another attorney prior to Mr. Jefferies and that attorney decided to disqualify the arbitrator; they could not select a new one, so they decided to lift the stay and bring the case back to District Court; they are done with discovery and are ready for trial. Parties declined the offer of a settlement conference.

COURT ORDERED, given the representations of counsel that discovery and designations occurred during the arbitration process, matter SET for Bench Trial on the stack beginning May 28, 2019. Trial Setting Order will ISSUE. The last day to file motions in limine and dispositive motions is April 5, 2019. Counsel advised there was one pending motion in limine which has not yet been fully briefed. COURT DIRECTED counsel to renotice that motion.


CLERK OF THE COURT

1 **ORDR**

3 **EIGHTH JUDICIAL DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 Plaintiff(s),
6 vs.

Case No.: A-16-730091-B

Dept. No.: XI

7 Defendant(s)

8 **NOTICE OF DEPARTMENTAL SEALING and/or REDACTING PROCEDURES**

9 This procedure applies to all cases pending in Department 11 and is being adopted due to the
10 inconsistent, and in some situations, improper procedures being undertaken by counsel and as a result of
11 the implementation of "autoaccept" by the clerk's office filing system.

12 No documents may be submitted to the Court under seal based solely upon the existence of a
13 protective order.

14 Any sealing or redaction of information must be done by motion.

15 All motions to seal and/or redact and the potentially protected information must be filed at the
16 clerk's office front counter during regular business hours 9 am to 4 pm.

17 In accordance with, Administrative Order 19-03, the motion to seal must contain the language
18 "Hearing Requested" on the front page of the motion under the Department number.

19 Pursuant to SRCR Rule 3(5)(b), redaction is preferred and sealing will be permitted only under
20 the most unusual of circumstances.

21 If a motion to seal and/or redact is filed concurrently with the potentially protected information,
22 the proposed redacted version of the document containing potentially protected information and/or with a
23 slip-sheet in the place of any exhibit or other attachment entitled "Exhibit ** Confidential Filed Under
24 Seal", must be attached as an Exhibit to the motion to seal and/or redact.
25

1 The potentially protected information in unredacted and unsealed form must be filed at the same
2 time and a hearing on the motion to seal set. While the motion to seal is pending, the potentially
3 protected information will not be accessible to the public.

4 If the motion to seal is noncompliant, the motion to seal may be stricken and the potentially
5 protected information unsealed.

6
7 Dated this 15 day of March, 2019.

8
9
10 
11 ELIZABETH GONZALEZ
12 DISTRICT COURT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25

Steven D. Grierson

1 **OPP**
2 **RICHARD L. PEEL, ESQ.**
3 Nevada Bar No. 4359
4 **CARY R. DOMINA, ESQ.**
5 Nevada Bar No. 10567
6 **JEREMY D. HOLMES, ESQ.**
7 Nevada Bar No. 14379
8 **PEEL BRIMLEY LLP**
9 3333 E. Serene Avenue, Suite 200
10 Henderson, Nevada 89074-6571
11 Telephone: (702) 990-7272
12 Fax: (702) 990-7273
13 rpeel@peelbrimley.com
14 cdomina@peelbrimley.com
15 jholmes@peelbrimley.com
16 Attorneys for Plaintiff Helix Electric of Nevada, LLC

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **HELIX ELECTRIC OF NEVADA, LLC, a** CASE NO. 1 A-16-730091-C
13 Nevada limited liability company, DEPT. NO. - NT

14 **Plaintiff,**

15 **vs.**

16 **APCO CONSTRUCTION, a Nevada**
17 **corporation, SAFECO INSURANCE**
18 **COMPANY OF AMERICA, DOCS I through X,**
19 **and BOE BONDING COMPANIES I through X,**

20 **Defendants.**

**HELIX ELECTRIC OF NEVADA,
LLC'S OPPOSITION TO APCO
CONSTRUCTION'S AND SAFECO
INSURANCE COMPANY OF
AMERICA'S MOTION IN LIMINE
NO. 3 TO PRECLUDE THE
INTRODUCTION OF EVIDENCE
RELATED TO HELIX'S
EXTENDED GENERAL
CONDITIONS AND MOTION IN
LIMINE NO. 4 TO PRECLUDE
ANY EVIDENCE OF HELIX'S
ACCOUNTING DATA OR JOB
COST REPORTS**

21
22
23 Plaintiff, **HELIX ELECTRIC OF NEVADA, LLC** ("Helix") by and through its attorneys,
24 the law firm of Peel Brimley LLP, hereby submits its Opposition to Defendants APCO
25 CONSTRUCTION'S ("APCO") and SAFECO INSURANCE COMPANY OF AMERICA'S
26 ("Safeco") Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's
27 Extended General Conditions and Motion in Limine No. 4 to Preclude Any Evidence of Helix's
28 Accounting Data or Job Cost Reports (the "Motion").

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, SUITE 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

1 This Opposition is made and based on the following Memorandum of Points and
2 Authorities, the pleadings, exhibits, and papers on file herein, and any argument that the Court
3 entertains in this matter.

4 Dated this 29th day of March 2019.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

JEREMY D. HOLMES, ESQ.

Nevada Bar No. 14379

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Phone: (702) 990-7272

Attorneys for Helix Electric of Nevada, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

APCO is essentially asking this Court to completely bar Helix from producing any evidence to support its claim for damages in this case in response to APCO's failure to comprehend Helix's claim and APCO's own failure to adequately depose Helix's 30(b)(6) witness. Throughout APCO's Motion are various cherry-picked deposition excerpts that make it appear as if Helix's witness was oblivious to critical aspects of Helix's claim. In reality, APCO was asking about matters completely unrelated to Helix's claim for damages and apparently APCO fails to recognize this fact. Repeatedly APCO grilled Helix's witness on matters related to general condition line items in payment applications, which APCO argues comprise Helix's damages in this case. This is false. Helix is seeking damages for incurring extended general conditions costs as a result of the Project being over the contracted duration. Helix's witness was knowledgeable as to the extended general conditions but was unable to answer certain questions related to the general conditions line item, as the latter is not what Helix is claiming in this case nor part of the "critical" noticed topic as APCO alleges.

APCO continued through the deposition placing documents in front of Helix's witness then asking questions that Helix's witness could not possibly answer from those documents. Instead of acknowledging his blunder, APCO now argues that it is "shocking" that Helix's witness could not answer these questions, despite the exact problem with the documents being explained at length to APCO's counsel during the deposition. This pattern of poor use of documents, or entirely ignoring documents APCO possesses that contain the exact information APCO appears to have been looking for, continued throughout the deposition. Now, APCO places the blame squarely on Helix and asks for, essentially, case-ending sanctions due to Helix's witness allegedly being unprepared.

First, Helix's witness was prepared to discuss the matters relevant to Helix's claim. APCO simply focused on asking questions on irrelevant matters. Next, even if Helix's witness was inadequate for the purposes of NRCP 30(b)(6), which he was not, the proper remedy is not to effectively eliminate Helix's ability to pursue its claims. Rather, APCO should be allowed to

1 notice another 30(b)(6) deposition and properly list the specific topics it seeks information on,
2 rather than the intentionally broad topics it has noticed previously.

3 APCO also argues that Helix breached its duties to cooperate in discovery by failing to
4 produce its full Job Cost Report. This is similarly false. APCO never asked for Helix's full Job
5 Cost Reports during discovery, nor were those documents relevant or in Helix's possession to be
6 required as a disclosure pursuant to NRCP 10.1. The first time APCO requested a full Job Cost
7 Report was November 28, 2015, 7 months after discovery closed in this case. As such, Helix can
8 not be faulted for declining to create and produce the document at that point in time, and Helix
9 still believes the document is wholly irrelevant to this case.

10 Accordingly, both requests by APCO are improper and should be denied.

11 **II. STATEMENT OF FACTS¹**

12 **A. GENERAL BACKGROUND OF PROJECT**

13 In the spring of 2012, APCO entered into a construction agreement with the City of North
14 Las Vegas ("CNLV") wherein APCO agreed to serve as the general contractor on the Craig
15 Ranch Regional Park Phase II project owned by CNLV ("Project"). On or about April 4, 2012,
16 Helix entered into an agreement with APCO ("Subcontract") wherein Helix agreed to provide
17 certain electrical related labor, materials and equipment (the "Work") to the Project for the lump
18 sum amount of \$2,356,520.00.²

19 **B. THE PROJECT ENCOUNTERED SUBSTANTIAL DELAYS AND HELIX
20 NOTIFIED APCO OF ITS INTENT TO PURSUE A CLAIM FOR
21 EXTENDED OVERHEAD.**

22 The Project was originally scheduled to be completed on January 9, 2013. However, as a
23 result of CNLV's and APCO's failures to properly prosecute and manage the Project, the Project
24 encountered significant delays and was not substantially completed until October 25, 2013, thus
25 resulting in Helix incurring approximately \$134,000 in extended overhead costs, among other
26 damages.

27 ¹ Much of the Statement of Facts were previously included in Helix's Opposition to APCO's Objections Motion in
28 Limine 1-2 filed on July 20, 2018 but given the Court's recent assignment of this case, and their relevance to this
Opposition, Helix believes it is important to restate them here.

² See Exhibit "A" attached hereto, a true and correct copy of the Subcontract between Helix and APCO.

Helix first notified APCO in writing that it would be asserting a claim for these extended overhead costs on January 28, 2013 (the "Claim").⁵ Specifically, Helix emailed a letter to APCO labeled "Schedule delay/Extended overhead" and stating:

The original scheduled final completion date was January 9, 2013. The current scheduled completion date that APCO Construction has transmitted shows a current schedule completion date of August 3, 2013. Please accept this notice that Helix Electric reserves all rights to any and all additional costs incurred due to scheduled delays for this project.⁶

Because Helix continued to incur damages for extended overhead costs each day the Project continued passed the original completion date, Helix did not submit its formal Claim to APCO at that time. Rather, recognizing that the Project would likely continue well into the summer of 2013, Helix planned to submit its formal Claim to APCO once the Project was completed so its total damages could be ascertained instead of "piecemealing" its Claim to APCO. However, when early summer rolled around and Helix realized the Project was still several months away from being completed, Helix again notified APCO of its Claim by way of its June 19, 2013 letter which provided a specific breakdown of the daily overhead costs Helix was incurring.⁷ In that letter Helix again labeled it "Extended Overhead Cost," and stated:

This letter is a follow up to our Notice letter of Schedule delay/Extended overhead dated January 28, 2013. Based on the original scheduled final completion date of January 9, 2013 for the above referenced project Helix Electric is incurring daily costs of extended overhead. Below is our daily cost associated to this extended overhead:

Project Manager	\$260
Superintendent	\$280
Site Trailer	\$25
Comms	\$5
Portable	\$25
Truck	\$45

⁵ See Exhibit "1" attached hereto, a true and correct copy of Helix's January 28, 2013 correspondence.

⁶ *Id.*

⁷ See Exhibit "2" attached hereto, a true and correct copy of Helix's June 19, 2013 correspondence.

Please be advised that Helix will be pursuing payment for the cost as the project continues to run beyond the original bid documents schedule and the contract schedule.⁵

Notably, the daily extended overhead cost Helix was incurring on the Project totaled \$640/day. As such, APCO knew at the time it received Helix's June Notice exactly how the \$640/day cost was broken down. Unbeknownst to Helix, APCO apparently submitted its own claim for extended overhead costs to CNLV on May 9, 2013. However, APCO made no effort to supplement its claim to CNLV to include Helix's claim.

C. CNLV REJECTED HELIX'S CLAIM AND APCO MISREPRESENTED THE REASONS FOR CNLV'S REJECTION OF HELIX'S CLAIM

On August 27, 2013, despite the fact that the Project was still ongoing, Helix furnished APCO with its then invoice for its claim in the amount of \$102,400, which represented extended overhead costs incurred between January 15, 2013 and August 30, 2013 (or 229 days).⁷ Notably, Helix's invoice again identified an extended overhead cost of \$640/day for 32 weeks, which daily cost had previously been provided to APCO in June 2013. APCO then submitted Change Order Request ("COR") No. 68 to CNLV on September 9, 2013 requesting compensation for Helix's claim.⁸ However, APCO did not include COR 68 as a supplement to its claim to CNLV submitted in May despite the fact that CNLV had not yet made a determination as to that claim. Not surprisingly, and because Helix's contractual privity was with APCO not CNLV, on September 16, 2013, CNLV rejected the COR stating: "This COR is REJECTED. The City of North Las Vegas does not have a contract with Helix Electric."⁹ However, despite CNLV's clear reasons stated for the rejection, APCO falsely informed Helix that CNLV rejected COR 68 because of lack of backup documentation. Contrary to APCO's representations during the Project and throughout this case,¹⁰ CNLV did not reject the COR for lack of backup or untimeliness. The only basis CNLV gave for rejecting COR 68 was that CNLV had no contractual privity with Helix. At his deposition, the Construction Manager for CNLV during the Project, learned

⁵ *Id.*

⁷ See Exhibit "4" attached hereto, a true and correct copy of Helix's initial invoice for the claim.

⁸ See Exhibit "5" attached hereto, a true and correct copy of APCO's Change Order Request to CNLV.

⁹ See Exhibit "6" attached hereto, a true and correct copy of CNLV's rejection of APCO's Change Order Request.

¹⁰ See APCO's Motion for Summary Judgment at pp. 6-18-7-7 and Affidavit Veritas at Exhibit A Pg. 4 16-21

Llamado, testified that the only reason he rejected Helix's Claim was because CNLV did not have a contract with Helix, so APCO should have included Helix's Claim to its own claim to CNLV since Helix's Subcontract was with APCO, not CNLV.¹¹ There is no question that Helix submitted its Claim to APCO prior to the City closing the Project, and even before CNLV approved APCO's claim, yet Helix has not been paid for its Claim.

Instead, on October 3, 2013, APCO sent Helix a letter requesting additional back-up documentation for the Claim so it could resubmit the Claim to CNLV, despite the fact that CNLV did not reject the Claim for lack of backup documentation.¹² That letter states in relevant part:

Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time APCO has not received any back-up documentation to undo the previous formal rejection made by the City of North Las Vegas. If you want APCO to re-submit your request, please provide appropriate back-up for review.¹³

However, no amount of backup would have changed CNLV's mind regarding its rejection of COR 68, because it did not reject Helix's Claim based on a failure to provide backup documentation supporting the Claim. Rather, it rejected Helix's Claim because Helix was APCO's subcontractor, and it was APCO's responsibility to assert a claim for extended overhead costs against CNLV which amounts should have included Helix's Claim. Again, Mr. Llamado confirmed at his deposition that he did not reject Helix's Claim for lack of backup as APCO falsely claims—rather, it was rejected because APCO is responsible to pay Helix's Claim, not CNLV.¹⁴

D. HELIX CONTINUED TO NOTIFY APCO THAT IT INTENDED TO PURSUE ITS CLAIM FOR EXTENDED OVERHEAD, AND APCO, THROUGH ITS CORRESPONDENCE AND CONDUCT, UNDERSTOOD HELIX HAD NOT WAIVED THOSE CLAIMS.

On October 31, 2013, in order to account for certain overhead items that were omitted from the original Claims, and because APCO misled Helix into believing CNLV rejected the

¹¹ See Deposition Transcript of Joemel Llamado attached hereto as Exhibit 7 at pp. 33-37, 53-55 (hereinafter "Llamado Transcript").

¹² See Exhibit "B" attached hereto, a true and correct copy of APCO's letter to Helix requesting additional documents for the Claim.

¹³ *Id.*

¹⁴ See Llamado Transcript at pp. 34-37, 75-76, 87-91-92.

1 Claim due to insufficient documentation, Helix (i) increased its Claim; (ii) resubmitted its Invoice
2 to APCO; and (iii) provided additional backup information and documents.¹⁵ Accompanying the
3 revised Invoice and backup documentation was a cover letter wherein Helix stated:

4 Attached please find the requested back-up documentation
5 requested in support our Invoice. Please note that after
6 additional review of our extended overhead for the dates of January
7 13, 2013 – August 30, 2013, we found that our calculated extended
8 overhead was actually \$111,847 and not \$102,400 that we
9 originally requested. We will be submitting a revised invoice in the
10 Amount of \$111,847. In addition we will be submitting a
11 separate invoice for extended overhead for the dates of
12 September – October 25, 2013.¹⁶

13 On or about November 5, 2013, three weeks after APCO received Helix's Retention Pay
14 App and Conditional Waiver, APCO submitted a revised COR (68.1) to CNLV seeking a total of
15 \$111,847 for Helix's Claim for extended overhead.¹⁷

16 On November 18, 2013, CNLV again rejected the Change Order Request stating:

17 This is the 2nd COR for Helix Electric's extended overhead
18 submitted. The 1st one was submitted on Sept. 9, 2013 and Rejected
19 on Sept. 16, 2013. This submitted dated Nov. 5, 2013 is REJECTED
20 on Nov. 17, 2013.¹⁸

21 Again, in rejecting COR 68.1, CNLV made absolutely no mention that the COR was
22 being rejected as a result of lack of backup documentation. Instead, CNLV referenced the fact
23 that the first COR (68) had already been rejected on September 16, 2013 based on CNLV's
24 position that it had no contractual privity with Helix. When asked at his deposition why he
25 rejected this revised COR, Mr. Llamado again stated that it had nothing to do with lack of backup
26 documents and was rejected because APCO should have included Helix's Claim under its own
27 claim to CNLV.¹⁹

28 Notwithstanding the foregoing, APCO once again misrepresented to Helix that CNLV
29 rejected COR 68.1 because of lack of backup documentation. However, as discussed more fully

30 ¹⁵ See Exhibit "9" attached hereto, a true and correct copy of Helix's Revised Invoice for the Claim.

31 ¹⁶ *Id.*

32 ¹⁷ See Exhibit "10" attached hereto, a true and correct copy of APCO's COR 68.1 to CNLV.

33 ¹⁸ See Exhibit "11" attached hereto, a true and correct copy of CNLV's rejection notice of COR 68.1

34 ¹⁹ See Llamado Transcript at pp. 8612 – 8617.

below, Helix did not know that by this time, APCO had already struck a deal with CNLV to receive payment for its own extended overhead costs, and in doing so, waived and released any further claims against CNLV, including Helix's Claim. In other words, by entering into a global settlement agreement with CNLV, APCO cutoff any rights Helix had to assert pass-through claims against CNLV, and in doing so, APCO became responsible to ensure that Helix was paid in full for its Claim.

As it had previously informed APCO it would, on or about November 13, 2013, Helix submitted to APCO another invoice including backup in the amount of \$26,304 accounting for the extended overhead costs for September and October.²⁰ Having already settled all claims with CNLV, APCO disingenuously submitted COR 93 to CNLV on November 18, 2013, knowing full well that CNLV would reject the COR because APCO released CNLV from all claims, including Helix's Claim.²¹ Predictably, on December 4, 2013, CNLV again rejected COR 93, but made no reference to lack of supporting documentation.²² Rather, CNLV rejected COR 93 for the same reason it had rejected all of the CORs APCO submitted on behalf of Helix: CNLV had no contract with Helix and now APCO had released CNLV from all claims, including Helix's Claim. This again was confirmed by Mr. Llamado during his deposition.²³

E. EVEN AFTER PAYING HELIX THE RETENTION CHECK, APCO CONTINUED TO ACKNOWLEDGE HELIX'S CLAIM FOR EXTENDED OVERHEAD.

Mr. Pelan has always acknowledged that Helix was owed money for the extended overhead costs, but he informed Victor Fuchs, the president of Helix, that APCO could not pay the Claim in a lump sum amount as it was facing financial difficulties. Mr. Pelan also misrepresented to Helix that APCO had never been paid any portion of its extended overhead costs from CNLV. As such, Mr. Pelan agreed that if Mr. Fuchs would draft up a promissory note in the amount of \$133,151, he would sign it and pay the Claim over a two-year period. Mr. Fuchs drafted the promissory note, but despite dozens of emails between Mr. Fuchs and Mr. Pelan

²⁰ See Exhibit "12" attached hereto, a true and correct copy of Helix's Second Revised Invoice for the Claim.

²¹ See Exhibit "13" attached hereto, a true and correct copy of APCO's COR 93 to CNLV.

²² See Exhibit "14" attached hereto, a true and correct copy of CNLV's notice rejecting COR 93.

²³ See Exhibit 7, Llamado Transcript at pp. 93:11-15, 6.

1 discussing Mr. Pelan's intention to sign it on behalf of APCO, it was never executed by APCO.²⁶
2 In one such email, Mr. Hirsch writes, "One, please accept this email as a 30 day extension of time
3 for the execution of [the] promissory note attached...In good faith we [are] extending this time
4 per your request, so you can come up with an arrangement to repay the outstanding amount that
5 is past due."²⁷

6 **F. DESPITE APCO'S MISREPRESENTATIONS, APCO WAS PAID BY**
7 **CNLY FOR EXTENDED OVERHEAD COSTS.**

8 On May 9, 2013, five months after APCO first learned of Helix's Claim, and without
9 notifying Helix, APCO submitted to CNLY Change Order Request No. 29.1 in the amount of
10 \$1,000,000.50 wherein it sought compensation for the additional 9 months of extended overhead
11 costs incurred on the Project as a result of the exact same delays Helix faced.²⁸ On October 2,
12 2013, well after Helix submitted its Claim, CNLY issued Change Order No. 50 to APCO and
13 agreed to pay APCO \$560,724.16 for the added overhead and general conditions it incurred as a
14 result of the extended project completion date.²⁹ Specifically, CNLY states:

15 Given the numerous changes and multiple delays that occurred
16 during this project...the City is prepared to offer you
17 compensatory delays of 165 days from May 10, 2013 to October
18 25, 2013 for a total amount of \$560,724.16....It is understood that
19 by accepting this offer that both parties agree that the terms herein
20 are full and final acceptance by both parties....It is also
21 understood that APCO will forgo any claims for delays,
22 disruptions, general conditions and overtime costs...and for any
23 other claim, present or future, that may occur on the
24 project....Upon acceptance of this offer by APCO the City agrees
25 to allow APCO to bill the balance of the funds indicated above less
26 prior payments on its September billing for the Project.³⁰

27 APCO has previously acknowledged that on October 2, 2013, CNLY paid it \$560,000 for
28 extended general conditions, but APCO claims such amounts only contained costs related to
29 APCO's extended general conditions—not any alleged time or impacts of its subcontractors.

30 ²⁶ See Exhibit "15" attached hereto, a true and correct copy of certain email exchanges between Mr. Hirsch and Mr.
31 Pelan and a draft of the Promissory Note.

32 ²⁷ *Id.* (emphasis added).

33 ²⁸ See Exhibit "16" attached hereto, a true and correct copy of APCO's COR 29.1.

34 ²⁹ See Exhibit "17" attached hereto, a true and correct copy of Change Order 50 wherein CNLY agreed to pay
35 APCO its extended overhead costs.

36 ³⁰ *Id.*

1 Indeed, this is precisely the reason why the Parties are before the Court—APCO failed to include
2 Helix's Claim in its own claim against CNL.V, and then struck a deal with CNL.V which barred
3 Helix from pursuing its Claim.

4 Hence, while CNL.V recognized the extended overhead costs APCO incurred on the
5 Project and paid APCO for the same, APCO (i) has refused to pay Helix for the extended
6 overhead costs it incurred during the same timeframe, and (ii) actually released CNL.V from all
7 future claims to include Helix's Claim. Therefore, by entering into this global settlement
8 agreement with CNL.V, APCO was either (i) paid for Helix's Claim, or (ii) settled any pass-
9 through claim Helix had against CNL.V. Under either scenario, APCO became responsible to
10 ensure Helix was paid its Claim.

11 **G. APCO DEPOSES TWO 30(b)(6) REPRESENTATIVES OF HELIX**

12 APCO noticed the deposition of the person most knowledgeable at Helix on a number of
13 topics on July 3, 2018. Amongst the seven topics was the item that APCO mainly focuses on in
14 its Motion: "[Helix's] claimed damages against APCO, more specific, but not limited to, your
15 assertions of damages as they relate to Helix's general extended conditions."²⁹ Prior to these
16 depositions taking place, the Helix employees who actually had the greatest knowledge regarding
17 these topics were Kirk Williams and Eddie Bennett. Kirk Williams, who was the Project
18 Manager for the Project, left Helix prior to this litigation and, thus, was unable to testify as to his
19 unique and superior knowledge of these topics. Eddie Bennett oversaw the payment applications
20 and billings for the Project but passed away prior to the depositions in this case and thus his
21 unique and superior knowledge was lost to Helix forever.

22 Without the two people who had more knowledge than anyone else about the Project, in
23 seeking to fulfill its duties under FRCP 30(b)(6), Helix initially provided Mr. Eric Rainer Pritzel
24 to testify on Helix's behalf on October 4, 2018. While Mr. Pritzel had substantial knowledge as to
25 the happenings on the Project itself on the ground, it became apparent that Mr. Pritzel did not
26 have the necessary level of knowledge to testify for Helix regarding the topics that dealt with
27 billing and accounting and office-type matters. Accordingly, Helix then provided a second

28 ²⁹ See Exhibit 1 to the Motion.

30(b)(6) witness, Mr. Robert Johnson, who was brought in to address the gaps in Mr. Brubaker's knowledge at his deposition on November 28, 2018.

III. LEGAL ARGUMENTS

A. ***APCO Has Cherry-Picked Excerpts That Highlight Responses to Poorly Posed Questions in an Effort to Convince This Court That Mr. Johnson Did Not Fulfill His Duty as Helix's 30(b)(6) Witness, When in Reality APCO Fails to Comprehend the Basic Nature of Helix's Claims***

Prior to his deposition, Mr. Johnson reviewed documents related to the Project in order to adequately answer questions posed by APCO's counsel. Throughout Mr. Johnson's deposition, however, inadequate questions were posed to Mr. Johnson, leading to many of the cherry-picked excerpts contained in the Motion. For example, rather than asking Mr. Johnson if he reviewed documents related to the Project and the claims for extended general conditions, APCO's counsel asked the following question:

Q: Did you take any steps to review any corporate records?²⁰
(emphasis added)

As Mr. Johnson had only reviewed documents related to the project rather than corporate records, which reasonably would refer to documents such as Helix's articles of incorporation and list of directors, or other corporate compliance-type documents, Mr. Johnson appropriately answered that he had not reviewed corporate records.²¹ Had APCO asked if Mr. Johnson had reviewed documents related to the Project, they would certainly have received a different answer.

As the deposition moved forward, APCO continually asked Mr. Johnson harmful questions that left Mr. Johnson incapable of giving APCO the answers they were looking for. For example, APCO cites the following exchange from the deposition while arguing it shows that Mr. Johnson knew nothing about Helix's claims for extended general conditions:

Q: Sitting here today, you can't tell me what cost components go into that \$108,000 general conditions line item in Exhibit 1, can you?

A: No, not the details no.²²

²⁰ Transcript of Mr. Robert Johnson's Deposition (hereinafter referred to as "Johnson Transcript"), attached to the Motion as Exhibit 4 at 7/19-20.

²¹ *Id.* at 82.

²² Motion at 10, quoting Johnson Transcript at 13,23-24.

1 The problem with APCO using this exchange to highlight Mr. Johnson's lack of
2 knowledge of the extended general conditions, is that the line item referred to in Deposition
3 Exhibit 1 is Helix's originally agreed upon general conditions price included in its contract with
4 APCO, not the extended overhead costs that resulted from the substantial delay of the Project.³³
5 In fact, the extended overhead costs that make up Helix's claim for damages are not included
6 anywhere in Exhibit 1 to the Deposition, which was a progress payment application and would
7 not contain amounts still being sought by Helix through change order requests. Accordingly, Mr.
8 Johnson's lack of knowledge of this line item is wholly irrelevant and highlights APCO's misuse
9 of testimony from Mr. Johnson's Deposition. APCO quotes several other exchanges that take
10 place during the analysis of Exhibit 1 in the Deposition in an effort to discredit Mr. Johnson, but
11 as explained above, this exhibit is completely unrelated to the extended overhead costs that
12 comprise Helix's damages.³⁴

13 APCO's conflation of contractually agreed upon general conditions and the delay-induced
14 extended overhead costs is readily apparent throughout the Motion and the deposition. APCO's
15 Notice of Deposition listed the "extended general conditions" as the seventh topic, which APCO
16 in the Motion stated was the "critical" topic, yet the vast majority of the excerpts provided by
17 APCO to show that Mr. Johnson was allegedly woefully unprepared to address the seventh topic
18 instead deal solely with Helix's regular general conditions line item. The only explanation that
19 does not imply APCO is intentionally trying to deceive the Court, is that APCO is unaware of the
20 difference between the contractually agreed upon general conditions line items and extended
21 overhead charges that are incurred when the project goes over its schedule. Mr. Johnson
22 attempted to explain the difference between the two on several occasions throughout his
23 deposition; yet APCO now uses those explanations as "evidence" that Mr. Johnson was
24 misinformed as to the noticed topics.

25 The original general conditions line item is a set amount included in the original contract
26 value that is based upon the planned duration of the Project and accounts for numerous indirect
27 costs, such as the cost of deploying job-site trailers and Cones boxes, as well as employee project

33 A true and correct copy of Exhibit 1 to Mr. Johnson's Deposition is attached hereto as Exhibit 18.

34 Motion at 10, 11-123.

1 management costs. As Mr. Johnson attempted to explain to ALICO's counsel during the
2 deposition, the general conditions line item on Helix's payment applications is not treated in the
3 same fashion as the scope of work it is completing, where the contract value is billed against in
4 proportion to the work completed:

5 Q: So the general condition line item would be a monthly charge, is
6 that right?

7 A: Not necessarily because it's not structured as a monthly charge,
8 it's structured as a total lump sum dollars. It's as quick as we can
9 get Apco to approve payment on. As far as I'm concerned, I'd like
10 to see our guys bill it in the first three months. In this case it looks
11 like he didn't, so maybe he got some pushback on the overall
12 billing. But to me it's a dollar to bill against, it's not allocated by
13 any period of time.²⁷

14 Mr. Johnson goes on to explain further how general conditions are billed and billed:

15 A: Because we expend our general condition dollars early in the
16 project. A lot of it is up front because you're doing all of your
17 preliminaries, all your studying, all those things that aren't reflected
18 throughout the execution. So for me, I go for it all if I was building
19 the schedule of values. But it's up to each PM to get with their
20 counterpart at Apco, what are you going to allow to bill, how are
21 you going to allow to bill it, and then they do their progress billings.
22 When it's a percentage item, it's not tied to duration. It's tied to
23 what you can get approved. And sometimes the PM may not go for
24 all of it just to appease the general contractor. It's got nothing to
25 do with whether we're entitled to it or not. It's trying to get a
26 billing approved.²⁸ (emphasis added)

27 Yet in the Motion, APCO argues "Helix could not have started incurring 'extended"
28 general conditions before it had finished billing all of its original contractual general
29 conditions."²⁹ This completely distorts the nature of general conditions billing and illustrates that
30 APCO does not understand the distinction between the two despite the numerous explanations
31 provided by Mr. Johnson. As soon as the project went beyond the anticipated completion date,
32 Helix began to incur extended overhead costs because the amount contemplated by the parties
33 and included in the original contract amount accounted for a specific period of time. Once that
34 period of time expired, Helix began to incur additional costs beyond what was included in the

35 ²⁷ Johnson (Vasconcelos) at 13:23-24.

36 ²⁸ *Id.* at 25:4-30.

37 ²⁹ Motion at 14:16-17.

1 contract *regardless* of what it had billed to date. As explained in detail by Mr. Johnson, the
2 amount billed on the general condition line item reflects nothing more than what APCO allowed
3 Helix to bill for that line item. The two items, while somewhat related, are different creatures
4 similar to a caterpillar that metamorphoses into a butterfly. Here APCO is focusing on
5 caterpillars when Helix's claim and the critical noticed topic is a butterfly and APCO does not
6 understand that there is a difference.

7 APCO goes on to argue that Helix did not know who was working on the Project or how
8 much time was spent, which it alleges is "a component of its extended general conditions
9 claim."³⁸ To support this argument, APCO cites to a portion of the deposition where Mr. Johnson
10 simply admits that he was unsure how many different projects Helix's Project Manager was
11 working on at the time. It is unclear to Helix how not knowing if the Project Manager was
12 involved on multiple projects is the same as Helix not knowing who was working on the Project
13 and how much time was spent. Furthermore, the extended overhead costs billed were billed on a
14 set amount per day basis, irrespective of the amount of time spent by any Helix employee on the
15 job, as was explained by Mr. Johnson during his deposition.

16 A: What we did is we prepared our extended general conditions
17 claim on a cost per day basis based on amount of days that we
sought in the delay.

18 Q: So your claim is not tied to your actual costs or your actual
19 budget or an actual loss?

A: Not to my knowledge.³⁹

20 In fact, the exact breakdown of Helix's extended general conditions daily costs was
21 provided to APCO on June 19, 2013 and was disclosed as part of this action.⁴⁰ For unknown
22 reasons, APCO did not bring this document to Mr. Johnson's attention during the deposition or
23 ask him any questions related to this document that would have allowed him to explain the daily
24 breakdown further. Nevertheless, APCO argues that "there [are] no source documents for APCO
25 to confirm what personnel were included in Helix's claim."⁴¹ Despite APCO alleging that Mr.

26
27 ³⁸ Motion at 15:8-10.

³⁹ Johnson Transcript at 14:5-11.

28 ⁴⁰ See Exhibit 3.

⁴¹ Motion at 15:4-5.

Johnson knew nothing about how the extended general conditions costs were allocated or knew nothing about the source documents supporting Helix's claim. Mr. Johnson explicitly stated the following during his deposition:

Q: [D]id Helix track its actual increased costs that it was going to claim for delay on the project?

A: Through the accounting that you saw and our notices of the daily costs, yes.

Q: And the accounting behind Exhibit 3?

A: Yes. And the daily costs we presented.⁴²

Q: Did Helix ever provide Apco with the source documents or cost accounting to justify and support any increased actual costs for delay?

A: We did in the form of daily costs and days incurred, yes.

Q: And when you say that you're referring to just a summary of saying Helix is claiming X dollars per day for?

A: There was an actual breakout per day and then a breakout by month that was presented to them.⁴³ (emphasis added).

Despite this testimony, APCO never questioned Mr. Johnson about the document he was reviewing established Helix's costs. Instead, APCO attempted to have Mr. Johnson connect its extended overhead costs to its Job Cost Report despite the fact that Mr. Johnson testified that the extended overhead costs would not be fully reflected in a Job Cost Report. In the Motion, APCO now argues that because Mr. Johnson could not connect the two, he was not a knowledgeable witness, but completely ignores the fact that Mr. Johnson's testimony shows that APCO was asking the wrong questions and using the wrong documents and Mr. Johnson's answers were completely appropriate. APCO also ignores the existence of the source document in order to further the narrative that it is left blindsided as a result of its own poor questioning and use of available documents.

APCO's arguments then descend into various arguments not against the quality of Mr. Johnson's responses or his knowledge, but against the fact that Helix's extended overhead costs are not directly tied to costs listed in Helix's Job Cost Reports. The first issue with these

⁴² Johnson Transcript at 55:6-14.

⁴³ *Id.* at 56:8-18.

arguments is that they are entirely unrelated to APCO's Motion, which seeks sanctions due to an allegedly inadequate 30(b)(6) witness. Rule 37 allows for sanctions for failure to cooperate in discovery, not because APCO disagrees with Helix's computation of damages. As such, these arguments are entirely irrelevant to the Motion and relief sought. Second, as has been explained above, general conditions and the extended overhead costs are largely indirect and project management costs that are not generally reflected on Job Cost Reports. As such, for fact that these costs are not mirrored in Helix's Job Cost Reports is not surprising, and certainly does not provide a basis for Helix to be prevented from providing any evidence in support of its case.

Accordingly, while APCO argues that Mr. Johnson knew practically nothing about the Project and the extended overhead costs, the only item it addresses that Mr. Johnson did not actually have an answer to was the date Helix started work on the Project, which was not listed as one of the topics of the 30(b)(6) Notice anyway.⁴⁴ Mr. Johnson adequately addressed when the extended overhead costs started to accrue,⁴⁵ how the regular line item general conditions were treated and billed,⁴⁶ and what was provided to support the extended overhead costs by Helix to APCO.⁴⁷ While APCO was clearly frustrated by the result of the deposition, that frustration was caused by APCO's failure to understand the difference between general conditions and extended overhead costs and APCO's decision to consistently question Mr. Johnson in relation to documents Mr. Johnson, and Helix's counsel, told APCO were improper for the purpose APCO was attributing to them.

In the event the Court does believe that Mr. Johnson did not completely satisfy his role as Helix's 30(b)(6) witness, the proper remedy would be to require Helix to produce a properly educated 30(b)(6) witness to cover whatever extremely minor gaps in the noticed topics may be left, not completely bar Helix from presenting evidence pivotal to its claims. In *Green Am. Ins. Co. of New York v. Fegar Const. Co.*, 251 F.R.D. 534 (D. Nev. 2008), the Court found that the defendant's 30(b)(6) witness was "wholly unprepared to provide meaningful answers" on any of

⁴⁴ While Mr. Johnson may not have had this information memorized, APCO's own documents reflect that Helix was questioned at least as early as February 2012. See Project Daily Site Log, labeled APC0000166, and Helix Daily Job Report, labeled APC-0000732, attached hereto as Exhibit "19."

⁴⁵ Johnson's response at 8:9-11; 18:8-11; 24:15-18.

⁴⁶ Id. at 15:2-13; 25:4-20.

⁴⁷ Id. at 25:8-10; 26:8-18.

1 the noticed topics. *Id.* at 542. Despite this finding, the Court held that “precluding [Defendant]
2 from offering evidence at trial on the subjects of examination [the 30(b)(6) witness] could not
3 address . . . would be disproportionate to the discovery violation” *id.* at 543. Explaining further,
4 the Court said “a trial is intended to be a search for the truth. Precluding [Defendant] from offering
5 evidence or trial on all of the noticed topics would not advance the pursuit of truth or adjudicating
6 this case on the merits.” *Id.*

7 In this case, Mr. Johnson was knowledgeable as to a number of the important topics, but
8 instead APCO focused on irrelevant aspects of the Project that are not pertinent to Helix’s claim
9 for extended overhead costs and which Mr. Johnson could not answer based on the documents he
10 was shown during his deposition. Mr. Johnson was far more knowledgeable than the witness
11 described in *Great Star Ins. Co.* and the court’s holding in that case is illustrative of how extreme
12 a remedy precluding the introduction of key evidence at trial would be in comparison to the
13 alleged violation. At most, if the Court agrees with APCO’s position that Mr. Johnson was not a
14 proper 30(b)(6) witness, Helix should be required to present a 30(b)(6) witness to focus on
15 whatever unanswered questions APCO has left. Instead of the “pretty intentionally broad” topics
16 noticed previously.¹⁸

17 **B. Helix Complied with NRCP 16.1 and APCO’s Discovery Requests, a Job Cost**
18 **Report Covering the Entirety of the Project was Not Produced Because It**
19 **Was Not Relevant to Helix’s Claim and Was Never Requested by APCO Until**
20 **Well After Discovery Closed in This Case at Mr. Johnson’s Deposition.**

21 APCO argues that Helix should be prohibited from introducing evidence of its accounting
22 documents or Job Cost Reports because Helix did not produce a full Job Cost Report. This
23 argument fails for several reasons. First, APCO never requested a full Job Cost Report. Rather,
24 APCO requested that Helix produce “all accounting documents . . . You claim support the
25 damages asserted through Your causes of action.”¹⁹ As Helix’s claim relates solely to damages
26 incurred as a result of the Project going over its schedule, the only responsive documents were
27 “accounting documents” for the time period after the Project went over schedule. Next, APCO
28 requested Helix produce “all of Helix’s accounting documents for the Craig Ranch Park, e.g.,

¹⁸ Johnson Transcript, at 91-92.

¹⁹ See APCO’s First Request for Production of Documents, attached as Exhibit 5 to the Motion at 4:12-14.

birds, invoices, payment requests, submissions, requests for payment, checks, lien releases, etc.”¹⁹⁹
In response, Helix produced all of its accounting documents. A Job Cost Report, however, is not
an accounting document, a distinction APCO itself makes in its Motion multiple times: “Helix
had an obligation to produce its full accounting records and job cost documents.”²⁰⁰ “Helix did not
produce the full accounting or job cost documents.”²⁰¹ Helix did, however, provide all the
documents APCO actually requested in its Second Request for Production.²⁰²

APCO never requested a full copy of the Job Cost Report until APCO’s Counsel orally
requested those documents at Mr. Johnson’s deposition, which took place 7 months after
discovery closed in this case. Nor has APCO established why a full Job Cost Report covering the
periods in 2012 that Helix worked on the Project would be relevant to Helix’s claim for damages
that relate solely to extended overhead costs starting in January 2013. Furthermore, Helix does
not possess a full Job Cost Report because that is a document that must be specifically sought out
and created. It is not an item that is generated in the regular course of business. Instead, Helix
appropriately created and disclosed a Job Cost Report through its NRCP 16.1 disclosures for the
relevant period of time for its claims. Helix should not now be penalized for denying a discovery
request made 7 months after the close of discovery for documents that are not relevant to Helix’s
claim.

Next, APCO again cherry-picks excerpts from Mr. Johnson’s deposition that attempt to
paint Helix and Mr. Johnson in a negative light. For example, APCO produced Helix’s 2013 Job
Cost Report and began asking Mr. Johnson to look at that report and determine when Helix first
mobilized to the Project. Helix’s counsel explaining to APCO that this document is inappropriate
for that purpose as it only covered 2013 is characterized as “shocking[]” by APCO, when really it
is simply common sense.²⁰³ It would be impossible for Mr. Johnson to look at a report for 2013
and determine when Helix mobilized to the job in 2012, so Helix’s Counsel correctly pointed out
that this line of questioning was a waste of time. Furthermore, APCO has numerous documents in

¹⁹⁹ See APCO’s Second Request for Production of Documents, attached as Exhibit 6 to the Motion at 4-7-8.

²⁰⁰ Motion at 25-11-12.

²⁰¹ Motion at 25-15-16.

²⁰² See Helix’s Response to APCO’s Second Request for Production of Documents, attached hereto as Exhibit 9-20.

²⁰³ Motion at 26-18-20.

PEEL BRIMLEY LLP
3333 W. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

1 its possession that indicate Helix was on the Project as early as February 2012,³² yet APCO did
2 not produce those documents to Mr. Johnson or ask him about those documents during his
3 deposition. Instead, APCO tried to ascertain Helix's 2012 mobilization date with the 2013 Job
4 Cost Report. This is simply another example of APCO failing to utilize appropriate documents to
5 obtain the information it was seeking during Mr. Johnson's deposition.

6 A 30(b)(6) Deposition "is not designed to be a memory contest." *Great Am. Ins. Co.*, 251
7 F.R.D. at 539 (citing *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135,
8 150 (S.D.N.Y. 1997)). Mr. Johnson was prepared to, and did testify to, a large amount of
9 information. The responses APCO refers to in its Motion are few and far between when
10 reviewing the actual transcript and result almost entirely from APCO's poor use of Exhibits and
11 ineptful questioning.

12 **IV. CONCLUSION**

13 Based on the foregoing, this Court should deny APCO's Motion.

14 Dated this 29th day of March 2019.

15 PEEL BRIMLEY LLP

16 

17 RICHARD L. PEEL, ESQ.

18 Nevada Bar No. 4359

19 CARY B. DOMINA, ESQ.

20 Nevada Bar No. 10567

21 JEREMY D. HOLMES, ESQ.

22 Nevada Bar No. 14379

23 3333 W. Serene Avenue, Suite 200

24 Henderson, Nevada 89074-6571

25 Attorneys for Helix Electric of Nevada, LLC


26
27
28 ³² See Exhibit 19

PEEL BRIMLEY LLP
3553 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 14 day of March 2019, I caused the above and foregoing document entitled HELIX ELECTRIC OF NEVADA, LLC'S OPPOSITION TO AFCC CONSTRUCTION'S AND SAPECO INSURANCE COMPANY OF AMERICA'S MOTION IN LIMINE NO. 3 TO PRECLUDE THE INTRODUCTION OF EVIDENCE RELATED TO HELIX'S EXTENDED GENERAL CONDITIONS AND MOTION IN LIMINE NO. 4 TO PRECLUDE ANY EVIDENCE OF HELIX'S ACCOUNTING DATA OR JOB COST REPORTS, 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 NEPCR 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
- ☐ emailed to all interested parties.


An Employee of Peel Brimley LLP