

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

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Elizabeth A. Brown
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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 VIII

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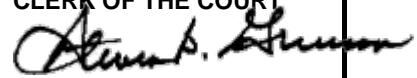
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

HELIX ELECTRIC OF NEVADA LLC,)
)
Plaintiff,)
)
vs.)
)
APCO CONSTRUCTION, et al.,)
)
Defendants.)

CASE NO. A-16-730091-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, JUNE 4, 2019

BENCH TRIAL - DAY 2

APPEARANCES:

FOR THE PLAINTIFF: CARY B. DOMINA, ESQ.
JEREMY D. HOLMES, ESQ.
RONALD J. COX, ESQ.

FOR THE DEFENDANTS: JOHN R. JEFFERIES, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

JD Reporting, Inc.

I N D E X

W I T N E S S E S

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1 LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 4, 2019, 9:13 A.M.

2 * * * * *

3 THE COURT: Are we ready to resume with our witness?

4 MR. DOMINA: Your Honor, we haven't set up the trial
5 director, which is the IT program, yet.

6 UNIDENTIFIED SPEAKER: We're good.

7 MR. DOMINA: Oh, we are? Okay. Well --

8 THE COURT: Yes. We are amazingly great because the
9 IT guy was here on time. He was ready to go. So we're all
10 set.

11 MR. DOMINA: We were here as well. We were just in
12 the hall.

13 THE COURT: Yeah, I know.

14 MR. DOMINA: Okay.

15 THE COURT: But he came into the room and got us set
16 up.

17 MR. DOMINA: Okay.

18 THE COURT: Mr. Prietzel, whenever you're ready. The
19 IT guys tell me they're ready. The lawyers are still getting
20 organized. So we'll do our preliminary things while they keep
21 getting organized, and hopefully they'll catch up with us soon.

22 MR. DOMINA: Your Honor, if I could just make one --

23 THE COURT: Wait. Wait. Wait. Let me swear him in
24 first.

25 MR. DOMINA: Okay.

1 THE COURT: Please raise your right hand so we can
2 swear you in.

3 **RAINER PRIETZEL**

4 [having been called as a witness and being first duly sworn,
5 testified as follows:]

6 THE CLERK: Thank you. Please be seated. Please
7 state and spell you're name for the record.

8 THE WITNESS: My name is Rainer Eric Prietzel.
9 Spelled R-a-i-n-e-r. Middle name Eric, E-r-i-c. Last name
10 Prietzel, P-r-i-e-t-z-e-l.

11 THE COURT: Before we get started, remember, sir, if
12 you need a break, you let us know. The lawyers do not
13 constrain when you get a break. There's water in the pitcher.
14 There's M&Ms behind you, and the exhibits.

15 Before you start your examination, Mr. Domina wanted
16 to tell me something.

17 MR. DOMINA: Your Honor, I just wanted to --

18 THE COURT: Mr. Domina, what do you want to tell me?

19 MR. DOMINA: I did. I wanted to let you know that we
20 have a somewhat new party representative Victor Fuchs who's the
21 president is here today. He'll be testifying at some point.
22 Bob Johnson will be back here later today, but I just wanted to
23 recognize that there's a new --

24 THE COURT: So you swapped out the corporate
25 representative is what you're telling me?

1 MR. DOMINA: For the time being, yes.

2 THE COURT: Okay. But the other one will be back?

3 MR. DOMINA: He'll be back.

4 THE COURT: All right. So you're asking me to relax
5 the exclusionary rule because of that?

6 MR. DOMINA: If it's been invoked already, yes.

7 MR. JEFFERIES: No objection.

8 THE COURT: It was. Okay. All right.

9 You may continue now.

10 MR. COX: Thank you, Your Honor.

11 THE COURT: Since we resolved that minor issue.

12 MR. COX: Thank you, Your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. COX:

15 Q Good morning, Rai. How are you?

16 A Good. How are you?

17 Q Good. Yesterday we were talking. We were going over
18 the daily job reports or some of the daily job reports that you
19 prepared. Do you remember that?

20 A Yes.

21 Q We're just going to go over a few more, and I promise
22 to be a little bit quick. So we'll try to finish this up.

23 A I'll try to be too.

24 Q Thank you.

25 MR. COX: Chris, can you go to -- it's Joint

1 Exhibit 5, page 274.

2 BY MR. COX:

3 Q Okay. I think this is the one that we left off
4 yesterday, and maybe you can remind me. Did you read that
5 bottom language yesterday?

6 A The typed up?

7 THE COURT: We did.

8 THE WITNESS: Yes.

9 MR. COX: Okay.

10 THE WITNESS: Yes, we did.

11 BY MR. COX:

12 Q So we talked about that.

13 A Yes.

14 Q And what was the purpose for that again, that box?

15 A Describe any information which could be valuable in
16 recovering costs via claims or protection against claims by
17 others, interference by other contractors, et cetera.

18 Q And I think I already asked you this. There are
19 daily job reports that don't have any information in there.
20 Would it be possible for you to write down everything that may
21 be a delay on this project?

22 A No.

23 Q And it was your understanding that this project was
24 already, as of the date of this, 4/8/13, was already severely
25 delayed; correct?

1 A That is correct.

2 Q Okay. Let's go ahead and we'll go to same exhibit
3 and page 311. Do you recognize this one?

4 A Yes. That's my handwriting.

5 Q All right.

6 A That's me.

7 Q And do you see the, in the location and description
8 of work performed, it says final inspection.

9 A Yes.

10 Q Can you go ahead and read that.

11 A Install PVC at a bench or playground.
12 Clean out all Century Link pole boxes.
13 Final inspection called in.
14 Landscape rock was installed --

15 Q That's -- I'll just cut you off right there.

16 A Okay.

17 Q That's fine. So we talked about inspections. So
18 this was a final inspection for --

19 A Yes.

20 Q Do you recall what it was for?

21 A Well, it's mentioned Century Link. So I'm going to
22 say I'm sure I called up Century Link, and I probably met with
23 Keith out there, and he verified that the pole boxes were
24 clean, installed, had pole strings and had their plugs in there
25 at the end of the conduits.

1 Q Okay. Perfect. And then landscape rock, how does
2 that impact Helix?

3 A Well, as they're installing the landscape rock, a lot
4 of times they'll either use a backhoe, you know, a front
5 loader, and then drop the rock down or sometimes they use a
6 conveyor and put the rock down. And we have pole boxes
7 throughout that site at Craig Ranch Park, and some of them are
8 in the landscaped areas, and if you're not paying attention,
9 you know, they could accidentally cover-up those pole boxes,
10 and if you're not there, now you're going to -- hey, was the
11 pole box here? Was the pole box there. You need to monitor
12 that. So, hey, guys, watch out. Scrape the rocks off of that
13 so the pole box is still accessible.

14 Q Okay. So as the superintendent, you were
15 coordinating with the landscapers to make sure --

16 A Yes.

17 Q -- that was done correctly?

18 A Yes.

19 Q Okay. Let's go ahead.

20 MR. COX: And we'll go to page 312, Chris.

21 BY MR. COX:

22 Q Okay. And this is another daily job report, which I
23 assume you prepared; correct?

24 A Correct.

25 Q And signed?

1 A Yes.

2 Q Can you go ahead and read the description of the work
3 performed that day.

4 A Blow strings and conduits.

5 Install sleeves under the sidewalks.

6 Paint conduits at picnic structures.

7 As-built updates in APCO's blueprints.

8 Get all manuals and drawings ready for turnover to
9 North Las Vegas.

10 Coordinate with the plumber, the cold water bond and
11 trap primers.

12 Also water heater voltage at the kiosk.

13 Received -- also received delivery of material.

14 Q Okay. Thank you. So we've already talked about your
15 coordination efforts with the plumbers and other trades. We
16 can just skip that, but what is the as-built update on APCO's
17 blueprints?

18 A Well, as we do the install throughout the job,
19 normally I would have, you know, a red pencil or to highlight
20 on their drawings the way the conduit is installed, the
21 locations of where we actually install the pole boxes. Because
22 on the original drawings, you may show a pole box or a conduit
23 run in certain locations, but as -- when you go out to the site
24 and actually examine that area, there may be items or, you
25 know, things that are in the way, and you can't install them

1 there. So they're not installed per the drawings. It's just
2 common practice to go in there.

3 We need to as-built the drawings. This is how we
4 routed the conduit it. This is the actual location of the pole
5 box. So when we turn over this job, you know, the job back to
6 North Las Vegas, they know exactly where the pole boxes, the
7 conduits are so any future work, you know, it's not a mystery.
8 Hey, the blueprints show the box here, but, you know, how come
9 it's over here? So it's just as a redline drawing. That's
10 what we call it, the redline drawing.

11 Q Okay. And as a superintendent, I assume you do that
12 throughout any time something had to change from the --

13 A Yes.

14 Q -- the specs?

15 A Normally, as the prints show, you wouldn't do
16 anything. I might just put a little red line and mark the home
17 run, and the home run is going back to the gear or the panel
18 that, yes, this is correct, but there's no need to, you know,
19 highlight the other drawings because it's as the print shows.
20 So any significant change I would have marked on those
21 drawings.

22 Q Okay. Thank you. And then it says, Get all manuals
23 and drawings ready for turn over to NLV. So we talked about
24 the drawings. I assume those are the drawings that you're
25 talking about now?

1 A Yes. That's correct.

2 Q What about the manuals?

3 A Manuals, you receive the manuals from like the
4 transformers, the panels. On some of the picnic areas and then
5 the switchgear, they have mechanical contactors in them.
6 They're installed a little differently than the electrically
7 held contactors. So I drew up a schematic of how they're all
8 wired and how they're all labeled. Like, this will take care
9 of this picnic area. This will be this picnic area. Just it's
10 just to make it easier for the maintenance people there at, you
11 know, at the park, you know, to see, hey, this is how this
12 functions. This is how this. So it's just going above and
13 beyond giving them a better product. You know, just everything
14 is perfectly clear when I turn it over.

15 Q Okay. Thank you. Now, I noticed this is dated June
16 20th, 2013.

17 A Yes.

18 Q And you'll notice that you're the only person listed
19 under the workforce.

20 A That's correct.

21 Q Where are the other people?

22 A They probably had been sent off to other jobs.

23 Q And why is that?

24 A At that time, it was more cost-effective, and through
25 discussions with Kurk Williams, we determined that I could

1 handle that myself. I could take care of all the paperwork,
2 the documentations, the drawings, the updates, and if any work
3 that was delayed could be released, I could handle it at that
4 time myself.

5 Q So you're still doing obviously the superintendent
6 work with the paperwork, the as-builts, the safety inspections,
7 all of that even though you're the only guy there?

8 A Yes. That's correct.

9 Q And you said as work is released you could get it.
10 What do you mean by that?

11 A Well, you might want to go over to a certain area,
12 and it's still not ready for you to install that. You know,
13 there's quite a delay. Hey, there's an issue right here. So
14 then I would probably go to another area, see if we could
15 possibly take care of some of the items in the other area and
16 stuff.

17 Q So you're still performing work as that work is
18 released to you and available to you?

19 A Correct.

20 Q So if you had let's say the four guys that you
21 previously had back on the site, would you be able to get that
22 work done quicker?

23 A It wouldn't be cost effective. I mean, I could do
24 that myself. Quicker, yeah, but at the time, if it's not
25 ready, they'd be standing around twiddling their thumbs, and

1 that's just -- that's not good practice. It's --

2 Q Okay. So they left because the work wasn't being
3 released in a manner that you could have a crew to do that
4 work?

5 A That's correct.

6 Q Okay. Let's go ahead and go to page 318. Do you
7 recognize this document?

8 A Yes. That's my handwriting.

9 Q And I assume your signature?

10 A Yeah. My signature. And that's me.

11 Q We've got a couple more. So I'm just going to skip
12 that. If you see one that's not your handwriting, just tell
13 me. Okay?

14 A Yes, sir.

15 Q All right. It says in the location call off, and I
16 don't know what that other word is. I think I do, but --

17 A Call off tools.

18 Q Call off tools?

19 A Yes.

20 Q Okay. What do you mean by that?

21 A Well, when we start the job, we make a list of tools
22 that we feel we're going to need to complete that task. We
23 have a tool department. When that job is complete, when I feel
24 we no longer need those tools, I would call Willie at the tool
25 department. Hey, Willie, I got all these tools. We don't need

1 them anymore. Do want to send out the truck and the driver so
2 we can return these tools back to the Helix tool department.

3 Q Okay. So was that every tool got pulled off site?

4 A Probably at that point. Since I've been an
5 electrician for 35 years total, I have a lot of tools. I
6 probably wouldn't have needed those tools. So, yes, I could
7 have returned all of those tools back to the Helix tool
8 department.

9 Q But did you retain some tools on site? You were
10 still doing work; correct?

11 A I was still doing work, yeah. So call off tools.
12 I'd have to see. I don't know. It's not specific
13 enough.

14 Q But if you're still doing work, you could assume that
15 you still had some tools?

16 A Some tools, yeah.

17 Q Okay. Let's go ahead and go to Exhibit 6, page 3.

18 Okay. And the description box, the very last
19 sentence, if you can read it, it's a little difficult.

20 A Yeah. Can you scroll that up just a little bit, and
21 then just -- received replacement ballasts.

22 Q Just the last sentence.

23 A Conex Number 4452, picked up off of the job site.

24 Q So what's the Conex?

25 A That's our large storage container that we have that

1 we would keep, like, our light fixtures, you know, our tools
2 and lock them up and stuff like that in there.

3 Q Okay. And so that was on site?

4 A Yes.

5 Q And do you see the date of this?

6 A July 31st, 2013.

7 Q So that Conex storage was on site up until July
8 31st, 2013; correct?

9 A Yes, that would be correct.

10 Q Okay. Let's go to page 12. Okay. So this -- do you
11 see the date on this one?

12 A Yeah. 8/13/13.

13 Q And there's a in the description of work, framers on
14 site. Can you read that sentence and the next sentence,
15 please.

16 A Framers on site to begin framing. Plumbing chases,
17 need mechanical equipment. Review conduit runs and pole box
18 locations. Dig up pole boxes covered up by dirt and landscape.
19 Paint light pole scratches and dents. Clean up trash. Tele-
20 data not on site today.

21 Q So do you recall working with the framers and the
22 plumbing and the need for mechanical equipment that day?

23 A Yes.

24 Q What were you doing with them?

25 A If we're doing in the plumbing chases, they would be

1 framing it. Let me see. They would be framing it up so you
2 could mount some of their equipment. It's probably going to be
3 up. If there are some of the framers there, they're probably
4 doing it up on the roof. So I'd have to coordinate where some
5 of the lights go and stuff like that also. So, yeah.

6 Q Okay. So you had to be there to coordinate that work
7 with the framers and the plumbers?

8 A Yeah.

9 Q Okay. Let's go ahead and move to page 26.

10 And I apologize. This is another kind of light copy.

11 MR. COX: Chris, if you could zoom in kind of in the
12 bottom half of that description.

13 THE COURT: If you can read that, you're a better man
14 than me.

15 MR. COX: Can you scoot it over a little bit because
16 I think it's missing.

17 THE WITNESS: Site -- it looks like it says site
18 trailer picked up and moved to the shop.

19 MR. COX: That's perfect.

20 THE WITNESS: Yeah. So that's when our site
21 trailer -- that's different from the Conex --

22 MR. COX: Okay.

23 THE WITNESS: -- that would be moved. That would
24 have been picked up and brought to the shop.

25 / / /

1 BY MR. COX:

2 Q So what's the site trailer?

3 A My office.

4 Q And that was obviously on site?

5 A Right, on the Craig Ranch Road. It's like right next
6 to APCO's trailer.

7 Q Okay. And what's the date of this?

8 A I'd have to see the top of the sheet.

9 MR. COX: Zoom back out.

10 THE WITNESS: 9/3/13.

11 BY MR. COX:

12 Q So the site trailer, your site trailer was on the
13 site up until September 3rd, 2013; correct?

14 A That is correct. Yes.

15 Q Okay. All right. Last one, page 54. Okay. What's
16 the date on this one?

17 A 10/10/13.

18 Q And can you go ahead -- it says walk site in the
19 middle of the box of description of work performed.

20 A Yeah. Walk the site with the North Las Vegas Traffic
21 Department and review installations. Receive golf cart and
22 return Site Truck Number 66 to the shop.

23 Q Okay. So what were you doing with the North Las
24 Vegas Traffic Department?

25 A The lighting. They walk -- we would go, and before

1 turning it over, you know, you're going to have the grand
2 opening at the park. There was some existing light poles out
3 there that, you know, we didn't have to deal with. Some of
4 those lights were not working, were not functional. So I would
5 just bring it to their attention. Hey, you know, you either
6 need to order fuses, new lamps or ballasts, and we would just
7 walk the site showing them, hey, this is the new fixtures that
8 Helix installed. These were the existing fixtures that we
9 didn't install. That would be a North Las Vegas punch list,
10 you know, for them to repair that before the grand opening.

11 Q Okay. Thank you. And then it says return Site Truck
12 Number 66. What is the site truck?

13 A That would be our work site truck to where we haul
14 material, tools and stuff around since the park is so big. You
15 know, we could be in multiple areas different times. So that's
16 truck that we got from our tool department and stuff also.

17 Q Okay. So as of 10 -- October 10th, 2013, or up
18 until October 10th, 2013, the site truck was on site?

19 A That's correct. Number 66. Yes.

20 Q Okay. On average, how much time would you say you
21 spent doing superintendent work or the actual physical work?

22 A To break it in between, it would probably be 50-50 or
23 slightly more. Because closing out a job, you'll be doing a
24 lot of documentation and files and reports and the blueprint
25 drawings, you know, the as-builts, turning over the files, you

1 know, leasing it, walking with North Las Vegas and the
2 inspectors, make sure they're approving, you know, all of our
3 methods and means that we did. So towards the end, towards
4 finishing off a job like that, it would be more towards the
5 superintendent's side I would say.

6 MR. COX: Okay. I don't have any other questions.
7 Thank you.

8 THE COURT: Cross-examination.

9 MR. JEFFERIES: Yes, Your Honor. May I do it from
10 counsel table?

11 THE COURT: It's between you and Jill.

12 CROSS-EXAMINATION

13 BY MR. JEFFERIES:

14 Q Good morning, sir.

15 A Good morning. I hope you enjoyed your vacation.

16 Q Last night you mean?

17 A Yeah.

18 Q Sir, you've gone through a number of duties, be it
19 coordinating inspections, doing paperwork. Did you perform
20 those duties in 2012 as well?

21 A That would have been Rick Clement when he was there.

22 Q Okay. And he was the?

23 A He was the superintendent.

24 Q Okay. And when did he stop serving as the
25 superintendent?

1 A I believe it was January of 2013.

2 Q Okay. And your role at the start of the project was
3 what?

4 A I would have been a lead man or journeyman wireman,
5 you know, an installer at the time. Rick was the
6 superintendent. So I would've been out in the field performing
7 work.

8 Q Well, you were the foreman, weren't you?

9 A Foreman and super -- I would've been the foreman when
10 I took over in January.

11 My wording foreman, slash, superintendent is
12 basically an interchangeable word. Foreman is the guy in
13 charge. Helix terminology is the superintendent. It's the
14 same meaning.

15 A lead man is what Helix uses out in the field as,
16 you know, just underneath the superintendent.

17 Q Okay. When we took your deposition, you confirmed to
18 me, sir, that you were, in fact, the foreman on the project;
19 right?

20 A That's correct.

21 Q Okay. And did that title as foreman ever change
22 during the course of the project?

23 A I would've been the foreman, slash, superintendent
24 come January 2013.

25 Q Okay. My question was more directly did your role as

1 foreman ever change?

2 A When I became foreman, no.

3 Q Okay. In 2013, were you still the foreman?

4 A Yes.

5 Q Okay. After Mr. Clement stopped coming to the
6 project in I think you said January 2013, was there another
7 superintendent assigned to the project by Helix?

8 A No. It was -- that would have been me. So I
9 would've been assigned to that.

10 Q Okay. And were you ever paid superintendent wages,
11 sir?

12 A I believe I was.

13 Q Okay. Isn't it true you were considered an EL10?

14 A I guess when Rick was in -- when Rick was the
15 superintendent. I believe that's what the classification is.

16 Q Okay. In some of your daily reports, you have your
17 craft as 99. Some people are 10. What does that represent?

18 A I believe 99 would be the superintendent and foreman
19 in charge. And then a 10 would be like the lead man, the
20 journeyman or installers that are actually doing the work.

21 Q Okay. All right. Isn't it true, sir, that while you
22 were out on the project from and after May 13, 2013, you were
23 in effect the only Helix employee out there through the balance
24 of the project?

25 A Yes.

1 Q Okay. And during that time, if there was no work for
2 you to do, you would have demobilized and gone home for the day
3 because you were an hourly employee; correct?

4 A Yes.

5 Q Okay. And isn't it true, sir, that through the
6 balance of 2013 there was sufficient original subcontract work
7 and change order work that you were performing from and after
8 May through October, November of 2013?

9 A Yes.

10 Q And your work product resulted in Helix generating
11 pay applications to APCO to pay for your completed work;
12 correct?

13 A Correct.

14 Q Okay. On any of your daily reports do you ever
15 attempt to allocate your time to superintendency or supervisory
16 work versus completing work in the field that was billable to
17 APCO?

18 A No.

19 Q Okay. Sir, can you describe for the Court what
20 documentation Helix generates and maintains in its ordinary
21 course of business to track equipment devoted to the project.

22 A Equipment being Helix furnished equipment, like Helix
23 tools?

24 Q Helix equipment or rent of equipment or --

25 A The Helix tools that we receive on the job, we get a

1 monthly checklist from Willie in the tool department just to
2 keep track that, hey, the tools are still here. Nothing has
3 been stolen or missing, and as soon as deemed fit, I can
4 release those tools back to the tool department so someone else
5 on another job can use that tool.

6 Q Okay. And you're saying tools, but that would
7 include trucks, forklifts, wire pullers?

8 A Yes. Those are also on the Helix tool list. Yes.
9 That's correct.

10 Q Okay. And it would include some tracking of rental
11 equipment as well?

12 A The rental equipment we would normally -- I would
13 call up Kurk Williams. We would call it up. We would call
14 Sunbelt or Ahearn or someone. Receive that equipment. It
15 wouldn't be tracked through the Helix tool department, but I
16 would fill out, like, a weekly check list because every time
17 you want to use that tool you need to make sure, you know,
18 since it's out there in the open if no one messed with it, hey,
19 are the tires good, are the forklift, you know, controls good.
20 Is everything good. So I would -- we would -- we have our own
21 checklist for rental equipment tools.

22 Q Okay. And this documentation tracking tools and
23 equipment, that's something that you would either be provided
24 by the home office and then provide back to the home office for
25 tracking purposes; correct?

1 A Yes. That's correct.

2 Q Sir, if you would --

3 MR. JEFFERIES: It's not worth you pulling up, Chris.

4 BY MR. JEFFERIES:

5 Q -- Exhibit 4 in the binders behind you, I would just
6 like --

7 A Which binder --

8 Q It'll be Volume I. I'm going to have you.

9 THE COURT: The smaller ones? Oh, no, the big ones.
10 These going to the other end, sir.

11 THE WITNESS: Oh, right here?

12 THE COURT: Yep.

13 BY MR. JEFFERIES:

14 Q I'm going to have you look at Exhibit 4.

15 THE COURT: You okay?

16 THE WITNESS: Yeah, I'm good.

17 THE COURT: All right. We've had people --

18 THE WITNESS: You've got a speed bump right up over
19 here.

20 THE COURT: I know we do. It's a lift. For those
21 who are in wheelchairs.

22 THE WITNESS: I'm good at doing handicap lifts. You
23 can call Helix up. We'll fix it.

24 THE COURT: Okay. Last time it broke, we had
25 somebody locked in it, and they had to use a knife to jimmy the

1 door because the key didn't work.

2 THE WITNESS: Yes, sir, I am on that page.

3 BY MR. JEFFERIES:

4 Q Okay. Tell me do you recognize Exhibit 4?

5 A Yes, I do.

6 Q And what is it?

7 A The daily sign in log.

8 Q Okay. And would you agree that it was APCO's
9 standard practice and procedure for contractors,
10 subcontractors, personnel as they were entering the site on a
11 daily basis to sign in?

12 A Yes.

13 Q Okay. And do you follow that practice and procedure?

14 A Yes.

15 Q Okay. Sir, if you would go to the page that's Bates
16 labeled 356 within Exhibit 4.

17 A It's way towards the back.

18 APCO 000356?

19 Q Yes, sir.

20 A Okay. I'm there.

21 Q Okay. And if you'd go down to the middle of the
22 page, May 3.

23 A Yeah.

24 Q Do you see that's your name and handwriting?

25 A Yeah. Rai P., 5/3. That's my birthday too.

1 Q If you -- that day Helix is shown as having a
2 three-man crew?

3 A Yep.

4 Q And then if you would, sir, go to the next page, 57.
5 do you see your name about two thirds of the way down?

6 A I do, yes.

7 Q Okay. And I won't belabor the point, but would you
8 agree with me just in flipping through the next few pages that
9 starts the time period that Helix only has a one person staff
10 on site, i.e., yourself?

11 A That appears to be correct.

12 Q Okay.

13 A Uh-huh.

14 Q And if I go to Exhibit 5, which would be your daily
15 reports, and if you would go to Bates label 1016, it's May 3,
16 2013.

17 A What was that number one more time? I'm sorry.

18 Q It's for May 3, 2013. It's that last day that you
19 had the three-man crew on site.

20 A Okay. Yeah.

21 Okay. Yep.

22 Q And it looks like that last day that you had the
23 three-man crew you pulled some wire, and then you cleaned up
24 the site, and it says Truck Number 83 plus wire trailer. What
25 does that mean?

1 A I think I'm on the wrong page here. Sorry.

2 THE COURT: It's on the screen if you want to look at
3 it there.

4 THE WITNESS: Okay. There it is. Sorry. Thanks.

5 Pull wire and all the plumbing chases and terminate
6 wire and devices. Clean up Site Truck Number 83 and the wire
7 trailer. Yes.

8 BY MR. JEFFERIES:

9 Q Okay. And my question was it looks like you're in
10 part cleaning up and demobilize certain things from the job; is
11 that right?

12 A No. Right there, if we're pulling wire and
13 terminating, there's probably scrap wire and debris that we've
14 just thrown into the truck probably because of the site. So
15 what we'll do is towards the end we'll take that site -- the
16 truck probably over to the dumpster, get everything thrown away
17 out of the back of the truck and cleaned up and then take the
18 wire trailer and park it back over by our Conexes and stuff.
19 Kind of mobile, you know, just cleaning it up. It probably had
20 a lot of debris and stuff in it.

21 Q Okay. Sir, was there ever a point in time when you
22 or Mr. Clement went to APCO and said that you were being
23 delayed?

24 A If there are any delays, I would have notified Kurk
25 Williams. He's the project manager, and I would have took that

1 channel.

2 Q Okay. Did you have any involvement in pricing out
3 any claim against APCO?

4 A No.

5 Q Were you consulted at all in pricing any claim with
6 APCO?

7 A No.

8 Q From and after the time May 3, when you last had the
9 three-man crew, would it be fair to say that the -- how many
10 trucks would you have needed on site for Helix after that date?

11 A After the other two gentlemen left the site?

12 Q Yes, sir.

13 A I would just need one for myself.

14 Q Okay. You mentioned that you were generating some
15 as-built or record drawings I think they're known in the
16 business; right?

17 A That is correct.

18 Q Okay. And those would reflect changes to the plans?

19 A Yes.

20 Q Okay. And to the extent there were changes to the
21 plans in 2013, Helix was issued a change order from APCO to
22 perform that work; correct?

23 A Not necessarily.

24 Q Okay. Let me make sure my question is clear. You
25 were issued change orders during 2013 by APCO; correct?

1 A Yes.

2 Q Okay. And some of those changes would be reflected
3 on the record drawings; right?

4 A That's correct, yes. If it was approved change
5 order, I would have noted it on those drawings.

6 Q If I asked you this, I apologize. I want to make
7 sure my record's clear. If there was a suspension of Helix's
8 work on the project, you would not have come to work that day.
9 Is that a fair statement?

10 A If there was a suspension or some type, I have
11 probably notified Kurk Williams, and then from there he would
12 have directed me, you know, what I should do.

13 Q Okay. Can you think of a time prior to substantial
14 completion when Helix was suspended, and there was no work for
15 you to do?

16 A No. There was always something to do.

17 Q Okay. After January 2013, Mr. Clement was not
18 actively involved in the project, was he?

19 A No. I may have asked him a few questions here and
20 there. Just, hey, how's it going. You know, do you remember
21 this, and that's it. He wouldn't have been on site.

22 Q Were you ever a salaried employee on the project?

23 A No.

24 Q Do you recall attending weekly meetings with APCO?

25 A Yes, sir.

1 Q And wouldn't it be fair to state that at those
2 meetings a schedule was discussed?

3 A That would be correct.

4 Q Okay. There were also monthly meetings between APCO,
5 the city, the architect; correct?

6 A I would say that's a fair statement, yes.

7 Q And did you attend any of those meetings?

8 A That would probably be between them if North Las
9 Vegas or someone had a question, you know, that, hey, we want
10 to do this. Hey, we want to add an outlet here. We'd like to
11 add something up over here. You know, I'd just like to -- the
12 information might be pertinent to me. Say, hey, this is what
13 we need to do. We'd like to do this and this here, and then I
14 would go out, evaluate, maybe give a material list, you know,
15 tools, what we need, and then I would let Kurk Williams know,
16 all of that would go through Kurk, the project manager would do
17 that.

18 Q Okay. I respect the process. My question was simply
19 did you attend the monthly meetings at times?

20 A At times I would say -- man, I can't remember I might
21 have. Holy moly.

22 MR. JEFFERIES: That's all I have, Your Honor.

23 THE COURT: So I have a couple questions before we
24 get to far.

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Do you remember something about actuators
2 going missing?

3 THE WITNESS: Actuators going missing?

4 THE COURT: If you don't that's okay.

5 THE WITNESS: I write off the -- the only actuators I
6 could think is if it would be some in the irrigation pond, or
7 the other actuators would be for the plumbers and that -- but
8 that would be it. So honestly, no, not off the top of my head.

9 THE COURT: Okay. After May 3rd, 2013, when you
10 didn't have the other guys at the site anymore, can you give me
11 an estimate of how many hours per day you worked on the project
12 realtime.

13 THE WITNESS: Actually hands on?

14 THE COURT: Hands on.

15 THE WITNESS: I'd say the best -- the best and most
16 honest thing would be about a 50-50 time. The amount of
17 paperwork that it takes to consume and start on that and
18 checklists and the safety responsibilities we have -- because
19 as a single father I'm going home safe -- so we have to be safe
20 and the actual work, that would be my most honest answer.

21 THE COURT: Okay. Thank you, sir.

22 THE WITNESS: You're welcome.

23 THE COURT: Redirect.

24 MR. COX: I have no redirect, Your Honor.

25 THE COURT: Okay.

1 MR. COX: But if I may just make a clarification.

2 THE COURT: Nope.

3 MR. COX: Okay.

4 THE COURT: Thank you, sir. Have a lovely day.

5 MR. COX: Thanks.

6 THE COURT: Travel safely.

7 THE WITNESS: Yes.

8 THE COURT: Your next witness.

9 MR. DOMINA: Your Honor, Helix calls Victor Fuchs.

10 THE COURT: Okay. I have to take a short break at
11 10:00 o'clock for a conference call. It will take about three
12 minutes, but let's get him sworn in and started on background.
13 Okay?

14 MR. DOMINA: Sounds good.

15 THE WITNESS: Good morning.

16 THE COURT: Good morning.

17 **VICTOR FUCHS**

18 [having been called as a witness and being first duly sworn,
19 testified as follows:]

20 THE CLERK: Thank you. Please be seated. Please
21 state and spell your name for the record.

22 THE WITNESS: Victor Fuchs. V-i-c-t-o-r, F-u-c-h-s.

23 THE CLERK: Thank you.

24 THE COURT: Sir, you will notice there's a pitcher
25 with water next to you.

1 THE WITNESS: Thank you.

2 THE COURT: There are M&Ms in the dispensers behind
3 you, and there are exhibit books that you may have to look at
4 as part of your testimony.

5 THE WITNESS: Great.

6 THE COURT: If you need a break at any time, you let
7 us know.

8 THE WITNESS: Thank you.

9 THE COURT: You may continue, Counsel.

10 MR. COX: Thank you, Your Honor. And just let me
11 know when you need me to stop.

12 THE COURT: Dani will dial the phone, and then she'll
13 tell me, and we'll just break.

14 MR. COX: Sounds good.

15 DIRECT EXAMINATION

16 BY MR. COX:

17 Q Good morning, Mr. Fuchs. How are you?

18 A Good. Thank you.

19 Q Good. What -- who is your current employer?

20 A Helix Electric.

21 Q And what's your position at Helix Electric?

22 A I'm the president and managing partner of Helix
23 Electric.

24 Q Okay. And how long have you been with Helix?

25 A Since 1987.

1 Q And how did you get involved in this industry?

2 A So we're the immigrants, and we came to this country
3 in 1978. My uncle started the company in 1985, and I joined
4 the company in 1987 out of college.

5 Q Okay. So has Helix been around serving the Vegas
6 community since you said 1995?

7 A So the company started in 1985. I came to Las Vegas
8 in 1995. We started doing business here in the early '90s.
9 I moved here with my family in 1995 and opened the office as a
10 branch office for Helix Electric, Inc., a California company.

11 In 2001, we -- I bought 50 percent shares of the
12 Nevada division, and we formed Helix Electric, a Nevada LLC.

13 So technically we've been doing business in the
14 community since 1995, but as a Helix Electric LLC of Nevada
15 2001.

16 Q Okay. And you were involved even prior to that?

17 A Oh, yeah. I've been with the company since 1987 when
18 I came to Las Vegas. I was executive vice president and
19 division manager of Las Vegas division.

20 Q Okay. And you worked your way up, and now you're the
21 president of Helix Electric?

22 A Right.

23 Q Are you familiar with the Craig Ranch Road project
24 that we're talking about?

25 A Yes, very much so.

1 Q And what was your involvement with that project?

2 A Well, my involvement was like any other project,
3 overseeing from the executive level: To make sure the project
4 goes well; sometimes involvement with the customer; overseeing
5 to make sure we're getting paid on time; make sure that we
6 don't have any critical issues, exposures.

7 I'm very much involved in safety because that's our
8 culture of our company, and it's very important as being
9 [indiscernible] shop to make sure we take care of our people.
10 So we have executive safety meetings every month when we talk
11 about any type of incidents throughout the company.

12 It's actually between Nevada and California
13 companies. It's over videoconferencing. And we discuss any
14 potential incidents of near miss or maybe an incident and see
15 how we could -- it could be prevented. So that's a big piece
16 of my involvement. If there's anything happens questionable,
17 the safety director reports to me directly.

18 Q Okay.

19 A And I am informed in any one of those situations.

20 Q Okay. And you said -- you made a comment about your
21 customer. Who is your customer with respect to the Craig Ranch
22 project?

23 A It was APCO Construction was the customer and Joe
24 Pelan.

25 Q Okay. And when I say project, I'm just going to --

1 that's referring to this specific Craig Ranch Road project.
2 Okay?

3 A Right.

4 Q All right. So let's go ahead, and we're going to
5 turn to a few documents, and this is plaintiff's exhibit. It
6 says, dash, 102.

7 (Pause in the proceedings.)

8 THE COURT: Any objection to 102?

9 UNIDENTIFIED SPEAKER: There's a standing objection.
10 This is your objection. This --

11 MR. JEFFERIES: Yes. Yes. I do have an objection.

12 THE COURT: Okay. Then I'll make him lay a
13 foundation and I'll address it separately.

14 Don't display it.

15 BY MR. COX:

16 Q Can you open up -- there's a binder behind you, and
17 it's going to be one of the smaller ones, and it should say
18 plaintiff's exhibits.

19 A Trial exhibits?

20 Q Yes.

21 A Yes. 101 and 102?

22 Q Yes. And if you'd turn to 102, there's little
23 numbers on the bottom of each page.

24 A Yes. PX.

25 Q Yep. PX 102, and I'm looking at, dash, 27.

1 A Slash 27.

2 Q Yeah.

3 A Okay.

4 Q Let's go ahead and wait for counsel.

5 MR. JEFFERIES: I don't have an objection to that
6 part of it. The last page --

7 UNIDENTIFIED SPEAKER: I think he's going to go
8 through the entire exhibit. I don't --

9 MR. JEFFERIES: Well, this is the problem. There's a
10 whole bunch of topics covered in the exhibit.

11 THE COURT: So, guys, we're going to lay a
12 foundation. Somebody is going to offer it. Unless there's a
13 stipulation, I'm going to make a ruling on the objection.

14 MR. COX: Okay.

15 THE COURT: So keep going.

16 BY MR. COX:

17 Q Do you recognize this document?

18 A Yes, sir.

19 Q And what is this?

20 A It's an email that I had sent to -- received from Joe
21 Pelan.

22 Q And who is Joe Pelan?

23 A He was our contact for APCO Construction on this
24 project.

25 Q Okay. Can you go ahead and read what Mr. Pelan wrote

1 to you.

2 THE COURT: No counsel. It's not admitted.

3 MR. COX: Oh, I apologize.

4 MR. JEFFERIES: Your Honor, I have no objection to
5 the admission of this page.

6 THE COURT: I am not going to admit each page
7 separately for 27 pages. If there is a real problem, I may
8 admit one or two pages separately, but I'm not going to admit
9 27 pages separately.

10 So if you want to lay a foundation for the document,
11 I would be happy to consider your ruling, otherwise I'm going
12 to have to go through the process of breaking the document
13 apart and separately identifying it as exhibits.

14 MR. DOMINA: Your Honor, if we might, I think that
15 during your recess counsel and I will have a discussion and
16 we'll try to figure out if there is just the one or two
17 documents that he wants to reserve his objection to.

18 THE COURT: Okay.

19 MR. DOMINA: And that way we can extract it and just
20 go through the other document.

21 THE COURT: All right. That would be lovely.

22 So Dani is going to dial the phone for my
23 10:00 o'clock where I'm going to talk to people about class
24 certification issues.

25 If you want to get up and walk around, sir, you may.

1 This is not a requested break.

2 ATTORNEYS: Thank you, Your Honor.

3 THE COURT: Under the *Brightsource versus Coyote*
4 *Springs* case.

5 (Proceedings recessed at 10:00 a.m. to 10:07 a.m.)

6 THE COURT: All right. If we could go back.

7 Mr. Fuchs, thank you for accommodating my need to
8 talk to attorneys.

9 All right. You may continue.

10 MR. COX: Thank you, Your Honor.

11 BY MR. COX:

12 Q You testified earlier that you have discussions with
13 your customers, and one of your customers is APCO Construction.
14 And that was your customer for this project; correct?

15 A That's correct.

16 Q And what kind of discussions did you have with -- and
17 I'll say Joe Pelan. You said that you had discussions with Joe
18 Pelan at APCO; right?

19 A That's right.

20 Q What kind of discussions did you have with Mr. Pelan
21 about this project?

22 A About us getting paid for extended general conditions
23 that we do.

24 Q And can you explain what that is.

25 A There were a number of notices given for delay of the

1 projects. The project was severely delayed, and we sent one
2 notice, and obviously we updated it on the next notice, and we
3 had a long series of discussions via meetings, via emails, via
4 phone calls about us getting paid the amount that was due.

5 Q Okay. And can you describe those discussions.

6 A So obviously in today's world, 80 percent of it was
7 via email. We were sending -- I would send an email to Joe,
8 and I would send another email to Joe, and I would send another
9 email to Joe, and finally I get response. Joe and I had a good
10 working relationship in the past. So I felt that we can figure
11 out a common way for us to get paid. So I really didn't want
12 to go down the legal route.

13 And for a long time we'd been told that, number one,
14 we were misled in the fact that Joe kept telling me that they
15 had financial issues, cash flow issues. They could not
16 accommodate the payment, but were trying to figure out a
17 certain way how to do that, means via another project included
18 in some other negotiated project, some payment terms, some
19 other avenue --

20 THE COURT: I'll just listen to your objection.

21 MR. JEFFERIES: Your Honor, I'm going to object.
22 These are post dispute settlement discussions under Rule 408.

23 THE COURT: Okay. So do you want to explain to me
24 why they're not settlement discussions trying to reach a
25 resolution including using another project as the way to fund

1 it?

2 MR. COX: These are not settlement discussions, Your
3 Honor.

4 THE COURT: Okay.

5 MR. COX: And if we can proceed, we can demonstrate
6 that there was no intent to compromise any claim, which is
7 required. So under Davis v. Beling, an offer of compromise and
8 an offer is an offer by one party to settle a claim where an
9 actual dispute or difference of opinion exists at the time the
10 offer is made.

11 There was never an attempt, and we'll demonstrate
12 this, on behalf of Helix to settle the claim.

13 THE COURT: So ask him that question so I can rule on
14 this thing.

15 MR. COX: Oh, I apologize.

16 BY MR. COX:

17 Q Mr. Fuchs, did you ever intend to settle your claim
18 with APCO?

19 A Absolutely not. I --

20 THE COURT: Okay. The objection is overruled.
21 Keep going.

22 MR. COX: Thank you, Your Honor.

23 BY MR. COX:

24 Q So you mentioned various emails. You had emailed
25 Mr. Pelan, email him again, email again, and then he would

1 respond?

2 A Yes.

3 Q Can you describe that a little bit in more detail.

4 A So I would then email first time, and I don't get --
5 I wouldn't get a response. So I wait three, four days, maybe a
6 week. Then I email again, and I said, please update me status.
7 Still wouldn't get response. Then I would escalate the email.
8 I said, are you planning to respond to me or not, and then
9 finally I get some kind of response saying I'm busy right now.
10 I'll get back to you by tomorrow or two days from now, and that
11 would never happen. Then I would again follow up and say well,
12 know you said you're going to get back to me.

13 Then at certain point Joe has asked me in several
14 times for lunch meeting, dinner meeting -- not dinner meeting.
15 Correct. Lunch meeting or breakfast meeting. I think we had
16 at least three or four of those where he would describe and
17 explain to me that economy stuff. He was having financial
18 issues, cash flow issues, and he would like to pay me, but they
19 don't have the funds.

20 Q Okay. Can -- you mentioned that 80 percent, you
21 know, in today's world, 80 percent of these communications were
22 via email; correct?

23 A Yes.

24 Q Can you go ahead and open up in that binder the
25 PX102.

1 A Yes.

2 Q Can you just real quickly flip through those
3 documents.

4 A Okay.

5 Q Are these the emails that you're discussing about
6 following up with Joe?

7 A Yes.

8 Q And him not responding?

9 A Yes.

10 Q About getting paid?

11 A Yeah. In fact, in some of the emails, as I
12 mentioned, in fact, email PX102-24, I said we --

13 THE COURT: Sir, don't tell me the substance. The
14 document is not admitted yet.

15 THE WITNESS: I see. Okay. Sorry.

16 BY MR. COX:

17 Q So these accurately reflect your testimony just now
18 of the email correspondence between you and Joe?

19 A Absolutely.

20 MR. COX: I'd like to move to admit exhibit --
21 Plaintiff's Exhibit 102.

22 THE COURT: Any objection to 102?

23 MR. JEFFERIES: I still object, Your Honor. It
24 includes proposals regarding other projects, and if -- for the
25 record, it's page PX102-15.

1 THE COURT: And are these proposals for other
2 projects consistent with what the witness has detailed as ways
3 to get them paid? Whether you agree or not, that's his
4 testimony.

5 MR. JEFFERIES: I would have to submit it as --

6 THE COURT: The objection is overruled.

7 MR. JEFFERIES: Okay.

8 THE COURT: Be admitted.

9 (Plaintiff's Exhibit Number PX102 admitted)

10 THE COURT: Okay. Let's keep going. Now, you can
11 display it and read from it.

12 BY MR. COX:

13 Q Okay. Let's go ahead and go to PX102-27.

14 A Is it okay if I open this? Because it's tight.

15 Q Yeah.

16 A Hopefully I don't get --

17 Q It's also on the screen.

18 A Okay. Great.

19 Q And if Chris could blow that up.

20 A Great.

21 Q Do you recognize this?

22 A Yes.

23 Q What is this?

24 A It's the email from Joe to me on January 28th of
25 2014, telling me that he had a meeting scheduled to discuss

1 remaining change-order issue which was the outstanding amount
2 of our extended general conditions on February 4th at
3 9:00 a.m.

4 Q Okay. And what's the date of this email?

5 A The email is January 28th.

6 Q Do you know when the project was complete?

7 A Some time, I don't know exactly, but some time end of
8 2013.

9 Q Okay. So this is after that?

10 A Yeah.

11 Q He mentions change-order issues. He has a meeting to
12 discuss remaining change-order issues, and you briefly
13 mentioned that, but what is that? What is your understanding
14 of that?

15 A My understanding of change-order issue was the amount
16 of extended general conditions, 138,000 and some change, yeah.

17 Q That Helix advised APCO it was due?

18 A Yeah. We didn't just advise we billed for it.

19 Q Okay. Did Joe ever tell you what the outcome of that
20 meeting was?

21 A I probably, knowing my consistency, followed up with
22 an email.

23 Q But right now you just don't recall?

24 A No, I don't recall.

25 Q Okay. Let's go ahead and turn to PX102-24. Again,

1 that's right in front of you on the screen. In the middle of
2 the page, do you recognize that?

3 A Can we zoom smaller. It's --

4 Q Yeah.

5 A It was my email to Joe after number of emails on
6 probably a weekly or biweekly basis prior to that.

7 Q What's the date of that email?

8 A That email was April 16th, 2014.

9 Q So approximately three months after the email that we
10 just looked at; correct?

11 A Exactly.

12 Q And what do you tell Joe in your email?

13 A That I need to know by Friday what's the plan,
14 otherwise we have to proceed with our monies due. Please get
15 back to me.

16 Q Well, you specifically say, Proceed with the claim --

17 A Claim.

18 Q -- correct?

19 A Yeah.

20 Q What do you mean by "proceed with the claim"?

21 A What I meant "proceed with the claim" is turned it
22 over to legal people to proceed -- proceed to collecting money.

23 Q Okay. Did you get a response from Joe, do you know,
24 that day?

25 A No.

1 Q Let's go ahead and turn to PX102-22. And the bottom
2 half --

3 A Can you go back. I want to correct myself.

4 Q Go back to the last?

5 A Yeah. It looks like -- I correct my statement. In
6 this particular case, he did respond to me: I will call you in
7 the a.m.

8 Q Got it. Okay. Thank you for that clarification.

9 A Yeah.

10 Q Do you know if he called you the next morning?

11 A That was five years ago.

12 Q Let's go ahead and go to 102-22. Maybe this will
13 help you remember. It's the bottom half of that document.
14 What is this?

15 A So obviously he didn't call me because I was reminded
16 in the previous email by Kurk Williams, project manager, if we
17 heard anything. So a week later I sent an email, and these
18 were repeatedly ongoing basis. I sent an email, and I said,
19 Joe, you were going to call me on Monday and, question mark.
20 Obviously it didn't happen.

21 Q Okay. And that's April 22nd?

22 A That's right. It's six days later.

23 Q Let's go to PX102-21. And in the middle of the page,
24 appears to be another email?

25 A Yeah. So this email is three days later, two days

1 later. I said, Joe, another week went by. We need to get this
2 resolved. And then he replied that,

3 I know. I have been addressing the rest
4 of the issues. I'm down to Helix and one
5 other. I'm out of town. I haven't forgot
6 you guys. Can I buy you lunch Tuesday?

7 Q Okay. So he responded to your email this time?

8 A Yeah. The following day.

9 Q The following day.

10 A Yeah.

11 Q And he says, I have been addressing the rest of the
12 issues. Do you understand what he was referring to by "the
13 rest of the issues"?

14 A Well, I assume he had other issues on the contract
15 besides us and one other one I guess.

16 Q Okay. And he says, I'm down to Helix and one other.
17 So would it be understanding -- understanding that he was
18 talking about an issue with Helix and one other?

19 A Yeah. I would assume it would be the issue I keep
20 asking because he was responding to my email on \$138,000
21 outstanding amount. And the way I interpret the email, one
22 other, probably another subcontractor.

23 Q Okay. Let's go ahead. And he says, I buy you lunch.
24 He probably meant to say I can -- can I buy you lunch on
25 Tuesday -- oh, he says, Can I buy you lunch Tuesday?

1 A He does. Can I buy you lunch on Tuesday?

2 Q Did you guys go to lunch --

3 A Yeah.

4 Q -- do you recall?

5 A I took every opportunity to meet face to face to see
6 if we could get some kind of commitment.

7 Q Did you discuss the project at that lunch?

8 A Absolutely.

9 Q Okay. And what did you discuss?

10 A And at that point he did tell me that he didn't have
11 money to pay -- pay me.

12 Q Okay. Let's go to PX102-20, the second half of the
13 page. Okay. What is this?

14 A I guess past -- I don't know if it was some
15 correspondence in between, but we were -- we were supposed to
16 talk. It's probably commitment from lunch because I probably
17 asked Joe for I need the date critical when we're going to do
18 this, and he committed to get back to me on May 6th, and he
19 didn't, again.

20 So I sent an email, and I said our commitment was to
21 talk today, and nothing happened. This is at 5:30 on May 6.
22 I'm pretty sure the commitment was he was going to get back to
23 me on May 6th.

24 Q Okay. So you were just following up with Joe?

25 A Yeah.

1 Q Okay. Let's turn to PX102-19, the bottom of the
2 page. It's an email approximately a week later. Do you
3 recognize that?

4 A So -- so he ignored my email, and this was consistent
5 pattern, and so a week later, I gave a week, and I said, Joe,
6 what's going on? Need to move -- need to move one way or
7 another.

8 Q And what did you mean by that?

9 A Well, I even told him at lunch I said, We either
10 figure out how you're going to pay me, pay Helix, for the
11 amount owed, or we will have to proceed with attorney
12 collecting, filing lawsuit and collecting the money.

13 Q Okay. And then up above that is another email dated
14 May 15th. Do you recognize that?

15 A Yeah.

16 Q What is that?

17 A He's so he ignored my May 12th, and I followed up
18 again on May 15th asking what is the update.

19 Q Did you get a response? Do you know?

20 A We can follow the email. It probably says that.

21 Q Let's do that. PX102-18, in the middle.

22 A Obviously not. I think Kurk actually reminded me
23 five days later. I send an email with a whole bunch of
24 question marks and refer to my email chain below.

25 Q So what did you mean by the question marks?

1 A Question marks, I need a response.

2 Q Okay.

3 A I was being ignored.

4 Q So let's go up above that spot.

5 A So it looks like he did finally respond to me on
6 Wednesday, and he said he will call me after lunch.

7 Q Do you know --

8 A The following day.

9 Q Do you know if he called you?

10 A I don't know. What's the next email says?

11 Q Well, let's go ahead and go to that. It's PX102-17,
12 and the previous email was dated May 21st.

13 A So he probably called me and made me another
14 commitment.

15 Q So do you recognize the bottom -- oh, yeah, that's
16 what you were reading.

17 A So it probably was another commitment. I'll get back
18 to you in a week because -- I'm just putting the dates
19 together -- he probably asked me for some time. So I am
20 sending him on Friday emails asking you were going to get back
21 to me on Wednesday, question mark, and it was no response.

22 Q So this was just another follow-up email?

23 A Yep.

24 Q Okay. Let's go ahead and move up above that email in
25 the middle of the page.

1 A So this was encouraging. He said he was working on
2 some project that may help our issue. We will have the info
3 for you and I to discuss Monday --

4 Q Well, what --

5 A -- so --

6 Q Oh, go ahead.

7 A So during our lunch he said, since he didn't have
8 money to pay, he said, Perhaps I can award you a project, and I
9 can pay you through that project effort, and --

10 MR. JEFFERIES: Your Honor, I'm going to object. An
11 offer of compromise.

12 THE COURT: Overruled. You may continue.

13 THE WITNESS: So I got really excited obviously on
14 Friday. I said cool. We finally getting somewhere.

15 BY MR. COX:

16 Q Okay. Let's go ahead and go to PX102-16, and let's
17 see. The top of the page, there's an email on June 10th. Do
18 you see the second email?

19 A Yeah. So he said he was going to get back to me on
20 Monday, and obviously I noted then on Tuesday nothing --
21 nothing happened on Monday. So on Tuesday I reminded him that
22 I'm still waiting.

23 Q All right.

24 A And then he replied in the meeting about the project,
25 I guess this project, hold on, I'm getting conceptals for you.

1 Q So that project is the project that he's talking
2 about?

3 A Apparently.

4 Q Okay. What's a conceptual?

5 A Conceptual mean some schematic floor plans, drawings
6 on some project. Normally a project like that would probably
7 go design build, and we get brought in on the team to work
8 together. That's --

9 Q Okay. So your understanding is he wanted to -- he
10 was working on a project, and he wanted to bring Helix in on
11 that project?

12 A Yeah.

13 Q As the process --

14 A From the beginning as a commitment for us to do the
15 job with them.

16 Q Okay.

17 A With APCO Construction.

18 Q And what was the purpose for that?

19 A The avenue for him to generate to get us paid for the
20 \$138,000.

21 Q Okay. Let's go to PX102-15 on the bottom of the
22 page, the very last email.

23 A So update again on June 13th. I don't know what
24 the previous date was.

25 Q June 10th.

1 A 10th. So end of the week haven't heard anything. So
2 obviously I went June 13th, and finally I get some
3 information that it's a 300,000 square-foot.

4 I have a project approximately 300,000
5 square feet, very similar to FedEx building.

6 I will give you summary info next week as we
7 sit -- and we can sit down and discuss.

8 So I got excited that finally there was some way of
9 working through and getting us paid for the amount owed.

10 I want to --

11 Q Okay.

12 A I want to mention something. We're not litigious
13 company, and the last thing I wanted to do is go down the path
14 that we are today or at any point, and I was looking for an
15 avenue. So I don't hurry the customer, but in the same token
16 getting us paid what money owed.

17 Q Okay. Thank you for that. Let's go to PX102-14.
18 This is a few days later. Top of the page. Do you recognize
19 that email?

20 A Well, I guess we never talked. So I said when can we
21 talk.

22 Q So you're following up again?

23 A Yeah. Yeah, because I feel I have some kind of a
24 light at the end of the tunnel, and I'm just trying to see if
25 it's real.

1 Q Okay. Let's go to PX102-13, again top of the page.
2 This is the following day. Do you recognize this email?

3 A Yeah. So getting info in the a.m. Will call you
4 this afternoon.

5 Q And that was Joe to you; correct?

6 A Yes. Correct.

7 Q Okay. Do you know if he called you that afternoon?

8 A Well, let's go to the next email.

9 Q All right. 102-12. The second email on that page.

10 A Okay. So the following --

11 Q Do you know the -- can you say the date.

12 A So I, on June 18th, the following day said, I'm
13 just following up.

14 And he responded, sorry I didn't get back to you
15 right away. I'm still waiting. I will call you around
16 9:00 a.m. if you're available.

17 Q Okay. So this is consistent with what you testified
18 earlier. You would follow up, follow-up. He would promise a
19 phone call.

20 A Yeah.

21 Q Wouldn't happen. You'd follow up again?

22 A That's right.

23 Q Okay. Let's go to PX102-11, the top page or top
24 portion of the page. Do you recognize this?

25 A So I guess I'm getting frustrated because I just feel

1 I'm getting led on, and -- nowhere because the fact of the
2 project at least we could've seen some kind of documents, you
3 know, and I haven't seen anything. So it's a week later, and I
4 basically said this needs to be resolved by Monday one way or
5 another.

6 Q And what's the date of that email?

7 A That's August 22nd, so four days later, and toward
8 the end of the week. So another week went by. Nothing
9 happens.

10 Q And you'll recall that first email that we were going
11 through was the beginning of 2014; correct?

12 A That's correct.

13 Q So now we're eight months in?

14 A Eight months in.

15 Q Okay. Let's go to PX102-10.

16 A So now we're in the --

17 Q The bottom of the page.

18 A So -- so a month went --

19 Q Do you see that?

20 A -- a month went by, a month went by with no
21 correspondence. So I finally just said I gave up, and I sent a
22 letter, attached letter putting on notice that basically we
23 going forward no more of these promises, useless promises.

24 Q Okay. Do you recall that letter that you sent?

25 A Do you have a copy? I --

1 Q Yeah.

2 A -- sort of recall it. It was a letter basically
3 saying that we exhausted all the efforts.

4 Q Okay. Let's go back. This is Joint Exhibit 32.

5 A Okay. So this letter was sent --

6 Q Go ahead and review it, and then we'll talk about it.

7 THE WITNESS: Can you zoom it up, please, Chris.

8 Okay. So this letter was sent a month later. So I
9 waited patiently for almost a month after the promise was made
10 with some kind of project.

11 BY MR. COX:

12 Q And what's the date of this letter?

13 A September 26.

14 Q 2000?

15 A '14.

16 Q Okay. And it's a letter from you to Joe Pelan;
17 right?

18 A That's right. The letter's topic is demand for
19 payment, Craig Ranch project. Please accept --

20 Dear Joe, please accept this letter as a
21 formal demand for final payment including
22 claim for general conditions in amount of
23 \$243 -- \$243,828.

24 Numerous attempts on the part of Helix
25 Electric have been made to collect the

1 past-due outstanding amounts; however, at
2 this point we have exhausted our efforts --

3 Q Okay. I just have a quick question before you
4 proceed. Sorry to cut you off.

5 A Sure.

6 Q What is this \$243,828 made up of?

7 A So retention was also owed.

8 Q Okay.

9 A So I believe there was 105,000 in retention, and 138
10 and change in the -- in the extended general condition claim.

11 Q Okay. So as of September 26, 2014, is it your
12 understanding that APCO knew Helix intended to get paid in full
13 for their \$138,000 extended overhead?

14 A Of course. We mentioned that for last eight months
15 in emails prior to that on notices.

16 Q And discussions with Joe; correct?

17 A And several discussions with Joe.

18 Q Okay. Go ahead and read that second paragraph.

19 A If I don't hear from you within 48 hours on how you
20 intend to rectify this matter, we will have no choice but to
21 turn this over to our legal counsel for collection. Any costs
22 that result from this action will be passed on to your account
23 once they are available.

24 We regret having to resort to this action, but we see
25 no other avenue to collect the money that is way past due.

1 Q Okay. So it's your understanding that not only did
2 you notify them that you were seeking the \$138,000 of overhead
3 but you were going to ask for a recovery of any attorney's fees
4 because this hadn't gotten resolved?

5 A Absolutely.

6 And I said a number of times during the meetings or
7 phone calls to Joe that I didn't want to go this route. So
8 this was not the first. I finally had to put it in writing.

9 Q Okay. Let's go ahead, and we're going to jump back
10 to Plaintiff's Exhibits 102, page 9. Actually, I'm sorry.
11 We're going to go to 102-10, and that was the email that we
12 just looked at. The bottom of the page. Is it your
13 understanding that the letter Joe Pelan mentions in this email
14 is this letter that we just read?

15 A Yeah. He acknowledged that he received my letter,
16 and he said he would ask me for six days to respond and thanked
17 me for my understanding.

18 Q So October 2nd; correct?

19 A Yes.

20 Q All right. Let's go to PX102-9, at the top of the
21 page. Do you recognize this email?

22 A Well, the email before that, I reminded him on
23 October 2nd that I didn't get a response that he promised. I
24 said today is the day, and the following day, morning, I got an
25 email: Sorry. I was in a meeting. Went past 5:00. LVP was

1 working on the bid yesterday. So -- LVP is Las Vegas Paving,
2 the parent company. So I sent, meaning to our resolution for
3 Monday 9:30 with Mr. Smith. I may call you if needed during
4 the meeting by 10:30.

5 I have met today --

6 Can you shrink it. I don't -- there. It's cut off a
7 little bit.

8 -- by 10:30 -- oops. I would have met today even
9 though I am off, but Mr. Smith is also off today. I apologize
10 for not getting it done. We will know what direction to go on
11 Monday. Thank you.

12 Q Do you recall him getting back to you after that?

13 A Well, we need to see if there is an email. We did
14 have a meeting with Mr. Smith later on in the -- in this
15 juncture.

16 Q Okay.

17 A After.

18 Q And you said Mr. Smith was who?

19 A Jay Smith. I believe at that point he was the
20 president of Las Vegas Paving, who is affiliated with APCO. I
21 believe it's a parent company.

22 Q Okay. And you said you had a meeting with him?

23 A Yeah.

24 Q And who set up --

25 A Thereafter.

1 Q -- that meeting?

2 A I set it up because I think there is an email maybe
3 after that that nothing got accomplished in the meeting with
4 Mr. Smith.

5 Q So you set up a meeting with Mr. Smith?

6 A I -- yeah. I actually got -- I think I got notified
7 by Joe that nothing have happened in the meeting in his attempt
8 to get anything done with Mr. Smith. So I called his office
9 and set up a meeting.

10 Q Okay. And what did you discuss at that meeting?

11 A So it was very interesting because he met me at the
12 meeting with Joe, and I believe even Joe was shocked because he
13 acted like he didn't know anything about what's going on, and
14 then --

15 Q What do you mean by "what's going on"?

16 A About the claim even though in the email it looked
17 like he had a meeting with Joe and talked about it. He acted
18 completely like he doesn't know what I'm talking about, and
19 understanding from Joe was that he was the -- Joe was reporting
20 to him. So I would assume he would be involved if it's major
21 money outstanding.

22 Instead of that, he acted like he had nothing to do
23 with it. It was APCO job, and this is not his problem.

24 Is also -- I was shocked when I walked in. Joe
25 actually apologized to me after that meeting because I felt

1 totally disrespected because here I set up a meeting. He knew
2 I was coming, and he looked at me like I fell out of the sky,
3 and it was -- it was very, very unfortunate.

4 Q Okay. Do you recall when that was?

5 A Well, probably shortly thereafter. I did not -- I'm
6 sure I can find on my calendar.

7 Q Okay. That's probably not that important.

8 At any of these lunch meetings with Joe, where you
9 saw an email about, you know, other projects, were there other
10 discussions about how to get you paid?

11 A Yeah. He thought maybe Las Vegas Paving can get me a
12 job.

13 MR. JEFFERIES: Your Honor, I'm going to have another
14 objection. These are offers and compromise and related
15 discussions.

16 THE COURT: Sir, did you ever intend to resolve your
17 claims and abandon them? That's a yes or no.

18 THE WITNESS: No. I expected to get paid.

19 THE COURT: Okay. So the objection is overruled.

20 BY MR. COX:

21 Q So you mentioned seeking help from Las Vegas Paving
22 to get paid --

23 A Joe was thinking.

24 Q Joe.

25 A In fact, he called several times because there were

1 several projects that we had bid, and apparently the call was
2 always too late on our end when we bid the job.

3 Q Okay. Were there any other discussions of methods of
4 payment?

5 A Yeah. So at one of the meetings Joe suggested
6 perhaps, since he didn't have money to pay in the company and
7 he was telling me that it was tough times in 2014, for all of
8 us, he asked if I can come up with some kind of promissory
9 note. So at certain point I actually reached -- I think I
10 reached out to your firm to help me put together promissory
11 note which I sent to him to see if that could work out.

12 Q Okay. Let's go ahead and turn to -- it's identified,
13 and I'll just be -- it's identified as a Joint Exhibit 44, but
14 that was a mistake I believe.

15 THE CLERK: It's proposed.

16 THE COURT: It's still not admitted.

17 UNIDENTIFIED SPEAKER: He's objected too, yeah.

18 MR. COX: Okay.

19 THE COURT: So we're going to -- there's not a
20 stipulation. So let's lay the foundation if we need to.

21 BY MR. COX:

22 Q You were just talking about a promissory note. Can
23 you turn to Joint Exhibit 44. It is likely in one of the
24 bigger binders behind you.

25 MR. DOMINA: It's also -- isn't also a plaintiff's

1 exhibit?

2 THE COURT: It's in Volume III.

3 MR. DOMINA: It's in there twice.

4 MR. COX: Oh, it is?

5 MR. DOMINA: So go to Plaintiff's Exhibit --

6 THE WITNESS: Got it. Right here. Thank you.

7 THE COURT: Okay.

8 MR. DOMINA: 101 is the -- it should have been.

9 Plaintiff's Exhibit 101 is the same thing, but whatever.

10 THE COURT: So do you want to withdraw Joint
11 Exhibit 44 and just use 101?

12 MR. COX: Sure.

13 THE COURT: Is that okay?

14 MR. JEFFERIES: Yes, Your Honor.

15 MR. COX: Sorry, Victor.

16 UNIDENTIFIED SPEAKER: It's cleaner.

17 MR. COX: Can you put the big binder back.

18 THE COURT: 44 is going to be withdrawn.

19 THE WITNESS: Okay.

20 THE COURT: And we're going to go to PX 101.
21 Right?

22 MR. COX: Correct.

23 THE COURT: Just trying to keep you guys straight.

24 MR. COX: Thank you.

25 / / /

1 BY MR. COX:

2 Q So you were just talking about a discussion with
3 Mr. Pelan about a payment plan; correct?

4 A That's correct.

5 Q And a discussion arose about a promissory note;
6 correct?

7 A Yes.

8 Q As you look at PX101, is this the promissory note
9 that was sent to Mr. Pelan?

10 A Yes.

11 MR. COX: I would like to move to admit Plaintiff's
12 Exhibit 101.

13 MR. JEFFERIES: Your Honor, a continuing objection.
14 This was made pursuant to Rule 408 settlement communications.

15 THE COURT: We don't use Rule 408 in state court.

16 So is this a compromise? From the face of the
17 promissory note that's being offered as PX101, is it a
18 compromise, or is it for the full amount?

19 MR. COX: Would you like me to ask?

20 THE COURT: I need -- you guys should know the
21 answer.

22 MR. COX: It's for the full amount, Your Honor.

23 MR. JEFFERIES: Same objection.

24 THE COURT: Does it appear to be for the full amount?

25 MR. JEFFERIES: Same objection. It's proposing terms

1 that are different.

2 THE COURT: Okay. Sir, in looking at PX101, is that
3 a compromise of your claim, or is that your intention to be
4 paid for the full amount?

5 THE WITNESS: Full amount.

6 THE COURT: Okay. The objection is overruled. The
7 document will be admitted.

8 (Plaintiff's Exhibit Number PX101 admitted)

9 MR. COX: Thank you.

10 BY MR. COX:

11 Q So what is the date of this promissory note,
12 Mr. Fuchs?

13 A November 13th, 2014.

14 Q And what is the amount identified that would be paid?

15 A \$138,151.

16 Q And that's the amount of your extended overhead claim
17 that we've been discussing?

18 A Yes, sir.

19 Q And who was to sign this document?

20 A Joe Pelan.

21 Q Did he ever sign this?

22 A No.

23 Q Did he tell you why?

24 A Well, there's a chain of emails goes through why.

25 Q Okay.

1 A So my assistant send them a note on December 10th.

2 Q Okay. Let's go to PX101-6, in the middle of the
3 page.

4 A Yeah.

5 Q Do you recognize that email?

6 A Yeah. That was a month later after we sent the note.

7 It said, Victor, I received your email. I understand your --

8 Q The middle of the page. Can you look at the middle.

9 A Oh, middle of the page. Okay.

10 Please accept this email, a 30-day
11 extension of time for the execution of
12 promissory note attached. In good faith we
13 extending this time per your request so you
14 can come up with arrangements to repay the
15 outstanding amount that is past due.

16 If we don't hear from you within 30
17 days, we expect to either sign and attach
18 agreement without any exception or have a
19 plan of repayment that's acceptable to Helix
20 Electric.

21 Please confirm in writing that you
22 accept these terms by the end of business day
23 tomorrow. If we don't hear from you by the
24 end of business day tomorrow, January 14th,
25 we have no choice but to turn this matter

1 over to our legal to collect the outstanding
2 amount that are due.

3 Q Okay. So this email is dated January 13th, 2015;
4 correct?

5 A Right.

6 Q You say, Please accept this email as a 30-day
7 extension of time for the execution of the promissory note.

8 A I suspect Joe and I have met for breakfast. I kind
9 of remember there was a breakfast.

10 Q Uh-huh.

11 A And during that breakfast, he asked me for 30 days.

12 Q Okay. And the very next sentence says, In good faith
13 we extending this time per your request?

14 A Yep.

15 Q So he requested an extension of time to sign this
16 document?

17 A That's right.

18 Q Do you know why he needed more time to sign it?

19 A I don't think he had the authority by himself to make
20 the decision.

21 Q Okay. Did you have discussions about why he didn't
22 sign it or any --

23 A He said he needed to talk to LVP.

24 Q Okay. The parent company?

25 A Yep.

1 Q Correct. All right. And I may have asked this but I
2 forgot. I'm sorry. But was this promissory note ever signed?

3 A No.

4 Q So as of January 16th, 2015, APCO -- is it your
5 understanding that APCO understood and knew that Helix fully
6 expected to be paid the \$138,000?

7 A Of course.

8 Q Okay.

9 A We've been going back and forth for a year.

10 MR. COX: I have no further questions, Your Honor.

11 THE COURT: Cross-examination.

12 MR. JEFFERIES: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JEFFERIES:

15 Q Mr. Fuchs, how would you -- prior to the project, how
16 would you describe your working relationship with APCO?

17 A Good.

18 Q Prior to the project, and by the project I mean
19 Craig's (sic) Ranch, had you worked on claim issues with APCO?

20 A No. I don't recall.

21 Q Okay. Do you recall the atrium project right before
22 Craig's Ranch?

23 A Yes.

24 THE COURT: Atrium?

25 MR. JEFFERIES: Atrium.

1 THE WITNESS: Yes. That's the -- is that the project
2 for the City of Las Vegas?

3 THE COURT: Rancho and 95?

4 THE WITNESS: Yes.

5 THE COURT: Yeah.

6 THE WITNESS: Okay.

7 THE COURT: Old building, needed to be rehabbed
8 before the city occupied and expanded business development
9 services. Is that what it was, development services, planning
10 and everybody's over there?

11 Sorry. Don't ask me how I know that.

12 MR. DOMINA: I think we know.

13 BY MR. JEFFERIES:

14 Q Mr. Fuchs, isn't it true that Mr. Pelan helped you --
15 has helped you in the past on certain change order or payment
16 issues for additional money prior to the project?

17 A Absolutely not.

18 Q Okay.

19 A He did -- we had a subcontractor, general contractor
20 relationship, and we got paid what was due based on the
21 contract.

22 Q Okay. Are you familiar with subcontractor processes
23 for asserting a pass-through claim from a sub to a public owner
24 in Nevada?

25 A I would have to defer that to my legal counsel.

1 Q Okay.

2 A Yeah.

3 Q But let me ask it differently. You have been
4 involved with asking general contractors to present your change
5 order request or claims for additional compensation up to a
6 public owner; right?

7 A Yeah. We submit it to general contractor. It's up
8 to him to proceed whatever his contractual relationship with
9 the client.

10 Q Okay. Have you reviewed the subcontract for the
11 Craig's Ranch project prior to today?

12 A Probably when I signed it in 2012.

13 Q Okay. Okay. Sir --

14 MR. JEFFERIES: Chris, could you pull up Exhibit 11.
15 BY MR. JEFFERIES:

16 Q And, sir, for your convenience, this may be an
17 exhibit that you may want to look at the hard copy. Exhibit 11
18 is the subcontract. It's probably going to be Volume II if you
19 can see that.

20 Can you go to Exhibit 11.

21 A Yep.

22 Q Page Bates label 454. It's 16 of 18 on the bottom of
23 the document. Is that your signature?

24 A Yes, sir.

25 Q Okay. Did you negotiate any of the terms of this

1 agreement with APCO? Or did Mr. Johnson?

2 A Jointly.

3 Q Okay. And if you would, sir, within the exhibit, go
4 to the Bates label page 474.

5 A 474?

6 Q Yeah.

7 A I'm losing your -- oh, 474. Okay. Right here.
8 Right here. Okay.

9 Q Is this the Helix addendum to the APCO subcontract?

10 A Yeah. It looks like it. Yeah.

11 Q And is -- directing your -- well, is this language
12 that you, Helix, drafted for inclusion in the subcontract?

13 A Yes. It's on our letterhead. Yes.

14 Q Okay. Directing your attention, sir, to Section 6,
15 there's to Section 6's, but if you would read to yourself the
16 one that says, Section 6, Add the following, and starts, in the
17 event. If you'd just read that to yourself.

18 A Okay.

19 Q Okay. During all of your discussions with Mr. Pelan,
20 did you ever send any document requesting that APCO assert a
21 claim against the city on behalf of Helix for the extended
22 general overhead?

23 A That was done prior to my discussion started.

24 Q Okay. So --

25 A The claim requesting amount was sent actually first,

1 in first notice then amended later by our project manager.

2 Q Okay.

3 A And then -- and then we had billed for it as well way
4 prior to my discussions with Mr. Pelan.

5 Q Okay. Sir, would you agree with me that there's a
6 difference between an invoice and a claim?

7 A I'll leave it up to my counsel on that.

8 Q Okay. The documents that you're referring to, are
9 you referring to the invoice where Helix requests payments and
10 bills for the extended overhead; right?

11 A Yeah.

12 Q Okay. But sitting here today, are you aware of the
13 city claim procedure for denied change order requests or
14 billings?

15 A No. All I know is we never got opportunity to -- we
16 were told that city didn't want to look at our claim. We
17 requested meeting. Never got opportunity to meet and present
18 our claim. Furthermore, I also understand that APCO settle a
19 claim, their claim, and got paid from the city for their costs
20 way in advance before I even start requesting getting paid for
21 ours.

22 Q Okay.

23 A And we been told APCO, Joe Pelan or APCO never
24 disclosed to us the fact that they got paid from the city. The
25 only time we found that out is in mediation when all of a

1 sudden they provide --

2 THE COURT: Sir, I don't want to know anything
3 about --

4 THE WITNESS: -- the documents.

5 THE COURT: -- mediation because that is clearly a
6 settlement discussion.

7 THE WITNESS: Okay.

8 MR. JEFFERIES: Your Honor, I'm going to move to
9 strike his answer after the word no.

10 THE COURT: Okay. That's granted.

11 BY MR. JEFFERIES:

12 Q Sir, would you look at Joint Exhibit 3, but still
13 keep the subcontract in front of you, and we can --

14 MR. JEFFERIES: Chris, if you'd put the Exhibit 3 up
15 on the screen.

16 BY MR. JEFFERIES:

17 Q Sir, have you ever seen the claims -- strike that.

18 I'll represent to you, sir, that this is part of the
19 prime contract for the Craig's Ranch project. Okay.

20 A Yeah.

21 Q You would agree that the prime contract is
22 incorporated into the subcontract with APCO; correct?

23 A Yeah.

24 Q Okay. Have you ever reviewed Exhibit 3 before?

25 A I am sure when we were signing the contract it was

1 part of public works, part of the plans and specs, yeah. Is
2 there something particular that you --

3 Q Yes. And my question to you is at any time in your
4 personal involvement with APCO regarding a project, did you
5 ever request that APCO escalate a claim against the city under
6 the city prime contract procedures?

7 A Yes.

8 Q And how did you do that?

9 A We sent a claim. It's up to APCO to proceed with
10 whatever their contract agreements are.

11 Q Okay.

12 A And collect -- and collect on our behalf.

13 Q Okay. I respect -- we've got a record here, sir, of
14 project communications, and they're going to speak for
15 themselves. My question was given your personal involvement,
16 did you ever ask APCO to escalate a claim against the city
17 under the procedures --

18 A Yes.

19 Q -- depicted in Exhibit 3?

20 A Because I have relationship with Mr. Pelan, I felt a
21 good construction relationship, when the claim came in, I
22 called him and told him there's a claim coming and how you
23 intend to do -- proceed with it, and he said submit it.

24 Q Okay.

25 A And we did.

1 Q And you got word that the city was not going to pay
2 the billing for the extended overhead; right?

3 A Yeah. And -- and not. We got -- I got a call that
4 says city won't accept it, and we requested a meeting to
5 represent us.

6 Q Okay. Would you agree that once you got an
7 indication, you, Helix, that the city was not going to pay the
8 extended overhead that Helix had an obligation to request that
9 APCO escalate it as a claim against the city?

10 A And we did.

11 Q You would agree it's your responsibility; right?

12 A I need to defer to my counsel. I don't know.

13 Q We spent some time going through all of your
14 communications, I won't say all, significant communications in
15 Plaintiff's Exhibits 101 and 102. Anywhere in those
16 communications and your emails did you ever indicate or request
17 that APCO escalate a claim against the city?

18 A Are you talking about me personally?

19 Q Yes, sir.

20 A I run a very large company, and the only time I get
21 involved is when things are not getting involved. I'm sure
22 there were my team communicating with Mr. Pelan on that behalf.

23 Q I've respect you've got a project team, sir. My
24 question simply was did you ever in any of these communications
25 request that APCO escalate a claim against the city?

1 A I'm not project manager on the job.

2 Q Is the answer no?

3 A I wasn't -- no.

4 Q Okay. Isn't it true, sir, that in your discussions
5 with Mr. Pelan he told you that Helix could not support costs
6 of \$138,000 for extended overhead?

7 A Absolutely false.

8 Q Okay. Would you --

9 A In fact, in fact --

10 THE COURT: Wait. He's explaining.

11 Sir, if you would explain, please.

12 THE WITNESS: In fact, he agreed. That's why he
13 asked me to prepare a note. That's why -- he felt bad. I'm
14 the one who was trying to accommodate him because he said he
15 had no cash to pay me.

16 MR. JEFFERIES: Okay.

17 THE WITNESS: I mean, we went in for a year in emails
18 where nowhere in that email he ever told me that the claim
19 isn't due.

20 BY MR. JEFFERIES:

21 Q Okay. Would you agree, sir, that as part of your
22 claim, Helix would only be entitled to recover documented costs
23 that were related to and as a result of the delay?

24 A I would agree that Helix would recover a fair,
25 amicable amount of money, but that money had been discussed and

1 agreed. As in my understanding, we agreed on this. We were
2 just figuring out how I can accommodate Mr. Pelan of getting
3 paid.

4 Q Okay. A different question. If your claim is going
5 to be considered by somebody, be it APCO, the Court, wouldn't
6 you agree, sir, that Helix is only entitled to recover
7 documented actual costs that resulted from the delay?

8 A Is that how APCO recovered their costs from the city?

9 THE COURT: Sir, you don't get to ask him questions.
10 If you could answer, please.

11 THE WITNESS: I'm not -- I'm not claims expert. We
12 put together a cost based on our understanding what the cost
13 was, and that's what we submitted.

14 MR. JEFFERIES: Your Honor, can I have the question
15 reread and reposed --

16 THE COURT: No. We do not reread questions.

17 MR. JEFFERIES: Okay.

18 THE COURT: We have a recorder. If you could please
19 ask your question again.

20 MR. JEFFERIES: I will.

21 BY MR. JEFFERIES:

22 Q Mr. Fuchs, wouldn't you agree that to the extent
23 anybody is going to consider the Helix claim for extended
24 overhead that at most Helix would be entitled to documented
25 costs that result from the delay?

1 A I take exception to at most, and I would agree that
2 when we submitted the claim a year and a half before or back in
3 early 2013 APCO should have sat down with Helix and
4 walk-through items and go through them. They did not. They
5 didn't even respond to it. And the whole year and a half or
6 year and three months my communication with Joe, there was
7 never an issue of outstanding amount. In fact, he asked me to
8 come up with promissory note to help him out.

9 MR. JEFFERIES: Your Honor, I'd move to strike as
10 nonresponsive.

11 THE COURT: Denied.

12 Next.

13 BY MR. JEFFERIES:

14 Q Have you reviewed the document supporting the request
15 for extended overhead?

16 A Generally.

17 Q Okay. Would you agree that to the extent Helix is
18 requesting extended overhead costs that those costs should be
19 supported by the Helix job costs?

20 A It's hard to answer my -- it's hard for me to answer
21 the question when Mr. Pelan and I had agreement, an amount a
22 year prior to that. We had a -- we had an agreement in all the
23 emails.

24 MR. JEFFERIES: Your Honor, I move to strike as
25 nonresponsive.

1 THE COURT: Denied.

2 BY MR. JEFFERIES:

3 Q When Helix negotiated -- strike that.

4 Did you instruct Helix personnel to negotiate the
5 check that APCO tendered for final payment?

6 A I actually negotiated with Mr. Pelan.

7 Q Did you actually instruct Helix personnel to deposit
8 and cash the check that was tendered as final payment to Helix
9 from APCO?

10 A It was not final payment because otherwise we had a
11 clear exception for the amount claimed that we agreed on.

12 Q Okay. Where is that exception?

13 A In the lien release.

14 Q Okay. Were you involved in the generation of the
15 lien release that you're referencing?

16 A Yeah. Joe needed to get paid from the city. He
17 couldn't get paid without our lien release. So he came back to
18 me and said I understand the claim, and we'll work through the
19 claim, but we need to get you retention.

20 Q Okay.

21 A So I said I cannot give up my rights on -- on the
22 claim that we agreed on, and -- but if you accept exception, we
23 will gladly take the check.

24 Q Okay. Sir, would you look at Exhibit 39.

25 MR. JEFFERIES: Chris, if you can pull it up.

1 BY MR. JEFFERIES:

2 Q Is this the release you're referring to?

3 A Yes.

4 Q As far as the reservation of rights?

5 A That's right.

6 Q Okay. And isn't it true, sir, that this was tendered
7 to APCO after the check was negotiated?

8 A Absolutely not.

9 Q Okay.

10 A I would -- we would never deposit the check until --
11 until we had this kind of release.

12 Q Okay. You would not cash the check unless you had
13 reached agreement with APCO on the reservation; right?

14 A Yep.

15 MR. JEFFERIES: All right. Nothing further.

16 THE COURT: Redirect.

17 MR. COX: No redirect, Your Honor.

18 THE COURT: Thank you, sir. We appreciate your time.
19 Have a very nice afternoon.

20 Next witness.

21 THE WITNESS: Thank you.

22 MR. DOMINA: Thank you, Your Honor. Helix calls Bob
23 Johnson.

24 THE CLERK: Thank you.

25 **ROBERT JOHNSON**

1 [having been called as a witness and being first duly sworn,
2 testified as follows:]

3 THE CLERK: Thank you. Please be seated, and please
4 state and spell your name for the record.

5 THE WITNESS: Robert Johnson. R-o-b-e-r-t,
6 J-o-h-n-s-o-n.

7 THE CLERK: Thank you.

8 THE COURT: Sir, there's a pitcher -- a water pitcher
9 next to you. There are a bunch of exhibit binders behind you,
10 and there are M&Ms in the dispensers behind you.

11 THE WITNESS: I just wonder why nobody's gone for
12 those M&Ms yet.

13 THE COURT: Well, the lawyers know they're not
14 allowed to touch them. They're only for witnesses. So that's
15 why nobody goes for them. So --

16 THE WITNESS: I might have to. Thank you.

17 THE COURT: And if you run out of water, let the
18 marshal know. He'll refill it for us.

19 THE WITNESS: Appreciate it.

20 THE COURT: You may proceed.

21 MR. DOMINA: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. DOMINA:

24 Q Bob, what is your position at Helix?

25 A Senior Vice President.

1 Q And how long have you been at Helix?

2 A Just over 18 years.

3 Q And what different positions have you had -- held
4 during those 18 years?

5 A Project manager, vice president, senior vice
6 president.

7 Q And in your current capacity as senior vice
8 president, how long have you been in that position?

9 A It's been approximately 10 years.

10 Q So during the time that this project, the Craig Ranch
11 project was taking place, you were also the senior vice
12 president at that time?

13 A Yes.

14 Q Can you tell me from a high level what was your
15 general involvement in this project.

16 A The project was in my department that does major
17 projects, larger construction, predominantly public works but
18 private work also. So my involvement is project managers
19 report to me. Superintendents indirectly report to me through
20 their project managers. I have a higher level view of the
21 project, sitting with project managers monthly to discuss the
22 project, the status of it, visiting the project as often as I
23 could which wasn't very often, to see the status of it, talk to
24 the superintendent, how it's proceeding. I'd be involved in
25 the billing process, the collection process.

1 Q And is there a particular aspect of the billing
2 process that you would be involved in on the project?

3 A Only from the standpoint of reviewing the billings
4 monthly, signing them, basically trying to anticipate if the
5 billings were significant enough to cover the costs being
6 incurred.

7 Q Did you sign all -- and billings I assume we're
8 talking about pay applications?

9 A Correct.

10 Q Did you sign all pay applications that were generated
11 by Helix to APCO?

12 A I believe I did.

13 Q Okay. And what about conditional waivers and
14 releases? Are you -- do you have any oversight over those?

15 A I have oversight that I sign those as they're
16 generated per billing.

17 Q Okay. Let's take you to the first exhibit that we're
18 going to review here.

19 MR. DOMINA: It's JX24, Chris. Let's start with
20 page 2, please.

21 BY MR. DOMINA:

22 Q Bob, if you could take a look at the document that's
23 before you. Is this a document that you're familiar with?

24 A Yeah, it appears to be a Helix Electric invoice. It
25 is difficult to read.

1 THE WITNESS: Thanks, Chris, for blowing it up.

2 BY MR. DOMINA:

3 Q Can you read it okay now?

4 A Yes.

5 Q By the way, were you able to get your reading
6 glasses?

7 A I'm wearing them.

8 Q Okay.

9 A It's still foggy on the screen though.

10 Q On the screen. Okay. What's the date of this pay
11 application?

12 A October 31st, 2013.

13 Q Okay. And the actual -- that's the through period;
14 correct, through the end of the month?

15 A Oh, I apologize. Up above. October I believe it's
16 the 18th, 2013.

17 Q Okay. Do you understand this to be the final pay
18 application for retention that was submitted to Helix by APCO?

19 A [No response.]

20 Q By looking at it can you tell.

21 A Yeah, it appears to be retention billing.

22 Q Okay. And what's the amount of the retention that's
23 being sought?

24 A 105,677.01.

25 MR. DOMINA: All right. If you would, let's turn to

1 page 5 of that document, Chris, Exhibit 24.

2 BY MR. DOMINA:

3 Q Do you recognize this document?

4 A It's a conditional waiver release.

5 Q You've been in the industry, construction industry
6 for how long?

7 A Too long. Over 30 years.

8 Q Okay. Pretty familiar with conditional waivers and
9 releases?

10 A Yes.

11 Q What is your understanding of what this document is
12 and how it applies to a billing statement.

13 A It's for progress billing. So it's a conditional
14 waiver upon payment for the final in this case.

15 Q The retention; correct?

16 A Correct.

17 Q Now, if we look at the document, what's the date of
18 the conditional waiver at the bottom left there?

19 A October 18th, 2013.

20 Q Okay.

21 MR. DOMINA: And then, Chris, go back to the main
22 body here.

23 BY MR. DOMINA:

24 Q The payment amount that's being requested is that
25 retention amount that we noted in the prior invoice of the

1 first page of this, \$105,677. And then if you look at the very
2 last line, it says amount of disputed claims, and then there's
3 a zero in there. Do you know -- well, when you signed this
4 document, did you know that there was a zero in that field?

5 A I did.

6 Q Okay. And what was the purpose? Why would you have
7 signed the document knowing that there was a zero in the field
8 that said disputed claims?

9 A There was discussions in our company with APCO that
10 in order to get us paid retention that amount would have to be
11 zero, but that we wouldn't be forfeiting our claim. If we
12 wanted to get paid that money, that would be the only way we
13 could do it. So we agreed outside of this to proceed with the
14 understanding our claim goes forward --

15 MR. JEFFERIES: Your Honor, I'm going to object.
16 This is hearsay, and we don't have any declarants even
17 identified.

18 THE COURT: Overruled. APCO would be a party
19 opponent.

20 Okay. Keep going.

21 BY MR. DOMINA:

22 Q When you submitted -- when this document was
23 submitted to APCO, was it Helix intention to waive its claim
24 for the extended overhead costs?

25 A No.

1 Q I'd like to go ahead and turn -- did Helix have an
2 understanding as to what APCO believed, whether -- whether APCO
3 believed that Helix was waiving its claim to the extent of
4 overhead costs?

5 MR. JEFFERIES: Object. Foundation.

6 THE COURT: Sustained.

7 Can you rephrase your question?

8 MR. DOMINA: Sure. I can do that, Your Honor.

9 BY MR. DOMINA:

10 Q Did you have any conversations at or around this time
11 with APCO where it led you to believe that they understood that
12 Helix was waiving its claim by submitting this document?

13 A No.

14 MR. DOMINA: Okay. Let's go to Exhibit 25, please,
15 Chris, Page 2.

16 BY MR. DOMINA:

17 Q So, Bob, the last -- the conditional waiver that we
18 looked at, that was dated October 18th. This is a document
19 dated October 31st, 2013. Have you seen this before?

20 A Yes.

21 Q And what do you recognize this document to be?

22 A It's a letter to Joe Pelan. I believe it was from
23 Kurk Williams. Cut off the screen who it was from. Kurk
24 Williams.

25 And it's addressing an invoice, 16113M001, and Kurt's

1 notifying that after additional review of our extended overhead
2 costs through the dates of January 13th, 2013, to August
3 30th, 2013, that we found that we had calculated extended
4 overhead not accurately and that it went to 111,847 from
5 102,400.

6 Q Okay. So this is a letter from Helix to APCO two
7 weeks after, approximately two weeks after submitting the
8 conditional waiver that showed that the disputed amount was
9 zero, and this letter now indicates that Helix intends to
10 pursue its claim. Is that your understanding?

11 A Correct.

12 Q And is that consistent with your understanding of why
13 that conditional waiver was signed at zero?

14 A Yes.

15 Q It would be taken care of outside of the retention
16 process?

17 A Yes.

18 Q Let's go to Exhibit 27, please. This was a document
19 that was actually just discussed during Mr. Fuchs's testimony.
20 It's an email dated January 28th, 2014, and it's from Joe
21 Pelan. You're copied on this. Do you recall receiving this
22 document or this email?

23 A Yes.

24 Q And again we talked about the meeting that Mr. Pelan
25 was trying to set up with Randy Duvall (phonetic) of the City

1 of North Las Vegas, but it was specifically to discuss the
2 remaining change-order issues. As of January 28th, 2014, were
3 you aware of any pending change-order issues on this project?

4 A The only pending change-order issue would be for them
5 to issue a change order for our claim for general conditions.

6 Q Okay. So is it your understanding that the only
7 purpose for that meeting and the only pending change orders to
8 be discussed was the claim of the extended general conditions?

9 A Correct.

10 Q Let's go to Exhibit 29, please.

11 Now, this is a little bit later. This is April
12 16th, 2014. I believe we saw this email as well. It's an
13 email from, Mr. Pelan to Kurk Williams. Have you seen this
14 email? You're not actually copied on the top part, but have
15 you in your review of the project and at the time did you ever
16 see this email?

17 A It looks familiar.

18 Q Okay. And Mr. Pelan says,

19 Kurk, Helix is the only firm holding up
20 the release of retention, just so you know, I
21 can't sign the final release with a pending
22 claim. I will talk to Victor tomorrow.

23 So it sounds like Kurk had reached out to him
24 regarding retention, and Mr. Pelan is responding by saying he
25 can't sign the final release without a pending claim. Do you

1 have an understanding as to what Mr. Pelan was describing with
2 respect to this comment of a pending claim?

3 A Our claim for general conditions.

4 Q And he's not talking about retention there; is he?
5 The pending claim is not retention?

6 A No. That's not a claim --

7 Q And how do you know that?

8 A -- that's --

9 Q How can you tell that?

10 A -- that's --

11 Pardon?

12 Q I spoke over you. How is it that you're certain, as
13 you sit here today, that he's not talking about the pending
14 claim as your request for the retention that was left on the
15 job?

16 A Because we're being communicated to you that we're
17 the only firm holding up the release of retention, and that's
18 due to he can't sign the final release because of our claim.

19 Q Perfect. Yeah. Exactly. That's -- thank you.

20 All right. Let's go to Exhibit 32. This is a
21 letter. We saw this letter also during Mr. Fuchs's
22 deposition -- or his testimony. I'm sorry. It's dated
23 September 26, 2014, and in this letter, what's going on in this
24 letter? Just summary. You don't have to read it, but just
25 summarize. You were here. You saw what it is.

1 A It's Victor giving him a formal demand of final
2 payment for our claim and for our retention.

3 Q So again this is a communication from Helix to APCO
4 subsequent to submitting that conditional waiver back in
5 October of 2013 where Helix has made it very clear that they
6 intend to pursue the extended general conditions. Would you
7 agree with that?

8 A I agree.

9 Q All right. Let's go ahead and move on to Exhibit 35,
10 please. Page 1 for now. So I'd like to take your attention to
11 the bottom part of this email string, and it's an email from
12 Mary Jo Allen. Did you understand who Mary Jo Allen was?

13 A Not specifically. I believe she was a project
14 assistant of some type that handled billings and different
15 things on the project.

16 Q At APCO?

17 A At APCO, yes.

18 Q Okay. So this is an email from her to Eddie Bennett,
19 and I think there was testimony yesterday from Mr. Williams.
20 He indicated that Eddie Bennett was a former employee of Helix
21 who handled all of the billings and whatnot,
22 administrative-type matters on projects. Is that your
23 understanding?

24 A Eddie did that, yes.

25 Q So this email is from Mary Jo to Eddie, and it

1 says -- well, why don't you read that for me if you would.

2 A Attached is a copy of your check and release for the
3 Craig Ranch project. Please bring in the signed release in
4 exchange for your check. Our office is open beginning --

5 Q You can stop there. That's -- sorry. That was
6 important part.

7 So in this email, number one, as of October 29th,
8 2014, at 8:27 in the morning, does Helix have the actual check
9 in its possession for the retention?

10 A No. I believe all we have is a copy.

11 Q So you have a copy of the check. And then what also
12 is being -- what else is described as being attached to this
13 email?

14 A A release.

15 Q Okay. A release for you to sign?

16 A Correct.

17 Q All right. And then she says, Please bring the
18 signed release in in exchange for your check; correct?

19 A Correct.

20 Q All right. So let's go to the next page, which is on
21 page 2, Exhibit 35, 2. Do you recognize this document?

22 A Yeah. It looks like a release.

23 Q Okay.

24 A Or final payment.

25 Q All right. So this is also entitled --

1 MR. DOMINA: Chris, I need the top of it real quick.

2 BY MR. DOMINA:

3 Q This is also entitled conditional waiver and release
4 upon final payment; correct?

5 A Correct.

6 Q This is the -- looks almost entirely or exactly like
7 the last document that we looked at that was dated October
8 18th, 2013?

9 A Yes. The one that I signed?

10 Q The one that you actually signed. Correct. So what
11 is your understanding of what this document is now that's being
12 sent a year later on October 29th, 2014?

13 A It's being sent in as a conditional waiver release
14 for our retention.

15 Q Okay. And this one, similar to the last one, has a
16 zero dollar amount in it; correct?

17 A It does.

18 Q Now, did you sign, did you or anyone at Helix sign
19 this version of the conditional waiver and release upon final
20 payment?

21 A Not that I'm aware of.

22 Q Okay. Have you seen this signed document in evidence
23 at all during the trial?

24 A No.

25 Q So let's now go to Exhibit 36. And I want to go back

1 to the third page. We're going to have to go to the start of
2 that email string. You've already read this email, but I want
3 to confirm with you that this is -- the bottom half of that
4 email is the very same email that we saw just a moment ago in
5 the last exhibit where Mary Jo was sending Eddie a copy of the
6 conditional waiver and release and the check for Helix to come
7 pick up; correct?

8 A Correct.

9 Q Now, Eddie, it appears, that on Wednesday, October
10 29th, the same day, but at 9:00 o'clock forwards this email
11 to Kurk Williams, and what does she say there?

12 A It's not on my screen.

13 Q Oh, sorry. What is Eddie's response?

14 A It's not on my screen.

15 MR. DOMINA: Chris.

16 THE WITNESS: I've only got a fraction.

17 MR. DOMINA: Okay. He's grabbing it. Sometimes
18 there's a lag in grabbing it.

19 This is a new version of the software. So it's got
20 some -- a little bit of things to work out I think, no?

21 (No audible response)

22 MR. DOMINA: Okay. All right.

23 BY MR. DOMINA:

24 Q All right. What is Eddie's response to the email
25 that -- Eddie's response to Kurk based on the email that Mary

1 Jo sent that earlier in the morning.

2 A She's asking the question, What happened to the
3 claim?

4 Q Okay. And then if we could go to page 2. So we're
5 going to go back, you know, in succession to the email string,
6 the bottom of page 2 of Exhibit 36. This is an email from Kurk
7 to Victor and to you. You're copied on it. And what does Kurk
8 say to you?

9 A He said, Did we settle on the extended overhead
10 claim? It was a question.

11 Q Now, why do you think there was a red flag, or why do
12 you think Eddie Bennett and Kurk are sending emails wondering
13 whether or not this claim had been extended -- excuse me, had
14 been resolved or settled?

15 A Because we still have an ongoing claim for 138,000,
16 and the release isn't addressing that.

17 Q Okay. They release showed a zero dollar amount;
18 correct?

19 A Correct.

20 Q Okay. And then, if you look up above that, it's now
21 9:14 a.m. Victor sends an email to Joe Pelan, and what does --
22 what is Victor's response?

23 A All in bold, This isn't going to work.

24 Q With several exclamation points after it?

25 A More than several. Five.

1 Q Okay. Were you involved in --
2 Five. Okay.

3 Were you involved in this transaction and what was
4 going on here?

5 A [No response.]

6 Q As far as you were in the office, were you aware of
7 it, that something was happening here?

8 A Oh, yes. I'm aware this is going on. Eddie is
9 communicating with me. Kurk is --

10 Q Okay. What was your understanding of, "This isn't
11 going to work," Victor's response?

12 A That we're not going to release our right to a lien.
13 That something else has to be done.

14 Q Okay. And if we look at the very email right above
15 it, 9:16, this is two minutes after Victor sent his email, Joe
16 Pelan responds, and what's his response to Victor?

17 A He says, Victor, make change for me to approve.
18 Thanks.

19 Q Okay. So then let's go to page 1 of the email
20 string. And the bottom email, I'm not really sure. Victor
21 kind of forwards it to Kurk and to Eddie to kind of let them
22 know what's going on, or it appears to be that way. Would you
23 agree?

24 A Correct.

25 Q It says F --

1 A He's saying FYA, for your --

2 Q Analysis maybe?

3 A Analysis, yeah.

4 MR. FUCHS: No. Action.

5 MR. DOMINA: Action. Oh, I like that. FYA. I'm
6 going to start using that. For your action.

7 MR. FUCHS: I'm sorry, but --

8 THE COURT: It's okay. I thought it was for your
9 action too.

10 MR. FUCHS: Thank you. We think --

11 THE COURT: Because if I gave it to my staff and I
12 said FYA, I hope they'd do something.

13 MR. DOMINA: I've never seen it before. I thought it
14 was --

15 MR. FUCHS: I like the way you think.

16 MR. DOMINA: I thought he mistyped FYI, but I like
17 it.

18 BY MR. DOMINA:

19 Q Okay. So the top email is from Eddie, and it's
20 addressed to Joe Pelan and to Mary Jo, both of APCO, and this
21 is dated October 29th, 10:14. So we're talking within an
22 hour of all this occurring, and what is Eddie's response? What
23 does she say?

24 A It says, good morning. Please see attached release
25 for your approval, and will the check be ready for pickup

1 today --

2 Q Okay. So --

3 A -- happy Halloween.

4 Q Okay. So -- oh, sorry. I always cut you off when
5 you get to the nonimportant stuff.

6 A It's okay.

7 Q Halloween. Okay. So what are the two things that,
8 as you read this, there are two things in here that stick out
9 to you the most in what Eddie is telling you?

10 Do you have a check? Does APCO have a check in its
11 hand yet?

12 A Does APCO have a check in its hand?

13 Q For not, yeah. That's my fault. Does Helix have the
14 retention check in its hand as of the time that this is sent?

15 A No. She's asking for if it's ready for pickup and
16 that we're sending back a release for their approval. So we've
17 modified the lease. Yes.

18 Q You modify -- because that was the invitation from
19 Joe Pelan; correct?

20 A Correct.

21 Q Make the change. Let me know what you want to do.

22 So then let's go to page 4 of Exhibit 36. What do
23 you recognize this document to be?

24 A An unconditional waiver and release upon final
25 payment.

1 Q Okay. What's the difference, to your understanding,
2 between an unconditional waiver and release upon final payment
3 and a conditional waiver and release upon final payment?

4 A Well, an unconditional is the final release that
5 would waive any right going forward.

6 Q Okay. Was this document actually executed by Helix
7 before it was sent to APCO via Eddie Bennett's email that we
8 looked at moments ago?

9 A Not that I'm aware of, and this one isn't -- and her
10 email was addressing attached release for approval because we
11 had modified the amount on there to reflect the 138,000 claim
12 and the retention of 105-.

13 Q Okay. So this -- that amount, payment amount of
14 243,830, Victor testified that that's broken down into two
15 components: 105,000 approximately for the retention, and
16 138,000 and change for the claim. Is that your understanding?

17 A Correct.

18 Q Okay. So is it your understanding that this was
19 Helix's proposal, that this was Helix's revisions that they
20 were proposing that APCO accept for the conditional waiver that
21 they had seen previously?

22 A It is.

23 Q Okay. Now, were there any other discussions after
24 that took place? Did APCO accept this form of the
25 unconditional waiver and release upon final payment and pay

1 Helix the \$243,000 that was being sought?

2 MR. JEFFERIES: Foundation.

3 THE COURT: Overruled.

4 You can answer.

5 THE WITNESS: I'm sorry.

6 MR. DOMINA: Yeah, that's okay.

7 THE WITNESS: Ask again, please.

8 BY MR. DOMINA:

9 Q Do you know whether APCO accepted this form that
10 Helix was proposing with the changes and paid Helix the 243,830
11 being sought?

12 A They didn't.

13 Q Okay. So were there any additional -- did the deal
14 just kind of fall apart, or were there any additional
15 discussions to figure out what form would be appropriate and
16 how the parties could move forward?

17 A There was. And 138,000 couldn't be paid. They were
18 having issues like Victor testified earlier. So the 138- was
19 broken out and put into the disputed claims amount. 105- was
20 left on the payment amount.

21 Q Okay. And did those discussions take place on
22 October 29th as well?

23 A I believe so.

24 Q Okay. Let's go to Exhibit 41. I want to take you to
25 page 2 first.

1 MR. DOMINA: Chris, please.

2 BY MR. DOMINA:

3 Q Now, what do you recognize this document to be?

4 A An unconditional waiver and release.

5 THE WITNESS: And if you could blow it up, Chris.

6 Perfect.

7 Go ahead.

8 BY MR. DOMINA:

9 Q Unconditional waiver and release upon final payment.

10 Now, is that your signature at the bottom?

11 A It is.

12 Q Okay. So is this the document that Helix eventually
13 provided to APCO in order to get a copy or a check for
14 retention?

15 A Yes.

16 Q Okay. And here we now have the amount 105, which is
17 the retention, and then the bottom line, what does it say
18 there? The bottom line underneath the payment amount.

19 A Amount of disputed claims, 138,151, parentheses,
20 attached pages are made part of this release.

21 Q Okay. What is the date of this document, and when
22 did you date that?

23 A October 29th.

24 Q 2014; correct?

25 A 2014.

1 Q That's the same day that all of these discussions
2 were going on; correct?

3 A Correct.

4 Q Okay. So is it Helix's understanding that as of
5 October 29th, 2014, APCO had acknowledged or agreed that Helix
6 would submit an unconditional waiver and release upon final
7 payment in the form that you've now attached here that we're
8 looking at here as Exhibit 41, page 2, in exchange for the
9 retention check?

10 MR. JEFFERIES: Objection.

11 THE WITNESS: -- correct.

12 MR. JEFFERIES: Foundation.

13 THE COURT: Overruled.

14 BY MR. DOMINA:

15 Q And I didn't get your answer. You were cut off.

16 A Correct.

17 Q Thank you. So now let's go to page -- the first page
18 of that, the email. So this is an email from Eddie dated
19 October 30th, 2014. It's at 12:32 p.m., and it's to a host
20 of people, but you're copied. You're one of the recipients.
21 And she says, Hello, please see attached release.

22 Now, this email was sent on the 30th, but the release
23 that we're looking at was dated the 29th. Do you know why
24 there might have been a period of time when the email went out
25 a day after the unconditional waiver and release was signed?

1 A I don't recall.

2 Q Okay. But you're confident that the discussions that
3 you testified to between APCO and Helix took place on the 29th
4 and that you drafted this document on the 29th of October?

5 A Correct.

6 Q Okay. And let's go to page 2 of Exhibit 42.

7 MR. DOMINA: Yeah, that's fine. Exhibit 2 -- or
8 page 2 of Exhibit 42.

9 BY MR. DOMINA:

10 Q Okay. Now, when we were looking at the unconditional
11 waiver that you had actually signed, there was -- and you
12 quoted it, the parenthetical there, the parentheses. It said,
13 attached pages are made part of this release. Are we looking
14 at, as Exhibit 42, page 2, part of the attached pages that were
15 referenced in the unconditional waiver and release?

16 A Yes.

17 Q Okay. Did you put this together, this document?

18 A I did.

19 Q And what was the purpose of putting this letter
20 together?

21 A To make sure everybody's understanding that we still
22 reserve our rights for payment related to the 138,151 for our
23 extended general conditions.

24 Q Were you -- was this an effort to memorialize what
25 had already been agreed between the parties the prior day?

1 A Correct.

2 Q This wasn't the first time that you were telling APCO
3 that Helix continued to maintain its claim for the general
4 conditions?

5 A No. That's been done quite a few times.

6 Q Okay. Let's turn to page 3 of that same exhibit.

7 Do you recognize this document?

8 THE WITNESS: Can you focus it up, Chris.

9 Yeah. It's a miscellaneous invoice.

10 BY MR. DOMINA:

11 Q Miscellaneous?

12 A Yeah. Miscellaneous invoice, sixteen, eleven,
13 thirteen, M, oh, oh, one, R, two, up above.

14 Q Okay. Instead of looking at -- oh, okay. And maybe
15 I am just -- miscellaneous. What does the invoice pertain to?

16 A Extended overhead.

17 Q Okay. And the invoice amount is the same amount as
18 the claim?

19 A Correct.

20 Q Was this invoice attached to the letter?

21 A Correct.

22 Q Okay. And both documents were attached and submitted
23 to APCO in exchange for the retention check?

24 A Correct.

25 Q All right. Okay. Thank you. Let's go to

1 Exhibit 49.

2 We're going to switch gears a little bit.

3 MR. DOMINA: We're not close to the lunch hour, are
4 we, Your Honor?

5 THE COURT: Twenty minutes.

6 MR. DOMINA: Okay. I think you --

7 THE COURT: How's that for close?

8 MR. DOMINA: Okay. I'll finish with my direct I
9 think.

10 THE COURT: Okay.

11 MR. DOMINA: Chris, if you could pull up Exhibit 49,
12 please, Joint Exhibit 49.

13 BY MR. DOMINA:

14 Q Bob, if you can take a minute to review this and tell
15 me if you're familiar with what this -- what we're looking at
16 here.

17 A It's an email from me to Joe Pelan.

18 Q Okay. Do you recall why you sent this email to
19 Mr. Pelan?

20 A Yeah. I believe in the chain he's asking a question
21 or making a statement about Rick Clement was no longer on the
22 job after the end of January, and I'm responding to it.

23 Q Okay. In fact, if we go to page 2 of that same
24 Exhibit 49, the bottom half of the email --

25 MR. DOMINA: If you can blow that up, Chris.

1 BY MR. DOMINA:

2 Q -- is this the -- is this the email that you're
3 speaking of where Joe was asking about Rick Clement?

4 A Yes.

5 Q Okay. And he says, Victor, after receiving Helix's
6 summons last week to provide information to our counsel, I have
7 discovered a few items that I'm sure you're not aware of, and
8 then he goes in and identifies some of the issues that he's
9 concerned about with respect to Helix's claim, and what is, if
10 you look at the top of the page, there's an email from -- well,
11 it kind of bleeds onto the first page there. There's an email
12 from Victor to Joe, and he says -- what is Victor's response
13 there? Can you see it? Sorry.

14 A It says, Bob is looking into your concerns, and we
15 will get back to you.

16 Q Okay. So did you actually receive the email, even
17 though you're not copied on the bottom email from Joe Pelan,
18 did you receive a copy of the email and review it?

19 A I did.

20 Q Okay. And your email on page 49, Exhibit 49, is your
21 response to Mr. Pelan's email and his concerns?

22 A Correct.

23 Q Okay. If you would, walk me through what you
24 understood Mr. Pelan's concerns to be based on his email and
25 your explanations of it.

1 A Could you blow that up Chris. It would help to see
2 it. So I was basically responding back that is correct. Rick
3 Clement was no longer superintendent on the project.

4 Q Well, let me stop you, Bob.

5 A Yeah.

6 Q I don't want to go through and read verbatim his
7 email.

8 A Okay.

9 Q I just want you to identify first what you knew his
10 concerns were, and then let's talk about how you addressed them
11 in your email.

12 A Rick Clement's date on the job and a forklift billing
13 in March.

14 Q Okay. So Mr. Pelan was questioning why Helix had
15 included as a claim, as a component of its claim the
16 superintendent charge. Is that your understanding?

17 A Ask me that again.

18 Q Maybe we should just go to the email. You said that
19 Rick Clement. Why -- why was Rick Clement -- what was your
20 understanding of why APCO was concerned about Rick Clement's
21 time? What was the issue that you believe they raised?

22 A I believe the issue was is that he believes our
23 supervision is no longer on the project as of that date.

24 Q Okay. Perfect. And then what about the issue with
25 respect to the forklift? You said something about a forklift.

1 A Yeah. He was inquiring about the fact that the
2 forklift couldn't have been there in March for light poles
3 because light poles were delivered February. I was concurring
4 that if that truly happened that way, then you would be
5 correct. The forklift shouldn't be in March, but that had
6 probably more to do with the billing date of the invoice. It
7 still was an invoice applicable to the project. It just should
8 have been assigned to March.

9 Q Okay. So let's go back to the superintendent issue.
10 We've heard testimony that Rick Clement was the original
11 project superintendent and pretty much filled that capacity
12 until the original completion date which should have been at or
13 around early January 2013. Is that -- is that accurate to you?

14 A Correct.

15 Q So when -- can you tell me just generally is -- does
16 Helix always require that a superintendent be on any given
17 projects that are ongoing?

18 A We do.

19 Q Okay. And why is that?

20 A Several reasons. Number one is that we can't have
21 personnel on site that are unsupervised. We have a liability
22 to make sure people are properly supervised from a safety
23 standpoint, and the only person in our company that has met
24 those qualifications are superintendents that carry the OSHA 30
25 card, have been through our in-house training and come to

1 regular safety meetings and updates and keep all their
2 certifications current. So we have to have one on site to make
3 sure the project is safe.

4 We have to have somebody on site that understands our
5 project, our scope of work, how to build the project correctly
6 that can respond to the general contractor's questions, owner's
7 questions, do all the coordination with inspectors, related
8 subcontractors and other entities.

9 Q Okay. So when -- at what point was it or why was it
10 decided that Mr. Clement would no longer serve as the project
11 superintendent?

12 A At that time I believe we had a need for him on
13 another project, and we had two supers there. Rai Prietzel was
14 clearly capable of taking over. So we took advantage of moving
15 Rick to another project.

16 Q Okay. So during that first year when Rick was the
17 designated superintendent for Helix, what was Rai Prietzel's
18 capacity? What was his position?

19 A He was still on site as a superintendent, but he was
20 acting as a second. So he was working more directly with the
21 crew at that time. If, for some reason, Rick was off the job,
22 he would be the acting super.

23 Q Okay. Was Helix billing for two superintendents on
24 the project?

25 A No.

1 Q Okay. During that first year, Rick Clement was the
2 superintendent, and then at some point, and it was about mid to
3 late January when Mr. Clement went to the other project?

4 A Correct.

5 Q Okay. And then what did -- what did you decide to do
6 with Mr. Prietzel? How did he -- what changed from his --

7 A He was immediately elevated to superintendent for the
8 project.

9 Q Okay. And had Mr. Prietzel served as a
10 superintendent for Helix on other projects prior to that
11 project?

12 A Yes.

13 Q Okay. Was it his first time serving in that
14 capacity?

15 A No. As he testified, he's been with us 20 some
16 years, and multiple projects.

17 Q Now, when the decision was made to elevate him to the
18 superintendent, would his hourly rate be increased?

19 A It would be increased to the prevailing wage for a
20 foreman.

21 Q For a foreman. Okay. Let's go ahead and take a look
22 at that.

23 MR. DOMINA: I want to turn to page 4 of Exhibit 49,
24 please, Chris.

25 And, in fact, before I give you page 4, I'm going to

1 go to -- let's go to page 7. 7 and 8 we're going to look at,
2 and you'll have to flip them, which you already did. Thank
3 you.

4 Yeah. You're on 7. That's right.

5 BY MR. DOMINA:

6 Q All right. Okay, Bob, once that gets there, do you
7 recognize the document that's before you?

8 A It's a certified payroll report.

9 Q Okay. And can you tell by looking at this for what
10 week ending this refers to?

11 A 1/27/2013.

12 Q And this is payroll -- now, are the payroll numbers
13 or the payroll reports numbered consecutively as each week goes
14 by?

15 A They are. And this one is 53.

16 Q So this is 53, week ending January 27th, 2013. So
17 you would count back five days from that; is that correct, to
18 give you the full date range?

19 A I believe that's correct. Yes.

20 Q Okay. Let's turn to the second -- the second page of
21 that report, which is page 8, and this is -- we'll have to try
22 to get it as big as we can. I know it's not easy to see. Do
23 you see the first individual that's listed on that payroll
24 record?

25 A It's a little cut off, but I see Richard, and --

1 yeah, there it is -- Richard Clement.

2 Q Richard Clement. That's Rick?

3 A Correct.

4 Q Okay. And is there a way, by looking at his entry
5 there, is there a way to determine whether he was identified as
6 the project superintendent?

7 A By the designation EL59 under trade.

8 Q Okay. And that's over under what column should we be
9 looking at?

10 A Under trade.

11 Q Okay. Under trade. EL59, and then there's a pay
12 rate there. Was Mr. Clement a salary employee or a wage --
13 prevailing wage employee?

14 A On this project, he's a salary employee.

15 Q Okay. And what was his hourly rate as that salary
16 employee?

17 A 60.81.

18 Q Okay. And does that include fringe benefits that a
19 nonsalaried employee would receive?

20 A Yes.

21 Q Okay. And we'll get to -- I'll have you explain the
22 difference, but so at this time, week ending I think we said
23 January 27th, it appears based on the payroll record that
24 Rick Clement was still the superintendent on the project. Is
25 that your understanding?

1 A Correct.

2 Q Okay. And if we look at that same entry, if we look
3 at the same entry, it says Rainer Prietzel. Is Rainer --
4 Rainer is Rai; correct?

5 A Correct.

6 Q And you see that down there at the bottom. His --
7 what is his designation show to you?

8 A It's shown as an EL10, and is also shown on the right
9 as an electrical inside wireman.

10 Q Okay. So to the left, under his name it says inside
11 wireman. What's the difference between an inside wireman and
12 what we saw for Rick Clement, which was INS wire foreman?

13 A The difference is Rai is there being paid as a
14 journeyman electrician, and Rick was being paid as a
15 superintendent.

16 Q Okay. So when Rick's there, Rai is paid. If we go
17 to the column that says pay rate. Rai's pay is what at this
18 time during that week?

19 A 45.13 an hour.

20 Q Is that his -- is that the true hourly rate, or are
21 there fringe benefits that are being captured somewhere else?

22 A For the hourly people, there's Davis-Bacon pension
23 that's being set aside for their retirement.

24 Q Okay. So what do you -- is there a way -- looking at
25 this, is there a way to determine what his, if you were to add

1 the Davis-Bacon wages and the fringe benefits, is there a way
2 to know what his true hourly rate would be?

3 A Yes.

4 Q Okay. And what should I be looking at to get that?

5 A I'm not too sure I see everything on the screen.

6 Q Do you need to scroll to the right?

7 A Somewhere on there should show the total with
8 benefits in there. I don't have the titles up above. I can't
9 see what is what.

10 Q Yeah. Well, I'll come back. I'll clean that up here
11 in a minute here. But in any event, because we're going to
12 look at another certified payroll record, are you --

13 MR. DOMINA: Did he get it?

14 MR. FUCHS: It's on the side.

15 BY MR. DOMINA:

16 Q Can you see it over there or not?

17 MR. FUCHS: To the right now.

18 BY MR. DOMINA:

19 Q It's just you're just not seeing it. That's all. He
20 just didn't have it set up for you. Can you see it now?

21 A You got it all up now.

22 Q Okay. Can you tell based on the entry here what
23 hourly rate Mr. Prietzel was being paid while he was just a
24 journeyman and not a superintendent? Approximately.

25 A I believe you've got Rick Clement up there. You've

1 got the 60.81 and the EL59. Did he split the screen? Am I --

2 (Pause in the proceedings.)

3 MR. DOMINA: All right. We're going to -- I don't
4 know if we're having technical difficulties or what.

5 THE COURT: Is this a good place to take our lunch
6 break?

7 MR. DOMINA: Yeah. It would be.

8 THE COURT: Yeah. That would be great. All right.
9 Can I see you guys at --

10 Do we have a conference call at 1:00, guys?

11 THE CLERK: Yes.

12 THE COURT: So I'll see you guys at 1:15. I also
13 have to take a break somewhere around 2:00 o'clock, usually for
14 less than a half-hour, to go handle my portion of mental health
15 court.

16 MR. DOMINA: No problem. Thank you, Your Honor.

17 THE COURT: Okay. Have a nice lunch.

18 (Proceedings recessed at 11:52 a.m., until 1:08 p.m.)

19 THE COURT: Sir, come on back up.

20 Sir, you're still under oath.

21 THE WITNESS: Yes.

22 THE COURT: You may proceed, Mr. Domina.

23 I see we still have the same exhibit, the certified
24 payroll back up.

25 MR. DOMINA: We do. In fact, we decided that we

1 would abandon the technology because it isn't quite jibing with
2 the screens, and we're going to go to, for purposes of a
3 landscape document, we're going to go to the binders.

4 THE COURT: Okay.

5 BY MR. DOMINA:

6 Q Unless you can see it there now, Bob.

7 A It's much better now.

8 Q Okay.

9 A It's got the whole page on it. I hope they all come
10 up this way.

11 Q Yeah. That's my fear is that the very next one I
12 show you might -- so why don't you just grab the binder just in
13 case.

14 A Sure.

15 Q It's going to be the one that says PX102 -- or 201,
16 202, something like that.

17 A 201, 213.

18 Q Oh, you're right. I apologize. I misspoke.

19 THE COURT: Counsel, did you have an objection?

20 MR. JEFFERIES: No.

21 BY MR. DOMINA:

22 Q Exhibit 49.

23 MR. DOMINA: 49, what volume is that in, gentlemen?
24 Someone?

25 THE WITNESS: It should be this one here, Volume III.

1 MR. DOMINA: Okay. We haven't been in the books. So
2 were not quite familiar with the volumes yet.

3 BY MR. DOMINA:

4 Q So this will be Exhibit 49, and I'd like you to go to
5 page -- page 7 and 8.

6 A Okay. On page 7 --

7 Q Okay. And page 7, you testified earlier that this is
8 the report for the week ending of January 27th, 2013; is
9 that --

10 A That's correct.

11 Q -- a true statement?

12 Okay. Let's go to 8, and here I'd like to focus in
13 on Rai's entry at the very bottom. It says, over by his hourly
14 wage, it says, EL10. Does that signify anything to you?

15 A Yeah. That he's out there as a journeyman
16 electrician.

17 Q Okay. So that's his wage rate as a journeyman
18 electrician?

19 A Correct.

20 Q And then if we go to page 5 of Exhibit -- well,
21 page 4 of Exhibit 49, can you tell me what this is.

22 A Certified Payroll Reporting Form Number 54.

23 Q 54, which is week ending February 3rd, 2013;
24 correct?

25 A Correct.

1 Q The following week. And if we swing to page 5, the
2 very next page in that packet, do you see Rick Clement on the
3 entry here at all?

4 A No.

5 Q Okay. And why is that?

6 A Because he's no longer on the job.

7 Q So he's no longer the superintendent on the project?

8 A Correct.

9 Q Okay. Now, Rai Prietzel, what can I look at at this
10 entry to determine that he is now identified as the
11 superintendent? That Helix has now identified him as the
12 superintendent on the project?

13 A Well, if you look below him, you'll see electric,
14 dash, ins [phonetic] wireman foreman, hour. That's standing
15 for foreman, and the wage rate has gone up from the 45 to 49,
16 and he also has a designation EL99, which is a foreman code.

17 Q Okay. So his code went from EL10 that we looked at
18 before, and his rate at the time the week before was \$45.13 an
19 hour, and now that he is serving as the superintendent, am I --
20 is it correct to say that he's now getting \$49.66 an hour?

21 A Correct.

22 Q Okay. And then the EL99 reflects a foreman
23 superintendent designation?

24 A It's a designation in our system that he's a working
25 superintendent.

1 Q What's the difference between a working
2 superintendent and a salaried superintendent?

3 A The difference is is just how they're paid. We're
4 allowed to have one salary superintendent on a prevailing wage
5 project. That's a superintendent that's on a salary basis, and
6 we can have one. If we have additional, they have to be
7 working foreman or working superintendents, and those show up
8 as an EL99 so that the certified payroll knows we're not paying
9 more than one person's salary, and that's all you're allowed.

10 Q Okay. And what about the -- is there a difference in
11 hourly rate between a salaried superintendent and a working
12 superintendent?

13 A There can be.

14 Q Okay. Can you explain why there would be a
15 difference in that rate.

16 A Longevity, experience, what the individual has
17 negotiated for a private rate versus what the prevailing rate
18 might be. It could be different.

19 Q Well, let's go back to Exhibit -- page 8 of
20 Exhibit 49, the one that showed Rick Clement on there as the
21 superintendent.

22 A Okay.

23 Q So his rate, according to this payroll record, shows
24 \$60.81 an hour. Is that your understanding?

25 A Correct.

1 Q And then Rai, who at the time was not a
2 superintendent but was being paid as a journeyman, his rate
3 shows as \$45.13 an hour. Is that -- am I to believe that
4 there's a \$15 difference between the superintendent and the
5 journeyman that Prietzel served as at the time?

6 A There's not.

7 Q Okay. Can you explain why -- can you explain if
8 there's additional wages that are paid to Mr. Prietzel as a
9 journeyman.

10 A Not necessarily additional wages, but I'll explain
11 how they're additional benefits. If you go to Rich Clement up
12 above, that is the salary superintendent EL59.

13 Q Uh-huh.

14 A He has below the line for the numbers you see "other
15 deductions." Those are deductions that come off of the 60.81.
16 Over to the right you see benefits. Those are added to it. So
17 he has an additional benefit of 48. So his price goes up
18 basically about another buck an hour for benefits, in this case
19 was health insurance benefit.

20 Q And we're looking at Rick Clement?

21 A Rick Clement.

22 Q Okay.

23 A Now, if you go to Rai Prietzel, you notice he has
24 very few other deductions other than health, and then he has
25 benefits of health. The reason for the deduction health would

1 be basically based on he's paying for his family medical where
2 the health is paying for the employee to the right.

3 In addition, he's getting Davis-Bacon pension of 345,
4 and an NV training fund that he contributes to. So if you take
5 the total of those, it's roughly about another \$10 an hour. So
6 he'd be roughly 55 something an hour total pay.

7 Q Okay. So then when he was elevated as a
8 superintendent, it would go up approximately \$4 an hour from
9 that as well?

10 A Correct.

11 Q Okay. So if you were to take apples to apples, Rick
12 Clement, when he was the superintendent, was 60 -- 60 bucks,
13 \$61 an hour approximately, and Rai Prietzel was around 60 bucks
14 an hour?

15 A Approximately 60.

16 Q Okay. So not a big difference between --

17 A No.

18 Q -- when you compare apples to apples?

19 Okay. Let's go ahead and go to Exhibit 8, please.

20 Bob, do you recognize the document before you?

21 A Yes. It's a labor material payment bond.

22 Q Now, do you know if Helix has asserted a claim
23 against the payment bond in this case?

24 A We have.

25 Q Okay. And I want to turn your attention to the

1 second to the last paragraph, and it's the last sentence in it
2 that starts off, This bond. Do you see that?

3 A I do.

4 Q Can you read that sentence for me.

5 A This bond shall remain in effect until two years
6 after the date of final acceptance of the work by the city
7 council.

8 Q Okay. And this bond, do you know why there was a
9 payment bond in place on this project?

10 A For subcontractors, vendors that didn't get paid,
11 they had a means and methods to pursue that payment.

12 Q And is it your understanding that all public works
13 projects require a payment bond such as this?

14 A They do.

15 Q Okay. If you could now, let's turn to Exhibit 30,
16 the first page. Yesterday you were here in the courtroom when
17 Joemel Llamado from the City of North Las Vegas testified. Do
18 you recall his testimony about the document that you're looking
19 at now?

20 A I remember him giving testimony on it.

21 Q Okay.

22 A The council meeting notes.

23 Q Well, what do you understand this document to be?

24 A It's basically the regular city council meeting
25 minutes, but I have to apologize. I don't remember the

1 specifics of the minutes.

2 Q Okay. And I'll take you through it, but the date on
3 it is July 2nd, 2014; correct?

4 A Correct.

5 Q So I want to go to page 7 of that document. And do
6 you see the highlighted portion up there?

7 A I do.

8 Q It says approval of the final acceptance of the City
9 of North Las Vegas, Craig Ranch Regional Park, Phase 2, bid
10 number dah, dah, dah, dah, dah. Is it your understanding that
11 on July 2nd, 2014, the City of North Las Vegas accepted the
12 project as completed?

13 A Yes.

14 Q Okay. And then the bond date on it or the -- not the
15 bond date, excuse me, the language of the bond said that it
16 would be effective for two years after the date that the city
17 accepted the project. Is that your understanding?

18 A Yes.

19 Q And if we go to --

20 MR. DOMINA: Your Honor, I'd like to show the
21 pleadings, one of the pleadings in the case, just the
22 complaint.

23 THE COURT: Sure.

24 MR. DOMINA: Chris, can you pull that up.

25 This is just the Complaint. I just want -- I'm doing

1 it for the purpose of -- go to the second page. It's a little
2 cleaner.

3 And go ahead and blow up the caption.

4 BY MR. DOMINA:

5 Q Do you recognize this as the Complaint that's been
6 filed in this action?

7 A I do.

8 Q And do you see as one of the named defendants Safeco
9 Insurance Company of America?

10 A Yes.

11 Q And they were -- were they the surety that issued the
12 bond, the payment bond that we looked at previously?

13 A Yes.

14 Q Okay. And if you look at the top right corner,
15 what's the filing date there?

16 A It's 1/12/2016.

17 Q Okay. And is it your understanding that this
18 Complaint was filed against Safeco two years -- within two
19 years from the date that the City of North Las Vegas
20 approved --

21 A Yes, within about --

22 Q -- the project?

23 A -- a year and a half.

24 Q Just one follow-up question. Were you -- did -- were
25 you aware of any actuators missing on this project?

1 A No.

2 Q And why is that?

3 A I believe the actuator discussion came up yesterday
4 with Kurk. He was using a reference to another project that he
5 did with his employer where they had some actuator issue. It
6 wasn't related to this case.

7 Q Okay. Okay. So it wasn't about this case. Okay.

8 MR. DOMINA: I don't have any further questions.

9 THE COURT: Cross.

10 MR. JEFFERIES: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. JEFFERIES:

13 Q I'm going to try to save some time, sir, and
14 potentially not have to pull up the documents, but I certainly
15 will if you need to.

16 Do you recall the pay applications that have been --
17 the Helix pay applications that have been marked as exhibits?

18 A I do.

19 Q Okay. And do you recall Mr. Williams and I had a
20 discussion about the \$108,000 line item for general conditions?

21 A Correct. I remember.

22 Q And in effect your claim here is for extended costs
23 related to that line item, agreed?

24 A No.

25 Q No. Why do you disagree?

1 A Because our extended general conditions is based on
2 all those items included, and they're not all included in that
3 line item that was broke off for the schedule of values.

4 Q Do you know what cost codes or items were included in
5 the \$108,000 that you were billing for monthly?

6 A Not in detail, but not unlike Kurk, I would suggest
7 there's some of it in mobilization. Some of it's in
8 submittals. It would be in those direct phase codes starting
9 with the 15,000 and into the 16- for the supervision, so forth.
10 So it's throughout the contract or the schedule of values.

11 Q Okay. Do you recall yesterday Mr. Williams
12 confirming that there was some kind of budgetary internal
13 analysis performed on an ongoing basis to determine
14 profitability of the project?

15 A Yeah. He was referring to a monthly process of
16 trying to assess cost to date versus where we're at and
17 subjective projections.

18 Q Okay.

19 A Where we're going.

20 Q And have you -- has Helix produced any of that type
21 of documentation in this litigation?

22 A Not that I'm aware of.

23 Q Okay. Have you seen it in any of the exhibits
24 presented to the Court?

25 A Not so far, no.

1 Q Okay. And similarly Helix, I believe it was
2 Mr. Prietzel, confirmed that Helix maintained documentation
3 regarding equipment on and off the project, and I'm
4 summarizing. Do you recall that?

5 A I do.

6 Q Okay. Has Helix produced any of that documentation
7 in discovery?

8 A Not to my knowledge.

9 Q Okay. Have you seen any of that documentation marked
10 as exhibits in these proceedings?

11 A No, I haven't yet.

12 Q We have two -- I won't -- I will say versions. We've
13 received two different productions of the job costs in this
14 case, Exhibit 50 and 51. My question to you is have you
15 personally gone through and determined whether the amounts that
16 Helix is requesting for extended overheads are tied out to and
17 supported by the figures in the job cost report?

18 A Just in general as it pertains to the amount of hours
19 that we've requested and the cost for those hours, yes. In
20 terms of [indiscernible], there was a forklift on the job,
21 those things, yes.

22 Q Okay. Isn't it true, sir, that the claim that Helix
23 is presenting in this case is not tied to actual costs?

24 A No. I would disagree that it's tied to actual costs.
25 It's based on people working on average four hours a day for

1 the PM and the super, and that was explained by them how they
2 work and how they do their direct tasks as it relates to those
3 titles. I think it's more than based on it.

4 Q Okay. Is your claim -- Helix's claim for extended
5 overhead tied to actual loss for those items?

6 A Yes.

7 MR. JEFFERIES: Your Honor, may I request that he be
8 shown his deposition. We have the original.

9 THE COURT: You would like us to publish the
10 deposition?

11 MR. JEFFERIES: Yes, Your Honor.

12 THE COURT: Sure. Sir, we're going to give you your
13 original deposition. It's currently in a very nice sealed
14 envelope. In Nevada we use an archaic procedure where we open
15 the sealed envelope that has the only original deposition in
16 it.

17 THE WITNESS: So it's the secret envelope.

18 THE COURT: It is the secret envelope. You remember
19 Johnny Carson and a hermetically sealed envelope, yeah, it's a
20 lot like that.

21 THE WITNESS: Cool.

22 THE COURT: So in a minute --

23 THE WITNESS: Are you going to bless it like that?

24 THE COURT: No, I'm not.

25 So in a minute it's going to have a stamp put on it

1 that's going to say published, and then it will be used in
2 these proceedings.

3 When we hand it to you, counsel will refer you to a
4 page. You may refer before or after to give yourself context
5 if that helps you.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: Okay. Hopefully this is the right
8 version.

9 MR. JEFFERIES: Thank you, Your Honor. There's
10 only --

11 THE COURT: Did you like the explanation, Counsel?
12 It's a stall tactic while she opens the envelope.

13 BY MR. JEFFERIES:

14 Q Sir, directing your attention to page 44,
15 specifically line 9.

16 A Okay.

17 Q Are you with me?

18 A I am with you.

19 Q I asked you the following question: So your claim is
20 not tied to your actual costs or your actual budget or an
21 actual loss?

22 Your answer at that time was, Not to my knowledge.

23 Did I read that correctly?

24 A You read it correctly.

25 Q Have you done any analysis that's been presented

1 anywhere in these exhibits to depict how the delay actually
2 caused an increase in Helix's cost?

3 A I have not done a personal analysis, no.

4 Q Okay. Sir, did you participate in -- you can put
5 that aside for the moment. Thank you.

6 Did you participate in negotiating the subcontract
7 with APCO?

8 A I did.

9 Q And we can put it in front of you if you need to. Do
10 you recall the Helix addendum that's reflected in Exhibit 11?

11 A Well, I recall it, but I couldn't quote it verbatim.

12 MR. JEFFERIES: Chris, could you pull up Exhibit 11
13 and go to page Bates label 474.

14 THE WITNESS: Exhibit number again?

15 MR. JEFFERIES: 11.

16 THE WITNESS: 11. Okay. I've got it.

17 BY MR. JEFFERIES:

18 Q Directing your attention to the addition that was
19 added to Section 6. Would you agree with me, sir, that payment
20 of Helix's extended overhead costs was a -- by the city was a
21 precondition to Helix's entitlement to payment for same from
22 APCO?

23 A I apologize. Where should I be looking?

24 Q Bates label 474 in the lower right-hand corner.

25 A 474. Okay. I'm there.

1 Q And specifically I'm asking you the question second
2 paragraph from the bottom. It talks about Section 6. That's
3 Helix's language; right?

4 A Correct.

5 Q Okay. And would you agree with me that per your
6 language that the city's payment of the extended overhead
7 invoice was a precondition to Helix collecting that amount from
8 APCO?

9 A I'm going to really apologize. I got twisted up on
10 what you said. Did you --

11 THE COURT: It's okay. Read it to yourself, sir.

12 THE WITNESS: Okay.

13 THE COURT: And then you can answer. We're not
14 trying to pressure you.

15 THE WITNESS: Okay. I can understand it better now.
16 Would you mind restating it.

17 MR. JEFFERIES: Sure.

18 BY MR. JEFFERIES:

19 Q Would you agree, sir, that per Helix's own language
20 that the city's payment of the extended overhead claim by Helix
21 was a precondition to Helix's entitlement to payment for same
22 from APCO?

23 A Yes. It reads that way.

24 Q And would you also agree with me that that clause
25 contemplates actual costs and damages sustained as it -- as a

1 result of the delay?

2 A I think you added a word as actual costs, but it
3 says, Representing the costs and damages sustained, I would
4 agree.

5 Q Sir, are you familiar with the prime contract claim
6 procedure as reflected in Exhibit 3?

7 A Very limited, as I heard about it discussed in the
8 courtroom here.

9 Q Okay. To your knowledge, did you ever request that
10 APCO appeal, prosecute a claim against the city on behalf of
11 Helix for this extended overhead?

12 A Yes.

13 Q You personally did?

14 A I personally know we did.

15 Q No, let me make sure my record is clear.

16 A Okay.

17 Q Did you personally communicate to APCO that Helix
18 wanted to appeal, prosecute a claim for its extended overhead
19 against the city?

20 A I think we did by indirectly notifying them because
21 they have the contractual relationship with the city as the
22 prime contractor. The minute we put them on notice on the
23 claim I would think, in my opinion, that they have an
24 obligation to properly represent that claim to the city. So,
25 yes, in that terms, yes.

1 Q Okay. Are you aware of anything other than the one
2 page summary sheets and the bills for the extended overhead
3 that were submitted to APCO -- that wasn't a very good
4 question.

5 A Yeah, you lost me.

6 Q Yeah. Let me rephrase. Other than the
7 one-page-summary sheets that gave certain categories of costs
8 on a monthly basis, are you aware of any other claim notice,
9 claim request other than those billings?

10 A No. I believe it's the billings.

11 Q The billings. Okay.

12 (Pause in the proceedings.)

13 THE COURT: Please don't be alarmed if people come in
14 and it looks like they're looking for us. Our mental health
15 court people who usually come into this courtroom, and so we
16 have a sign that's directing them to another courtroom, but
17 they don't all understand. So we'll try and direct them out if
18 any of them should inadvertently come in instead of going to
19 the courtroom we have them in today.

20 And then I'll break at 2:00 o'clock to go over there
21 and get my part done.

22 MR. JEFFERIES: Okay. If I could have one minute
23 here.

24 BY MR. JEFFERIES:

25 Q Okay. Sir, could you put Exhibit 20 in front of you,

1 and I would like to do this for both of our sanity off of the
2 hard copy. Exhibit 20, if you would go to page 2.

3 A Okay. I'm there.

4 MR. JEFFERIES: May I approach, Your Honor?

5 THE COURT: You may.

6 MR. JEFFERIES: I would like to have a demonstrative
7 marked.

8 THE COURT: Is this D3?

9 (Pause in the proceedings.)

10 MR. JEFFERIES: Would you like a copy, Your Honor?

11 THE COURT: Yes, please. That's not big enough for
12 me to see on the screen.

13 (Pause in the proceedings.)

14 BY MR. JEFFERIES:

15 Q Mr. Johnson, what I'd like to do, we could probably
16 leave page 2 of Exhibit 20 on the screen, and then what I'd
17 like you to do is grab Exhibit 51.

18 A Oh, that's a biggie. Got it.

19 Q Yes, sir. Do you recognize Exhibit 51?

20 A Hold on. That's the cover page. Let me get past
21 that. Craig's Ranch Regional Park Phase 3 is what the cover
22 says. So, okay.

23 Q Okay. This is the job cost report, and what I'd like
24 to do is spend a few minutes and look at your claim amount and
25 compare certain items to the job cost report, specifically in

1 your claim, page 2 of Exhibit 20 for --

2 A Hold on. My Exhibit 51 is not a cost report.

3 Q It should be starting about -- this was the partial
4 job cost that was produced starting about page 11. Do you see
5 that?

6 A No, not in 51 I don't, and 51 starts out with the
7 project manager cost by month.

8 MR. JEFFERIES: May I approach, Your Honor?

9 THE COURT: You may.

10 THE WITNESS: Oh. Thank you. Way back there.

11 BY MR. JEFFERIES:

12 Q Well, sir, I'll represent to you this was part of the
13 job -- partial job costs that we used at your deposition.

14 A Okay.

15 Q So looking at the screen, I have page 2 of Exhibit 20
16 up there, and for February Helix is claiming \$5200 for the
17 project manager; correct?

18 A Correct.

19 Q And if you would, sir, go to the Bates label 31 dash
20 32 within Exhibit 51.

21 (Pause in the proceedings.)

22 THE WITNESS: Do I have a way of seeing the Bates
23 here? I don't see it.

24 BY MR. JEFFERIES:

25 Q It's in the lower right-hand corner.

1 A The lower right-hand corner is --

2 MR. JEFFERIES: May I approach?

3 THE COURT: You may.

4 MR. JEFFERIES: Just under the job cost report.

5 THE WITNESS: Show me. Is it that?

6 MR. JEFFERIES: Yes.

7 THE WITNESS: Oh, okay.

8 MR. DOMINA: Can you tell us the number again, Randy?

9 MR. JEFFERIES: 31.

10 THE WITNESS: 31. Okay.

11 BY MR. JEFFERIES:

12 Q Can you --

13 A Okay.

14 Q Page 31 to 32 within Exhibit 51, do you see this as
15 being the job cost for the project manager for February 2013?

16 A Yes.

17 Q Okay. And how much does Mr. Williams's job cost
18 report reflect for project manager time in terms of dollars for
19 February 2013?

20 A 2,930.51.

21 Q Okay. Let's go to March on Exhibit 20, page 2.
22 Helix is requesting \$5200. Do you see that?

23 A That's the one on the screen; right?

24 Q Yes, sir.

25 A Okay.

1 MR. JEFFERIES: And all of this is depicted, Your
2 Honor, on D3.

3 BY MR. JEFFERIES:

4 Q If you would, sir, within Exhibit 51, go to Bates
5 label 042.

6 A Okay.

7 Q And how much time and cost does the job cost report
8 for a project manager reflect in March 2013?

9 A Seven, oh, five and fifty-four cents.

10 Q Okay. While we're there, does your job cost reflect
11 any cost in February or March for a project engineer for which
12 Helix is requesting \$901.90?

13 A You said for March and for February?

14 Q Well, yes. Let's do February and March.

15 A Yes. I see some in March.

16 Q What page are you on?

17 A It would be the Bates 040.

18 Q On page 040, where do you see project engineer?

19 A The very first line item entry, Mark Smith or trade
20 code is OFPA.

21 Q Okay. And what is the total for March for an
22 engineer as reflected in the job cost report?

23 A I would have to do the math and go to every place
24 that he shows up and add them. He shows up three places on
25 this page. He could be on more. We'd have to go do the math.

1 Q Okay. Let's look at superintendent for February and
2 March.

3 A What Bates?

4 Q That's my question to you.

5 A Okay.

6 Q In your claim, you're requesting \$5600 for both
7 February and March each. Does the job cost reflect that cost?

8 A It does.

9 Q Where is that?

10 A All over. You can take and start with site light at
11 15-500. You'll see Rai Prietzel under it. You can go to
12 15-502 see Rai Prietzel under it. He's spread out through all
13 these codes. It goes on and on.

14 Q Okay. The job cost does not distinguish between
15 Mr. Prietzel's role as performing contract work or supervising
16 himself, does it?

17 A No.

18 Q Okay. Let's go to April for the project manager. On
19 page 2 of Exhibit 20, Helix is requesting \$5200. If you go to
20 Bates label 059 within Exhibit 51, how much does the job cost
21 show for Mr. Williams as project manager?

22 A Under the Code 88105, project management shows 651.28
23 I believe.

24 Q Okay. Same question for May for project manager?

25 A Can we get a quick Bates.

1 Q Bates 66 to 67. Helix is requesting \$6500 for
2 project manager in May of 2013, and what does the job cost
3 reflect?

4 A 651.28.

5 Q Okay. Is there a way, sir, for you to look at the
6 complete job cost report that was submitted as Exhibit 50 and
7 tell me what the total project manager costs are to Helix for
8 this project?

9 A I can't without looking. I'll see if I can.

10 Q Please do.

11 A So yes, I can.

12 Q What Bates?

13 A Would you like me to read it?

14 Q Please tell me what Bates page you're on.

15 A 0656.

16 Q Okay. What is the -- let me make sure my record is
17 clear. What is Helix's total project manager cost for the two
18 years of construction on this project?

19 A For this code 36,711.50?

20 Q Okay. Are you able to tell me from the complete job
21 cost report the costs that Helix incurred for a project
22 engineer on the project?

23 A I'm pretty sure I can when I find the code.

24 (Pause in the proceedings.)

25 / / /

1 BY MR. JEFFERIES:

2 Q Sir, I think I've got a cheat sheet if I could help
3 you.

4 A That would be handy.

5 Q Would you go to Helix Bates 631.

6 A 631.

7 MR. DOMINA: What exhibit is that in now?

8 MR. JEFFERIES: 50.

9 THE WITNESS: Okay. I'm on the page.

10 MR. JEFFERIES: Does that line -- or excuse me, does
11 that cost category represent the total project engineering
12 cost?

13 A It does for that particular phase code but not those
14 that we discussed about earlier that are all over.

15 Q For project engineering?

16 A Correct.

17 Q Okay. So what is -- just give me this total.

18 A Well, for this particular phase code, it's nine -- or
19 pardon me, 16,947.48.

20 Q Okay. And what other cost code would include field
21 engineering or project engineering for Helix other than that
22 line item?

23 A Those codes we went over earlier, the
24 15,300, -500 that Mark Smith is showing up on.

25 Q Okay. So in looking at the job cost, there isn't a

1 summary that would total out to that number that you're
2 claiming for project engineer; correct?

3 A I'm not too sure what that question is. State it
4 again.

5 Q Sure. Are you able to tell me is there another cost
6 that's summarized that would support Helix's request for field
7 or project engineering for the project?

8 A By phase code adding up every time that Mark Smith
9 shows up, adding up to this, yes, I could give you a total.

10 Q Okay. How about superintendent? Does the total job
11 cost reflect the general superintendent cost?

12 A Again, for that particular phase code, but not all
13 superintendent costs because a lot of those are in the direct
14 phase codes.

15 Q Okay. So in looking at the job cost -- well, in
16 fairness to you, go to page 647, Bates label 647 within
17 Exhibit 50.

18 A I'm there.

19 Q And how much does the job cost reflect for general
20 superintendent for the project?

21 A For general superintendent, 3,124.07.

22 Q Okay. And is there any other way to support the
23 actual superintendent costs in terms of the summary of the cost
24 codes other than just labor?

25 A I believe so. Give me a minute to look here.

1 You're on general superintendent code.

2 No. Just as it pertains to the other codes up front
3 where they might have charged time to the direct codes.

4 Q And those charges would be in labor; right?

5 A Oh, correct.

6 Q So my point is there's not a superintendent cost code
7 other than the general superintendent cost code we just talked
8 about; correct?

9 A That appears correct. I looked for it. I didn't see
10 it unless I missed it.

11 MR. JEFFERIES: Okay. Your Honor, I was just going
12 to change direction into the --

13 THE COURT: So would this be a good time for me to
14 break, go do my mental health court stuff and then come back?

15 MR. JEFFERIES: Yes, Your Honor.

16 THE COURT: You guys have a nice break. It's
17 probably about 20 minutes.

18 THE WITNESS: Okay.

19 THE COURT: I have three things I have to do. So --

20 (Proceedings recessed at 1:57 p.m., until 2:19 p.m.)

21 THE COURT: Thank you for your accommodation,
22 Counsel.

23 Sir, you're still under oath.

24 You may continue with your cross-examination.

25 MR. JEFFERIES: Thank you, Your Honor.

1 Chris, could you pull up Exhibit 24.

2 BY MR. JEFFERIES:

3 Q And just for the record, sir, you recognize this as
4 the final billing for retention?

5 THE WITNESS: Could you blow that up, Chris. There.
6 Thanks.

7 BY MR. JEFFERIES:

8 Q And maybe go to the third page of the exhibit. It
9 might help.

10 A Yes.

11 Q Okay. And then the last page of the exhibit, that is
12 the conditional form of release that shows the zero claims
13 remaining; right?

14 A Yes. I see that.

15 Q Okay. And you never discussed this particular
16 release form with anybody at APCO, did you?

17 A Not personally, no.

18 Q Okay. Now, if you would, sir, go to Exhibit 43, and
19 it's a three-page document. I don't know if it would help you
20 to see the hard copy. In fact, why don't you grab that
21 notebook just to me it's a little easier to flip through the
22 pages.

23 A Bates number again.

24 Q It's Exhibit 43.

25 A Oh, 43.

1 Q It's probably Volume II.

2 A I've got it here. It's got a 43 in here.

3 It starts out with a letter October 30th.

4 Q Yes. That --

5 A Same one as that one. Okay. I got it.

6 Q This is your letter to Mr. Pelan dated October 30,
7 and you're transmitting a totally separate form of release than
8 what we looked at in Exhibit 24; correct?

9 A I believe that's correct. Let me just go to it.
10 Yes.

11 Q The Exhibit 24 was a conditional release on final,
12 and what you're transmitting here in Exhibit 43 is an
13 unconditional final with reservation; correct?

14 A Correct.

15 Q And you transmitted this to APCO on October 30, 2014?

16 A Correct.

17 Q And you never discussed this letter or this release
18 with anybody at APCO, did you?

19 A Not that I recall, no.

20 Q Okay. Look at Exhibit 37.

21 A Okay.

22 Q Between -- if you could put your finger there between
23 Exhibit 37 and Exhibit 40, just would you agree with me, sir,
24 that Helix cashed the final payment check and received the
25 funds on October 29, 2014?

1 A I'm just looking at the exhibits to see if I can see
2 the dates on when it was deposited. So just bear with me.

3 Q Certainly.

4 A So it looks like Western Alliance has it posted
5 October 29th.

6 Q And that's your bank; correct?

7 A Yeah. I always know our bank as another name, but I
8 believe it's affiliated.

9 Q Okay. So my record is clear, Helix received the
10 \$105,679, actually received the funds on October 29, 2014;
11 correct?

12 A Correct.

13 Q Okay. Now, if you would, sir, go to Exhibit 42.

14 A Okay.

15 Q Now, would you agree that although --

16 This is the same unconditional waiver that was
17 transmitted to APCO on April 30 in the form of Exhibit 43;
18 correct?

19 A Yes.

20 Q Okay. And although it's dated October 29, 2014, the
21 documents it incorporates were not dated and prepared until
22 October 30; correct?

23 A The document was created October 29th.

24 Q Okay. But look at the attachment.

25 A Are you referring to my letter?

1 Q Yes.

2 A Okay.

3 Q So this release was not transmitted to APCO until
4 after Helix received the funds by cashing the check; correct?

5 A I don't know that.

6 Q Do you have any evidence to suggest that it was sent
7 prior to cashing the check?

8 A No, I don't. Not sitting here.

9 Q Okay. All right. Well, let's look at Exhibit 41.

10 MR. JEFFERIES: Can you blow that up a little bit.

11 BY MR. JEFFERIES:

12 Q In fact, according to Helix's own records, it was not
13 transmitted, it being the revised release, was not transmitted
14 to APCO until October 30, 2014; correct?

15 A If that's the release that's referenced, yes. See
16 attached release, and it looks like the same release.

17 Q Okay. And albeit I was objecting, you were talking
18 about an agreement between Helix and APCO. The fact is you
19 weren't party to any discussions that resulted in any agreement
20 with APCO and Helix regarding this revised release; correct?

21 A Not that I remember.

22 Q Okay. And personally, did Helix ever rescind the
23 conditional separate release that was included in Exhibit 24?

24 MR. DOMINA: Objection, Your Honor. Just vague. He
25 said "personally." Helix never rescinded. I --

1 THE COURT: Can you rephrase your question.

2 MR. JEFFERIES: Yes, I will.

3 BY MR. JEFFERIES:

4 Q Did you ever rescind the conditional release in
5 Exhibit 24?

6 A I think that's a legal question. I think when we
7 gave the unconditional based on the agreement that we are
8 giving the release in order to get retention, then yes, I
9 believe we rescinded.

10 Q Okay. Can you -- do you still have your deposition
11 up there?

12 A I do.

13 Q Directing your attention to page 76, line 12.

14 A Okay.

15 Q Tell me when you're there.

16 Question, At any time prior to your delivery of this
17 letter --

18 And we referenced your letter of October 30; do you
19 see that in the exchange above?

20 A I see it. I'm following you. Number 12 there.

21 Q Okay. At any time prior to your delivery of this
22 letter, the October 30 letter, did you on behalf of Helix ever
23 rescind the conditional waiver that was signed for the
24 retention?

25 Mr. Domina makes an objection. Calls for a legal

1 conclusion.

2 Your answer was, I would never rescind a waiver. So
3 my answer would be no.

4 Did I read that correctly?

5 A You did.

6 Q You said it quickly, and I want to make sure I -- who
7 was the person that you said was the project engineer?

8 A Mark Smith.

9 Q Mark Smith. Okay. Thank you. Any others?

10 A Possibly. I'd have to look and recognize by name. I
11 don't recall. It's been a long time ago.

12 MR. JEFFERIES: That's all I have, Your Honor.

13 THE COURT: Redirect?

14 MR. DOMINA: One minor point. Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. DOMINA:

17 Q Bob, at the time that you had your deposition taken
18 and you were asked about the conditional waiver and asked
19 whether you personally rescinded it, did you understand what
20 the term to rescind, how it was being used?

21 A No, not in the context at that time.

22 Q Why would you have responded to counsel during the
23 deposition to say that you would never rescind a conditional
24 waiver.

25 A Because it sounded to me like I was completely

1 retracting the whole thing as it sits, and that particular
2 document that was not rescinding to my knowledge, nor would I
3 rescind it, but by the issuance of our unconditional and the
4 agreement that was based on, I think the unconditional later
5 rescinded it, but that direct document I would not have
6 rescinded.

7 MR. DOMINA: Okay. I don't have any further
8 questions, Your Honor.

9 THE COURT: Anything else?

10 MR. JEFFERIES: No, Your Honor.

11 THE COURT: Thank you, sir. We appreciate your time.
12 Next witness.

13 THE WITNESS: Do you want these secret docs back?

14 THE COURT: Oh, yeah. I need the secret document
15 back. Okay. Here you go. Here's the depo.

16 THE CLERK: Okay. Do you have D3 up there, sir?

17 THE COURT: Sir, do you have this pretty sheet?

18 THE WITNESS: I do. Do you want it?

19 THE COURT: The clerk does. I'll hand it to her.

20 THE CLERK: Thank you.

21 THE COURT: Did you get D2 back yesterday?

22 THE CLERK: Yes.

23 THE COURT: Okay.

24 Next witness.

25 MR. DOMINA: Your Honor, Helix rests its case in

1 chief.

2 THE COURT: Before I -- before you tell me that, I'm
3 going to have you do the thing I have everybody do. Please
4 come up with whoever you think is appropriate to see Dulce and
5 make sure every document you think is admitted is, in fact,
6 admitted.

7 MR. DOMINA: Okay. Very good.

8 THE COURT: And you're welcome to join him.

9 I was going to ask how far behind we are, but
10 apparently not.

11 UNIDENTIFIED SPEAKER: We're doing well.

12 (Pause in the proceedings.)

13 MR. DOMINA: Okay. So as far as the plaintiff's case
14 goes, I think everything is in that we wanted in.

15 THE COURT: All right.

16 MR. DOMINA: Thank you.

17 THE COURT: So, Mr. Domina, you had a chance to make
18 sure that all the exhibits you hoped were in are, in fact, in
19 evidence?

20 MR. DOMINA: I agree. Yes, Your Honor.

21 THE COURT: Now, what does the plaintiff want to tell
22 me?

23 MR. DOMINA: I'm sorry?

24 THE COURT: Now, you would use those words.

25 MR. DOMINA: Yeah. I got you. Plaintiff rests its

1 case in chief.

2 THE COURT: Thank you.

3 Your next witness.

4 MR. JEFFERIES: Yes, Your Honor. I call Mr. Pelan.

5 THE COURT: Mr. Pelan, if you'd come forward, please.

6 Be sworn.

7 **JOE PELAN**

8 [having been called as a witness and being first duly sworn,
9 testified as follows:]

10 THE CLERK: Thank you. Please be seated. Please
11 state and spell your name for the record.

12 THE WITNESS: Joe Pelan. J-o-e, P-e-l-a-n.

13 THE COURT: Thank you, sir. And you've heard me
14 explain there's water in the pitcher. There are M&Ms in the
15 dispensers, and there's tons of exhibits around you. Hopefully
16 counsel will get you to the right pages.

17 You may proceed.

18 MR. JEFFERIES: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. JEFFERIES:

21 Q Mr. Pelan, can you give the Court some sense of your
22 background in the construction industry.

23 A Well, I'm 62 years old, and I've been doing it since
24 18.

25 Q Okay. Where are you currently employed?

1 A APCO Construction.

2 Q And what's your position with APCO?

3 A General manager.

4 Q Okay. And who do you report to?

5 A That would be Jay Smith and Marc Mendenhall.

6 Q Okay. How long have you been the general manager at
7 APCO?

8 A 2014.

9 Q Let's do it this way. How long have you worked for
10 APCO?

11 A From 2003 to present.

12 Q Okay. And prior to assuming the role of general
13 manager in 2014, what was your position with APCO?

14 A I was the contract manager.

15 Q Okay. Obviously when I -- we're here to talk about
16 the Craig's Ranch project; correct?

17 A Correct.

18 Q And so if I shorthandedly say the project, you'll
19 understand that's what I'm referring to?

20 A Yes.

21 Q Okay. Before I get into the project, can you
22 describe what your personal working relationship has been with
23 Helix prior to the project.

24 A Well, we did a few projects together. I had a good
25 relationship with Mr. Fuchs. We did the atrium project

1 together. I'm trying to remember the other one, but they did
2 the Cannery Hotel Casino for us back in 2002, 2002 that went
3 over into 2003. So I became familiar with their firm back
4 then, but for the most part, everything has been fairly smooth.

5 Q Okay. You mentioned the atrium project. When did
6 you work with Helix on that project in relation to the project?

7 A It seems to me that it was a year or so before.

8 Q Okay.

9 A I did not look at the dates.

10 Q Okay.

11 THE COURT: We're only here for your best
12 recollection.

13 THE WITNESS: We're in trouble.

14 THE COURT: Counsel, can refresh your memory with
15 other items if necessary.

16 BY MR. JEFFERIES:

17 Q Do you recall dealing with Mr. Fuchs on the atrium
18 project regarding claim issues?

19 A Yes.

20 Q Okay. And what were those claim issues?

21 A Well, when we were given the project by the city of
22 Las Vegas, Helix was our electrical contractor; however, the
23 low-voltage package, there was a dispute from the city wherein
24 they said that the low-voltage package should be included in
25 Helix's scope, and obviously there was a disagreement. And so

1 we had several meetings with the city and their staff, and we
2 weren't getting very far, and so I assisted Victor into writing
3 a letter to the city attorney comparing that project to the Mob
4 Museum, which we were currently on as well, and the same
5 specifications wherein we did get a change order for that, and
6 it resolved the issue for Victor.

7 Q Okay. Can you describe for the Court your prior
8 experience, let's just say generally with public construction
9 projects in Las Vegas.

10 A Generally, pretty much as soon as I started with
11 APCO, that's the projects that I was assisting on bidding, and
12 then subsequently overseeing.

13 Q Okay. So pretty much all of your projects -- well,
14 strike that.

15 What percentage would you say APCO's work in Las
16 Vegas relates to public contracts?

17 A Approximately 80 percent.

18 Q Okay. And prior to the project, had you worked with
19 the City of North Las Vegas?

20 A Yes.

21 Q Okay. And approximately how many times?

22 A Just one.

23 Q Okay. Had you worked with Joemel before?

24 A Yes.

25 Q Okay. On that prior project?

1 A Yes. He was actually the northwest corner where we
2 built the maintenance facility and an office facility for their
3 maintenance staff and field folks. And then subsequently we
4 did phase two of the park.

5 Q Okay. As far as the project goes, can you describe
6 the bidding history for the project.

7 A Well, this project was bid twice by the city. The
8 first time was in the summer of 2011, June or July. What they
9 had done on that particular bid is added several alternates in,
10 and when the price was higher than expected, they decided to
11 rebid the project, and they rebid the project I believe in
12 April -- or I'm sorry, October and awarded it in November;
13 however, other than the alternates that they were -- I was told
14 by Joemel that they were having discussions down at City Hall
15 on which ones they could afford and which ones they couldn't,
16 and that's what predicated the rebid. However, in their
17 endeavor to try to get the park open when they originally
18 wanted it, they reduced the time for it to be built. I believe
19 it was 17 months on the first bid and then went down to 12 on
20 the second bid. I relayed my concerns to the city and --

21 Q Well, I'm going to get to that in a minute. Did
22 Helix bid APCO the first go round?

23 A Yes.

24 Q Okay. So the city let the process go to the point of
25 accepting and opening bids; right?

1 A They did.

2 Q Okay. And it was after opening bids that they
3 canceled that solicitation and issued the current one?

4 A That's correct.

5 Q Okay. Do you recall approximately how much Helix's
6 bid was the first go round for that scope of work?

7 A We looked, but we don't have a copy.

8 Q Okay. Was APCO read low on the second bid?

9 A We were.

10 Q Okay. And describe for the Court from and after that
11 point vis-à-vis Helix, describe that process that resulted in a
12 subcontract.

13 A Well, it was a challenge to say the least. We had 40
14 subcontractors on that project, and my conversations with
15 Victor were to the effect that we want to make sure that if --

16 We knew the project was going to go over. The
17 subcontractors knew it was going to go over. We were going to
18 have a hard time preparing a schedule for 12 months, period.
19 So that was pretty much a given.

20 Q Why do you say that?

21 A Because it was going to be tight with the original 17
22 months that they had scheduled because of the dollar amount. I
23 believe it was approximately \$30 million, and we had to tie
24 onto several unknown utilities, and we had to do demolition.
25 We didn't know what we were going to run into there. There

1 were several things that we could see that were going to affect
2 the project.

3 Q How much was the -- your prime contract as awarded
4 the second time, just approximately?

5 A I want to say 30 million.

6 Q Okay. So this is a relatively large project?

7 A It is.

8 Q Okay. All right. You were telling me about your
9 discussions with -- was it Mr. Fuchs that you discussed the
10 award of the subcontract to?

11 A Yes. Actually when we were bidding the project, we
12 had three guys in our office bidding. We had Max, myself and a
13 guy named Randy, and I was -- I was taking care of the steel
14 and the electrical. So I dealt with electrical contractors,
15 and then once we were awarded the project, then Victor and I
16 battled that contract back and forth for about three months.

17 Q Okay. And what did -- in your discussions with
18 Mr. Fuchs, did he acknowledge that the job was likely not going
19 to be completed in 12 months?

20 A He knew --

21 MR. DOMINA: Objection, Your Honor. We're getting
22 into parol evidence rule.

23 THE COURT: Sustained.

24 Can you rephrase your question.

25 MR. JEFFERIES: Sure.

1 BY MR. JEFFERIES:

2 Q As far as your negotiations leading up to the
3 subcontract, did you and Mr. Fuchs discuss schedule?

4 A We did.

5 Q Okay. And what did you discuss?

6 A That we agreed that the project could not be built in
7 12 months.

8 MR. DOMINA: Again, Your Honor, this seems to be
9 parol evidence we're discussing.

10 THE COURT: Counsel, it's a discussion of a party
11 opponent.

12 MR. DOMINA: I'm not saying it's hearsay. I'm saying
13 it's parol evidence.

14 THE COURT: I understand. Overruled.

15 MR. DOMINA: Okay.

16 BY MR. JEFFERIES:

17 Q How did those discussions result in subcontract
18 terms?

19 A Well, I was very clear with not only Helix, but the
20 other subcontractors that when we were signing contracts, I
21 mean, we wanted everyone to know that and be aware of that that
22 project was going to be pretty close to the original bid
23 schedule and not the shortened version, and I didn't want to
24 have to handle claims as soon as we hit month 12.

25 There was a caveat to that because I was put in a

1 situation as APCO, as the general contractor because the
2 specifications called for us to have five people on-site,
3 four to five people, a double wide trailer, or a trailer for
4 the city inspectors and Joemel, full-time security. We had
5 sign-in check. We had temporary fencing, all these things that
6 would eat our lunch starting on month 13.

7 So I developed a schedule of values that depicted all
8 of those costs right up front so the city could see them.
9 Every month we were billing for one twelfth of those costs, and
10 then when it came time at the end of December, I had Hill
11 International provide a TIA for APCO's use so that we could
12 start our talks with the city for the extended time because it
13 was --

14 Q And you just fast forwarded past where I wanted to
15 be. That's the TIA 1 that the Judge has heard reference to;
16 right?

17 A I think so.

18 Q Okay.

19 A I might have missed it.

20 Q All right.

21 THE COURT: I already knew what that was before this
22 trial. I'd seen them before.

23 MR. JEFFERIES: I understand.

24 The subcontract is Exhibit 11. You might as well get
25 it in front of you, and let's talk about it.

1 THE COURT: It should be -- I think it's in the
2 second binder, but I may be wrong.

3 THE WITNESS: I have it.

4 BY MR. JEFFERIES:

5 Q Okay. And starting on Bates 474, there is a
6 document. It's on Helix letterhead, and it is designated as
7 the addendum. Do you see that?

8 A Yes, I do.

9 Q Did you negotiate this addendum with anybody at
10 Helix?

11 A Victor and I redlined this several times.

12 Q Okay. And I want to direct your attention to the
13 clause that references Section 6. Take a minute and read that
14 to yourself.

15 A Okay.

16 Q How did this clause come to be in the subcontract?

17 A Due to my discussions with Victor, he added this
18 language to ease my concerns.

19 Q Concerns about what?

20 A The time of the project that the schedule could not
21 be met.

22 Q Okay. Just while we're here at this point in the
23 record, when was, based on the shortened original contract
24 time, when was the scheduled completion date approximately?

25 A Well, approximately January to January.

1 Q So January of '13 would have been --

2 A From '12 to '13.

3 Q Okay. And how long did the project go approximately?

4 A Ten months over.

5 Q Okay. So pretty close to -- a few months off of the
6 original first solicitation; is that right?

7 A Yes.

8 Q Okay. All right. I interrupted you. What did you
9 understand the purpose of this clause to be? And that being
10 the second paragraph from the bottom on 474 of Exhibit 11.

11 A I'm sorry. Ask that again.

12 Q What's the purpose of this clause?

13 A Well, the purpose of the clause in my eyes was if at
14 one point Victor asked for extended costs for being there
15 longer and it was rejected that it wouldn't be my
16 responsibility.

17 Q Okay. Was this Helix's language or APCO's language?

18 A Well, it was their language. They made changes to
19 our contract language to get to the point where we had an
20 agreement.

21 Q Okay. I believe -- what was -- once APCO started
22 work in January 2012, what was your role on the project
23 personally?

24 A Well, I wrote all the contracts. I was not in the
25 field. I was at the home office, which is 3 miles away. But

1 for this particular project, when Marc Yocum [phonetic] and the
2 project manager would run into issues with the city, if they
3 were uncomfortable with those issues, I would go out and
4 assist, but for the most part, the first three months of the
5 project were while the demo was going on and earthworks
6 starting; I was busy doing 40 contracts.

7 Q Subcontracts?

8 A Subcontracts.

9 Q Okay. Once the project got underway, did APCO have
10 periodic meetings with the owner?

11 A Yeah. The on-site staff met with the owner once a
12 month with the -- with the city staff, the architect and
13 subcontractors that were having issues.

14 Q Okay. And then there was -- were there also weekly
15 meetings?

16 A There were weekly subcontractor meetings to move the
17 work along, handle RFI's, handle the sequence, problem-solving,
18 that kind of thing.

19 Q Okay.

20 (Pause in the proceedings.)

21 BY MR. JEFFERIES:

22 Q Okay. I want to fast-forward to I believe it's
23 Exhibit 78. Was this -- tell me what this is.

24 A This is Change Order Request 39 that we presented to
25 the city with our Time Impact Analysis Number 1 the first week

1 of January of 2013.

2 Q Was this at or about the time that it was becoming
3 clear that the project was going to run over the one year?

4 A Well, I would say it was clear before that, probably
5 a few -- three months before that.

6 Q Okay. And what was your purpose in submitting
7 Exhibit 78 to the city?

8 A Well, we had done a projected schedule, and then the
9 impact to the critical path items that were affecting us, and
10 this was just to get our on-site cost for support not only on
11 the record, but as requested so that we weren't going to lose a
12 half million dollars on general conditions.

13 Q Okay. And did you include any subcontractor costs in
14 Exhibit 78?

15 A No, we did not. Number one, we did not have anything
16 from any subcontractors at this point, and secondarily, these
17 line items are directly right off of our pay application. So I
18 was simply carrying those forward based on the schedule.

19 Q Okay. And the costs that you have reflected in
20 Exhibit 78, were those costs that the city had agreed to and
21 accepted in your original schedule of values?

22 A Yes, they were.

23 MR. JEFFERIES: Okay. Now, could you pull up, Chris,
24 Exhibit 12 if you would.

25 Can you get a bigger shot of it just --

1 BY MR. JEFFERIES:

2 Q Mr. Pelan, showing you Exhibit 12, this was the
3 initial Helix notice of potential costs related to this
4 extension. Even with this letter, did Helix supply you any
5 costs at that time?

6 A No, they did not.

7 Q Okay. Now, obviously Mr. Fuchs testified here today
8 about extensive discussions with you after the project. Did
9 you have any discussions with Mr. Fuchs I'm going to say during
10 the project when these extended delays are taking place?

11 A Actually I was copied on some of these, but I didn't
12 speak to Victor about them. I don't remember he calling me or
13 me calling him because it was being handled in the field, and I
14 did not get involved until Brian Bohn announced that -- which
15 was our project manager -- was going to leave our firm and go
16 to work somewhere else, and that was I want to say July.

17 Q Of what year?

18 A Of 2013.

19 Q And at that point did your role change?

20 A Well, in May, Brian Benson -- I brought Brian Benson
21 out there to help push the job a little harder, and I started
22 getting more involved in May, and as Brian Bohn announced that
23 he was leaving, then I got a little more involved with
24 Mr. Yocum and Brian.

25 Q Okay. Would it be fair to say that Exhibit 78, your

1 TIA was kind of a look-ahead schedule and projection of
2 potential delays?

3 A At that point, yes.

4 Q Okay. Would you turn to Exhibit 15, sir. And what
5 is this?

6 A Approximately the beginning of April we knew that our
7 original schedule and TIA that we provided the city back in
8 January was still going to miss. So I prepared a letter and an
9 overall estimate of our costs that we would experience for that
10 additional time and had Hill International provide TIA
11 Number 2.

12 Q Once again -- well, strike that.

13 Did TIA 1 resolve any claim issues, extensions of
14 time with the city?

15 A No.

16 Q Okay. So these are -- time is still an ongoing issue
17 at the time you submit Exhibit 15?

18 A It was.

19 Q Okay. And at this point, technically are you in
20 liquidated damages?

21 A By contract, yes, because they have not addressed
22 that.

23 Q Okay. Now, in Exhibit 15, you're up to over a
24 million dollars, 1,090,000. Did you include any subcontractor
25 costs in that submission?

1 A No, we did not.

2 Q Okay. And again are the costs reflected in
3 Exhibit 15 simply your agreed-upon line items extended out --
4 excuse me. Strike that. Are the dollars reflected in
5 Exhibit 15 based upon the city accepted costs for your
6 time-driven costs just extended out as you're projecting it in
7 Exhibit 15?

8 A Yes.

9 Q Okay. Now, at the time that you submitted
10 Exhibit 15, and if I'm wrong, I'll stand corrected with the
11 exhibits, but had you then received any actual costs from
12 Helix?

13 A Not that I recall.

14 Q Okay. What is APCO's practice -- well, strike that.
15 On the project, can you describe for the Court the process that
16 APCO and the city used to process requests for additional time
17 or costs?

18 A Well, the first thing we would do is obviously the
19 cover sheet here was a change order request. That would open
20 up discussions on whether it be this particular item or Helix
21 electrical items or landscape items or whatnot. Then the city
22 would either come back with questions, approve it, disapprove,
23 and sometimes, sometimes we actually presented the same revised
24 change orders two and three times to get to where the city was
25 comfortable, and we could make ourselves and our subs happy.

1 Q Okay. Did you have meetings with -- strike that.
2 Who was your primary contact at the city?

3 A Joemel.

4 Q Okay. And did you and Joemel have scheduled meetings
5 or routine meetings to discuss pending CORs?

6 A I want to say not until after they received this.

7 Q "This" being Exhibit 15?

8 A This Exhibit 15.

9 We may have had a few meetings prior to that on
10 grading issues. There were several grading issues on that
11 project, and I remember going out there for that, but Brian
12 Bohn and Marc Yocum were handling a lot of these, and then once
13 the change orders were approved, then Mary Jo would handle them
14 in office.

15 Q Okay. But if the city approved a change order
16 request --

17 The record reflects some references to a CCA. What
18 is that?

19 A A construction change authorization.

20 Q Okay. And that's the city's form of approval?

21 A Yes.

22 Q Okay. Can you describe for the Court what APCO's
23 standard practice was on CORs in terms of individuals
24 subcontractors, multiple subcontractors. How did you handle
25 those?

1 A We tried to keep everything separate because if you
2 turn in a change order with multiple subcontractors on it, you
3 can create a mess. So we tried to keep the APCO change order
4 requests and the work that we were ourselves performing,
5 whatever that may be separate from our subcontractors, and even
6 if there were three components to a request that the city gave
7 us, most of the time we would do three separate change orders
8 because we might have to, out of 40 subcontractors, you might
9 have to invite two in to talk to them about it, or they may
10 have to go to one of the meetings, and so it's just a clean
11 process that way.

12 Q Okay. Out of 40 subs on the project, how many
13 submitted billings or -- I'll say billings or change order
14 requests for extended overheads?

15 A Two.

16 Q Okay. And those two were who?

17 A Helix and Valley Crest.

18 Q Okay. Did Valley Crest ever receive a change order
19 for extended overheads on the project?

20 A They did not.

21 Q Sir, would you look at Exhibit 17.

22 This is Helix's June 19, 2013, letter, and then if
23 you would -- I just wanted you to look at that for context, and
24 then look at Exhibit 19 if you would.

25 A All right.

1 Q And directing your attention to the first page of
2 Exhibit 19, I may be wrong, but I believe this is the first
3 time I'm seeing you in the written record. If you look about
4 two thirds of the way down, you send an email that says, Is
5 there any documentation other than a letter; take a minute and
6 read that exchange.

7 A Okay.

8 Q Did Helix ever support its claimed extended overhead
9 costs to you?

10 A I did not see any.

11 Q Okay. Were you concerned about presenting an
12 unsupported claim to the city?

13 A Well, yes. Obviously working with a lot of
14 subcontractors, project managers, some of them turn in less
15 than is required to get a change order approved the first go
16 around, and subsequently we have a responsibility that we need
17 to verify that the change orders that we're turning in are
18 close to what we think would be the accurate amount to be
19 responsible to the owner.

20 Q Okay. And, in fact, because this is a public
21 contract, false claims are a concern of yours; correct?

22 A Well, they would be, yes.

23 Q You'll see in Exhibit 19 Mr. Williams makes
24 reference, well, their costs could be supported by the job
25 costs. Specifically did Helix ever submit its job costs to

1 support its claim prior to this litigation?

2 A No.

3 Q And Exhibit 21, the first page is APCO Change Order
4 Request Number 68. Is that your signature?

5 A It is.

6 Q Are you simply transmitting to the city the Helix
7 billing and invoice for the \$102,400?

8 A Yes.

9 Q Okay. And if you go to the fifth page of the
10 document, Bates label APCO 110, you'll see a City of North Las
11 Vegas Change Management Form 68. Do you see that?

12 A Yes, I do.

13 Q Okay. Did you discuss COR 68 that was submitted on
14 Helix's behalf with Joemel?

15 A I did.

16 Q Okay. And tell the Court what the two of you
17 discussed.

18 MR. DOMINA: Objection. Hearsay, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Well, as we were going through,
21 obviously we didn't have a special meeting for Helix with the
22 change orders.

23 BY MR. JEFFERIES:

24 Q I'm sorry. You did or you didn't?

25 A We didn't have a special meeting with Joemel in the

1 beginning about this because I had several change orders to go
2 through. When I got to this one, Joemel started giggling and
3 said this is BS, and I said, well, let me see if I can get some
4 backup because I didn't want to -- I didn't want him to
5 categorically reject it, but I don't understand -- I heard his
6 testimony yesterday, and I see what he wrote here, and it does
7 not make sense to me.

8 Q Okay. Well, I was going to ask. Let me make sure I
9 ask you a question about that. If you note on the page, he has
10 written, The City of North Las Vegas does not have a contract
11 with Helix Electric.

12 Based on your experience in working with the City of
13 North Las Vegas, was that ever a basis to -- strike that.

14 Was that ever a basis asserted by the city to reject
15 a change order request?

16 A I think this is the only one that I've seen.

17 Q Okay. And, in fact, Helix itself got several change
18 orders approved by the city through this COR process; correct?

19 A Absolutely.

20 Q Okay. Based on your specific interaction with
21 Joemel, was it your understanding that he was commenting on the
22 merits of the request from Helix?

23 A I'm not sure "merit" is the word, but there was --
24 it's a one-liner, and he wasn't going to review a one-liner.

25 Q Okay. Sir, within Exhibit 21, if you would go to the

1 fourth page, Bates label APCO 109, is that your letter back to
2 Mr. Johnson?

3 A It is.

4 Q Okay. And what were you -- why were you sending this
5 to Mr. Johnson?

6 A I was trying to help him.

7 Q Okay. Had you discussed this COR with Mr. Johnson
8 before this letter?

9 A No.

10 Q And what was your purpose in sending it other than to
11 help him?

12 A Well, actually this letter was written by my
13 assistant on some other -- when we would review change orders,
14 I would say ask this one for X. Ask this one for X. And I
15 said, when it was Helix, I said ask them for more backup, and
16 so I signed it, and we sent it out.

17 Q Okay. Would you turn to Exhibit 22 -- well, strike
18 that. Before I ask you about Exhibit 22, did Mr. Johnson
19 respond to your letter by sending you any cost support for the
20 figures that were included in the Helix COR?

21 A No.

22 Q Okay. Tell me what Exhibit 22 is.

23 A It's our -- it's APCO's final resolution with the
24 city regarding our costs for extended management in the field.

25 Q Okay. In looking at the document, would it be fair

1 to characterize your TIAs 1 and 2 as being the presentation of
2 APCO's position on time-related issues?

3 A Yes.

4 Q Okay. And what was your personal role in discussing
5 those issues with the city that resulted in Exhibit 22?

6 A Well, obviously this one was, once I produced TIA
7 Number 2 with the change order request at a little bit over a
8 million dollars, then Joemel had to bring his boss in, Randy
9 Duvall, and so I actually had to have a few meetings with him
10 down at the city to -- to get some kind of resolution.

11 Q Okay. You were making your case for time to
12 Mr. Duvall?

13 A Yes.

14 Q Okay. And did the city make its case back to you
15 that at least up through May 10, 2013, that delays were not
16 compensable?

17 A Yes, they did.

18 Q Okay. And if a delay is not compensable, that means
19 what?

20 A That they're going to give us the extra time, but
21 they're not going to pay us for our extra costs.

22 Q Okay. So you get relief from liquidated damages, but
23 you have to eat the time-driven costs reflected in TIAs 1 and
24 2; right?

25 A That's correct.

1 Q Okay. At any time in its presentation of its
2 billings to APCO, has Helix ever given APCO credit for the
3 noncompensable time extension that was granted by the city?

4 A I have not seen that.

5 Q Okay. So our record is clear, you were -- during
6 what time periods was APCO actually compensated for by the
7 city?

8 A It says for May 10th to October 25th, 2013.

9 Q Okay. If you go to the second page, you can see
10 where the city -- I'm looking at the third paragraph from the
11 bottom -- well, strike that.

12 You are, in fact, still working on the project after
13 this document is signed; right?

14 A Yes.

15 Q Okay. Approximately how much longer on the project
16 did you work?

17 A Well, we were there a little bit longer than our
18 subcontractors. There were a few issues that came up at the
19 end where some of their existing park that we weren't -- that
20 we had no responsibility for in construction that was already
21 there obviously, and they had driven city trucks on their
22 sidewalks and cracked them, and so we were doing a remove and
23 replace of substantial amount of sidewalks on the existing park
24 that wasn't our new work.

25 Q My question was a little different. Your original

1 scope of work under the contract was still somewhat ongoing
2 after you signed this document; right?

3 A Yes. We hadn't completed a punch list, and there was
4 landscape maintenance that was involved and things like that.

5 Q Okay. If you go to the second to the last paragraph,
6 it talks about, APCO will forgo any claims for delays,
7 disruptions, general conditions and overtime associated with
8 the -- it talks about weekend work performed. And for any
9 other claim present or future that may occur on the project.

10 As between you and the city from and after the time
11 you signed this, what did you understand this document,
12 Exhibit 22, to apply to?

13 A Well, in my discussions with Mr. Duvall, there was
14 two items that they were concerned about. One is they wanted
15 to have some kind of function I believe on October 25th, and
16 they wanted us to work overtime doing that, and then when we --
17 subsequently when we did the additional concrete work, they
18 wanted us to work seven days a week on that, and they did not
19 want to pay me overtime. Since those two dates and those two
20 scopes had not occurred, they put that language in there for
21 APCO, and that was my understanding.

22 Q Okay. Did you -- did you submit change order
23 requests after October 3, 2013?

24 A Yes, all the way through March of 2014.

25 Q Okay. And what I'd like for you to do, sir, is turn

1 to Exhibit 1.

2 A Different binder. Okay.

3 Q Take that out for a minute and look at it, and my
4 question to you is going to be how many change order requests
5 did APCO submit and the city approve after you signed the
6 October 2 document?

7 THE COURT: The October 2 document being Exhibit 22?

8 MR. JEFFERIES: Yes, Your Honor.

9 THE COURT: All right. I just want to make sure
10 we're talking about the same thing.

11 MR. JEFFERIES: Thank you.

12 THE WITNESS: The first part of the question we
13 submitted 80 COR requests, 81 on 10/7, and then our last change
14 order request after that date was 103 on 3/13. And as far as
15 approval, it looks like nine were approved.

16 BY MR. JEFFERIES:

17 Q Okay. And as between APCO and the City of North Las
18 Vegas, the two parties to this agreement, did the city ever
19 deny any change order requests or further adjustment of the
20 contract citing release language found in Exhibit 22?

21 A No.

22 Q Okay. Will you put that -- make sure that gets back
23 in the binder.

24 Would you turn to Exhibit 24, sir.

25 A All right.

1 Q And for the record, this is Helix's final billing
2 seeking retention. Do you see that?

3 A Yes.

4 Q And if you would, go to the last page. This is the
5 conditional release showing zero claims?

6 A Yes.

7 Q This was executed by Mr. Johnson on or about
8 October 18, 2013. Prior to that date, had you advised Helix
9 that the city had essentially rejected the claim, the request
10 for additional money, and you had sought additional backup?

11 A Yes.

12 Q What --

13 A Yes.

14 Q Okay. And prior to October 18, 2013, when
15 Mr. Johnson signed this document, had you been provided any
16 response to your letter requesting backup to support Helix's
17 request for extended overhead?

18 A No.

19 Q Did you have any discussions with anybody at Helix
20 and advise them, request, impose any requirement that they put
21 in zero in the line item that says amount of disputed claims?

22 A This was a function of accounting department. I
23 didn't even see it until after the fact to be honest with you.

24 Q So you didn't discuss the need to put zero in there
25 with anybody at Helix?

1 A No.

2 Q When you advised Helix that the city had not accepted
3 its extended overhead billing, given your experience in the
4 industry and the subcontract, what options did Helix have
5 available to it with regard to that extended overhead billing?

6 A Well, I was expected that they would have given me
7 more information so that I could go take another shot at it for
8 them.

9 Q Okay. Did Helix have the option of filing a formal
10 claim?

11 A Yes, they did.

12 Q Okay. And describe for the Court on this particular
13 project what a formal claim would have involved.

14 A As it relates to?

15 Q Their extended overhead request.

16 A Well, we have a file that's probably 4 inches thick
17 with two TIAs that are required for your scope of work, a time
18 impact analysis to show that yes, you were delayed and when and
19 where and why. And then you're supposed to turn in your costs
20 as you're experiencing them so that the city is aware that
21 that's going on. A notification letter and then a one-liner 6,
22 7 months later it doesn't satisfy that; however, if they would
23 have given me more information, I would have tried harder to
24 get their change orders approved.

25 Q Okay. Did Helix ever request that APCO escalate the

1 denial of its COR within the city prime contract procedures?

2 A Say that one more time.

3 Q Did Helix at any time, be it in 2013 or in 2014, as
4 the Court has heard Mr. Fuchs talk about, did Helix ever demand
5 or request that APCO escalate, protest, appeal any claim to the
6 city for its overhead?

7 A No.

8 Q Would you look at Exhibit 20. And if you would, sir,
9 the second page, this reflects the increased billing to
10 \$111,847 for overhead. Do you see that?

11 A I do.

12 Q Is this in your experience sufficient support for
13 such a request for additional compensation?

14 A Obviously it's very weak, and it's lax on the backup,
15 and it's basically a menu that would need more information in
16 my opinion.

17 Q If you go further in Exhibit 20, the fourth page
18 Bates labeled 467 -- excuse me, the third page, did you pass
19 this on to the city?

20 A Yes, we did.

21 Q And if you would, sir, go to Exhibit 21. Without
22 going through all of them, the record reflects Joemel rejecting
23 these supplemental CORs two and maybe three times. Do you
24 recall that?

25 A Yes.

1 Q Okay. Did Mr. -- did Joemel ever explain to you that
2 he was rejecting the Helix change order requests for overhead
3 because of any release language that may have been included in
4 Exhibit 22?

5 A No, not at all.

6 Q Would you look at Exhibit 27.

7 A All right.

8 Q Now, this is one of the first times, I won't
9 overstate it, one of the first times that I see you
10 corresponding with Mr. Fuchs. Was that January 28 of '14?
11 Does that sound about right when you and Mr. Fuchs started
12 communicating?

13 A It might have been earlier, maybe even around
14 Christmas that we started have having phone conversations.

15 Q Okay.

16 A And I told him that I would try again to see if I
17 could get his change orders approved, and --

18 Q I want to make sure we're clear. You said "change
19 orders." Was there more than one?

20 A Well, it ended up being one total that was in three
21 sections of three parts. It was the one oh two, the revised
22 one, one, eleven, and then another one for twenty-six that came
23 up to the 138,000. So, you know, it was -- it was one request
24 that was given to us in three parts.

25 Q Okay. And in this -- strike that.

1 Did you have the meeting that you reference in
2 Exhibit 27?

3 A Yes, I did.

4 Q Okay. And who was at that meeting?

5 A It was Randy Duvall and I and Joemel.

6 Q And what was discussed regarding Helix's extended
7 overhead requests?

8 MR. DOMINA: Objection, Your Honor. Hearsay.

9 THE COURT: Overruled.

10 THE WITNESS: Well, Mr. Duvall had reviewed
11 everything. He says, I'm just not going to approve these.
12 That was it.

13 MR. JEFFERIES: Okay.

14 THE WITNESS: I presented them, and I said, Helix
15 Electric is looking to get some extended general conditions.
16 And he said, I've reviewed it, and I'm not going to approve it.
17 What's next? So --

18 BY MR. JEFFERIES:

19 Q Did you have other issues that you all were
20 discussing, or was this it?

21 A Yes, we had other issues as well.

22 Q Okay. Did you resolve any other COR issues at that
23 meeting?

24 A I think maybe two.

25 Q Okay. Would Exhibit 1 reflect that or --

1 A It might.

2 Q Well, let's look. Do you have it in front of you?

3 A Let me take it out.

4 Q Just for the record, did you identify what Exhibit 1
5 is? I know it's in evidence, but so the Court has some
6 context.

7 A Well, this is APCO's change order log for the
8 project.

9 Q For the entire project?

10 A The entire project with all the requests by all the
11 subs.

12 Q Okay. And my question is, in looking at Exhibit 1,
13 were other CORs resolved at the meeting on January 28?

14 THE COURT: I think the meeting was February 4th;
15 right?

16 THE WITNESS: Yes.

17 MR. JEFFERIES: Yes, Your Honor.

18 THE COURT: I was just paying attention.

19 THE WITNESS: Good job.

20 Now, it looks like two -- that came later. We
21 discussed them, but they came later. One for west deck, and
22 one for the sidewalks that we were talking about, the very last
23 one.

24 BY MR. JEFFERIES:

25 Q And did you report back to Mr. Fuchs the city's

1 position on the Helix overhead request?

2 A Yes, I did.

3 Q Okay. And from and after that point, did Helix,
4 anybody at Helix ever request that you escalate or formalize
5 that denial into a formal claim under the prime contract
6 procedures?

7 A No.

8 Q Would you look at Exhibit 28, and tell me what this
9 is.

10 A That was a final change order on the project.

11 Q And directing your attention, under description of
12 change, slash, reason for change, there is a statement:

13 APCO agrees that no further CORs will be
14 submitted, thus concluding the project in its
15 entirety.

16 Do you see that?

17 A I do.

18 Q Did you understand that that document in March 2014
19 would act as a bar to any further claims on the project?

20 A I did.

21 Q Okay. Was -- strike that. Do you recall
22 approximately when APCO received its retention from the city?

23 A I don't remember the exact date. It seems to me
24 around July.

25 Q Okay. Technically was APCO late in releasing

1 retention to Helix?

2 A Yes.

3 Q Okay. Would you look at Exhibit -- Exhibit 34. Is
4 that the check that represents the final payment that was
5 reflected in the lien release that was included in Exhibit 24?

6 A Yes.

7 Q I want to look at the exchange of email that
8 starts -- is included in Exhibit 38, and you were present when
9 Mr. Fuchs testified, and you saw this exchange referenced. At
10 first page of Exhibit 38, do you see on October 29 at 9:14
11 Mr. Fuchs sends you an email saying, This isn't going to work;
12 and you respond, Victor, make changes for me to approve? Do
13 you see that?

14 A Yes.

15 Q Okay. Were you having discussions with anybody at
16 Helix on the topic of this final payment with anyone other than
17 Mr. Fuchs?

18 A Not that I recall.

19 Q You personally?

20 A No.

21 Q Okay. Did -- I think the record reflects that Helix
22 received the funds through the cashing of that check on
23 October 29, 2014. Prior to their cashing of that check, did
24 you and Mr. Fuchs reach any agreement on any alternative
25 language that would otherwise undo, nullify, modify the final

1 release that was included in Exhibit 24, the conditional final?

2 A No.

3 Q Would you look at Exhibit 41.

4 A Okay.

5 Q When did you receive -- strike that. When did APCO
6 receive this document?

7 A Well, it says Thursday, October 30th, 2014, at
8 12:32 p.m.

9 Q Okay. Can you identify Exhibit 46 for me. What is
10 this?

11 A This is a letter to -- I had never met Cary, and I
12 didn't know if it was a man or a woman. So obviously I screwed
13 that up.

14 MR. DOMINA: You're not the first.

15 THE WITNESS: So it was a letter in response to his
16 demand letter that he sent on Victor's behalf.

17 BY MR. JEFFERIES:

18 Q Okay. I want to -- I wanted you to identify this
19 letter because I want to bookend --

20 Mr. Fuchs went through a whole series -- described a
21 whole series of communications with you. You were present;
22 right?

23 A Yes.

24 Q Okay. A couple things specifically before I get
25 general. Did you ever acknowledge to Mr. Fuchs that APCO owed

1 Helix this money for extended overhead?

2 A I have never done that.

3 Q Okay. Exhibit 101, Plaintiff's 101 is a promissory
4 note. Describe for the Court how that promissory note came
5 about.

6 A At that point or prior?

7 Q When did the issue or concept of a promissory note
8 first come up in your discussions with Mr. Fuchs?

9 A He called me and said that he was having discussions
10 with his attorney, and it would have been -- obviously I don't
11 know the date. I'd have to look at the document, and that he
12 said, My attorney came up with a good idea. So we typed up a
13 promissory note.

14 I said, Really?

15 So he says, I'm going to send it to you.

16 I said, Okay.

17 And he said, I want you to go -- I want you to take
18 it over to Las Vegas Paving and see if you can get it signed.

19 Q Okay. So you didn't propose the concept of a note,
20 did you?

21 A No. It was totally off guard because he was trying
22 to get me to commit to give him projects. That was -- if you
23 go back to when his change orders were rejected by Randy
24 Duvall, my conversation with Victor was not like Victor
25 described today. We were -- we were friendly. We were

1 resolving a problem. We weren't bickering.

2 He said -- I said, Listen, Victor, you've got two
3 choices here. You can file a pass-through claim and screw up
4 everybody getting their retention because he's the one that was
5 rattling most about getting his retention. I said, Well,
6 you're going to screw that up. So what do you want to do? So
7 I left the ball in his court, and I didn't answer him for a
8 while.

9 And then the next time we met, I said, Victor, why
10 don't you just let it go, and we'll get -- we'll get some jobs
11 together, and we'll call it good.

12 Well, he said, Well, I have to answer to my owners.

13 Well, I was surprised today to hear that he was the
14 owner. So that didn't make sense to me when I heard that too.

15 THE COURT: You never heard that one before from a
16 subcontractor?

17 THE WITNESS: Well, not from Victor.

18 THE COURT: Sorry. I'm sorry.

19 THE WITNESS: Well, not from Victor. So anyway, and
20 then it just -- he -- it felt like to me that he wanted
21 reassurance, and he started escalating the phone calls, text
22 messages. He was calling my assistant two, three times a week:
23 Is Joe in, and it got to be a nuisance to be honest with you.

24 And I did do what I told him to do. We started
25 working on a potential project, which you saw the emails for

1 that. It doesn't happen overnight. I had to get a commitment
2 on a piece of property and that kind of thing, although that
3 kind of fell through the cracks.

4 And then that's when, when he knew that that fell
5 through the cracks is when he had, I guess it was the letter
6 that we saw earlier written with a demand for that he wanted
7 his retention, and he wanted -- he added \$138,000 in. Well,
8 we -- we went to breakfast five -- I think five times in the
9 course of that year. They were all amicable. We didn't yell
10 and holler and scream, and we had civil conversations.

11 And I said, Victor, we don't owe you a damn dime, but
12 I'll -- I'm willing to work with you.

13 Then he said, Well, I want all -- I want my money.

14 I said, Victor, I don't owe you your money. The city
15 owed you your money. You let that go, and now because we're
16 not bidding anything right now, now you're wanting me to commit
17 to you, and that's how that laid out.

18 BY MR. JEFFERIES:

19 Q Okay. And by considering working with Helix on other
20 products, were you somehow admitting that you owed Helix the
21 \$138,000?

22 A No. That was my olive branch to solve the problem.

23 Q Okay.

24 A That, like I said before, I'm a good soldier, and
25 APCO fights for their contractors. We go back to the

1 Washington Buffalo case, we spent almost \$800,000 to get our
2 subcontractors' money from the city in legal fees.

3 Just a year and a half ago, after eight years on
4 Manhattan West, the owners of APCO Construction spent over a
5 million dollars with four different law firms trying to protect
6 our subcontractors and ourselves going to the Supreme Court and
7 back.

8 So we are -- we are very subcontractor friendly and
9 conscious, and we fight for our subs. You got to give me
10 something to fight with though.

11 And Victor is not a baby, and I was -- I was kind of
12 taken back by Cary's opening statement that insinuating that I
13 needed to take them under my wing and collect their money, and
14 it was included in the money that I collected from the city.
15 That was not true.

16 Q Okay. Did -- if APCO owed a subcontractor money on
17 this or any other project during the 2013, 2014, '15 time
18 period up through today, is APCO able to pay its bills?

19 A Absolutely.

20 Q Okay.

21 MR. JEFFERIES: Your Honor, it's 4:00 o'clock.

22 THE COURT: 3:59.

23 MR. JEFFERIES: 3:59. I think if -- I think
24 Mr. Pelan is going to be my last witness.

25 THE COURT: Uh-huh.

1 MR. JEFFERIES: And I know we're going to spill over
2 into morning. Could I request that we break? Because if I can
3 have the evening --

4 THE COURT: So if you request a break, then I am
5 going to say on the record it is a requested break under
6 *Brightsource versus Coyote Springs*. I don't know if you know
7 what that means.

8 MR. JEFFERIES: I do not, Your Honor.

9 THE COURT: But I'm going to say that.

10 MR. JEFFERIES: In all candor.

11 THE COURT: And then you may have some issues.

12 MR. JEFFERIES: Okay.

13 THE COURT: So I would be careful what I asked for.
14 I'd be happy to take a five-minute break or so while you figure
15 that out.

16 MR. JEFFERIES: Okay.

17 THE COURT: But if you request a break, I will say
18 that.

19 MR. JEFFERIES: Okay.

20 THE COURT: I don't know if Mr. Domina knows what
21 that is.

22 MR. JEFFERIES: I'd like a five-minute break for
23 other reasons, but he can decide what he wants to do.

24 THE COURT: So you can look that case up and figure
25 it out.

1 MR. JEFFERIES: I'm sorry. What -- one more time,
2 Your Honor.

3 THE COURT: *Brightsource Energy versus Coyote*
4 *Springs*. Harvey Whittemore was the witness. Jim Pisanelli was
5 the attorney. Pete Bernhard was the other lawyer.

6 (Proceedings recessed 4:00 p.m., until 4:05 p.m.)

7 THE COURT: Did you read the case about
8 Mr. Whittemore?

9 MR. JEFFERIES: I didn't read, but I was advised by
10 Mr. Byrd.

11 THE COURT: Oh, did Chris know the answer to that
12 question?

13 MR. JEFFERIES: He did.

14 THE COURT: I'm so glad to know Chris keeps up with
15 that stuff when he doesn't come to court ever.

16 Wow. This is a small community for you. I feel old
17 now.

18 All right. Mr. Pelan, come on back up. You're still
19 under oath.

20 What are we doing next?

21 But at least I warned you as opposed to other Judges.

22 MR. JEFFERIES: And I appreciate it.

23 Okay. Sir, I'm going to have you look at Proposed
24 Exhibit 201.

25 THE COURT: And that should be in the smaller of --

1 well, not the smallest, but the next to the smallest of the
2 white binders.

3 THE WITNESS: Oh.

4 THE COURT: I can't look at it. I don't know.
5 It's -- in mine it's on the end. DX 201, and 2 -- through 213.
6 I believe. It's not admitted. I can't look at it yet. I told
7 you it was going to be boring.

8 Propose 201.

9 MR. JEFFERIES: Yes, Your Honor.

10 BY MR. JEFFERIES:

11 Q Mr. Pelan, do you recognize -- recognize this
12 document?

13 A I do.

14 Q And what is it?

15 A Let me double check to make sure that -- this
16 document is the spreadsheet of the -- is simply all of the
17 Helix Electric certified payroll on the project.

18 Q This is a summary of the certified payroll?

19 A It is.

20 Q Okay. And did you prepare this?

21 A No. I had Wes Purcell prepare this.

22 Q At your direction?

23 A Yes, sir.

24 Q Okay. And upon receipt of this document, did you
25 review it for accuracy?

1 A As best I could.

2 Q Okay. When was this created?

3 A Oh, maybe two years ago.

4 Q Okay.

5 MR. JEFFERIES: Your Honor, I would move for the
6 admission of Proposed Exhibit 201.

7 THE COURT: Any objection?

8 MR. DOMINA: Yes, Your Honor. We believe it's better
9 suited as a demonstrative exhibit.

10 THE COURT: And we marked it as D2 yesterday.

11 MR. DOMINA: Okay. Understood. The reason why we're
12 objecting to it is I don't know that the actual labor -- or the
13 wages that were identified were captured correctly. I don't
14 know if it includes the burden. So in other words, if they
15 were going down that job cost report and just saying here's the
16 hourly wage, just like you saw with Rai Prietzel, they just
17 took that wage and dollar amount and didn't include the
18 burdened amount.

19 THE COURT: And since this witness didn't prepare it,
20 we can't ask him that question. We'd have to ask Mr. Purcell,
21 who's not here.

22 MR. DOMINA: Right. So that would be the only
23 objection.

24 THE CLERK: Your Honor, the one that was D2 yesterday
25 was 202, not 201.

1 THE COURT: Okay. So it's not demonstrative.
2 Do you want to mark this one as a demonstrative?

3 MR. JEFFERIES: Yes, Your Honor.

4 THE COURT: So I am happy to take it as a
5 demonstrative. If you want to call Mr. Purcell to lay an
6 additional foundation about the contents and the manner by
7 which he prepared the document, I'm happy to listen to his
8 testimony.

9 MR. JEFFERIES: Okay. This is D --

10 THE COURT: 4.

11 MR. JEFFERIES: -- 4.

12 THE CLERK: Yes.

13 THE COURT: So you may use it now and show it on the
14 screen as D4.

15 BY MR. JEFFERIES:

16 Q Mr. Pelan, would you go to page 2 of Exhibit D4.

17 A Yes.

18 Q And directing your attention to the report Number 13
19 for the week ending April 22, 2012, you'll see Mr. Clement and
20 Mr. Prietzel. Do you see that?

21 A I do.

22 Q Okay. And did you understand that these hourly total
23 rates do include the fringe benefits?

24 A Yes.

25 Q Okay. And by this account, Mr. Clement was making

1 approximately \$6 more than Mr. Prietzel in 2012. Do you see
2 that?

3 THE COURT: \$6 an hour?

4 MR. JEFFERIES: Yes.

5 THE COURT: Thank you.

6 MR. JEFFERIES: Thank you, Your Honor.

7 THE WITNESS: Yes.

8 THE COURT: That's why I'm here.

9 BY MR. JEFFERIES:

10 Q Now, based on the review of the certified payroll,
11 what is Mr. Prietzel's total hourly rate in April of 2012? The
12 week -- the week of the 13th -- strike that. Jiminy
13 Christmas -- the week ending April 22, 2012.

14 A \$56.28.

15 Q Okay. And then if you would go to Mr. Prietzel's
16 time for the report Number 32, still within 2012, do you see
17 September 2, 2012?

18 A I do.

19 Q Okay. And including fringe benefits, what is
20 Mr. Prietzel's hourly rate, even in September before his
21 promotion? What was it?

22 A \$60.81.

23 Q Okay. And let's go to the last two pages of the
24 document if you would, Bates label 1292.

25 A All right.

1 Q And this is, just on this page, it's report Number 73
2 through 85. So this summary confirms that it's just
3 Mr. Prietzel on-site. Do you see that?

4 A Yes.

5 Q Okay. And even during this extended time period,
6 Mr. Prietzel is fluctuating between the \$56.28 per hour, as
7 depicted on report Number 81, and, 82, the \$60.81. Do you see
8 that?

9 A Yes.

10 Q Based on your knowledge of certified payroll and this
11 project, do you know why those rates are different?

12 A Well, I can't speak to the way Helix does their
13 accounting, but typically with the certified payroll as it
14 relates to electrical workmen in the field, these are -- these
15 are two different categories for the work being performed.
16 That would be my opinion.

17 Q Okay.

18 MR. DOMINA: I'll just make an objection as to
19 foundation.

20 THE COURT: Overruled.

21 BY MR. JEFFERIES:

22 Q Go to the last page, page 1293. This shows
23 Mr. Prietzel's last time on the project November 10, 2013.
24 Based on the certified payroll, what does D4 depict as the
25 total labor Helix spent on the project?

1 A \$588,311.89.

2 Q Okay. Sir, would you look at Proposed Exhibit 202
3 that was previously marked as demonstrative --

4 THE COURT: D3? D2?

5 THE CLERK: D2 was 212.

6 MR. JEFFERIES: So this is D1?

7 THE CLERK: D1 was Mr. Williams's job cost report.

8 MR. JEFFERIES: Okay. Well, maybe this was not.

9 BY MR. JEFFERIES:

10 Q Sir, would you look at Proposed Exhibit 202.

11 THE COURT: So don't display it. Thanks.

12 BY MR. JEFFERIES:

13 Q And tell me what this is.

14 A Well, this is a partial of the prior exhibit. This
15 is the exact same -- or exact same data from Helix's certified
16 payroll reports, only it starts in February, on February 3rd
17 and goes to the end of the project till you see how much actual
18 labor that Helix spent in the field.

19 Q Okay. And did you participate in preparing proposed
20 Exhibit 202?

21 A Yes, I directed Wes.

22 Q Pardon me?

23 A Yes, I did, and I directed Wes.

24 Q Okay. Did you ever take any steps to confirm its
25 accuracy?

1 A I checked his certified payroll reports
2 intermittently, and they seemed to be right on.

3 MR. JEFFERIES: Okay. I move for the admission of
4 Exhibit 202.

5 THE COURT: Any objection?

6 MR. DOMINA: No objection.

7 THE COURT: Be admitted.

8 (Defense Exhibit Number DX202 admitted)

9 BY MR. JEFFERIES:

10 Q Okay. Based on this summary of these certified
11 payrolls, how much total labor, field labor did Helix spend
12 between February and November, 2013?

13 A \$167,390.23.

14 Q And Helix is asking for \$138,000 in extended time
15 driven cost to administer that labor in the field; is that
16 right?

17 A Yes.

18 Q What did you do with your fancy calculator,
19 Mr. Pelan?

20 A It's in that folder back there on the chair.

21 MR. JEFFERIES: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. JEFFERIES:

24 Q Sir, I'm going to ask you to look at Exhibit 65, and
25 just for the record, this is Helix's -- one of Helix's final

1 billings for the project, sir, and if you would look at the
2 contract amount to date, do you see the \$3,393,113.89?

3 A No.

4 Q Okay. Third figure down, contract amount. I believe
5 Helix is representing or presenting the revised subcontract
6 amount. Do you understand that?

7 A Yeah. I just said no because you said 3 million.

8 Q Okay.

9 A No problem.

10 Q And if you'd go to the -- well, mine -- that copy
11 doesn't -- do you recall the line item for general conditions
12 that Helix was maintaining throughout the project?

13 Turn to Exhibit 63, line item 35, page 3 of the
14 exhibit. Do you see the general conditions of 108,040?

15 A Yes.

16 Q What I'd like for you to do so that we have it in the
17 record, what percentage does that \$108,000 in general
18 conditions represent of the subcontract price to Helix? Do you
19 understand my question?

20 A I think so.

21 THE COURT: And you're asking him to do math?

22 MR. JEFFERIES: Yes, Your Honor.

23 THE COURT: Making sure.

24 THE WITNESS: Four and a half percent.

25 / / /

1 BY MR. JEFFERIES:

2 Q Okay. Now, what I would like you for you to do is
3 tell me what -- well, strike that.

4 Would you turn to Proposed Exhibit 203 and tell me
5 what this document is.

6 A This is the document that takes into account Richard
7 Clement's pay for 2012 and one entry in 2013, and then it
8 side-by-side comparison to Rainer Prietzel's wages.

9 Q Is this a summary of the certified payroll labor
10 charges for those two gentlemen?

11 A It is.

12 Q Okay. And did you participate in its preparation?

13 A Yes, I did.

14 Q Okay. And did you confirm its accuracy?

15 A Yes. It's just a portion of the prior two.

16 MR. JEFFERIES: Okay. I'd move for the admission of
17 Proposed 203.

18 THE COURT: Any objection to 203?

19 MR. DOMINA: No objection, Your Honor.

20 THE COURT: 203 will be admitted.

21 (Defense Exhibit Number DX203 admitted)

22 BY MR. JEFFERIES:

23 Q Tell me what does the, if you go to the last page of
24 Exhibit 203, what do these figures represent?

25 A Well, you have a subtotal of 2013 on the bottom of

1 the page and then a grand total of 2012 and 2013, and then on
2 the prior page you have the subtotals for 2012. So the reason
3 that I did this exercise is that Richard Clement was the
4 superintendent on the job in 2012, and his total pay for that
5 year was \$31,000 charged to this job.

6 Rainer Prietzel was paid 99,795 in 2012.

7 And then obviously Richard Clement only had, going
8 back to page 3, he had \$1,993 for only 32 hours in 2013.

9 And Rainer Prietzel was paid 104,841 for a total on
10 the project of 204,637.20.

11 Q Can you look at Exhibit -- Proposed 204.

12 A Yes.

13 Q Did you prepare this document? Or participate in its
14 preparation?

15 A Participated with Wes.

16 Q Okay. And tell me what data does this Proposed 204
17 summarize?

18 A Using the certified payroll reports, we tracked
19 Richard Clement and Rainer Prietzel's hours from the beginning
20 of the project till the end to match the prior exhibits.

21 Q Okay. Does this document also summarize the
22 information found in Exhibit 4, which is the APCO daily sign-in
23 sheet for the project?

24 A Yes.

25 Q Okay. Does this document accurately reflect when

1 these gentlemen signed into the project?

2 A It does.

3 MR. JEFFERIES: Okay. I'd move for the admission of
4 Proposed 204.

5 THE COURT: Any objection to 204?

6 MR. DOMINA: No objection.

7 THE COURT: 204 will be admitted.

8 (Defense Exhibit Number DX204 admitted)

9 BY MR. JEFFERIES:

10 Q A couple general questions based on this document.
11 Did Mr. Williams ever sign in to -- as to being on the project?

12 A No.

13 Q Okay. And how many times did Mr. Clement sign in as
14 being on the project?

15 A Well, Wes let me down. He didn't give me a total.

16 Q You're going to have to count them up. It's not
17 going to take long, believe me. Mr. Prietzel signed in. No.
18 No. No. Mr. Clement. I'm sorry.

19 A Okay. Okay. Two.

20 MR. JEFFERIES: May I approach, Your Honor?

21 THE COURT: You may.

22 Demonstrative.

23 MR. JEFFERIES: Demonstrative.

24 THE COURT: Which one? New?

25 (No audible response)

1 THE COURT: Mr. Domina, any objection to me looking
2 at D5?

3 MR. DOMINA: Not as a demonstrative, no.

4 THE COURT: Okay. May I have a copy. Thank you.

5 MR. JEFFERIES: Yes, ma'am. Just so we don't have to
6 do it at the end, Your Honor, we're withdrawing Proposed 205,
7 and in its place submitting Demonstrative 5?

8 THE COURT: Okay.

9 BY MR. JEFFERIES:

10 Q Mr. Pelan, can you describe what D5 represents.

11 A This is a comparison of the accounting documents that
12 Helix gave us for the line items that were in their original
13 claim. First it's a comparison of their original claim or
14 invoice amounts versus what they've booked as costs for those
15 line items.

16 THE COURT: So, sir, can I ask you a question.

17 I'm sorry to interrupt your counsel.

18 I'm looking at D3 and D5 together. So I'm going to
19 hand you my copy of D3 that has my pencil mark on it there on
20 the bottom.

21 THE WITNESS: Okay.

22 THE COURT: Can you look at D3 and D5 and tell me
23 what the difference is? Because they have the same title and
24 many of the same columns but different numbers.

25 THE WITNESS: Yeah. There's one different number,

1 and this D3 was missing some of the project admin, M. Smith
2 that's charged from the office.

3 THE COURT: Okay.

4 THE WITNESS: So we went ahead and added that
5 column for -- to be fair.

6 THE COURT: Okay. Thank you. So you have made some
7 additions to D3 and have updated it for now D5?

8 THE WITNESS: That's correct.

9 THE COURT: Okay.

10 MR. JEFFERIES: Based on Mr. Johnson's testimony.

11 THE COURT: That's fine. I'm just now going to put
12 it D3 underneath D5 and ignore it for now.

13 MR. JEFFERIES: Okay.

14 BY MR. JEFFERIES:

15 Q Does -- and what were you attempting to capture by
16 preparing D5?

17 A Well, obviously we wanted to know what Helix had --
18 what costs they had booked towards these items in 2013.

19 Q Okay.

20 A Versus -- versus their original claim.

21 MR. JEFFERIES: Okay. Your Honor, for the record, to
22 the extent the Court is so inclined, D3 does have value in that
23 it does cross-reference a Bates number.

24 THE COURT: I see that.

25 MR. JEFFERIES: Okay. All right.

1 THE COURT: I haven't thrown it away. I've just put
2 the other one on top of it for my reference.

3 MR. JEFFERIES: Understood.

4 BY MR. JEFFERIES:

5 Q And in fairness to the record, the superintendent
6 line item does not have an actual cost from the job cost, does
7 it?

8 A No.

9 Q And in looking at the Helix job cost, you were here
10 when I asked Mr. Johnson if he could identify a cost code that
11 would give us that number. Do you recall that?

12 A Yes.

13 Q Okay. And were you able to readily identify a
14 project superintendent cost code from the job cost?

15 A No.

16 THE COURT: If we could pause for a minute, please.

17 MR. JEFFERIES: Sure.

18 THE COURT: And I'm planning to break for the day in
19 seven minutes, and that will not be a requested break. It will
20 be an end of the day break.

21 Only in Nevada.

22 How much -- how many more witness you got? Are you
23 just going to end with him?

24 (No audible response)

25 THE COURT: Okay. So were not going to need to call

1 Mr. Purcell.

2 MR. DOMINA: And, in fact, on that one exhibit that
3 was --

4 THE COURT: 201.

5 THE COURT RECORDER: Sorry.

6 THE COURT: Jill, are you okay?

7 MR. DOMINA: -- we could stipulate because what I
8 wanted to insure was that when you guys calculated it you
9 didn't ignore the burden and that the rate was --

10 THE COURT: So are you okay on admitting 201 now?

11 MR. DOMINA: If he moves for it.

12 THE COURT: Come on.

13 MR. JEFFERIES: So moved.

14 THE COURT: 201 will be admitted.

15 (Defense Exhibit Number DX201 admitted)

16 THE COURT: Okay. So Mr. Pelan is your last witness
17 for the defense case in chief?

18 MR. JEFFERIES: Yes, Your Honor.

19 THE COURT: Okay. And how much longer do you think
20 tomorrow you're going to have with him?

21 MR. JEFFERIES: Ten, 15 minutes.

22 THE COURT: So, okay.

23 And, Mr. Domina, given what you currently know, do
24 you plan to have a rebuttal case?

25 MR. DOMINA: No, I will not have a rebuttal, but I

1 will have cross.

2 THE COURT: Of course. So my question to you, and I
3 want you to think about this, you don't have to answer me until
4 tomorrow morning, is do you need a break before you do closing
5 arguments? Like do you need a half-hour to gather your
6 thoughts, or, or can we just go.

7 MR. DOMINA: I would, like -- I can tell you right
8 now I would like -- you're talking about tomorrow morning. I
9 would like to just go straight through and do closing argument
10 after.

11 THE COURT: Are you okay with that?

12 MR. JEFFERIES: That's fine. We --

13 THE COURT: All right. Good. Then that's our plan.

14 MR. JEFFERIES: Could --

15 THE COURT: We have five more minutes to ask
16 questions. Jill is back.

17 BY MR. JEFFERIES:

18 Q Based on what you were able to discern from the job
19 cost that was produced to us by Helix, based on D5, what do you
20 show the actual cost to be for the categories that you have
21 included in the calculation?

22 A \$66,634.15.

23 Q Okay. And that is the total cost for Helix on those
24 items between January and November 2013; correct -- or excuse
25 me, October?

1 A Yes.

2 Q Okay. And during this time period, was Helix sending
3 APCO progress billings requesting compensation?

4 A On their contract work?

5 Q Yes.

6 A Yes.

7 Q So they were being paid for these costs?

8 A Yes.

9 Q Okay.

10 (Pause in the proceedings.)

11 THE COURT: Any objection to 206?

12 MR. DOMINA: The first time I'm -- if I -- let's see.

13 MR. JEFFERIES: No. I'm going to withdraw 206,
14 Proposed 206, and I'd like to submit, if I may approach, D6.

15 THE COURT: D6. So 206 will be withdrawn.

16 Mr. Domina, any problem with D6?

17 MR. DOMINA: I think just kind of the heading and
18 what it's purporting to be, it in other words is trying to
19 compare our general conditions with the claim, and there's been
20 testimony that they weren't the same, that they weren't put
21 together the same.

22 THE COURT: I get that.

23 MR. DOMINA: I understand.

24 THE COURT: The question is is legally what has to
25 happen, but, yes, I know general conditions and expenses are

1 not the same.

2 MR. DOMINA: That's fine --

3 THE COURT: But I know that as a former construction
4 lawyer.

5 MR. DOMINA: And because you know that, I'm okay
6 admitting it as a -- into evidence.

7 THE COURT: It's only for demonstrative purposes.

8 MR. DOMINA: Oh, he had said demonstrative? That's
9 fine.

10 THE COURT: D6. That's why I was asking these
11 questions.

12 MR. DOMINA: Very good.

13 THE COURT: He withdrew 206, and in its place is
14 using D6 to help us understand his argument to illustrate the
15 testimony of this witness.

16 BY MR. JEFFERIES:

17 Q Okay. Mr. Pelan, can you identify exhibit
18 D6, please.

19 A You know, this is similar to D5 with the respect that
20 it goes from May 13th to the end of the project to show what
21 Helix's costs were.

22 Q Okay. And does the time period reflected in D6, the
23 May through October time period reflect the time that APCO was
24 compensated for in Exhibit 22?

25 A It does.

1 Q Okay. And in fairness to the record, there are
2 certain costs again that you were unable to identify and
3 discern from the job costs on its face; is that fair?

4 A Yes.

5 MR. JEFFERIES: I am withdrawing Proposed 207 and 208
6 and 209, 210.

7 BY MR. JEFFERIES:

8 Q If you could, sir, look at Proposed Exhibit 211. Did
9 you participate in preparing this document?

10 A Yes.

11 Q Okay. And what -- is this a summary of what
12 information?

13 A These are -- it's the summary of each monthly billing
14 that Helix was paid for 2012 and 2013, the subtotals for each
15 year.

16 Q Did you review this for accuracy?

17 A I did.

18 MR. JEFFERIES: Okay. I'd move for the admission of
19 Proposed 211.

20 THE COURT: Any objection to 211?

21 MR. DOMINA: No objection, Your Honor.

22 THE COURT: 211 will be admitted.

23 (Defense Exhibit Number DX211 admitted)

24 BY MR. JEFFERIES:

25 Q Okay. Based on Exhibit 211, how much did APCO pay

1 Helix in total on the project?

2 A 2,395,373.92.

3 Q Okay. More specifically focusing on the extended
4 period from February through October 2013, how much did Helix
5 earn while Mr. Prietzel was out there completing original
6 contract work and change order work?

7 A \$399,823.72.

8 Q Okay. And during that time period, Helix received
9 change orders totaling what amount?

10 A \$92,813.72.

11 THE COURT: And that's included in the \$399,823.72?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Counsel, would this be a good
14 place a break for the evening?

15 MR. JEFFERIES: Yes, Your Honor.

16 THE COURT: 9:00 o'clock tomorrow?

17 MR. JEFFERIES: Okay.

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1 THE COURT: Can everybody get here by 9:00?

2 MR. DOMINA: Yes.

3 THE COURT: Okay. All right. We'll see you then.

4 Have a nice evening.

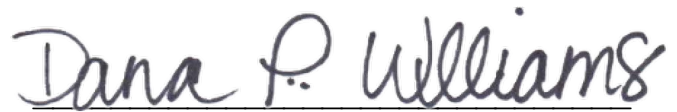
5 (Proceedings concluded for the evening at 4:47 p.m.)

6 -oOo-

7 ATTEST: I do hereby certify that I have truly and correctly
8 transcribed the audio/video proceedings in the above-entitled
9 case.

10

11

A handwritten signature in dark ink, reading "Dana L. Williams". The signature is written in a cursive, flowing style. The first name "Dana" is written in a larger, more prominent script, followed by "L." and "Williams". The signature is positioned above the printed name and title.

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Dana L. Williams
Transcriber

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<p>BY MR. COX: [20] 6/14 7/2 7/11 9/21 18/1 18/11 34/16 37/15 38/16 40/11 42/16 42/23 44/16 45/12 53/15 58/11 63/20 64/21 66/1 67/10</p> <p>BY MR. DOMINA: [27] 83/23 85/21 86/2 87/2 87/23 88/21 89/9 89/16 95/2 96/23 99/18 102/8 103/2 103/8 104/14 105/9 106/10 107/13 108/1 113/5 116/15 116/18 118/5 118/21 119/3 126/4 150/16</p> <p>BY MR. JEFFERIES: [61] 20/13 25/4 25/13 26/3 28/8 70/14 71/13 72/15 75/11 75/16 78/20 79/21 80/13 81/2 82/1 127/12 131/13 132/17 133/18 135/24 136/14 137/11 137/24 138/11 139/3 142/1 145/2 145/7 148/11 149/3 153/20 155/16 160/1 160/16 162/4 164/21 166/1 172/23 178/16 183/18 184/24 187/17 190/18 194/10 196/15 197/9 198/21 199/9 199/12 200/9 200/23 202/1 202/22 204/9 205/9 206/14 207/4 209/17 211/16 212/7 212/24</p> <p>MR. COX: [38] 6/10 6/12 6/25 7/9 9/20 17/11 17/15 17/19 17/22 18/9 20/6 32/24 33/1 33/3 33/5 34/10 34/14 38/14 39/3 40/10 42/2 42/5 42/15 42/22 44/20 64/18 65/4 65/12 65/15 65/17 65/22 65/24 66/11 66/19 66/22 67/9 70/10 82/17</p> <p>MR. DOMINA: [95] 4/4 4/7 4/11 4/14 4/17 4/22 4/25 5/17 5/19 6/1 6/3 6/6 33/9 33/14 39/14 39/19 64/25 65/3 65/5 65/8 71/12 82/22 83/21 85/19 86/25 87/21 89/8 89/14 95/1 96/15 96/17 96/22 99/5 99/13 99/16 102/6 103/1 105/7 107/3 107/6 107/8 107/11 107/25 112/23 116/13 117/3 117/7 117/16 117/25 118/23 119/1 125/20 125/24 127/8 138/8 142/7 148/24 150/14 151/7 151/25 152/7 152/13 152/16 152/20 152/23</p>	<p>152/25 159/21 160/8 160/12 160/15 172/18 183/8 187/14 195/8 195/11 195/22 198/18 200/6 202/19 204/6 205/3 208/2 208/7 208/11 208/25 209/7 210/12 210/17 210/23 211/2 211/5 211/8 211/12 212/21 214/2</p> <p>MR. FUCHS: [6] 99/4 99/7 99/10 99/15 116/14 116/17</p> <p>MR. JEFFERIES: [118] 6/7 20/9 25/3 31/22 37/11 38/5 38/9 39/4 41/21 44/23 45/5 45/7 53/10 63/13 65/14 66/13 66/23 66/25 70/12 70/25 72/14 75/8 75/14 78/16 79/14 79/17 79/20 80/9 80/24 81/25 82/15 88/15 89/5 102/2 104/10 104/12 118/20 127/10 130/7 130/11 131/9 132/12 132/15 133/17 135/22 136/4 136/6 136/10 137/8 138/2 138/4 138/6 138/9 139/1 142/8 142/10 144/11 144/15 144/25 148/10 149/2 150/12 151/10 153/4 153/18 159/25 161/23 165/23 178/8 178/11 183/13 184/17 191/21 191/23 192/1 192/8 192/10 192/12 192/16 192/19 192/22 193/1 193/9 193/13 193/22 194/9 195/5 196/3 196/9 196/11 197/4 197/6 199/6 199/8 200/3 200/21 201/22 202/16 204/3 204/20 204/23 205/5 206/10 206/13 206/21 206/25 207/3 207/17 208/13 208/18 208/21 209/12 209/14 210/13 212/5 212/18 213/15 213/17</p> <p>THE CLERK: [16] 5/6 33/20 33/23 64/15 82/24 83/3 83/7 117/11 151/16 151/20 151/22 153/10 195/24 196/12 199/5 199/7</p> <p>THE COURT: [253] THE WITNESS: [92] 5/8 7/8 7/10 17/17 17/20 17/23 18/10 25/11 25/16 25/18 25/22 26/2 28/4 31/25 32/3 32/5 32/13 32/15 32/22 33/7 33/15 33/22 34/1 34/5 34/8 44/15 53/13 58/7 63/18 65/6 65/19 67/5 71/1 71/4</p>	<p>71/6 75/4 75/7 78/12 78/17 79/11 82/21 83/5 83/11 83/16 83/19 86/1 96/16 102/5 102/7 103/5 104/11 106/8 117/21 118/25 130/17 130/21 130/23 131/6 132/14 132/16 133/12 133/15 137/10 137/22 138/5 138/7 138/10 142/9 144/18 145/5 151/13 151/18 153/12 155/13 162/3 172/20 178/12 183/10 183/14 184/16 184/19 187/15 189/17 189/19 194/3 197/7 201/24 205/21 205/25 206/4 206/8 213/12</p> <p>UNIDENTIFIED SPEAKER: [6] 4/6 37/9 38/7 64/17 65/16 152/11</p> <p>\$</p> <p>\$1,993 [1] 203/8 \$10 [1] 123/5 \$102,400 [1] 172/7 \$105,677 [1] 88/1 \$105,679 [1] 147/10 \$108,000 [3] 127/20 128/5 201/17 \$111,847 [1] 181/10 \$138,000 [9] 49/20 54/20 59/13 60/2 70/6 78/6 190/7 190/21 200/14 \$138,151 [1] 67/15 \$15 [1] 122/4 \$167,390.23 [1] 200/13 \$243 [1] 58/23 \$243,000 [1] 102/1 \$243,828 [2] 58/23 59/6 \$3,393,113.89 [1] 201/2 \$30 [1] 158/23 \$30 million [1] 158/23 \$31,000 [1] 203/5 \$399,823.72 [2] 213/7 213/11 \$4 [1] 123/8 \$45.13 [2] 120/18 122/3 \$49.66 [1] 120/20 \$5200 [3] 137/16 138/22 140/19 \$56.28 [2] 197/14 198/6 \$5600 [1] 140/6 \$588,311.89 [1] 199/1 \$6 [2] 197/1 197/3 \$60.81 [3] 121/24 197/22 198/7 \$61 [1] 123/13 \$6500 [1] 141/1 \$66,634.15 [1] 209/22 \$800,000 [1] 191/1 \$901.90 [1] 139/12</p>	<p>\$92,813.72 [1] 213/10 ,</p> <p>'12 [1] 163/2 '12 to [1] 163/2 '13 [2] 163/1 163/2 '14 [2] 58/15 182/10 '15 [1] 191/17 '90s [1] 35/8</p> <p>-</p> <p>-oOo [1] 214/6</p> <p>0</p> <p>000356 [1] 26/18 040 [2] 139/17 139/18 042 [1] 139/5 059 [1] 140/20 0656 [1] 141/15</p> <p>1</p> <p>1 and [1] 175/1 1 that [1] 161/15 1,090,000 [1] 167/24 1/12/2016 [1] 126/16 1/27/2013 [1] 113/11 10 [8] 19/17 22/17 22/19 57/15 60/11 84/9 175/15 198/23 10/10/13 [1] 18/17 10/7 [1] 178/13 101 [9] 37/21 65/8 65/9 65/11 65/20 66/12 77/15 188/3 188/3 1016 [1] 27/15 102 [9] 37/6 37/8 37/21 37/22 37/25 44/21 44/22 60/10 77/15 102,400 [1] 90/5 102-10 [1] 60/11 102-12 [1] 56/9 102-22 [1] 48/12 103 [1] 178/14 104,841 [1] 203/9 105 [3] 101/12 102/19 103/16 105,000 [2] 59/9 101/15 105,677.01 [1] 86/24 108,040 [1] 201/14 109 [1] 174/1 10:00 a.m [1] 40/5 10:00 o'clock [2] 33/11 39/23 10:07 a.m [1] 40/5 10:14 [1] 99/21 10:30 [2] 61/4 61/8 10th [7] 19/17 19/18 53/17 54/25 55/1 68/1 176/8 11 [11] 56/23 72/14 72/17 72/20 132/10 132/12 132/15 132/16 137/4 161/24 163/10 110 [1] 172/10 111,847 [1] 90/4 11:52 a.m [1] 117/18 12 [11] 16/10 56/9 149/13 149/20 157/19</p>	<p>158/18 159/19 160/7 160/24 165/24 166/2 1292 [1] 197/24 1293 [1] 198/22 12:32 p.m [2] 104/19 187/8 12th [1] 51/17 13 [9] 7/24 16/12 18/10 18/17 22/22 56/1 161/6 178/14 196/18 138 [2] 59/9 102/18 138,000 [6] 46/16 97/15 101/11 101/16 102/17 182/23 138,151 [2] 103/19 105/22 13th [7] 54/23 55/2 67/13 69/3 90/2 197/12 211/20 14 [2] 2/20 55/17 14th [1] 68/24 15 [12] 44/25 54/21 167/4 167/17 167/23 168/3 168/5 168/7 168/10 169/7 169/8 208/21 15,000 [1] 128/9 15,300, -500 that [1] 142/24 15-500 [1] 140/11 15-502 [1] 140/12 15th [2] 51/14 51/18 16 [3] 53/16 72/22 128/9 16,947.48 [1] 142/19 16113M001 [1] 89/25 16th [3] 47/8 70/4 91/12 17 [4] 52/11 157/19 158/21 170/21 18 [7] 51/21 72/22 84/2 84/4 153/24 179/8 179/14 18th [5] 56/12 86/16 87/19 89/18 95/8 19 [5] 51/1 170/22 170/24 171/2 171/23 1978 [1] 35/3 1985 [2] 35/3 35/7 1987 [3] 34/25 35/4 35/17 1995 [4] 35/6 35/8 35/9 35/14 1:00 [1] 117/10 1:08 p.m [1] 117/18 1:15 [1] 117/12 1:57 p.m [1] 144/20</p> <p>2</p> <p>2 as [1] 175/1 2,395,373.92 [1] 213/2 2,930.51 [1] 138/20 20 [13] 2/21 50/12 112/15 135/25 136/2 136/16 137/1 137/15 138/21 140/19 144/17 181/8 181/17 2000 [1] 58/14 2001 [2] 35/11 35/15 JA1476</p>
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<p>Y</p> <p>yeah... [90] 14/10 15/11 15/16 15/20 16/12 17/5 17/8 17/20 18/20 20/17 25/16 26/23 26/25 27/20 35/17 38/2 44/11 45/15 46/10 46/16 46/18 47/4 47/19 48/5 48/9 48/25 49/8 49/10 49/19 50/3 50/25 51/15 52/15 53/19 54/12 55/23 55/23 56/3 56/20 58/1 60/15 61/23 62/6 63/11 64/5 64/17 68/4 68/6 71/5 72/2 72/7 73/6 73/10 73/10 74/11 75/20 75/23 76/1 77/3 81/16 85/24 86/21 92/19 94/22 99/3 100/13 102/6 105/7 106/9 106/12 107/20 109/5 110/1 113/4 114/1 116/10 117/7 117/8 118/11 119/15 128/15 130/19 135/5 135/6 147/7 151/14 152/25 164/11 201/7 205/25</p> <p>year [17] 70/9 78/17 80/2 80/5 80/6 80/22 95/12 111/16 112/1 126/23 155/7 165/3 166/17 190/9 191/3 203/5 212/15</p> <p>years [15] 15/5 48/11 84/2 84/4 84/9 87/7 112/16 124/5 125/16 126/18 126/19 141/18 153/23 191/3 195/3</p> <p>yell [1] 190/9</p> <p>Yep [9] 25/12 27/3 27/21 37/25 52/23 69/14 69/25 72/21 82/14</p> <p>yes [217]</p> <p>yesterday [12] 6/17 7/4 7/5 61/1 93/19 124/16 127/3 128/11 151/21 173/6 195/10 195/24</p> <p>yet [7] 4/5 44/14 83/12 100/11 119/2 129/11 194/6</p> <p>Yocum [3] 164/1 166/24 169/12</p> <p>you [1045]</p> <p>you'd [7] 26/21 37/22 56/21 73/17 75/14 153/5 201/10</p> <p>you'll [10] 12/18 19/23 57/10 113/2 120/13 140/11 154/18 171/23 172/10 196/19</p> <p>you're [66] 4/18 5/7 5/25 6/4 9/8 9/10 9/10 11/24 12/18 13/5 13/7 13/17 15/14 17/13 19/1 24/6 28/9 32/22 35/20</p>	<p>43/12 44/5 51/10 55/22 56/16 74/8 81/15 82/2 85/23 90/21 91/14 92/12 97/7 104/20 104/20 105/2 107/15 108/2 108/7 108/17 113/4 116/19 117/20 118/18 121/9 124/18 140/6 141/14 143/1 144/1 144/23 146/7 146/12 149/15 152/8 167/23 168/6 180/19 180/20 187/14 189/6 190/16 193/18 201/21 204/16 208/20 209/8</p> <p>you've [10] 20/18 25/18 77/23 87/5 96/2 104/7 116/25 116/25 153/13 189/2</p> <p>your [280]</p> <p>yours [1] 171/21</p> <p>yourself [6] 27/10 73/15 73/17 131/4 133/11 162/14</p> <hr/> <p>Z</p> <p>zero [12] 88/3 88/4 88/7 88/11 90/9 90/13 95/16 97/17 145/12 179/5 179/21 179/24</p> <p>zoom [4] 17/11 18/9 47/3 58/7</p>			<p>JA1504</p>
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 05, 2019

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

June 05, 2019 9:00 AM Bench Trial

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

COURT CLERK: Dulce Romea

RECORDER: Patti Slattery

PARTIES

PRESENT: Cox, Ronald J. Attorney for Plaintiff
Domina, Cary Attorney for Plaintiff
Holmes, Jeremy D. Attorney for Plaintiff
Jefferies, John R. Attorney for Defendants

JOURNAL ENTRIES

- DAY 3

APPEARANCES CONTINUED: Robert "Bob" Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction.

Testimony and exhibits presented. (See worksheet.) RECESS.

Testimony and exhibits continued. (See worksheet.) At the hour of 11:20 am, Defendant RESTED.

Closing arguments by Mr. Domina and Mr. Jefferies.

COURT ORDERED, matter taken UNDER ADVISEMENT and status check SET on the Court's decision.

6-21-19 CHAMBERS STATUS CHECK: DECISION

PRINT DATE: 06/05/2019

Page 1 of 1

Minutes Date: June 05, 2019

JA1505