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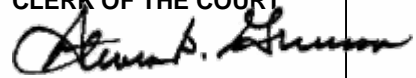
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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 v.

19 APCO CONSTRUCTION, a Nevada
20 corporation; SAFECO INSURANCE
21 COMPANY OF AMERICA; DOES I through
22 X; and BOE BONDING COMPANIES, I
23 through X.

24 Defendants.

Case No.: A-16-730091-C

Dept. No.: XVII

APCO CONSTRUCTION, INC.'S AND
SAFECO INSURANCE COMPANY OF
AMERICA'S OPPOSITION TO HELIX'S
COUNTERMOTION FOR AMENDMENT
TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW; AND REPLY IN
SUPPORT OF MOTION FOR
CLARIFICATION AND/OR AMENDMENT
TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW

(HEARING REQUESTED)

25 APCO Construction, Inc. and Safeco Insurance Company of America (collectively referred
26 to as "APCO") submit their Opposition to Helix's Countermotion for Amendment to Findings of
27 Fact and Conclusions of Law ("Opposition") and Reply in Support of Motion for Clarification
28 and/or Amendment to Findings of Fact and Conclusions of Law ("Reply").¹

The Court properly considered all evidence and arguments by the parties regarding the "no
damage for delay" clause and concluded "the provision limiting damages after a delay does not
permit the recovery of extended general conditions". Findings, ¶114. The Court should have

¹ Because Helix offers substantially similar arguments in its Opposition to APCO's Motion for Clarification and/or
Amendment to Findings of Fact and Conclusions of Law ("Motion") and its Countermotion for Amendment to

1 enforced that clause as written.

2 The Court went on to enforce the contract provision limiting Helix to its actual costs for
3 delay. Helix does not and cannot reasonably dispute that determination. The Court further found
4 that the job cost report accurately reflected and summarized Helix's costs. The Court properly
5 relied on this evidence, though APCO respectfully asserts that the Court relied on the incorrect
6 column in Exhibit D5.² To the extent the Court is awarding costs, the actual job cost figure in
7 Exhibit D5 is the appropriate recovery, not the inflated billed amounts for the project manager.

8 The Court's Findings also confirm the Court completed a thorough analysis of APCO's
9 actions when calculating the compensable time period. Helix did not submit any evidence or
10 analysis of the cause of the underlying delays so there is no basis in the record for the Court to
11 undermine or change the City's and APCO's determinations on the compensable nature of the
12 project delays.

13 Finally, there was overwhelming evidence supporting the Court's determination that Helix
14 is not entitled to recover Foreman Prietzel's time on site completing original subcontract and
15 change order work. Helix presented no basis for the Court to reverse itself.

16 For these reasons, the Court should grant APCO's motion and either enforce the no
17 damage for delay provision or limit Helix to its actual costs as reflected in its job cost report.
18 Helix's Countermotion must be denied as it has now failed to meet its burden of proof twice.

19 DATED: August 12, 2019.

20 **FENNEMORE CRAIG, P.C.**

21 By: John R. Jefferies

22 John Randall Jefferies, Esq. (Bar No. 3512)

23 Brandi M. Planet, Esq. (Bar No, 11710)

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28 Findings of Fact and Conclusions of Law ("Countermotion"), this brief can be treated as both APCO's Opposition to
the Countermotion and Reply in support of its Motion.

² Findings, fn. 5, referencing trial Exhibit D5, Attachment B to APCO's Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. The Court's ruling on the no damages for delay provision was proper.**

3 Section 6.5 of the Subcontract contains a no damage for delay provision that states as
4 follows:

5 "If Subcontractor shall be delayed in the performance of the Work by any
6 act or neglect of the Owner or Architect, or by agents or representatives of
7 either, or by changes ordered in the Work, or by fire, unavoidable
8 casualties, national emergency, or by any cause other than [SIC] the
9 intentional Interference of Contractor, Subcontractor shall be entitled, as
10 **Subcontractor's exclusive remedy**, to an extension of time reasonably
11 necessary to compensate for the time lost due to the delay, but only if
12 Subcontractor shall notify Contractor in writing within twenty four (24)
13 hours after such occurrences, and only if Contractor shall be granted such
14 time extension by Owner."

15 This clause was not stricken by the Helix Addendum.

16 Additionally, the Subcontract provided at Section 6.7 that "Contractor shall not be liable to
17 Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes,
18 labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause
19 beyond Contractor's control, or contributed to by Subcontractor." Section 6.7 was not stricken
20 from the Subcontract by the Helix Addendum.

21 As noted above, the Court recognized and evaluated the valid arguments made by the
22 parties and concluded that "the provision limiting damages after a delay does not permit the
23 recovery of extended general conditions" because the "delay was not so unreasonable to amount to
24 abandonment." Findings, ¶114.

25 Helix argues that the Court should now evaluate its arguments under the framework of
26 NRS 338.485(2)(c)(4), which states that a party cannot contract away its right for delay damages
27 when a public body "significantly" adds to the "scope or duration of the public work." There is no
28 definition of what "significantly" means in the context of the statute and no case law or legislative
history to assist in this analysis. Helix did not present any evidence suggesting that the delays
were significant in this context and is reaching with its vague references to the time extensions
granted by the City through change orders. Helix's arguments are especially specious given Mr.
Pelan's testimony that Helix knew full well that the project would take almost two years to

1 construct based on the first solicitation issued by the City. Despite specific questioning from the
2 Court, Helix did not present any evidence rebutting that testimony. That is why Helix did not bill
3 its general conditions at 100% until the final month on the job. So the Court's prior ruling on
4 enforceability should stand and govern.

5 **B. Under any scenario, Helix can only recover actual costs based on its own job**
6 **cost report.**

7 As specifically noted by the Court, section 7.1 of the Parties' contract requires "proof of
8 actual cost increase." Findings, ¶17. Kurk Williams ("Williams") even admitted that based on the
9 contract, Helix was "limited to [its] direct actual on-site costs." **Attachment C** at p. 82, lns. 15-21.
10 Williams was essentially non-existent on site. To that end, the Court found that "Helix indicated
11 that its job cost reports *would reflect the actual costs* for the extended overhead." Findings, ¶ 43
12 (emphasis added). The job cost reports are therefore the best evidence of Helix's actual costs and
13 they are what APCO and this Court should rely upon when calculating Helix's actual damages.
14 Anything else is nothing more than estimation and speculation, which is not a proper basis for a
15 damage award under the contract that requires proof of costs, not an estimate or speculation of
16 actual costs. *See Watt v. Nevada Central Railroad Co.*, 23 Nev. 154, 174-175, 44 P. 423
17 (1896)("Neither courts nor juries are permitted to assess values on conjecture.").

18 The substantial evidence in this case supports a reduction of the award to Helix. Exhibits
19 D5 and D3 show that Helix's actual costs are only \$25,351.36 without superintendent costs, which
20 were properly excluded by this Court. This amount includes a reduction of Williams' project
21 manager costs to the actual costs supported by Helix's own job cost report. A reduction is further
22 supported by Williams' admission that during much of the compensable time period, he was
23 spending time on another four-month project that had "a lot of project management time".
24 **Attachment C**, p. 77, lns. 15-20.

25 When the Court properly considers the actual cost column in the referenced Exhibit D5,
26 Helix's cost recovery is limited to \$25,351.36. So the Court should grant APCO's motion.

27 **C. The Court properly evaluated the compensable time period.**

28 The Court found that the compensable time period is from May to October 2013. Findings

1 ¶ 115. This was the timeframe under which APCO was compensated by the City. The other delay
2 period was recognized by the City as excusable, i.e. not the fault of either party and/or had
3 concurrent causes by both parties such that it was not compensable under the prime contract under
4 any scenario. Under no circumstance can Helix change the nature of the underlying cause of the
5 delay. The Court set forth extensive facts in support of this decision. Findings, pgs. 8-12. This
6 indicates that the Court clearly evaluated the “substantial evidence” to determine the compensable
7 time period. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 254, 235 P.3d 592, 599
8 (2010); NRCP 52(a). Notably, Helix does not argue that the Court’s findings were “clearly
9 erroneous”. *Id.*

10 The only argument Helix offers is testimony from Joe Pelan related to APCO’s business
11 decision and standard claim practice. Counter-motion at p. 5, Ins. 16-20. The Court’s Findings
12 make it clear that it also thoroughly evaluated APCO’s conduct in support of its ruling related to
13 the compensable time period. The Court specifically stated that APCO’s conduct establishes that
14 APCO had a “duty to include Helix’s Claim in its own claim to CNLV or otherwise preserve the
15 claim when it settled...” Findings, Order ¶ 5; *see also, Id.* at ¶¶ 6,7,8,9 (which notes APCO’s
16 internal policies—and therefore APCO’s business decision—related to claim submission to CNLV
17 and impact on Helix). While APCO disagrees with these findings, it nonetheless proves that the
18 Court evaluated all evidence and related testimony when it made its decision that the compensable
19 time period is from May to October 2013. The Court is only required to rely on “substantial
20 evidence” and not all evidence, which is exactly what the Court did here. *Bahena* at 254, 599.

21 Finally, Helix presented no evidence or scheduling analysis that would allow the Court to
22 undermine or change the City’s determinations regarding the nature of the underlying events
23 extending the Project time and APCO’s acceptance thereof. If Helix was going to contest the
24 compensable time period, it was required to do so with evidence and expert analyses. Helix
25 presented no evidence as to the nature or amount of delay to Helix, did not present its delay costs
26 on a monthly basis as required by the Prime Contract, and did not rebut Mr. Pelan’s testimony
27 regarding concurrent delays, or even the fact, as noted by the Court, that Helix itself was late
28 receiving and installing the lights. The fact is, it took Helix until a week before trial to produce its

1 complete job cost. Helix cannot meet its burden of proof on these issues in a post-trial motion.

2 **D. The Court properly excluded superintendent costs.**

3 There is nothing to indicate that the Court misinterpreted Ray Prietzel's ("Prietzel")
4 testimony. As with its other findings, the Court properly evaluated the "substantial evidence" and
5 clearly set forth the factual basis as to why superintendent costs were properly excluded. The
6 Court specifically found that "[a]s Prietzel was paid for his time on site under the approved change
7 orders the claimed expense for acting as a superintendent (supervising only himself) is not
8 appropriate." Findings, ¶ 116. The Court further noted that "...he split his time as the Project
9 Superintendent and self-performing contract and change order work on the Project." Findings, ¶
10 28. This clearly shows that the Court understood and evaluated Prietzel's testimony regarding the
11 work he performed at the project. The fact is, Helix did not present any evidence or analysis for
12 the Court to determine that those contract or change order billings did not cover Prietzel's labor
13 charges. So there is no basis for the Court to re-evaluate its findings related to exclusion of
14 superintendent costs.

15 **III. CONCLUSION**

16 APCO is entitled to a ruling enforcing the no damage for delay clause. But if the Court
17 awards something to Helix, it is limited to its actual costs, as reflected in the job cost report.
18 APCO respectfully submits that the Court simply read the figures from the wrong column on
19 Exhibit D5 and included Helix's unsupported billed amounts, not actual costs. APCO therefore
20 requests that this Court amend its award by reducing the amount of Helix's actual costs for the
21 compensable period to \$25,351.36. *See* Exhibits D5 and D3. Until this issue is resolved, the Court
22 cannot determine the prevailing party or entitlement to fees and costs.

23 APCO therefore respectfully requests that this Court grant its Motion and deny Helix's
24 Countermotion for the reasons set forth above and in the moving papers.

25 DATED: August 12, 2019.

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Attorneys for APCO Construction, Inc.
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fennemore Craig, P.C., and further certify that
3 the: **APCO CONSTRUCTION, INC.'S AND SAFECO INSURANCE COMPANY OF**
4 **AMERICA'S OPPOSITION TO HELIX'S COUNTERMOTION FOR AMENDMENT TO**
5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND REPLY IN SUPPORT OF**
6 **MOTION FOR CLARIFICATION AND/OR AMENDMENT TO FINDINGS OF FACT**
7 **AND CONCLUSIONS OF LAW** was served by electronically filing via Odyssey File & Serve e-
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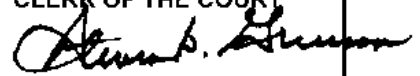
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25 DATED: August 12, 2019.

26 /s/ Trista Day
27 An Employee of Fennemore Craig, P.C.
28

Attachment C

Attachment C



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

MONDAY, JUNE 3, 2019

BENCH TRIAL - DAY 1

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.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 3, 2019, 10:56 A.M.**

2 * * * * *

3 THE COURT: So counsel, are you able to stipulate to
4 the admission of any of the exhibits that bear the JX
5 designation?

6 MR. DOMINA: Your Honor, we are. We had actually
7 intended to have every single exhibit identified as JX admitted
8 without objection, but we found that, inadvertently, there was
9 one e-mail string that had been objected to. So I can tell you
10 which one that is.

11 THE COURT: Which one is that?

12 MR. DOMINA: 44, is that right?

13 MR. JEFFERIES: Correct.

14 THE COURT: So with the exception of 44 and 45, which
15 was not used, may I admit all of the other JX exhibits?

16 MR. DOMINA: Yes, Your Honor.

17 MR. JEFFERIES: Yes, Your Honor.

18 THE COURT: All right. So all of the other JX are
19 admitted.

20 (Joint Exhibit Numbers JX1-JX43, JX45-JX78 admitted)

21 THE COURT: If I could go to the PX exhibits, 101 and
22 102, is there objection to those?

23 MR. JEFFERIES: Yes, there is, Your Honor.

24 THE COURT: And I could go to the DX exhibits, which
25 are 201 through 213, is there any objection?

1 MR. DOMINA: There are objections to those as well.

2 THE COURT: Okay. That's just -- good.

3 Does anyone want to make an opening statement?

4 MR. DOMINA: Yes, Your Honor, Helix would.

5 THE COURT: Okay.

6 MR. DOMINA: Your Honor, before we do, would you
7 like -- we didn't do a formal introduction to those that are in
8 the room. Would you like us to do that or is that another time
9 and --

10 THE COURT: My staff would love for you to do that.

11 MR. DOMINA: Okay. Good morning, Your Honor. Cary
12 Domina representing Helix Electric of Nevada LLC. To my left
13 is Ronnie Cox from our office. To his left is Bob Johnson, who
14 is the vice president of Helix Electric. To his left is Chris
15 Turtepas [phonetic], who is going to be doing our IT work. And
16 you saw or you met Jeremy Holmes this morning, as well.

17 THE COURT: And Jeremy was here almost all the time.
18 So yes.

19 MR. DOMINA: He was. So you know Jeremy. Thank you.

20 THE COURT: All right.

21 MR. JEFFERIES: Randy Jefferies, Fennemore Craig, on
22 behalf of APCO. And with me is Mr. Joe Pelan with APCO.

23 THE COURT: Good morning.

24 MR. PELAN: Good morning.

25 THE COURT: Would you like to make an opening

1 statement?

2 MR. DOMINA: Please, Your Honor.

3 **OPENING STATEMENT FOR THE PLAINTIFF**

4 MR. DOMINA: Your Honor, APCO believes that despite
5 the fact that it was paid by the City of North Las Vegas for
6 the extended general conditions when the project went nine
7 months over, that Helix should not be paid for those same type
8 of extended overhead costs, even though Helix was forced to
9 work on the project nine months longer than it anticipated or
10 it should have.

11 But it gets much worse than just their belief, as you
12 will see when we introduce evidence and testimony, APCO was
13 misleading Helix and being very dishonest in its business
14 affairs and the way that they conducted themselves.
15 Specifically, APCO submitted its own claim to the City of North
16 Las Vegas for its extended general conditions, but for whatever
17 reason it decided that it would not include in its claim the
18 claim that it knew Helix had. Instead, it decided that it
19 would submit that separately.

20 And because it submitted Helix's claim separately,
21 outside of the contractual relationship that it was required to
22 do so, the City of North Las Vegas rejected Helix's claim. But
23 the City of North Las Vegas, as you will hear when Mr. Joe
24 Llamado testifies, who was the project manager for the City, it
25 was rejected simply because it was provided outside the

1 contractual relationship of APCO's claim.

2 Well, the issue with that, though, is that's not what
3 APCO told Helix. APCO told Helix that it was rejected because
4 of lack of backup. So Helix was in the dark and had no idea
5 that the real reason why the claim had been rejected was
6 because APCO had submitted it outside of the recognized
7 contractual relationship that the City required. And, in fact,
8 the City manager testified at his depo, and I assume he will
9 again today, that he didn't even look at Helix's claim for any
10 merit, because it, out of the box, was improper and he
11 immediately rejected it.

12 So you'll also hear evidence, and this is where it
13 gets really interesting, is that the City of -- well, that APCO
14 entered into a settlement agreement with the City of North Las
15 Vegas whereby the City agreed that they would pay APCO a
16 portion of its extended general conditions in exchange for a
17 full and total release of any and all claims that it had for
18 those delays regarding the nine months, including any delays of
19 its subcontractors.

20 Well, he -- APCO did not tell Helix that that's
21 something that they did. And, in fact, the very day -- and
22 we'll show this document -- the very day that Mr. Pelan, who's
23 sitting at counsel table, signed the settlement agreement with
24 the City of North Las Vegas, effectively barring Helix from
25 making any claim as a pass-through to the City, he sent a

1 letter to Helix saying -- telling Helix, Oh, by the way, your
2 claim was rejected for lack of backup. Do you have any backup
3 documentation that I can give to the City so that they can
4 maybe reconsider their rejection?

5 And in other words, Mr. Pelan was dishonest in three
6 different ways: He lied about the reason why the City rejected
7 the claim; he lied about the fact that the City may reverse its
8 previous rejection. There was no reversing going to happen,
9 the City didn't reject it for that; and, finally, he lied
10 because he didn't tell APCO -- he didn't tell Helix that the
11 City and APCO had entered into a settlement agreement whereby
12 it effectively eliminated the right or the opportunity for
13 Helix to get paid through a pass-through claim to the City.

14 Now, based on these representations, because Helix
15 was in the dark, had no idea that the City was really just
16 saying no, you didn't put it in the right -- you didn't do it
17 the right way, you didn't follow the contract. Helix submitted
18 a additional document or a additional backup for its claim to
19 APCO.

20 And, unbelievably, despite having settled its claim
21 with the City, and despite the fact that the City had already
22 told APCO that it was rejecting the claims because of the
23 improper contractual process they were using, APCO submitted on
24 two separate occasions Helix's claims after the fact, which can
25 only be described as disingenuous. It was disingenuous to the

1 City and it was disingenuous to Helix, most importantly,
2 because the claims had already been settled and there was never
3 any chance for Helix now to get paid through a City claim.

4 In fact, you'll also hear testimony that APCO not
5 only concealed that it entered into this settlement agreement
6 with the City, but it continued to tell Helix that it never got
7 paid by the City for its extended general conditions, when, in
8 fact, that was a lie; they did get paid for that.

9 Then, towards the end of the project, APCO,
10 recognizing that the City is not going to pay a claim that it
11 already settled with APCO, APCO said that it would -- or it
12 notified Helix that it did not have the financial wherewithal
13 to pay for the claim, but that it would be willing to enter
14 into some sort of an agreement, a promissory note, whereby it
15 would pay the claim over a couple of years. And our -- Victor
16 Fuchs will testify that he was instructed by Mr. Pelan to go
17 ahead and draft a promissory note and that they would sign it,
18 that APCO would sign it. While Helix did draft it, it was
19 never signed and Helix has never been paid for the claim.

20 So that takes us to today. During the trial, Your
21 Honor, you will hear very clever argument raised by APCO's
22 attorney, who are -- who presents what I would just call lawyer
23 arguments. They're not the positions of APCO, they were not
24 APCO's positions during the project. Everything that they
25 argue from a legal standpoint was completely contradicted or

1 contrary to what the contemporaneous evidence suggests during
2 the project.

3 First, APCO's going to argue that the subcontract
4 contains a no damages for delay clause, which precludes Helix
5 from recovering its damages, or recovering compensatory damages
6 for any delays and that it limits Helix to only recovering for
7 -- or only getting an extension to the contract duration, or
8 the project duration.

9 Now, in my response to that, or our rebuttal will be,
10 number one, Helix specifically negotiated a counterveiling or a
11 contravening clause, which did allow them to recover damages in
12 the -- compensatory damages for any type of delay. So we have
13 a clause that we specifically negotiated that trumps the clause
14 that they're pointing to.

15 But more importantly, this is a Public Works project.
16 And because it's a Public Works project, it's governed under
17 NRS 338. And that includes NRS 338.485, which has an express
18 provision which states that any provision in a contract that
19 attempts to limit, waive, or impair a contractor's right to
20 recover delay damages is against public policy, void, and
21 unenforceable.

22 And so we have that clause, there are certain
23 conditions that must be met to get that, but we will put on
24 evidence that show two of the four provisions are met and they
25 are alternate provisions. All you have to do is show any one

1 of them and you can get the statute to wipe out the clause.

2 And so that is probably the strongest argument that
3 we have that the no damages for delay clause is not
4 enforceable. More importantly, we would also be bound by
5 whatever was in the prime contract. And if they got paid for
6 delay damages, how can they say that the prime contract
7 precludes us from getting delay damages? And, by the way, they
8 haven't even produced the prime contract. It was part of our
9 discovery request. I know they like to say that it wasn't
10 produced -- we didn't produce all these things, but that's a
11 major component of this case, yet we never saw the prime
12 contract.

13 The next argument they're going to make is that
14 there's a pay-if-paid clause in the subcontract that says if
15 they don't get paid, then we don't get paid. Well, number one,
16 in Nevada, pay-if-paid clauses are unenforceable as well. The
17 Supreme Court has very clearly come down to rule that they are
18 unenforceable.

19 More importantly, they did get paid. I don't know
20 why they're pointing to the pay-if-paid clause; they got paid,
21 and so therefore they can't say that the pay-if-paid clause is
22 enforceable. They got paid for their damages and we should get
23 paid for the damages as well. It was their decision not to
24 include our claim within that claim.

25 In addition, by settling directly with the City of

1 North Las Vegas and cutting off Helix's right to get paid for
2 that, they effectively made the pay-if-paid clause an illusory
3 clause. In other words, there was nothing they could ever do
4 to get paid for Helix's claim, because they settled Helix's
5 claim. So you can't use that as a shield and say, Ah,
6 pay-if-paid, when the action that you took is the very thing
7 that --

8 THE COURT: Shield and sword is usually
9 attorney/client privilege, but I'll take it on this too.

10 MR. DOMINA: Okay.

11 THE COURT: All right.

12 MR. DOMINA: So that's -- you can't use the
13 pay-if-paid. They can't come in and say, Ah, we're using
14 pay-if-paid because, you know, you -- we never got paid, when
15 they -- their very decision is what led to that condition
16 precedent not being met.

17 The next thing that you're going to hear them argue,
18 they're going to argue that we waived our right to the claim,
19 that Helix waived the right because we provided a conditional
20 waiver and release at the end of the job for retention. And
21 what they're not going to tell you is that, number one, Mr.
22 Pelan told Helix that it should -- that the conditional waiver
23 and release should be submitted without reference to any claim,
24 because then the City would not provide retention if you
25 reference your claim. So it was never provided with the

1 intention of waiving the claim, and they knew that. They knew
2 it then, these are just clever arguments that they're making
3 after the fact.

4 Number two, it was only a conditional waiver and they
5 waited a full year to pay us our retention. So they got the
6 conditional waiver. And a whole year -- more than a year
7 transpired before we actually got paid. So you can't say that
8 anything was waived. And during that waiver, during that
9 one-year period, we will show evidence that over and over,
10 Helix either rescinded the conditional waiver, if it was ever
11 operative, or APCO, through its actions, through its -- through
12 the e-mails that we see, they acknowledge that it had not been
13 waived and that the claim was still on the table.

14 So therefore, the -- this idea that the conditional
15 waiver somehow waived -- magically waived the claim is bogus,
16 it's not supported in any fact.

17 And then most importantly, when I deposed Mr. Pelan,
18 he testified that Jim Barker, the general counsel for APCO,
19 told him that he could give the retention check to Helix in
20 exchange for an unconditional waiver and release that then did
21 identify the undisputed -- or, excuse me, the disputed amount
22 as the \$138,000 claim.

23 So that was not even elicited. He shared that. I
24 didn't -- I would not have asked for privileged information,
25 but he shared it during his testimony or deposition. I assume

1 he'll testify to that again today, this -- during trial.

2 And finally, with respect to this argument about the
3 conditional waiver, Helix was supposed to be -- well, APCO will
4 acknowledge that it was paid its retention by the City on or
5 about June 10th, 2014. Well, by statute, again, we're a Public
6 Works project, under NRS 338.550, they must have provided the
7 retention to Helix within 10 days of receiving it. We didn't
8 get that, admittedly, until October 29th of 2014, four months
9 later -- more than four months later.

10 And therefore, the statute says if you violate that
11 statute, the general contractor who hired your party must then
12 pay interest on the amount of the retention held for that
13 period of time. So what that means is there were damages that
14 incurred by way of this violation that could not have been
15 waived back in 2013, when they didn't even arise. And so the
16 conditional waiver is void, unenforceable, not operative, a
17 great little clever argument, but it does not rule the day, and
18 there's no evidence that this was waived. They know that.

19 The last issue that you'll hear them argue is the one
20 that they'll spend the most of their time on, and this is the
21 job cost report. They will argue that because Helix's job cost
22 report did not capture every single direct cost on this
23 project, that Helix should somehow not be entitled to its claim
24 for extended general conditions -- or extended overhead.

25 But what they don't tell, Your Honor, is that their

1 own claim, APCO's claim against the City for their extended
2 general conditions was completely comprised of a daily cost.
3 It was an agreed-upon daily cost. And it was not backed up by
4 the job cost report or actual cost that they provided to the
5 City.

6 So at the end of the day, Your Honor, the Court will
7 be asked to decide whether it's fair that APCO, with all of the
8 bad faith conduct that it engaged in and the misrepresentations
9 made, should get paid from the City for its general conditions,
10 and yet Helix, who was also on the project for nine months
11 longer than it should have been, through no fault of its own,
12 by the way, should not get paid for its extended overhead
13 costs.

14 Now, this is, again, especially troubling because
15 APCO should have included Helix's claim within its own claim at
16 the outset, but instead, it settled with the City and forever
17 barred Helix's ability to pursue the City through a passthrough
18 claim.

19 Just like APCO, Helix is entitled to get its extended
20 overhead costs. APCO's failure to pay Helix's extended
21 overhead costs constitutes a breach of the subcontract
22 agreement, and at the very least, if they did comply with the
23 literal terms of the subcontract agreement, through its bad
24 faith and its misrepresentations throughout the entire
25 contractual relationship, constitutes a breach of the implied

1 Covenant of Good Faith and Fair Dealing. And it also entitles
2 Helix to a claim or a judgment against APCO and the surety
3 which is in play in this case as well.

4 Thank you, Your Honor.

5 THE COURT: Thank you. Would you like to make an
6 opening statement?

7 MR. JEFFERIES: Yes, Your Honor.

8 **OPENING STATEMENT FOR THE DEFENDANTS**

9 MR. JEFFERIES: Obviously, our evidence will rebut
10 some of the statements made by Mr. Domina. From our
11 perspective, this is primarily a legal case, significant legal
12 issues to be resolved by the Court.

13 The first would relate to the subcontract and the
14 intent, meaning, and application of the base subcontract, as
15 well as the Helix addendum. We go through that in detail in
16 our proposed findings, so the Court has specific reference to
17 those that we believe are at issue.

18 There is no question that Helix and APCO negotiated
19 the addendum and Helix will confirm they were the author of
20 that addendum. And the Court will note those provisions of the
21 subcontract that were left intact and those that were not
22 deleted, you will see that when Helix wants to delete a clause,
23 they call it out and they say, Section such-and-such is
24 deleted. So the provisions that we have cited to Your Honor
25 and that you'll hear about were not deleted, and from our

1 perspective, bar certain claims.

2 The lien release, there are -- in listening to Mr.
3 Domina, it would seem like there are factual issues, but there
4 really aren't. You'll hear that the final lien release that
5 says zero claims outstanding, that was executed by Helix after
6 being advised that its claim had been denied. And you will
7 also hear confirmation that that release was never rescinded.

8 You will hear, and admittedly on the day that APCO
9 issued its check satisfying the condition in the release, that
10 there was an exchange of e-mail between Mr. Fuchs and Mr.
11 Pelan. Mr. Pelan said, Victor, propose some language so that
12 we can have agreement. Helix did not do that. They cashed the
13 check.

14 The next day they send an executed release that
15 purported to replace the prior and reserve claims. And it's
16 going to be our clear position that that was ineffective.

17 They negotiated the check knowing our intent, APCO's
18 intent, and they're bound by the document itself.

19 Mr. Domina's right, we are going to spend some time
20 on clause. To their credit, Helix did mitigate the impact to
21 an acknowledged delay. They went from a three-man crew with
22 equipment down to one person, their foreman. He remained a
23 foreman throughout the entire project. There was nobody else
24 on site for Helix from May '13 through October '13. Helix
25 costs during that time period are minimal to nonexistent.

1 And you may recall the briefing we had previously.
2 Helix wants to come in and say contrary to Article 7.1 of the
3 contract, they don't have to prove their actual costs; they can
4 come in and just say project manager is X, and he -- we're
5 charging you four hours per day during the eight or nine months
6 of delay.

7 From a legal standpoint, that is contrary to the
8 subcontract and it's contrary to applicable law that we've
9 cited, Your Honor, in our findings.

10 So they are not going to want to talk about actual
11 costs, because even if you get past the legal issues that we've
12 raised, this Court's going to have to deal with how was Helix
13 damaged, if at all.

14 And we -- our -- the parties have just stipulated
15 some pretty voluminous documents. They are sign-in sheets,
16 they are certified payroll reports, there are two versions of
17 their job costs. And, Your Honor, the DX exhibits, about six
18 of them are summaries that we have prepared for the Court's
19 benefit to -- because those other documents are large and at
20 times unwieldy. So we will present to you summaries based on
21 their costs confirming that they were, in fact, not damaged and
22 certainly do not justify the numbers that they're requesting.

23 So unless you have questions, that's all I have.

24 THE COURT: I don't.

25 First witness.

1 MR. DOMINA: Yes, Your Honor. APCO -- or, excuse me,
2 Helix calls Kurk Williams.

3 THE COURT: Does anyone wish to invoke the
4 exclusionary rule?

5 MR. JEFFERIES: I do.

6 THE COURT: So, Roy, if anyone should come in, ask
7 them if they're a witness. If they are, send them back
8 outside.

9 THE MARSHAL: Okay. All right.

10 **KURK WILLIAMS**

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

13 THE CLERK: Thank you. Please be seated. And please
14 state and spell your name for the record.

15 THE WITNESS: Kurk Williams, K-U-R-K W-I-L-L-I-A-M-S.

16 THE COURT: Good morning, sir. There's a pitcher
17 with water in it next to you. There are M&Ms behind you in the
18 little trucks and dispensers, and there are exhibits in the big
19 white binders if you need them.

20 You may proceed.

21 MR. DOMINA: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 **BY MR. DOMINA:**

24 Q Mr. Williams, do you mind if I call you Kurk?

25 A Not at all.

1 Q Kurk, who's your current employer?

2 A JA Tiberti Construction.

3 Q What is your job title with Tiberti?

4 A Project manager.

5 Q Now, did you previously work for Helix Electric?

6 A Yes.

7 Q And when were you last employed by Helix?

8 A I believe it was January of 2015.

9 Q Just want to go through a little bit of your personal
10 background. What is your highest level of education?

11 A Bachelor of Science.

12 Q And what is that degree in?

13 A Construction management.

14 Q Where did you attend school?

15 A Kennesaw State University, Marietta --

16 Q Where is that located?

17 A Marietta, Georgia.

18 Q Oh, thank you. You were going ahead of me. You were
19 going right where I needed -- what I needed to hear.

20 When did you graduate, Kurk?

21 A 1998.

22 Q How long have you been in the construction industry?

23 A 20, 21, 22 years.

24 Q And how long did you work for Helix Electric?

25 A In multiple stints, probably a total of nine years.

1 Q Okay. So you say multiple stints. There were times
2 when you were on and off again at Helix?

3 A Correct.

4 Q But collectively, you were working for them for about
5 nine years?

6 A About nine years.

7 Q When did you first start working for them, do you
8 remember?

9 A June of 2000.

10 Q And what job title did you hold most recently from
11 when you left Helix?

12 A Project manager.

13 Q What about your earliest position with Helix?

14 A Project engineer.

15 Q Okay. And does -- is there a hierarchy in the
16 industry where it goes project engineer and then project
17 manager, or?

18 A Yes.

19 Q Okay. And how long were you considered a project
20 engineer before you were elevated to project manager?

21 A Probably about two years.

22 Q So safe to say, about seven of the nine years that
23 you spent with Helix was as a project manager?

24 A Yes. I will say that I started running work with
25 Helix not with the title project manager, but managing projects

1 after six months with being with Helix.

2 Q Okay. Now, you said that you left Helix sometime in
3 2015; do you know the exact date?

4 A It was definitely towards the end, end of the month,
5 could have been the 31st.

6 Q Of what month?

7 A 2015, January.

8 Q January. Okay.

9 A 2015.

10 Q That's what I thought. Now, did you leave Helix on
11 good terms?

12 A Yes, I believe so.

13 Q Approximately how many projects do you think you were
14 a project manager for while at Helix during those nine years?

15 A Upwards of I'd say 20 to 30.

16 Q Prior to the specific project that we're talking
17 about today, the Craig's Ranch project had you ever been a
18 project manager for Helix on any other Public Works or federal
19 projects?

20 A Yes.

21 Q Approximately how many?

22 A Probably six or seven.

23 Q And in terms of dollar amount of the project, have
24 you ever worked on a project with Helix that was more -- that
25 had a larger contract value than the Craig Ranch project?

1 A Yes.

2 Q Did you personally consider this project to be
3 particularly complex?

4 A No. I would say it had some different -- it was a
5 little different in that APCO purchased the fixtures, which
6 was -- it usually -- which is a little different than normal.
7 Usually, as electrical contractor, you purchase the fixtures.
8 Not to mention APCO had the trenching on the project that is a
9 little unusual. Usually, we would have control over that.

10 Q Did the fact that APCO had control over the trenching
11 and the purchase of the electrical fixtures, did that at all
12 present its own challenges to you?

13 A Somewhat. Just because you don't have the direct
14 control necessarily yourself. The relationship that you would
15 have in terms of with the vendors, you still have to manage
16 that and it's just a little different than usual. So I don't
17 think I would classify the project as overly difficult as
18 opposed to maybe somewhat unique.

19 Q Sure. Now, did you consider yourself a qualified
20 individual or project manager for this project?

21 A Yes.

22 Q I'd like to just take a minute and describe for me
23 the hierarchy of Helix. Did -- during this project, did you
24 have any employees that reported to you immediately?

25 A Project engineer.

1 Q Okay. Do you know who that was?

2 A That would have been either -- that would have been
3 Jason Getty and Dave Beeler.

4 Q Okay. I kind of put you on the spot with names, but
5 there was a project engineer on this project?

6 A Yeah.

7 Q Who -- anyone else that would have communicated with
8 you during the course of the project?

9 A Superintendent. In our -- communicate daily.

10 Q Okay. What about your immediate supervisor, who
11 would you then go and report to?

12 A That would have been Bob Johnson, vice president of
13 Helix Electric.

14 Q Now, what I'd like to do is take a moment for you to
15 describe your daily, weekly, monthly interactions and
16 responsibilities as a project manager on any project in
17 general, but specifically the Craig Ranch project.

18 A Daily, keep -- you communicate with the
19 superintendent, addressing any issues that they may have as far
20 as any purchasing of material that may have come to the job
21 site wrong, you need to correct that, any equipment that there
22 might be issues as far as not working or getting different type
23 equipment, small tools to the job. You have approval of
24 miscellaneous requests, order material, approval of
25 miscellaneous requests for equipment. You also have

1 reconciliation with construction building material items,
2 checking cost of material against the budget prior to getting
3 purchased, so you can stay within budget.

4 Weekly, you're running job cost reports to make sure
5 that you're staying within your costs and cleaning up any cost
6 issues that you might have.

7 Daily, also review of dailies coming in from the job
8 site in regards to monetary and what's going on. Talking to
9 the G, general contractor, if there's any issues there, could
10 be writing up RFIs, could be dealing with any issues of major
11 purchase orders, switchgear, submittals.

12 Also, weekly, you -- early in the job I know I was
13 going to the weekly meetings, walking the job at least weekly,
14 it was a big site, going through that with the superintendent
15 or the general contractor's superintendent.

16 Monthly, cost -- monthly cost to complete with vice
17 president. There's also clean up of any issues that may
18 reflect in the cost of completes. There's invoicing of the
19 general contractor, there's approval of invoices for
20 subcontractors as well as vendors, there's manpower projections
21 weekly that you have to basically approve, approve of to make
22 sure that we're on target, staying within budget.

23 Q And I don't mean to cut you off here, but is there
24 even more things that you could describe? I just don't want to
25 take too much of the Court's time and I think we've kind of

1 made the point.

2 A There's more things, but I think that everybody here
3 probably gets the point.

4 Q Yeah. So during the project, typically, how many
5 projects would -- well, let me see -- step back.

6 While you were at Helix, typically, how many projects
7 at a time would you be assigned to as a project manager?

8 A At this time in this particular division, that
9 there's -- generally, you're working on large projects, usually
10 two, if not three.

11 Q Okay. Now, do you recall that -- well, first of all,
12 do you recall when the project commenced? This project for
13 Helix, anyway?

14 A I think it was January of 2012. I don't know about
15 an actual date, but that's about right.

16 Q That's close enough. We have some documents we can
17 look at to get into that specific date.

18 Do you recall how many projects you were assigned as
19 the project manager for during that time frame, January of
20 2012?

21 A Two.

22 Q Okay. Do you recall when the job was originally
23 expected to be completed?

24 A I believe it was December of 2012, I believe.

25 Q 2012 or -- because you said the job started in 2012.

1 A January of 2012.

2 Q Oh, you said December -- I beg your pardon. So you
3 said December of 2012. So --

4 A I believe so.

5 Q About a year, then?

6 A Yeah.

7 Q Now, to the best of your recollection, do you recall
8 when the project was actually completed where Helix could
9 demobilize from the project?

10 A October sometime of 2013.

11 Q I'd like to go ahead and have you look at the very
12 first exhibit we're going to take a peak at.

13 THE COURT: Mr. Domina, do you want him to use the
14 binder?

15 MR. DOMINA: I'm actually probably going to use the
16 screen, Your Honor.

17 THE COURT: Okay. Sir, there's a screen next to you,
18 right down there.

19 THE WITNESS: Okay.

20 THE COURT: So you can use that if it is helpful to
21 you. The paper copies are in those white binders behind you.
22 So let's see how we do with the monitor. If that doesn't work,
23 we can always go back to paper.

24 BY MR. DOMINA:

25 Q Right. And you just tell me if it's too small. We

1 can also blow it up a little bit to help with some of the
2 smaller print here. So first of all, I'm going to take you to
3 what's been marked as -- or identified as JX11, so Exhibit 11.
4 And this -- there's a little bit of a pause, but it should pull
5 up here. Okay.

6 MR. DOMINA: Chris, if you could just make that the
7 full size of the screen so he can take a look at that.

8 BY MR. DOMINA:

9 Q Do you recognize this document?

10 A Looks like a subcontract. Yeah. Subcontract
11 agreement between APCO and Helix.

12 Q Okay. The screen in front of you, is it not as
13 good -- because we can actually bring this closer to you if you
14 prefer looking off the television?

15 A This one's fine.

16 Q Okay. Good. I didn't want you to kink your neck,
17 because you're going to be in a lot of pain if we do that all
18 day.

19 So you understand this to be the contract between --
20 subcontract between APCO and Helix; what involvement, if any,
21 did you have in negotiating the subcontract?

22 A None.

23 Q Okay. And is that typical of a project manager?

24 A Project managers in different companies mean
25 different things. But at Helix, yeah, that's typical.

1 Q Okay. And as the project manager, what involvement,
2 if any, do you have in reviewing the subcontract? What purpose
3 would you review it?

4 A Primarily scope of work, making sure that matches
5 what the estimating department bid. You -- obviously, you
6 review, you know, the schedule. But primarily, the scope of
7 work and the dollar amount, making sure the dollar amount of
8 what went out in the proposal matches the actual subcontract.

9 Q Okay. Do you have any involvement in actually
10 putting -- let me ask more specific.

11 Did you have any involvement in actually putting the
12 bid for this project together?

13 A No.

14 Q Okay. Would you, though, as project manager, have to
15 review the bid?

16 A Prior to it going out?

17 Q No. Once the contract is executed, and like you
18 said, comparing your costs and making sure you're within
19 budget?

20 A Yes. You review that, yes.

21 Q So I'd like to turn your attention to -- I'll just
22 have Chris pull it up, I guess. Might work better here.

23 MR. DOMINA: Chris, can you pull up page 20 on that?
24 And actually, let's take him back to 420, go to 19, so I can
25 have him identify it.

1 BY MR. DOMINA:

2 Q Kurk, do you recognize this to be the bid proposal
3 that was attached to the subcontract between Helix and APCO?

4 A Far as I can remember, yes.

5 Q So now take you to page 20 of that. I want to have
6 you look specifically, if you could, at about four inches down,
7 there's a heading called Proposed -- or Proposal
8 Qualifications; do you see that? He's going to blow it up so
9 you can see it really nicely here.

10 A Yes.

11 Q So if you look at Number 5 under that heading --
12 well, first of all, what are -- to you, what are the proposal
13 qualifications; what does that mean?

14 A That's basically stated -- it's clarity to what's
15 included in the proposal.

16 Q Okay. Under Number 5, it says, Any price breakouts
17 are provided for accounting purposes only. And then it says,
18 This proposal is based on all parts performed under one
19 continuous schedule. Do you see that?

20 A Yes.

21 Q Do you know if it was Helix's expectation that it
22 would be performing the work under a continuous schedule?

23 A Yes.

24 Q Now, you've been in the construction industry 20
25 years, what types of issues would a contractor face if it was

1 required to perform -- base its work in a schedule that was not
2 continuous?

3 A Well, there could be de-mobe, mobilization. There's
4 escalating of -- escalation of the material, cost, in a lot of
5 cases, if you de-mobe off of a project, a lot of times the crew
6 that's -- that has worked on the job goes to a different job,
7 they come back or they don't come back, you've got a different
8 crew that has to learn the job all over again.

9 Q Are there inefficiencies that happen?

10 A Yes.

11 Q Are there -- is there out-of-sequence work that
12 sometimes happens when you're dealing with a noncontinuous
13 schedule?

14 A Generally, yes.

15 Q Okay. Let's go to the next one, Number 6. It says,
16 Wages are based on prevailing rates. Do you have an
17 understanding as to why Helix included as a qualification
18 prevailing wages?

19 A Clarity. Public Works bid, it's clarity. There's a
20 lot of, how do you put it --

21 Q You answered what I was looking for. I just -- this
22 was a Public Works project, correct?

23 A Yes. Yeah.

24 Q And therefore, the employees were paid prevailing
25 wages.

1 Let's have you look at Number 7. It says, This
2 proposal is based on a 12-month schedule. Did you understand
3 that Helix had submitted this bid and entered into a contract
4 based on the fact that the project would last for 12 months?

5 A Yes.

6 Q Okay. And what would -- in your experience, what
7 would Helix have looked at to generate that assumption or that
8 knowledge that this was based on 12 months?

9 A Generally, it's listed Public Works bids that they
10 have a duration of the projects.

11 Q In the public documents?

12 A Yeah. In the public documents or the specifications
13 or the bid invite, that's generally listed.

14 Q Okay.

15 A And if it's not, most contractors will write an
16 [indiscernible] prior to bid, clarifying what is the schedule
17 of the project to get that as part of the bid documents.

18 Q So again, going back to kind of the same type of
19 question, in your 20 years of experience, if a contractor bids
20 a job to last 12 months and the project actually ends up
21 taking, say, 18 months, six months longer, what types of issues
22 would that contractor run into because of the delay to the
23 project?

24 A Well, you get into extended overhead. I mean, I can
25 give you an example. I'm doing a project for the City of Las

1 Vegas right now that it's out at the Water Pollution Control
2 Facility that they were supposed to provide actuators, and come
3 to find out the actuators that they have, we can't use them,
4 because their City employees took the parts.

5 So we had -- we basically -- they said, hey, we want
6 you to provide them. So --

7 THE COURT: Wait, stop. You said the City employees
8 took the parts?

9 THE WITNESS: Yeah. They used them on other
10 actuators.

11 THE COURT: Okay. Thanks.

12 THE WITNESS: Yes. Yeah, they basically -- they were
13 maintenance guys --

14 THE COURT: They didn't steal them?

15 THE WITNESS: No, they didn't --

16 THE COURT: Just used them in something else.

17 THE WITNESS: They didn't steal them. Yes.

18 THE COURT: Okay.

19 MR. DOMINA: We don't have a criminal case, Your
20 Honor, here. We're okay.

21 THE COURT: I was just wondering. You know, the
22 words --

23 THE WITNESS: Sorry about that.

24 THE COURT: Keep going. Okay. Sorry to interrupt.

25 THE WITNESS: So the -- these actuators that they

1 previously purchased seven years ago, they want us to provide
2 them, the company that I work for now, they want us to provide
3 them, so we go through and put together a proposal to use
4 the -- to provide the same actuators.

5 Well, long story short, that whole process of getting
6 them to review the submittal, they had issues with the
7 actuators that we were proposing to use, that was based on what
8 they had given us. That took about five months, four months to
9 get approved prior to releasing.

10 On top of that, the actuators are a six-month lead
11 time. So our project that is scheduled to end in February of
12 2020 is now delayed and it's going to -- we have a trailer out
13 there as well as the electrical contractor has a trailer out on
14 site. We're going to have an extension of time that we will be
15 out there, my time, a project engineer's time, the
16 superintendent will all be impacted by this delay. The City's
17 fully aware of this and they understand that some of our subs
18 will be impacted as well.

19 BY MR. DOMINA:

20 Q And not to get too far off subject, but what will you
21 do as the general contractor to ensure that the subs are taking
22 care of it, they suffer the same delay damages?

23 MR. JEFFERIES: Object. Speculation.

24 THE COURT: Sustained.

25 Can you rephrase your question.

1 BY MR. DOMINA:

2 Q Have you taken any action to ensure that the
3 subcontractors are paid for the delay that they encounter?

4 MR. JEFFERIES: Objection. Relevance.

5 THE COURT: Can you rephrase your question, please.

6 BY MR. DOMINA:

7 Q So this -- and we're talking specifically about this
8 project with the City of Las Vegas.

9 THE COURT: City of North Las Vegas.

10 THE WITNESS: No --

11 MR. DOMINA: No.

12 THE WITNESS: -- this is the City of Las Vegas.

13 THE COURT: Oh. Okay.

14 THE WITNESS: Sorry.

15 MR. DOMINA: He was telling me, you know, it's a
16 different story.

17 BY MR. DOMINA:

18 Q But did -- have you -- have the subcontractors in
19 this particular case submitted claims to you?

20 MR. JEFFERIES: Objection. Relevance.

21 THE COURT: Sustained.

22 MR. DOMINA: Okay. That's fine. We'll move on.

23 That's okay.

24 THE COURT: Thank you.

25 / / /

1 BY MR. DOMINA:

2 Q I'd like to go ahead and have you read one section
3 of -- or one small portion of the subcontract.

4 MR. DOMINA: Chris, if you can go to page 7.

5 BY MR. DOMINA:

6 Q This is going to be Section 7.3. In fact, I'll read
7 it and then I'll ask you a question about it. It says:

8 In any dispute between contractor and owner as to
9 amount, classification, price, time, or value of subcontract
10 work, or any subcontract material or supplies, or any delay in
11 the prosecution of the subcontract work caused by owner or any
12 other matter whatsoever pertaining to the subcontract work,
13 subcontractor agrees to promptly and adequately provide
14 contractor with whatever documentation or support as contractor
15 may deem necessary to negotiate with owner.

16 Now, in this case, let's get back to the Craig Ranch
17 project, did APCO specifically ask you to provide a copy, a
18 full copy of your job cost report to support the claim to the
19 owner?

20 A No.

21 Q They never asked for that specifically?

22 A [No audible response.]

23 MR. DOMINA: Okay. Let's go ahead and turn, Chris,
24 if you would, pull up JX13, please. If you would blow up the
25 bottom half of the e-mail.

1 BY MR. DOMINA:

2 Q Kurk, this is a -- appears to be an e-mail from you
3 dated January 28th, 2013, to Brian Bohn. Do you know who Brian
4 Bohn was or is?

5 A Yeah, he was the second project manager on this
6 project.

7 Q For APCO?

8 A Uh-huh.

9 MR. JEFFERIES: Cary, what exhibit? I'm sorry.

10 MR. DOMINA: JX13.

11 MR. JEFFERIES: Thank you.

12 BY MR. DOMINA:

13 Q So do you recall sending this e-mail?

14 A Yes.

15 Q And your e-mail says, Brian, please see attached,
16 schedule delay notice. And then if we pull up JX12 --

17 MR. DOMINA: And go ahead, just blow up the Brian
18 thing. Thanks, Chris. Wow.

19 BY MR. DOMINA:

20 Q Does this -- is this the letter that you attached to
21 the e-mail back on January 28, 2013?

22 A Yeah. Yes.

23 Q Okay. And in your letter, because we're looking at
24 the letter now, what do -- what -- is the final completion date
25 identified in your letter as you understood it at the time?

1 A Yes.

2 Q And what do you -- what is it -- what is written
3 there?

4 A January 9, 2013.

5 Q Okay. And if you would, just take a moment to just
6 scan the rest of the letter there. You indicate that the --
7 APCO provided a current schedule which shows a completion date
8 of August 3rd, 2013; do you remember receiving that?

9 A Yes.

10 Q Now, that schedule, is that -- does the schedule
11 continue to be in flux at times when -- can the schedule be
12 revised multiple times?

13 A A schedule is usually revised about every week.

14 Q So --

15 THE COURT: Yep.

16 BY MR. DOMINA:

17 Q So the fact that it says August 3rd, 2013, did that
18 mean to you that for sure the job would then be done by August
19 3rd, 2013?

20 A No.

21 Q Okay. So what was the purpose of you sending this
22 January 28th letter to APCO?

23 A It was basically a notice that's saying, hey, we're
24 going past the original completion date and that, you know,
25 Helix was reserving its rights as to, you know, any and all

1 additional costs incurred due to the schedule delays that if
2 Helix chose to pursue, this was notice, you know, per the
3 contract of saying the job is being delayed.

4 Q And prior to this date of January 28th, 2013, did
5 anyone at APCO notify you or anyone else at Helix, to the best
6 of your knowledge, that they -- that APCO had already submitted
7 a claim to the owner for its own extended general conditions?

8 A No.

9 Q Okay. Let's go back to JX13, which was the e-mail,
10 and I'm looking at the top part of the e-mail. This is Brian
11 Bohn's response to you the following day it appears. And he
12 says, Kurk, please see the attached letter in response to your
13 notice.

14 And so I'm going to take you to Exhibit JX13, page 2.

15 MR. DOMINA: Can you blow that up, at least -- let's
16 see that.

17 BY MR. DOMINA:

18 Q Do you recognize this letter?

19 A Yes.

20 Q Okay. And is this the letter that Mr. Bohn sent to
21 you in response to your notice of the delay impact?

22 A Yes.

23 Q And after reading this letter, what was -- did you
24 have any special concerns or any thoughts that came to mind?

25 A The -- probably the biggest thing that comes to mind

1 here was that APCO was -- we were in this together a lot of
2 times as a sub, and you present cost, you present, say, we're
3 being impacted. The general contractor will try and push the
4 sub down and mitigate that so that it doesn't go any further,
5 you know, due to the owner.

6 But this letter, for me, it made me feel like, hey,
7 we're in this together. We're going to do this, we're both
8 going -- we're aligned.

9 Q Okay. Let's go to Tab 3 -- or that's my Tab 3. I
10 want to go to Exhibit JX18, please, page 1.

11 This is a e-mail chain. The bottom e-mail --

12 MR. DOMINA: If you can blow that up.

13 BY MR. DOMINA:

14 Q -- this is from you, Kurk, dated June 19, 2013, again
15 to Brian Bohn. And here you say:

16 Rai told me -- I'm starting with the first real
17 paragraph, not the first sentence. It says,

18 Rai told me that you mentioned in the
19 weekly meeting last week and Helix and Valley
20 Crest would be getting paid for extended
21 overhead on this job. I know that we have
22 had previous correspondence on this subject
23 back in February. I will be submitting our
24 daily costs to you for the extended overhead,
25 and I will also let you know where we are as

1 far as costs to date based on today versus
2 the original scheduled completion date.

3 Remember sending that e-mail to him?

4 A Yeah.

5 Q Now, do you recall having a specific understanding as
6 to whether or not APCO had indicated that Helix would be paid
7 for his -- its extended general condition?

8 A No. There wasn't any understanding.

9 Q Well, your e-mail says that Rai told me -- and who's
10 Rai?

11 A Rai was a superintendent on the job.

12 THE COURT: From APCO.

13 THE WITNESS: From -- for Helix.

14 THE COURT: Okay.

15 THE WITNESS: And Rai called, excited, saying, Hey,
16 you know, Brian said that Valley Crest and Helix are going to
17 get paid. So I got excited and, you know, basically sent this
18 e-mail trying to confirm that, hey, we're going to get paid.

19 BY MR. DOMINA:

20 Q Okay. And his response to that -- and why do -- you
21 say excited, what -- is that just because you were waiting so
22 long or does that go back to what you were saying before, that
23 it's not typical that the general helps you through the
24 process?

25 A It can be challenging to get claims. So once again,

1 noting that the general contractor is not pushing back on
2 anything or saying that the owner is pushing back, this is
3 pretty exciting. You're almost -- I felt there's conversation
4 going on between the general contractor and the owner, and, you
5 know, the owner is saying, yes, we're welcoming extended
6 overhead.

7 Q All right. And if we look at the top part of the
8 e-mail, it's sent the same day, it's Brian's response to you,
9 he says, Thank you, Kurk. As far as the extended overhead, I
10 definitely did not say that anyone will be getting paid.

11 But then he goes on to say,

12 I don't recall what, if any, comments I
13 made in regards to extended overhead, but
14 APCO is in the process of presenting the City
15 with a time-impact analysis containing facts
16 as to why additional costs should be paid.
17 Once we fight the battle and hopefully come
18 out successfully, this will open the door for
19 Helix and Valley Crest to present their case
20 for the same.

21 Now, after you read -- I'm going to stop you there,
22 and we'll continue on. But after you read that portion of the
23 e-mail, did you have an understanding as to whether APCO had
24 already submitted its claim to the City of North Las Vegas or
25 whether it was in the process and kind of intended to?

1 A It's in the process and it's intending to. Because a
2 time-impact analysis was just that, that's you're presenting to
3 the owner, hey, this is why we feel why we should be
4 compensated. So it's a process.

5 Q Okay. So the claim -- and reading this, you didn't
6 take this as if APCO had already submitted a change order
7 request for some extended general conditions?

8 A Absolutely not.

9 Q Okay. And then the rest of the e-mail says -- this
10 is Brian. He says,

11 Valley Crest has already submitted a
12 letter and extended overhead cost information
13 to me, and I forwarded it to the City for
14 their review and consideration. If you
15 choose to do the same, I will forward it to
16 the city as well.

17 Did you have any concerns or immediate thoughts come
18 to you as you read that portion of the e-mail?

19 A Yeah. That Valley crest was ahead of me and I needed
20 to get in costs ASAP.

21 Q Okay. And why do you -- why was that a concern to
22 you that Valley Crest be ahead of you?

23 A Well, how do you put it? He who is up on --

24 Q There's only so much money?

25 A He who is up on the table, you know, gets paid first,

1 if you will. Or, you know, you see that, you see that first,
2 somebody is already on the table, they could be in negotiations
3 type of deal. There's only generally so much allocated money.

4 Q Right. Only so much money to go around?

5 A To go around.

6 Q I know that too well in some cases we're handling.

7 But -- okay.

8 If you would, let's turn to exhibit -- page --
9 Exhibit 19, page 1.

10 MR. DOMINA: And, actually, I'm going to have you go
11 to 2, if you could, Chris.

12 BY MR. DOMINA:

13 Q So I'm mostly interested in, if you look at the
14 bottom e-mail, the bottom e-mail is the same e-mail that you
15 sent back on January 29th, correct? Where you say, Here's our
16 initial letter -- sorry.

17 The bottom e-mail is Brian's response to you
18 regarding that initial response from January 28th, 2013; is
19 that correct?

20 A Yeah.

21 Q Okay.

22 A Without seeing it, but yeah, based on the dates, it
23 looks -- yes.

24 Q Okay. So I want to turn your attention to the top
25 e-mail, which is your e-mail dated June 19th, but you're just

1 kind of using that e-mail string to respond to him; is that
2 right?

3 A Yes.

4 Q Okay. So in your e-mail, you identify a -- that
5 you've attached a letter for your extended overhead costs and
6 you -- again, you indicate:

7 I know from our previous conversations that you will
8 be submitting this to the City of North Las Vegas.

9 And you go on then to say, Based on the current date
10 of today, these costs are about \$72,960. First of all, what
11 was the purpose of identifying a specific cost at this point to
12 the City? Or, excuse me, to your -- APCO?

13 A Well, so that it wasn't a Roman number or a
14 guesstimate, you've got something here to tell the City and
15 say, hey, right now, you know, I'm including our cost in
16 extended overhead as well as any other subs, you can total
17 package this up as to what you're presenting, you know. Ours
18 is 72 and Valley Crest's might have been 100,000 and APCO's
19 might have been 400,000. But it --

20 Q So as of June 19, Helix had determined that it was
21 incurring approximately \$73,000 in extended overhead costs?

22 A Yes.

23 Q And did you indicate that -- or did you believe that
24 that would be the end of Helix's claim or did you expect that
25 you would be able to increase that claim if the project

1 continued to go forward past the date?

2 A Well, I expected it to go forward. That's why it's
3 saying based on the current date.

4 Q Right. And, in fact, the last sentence of your
5 e-mail specifically says that, does it not?

6 A Yes.

7 Q It says, You'll be pursuing to get paid for these
8 additional costs that we are incurring on a daily basis due to
9 the fact that the project is behind schedule. All right.

10 So let's turn now to the actual letter that you sent.
11 That's JX17. And I should ask you, is this the letter that was
12 attached to that e-mail that we just looked at?

13 A Yes.

14 Q Okay. And you identified it -- the subject line is
15 extended overhead costs. And this letter, it identifies kind
16 of a breakout. What -- can you explain for me what that -- you
17 know, the breakout is there, the project manager,
18 superintendent, what does that designate?

19 A This designate the daily cost of what equipment, as
20 well as personnel, is being associated with the project on a
21 daily, you know, daily cost. So it's basically allowing
22 somebody to say, well, if we extend this out an additional six
23 months, this is going to be x-amount of dollars. If it's an
24 additional year, it's going to be x-amount of dollars.

25 Q Now, if you add up all of those line items there, and

1 I won't ask you to do it at this point, but I did that and it
2 comes to \$640. Do you -- does that ring true to you as what
3 the total daily claim was at the time?

4 A It looks about right, yeah.

5 Q Again, at June -- at around the time of June 19th,
6 correct?

7 A Yes.

8 Q Did you believe that this letter was -- this letter
9 identifying the daily breakdown was sufficient to put APCO on
10 notice that it could go and include Helix's claim along with
11 APCO's claim to the City of North Las Vegas?

12 A Yes.

13 Q Did you feel that at this time you -- or did APCO at
14 any time ask you to provide the job cost report supporting
15 these daily costs?

16 A No.

17 Q All right. So let's jump back to the first page of
18 the exhibit that we were looking at, Exhibit 19. So I'm
19 looking at the bottom e-mail and this from Brian Bohn dated
20 February -- or, excuse me, Friday, June 21st. So just a few
21 days after you sent the letter, which was June 19th. And he
22 says, Kurk, your letter has been forwarded to the City for
23 their review.

24 After reading that, did you have a comfort level that
25 APCO was looking out for you?

1 A We're in the same boat rowing the same direction.

2 Q Okay. And then if you look at the immediate e-mail
3 above it from Joe Pelan, do you recognize -- you know who Mr.
4 Pelan is, correct?

5 A Uh-huh.

6 Q Is he in the courtroom today?

7 A Yep.

8 Q Okay. His e-mail to you says: Is there any
9 documentation other than the letter? Do you see that?

10 A Yep.

11 Q Do you recall providing a response to that?

12 A Yep.

13 Q And what was your response? And we can look at it.

14 A Does there need to be?

15 Q Okay. Is there any other documentation that you
16 need?

17 A Yeah.

18 Q What did you mean by that?

19 A Basically, anything that you need at this time to
20 help to support what we're presenting, we're willing to, you
21 know, let's get it on the table now.

22 Q Okay. And Joe responds to you, and he says,
23 Typically, the project manager that is not on site would be
24 considered home office overhead. If the City challenges this
25 item, how will you respond or document the cost?

1 Do you have an understanding as to what he was
2 talking about in his e-mail there?

3 A Yes.

4 Q Can you explain for me what you believe he was trying
5 to convey to you?

6 A You know, if you're not a project manager, that's,
7 you know, out on site, in the trailer, working on the specific
8 job, that, you know, you'd be considered as home office, being
9 that you're working out of an office.

10 Q Did you agree with his position?

11 A I could see how it may be questioned. But I know you
12 could be out on a site and be working on multiple projects.
13 Just because you're in a on-site trailer doesn't mean that
14 you're working on that job specific. But I understood what he
15 was, you know, pushing at.

16 Q Okay. And then your response to him says,
17 If need be, we have job cost detail
18 reports that show costs and project as
19 absorbing to managing the project that is not
20 an overhead cost.

21 What was the purpose of you sending this e-mail?

22 A Basically saying that, you know, if this is something
23 that is going to be required, the job cost detail reports can
24 basically show, you know, time associated with the extension.

25 Q Okay. Did Mr. Pelan ever respond to this e-mail and

1 tell you, yes, the job cost report, a daily cost identifying
2 the direct cost, is required, to your knowledge?

3 A No.

4 THE COURT: Would this be an okay place to break for
5 lunch?

6 MR. DOMINA: Oh, is it lunchtime? Yes.

7 THE COURT: It is.

8 MR. DOMINA: It will be fine.

9 THE COURT: All right. We'll be in recess until
10 1:15. Apparently I have a 1:00 conference call.

11 MR. DOMINA: Okay. Thank you, Your Honor.

12 (Proceedings recessed at 12:01 p.m., until 1:14 p.m.)

13 THE COURT: Good afternoon, Counsel.

14 Sir, I'd like to remind you you're still under oath.

15 THE WITNESS: Thank you.

16 THE COURT: You may proceed.

17 MR. DOMINA: Thank you, Your Honor.

18 BY MR. DOMINA:

19 Q Okay. Kurk, before lunch we had stopped, we had
20 looked at Exhibit 19, I believe.

21 MR. DOMINA: I want to go ahead and now turn to
22 Exhibit 21, Chris. If you could go to page 3 of that exhibit.

23 BY MR. DOMINA:

24 Q This is an e-mail from Lisa Linn [phonetic]. Do you
25 know who Lisa Linn is?

1 A Yeah. Yes.

2 Q And who was she?

3 A She was the contract administrator for APCO.

4 Q For APCO? And it's an e-mail to a Joemel Llamado; is
5 that how you pronounce that?

6 A Yeah.

7 Q The e-mail that the two line there, it says Joemel --

8 A Uh-huh.

9 Q -- Llamado.

10 A Yep.

11 Q Do you know who Joemel is?

12 A He was the project manager for City of North Las
13 Vegas.

14 Q Okay. And had you ever met him during the project?

15 A Uh-huh.

16 THE COURT: Is that yes?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 BY MR. DOMINA:

20 Q So the e-mail says: Please see attached CORs 68, 69,
21 70, and 71. Do you understand CORs to be change order request?

22 A Yes.

23 Q Okay. So let's look at those -- some of those
24 attachments.

25 MR. DOMINA: If you can turn to page 2 of that

1 document, Chris. See the 21-2. Okay.

2 BY MR. DOMINA:

3 Q Okay. Kurk, do you recognize the document that's on
4 the screen?

5 A Can you blow it up a little bit, please? Yes.

6 Q Okay. And what is this?

7 A This is an invoice for the -- for extended overhead
8 that was sent to APCO, from Helix to APCO.

9 Q Okay. So this is the invoice that Helix would have
10 submitted to APCO and it's dated August 27, 2013. It's
11 \$102,400. This is a little bit higher than the last rate that
12 you provided back on June 19th; do you recall that?

13 A Yes.

14 Q Now, how did you come to the \$102,000 number?

15 A It's additional time. The 72 was based on June, an
16 extension to June. The 102 is based on an extension to --
17 through August, roughly.

18 Q So as a project continued to be delayed, you would
19 submit --

20 A The cost goes up.

21 Q -- additional -- okay. You'd submit additional
22 invoices or supplement the invoice with new costs?

23 A Yes.

24 Q Is that correct?

25 A Correct.

1 Q Okay. And you still have the \$640-a-day breakdown,
2 do you see that in the description?

3 A Yes.

4 Q Okay. So that carries over from the analysis that
5 you determined back in June, correct?

6 A Correct.

7 MR. DOMINA: All right. And if you go to just the
8 first page of Exhibit 21, Chris.

9 BY MR. DOMINA:

10 Q Do you know what this document is?

11 A It's a change order request.

12 Q Okay. And do you understand what it is or the
13 purpose of it here?

14 A Yeah. It looks like APCO's requesting from Joemel of
15 the City of Las Vegas pushing Helix's invoice through,
16 basically, via change order request to the City of North Las
17 Vegas.

18 Q Okay. And APCO did not -- or have you seen this
19 change order request before?

20 A I don't believe so, no.

21 Q Okay. Did you have an understanding that when you
22 submit -- or what was your understanding of what APCO would do
23 after you submitted the invoices to APCO for the claim?

24 A That they would -- that industry standards has it
25 that they would have submitted Helix's request for extended

1 overhead with theirs and anybody else's that were claiming to
2 be affected.

3 Q Okay. And as you look at this change order request,
4 does it appear, based on that, that -- based on this change
5 order request that APCO included Helix's claim within its own
6 claim or did it submit it as a standalone claim?

7 A Appears to be a standalone claim to me.

8 MR. DOMINA: Okay. Let's go ahead, Chris, and go to
9 Exhibit 2105.

10 BY MR. DOMINA:

11 Q Kurk, have you ever seen this document before?

12 A No.

13 Q Okay. So the -- down at the bottom -- this is a City
14 of North Las Vegas document that identifies the -- can you see
15 at the top there, the title, it says: Helix Electric Extended
16 Overhead?

17 A Yes.

18 Q Do you see that?

19 A Yeah.

20 Q And there are some -- there's not a whole lot of
21 description in here, but there are some remarks at the -- about
22 the middle of the page there; do you see that? Can you read
23 those remarks to me? If you can -- it can be blow up or --

24 A This COR is rejected. The City of North Las Vegas
25 does not have a contract with Helix Electric.

1 And then it's signed by Joemel Llamado, City of North
2 Las Vegas.

3 Q Do you recognize that as Joemel's signature, or is it
4 just the fact that he wrote his name under it?

5 A I just see it in the print. The cursive -- I
6 wouldn't know Joemel's signature, but --

7 Q Okay. As you read that now, as you sit here today
8 and you read that, do you have an understanding as to what the
9 basis was for the rejection of this change order request?

10 MR. JEFFERIES: I'm going to object. Foundation.

11 THE COURT: Overruled.

12 You can answer.

13 THE WITNESS: Yes.

14 BY MR. DOMINA:

15 Q Okay. And can you provide the answer that -- your
16 understanding?

17 A Well, my -- as I previously mentioned, industry
18 standard would have it being that the City of North Las Vegas
19 has a contract with the general contractor, being APCO, that
20 any requests would come through APCO, on Helix's behalf, would
21 go through APCO. So the City -- he's rejecting this saying
22 that we don't have a contract with Helix Electric, which I
23 would agree. There was not a direct contract with the City.

24 Q In other words, based on the change order request
25 that we looked at previously, was APCO asking the City of North

1 Las Vegas to add Helix's claim to its overall contract value,
2 or was it asking the City to pay Helix separately?

3 A Can you scoot down?

4 Q We'd have to go to the last exhibit we were looking
5 at.

6 MR. DOMINA: So go to Exhibit 21, Chris, the first
7 page.

8 BY MR. DOMINA:

9 Q Based on this, can you tell whether or not APCO was
10 including the change order request or asking the City to add
11 this value, 102,400, to the APCO contract, or to pay Helix
12 separately?

13 A I would have to say looking to pay Helix separately,
14 here, without any markup on APCO's behalf or anything like
15 that, based on this change order.

16 Q In other words, there was -- APCO did not attempt to
17 mark it up or --

18 A Yeah, generally, for their passthrough, they would
19 have markup for administrative, i.e., overhead costs, to pass
20 this through --

21 Q That --

22 A -- to a subcontractor.

23 Q That dollar amount exactly mirrors the invoice amount
24 that Helix was seeking, correct?

25 A Correct.

1 Q Okay. Now, did -- at the time of the -- during the
2 project, I assume that APCO notified Helix at some point that
3 the invoices were rejected by the City; do you recall that?

4 A That the -- I won't say the invoices, but I -- that I
5 remember, but that, you know, the claim for extended overhead
6 had been rejected.

7 Q Okay. And that was probably a failure on my part.
8 The claim itself had rejected, did APCO give Helix a basis or a
9 reason as to why the City rejected Helix's claim?

10 MR. JEFFERIES: Can I just object? Get some clarity.
11 Who's talking to who? Because --

12 THE COURT: Can you do that for us. Identify the
13 participants in a conversation to a communication so I can
14 understand better who's talking to who.

15 MR. DOMINA: Okay.

16 BY MR. DOMINA:

17 Q Did you hear from anyone at -- and, because I don't
18 necessarily know if it came from staff or from Mr. Pelan
19 himself, but did you personally hear from anyone at APCO
20 that -- the reason as to why the City of North Las Vegas
21 rejected Helix's claim?

22 THE COURT: That's a yes or no, sir.

23 THE WITNESS: Yes.

24 BY MR. DOMINA:

25 Q Okay. And who -- first of all, who did you have that

1 conversation with?

2 A I don't remember it being a conversation, but I think
3 it was an e-mail, if I remember correctly.

4 Q Okay. And who did the e-mail -- who was the author
5 of the e-mail or the letter, whatever the correspondence was?

6 A I think it was Joe, if I remember correctly, Pelan
7 stating that it had been rejected based on backup.

8 Q Based on backup, meaning the lack thereof?

9 A Lack thereof, correct.

10 Q Okay. Did anyone at APCO tell you that the City
11 rejected the claim because of a contractual issue and that they
12 failed to submit it through their own contractual process?

13 A No.

14 Q Okay.

15 MR. DOMINA: Let's go to Exhibit 21, page 4, Chris.

16 BY MR. DOMINA:

17 Q Okay. Kurk, this is a letter dated October 3rd,
18 2013. It's to Mr. Bob Johnson. Do you -- could you take a
19 look at this and tell me if you recall seeing this letter?

20 A Yes.

21 Q Okay. You do recall seeing it?

22 A Uh-huh.

23 Q Is this what you were talking about when you said you
24 received a correspondence from Mr. Pelan indicating that the
25 City had rejected the claim based on failure to provide backup?

1 A Correct. This would be what I was speaking of.

2 Q Okay. And in the letter, Mr. Pelan says,

3 At this time, APCO has not received any
4 backup documentation to undo the previous
5 formal rejection made by the City of North
6 Las Vegas. Do you want APCO to resubmit your
7 request? Please provide the appropriate
8 backup for review.

9 After reading that, what was your understanding of
10 what APCO was asking of Helix?

11 A Just for an additional breakdown, to resubmit.

12 Q And you read it to -- when you read it, did you
13 believe that the City had rejected -- in fact, rejected Helix's
14 claim because of lack of backup?

15 A Yes.

16 Q If you would, just note this, that the October 3rd,
17 2013, date. We'll come back to that. Okay?

18 A Okay.

19 Q Just kind of take a mental note of that.

20 MR. DOMINA: Let's go to Exhibit 22. Just the first
21 page for now, Chris.

22 BY MR. DOMINA:

23 Q Have you ever seen this document before, Kurk?

24 A I can't really see it now.

25 MR. DOMINA: Chris, can you, like, show him the

1 header first. Blow up the header so you can kind of see what,
2 you know, the top part of the document is.

3 THE WITNESS: I can see it now.

4 BY MR. DOMINA:

5 Q Okay. Have you ever seen this document before?

6 A No.

7 Q Okay. This is an October 2nd, 2013, letter from a
8 Jeffrey Buchanan. Do you -- have you heard that name before?

9 A No.

10 Q Okay. Somebody from the City of North Las Vegas, to
11 Joe Pelan. And I just want to read a small section to you and
12 then ask if you were given any information about this
13 particular letter. Starting off with the second paragraph of
14 the letter. It says, Given the numerous.

15 Do you see that?

16 A Uh-huh. Yes.

17 Q It says,

18 Given the numerous changes and multiple
19 delays that occurred during this project, but
20 not included in your TIAs, the City is
21 prepared to offer you compensatory delays of
22 165 days from May 10, 2013, to October 25,
23 2013, for a total amount of \$560,724.16,
24 based on the following evaluation.

25 Now, if you turn the page to Exhibit 22 -- or, excuse

1 me, page 2 of Exhibit 22, the last paragraph, it reads,

2 It is also understood that APCO will
3 forego any claims for delays, disruptions,
4 general conditions, and overtime costs
5 associated with the weekend work previously
6 performed and presently ongoing to achieve
7 the above dates and for any other claim,
8 present or future, that may occur on the
9 project.

10 This letter was dated October 2nd, 2013. Did -- at
11 any time during the project, APCO notified Helix that it had
12 entered into an agreement with the City of North Las Vegas
13 whereby it was being paid its extended general conditions?

14 A No, not that I'm aware of.

15 Q After having read that paragraph, do you -- based on
16 your industry, your 20 years of experience, do you have an
17 understanding as to whether or not Helix or the claim that
18 Helix had submitted would be included in a release such as the
19 language that we just looked at?

20 MR. JEFFERIES: Object. Lack of foundation.

21 THE COURT: Overruled.

22 THE WITNESS: I would say based on what I'm reading,
23 no. That there's no possible recourse for Helix to get
24 anything, based on this language, through the city.

25 MR. DOMINA: Okay. Let's go to page -- excuse me,

1 Exhibit 25, page 2.

2 BY MR. DOMINA:

3 Q Do you recognize this letter?

4 A Can you blow it up?

5 MR. DOMINA: Chris?

6 THE WITNESS: It looks -- yeah, I do, but I'm trying
7 to read it.

8 Yes, I recognize it.

9 BY MR. DOMINA:

10 Q Okay. This is a letter dated October 31st, 2013, and
11 you appear to be the author, and you're sending it to Mr.
12 Pelan. What was the purpose -- well -- yeah, what was the
13 purpose of you sending this letter to Mr. Pelan?

14 A Basically, we found a calculated error in -- I don't
15 know if it was an Excel error or whatever, but there was a
16 error in regards to submitting this cost, and there were some
17 additional dollars associated that we were presenting at the
18 time.

19 Q Okay. And did you provide the City -- if you look at
20 the -- let me just walk you through this. The regarding line
21 or the subject line, it says, Rejected invoice. Do you see
22 that? See the very -- you know, just your subject line.

23 A Requested backup -- request to support our invoice.

24 Q Right. And --

25 A Yes. Yes.

1 Q And the first sentence of your letter says, Attached
2 please find the requested backup documentation requested to
3 support our invoice. What were you -- who -- what were you
4 responding to?

5 It says a "requested backup." To whom were you
6 responding, and what were you responding to?

7 A That was to -- from Joe's letter stating that the
8 request for the extended overhead was rejected due to not
9 having a substantial backup.

10 Q Okay. So this was your attempt to provide the backup
11 that he was requesting, because you were told that the City had
12 rejected the claim --

13 A Correct.

14 Q -- for lack of backup?

15 A Yes.

16 Q Okay. And again, as of October 31st, you had not
17 become aware that the City of North Las Vegas, and APCO had
18 reached a deal on the extended general conditions?

19 A Correct.

20 Q Okay. So let's go and look at exhibit -- or the same
21 exhibit, but page 3. Is it coming? There it is. All right.

22 BY MR. DOMINA:

23 Q So is this just another invoice, then, identifying
24 the amount of your claim from -- well, tell me what this is.

25 A That's an -- that's the revised invoice amount from

1 \$102-and-some to \$111,847.

2 Q Okay. And do you recall specifically why it went up?
3 You said there were some errors, but were there amount -- were
4 there items that had not been captured as part of direct costs
5 that you were adding to the claim?

6 A Honestly, I don't remember.

7 MR. DOMINA: Okay. Well, I think maybe if I -- if we
8 look at the next page, which is page 4, and then we'll have to
9 flip it, Chris, because it's going to be -- you can do that,
10 right? Look at that. See, I've got to flip mine.

11 BY MR. DOMINA:

12 Q Okay. Do you -- can you tell us what we're looking
13 at here on page 4 of Exhibit 25?

14 A Yeah. It's a breakdown of the extended overhead
15 costs with various line items by month through the certain time
16 period, January 1st, 2013, through August 30th, 2013.

17 Q So does it appear that the daily costs that Helix was
18 seeking recovery for went up a bit from that 640 that was
19 initially identified in the June 19 letter?

20 A Yes.

21 Q Right. There's additional --

22 A There's additional.

23 Q There's additional line items, right?

24 A Yes.

25 Q You've identified things that, for instance, on

1 the -- on that June 19th letter, we didn't see project fuel
2 being charged to the -- to APCO, correct?

3 A Correct.

4 Q Small tools wasn't on that list?

5 A Correct.

6 Q So there's some items that you've gone and recaptured
7 then?

8 A Yes.

9 Q Okay. And then going back to that letter --

10 MR. DOMINA: Which is page 2, Chris.

11 BY MR. DOMINA:

12 Q -- the very last sentence, you say, In addition, we
13 will be submitting a separate invoice for extended overhead for
14 the dates of September 2nd, 2013, through October 25th, 2013.

15 Now, this letter was dated October 31st. The project
16 had not ended; is that correct? For -- as far as Helix's
17 purposes go?

18 A Sometime, yes, late October, yeah.

19 Q Okay.

20 A That would be correct.

21 Q And so now Helix had identified the costs that were
22 incurred during September and October?

23 A That needed to be presented, yes.

24 Q Okay. And your -- it was your intention to submit
25 those as a supplement or provide those to --

1 A Yes.

2 Q -- APCO?

3 A Yes.

4 Q Okay. Let's go to -- let's turn to that.

5 MR. DOMINA: Let's go to Exhibit 25, Chris, page 11.

6 BY MR. DOMINA:

7 Q Now, I want to look at the first e-mail at the bottom
8 of the page there. It's from Eddie Bennett; do you know who
9 Eddie Bennett is or was?

10 A Yeah. She was a contract administrator for Helix.

11 Q Okay. And it's my understanding Ms. Bennett has
12 passed away; is that your understanding?

13 A Correct.

14 Q Okay. So this is an e-mail from her to Joe Pelan,
15 but you're copied on it. And she says -- it's dated November
16 13th, so about two weeks after you sent the last letter to APCO
17 notifying them that you would be submitting additional claims.
18 And it says, Attached is an invoice for extended overhead for
19 September 2013 through October 2013.

20 And I just want you to look at, quickly --

21 MR. DOMINA: Page 2, Chris, and page 3.

22 BY MR. DOMINA:

23 Q -- of Exhibit --

24 MR. DOMINA: Oh, I'm sorry. You know what, that's my
25 fault. Go to Exhibit 26, page 2.

1 BY MR. DOMINA:

2 Q You recognize this document?

3 A Yes.

4 Q And what is this?

5 A This is the additional amount from September through
6 October for extended overhead of that time.

7 Q The 26,304, correct?

8 A Yes.

9 MR. DOMINA: And then, Chris, if you'd go to page 3
10 of that document.

11 BY MR. DOMINA:

12 Q Is this the breakdown that we looked at earlier?

13 MR. DOMINA: If you could twist it. There.

14 BY MR. DOMINA:

15 Q Is this the breakdown of -- similar to what we saw
16 for the months of January through August?

17 A Yes.

18 Q Okay. Now, looking at -- since --

19 MR. DOMINA: Chris, if you can scroll down to the
20 language right under the table there.

21 BY MR. DOMINA:

22 Q Okay. Yeah. It says -- the second line says,
23 Project manager based on four hours a day at \$65 an hour.
24 Explain that to me. How did you come up with that charge?

25 A Well, there's a certain amount of daily tasks

1 performed with each project that you do at Helix. And I say
2 Helix, meaning Helix-specific, because at Helix you do about
3 three if not four times the amount of tasks than the normal
4 contractor, if you will. It's a -- basically, a requirement,
5 part of their systems. That -- I can't say that it's all four
6 hours every day. Some hours -- sometimes it's eight, sometimes
7 it's six, sometimes it's two. But on average, that's roughly
8 what you're spending on each project, roughly, that you're
9 doing at Helix.

10 Q Okay. And so the line item below that or the
11 description below that says superintendent at four hours a day
12 at 70 bucks an hour. How did you come up with that analysis?

13 A Same principle. Helix requires extensive amounts of
14 paperwork from project manager as well as superintendents.
15 That is, I would say, like I said, three or four times as much
16 as your average contractor. So that there's multiple --
17 there's dailies, there's check-in of equipment, all of this has
18 to get signed, submitted into the office, and it has to be done
19 daily performance that supervisors -- Helix feels supervisors
20 are required to do.

21 MR. DOMINA: Okay. Chris, take -- let's go back to
22 page 11 of Exhibit 25.

23 BY MR. DOMINA:

24 Q So we looked at the e-mail where Eddie had forwarded
25 the two -- the invoices for the two additional months. Below

1 that, Mr. -- excuse me, above that e-mail, Mr. Pelan sends a
2 response and says, The City has your change order request. I
3 cannot approve without their approval. Thanks.

4 Now, this was -- that e-mail was sent November 13th.
5 This was more than a month after the letter that we looked at
6 dated October 2nd, 2013, correct?

7 A Yes.

8 Q Did -- had you known at the time that the City and
9 APCO had entered into a settlement agreement on -- in October
10 of 2013, would you have responded differently -- or would you
11 have responded to or taken up that issue with APCO as to
12 whether or not you were going to get paid for your claim?

13 A Yeah. I would have rose it to a higher supervisory
14 level that we had a major issue.

15 Q Okay. But again, you weren't ever notified that
16 there was a settlement?

17 A No.

18 Q And then your response was, Thanks for passing this
19 one on, Joe. Right? You would have responded a little
20 differently than that had you known that Helix's rights were
21 already waived?

22 A Sure. Yep. Yes.

23 Q Okay. Let's go -- we can skip a little bit here.

24 MR. DOMINA: Let's go to Exhibit 29, Chris.

25 / / /

1 BY MR. DOMINA:

2 Q I want to start with page -- I guess it would be 2,
3 the very bottom. We're going to go through these real briefly.
4 There -- I want you to look at page 2 and follow with me. It
5 looks like it's -- you've got Eddie Bennett, who's sending out
6 an e-mail at the bottom of the page. She's asking for
7 retention to be released. Is it your understanding that as of
8 March 24, 2014, APCO had not released retention to Helix?

9 A Yeah, that's correct.

10 Q And, basically, there's a response from Mary Jo at
11 APCO Construction saying no, or not yet, still waiting. Did
12 you understand, based on that time frame, that Helix had not --
13 excuse me, APCO had not yet been paid its retention from the
14 City?

15 A That's typically why a sub would not be paid, is that
16 the general contractor hadn't been paid yet.

17 Q Okay. And then in April --

18 MR. DOMINA: If we go back to just the page 1 on
19 Exhibit 29, Chris.

20 BY MR. DOMINA:

21 Q On April 9th, Eddie sends another e-mail -- oh, I'm
22 sorry, it was still on that same page.

23 So there's a little bit of a string going on there,
24 asking where the retention is. But what I want to get to is
25 your e-mail, which is on that first page, Exhibit 29. Your

1 e-mail is dated April 16th to Joe Pelan, and you're asking him
2 about the release for the Craig Ranch project; do you see that?

3 A Yes.

4 Q And you indicate that you've been off the job for six
5 months and not sure why you haven't been paid your retention.

6 A Correct.

7 Q Okay. Let's look at Mr. Pelan's e-mail above to you
8 in response. Can you read that for me?

9 A Helix is the only firm holding up the release of
10 retention, just so you know. I can't sign the final release
11 with a -- something -- claim. I will talk to Victor tomorrow.
12 Thanks.

13 Q It says, Pending claim.

14 A Pending claim.

15 Q Okay.

16 A Okay.

17 Q Okay. When you -- do you recall receiving this
18 e-mail?

19 A Yes.

20 Q When you saw the term, pending claim, did you believe
21 that APCO recognized that Helix's claim was still outstanding?

22 A We're still in the pipe.

23 Q Did you understand -- when he said claim, pending
24 claim, what did you understand that to be? What was he
25 referring to?

1 A The extended overhead claim.

2 Q Okay. So we're now April 16, 2014, you -- as you
3 read that, you don't believe that APCO understood that Helix
4 had waived its claim based on a conditional waiver and release
5 that was given more than a year earlier, right?

6 A No. Not based on -- no.

7 MR. DOMINA: Okay. Let's move onto Exhibit 51,
8 Chris. I'm going to send you to page 3. That's not it, is it?
9 Or 31, go to 31. 51, 31? Oh, yeah. Yeah, it was on page 31,
10 sorry.

11 MR. JEFFERIES: Counsel, 51?

12 MR. DOMINA: Yeah, it's Exhibit 51, page 31.

13 MR. JEFFERIES: Thank you.

14 BY MR. DOMINA:

15 Q Kurk, do you know what we're looking at now on the
16 screen?

17 A Yeah. It looks like a job cost report.

18 Q Okay. Were you familiar with Helix's job cost
19 reports while you were employed at Helix?

20 A Yes.

21 Q Did you, in particular, have to navigate the job cost
22 report for the Craig Ranch project?

23 A Yes.

24 Q I'm going to just identify two or three of these.

25 MR. DOMINA: Let's go to -- Chris, go to Exhibit 32.

1 Or, excuse me, page 32.

2 BY MR. DOMINA:

3 Q Do you recognize what this table represents?

4 A Yeah. It looks like the cost code -- looks like
5 project manager cost code.

6 Q Okay. So is it -- would you agree that it appears to
7 be for the month of February of 2013?

8 A That's what it looks like, yes.

9 Q Okay. And I just want to orient myself with this
10 document. If you look at the -- your name is the source
11 description, right? Kurk Williams?

12 A Uh-huh.

13 Q And then if you go over a couple of columns, there's
14 a column called Quantity. What do you understand that column
15 to be?

16 A Hours.

17 Q The hours worked?

18 A Yes.

19 Q Okay. And each of these, if we look at the entries
20 here, there's a February 3rd, there's a February 10th, February
21 17th, and a February 24th. Can you -- what significance does
22 that date have in the particular month; is that first of the
23 week or the end -- week ending?

24 A I believe it's the week ending.

25 Q Okay. And so if we look at the, you know, for

1 instance, this document we're looking at, if you were to read
2 the job cost report for the week ending of February 17th --
3 actually, let's go to the 24th, February 24th. If I were to
4 read it, am I to assume that you only worked two hours on that
5 week on the project of February 24th?

6 A Yes. Looking at the report, yes.

7 Q Okay. Based on what the report is saying, correct?

8 A Yes.

9 Q Okay. So what I did, and this is where I'm going to
10 ask to have a demonstrative exhibit admitted into evidence.
11 What I did was go ahead and -- not admitted into evidence, but
12 used -- I went through the job cost report from January of 2013
13 through October of 2013 and identified all of the entries for
14 you that were entered into the job cost report, and I compiled
15 them into a table just for the purpose so that we're not having
16 to look at every little line item and take the Court's time. I
17 put them into a table.

18 MR. DOMINA: Chris, can you pop that up for a minute.

19 THE COURT: Well, if it's a demonstrative exhibit, I
20 need it to be reviewed before I'm going to let you use it, to
21 see if there are any objections to it, since I'm your fact
22 finder.

23 MR. DOMINA: I did provide it to opposing counsel.

24 THE COURT: I'm waiting.

25 MR. JEFFERIES: Yeah, I'm looking.

1 MR. DOMINA: This is the one I e-mailed to you.

2 MR. JEFFERIES: Yeah, I got it somewhere.

3 MR. DOMINA: I can give it to you. I mean, I need it
4 back.

5 MR. JEFFERIES: No, I don't want to take your copy.

6 MR. DOMINA: Well.

7 MR. JEFFERIES: You may proceed. Your Honor, I did
8 see it yesterday and I don't have an objection.

9 THE COURT: All right. Can we mark a copy as D1.

10 MR. DOMINA: Is that how you -- okay.

11 THE COURT: It is how I do it.

12 MR. DOMINA: Yep. Correct. Demonstrative 1, very
13 good.

14 THE COURT: D1, Demonstrative 1. That's --

15 MR. DOMINA: I got it.

16 THE COURT: It's by standard operating procedure.

17 MR. DOMINA: Okay.

18 THE COURT: Before you show it to me, I need to mark
19 it as D1. Do we have a copy?

20 MR. DOMINA: Yes.

21 THE COURT: Lovely. Not me, Dulce. She is the
22 marker of all things.

23 MR. DOMINA: Okay.

24 THE COURT: Wait. Can I see it. Thank you.

25 All right. Now you can move on.

1 MR. DOMINA: Okay. Chris, can you pull that up for
2 us here? And then blow it up, because now I'm out of a copy.
3 I was not going to --

4 THE COURT: Well, you gave us a yellow highlighted
5 version.

6 MR. DOMINA: I did. That's okay.

7 THE COURT: Okay. That okay with you?

8 MR. JEFFERIES: Sure.

9 THE COURT: All right. Okay. Thank you.

10 MR. DOMINA: We can make another. We can replace it
11 if we need to. But --

12 BY MR. DOMINA:

13 Q So what I'd like you to look at here is, starting in
14 February --

15 MR. DOMINA: Actually, let's go down to March, Chris.
16 Scroll down.

17 BY MR. DOMINA:

18 Q So in March, if you look at the total, all of those
19 weeks are there. You have March 3rd, 10th, 17th, 24th, and
20 31st. Those are all the week ending. And I calculated, based
21 on the job cost report, the number of hours that were reflected
22 in that report. And it showed for a total of 13 hours for the
23 month of March 2013. Do you believe that to be an accurate
24 reflection of the time that you spent on the project?

25 A No.

1 Q And why would you say that?

2 A Well, one, as I previously mentioned, at Helix, you
3 do three to four times the amount of work that you normally do
4 for contractors. As a salaried employee, and you have to turn
5 in a time card at Helix -- you typically work in a project
6 manager role at Helix, you typically work anywhere from 55 to
7 60 hours in a week. I'd say average contractor is more like
8 45, 55 hours. So with all the project management duties that
9 you have -- it's a salaried position -- you're not overly
10 concerned. A time card is more of a nuisance to you that you
11 just start putting time. You turn in 40 hours, for lack of
12 better terms.

13 Also, I can specifically remember a little bit about
14 this project in that the project management dollars that was
15 allocated in the cost code was starting to take hits because
16 the job was running over longer. So I get graded on
17 performance. Although there's a pending claim, it may have
18 just went away.

19 So you -- so as you're starting new project that
20 had -- may have more additional project management time, you
21 start putting more time over there. But it doesn't change the
22 fact that every day, every week, every month you have the
23 continuous duties that you had to perform from day one.

24 MR. DOMINA: So, Chris, scroll down to the bottom of
25 the table there, April.

1 BY MR. DOMINA:

2 Q So April shows --

3 MR. DOMINA: Whoops, not too far. Just April.

4 BY MR. DOMINA:

5 Q April shows 12 hours of time that you worked on that
6 project, based on what the job cost report reflects; do you
7 believe that that accurately represents the amount of time that
8 you would have spent in April of 2013?

9 A No.

10 Q And again, can you tell me concisely why you believe
11 that is?

12 A Because as long as -- as long at Helix Electric that
13 the job is open, you are required to do certain daily, weekly,
14 and monthly tasks that require a certain amount of time for you
15 to do them in. So I remember specific here, in late March,
16 early April, I was starting a big \$8 million utility solar
17 project that -- hey, we got a new job, everything's going good,
18 this job is going in the extended overhead. That job was about
19 a four-month job, it had a lot of project management time in
20 it.

21 So I start putting more cost over there. But it
22 doesn't change the fact of the duties that I still was required
23 to do as far as invoicing, approval of construction building
24 materials, material recs, equipment requests, the norm from
25 starting from day one. It just doesn't change.

1 MR. DOMINA: All right. Chris, let's go to the final
2 exhibit that I have. This is going to be -- this is page 3 of
3 Exhibit 51.

4 BY MR. DOMINA:

5 Q We saw this document attached to --

6 MR. DOMINA: Yeah, Exhibit 51, page 3.

7 MR. JEFFERIES: Thank you.

8 BY MR. DOMINA:

9 Q We saw this document attached to your invoices or
10 Helix's invoices to APCO; do you remember seeing that?

11 A Uh-huh. Yes.

12 Q And the first document that you're looking at right
13 now just runs through August, and then if Chris takes us to
14 page 4, it should be the remainder -- the remaining two months.
15 Have you added up the two dollar amounts there, the \$111,847
16 and the 26,304, do you know what that is approximately?

17 A It's like 137-, 138,000.

18 Q 138,151. When you put this together, did you go in
19 and -- or strike that.

20 Were you involved in putting the claim together?

21 A Yes.

22 Q Now, we talked about how you came up with the four
23 hours a day for the project manager, we talked about how you
24 came up with that for the superintendent. What about the
25 project engineer? According to Exhibit 51, page 3, you're --

1 Helix is billing about \$901 a month for project engineer. What
2 did you do to confirm that that was -- that's an accurate or
3 reasonable amount of time that the project engineer would be
4 spending?

5 A The project engineer helps out the project manager
6 and the superintendent on the project, that they, as well,
7 spend a significant amount of time in regards to specifically
8 tracking of, like, light fixtures, any type of lamps that may
9 have been -- have been broken.

10 On this particular job, I know we shipped fixtures to
11 a prefab shop that -- I think that, although they take off the
12 light fixtures, they still need to be verified. You know, you
13 receive them; you sign this delivery ticket, but, really, is
14 there anything damaged? The truck driver's trying to go about
15 its way. They're blocking up space. So the project engineer
16 spends a generous amount of time going and verifying -- this
17 job had a lot of light fixtures on it -- that, you know, the
18 light fixtures that we had were all -- were in good condition,
19 or for those that weren't, you know, went back and made sure we
20 got what we needed.

21 Q Okay. And if we look at the other items there,
22 there's a site truck, project fuel, site trailer, wire trailer,
23 office supplies, storage Conex, forklift, small tools, for the
24 total. In all of those things I just read off, did you go and
25 confirm that those were actual items that were being used on

1 the Craig Ranch project?

2 A Yes.

3 Q And do you believe that the amounts, the daily
4 charges and the amounts that are being charged in Exhibit 51,
5 page 3 and 4, are reasonable and accurately represent the
6 direct cost that Helix was incurring on this project?

7 A I do.

8 MR. DOMINA: I don't have any further questions, Your
9 Honor.

10 THE COURT: Cross-examination.

11 MR. JEFFERIES: Your Honor, I do. We have had
12 discussion before we went on the record of Joemel with the City
13 of North Las Vegas is here waiting. And out of courtesy to
14 him, Mr. Domina and I talked about --

15 THE COURT: You want to suspend this witness's
16 examination and do the North Las Vegas guy?

17 MR. DOMINA: I actually don't, Your Honor. And I --
18 you weren't here when I confirmed that, but I talked to Kurk.
19 He has a very important bid that he's putting together with his
20 current employer, and --

21 THE COURT: So let's finish him up --

22 MR. DOMINA: -- he's got to go.

23 THE COURT: -- then they get to the North Las Vegas
24 guy.

25 MR. JEFFERIES: That's fine. Do you mind, Your

1 Honor, if I do it from counsel table, given the exhibits I've
2 got spread out?

3 THE COURT: As long as you keep your voice up.

4 MR. JEFFERIES: I'll try. Let me know if it doesn't.

5 THE COURT: Jill will tell you if you're not.

6 CROSS-EXAMINATION

7 BY MR. JEFFERIES:

8 Q Mr. Williams, as the project manager, were you
9 familiar with the subcontract?

10 A Certain portions.

11 MR. JEFFERIES: Okay. Chris, can you pull up
12 Exhibit 11?

13 BY MR. JEFFERIES:

14 Q Did anybody assist you in preparing the invoice for
15 the extended general conditions?

16 A Not really. Maybe me and Bob might have looked at
17 it, but --

18 Q Bob Johnson?

19 A Bob Johnson, yeah.

20 Q Okay. And in preparing any of those, did you go to
21 the Helix job cost report?

22 A I don't think so.

23 Q Okay. And as project manager, was it one of your
24 expectations and responsibilities to allocate the time and cost
25 that went into the job cost report?

1 A Yes.

2 MR. JEFFERIES: Okay. If you would, would you go to
3 paragraph 7.1. It's on Bates 444 within Exhibit 11. If you
4 could blow up Article 7.1.

5 MR. DOMINA: Page 6 of Exhibit 11. Or, if you want,
6 you can read the Bates number and he can punch that in.

7 MR. JEFFERIES: Okay.

8 MR. DOMINA: He's got to have something, though. He
9 doesn't have the version with trial director.

10 BY MR. JEFFERIES:

11 Q Sir, do you see the section that is entitled Changes
12 and Claims, and then that first paragraph, if you'd take a
13 minute, read that to yourself.

14 A Okay.

15 Q Would it be a fair reading of 7.1 that -- for a claim
16 for extended overhead or general conditions, that you were
17 limited to your direct actual on-site costs?

18 A Based on this, yes.

19 Q Okay. You understood, sir, that the prime contract
20 was incorporated into the subcontract, correct?

21 A Yes.

22 Q Okay. And you, in fact, had an opportunity and did
23 review the prime contract as part of your scope of work as a
24 project manager, correct?

25 A No, I did not. No.

1 Q You did not?

2 A No.

3 Q Prior to this project, had you worked on a City of
4 North Las Vegas project before?

5 A With a different contractor, yes.

6 Q Okay. So you were familiar, generally, with the fact
7 that the prime contract has claim escalation-type procedures,
8 correct?

9 A Yep.

10 Q Okay. Sir, would you look at Joint Exhibit 3.

11 MR. JEFFERIES: If you would, Chris. Thank you.

12 BY MR. JEFFERIES:

13 Q And in fairness to you, this may be one, if you want
14 to grab the hardcopy, I'll leave it up to you if -- it's pretty
15 blurry on my screen, but --

16 A I just need it blown up a little bit, Chris.

17 MR. JEFFERIES: Just first page, 6.3, Resolution of
18 Disputes.

19 THE COURT: Wow. That's a great improvement. Thank
20 you.

21 Can you see it better, sir?

22 THE WITNESS: Yes.

23 BY MR. JEFFERIES:

24 Q Okay. I'm going to ask you to kind of review that
25 page, if you will. So that's why I said it may help you if you

1 could grab the --

2 MR. JEFFERIES: May I approach? I can help him, Your
3 Honor.

4 BY MR. JEFFERIES:

5 Q But it's the notebook that has Joint Exhibit 3 behind
6 you.

7 THE COURT: So it's probably in the first volume?

8 MR. JEFFERIES: Yes, Your Honor.

9 MR. DOMINA: You can scroll that box down too, as
10 he's reading it, just so you know.

11 THE WITNESS: We're talking about 6.31?

12 BY MR. JEFFERIES:

13 Q Yes, sir. And 6.3.2, and then it continues onto the
14 next page, to paragraph B.

15 Let me ask you this, maybe I can short circuit some
16 of this. At any time on a project, did Helix request that APCO
17 invoke any of the prime contract claim procedures for your
18 extended overhead claim?

19 A No.

20 Q Okay. If you flip to page 2 of Exhibit 3, subsection
21 B, it talks about a disputed portion of the work. It says,

22 The contractor shall keep accurate and
23 complete records of its costs and shall make
24 available to the construction manager a daily
25 summary of the hours and classifications of

1 equipment and labor utilized on the disputed
2 work.

3 Did Helix do that with regard to its extended
4 overhead?

5 A I would say Helix charged some of the costs with its
6 extended overhead, yes.

7 Q Some of them? Okay.

8 A Yeah.

9 Q Which ones? Which categories?

10 A I don't recall off the top of my head.

11 Q Okay. If you look at Subsection C within Exhibit 3,
12 it talks about disputed costs being incurred over a span of
13 more than 30 days. Will you take a minute and review that.

14 A Okay.

15 Q Okay. Did Helix comply with Subsection C and submit
16 itemized detail of its actual costs for this extended overhead?

17 A There were some detail that was broke out.

18 Q Okay. You gave a one-page summary, is that it, that
19 you submitted?

20 A Being that the contractor never requested anything
21 else, yes.

22 Q Okay. If you go to Exhibit 12, this is your first
23 notice once the project went overtime, right?

24 A Yes.

25 Q And you know and you note that your claim is -- and

1 I'm going to use your term -- for all additional costs incurred
2 due to schedule delays, correct?

3 A Yep.

4 Q Okay. You mention timecards. How often did you
5 personally fill out timecards?

6 A Every week.

7 Q Every week? Okay. So the information -- and I
8 haven't beat you up yet with the job costs, but we'll use D1,
9 would it be fair to say that during the course of --

10 THE COURT: He doesn't have D1 because of the way it
11 was marked. I will get him the copy that was provided to me.
12 That's the problem with using demonstrative exhibits.

13 Sir, this is a summary that's been provided by
14 counsel. You don't have to believe it's accurate.

15 BY MR. JEFFERIES:

16 Q My question was these times, as Mr. Domina has
17 depicted on Exhibit D1, you would have input these into the
18 Helix job costs on a weekly basis?

19 A Yes.

20 Q Okay. And that would be based upon your timecards
21 that were filled out concurrently as part of your process of
22 administering the job, correct?

23 A Yes.

24 Q Okay.

25 A But I will say it doesn't reflect the time that's

1 spent on the job, as I previously stated.

2 Q Okay.

3 A Working 60 hours, you can only put 40 hours on the
4 timecard.

5 Q Okay. Well, let's -- you -- in your summary, your
6 request for extended general conditions is based upon four
7 hours a day for yourself and a superintendent, correct?

8 A Correct.

9 Q Beginning in February, which is the first month after
10 the -- or, I guess, when the delay starts, who was the
11 superintendent?

12 A Rai Prietzel.

13 Q Rai Prietzel? Okay. And was he also the foreman?

14 A At what point?

15 Q You tell me; when was Mr. Prietzel the foreman on the
16 project?

17 A He would have only been the foreman on the project
18 when Rick Clement was there as the superintendent.

19 Q Okay. Did you ever promote Mr. Prietzel to
20 superintendent?

21 A I'm not authorized to promote.

22 Q Okay. Who made Mr. Prietzel superintendent?

23 A Well, anybody that's on the Helix project that's
24 running work, that is the supervisor, is a superintendent.

25 Q Okay. So is it your testimony today that the four

1 hours for a project superintendent is Mr. Prietzel's time?

2 A Would have been in February.

3 Q Okay. February through October?

4 A Through October.

5 Q Okay. And isn't it true, sir, that beginning in May
6 2013, Mr. Prietzel was the only -- strike that, that's not
7 accurate.

8 Beginning May 13, 2013, isn't it true that
9 Mr. Prietzel was the only person that Helix had on site?

10 A If that's what's reflected in the job costs, yes.

11 Q Okay. And isn't it true, sir, that Mr. Prietzel was
12 actually performing contract work that resulted in you
13 preparing pay estimates to APCO so you could get paid?

14 A Yes.

15 Q Okay. So Mr. Prietzel was doing billable work, he
16 wasn't suspended for four hours from February through October
17 2013, correct?

18 A Yes.

19 THE COURT: Can you rephrase your question.

20 MR. JEFFERIES: Yes.

21 THE COURT: I'm not sure I understand.

22 MR. JEFFERIES: Yes.

23 BY MR. JEFFERIES:

24 Q Isn't it true, sir, that if we look at what
25 Mr. Prietzel, as the soul Helix employee, was doing in the

1 field, he was completing the balance of Helix's contract work
2 that you would then bill APCO for, correct?

3 A While performing superintendent duties, yes.

4 Q Okay. Who is he superintending?

5 A He's performing, I said, superintendent duties. So
6 there's requirements of filling out paperwork, checking
7 equipment, ordering material, those are superintendent duties.
8 He's filling out labor reports.

9 Q Okay. Do you know if Mr. Prietzel was ever paid as a
10 superintendent?

11 A I'm going to say he was, based on certified payroll.

12 Q Okay. How often were you on site?

13 A At what point in the project.

14 Q Let's say -- let's do 2012.

15 A I probably attended at least once a week through most
16 of 2012.

17 Q Okay. And isn't it true, sir, that APCO scheduled
18 monthly meetings with the City, the architect, and all of the
19 subcontractors to discuss project issues?

20 A I believe so.

21 Q Okay. And at those meetings, issues were escalated
22 for discussion for the entire group, correct?

23 A I believe so.

24 Q And during those monthly meetings, schedule was
25 discussed, correct?

1 A That I can't say. With -- because what I'm
2 remembering is the subcontractor meetings with -- where the
3 City wasn't there. So I remember the general contractor and
4 the subcontractor meetings. Later on in the job, I believe
5 there was some owner meetings.

6 Q Okay. Well, let me make sure our record is clear.
7 There are two types of meetings that APCO regularly conducted
8 on the project, weekly meetings with the subcontractors,
9 correct?

10 A Correct.

11 Q And then there was a monthly meeting that the
12 subcontractors were all invited to attend with the owner and
13 the architect, correct?

14 A I believe so.

15 Q Okay. And at both meetings, schedule was discussed,
16 correct?

17 A I don't know about the owner meeting. I do know the
18 subcontractor meeting.

19 Q And at the weekly subcontractor meeting, APCO would
20 hand out schedules, correct?

21 A Yeah.

22 Q Okay. And I'm not going to be able to put my finger
23 on it, but in one of the exhibits we went through this morning,
24 APCO actually told you there was a TIA; did you ever request,
25 separate and apart from any discussion at a meeting, a copy of

1 the TIA?

2 A No.

3 Q Okay. Would you agree with me, sir, that once a
4 delay happens on the project, that all parties have a duty to
5 mitigate damages, costs if they can?

6 A Yes.

7 Q Okay. And the level of mitigation is different, and
8 the opportunities for mitigation, are different for prime
9 contractors and specialty subcontractors; would you agree?

10 A In certain cases.

11 Q Okay.

12 A Sometimes there's prime contractors that self-perform
13 work.

14 Q Fair enough. But, generally, you agree with my
15 statement?

16 A Yes.

17 Q Okay. Who made the decision to go from a three-man
18 crew during the first two weeks of May down to just
19 Mr. Prietzel in May of 2013?

20 A Me and Rai.

21 Q Okay. And why did you do that?

22 A Well, one, the schedule was moving slower, so we're
23 already busting on labor, because the job's going over. We
24 need to get cost off the job. That would be number one. And
25 if the work's not there, we're not just going to put guys on

1 the job just to put guys on the job.

2 Q Okay.

3 A Because it, you know, we could have just put all of
4 this into a "claim" cost code. But that's not what we do.

5 Q Okay. You didn't track any delay-related costs in
6 your cost code, did you?

7 A Not in a specific cost code, no.

8 Q Okay.

9 A It's based off of the time. But we could have opened
10 a different cost code.

11 Q You knew you were going into a claim situation with
12 extended performance, right?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q Okay. And you didn't create any type of specific
17 cost coding within your job costs to track the actual costs,
18 correct?

19 A Correct.

20 Q Okay. Sir, would you --

21 MR. JEFFERIES: Exhibit 14, Chris. Can you blow it
22 up a little bit for the Court and the witness. Not that much.

23 BY MR. JEFFERIES:

24 Q Tell me what Exhibit 14 is, sir.

25 A It looks like a progress invoice.

1 Q Okay. So this is the Helix progress billing up
2 through April 30, 2013, correct?

3 A Yes.

4 Q Okay. And did you prepare these?

5 A Yes.

6 Q Okay. And you presented them to Mr. Johnson for his
7 signature?

8 A Yes.

9 Q Okay. If you would, go to Bates label 533, the third
10 page of Exhibit 14, if you would, sir.

11 MR. JEFFERIES: And you're going to have to rotate
12 it, if you would, Chris.

13 BY MR. JEFFERIES:

14 Q And I want to ask you about -- did you prepare this
15 schedule of values?

16 A Yes.

17 Q Okay. And this is how you tracked your progress for
18 billing purposes, right?

19 A Somewhat. It's a portion of it, yes.

20 Q Okay. Now, if I go up to Line Item 35 at the bottom,
21 if you could --

22 MR. JEFFERIES: Chris, if you could kind of blow that
23 line up so we have it -- is it possible to do it across?

24 MR. TURTEPAS: It's not going to be any bigger.

25 MR. JEFFERIES: Okay.

1 BY MR. JEFFERIES:

2 Q To use your terminology, what is included in general
3 conditions for your billing purposes here?

4 A I didn't bill the general conditions line item.
5 That's something that would have come from our estimating
6 department. But, I mean, typical in general conditions is your
7 office and your overhead. That's typically what's in your
8 general conditions. But I didn't bill that specific dollar
9 amount, that came from our estimating department.

10 Q Okay. And I respect when you say that, you didn't
11 come up with \$108,000 figure, is that what you're saying?

12 A Correct.

13 Q Okay. I respect that. General conditions as
14 reflected here would be your project management, your
15 superintendent, and the home office and field support, correct?

16 A No. Because a superintendent on this job would cost
17 a lot more money than \$108,000.

18 Q Okay. That's why I was asking you a question. What
19 did you envision the general condition line item included? Did
20 it include yourself?

21 A Let me see the rest of the top. Because I -- like I
22 said, I didn't bill that -- this. Let me see --

23 THE COURT: Do you want to look at it -- the actual
24 document?

25 THE WITNESS: Yeah, I want to look at the actual --

1 THE COURT: What's the exhibit number again?

2 MR. JEFFERIES: 14.

3 THE COURT: So, sir, it may be in that same book.

4 THE WITNESS: Okay. So something that would have
5 been in -- something that would have included --

6 THE COURT: So I think it's in Volume 2, sir, if you
7 want to see it --

8 THE WITNESS: I can --

9 THE COURT: Oh, you can read it there?

10 THE WITNESS: I can -- yeah, I can read it now.

11 Something that would have been included, project management
12 time would have been submittals. That would have project
13 management time and putting those together. You could even
14 have some cost in mobilization and writing of purchase orders
15 and various different things to get equipment out on site. So
16 I would say that project management time is more based
17 throughout and not just in general conditions, based on your
18 question.

19 BY MR. JEFFERIES:

20 Q Okay. The claim that you have made against APCO,
21 does it relate to the extended general conditions for your time
22 on the job?

23 A Yes.

24 Q Okay. Looking at that Line Item 35, for the time
25 period April 30, 2013, is it a correct reading of this document

1 that even with the \$7,500 you're billing for April, the general
2 conditions is still only billed out at 92.56 percent?

3 A Yeah, that's probably true.

4 Q Is my statement true?

5 A Yes.

6 Q Do you know how you would have determined the \$7,500
7 to bill in April for general conditions?

8 A I can't say specific. What I can say is as a
9 subcontractor, when preparing a invoice, one of the things that
10 you're trying to do is to invoice enough so that you're not
11 continuously financing projects. So you may have other areas
12 that are front-end loaded in the job that you're basically
13 looking to cover costs, i.e., get profit to not continue to
14 carry a negative cash flow.

15 Q Okay.

16 A So in preparing this, a small amount like that can
17 get somewhat irrelevant, if you will, as trying to get the
18 job -- keep the job in positive cash flow.

19 Q Okay. Did Helix lose money on this job?

20 A Helix, I don't believe, made the -- if I remember
21 right -- did not make the margin that they were looking to
22 make.

23 Q Okay.

24 A And I could define -- losing money is a subjective
25 term.

1 Q Okay. Fair enough. I'll come back to that in a
2 minute.

3 Would you look at Exhibit 16. Again, if you'd go to
4 the third page of the exhibit. Now, you've mentioned submittal
5 as being kind of an overhead -- mobilization and submittals as
6 part -- kind of an overhead activity, for lack of a better
7 word. And I don't mean to mischaracterize what you've said.
8 But explain to the Court what line items 1 and 2 are on this
9 billing.

10 A Mobilization.

11 Q Okay.

12 A Oh, that's -- that's cost to get going of ordering of
13 material, it can mean staging and set up on the front end of
14 the job. There's a number amount of getting job orders and
15 bonds ordered, if required. There's writing of subcontracts.
16 There's -- most of -- a lot of your cost is spent right up
17 front in getting the job going. Submittals is -- you have to
18 prepare submittals for fixtures, switchgear, miscellaneous line
19 items, especially in Public Works jobs. It's -- it can be a
20 monumental task to get things --

21 Q And so your -- through your billing, and admittedly,
22 you have billed these at 100 percent, that's where you're
23 recouping those costs, right?

24 A Some.

25 Q Line items 1 and 2?

1 A For that work, yes.

2 Q Okay. Now, I want to direct your attention now,
3 we're fast-forwarding to the next month. It's now May 2013,
4 we're in the delay time period. And directing your attention
5 to Line Item 35, the general conditions; have you billed your
6 general conditions at 100 percent as of the end of May 2013?

7 A No.

8 Q Okay.

9 THE COURT: Are you at 94.41 percent?

10 THE WITNESS: Based on this, yes.

11 THE COURT: Okay.

12 BY MR. JEFFERIES:

13 Q In your testimony, you made reference to some
14 budgets; do you recall that?

15 A Budgets, no, I don't.

16 Q Okay. I thought -- if I understood your testimony, I
17 thought you were talking about tracking the job as you were
18 going as to how you were doing costs incurred --

19 A Oh.

20 Q -- versus budget.

21 A Yes.

22 Q Okay.

23 A Yes.

24 Q Did Helix -- well, strike that.

25 I think you even said that's kind of how you were

1 graded on an ongoing basis, you know, how the job is doing as
2 compared to budget.

3 A Correct.

4 Q Okay. Now, internally, did Helix generate some type
5 of budgetary report or something that would tell you how you
6 were doing?

7 A Yes.

8 Q Okay. And described that for me.

9 A The budget? Well, you have an estimate, and from an
10 estimate, you build a budget that has cost codes to it. And
11 you have costs that hit daily, monthly, weekly, that you're
12 able to track towards that.

13 Q Okay. And the reason I'm asking you that question,
14 because the only thing we have seen are the job cost reports
15 that's been produced to us here and -- in this, I don't want
16 him to pull up, but could you reach for Exhibit 50.

17 A Is it back here?

18 Q It will be in one of those notebooks, please.

19 THE COURT: 50 should be in Volume III, sir.

20 THE WITNESS: Are we done with this other volume for
21 now?

22 MR. JEFFERIES: No. Keep it there.

23 THE WITNESS: Okay. Which tab if I may ask?

24 MR. JEFFERIES: 50.

25 THE WITNESS: Okay.

1 BY MR. JEFFERIES:

2 Q Now, I will represent to you, sir, that this was the
3 job cost that was produced to us here. It has a run date of
4 May 23, 2019. Do you see that in the upper right-hand corner?

5 A Yep.

6 Q Okay. The budgeting reports that you were
7 referencing that you used, were they different than just this
8 job cost report?

9 A No, this pretty much part of the report.

10 Q Part of the report? I respect it's the cost side of
11 the report. But can you tell me what the budget was in looking
12 at Exhibit 50?

13 A No.

14 Q Okay. And that's why we went down this path, because
15 there's a separate budget-type analysis that allows you to
16 track cost per activity and how you're doing on a profit/loss
17 standpoint, correct?

18 A Well, yeah. We have a labor -- Helix has a labor
19 report that shows you productivity and how you're doing in each
20 cost code.

21 Q Okay. So there's a labor report and then just a
22 general budget report that would tell you how you're doing,
23 right? Yes?

24 A Yes.

25 Q Did -- do you still have Exhibit 16 in front of you?

1 I guess --

2 A That's the one with --

3 Q Yeah.

4 A Yeah, the --

5 Q The third page where we were going through your
6 billing line items. It's up on the screen now.

7 A Oh, okay. Okay.

8 Q Most contractors will track their job costs based
9 upon these revenue generated -- revenue generating items. Are
10 you familiar with that practice?

11 A Are you talking about NV Energy Lighting
12 Installation? That's what's highlighted up here on the screen.

13 Q No, I was just looking generally at your Line Items 1
14 through 35 in the billing you submit. Do you track your profit
15 and losses per those individual line items?

16 A No.

17 Q Okay. Since I don't have a budgetary report, sir,
18 what I'd like for you to do, the closest I can come -- you
19 still have Exhibit 51 there?

20 A I've got both folders.

21 Q Okay. I'm sorry, it's Exhibit 50.

22 MR. JEFFERIES: Your Honor, for the record and your
23 notes, Exhibit 50 is the complete job cost report that you
24 ordered produced. Exhibit 51 was the partial that we had been
25 working with during discovery. So that's the distinction.

1 THE COURT: Okay.

2 BY MR. JEFFERIES:

3 Q Sir, would you look at Joint Exhibit 65.

4 A That's Tab 65, correct?

5 Q Yes, sir.

6 A Okay.

7 Q And keep your finger on 50, because we're going to do
8 a little math. Do you have a phone or something that will
9 allow you to do some calculating for me? Is that possible?

10 I've got -- actually, no, I --

11 MR. JEFFERIES: May I approach?

12 THE COURT: You have an old-fashioned calculator.

13 You may approach.

14 MR. JEFFERIES: Thank you.

15 THE COURT: Don't ever ask us for one with a tape,
16 though. Finding one of those is hard.

17 BY MR. JEFFERIES:

18 Q Okay. First, for the record, can you tell me what
19 Exhibit 65 is?

20 A That would be -- looks like the final invoice.

21 Q Okay. And this is your bill up through October 31,
22 2013?

23 A Yes.

24 Q Okay. And you have tracked an adjusted contract
25 amount to date, that's with change orders, right?

1 A Uh-huh.

2 Q Yes?

3 A Yes.

4 Q I don't mean to be rude, I just want to make sure we
5 have a clear record. What is the adjusted contract amount as
6 of October 31, 2013?

7 A \$2,393,113.89.

8 Q Okay. Would you put that number into the calculator.

9 A Okay.

10 Q And if I take you, sir, back to the last page of
11 Exhibit 50, what is the total cost that Helix allocates to the
12 project?

13 A This 1623 number you're talking about?

14 Q I'm asking you.

15 A I believe it's \$1,623,671.75.

16 Q Okay. Sir, given that final cost figure, will you
17 tell me how much profit Helix made on the project.

18 A \$769,442.14.

19 Q Okay. Prior to today, sir, have you ever analyzed
20 whether Helix's project overhead costs overran over the assumed
21 budget?

22 A No.

23 Q Okay. In your -- sir, if you'd go to Exhibit 19, and
24 you -- Mr. Domina went over this --

25 A Okay.

1 Q Yeah.

2 A Sorry.

3 Q That will probably be the most efficient. This is
4 your exchange with Mr. Pelan. He asked you about backup -- I'm
5 paraphrasing. You said you understood his comment that your
6 time would most likely be considered home office overhead,
7 right?

8 A Yeah.

9 Q Okay. You agree with that?

10 A Well, not necessarily because I'm a direct cost to
11 the job.

12 Q Okay.

13 A And I don't consider that home office.

14 Q Okay. Your cost, as you attributed them during the
15 course of the project, are in the one-million-six figure we
16 just went through in Exhibit 50, correct?

17 A Yes, for the job.

18 Q Okay. Now, looking at your last response in this
19 exchange in Exhibit 19, you actually say you have job cost
20 detailed reports that would support your claim, right?

21 A Yep.

22 Q Okay. And the only thing you ever supplied to APCO
23 on your three submissions was just the summary that reflected
24 the four hours a day for your time and four hours a day for
25 the -- in this case, Mr. Prietzel, right?

1 A I would have been happy to do more if they would have
2 asked.

3 Q That wasn't my question.

4 A Yes.

5 Q Thank you. In addition to Mr. Prietzel performing
6 base contract work that would lead to additional billings --
7 and they are in the record, I don't intend to go through them,
8 they were some of the joint exhibits. But Helix was also paid
9 change orders June, July, August of 2013, correct?

10 A I believe so, yes.

11 Q Okay. And in each of those change orders, APCO
12 followed the same procedure -- strike that.

13 In each of those change orders, Helix was paid a
14 10 percent markup for materials and 15 percent markup on labor,
15 correct?

16 A That sounds about right, yes.

17 Q Okay. And what are those markups intended to cover?

18 A Overhead to those specific change orders.

19 Q Okay. Would you look at Exhibit 23, page 3, if you
20 would. And for the record, this is your final progress bill up
21 through October 30, 2013; is that correct?

22 A Yes.

23 Q Okay. And if you would, sir, it's at that point that
24 you have now billed the general conditions out at 100 percent,
25 right?

1 A Yep.

2 Q Okay. And this is the month that you achieved
3 100 percent on your general conditions, right?

4 A Based on this, yes.

5 Q Okay. Exhibit 24 is a documents submitted -- a pay
6 application submitted at or about that time. This is a
7 separate billing for your retention, right?

8 A Yep.

9 Q Can you go to page 2. Actually, page e3 if you need
10 see it. Do you recognize this as your retention billing?

11 A Yes.

12 Q Okay. In the final page of that exhibit is a
13 conditional final release.

14 MR. JEFFERIES: If we could go to the last page of
15 the --

16 BY MR. JEFFERIES:

17 Q If you -- this shows the payment of -- final payment
18 amount of 105,677. And then there's a line that says:

19 Amount of disputed claims. Do you see that?

20 A Yes.

21 Q And it says zero?

22 A Correct.

23 Q Okay. Who put the zero in that line item?

24 A I don't know.

25 Q Would it have been somebody at Helix?

1 A I would -- yes, I would imagine so.

2 Q Okay. In preparation for your testimony today, did
3 you review the job cost report?

4 A No.

5 Q Were you shown any exhibits that Mr. Pelan had
6 prepared summarizing the job cost?

7 A No.

8 Q Okay. Could you turn to Defendant's Exhibit 212.

9 THE COURT: Proposed.

10 MR. JEFFERIES: Proposed, yes. Thank you.

11 THE COURT: Can we not show it. Thank you. I
12 couldn't read it anyway, but I didn't have my glasses on.

13 MR. JEFFERIES: Your Honor, foundationally, Mr. Pelan
14 is going to testify as to how we prepared this summary.

15 THE COURT: I can't look at it till it's submitted,
16 counsel.

17 MR. JEFFERIES: Okay.

18 THE COURT: You're welcome to ask the witness
19 questions about it, but I can't look at it. It's not admitted.

20 MR. JEFFERIES: Okay.

21 THE COURT: Unless you have a stipulation.

22 MR. JEFFERIES: I believe Mr. Domina at a minimum
23 stipulates that it's at least a demonstrative.

24 MR. DOMINA: That's what I said, Your Honor, all
25 along.

1 THE COURT: So let's mark it as D2 for now.

2 MR. JEFFERIES: Okay.

3 THE COURT: Do you have an extra copy?

4 MR. JEFFERIES: I do. May I approach?

5 THE COURT: Well, Dulce would love to mark it as D2.

6 You may approach.

7 THE WITNESS: Your Honor.

8 THE COURT: Oh, yeah, I can't lose these. Thank you.

9 THE WITNESS: You're welcome.

10 THE COURT: I get in trouble if I lose them. Plus I
11 have all these binders from last weeks' hearing that are
12 organized.

13 MR. DOMINA: If D2 was a formerly -- Defendant's
14 Exhibit something, then we can just probably pull it out of
15 that.

16 THE COURT: Well, he may want to offer it as
17 substantive exhibit at 212. And we'll see later if he does.
18 Right now it's marked as D2 for purposes of -- if you want to
19 have the witness turn to 212 in the binders, he can look at it
20 there, even though it's marked for my purposes as D2, and I can
21 look at it as D2.

22 MR. JEFFERIES: Thank you, Your Honor.

23 THE COURT: Sorry, guys. Trying real hard to make a
24 record.

25 / / /

1 BY MR. JEFFERIES:

2 Q Okay. Sir, would you grab -- it's going to be in the
3 third binder, last binder. For your purposes it's D212, for
4 the Court's purposes, it's D2.

5 THE COURT: So I think it's in a small binder near
6 the end.

7 THE WITNESS: DX?

8 MR. JEFFERIES: Yes. Yes, sir.

9 THE COURT: This little tiny binder, looks like this?
10 Good. Thank you.

11 BY MR. JEFFERIES:

12 Q Okay. Sir, I will represent to you that this is a
13 summary of Exhibit 50 just for purposes of my examination,
14 prepared by Mr. Pelan. And there's a line item, 88010, called
15 Permits, Bonds, and Insurance. Do you see that?

16 A 88010, yes.

17 Q It's under --

18 A Yeah, Permits, Bonds, and Insurance.

19 Q Would you agree that, given your prior testimony and
20 the way the billings were broken out, that that figure would be
21 covered under your mobilization item?

22 A That's probably correct, yes.

23 Q Okay. And then go down to the next line, Field
24 Office, Trailer, and Supplies, \$3,457.79. Would you agree that
25 cost would go in your general conditions category for your

1 billing purposes?

2 A Yeah, probably so. That could go in mobilization,
3 though, too.

4 Q Okay. Next item is Field Engineering. I want to ask
5 you about 16,947.48. Would you agree that that would go into
6 the general conditions line item on the billings?

7 A Could.

8 Q Okay. Well, it would either be in the general
9 condition item or what other item?

10 A It could be part of some of it in mobilization.

11 Q Okay.

12 A Submittals.

13 Q The -- there's travel and substance. I think that
14 should be subsistence, but -- for \$327.46; would you agree that
15 would be a general condition cost item?

16 A Right off the top of my head, I don't know what that
17 is, so I'm not going to agree to that.

18 Q Fair enough. General superintendent, about three
19 lines down, for \$3,124.07, who is that?

20 A That's a general superintendent who goes around all
21 the various different projects. He's a -- he's basically a
22 supervisor to the project superintendents.

23 Q Okay. Who would that have been on the project?

24 A Probably at that time, Mark Worker.

25 Q Okay. That's a name I don't recognize. I recognize

1 a Mr. Clements (sic). Do you know Mr. Clements?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q Was he the superintendent overseeing this project?

6 A He was at some point, yes.

7 Q Okay. Would that be general conditions, his --

8 his --

9 A I -- let me ask you a question, if I may.

10 Q Certainly.

11 A Are you saying that he was the general
12 superintendent.

13 THE COURT: Counsel may not know the answer.

14 THE WITNESS: Okay.

15 THE COURT: So he can't help you. But you give us
16 your best recollection, which is all we're able to get.

17 THE WITNESS: I'm going to say that Rick Clement was
18 not the general superintendent, that that was Mark Worker at
19 the time, just for clarification. And that would go under
20 probably general conditions.

21 BY MR. JEFFERIES:

22 Q Okay. The next -- there's references to bonuses of
23 31,206. That's not a overhead item, is it?

24 A I don't know how Helix charges that within their --
25 the company. So I can't answer that.

1 Q Okay. The next item is \$36,711.50 for a project
2 manager; that would be your time, right?

3 A Correct.

4 Q Okay. And that would go under the general
5 conditions, correct?

6 A Some could go in the mobilization as well.

7 Q Okay.

8 A And submittals, like I previously stated.

9 Q Okay. Now, there is some equipment that is noted in
10 the job cost. As I understand it, Helix maintains some
11 equipment lists that are distributed to the various projects to
12 track when equipment is on and off a project; is that correct?

13 A Yes.

14 Q Okay. And that would show literally down to
15 individual pieces of equipment coming and going from a project,
16 be it owned or rented, correct?

17 A In most cases, yes.

18 Q Okay. And did you review any of those equipment
19 lists in preparing your summary of extended overhead?

20 A No.

21 Q Isn't it true, sir, that on or about February or
22 March 2013, that you were actually pulled onto a larger job to
23 go be the project manager on that? I think you alluded to it,
24 I didn't remember the name.

25 A Yeah. I did a bigger job, yes.

1 Q Okay. The budget analysis would -- that -- strike
2 that.

3 The budget report that you've testified Helix
4 maintained internally, would that allow you to determine how
5 much money, if any, you were losing on the mobilization
6 submittal and general condition line items?

7 A No.

8 Q No? In looking at D2 for the Court's purposes and
9 DX212, the job cost reflects a total of \$36,711 for your time
10 for almost two years on the project. Do you have any
11 information to tell this Court what the assumed budget was for
12 a project manager?

13 A I don't know. It's been six years. I couldn't tell
14 you.

15 Q Okay. Same question for the superintendent; the
16 total shown on the job cost is \$3,124.07.

17 A That's general superintendent.

18 Q Yes. I recognize that. Is the superintendent
19 budgeted in any other line item? I'm just reading Helix's own
20 job cost line items.

21 A Yes. Meaning, if you're asking is he budgeted
22 separate from the, like, 15,500, the superintendents in there,
23 15,502, 16,103, 16,110, 16,250, he's in various amount of cost
24 codes.

25 Q Okay.

1 A And the -- I mean, there's more, but I think you get
2 the drift.

3 Q Okay. But sitting here without the budget analysis
4 we can't tell how much or how much overran -- strike that.

5 Without the budget analysis-related documents, we
6 can't tell how much, if any, Helix went over on his assumed
7 budgeted time, correct?

8 A Well, I would say you can, because the job went over
9 in months, and the superintendent was always there on the job.

10 Q Okay. And you're using the term superintendent to
11 mean Mr. Prietzel from and after February through October,
12 correct?

13 A Yes.

14 Q Have you done any analysis to determine if Mr.
15 Prietzel's time on the project truly represented an additional
16 cost to Helix that wasn't accounted for in his billable work
17 during the February to October 2013 time period?

18 A Are you references -- his billable work to be the
19 change orders or the actual contractual work that should have
20 been completed prior to the job going over?

21 Q Both.

22 A I don't remember specific, but I would have to say
23 somewhat six years ago when this was put together.

24 Q Because just for the Court's benefit, between May and
25 October, and we looked at the final bill, you were billing

1 progress billings every month during this extended performance
2 time, right?

3 A Well, there's no other time I couldn't bill it,
4 because -- yes, there's no time I could bill it. Because the
5 work wasn't done.

6 Q I guess that's my point. You're making money with
7 Mr. Prietzel being the sole person in the field from and after
8 May 2013 through October 2013, correct?

9 A No. Because, as a contractor, you make money by
10 going faster. And in this case, the job was going slower.

11 Q Okay. Did you ever analyze those additional costs of
12 Mr. Prietzel's time as a cost to Helix?

13 A I said I probably did six years ago.

14 Q Okay. But it's not in any of these exhibits. Have
15 you seen it today?

16 A No.

17 Q Okay. Helix never was required to demobilize and
18 remobilize on the project, correct?

19 A Correct.

20 MR. JEFFERIES: I don't have any further questions,
21 Your Honor.

22 THE COURT: Redirect?

23 MR. DOMINA: Yes, Your Honor. Just a few quick
24 points. Chris, if you would pull up Exhibit 68, please. Yeah,

25 JX68. Yep. And let's go to page 5.

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REDIRECT EXAMINATION

BY MR. DOMINA:

Q Kurk, during cross-examination, you were asked about change orders that came -- excuse me, that were issued to Helix during the delay period, the nine months after the project was to be completed; do you recall that?

A Yes.

Q And were you the one who prepared most of those change orders, then?

A Yes.

Q Change order request. So let's go to page 5 of Exhibit 68; did you prepare this?

A Yes.

Q Okay. And what's the dollar amount that Helix is seeking for this particular change order?

A 12,800 and I believe that's 16, I don't know if that's 16 or 15 dollars.

Q Okay. And it was to add two F3 fixture lights; do you recall that scope of work?

A Vaguely, yes.

Q Six years ago?

A Yeah.

Q As best as you can? Okay.

MR. DOMINA: If you would, Chris, go to page 3 of the same exhibit. Okay.

1 BY MR. DOMINA:

2 Q Do you recognize this document? You know what this
3 is?

4 A The change order request.

5 Q Right. And this shows -- this is for APCO to the
6 City of North Las Vegas, correct?

7 A Uh-huh.

8 Q And it's for the same exact scope of work that Helix
9 bid?

10 A Yep.

11 Q And the dollar amount here is 16,542.06, it looks
12 like, is that right?

13 A Yes.

14 Q So why isn't the change order request that APCO is
15 sending to the City of North Las Vegas the same amount that
16 Helix bid?

17 A Because they have markup on it.

18 Q Okay. So City of North Las Vegas -- or, excuse me,
19 APCO submitted change order request and marked up the work that
20 Helix was proposing to perform at a time during the delay
21 period of the project, correct?

22 A Correct.

23 Q Okay. And we looked earlier on direct and you saw
24 the settlement agreement where the City of North Las Vegas
25 agreed to pay APCO a percentage of their extended general

1 conditions for that nine-month delay, correct?

2 A Correct.

3 Q Okay. But they're still getting labor -- or they're
4 still getting markup on their labor based on the change orders
5 that they were submitting to the City as well during that time
6 period; is that correct?

7 A Correct.

8 Q Just wanted to -- I don't even need to show you one.
9 You were -- there were several pay applications that you were
10 shown, primarily those that were submitted in the January 2013
11 to October 2013 timeframe; do you remember seeing that?

12 A Yes.

13 Q And counsel showed you the general conditions line
14 item in those pay applications?

15 A [No audible response.]

16 Q I think your testimony was that you were still
17 billing those general conditions during that timeframe. Had
18 APCO -- or had Helix consumed the general conditions prior to
19 the time that you were billing them?

20 A Honestly, the general conditions, personally, the way
21 I did the billing, was irrelevant. It was more about not
22 financing the job and getting positive cash flow. So there
23 were line items that I had built in the scheduled values that
24 were front-end loaded that would help with the positive cash
25 flow. Like I said, I didn't bill the general conditions. That

1 was something that was handled -- handed over to me.

2 Had I built the general conditions, they would have
3 been more than what they were. So the fact that that -- there
4 was only a percentage billed, personally, it's irrelevant. I
5 know what it looks like, but it wasn't the basis off of my
6 billing. My billing was based on this is our cost for the job,
7 this is what we're out of pocket. We need to at least try and
8 recoup our costs every month being that a billable cycle is --
9 payment cycle is typically 45 to 60 days.

10 Q And that 108,000, that was a lump sum amount,
11 correct?

12 A Yes.

13 Q It was part of the contract; it was not an allowance
14 to the contract, it was an earned contract line item, correct?

15 A Correct.

16 MR. DOMINA: Okay. I don't have any further
17 questions, Your Honor.

18 THE COURT: Thank you, sir. Good luck with your bid
19 you've got to do. Have a nice afternoon.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness.

22 MR. DOMINA: Your Honor, Helix calls Joemel Llamado,
23 but he's not in the room, so we need to go get him.

24 THE COURT: Yeah.

25 MR. JEFFERIES: Your Honor, could we take five?

1 THE COURT: Yes. You may have a five-minute recess.
2 Anything else?

3 MR. JEFFERIES: No, Your Honor.

4 (Proceedings recessed at 3:09 p.m., until 3:21 p.m.)

5 THE COURT: All right. Next witness.

6 MR. DOMINA: Yes. Helix calls Joemel Llamado.

7 THE COURT: Sir, if you'd come forward to the witness
8 stand, please.

9 **JOEMEL LLAMADO**

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

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

14 THE WITNESS: Joemel Llamado, J-O-E-M-E-L
15 L-L-A-M-A-D-O.

16 THE COURT: Thank you. Sir, you'll notice there's a
17 pitcher with water there, there are some M&Ms in the dispensers
18 behind you, and there are binders that have exhibits the
19 lawyers may refer you to, or they may show them on the screen
20 that's next to you.

21 You may proceed, Mr. Domina.

22 MR. DOMINA: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. DOMINA:

25 Q Mr. Llamado, do you have a preference as to whether I

1 call you Joel or Joemel or Mr. Llamado?

2 A Joemel is fine.

3 Q Okay. Thank you. That'll be easier.

4 A Uh-huh.

5 Q Joemel, I think.

6 A Yeah.

7 Q Who are you currently employed by?

8 A The City of North Las Vegas.

9 Q And how long have you been with the City of North Las
10 Vegas?

11 A 21 years.

12 Q And what's your current capacity there?

13 A I'm the deputy director of the utilities department.

14 Q Okay. And I assume you're familiar with the project
15 known as the Craig Ranch project?

16 A I am.

17 Q Phase II?

18 A I am.

19 Q And what was your position with the City of North Las
20 Vegas when that project was ongoing?

21 A I was the construction manager for the City of North
22 Las Vegas.

23 Q Okay. That's different than the capacity you serve
24 now?

25 A Correct.

1 Q This particular project, was it broken up into
2 multiple phases or was there just one general project -- I've
3 heard it referred to as Phase II project, so I'm curious, were
4 there multiple phases?

5 A Yes, there were multiple phases for this entire Craig
6 Ranch project.

7 Q Okay. This particular phase you understand it to be
8 Phase II?

9 A Correct.

10 Q What was the City's understanding of the project
11 duration of Phase II?

12 A Initial project duration was one year.

13 Q Okay. And do you know if the project completed
14 within one year?

15 A It did not complete within one year.

16 Q Okay. Going to go ahead and take you to, almost
17 immediately, to some exhibits here.

18 A Sure.

19 MR. DOMINA: Chris, could you pull up Joint Exhibit
20 78, please.

21 BY MR. DOMINA:

22 Q You'll see on the screen in front of you the document
23 that I'm referring to. If at any time it's hard to see because
24 of a glare or what have you, there are binders with the
25 original document, the actual hard copy that you can look at.

1 But it's your preference. He can actually blow up or, you
2 know, zoom in, so it might be more helpful to see it on the
3 screen at times.

4 A Right.

5 Q What I want to do is ask you a question about this.
6 Do you recognize this document?

7 A Yes, I do.

8 Q And what do you recognize it to be?

9 A It is the TIA Number 1 submitted to the City from
10 APCO.

11 Q Okay. And what does TIA stand for?

12 A Time Impact Analysis.

13 Q Okay. And is that synonymous in the City's
14 terminology as a change order request?

15 A This is the first time I've seen a TIA from all my
16 projects. It's not -- it's -- to answer your question, no.
17 I've never -- I've -- only in this project did I issue -- did I
18 encounter a TIA.

19 Q Have you ever seen a TIA subsequent to this project?

20 A No.

21 Q Okay. Now, this document, specifically, is referred
22 to as a change order request, correct?

23 A Correct.

24 Q And when -- do you recall actually receiving the
25 document during the project?

1 A It was nearly at the end of the project, I believe,
2 the TIAs came. Yeah.

3 Q When you say at the end, you mean the end of the
4 original completion date or the end of the delay period?

5 A I want to say it's the end of the delay, extended
6 period. Yeah.

7 Q Okay. Because if you look on the date of this
8 particular document, it's dated January 9th, 2013?

9 A Uh-huh.

10 Q Do you have a -- I know this is several years ago
11 and --

12 A Right.

13 Q -- you did testify at a deposition --

14 A Yes.

15 Q -- and that was several months ago --

16 A Right.

17 Q -- so your memory probably isn't perfect on this, but
18 do you have a recollection as to when the original project
19 completion date was scheduled to --

20 A I believe it should have been around the end of 2012,
21 original project completion date.

22 Q December 2012 or so?

23 A Yes. Uh-huh.

24 Q Okay. And so this is January of 2013 --

25 A Uh-huh.

1 Q -- so just within a month of the anticipated
2 completion, original completion date, correct?

3 A Correct.

4 Q Okay. And do you actually recall receiving this
5 document from APCO?

6 A Yes.

7 Q And what -- when you received it, what did you do?

8 A We analyzed, reviewed it, and I actually submitted it
9 to my supervisors for their review as well.

10 Q Okay. If I can turn your attention to about the
11 middle of the page there, there -- obviously, this is not just
12 one line item, one change order including one line item,
13 there's several. But I just want to focus in on two and
14 potentially just one. But the one that says General Conditions
15 in the middle there, do you see that?

16 A I see it.

17 Q And if you look over, it says \$266,229. Do you know
18 how APCO came up with that calculation?

19 A Don't quite recall it offhand, to be honest.

20 Q Okay. That's all right. I'll show you some other
21 documents and --

22 A Sure.

23 Q -- potentially that'll refresh your memory on it. Do
24 you know if this was approved by the city, this particular
25 change order request?

1 A I know TIA Number 1 was approved. I don't know if it
2 was for this amount, because we did have some negotiations
3 along the way. So I don't know if this was the actual
4 amount --

5 Q Okay.

6 A -- that was approved. And I notice it wasn't signed
7 by me, so I'm pretty sure this was not the amount.

8 Q Okay. When you received this change order request,
9 did you understand -- or what did you believe it was in
10 relation to? What was the purpose of the change order request?

11 A It was -- normally, if it's something that's
12 submitted like this, it's for additional cost, additional
13 overhead, additional -- things that's above and beyond the
14 normal scope of work.

15 Q Okay.

16 A So --

17 Q Did you have an understanding at this time whether or
18 not this change order request included any amounts that APCO's
19 subcontracts would be seeking for potential delays?

20 A No.

21 Q You didn't know --

22 A No.

23 Q -- at the time? Okay. All right.

24 MR. DOMINA: Let's go ahead and go to Exhibit 15,
25 Chris. Just the first page for now. Why don't you blow that

1 up a little bit there.

2 BY MR. DOMINA:

3 Q Do you recognize this document, sir?

4 A Yes, I do.

5 Q And what do you understand this to be?

6 A Letter from APCO towards me for TIA Number 2.

7 Q Okay. And did this letter -- do you know if this
8 letter came by itself or did it come in conjunction with
9 additional documentation?

10 A Off the top of my head, I believe it did come with
11 additional documentation.

12 Q Okay. And --

13 A But that's been a while back, yeah.

14 Q Right. And if you read the first sentence there, it
15 says, Please find attached TIA Number 2 prepared by Hill
16 International indicating the causations and delays associated
17 with three critical path items.

18 A Uh-huh.

19 Q And then if we turn to the second page of that
20 exhibit, do you recognize this document?

21 A Yes.

22 Q Okay. And what do you understand this to be?

23 A The breakdown of TIA Number 1.

24 Q Okay. And this -- if you see that up at the top
25 right, it's the Change Order Request 39.1.

1 A Uh-huh.

2 Q Does that indicate that it is a -- an addition to the
3 prior change order request that we just looked at of 39? The
4 .1, does that designate to you a revision or --

5 A The .1 would definitely signify a change order
6 revision from the original, yes.

7 Q Okay. The first exhibit we looked at just moments
8 ago was Change Order Request 39, I don't -- perhaps you didn't
9 notice that, but --

10 A No, I --

11 Q Okay. So does this appear to be building on --
12 building upon that last change order request?

13 A The .1 would indicate a change or revision from the
14 39, yes.

15 Q Okay. So what did -- when you received this
16 document, what did you do with it?

17 A We reviewed it, analyzed, and sent it up to my
18 supervisors for their review, as well.

19 Q Okay. And here the general conditions, do you see
20 where it says quantity on this document? Where it says general
21 conditions, and then there's a column that says quantity?

22 A Correct, yeah.

23 Q Then it says 9, and then Months next to it?

24 A Correct.

25 Q Did you understand this to be the entire claim for

1 APCO for the extended general conditions on the project?

2 A Yes.

3 Q Okay. Did you -- when you received this, would you
4 have expected that APCO would have included any and all claims
5 of its subcontractors for extended general conditions as well?

6 A The nine months was for the entire duration,
7 including the extended amounts. So the answer would be yes.

8 Q Okay. If you turn to page 3 --

9 MR. DOMINA: Chris.

10 BY MR. DOMINA:

11 Q -- do you recall receiving this document in addition
12 to that change order request?

13 A Quite honestly, I don't remember this particular
14 document.

15 Q The time impact analysis?

16 A Number two --

17 Q If we went --

18 MR. DOMINA: Maybe go to page 4, Chris. Maybe
19 that'll help him see it better.

20 BY MR. DOMINA:

21 Q Do you recall receiving a time impact analysis,
22 number 2, from Hill International on behalf of APCO?

23 A Yeah, I want to say it's looking more familiar now
24 with the body of the -- yeah, the content, yeah.

25 Q Okay. Well, when I deposed you, sir, a few months

1 ago we looked at this very document.

2 A Okay.

3 Q And I had asked you at the time if you recognized --
4 and I'm not calling out your memory --

5 A No, yeah.

6 Q -- because it is what it is.

7 A Yes.

8 Q I'm sure you have many other things going on in life.
9 But you testified that you recognized it and I asked you if any
10 other documentation and job cost reports or any other back-up
11 documents were attached to this report, do you recall what your
12 answer was?

13 A I believe my answer was no, there was none.

14 Q Okay. And today as you sit here, do you have any
15 other response -- is your response still you don't believe that
16 there are any -- there were any other back-up documents
17 attached --

18 A No.

19 Q -- to this report? Okay.

20 MR. DOMINA: Let's go to Exhibit 17, please.

21 BY MR. DOMINA:

22 Q Joemel, have you ever seen this document before?

23 A I'll be honest, top of my head, no, I have not.

24 Q Okay. And that was your answer in the deposition as
25 well.

1 A Okay.

2 Q So that's good.

3 A I'm glad I'm consistent.

4 Q Yeah.

5 THE COURT: Yes?

6 MR. JEFFERIES: Your Honor, if I might, I'm just
7 going to object. I think that's a misuse of his prior
8 testimony. I think he can -- they just confirmed it was
9 consistent. They repeatedly refer to --

10 THE COURT: That's true. It's not an appropriate use
11 of deposition, but we're not impeaching because it hadn't been
12 published. So okay.

13 Keep going.

14 MR. DOMINA: Right.

15 BY MR. DOMINA:

16 Q So at the time, you -- okay. Is there anyone else at
17 APCO -- or, excuse me, is there anyone else at the City who
18 would have received communication like this from APCO?

19 A No. It would have to go through me as the
20 construction manager.

21 MR. DOMINA: Okay. Let's go ahead and turn to
22 Exhibit 21, please, Chris. Let's start on page 3.

23 BY MR. DOMINA:

24 Q This is an e-mail, Joemel, from Lisa Linn from APCO,
25 do you know who she is?

1 A Yes.

2 Q Okay. And she sent this to you on September 9th,
3 2013. She says, Please see attached COR 68, 69, 70, and 71 for
4 your review and approval.

5 MR. DOMINA: Let's turn to Exhibit -- well, we're
6 still on 21, but page 2, please.

7 BY MR. DOMINA:

8 Q You recall, attached to that e-mail, seeing this
9 particular invoice from Helix?

10 A Thank you for zooming in.

11 Q And maybe what I can do, if you're hesitant to --
12 regarding your -- I can put you to --

13 MR. DOMINA: Let's go to JX21, Chris.

14 THE WITNESS: Okay.

15 MR. DOMINA: Maybe he'll see that first, the way
16 that -- 21. Just 21.

17 BY MR. DOMINA:

18 Q Have you seen this document before, sir?

19 A Extended overhead. I believe I had, yeah.

20 Q Okay.

21 A Uh-huh.

22 Q And what do you understand this to be?

23 A COR request from APCO for Helix Electric extended
24 overhead. Yeah.

25 Q Okay. And when you received this -- do you recall

1 receiving this in conjunction with the e-mail that we looked at
2 just a minute ago?

3 A Yes.

4 Q Okay. And when you received it, did you sit down and
5 try to review it and determine what you would do with it?

6 A Yes, I believe so. We -- I think -- I believe this
7 was denied.

8 Q Okay. And do you recall the basis of why it was
9 denied?

10 A Standard overhead, I believe it was denied because it
11 was from Helix and this is their overhead costs and not
12 something that's -- the contract is with -- our contract, the
13 City's contract is with APCO. So we look for things that we
14 deal with with APCO. So if the -- Helix has an extended
15 overhead, that's something they should submit to APCO, because
16 their contract is with them, not with the City.

17 Q Okay. And if APCO had submitted Helix's claim within
18 its own claim that we looked at, TIA Number 2, would the City
19 have looked at Helix's claim in conjunction with APCO's?

20 A TIAs that was submitted was, as you stated earlier,
21 all inclusive of all the additional work. So being that that
22 was the case, that's the only thing that we looked at, all
23 inclusivity from that TIA.

24 Q Okay. In looking at that, you -- the City makes the
25 assumption that the general contractor, APCO, would have

1 reached out to its subs and determined if its subs were also
2 being delayed on the project and had claims that should go
3 through to the City?

4 A How APCO does their work with their subconsultant is
5 up to them. What they submit to us as to make them whole for
6 the project is what we look at.

7 MR. DOMINA: Okay. And let's go ahead and take a
8 peak at Exhibit 21, page 10.

9 BY MR. DOMINA:

10 Q Do you recognize this document?

11 A Change management. Yes, it's created through our
12 program called Primavera, and that's the output of that program
13 is the spreadsheet right here.

14 Q Okay. And what is the purpose of this document,
15 Change Management Number 68?

16 A Change Management Number 68, again, it's a while
17 back. But -- thank you again for zooming in. I think this is
18 just an input process through our program called Primavera.
19 It's for security, it's just a change management, and if it
20 gets approved as a change order, it becomes a COR. So I think
21 it's just the process before it becomes -- if it was approved.

22 Q Okay. And the title -- what does the title say on
23 this particular document? Do you see it under Project?

24 A Craig Ranch -- Helix [indiscernible] extended
25 overhead. So.

1 Q Okay. And if you go to your remarks there --

2 A Yes.

3 Q -- I assume that you -- did you fill this out? Is
4 that your --

5 A Yes, you're correct.

6 Q -- your comment? Okay. Can you tell me what that
7 said? Can you read that please, for the Court.

8 A Under remarks, The COR is rejected. The City of
9 North Las Vegas does not have a contract with Helix Electric.

10 Q Okay.

11 A That's the one? That's the statement?

12 Q Is that what you were saying, then, earlier --

13 A Yes.

14 Q -- and testifying that there was no contract with
15 Helix, so --

16 A Uh-huh.

17 Q -- you rejected it?

18 A That is correct.

19 Q Did you reject the change order request for any other
20 purpose other than the sole fact that it was going through a
21 different contractual method than what you -- that the City
22 required?

23 A Can you repeat again?

24 Q Was there any other reason as to why you would have
25 rejected that change order request?

1 A No, no other reason other than it came from a
2 noncontracted contractor.

3 MR. DOMINA: Okay. Chris, if you would, go to page 9
4 in that same exhibit, 20 -- 21.

5 BY MR. DOMINA:

6 Q So Joemel, this is a little e-mail chain here. It
7 starts on October 3rd.

8 A Uh-huh.

9 Q Again, from Lisa Linn. And she says, Please see
10 attached. There's not a date indicated on the document to note
11 that it was rejected before 9/26. Can you please issue --

12 A Okay.

13 Q -- the document with the proper rejection date. Do
14 you understand why -- what she's telling you there?

15 A Yes. I think I issued a rejection letter, that
16 because of the formatting that the program Primavera has, it
17 didn't put in the date. So she wanted to clarify the date that
18 it was rejected. And I think I might have handwritten that
19 date on the next issuance of the document because Primavera
20 does not put that date when I rejected it.

21 Q Okay. And your e-mail response is, Will issue with
22 date. Thanks. Correct?

23 A Yes.

24 Q All right. So let's go to that document I think
25 you're testifying about.

1 MR. DOMINA: That's page 5, Chris, of 21.

2 BY MR. DOMINA:

3 Q Okay. Is this what you were referring to?

4 A Yes. Yeah. This somehow -- this change management
5 thing does not put the date that I rejected it. So I could
6 have put it in the remarks, I guess. But then I had to
7 handwrite it.

8 Q Do you have any idea why the date that it was
9 rejected was important to APCO?

10 A No idea. Maybe because this -- they just needed to
11 put a time stamp on when I returned it, I guess.

12 Q Okay. And so here you've signed it and put
13 9/16/2013. Is it your understanding that that was the date
14 that you initially rejected that claim?

15 A Yes.

16 MR. DOMINA: Okay. Let's go ahead and go to
17 Exhibit 21-4, please.

18 BY MR. DOMINA:

19 Q Now, Joemel, I don't know if you've seen -- you
20 probably haven't seen this document before, so I'm just going
21 to read a portion, then ask you a question about it. This
22 isn't a letter dated October 3rd, 2013, from Joe Pelan at APCO
23 to Bob Johnson at Helix Electric. And, basically, he is
24 providing the invoice. He says, Attached is your invoice of
25 October -- or, excuse me, August 27, 2013, in the amount of

1 \$102,400. At this time, APCO has not received any backup
2 documentation to undo the previous formal rejection made by the
3 City of North Las Vegas.

4 If Helix had provided backup, additional backup
5 directly to the City, would that have in any way changed the
6 rejection of that change order request that you already
7 submitted?

8 A It would not because it still would be coming from a
9 contractor that does not have a contract with the City.

10 Q Okay. And you in no -- did you at any point in time
11 notify APCO that you were rejecting the change order request
12 because there was lack of backup?

13 A I believe I rejected it and informed APCO because we
14 don't have a contract with them.

15 Q Okay.

16 A I don't -- there's no mention of any backup or
17 anything on my end.

18 Q I'm sorry, that got a little cluttered there.

19 A Oh.

20 Q Can you restate what you said.

21 A I believe I -- I did not -- I rejected that change
22 order or that request because there was still -- Helix was
23 still not a contracted contractor through APCO. And I believe
24 that it did not ask for any additional backup at all during
25 this rejection.

1 Q Perfect. Thank you.

2 MR. DOMINA: Chris, if you would, take me to JX22,
3 please.

4 BY MR. DOMINA:

5 Q Joemel, have you seen this document before?

6 A Yes, I have.

7 Q Okay. What do you understand this document to be?

8 A This document to be -- is the understanding of this
9 is how much we are offering of the acceptance of the TIAs 1 and
10 2 to APCO.

11 Q Okay. And this is dated October 2nd, 2013, correct?

12 A Correct.

13 Q Did you have any involvement in determining -- if we
14 look at the second page, it's signed by a Jeffrey L. Buchanan;
15 do you know who that is?

16 A Yes.

17 Q And who is Mr. Buchanan?

18 A He was, I believe, our acting city manager at that
19 point, assistant city manager at that point.

20 Q Okay.

21 A No -- I was going to say, no longer with us.

22 Q Yeah. Did you -- are you -- were you involved in
23 responding or forming -- form -- excuse me, generating this
24 letter?

25 A No, I was not.

1 Q Okay. Were you informed -- were you involved in any
2 of the discussions about it?

3 A Yes.

4 Q Okay. You said that this was a letter that basically
5 resolved TIA 1 and 2?

6 A Correct.

7 Q And if I could, I want to take you to a couple of
8 sentences in here. I want to start with the first full -- or
9 the first sentence. Strike that.

10 The second sentence in that first paragraph. It
11 says, In our review, it was determined that APCO was granted
12 119 noncompensatory calendar days, bringing the contract
13 completion from January 11th, 2013, to May 10th, 2013.

14 I may have said 18, 13. Do you have an understanding
15 of what is being discussed there, adding 119 noncompensatory
16 calendar days to the contract?

17 A Well, just by math, that's from January 11th to May
18 10th, that's the 119 days, I believe. Noncompensatory usually
19 means that you're not being paid for the days, it's just things
20 that -- like -- noncompensatory, like, if it was a rain delay,
21 that would be noncompensatory. You just eat the day, and
22 that's it. You don't get paid for that day.

23 Q The project completion gets pushed out a little bit?

24 A Yes.

25 Q Is that what you're saying?

1 A Uh-huh.

2 Q But you don't get paid for that day?

3 A Right.

4 Q Okay. Here, it says APCO was granted 119 -- and I
5 guess my question is can you shed some light on what happened
6 there for APCO to have been granted 119 noncompensatory days?
7 Because it's not talking about future, it's talking about past,
8 would you agree?

9 A It's -- yes. Because we're already -- what's the
10 date of this letter? October 3rd already?

11 Q Right.

12 A Yeah. This is beyond that date, January 11 through
13 May 10th. So.

14 Q Okay. So is it your understanding that the City
15 granted APCO an additional 119 noncompensatory days to the
16 contract?

17 A Correct.

18 Q And that would be a decision that the City makes
19 based on what?

20 A That was actually the decision of the acting City
21 manager at that point, so --

22 Q Okay.

23 A -- that was not my call.

24 Q The buck stopped with him?

25 A Yes.

1 Q He made that decision?

2 A Yes.

3 Q Okay. And then it goes on to say that further review
4 of the subject TIAs indicate APCO should be given an additional
5 61 calendar days of additional time extension but not
6 compensatory.

7 A Yes.

8 Q So if you add the 119 and the 61 --

9 A Okay.

10 Q -- you're an engineer, so you probably know that off
11 the top of your head, right? I have to get the calculator out.
12 But I think it's 180 days.

13 A 180 days, yes.

14 Q Yeah.

15 A Right.

16 Q Do you believe that adding 180 days to a project that
17 was only a one year -- or scheduled to be one year is a
18 significant amount of time to increase the project schedule?

19 A I would say so, yes.

20 Q Let's take a little bit further look into this
21 document. I want to look at this table here. The very middle
22 of the table is where you have general conditions showing up,
23 do you see that?

24 A I see it.

25 Q And it says that the general conditions are

1 \$1,750.65, and do you understand that to be a daily cost -- a
2 daily price?

3 A Yes. Correct.

4 Q So this price is a daily cost that APCO is
5 identifying or claiming against the City, but it's not actually
6 backed up by a job cost report or actual cost, is it?

7 A I don't recall how they got the 1750.55 per day. I
8 don't know.

9 Q Okay. But it's a daily -- it's a -- in other words,
10 if you take a hundred and -- or however many days -- if you
11 take a hundred days and times it by that, that's the general
12 conditions that the City was -- would be agreeing to pay --

13 A Right.

14 Q -- APCO?

15 A Correct.

16 Q All right. Let's go to the last sentence, just above
17 that same table. I guess it's maybe two sentences. It says,

18 Given the numerous changes and multiple
19 delays that occurred during this project, but
20 not included in your TIAs, the City is
21 prepared to offer you compensatory days of
22 165 days from May 10th, 2013, to
23 October 25th, 2013, for a total amount of
24 \$560,724.16, based on the following
25 evaluation.

1 A Uh-huh.

2 Q So is it an accurate statement? If I were to take
3 165 days and times it by that 1,750, that would be the
4 number -- the general condition amount that the City agreed to
5 pay APCO for this delay?

6 A 165 days from May 10th do not compensate for the
7 days. I don't know where they get the 560 because that could
8 be anything from combination of the general conditions, any of
9 his descriptions to get to that particular day.

10 Q Okay.

11 A That amount. But it is accurate to say that it's a
12 quantity times the days. And how they got the quantity first
13 or the actual price per day, I don't know. I don't recall.

14 Q Okay. Fair enough.

15 MR. DOMINA: Let's go to the second page of that
16 document, Chris. I'd like to highlight the -- it's the fourth
17 paragraph, fifth paragraph down that says, By Agreeing. You
18 see that, Chris? So just blow that bottom half up and he'll
19 see it.

20 BY MR. DOMINA:

21 Q Do you see where it says, By agreeing to?

22 A Uh-huh. Yes.

23 Q Okay. Let's start there. It talks about -- it says,
24 By agreeing to and meeting the terms of this offer, it's
25 understood by both parties that the City waives any and all

1 liquidated damages accrued prior to the date of this offer.

2 Do you know if prior to the date of this offer of
3 October 2nd, 2013, the City had any liquidated damages assessed
4 against APCO?

5 A No, the City did not have any liquidated damages
6 assessed --

7 Q Okay.

8 A -- to APCO.

9 Q Was this maybe carryover, like, boilerplate language?

10 A Yes.

11 Q Okay. Point of clarification, let's look at the very
12 next sentence or paragraph. It says,

13 It is also understood that APCO will
14 forego any claims for delays, disruptions,
15 general conditions, and overtime costs
16 associated with the weekend work previously
17 performed and presently ongoing to achieve
18 the above dates and for any other claim
19 present or future that may occur on the
20 project.

21 Did the City understand that by APCO signing this
22 document, that it was waiving and releasing any and all claims
23 for extended general conditions for that nine-month period for
24 it and any of its subcontractors?

25 A I believe the City intended the statement to be that

1 there would be no future claims against the City by agreeing to
2 these terms from APCO.

3 Q Okay.

4 A Everything that was done, including the overtime work
5 that weekend and any of the future claims are to be foregone or
6 to be waived as a result of this agreement.

7 Q Okay. So if APCO had, subsequent to the date of this
8 agreement, October 2nd, 2013, had submitted to you a change
9 order request that included Helix's claim for the extended
10 general conditions, extended overhead costs, and did it through
11 the proper contract channels, would you have reviewed it or
12 rejected it based on the settlement?

13 A Based on the settlement, I would reject anything that
14 APCO gave me after this date.

15 MR. DOMINA: Let's go to Exhibit 25, please, page 5.

16 BY MR. DOMINA:

17 Q This is an e-mail, again, from Lisa Linn to you dated
18 November 12th, 2013.

19 A Uh-huh.

20 Q And she says, Joemel, please see attached for your
21 review and approval. And the attachments are COR 68.1, and
22 COR 88. Let's --

23 I'm going to take you to at least 68.1. That would
24 be page 25 --

25 MR. DOMINA: Or just the original exhibit, 25, Chris.

1 BY MR. DOMINA:

2 Q Do you recall receiving this change order request
3 from APCO?

4 A It looks similar to the other one, so.

5 Q Yeah.

6 A Yes.

7 Q Okay. And this is dated November 5th, 2013, correct?

8 A Yes.

9 Q And that was after APCO and the City reached their
10 settlement agreement?

11 A After November 3rd, I believe -- October 3rd, yes. I
12 believe that's the settlement, right? October 3rd?

13 MR. DOMINA: Okay. Chris, if you could go to Exhibit
14 26, Page 4.

15 BY MR. DOMINA:

16 Q This is another e-mail from Lisa Linn dated
17 Wednesday, November 20th, 2013. She says,

18 Joemel, please see attached CORs that we
19 discussed in our meeting of 11/18/2013. I
20 just want to make sure you have a copy of all
21 the new CORs.

22 Do you recall receiving -- I know you received
23 probably many e-mails --

24 A Yeah.

25 Q -- do you recall seeing this one?

1 A I received many e-mails, but, yeah, I do recall
2 receiving this one too.

3 Q Okay. I don't -- admittedly, I don't have all of the
4 change order requests, but we do have the one that's referenced
5 as -- in the attachment as 93.

6 A Okay.

7 MR. DOMINA: And, Chris, that's Exhibit 26, the
8 original page, first page.

9 Q Joemel, do you recognize this document?

10 A Yes, I do.

11 Q Okay. So --

12 A Uh-huh.

13 Q -- does this appear to be just continued claims from
14 APCO on behalf of Helix for the extended general conditions
15 that Helix was claiming?

16 A Correct, yes.

17 Q And the date of this is November 18, 2013, correct?

18 A Correct.

19 Q Do you know if you -- well, hold on. Strike that.
20 Let's go to Exhibit 26, page 9. This is an e-mail from Lisa
21 Linn to Kurk Williams, and she says, Please see attached CORs
22 that are rejected.

23 Let's take a look at those CORs and see if you
24 remember handling those.

25 MR. DOMINA: Starting on page 6 of Exhibit 25, Chris.

1 BY MR. DOMINA:

2 Q Okay. Do you recognize this document?

3 A Change management document, yes.

4 Q Okay. And what date do you have on this? What is
5 the date? I know you said that it's kind of a system that
6 doesn't --

7 A Yeah.

8 Q -- populate a date.

9 A I tried to -- I learned -- I try to learn from the
10 last mistake. I might have put a date on this one, so.

11 Q Okay. And there -- is that your signature on the
12 bottom there?

13 A No, it's not.

14 Q Oh, that -- the -- okay.

15 A That's not my -- 11/18/13?

16 Q Okay.

17 A That's received by someone.

18 Q All right. Let's look at the remarks, then, because
19 I think there's some dates in there that might help us. Can
20 you please read for me the -- no, let me ask you: Did you
21 prepare these remarks?

22 A Yes.

23 Q Okay. Would you please read the remarks that you had
24 there?

25 A This is the second COR for Helix Electric's extended

1 overhead submittal. The first one was submitted on September
2 9, 2013, and rejected September 16th, 2013. This submittal of
3 November 5th, 2013, is rejected on November 13th, 2013.

4 Q Okay. And again, this change order request that
5 you're referring to, what was the basis of the rejection that
6 you were making here?

7 A Again, this is another -- a subcontractor trying to
8 submit something that we don't have a contract with. So.

9 Q Okay.

10 MR. DOMINA: And, Chris, if you could go to page 5 of
11 that same exhibit, 26.

12 BY MR. DOMINA:

13 Q Do you recognize this document?

14 A I believe so, yes.

15 Q Okay. And again, this is -- can you read your
16 comments here, the remarks, I assume you made those remarks as
17 well?

18 A Yes. The COR in the amount of 26,304 for Helix
19 Electric extended GCs is rejected on 12/4/13.

20 Q And not to repeat myself, but I'm going to. Was this
21 rejected for the same reason as the last ones, the contractual
22 issue that the City had?

23 A You're correct, sir. It was rejected because of a
24 contract we don't have with Helix, and therefore, we don't
25 entertain -- or we don't review things like that.

1 Q Okay. And by this time, as well, the date being
2 12/4, as you know, that was also well after the time that you
3 had struck a deal with APCO to no longer incur any claims on it
4 related to the extended overhead, correct?

5 A That was after the agreement date, correct.

6 MR. DOMINA: Okay. Chris, if you could, go to
7 Exhibit 30, page 7.

8 BY MR. DOMINA:

9 Q Well, actually, let me take you to the first page
10 first, before we go to 7.

11 MR. DOMINA: Just page -- Exhibit 30. He's getting
12 there. No -- don't look at that one. Okay. Sorry.

13 THE WITNESS: I don't -- can't even read it.

14 MR. DOMINA: I didn't invest too much time into that
15 one, knowing that that wasn't the right one.

16 THE WITNESS: He didn't zoom in on it, so I didn't
17 read it.

18 MR. DOMINA: Okay.

19 BY MR. DOMINA:

20 Q Do you recognize this document or this reporting at
21 all?

22 A Counsel meeting agenda, yes.

23 Q Okay. And does this look familiar to the formats
24 that you're used to seeing for the counsel meeting agenda?

25 A Yes.

1 MR. DOMINA: Chris, if you could, turn to page -- I
2 told you, now I lost it -- 7, please. And go ahead and blow up
3 the part that's already highlighted. Yeah.

4 BY MR. DOMINA:

5 Q Do you know what this Action Item Number 10 is?

6 A Yes.

7 Q And what does this refer to?

8 A It's the final acceptance of the project itself.
9 It's the final piece of -- to close out the project, pretty
10 much. Yeah.

11 Q Okay. And so do you -- one thing I didn't do, was
12 kind of careless about, what was -- did you happen to catch the
13 date of -- let's go back to --

14 A Oh.

15 Q -- page 2. What's the date of the meeting that was
16 held?

17 A July 2nd, 2014.

18 Q Okay. So what's the significance of that action,
19 Item 10, in relation to July 2nd, 2014; do you have an
20 understanding as to what this means for the project?

21 A Normally, when we close out a project, the one-year
22 warranty takes an effect on that date. Or, actually, no, let
23 me correct myself.

24 The one-year warranty takes an affect after
25 substantial completion of the project. This is just to

1 basically close out the accounts and close out the contractors'
2 work for that work for the project.

3 Q Okay. Do you pay retention prior to the City -- the
4 City of North Las Vegas approving or accepting the final
5 completion of the project?

6 A Explain retention; what do you mean?

7 Q Retention in a contract, you're familiar with the
8 concept of retention, right?

9 A Yes. Yes. We would -- like, normally, we would
10 retain certain percentage of the contract during each pay
11 period. Yes.

12 Q Right. And so there's usually a final retention pay
13 application that the general contractor submits to the public
14 body; are you familiar with that?

15 A Yes. Uh-huh.

16 Q So my question was, is there a time period when the
17 public body will withhold retention until such time as the City
18 Counsel actually approves the completion of the project, adopts
19 it?

20 A I don't recall --

21 Q It's not tied? And that's okay if you don't know.

22 A Yeah.

23 Q I'm just wondering if it's tied to the release of
24 retention.

25 A Retention release, substantial completion. I'm

1 trying to recall right now.

2 Q Yeah.

3 A It's been a while since I was in that --

4 Q And I -- we don't want you go guess.

5 A Yeah.

6 Q You're here to give us your --

7 A Yes.

8 Q -- best testimony.

9 A Yes.

10 Q We appreciate you being here.

11 A Uh-huh.

12 MR. DOMINA: And, in fact, I don't have any further
13 questions for the witness, Your Honor.

14 THE COURT: Thank you.

15 Redirect -- or, I'm sorry. Cross.

16 CROSS-EXAMINATION

17 BY MR. JEFFERIES:

18 Q Mind if I call you Joemel?

19 A Nope. Absolutely.

20 Q We met for the first time today, right?

21 A Yeah, I've never seen you before.

22 Q Okay. There is a notebook behind you, sir, that is
23 going to have exhibits starting with 67. I want to generally
24 walk you through Exhibit 67 to 77.

25 A Okay.

1 Q And why don't we start with 68, if you would.

2 A Okay.

3 THE COURT: And these are part of the joint exhibits?

4 MR. JEFFERIES: Yes, Your Honor.

5 THE COURT: Thank you.

6 BY MR. JEFFERIES:

7 Q And for sake of time, can you go to page 3 within
8 Exhibit 68.

9 A Okay.

10 Q And not a very good copy. Do you recognize this as a
11 change order request that

12 APCO submitted to you on behalf of Helix Electric?
13 Directing your attention to page 5 within Exhibit 68.

14 A Okay. Yes. The answer is yes.

15 Q Okay. So APCO submits Change Order Request 57 within
16 Exhibit 68 to you for your review and approval, correct?

17 A That is correct.

18 Q And you did not reject this because it was submitted
19 on behalf of APCO -- excuse me, you did not reject this COR
20 because it was submitted on behalf of Helix, did you?

21 A I accepted the COR, correct.

22 Q Okay. And, sir, isn't it standard practice on City
23 projects for you to approve change order requests even though
24 the underlying work was being done by a subcontractor?

25 A Yes.

1 Q Okay. Isn't it true, sir, that when APCO submitted
2 to you the Helix request for extended general conditions, that
3 you and Mr. Pelan sat down and reviewed them?

4 A We did.

5 Q You did?

6 A Yes.

7 Q In fact, that was your standard procedure, to have a
8 change order request meeting with Mr. Pelan to go over CORs?

9 A Mr. Pelan or his representatives from the project.

10 Q Okay. And Mr. Domina was asking you questions about
11 Lisa Linn sending up, here's certain number of CORs, that was
12 anticipation of this standard meeting that you all had,
13 correct?

14 A It would not have occurred -- she would send it to me
15 so I could review it so I'd be prepared for the meeting with
16 the representative from APCO.

17 Q Okay. And that was standard practice on this
18 project?

19 A Correct.

20 MR. JEFFERIES: I'm not going to go through all of
21 these, Your Honor, just 67 through 77 are all Helix change
22 orders that were accepted by the City.

23 BY MR. JEFFERIES:

24 Q Sir, isn't it true that you and Mr. Pelan discussed
25 the merits of Helix's request for extended overhead as

1 reflected in the initial COR I have as Exhibit 20?

2 And that's -- I haven't asked a question yet. I'm
3 going to get myself organized here.

4 If you would, sir, go to Exhibit 21.

5 A 21? Okay.

6 Q And just for comparison purposes, I had asked you
7 about Exhibit 68, and I don't want you to go there, for sake of
8 time --

9 A Okay.

10 Q -- but that was Change Order Request 59, Exhibit 21
11 is now Change Order Request 68. Exhibit 21 is the standard
12 process for APCO to forward to you --

13 A Uh-huh.

14 Q -- a change order request on behalf of a
15 subcontractor, correct?

16 A Exhibit 21 is -- that is the correct format to
17 forward to me, yes.

18 Q Okay. And as part of your standard practice with Mr.
19 Pelan, the two of you would have sat down and discussed the
20 merits of Exhibit 21 and this initial request by Helix for
21 extended overhead, correct?

22 A Correct.

23 Q Okay. And isn't it true, sir, that as part of your
24 review of COR 68 with Mr. Pelan, that you rejected the Helix
25 request in part because it had no merit?

1 A That is correct.

2 Q Okay. And other than the summaries -- I'm going to
3 try and find a good example. If you would, sir, go to Exhibit
4 20, page 2.

5 A Okay.

6 Q Other than this summary submitted by Helix that
7 assumes four hours a day for a project manager and four hours a
8 day for a superintendent, you never received any backup for any
9 increased costs from Helix through APCO, correct?

10 A That is correct.

11 Q And you were on the job site daily?

12 A I was.

13 Q Okay. And isn't it true, sir, that beginning in
14 approximately mid-May, Helix only had one person in the field
15 doing miscellaneous change order and regular contract work?

16 A May of 2013?

17 Q Yes.

18 A Or --

19 Q The second year.

20 A The second year, yeah. I believe they demobilized
21 most of their crew out of the job site, yes.

22 Q Okay. Mr. Domina asked you about some of the I'll
23 call it post-October submissions of updates to the --

24 A Uh-huh.

25 Q -- Helix requests for extended overhead. In none of

1 your notes reflecting your review do you cite a waiver, do you?

2 A Waiver?

3 Q Yes.

4 A No. I don't recall. No waivers.

5 Q Sir, would you agree that when APCO cited and
6 submitted its TIAs, there were two of them that you went
7 over --

8 A Correct.

9 Q -- that APCO was including its project management
10 costs on a looking-forward basis?

11 A Yes.

12 Q Okay. And at the time those were submitted, Helix
13 had not presented its costs to APCO?

14 MR. JEFFERIES: That's not probably --

15 THE COURT: He didn't know.

16 MR. JEFFERIES: I know. That's --

17 THE COURT: Okay.

18 MR. JEFFERIES: I was waiting for him to object. I
19 sustain.

20 THE COURT: You made the objection for him, didn't
21 you?

22 MR. DOMINA: I'm busy trying to prepare for redirect.
23 Sorry. I didn't think it was spectacular.

24 THE WITNESS: So I don't need to answer that --

25 THE COURT: No, you don't need to answer. He

1 withdrew the question. There was no objection, no ruling. He
2 just withdrew.

3 MR. JEFFERIES: I think that's all I have.

4 THE COURT: Mr. Domina.

5 MR. DOMINA: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. DOMINA:

8 Q I think one point I'd like to make, Joemel, on
9 cross-examination, counsel asked you that -- he said, Didn't
10 you meet with Joe Pelan? And you said they have no merit.
11 What did you mean by those -- Helix's change order request had
12 no merit?

13 A That means that it's -- that I would not look into
14 that, because it was not from APCO, my contractor.

15 Q Correct.

16 A Not Helix, the subcontractor.

17 Q The merits -- it had nothing to do with no backup,
18 no -- not enough support for you to feel good about it. It was
19 just the fact that it came from APCO and did not carry into
20 APCO's contract value. Correct?

21 A It -- again, it goes back to I don't have a contract
22 with Helix. That's why it was rejected.

23 MR. DOMINA: Okay. Thank you.

24 No further questions.

25 THE COURT: Anything further?

1 MR. JEFFERIES: No, Your Honor.

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

4 THE WITNESS: Oh, thank you very much. I'm going to
5 even take some M&Ms with me.

6 THE COURT: Please do. Don't let the lawyers have
7 any.

8 Gentlemen, your next witness.

9 MR. DOMINA: Yes, Your Honor. I'm just going to let
10 him come through.

11 Thank you.

12 THE WITNESS: Thank you.

13 MR. DOMINA: Helix calls Rai Prietzel, but he's out
14 in the hall.

15 THE COURT: Okay. And we break at 4:45, so we've got
16 about a half hour.

17 MR. DOMINA: Okay.

18 MR. JEFFERIES: Your Honor, could we talk about
19 scheduling?

20 THE COURT: We could.

21 MR. JEFFERIES: Before we --

22 THE COURT: 9:15 tomorrow, I have two things on my
23 9:00 calendar, won't be very long.

24 MR. JEFFERIES: Okay. And do you have us slotted for
25 Wednesday? Because it wasn't --

1 THE COURT: I do.

2 MR. JEFFERIES: Do you?

3 THE COURT: Let me look at my chart. Definitely.
4 You all have an arrow drawn from 10:30 on June 3rd to June 5th.

5 MR. DOMINA: Do we have you all day tomorrow, Your
6 Honor, after the 9:15?

7 THE COURT: I have a short mental health court
8 appearance that I have to make around 2:00, but we have a
9 courtroom for them to use so we don't have to suspend our
10 proceedings.

11 MR. DOMINA: Okay.

12 THE COURT: I just walk down the hallway.

13 MR. DOMINA: Okay.

14 THE COURT: You ready for a hand, sir?

15 **RAINER PRIETZEL**

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

18 THE CLERK: Thank you. Please be seated.

19 THE WITNESS: Thank you.

20 THE CLERK: Please state and spell your name for the
21 record.

22 THE WITNESS: My name is Rainer Eric Prietzel,
23 spelled R-a-i-n-e-r, E-r-i-c, P-r-i-e-t-z-e-l.

24 THE CLERK: Thank you.

25 THE COURT: Thank you, sir. You'll notice there's a

1 pitcher of water there if you should need it, there are M&Ms in
2 the dispensers behind you, and there are binders with some of
3 the exhibits, although counsel will probably show them to you
4 on this screen.

5 THE WITNESS: Thank you very much.

6 THE COURT: Okay. You may proceed.

7 MR. DOMINA: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. COX:

10 Q Good afternoon, Mr. Prietzel. Do you mind if I call
11 you Rai?

12 A Please.

13 Q Okay. I notice that your first name is Eric?

14 A First name is Rainer, middle name is Eric.

15 Q Got it. So you go by Rai, though?

16 A Yes.

17 Q Okay. Where do you currently work?

18 A I work for Helix Electric.

19 Q And how long have you worked at Helix Electric?

20 A 24 years.

21 Q What is your current position at Helix?

22 A Helix's superintendent.

23 Q Okay. How long have you been a superintendent at
24 Helix?

25 A 23 years.

1 Q So 23 of the 24 years?

2 A Yes, sir.

3 Q So approximately how many jobs with Helix have you
4 served as Helix's superintendent over the 23 years?

5 A I would say about 10.

6 Q And what kind of jobs are these? Are they large,
7 small?

8 A Usually on the larger size jobs. So they would be
9 considered large jobs.

10 Q Jobs that would take longer than a year, I assume,
11 since it's --

12 A Yes, that's correct.

13 Q -- 10 jobs in a 23-year time span?

14 A Yeah.

15 Q So I've heard different terminology in this case and
16 I've seen different records. And you yourself have even
17 referred to yourself as a foreman sometimes.

18 A That's correct.

19 Q What is the difference between a foreman and a
20 superintendent, if any?

21 A No difference. It's -- a foreman is a person in
22 charge and at Helix a person in charge is classified as a
23 superintendent. So it's just the same meaning.

24 Q Okay. So they're used interchangeably?

25 A Yes, sir.

1 Q Okay. And let's go back to some of your background.
2 Do you have any license or certifications personally with
3 respect to the duties that you perform at Helix?

4 A Yeah, I'm a certified electrician through Clark
5 County, I have a license on that. I'm also certified for
6 scissor lifts, forklifts, boom lifts, trenching and excavation,
7 confined space, meters, testers, qualified person training.

8 Q Do you have any OSHA certifications?

9 A I -- oh, that's right, I'm sorry. I do have an OSHA
10 30. Sorry.

11 Q What is an OSHA 30?

12 A OSHA 30 is required in construction. A minimum is an
13 OSHA 10, required for construction workers on site. An OSHA 30
14 would be required either by a safety supervisor, a foreman, or
15 a field superintendent. It's just more qualifications, more
16 training.

17 Q Okay. So all electricians would have the OSHA 10
18 certification?

19 A That's correct.

20 Q And you have the OSHA 30, which is standard for
21 superintendents?

22 A That's correct.

23 Q And required?

24 A Yes.

25 Q Are you required to renew any of these licenses and

1 certifications periodically?

2 A Yes. Every three years the Clark County journeyman's
3 card requires 16 hours of continuing education classes, which
4 will renew. Mine will be in 2021. We also renew our scissor
5 lift, forklifts, and boom lift certifications. Some of those
6 can expire. Also, we're offered monthly classes at Helix
7 Electric if there's any new materials, equipment, or things
8 that may help us out in the field or safety -- newer safety
9 regulations or equipment that have come out, we get trained on
10 that or at least informed on those.

11 Q Okay. And do you keep current on those renewals?

12 A Yes, I have to.

13 Q I'm going to ask you a few questions about the Craig
14 Ranch Road Park project; are you familiar with that project?

15 A Craig Ranch Regional park, yes, sir.

16 Q Okay. To keep it simple, I'll just refer to it as
17 the project and we'll all understand that's what we're talking
18 about.

19 A Okay.

20 Q How are you familiar with that project?

21 A I've worked on that project for, oh, probably almost
22 two years.

23 Q Do you recall when you began working at the project?

24 A Early 2012.

25 Q And do you recall when your work at the project

1 ended?

2 A Early November 2013, I believe. Yep.

3 Q And what was your job title while working at the
4 project?

5 A I was Helix superintendent.

6 Q And who's Richard Clement?

7 A Rick Clement?

8 Q Oh, sorry.

9 A Yep, no problem. Rick Clement, he started that job
10 as the Helix superintendent.

11 Q Okay. So he worked on that project as well?

12 A Yes.

13 Q As a superintendent?

14 A Yes.

15 Q Was he on the project until the very end?

16 A No.

17 Q Do you recall when he left?

18 A I believe it was early 2013.

19 Q So after he left, you were the only superintendent
20 for Helix at the project?

21 A That's correct.

22 Q Until the very end?

23 A Yes.

24 Q Were you ever the project manager of the project?

25 A No. That would have been Kurk Williams.

1 Q Okay. And did you communicate with Kurk Williams?

2 A Yes, I did.

3 Q How often did you communicate with him?

4 A I'd say two to three times a week.

5 Q Okay. Did you ever meet with him in person or just
6 phone calls?

7 A Yes, I met with him in person, also telephone calls
8 or text messages, yes.

9 Q Okay. Did you guys ever walk the site together?

10 A Yes, when he would show up there, first thing we
11 would walk the site or we had site trucks, well, because the
12 site was so big, we would drive around and would show him our
13 progress or any types of delays or, you know, safety issues
14 that might be of concern to him.

15 Q Okay. So you just talked about basically the status
16 of the project and --

17 A Yes.

18 Q -- any issues?

19 A Yeah. Anything to do pertaining to Craig Ranch.

20 Q And did your communications with Mr. Williams
21 continue till the very end of the project?

22 A Yes.

23 Q So as a superintendent, what were some of your
24 day-to-day responsibilities at the project?

25 A To supervise and maintain the labor, the equipment,

1 subcontractors, perform the safety meetings. At the beginning
2 of the job we have safety meetings at the beginning. Fill out
3 daily reports, the timecards, attend the weekly subcontractors
4 meetings with APCO to review the schedule, coordinate
5 inspections, call up City of North Las Vegas, contact them or
6 NV Energy or Century Link to schedule inspections prior to any,
7 you know, work being performed.

8 Q Okay. And were you on the project every day that
9 work was being performed?

10 A Yes.

11 Q Until the very end?

12 A Yes.

13 Q Okay. Why was it important that you were on site
14 every day?

15 A Well, first of all, it would be qualified and trained
16 to notice and make sure the area's safe for all of our
17 employees there, and not just Helix employees, other employees
18 also, conduct those meetings, and I had the OSHA 30 card, so I
19 was qualified to do all of that.

20 Q And safe -- Helix is an electrical contractor, right?

21 A Yes.

22 Q So there's some significant concerns with
23 electricity?

24 A Absolutely. With the trenching and the layout, you
25 know, possible hazard of actually hitting some of that stuff.

1 Q You mentioned contractor meetings; what were those
2 meetings for?

3 A It would be in APCO's trailer, usually Marc Yocum
4 [phonetic] or Noah Holmes would perform those and it would just
5 state the job -- where the job was at, what -- you know,
6 where -- okay, here, we're going to go here under this area, or
7 we're going to go under this area. We need you, you know, just
8 scheduling and laying out the work for not just Helix but for
9 the other subcontractors on that job.

10 Q And how often were those meetings?

11 A Once a week.

12 Q Did everyone attend those, including laborers?

13 A No. It would have just been the foreman's
14 superintendent or supervisors from myself and the other
15 contractors there.

16 Q Okay. So you said that you coordinated work with
17 other trades?

18 A Yes.

19 Q What other trades did you coordinate with?

20 A It would have been with the plumbers, could be the
21 plumber, it was some of the steel engineers. I would have
22 coordinated with APCO.

23 Q And why would you have coordinated with APCO?

24 A Because I was ultimately responsible for laying out
25 the trenches for them to dig. They were dig -- doing the

1 digging and stuff for us, so it was my -- I had to go out there
2 with the prints, so I had to evaluate the area: Is this the
3 correct place to put a trench? Or would there some live
4 utilities or something here? Should we move this here? So me
5 coordinate, me laying it out, that was my responsibility. And
6 then from there they could follow the, you know, the marks or
7 the directive from me.

8 Q Okay. And so that's trenching and back hoeing, and
9 I'm sorry --

10 A Yeah.

11 Q -- I interrupted you. You said plumbers?

12 A Oh, yeah, I'm sorry.

13 Q Why would you be coordinating with plumbers?

14 A Yeah. With a plumber, we had rest room areas that
15 were poured in place in concrete. And in the middle of those
16 restroom areas would have been plumbing chases. And in that
17 plumbing chase, that's where it got kind of crowded. So we
18 would have -- it was a subpanel, it was basically a mini
19 transformer with a panel in there. And I had to coordinate
20 with them, can we put it on this wall or this wall? How are
21 you running your pipes? Where are your automatic flushers
22 going? How are you mounting your racks? It's just one of
23 those deals you just can't throw in there, because then one
24 guy's going to be on top of the other.

25 Also, you know, hey, the mirrors and the sinks are

1 going right here. Hey, there might be a GFI -- GFCI receptacle
2 right there. You want to make sure it doesn't get installed
3 where there's an actual, you know, divider, where the urinals
4 or the stalls are, or if there's a door right there, so it's
5 behind the door. It's got to be met so it's accessible and not
6 in the way of other trades.

7 Q Okay.

8 A So just common practice.

9 Q So as a superintendent, you're basically working with
10 other trades solving problems that come up on a day-to-day
11 basis?

12 A Solving issues that could be problems, just catching
13 them beforehand. But yeah, it had -- it's through
14 communication and preplanning.

15 Q Okay. Did you ever coordinate with landscaping?

16 A Yes.

17 Q Why?

18 A To find out where they're running their 2-inch main
19 water lines. We didn't want to coincide with them. We were
20 doing trenching, find out the depth of their pipes. So, you
21 know, we had a minimum depth we have to require, so if we have
22 to go a little bit deeper, we would go deeper and let them run
23 on top. Also where his valves and stuff were located, let him
24 know, Hey, I'm going to install a pole box here, will this be
25 in the way of possible sprinkler head location or, you know,

1 any of -- or his equipment could go, sometimes he had pedestals
2 with time clocks and stuff like that. So it's just
3 coordination, common practice.

4 Q Okay.

5 THE COURT: Were you doing the trenching or was
6 somebody else?

7 THE WITNESS: APCO was doing the trenching. They had
8 a operator.

9 THE COURT: Okay.

10 THE WITNESS: But I was laying it out to where they
11 had to do the trenching.

12 THE COURT: All right. Thank you, sir.

13 THE WITNESS: You're welcome.

14 BY MR. COX:

15 Q And you laid it out so that they did it correctly,
16 correct?

17 A Yes.

18 Q Okay. So you mentioned inspections. And we'll get
19 into some timecards or daily reports that talk about that. But
20 just briefly, what's the process to getting an inspection?

21 A Well, on the prints on, let's just say, for example,
22 the NV Energy drawings, you know. We get those drawings,
23 there's a project number and a phone number there. So prior to
24 some of the work, I need to call them up and say, Hey, I'd like
25 to schedule for a courtesy meeting to meet the inspector and

1 let him know what our plan is and where we're going to trench
2 this. I just didn't want to start trenching. You know, you
3 want to coordinate with him, Hey, are you happy with this
4 location? Are you good with this? So we would call them out
5 for that.

6 Then once the -- once that was approved where the
7 trenching was going to go, APCO would do the digging. You
8 know, we'd -- I would make sure after I got done painting the
9 trenches, I would go out there and make sure the depth of the
10 trenches were correct, make sure they put sand at the bottom of
11 the trenches, which is required by NV Energy. You know, make
12 sure that the sand was done. Then we would have to call for
13 inspection again, same process, calling him up, schedule him to
14 come out. Vince would usually come out -- that's the
15 inspector's name at the time. He would come out, inspect the
16 trench, see that it was sanded on the bottom, and they say, Go
17 ahead, you can install your conduit now.

18 After the conduit was installed, I would have to call
19 him up again because as a requirement, NV Energy has sand that
20 you have to put over the top of their conduits. They don't
21 like native soil, because there's rocks and stuff in it, and
22 possible damage to the -- you know, the conduit and stuff. So
23 you have to sand it. You recall him out, he inspects the sand,
24 makes sure, you know, it's installed at the proper depth, which
25 I believe was 12 inches.

1 And then after that, they would do their first lift
2 of dirt, type 2 native, do a compaction, and then they would
3 put -- we would put the NV Energy tear tape, which identifies
4 the trench, so if anyone comes behind us and happens to do the
5 digging, you know, in the first foot or two, they would hit
6 that tape and that would notify them, hey, there's an NV
7 Energy, you know, there's a conduit here, so no accidents would
8 occur. So.

9 Q And so you participated in all those inspections?

10 A Yeah, I called all of those. I walked with the
11 inspector and we made sure he passed it and once they passed, I
12 would relay it to either Mark or Noah, say, Hey, Vince passed
13 this trench, you can go ahead and backfill. And, you know,
14 when do you think you're going to have it done? Okay. And
15 then I'll call up the inspection, say, Hey, can you come back
16 out on this date? Schedule it for then and then come out and
17 do that.

18 Q When you say Mark or Noah, who are they with?

19 A Mark Yocum and Noah Holmes, they were the
20 superintendents for APCO Construction.

21 Q Okay. And would inspectors ever talk to take
22 instructions from laborers?

23 A No. They're -- no, they would only report to me.

24 Q Okay. You said earlier when you were describing your
25 daily duties, that you ran safety inspections. Can you tell me

1 about that?

2 A Well, before we start every day, so it's Helix policy
3 every day to do a safety inspection. We have certain topics
4 that are just refreshers, you know, and then also do safety
5 inspections that actually pertain to that job. That job had a
6 lot of heavy equipment and open trenches, so a lot of my safety
7 meetings would be on heavy equipment, you know, what to watch
8 out for, make sure you have your proper PPE on, you know,
9 traffic -- you know, hardhat, gloves, glasses, proper attire,
10 your boots and stuff like that.

11 So, you know, one day we might do heavy equipment,
12 the next day it would probably be -- because here were are in
13 the desert, it's 113 out, it would be heat exhaustion and
14 heatstroke. You know, we've got to make sure not only myself,
15 because, you know, I'll be in the trailer lot doing some of the
16 paperwork, but the other guys working around their other
17 workers, Hey, keep an eye on so-and-so, it's getting hot out,
18 you know, does he look a little flushed, does he need some
19 water? Let's get him in the shade. So just -- it's just
20 different safety meetings every day, just as a reminder, Hey,
21 guys, this is what's happening on the job, we need to watch out
22 for each other.

23 Q Okay. And you've coordinated these safety meetings?

24 A Yeah, every morning I did.

25 Q Okay.

1 A Everyone signed in, and I coordinated the meetings.
2 I picked the topic.

3 Q And then did you also check the areas that you're
4 working in to ensure that they were safe?

5 A Oh, absolutely. Because each night, you know, Craig
6 Ranch Park there's a lot of traffic out there, so sometimes you
7 get vagrants in at night or kids that come in at night, like to
8 mess around. And even though the night before, you know, when
9 we leave, we make sure our barricades are up and everything's
10 safe, sometimes you would come in, the wind would come up,
11 barricades would be down, so we'd have to go back, you know,
12 say, hey, guys, let's get the caution tape back up here.

13 Are there any new hazards? There's other trades and
14 stuff that are in those work areas, you know, we do a safety
15 check where we check all of our extension cords and all of our
16 tools to make sure they're working properly. I'm not sure
17 every other sub out there does that. So it's my
18 responsibility, if my guys are in your work area, and say
19 you're the plumber, I'm going to physically -- I'm going to go
20 and take a look and just make sure your cord is okay. If your
21 cord happens to be frayed and I notice some, you know, the
22 insulation is ripped off and there's a possible chance for my
23 guys to get zapped or electrocuted, you know, if I power off
24 the generator, I'm going to tell them, Hey, let's get -- let's
25 stop or at least let the plumber, hey, let's take this cord out

1 of there, why don't you use our cord to make it a safe
2 environment.

3 Because also goes for iron workers. You know, they
4 use Hilti ramset guns with .22 caliber shots in them, you know,
5 powder actuated tools, and sometimes you find those laying on
6 the ground with an empty shell or a shot in it. Well, if you
7 happen to kneel down, you know, and you don't see that shot,
8 and you kneel down on that, that thing can go off and do some
9 serious damage not only either to your foot or your knee, it
10 wouldn't be a pretty sight. So those are just issues and
11 you've got to take care of it.

12 Q Yeah. And you do that every day, wherever you guys
13 were working to make sure you guys were safe?

14 A Every area we go in has got to be inspected to make
15 sure it's safe.

16 Q Okay. Did you create daily job reports?

17 A Yes.

18 Q Okay. And we're going to go ahead and turn through
19 some of those.

20 MR. COX: Chris, if you could, it's Joint Exhibit 5.

21 THE WITNESS: Is there a book you want me to grab or?

22 MR. COX: They're going to --

23 THE COURT: It should be in the first volume --

24 MR. COX: -- pull up on the screen --

25 THE COURT: -- or you can look on the screen.

1 MR. COX: And there's a screen in front of you, Rai.
2 Rai, to the side.

3 THE WITNESS: Oh, right here? This one?

4 MR. COX: Yeah. And he'll be able to blow it up.

5 BY MR. COX:

6 Q Can you see that?

7 A Yeah.

8 Q Okay. Do you recognize this document?

9 A Yep.

10 Q And did you create it?

11 A Yes. That's my handwriting.

12 Q And at the bottom there's a signature; is that your
13 signature -- when we get to it?

14 A Yes, that's it.

15 Q All right. What is this document?

16 A That would be our daily report. That's the tasks
17 we're going to be doing in certain areas. Like I said, you're
18 filling out the weather. Weather is definitely an issue out
19 there. Is it sunny? Is it hot? You've got to make sure
20 you've got your water jugs? Are you cool? Is it going to be
21 windy and dirty, instead of just safety glasses, will you need
22 goggles to protect the dirt? So it's just -- it's just a
23 common daily report for us.

24 Q Okay. And you prepared one of these reports every
25 day you guys were performing work?

1 A Yes, sir, that's correct.

2 Q And that's typical of a superintendent, correct?

3 A Yes, absolutely.

4 Q You'll notice there are a list of names around the
5 left-hand side. What do those names represent?

6 A Those are my employees that I had on the job.

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

8 A February 6, 2013.

9 Q Okay. So February 6, 2013, those are the employees
10 that you had on the job that day?

11 A That is correct.

12 Q And did you supervise those employees?

13 A Yes, I did.

14 Q They report to you?

15 A Yes.

16 Q Did you tell them what area to work in?

17 A Yes.

18 Q Did you tell them what work needed to be performed
19 that day?

20 A Yes.

21 Q Every day?

22 A Every day we meet at the trailer.

23 Q Okay.

24 A Yep.

25 Q Next to the list of the names is a box, and it's

1 titled Location and Description of Work Performed. Do you see
2 that?

3 A Yes.

4 Q What is that?

5 A Just a brief description of the areas and the work
6 that will probably be performed.

7 Q Okay.

8 A Pipe the gutter in at the baseball field restroom,
9 wire up the pull boxes, the NV Energy Mandrel test today,
10 install PVC at the ballpark and blowing strings. Went to
11 Rockway Precast to do layout for the walls in the central
12 plaza. Attend the APCO sub meeting. Safety inspection today.
13 And, like, I said, we blew strings in the conduits that we
14 installed.

15 Q Okay. So I want to ask you a couple of questions.
16 Mentions of APCO sub meeting, is that the sub meeting that we
17 talked about earlier?

18 A Yes.

19 Q Okay. So you attended that?

20 A Correct.

21 Q What is the NV Energy Mandrel test?

22 A That's prior to the mandrel test, I would have to
23 schedule through NV Energy, you know, have the inspector there.
24 And, basically, what it is is you have string or a mule tape --
25 mule tape is -- which, like -- it's, like, a larger, strong

1 measuring tape inside the conduit. And, like on that NV Energy
2 has 4-inch conduit. We would have to use a 3-1/2-inch to
3 3-3/4-inch mandrel. And what it is, it's basically a solid
4 cylinder that you basically pull from one end of that conduit
5 to the other. This way it shows NV Energy that that conduit is
6 clear, there's no obstructions in it and no dirt in there.

7 So once that's complete, they also read the
8 measurements on that mule tape, tells them how long a wire they
9 need to order. And then once that test is complete, the NV
10 Energy knows, Hey, the conduit's good, we can go ahead and pull
11 wire in that conduit.

12 Q Okay. So you coordinated these tests with NV Energy?

13 A Yes, that's correct.

14 Q Okay.

15 A I was out there with the inspector, also.

16 Q Okay. The inspector of the City?

17 A The inspector of NV Energy.

18 Q NV Energy? Okay.

19 A Yes. He has to witness that test.

20 Q Okay. And how often did you have these types of
21 tests with NV Energy?

22 A There were multiple runs in there.

23 Q Just an estimate.

24 A Three or four, maybe. There's probably -- well, for
25 the mandrel test, probably three or four. But there would have

1 been more inspections with the inspector prior to that testing
2 on, you know, the install of that work.

3 Q Okay. And that was the NV Energy inspector?

4 A Yes.

5 Q Okay.

6 A We also had a CenturyLink inspector out there also,
7 because we had CenturyLink, and that's --

8 Q So you had an inspect --

9 A -- that's the same process.

10 Q So you had inspections with CenturyLink inspectors,
11 as well?

12 A Yes. Absolutely. I had to call up CenturyLink.
13 Basically, same process. They have a project ID number,
14 there's a phone number to call, you would schedule that
15 inspection. I would meet with Keith, always a courtesy
16 inspection first, Hey, this is how we're going to install it.
17 Are you okay with these pull boxes in this location? He would
18 say yes, go ahead and continue the work. And then he would
19 say, Give me a call back when this work, you know, when that
20 conduit is installed. Let him inspect that conduit. Virtually
21 the same as NV Energy.

22 Q Okay.

23 A Just so he could inspect the install of that work.

24 Q And I assume you also have inspections through the
25 County or the City, correct?

1 A Absolutely, yeah. Dwight Bodeen, he was the
2 inspector for North Las Vegas at the park.

3 Q And you dealt with all of these inspectors
4 personally?

5 A I dealt with all the inspectors, yes, sir.

6 Q Okay.

7 MR. COX: I still have some direct questions. But I
8 will stop at 4:45, if somebody --

9 THE COURT: We've got six more minutes till then.

10 MR. COX: Okay. I'll go quickly. Can somebody just
11 let me know --

12 THE COURT: We will.

13 MR. COX: -- when it's 4:45? Okay.

14 THE COURT: Please. There won't be any problem with
15 that.

16 MR. COX: Thank you, Your Honor. There's no clocks,
17 so I'm glad somebody brought that to my attention.

18 THE COURT: There is not a clock in here for a
19 reason. Let's keep going.

20 MR. COX: All right.

21 MR. DOMINA: Will you share with us that reason, Your
22 Honor?

23 THE COURT: I don't want you guys to know what time
24 it is. Get it done.

25 MR. DOMINA: It's like a casino.

1 THE COURT: Uh-huh.

2 MR. COX: I have six minutes. Come on.

3 MR. DOMINA: Okay.

4 BY MR. COX:

5 Q Okay. In that you mentioned that you went to Rockway
6 Precast to lay out walls. What's Rockway Precast?

7 A Rockway Precast is the concrete company that would
8 have formed up and built the walls up, installed the rebar,
9 because they were tilt walls for the restroom areas. They
10 weren't just block and built there on site, they were actually
11 built at another site where you have to go to where they're
12 back -- you know, they're lay-down yard was, and coordinate,
13 you know, with them, the plumber also, where some of their
14 openings and installs would be. So, you know, if we found,
15 hey, there's no way your plumbing's going right here and my
16 electrical's here. Okay. Well, let's make a change and let's
17 move this over to here so as just not to, you know, have any
18 conflict when that concrete's poured.

19 Q Okay. So you'd coordinate with Rockway Precast to
20 make sure they're cutting their precast panels correctly and --

21 A Yeah.

22 Q -- and you can install the electrical?

23 A And it would be installed. That's correct. We'd
24 move the install. So yes.

25 Q How often did you do that with Rockway? As to --

1 A How many buildings, one, two -- half a dozen.

2 Q Okay. We talked briefly about daily safety
3 inspections; were there other safety inspections?

4 A We would have our safety director, Lawrence Frye,
5 come out there, not only do I do that, but he would do his --
6 usually two times a month, come out there and inspect the job
7 site, just to make sure, because -- you know, that we're
8 following through with procedure. And he would walk the site,
9 I would walk the site with him. Bring to our attention, hey,
10 you need to watch out, you know, here's a little safety issue
11 that might be of concern. Here's an issue right here, you
12 know, you should probably maybe do this and that. Just doing
13 his corporate safety walk.

14 Q Okay. And you said that was twice a month?

15 A About twice a month, yeah.

16 Q Okay. Let's go ahead and turn to the same exhibit,
17 page 240; do you recognize this?

18 A Yep. March 1st, 2013. That's my writing, that's my
19 signature.

20 THE COURT: So why is your employee number only four
21 digits?

22 THE WITNESS: Because I've been here 24 years.

23 THE COURT: Okay. So everybody else has got bigger
24 numbers because they're more recent. Okay.

25 THE WITNESS: They're on the 20,000s --

1 THE COURT: Just couldn't [indiscernible] pays
2 attention.

3 THE WITNESS: They're in the 20,000s right now.

4 MR. COX: It's like a lower bar number.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: It is like a lower bar number, except
7 those first 3,000.

8 THE WITNESS: I'm proud to say also -- sorry to waste
9 your time -- but I'm in the top 10 of longest tenured employees
10 here at Helix Electric here in Las Vegas.

11 MR. COX: Congratulations.

12 THE WITNESS: I'm Number 8. So I hope it means
13 something.

14 BY MR. COX:

15 Q Okay. So this is a similar document, correct?

16 A Yep.

17 Q That we just looked at. You prepared this?

18 A Yes, that is correct.

19 Q Okay. And if you look down on the location and
20 description of the work performed, you'll see a sentence that
21 starts, Call for.

22 A Yeah.

23 Q Can you go ahead and read that?

24 A Call for inspection in switchgear and picnic
25 structure panels.

1 Q So is this an inspection with NV Energy or is it the
2 City?

3 A That would have been with the City right there. He
4 would have -- that would have been an inspection on the gear.
5 I would have opened it up, he would have checked the
6 terminations, checked to make sure the wires were landed
7 properly. We would have torqued that. He would have okayed
8 it. And then I could have closed up and locked up that panel.

9 Q Okay. And you would have --

10 A That would have been with Dwight Bodeen. I would
11 have been with the inspector. And I -- and there was multiple
12 locations, you know, that one -- just --

13 Q Okay.

14 A -- yeah, inspection on switchgear on the picnic
15 structure. Yeah.

16 Q Okay. Let's go ahead and go to page 274. Do you
17 recognize this document?

18 A Yes. April 18th, 2013.

19 Q And we're not so interested in the location and
20 description of the work, but there's additional writing at the
21 bottom. Do you see that?

22 A Yeah. Phase I telephone conduit, existing kiosk
23 cannot be located. Walk the site with Brett Miller of North
24 Las Vegas, and reviewed the issue. North Las Vegas to review
25 this and inform us of any changes. So we were trying to find

1 out where that one telephone conduit and pull box was actually
2 located. It wasn't as the drawing was shown.

3 Q Okay. So that's why you're walking it with --

4 A That's correct. Yes.

5 Q -- North Las Vegas?

6 A Yes.

7 Q Okay. What is that box for? Can you read the title
8 of that box?

9 A If you shrink it a little bit, it's missing the first
10 couple of letters. Holy moly. Little bit bigger. This is --
11 MR. DOMINA: He's got it.

12 THE WITNESS: All right. Describe any information
13 which could be valuable in recovering costs via claims or
14 protection against claims by others, interference by other
15 contractors, et cetera.

16 BY MR. COX:

17 Q So you wrote in here because there was an issue that
18 kind of caused some sort of delay in your day?

19 A Yeah. It took up a lot of time, you know, just
20 trying to find those conduits and those boxes. So, you know, I
21 have the prints, go around, let's locate all of these, hey,
22 where is this box? If I remember right, that would be the
23 telephone that went into their maintenance, where Brett's
24 office was located on the -- like, the northwest corner. And I
25 just couldn't find all of those.

1 Q And I've looked at all the daily reports.

2 A Uh-huh.

3 Q And not all of them have, you know, descriptions of
4 delays or anything like that. Is there -- would it be possible
5 for you to write down every single delay that you experienced
6 on the project?

7 A No. Some of that -- a lot of that stuff, you know, I
8 just kind of remembered. I might have jotted down on a
9 notepad, so I remind myself in the morning, hey, there's a
10 delay or I might have to come back to this certain area. But,
11 no, I probably didn't get everything.

12 Q Was it your understanding that this project had been
13 the completion date had been delayed?

14 A Yes.

15 Q Okay.

16 THE COURT: Would this be a convenient place to break
17 for the evening?

18 MR. COX: Yes, it would.

19 THE COURT: If you could join me at 9:15 in the
20 morning, I have a 9:00 calendar that has two matters on it. So
21 if everyone shows up when they're supposed to be, I'll be done
22 well before 9:15.

23 MR. DOMINA: Do you want us here earlier than 9:15?

24 THE COURT: No. If you get here at 9:15, it should
25 work out.

1 MR. DOMINA: Okay.

2 THE COURT: Because you will walk in with somebody
3 who is whining and still saying stuff, and I'll say, Oh, gosh,
4 guys, I've got to start my trial.

5 Have a nice evening.

6 (Proceedings recessed for the evening at 4:47 p.m.)

7 -oOo-

8 ATTEST: I do hereby certify that I have truly and correctly
9 transcribed the audio/video proceedings in the above-entitled
10 case.

11

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Dana L. Williams
Transcriber

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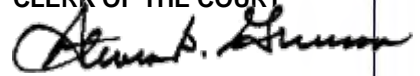
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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

CASE NO. : A-16-730091-C
DEPT. NO. : XI

13 Plaintiff,

14 vs.

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

18 Defendants.

19
20 **HELIX ELECTRIC OF NEVADA, LLC'S REPLY IN SUPPORT OF HELIX'S**
21 **COUNTERMOTION FOR AMENDMENT TO FINDINGS OF FACTS AND**
22 **CONCLUSIONS OF LAW**

23 Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix") by and through its attorneys,
24 the law firm of Peel Brimley, hereby submits its Reply in Support of Helix's Countermotion for
25 Amendment to Findings of Fact and Conclusions of Law.

26 ///

27 ///

28 ///

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

4 Dated this 15th day of August, 2019.

5 **PEEL BRIMLEY LLP**

6 
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Helix’s Countermotion was premised on the belief that the Court overlooked certain key
4 pieces of evidence in reaching its decision. Through the Countermotion, Helix pointed out
5 numerous areas of testimony that warranted a different conclusion by the Court. For instance, Helix
6 identified specific areas of testimony and arguments that establish (i) CNLV significantly extended
7 the duration of the Project; (ii) Helix should not be bound by the settlement terms between APCO
8 and CNLV; and (iii) Ray Prietzel’s time as superintendent on the Project was never compensated
9 through Helix’s contract and change order billings.

10 APCO’s Opposition ignores the facts and testimony presented in the Countermotion,
11 fabricates lines of questioning by the Court, and then argues that Helix presented no evidence to
12 support its arguments. Given that Helix’s Countermotion was supported heavily by citations to the
13 record, APCO’s assertion that Helix presented no evidence to support its claims is baffling.
14 Throughout the rest of its Opposition, APCO fails to address Helix’s arguments or explain why it
15 believes Helix’s position is incorrect. Because APCO fails to rebut Helix’s arguments and instead
16 relies on unsupported conclusory statements, the Court should amend its Findings of Fact and
17 Conclusions of Law (“FFCL”) and award Helix the full amount of its claim.

18 **II. LEGAL ARGUMENTS**

19 **A. Helix Offered Testimony at Trial Supporting its Arguments Under NRS**
20 **338.485(2)(c)(4), Rendering APCO’s Arguments to the Contrary Without**
21 **Merit.**

22 In its Countermotion, Helix explained that the Court did not rule on its argument under
23 NRS 338.485(2)(c)(4) despite Helix raising it at trial.¹ Helix also explained how this argument was
24 supported by the testimony of Joemel Llamado, the construction manager for the City of North Las
25 Vegas (“CNLV”) for the Project, who testified that due to various delays encountered at the Project,
26 CNLV made the decision to extend the duration of the Project, and that he considered the 9-month
27 extension of time significant.² Nevertheless, APCO argues that Helix has brought this argument

28 ¹ See Helix’s Opposition and Countermotion, at 4:6-8; 9:4-9.

² *Id.* at 9:10-22.

1 now for the first time, after trial, and that Helix “did not present any evidence suggesting that the
2 delays were significant.” Either APCO did not carefully read Helix’s Countermotion, or APCO is
3 simply attempting to mislead the Court. Either way, it is clear that Helix raised its NRS
4 338.485(2)(c)(4) argument during trial and presented evidence supporting it.

5 APCO then argues that despite CNLV’s construction manager testifying that the extension
6 of time was significant, that this argument must fail because Mr. Pelan testified that all parties knew
7 the Project would take two years to complete. Mr. Pelan’s self-serving and unsupported testimony,
8 which is contradicted by the terms of every Project document produced in this case, has no impact
9 on the applicability of NRS 338.485(2)(c)(4). Further, if it was true that everyone knew the Project
10 would last two years, rendering the recovery of extended general conditions improper, why did
11 APCO seek over \$750,000 for extended general conditions due to the Project’s delay? APCO
12 cannot legitimately argue that Helix bid the Project, or should have bid the Project, with the
13 understanding that it would take two years to complete, when it its own bid only contemplated a
14 12-month duration.

15 To support this irrelevant and unsupported argument, APCO claims, without citing to the
16 record or any other source, that this Court specifically questioned Helix about Mr. Pelan’s
17 testimony as to the anticipated project duration. Yet a simple review of the trial transcripts reveals
18 that this never took place. Mr. Pelan was the final witness called at trial, so there were no Helix
19 witnesses to question after Mr. Pelan’s testimony and the Court did not question Helix’s counsel
20 about this issue during Helix’s closing arguments. In fact, the only exchange between the Court
21 and Helix regarding this testimony was the Court ruling on Helix’s objection that Mr. Pelan’s
22 testimony violated the parol evidence rule.³

23 APCO then argues that by not billing 100% of its general conditions line item until the final
24 month of the Project, Helix anticipated that the Project duration would last two years. On many,
25 many occasions it has been explained to APCO that the amount billed for the general conditions
26 line item on payment applications has nothing to do with the actual duration of the Project, as it is
27 simply a number to bill against at whatever rate APCO would approve. Bob Johnson testified as

28 ³ See attached hereto as **Exhibit 1** an excerpt from a true and correct copy of the Trial Transcript for Day Two of Trial,
pp. 159:21–160:15.

1 such in his deposition, it was again made abundantly clear in Helix’s Opposition to APCO’s
2 Motions in Limine 3-4 and at the hearing on that matter, and Kirk Williams testified to this at Trial.⁴
3 In fact, Mr. Williams testified “the fact that . . . there was only a percentage billed, personally, it’s
4 irrelevant.”⁵ In light of such testimony, APCO’s continued insistence that the billing progress of
5 the general conditions line item represents Helix’s knowledge the Project would take longer than
6 12 months is absurd.

7 **B. Helix’s Recovery Must not be Limited Due to APCO’s Business Decision to**
8 **Accept a Large Reduction in Compensable Time Because Helix Was Not a**
9 **Party to the Settlement and Doing so Rewards APCO for its Bad Faith**
10 **Conduct.**

11 It is undisputed that APCO accepted the compensable period offered by CNLV without a
12 fight. It is undisputed that APCO never gave Helix an opportunity to dispute the compensable
13 period offered by CNLV and that Helix was never made aware APCO was settling its claims related
14 to the delay with CNLV. APCO’s decision to cut its losses and accepted at face value CNLV’s
15 first offer does not mean the same limitation should apply to Helix who was not a party to that
16 transaction. This Court has already determined that APCO’s decision to settle Helix’s Claim
17 without its knowledge or input constituted a breach of the implied covenant of good faith and fair
18 dealing that existed between APCO and Helix. It follows that the Court should also find that Helix’s
19 recovery should not be limited due to the terms of a settlement to which Helix was not a party and
20 had no opportunity to dispute.

21 APCO argues that Helix cannot change the nature of the underlying cause of the delay.
22 First, it should be noted that the only testimony provided at trial about alleged delays involving
23 Helix came from Mr. Pelan’s self-serving direct examination. At no point did APCO question
24 Helix’s employees or CNLV’s Project Manager on this topic. Helix disputes that it was the cause
25 of any delays to the Project.

26 However, even if Mr. Pelan testified truthfully that CNLV limited APCO’s claim for
27 extended general conditions because of alleged delays partially attributable to Helix, Helix cannot

28 ⁴ See attached hereto as **Exhibit 2** an excerpt from a true and correct copy of the Trial Transcript for Day One of Trial,
pp. 118:16–119:15.

⁵ *Id.* at 119:3-4.

1 now, six years later, change CNLV's determination as to the underlying cause of the delay. Nor
2 could Helix have changed CNLV's mind at the time CNLV made the decision to limit APCO's
3 recovery for extended general conditions simply because Helix was not a party to that process. The
4 fact is that nobody challenged CNLV's determination, so there is no way to know if CNLV's
5 determination (again assuming Mr. Pelan testified truthfully) was proper because APCO simply
6 accepted it and moved on without any further negotiations and most egregiously, without notifying
7 Helix or giving it an opportunity to dispute the decision. APCO's assertion in its Opposition that
8 the Court "set forth extensive facts in support of this decision" is followed by a citation to several
9 pages of the FFCL that have nothing to do with the Court's decision on this issue whatsoever.

10 APCO then incredulously asserts that the Court evaluated "substantial evidence" to
11 determine the compensable time period. It appears to Helix that the Court simply applied the same
12 time frame from the CNLV-APCO settlement to Helix's claim and nothing more. Furthermore, as
13 APCO never disputed the compensable time period and no investigation of the circumstances
14 causing the delay was conducted by APCO or presented to the Court, Helix does not understand
15 how it would have been possible for the Court to have independently determined what the proper
16 compensable time period should have been. While there is substantial evidence showing APCO's
17 bad faith conduct prohibited Helix from disputing the compensable time period, there is no
18 evidence regarding the proper compensable time period.

19 APCO also alleges that the Court thoroughly evaluated APCO's conduct as it relates to the
20 compensable time period and its applicability to Helix's claim in its FFCL. Once more, no such
21 evaluation actually exists in the Court's FFCL and APCO does not provide any citation to the record
22 to support this assertion. The Court does not provide any basis for why the compensable time period
23 accepted without dispute by APCO should bind Helix. APCO then notes that the Court highlighted
24 that APCO had a duty to include Helix's claim with its own, which it failed to do. APCO should
25 not be rewarded for engaging in the very same bad faith conduct that impaired Helix's ability to
26 recover its extended overhead costs to begin with.

27 Lastly, APCO argues that Helix did not provide sufficient evidence showing that CNLV's
28 calculation of the compensable time period was incorrect. Helix had no reason to believe it would

1 be limited in its recovery to the same period of time accepted by APCO. APCO had never raised
2 this argument and it did not come up at trial. If Helix had been given the opportunity to dispute
3 CNLV's determination back in 2013 prior to APCO unilaterally accepting the settlement and
4 cutting off Helix's rights, Helix would have had such an analysis to provide to the Court.
5 Furthermore, Helix's argument is not based on what the actual proper compensable time period
6 should have been--Helix's argument is that there is no reason to bind Helix to the same time period
7 agreed to without question by the opposing party in a transaction that Helix was not a party to and
8 had no opportunity to dispute. While APCO is bound by the agreement it struck with CNLV,
9 Helix's claim for extended general conditions against APCO should not be limited to APCO's
10 recovery against CNLV, especially since it was a negotiated settlement done behind Helix's back.

11 It is clear through APCO's conduct that APCO did not care what impact this settlement had
12 on its subcontractors--APCO simply wanted to get whatever money it could. APCO should not now
13 receive a windfall at the expense of Helix's Claim due to this same egregious behavior and APCO's
14 eagerness to take whatever CNLV offered regardless of whether it disagreed with CNLV's position.

15 **C. Ray Prietzel's Time as the Project Superintendent Should be Compensable.**

16 APCO's arguments regarding Ray Prietzel's time highlight the very misunderstanding that
17 Helix is attempting to rectify in its Counter-motion. APCO, similar to the Court's FFCL, asserts that
18 Ray Prietzel's time on site was completely compensated by contract and change order billings and
19 no additional compensation was warranted. Instead of addressing Helix's arguments or explaining
20 why it is proper for Helix to be barred from recovering for Mr. Prietzel's time, APCO simply argues
21 that Helix presented no evidence to establish Mr. Prietzel's time on the project was not covered by
22 contract or change order billings. This argument ignores the extensive testimony Mr. Prietzel
23 provided at trial, and cited in the Counter-motion, wherein Mr. Prietzel testified that less than half
24 of each day was spent completing compensable contract or change order work that was billed to
25 APCO.⁶

26 Mr. Prietzel testified that at least half of his hours on the Project each day, if not more, were
27 spent completing the superintendent duties required by Helix.⁷ None of Mr. Prietzel's time

28 ⁶ See Helix's Opposition and Counter-motion, at p. 11:14-22.

⁷ *Id.*

1 completing the numerous superintendent duties outlined in the Countermotion and testified to at
2 trial were billed and compensated as contract or change order work.⁸ APCO introduced no evidence
3 at trial to rebut Mr. Prietzel's testimony that he spent at least half of each day doing non-contract
4 or change order work in order to fulfill his duties as superintendent. Further, Mr. Prietzel testified
5 that these duties never changed even though he was the only person from Helix remaining on the
6 job, as he still needed to ensure job site safety for all trades working in the area, as well as attending
7 meetings, arranging inspections, and much more.⁹ Thus, Helix was only paid for the half of the day
8 Mr. Prietzel spent completing contract and change order work, and Helix remains uncompensated
9 for the four-plus hours a day Mr. Prietzel was completing his numerous duties as superintendent
10 throughout the many months of delay the Project experienced. Notably, all of Mr. Prietzel's time
11 is captured in the Job Cost Report which reflects the higher wage Helix was paying Mr. Prietzel in
12 his capacity as the Project Superintendent.

13 Finally, the Court acknowledges in its FFCL that Helix is required by OSHA to have a
14 project superintendent on site at all times, irrespective of whether the superintendent was actually
15 supervising other Helix employees,¹⁰ so the fact that Mr. Prietzel was the only Helix employee on
16 the Project for the last few months of the Project is of no consequence and does not preclude Helix
17 from recovering the added costs it incurred as a result of the Project delays. Had the Project ended
18 on time, Helix would not have had to pay Mr. Prietzel to remain on the Project during those extra
19 months when he was performing superintendent responsibilities, not covered under the contract,
20 and not compensated through change orders.

21 **III. CONCLUSION**

22 As discussed above and in the Countermotion, Helix believes that this Court overlooked
23 several key areas of testimony and arguments when reaching its decision. Helix has pointed to
24 specific areas of testimony and arguments that establish CNLV significantly extended the duration
25 of the Project, that Helix should not be bound by APCO's settlement with CNLV, and that Ray
26 Prietzel's time as superintendent on the Project was never compensated through Helix's contract

27 _____
⁸ *Id.* at 12:2-19.

28 ⁹ *Id.* at 12:9-11.

¹⁰ FFCL at 6, ¶ 26.

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1 and change order billings. APCO's arguments to the contrary continuously misrepresent facts and
2 the testimony given at trial and provide no basis for Helix's Countermotion to be denied. For these
3 reasons, Helix believes the Court should amend its FFCL and increase Helix's award to the full
4 amount sought by Helix, \$138,151.40.

5 Dated this 15th day of August, 2019.

6 **PEEL BRIMLEY LLP**

7 

8

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 15th day of August, 2019, I caused the above and foregoing document, **HELIX ELECTRIC OF NEVADA, LLC'S REPLY IN SUPPORT OF HELIX'S COUNTERMOTION FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW**, to be served as follows:

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

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

Attorneys for APCO Construction and Safeco Insurance Co.

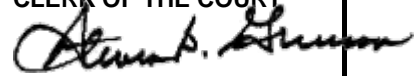
John Randall Jefferies, Esq. (rjefferies@fclaw.com)

Brandi M. Planet, Esq. (bplanet@fclaw.com)



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1



1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4 * * * * *

5 HELIX ELECTRIC OF NEVADA LLC,)
6 Plaintiff,)
7 vs.)
8 APCO CONSTRUCTION, et al.,)
9 Defendants.)

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

**TRANSCRIPT OF
PROCEEDINGS**

10
11 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

12 TUESDAY, JUNE 4, 2019

13 **BENCH TRIAL - DAY 2**

14 APPEARANCES:

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

18
19 FOR THE DEFENDANTS: JOHN R. JEFFERIES, ESQ.
20

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22 RECORDED BY: JILL HAWKINS, COURT RECORDER
23 TRANSCRIBED BY: JD REPORTING, INC.
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JD Reporting, Inc.

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I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

RAINER PRIETZEL

Continued Direct Examination by Mr. Cox 6

Cross-Examination by Mr. Jefferies 20

VICTOR FUCHS

Direct Examination by Mr. Cox 34

Cross-Examination by Mr. Jefferies 70

ROBERT JOHNSON

Direct Examination by Mr. Domina 83

Cross-Examination by Mr. Jefferies 127

Redirect Examination by Mr. Domina 150

WITNESSES FOR THE DEFENDANTS:

JOE PELAN

Direct Examination by Mr. Jefferies 153

E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

PX101 December 14, 2015, Email string regarding promissory note (promissory note attached) 67

PX102 Exhibit 20 to Joe Pelan September 8, 2017, Deposition 45

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 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.

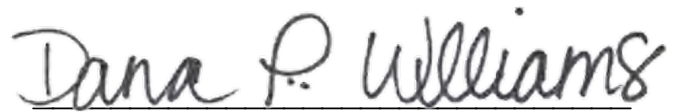
5 (Proceedings concluded for the evening at 4:47 p.m.)

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.

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Dana L. Williams
Transcriber

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EXHIBIT 2

I N D E X

Opening statement for the Plaintiff by Mr. Domina	5
Opening statement for the Defense by Mr. Jefferies	15

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

KURK WILLIAMS

Direct Examination by Mr. Domina	18
Cross-Examination by Mr. Jefferies	81
Redirect Examination by Mr. Domina	116

JOEMEL LLAMADO

Direct Examination by Mr. Domina	120
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Redirect Examination by Mr. Domina	160

RAINER PRIETZEL

Direct Examination by Mr. Cox	163
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E X H I B I T S

JOINT EXHIBITS ADMITTED:

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JX45-JX78	3

1 conditions for that nine-month delay, correct?

2 A Correct.

3 Q Okay. But they're still getting labor -- or they're
4 still getting markup on their labor based on the change orders
5 that they were submitting to the City as well during that time
6 period; is that correct?

7 A Correct.

8 Q Just wanted to -- I don't even need to show you one.
9 You were -- there were several pay applications that you were
10 shown, primarily those that were submitted in the January 2013
11 to October 2013 timeframe; do you remember seeing that?

12 A Yes.

13 Q And counsel showed you the general conditions line
14 item in those pay applications?

15 A [No audible response.]

16 Q I think your testimony was that you were still
17 billing those general conditions during that timeframe. Had
18 APCO -- or had Helix consumed the general conditions prior to
19 the time that you were billing them?

20 A Honestly, the general conditions, personally, the way
21 I did the billing, was irrelevant. It was more about not
22 financing the job and getting positive cash flow. So there
23 were line items that I had built in the scheduled values that
24 were front-end loaded that would help with the positive cash
25 flow. Like I said, I didn't bill the general conditions. That

1 was something that was handled -- handed over to me.

2 Had I built the general conditions, they would have
3 been more than what they were. So the fact that that -- there
4 was only a percentage billed, personally, it's irrelevant. I
5 know what it looks like, but it wasn't the basis off of my
6 billing. My billing was based on this is our cost for the job,
7 this is what we're out of pocket. We need to at least try and
8 recoup our costs every month being that a billable cycle is --
9 payment cycle is typically 45 to 60 days.

10 Q And that 108,000, that was a lump sum amount,
11 correct?

12 A Yes.

13 Q It was part of the contract; it was not an allowance
14 to the contract, it was an earned contract line item, correct?

15 A Correct.

16 MR. DOMINA: Okay. I don't have any further
17 questions, Your Honor.

18 THE COURT: Thank you, sir. Good luck with your bid
19 you've got to do. Have a nice afternoon.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness.

22 MR. DOMINA: Your Honor, Helix calls Joemel Llamado,
23 but he's not in the room, so we need to go get him.

24 THE COURT: Yeah.

25 MR. JEFFERIES: Your Honor, could we take five?

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MR. DOMINA: Okay.

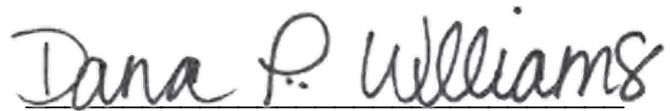
THE COURT: Because you will walk in with somebody who is whining and still saying stuff, and I'll say, Oh, gosh, guys, I've got to start my trial.

Have a nice evening.

(Proceedings recessed for the evening at 4:47 p.m.)

-oOo-

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.



Dana L. Williams
Transcriber

