

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Supreme Court Case No. 77320  
*Consolidated with 80508*

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

**APCO CONSTRUCTION, INC., A NEVADA CORPORATION,**

Respondent.

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**JOINT APPENDIX  
VOLUME 78**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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

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08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
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	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion in Limine Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
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	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
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<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
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<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
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<sup>1</sup> Filed January 31, 2018

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	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

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

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



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

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

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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

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

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<sup>4</sup> Filed January 31, 201883

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

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

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

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



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

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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

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

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

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

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

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



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

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

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

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

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	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

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

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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

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



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

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

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

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

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	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
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<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

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06-15-18	Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007121- JA007189	98
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>08-06-19</b>	<b>Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA007316- JA007331</b>	<b>101</b>
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC’s Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.’s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109



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

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

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

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

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	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
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<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
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	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
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	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
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	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97

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	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-</b>	<b>JA009117- JA009123</b>	<b>119</b>

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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
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	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28



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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
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	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
<b>01-29-20</b>	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120

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<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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

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

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

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	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
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	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
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	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42



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

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

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

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

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

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

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<sup>5</sup> Filed January 31, 2018

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

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

<sup>6</sup> Filed January 31, 201879

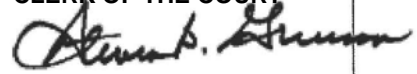
<sup>7</sup> Filed January 31, 2018



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

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<sup>8</sup> Filed January 31, 2018



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*Attorneys for Various Lien Claimants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs

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

Defendants.

AND ALL RELATED MATTERS.

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

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

**ORDER DENYING APCO  
CONSTRUCTION'S MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING PARTIAL SUMMARY  
JUDGMENT PRECLUDING  
DEFENSES BASED ON PAY-IF-PAID  
AGREEMENTS**

This matter came on for hearing January 11, 2018 before the Honorable Mark Denton in Dept. 13 on APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time. Mary Bacon, Esq. of SPENCER FANE LLP appeared on behalf of Plaintiff APCO Construction, Inc. ("APCO"); Eric B. Zimbelman, Esq. of PEEL BRIMLEY LLP appeared on behalf of Peel Brimley Lien Claimants ('PB Lien Claimants'); and John Taylor, Esq. of CADDEN FULLER LLP appeared on behalf of National Wood Products, Inc. ("NWP").

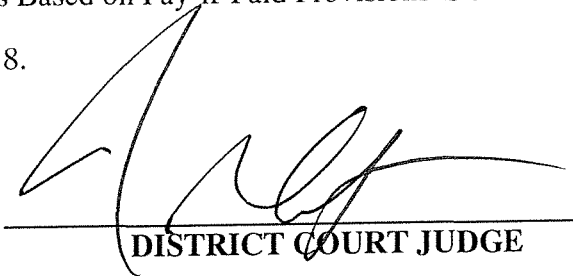
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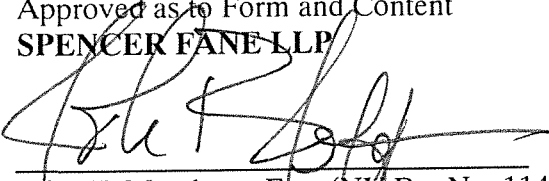
The Court having considered all of the pleadings and papers on file, and for good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that APCO's Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions is denied.


Dated this 18<sup>th</sup> day of January, 2018.

  
DISTRICT COURT JUDGE

Approved as to Form and Content  
**SPENCER FANE LLP**

  
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1 RTRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 APCO CONSTRUCTION, a Nevada  
5 corporation,

6 Plaintiffs,

7 vs.

8 GEMSTONE DEVELOPMENT WEST, INC.,  
9 and DOES I through X,

10 Defendants.

11 AND ALL RELATED MATTERS

CASE NO: 08A571228

DEPT. XIII

12 BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

13 THURSDAY, JANUARY 18, 2018

14 *RECORDER'S TRANSCRIPT OF PROCEEDINGS*  
15 *RE: BENCH TRIAL - DAY TWO*

16 APPEARANCES:

17 For the Plaintiff APCO Construction: JOHN R. JEFFERIES, ESQ.

18  
19 For the Defendant Helix Electric;  
20 SWPP Compliance Solution; Cactus  
21 Rose Construction, Inc.; Fast Glass, Inc.  
and Heinaman Contract Glazing: ERIC B. ZIMBELMAN, ESQ.

22 For the Defendant  
23 National Wood Products: JOHN B. TAYLOR, ESQ.  
JUDY S. HIRAHARA, ESQ.

24  
25 RECORDED BY: JENNIFER GEROLD, COURT RECORDER

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I N D E X

<u>Witnesses</u>	<u>Page</u>
ROBERT JOHNSON (Cont'd)	
Cross-Examination by Mr. Jefferies	6
Redirect Examination by Mr. Zimbelman	31
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Further Redirect Examination by Mr. Zimbelman	45
ANDREW RIVERA	
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
535	Spreadsheet of payments	51

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 18, 2018

2 [Proceeding commenced at 1:04 p.m.]

3

4 THE MARSHAL: All rise. Come to order. This  
5 Department's now in session.

6 THE COURT: Good afternoon. Please be seated. We're  
7 reconvening for nonjury trial in APCO Construction versus Gemstone  
8 Development.

9 Please state appearances of counsel, identify parties and  
10 party representatives who are present today.

11 MR. JEFFERIES: Randy Jefferies of Spencer Fane, and with  
12 me is Mr. Joe Pelan and Lisa Lynn of APCO.

13 MR. ZIMBELMAN: Eric Zimbelman for Helix, Fast Glass,  
14 Heinaman -- that's all right -- SWPP Compliance Solutions, and one  
15 more.

16 MR. TAYLOR: John Taylor and Judy Hirahara for National  
17 Wood Products.

18 THE COURT: Okay. As I indicated, this is the time for  
19 resumption of the nonjury trial. Are counsel and the parties ready to  
20 proceed?

21 MR. JEFFERIES: We are, Your Honor.

22 THE COURT: Okay.

23 MR. ZIMBELMAN: If I could -- can I -- just one  
24 housekeeping matter, Your Honor.

25 THE COURT: Yes.

1 MR. ZIMBELMAN: I just want to give you a heads up.  
2 Tomorrow -- and I'm -- I discussed this with counsel -- I have a  
3 problem with a witness that I had planned to put on next week for  
4 Fast Glass, and that's claims against Camco. And I -- I really tried my  
5 best to try to push those to next week when Mr. Morris would be  
6 back, or said he would be back, but I -- that witness is going to be out  
7 of the country. So I have no choice but try to put him on tomorrow. I  
8 want to take him out of order and be very brief, probably 30 minutes  
9 or less, and so I just wanted to give you a heads up about that.

10 MR. TAYLOR: No problem by us.

11 THE COURT: Okay.

12 MR. JEFFERIES: No objection.

13 THE COURT: All right.

14 MR. ZIMBELMAN: Thank you.

15 THE COURT: And I note here there's a stipulation and  
16 order regarding trial exhibits admitted into evidence.

17 MR. JEFFERIES: Yes, Your Honor.

18 THE COURT: Is this the origin item here?

19 MR. JEFFERIES: Yes.

20 MR. ZIMBELMAN: And one last thing, Your Honor: I do  
21 have the order denying the reconsideration of the summary judgment  
22 motion that counsel has signed off on. May I approach?

23 THE COURT: Okay. Sure. Uh-huh. All right. Just a  
24 second.

25 [Pause in proceedings.]

1 THE COURT: All right. I've signed the order that was just  
2 submitted to me by Mr. Zimbelman, and you can process that in the  
3 clerk's office, if you want to come reclaim it. Okay?

4 MR. ZIMBELMAN: Thank you, Your Honor.

5 THE COURT: Make copies and whatever. I've also signed  
6 the order on the stipulation regarding trial exhibits admitted into  
7 evidence. Do you want to process that in the clerk's office or do you  
8 want to do that yourself?

9 THE CLERK: I can stamp it, but the last time I did, they  
10 returned it, so --

11 THE COURT: Oh, okay. I think it's best that you just  
12 process it in the clerk's office.

13 MR. ZIMBELMAN: Sure.

14 THE COURT: Okay. Make sure it's filed and signed it, the  
15 right date and everything.

16 MR. ZIMBELMAN: Thank you.

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

18 MR. JEFFERIES: Your Honor, we're ready to do the  
19 cross-examination of Mr. Johnson.

20 THE COURT: All right. Very well.

21 Witness, retake the stand.

22 ROBERT JOHNSON

23 [having been recalled as a witness and previously sworn, testified as  
24 follows:]

25 THE COURT: Do you realize you're still under oath, sir?



1 THE WITNESS: I do.

2 THE COURT: All right. You may be seated.

3 You may proceed, Counsel.

4 CROSS-EXAMINATION

5 BY MR. JEFFERIES:

6 Q Good afternoon, sir.

7 A Good afternoon.

8 Q What was Helix's role on the project? And when I say  
9 "project," sir, please understand I'm referring to the Manhattan West  
10 project that APCO worked on, okay?

11 A Okay.

12 Q Prior to the time that Helix contracted with APCO, what was  
13 Helix's role on the project?

14 A Would you restate the question?

15 Q Yeah. Were -- was Helix involved with providing service to  
16 Gemstone before it contracted with APCO on the project?

17 A Not to my knowledge.

18 Q Okay. Did Helix participate in preparing engineering and  
19 design services for Gemstone on the electrical scope of work?

20 A We did.

21 Q Okay. And when was that performed?

22 A Prior to the project. I don't know the exact time frames.

23 Q Okay. And that's generally what I was alluding to. Can you  
24 describe for the Court what Helix's role was on the project before  
25 starting work for APCO?

1           A    Our role was we had designed for the project. As far as the  
2 details of it, I'm not intimate with it. But we did have a design portion  
3 of it.

4           Q    Okay. You did design -- Helix did design work under  
5 contract directly with Gemstone?

6           A    Correct.

7           Q    Okay. So the -- the APCO scope of work that you worked  
8 on were based, in part, upon electrical drawings that Helix prepared?

9           A    I believe that is correct.

10          Q    Okay. Yesterday you identified Mr. Victor Fuchs. I  
11 understand he's part owner of Helix?

12          A    Correct.

13          Q    Okay. Do you know, sir, does Mr. Fuchs have a personal  
14 relationship with Mr. Edelstein, one of the owners of Gemstone?

15          A    Not to my knowledge.

16          Q    Okay. What was your role, sir, in bidding the project for  
17 Helix, the construction portion to APCO?

18          A    My role was not -- nothing on the bid side. Purely  
19 operational after they were awarded the contract.

20          Q    Okay. Isn't it true that Gemstone is the entity that actually  
21 selected Helix to serve as the electrical subcontractor to APCO?

22          A    Not to my knowledge.

23          Q    Okay. Did Helix bid, competitively bid, the scope of work to  
24 APCO?

25          A    My understanding is a bid was prepared for APCO. As far

1 as competitively bid, that would be up to APCO and whatever  
2 numbers they took.

3 Q Okay.

4 A I have no knowledge of that.

5 Q Okay. After Helix started construction on the project, what  
6 was your personal role?

7 A My role is, as senior vice president of major projects, the  
8 PM superintendent for the project come under my department. So I  
9 oversee the -- basically the execution of the work.

10 Q Okay. Did you have any on-site responsibilities during the  
11 course of construction on the project?

12 A No.

13 Q Okay. And your project manager was Mr. Rivera?

14 A Correct.

15 Q Okay. Mr. Rivera reported directly to you?

16 A He did.

17 Q What was your involvement, if any, in the payment  
18 application process on the project?

19 A My involvement came in after Andy prepared a progress  
20 billing, had it reviewed. He would come to me for signatures so that  
21 we could present it for payment.

22 Q Okay. If I were to want to get into specific numbers on pay  
23 applications, would that be something that you or Mr. Rivera would  
24 be best suited to address?

25 A I would have to say Andy Rivera would be best suited.

1 Q Okay. Yesterday we went over -- well, strike that.

2 As you sit here today, are you aware that Helix has sued  
3 APCO for breach of contract?

4 A To be honest with you, I know we're here in a lawsuit. I  
5 hadn't heard specifically breach of contract, but okay.

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

8 A I would say they did in the respect that we haven't received  
9 final payments.

10 Q Okay. And which contract is it your position that APCO  
11 breached?

12 A For the Manhattan West project.

13 Q Is there a document?

14 A There is a document.

15 Q Okay. And, sir, would you turn -- if you could, grab  
16 Exhibit 45. You spent some time talking about this yesterday.

17 A Okay.

18 THE COURT: Which item is it, Counsel?

19 MR. JEFFERIES: Exhibit 45.

20 BY MR. JEFFERIES:

21 Q Is it your position that APCO breached this agreement?

22 A My assumption would be they breached it, yeah.

23 Q Okay. But is it this document that represents the  
24 agreement between APCO and Helix for the project?

25 A It is the agreement between APCO and Helix.

1 Q Can you generally describe for the Court what your scope  
2 of work was for APCO on the project under Exhibit 45?

3 A The scope of work was to perform electrical installation for  
4 the project, which consists of distribution power, lighting, power for  
5 the units, connections to equipment that required electrical.

6 Q Okay. Is it -- was that the same scope of work that you  
7 performed after APCO left the project and Camco took over for  
8 APCO?

9 A Those portions of work left to be completed would be  
10 correct.

11 Q Okay. So the record's clear, the balance of your work on  
12 those items remain to be done under Camco's watch, correct?

13 A Yeah, they were done under Camco's watch, correct.

14 Q But the general scope of work, the same design documents  
15 were the same that you used while you were working for APCO and  
16 after Camco took over, correct?

17 A I believe that to be correct.

18 Q What did you understand Helix's obligations to Camco to  
19 be?

20 A My obligations -- my understanding of our obligations was  
21 basically to perform the work that was currently under construction  
22 with APCO and bill through Camco to Gemstone. Other than that, we  
23 had no contract. We were trying to negotiate one, but it was never  
24 successfully done.

25 Q Okay. Do you -- are you aware that in this case APCO --

1 excuse me, Helix has alleged that Camco has breached a ratification  
2 agreement?

3 A Not aware of that.

4 Q Sir, I'm going to show you what's been marked as  
5 Exhibit 77. It is the Helix Electric's Statement of Facts Constituting  
6 Notice of Lien and Third-Party Complaint. Do you see that?

7 A I see it.

8 Q This was filed by Peel Brimley on your behalf, correct?

9 THE COURT: What's that item, Counsel?

10 MR. JEFFERIES: 77.

11 THE WITNESS: Yep. It appears to be.

12 BY MR. JEFFERIES:

13 Q Okay.

14 THE COURT: Is that stipulated?

15 THE CLERK: Huh?

16 THE COURT: Is that stipulated?

17 THE CLERK: Uh-huh.

18 BY MR. JEFFERIES:

19 Q Was -- did you play any role in reviewing the pleadings that  
20 your counsel was filing on Helix's behalf to determine if they were  
21 accurate?

22 A Not to my recollection.

23 Q Showing you page 4 of Exhibit 77, directing your attention  
24 to paragraph 10. You'll see there is a statement of fact that on or  
25 about April 17, 2007, Helix entered into an agreement with Asphalt

1 and APCO, the APCO agreement, to provide certain electrical-related  
2 work, materials, and equipment for the property located in Clark  
3 County, Nevada.

4 Is that a reference to Exhibit 45?

5 A Just reading that, I -- one could assume that. But I -- I don't  
6 know what the reference is to. I didn't write it.

7 Q Okay. Look at paragraph 11. You're seeking compensation  
8 in these proceedings -- well, strike that.

9 You make the -- Helix makes the statement that it furnished  
10 work for the benefit of and at the specific instance and request of  
11 Asphalt and APCO and/or owner. Do you see that?

12 A I do.

13 Q From and after the point that Camco took over the project,  
14 did Helix provide any material, work, or labor, or service at the  
15 specific instance and request of APCO?

16 A I did not understand that question.

17 Q Okay. From and after the point that Camco took over the  
18 project, was any of the materials Helix delivered or work performed  
19 done at APCO's insistence or request?

20 A Absolutely.

21 Q And how did that come about?

22 A By being under contract and having a schedule and a  
23 deadline and the correspondence that we had to meet that deadline.

24 Q Is it your testimony today that after Camco took over, that  
25 APCO was somehow involved in your scope of work?

1           A    They were involved in our scope of work prior and never  
2 rescinded any directions. So yes.

3           Q    Okay. Physically and as a practical matter, how was APCO  
4 involved in Helix's work after Camco took over?

5           A    To my recollection, the same extent they were involved  
6 previously. We were operating under their direction, their schedule.

7           Q    If you look at the -- page 5 of Exhibit 77, Helix makes the  
8 statement of fact that on or about September 4, 2008, Helix entered  
9 into the ratification and amendment of subcontract agreement with  
10 CPCC, who replaced Asphalt and APCO as the general contractor on  
11 the project, to continue the work for the property. Do you see that?

12          A    I do.

13          Q    Is that an accurate statement?

14          A    In general it reads accurate to me. I don't know what  
15 "entered" means on it. But there definitely was ratification and  
16 amendment agreement we were reviewing.

17          Q    Okay. But you understood that Camco was replacing  
18 APCO, correct?

19          A    Well, they were attempting to replace APCO. We hadn't  
20 accepted that.

21          Q    Look at paragraph 19. Is that an accurate statement that  
22 Helix furnished the work for the benefit of and at the specific instance  
23 and request of CPCC and/or owner?

24          A    I see it. Was there a question in there?

25          Q    Is that an accurate statement?



1 A I don't believe it's an accurate statement.

2 Q Why?

3 A Because I'm not familiar with any specific direction of CPCC  
4 or the owner.

5 Q Did Helix ever send a bill, pay application, or invoice to  
6 APCO for the materials, labor, services it provided to Camco?

7 A No. All the bills went to -- at that point of the game, APCO  
8 had previously switched from paying direct and went to a cash  
9 disbursement entity. I believe it was NCR or NCS. So we submitted  
10 our billings to them the same. Nothing changed.

11 Q Is it your testimony that prior to Camco taking over your  
12 bills -- did they go to APCO or NCS?

13 A They went to APCO. Until a few months prior to APCO  
14 leaving the project, it switched to NCS and we continued to bill  
15 through NCS.

16 Q Okay. And after Camco took over, did Helix submit bills to  
17 Camco?

18 A We submitted bills that referenced Camco work, because  
19 that's how NCS wanted it. I don't believe they went to Camco direct.  
20 I think they went to NCS. But it could have been either way.

21 Q Okay. After Camco took over the project, did you have any  
22 communications with APCO personnel regarding the ongoing work?

23 A Not to my recollection.

24 Q Did Helix take direction from Gemstone and Cam -- and/or  
25 Camco after APCO left the project?

1           A    Can't answer that because I was not involved in any  
2 direct -- direction.

3           Q    At any time, given your personal involvement with the  
4 project, did APCO ever agree to pay Helix for the work that Helix did  
5 for Camco or Gemstone?

6           A    I don't even know how to answer that one because at that  
7 point that request would have never been made nor would it have  
8 been entered in a conversation, because we're under the impression  
9 our work is through APCO; we will get paid. The only thing I  
10 understood is our pay apps had to reference Camco work because  
11 they were the ones approving on site at that point the progress of the  
12 work. And that was our only method of getting payment. We have  
13 no idea of what's going on with that APCO at that point.

14          Q    Did you understand that a prime contract, which is in the  
15 record as Exhibit 2 -- you can look at it, if need be -- was that  
16 incorporated into the Helix subcontract with APCO, Exhibit 45?

17          A    I don't recall. Typically it would be, but I don't recall.

18          Q    Do you have Exhibit 45 in front of you?

19          A    I do.

20          Q    If you look at -- if you look at the definition of contract  
21 documents, would you agree with me that the prime contract is  
22 incorporated by reference?

23          A    Is that the definition that's up here?

24          Q    Yes. I've put page 1 of --

25          A    Okay.

1 Q -- Exhibit 45.

2 A Okay. I read it.

3 Q Do you agree, sir, that the prime contract between APCO  
4 and Gemstone is incorporated into Exhibit 45?

5 A It's not clear to me. Maybe you can point it out.

6 Q Do you see in -- do you see where it says, And the primary  
7 contract between the owner and contractor?

8 A Okay.

9 Q Would you agree that that is a cross-reference and  
10 incorporation of the prime contract between APCO and Gemstone?

11 A Yes.

12 Q Okay. And would you -- would it have been your practice  
13 to have reviewed the prime contract before entering into Exhibit 45?

14 A It's our practice to request it. I don't recall if we received it  
15 or not on this project.

16 Q I didn't ask you if you recall doing it. I'm trying to give you  
17 the benefit of the time that's allowed. Would it have been your  
18 practice to have requested it and reviewed it?

19 A Yes.

20 Q Okay. Do you recall there being provisions in there that if  
21 there's a termination of the prime contract, that there was, in effect,  
22 an assignment of the subcontracts to Gemstone?

23 A Please ask that again.

24 Q Sure. If -- do you recall there being provisions to the effect  
25 that if, in fact, Gemstone terminates the prime contract with APCO,

1 that, in effect, APCO would be assigning the subcontracts to  
2 Gemstone?

3 A I would not know that.

4 Q Do you still have Exhibit 45 in front of you? It would  
5 probably be better if you read the hard copy of the exhibit.

6 A I got it.

7 Q How many of these types of subcontracts would you say  
8 you have reviewed over your career?

9 A No way to guess. I could put it as many as 50 plus.

10 Q Okay. And how many of these contracts would you have  
11 negotiated with APCO, approximately?

12 A Three, possibly four.

13 Q Similar format as Exhibit 45?

14 A Boy, I don't have that good of memory. It's been a lot of  
15 years. Contractors change their contracts, but I would say probably.

16 Q Okay. Would you turn to page 4? And directing your  
17 attention to paragraph 3.8?

18 A Okay.

19 Q Do you recognize that as the agreed-upon retention  
20 payment schedule in the subcontract?

21 A I do.

22 Q And in fairness to you and the record, you did propose a  
23 change to paragraph 3.8. Could you turn to page 16 of the exhibit,  
24 Exhibit 45? And directing your attention to paragraph 7, does this  
25 reflect your proposed change to the retention payment schedule in

1 the original form of Exhibit 45?

2 A In the original form, yes.

3 Q Okay. And APCO accepted your added sentence that if the  
4 retention was reduced on the project, that same would be passed on  
5 to the subcontractor, correct?

6 A Correct.

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

10 A We did not.

11 Q Prior to today has Helix ever invoiced APCO for its  
12 retention, for Helix's retention?

13 A I don't recall.

14 Q Prior to today has Helix ever demanded in writing that  
15 APCO pay Helix's retention?

16 A I don't recall that either.

17 Q Did Helix satisfy the conditions of the retention payment  
18 schedule found in paragraph 3.8 while APCO was working on the  
19 project?

20 A So you're asking me to read it so I can answer?

21 Q Please.

22 A Because I can't do that off memory.

23 [Witness complies.]

24 I'd say parts of it I could identify.

25 Q Okay. My question was would you agree that Helix did not

1 satisfy the requirements of paragraph 3.8 while APCO was acting as  
2 the prime contractor?

3 A That question's hard to answer because some of these are  
4 not Helix requirements. They're APCO requirements. Like, receipt of  
5 final payment from owner, I don't know if they got that or not for their  
6 portion of the work to date. Nobody's ever said. I don't control that.  
7 Helix doesn't control that.

8 In regards to is the project completed, no. That one I can  
9 identify.

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

13 A Not to my knowledge.

14 Q Would you agree, sir, that when Camco started work on the  
15 project for APCO, or in place of APCO, that the Helix billings rolled its  
16 retention over from what it had earned and accounted for while  
17 APCO's was a prime over to Camco?

18 A No, I would not agree.

19 Q Okay. Based on your involvement with the project, who  
20 withheld the money that was Helix's retention?

21 A I would assume it was held by Gemstone.

22 Q It was not APCO, was it?

23 A Or the financial entity that was controlling funds.

24 Q It was not APCO, was it?

25 A Well, it was APCO to us, because I really don't know where

1 it is from APCO to whoever. So as far as I'm concerned, it's from  
2 APCO. If it was done by the owner at APCO, you would know that  
3 better than I do.

4 Q Do you have any facts, documents, or information to  
5 suggest that APCO ever received Helix's retention amounts --

6 A I don't.

7 Q -- from Gemstone?

8 A No, I don't.

9 Q Would you turn to page 7 of Exhibit 45?

10 A The exhibit itself or the pages we were on with the Helix  
11 exhibit?

12 Q It would be --

13 A 7 to 17?

14 Q Yes, sir.

15 A I got it.

16 Q If you look at paragraph 8, it's -- those sections are entitled:  
17 Default and Termination. Do you see that?

18 A I do.

19 Q And then directing your attention to the next page -- excuse  
20 me. Well, now I'm missing a page.

21 Can you go to page 9?

22 A Okay.

23 Q Does that have Article 9?

24 A It does.

25 Q Terminations for convenience?

1 A Yes.

2 Q Okay. Would you take a minute and review, just to  
3 yourself, Articles 9.4 and 9.5?

4 A [Witness complies.]

5 Okay.

6 Q Would you agree with me, sir, that Articles 9.4 and 9.5  
7 contemplate an owner's termination of the prime contract for the  
8 owner's convenience?

9 A It appears to be that.

10 Q And Helix never submitted a claim invoking these  
11 provisions of the subcontract, did it?

12 A Not to my knowledge.

13 Q When you -- in your direct examination you testified that  
14 you received Mr. Nickerl's comments or notations on Exhibit 45, your  
15 attachment, supplemental conditions, some of which he accepted,  
16 some of which he wrote no, and you went through some of those.  
17 Isn't it true, sir, that upon receipt of Mr. Nickerl's rejections of some of  
18 those provisions that you proposed, that Helix continued to work on  
19 the project?

20 A That's correct.

21 Q Did Helix ever bill anybody for its retention on the project?

22 A I don't recall.

23 Q Was Helix paid in full, less retention, for all of the work that  
24 it performed on the project, up through the time that Camco took  
25 over?



1 A No.

2 Q What wasn't paid?

3 A Outstanding change orders.

4 Q Okay. Isn't it true, sir, that after APCO -- strike that.

5 Isn't it true that as APCO was leaving the project, Helix was  
6 having direct communications with the owner and/or Camco to  
7 resolve the outstanding change orders?

8 A I have no knowledge of that.

9 Q You didn't participate in that?

10 A I had one meeting with Gemstone. Were they in the  
11 process of leaving or not? I have no idea.

12 Q When was that one meeting with Gemstone?

13 A Somewhere about the time that Camco came on board.

14 Q Okay.

15 A I couldn't even begin to tell you the date.

16 Q Okay. But it was in the transition period between APCO  
17 and Camco?

18 A Correct.

19 Q And who did you meet with at Gemstone?

20 A I believe it was an Alex Edelstein and a Camco  
21 representative. I couldn't even recall his name.

22 Q Mr. Parry?

23 A Possibly.

24 Q Okay. What was the purpose of that meeting?

25 A The purpose of that meeting was to represent that work

1 was still proceeding, nothing had changed with our contracts with the  
2 current APCO relationship, and that we were to take direction for  
3 construction from Camco, and they wanted to negotiate a contract.  
4 And that was about it.

5 Q Okay. At that meeting did Mr. Edelstein indicate that  
6 Gemstone had purported to terminate the prime contract with APCO?

7 A I don't recall him saying that.

8 Q Did you ever ask what happened to APCO, where did they  
9 go?

10 A I had asked that a hundred times before that and never got  
11 a clear signal. So you stop asking after a while because you get  
12 different messages from everybody. Our people had even asked in  
13 the field what's going on, and people didn't know. So it was just  
14 confusion.

15 Q Did you ever send a letter to APCO asking APCO to clarify  
16 or provide any information to you on that front?

17 A No. Because it's -- I treat it all as rumor. Until APCO does  
18 something contractually to inform me our relationship is different, it's  
19 not changed. If I chased every rumor in this construction industry, I'd  
20 be doing nothing all day but making calls and chatting on the  
21 Internet.

22 Q Did you receive copies of correspondence between APCO  
23 and the owner as to APCO's allegations that Gemstone was in breach  
24 for not paying?

25 A Not that I remember.

1 Q Okay. Were you receiving e-mail on the project, or were  
2 those going to Mr. Rivera?

3 A I received some e-mail, but it was predominantly from  
4 Randy Nickerl, and direct project correspondence predominantly was  
5 going to Andy.

6 Q Sir, I'm going to put on the ELMO Exhibit 13, which for the  
7 record is Gemstone's letter of August 15, 2008. It's entitled:  
8 Termination for Cause to APCO. Have you ever seen this before  
9 today?

10 A I've seen it.

11 Q Okay. And I'm going to direct your attention to the last  
12 page of the exhibit, specifically paragraph 3. It's entitled:  
13 Assignment of Third-Party Agreements and Permits. Take a minute  
14 and review that, if you would.

15 A Okay.

16 Q Having read that, does that refresh your recollection that, in  
17 fact, Gemstone had been assigned the Helix subcontract?

18 A Nope, because I don't recall seeing this during that  
19 process. I've seen this after the fact, preparation of this proceeding.

20 Q Sir, would you look at Exhibit 171?

21 You know what, I'll -- this is a Helix work order dated  
22 August 26th, 2008. Do you see that?

23 A I do.

24 Q And do you recognize the signature under authorization on  
25 the left-hand side?

1 A Quite honestly, I don't.

2 Q Was this work being directed by the owner?

3 A This work was definitely presented to the owner. It's our  
4 work order to Gemstone.

5 Q See where it says, From, and it says, Gemstone  
6 Development; is that --

7 A I got it. That's what I'm saying, from Gemstone. But it's  
8 our work order.

9 Q Now, I respect that. Let me make sure my record's clear.  
10 Gemstone is directing Helix to perform this work, correct?

11 A Correct.

12 Q Okay. And page 2 of the exhibit is you're being directed to  
13 hook up power to the Camco trailer. Do you see that?

14 A I do.

15 Q And this work was performed on August 26th, 2008?

16 A Correct.

17 Q Upon receiving this direction from Gemstone, did you  
18 inquire of anybody as to why Camco was coming on board?

19 A Me personally? No. I wouldn't have even been involved at  
20 the time. This happened on the job site.

21 Q Sir, I'm going to -- you don't have to grab it. I'm going to  
22 put up on the ELMO Exhibit 170, which is a transmittal from -- I  
23 believe from Gemstone on August 26th. You see the second page at  
24 the top, it says to Helix Electric. Do you see that?

25 A I do.

1 Q Do you recall receiving this document?

2 A Can you take it down to the bottom so I can see the whole  
3 document?

4 Q Well, let me see. It might be easier if you -- you may need  
5 a hard copy on this one. Can you grab 1 --

6 A What exhibit number?

7 Q 170.

8 A So that's this one here, the page 2. Okay. I've got it.

9 Q Okay. Thank you. If I'm understanding this correctly,  
10 Gemstone is providing you with the Camco subcontract, Camco pay  
11 application; is that correct?

12 A Boy, I can't tell that from this.

13 Q Second paragraph on page 2: Please find two copies of  
14 your subcontract agreement for the above-referenced project. Please  
15 read carefully and sign both copies and return both copies to our  
16 office. And then --

17 A Yeah, I can read that, but I can't tell who this is from.

18 Q Okay. Second paragraph says, Pay request -- Camco  
19 Pacific's pay request form.

20 A Okay.

21 Q Do you see that?

22 A I do.

23 Q And if you go to the third page of the document, it says,  
24 Retention Monies. If you take a minute and read that to yourself.

25 A [Witness complies.]

1           Okay.

2           Q   Did you --

3           A   All right.

4           Q   -- understand that as you went to work for Camco, that the  
5 retention would only be released on final completion?

6           A   I don't recall having this document at the time of doing the  
7 Camco contract review, and that's why we had all the changes in our  
8 exhibit to it. So no, I can't say I agree to that.

9           Q   Sir, could you, for your convenience, pull out Exhibit 172.  
10 I'll have you look at the hard copy. Could you tell me what this  
11 Exhibit 172 is?

12          A   Gemstone transmittal.

13          Q   To --

14          A   And on the transmittal it says, Ratification of subcontract.

15          Q   Is that your signature, Received by?

16          A   Yes.

17          Q   And what day did you receive this?

18          A   I'm not sure of the day that I received it, but it's stamped  
19 coming into our office on September 3rd.

20          Q   Okay. What -- what date did you write under your  
21 signature?

22          A   Oh, there we go. 9/4.

23          Q   September 4, 2008?

24          A   It's just murky enough I can't tell what that number is, to be  
25 honest with you. It's a poor reproduction.

1 Q Okay. If you would, sir, go to the second page. And this is  
2 a letter from Gemstone to Mr. Fuchs of Helix, right?

3 A It appears to be.

4 Q And isn't it true, sir, that Helix continued to work on the  
5 project from and after receipt of this document?

6 A Yeah, we were on the project after September 4th.

7 Q But having received the enclosed ratification and  
8 amendment of subcontract agreement that's enclosed, as starting on  
9 page 3 of Exhibit 172, Helix continued to work on the project, correct?

10 A We did.

11 Q Sir, directing your attention back to Exhibit 77, which was  
12 the complaint filed in this matter by Helix, in paragraph 18, Helix  
13 states as a matter of fact -- and I have it up on the ELMO so you don't  
14 have to go searching for it, sir.

15 A Got it.

16 Q Do you see paragraph 18?

17 A I do.

18 Q On or about September 4 of 2008, Helix entered into the  
19 ratification and amendment. Isn't that a reference to Exhibit 172?

20 A It appears to be.

21 Q In the liens and statement of liens that you filed on behalf  
22 of Helix, isn't it true, sir, that you alleged that Helix had entered into  
23 contracts with APCO and Camco?

24 A I don't recall that. I'd have to review them.

25 Q Sir, I'm going to put up on the ELMO Exhibit 512. This is

1 Helix's Notice of Right to Lien. Do you see that?

2 A I do.

3 Q Okay. And in the middle of that paragraph you make the  
4 statement that Helix was under contract with the undersign's  
5 customer, using your terminology, right?

6 A Correct.

7 Q And directing your attention to page 6 of 512, you have  
8 indicated a contract price with Gemstone and/or Camco of  
9 approximately 8.6 million. Do you see that?

10 A Now I see it, but I can't read the numbers. So I assume  
11 what you're telling me is correct.

12 Q Well, I don't blame you if that's -- it's the reflection of that  
13 highlighting. Could you --

14 A Now I can see it.

15 Q Pardon me?

16 A I can see it right now.

17 Q Okay. Is my statement correct?

18 A Well, 13-million-233.

19 Q All right. Let me make sure my record's clear. In your lien  
20 you alleged that you had -- Helix had a contract with Gemstone  
21 and/or Camco Pacific for approximately \$8.6 million, correct?

22 A Correct.

23 Q Did Helix ever complete its work on Buildings 7 and 8?

24 A I'm going to have to be honest with you, I can't recall which  
25 buildings are 7 and 8.



1 Q Was Mr. Rivera also involved with the project as project  
2 manager for Helix during the Gramercy or Martin-Harris project?

3 A No.

4 Q Would you agree that when Helix completed the work on  
5 the project for Martin-Harris, several years later, that it used the same  
6 scope of work and electrical design?

7 A No.

8 Q Can you tell me what Exhibit 315 is?

9 A It appears to be a bid proposal.

10 Q Were you involved in preparing the bid for the Gramercy  
11 project?

12 A Nope.

13 Q Did you play any role at all in construction of the Gramercy  
14 project?

15 A Nope.

16 Q I have your signature on several pay applications, both to  
17 APCO and to Camco. Albeit, with your signature, would it be fair to  
18 say that Mr. Rivera would have the most personal knowledge of the  
19 information submitted in the pay application?

20 A Yes.

21 Q Earlier you referenced there was some change orders  
22 outstanding during this transition, and if -- if I asked you this, sir, I  
23 apologize -- did you ultimately get your change orders resolved with  
24 the owner?

25 A No.

1 Q Okay. Did you ever present a claim to APCO for any  
2 additional compensation on disputed claims that may have arisen  
3 while APCO was on the job?

4 A I'm not aware of disputed claims or change orders for  
5 directed changes.

6 MR. JEFFERIES: We don't have any further questions,  
7 Your Honor.

8 MR. TAYLOR: No questions.

9 THE COURT: All right. Redirect.

10 MR. ZIMBELMAN: Thank you, Your Honor. One moment.

11 THE COURT: I beg your pardon?

12 MR. ZIMBELMAN: Just one moment to organize.

13 THE COURT: Okay.

14 [Pause in proceedings.]

15 REDIRECT EXAMINATION

16 BY MR. ZIMBELMAN:

17 Q Bob, just to be clear, we talked about this yesterday, but do  
18 you -- did the -- did Helix ever sign the ratification agreement with  
19 Camco?

20 A No.

21 Q And we went through that. There were no signatures  
22 anywhere on the document, correct?

23 A Correct.

24 Q So how do you explain the allegation in the complaint that  
25 counsel showed you that we entered into the ratification agreement

1 on September 4th?

2 A I can't explain those allegations.

3 Q It's incorrect, isn't it?

4 A To me it's incorrect because we never came to a full  
5 agreement. It always was a work in process.

6 Q Counsel showed you a letter from Gemstone regarding an  
7 intent to enter into a contract with you, right?

8 A He did.

9 Q Do you deal with letters of intent very often in this  
10 business?

11 A Lots of letters of intent, but it doesn't always materialize.

12 Q Right. What is a -- what is the purpose of a letter of intent?

13 A Basically just saying they intend to do something, but they  
14 haven't done it yet.

15 Q Right. And if you're intending into a contract and you  
16 don't, do you generally consider yourself to have a contract?

17 A I consider if we start performing the work, we will -- we  
18 have a contract under the laws of Nevada at that time because it's all  
19 verbal.

20 Q So a verbal contract?

21 A Verbal.

22 Q Do you believe you had a verbal contract with Camco?

23 A I think we had a verbal agreement that they were going to  
24 act in a construction advisory role.

25 Q Okay. Did you have a verbal contract with Camco to be

1 responsible for payment to you?

2 A That I honestly can't answer because of this third-party  
3 check place. It really wasn't the responsible entity that disbursed  
4 funds.

5 Q Did Helix ever terminate its contract with APCO?

6 A No.

7 Q Did APCO ever terminate its contract with Helix?

8 A No.

9 Q Did you have a clear understanding of your legal and  
10 contractual relationships after APCO stopped working and left the  
11 site?

12 A No.

13 Q Did Helix do anything to create that situation?

14 A We did not.

15 Q APCO's counsel asked you about the definition of contract  
16 documents in the APCO/Helix subcontract agreement, right?

17 A He did.

18 Q In Exhibit 162, which he also showed you, on the first page,  
19 which is the draft Amended and Restated Construction Agreement  
20 with Camco, the Section 1.01 entitled: Contract documents, how  
21 does that define what the contract documents are in the Camco  
22 subcontract document?

23 A It's really just stating that you have the drawings and the  
24 specifications for the project set forth.

25 Q Does it reference the prime contract between the owner

1 and Camco?

2 A No.

3 Q Unlike the APCO document that referenced the APCO  
4 agreement with Gemco -- Gemstone, correct?

5 A Correct.

6 Q By the way, did Helix ever receive the prime contract  
7 between Gemstone and Camco?

8 A I don't recall ever receiving it.

9 Q Were you here yesterday when I was questioning Mr. Pelan  
10 about the Gemstone/Camco agreement?

11 A Yes.

12 Q Do you remember that we went through the issues of the  
13 exclusions that existed to the responsibilities of the contractor,  
14 namely Camco?

15 A Yeah, I remember.

16 Q If Helix had been aware of those exclusions, would that  
17 have caused you any concern in entering into a contract with Camco?

18 A Yes.

19 Q Why?

20 A Because we wouldn't want to enter into anything with  
21 Camco that would affect us with APCO because we're under contract  
22 with APCO.

23 Q And would the exclusions that Camco has to its  
24 responsibilities impact Helix potentially?

25 A Potentially.

1 Q So for example, if APCO -- if Camco isn't responsible for  
2 the means and methods of the work, is that of concern?

3 A Yes.

4 Q Why?

5 A Well, if they're not responsible for the means and work and  
6 they're trying to contract us, it's a big problem, because who is at that  
7 point? We know we got APCO, and if Camco is trying to come in and  
8 do a contract with us and they're not responsible, that's a problem.

9 Q You don't know who to -- who you're taking --

10 A Right.

11 Q -- direction from, right?

12 A Yeah. It's a real problem.

13 Q Mr. Jefferies also showed you a section of the contract  
14 between APCO and Gemstone. The assignment provision, 10.04, do  
15 you remember looking at that?

16 A Yes.

17 Q Now, this provision states with respect to the third-party  
18 agreements, those agreements like the subcontracts, that for a -- each  
19 third-party agreement, for a portion of the work, is hereby assigned to  
20 general contractor -- by general contractor to developer, provided  
21 that such assignment is effective only after termination of the  
22 agreement by developer for cause, pursuant to Section 10.02, and  
23 only for those third-party agreements, which developer accepts by  
24 notifying general contractor and the applicable third-party service  
25 provider in writing.

1 Now, first of all, does Helix know whether -- and  
2 specifically at the time that APCO left the project, did Helix know  
3 whether Gemstone had terminated APCO for cause?

4 A No.

5 Q Did Helix ever receive notification, whether it be from  
6 Gemstone or from APCO, that Gemstone had terminated APCO for  
7 cause?

8 A I never seen any.

9 Q And did APCO -- I think we already covered this, but APCO  
10 never notified Helix that its subcontract had been terminated, correct?

11 A No, they did not.

12 Q To your knowledge, did the developer accept the  
13 assignment by notifying general contractor and the applicable  
14 third-party service provider in writing? Did Gemstone notify you in  
15 writing that it was accepting assignment of APCO's contract?

16 A I have never seen anything in writing.

17 Q It goes on to state: General contractor shall execute and  
18 deliver all such documents and take all such steps as developer may  
19 require for the purpose of fully vesting in developer the rights and  
20 benefits of general contractor under such documents.

21 Have you ever seen any documents that do that?

22 A Nope, never.

23 Q Mr. Jefferies also asked you about the APCO/Helix  
24 subcontract document, and specifically Section 3.8. And he asked  
25 you about the conditions precedent to subcontractor's right to receive

1 final payment hereunder and payment of such retention. And he  
2 asked you whether you had -- whether those conditions had been  
3 satisfied at the time that APCO left the project, right?

4 A Correct.

5 Q And your answer, of course, was no, correct?

6 A That's correct.

7 Q Because the project had not been entirely completed at the  
8 time APCO left the job, right?

9 A No, it was not completed.

10 Q There hadn't been approval and final acceptance of the  
11 project work at the time, correct?

12 A Final acceptance, no, there was none.

13 Q There hadn't been receipt of final payment from -- by  
14 contractor from owner, of course, correct?

15 A It wouldn't appear to be.

16 Q In fact, none of those conditions were ever satisfied on this  
17 project because the owner closed the doors, right?

18 A Yes, eventually, December, the project was shut down.

19 Q So was it -- essentially what counsel seems to be saying is  
20 that you've agreed not to ever receive your retention if the owner  
21 terminates the job?

22 A He may have asserted that, but I wouldn't agree to that.

23 Q And why not?

24 A Because retention is part of our billing for work in place,  
25 and we're entitled to it. In my opinion, once the project was



1 cancelled, we were entitled to our retention.

2 Q What is the purpose of retention?

3 A The purpose of retention, to my understanding, is for them  
4 to hold certain funds back to a hundred percent completion in case  
5 we abandon the project or don't complete our work or there's some  
6 dispute. But when the owner terminates, it's over. At that point,  
7 funds should be disbursed for work to date in place.

8 Q And so retention's not like some kind of -- and I don't mean  
9 to be facetious here, but it's not some kind of bonus you get at the  
10 end of the job, right?

11 A No. It's part of our work in place.

12 Q It is --

13 A It's our work costs. It's our overhead and profit.

14 Q And when you submit a -- an application for payment, are  
15 you showing the gross amount to which you're entitled by way of  
16 that payment, as well as the net amount?

17 A Correct.

18 Q And the gross being -- including retention and the net  
19 being with retention --

20 A After retention.

21 Q -- pulled out, correct?

22 A Correct.

23 Q And you're not aware of any allegations that have been  
24 made that would have entitled someone to withhold the money that  
25 you otherwise earned because of defective work or --

1           A    No. Never got notice. The way I view retention, it's  
2 basically an escrow account on our behalf of our funds. And when  
3 it's cancelled, it's due and payable. That's how I look at it.

4           Q    And who do you look to to pay that money to?

5           A    APCO.

6           Q    Do you have any contractual right to demand that money  
7 from the owner?

8           A    No, because I don't have a contract with the owner.

9           Q    Can you turn again to Exhibit 170? Mr. Jefferies asked you  
10 to look at it as well.

11          A    Okay. Got it.

12          Q    So this is approximately 56 pages long, correct, this entire  
13 exhibit?

14          A    It was a bunch.

15          Q    It essentially mirrored our copy of what was provided to  
16 Helix with respect to potential enter into a subcontract with -- with  
17 Camco, right?

18          A    Correct.

19          Q    Including the draft Camco agreement, including the Helix  
20 Electric exhibit that you would have prepared, correct?

21          A    Correct.

22          Q    And the first page of the document is called, Checklist  
23 Items, right?

24          A    Yes.

25          Q    And then Mr. Jefferies showed you page 3 of the exhibits,

1 and specifically the section entitled, Retention Monies. Do you see  
2 that? I got it up on the screen right now as well.

3 A Yeah. I got it here on paper too.

4 Q And it says, The final retention monies will only be  
5 released to Camco Pacific from owner when all punch-list items,  
6 contract items, and closeout documents have been completed and  
7 inspected by owner, right?

8 A Yes.

9 Q Now, again, this isn't something that you ultimately agreed  
10 to, is it?

11 A Nope.

12 MR. ZIMBELMAN: I beg your pardon, Your Honor. Just  
13 give me a second, please.

14 [Pause in proceedings.]

15 BY MR. ZIMBELMAN:

16 Q Do you know whether or not Gemstone and Camco's  
17 contract provided for payments to be made for work performed to  
18 Camco and then to the contractors or whether the money flow  
19 avoided Camco altogether?

20 A My understanding is avoided Camco and went to NCS.

21 Q It went through NCS?

22 A Right.

23 Q Nevada Construction Services. It was never given to  
24 Camco, correct?

25 A Not to my understanding, no.

1 Q And that would include retention money, right?

2 A Correct.

3 Q On the other hand, while you were working for APCO, you  
4 received payments from APCO, didn't you?

5 A Received payments from APCO.

6 Q At least until the very end?

7 A Until NCS got involved.

8 MR. ZIMBELMAN: That's all I have. Thank you,  
9 Your Honor.

10 THE COURT: Any recross?

11 MR. JEFFERIES: Yes, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. JEFFERIES:

14 Q Mr. Johnson, do you have Exhibit 170 still within reach?

15 A I do. It's open.

16 Q Sir, would you go to paragraph 43 of the exhibit?

17 THE COURT: Which one is it, Counsel?

18 MR. JEFFERIES: 170.

19 MR. ZIMBELMAN: Which page?

20 THE WITNESS: Yeah, how do you find 43?

21 MR. JEFFERIES: 43. It'll be -- in the lower right-hand  
22 corner, you'll see the exhibit number and it will be 043 for the page  
23 number.

24 THE WITNESS: Okay.

25 BY MR. JEFFERIES:

1 Q Now, this document is entitled: Helix Electric Exhibit to the  
2 Ratification and Amendment. Do you see that?

3 A I do.

4 Q Did you prepare in?

5 A Yes.

6 Q Okay. Looking at the first paragraph where it says, Item 1.  
7 It says, Add the following: Prior to the removal of APCO as the  
8 contractor. Is that your language?

9 A Yes.

10 Q And what were you referring to when you used the term,  
11 Removal of APCO as the contractor?

12 A Basically reference -- I believe that was in their contract that  
13 they were taking over from APCO, so I'm just trying to conform to  
14 their language.

15 Q Their being Gemstone --

16 A Camco. Camco.

17 Q -- and/or Camco?

18 A Camco.

19 Q The Item 2, there's a reference to change orders?

20 A Correct.

21 Q Did you prepare that language?

22 A Yes.

23 Q You make the statement that: Change order log reflects the  
24 total amount of 994,025 submitted to APCO prior to the effective date  
25 of 8/26/08. What effective date are you referencing there?

1           A    The date that Camco was using in their ratification  
2 agreement.

3           Q    Okay. Sir, if you would go to page 53 within the exhibit,  
4 did you prepare this?

5           A    Yeah. Yes.

6           Q    Okay. Directing your attention to the -- there's a figure of  
7 \$172,500 for Phase 1 submittals, trailers, permits, and superintendent.  
8 Do you see that?

9           A    I do.

10          Q    Does that represent Helix's general conditions for Phase 1?

11          A    It may represent part of them. I don't know if it represents  
12 all of them, but it's definitely those that are identified.

13          Q    Okay. And if I'm understanding, what are the references to  
14 the addendum in the left-hand side of the document?

15          A    You lost me. The references --

16          Q    Okay. Fair enough. Do you see where it says, Addendum?

17          A    Yes.

18          Q    What does that refer to?

19          A    Addendum -- if it's in here, it's an addendum attached to  
20 the agreement.

21          Q    To the ratification agreement?

22          A    Correct.

23          Q    Okay. Just in looking at those paragraphs, the lower part  
24 of page 53 of Exhibit 170, am I reading that correctly that through  
25 these negotiations with the owner and/or Camco, you have resolved

1 your outstanding change orders?

2 A No.

3 Q Wouldn't it be fair to conclude that given the language and  
4 the -- your reference to approve change orders, that the change  
5 orders that had been submitted prior to Camco's takeover on  
6 August 26, 2008, that those had been resolved through negotiation  
7 with the owner?

8 A No. What that's referring to is there was approved change  
9 orders of 480. It's not all change orders. There's unapproved change  
10 orders.

11 Q If you go to the next page, Addendum 5, the contract price,  
12 that price of 5.55 million, that was your original pricing to APCO for  
13 Phase 1, correct?

14 A That's correct.

15 Q And through this amendment, you're adding \$480,689 in  
16 approved change orders that you have negotiated with the owner,  
17 correct?

18 A No. We have not negotiated those with the owner. We  
19 negotiated those with APCO.

20 Q Okay. If you go to the next page of the exhibit, did you  
21 prepare this?

22 A I included it, but I don't prepare it.

23 Q Well, it was prepared by somebody at Helix Electric, right?

24 A Correct.

25 Q Okay. And do you see there's a reference to

1 Gemstone/Camco takeover? Do you see that?

2 A Point to it again, would you?

3 Okay.

4 Q What does that refer to?

5 A I don't know.

6 MR. JEFFERIES: I've got nothing further.

7 MR. TAYLOR: Nothing further.

8 MR. ZIMBELMAN: May I briefly redirect on his cross --

9 THE COURT: Yes.

10 MR. ZIMBELMAN: -- of change orders.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. ZIMBELMAN:

13 Q Bob, at the time that APCO left the project, did you have  
14 outstanding change orders that had not yet been approved?

15 A Yes.

16 Q Have you done work for what you had outstanding change  
17 orders that were unapproved?

18 A Yes.

19 Q Remember we talked yesterday about the -- about the Helix  
20 amendment that came back to you in July. And Mr. Nickerl had  
21 previously accepted the \$15,000 limit on change work without a  
22 written change order?

23 A Yes, he did.

24 Q And then he decided to strike that --

25 A Yeah.



1 Q -- in July, correct?

2 A Convenient -- conveniently in July, yeah.

3 Q And I think you testified that's because you had a lot of  
4 outstanding change work?

5 A A lot of outstanding and --

6 Q And --

7 A Go ahead.

8 Q Until change work was approved, so you had written  
9 change orders, were you allowed to bill, put that on your payment  
10 applications?

11 A For change orders?

12 Q Yeah.

13 A No.

14 Q So with respect to monies that you had billed through  
15 Camco before it left the job, did that include unapproved or change  
16 work for which you had not yet received the change order?

17 A No, it did not include it.

18 Q Did some of that work get billed subsequently through  
19 Camco?

20 A Not work that was done under APCO, no.

21 Q No, none. Okay. Were you trying to get some of that work  
22 approved by way of this Helix amendment to the Camco document?

23 A What we were trying to do at the time is it was so  
24 confusing between what APCO was doing, what Camco was doing,  
25 what Gemstone was doing, we were just trying to protect ourselves

1 and make sure we have an avenue to get paid for changes.  
2 MR. ZIMBELMAN: Great. Thank you, Bob.  
3 MR. JEFFERIES: Nothing further.  
4 THE COURT: All right. Sir, you may stand down.  
5 Do you want to take a brief recess before the next witness?  
6 MR. ZIMBELMAN: Sure.  
7 THE COURT: All right. Let's reconvene at ten to 3:00.  
8 Okay.  
9 MR. ZIMBELMAN: Thank you, Your Honor.  
10 [Recess taken at 2:40 p.m., resumed at 2:55 p.m.]  
11 THE MARSHAL: Call to order.  
12 THE COURT: You may be seated. We're back on the  
13 record. You can call your next witness.  
14 MR. ZIMBELMAN: Thank you, Your Honor. Andrew  
15 Rivera.  
16 ANDREW RIVERA  
17 [having been called as a witness and being first duly sworn, testified  
18 as follows:]  
19 THE CLERK: Please state your name for the record and  
20 spell both your first and your last name, please.  
21 THE WITNESS: Andrew Rivera, A-N-D-R-E-W R-I-V-E-R-A.  
22 Andy is fine.  
23 THE CLERK: Thank you.  
24  
25

1 DIRECT EXAMINATION

2 BY MR. ZIMBELMAN:

3 Q Andy, please tell -- please tell the Court what you do for  
4 Helix.

5 A Project manager for Helix Electric, 16 years, major projects  
6 division.

7 Q And that means Manhattan West ended about nine years  
8 ago. You'd been with Helix for six or seven years before that, right?

9 A Eight.

10 Q Eight. You would know better than me. My -- I'm a lawyer,  
11 not a mathematician. So -- so tell me what relationship you had to  
12 this project, the Manhattan West project.

13 A Project manager in charge of labor, materials, fixture  
14 packages, gear packages, subcontractors, labor reports, billings,  
15 change orders, submittals, requests for information, most documents  
16 regarding the project.

17 Q And Bob Johnson testified that you report -- you reported  
18 directly to him, correct?

19 A Correct.

20 Q Anybody between you and Bob?

21 A No.

22 Q And so did your job requirements or job duties take you  
23 into the field as well?

24 A Yes.

25 Q And how much time were you in the field versus in the

1 office?

2 A Field visits probably once a week, ranging from one hour to  
3 eight hours. Varies throughout the project.

4 Q Depending on what's going on?

5 A Correct.

6 Q And were you involved in putting together payment  
7 applications?

8 A Yes.

9 Q What was your responsibility with respect to payment  
10 applications, what specifically did you do?

11 A Provided a Schedule of Values based on each building,  
12 based on general conditions, breaking it down for tracking the costs  
13 of the job and the progress of the job.

14 Q And when you say a Schedule of Values, is that a specific  
15 document that you prepare?

16 A Yes. It's part of the invoice, AIA form.

17 Q The G702, G703 documents?

18 A Correct.

19 Q Could you open up Exhibit 501. I'm not sure if you have  
20 the Helix binders.

21 MR. ZIMBELMAN: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. ZIMBELMAN:

24 Q Ask you to turn to Exhibit 501. This exhibit is -- and I have  
25 393 pages long. Can you tell the Court, generally, what is in this

1 exhibit?

2 A It appears to be copies of checks, lien releases, basically  
3 transmittals to and from Helix/APCO.

4 Q So essentially, the billing records between Helix and APCO,  
5 correct?

6 A Correct.

7 Q And do we have a similar exhibit with respect to billing  
8 records between Helix and Camco?

9 A I believe -- I would think we do, yeah.

10 Q Yeah, we do. We'll look at that in just a minute.

11 The first page is a check from APCO Construction, correct?

12 A Correct.

13 Q And it's Check No. 12322, dated December 6th, 2007, in the  
14 amount of 169,875. Do you believe -- this is obviously a check early  
15 on in the process. Do you believe it was the first check you received  
16 from APCO?

17 A That should be the -- around the first one, correct.

18 Q At some point in time did you put together a summary  
19 document that showed the payment application amounts and the  
20 payments received between -- or from APCO? Payment apps to and  
21 payments received from APCO.

22 A In connection with my project assistant, yes.

23 Q I'm looking at page 393 of Exhibit 501. That's the final page  
24 of the exhibit. Does this appear to be the spreadsheet of payments  
25 applied for and payments received to and from APCO?

1           A    Correct.

2           Q    Now, we looked at this document in your deposition. Do  
3 you remember that?

4           A    Yes.

5           Q    And what -- did you make some correction to that  
6 document at that time?

7           A    We did.

8           Q    I'm showing you Helix Trial Exhibit 535, page 252 only.  
9 This was the Exhibit 99 to your deposition. Do you remember this  
10 being the document that you corrected at the time of your  
11 deposition?

12          A    Yes.

13          Q    And it's the same as Exhibit 501, page 393, except for your  
14 corrections, right?

15          A    Correct.

16               MR. ZIMBELMAN: Your Honor, I'm offering page 252 of  
17 Exhibit 535. It's a deposition exhibit. We've exempted the  
18 depositions from the blanket admissibility, but this document I'd like  
19 to offer.

20               MR. JEFFERIES: No objection.

21               THE COURT: It's admitted.

22                               [Defendant's Exhibit No. 535 admitted.]

23               MR. JEFFERIES: It's 535.

24               MR. ZIMBELMAN: 535, page 252 only.

25

1 BY MR. ZIMBELMAN:

2 Q I'm going to have you -- with respect to the line items on  
3 your Dep Exhibit 99 on your spreadsheet, it begins with a re-billed  
4 October billing, date submitted 9/20/07, correct?

5 A Correct.

6 Q And a payment due date of 10/30, but it doesn't show any  
7 payment received, correct?

8 A Correct.

9 Q What -- why was that?

10 A I don't recall the -- I don't recall the reason why. It was  
11 delayed a month.

12 Q It's not showed any amount -- balance due or any amount  
13 outstanding from that voided re-billed entry, correct?

14 A Correct.

15 Q So the next entry is 16713-001R3. What does the 16713  
16 refer to?

17 A That's our job number for Manhattan West.

18 Q And then the 001R3, what does that designation mean?

19 A 001 would be the first invoice. R3 is Revision 3.

20 Q Did you have to submit to revise your payment  
21 applications?

22 A Correct.

23 Q And why would that be?

24 A That would be based on an agreement with APCO and  
25 Gemstone when we would walk the project.

1 Q To determine percentage of completion or something else?

2 A Percentage of completion, correct.

3 Q And so sometimes your -- well, I don't want to put words in  
4 your mouth.

5 Did you ask for more or a higher percentage of completion  
6 than the owner provided to you?

7 A Yes.

8 Q Did the owner ever give you a higher percentage of  
9 completion than you were asking for?

10 A No.

11 Q Did APCO do those job walks along with you?

12 A If not with, separate. Both.

13 Q And did you have any communications with APCO about  
14 the percentage of completion?

15 A Yes.

16 Q Was the percentage of completion done on a line item  
17 basis?

18 A Yes.

19 Q Can you please turn to page 8 of Exhibit 501. What is this  
20 page?

21 A The Schedule of Values for Manhattan West.

22 Q Or at least the first page thereof, correct?

23 A Correct.

24 Q And it -- was this done with respect to the payment  
25 application 001R3?



1 A Correct.

2 Q And this is what we're referring to as the G703 document,  
3 right?

4 A Correct.

5 Q Was this a document that Helix chose to use for this project  
6 or that Helix was advised to use on this project?

7 A I don't recall.

8 Q Sure. Okay.

9 A It's pretty standard.

10 Q It's pretty commonly used in the industry, isn't it?

11 A Correct.

12 Q And in each line item for each scope of work, whether it be  
13 a general condition item, like office trailer, or whether it be a  
14 provision of work and materials, you've got a separate line item,  
15 correct?

16 A Correct.

17 Q And there's a scheduled value for each such line item,  
18 right?

19 A Correct.

20 Q What is that -- if you add up all those numbers of the  
21 schedule value, what should you have?

22 A The contract amount between Helix and APCO.

23 Q All right. And if it's adjusted by change order, would that  
24 be then reflected on the Schedule of Values?

25 A Correct.

1 Q And if you put a change order amount on the Schedule of  
2 Value that the owner didn't agree to, can you bill for that?

3 A No.

4 Q Because the owner wouldn't allow it, correct?

5 A Correct.

6 Q And then there's a column E under, Work Completed.  
7 There's the previous -- D would be previous application work  
8 completed, and E would be work completed this period, right?

9 A Correct.

10 Q So that's intended to show how much you've progressed  
11 on each line item, right?

12 A Correct.

13 Q And how much you're going to be billing. If you add up  
14 everything in the E column, what's that going to total up to?

15 A Monthly progress.

16 Q How much you're entitled to this month, correct?

17 A Correct.

18 Q And is that before or after retention?

19 A Before.

20 Q So then you deduct 10 percent for retention, and that's how  
21 much you're asking in your billing statement, correct?

22 A Correct.

23 Q Look at page 7, please, right before that. Do you recognize  
24 this as the G702 document that you used on the project?

25 A Correct.

1 Q And what is this specific document intended to do?

2 A Recap of the accounting of what has been billed versus  
3 what is billed this month.

4 Q So it includes the total completed and stored to date, and  
5 then the total -- total earned, less retainage in line 6, 169,875. Is that  
6 the amount you're asking to be paid?

7 A Correct.

8 Q And so this should be the sum total that 188,750, is that  
9 going to be the total of all the line items in column D of the Schedule  
10 of Values?

11 A Correct.

12 Q And less your 10 percent is your total amount of the  
13 payment application, right?

14 A Correct.

15 Q Has Helix earned this amount of money in the total  
16 completed and stored to date column that -- I should say G?

17 A Correct, yes.

18 Q For this payment period?

19 A Yes.

20 Q Including the retention amount?

21 A Yes.

22 Q And you -- did you do this process monthly on this project?

23 A Yes.

24 Q And each month would you have a discussion with APCO  
25 and the owner about your percentage of completion?

1 A If not discussion, communication via paper.

2 Q So draft Schedule of Values?

3 A Correct.

4 Q And then you might revise that Schedule of Values from  
5 time to time, correct?

6 A Correct.

7 Q Until you had an agreed document whereupon you could  
8 submit it?

9 A Correct.

10 Q And presumably you would then get paid, right?

11 A Correct.

12 Q So looking again at the summary document that you had  
13 prepared, does this list out all of the payment applications that you  
14 submitted with the owner's approval?

15 A Correct.

16 Q And APCO's approval as well?

17 A Correct.

18 Q Do you know if APCO included these amounts in its  
19 payment applications to the owner?

20 A I do not know.

21 Q And did you get paid all of the amounts listed on this  
22 document?

23 A In the amount paid column, yes.

24 Q Now, what is the correction that you made at the time of  
25 your deposition to this document?

1           A    The line item at the bottom, where it says APCO totals on  
2 the left, that cell going left to right, under the amount paid and the  
3 balance due, the formulas did not pick up --

4           Q    This was an Excel spreadsheet?

5           A    This is an Excel spreadsheet sheet, sorry. So where you  
6 see the -- in bold 4,347,019.46, and in the balance due column at the  
7 bottom you see 784,187.65. The formulas in there did not pick up the  
8 cells immediately above that. So the correction in writing down blow  
9 for the amount paid from the bold 4,347,019.46, you deduct the  
10 279,166.65 and you have the total of 4,626,186.11.

11          Q    All right. So in other words, the payment reflected of  
12 279,166.65 didn't get accounted for in the formula, correct?

13          A    Correct.

14          Q    So the actual amount that you were paid was 4,626,186.11,  
15 right?

16          A    Correct.

17          Q    And the difference between that and the total amount, the  
18 gross amount sought is then the 505,021; is that correct?

19          A    Correct.

20          Q    And in fact, that is retention money, isn't it?

21          A    Correct.

22          Q    And you pointed this out to APCO's counsel at your  
23 deposition, didn't you?

24          A    Correct.

25          Q    All right. This reflects the amount of payments received for

1 work performed through what payment period?

2 A August 31st, 2008.

3 Q When did APCO leave the project?

4 A Around that time frame.

5 Q And was this intended to reflect monies earned while  
6 APCO was on the project?

7 A Yes.

8 Q Was it intended to reflect monies earned while APCO was  
9 off the project?

10 A No.

11 Q Do you have a similar document for monies earned while  
12 APCO was off the project?

13 A Yes.

14 Q The payments received -- it looks like the last payment for  
15 the Payment Application No. 11 was submitted on August 20th,  
16 correct?

17 A Correct.

18 Q For a payment period August 31st. So it was submitted  
19 before the end of the pay period?

20 A Correct.

21 Q Is that normal?

22 A Correct.

23 Q That's how it's done on this project?

24 A Yes.

25 Q Is that unusual for construction projects in general?

1 A No.

2 Q Are you -- what are you doing? You're trying to anticipate  
3 percent to complete by the end of the pay period; is that right?

4 A Correct.

5 Q So when did you receive that payment or payments?

6 A October 28th.

7 Q So two months after APCO had left the project, correct?

8 A Correct.

9 Q If you would turn to page 225 of the exhibit.

10 A Oh, I didn't come up with that one.

11 Q Looking for the Check No. 14375. It should be at Trial  
12 Exhibit 501-225.

13 A 252, I believe.

14 Q See the Bates number here at the bottom of the page.

15 A 252 -- 252 --

16 Q Feel free to just look at --

17 A Yeah. I think you said 225, or maybe I heard you wrong.  
18 I'm sorry.

19 Q Page 225 in Exhibit 501. And you can look at it on the  
20 screen as well.

21 A Okay. That's fine. I can see it fine on the screen.

22 Q This is a check in the amount of 268,783 to Helix from  
23 APCO, correct?

24 A Correct.

25 Q And does that show up on your payment summary

1 document? Right there, for example.

2 A Yes.

3 Q I know the numbers are kind of small. And that's with  
4 respect to payment submitted on May 8th of '08 for a payment period  
5 ending May 31st, '08, correct?

6 A Correct.

7 Q And up until this point in time, the checks that you were  
8 receiving, they were all from APCO, weren't they?

9 A Correct.

10 Q Go to page 275. Now I've got that up on the screen as well.

11 A Got it.

12 Q And this is a Check No. 528387, dated August 28th, 2008,  
13 correct?

14 A Yes.

15 Q In the amount of 211,936?

16 A Correct.

17 Q And is that payment also reflected on your payment and  
18 summary document?

19 A Yes.

20 Q And that's with respect to the date submitted of June 20th  
21 for the payment period ending June 30th, right?

22 A Correct.

23 Q Who is this check from?

24 A Nevada Construction Services.

25 Q And who is it to?



1 A Joint with APCO and Helix.

2 Q Did you ask to be paid by way of a joint check?

3 A No.

4 Q Did you ask to be paid by Nevada Construction Services?

5 A No.

6 Q Had this ever happened prior to this date?

7 A No.

8 Q Do you know why this happened?

9 A No.

10 Q Did APCO or anybody else tell you why that was

11 happening?

12 A Not to my recollection.

13 Q And as of August 28, 2008, APCO has stopped working on

14 the project, haven't they?

15 A Correct.

16 Q Did you receive any other joint checks?

17 A Yes.

18 Q Look at page 332.

19 A Okay.

20 Q This is a check dated September 23rd, 2008, also from

21 Nevada Construction Services to Helix and APCO, correct?

22 A Correct.

23 Q So another payment that you received via joint check

24 through NCS, right?

25 A Correct.

1 Q In fact, the remainder of the payments that Helix received  
2 with respect to the work performed while APCO was on site come  
3 through NCS, don't they?

4 A Correct.

5 Q Did they joint check you and any of your subcontractors?

6 A I would have to review.

7 Q Well, take a look at page 333 of that same exhibit. Now,  
8 this is a check from NCS to APCO and Helix and Penhall Company.  
9 Was Penhall a sub or supplier of Helix?

10 A Subcontractor, correct.

11 Q Again, Helix didn't ask for this procedure, did it?

12 A No, sir.

13 Q Now, was there any work that Helix had performed for  
14 which it had not submitted one of these payment applications that  
15 were the summary of which is reflected on this exhibit, 535, page  
16 252?

17 A Repeat, please.

18 Q Yeah. Was there any work that APCO performed while --  
19 excuse me, that Helix performed, while APCO was on the project, for  
20 which it was not allowed to bill?

21 A Yes.

22 Q What was that?

23 A Could be various work orders, plan changes, directives.

24 Q And did those amounts ever go on to your pay application  
25 documents, at least those that were approved for payment?

1 A No.

2 Q Okay. And you heard Bob testify a little bit ago, Bob  
3 Johnson, that APCO didn't -- that Helix didn't push those numbers  
4 over to payment applications submitted through Camco, correct?

5 A Correct.

6 Q What happened to those dollars?

7 A Pending. Spent by Helix and pending payment.

8 Q Okay. Is that part of the claim that we're asserting today --

9 A No.

10 Q -- in this action?

11 A No.

12 Q All right. Can you turn to Exhibit 508. It should be in the  
13 same binder.

14 A It is.

15 Q Oh, before we move to there, with respect to the money  
16 showing on your summary document for the work performed under  
17 APCO, the 500,000 -- 505,021, was that work actually performed by  
18 Helix?

19 A Yes.

20 Q And do you believe that the percentages of completion that  
21 are reflected in the pay applications are at least as much as  
22 represented?

23 A Yes.

24 Q Do you believe that the amounts Helix billed were  
25 reasonable for the work performed?

1 A Yes.

2 Q All right. So on Exhibit 508, page 1 of 508 is a letter of  
3 transmittal from Helix to Camco. And it's with respect to a payment  
4 application of October 20th, 2008.

5 A Yes.

6 Q Payment application 16713-013R1, correct?

7 A Correct.

8 Q Now, again, you've maintained the 16713 number, I see.

9 A Correct.

10 Q Is that because it's still the Manhattan West project?

11 A Same project.

12 Q I'll have you turn to page 68 of the exhibit. What is this  
13 document that we're looking at?

14 A It is the cover sheet for an invoice through the end of  
15 September 2008.

16 Q Did you maintain and continue to use the AIA G702 and  
17 G703 documents after APCO stopped working on the project?

18 A Correct.

19 Q And is this because that's what the owner wanted?

20 A Correct.

21 Q With respect to this invoice dated September 19th, 2008, is  
22 that the first payment application submitted through Camco?

23 A Yes.

24 Q Now, the invoice number is 16713-012, right?

25 A Correct.

1 Q And that's the next number numerically from the last  
2 payment application to APCO, isn't it?

3 A Correct.

4 Q Why did you maintain this order of payment application?

5 A Nothing has changed for us. Same job continuing from  
6 August to September of '08.

7 Q Okay. You haven't had your contract terminated with  
8 APCO, have you?

9 A Have not.

10 Q Why are you billing it to Camco and not to APCO then?

11 A At this point we're trying to -- trying to get paid, I guess.  
12 Covering our bases, I guess.

13 Q If you had submitted it to APCO, would you have gotten  
14 paid?

15 MR. JEFFERIES: Objection, speculation.

16 THE WITNESS: I don't believe so.

17 THE COURT: Sustained.

18 BY MR. ZIMBELMAN:

19 Q Did anybody tell you to direct your payment applications to  
20 Camco?

21 A Gemstone.

22 Q The owner?

23 A Correct.

24 Q Now, this invoice is a summary of your billing -- of your  
25 Payment Application No. 12, isn't it?

1 A Correct.

2 Q And it shows an origin contract amount, change orders,  
3 contract amount to date. That's change orders that have been  
4 approved, correct?

5 A Correct.

6 Q That you could bill for, right?

7 A Correct.

8 Q And will those -- the work you've done under those change  
9 orders is going to be reflected on your G703 document, isn't it?

10 A Correct.

11 Q So the original contract amount is 13,230 changes. Now,  
12 the contract amount is 13,710,689.01 as of this date, correct?

13 A Correct.

14 Q Now, that's carried forward from your original contract  
15 amount with APCO, isn't it?

16 A Correct.

17 Q And again, why are you billing Camco and showing an  
18 original contract amount that was established under APCO?

19 A That's the only contract document we had.

20 Q The next page, page 69, is one of the G702 documents,  
21 right? The payment application itself, again, correct?

22 A Correct.

23 Q Showing the same summary information that was on the  
24 cover sheet, correct?

25 A Correct.

1 Q And then behind that would be the G703 document, the  
2 Schedule of Values document, correct?

3 A Correct.

4 Q But you maintained and continued to use this procedure  
5 throughout your work on the project, didn't you?

6 A Yes.

7 Q And did the same procedure and same process occur with  
8 respect to having the schedule, the percentage-of-completion  
9 determination --

10 A Yes.

11 Q -- that went into this document?

12 A Yes.

13 Q That the owner would review and approve, correct?

14 A Correct.

15 Q Was Camco involved in that procedure at all?

16 A No.

17 Q Turn to page 61 of the exhibit. What are we looking at  
18 here?

19 A The Excel spreadsheet of payments that went to Camco.

20 Q So essentially the same type of document that we looked at  
21 earlier with respect to the work performed under APCO, correct?

22 A Cam -- correct, correct. Yes.

23 Q Except this is the work performed under Camco, right?

24 A Yes.

25 Q Does it include all of the payment applications that you

1 submitted through Camco?

2 A It does not.

3 Q What's it missing?

4 A It's missing December -- through December -- mid  
5 December, the last one.

6 Q Pay App 15?

7 A Correct.

8 Q We'll look at that in a moment. With -- other than Payment  
9 Application 15, does this document accurately summarize the  
10 amounts that you sought by way of your payment applications once  
11 Camco was on site and the amounts of payments that you received?

12 A Correct.

13 Q And what -- what are the totals then, exclusive of Payment  
14 Application 15?

15 A Amount billed 760,471.58.

16 Q And total payments received?

17 A 175,778.80.

18 Q And when was that payment received?

19 A November 19th, 2008.

20 Q So --

21 A For the month of September, sorry, 2008.

22 Q So about two months after you submitted the payment  
23 application, you got some amount of payment, correct?

24 A Correct.

25 Q So at least for Payment Application 14, the balance due



1 was 584,692.78?

2 A Correct.

3 Q And these are the gross billing amounts, correct, not --  
4 not -- including whatever retention you had earned, right?

5 A Correct.

6 Q Please turn to page 61 of the exhibit.

7 A I think we're on it.

8 Q Oh, sorry. I have confused myself. I am looking for  
9 something else. Try page 49.

10 THE COURT: 49?

11 MR. ZIMBELMAN: Yes. It's the trial exhibit number in the  
12 lower left-hand corner.

13 BY MR. ZIMBELMAN:

14 Q What is this document?

15 A That would be our final invoice through December 15th,  
16 2008.

17 Q That's Pay App No. 15?

18 A Correct.

19 Q And it's period through to December 15th, 2008, instead of  
20 December 31st, at the end of the month. It's the middle of the month.  
21 Why is that?

22 A I believe that is the date work stopped entirely.

23 Q And how much have you billed for this period, gross?

24 A 249,783.67.

25 Q That's the gross current period number right there?

1 A Correct.

2 Q And if you add that number to the 584,692.78 number, is  
3 that the amount of money that you've earned during the period that  
4 Camco was on site and had been unpaid?

5 A Yes.

6 Q Do you have a calculator on you?

7 A I do not.

8 Q Can I give you one?

9 MR. ZIMBELMAN: May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MR. ZIMBELMAN:

12 Q Andy, would you please add up 584,692.78 plus  
13 249,783.67?

14 A 834,476.45.

15 Q And is that the amount of money earned and unpaid after  
16 APCO left the site?

17 A Correct.

18 MR. JEFFERIES: Can I get the number again?

19 MR. ZIMBELMAN: Yes. It is 834,476.45.

20 MR. JEFFERIES: Thank you.

21 BY MR. ZIMBELMAN:

22 Q With respect to the amounts that Helix has billed while  
23 APCO was on site, do you believe those to be reasonable amounts --

24 A Yes.

25 Q -- for the work performed?

1 A Yes.

2 Q Did you perform the work?

3 A Yes.

4 Q Do the billing statements accurately reflect the percentage  
5 of completion or at least -- at least as much percentage of completion  
6 as, in fact, performed?

7 A Yes.

8 Q You've been told about -- that APCO believes you  
9 overbilled in some respects --

10 A Yes.

11 Q -- correct?

12 Do you agree with that?

13 A No.

14 Q Would you look at Exhibit 508 -- no. That's the wrong one.  
15 Excuse me. Give me one quick second.

16 By the way, when did you prepare these summary  
17 documents? When were those -- were those done recently?

18 A No.

19 Q When were they done?

20 A During the project, 2008.

21 MR. ZIMBELMAN: I just have one further document,  
22 Your Honor, then I'll be done. I just need to find it.

23 All right. I'll just pass the witness, Your Honor. Thank you.

24 THE COURT: All right. Cross.

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CROSS-EXAMINATION

BY MR. JEFFERIES:

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

A Correct.

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

A Yes.

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

A Correct.

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

A Correct.

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

A Correct.

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

A Yes.

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

5 A Yes.

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

7 A No. No. I'm sorry.

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

10 A I would not know.

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

14 A Correct.

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

18 A Yes.

19 Q As the project manager, did you review the prime contract  
20 between APCO and Gemstone?

21 A I don't believe so.

22 Q The \$505,000 in retention that was shown in Exhibit 44, you  
23 actually rolled that over into your billings to Camco, correct?

24 A Correct.

25 Q Can you describe for the Court what you understood to

1 be -- well, strike that.

2           Wouldn't it be fair to say that based on communications,  
3 both written and verbal, that you received from APCO and/or  
4 Gemstone, you knew that Gemstone had purported to terminate  
5 APCO's prime contract?

6           A    We knew they were having issues, yes.

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

10          A    Correct.

11          Q    Okay. If this gets hard to read, sir, you can always grab the  
12 copy of the exhibit. I'm putting Exhibit 12 up on the ELMO.

13          A    I can see it fine.

14          Q    Okay. For the record, this is an e-mail sent from Craig  
15 Colligan. Who was he?

16          A    Gemstone representative. I'm not sure of his title.

17          Q    Okay. And you were actually the first recipient on this  
18 e-mail, correct?

19          A    Correct.

20          Q    And this is addressed to all subcontractors on the project?

21          A    Yes.

22          Q    Take a minute and look at that. I want to ask you some  
23 questions. Well, that's not fair. You may need the hard copy just to  
24 read it.

25          A    It's pretty -- it's fine.

1 Q You can do it?

2 A Uh-huh.

3 Q Okay.

4 A [Witness complies.]

5 Okay.

6 Q Would it be fair to state that during this August 2008 time  
7 period, you, as a subcontractor on the project, were getting  
8 information directly from Gemstone?

9 A Yes.

10 Q Okay. And who was your primary contact at Gemstone?

11 A I believe it was -- well, it varied. Pete Smith would be one.  
12 Jill Gisondo would be another. I believe those are the two names  
13 that I can recall off the top of my head.

14 Q And would it be fair to say that you received copies of  
15 certain communications from APCO to the owner, Gemstone,  
16 whereby APCO indicated that we're having payment issues and we're  
17 giving notice of our intent to exercise statutory rights to suspend  
18 and/or terminate?

19 A Something to that effect, yes.

20 Q Okay. The record has a number of notices in here. And I  
21 can -- well, let's do it.

22 Sir, I'm going to put on the ELMO what's been marked as  
23 Exhibit 5, dated July 18. This is an amended notice to Gemstone of  
24 payment issues. And have you seen this letter before today?

25 A Yes.

1           Q    Okay. And at the end of the letter, on the last page, APCO  
2 shows it being copied to Pete Smith, Craig Colligan, and all  
3 subcontractors. Do you have any reason to believe or can you testify  
4 of your own personal knowledge that this was not sent to you as a  
5 subcontractor on the project?

6           A    I do not know.

7           Q    Okay. That was a terrible question.

8                   As a matter of practice, would you have received this  
9 during the course of construction, Exhibit 5?

10          A    I can't answer that. I don't know. It could stop at my VP  
11 and never get to me. It could -- I do not know.

12          Q    Okay. But you do recall receiving APCO-generated  
13 correspondence indicating to the owner, which was sent to the  
14 subcontractors as well, that APCO was suspending and/or  
15 terminating its work, correct?

16          A    Correct.

17          Q    Okay. The invoices that you went through, I think in  
18 Exhibit 508 to Camco, you did not forward those to APCO, did you?

19          A    No.

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

22          A    Gemstone.

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

25          A    Correct.



1 Q And based on your personal involvement with Gemstone  
2 and Camco, did you understand that, in fact, Camco was replacing  
3 APCO as the prime contractor?

4 A At that time did not know exactly how that was -- the  
5 arrangement was going to be.

6 Q Did you come to find out?

7 A Yes.

8 Q That was, in fact, the case?

9 A Yes.

10 Q Were you involved at all in evaluating or reviewing the  
11 ratification agreement that you've heard referenced to in these  
12 proceedings?

13 A No.

14 Q Would it be fair to conclude that the technical scope of  
15 work remained the same as you transitioned to working with  
16 Camco --

17 A Yeah.

18 Q -- for Helix?

19 A Yes.

20 Q Did you have an understanding from Gemstone that the  
21 APCO/Helix subcontract had been assigned to Gemstone?

22 A I wouldn't know.

23 Q Sir, I'm showing you what's been marked as Exhibit 169.  
24 Have you seen that --

25 MR. ZIMBELMAN: Did you say 169?

1 MR. JEFFERIES: Yes.

2 BY MR. JEFFERIES:

3 Q Have you seen that before today?

4 A Yes.

5 Q Okay. Would you look down -- there are some figures at  
6 the bottom of the page. Does the -- there's a reference to \$172,500.  
7 Does that represent Helix's general condition costs on the Schedule  
8 of Values for Phase 1 that it was performing for APCO?

9 A A portion of. I would have to look at the total general  
10 conditions, but it's part of general conditions, yes.

11 Q Well, what do I need to show you in order for you to tell me  
12 what the Schedule of Values was for general conditions for Phase 1?

13 A Any billing form between Helix and APCO.

14 Q Okay. Do you -- can you get a hard copy of 501? Do you  
15 have one up there? Your Exhibit 501.

16 MR. JEFFERIES: May I approach, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: That's in Helix's, right?

19 MR. JEFFERIES: Yes. Thank you.

20 BY MR. JEFFERIES:

21 Q Let's -- if you could, sir, just within Exhibit 501, identify a  
22 pay application that would allow you to tell me what Helix's general  
23 conditions were for Phase 1 of the project.

24 A Page 008.

25 Q Okay.

1           A    And the general conditions would be the total of lines 1  
2 through 7.

3           Q    Okay. Maybe I asked a bad question before. Let me make  
4 sure my record's clear when we read this.

5                   Phase 1 is all Helix ever worked on for APCO, correct?

6           A    Correct.

7           Q    Okay. And would the \$172,000 figure I just showed you on  
8 Exhibit 169, would that be the sum of the Schedule of Values for Line  
9 Items 3 through 7, inclusive, on Exhibit 501, page 8?

10          A    No.

11          Q    No.

12          A    Without doing math, because it was 172,500, if you add  
13 these numbers up, you're almost 400,000.

14          Q    That's true. How -- based on this Schedule of Values, how  
15 would you be able to calculate for me how much of Line Items 3  
16 through 7 applied to Phase 1?

17          A    Well, it would -- there are certain things that -- on the  
18 Schedule of Values that would apply to Phase 1 and 2, even though  
19 we physically didn't work on Phase 2. Engineering could have been  
20 complete for typical buildings, submittals for typical buildings. So  
21 even though we didn't physically perform Phase 2, a lot of those  
22 costs included Phases 1 and 2.

23          Q    And I respect that, especially for the engineering, but  
24 looking at Line Items 3, which is the trailer; Line Item 4 is the project  
25 engineer and personnel; 5 is permits; 6 is submittals; and 7 is

1 supervision. Is there a way for you to calculate what percentage of  
2 those 3 through 7 would apply just to the work you performed on  
3 Phase 1?

4 A I'm sure there is. I don't recall off the top of my head how  
5 I -- how the 172,500 is calculated.

6 Q Were you involved in the Gramercy project, be it in the  
7 estimating or performance of the work for Martin-Harris?

8 A No.

9 MR. JEFFERIES: I think that's all I have, Your Honor.

10 MR. ZIMBELMAN: Very briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ZIMBELMAN:

13 Q Looking, Andy, at the -- page 8 of 501, the so-called general  
14 conditions items.

15 A Yes.

16 Q The first one is electrical engineering, \$155,000, correct?

17 A Correct.

18 Q Was that engineering for both phases of the project?

19 A Correct.

20 Q And was that done on a phase-by-phase basis, or was it  
21 done at the beginning of the project?

22 A Beginning of the project.

23 Q Mobilization, was there a separate mobilization amount for  
24 the Phase 2?

25 A No.

1 Q You were intending to still be on site?  
2 A Correct.  
3 Q What does mobilization mean?  
4 A The cost of getting labor, materials, equipment to the  
5 project.  
6 Q Ramping up, right?  
7 A Correct.  
8 Q Office trailer administration, 24 months, was the duration  
9 of the project, Phases 1 and 2, anticipated to be 24 months?  
10 A Correct.  
11 Q As of the time the project was suspended, were you on  
12 schedule to complete in 24 months?  
13 A No.  
14 Q As of the time APCO left the project, were you on pace to  
15 complete in 24 months?  
16 A No.  
17 Q So the project had been delayed --  
18 A Yes.  
19 Q -- as of that time, correct?  
20 A Yes.  
21 Q Did Helix continue to extend every month costs like office  
22 trailer administration?  
23 A Correct.  
24 Q Supervision and planning and coordination?  
25 A Correct.

1 Q Did you receive any additional money for going past 24  
2 months?

3 A No.

4 Q If you had gone past 24 months to complete the project --  
5 well, let me state it a different way.

6 Had you gone past 24 months as of the time the project  
7 was suspended?

8 A Please repeat.

9 Q Sure. Had 24 months elapsed as of the time the project  
10 was suspended?

11 A No.

12 Q But it wasn't going to be able to be completed in 24  
13 months regardless, correct?

14 A Correct.

15 Q Had you gone past that 24 months, would you have asked  
16 for additional money for general conditions?

17 A Yes.

18 Q Did you ever -- as you sit here today, you were asked if you  
19 had seen Exhibit 12, the e-mail from Mr. Colligan, right?

20 A Correct.

21 Q You were asked if you'd seen Exhibit 5, the letter -- the  
22 notice from APCO to Gemstone dated July 8th -- 18th, correct?

23 A Correct.

24 Q As you sit here today -- well, let me state it differently.  
25 Mr. Jefferies asked you if you had seen Exhibit 5 before

1 today, and you said yes, correct?

2 A Correct.

3 Q Does that mean you had seen that document at the time  
4 that it was issued?

5 A I know I saw it yesterday. That's what I said. I don't recall.

6 Q Do you have an independent recollection of having been  
7 notified that either APCO was terminating Gemstone or Gemstone  
8 was terminating APCO?

9 A No.

10 Q Is there any document that you're aware of that's been  
11 presented to the Court in this proceeding, shows that APCO notified  
12 Helix that it had terminated its agreement with Gemstone?

13 A There's been a few documents I've seen. Yes.

14 Q That APCO told Helix about it? Not that it had done it, but  
15 that it had told Helix, We terminated Gemstone?

16 MR. JEFFERIES: Object, asked and answered.

17 THE COURT: I'll allow it.

18 THE WITNESS: I don't -- I'm not following the question.

19 BY MR. ZIMBELMAN:

20 Q Understood. The argument is that Helix was told about the  
21 termination, right? That APCO sent a letter of termination to  
22 Gemstone, and then APCO turned around and said, We have indeed  
23 terminated our contract with Gemstone, right? Told Helix this or  
24 other subcontractors at the time. Do you have a recollection of  
25 having received such a notice?

1           A    I don't recall.

2           Q    Somewhat related, do you have a recollection of having  
3 received a notice from Gemstone that, hey, we have terminated  
4 APCO?

5           A    I don't think so.

6           MR. ZIMBELMAN: Thank you.

7           THE COURT: Recross?

8           MR. JEFFERIES: No. I think those records are in evidence,  
9 so I'll deal with it.

10          THE COURT: Okay. Thank you.

11          All right. Sir, you can stand down.

12          MR. ZIMBELMAN: Your Honor, that's the last witness that  
13 Helix is going to bring on in its case-in-chief. Obviously, reserve the  
14 right to recall the witness in rebuttal once we hear APCO's case.

15          THE COURT: All right.

16          MR. TAYLOR: Your Honor, I hate dead air in a trial, but at  
17 2:40, when we took our break, I asked counsel if they thought they  
18 were going to finish today, and they said they did not expect to finish  
19 until the end of the day. So I told my witness that was going to be  
20 here at 3:30 to come back tomorrow morning at 9:00.

21                I do have a little brief depo read that I might do to fill a little  
22 bit of the time, but it's only about six little sections of an APCO  
23 employee. We could use that to fill a little bit of our time, but other  
24 than that --

25          THE COURT: So since APCO's going to do its case-in-chief



1 after both claimants here have proceeded, right?

2 MR. JEFFERIES: We will do our defense to their claims,  
3 yes.

4 THE COURT: After they're all done, right. Okay. All right.

5 MR. TAYLOR: So could I do a little depo read right now? I  
6 could show you the four -- the six excerpts or just read them.

7 MR. JEFFERIES: Is it -- who is it?

8 MR. TAYLOR: It's Brian Benson.

9 MR. JEFFERIES: Brian Benson, okay.

10 MR. TAYLOR: If we do these --

11 MR. JEFFERIES: Well, no objection. Go ahead.

12 THE COURT: Are you going to have somebody sworn to  
13 read the deposition answers, or how are you going to proceed with  
14 that?

15 MR. TAYLOR: If you don't mind I'll just read the question  
16 and answer.

17 THE COURT: Do Counsel stipulate that that can happen?

18 MR. JEFFERIES: I don't have a problem as long as I have a  
19 copy, and I don't -- let's see. In fact, could I have a minute to find the  
20 copy?

21 THE COURT: Yes. That's fine.

22 MR. JEFFERIES: Do you have an extra copy?

23 MR. TAYLOR: I don't.

24 MR. JEFFERIES: If it's -- if you're reading Brian Benson, I  
25 was going to call him live.

1 MR. TAYLOR: Okay. So then I was going to say if I did  
2 this, I wouldn't need to call him, but if you're going to call him live  
3 anyway, then --

4 MR. JEFFERIES: I just -- I was calling him. Yes.

5 THE COURT: Okay.

6 MR. TAYLOR: Then maybe we wouldn't accomplish  
7 anything by me doing a depo read. I'll ask him when he's here live.

8 THE COURT: So we'll just adjourn now and resume at 9:00  
9 in the morning.

10 MR. TAYLOR: I would appreciate that indulgence,  
11 Your Honor.

12 MR. JEFFERIES: No objection.

13 THE COURT: Okay. Very well. That will be the order. And  
14 we'll adjourn now and resume tomorrow morning at 9:00, okay?  
15 Thank you.

16 MR. JEFFERIES: Thank you.

17 MR. ZIMBELMAN: Thank you, Your Honor.

18 [Proceeding adjourned at 4:09 p.m.]

19 \* \* \* \* \*

20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled case to  
22 the best of my ability.

23 

24 \_\_\_\_\_  
25 Shannon D. Romero  
Court Transcriber

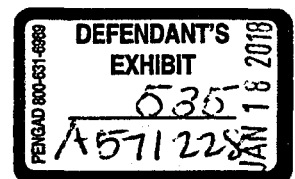
**In the Matter Of:**  
**APCO vs GEMSTONE DEVELOPMENT**

A571228

**HELIX ELECTRIC OF NEVADA**

*July 20, 2017*

30(b)(6)



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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

CASE NO. A571228  
DEPT. NO. XIII

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

Defendants.

-----  
AND ALL RELATED MATTERS.  
-----

THE DEPOSITION OF

ANDREW RIVERA

30(b)(6) witness on behalf of

Helix Electric of Nevada, LLC

Tuesday, July 20, 2017  
9:18 a.m.

2300 West Sahara Avenue, Suite 770  
Las Vegas, Nevada

June W. Seid, CCR No. 485



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22 \* \* \* \* \*



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Deposition of ANDREW RIVERA

July 20, 2017

(Prior to the commencement of the deposition, all of the parties present agreed to waive the statements by the court reporter pursuant to Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

Thereupon--

ANDREW RIVERA,  
was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MOUNTEER:

Q. Good morning, Andy.

A. Good morning.

Q. Can you please state and spell your name for the record.

A. Andrew Rivera, A-n-d-r-e-w R-i-v-e-r-a.

Q. You understand today you've been designated as what we call a 30(b)(6), a person most knowledgeable for Helix, correct?

A. Correct.

Q. You've been deposed as a 30(b)(6) before?

A. Yes.

MR. MOUNTEER: In anticipation of the



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1 deposition, I want to show you the notice. We'll mark  
2 that as the next exhibit.

3 (Exhibit 89 marked  
4 for identification.)

5 BY MR. MOUNTEER:

6 Q. Have you ever seen this document before?

7 A. Yes.

8 Q. Could you turn for me to page 3, under the  
9 topics. Have you had a chance to read and understand  
10 what those topics are?

11 A. Yes.

12 Q. And you're prepared to testify as to those  
13 topics today?

14 A. Yes.

15 Q. You understand that if I use the word or  
16 vernacular "you," I'm actually meaning Helix, your  
17 answers will be binding on Helix the company, not  
18 necessarily yourself?

19 A. Correct.

20 Q. Just moving along, you said you've been  
21 deposed before. Is that in your capacity as a 30(b)(6)  
22 for Helix or was it for other corporations?

23 A. I was having a hard time remembering. I  
24 believe it was for Helix, twelve, fourteen years ago.

25 Q. Was that the last time you were deposed?



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1 A. Yes.

2 Q. So it's been a little bit of time. I'm going  
3 to quickly run through some of the admonitions, rules  
4 of the deposition. You're doing a very good job  
5 already. One is please allow me to finish my question  
6 before you speak; that gives us a very clean record.  
7 Also the court reporter won't be kicking us under the  
8 table.

9 Second, you're sworn in today. This is the  
10 same testimony as if you were literally sitting in a  
11 court of law. So it is binding not only on the  
12 company, but it is sworn.

13 If I ask you a question and you don't know  
14 the answer, it's okay to say I don't know the answer.  
15 I don't want you to guess. If you can provide me with  
16 an estimate, that's fine.

17 I'm going to give you an example of this.  
18 I'm sure you could probably estimate the length of this  
19 table being in construction, correct?

20 A. Correct.

21 Q. Now, if I asked you to estimate the length of  
22 my kitchen table in my house, you know what a kitchen  
23 table looks like, but they come in all shapes and  
24 sizes. Without seeing it you couldn't give me an  
25 estimate of it, right?



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1 A. Yes.

2 Q. That's the difference between an estimate and  
3 a guess.

4 Have you consumed any prescription  
5 medications, alcohol, anything that would keep you from  
6 giving your best testimony here today?

7 A. No.

8 Q. Do you think there's anyone other than  
9 yourself on behalf of Helix that would be more  
10 knowledgeable about the topics that were noticed in  
11 Exhibit 89 that I provided to you?

12 A. No.

13 Q. Did you speak with anyone outside of your  
14 counsel in preparation for your deposition today?

15 A. No.

16 Q. Did you review any documents for your  
17 deposition?

18 A. Yes.

19 Q. What documents were they?

20 A. Exhibit 89, and some billing forms just to  
21 get reacquainted with the project.

22 Q. Now, when you say "billing forms," because  
23 this case, and as my client sitting right beside me  
24 notes very well, has millions of pages of documents.  
25 Did you review anything other than just billing forms,



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1 at least as they pertain to Helix?

2 A. A table was provided showing some numbers. I  
3 believe that was provided at APCO's previous  
4 deposition.

5 Q. On that sheet which we will look at a little  
6 bit later, there were some Bates numbers on there. Did  
7 you get a chance to look at every single one of those  
8 noticed Bates numbers?

9 A. Depending on the document, yes.

10 Q. Did you go back through any pay applications  
11 or anything else?

12 A. The final pay app.

13 Q. You didn't look at pay apps 1 through 10?

14 A. Looked at the history to make sure the  
15 billings and the payments matched.

16 Q. Who is your current employer?

17 A. Helix Electric.

18 Q. How long have you been with them?

19 A. Sixteen years.

20 Q. What is your current position with them?

21 A. Project manager.

22 Q. Were you the project manager on the  
23 ManhattanWest project?

24 A. Correct.

25 Q. Were there any other project managers out



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1 there?

2 A. No, sir.

3 Q. Helix, are they licensed to do business in  
4 Nevada?

5 A. Yes.

6 Q. Nevada state contractor's license?

7 A. Yes.

8 Q. Any other states?

9 A. Yes.

10 Q. What other states are they licensed to do  
11 business in?

12 A. California, Arizona, New Mexico, Texas,  
13 Virginia and probably a couple other states back on the  
14 east coast that I would have to research.

15 Q. No worries. Let's just jump right in, get  
16 past all the pleasantries.

17 What's your understanding or Helix's  
18 understanding of who the owner of the project was?

19 A. Gemstone Development.

20 Q. And who acted as a general contractor for the  
21 project?

22 A. APCO Construction.

23 Q. Did that change throughout the project?

24 A. Yes.

25 Q. And who took over from APCO?



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1 A. CAMCO Pacific.

2 Q. Do you know what date that occurred?

3 A. Not exactly.

4 Q. Well, can you give me an estimate?

5 A. August of '08. August, September.

6 Q. You said CAMCO took over. How long was CAMCO  
7 on the project?

8 A. Three months, to my best recollection.

9 Q. Helix provided work under CAMCO?

10 A. Yes.

11 Q. At that point did the project ever shut down?

12 A. Yes.

13 Q. Did Helix ever go back and finish the  
14 project?

15 A. Not ManhattanWest, no.

16 Q. The project not under ManhattanWest, but I  
17 think it is now called Gramercy, the building itself?

18 A. Yes.

19 Q. Did Helix go back and finish building the  
20 specific property?

21 A. Yes.

22 Q. Who did they do that under?

23 A. Martin-Harris Construction.

24 Q. Helix had a contract with each one of those  
25 general contractors throughout the time?



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1 A. Yes.

2 Q. You were the project manager, so I'm clear,  
3 from literally day one of the project through end of  
4 the project. And when I say the project right now, I'm  
5 only going to specifically talk about from the time of  
6 CAMCO and the project was shut down.

7 A. Correct.

8 Q. I'm not talking about Martin-Harris stuff.  
9 We will get to that later.

10 How many times a week would you visit the  
11 project?

12 A. Two to three times a week.

13 Q. What would your work entail when you would  
14 arrive on site?

15 A. To meet with my superintendent and evaluate  
16 progress.

17 Q. Who was your superintendent?

18 A. Duane Garrison.

19 Q. What was Duane's scope of work on the  
20 project?

21 A. He supervised labor, overall labor.

22 Q. How many laborers were typically working on  
23 the project for Helix?

24 A. It varied. I would have to go back and look  
25 at reports. One to twenty on any given week.



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1 Q. Who controlled the actual on-site progress;  
2 was that your supervisor -- I mean your superintendent,  
3 or was it yourself?

4 A. Superintendent.

5 Q. Are you aware of the specific allegations  
6 that Helix has made against APCO in this matter?

7 A. General, yes.

8 Q. What is your understanding of that?

9 A. Outstanding monies owed to Helix.

10 Q. When you say outstanding monies owed to  
11 Helix, how much would that value be?

12 A. Half a million dollars.

13 Q. Where does that 500,000 dollars come from?

14 A. APCO.

15 Q. I guess I need to clarify the question. I'm  
16 trying to get through a little bit quicker so we can  
17 dive into the documents. 500,000 dollars -- during  
18 this process, APCO would provide pay applications,  
19 correct?

20 A. Correct.

21 Q. Explain to me the pay application process.

22 A. We would submit progress billing at the end  
23 of the month, for work performed that month.

24 Q. So basically on a monthly basis? Sorry, I  
25 didn't mean to cut you off.



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1 A. Monthly progress billings, yes.

2 Q. How would you determine what would be  
3 included in the progress billing?

4 A. Percent of completion.

5 Q. Who made that determination?

6 A. We would submit what we felt was complete.  
7 So Helix did.

8 Q. Just so I'm clear, at the very beginning,  
9 Helix works for 30 days. At the end of the 30 days,  
10 was it you or was it the superintendent that would  
11 basically say, okay, we have completed -- and when I  
12 say we have completed, this percentage was a percentage  
13 of the overall contract, right?

14 A. Overall per building, correct.

15 Q. Per building. So who would come up with a  
16 number, say 25 percent of our work is done?

17 A. I would.

18 Q. So you would do that?

19 A. Yes.

20 Q. And you would put that on the application  
21 form?

22 A. Yes.

23 Q. What would you do with that application form?

24 A. Submit it to APCO for processing.

25 Q. Do you know what APCO did with that form?



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1 A. No.

2 Q. Is it your understanding that APCO would turn  
3 that form over to the owner?

4 A. Yes.

5 Q. Once it was turned over to the owner, who --  
6 we will ask it this way. Whose responsibility was it  
7 to verify your percentage of work done?

8 A. APCO and the owner, I would assume it would  
9 be a joint effort.

10 Q. Was there ever construction control in this  
11 case too, in this project?

12 A. Would you define "construction control"?

13 Q. A construction service that would control  
14 payments, cut checks?

15 A. Yes. Towards the end of the project, yes.

16 Q. Do you know who that was?

17 A. Yes. NCS, I think, yeah.

18 Q. What is Helix's understanding of NCS's  
19 involvement?

20 A. That, I do not know exactly how that worked.

21 Q. Did Helix ever receive any checks directly  
22 from NCS?

23 A. I believe we did.

24 Q. So you said they came in kind of late in the  
25 project. In the beginning of the project who was



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1 cutting checks to Helix?

2 A. I believe it was APCO.

3 Q. APCO directly?

4 A. I believe, yes. From my recollection, I  
5 believe it was APCO, yes.

6 Q. And then later on checks started coming from  
7 NCS?

8 A. I believe they were a joint check from NCS to  
9 APCO Helix.

10 Q. Were you involved in the bidding of the  
11 project?

12 A. No.

13 Q. Who bids the projects for Helix?

14 A. Estimating department.

15 Q. So you have a whole separate --

16 A. Separate estimating, correct.

17 Q. Were you involved in any of the contract  
18 negotiations for Helix?

19 A. Just the -- just to verify scope.

20 Q. So the actual like general conditions of the  
21 contract, the subcontractor agreement, you don't have  
22 any involvement with what language is in there or  
23 anything like that?

24 A. No, correct. Correct.

25 (Exhibit 90 marked



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1 for identification.)

2 BY MR. MOUNTEER:

3 Q. All right, Andy, we have handed you what has  
4 been marked as Exhibit 90. Can you quickly look  
5 through this document and tell me if you've ever seen  
6 this before?

7 A. Yes, looks like a subcontract agreement that  
8 we have used in the past.

9 Q. Does it appear to be a true and accurate  
10 subcontract agreement --

11 A. Yes.

12 Q. -- for the ManhattanWest project?

13 A. Yes.

14 Q. Let's turn to page, I think it's on 15,  
15 actually, on this contract. Turn to page 15. Do you  
16 recognize the signature there at the end of the  
17 contract?

18 A. Yes.

19 Q. And whose signature is that?

20 A. Victor Fuchs.

21 Q. What was Victor's role in Helix?

22 A. Owner of Helix Electric Nevada.

23 Q. Do you recognize the other signature from  
24 APCO?

25 A. I believe so.



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1 Q. Randy Nickerl, I'll make that representation.

2 A. Um-hum.

3 Q. Did you ever work with Randy Nickerl on the  
4 project?

5 A. I do not recall. Most likely.

6 Q. So you said earlier this appeared to be a  
7 typical contract that Helix uses. I want to draw your  
8 attention to just past the signature page that we were  
9 looking at. It's Bates stamped APCO 103646; do you see  
10 that?

11 A. Yes.

12 Q. It appears to be an exhibit or an attachment  
13 drafting amendments to the contract language in the  
14 first part of the contract; is that an accurate  
15 representation of that?

16 A. Correct.

17 Q. Did you do any of these initials or marks on  
18 this document?

19 A. No.

20 Q. Do you know who did?

21 A. Be most likely Bob Johnson, vice president.

22 Q. Does Bob Johnson typically negotiate  
23 contracts like this?

24 A. Yes.

25 Q. So in this action I'll represent to you that



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1 Helix has asserted that APCO has breached the contract.  
2 I think we talked about earlier Helix was saying that  
3 APCO's owed 500,000 dollars?

4 A. Yes.

5 Q. Can you please direct me to the specific  
6 clauses in this contract that Helix claims APCO has  
7 specifically breached?

8 A. I would have to research it because I'm not  
9 involved in that. That's vice president type stuff  
10 when we come to an issue like this.

11 Q. So you're not familiar or ready to testify  
12 today pursuant to the contract?

13 A. If you want to give me some time I can find  
14 it.

15 Q. We have got a few moments.

16 A. I'm sorry.

17 MR. ZIMBELMAN: Are you expecting him to have  
18 perfect knowledge of the dollars that were billed and  
19 paid without reference to any documents or exhibits  
20 that have already been produced and made exhibits to  
21 the deposition?

22 MR. MOUNTEER: No.

23 MR. ZIMBELMAN: Because it sounds like that's  
24 what your asking him --

25 MR. MOUNTEER: No, that's not what I'm



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1 asking.

2 MR. ZIMBELMAN: Let me finish my objection.

3 And you're trying to make the witness sound  
4 as if he doesn't know or isn't prepared to be the PMK.  
5 He is prepared. If you put a document in front of him,  
6 I'm sure he would be able to answer your question.

7 BY MR. MOUNTEER:

8 Q. Let me make it clear, I'm not asking about a  
9 dollar amount, because in Exhibit 90, the contract I've  
10 handed the witness, there's no dollar amount in here  
11 regarding the 500,000 dollars. We will get into that  
12 later.

13 I'm asking the specific clauses in this  
14 contract, what is Helix's position that APCO breached?  
15 Is there specific language in the contract that  
16 Helix --

17 MR. ZIMBELMAN: You want him to review the  
18 entire length of the contract and answer that question  
19 for you? Let's go off the record for an hour, and he  
20 will come back and he'll answer that question for you.

21 MR. MOUNTEER: I mean if that's what we have  
22 got to do.

23 MR. ZIMBELMAN: Other than payment, Cody,  
24 which we have answered by way of discovery responses,  
25 what are you referring to? What are you trying to get



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1 at?

2 MR. MOUNTEER: Is it Helix's position that  
3 there's no language in this contract that we breached?

4 MR. ZIMBELMAN: As in paying Helix the money  
5 it's due?

6 MR. MOUNTEER: Sure.

7 MR. ZIMBELMAN: Other than that?

8 Go ahead and ask him if he knows what other  
9 contract language has been breached. You're asking him  
10 a legal question. I'll object on that basis as well.

11 MR. MOUNTEER: I'm not asking for a legal  
12 opinion. I'm saying Helix has asserted a cause of  
13 action that APCO has breached this contract, this  
14 language. Now, if this is strictly a payment issue  
15 here, I think under the contract it looks like there's  
16 a pretty short chapter -- I mean section that would  
17 cover that type of payment language.

18 I think we have a right to know today from  
19 Helix, from the person most knowledgeable, this  
20 contract language, what language did we breach.

21 MR. ZIMBELMAN: Well, ask the witness, he  
22 will give you his best answer.

23 A. Okay. So article 3, contract price and  
24 payments, we submitted billings that we need to be paid  
25 on, and we didn't get paid on.



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1 BY MR. MOUNTEER:

2 Q. Is there any specific section of article 3 or  
3 are you just asserting all article 3?

4 MR. ZIMBELMAN: Same objection. Calls for a  
5 legal conclusion. The witness is not an attorney.

6 BY MR. MOUNTEER:

7 Q. For clarification of the question, I'm not  
8 asking for your legal opinion. I'm saying is there  
9 language specifically that Helix asserts we have  
10 breached?

11 If your testimony is section 3, then it's  
12 section 3. If there's other specific language that  
13 you're aware of, please guide me to it.

14 A. Article 3.

15 Q. Is there any other article in this contract  
16 that Helix claims APCO breached? And please take the  
17 time to review the different articles.

18 A. As a project manager, I'm not contract -- to  
19 speak on law about contracts, so I would have to review  
20 the entire contract. And even after that, I may not be  
21 the one to handle the legal side of what the contract  
22 interpretations are.

23 Q. I understand that, and for clarification, I'm  
24 not asking whether APCO is ultimately found responsible  
25 for the assertions that Helix has made to pay X amount



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1 of dollars based on contract language, is a legal  
2 question. I will stipulate to that on the record.  
3 However, my client, APCO, is entitled to know what's  
4 being asserted against it.

5 Now, attorneys draft complaints, all that  
6 stuff, that's great. But one of the allegations is  
7 that we breached this language, and I'm just curious  
8 if -- and if you're not prepared to testify today, then  
9 let me know on that manner, but my understanding is  
10 section 3 is what Helix is asserting APCO breached.

11 If you could review the other sections of the  
12 contract briefly, if you're not prepared, let me know.  
13 If you are prepared to talk about those, that's fine.  
14 I'm just trying to get a scope to make sure that if  
15 this goes to trial, we know what we are up against, we  
16 know what language we're having asserted against my  
17 client.

18 A. Okay. My answer --

19 Q. If you need to go off the record and give you  
20 some time, we can do that.

21 A. Okay. Even if I had the time, I don't have  
22 the legal knowledge to answer that question on behalf  
23 of Helix, the legal side of it.

24 MR. ZIMBELMAN: That's a lay way of saying  
25 it's a legal question.



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1 MR. MOUNTEER: I understand the objection.

2 And --

3 MR. ZIMBELMAN: You can ask him about facts.

4 BY MR. MOUNTEER:

5 Q. I am asking him about facts. I think I've  
6 made it clear that I'm not asking about a legal  
7 question as to did we ultimately breach this contract.  
8 I'm asking as a fact. It is my understanding Helix  
9 entered into this contract with APCO; is that correct?

10 A. Correct.

11 Q. Helix claims APCO breached this contract.

12 A. Correct.

13 Q. Okay. Helix drafted this contract; is that  
14 correct?

15 A. Correct.

16 Q. Helix made revisions to the contract?

17 A. Correct.

18 Q. And now Helix is saying based upon the  
19 language that it put in the contract, there's something  
20 that APCO did not do pursuant to this contract.  
21 Factually, what actions did APCO take that Helix is  
22 saying we breached?

23 A. The action was nonpayment.

24 Q. Is that the only action that Helix is  
25 asserting?



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1 A. To my knowledge, yes.

2 Q. Okay. Thank you. I'm not trying to be a  
3 jerk. I'm trying to make sure that that's what we are  
4 here for today.

5 (Exhibit 91 marked  
6 for identification.)

7 BY MR. MOUNTEER:

8 Q. Andy, I'm handing you what has been marked as  
9 Exhibit 91. It has the Bates stamp documents Helix  
10 0001 through Helix 0007. Do you recognize this  
11 document?

12 A. I have not seen it before. Can I unstaple it  
13 and put the pages right side up?

14 Q. Yes, absolutely.

15 A. Yes, I have not seen this before.

16 Q. Okay. Do you recognize this document,  
17 though? Even though you haven't seen it today before,  
18 do you recognize what this document is?

19 A. It appears to be our vendors owed money, at  
20 first glance.

21 Q. Okay. So this is something Helix produces in  
22 the course of construction throughout the project?

23 A. Like I said, I have not seen it, this before,  
24 in this format, but it looks like our vendors.

25 Q. Is it strictly just Helix's vendors or are



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1 these other Helix invoices; do you know?

2 A. Invoices from vendors -- Helix vendors to  
3 Helix.

4 Or a recap of billings per vendor. I'm not  
5 sure if this...

6 Q. Do you know what the column on the right-hand  
7 side, second left where it says "Outstanding amount,"  
8 do you know what that means?

9 A. My assumption was, for example, the first one  
10 from QED, top line, item 40158, my assumption is it was  
11 an invoice that did not get paid.

12 Q. Do you know what the invoice date -- do you  
13 see that column?

14 A. Yes.

15 Q. I'm going to make this real simple so I don't  
16 have to go through a bunch of these. On that invoice  
17 date, you said earlier that you believe that APCO had  
18 control of the project until August of 2008?

19 A. To the best of my recollection, yes.

20 Q. Starting in September, any of these invoices,  
21 would APCO be responsible for any outstanding amount?

22 A. I would have to research.

23 Q. So you don't know if APCO is responsible for  
24 any of these values that are listed on this sheet?

25 A. I would be -- again, each one -- you would



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1 have to look at each one. Invoice can come two months  
2 after the product was ordered.

3 Q. What exactly was Helix's scope on the  
4 project?

5 A. Two commercial four-story shell buildings,  
6 two residential four-story condominiums, and one  
7 high-rise condominium.

8 Q. All electrical?

9 A. Correct.

10 Q. Anything outside of electrical?

11 A. No.

12 Q. Did Helix use any of its own subcontractors,  
13 or enter into any other contracts with subcontractors?

14 A. Yes.

15 Q. Who might that be?

16 A. There was a fire alarm subcontractor, best of  
17 my recollection an excavating subcontractor. Those  
18 would be the two main ones that I can recall off the  
19 top of my head.

20 Q. Do you know the value that Helix is asserting  
21 against APCO in this action? Does it include any of  
22 the values owed from Helix's subcontractors?

23 A. I don't know.

24 Q. Would those particular subcontractors of  
25 Helix, would they appear on what's been marked as



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1 Exhibit 91?

2 A. R2W would be a subcontractor, on sheet 00002.

3 Q. Okay.

4 A. Sting Surveillance is one I didn't mention  
5 previously, on 00003, is a subcontractor. Penhall  
6 Company on 00004, that would be excavation, is a  
7 subcontractor. R2W is listed again on 00006. Sting  
8 Surveillance is listed again on 00007. So those three  
9 subcontractors.

10 Q. So is it fair to say that the rest of the  
11 people identified on this sheet would have been vendor  
12 or supply house?

13 A. Yes, equipment, electrical supply houses.

14 Q. In August of 2008, what did the project look  
15 like, the percentage of finish? You mentioned each one  
16 of those buildings. Can you detail each building at  
17 its stage of construction for me?

18 A. The two residential buildings, four-story  
19 ones, to the best of my recollection, 85-90 percent  
20 complete.

21 MR. ZIMBELMAN: Are you talking about Helix's  
22 scope only, for clarification?

23 MR. MOUNTEER: For clarification, sorry,  
24 Helix's scope of work on those buildings. And if you  
25 can give me a general description what the building



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1 looked like, that would be great too. But specifically  
2 if you can give me a percentage, I'm asking for Helix's  
3 percentage of completion, not the buildings' percentage  
4 of completion.

5 A. Okay, on the two residential buildings, 8 and  
6 9, like I said we were 85 to 90 percent complete. On  
7 buildings 2 and 3, which were the four-story commercial  
8 buildings, I would say we were 90 to 95 percent  
9 complete. On the high-rise, I would say we were --  
10 gosh, I would need to go back and look. I would be  
11 guessing on that one right now.

12 BY MR. MOUNTEER:

13 Q. Okay. You couldn't give me even a rough  
14 estimate?

15 A. 50 percent.

16 Q. Okay. Fair enough.

17 Let's talk about buildings 8 and 9 real  
18 quick. Was Helix's scope of work, exterior, interior  
19 lighting, what did it entail specifically?

20 A. It entailed interior lighting, fire alarm  
21 system, security system, branch circuits for  
22 receptacles, all the units and all the unit electrical  
23 for each condo, the garage lighting, the building  
24 services.

25 Q. And that particular scope of work that you're



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1 talking about was 85-90 percent complete?

2 A. Yes.

3 Q. What about buildings 2 and 3, what was the  
4 scope of work for Helix?

5 A. 2 and 3 were commercial shell buildings to  
6 where we installed the building services and minimal  
7 exit lighting, exterior lighting, electrical rooms for  
8 future.

9 Q. Do you recall any particular issues with  
10 Helix's work during construction?

11 A. Not to my recollection.

12 Q. Would those percentages you gave me, that  
13 would include any of Helix's subcontractors too, that  
14 same percentage?

15 A. Correct.

16 Q. Do you recall Helix ever being asked to redo  
17 work?

18 A. I would have to go look.

19 Q. What about change orders; how were change  
20 orders handled?

21 A. We would submit pricing. Or if it was -- if  
22 we knew plans changed, we would be able to submit  
23 pricing on a plan change. If it was something that was  
24 outside our scope, then we would do a recorder and  
25 daily field verification tickets.



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1 Q. Who would you provide the change submission  
2 to?

3 A. To APCO.

4 Q. Do you know what APCO did with it after that?

5 A. Do not know what they did with it after that.

6 Q. Did it ever have to have owner's approval?

7 What is your understanding who would have to approve  
8 change orders?

9 A. For Helix it would be APCO.

10 Q. APCO only?

11 A. That's all we were contracted with.

12 Q. So you're not aware anywhere that the owner  
13 had to approve change orders?

14 A. No.

15 Q. Did the owner have to approve any of the  
16 work, or was it only APCO's responsibility to approve  
17 work?

18 A. To my knowledge, both.

19 Q. So to your knowledge then, what would occur  
20 under the hypothetical if APCO said, hey Helix, we  
21 approve it, and the owner said no. Who is responsible  
22 for that approval or payment?

23 MR. ZIMBELMAN: Objection. Calls for a legal  
24 conclusion, incomplete hypothetical as well.

25 BY MR. MOUNTEER:



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1 Q. You still can answer the question.

2 A. Would you please repeat?

3 Q. So if you submit a change order, or let's  
4 just say a payment app, change order or payment app to  
5 APCO, APCO approves it and the owner doesn't approve  
6 it, who is responsible to pay on that? Helix's  
7 position, who is responsible for paying for that change  
8 order?

9 A. APCO.

10 Q. Even if the owner doesn't approve it?

11 A. Yes.

12 Q. The 500,000 dollars that you spoke of  
13 earlier, just in general, are you speaking of retainage  
14 or is there other outstanding money that you believe  
15 Helix is owed?

16 When we are saying five hundred, I think we  
17 are talking about a general number, not a specific  
18 number.

19 A. Correct, plus or minus 5,000. It would be  
20 money owed for work performed.

21 Q. Money owed for work performed in what way?

22 A. Based on our progress billing.

23 Q. Based on your progress billing. So are you  
24 saying there was half a million dollars that was not  
25 paid to Helix outside of retainage, or are we



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1 specifically talking about retainage?

2 A. It's retainage.

3 Q. I think you may agree with me, but if you  
4 need to go back and look at Exhibit 90, I'll represent  
5 to you ten percent is the amount of retainage that was  
6 taken --

7 A. Correct.

8 Q. -- or reserved. Okay. So basically we are  
9 saying that while APCO had control of the project,  
10 Helix had billed approximately half -- or 5 million  
11 dollars?

12 A. Correct.

13 Q. And there's 500,000 of that, that was held in  
14 retainage that Helix never got paid?

15 A. Correct.

16 Q. So what is your understanding of when  
17 retainage is due back to the contractor that it was  
18 being held for?

19 A. Well, normally at the completion of a  
20 project, but in this case APCO left the site, so it  
21 would be at the time they left the site.

22 Q. Even though the project wasn't completed?

23 A. Never got completed. The project never got  
24 completed.

25 Q. So APCO left the site, you said somewhere



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1 around August 2008. Half a million dollars in  
2 retainage. Was any of the buildings complete at that  
3 point that we talked about earlier, buildings 8, 9, 2,  
4 3, the high-rise?

5 A. To a percentage, yes.

6 Q. To a percentage. Were they a hundred percent  
7 complete?

8 A. No.

9 Q. If APCO had not left the job, when would  
10 retainage typically be provided back to the contractor  
11 who it was being held for?

12 A. When the buildings were complete.

13 Q. Can you direct me to any type of language or  
14 whatnot to substantiate the position that since APCO  
15 stopped work and left the job, even though the  
16 buildings are not complete, Helix is able to have  
17 retainage released to it?

18 MR. ZIMBELMAN: Same objection. Calling for  
19 a legal analysis and conclusion.

20 You can answer if you can.

21 A. I can't. That would be -- as previously,  
22 that's, you know, the attorney above me. Above my pay  
23 scale.

24 BY MR. MOUNTEER:

25 Q. I understand that. I'm just trying to figure



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1 out -- I mean, you said that because APCO left the job,  
2 Helix gets their retainage, and I'm just trying to say  
3 why? I'm not asking for a legal conclusion. I'm  
4 saying as far as Helix is concerned, why?

5 A. We performed work, the value of that work was  
6 five million dollars. We should be paid five million  
7 dollars for when you were in control of that work.

8 Q. Did Helix finish the 15 to 10 percent of that  
9 work under CAMCO?

10 A. No.

11 Q. So Helix never finished buildings 8 or 9?

12 A. Correct.

13 Q. They never finished buildings 2 or 3 or the  
14 high-rise?

15 A. Correct.

16 Q. But they continued to work on those buildings  
17 under CAMCO?

18 A. Correct.

19 Q. So why would retainage not stay in effect  
20 being held under CAMCO instead of Helix if the building  
21 was not complete?

22 A. CAMCO would have a separate contract with  
23 separate retention for the work that they would be  
24 responsible for.

25 Q. Okay. So it's Helix's understanding that



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1 there's almost like two separate accounts for  
2 retainage; am I misstating that?

3 There's an account that APCO would hold the  
4 money, and then there's an account where CAMCO would  
5 hold the money that would be set aside for retainage?

6 A. I would think so.

7 Q. Do you know if APCO ever received the 500,000  
8 dollars?

9 A. I do not.

10 Q. Do you know if the bank ever set aside  
11 500,000 dollars?

12 A. I do not.

13 Q. Do you know if there's an account out there  
14 where there's 500,000 dollars sitting in it?

15 A. I do not. But I would like to know that.

16 Q. How is it Helix's understanding that this job  
17 was being funded, just generally from the owner; was  
18 the owner paying cash, were there bank investments?

19 A. I do not know.

20 Q. What is Helix's understanding of what  
21 general -- what extended general conditions are on the  
22 project?

23 A. A general understanding of general conditions  
24 as far as --

25 Q. What would general extended conditions



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1 entail?

2 Sorry, that's a better question.

3 MR. ZIMBELMAN: Hang on. General extended  
4 conditions, or extended general conditions?

5 MR. MOUNTEER: Extended general conditions,  
6 sorry.

7 A. Basically the costs involved with the monies  
8 owed that aren't necessarily part of the project, but  
9 support the project.

10 BY MR. MOUNTEER:

11 Q. I just want to make sure I understand this.  
12 So let's say we have a project like this, and you have  
13 contract work -- it's my understanding -- I'm just  
14 trying to make sure I understand it right.

15 You have contract work, and then you have  
16 these general conditions, and if the contract work  
17 takes a little bit longer to complete, if there were  
18 delays or something, right, there might be additional  
19 costs associated with staying on the project a little  
20 bit; is that correct?

21 A. Correct.

22 Q. Are those costs, the extended general  
23 conditions, are those separate and independent from the  
24 value of the contract scope of work?

25 A. They are part of the contract scope of work



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1 per the contract schedule.

2 Q. Okay. Let's say you have -- in that schedule  
3 you have a scope of work, for example, of you have to  
4 install X amount of lights in building 8 or 9, right?

5 A. Correct.

6 Q. Is the installation scope of work, the labor  
7 so to speak, different than the extended general  
8 conditions?

9 MR. ZIMBELMAN: Hang on. The general  
10 conditions or the extended general? You're blending  
11 concepts here.

12 BY MR. MOUNTEER:

13 Q. The extended general -- well, either.  
14 General conditions. What I want to ultimately ask, and  
15 I'll get to it, is APCO seeking any extended general  
16 conditions on this project?

17 A. APCO?

18 Q. I mean Helix.

19 A. To APCO, I do not believe so.

20 Q. Okay. Are you, meaning Helix, asserting that  
21 APCO received any benefit on this project for Helix's  
22 scope of work outside of the retention held?

23 A. Please repeat.

24 Q. Do you believe APCO received any benefit, any  
25 payment, anything, that -- for work that Helix



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1 completed, other than the 500,000 dollars that you've  
2 already spoken of?

3 A. I would not know.

4 MR. ZIMBELMAN: Cody, I can answer that.  
5 Helix is not seeking extended general conditions. That  
6 does not mean there weren't any.

7 MR. MOUNTEER: I understand. That's why I  
8 said if we had some stipulations it might be a lot  
9 faster today. I just want to make sure I get the  
10 universe of what we're talking about, because there are  
11 a lot of documents, there's a lot of allegations out  
12 here, and to me things haven't been clarified.

13 If we are only talking about the 500,000  
14 retention, then this is going to go a lot quicker. But  
15 I have a big project and I have a lien that's in the  
16 millions, so I don't know how you want to handle that.

17 MR. ZIMBELMAN: I think I just answered your  
18 question.

19 MR. MOUNTEER: Okay.

20 MR. ZIMBELMAN: Can we take a five-minute  
21 break?

22 MR. MOUNTEER: Yes.

23 (Whereupon, a recess was taken.)

24 BY MR. MOUNTEER:

25 Q. Sorry, Andy, I need to go back.



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1 I just was noticing in my notes real quick,  
2 just a quick line of questioning. During the initial  
3 part of bidding the project and whatnot, did Helix have  
4 any involvement in design?

5 A. I believe we did.

6 Q. Do you know if Helix had any involvement with  
7 the owners or whatnot prior to APCO even coming onto  
8 the project?

9 A. I would have to go back and look.

10 Q. Do you know if the owners had presented Helix  
11 to APCO saying, you know, this is the electrical  
12 subcontractor you have to use?

13 A. Do not know.

14 Q. Do you know if Helix had received any type of  
15 bid packet or whatnot for the project from APCO?

16 A. Do not know.

17 (Exhibit 92 marked  
18 for identification.)

19 BY MR. MOUNTEER:

20 Q. Andy, you've been handed what's been marked  
21 as Exhibit 92, it appears to be a correspondence dated  
22 September 4, 2008 with a Bates stamp starting on Helix  
23 894. Have you ever seen this document before?

24 A. Yes.

25 Q. Can you tell me what it is?



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1 A. It looks like to continue performing our  
2 scope at ManhattanWest.

3 Q. Who is it directed to?

4 A. Victor Fuchs.

5 Q. You said earlier that was the owner?

6 A. I believe at the time he may have been  
7 president. I don't know how the company is legally  
8 defined.

9 Q. He's an important individual over at Helix?

10 A. He's an important individual over at Helix.

11 Q. On the front of this correspondence, it lists  
12 three things; do you see that?

13 A. Yes.

14 Q. Right down the middle. Schedule of values,  
15 breakdown for your work. Number two, your certificate  
16 of general liability insurance. Number 3, evidence of  
17 your Nevada business tax. Do you know if Helix ever  
18 provided that to Gemstone?

19 A. I do not recall.

20 Q. Do you know if Helix ever provided it to  
21 CAMCO?

22 A. I do not recall.

23 Q. Attached to this particular correspondence,  
24 it appears there's a fax transmittal sheet and then  
25 starting on Helix 895, you have a ratification



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1 agreement. Do you recognize this ratification  
2 agreement?

3 A. Yes.

4 Q. Is this the ratification agreement that Helix  
5 executed with CAMCO to continue the work on the  
6 project?

7 A. I believe it is the document. I do not  
8 believe that it was ever fully executed.

9 Q. I'll represent to you that the one you have  
10 in front of you does not have signatures on it. I have  
11 combed through painstakingly thousands and hundreds of  
12 thousands of pages looking for one. Do you know if one  
13 was ever signed?

14 A. I do not know.

15 Q. But Helix did end up working under CAMCO on  
16 the site, correct?

17 A. Correct.

18 (Exhibit 93 marked  
19 for identification.)

20 BY MR. MOUNTEER:

21 Q. Andy, you've been handed what has been marked  
22 as Exhibit 93, starting Bates stamp is Helix 882. Do  
23 you recognize this document?

24 A. Yes.

25 Q. Who constructed this document?



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1 A. I would believe Bob Johnson.

2 Q. And who is Bob?

3 A. Vice president at Helix.

4 Q. Do you know -- this is on Helix's letterhead?

5 A. Correct.

6 Q. Can you tell me what this document proclaims

7 itself to be, on the front page there, title of it?

8 A. An addendum to the ratification agreement.

9 Q. Do you know whose handwriting is on that  
10 first page? It appears there's a number there, seven  
11 million six hundred and some change. And it says  
12 fifteen percent profit?

13 A. I do not.

14 Q. You don't know if that was anyone from Helix?

15 A. Do not.

16 Q. Do you believe that this exhibit to the  
17 subcontract agreement between CAMCO Pacific, that Helix  
18 was operating under this agreement being that it  
19 provided it to CAMCO?

20 A. I would assume so.

21 Q. The reason I ask that, if you could look  
22 towards the end there, appears to be some numbers that  
23 are included in this particular agreement.  
24 Specifically if we start -- if we look at what's been  
25 marked as Helix 889 --



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1 MR. ZIMBELMAN: Just to clarify, Cody, this  
2 document is an exhibit to the standard subcontract  
3 agreement that we looked at earlier.

4 MR. MOUNTEER: Correct.

5 MR. ZIMBELMAN: It's Exhibit 92, and this is  
6 93.

7 MR. MOUNTEER: Make sure the record is clear,  
8 Exhibit 93 appears to be an exhibit that would have  
9 been attached to Exhibit 92.

10 MR. ZIMBELMAN: Assuming they were executed.

11 MR. MOUNTEER: Assuming they were executed.  
12 And that's my next question.

13 BY MR. MOUNTEER:

14 Q. It appears that Exhibit 93 is not executed by  
15 Helix, correct?

16 A. Correct.

17 Q. Going back, you testified you believe that  
18 Helix was operating under the assumption of this  
19 agreement. And the reason I asked that question was do  
20 you know whether the numbers, specifically on Bates  
21 stamp page 889, and then again the cost estimate log,  
22 and change order logs that are provided by Helix on 891  
23 and 892, whether those numbers are accurate?

24 A. I believe they are accurate.

25 (Exhibit 94 marked



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1 for identification.)

2 BY MR. MOUNTEER:

3 Q. All right, Andy, you've been handed what has  
4 been marked as Exhibit 94 with an initial Bates stamp  
5 number APCO 103562. Can you tell me what this document  
6 is?

7 A. I believe a lien notice.

8 Q. For this project?

9 A. Correct.

10 Q. Can you tell me the amount of the lien that's  
11 identified on the front page?

12 A. \$3,186,102.67.

13 Q. Who was the lien against?

14 A. The owner, Gemstone.

15 Q. Does the lien identify APCO anywhere in  
16 there?

17 A. I would have to read through it. I do not  
18 believe so.

19 Q. Let's go to Exhibit A of the lien, if you  
20 would, APCO 103564. Do you see that exhibit?

21 A. I do.

22 Q. What's this particular exhibit attached to  
23 the lien represent?

24 A. I believe it's breaking down the three  
25 million dollars into different entities.



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1 Q. Is it Helix's position that the lien, when it  
2 breaks it down to different entities, that the lien is  
3 being placed against any one of these entities, or is  
4 it Helix's position the lien is placed against the  
5 property?

6 A. I would defer to counsel on that one. I am  
7 not sure.

8 Q. When Helix files a lien, what is Helix's  
9 understanding of why it's filing a lien?

10 A. Monies owed.

11 Q. And it's filing a lien, though, with who?  
12 Who is it filing a lien with?

13 A. I would have to assume the general  
14 contractor.

15 Q. So it's Helix's position that the lien is  
16 being filed with the general contractor?

17 A. I'm not sure how that process works, to be  
18 100 percent.

19 Q. Let's look at the Exhibit A, if we would,  
20 APCO 103564. If we look at contract description, we  
21 have under the first line, do you see that, phase 1 and  
22 2?

23 A. Yes.

24 Q. APCO Construction. And then it says  
25 13,230,000 dollars under original contract price. Did



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1 I read that correct?

2 A. Correct.

3 Q. And then the next column over, amount of  
4 additional change work materials or equipment, 738,000  
5 and some change; isn't that correct?

6 A. Correct.

7 Q. And then we have a column next to that that's  
8 the total amount of all payments received. That's  
9 4,300,000 and some change?

10 A. Correct.

11 Q. So I just want to make sure I understand  
12 this. We have 13 million approximately, original  
13 contract price. Change order work is another 700,000,  
14 and Helix has been paid 4,300,000 and some change.

15 A. Correct.

16 Q. How did Helix come up with a lienable amount  
17 in that last column of 2,145,000 dollars?

18 A. That would be -- I was not involved in that.

19 Q. So you don't know how that amount was  
20 calculated?

21 A. Correct.

22 Q. Do you know how any of the lienable amounts  
23 were calculated on this sheet?

24 A. I do not.

25 Q. I want to make sure I understand your



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1 testimony earlier today. This lienable amount, the  
2 2,145,000 dollars -- sorry, \$2,145,116.73, Helix is not  
3 asking for that amount from APCO in this matter; is  
4 that correct?

5 A. I do not know the extent of the lien versus  
6 what we are lienning from APCO. My position, I don't  
7 get involved in the lienable calculations. My thoughts  
8 are they are lienning for lost overhead and profit for  
9 the 13 million dollar contract.

10 Q. Okay. So you think the lost overhead and  
11 profit's in that value there?

12 A. A part of, I would assume.

13 Q. Would that lost overhead and profit be gained  
14 by any of the work that was done by Gemstone -- under  
15 Gemstone or CAMCO?

16 A. I don't believe so. I believe it's  
17 separated.

18 Q. So under the lien, it appears that Helix is  
19 trying to say that APCO is responsible for its lost  
20 overhead and profit for the entire original contract  
21 price of 13 million, or is this just for the period up  
22 until August of 2008?

23 A. Based on what I see, I would think it's based  
24 on the 13 million two-thirty.

25 Q. The entire?



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1 A. Correct.

2 Q. Is there any particular reason why Helix is  
3 saying APCO is responsible for the entire contract  
4 amount, and then going on and stating that Gemstone and  
5 CAMCO and other people are responsible for additional  
6 amounts?

7 A. Again, I don't know how they were exactly  
8 calculated, so I do not know.

9 (Exhibit 95 marked  
10 for identification.)

11 BY MR. MOUNTEER:

12 Q. All right. Andy, you've been handed what has  
13 been marked as Exhibit 95, with a beginning Bates stamp  
14 of Helix 00378. Do you recognize this document?

15 A. Yes.

16 Q. What is this document?

17 A. Progress billing.

18 Q. Does it appear to be a true and accurate  
19 representation of Helix's progress billing?

20 A. Yes.

21 Q. What is it for the period to?

22 A. One second. Need to fix them again.

23 MR. ZIMBELMAN: This is not in order again?

24 MR. MOUNTEER: Yes.

25 A. Through August 31 of 2008.



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1 BY MR. MOUNTEER:

2 Q. Okay. Going back, you had said earlier you  
3 think that APCO had control of the progress through  
4 August of 2008. Does this document or any other  
5 document you've been shown today refresh your  
6 recollection of a more sure date of that time period?

7 A. I would believe end of August of 2008.

8 Q. So this would be the last application,  
9 certificate for payment that would have gone to APCO;  
10 is that correct?

11 A. I believe so, yes.

12 Q. All right. Let's look at this just for a  
13 moment. I'm just looking at the numbers on the front  
14 here. We have the starting on line 1, 13 million  
15 number that matches up with the lien; is that correct?

16 A. Correct.

17 Q. And then we have net change by change orders.  
18 Do you see that, 341,000?

19 A. Yes.

20 Q. Why is that number different than the number  
21 on the lien amount, if you want to reference back to  
22 Exhibit 94? You may want to keep 94 open for just a  
23 short time here to Exhibit A on 94; do you know why  
24 that amount is different?

25 A. Change order 738257. It's possible that some



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1 change orders either did not start or pertained to  
2 other buildings that did not start on the lien amount  
3 versus the billing form.

4 Q. Just so I'm clear, what I believe you're  
5 saying is there's change orders that were approved for  
6 work to be done, but the work was not completed by  
7 August 31 of 2008?

8 A. I would think that the change orders were  
9 issued for future buildings, or the change orders --  
10 I'm sorry, on the lien form that there were going to be  
11 changes on future buildings that were incorporated into  
12 the buildings performed under contract.

13 The ones on the billing form were for the  
14 buildings that were currently being constructed.

15 Q. Okay. So if we look at -- looks like someone  
16 had wrote some type of circle around it on number 4,  
17 total completed and stored to date. What does it mean,  
18 "and stored to date"?

19 A. There were fixtures on site, fixtures,  
20 distribution, materials that were sent to the site to  
21 be installed that for whatever reason weren't  
22 installed, but we were allowed to bill for --

23 Q. You were allowed to bill for having that  
24 material stored, correct?

25 A. -- having that materials stored, that's



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1 correct.

2 Q. So it looks like we have a 5,100,000 and  
3 change on that number. On number 5, we have the  
4 infamous word retainage. Do you see that?

5 A. Yes.

6 Q. Under there we have 500,000 and change. Is  
7 that the number that you're saying that Helix is  
8 seeking from APCO?

9 A. Yes.

10 Q. So just so we are clear, that is \$513,120.71?

11 A. Correct.

12 Q. Going down to number 6, we have total earned  
13 less retainage. We subtract that retainage out, that  
14 brings the total completed work to that 4,618,000 and  
15 change?

16 A. Correct.

17 Q. And then under number 8, we have current  
18 payment due. So under this particular pay app, with  
19 all the above numbers and whatnot, Helix is saying  
20 APCO, here's the application for 326,610 dollars; am I  
21 right on that?

22 A. Correct.

23 Q. Was APCO ever paid the 326,610 dollars?

24 A. I do not know.

25 Q. You're not aware of whether they were paid or



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1 not?

2 A. APCO?

3 Q. I mean, I'm sorry, Helix. Was Helix ever  
4 paid that amount?

5 A. Yes.

6 Q. So you're not claiming that APCO owed you for  
7 that amount?

8 A. Correct.

9 Q. With this being the last payment application  
10 that was to APCO, who did the next payment application  
11 go to?

12 A. I believe CAMCO.

13 Q. So are you faulting APCO for any payments  
14 that weren't made under CAMCO?

15 A. I do not know. If that's a legal -- I'm not  
16 sure.

17 Q. I mean, you could ask your counsel. I don't  
18 think it's legal. I guess what I'm curious for is --  
19 stated better -- is Helix claiming that APCO is  
20 responsible for any amounts, retainage, payment  
21 certificates, whatever, that went to CAMCO and not  
22 APCO?

23 A. I do not believe so.

24 Q. So as of August 31, 2008, you can't -- Helix  
25 doesn't fault APCO for any payments that would have



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1 been submitted to someone else after that date?

2 A. I believe so.

3 Q. So then is it Helix's position that Helix was  
4 paid 100 percent in full for everything -- when I say  
5 everything, I mean work completed and stored to date  
6 that APCO was responsible for on this project, except  
7 for the \$513,120.71?

8 A. Correct.

9 MR. MOUNTEER: Let's take a five-minute break  
10 if that's all right.

11 (Whereupon, a recess was taken.)

12 BY MR. MOUNTEER:

13 Q. All right, so Andy, let's talk quickly about  
14 once APCO left the project, or around the time that  
15 APCO was leaving the project. Helix had some notice  
16 that APCO was going to leave; is that correct?

17 A. I believe so.

18 (Exhibit 96 marked  
19 for identification.)

20 BY MR. MOUNTEER:

21 Q. All right, I'm showing you a document that is  
22 Bates stamped NVPE002240. It appears to be --

23 A. No, I don't have that number. 000247.

24 MR. ZIMBELMAN: That's what I'm looking at as  
25 well.



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1 BY MR. MOUNTEER:

2 Q. Let me see. Yeah, 247.

3 A. Okay. That's not what I heard.

4 Q. I'll start from the beginning. NVPE000247,  
5 appears to be an e-mail from Craig Colligan. Do you  
6 know who Craig Colligan is?

7 A. Do not recall.

8 Q. It appears Craig has an e-mail address from  
9 Gemstone. Does that refresh your recollection at all  
10 of who Craig may be?

11 A. Obviously with Gemstone in some capacity.

12 Q. Okay. And then the first name on that e-mail  
13 list, is that you?

14 A. That is correct.

15 Q. So do you recall receiving this e-mail?

16 A. Oh, boy. No.

17 Q. Okay. I understand. This was a long time  
18 ago in 2008. Believe me, I've got e-mails in my e-mail  
19 account going back a long ways.

20 Do you believe, though, based upon the fact  
21 that your name is cited to this too, that you would  
22 have received this e-mail?

23 A. Yes.

24 Q. Do you recognize any of the handwriting  
25 that's up in the right-hand corner? It appears there



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1 are two sets of initials. Do you have any idea whose  
2 initials those may be?

3 A. Negative.

4 Q. This e-mail appears to be sent on August 12,  
5 2008, during that last month of APCO's control of the  
6 project; would you agree with me?

7 A. Correct.

8 Q. In the body of the e-mail, could you read  
9 along with me, I'm going to start just at the very  
10 beginning, it says, "In light of recent work stoppage  
11 at ManhattanWest site." Were you aware of a work  
12 stoppage?

13 A. I believe so, yes.

14 Q. Do you know why the work was stopped?

15 A. The assumption would be payment.

16 Q. Are you aware it's because APCO had asserted  
17 from Gemstone that they were not getting paid?

18 A. I would assume so.

19 Q. Going back to the last sentence of that first  
20 paragraph, it says, "in contract, the recent work  
21 stoppage was actually a result of an ongoing dispute  
22 between Gemstone and its general contractor and had  
23 nothing do with Gemstone's financing for the project."

24 Do you know if that dispute between Gemstone,  
25 and I'm assuming, I'll represent to you the contractor



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1 I believe at that time was APCO, had to do with  
2 payment? Does that refresh your recollection at all?

3 A. Let me re-read the entire paragraph real  
4 quick.

5 I believe it states it's not regarding  
6 payment or financing.

7 Q. But earlier you thought it may have been?

8 A. That's usually been the construction industry  
9 what stops work.

10 (Exhibit 97 marked  
11 for identification.)

12 BY MR. MOUNTEER:

13 Q. You've been handed what's been marked as  
14 Exhibit 97. If we look at -- I think this is out of  
15 order as far as the way its Bates stamped. I believe  
16 that the second page was the cover letter on August  
17 21st, 2008, which would have come shortly after August  
18 12th that was cited in Exhibit 96. Do you ever recall  
19 seeing this document before?

20 A. I do not recall.

21 Q. Do you know --

22 MR. ZIMBELMAN: I'm sorry, are you saying  
23 this is a single document, counselor? Are you  
24 representing that this is a single document that they  
25 were --



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1 MR. MOUNTEER: Honestly, I don't know. I  
2 think it was a cover page, but I don't know if that's  
3 true or not.

4 MR. ZIMBELMAN: Because I don't see any  
5 enclosures notice on the letter, page 2 of the exhibit.

6 MR. MOUNTEER: That's fine. Let me clarify  
7 my question then.

8 MR. ZIMBELMAN: Thank you.

9 BY MR. MOUNTEER:

10 Q. Andy, do you recall seeing either one of  
11 these two pages in Exhibit 97?

12 A. I do not recall.

13 Q. Do you recall APCO telling Helix at any time  
14 that it was going to stop work for nonpayment?

15 A. Not specifically for nonpayment, no.

16 Q. Just that APCO was stopping work?

17 A. I believe so.

18 Q. Do you recall any of those conversations,  
19 what the content of them were?

20 A. I recall some issues with concrete. Don't  
21 know if that has anything to do with the project  
22 stopping or not.

23 Q. But Helix was fully aware that APCO was no  
24 longer going to be the contractor on the site, right?

25 A. To some extent, yes.



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1 Q. And it's Helix's understanding that CAMCO was  
2 going to take over at that point?

3 MR. ZIMBELMAN: At what point?

4 BY MR. MOUNTEER:

5 Q. End of August, starting September 1, 2008?

6 A. I believe we were informed that CAMCO was  
7 taking over or another GC was taking over.

8 (Exhibit 98 marked  
9 for identification.)

10 BY MR. MOUNTEER:

11 Q. Andy, you've been handed what has been marked  
12 as Exhibit 98. Appears to be another e-mail from  
13 someone at Gemstone, Jill Gisondo -- I might have  
14 brutalized the last name, G-i-s-o-n-d-o -- dated August  
15 28, 2008.

16 If you look down in the "to" column, it looks  
17 like Brian Johnson of Helix received this e-mail. Do  
18 you see that on the far left, about halfway down,  
19 EJohnson@HelixElectric?

20 A. Bob Johnson, correct.

21 Q. Bob Johnson. Do you recall ever receiving  
22 the e-mail?

23 A. My name's on it.

24 Q. This is still right around the end of August,  
25 correct?



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1 A. Correct.

2 Q. And the beginning of this e-mail is informing  
3 you and other parties that it's sent to, and I'll start  
4 reading that first paragraph, "The June checks should  
5 be completed and run at this time. An APCO  
6 representative has to sign all the subcontractor checks  
7 due to Gemstone's request to prepare the joint checks."

8 You said earlier there was a process where  
9 Helix started receiving joint checks; is that correct?

10 A. Correct.

11 Q. Do you know why that process was changed?

12 A. Do not.

13 Q. But as you testified earlier, any money due  
14 Helix at the end of August, except for retention, was  
15 paid and done?

16 A. Correct.

17 Q. Did Helix do any investigation as to why APCO  
18 was being removed as the contractor on the project?

19 A. I do not know.

20 Q. Who at Helix would have made the decision to  
21 continue with the project after APCO's been removed?

22 A. Victor Fuchs.

23 Q. Do you know why Victor made that decision?

24 A. Do not.

25 Q. Do you know who the owner of ManhattanWest



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1 was?

2 A. Alex -- I don't recall his last name.  
3 Edelstein.

4 Q. Do you know if you know if Victor and Alex  
5 are friends? Socially, business?

6 A. Business.

7 Q. Has Victor done any other work after this  
8 project for Alex Edelstein?

9 A. Not to my knowledge.

10 Q. Does Helix fault APCO in any way for the  
11 project actually failing?

12 A. I don't believe so.

13 Q. Does Helix fault APCO for any of CAMCO's  
14 actions?

15 A. I don't believe so.

16 Q. Do you know if Helix was involved in the  
17 appeal of this matter?

18 A. I'm unaware of the appeal.

19 Q. So you don't know if Helix was seeking  
20 payment alongside with any of the other contractors in  
21 this case on appeal to the supreme court?

22 A. I do not know.

23 Q. Do you know what ultimately happened with the  
24 property after the project closed?

25 A. No. As far as who owns the property or...



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1 Q. Well, ultimately Helix went back and did some  
2 work for Martin-Harris, correct?

3 A. Correct.

4 Q. So -- I'm assuming Helix had pulled off the  
5 project --

6 A. Correct.

7 Q. -- at some point, and then had to go back  
8 and re-set up and everything?

9 A. Correct.

10 Q. Do you know how much the contract amount was  
11 with Martin-Harris by chance?

12 A. I do not.

13 Q. Do you know if the scope of work changed with  
14 Martin-Harris at all?

15 A. I do not know specifics.

16 Q. Do you know if the bank was holding any funds  
17 that Helix is due or any of the parties are due in this  
18 matter?

19 A. Regarding Martin-Harris?

20 Q. No, regarding APCO or Helix.

21 A. I do not know.

22 Q. Is Helix aware that the property was  
23 ultimately sold and money from that proceed was  
24 distributed to the banks that had loans on the  
25 property?



1 A. I do not know.

2 MR. MOUNTEER: Let's take a five-minute  
3 break. I think we are just about done.

4 (Whereupon, a recess was taken.)

5 BY MR. MOUNTEER:

6 Q. All right, Andy, if you could just pull up  
7 Exhibit 93 for me, real quick.

8 A. Okay.

9 Q. I believe we said earlier that Exhibit 93 is  
10 actually Exhibit A to Exhibit 92, if that's right. Can  
11 you verify that just to make sure?

12 A. Correct.

13 Q. We talked earlier about how Helix is only  
14 seeking retention from APCO, and how it's Helix's  
15 position that because Helix left -- I mean APCO left  
16 the site, that it's owed that amount at that time. I  
17 guess can you please clarify then, in Exhibit 93 what  
18 these total amounts are on the front page for like  
19 building 2, 3, 7, 9 and 8?

20 A. It looks like the amount of each building per  
21 schedule of values.

22 Q. So when APCO left the site, did that whole  
23 entire schedule then transfer to CAMCO?

24 A. It appears that way, yes.

25 MR. MOUNTEER: I have no further questions.



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1 Thank you. Unless your counsel has anything.

2 MR. ZIMBELMAN: Actually, I do, surprisingly.

3 EXAMINATION

4 BY MR. ZIMBELMAN:

5 Q. Andy, I'm going to ask you to look at what  
6 has been previously marked as Exhibit Number 50 in a  
7 series of depositions that have occurred prior to yours  
8 today. Do you recognize Exhibit 50?

9 A. Yes.

10 Q. What is it?

11 A. Billing spreadsheet that we track invoices  
12 and payments on.

13 Q. Is this something that Helix prepared as a  
14 summary of its billings to APCO?

15 A. Yes.

16 Q. Have you had a chance to ascertain whether  
17 all of the numbers on this document are correct?

18 A. The numbers are correct with the exception of  
19 the totals. If you look at underneath 16713-011 in the  
20 left-hand column, there's a column that's been added,  
21 and I don't know if you need to pull that document up  
22 or not.

23 MR. MOUNTEER: Yeah, I wasn't prepared with  
24 that document yet. If we could go off the record for  
25 one second.



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1 MR. ZIMBELMAN: Yeah.

2 (Whereupon, a recess was taken.)

3 A. Okay, so yes, there's a column down at the  
4 bottom underneath pay app 16713-711. There's a line  
5 item directly below it that if you follow it all the  
6 way across to amount paid and balance due, 279,166.65  
7 has been plugged in both those columns.

8 Those numbers did not get recognized in the  
9 totals, so there's -- what happened is the person  
10 responsible for putting the spreadsheet together  
11 probably added a line item, inserted a line item and  
12 did not check the formula, because the APCO total  
13 column is a formula of all cells above that. So if you  
14 take the 4,347,019.46, does not include the 279,166.65.  
15 If you add those numbers together, that is what Helix  
16 received.

17 MR. MOUNTEER: Let's add them and get on the  
18 record what that number is, just in case we look at  
19 this later.

20 MR. ZIMBELMAN: Let's have the witness do it,  
21 you can verify it.

22 A. So I come up with \$4,626,186.11.

23 MR. MOUNTEER: Agreed.

24 A. That amount is what we received for this  
25 invoice.



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1 BY MR. ZIMBELMAN:

2 Q. Similarly, Andy, was that number accounted  
3 for in the balance due column, that 279,166.65?

4 A. The balance due, the 784,187.65 less the  
5 279,166.65 is the balance due, and I'll do the math on  
6 that as well.

7 MR. MOUNTEER: Wait. I want to make sure I  
8 understand your response to that question while we are  
9 doing the math here.

10 So what you're saying is the 784 number needs  
11 to be subtracted from the -- or the 279 needs to be  
12 subtracted from the 784 and that's your balance due?

13 THE WITNESS: That's correct. And the number  
14 is 505,021.

15 BY MR. ZIMBELMAN:

16 Q. And that's the retention that was unpaid as  
17 billed to APCO, correct?

18 A. Correct.

19 MR. MOUNTEER: Thank you for clarifying.

20 MR. ZIMBELMAN: Certainly.

21 BY MR. ZIMBELMAN:

22 Q. Andy, I'm going to ask you to look at Exhibit  
23 95 as well.

24 A. Okay.

25 Q. We looked at it earlier, counsel was asking



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1 you about the retainage number 513,120.71 as of August  
2 31st, 2008?

3 A. Correct.

4 Q. Do you know why there's an approximate eight  
5 thousand dollars difference between those two numbers?

6 A. The amount received by Helix, I don't know  
7 exactly how it came about to be eight thousand dollars  
8 off, but I know we definitely received the  
9 4,626,186.11.

10 Q. Okay. All right, you weren't present, but on  
11 Tuesday at the continuation of the PMK deposition of  
12 APCO with Ms. Mary Jo Allen -- do you know Mary Jo?

13 A. I do not.

14 Q. She testified about a document she prepared  
15 and that was Exhibit 68.

16 MR. MOUNTEER: Yeah, I have a copy of that.  
17 Thank you.

18 MR. ZIMBELMAN: Sorry, the Exhibit 50 that I  
19 presented to the witness, he has handwritten in the  
20 changes that we talked about. Counsel, do you agree  
21 with that?

22 MR. MOUNTEER: I agree with that. Should  
23 have warned him not to write on the original copy.

24 (Exhibit 99 marked  
25 for identification.)



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1 MR. ZIMBELMAN: Back on the record.

2 To clarify our record on our exhibits, what  
3 we did off the record was take the original Exhibit  
4 Number 50, we took a photocopy of that and we placed a  
5 new Exhibit 50 sticker on top of that in the exact same  
6 location. We took the Exhibit 50 that we were using  
7 that the witness wrote on, we have crossed out the  
8 Exhibit 50 sticker and we have placed a new sticker and  
9 marked it Exhibit 99.

10 MR. MOUNTEER: Agreed.

11 BY MR. ZIMBELMAN:

12 Q. And I'm going to caution you not to write on  
13 Exhibit 68 that I've handed to you. If we do decide  
14 it's necessary, we will go ahead and go off the record  
15 and make a copy and have you write on it. Again, that  
16 was totally my fault.

17 So without getting into any communications  
18 that you and I had, don't want to invade the  
19 attorney-client privilege, did you have a chance to  
20 review Exhibit 68 subsequent to the APCO deposition  
21 that was marked?

22 A. No.

23 Q. You did or did not have a chance to look at  
24 Exhibit 68?

25 A. Prior to?



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1 Q. No, afterwards.

2 A. Yes, yes, yes. That's correct.

3 Q. And again, without talking about what you and  
4 I discussed, did you have a chance to determine whether  
5 any of the information on this exhibit is correct or  
6 incorrect?

7 A. Yes.

8 Q. So, for example, Ms. Allen has indicated that  
9 the total net payments to Helix through August 2008  
10 billings was 4,626,186.11, which miraculously lines up  
11 with the figure you came up with by correcting Exhibit  
12 50, that's now marked as Exhibit 99, correct?

13 A. Correct.

14 Q. 4,626,186.11. So you believe that her number  
15 of total payments of 4,626,186.11 is correct?

16 A. Correct.

17 Q. So we agree on that, right?

18 A. Yes.

19 Q. Now, there's a section in the lower half of  
20 the first page of Exhibit 68 that's entitled, "Helix  
21 overpayment from general conditions and light fixture  
22 installation as of August 2008." First let's take the  
23 general conditions issue. Did you attempt to evaluate  
24 whether or not Helix overbilled for its general  
25 conditions for phase 1?



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1 A. I tried to confirm that number and I was  
2 unable to.

3 Q. What did you do to try to confirm that  
4 number?

5 A. I looked at the schedule of values on our  
6 billing sheet.

7 Q. So, for example, we looked today at Exhibit  
8 95. Can you pull that document?

9 A. Yes.

10 Q. And Exhibit 95 being the pay app for the  
11 period of 8/31/2008, correct?

12 A. Correct.

13 Q. It's the last pay app submitted to APCO,  
14 correct?

15 A. Correct.

16 Q. So is this the document you looked at to try  
17 to evaluate whether or not Helix overbilled its general  
18 conditions?

19 A. Correct.

20 Q. What did you determine -- were you able to  
21 determine what methodology Ms. Allen used in creating  
22 Exhibit 68 as far as evaluating the general conditions  
23 dollars for phase 1 of 172,500?

24 A. I was not able to confirm how she -- or that  
25 number was computed.



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1 Q. Were you able to determine looking at Exhibit  
2 Number 95, which line items of the schedule of values  
3 Ms. Allen used to -- which line items went into her  
4 characterization of general conditions?

5 A. Items 1 through 7.

6 Q. And you know that because why?

7 A. Basically the schedule of values submitted  
8 for conditions to build the job that aren't necessarily  
9 related or become part of the job.

10 Q. Well, one of those is, for example,  
11 electrical engineering, in the amount of 150,000  
12 dollars, correct?

13 A. Correct.

14 Q. And according to the schedule of values on  
15 the final pay app to APCO, you had previously billed  
16 83,700 of that amount, correct?

17 A. Correct.

18 Q. It's column D. And then in column G, shows  
19 the total completed and stored to date of 83,700,  
20 correct?

21 A. Correct.

22 Q. And the next column, which shows a percentage  
23 of completion at 54 percent, correct?

24 A. Correct.

25 Q. And the balance to finish of 71,300, right?



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1 A. Correct.

2 Q. You believe that was an accurate billing at  
3 the time?

4 A. Correct.

5 Q. The second item was mobilization at 60,000  
6 dollars, correct?

7 A. Correct.

8 Q. You've billed a total of 60,000 dollars,  
9 correct?

10 A. Correct.

11 Q. For 100 percent of that amount, right?

12 A. Correct.

13 Q. Is it appropriate to have billed 100 percent  
14 of mobilization even though you're not done with the  
15 job?

16 A. Correct.

17 Q. Why?

18 A. It's the cost to mobilize the job, to get the  
19 proper materials or supervision, equipment, in order to  
20 build the job.

21 Q. In other words, you've done that portion of  
22 the so-called general conditions long before this  
23 billing, correct?

24 A. Correct.

25 Q. And the next line item is number 3, office



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1 trailer/admin 24 months. And the schedule value of  
2 120,000 dollars, correct?

3 A. Correct.

4 Q. You had previously billed 55,000, you're  
5 billing 5,000, so apparently your monthly cost for  
6 office trailer and admin is 5,000 dollars, right?

7 A. Correct.

8 Q. So total to date of 60,000 dollars, and we  
9 can determine how many months you billed that 5,000  
10 dollars from that, correct?

11 A. Correct.

12 Q. And you show that being 50 percent complete,  
13 that one, correct?

14 A. Correct.

15 Q. Halfway through your anticipated 24 months,  
16 right?

17 A. Correct.

18 Q. Now, did these items all the way through item  
19 7, including supervision, planning and coordination,  
20 the 120,000 dollars, of those seven items -- well, is  
21 that for the entirety of the project, phases 1 and 2?

22 A. Correct.

23 Q. And so once you finished -- and what was  
24 phase 1 versus phase 2?

25 A. Phase 1 was buildings 2, 3, 7, 8, 9.



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1 Q. Now, is it possible for you to take that  
2 total amount that goes into these general conditions  
3 items 1 through 7, first of all, can you add that up  
4 for us?

5 A. 605,000.

6 Q. That 605,000 dollars, is there a way to  
7 accurately determine what portion of the general  
8 conditions dollars applies to phase 1 versus phase 2?

9 A. No.

10 Q. So, for example, mobilization couldn't apply  
11 to phase 2 at all, right? In other words, it's already  
12 incurred before you --

13 A. Correct.

14 Q. You got --

15 A. Correct.

16 Q. So you're not going to give a percentage of  
17 mobilization to phase 2, are you?

18 A. Correct.

19 Q. Were the scopes of work for phase 1 and phase  
20 2 identical in terms of cost?

21 A. We had cost per building type, and some of  
22 the phase 2 buildings were the same as phase 1  
23 buildings.

24 Q. With respect to the monthly 5,000 dollars for  
25 office trailer/admin, those 24 months, were you on



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1 schedule to complete phases 1 and 2 in 24 months as of  
2 the time of this pay application?

3 A. To the best of my knowledge, yes.

4 Q. Did you make an effort to determine where  
5 Ms. Allen came up with this figure of general  
6 conditions for phase 1 at 172,500 dollars?

7 A. I attempted to, yes.

8 Q. What was your determination of what you  
9 believe she did?

10 A. She had to take an educated guess of -- I'm  
11 not sure. I don't know how the 172,500 --

12 Q. If you add up nongeneral conditions portions  
13 of the work built, is that possible to do?

14 A. We can do that.

15 Q. And you can separate the building costs from  
16 the general conditions, can't you?

17 A. Correct.

18 Q. Would you be able to do that for phase 2 as  
19 well?

20 A. Correct.

21 Q. Would you be able to compare the total  
22 building cost and set that number phase 1 and phase 2,  
23 whatever that number adds up to, 13,200,000 something  
24 like that, right?

25 A. Correct.



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1 Q. You add that number, you set that number next  
2 to the total general conditions of 605,000 dollars,  
3 correct?

4 A. Correct.

5 Q. Now, if you split up that 13,200,000 dollars,  
6 did that include the 605, by the way?

7 A. The 13,200,000 does include the 605.

8 Q. So if you back out the 605, then you've got  
9 the building cost less general conditions, correct?

10 A. Correct.

11 Q. And you can take the two phases of that  
12 13,200,000, less general conditions, and you can  
13 determine this dollar amount applies to phase 1, and  
14 this dollar amount applies to phase 2, and it totals up  
15 to that 13 million less general conditions?

16 A. Correct.

17 Q. And you can evaluate a percentage of phase  
18 1's total building costs to the total building cost,  
19 couldn't you?

20 A. Correct.

21 Q. Then you could take the general conditions  
22 dollars of 605,000 dollars and you can find an equal  
23 and correlative percentage?

24 A. Correct.

25 Q. Right? So you could take that phase 1



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1 percentage of general conditions and say, well, let's  
2 just say hypothetically that phase 1's building costs  
3 were 45 percent of the overall costs of the buildings  
4 for phases 1 and 2, hypothetically?

5 A. Okay.

6 Q. You could then take 45 percent of the 605,000  
7 dollars and come up with a number?

8 A. Correct.

9 Q. And say, oh, that's the general conditions  
10 for phase 1?

11 A. Correct.

12 Q. Would that be an accurate way of determining  
13 what the general conditions were for phase 1?

14 A. Pretty accurate.

15 Q. Okay. Now, Ms. Allen has indicated that you  
16 took the 153,525 as your billings to general conditions  
17 for phase 1. Sorry, net percentage of general  
18 conditions that should have been billed is 153,525.  
19 She says that you actually billed and were paid  
20 386,392. When you look at the continuation sheet, the  
21 schedule of values and determine whether or not you, in  
22 fact, you billed and had been paid 386,392.50 as of  
23 the -- or at least billed for through August 31st, that  
24 amount of money?

25 A. Yes, that amount should be lines 1 through 7





1 under column G. Those totals should be the 429,325  
2 less the ten percent, would be the 386,392.50.

3 Q. And so by comparison to the total amount of  
4 general conditions, she's saying you therefore  
5 overbilled your general conditions by a factor of  
6 232,867.50, because you should have only billed  
7 172,000 -- excuse me, 153,525; is that wrong? And if  
8 so, why?

9 A. Yeah, I believe it is wrong, because the  
10 general conditions were -- the cost is more up front  
11 for the entire contract, not just phase 1. General  
12 conditions are based on the entire contract.

13 Q. So you might incur some general conditions  
14 earlier than later, for example?

15 A. Correct.

16 Q. Now, if you had at some point exceeded your  
17 general conditions, would you be billing for that  
18 number at any point?

19 A. No.

20 Q. If you billed for that number, do you think  
21 that APCO would have paid you that amount of money?

22 A. No.

23 Q. Do you think the owner would have approved  
24 you overbilling your general conditions --

25 A. No.



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1 Q. -- more than 100 percent?

2 A. No.

3 Q. Now, with respect to the light fixture  
4 installation issue, Ms. Allen indicates in this based  
5 on page 2 of the Exhibit 6, it indicates you've been  
6 overpaid for certain line item numbers with respect to  
7 buildings, 2, 3, 7, 8 and 9, Helix line item numbers  
8 23, 34, 87, 112 and 126, correct?

9 A. Yes.

10 Q. Just looking at page 2, first of all, is any  
11 portion of this document prepared by Helix?

12 A. No.

13 Q. What about this section, the information in  
14 the first large box, is that from a Helix document?

15 A. Yes.

16 Q. What about the information in the smaller box  
17 below that, is that Helix prepared or it come from a  
18 Helix document?

19 A. No.

20 Q. What about the writing below, the lower box?

21 A. No, not Helix.

22 Q. With respect to the writing that is Helix or  
23 from a Helix document, it shows Helix line items  
24 numbers previously billed materials stored, material  
25 removed and so forth, correct?



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1 A. Correct.

2 Q. Do you believe that those numbers are  
3 accurate in the first large box?

4 A. Yes.

5 Q. If you take, for example, line item number  
6 23, previously billed materials stored, 26,000 dollars,  
7 correct?

8 A. Correct.

9 Q. And that's from the schedule of values, isn't  
10 it?

11 A. Correct.

12 Q. That's from the August 31st schedule of  
13 values, right?

14 A. Correct.

15 Q. If you look at line item number 23, of the  
16 schedule of values, that 65,500 is the total scheduled  
17 value?

18 A. Correct.

19 Q. 58,950 from previous applications, total to  
20 date 58,950 is completed and stored, or 90 percent?

21 A. Correct.

22 Q. Now, in the lower box of page 2, Exhibit 68,  
23 Ms. Allen has placed line item number 23, and says  
24 Helix schedule of value for line 23, 65,500, correct?

25 A. Correct.



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1 Q. Then she breaks that out into a labor portion  
2 of light fixture package and a material portion of  
3 light fixture package, and she says the labor portion  
4 was 39,500 and the material portion was 26,000, and  
5 that the amount paid to Helix was 53,055, correct?

6 A. Correct.

7 Q. She does that for line items 34, 87, 112 and  
8 126, correct?

9 A. Correct.

10 Q. She takes the schedule of value -- the  
11 scheduled value, right, and she breaks that up into a  
12 material and labor component, correct?

13 A. Correct.

14 Q. Is that an accurate way of assessing what  
15 Helix is billed on the -- on these line items?

16 A. No.

17 Q. Why not?

18 A. The schedule of value for line items 23, 34,  
19 87, 112 and 126 is for material only. They do not  
20 involve labor.

21 Q. Does the -- is there any labor line item that  
22 would apply to or be related to these material line  
23 items?

24 A. Not the specific 23, 34, 87, 112 or 126, but  
25 different line items on the schedule of values.



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1 Q. Would account for labor --

2 A. Would account for labor to install the light  
3 fixtures, correct.

4 Q. So your testimony is those line items are  
5 purely material, correct?

6 A. Correct.

7 Q. So if Ms. Allen then says that the total  
8 materials portion of light fixture package for lines  
9 23, 34, 87, 112 and 126 is 179,250, that would just be  
10 wrong?

11 A. Correct.

12 Q. And if she says that the labor portion to  
13 install light fixture packages for -- excuse me, if she  
14 said the total materials for those line items was  
15 179,250, that would be wrong as well, correct?

16 A. Correct.

17 Q. And if she said the labor portion for those  
18 line items was 304,750, that would also be wrong,  
19 correct?

20 A. Correct.

21 Q. Did Helix overbill any of these line items  
22 23, 34, 87, 112 and 126?

23 A. No.

24 MR. ZIMBELMAN: That's all I have.

25 ///



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FURTHER EXAMINATION

BY MR. MOUNTEER:

Q. Looking at that same box below that was prepared by Ms. Allen, you just testified that those particular line item numbers were for material only, correct?

A. Correct.

Q. Can you show me then where the line items are on the payment application for the labor, can you identify those particular lines for each one of those?

A. Yes. So Exhibit 95, for line item 23 --

Q. The labor would be which one?

A. The labor would be items 28, 29, 30 and 31.

Q. Okay, and the same for line 34, please?

A. 34, they would be 51, 53, 55.

Q. I'm sorry, trying to catch up. For 34 they are going to be 51?

A. 51, 53, 55, 57.

For 87 it would be 94, 96, 98, 100, 102, 104, 106, 108, 110.

Q. Okay.

A. For 112 it would be 118, 120, 122, and 124. And for 126 it would be 132, 134, 136, 138.

MR. MOUNTEER: All right. I have no further questions.



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FURTHER EXAMINATION

BY MR. ZIMBELMAN:

Q. Just to clarify, Andy, those numbers you read off, so for example, for line item 23, please tell me the line items that would have labor for those one more time.

A. 28, 29, 30 and 31.

Q. Now, those dollar values apply -- that are in those line items, so those dollar values apply only to the materials represented by line 23?

A. A portion of. It has -- it has -- to install fixtures, to install devices, to install finish product.

Q. So those line items of labor are for multiple activities?

A. Correct.

Q. Not just installing these items represented by number 23, correct?

A. Correct.

FURTHER EXAMINATION

BY MR. MOUNTEER:

Q. Just to make sure we understand before we close out the deposition, I'm only going to focus on number 23, make sure I have an understanding of it. So the light fixture package in line item 23 has a



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1 scheduled value of 65,000, you say is 90 percent done?

2 A. Correct.

3 Q. What you're saying is, 90 percent of those  
4 products have been purchased and stored?

5 A. Correct.

6 Q. Okay. Now we go down to line 28, first floor  
7 rough-in and trim, schedule of values of 25,000  
8 dollars, that doesn't necessarily say that on the first  
9 floor rough and trim, you have installed 90 percent of  
10 those light fixtures; is that just saying there's 90  
11 percent of that work done on that floor?

12 I'm trying to correlate exactly, because the  
13 way I look at it here is in line item 23, you purchased  
14 90 percent of the product.

15 A. Correct.

16 Q. Okay? And then we look down at 28, 29, 30  
17 and 31, your rough-in and trims for those various  
18 floors. Are you saying, because all of them also  
19 appear to have 90 percent --

20 A. Complete.

21 Q. -- completion percentages, that there was  
22 additional work that was not including the 90 percent  
23 of the purchase, or has 90 percent of the product been  
24 installed with 90 percent of the work? Is there a  
25 correlation between the two?



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1 A. There's not an exact correlation between the  
2 two.

3 Q. Can you give me a rough percentage of the  
4 relationship between how much the product that was  
5 purchased would have been installed at that time?

6 A. Not without a thorough review of -- the line  
7 items 28, 29, 30, 31 include other installation of  
8 materials that are separate from light fixtures.

9 Q. Okay. But the way I read this, just so I'm  
10 clear, is in August of 2008, for these particular line  
11 items that -- and I'm not just talking about, you know,  
12 23, the labor under there, but the line items you  
13 recognized for the labor of Helix number 23, 34, 87,  
14 112 and 126, those related, you're claiming 90 percent  
15 of the building was complete as far as Helix's scope of  
16 work?

17 A. For these items 23, 34, 87, 112 and 126?

18 Q. Correct. I'm not saying that amount of  
19 product was installed, but if you look at just the  
20 secondary labor, just the labor items that you  
21 recognize, I can go through those lines just to make  
22 sure we have a clear record. So we are talking about  
23 line 28, 29, 30, 31. Continuing on we are talking  
24 about lines 50, 51, 53, 55 and 57. 94, 96, 98, 100,  
25 102, 104, 108, 110, 118, 120, 122, 124, 132, 134, 136,



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1 138. So for that labor, you're claiming the percentage  
2 that was completed, that's Helix's percentage of work  
3 that was completed on that building at that time --

4 A. Correct.

5 Q. -- in August 2008?

6 A. Correct.

7 MR. ZIMBELMAN: On those line items.

8 MR. MOUNTEER: On those line items.

9 A. A couple of your numbers you missed, but it's  
10 the ones labeled in the schedule of values either trim  
11 or fixture trim.

12 BY MR. MOUNTEER:

13 Q. Which one -- I want to make sure I have those  
14 numbers right.

15 A. So let's recap it. Let's recap it.

16 Q. Please.

17 A. For line item 23, it would be 28, 29, 30, 31.

18 Q. Got it.

19 A. For --

20 MR. ZIMBELMAN: Hold on. Sorry, go through  
21 it again.

22 A. For 23, it would be 28, 29, 30 and 31. For  
23 34, it would be 39, 40, 41, 42. For 87, it would be  
24 94, 96, 98, 100, 102.

25 MR. ZIMBELMAN: Hang on.



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1 Not 92, correct?

2 THE WITNESS: I'm sorry, let's start over on  
3 that building.

4 A. So on 87, the labor for 87 would be under 94,  
5 96, 98, 100, 102, 104, 106, 108, and 110.

6 For 112, it would be 118, 120, 122, and 124.

7 And for 126, it would be 132, 134, 136, and  
8 138.

9 MR. MOUNTEER: Thank you for clarifying that.  
10 Us people who are not mathematically minded. Make sure  
11 we get it down right.

12 All right, with that I have no further  
13 questions.

14 MR. ZIMBELMAN: Thank you.

15 ( PROCEEDINGS ADJOURNED AT 11:50 AM )

16 \* \* \* \*

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[illegible]

I, June W. Seid, a Certified Court Reporter  
licensed by the State of Nevada, certify: That I  
reported the deposition of ANDREW RIVERA, on Tuesday,  
July 20, 2017, at 9:18 a.m.;

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any of the parties involved in the proceeding; nor a person financially interested in the proceeding; nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
1st day of August, 2017.

JUNE W. SEID, CCR NO. 485



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DEPOSITION ERRATA SHEET

Assignment No. J0581357

Case Caption: APCO Construction vs. Gemstone

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ANDREW RIVERA



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DEPOSITION ERRATA SHEET

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HELIX ELECTRIC OF NEVADA 30(b)(6)  
APCO vs GEMSTONE DEVELOPMENT

July 20, 2017  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**Supreme Court Case No. 77320**  
***Consolidated with 80508***

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

**APCO CONSTRUCTION, INC., A NEVADA CORPORATION,**

Respondent.

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**JOINT APPENDIX**  
**VOLUME 79**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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

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



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

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

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	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
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11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

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

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

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

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

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<sup>1</sup> Filed January 31, 2018



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

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

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

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

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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
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	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
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	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
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	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
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	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

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



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

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

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

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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

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

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<sup>4</sup> Filed January 31, 201883

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

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

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



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

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

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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

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

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

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

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



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

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

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

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

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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

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

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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



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

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

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

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

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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>08-06-19</b>	<b>Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA007316- JA007331</b>	<b>101</b>
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC’s Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.’s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Nevada, LLC, SWPPP Compliance Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109

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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec Against APCO	JA008379- JA008450	110/111
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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484- JA008504	111
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	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
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	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
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	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
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<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
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	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
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	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
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<b>06-01-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
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	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
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<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

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01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
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	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
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<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
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<sup>5</sup> Filed January 31, 2018

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<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

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HELIX ELECTRIC OF NEVADA 30(b)(6)  
APCO vs GEMSTONE DEVELOPMENT

July 20, 2017  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

13 APCO CONSTRUCTION, a Nevada  
14 corporation,

15 Plaintiff,

16 vs.

17 GEMSTONE DEVELOPMENT WEST, INC., A  
18 Nevada corporation,

19 Defendant.

Case No.: A571228  
Dept. No.: 13

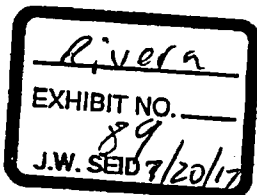
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A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

20 AND ALL RELATED MATTERS

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

21 PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Nevada Rules of Civil  
22 Procedure, Plaintiff, APCO Construction, by and through its attorneys, Marquis Aurbach  
23 Coffing, will take the deposition of Helix Electric of Nevada LLC upon oral examination on July  
24 20, 2017 at 9:00a.m. before a Notary Public, or before some other officer authorized by law to  
25 administer oaths. The deposition will take place at Marquis Aurbach Coffing, 10001 Park  
26 Run Drive, Las Vegas, NV 89145.

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



Page 1 of 8

MAC:05161-019 3106777\_1 6/7/2017 10:55 AM

Case Number: 08A571228

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

**MARQUIS AURBACH COFFING**

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Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

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

3 Dated this 7th day of June, 2017.

MARQUIS AURBACH COFFING

By

Jack Chen Min Juan, Esq.

Nevada Bar No. 6367

Cody S. Mounteer, Esq.

Nevada Bar No. 11220

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorney(s) for APCO

CONSTRUCTION APCO CONSTRUCTION

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

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

[As amended; effective January 1, 2005.]

**TOPICS**

1. Your claims and facts as alleged against APCO;
2. Documents that you have disclosed in support of your claims against APCO;
3. Your assertion that APCO is liable for any portions of your general and/or lien claims;
4. The percentage/allocation of your general and/or lien claims against APCO versus CAMCO;
5. The payment process, payment details, scope of payments, parties involved, and standard practices of payment, including, but not limited to, all payment applications, approvals, amounts, checks, and releases;
6. Each fact related to your contract agreement with APCO in regard to the Manhattan West Project ("Project") at issue in this matter, including, but not limited to original contact(s), change orders, and ratification agreement(s);
7. Each fact related to your scope of work at the Project;
8. The structure of your business; and
9. Your viability and business status from the time you entered into the subject contract until the date of your deposition, including, but not limited to, whether your company has been sold, transferred control, wound down, and/or claimed bankruptcy.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing AMENDED NOTICE OF TAKING NRCP RULE 30(b)(6) DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR HELIX ELECTRIC OF NEVADA LLC was submitted electronically for service with the Eighth Judicial District Court on the 7th day of June, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Peel Brimley

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Henderson, NV 89074

*caleb@fangsdalllaw.com*

"Cody Mounteer, Esq."

om

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

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28		

**MARQUIS AURBACH COFFING**

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(702) 382-0711 FAX: (702) 382-5816

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

3 N/A

4 /s/J. Case

5 J. Case, an employee of  
6 Marquis Aurbach Coffing

## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 163-7 APCO Construction Project No. 168  
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, 303.861.5704 Haman Street, Denver, CO . 80202. Redwine Engineering (303) 676-9510 700 17th Street, Denver, CO 80202. Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702) 990-9300 5011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor")  
3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0398. Nevada  
Contractors License No. 14563.

And Helix Electric  
3078 E. Sunset Road  
Suite 9  
Las Vegas, NV 89120 P 702-732-1188 F 702-732-4386

(hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 53810

Limit: Unlimited

Contractor and Subcontractor agree as follows:

### 1. Contract Documents

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering and approved by Gemstone Development West, Inc. and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").

- 1.2 The attached Helix Electric Exhibit is also part of this Subcontract Agreement. The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

APCO Construction  
Subcontractor HE

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- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

- 2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work
- 2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

- 2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. Contract Price and Payments

- 3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work.
- 3.2 In consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and

APCO Construction  
Subcontractor UR

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furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25<sup>th</sup> of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25<sup>th</sup> of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to

APCO Construction  
Subcontractor UR

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APCO 103633

assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

- 3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.
- 3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.
- 3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for its scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (Forms attached). If any subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.
- 3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.
- 3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.
4. Prosecution of Work
- 4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.
- (a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size

APCO Construction  
Subcontractor UR

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24"x36" including one (1) sepia & six (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled "The Manhattanwest Condominiums". Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.

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- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.
- 4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
- 4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.
5. Changes and Claims
- 5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.
- 5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.
- 5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.
- 5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

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6. Assignments

- 6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

7. Taxes

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. Default and Termination

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specifications; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/or appliances shall be returned to

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Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 8.4 In the event Contractor elects to use his own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor - At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment - At the then prevailing Equipment Rental Rates as established by the Blue Book for Construction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.
- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading

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for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for Convenience

9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.

9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
- B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
- C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
- D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
- E. Complete non-terminated portions of the Subcontract Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
- F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
- G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
- H. Take any other action toward termination as directed by the General Contractor.

9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.

9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:

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- A. The direct cost of the work performed by Subcontractor prior to termination.
- B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
- C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.

9.6 **Items Not Compensated.** The Subcontractor shall not be compensated for.

- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
- B. Unabsorbed overhead and anticipated lost profits.

9.7 **Permitted Deductions.** The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.

9.8 **Consideration.** If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.

9.9 **Settlement and Release of Any and All Claims.** The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

#### 10. Bonds

10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligor, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

#### 11. Indemnity and Insurance -

11.1 **INSURANCE REQUIREMENTS** - Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

- 1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.

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2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only.** "Claims Made" is not acceptable. The limits of liability shall not be less than:
  - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence of,
  - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. **Excess Liability:** Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
5. **The Project is covered by an OCIP.** Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
7. **Liability Policy forms must include:** a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC, and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."
8. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; (see attached samples) (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

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## 11.2 INDEMNIFICATION

- a) General Indemnity: All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss, damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.
- b) Indemnity Not Limited: In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

## 12. Warranty and Guarantee

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors (Refer to General Contractor's/Owner's Contract).

## 13. Patents

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

## 14. Compliance with Regulations, Applicable Law and Safety

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any

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way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor;

- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.
15. Damage to Work
- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.
16. Inspection and Approvals
- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.
- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when

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specifically required to comply with at request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

17. Arbitration

17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.

17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.

17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.

17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.

17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.

17.7 This Agreement to arbitrate shall not apply to any claim of contribution or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.

17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

18. Miscellaneous

18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.

18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.

18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The

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Illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.

- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.
- 18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF, The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Helix Electric

Victor Fuchs, President

TITLE

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APCO CONSTRUCTION

Randy Nichel

4-8-07

Project Manager

TITLE

APCO Construction  
Subcontractor U.R.

Page 15 of 17

APCO 103645





**Helix Electric**  
CONSTRUCTORS • ENGINEERS

**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN ASPHALT PRODUCTS CORPORATION (APCO)  
AND HELIX ELECTRIC OF NEVADA, LLC.  
FOR THE MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(APCO-JOB #168/HE JOB #16713)**

Page 1

1. OK C Section 1, Paragraph 1.3: Revise as follows: add the phrase "... except to the extent a particular obligation of the Subcontractor is set forth in this Subcontract" to the end of the first sentence; add the phrase "... with respect to the Work of this Subcontract" to the end of the second sentence; and delete the third sentence.
2. NO C Section 3, Paragraph 3.2: Revise to read as follows: "In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract."
3. NO C Section 3, Paragraph 3.4: Delete in its entirety.
4. NO C Section 3, Paragraph 3.5: 1<sup>st</sup> Sentence change 15 days to 40 days. 2<sup>nd</sup> Sentence change less 10% retention to 5%. Delete the last sentence ("Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering in to the Prime Contract with the Owner.")
5. OK C Section 3, Paragraph 3.7: Revise as follows: Third line delete "...regardless of the source of said obligation." And replace with "...under the provisions of this Subcontract."
6. OK C Section 3, Paragraph 3.7: Add the following: "Contractor agrees that before it may apply funds due Subcontractor to any alleged indebtedness of Subcontractor, Contractor shall first give Subcontractor written notice not later than ten days after the alleged indebtedness of Subcontractor was incurred."
7. NO C Section 3, Paragraph 3.8: Change 10% to 5% and Add the following: "If retention is reduced on the project, same will be passed on to the Subcontractor."
8. OK C Section 4: Add the following: "In the event the schedule as set forth above is changed by Contractor for whatever reason so that Subcontractor either is precluded from performing the work in accordance with said schedule and thereby suffers delay, or, is not allowed the number of calendar days to perform the work under such modified schedule and must accelerate its performance, then Subcontractor shall be entitled to receive from Contractor payment representing the costs and damages sustained by Subcontractor for such delay or acceleration, providing said costs and damages are first paid to Contractor."

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APCO 103646



**Helix Electric**

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**HELIX ELECTRIC EXHIBIT**

**TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN ASPHALT PRODUCTS CORPORATION (APCO)  
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- OK  
C 9. Section 4, Paragraph 4.1: Add the following new paragraph: "Contractor shall make available to Subcontractor in a prompt fashion, all information in its possession that affects Subcontractor's ability to meet its obligations under this Subcontract. Information that affects this Subcontract shall include, but not be limited to, information relating to such matters as delays, modifications to the Contractor's agreement with the Owner or other subcontracts that affect the work of the Subcontractor, impending strikes or work stoppages by any trade and deterioration of the Owner's ability to pay for the Work on the Project."
- OK  
C 10. Section 4, Paragraph 4.3 Delete in its entirety and replace with following: "4.3 Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract, and shall regularly haul such waste materials and rubbish to trash receptacles provided by Contractor in convenient locations on the Project's premises. Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors and shall not be subject to any charge by Contractor for trash removal or cleanup determined on a pro rata or similar basis."
- OK  
C 11. Section 4, Paragraph 4.4: Delete the last sentence.
- NO  
C 12. Section 4, Paragraph 4.5: Revise as follows: add the words "negligent or wrongful acts of the . . ." after the words "delays caused by" in the third line of Paragraph 4.5; then add the following to the end of Paragraph 4.5: "Further, in the event Contractor seeks to assess liquidated or other delay damages against Subcontractor, such an award of liquidated damages shall be assessed against Subcontractor only to the extent caused by Subcontractor, Subcontractor's employees and agents, sub-subcontractors or their agents or employees or other persons performing portions of the work under contract with Subcontractor, or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract. Contractor shall not assess liquidated damages against Subcontractor unless and until the Contractor gives written notification of intent and basis of determination of amounts and degree of responsibility Subcontractor and all other subcontractors. Such written notification must be given within a reasonable period of time after the occurrence for which the Contractor seeks to assess liquidated damages, not to exceed ten (10) days after the alleged event causing the damage. Nevertheless, liquidated damages, taken in the aggregate, shall not exceed 10% of Subcontractor's total Subcontract Price."
- NO  
C 13. Section 5, Paragraph 5.1: Revise as follows: Third line delete "10%" and replace with "15%".
- OK  
C 14. Section 5, Paragraph 5.2: Revise as follows: First line delete "24 hours" and replace

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Page 3

OK  
C with "5 days". add the words "Contractor's written" after the word "of" at the beginning of the second line in Paragraph 5.2; and delete the text of Paragraph 5.2, starting with the words "Contractor shall not be liable..." in the fourth line, through the end of the paragraph.

OK  
C 15. Section 5, Paragraph 5.4: Delete in its entirety.

OK  
C 16. Section 6, Add the following new paragraph: "Notwithstanding any other provision of this Subcontract, the parties agree that at no time shall the value of additional labor and materials put in place by Subcontractor at the written direction of Contractor exceed \$15,000.00 without a fully executed, agreed upon change order modifying the Subcontract Price."

OK  
C 17. Section 8, Paragraph 8.4: Delete the second paragraph in its entirety.

OK  
C 18. Section 8, Add the following new paragraph: "Subcontractor may terminate this Subcontract or its obligations under the Contract Documents, for the same reasons and under the same circumstances and procedures with respect to the Contractor as Contractor may terminate its agreement with respect to the Owner, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, its subcontractors or their agents or employees or other persons performing portions of the Work under contract with Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, providing Contractor first received payment from Owner."

OK  
C 19. Section 11, Subparagraph 11.1 (3) and (4), Delete in their entirety and replace with the following: "General Liability Insurance shall be provided by others via a Wrap Insurance Policy for all subcontractors on the project."

OK  
C 20. Section 11, Subparagraph 11.2(a): Revise as follows: delete the phrase "whether or not it is caused in part by an Indemnitee; provided, however, that the..." from the 11th line of subparagraph 11.2(a), and replace it with the following phrase: "but only to the extent such claims, etc. arise from the negligence or wrongful acts of Subcontractor, and..." delete the word "sole" after the words "due the..." in the last line of subparagraph 11.2(a), and add the words "or any third party" at the end of the last sentence in this subparagraph.

OK  
C 21. Section 11, Add the following new paragraph: "Notwithstanding the foregoing, the Indemnification obligations of the Subcontractor under this Subcontract shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of

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them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, authorization for extra work, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is a proximate cause of the injury or damage."

22. Section 12, Change to "One Year"

23. Section 15, Paragraph 15.1: Revise as follows: delete the first sentence of the paragraph (in lines 1-3); delete the words "at all times and at its sole expense" from the third line; delete the words "all work and" from the fourth line; and add the following to the end of Paragraph 15.1: "Notwithstanding anything contained in this Subcontract to the contrary, once Subcontractor has received payment for its Work in place, title to same shall pass to Owner and Subcontractor shall no longer be responsible for any damage or loss thereto so long as said damage is not caused by Subcontractor or anyone for whom Subcontractor is contractually responsible, and the Owner shall rely on the project's "all-risk" insurance policy to pay for any loss or damage to Subcontractor's work."

24. Section 17, Delete Paragraph 17.1, 17.2, 17.4, 17.6, 17.7, and 17.8 and add the following new paragraph 17.1: "The parties agree that active, good faith participation in mediation is a condition precedent to the institution of any formal dispute resolution procedures. The parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. The initiating party shall then undertake to schedule the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may contact the Las Vegas, Nevada office of the American Arbitration Association to schedule the conference. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the parties. If a party fails or refuses to participate in the mediation, or if on completion of such mediation the parties are unable to agree and settle the dispute, then the dispute shall be referred to resolution in accordance with the procedures set forth herein. Thus, with the exception of procedures to preserve or enforce mechanic's lien or bond rights, any party that refuses or fails to participate in the mediation, or pay its proportional share of the cost of the mediation, shall be deemed to have waived its right to recover its attorney's fees hereunder, even if said party is later determined by the court or arbitrator to be a prevailing party." Parties will be bound by the Prime Contract.

25. Section 17, Paragraph 17.3: Delete the phrase "arbitration and other" from the first line and add the following paragraph: "This Subcontract and any dispute resolution proceeding brought to enforce or interpret its provisions, shall be governed by the laws of the place where the Project is located."

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26. Section 18, Paragraph 18.1: Revise as follows: Change the word "Contractor's" in the first line, to the words "either party's" in both places where it appears.
27. Section 18, Paragraph 18.7: Revise as following: add the words "and Subcontractor's. . ." after the word "Contractor's . . ." at the beginning of the paragraph, and add the words "and Subcontractor . . ." after the word "Contractor" at the end of the first line.
28. Exhibit A: Subcontractor Scope of Work, Revise the third line as follows:  
"...Addenda/Delta Number(s) N/A through N/A Subcontractor acknowledges that he has performed his own take-off, site visit and..." (No addenda were received)
29. Exhibit A: Site and Building Electric and Low Voltage Complete, 5<sup>th</sup> Line, Revise the following: "...Redwine Engineering, Jordan & Skala Engineers, WRG Engineering, dated May 25, 2007..." *Red lined*
30. Exhibit A: Site and Building Electric and Low Voltage Complete, 5<sup>th</sup> and 6<sup>th</sup> Line, Delete the following: "(See attached Project Drawing List)"
31. ~~Exhibit A: Site and Building Electric and Low Voltage Complete, 6<sup>th</sup> and 7<sup>th</sup> Line, Change the Contract Amount to read as follows: "Thirteen Million Two Hundred Thirty Thousand and no/100 (\$13,230,000.00) for building 1 through building 12."~~ *\$236,000 has been added via C.O.*
32. Exhibit A: Site and Building Electric and Low Voltage Complete, Add the following new section:  
Qualifications: *as noted below*
- Proposal is based on utility metering for 4 story buildings, with building 7 using a tenant sub metering system. Meters shall be located in garage, with access provided similar to the Manhattan East project. All utility company conduits are provided stubbed to 5' outside of the building lines. Additional work is pending utility company drawing review.
  - 4-story buildings to be type V construction with R-2 and S-2 occupancies. 8-story tower to be type II-B construction with R-2, S-2, and A-3 occupancies.
  - Fire alarm to minimum code, with separate systems for each building.
  - This proposal is based on wiring methods typical for this type of construction including the use of Romex cable, MC cable, SER cable, aluminum feeders, die cast set screw fittings, PVC underslab conduits, PVC embedded conduits, PVC through-slab transitions, etc.
  - Light fixture counts are per 5-25-07 drawings. *Red lined* All light fixtures are as selected by Helix.
  - HVAC connections are based on individual split systems for each living unit with roof or

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APCO 103650



# Helix Electric

CONSTRUCTORS • ENGINEERS

## HELIX ELECTRIC EXHIBIT TO THE STANDARD SUBCONTRACT AGREEMENT BETWEEN ASPHALT PRODUCTS CORPORATION (APCO) AND HELIX ELECTRIC OF NEVADA, LLC. FOR THE MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV (APCO JOB #168/HE JOB #16713)

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- balcony mounted condensing units and fancoils in the closet ceilings. *per plans* <sup>Ⓢ</sup>
- Emergency lighting is via battery packs or bugeyes for buildings 2, 3, 8, and 9 with building 7 on emergency power system.
- All units include 40 amp electric oven, 120 volt dryer connection, and 120V power receptacle for gas water heater.
- No owner allowances are included at this time.
- *U.S. Report includes in the report* <sup>Ⓢ</sup> Since no Life Safety Report was available at the time of this proposal, we are including a fire alarm system based on minimum code requirements. The design is based on the notion that Helix and/or its subcontractor will have an opportunity to review and revise the report draft prior to it being issued to the AHJ.
- Decorative and specialty lighting for condominium units are not defined and not shown in the bid documents, and nothing is included for these. We have made no allowances for soffit lighting, neon, etc in all building areas.
- This proposal is based on type V construction with an R occupancy. Branch wiring is via Romex cable as allowed by code. Our budget is based on the framer providing for us a direct wire path through any steel or iron wall studs" *per plans* <sup>Ⓢ</sup>
- This proposal is based on the use of Romex cable as allowed by code. We assume the corridor ceiling assembly will allow for the use of Romex for branch wiring in the corridor." *per drawings* <sup>Ⓢ</sup>
- A 2-hour rated enclosure must be provided for all emergency power feeders. All emergency power equipment including generators, panels, switchboards, transformers, etc must be enclosed in 2-hour rated rooms or enclosures.
- This proposal is based on all rooms as "non-ADA" rooms. No special or additional conduits, boxes, devices, etc are included to allow for provision to convert the condos to ADA compliance. It is assumed that it will be the responsibility of the individual owners to make their condos "compliant" via remodel after construction completion. *per plans* <sup>Ⓢ</sup>
- This proposal is based on an OCIP or CCIP "wrap" scenario where general liability insurance is provided by others for all subcontractors on site. ~~insurance policy~~ <sup>Ⓢ</sup> is subject to approval by Helix Electric.
- Chases of sufficient size must be provided for conduit and cable feeds up the tower (building type 3). This proposal assumes electrical and telecom rooms stack from the ground floor to the roof.
- This proposal is based on drop ceilings provided in the tenant rooms across the kitchens, baths, laundry rooms, and hallways on the corridor side of each unit. Corridors and common areas to have drop ceilings also. *per plans* <sup>Ⓢ</sup>
- No allowances are included for connection to such specialty items as steam generators, wine coolers, specialty appliances such as subzero refrigerators, etc.
- Proposal includes fire pump connection in 9-story building only. <sup>Ⓢ</sup>
- Pool connections are limited to power to pool panel only. All equipment to be provided

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(APCO JOB #168/HE JOB #16713)

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- and installed by pool subcontractor.
- Building type breakdowns are for budgeting purposes only, and are contingent upon award of all buildings in (1) contract, with all work performed under ~~(1)~~ continuous schedule. *by phase*
- Budget is based upon Helix Electric having input in the selection and placement of electrical equipment and systems in order to maintain the project budget. This proposal is based on a design build scenario. Design fees are part of a separate proposal.
- Any price breakouts are provided for accounting purposes only. This proposal is based on all parts performed under one continuous schedule.
- Wages are based on non-prevailing rates.
- This proposal is based on a 20-month schedule.
- This proposal is based on work performed during normal business hours, *split shifts*
- This proposal is valid for 15 days. Price may be subject to cost escalation. *No @*

33. Exhibit A: Site and Building Electric and Low Voltage Complete, Add the following new section:  
Exclusions:

- Utility Company fees.
- Formed concrete (pipe barriers or bollards, pole bases, housekeeping pads, etc.).
- Sacking of pole bases.
- Temporary power and lighting.
- Cutting, patching, and painting of any kind.
- Offsite hauling of trenching spoils.
- Import of water for backfill operation.
- *@ included* ~~Hard dig and trenching in catchment or blasting and any de-watering that may be required.~~
- Fixture safety and support wires.
- Fixture enclosures of any kind.
- ~~Conduit and control wiring for HVAC, etc.~~
- Offsite improvements not mentioned in this proposal.
- Landscape lighting. *per plan is included*
- Dumpsters for trash.
- Access panels.
- Bond costs.
- Surveying and staking.
- Systems not mentioned in this proposal including CATV, intercom/entry, audio/visual system, WIE system, CO monitoring, etc. *Helix has allowance for this work*
- Emergency power for 4-story buildings.

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(APCO JOB #168/HE JOB #16713)**

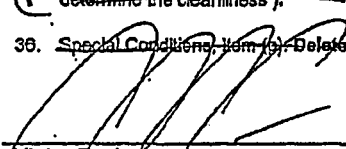
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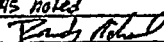
- Duct detectors; furnish, install, and control wiring, *110V power included if required.*
- Traffic control, trench plates, traffic and pedestrian barriers.
- Fire rated enclosures for emergency power feeders and equipment.
- Connection to electric water heaters and jacuzzi tubs. No allowance is made for these appliances in our service and feeder load calculations (assumed to be recalculated once condo owners make option selections)
- Lightning Protection system. *Per Plans*
- ~~Fire stopping, putty pads, fire sealing. This is included~~
- Work associated with guardhouses (none shown)
- Electrical engineering and design fees.
- Linear LED lighting and cove lighting in building seven- not enough information to get pricing. *Per plans*
- ~~All additional lighting and devices from design meetings on June 1, 2007 are excluded at this time. These are included~~
- Door locking hardware for card access system (furnished and installed by others. *power to system is included.*)

34. Special Conditions (a): Revise to read: "The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site."

35. ~~Special Conditions (d): Delete the last sentence ("APCO shall be the sole judge to determine the cleanliness").~~

36. ~~Special Conditions, Item (e): Delete in its entirety.~~

  
Victor Fuchs  
President  
NOV 28 2007

*As noted*  
By:   
Title: *Division Mgr.*  
Date: *4-8-08*

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**EXHIBIT 'A'**

**Subcontractor Scope of Work**  
**APCO Contract No. 0222162**

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_\_\_ through \_\_\_\_\_. Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.

The Scope of Work shall specifically include but not be limited to the following list of bid items:

ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
	<b>Site and Building Electric and Low Voltage Complete:</b> Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes and Necessary Insurance to install and complete all Electric, and all Low Voltage excluding Temperature per plans by <u>OZ Architecture, Redwine Engineering, Jordan &amp; Skala Engineers, WRG Engineering</u> . (See attached Project Drawing List), in the amount of Twelve Million Nine Hundred and Ninety Four Thousand Dollars and no/100, (\$12,994,000.00) for building 1 through building 12.				

Our understanding of the clarifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all alternate/option items of work as shown on your proposal at the stated alternate price during the course of construction.

Helix Electric

  
Victor Fuchs, President

TITLE

NOV 28 2007

APCO CONSTRUCTION

  
Project Manager

TITLE

APCO Construction  
Subcontractor 

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APCO 103654

### SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the \_\_\_\_\_ Area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing his debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employees.
- (k) Subcontractor shall at all times protect stored equipment, materials from damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.
- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project.

APCO Construction  
Subcontractor CR

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APCO 103655

**NOTICE TO ALL SUBCONTRACTORS**

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes ☒ or No ☐

Social Security No. [Signature]

Federal Tax ID No. 86-4485672

By: [Signature]  
Signature

Victor Fuchs

NOV 28 2007  
Date

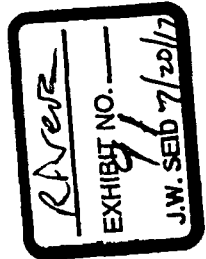
President  
Title

APCO Construction [Signature]  
Subcontractor [Signature]

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						Outstanding AP				Paid To Date (Previous Billings)
Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Original Amount	Discount	Outstanding Retainage	Outstanding Amount	
				QED, Inc 3560 S Valley View Blvd Las Vegas, NV 89103 702-271-4108						
16713	Manhattan West	S2496633-01	10/16/08			401.58	0.00	0.00	401.58	
16713	Manhattan West	S2496633-02	10/20/08			401.58	0.00	0.00	401.58	
16713	Manhattan West	S2513815-01	11/12/08			2,355.44	0.00	0.00	2,355.44	
16713	Manhattan West	S2518188-01	11/19/08			431.00	0.00	0.00	431.00	
				Total QED		3,589.60	0.00	0.00	3,589.60	
				Wesco ABA043000096 PO Box 676780 Dallas, TX 702-253-7660						
16713	Manhattan West	35524	09/12/08			513.97	0.00	0.00	513.97	
16713	Manhattan West	36511	09/16/08			31.25	0.00	0.00	31.25	
16713	Manhattan West	61499	10/20/08			2,868.84	0.00	0.00	2,868.84	
16713	Manhattan West	63098	10/22/08			86.19	0.00	0.00	86.19	
16713	Manhattan West	56022	10/17/08			2,960.50	0.00	0.00	2,960.50	
16713	Manhattan West	66239	10/28/08			439.08	0.00	0.00	439.08	
				Total Wesco		6,899.83	0.00	0.00	6,899.83	
				Gexpro P.O. Box 840093 Dallas, TX 75202 702-367-3535	823,899.60					
16713	Manhattan West	777-643639A	10/08/08			3,266.70	0.00	0.00	3,266.70	416,885.51
16713	Manhattan West	777-204654A	10/10/08			2,643.18	0.00	0.00	2,643.18	
16713	Manhattan West	777-643679A	10/14/08			324.99	0.00	0.00	324.99	
16713	Manhattan West	777-643686A	10/14/08			197.78	0.00	0.00	197.78	
16713	Manhattan West	777-643684A	10/15/08			2,390.56	0.00	0.00	2,390.56	
16713	Manhattan West	777-643685A	10/14/08			26.17	0.00	0.00	26.17	
16713	Manhattan West	777-643732A	10/21/08			2,490.01	0.00	0.00	2,490.01	
16713	Manhattan West	777-643856A	11/04/08			1,832.10	0.00	0.00	1,832.10	
16713	Manhattan West	777-643909A	11/05/08			691.82	0.00	0.00	691.82	
16713	Manhattan West	777-643911A	10/30/08			686.81	0.00	0.00	686.81	
16713	Manhattan West	777-205329	11/14/08			105.64	0.00	0.00	105.64	
16713	Manhattan West	777-643971	11/19/08			1,406.14	0.00	0.00	1,406.14	
16713	Manhattan West	777-644012	11/25/08			1,637.32	0.00	0.00	1,637.32	
16713	Manhattan West	777-644020	11/26/08			810.17	0.00	0.00	810.17	
16713	Manhattan West	777-643974	11/20/08			1,260.84	0.00	0.00	1,260.84	
16713	Manhattan West	777-644046	12/03/08			4,916.56	49.17	0.00	4,867.39	
				Total Gexpro		24,686.79	49.17	0.00	24,637.62	



						Outstanding AP				Paid To Date (Previous Billings)
Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Original Amount	Discount	Outstanding Retainage	Outstanding Amount	
				Too Many Amps 3220 Pepper Lane Las Vegas, NV 89120 702-456-4508						
16713	Manhattan West	SI-55209	09/12/08		167,283.76	2,521.08	0.00	0.00	2,521.08	116,403.50
16713	Manhattan West	SI-55210	09/12/08			1,316.71	0.00	0.00	1,316.71	
16713	Manhattan West	SI-55205	09/12/08			6,941.90	0.00	0.00	6,941.90	
16713	Manhattan West	SI-55195A	09/12/08			593.16	0.00	0.00	593.16	
16713	Manhattan West	SI-55421	09/22/08			1,473.59	0.00	0.00	1,473.59	
16713	Manhattan West	SI-55656	10/01/08			261.29	0.00	0.00	261.29	
16713	Manhattan West	CM-7096	09/12/08			-17,272.32	0.00	0.00	-17,272.32	
16713	Manhattan West	CM-7097	09/12/08			-17,164.58	0.00	0.00	-17,164.58	
16713	Manhattan West	CM-7098	09/12/08			-14,007.50	0.00	0.00	-14,007.50	
16713	Manhattan West	SI-55799	10/09/08			26,646.58	0.00	0.00	26,646.58	
16713	Manhattan West	SI-55800	10/09/08			18,856.25	0.00	0.00	18,856.25	
16713	Manhattan West	SI-55839	10/10/08			18,140.79	0.00	0.00	18,140.79	
16713	Manhattan West	SI-55843	10/10/08			1,626.16	0.00	0.00	1,626.16	
16713	Manhattan West	SI-55849	10/10/08			1,684.13	0.00	0.00	1,684.13	
16713	Manhattan West	SI-56150	10/20/08			504.70	0.00	0.00	504.70	
16713	Manhattan West	SI-56145	10/20/08			900.79	0.00	0.00	900.79	
16713	Manhattan West	SI-56297	10/24/08			9,227.90	0.00	0.00	9,227.90	
16713	Manhattan West	SI-56295	10/24/08			536.38	0.00	0.00	536.38	
16713	Manhattan West	SI-56381	10/29/08			4,169.93	0.00	0.00	4,169.93	
16713	Manhattan West	SI-56628	11/07/08			2,181.72	21.62	0.00	2,159.90	
16713	Manhattan West	SI-56620	11/07/08			4,554.05	45.54	0.00	4,508.51	
16713	Manhattan West	SI-56619	11/07/08			683.95	6.84	0.00	677.11	
16713	Manhattan West	CM-7166	11/14/08			-4,554.05	-45.54	0.00	-4,508.51	
16713	Manhattan West	SI-56546	11/05/08			390.59	3.91	0.00	386.68	
16713	Manhattan West	SI-56534	11/05/08			641.22	6.41	0.00	634.81	
				Total Too Many Amps		50,854.42	38.98	0.00	50,815.44	
				NV Compressed Gas 1820 Western Ave Las Vegas, NV 89102 702-564-7252						
16713	Manhattan West	150019	11/24/08			81.97	0.00	0.00	81.97	
16713	Manhattan West	150673	12/10/08			87.41	0.00	0.00	87.41	
				Total Nevada Compressed Gas		169.38	0.00	0.00	169.38	
				R2W, Inc 6380 McLeod Ste #15 Las Vegas, NV 89120 702-436-4729						
16713	Manhattan West	4537	03/19/08		850,537.50	17,462.00	0.00	1,746.20	0.00	299,735.64
16713	Manhattan West	5026	04/09/08			98,790.00	0.00	9,879.00	0.00	

**JA005523**



16713 Manhattan West - AP as of 12/17/08

Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Outstanding AP				Paid To Date (Previous Billings)
						Original Amount	Discount	Outstanding Retainage	Outstanding Amount	
16713	Manhattan West	750192-01	10/23/08	FASCO 4315 W Tompkins Ave Las Vegas, NV 89103 702-248-6000		96.29	0.00	0.00	96.29	
16713	Manhattan West	750815-00	10/29/08			58.94	0.00	0.00	58.94	
				Total FASCO		155.23	0.00	0.00	155.23	
16713	Manhattan West	471264	10/01/08	Nedco Supply 4200 Spring Mountain Road Las Vegas, NV 89102 702-367-0400		2,595.70	0.00	0.00	2,595.70	
16713	Manhattan West	472013	10/02/08			494.44	0.00	0.00	494.44	
				Total Nedco		3,090.14	0.00	0.00	3,090.14	
16713	Manhattan West	16713-03	07/18/08	Penhall Company 4755 University Drive Las Vegas, NV 89103 702-736-6033	25,000.00	2,808.00	0.00	280.80	0.00	19,207.30
16713	Manhattan West	16713-04	09/20/08			11,839.00	0.00	1,183.90	0.00	
				Total Penhall		14,647.00	0.00	1,464.70	0.00	
16713	Manhattan West	937320253	10/13/08	Graybar File 57072 Los Angeles, CA 90074-7072 702-367-0400	521,048.02	1,900.62	0.00	0.00	1,900.62	262,943.47
16713	Manhattan West	937440500	10/17/08			274.76	0.00	0.00	274.76	
16713	Manhattan West	937409647	10/16/08			1,460.14	0.00	0.00	1,460.14	
16713	Manhattan West	937597611	10/24/08			41,304.89	0.00	0.00	41,304.89	
16713	Manhattan West	937564630	10/23/08			1,208.17	0.00	0.00	1,208.17	
16713	Manhattan West	938104923	11/17/08			5,311.00	0.00	0.00	5,311.00	
16713	Manhattan West	938145387	11/19/08			20,664.17	0.00	0.00	20,664.17	
16713	Manhattan West	938114708	11/18/08			1,741.22	0.00	0.00	1,741.22	
16713	Manhattan West	936815758	09/19/08			35,205.16	0.00	0.00	35,205.16	
16713	Manhattan West	938324164	12/01/08			92,151.03	0.00	0.00	92,151.03	
16713	Manhattan West	938622488	12/15/08			11,528.17	0.00	0.00	11,528.17	
16713	Manhattan West	938534476	12/07/08			2,289.69	0.00	0.00	2,289.69	
16713	Manhattan West	938495163	12/08/08			269.18	0.00	0.00	269.18	
16713	Manhattan West	938504122	12/09/08			690.34	0.00	0.00	690.34	
16713	Manhattan West	938559886	12/11/08			554.54	0.00	0.00	554.54	
				Total Graybar		216,553.08	0.00	0.00	216,553.08	

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						Outstanding AP				Paid To Date (Previous Billings)
Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Original Amount	Discount	Outstanding Retainage	Outstanding Amount	
				QED, Inc 3560 S Valley View Blvd Las Vegas, NV 89103						
16713	Manhattan West	S2498633-01	10/16/08	702-271-4108		401.58	0.00	0.00	401.58	
16713	Manhattan West	S2498633-02	10/20/08			401.58	0.00	0.00	401.58	
16713	Manhattan West	S2513815-01	11/12/08			2,355.44	0.00	0.00	2,355.44	
16713	Manhattan West	S2518188-01	11/19/08			431.00	0.00	0.00	431.00	
				Total QED		3,589.60	0.00	0.00	3,589.60	
				Wesco ABA043000096 PO Box 676780 Dallas, TX						
16713	Manhattan West	35524	09/12/08	702-253-7660		513.97	0.00	0.00	513.97	
16713	Manhattan West	36511	09/16/08			31.25	0.00	0.00	31.25	
16713	Manhattan West	61499	10/20/08			2,868.84	0.00	0.00	2,868.84	
16713	Manhattan West	63098	10/22/08			86.19	0.00	0.00	86.19	
16713	Manhattan West	56022	10/17/08			2,960.50	0.00	0.00	2,960.50	
16713	Manhattan West	66239	10/28/08			439.08	0.00	0.00	439.08	
				Total Wesco		6,899.83	0.00	0.00	6,899.83	
				Gexpro P.O. Box 840093 Dallas, TX 75202						
16713	Manhattan West	777-643639A	10/08/08	702-367-3535	823,899.60	3,266.70	0.00	0.00	3,266.70	416,885.51
16713	Manhattan West	777-204654A	10/10/08			2,643.18	0.00	0.00	2,643.18	
16713	Manhattan West	777-643679A	10/14/08			324.99	0.00	0.00	324.99	
16713	Manhattan West	777-643686A	10/14/08			197.78	0.00	0.00	197.78	
16713	Manhattan West	777-643684A	10/15/08			2,390.56	0.00	0.00	2,390.56	
16713	Manhattan West	777-643685A	10/14/08			26.17	0.00	0.00	26.17	
16713	Manhattan West	777-643732A	10/21/08			2,490.01	0.00	0.00	2,490.01	
16713	Manhattan West	777-643856A	11/04/08			1,832.10	0.00	0.00	1,832.10	
16713	Manhattan West	777-643909A	11/05/08			691.82	0.00	0.00	691.82	
16713	Manhattan West	777-643911A	10/30/08			686.81	0.00	0.00	686.81	
16713	Manhattan West	777-205329	11/14/08			105.64	0.00	0.00	105.64	
16713	Manhattan West	777-643971	11/19/08			1,406.14	0.00	0.00	1,406.14	
16713	Manhattan West	777-644012	11/25/08			1,637.32	0.00	0.00	1,637.32	
16713	Manhattan West	777-644020	11/26/08			810.17	0.00	0.00	810.17	
16713	Manhattan West	777-643974	11/20/08			1,260.84	0.00	0.00	1,260.84	
16713	Manhattan West	777-644046	12/03/08			4,916.56	49.17	0.00	4,867.39	
				Total Gexpro		24,688.79	49.17	0.00	24,637.62	

						Outstanding AP				Paid To Date (Previous Billings)
Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Original Amount	Discount	Outstanding Retainage	Outstanding Amount	
				Too Many Amps 3220 Pepper Lane Las Vegas, NV 89120						
16713	Manhattan West	SI-55209	09/12/08	702-458-4508	167,283.76	2,521.08	0.00	0.00	2,521.08	116,403.50
16713	Manhattan West	SI-55210	09/12/08			1,316.71	0.00	0.00	1,316.71	
16713	Manhattan West	SI-55205	09/12/08			6,941.90	0.00	0.00	6,941.90	
16713	Manhattan West	SI-55195A	09/12/08			593.16	0.00	0.00	593.16	
16713	Manhattan West	SI-55421	09/22/08			1,473.59	0.00	0.00	1,473.59	
16713	Manhattan West	SI-55656	10/01/08			261.29	0.00	0.00	261.29	
16713	Manhattan West	CM-7096	09/12/08			-17,272.32	0.00	0.00	-17,272.32	
16713	Manhattan West	CM-7097	09/12/08			-17,164.58	0.00	0.00	-17,164.58	
16713	Manhattan West	CM-7098	09/12/08			-14,007.50	0.00	0.00	-14,007.50	
16713	Manhattan West	SI-55799	10/09/08			26,646.58	0.00	0.00	26,646.58	
16713	Manhattan West	SI-55800	10/09/08			18,856.25	0.00	0.00	18,856.25	
16713	Manhattan West	SI-55839	10/10/08			18,140.79	0.00	0.00	18,140.79	
16713	Manhattan West	SI-55843	10/10/08			1,626.16	0.00	0.00	1,626.16	
16713	Manhattan West	SI-55849	10/10/08			1,684.13	0.00	0.00	1,684.13	
16713	Manhattan West	SI-56150	10/20/08			504.70	0.00	0.00	504.70	
16713	Manhattan West	SI-56145	10/20/08			900.79	0.00	0.00	900.79	
16713	Manhattan West	SI-56297	10/24/08			9,227.90	0.00	0.00	9,227.90	
16713	Manhattan West	SI-56295	10/24/08			536.38	0.00	0.00	536.38	
16713	Manhattan West	SI-56381	10/29/08			4,169.93	0.00	0.00	4,169.93	
16713	Manhattan West	SI-56628	11/07/08			2,181.72	21.82	0.00	2,159.90	
16713	Manhattan West	SI-56620	11/07/08			4,554.05	45.54	0.00	4,508.51	
16713	Manhattan West	SI-56619	11/07/08			683.95	6.84	0.00	677.11	
16713	Manhattan West	CM-7166	11/14/08			-4,554.05	-45.54	0.00	-4,508.51	
16713	Manhattan West	SI-56546	11/05/08			390.59	3.91	0.00	386.68	
16713	Manhattan West	SI-56534	11/05/08			641.22	6.41	0.00	634.81	
				Total Too Many Amps		50,854.42	38.98	0.00	50,815.44	
				NV Compressed Gas 1820 Western Ave Las Vegas, NV 89102						
16713	Manhattan West	150019	11/24/08	702-564-7252		81.97	0.00	0.00	81.97	
16713	Manhattan West	150673	12/10/08			87.41	0.00	0.00	87.41	
				Total Nevada Compressed Gas		169.38	0.00	0.00	169.38	
				R2W, Inc 6380 McLeod Ste #15 Las Vegas, NV 89120						
16713	Manhattan West	4537	03/19/08	702-436-4729	850,537.50	17,462.00	0.00	1,746.20	0.00	299,735.64
16713	Manhattan West	5026	04/09/08			98,790.00	0.00	9,879.00	0.00	

						Outstanding AP				
Job #	Job Name	Invoice #	Invoice Date	Vendor Name	Original Contract/PO Amount	Original Amount	Discount	Outstanding Retainage	Outstanding Amount	Paid To Date (Previous Billings)
16713	Manhattan West	5104	07/20/08			38,868.00	0.00	3,888.60	0.00	
16713	Manhattan West	5262	10/16/08			177,921.60	0.00	17,792.16	0.00	
16713	Manhattan West	5298	11/17/08			20,470.00	0.00	2,047.00	18,423.00	
				Total R2W		353,509.60	0.00	35,350.86	18,423.00	
16713	Manhattan West	1000023244	03/31/08	Sting Surveillance 5 Longevity Drive Henderson, NV 89014 702-737-8464	349,000.00	5,382.40	0.00	538.24	0.00	4,844.16
16713	Manhattan West	26493	09/30/08			9,950.38	0.00	995.04	8,955.34	
16713	Manhattan West	11421	11/01/08			32.95	0.00	0.00	32.95	
16713	Manhattan West	12084	12/01/08			32.95	0.00	0.00	32.95	
				Total Sting Surveillance		15,398.68	0.00	1,533.28	9,021.24	
16713	Manhattan West	4094-541013	10/03/08	Vegas Electric Supply 6625 Arroyo Springs Ste #170 Las Vegas, NV 89118 702-368-1160		473.73	0.00	0.00	473.73	
16713	Manhattan West	4094-540406	09/17/24			1,182.22	11.82	0.00	-11.82	
16713	Manhattan West	4094-105795	11/05/08			-21.05	0.00	0.00	-21.05	
16713	Manhattan West	4094-543125	11/10/08			19.88	0.00	0.00	19.88	
				Total Vegas Electric Supply		1,654.78	11.82	0.00	460.74	
16713	Manhattan West	1703	10/13/08	Rise & Shine Lighting 4545 W Reno #B2 Las Vegas, NV 89118 702-368-1160	51,438.37	24,878.57	0.00	0.00	24,878.57	0.00
16713	Manhattan West	1715	10/20/08			13,267.21	0.00	0.00	13,267.21	
16713	Manhattan West	1776	11/25/08			4,621.40	0.00	0.00	4,621.40	
				Total Rise & Shine Lighting		42,767.18	0.00	0.00	42,767.18	
	GRAND TOTALS				2,788,207.25	733,808.33	99.97	38,348.94	376,413.10	1,120,019.68



## GEMSTONE DEVELOPMENT

September 4, 2008

Mr. Victor Fuchs  
Helix Electric, LLC  
3708 East Sunset Road, STE # 9  
Las Vegas, NV 89120

RE: Manhattan West Phase I - 0810

Mr. Fuchs:

This letter will serve as Gemstone Development West, Inc.'s intention to continue to retain the services of your firm in connection with the above referenced project for Helix Electric, LLC previously contracted with APCO Construction. The conditional acceptance of this work is based on the execution of a standard CAMCO Pacific Construction Ratification Agreement.

Please provide the following items within ten (10) business days of the date of this letter.

- 1) A schedule of values breakdown for your work
- 2) Your Certificate of General Liability Insurance
- 3) Evidence of your Nevada Business Tax

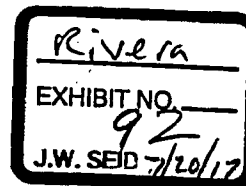
On behalf of Gemstone Development West, Inc., we look forward to working with your firm in making this a successful project. We have provided you a copy of the Camco Pacific Ratification Agreement for your review and acceptance. Please contact our staff tomorrow September 3, 2008 to review and sign the agreement.

Should you have any questions, please don't hesitate to contact me directly at (702)580-7337.

Respectfully,

GEMSTONE DEVELOPMENT WEST, INC.

  
Jennifer Griffith  
Project Manager



HELIX00894



## GEMSTONE DEVELOPMENT

9121 W. Russell Rd. #117  
Las Vegas, NV 89148  
(702) 614.3193 phone  
(702) 614.0669 fax

RECEIVED  
SEP 03 2008  
HELIX ELECTRIC

## TRANSMITTAL

Company: Helix  
ATTN: \_\_\_\_\_  
Address: \_\_\_\_\_  
Project/Reference: ManhattanWest  
From: \_\_\_\_\_  
Date: September 4, 2008

We are Sending: ☐ Specifications  
☐ RFI

☐ Change Order  
☐ Shop Drawings

☐ Submittal  
☐ O&M Manual  
☒ Other \_\_\_\_\_

For: ☒ Your Records  
☐ Your Use

☐ As Requested  
☐ Your Review/Approval

☐ Other \_\_\_\_\_

Comments: Ratification of Subcontract Agreement

CS of STAIRS  
in Manhattan West 8-29-08  
Current Schedule

Received by: Robert D. Johnson  
Signature: Robert D. Johnson  
Date: 9/4/08

HELIX00893

**RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT  
HELIX ELECTRIC**

This Ratification and Amendment of Subcontract Agreement ("Ratification") is made as of September 4, 2008 (the "Effective Date"), between **HELIX ELECTRIC** ("Subcontractor"), and Camco Pacific Construction Company, Inc. ("Camco").

**RECITALS**

A. Subcontractor and Asphalt Products Corporation also known as APCO Construction ("APCO") entered into the written Subcontract Agreement attached hereto as Exhibit A (the "Subcontract Agreement") related to the ManhattanWest Condominiums project located at West Russell Road and Rocky Hill Street in Clark County, Nevada.

B. Subcontractor and Camco desire to acknowledge, ratify, and agree to the terms of the Subcontract Agreement, whereby Camco will replace APCO as the "Contractor" under the Subcontract Agreement but, subject to the terms of this Ratification, all other terms and conditions of the Subcontract Agreement will remain in full force and effect.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Subcontractor and Camco agree as follows:

**AGREEMENT**

1. Amendments. Attached hereto as Exhibit B are all of the amendments and modifications to the Subcontract Agreement that were executed by APCO and Subcontractor prior to the Effective Date (the "Amendments").

2. Change Orders. Attached hereto as Exhibit C are all of the change orders that have been submitted by Subcontractor to APCO prior to the Effective Date (the "Submitted Change Orders"). Set forth on Exhibit D hereto is a list of the Submitted Change Orders that have been approved by Camco as of the Effective Date (the "Previously Approved Change Orders").

3. Removal of Future Buildings. Notwithstanding any provision of this Ratification, Section 9.8 of the Subcontract Agreement is hereby amended and restated as follows:

**9.8 Consideration.** Notwithstanding any provision of this Subcontract Agreement, in the event of a partial termination of the Subcontract Agreement, at the time of such termination, if no work has been performed by Subcontractor on a given building or buildings that are subject to such termination, (a) the sole compensation to be paid by Contractor to Subcontractor with respect to such building or buildings shall be an aggregate of \$100 and (b) in no event shall Subcontractor be entitled to profit, markup, or compensation for any form of bulk discounts on services or work not performed.

HELIX00895

4. **Subcontractor Scope of Work.** Notwithstanding any provision of this Ratification, the second paragraph of Exhibit A Subcontractor Scope of Work APCO Contract No. 168-7 is hereby amended and restated as follows:

The Scope of Work shall consist of the following:

ALL ELECTRIC WORK AND REQUIREMENTS PER PLANS AND SPECIFICATIONS FOR BUILDINGS ONE THROUGH TWELVE: Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes, and Necessary Insurance to install and complete all ELECTRIC WORK FOR BUILDINGS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12 pursuant to the Project Drawing List for the following amounts per building:

Building	Amount
Building 1	
Building 2	
Building 3	
Building 4	
Building 5	
Building 6	
Building 7	
Building 8	
Building 9	
Building 10	
Building 11	
Building 12	
Total:	\$12,994,000.00

Notwithstanding any provision of this Subcontract Agreement, Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction Drawings August 29, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to



Subcontractor all of the shop drawings for the Project (collectively, the "Project Drawing List"). Prior to the effective date, (a) Subcontractor received and reviewed the drawings, documents, and submittals contained in such Project Drawing List and (b) both parties hereby acknowledge that the version of such documents as of the Effective Date are hereby incorporated into this Agreement and shall serve as the relevant design documents for purposes of this Agreement.

Notwithstanding any provision of this Subcontract Agreement, the Scope of Work for (a) Buildings 2, 3, 7, 8, and 9 must be completed pursuant to the updated ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008 and attached hereto as Schedule 1 (the "Camco Schedule") and (b) Buildings 1, 4, 5, 6, 10, 11, and 12 must be completed pursuant to the schedule to be delivered to Subcontractor by Contractor at the time that work on such buildings is commenced. Furthermore, it is expressly understood that Subcontractor shall provide such additional manpower and/or work such additional shifts as are reasonably requested by Camco, without additional expense to Camco.

5. Ratification. Subcontractor and Camco agree that (a) the terms of the Subcontract Agreement (as amended by this Ratification and including all Amendments, Previously Approved Change Orders, and the Camco Schedule) will govern their relationship regarding the Project, (b) Camco will be the "Contractor" under the Subcontract Agreement, and (c) Subcontractor and Camco agree to perform and fulfill all of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled thereunder by Subcontractor and Camco, respectively. Additionally, Subcontractor and Camco will be entitled to receive all of the benefits of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled by Camco and Subcontractor, respectively. Notwithstanding any provision of this Ratification, this Ratification shall not be construed as an (i) approval or acceptance by Camco of the Submitted Change Orders that are not Previously Approved Change Orders or (b) acceptance by Subcontractor of Camco's decision, as of the Effective Date, not to approve the Submitted Change Orders that are not Previously Approved Change Orders.

6. Value Engineering. In the event that Camco delivers written notice to Subcontractor of a specific value engineering initiative (the "VE Initiative"), Subcontractor will provide to Camco, within three days, a revised price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Camco (the "Value Engineering Deduct"). Notwithstanding any provision of this Ratification or the Subcontract, in the event that Subcontractor fails to comply with the previous sentence of this Section 6, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work. Notwithstanding any provision of this Ratification or the Subcontract, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Camco, Camco shall have the right to obtain an alternate price from a third-party, and if Subcontractor fails to meet such price, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work.

7. Successors and Assigns. This Assignment is binding on and inures to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

8. **Governing Law.** This Assignment will be construed, interpreted, and enforced in accordance with, and governed by, the laws of the State of Nevada, including Nevada's statutes of limitations, but without regard to Nevada's conflicts of laws provisions.

9. **Further Assurances.** The parties agree to execute all instruments and documents of further assurance and will do any and all such acts as may be reasonably required to carry out their obligations and to consummate the transactions contemplated herein.

IN WITNESS WHEREOF, the parties have executed this Ratification as of the Effective Date.

**Subcontractor**

\_\_\_\_\_, a \_\_\_\_\_ corporation

\_\_\_\_\_  
By:  
Its:

**Camco**  
Camco Pacific Construction Company, Inc., a  
California corporation

\_\_\_\_\_  
By:  
Its:

**SCHEDULE 1  
TO EXHIBIT A  
TO THE SUBCONTRACT AGREEMENT**

Camco Schedule

**EXHIBIT A  
TO THE RATIFICATION**

**Subcontract Agreement**

**EXHIBIT B  
TO THE RATIFICATION**

**Amendments**

**EXHIBIT C  
TO THE RATIFICATION**

**Submitted Change Orders**

**EXHIBIT D  
TO THE RATIFICATION**

**Previously Approved Change Orders**





**HELIX ELECTRIC EXHIBIT  
TO THE RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(HE JOB #16713)  
Page 1**

The following terms will replace the corresponding portions of the paragraphs in the Subcontract Agreement:

Agreement     **Item 1, Amendments, Add the following:** "Prior to the removal of APCO as the  
Page 1         contractor and the issuance of this Ratification and Amendment of Subcontract  
Agreement, Helix Electric and APCO were in the process of completing negotiations of the  
"Helix Electric Exhibit to the Standard Subcontract Agreement between Asphalt Products  
Corporation (APCO) and Helix Electric of Nevada, LLC for the Manhattan West  
Condominiums, Las Vegas, NV (APCO Job #168/HE Job #16713)."

The final version of the Helix Electric Exhibit that was acceptable to Helix Electric is attached and incorporated as an Exhibit B amendment under this section of the Ratification and Amendment of Subcontract Agreement.

Agreement     **Item 2, Change Orders, Add the following:** Attached Helix Electric Change Order Log  
Page 1         updated through 9/29/2008 is submitted as "Exhibit C" to this Ratification and Amendment  
of Subcontract Agreement. Change Order Log reflects the total amount of \$994,025.01  
submitted to APCO prior to the effective date of 8/26/2008 and the total amount of  
\$259,323.00 submitted to Gemstone/Camco after the effective date of 8/26/2008. These  
amounts total \$1,253,348.01 and represent the amount due to Helix for change orders on  
the Manhattan West project.

Agreement     **Item 4, Subcontractor Scope of Work, 2<sup>nd</sup> Paragraph Delete the following:** "Design"  
Page 2         and "Insurance"

Agreement     **Item 4, Subcontractor Scope of Work, Add the following to the 3<sup>rd</sup> paragraph:**  
Page 2         "Subcontractor acknowledges receipt of the disk entitled "Manhattan West Construction  
Drawings, August 29, 2008." This disk contains a substantial amount of drawings and did  
not provide a list of drawings included. Subcontractor has requested a drawing list and  
has received one to date. Subcontractor will accept only those drawings previously  
covered by its Subcontract with APCO and any revisions to those drawings for which  
Subcontractor has been issued a Change Order."

Agreement     **Item 4, Subcontractor Scope of Work, 4<sup>th</sup> paragraph, Item (b) 4<sup>th</sup> line through 9<sup>th</sup> line,**  
Page 3         **Delete in its entirety.**

Agreement     **Item 4, Subcontractor Scope of Work, Add the following to the end of this section:**  
Page 3         **The amounts listed for Buildings 1-12, Site, "Submittals, Trallers, Permits, Supervision"**

HELIX00834

**HELIX ELECTRIC EXHIBIT  
TO THE RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(HE JOB #16713)  
Page 2**

and Total are derived by the schedule of values prepared by Subcontractor under its subcontract with APCO for billing purposes. Phase I work contract amount for Buildings 2, 3, 7, 8 and 9 that is currently under construction is \$5,555,000.00 The balance of \$7,675,000.00 of the \$13,230,000.00 is the contract amount for Phase 2 work for Buildings 1, 4, 5, 6, 10, 11, and 12.

Agreement  
Page 3

**Item 4, Subcontractor Scope of Work, Add the following to the end of this section:**  
"Subcontractor is proceeding with the schedule (the "Camco Schedule") pending resolution of the following:

1. Schedule is currently 50 days behind based on original completion date of 10/18/2008 versus the revised Camco completion date of 12/26/2008. Subcontractor has costs associated with extended general conditions as a result of this delay and will be seeking compensation for delay.
2. Schedule is accelerated and compressed and requires the subcontractor to complete the remaining work in half the time allotted on this original schedule. Subcontractor will incur costs associated with acceleration and compression and will be seeking compensation for these costs."
3. Approved Smoke Control Drawings for Building 7 have not been issued to Subcontractor. This is delaying the completion of Subcontractors design for the Smoke Control Panel. Subsequently, this will delay the manufacture, installation, and final testing of the smoke control panel for the life safety system. Subcontractor will not be held liable for the delays that result to the life safety system installation and the final acceptance of Building 7 by the AHJ.

Agreement  
Page 3

**Item 5, Ratification, Delete the last sentence, starting with "Notwithstanding...on the 9<sup>th</sup> line through ...Change Orders" on the 13<sup>th</sup> line.**

Agreement  
Page 3

**Item 6, Value Engineering, 3<sup>rd</sup> line, Change the following: "three days" to "five business days"**

Agreement  
Page 3

**Item 6, Value Engineering, 5<sup>th</sup> through 12<sup>th</sup> lines, Delete in their entirety.**

Agreement  
Page 4

**Item 10, Governing Law, 3<sup>rd</sup> line, Delete the following: "...but without regard to Nevada conflicts of laws provisions."**

Agreement

**Item 11, Further Assurances, Delete in its entirety.**

HELIX00835

**HELIX ELECTRIC EXHIBIT  
TO THE RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(HE JOB #16713)  
Page 3**

Page 4

\_\_\_\_\_  
Robert D. Johnson  
Vice President

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

HELIX00836

August 26, 2008  
ManhattanWest

#### CHECK LIST ITEMS

Please read the following information package carefully. All of the following Check List Items must be in our office, before any on site work can begin. No payment will be made until all items are completed properly, returned, and accepted.

- ☐ 1. Two executed copies of your Subcontract Agreement.
- ☐ 2. Original Certificates of Insurance as follows and per attached example:

NOTE: ALL INSURANCE CERTIFICATES SHALL BE ON ACORD FORMS

A. Automobile Liability – Reference job name and number.  
Owned, non-owned and hired autos.

B. Workers' Compensation – Reference job name and number.  
Waiver of subrogation.

- ☐ 3. Evidence of valid State Contractor's License (with the current expiration date).
- ☐ 4. Completed W-9 form (enclosed).
- ☐ 5. A copy of your City/County Business License for the project location, (with current expiration date).
- ☐ 6. All shop drawings and submittals, per the specifications.
- ☐ 7. Proof of compliance with the State Business Tax requirements. (Camco Pacific will accept a copy of your Business Tax Return, for the calendar quarter, just previously ended).
- ☐ 8. "THE ZERO PUNCH LIST" quality commitment (must be executed).

HELIX00837

To: Helix Electric of Nevada LLC  
3078 E. Sunset Rd, Suite 9 Las Vegas, NV 89120

Project Name: ManhattanWest

Contract Issue Date: August 26, 2008

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In addition to the required "Check List Items", as shown on the previous page, the following items are critical to a mutually successful project. Please note: a Pay Request form, form, W-9 form, lien releases, "THE ZERO PUNCH LIST" Commitment, and an example of the required Insurance Certificates are attached.

**SUBCONTRACT AGREEMENT** - Please find two copies of your Subcontract Agreement for the above referenced project. Please read carefully, sign both copies, and return both copies to our office. We, in turn, will sign both copies and return a fully executed Agreement to you.

**PAY REQUESTS - Camco Pacific's Pay Request form** (enclosed) must be turned in to our office no later than the 25<sup>th</sup> calendar day of each month. Please include all work up to the **Last Day of each month**. Billings not filled out and completed on **our** Pay Request and lien release forms will be returned to you for correction. Stored material will only be considered for payment (if allowed by Owner and its lender) when itemized on the Pay Request and accompanied with invoices from suppliers, the location stored, and Insurance Certificates for the storage location. If you have any questions regarding Pay Requests, please contact our Accounting Department at (702) 798-6611.

**LIEN RELEASES** - We also require lien releases from your suppliers through the end of the month being billed. If supplier releases are not furnished, the payment cannot be made. If amounts are owed to your suppliers, we will issue joint checks to you and your suppliers. In such cases, we require conditional lien releases from your suppliers. You will be requested to sign a lien release form when you receive your payment. Subcontractors who come into the office will need to sign a lien release when they pick up their check, therefore, this requires a responsible Company Officer. Payments that are mailed will be accompanied by a lien release that must be signed and returned to Camco as quickly as possible, and prior to any additional payments.

**PAYMENT** - We will issue payment to you within 10 days after receiving payments from Owner. IF YOUR BILLING DOES NOT ARRIVE AT OUR OFFICE IN TIME TO BE INCLUDED IN OUR INVOICE TO THE OWNER, YOU WILL HAVE TO WAIT UNTIL THE NEXT MONTH'S DRAW.

HELIX00838

**INSURANCE** – State law mandates that all employers carry Workman's Compensation Insurance. The only exception is for a Sole Proprietorship with no employees. Subcontractors must also carry General and Automobile Liability insurance. There are no exceptions. All Subcontractors must comply. Each project insurance requirement is different, so please review the contract, specifically Section V. Please find our attached sample certificate for details. Camco Pacific requires a minimum of \$1,000,000 Liability Insurance.

**SUBMITTALS** – Please review the contract specifications and submit to us any required shop drawings, samples, and/or alternates for the review and approval of the architect. All submittals must be received within five days of issuance of this Agreement. LATE SUBMITTALS HURT EVERYONE!

**CLEAN-UP** – As you know, your Subcontract Agreement requires prompt clean-up of any debris associated with your work. This is important for many reasons, including safety. The Subcontractor is required to perform this provision of the Subcontract Agreement, however, should you not do so, we will perform the clean-up and backcharge you for it. Please be advised that there will be a twenty percent (20%) handling fee for all backcharges against this Subcontract.

**CLOSE-OUT DOCUMENTS** – All close out documents must be turned in before Camco Pacific can release any monies over 75% of your contract amount. There will be no exceptions. LATE CLOSE-OUT DOCUMENTS KEEP US ALL FROM GETTING PAID.

**RETENTION MONIES** – Final retention monies will only be released to Camco Pacific from Owner when all Punch list Items, Contract Items, and Close-Out Documents have been fully completed and inspected by the owner. Any delay by a single Subcontractor in completing this will delay the entire project's final payment. PLEASE DO NOT DELAY COMPLETING YOUR PUNCHLIST ITEMS.

HELIX00839

Date: August 26, 2008

To: Helix Electric of Nevada LLC  
3078 E. Sunset Rd, Suite 9 Las Vegas, NV 89120

Project: ManhattanWest

Re: "THE ZERO PUNCH LIST" Quality Commitment

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Camco Pacific Construction has committed to the Project Owner a Project of the highest quality, including "THE ZERO PUNCH LIST". By critically viewing our performance through the eyes of the Owners and the architects we can improve upon the level of quality and service we all provide. One method of achieving this commitment is by requesting from each Subcontractor a responsible Subcontractor's Representative, to make a firm commitment to achieve "THE ZERO PUNCH LIST".

"I, the undersigned, accept the responsibility, on behalf of our company, to achieve "THE ZERO PUNCH LIST". I will personally guard against poor quality and workmanship from all of our employees and material-men during the installation of our Project Work.

Subcontractors Representative: (This individual must be the responsible individual that will be involved directly with field quality).

Helix Electric of Nevada LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Subcontractor's Representative

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Direct Phone Number)

HELIX00840

# PAYMENT REQUEST

Subcontractor:	CAMCO PACIFIC
Subcontractor Address	CONSTRUCTION COMPANY INC.
Between the "Contractor"	2925 E. Patrick Lane, Suite G
	Las Vegas, Nevada 89120
PAYMENT REQUEST NO.	(702) 798-6611
	(702) 798-6655
MANHATTANWEST	
	From:
Russell Road and 215 Beltway	
	To:

Original Contract Amount		\$
Camco Change Order No's (approved copies must be attached)		\$
		\$
Revised Contract Amount		
Work Completed To Date		\$
% work completed on original contract		
Work completed on Change Orders		\$
Materials stored to date (if any)		\$
Less Retention		\$
Less Previous Payments/Billed		\$
Amount Due This Payment Period		\$
Signature		Date
Print Name		Title

Approval By	Date	Cost Code:
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HELIX00841



**CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AGREEMENT BETWEEN  
CONTRACTOR AND SUBCONTRACTOR**

<b>This "Agreement" is hereby made as of:</b>	<b>August 26, 2008 (the "Effective Date")</b>	
<b>Between the "Contractor"</b>	CAMCO PACIFIC CONSTRUCTION COMPANY	
	2925 E. Patrick Lane, Suite G	
	Las Vegas, Nevada 89120	
	California License No. 676205	
	Nevada License No. 0037507	
	Utah License No. 6169863-5501	
	License Limit: Unlimited	
	Telephone: (702) 798-6611	
<b>And the "Subcontractor"</b>	Helix Electric of Nevada LLC	
	3078 E. Sunset Rd, Suite 9 Las Vegas, NV 89120	
	Nevada License No: 53810	
	Federal Tax ID No. /FICA No.: [Number]	
	Designated Representative: Robert Johnson	
<b>For the following "Project"</b>	ManhattanWest	
<b>At the following "Job Site"</b>	Russell Road and the 215 Beltway	
	Clark County, Nevada 89148	
<b>Developed by the following "Owner"</b>	Gemstone Development West, Inc.	
<b>For the following scope:</b>	All Site and Building Electrical Work (including high and low voltage)	
<b>Cost Code:</b>	[Contract Reference]	
	See <b>Addendum 1</b> for the expanded description of Subcontractor's scope of work ("Contract Work")	
<b>With the following "Retention":</b>	10%	
<b>For the following "Contract Price":</b>	The following amounts per Building:	
	<b>Building</b>	<b>Amount</b>
	Building 2	\$698,000
	Building 3	\$698,000
	Building 7	\$1,858,500
	Building 8	\$1,064,000
	Building 9	\$1,064,000
	<b>Total:</b>	<b>\$5,382,500</b>

HELIX00842

**I. THE CONTRACT WORK.**

**A. Project Site.** Contractor has executed a prime contract with Owner (the "Prime Contract") to perform all of the work required for the Project (the "Project Work") at the Job Site. The Project Work must be performed in accordance with the intent set forth in the Prime Contract and the addenda, reports, (including soils), drawings and plans and specifications made a part thereof and provided pursuant to Addendum 2 hereto (the "Project Contract Documents").

**B. Plans and Specifications; Laws; Scope.** The work for the portion of the Project to be performed by Subcontractor shall be performed in strict accordance with: (1) this Agreement; (2) the Project Schedule (defined below); (3) the intent set forth in the Project Contract Documents applicable to the Contract Work and all modifications thereto as permitted herein; and (4) all applicable federal, state and local codes, laws, permits, orders, ordinances and any rules and regulations promulgated thereunder (collectively "Laws"). Subcontractor recognizes that the scope of the Contract Work set forth on Addendum 1 cannot identify each and every component of the Contract Work but that the Contract Work shall include everything necessary to accomplish the results intended by the Project Contract Documents. The Contract Work shall include all labor, materials, tools, appliances, equipment, supplies, supervision, construction plant and machines, transportation, fuel, shop drawings and samples, as-built drawings, accessories, warranties/guarantees, training and all other facilities and incidentals necessary to produce the intended results, as and when required. The Contract Work shall also include such incidental work which may not be expressly indicated in the Project Contract Documents, but which is considered to be Subcontractor's obligations to provide under construction industry standards, customs, and practices. Subcontractor recognizes and accepts that it must accomplish everything necessary so as to provide good and workmanlike construction, in a complete and acceptable condition to Contractor and Owner. Subcontractor accepts the risk of any error or omission in its estimating or construction process as well as its means, methods, techniques, sequences and procedures. If there is any dispute between Contractor and Subcontractor over the Scope of the Contract Work, Subcontractor shall not stop the Contract Work but will prosecute the Contract Work diligently to completion. The Dispute will be mediated in accordance with Section XI(F).

**C. Submittals.** Subcontractor shall, to the extent required by the Contract Work, submit such shop drawings, product data, samples and similar submittals (collectively, the "Submittals") to Contractor that are required to accomplish the Contract Work with promptness and in such sequence so as to cause no delay in the Contract Work. It is generally encouraged that all "Submittals" be provided to Contractor within five days of the Effective Date. Contractor shall review all Submittals with reasonable promptness. Approval of Submittals which do not comply with the Project Contract Documents shall not release Subcontractor from its obligation to comply with the Project Contract Documents.

HELIX00843

**D. List of Suppliers and Subcontractors.** Subcontractor shall, within five days of the execution of this Agreement, submit to Contractor a "Supplier Statement" in the form attached hereto as Addendum 3 setting forth the names and addresses of all persons from whom Subcontractor expects to request, or has requested services, materials, fixtures, or machinery and equipment for use or installation in connection with the Contract Work. No additions to or changes of such statement will be made without the prior written consent of Contractor.

**E. Protection of the Contract Work.** Subcontractor shall take all steps, necessary to reasonably protect the Contract Work from loss or damage by the elements. Subcontractor shall, promptly replace and restore any damaged portion thereof at its expense, where such reasonable caution was not taken. Subcontractor shall also take all steps necessary to protect adjacent surfaces and work performed by others from damage due to Subcontractor's performance of the Contract Work. In the case of minor repairs to newly furnished surfaces (not covered by property insurance in place) the cost of repairs shall be paid for by Subcontractor that caused such damage.

**F. Reduction in the Contract Work.** Upon written notice to Subcontractor, Contractor shall have the right to reduce the amount of the Contract Work to be completed by Subcontractor under this Agreement, with a corresponding reduction in Contract Price occurring. Contractor may require the replacement of any Subcontractor at anytime with or without cause.

**G. Confidentiality.** Subcontractor shall keep all information and data relating to or connected with the Contract Work, and all documents relating thereto, confidential in all respects.

**H. Design Documents.** All documents related to or prepared in connection with the Contract Work, including, without limitation, documents that are furnished or obtained by Subcontractor, including, without limitation, any drawings, specifications, or designs and their digital counterparts (the "Design Documents") are the sole property of Owner and may be used by Owner for any purpose. By this reference the Design Documents are hereby incorporated into the Project Contract Documents, notwithstanding their potential omission from Addendum 1. Owner's ownership of the Design Documents furnished or obtained by Subcontractor does not relieve Subcontractor of its legal and professional design responsibilities to Owner or Contractor relating to such Design Documents. Notwithstanding any provision of this Agreement, upon receipt of a written request from Owner or Contractor, Subcontractor shall immediately deliver all Design Documents to Owner.

**I. Specific Articles.** Whenever any manufactured article, implement or series of articles or implements is identified by trade name, it is intended to establish a standard of quality or merit and Subcontractor shall furnish such specific article or implement. The intent of this paragraph is to require quality materials and workmanship. Substitutes of equal merit may be used by Subcontractor, only with the prior written consent of Contractor and Owner. By requesting an

HELIX00844

alternate or substitution, Subcontractor represents such alternate or substitute to be of equal quality and in conformance with the Project Contract Documents.

**J. Job Site Excavation.** If the Contract Work requires earth excavation, it shall be done in a safe manner and in accordance with all state, local and federal safety regulations. All backfilling of excavated material shall be performed by replacing material in 6" layers and mechanically compacting before placing the next layer. Compacting shall be by a suitable method as necessary to obtain a minimum density of 90% of maximum density by the "Modified Proctor" unless a higher density is required by other Project Contract Documents. If additional or less water in the material is required to obtain this density, it shall be added or removed as necessary. If, in the opinion of Contractor or Owner, the compaction does not meet this requirement, Contractor or Owner may have an independent soil testing laboratory perform tests to determine the degree of compaction. If the tests show the compaction to be less than required, Subcontractor shall reimburse Owner or Contractor for the costs of the re-tests and take action to compact or rebackfill the excavated areas until the requirements of this provision are satisfied.

**K. Project Schedule.** Attached hereto as **Addendum 4** is the ManhattanWest Camco Pacific Construction Schedule, dated October 31, 2008 setting forth the sequence and time requirements for all Project Work (the "Project Schedule"). Subcontractor hereby acknowledges (1) the Project Schedule and (2) that Subcontractor's performance of the Contract Work, as and when required, is material to Contractor's performance under the Prime Contract, accordingly, time is of the essence. Contractor may from time to time revise the Project Schedule as necessary, with Subcontractor's cooperation. If Subcontractor is behind on the schedule, Subcontractor shall engage such extra labor and equipment, (or work such overtime), as may be required or requested by Contractor to timely complete the Contract Work in accordance with this Agreement and the Project Schedule (collectively, the "Recovery Actions"). If the Recovery Actions are necessary due to Subcontractor's failures, Subcontractor shall be responsible for all costs and expenses incurred for such Recovery Actions. However, if the need for the Recovery Actions is not due to Subcontractor's failures, Contractor shall be responsible for all costs and expenses incurred for the Recovery Actions; provided however, that prior to taking the Recovery Actions, Contractor and Subcontractor shall agree upon the amount of such costs and expenses to be charged by Subcontractor. Contractor shall have control of the Job Site and shall have the right to decide the time and order in which various portions of the Project Work shall be performed. If Subcontractor fails to take any of the action described above, within 24 hours, after receiving notice from Contractor, Contractor may take action to attempt to put the Contract Work on schedule and deduct the entire costs thereof from amounts due, or to become due, Subcontractor.

**L. Delay.** If Subcontractor is delayed in the performance or completion of the Contract Work in accordance with Project Schedule by acts of God or any unforeseeable elements when unforeseeable or unpredictable, the time fixed for

HELIX00845

completion of the Contract Work shall be extended by the actual number of days that Subcontractor has thus been delayed. Subcontractor shall make claim therefor in writing to Contractor within 48 hours of the beginning of such delay. Subcontractor shall not be entitled to any additional compensation for any delays. If any act or omission of Subcontractor in the prosecution of the Contract Work causes delay to the Project Work, Subcontractor shall be liable for all costs, liabilities, and damages including consequential, liquidated, and sustained, or for which Contractor may be liable to Owner, or any other person because of Subcontractor's default.

**M. Meetings.** Subcontractor shall attend any meetings held by Contractor. Owner may meet independently with any Subcontractor at anytime, and each Subcontractor shall attend such meetings.

## **II. CONTRACT PRICE AND PAYMENT.**

**A. Contract Price.** For and in consideration of Subcontractor's agreement to perform all of the terms and conditions of this Agreement, and in consideration of the faithful and full performance by Subcontractor, Contractor shall pay, subject to increases or decreases as provided in this Agreement, the Contract Price. The Schedule of Values for the Contract Work, Unit Prices, if any, and Allowances, as applicable, are as set forth in **Addendum 5** attached hereto. Subcontractor acknowledges that the Contract Price includes an appropriate contingency and all applicable charges, fees, and sales, use, and other taxes. Contractor and Subcontractor expressly acknowledge that all payments due to Subcontractor under this Agreement shall be made by Contractor solely out of funds actually received by Contractor from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein, in the risk that Owner may for any reason, including, but not limited to, insolvency or an alleged dispute, fail to make one or more payments to Contractor for all or a portion of the Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition precedent to Contractor's obligation to pay Subcontractor; it being understood that Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives the corresponding payment from Owner. Upon receipt of such payment from Owner, Contractor will then promptly pay Subcontractor and also agrees that, in no event, shall Contractor be responsible for payment to Subcontractor if Subcontractor's failure to perform its obligations under this Agreement have been asserted as a reason for Owner's failure to make such payments to Contractors.

**B. Invoices.** All applications for payment ("Invoices") shall be on Contractor's standard subcontract Payment Request form, and shall be submitted no later than the 25th calendar day of each month, for the entire month. The Schedule of Values attached hereto as part of **Addendum 5** shall serve as the schedule of values for this Agreement. All Invoices shall be accompanied by a list of all

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suppliers; materialmen, and subcontractors whose materials or services have been utilized, during the pay period by Subcontractor to perform the Contract Work described in the Invoice. In addition, the Invoice will be accompanied by all required conditional and/or unconditional and/or final lien releases, as may be required by Contractor, Owner, or its lender to assure that all funds are being properly allocated by Subcontractor.

**C. Monthly Progress Payments.** So long as Subcontractor adheres to Contractor's periodic payment procedure, submits proper Invoices, and is not in conflict with the provisions of this Agreement, Contractor shall pay to Subcontractor, in monthly progress payments, 90% of labor and materials placed in position by Subcontractor during such preceding month. The remaining 10% shall be held as the Retainage. Contractor shall pay to Subcontractor in monthly progress payments with funds received from Owner. Progress Payments shall be made no later than the 10th day after Contractor's receipt from Owner of the corresponding payment. If Subcontractor fails to submit an Invoice for any Invoice period, Contractor may at its option, include in its monthly application an amount Contractor believes proper for the Contract Work for the missed Invoice Period. Subcontractor agrees to accept such amount in lieu of the amount Subcontractor may claim due. If Owner fails to make any payment to Contractor when due, Subcontractor shall cooperate with Contractor in Contractor's efforts to collect all amounts due from Owner and shall forbear collection efforts against Contractor until Owner pays Contractor or until all reasonable efforts of collection have been exhausted. Subcontractor shall be entitled to all of its mechanic's lien rights.

**D. Final Payment.** Subcontractor shall not be entitled to payment of the balance of the Contract Price, including, without limitation, the Retainage, until (1) the Contract Work has been completed to the satisfaction of Contractor, (2) Subcontractor has submitted to Contractor an Invoice for the final payment accompanied by (i) a final complete list of all suppliers and subcontractors whose materials or services have been utilized by Subcontractor, (ii) all closeout documents including, warranties, guarantees, as-builts, drawings, operating and maintenance manuals and such other items required of Subcontractor have been provided and such have been accepted by Owner, (iii) executed unconditional lien releases and waivers from Subcontractor and all of its mechanics, subcontractors, and suppliers for the Contract Work covered by all preceding progress payments, and (iv) executed unconditional lien releases and waivers upon final payment from all mechanics, subcontractors, and suppliers who have previously received final payment, and conditional lien releases and waivers upon final payment from Subcontractor and each mechanic, subcontractor, and supplier for which an unconditional lien release and waiver upon final payment has not been submitted to Contractor, (3) Contractor has received the corresponding final payment from Owner (4) Contractor has received evidence of Subcontractor's insurance required to be in place, (5) 45 days have elapsed after a Notice of Completion has been recorded or if a valid Notice of Completion is not recorded, upon Subcontractor's receipt of a written notice of acceptance of the Contract Work that shall be given by Contractor

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not later than 91 days after Contractor determines in good faith that the Contract Work has been performed completely and in an acceptable manner and (6) all outstanding disputes related to the Project have been resolved, and any liens against the Project have been removed.

**E. No Waiver.** No payment made shall (1) be considered conclusive evidence of the performance by Subcontractor of the Contract Work or acceptance of the Contract Work by Contractor and (2) not be construed to be acceptance of any delayed or defective Contract Work, or improper or defective materials.

**F. Payments to Others.** Contractor shall have the right to make payment to Subcontractor by checks payable jointly to Subcontractor and its employees, subcontractors, suppliers, or other mechanics.

**G. Establishment of Fund.** All sums earned by Subcontractor, by the partial or complete performance of the Contract Work, shall constitute a fund for the purpose of: (1) full completion of the Contract Work; (2) payment of any backcharges or claims due Contractor from Subcontractor on the Project; (3) payment to the subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims on valid and enforceable bond claims (if the Project is bonded by Contractor or Subcontractor). Such tentative earnings shall not be due or payable to Subcontractor, or anyone else claiming in Subcontractor's place and stead, including, without limitation, a trustee in bankruptcy, receiver or assignee of Subcontractor, until and unless the Contract Work is fully and satisfactorily completed and any amounts described above are fully paid and satisfied. Contractor may, at any time, demand written evidence of Subcontractor's financial capability to perform and that Subcontractor has made appropriate payments.

**H. Withholding of Payments.** Notwithstanding any applicable statutes, Contractor may withhold payments from Subcontractor for any of the following reasons: (1) Subcontractor's omission of any Contract Work required by this Agreement; (2) Subcontractor's failure to cure defective or damaged Contract Work; (3) Subcontractor's failure to submit all information required under this Agreement; (4) the filing or recording of mechanics' liens, materialmen's liens, stop notices or bonded claims related to the Contract Work or Subcontractor or reasonable evidence that such may occur; (4) Subcontractor's failure to make payments properly to subcontractors, suppliers, materialmen, laborers, or other persons entitled to file a lien; (5) Subcontractor's failure to complete the Contract Work, or any reasonable indication that the Contract Work will not be completed within the time of performance required in this Agreement; and (6) any other grounds for withholding payment permitted by State or Federal Law, or as otherwise permitted by this Agreement. Contractor may withhold 100% of the amount claimed in any lien, or notice of claim, by Subcontractor's suppliers or subcontractors or a reasonable amount to conclude Subcontractor's work or the requirements of this Agreement.

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I. Payment of Withheld Amount. Whenever the grounds giving rise to the above withholding have been removed, Contractor shall pay Subcontractor the amount withheld, less any expenses incurred by Contractor or damages sustained by Contractor. Any payment made by Contractor directly to any Subcontractor's laborers, subcontractors, suppliers or materialmen or for their benefit shall be deemed payment to Subcontractor and shall be credited against the Contract Price.

### III. JOB SITE CONDITIONS AND SUPERVISION.

A. Supervision of the Contract Work. Subcontractor shall, enforce strict discipline and good order among its employees (and those of its subcontractors and suppliers), faithfully and rigidly observe and ensure that its agents, employees, suppliers and subcontractors so observe, all laws and prudent business practices and all rules established by Contractor. Subcontractor shall not employ or allow at the Job Site any unfit person or anyone not skilled in, or licensed for, the work assigned to such person. Subcontractor shall employ a competent Project Superintendent. Such Superintendent shall be in attendance at the Job Site as required during the progress of the Contract Work and shall attend relevant on site meetings and shall have regular quality control inspections. Subcontractor shall be solely responsible for examining, accepting and securing, at the time of delivery all materials or equipment furnished to Subcontractor, and shall thereafter handle, store and install such items with such skill and care as to insure compliance with its obligations hereunder. Any loss to materials or equipment due to Subcontractor's violation of this covenant, or otherwise, shall be the responsibility of Subcontractor. Any person adjudged by Contractor to be incompetent, disorderly or otherwise unsatisfactory shall be immediately removed from the Job Site and shall not again be employed at the Job Site. Subcontractor shall not permit its employees or any other persons associated with the Contract Work to consume alcoholic beverages or illegal substances at the Job Site. Subcontractor shall prohibit barbeques, parties, pets, children, guests, loud music and unnecessary noise, at or near the vicinity of the jobsite.

B. No Defects. Subcontractor's commencement of the Contract Work constitutes Subcontractor's acknowledgment that the work of other subcontractors, completed or commenced prior to commencement of the Contract Work, are free of defects that would in any way impair or otherwise adversely affect Subcontractor's performance of the Contract Work. If Subcontractor discovers a defect in the Project Contract Documents, the Contract Work, or in the work of others, Subcontractor shall immediately notify Contractor in writing of such defect prior to commencing or continuing any of the Contract Work that may be affected thereby.

C. Signs. Subcontractor shall not post any sign or advertisement at or in the vicinity of the Job Site. Subcontractor shall adhere, and shall cause its mechanics, subcontractors, and suppliers to so adhere to, and observe all signs posted at the Job Site.

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**D. Integration of the Work.** Contractor shall take such steps as are necessary to integrate the Contract Work with the work of others at the Job Site. Subcontractor shall not alter the work of others. Subcontractor shall cooperate with Contractor and other subcontractors and shall participate in the preparation of coordinated drawings and work schedules in areas of congestion, to minimize interference to all.

**E. Hazardous Material.** Subcontractor shall not permit any Hazardous Material to be located, used, incorporated into the Contract Work or brought onto the Job Site in connection with the Contract Work. Subcontractor shall comply with all Laws (inclusive of Proposition 65) and prudent business practices concerning any Hazardous Material required and approved to be located, used, incorporated into the Contract Work or brought onto the Job Site or required and approved to be transported on, to, from or about the Job Site. If Subcontractor encounters any material, matter or substance reasonably believed to be Hazardous Material, or becomes aware of any circumstance or incident involving Hazardous Material at the Job Site, Subcontractor shall immediately stop the Contract Work in the area so affected and shall immediately report in writing such encounter or knowledge to Contractor. Subcontractor shall be liable for all on and off-site disposal or transport of Hazardous Material (and shall sign any manifest in connection with the transport or storage of such Hazardous Material) and for any discharge, release, injury to any person, or injury or damage to any property resulting from use of Hazardous Material in the performance of the Contract Work and shall be responsible for obtaining all required permits and approvals necessary to remove such Hazardous Material or otherwise remedy any problem resulting from the use of the Hazardous Material. "Hazardous Material" shall mean (1) any "Hazardous Material" as defined by Federal, State, or Local Agency Law or Code, (2) any substance or matter that results in liability to any person or entity from discharge of or exposure to such substance or matter under any statutory or common law theory, (3) pesticides, asbestos, formaldehyde, polychlorinated biphenyls, solvents, petroleum and motor fuel hydrocarbon material, and (4) any other substance or matter that becomes subject to any Federal, State, or Local Agency order or requirement for removal, treatment or remedial action. Subcontractor shall indemnify, defend (at Subcontractor's sole cost and with legal counsel acceptable to Contractor), protect and hold Contractor and Owner and their respective officers, directors, agents, employees, representatives, shareholders, partners, affiliates, successors and assigns, free from and against any and all claims, demands, losses, damages, disbursements, liabilities, fines, actions, causes of action, suits, expenses costs, professional and consultants' expenses, when removing or remediating any Hazardous Materials located, used, incorporated or brought onto or about the Job Site or transported on, to, from or about the Job Site by Subcontractor. This indemnity shall be effective after completion of the Contract Work, as well as during the progress of the Contract Work and shall survive any termination of this Agreement.

**F. Cleanup, Storage, Reserved Gate and Safety.** Subcontractor shall maintain the Job Site and the vicinity thereof, in a clean, neat and safe condition, to

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Contractor's satisfaction and shall (1) store all materials, supplies, equipment and goods in appropriate containers or enclosures, (2) remove from the Job Site all excess material and debris daily and all equipment, unused material and supplies and temporary structures upon completion, (3) return each fence, barrier and obstruction that is temporarily relocated or displaced by Subcontractor to its original position and condition immediately to ensure adequate and continuous protection of construction personnel as well as the general public at all times. It is understood that Contractor may charge Subcontractor for trash dumpster usage, if Subcontractor uses Contractor's dumpster. If Subcontractor fails to so maintain the Job Site, Contractor may, perform all work necessary to cause the Job Site to be so maintained and charge all costs related thereto to Subcontractor plus a 20% handling fee. Subcontractor shall take all reasonable safety precautions in the performance of the Contract Work, including complying with Contractor's Superintendent and/or safety officer, all OSHA safety laws, orders, codes, rules, ordinances and regulations. Subcontractor shall not load, nor permit any part of the structure to be loaded, with weight that will endanger its safety. Subcontractor shall immediately notify Contractor of any injury to any individual occurring at the Job Site. If the Job Site is picketed and Contractor establishes a reserve gate for Subcontractor's purpose, Subcontractor shall make use of such reserve gate, and continue performance of the Contract Work without interruption or delay. Subcontractor shall also be solely responsible for all traffic control necessary to perform the Contract Work in a manner acceptable to Contractor and in compliance with all Laws. Subcontractor shall require all of its employees to attend weekly Job Site safety meetings, either sponsored by Contractor or Subcontractor. In addition to the above, Contractor, may seize 1.5% of Subcontractor's total contract amount as a penalty for not maintaining the job site, and the vicinity thereof, in a clean, neat and safe condition to Contractor's satisfaction.

**G. Layout.** Contractor shall establish principal axis lines, control points and datum point. Subcontractor shall lay out the Contract Work and shall be responsible for its accuracy, including the placement of all conduits, pipes, inserts, embeds, grounds, blockouts, and so on, as required to properly perform the Contract Work.

**H. Use of Job Site Equipment.** Subcontractor assumes all responsibility for, and shall hold Contractor and Owner harmless from, all claims, actions, demands, resulting from the use of Contractor's or Owner's equipment or facilities by Subcontractor.

**I. Scaffolding, Staging and Hoisting.** As part of the Contract Work, Subcontractor shall provide, and at all times continuously maintain, in safe operational condition, all necessary scaffolding, staging, bracing, hoisting, planks, ladders, rigging, barricades, protective devices and coverings, and all other associated equipment and accessories required for the continuous safe and satisfactory accomplishment of the Contract Work, including use by others than Subcontractor's employees. Subcontractor shall also be responsible for all

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transportation, unloading, erection and removal of same from the Job Site. Usage of any equipment of Contractor or Owner shall be permitted only with prior written approval from Contractor, and at the sole risk of Subcontractor. SUBCONTRACTOR HEREBY RELEASES CONTRACTOR AND OWNER FROM ANY AND ALL CLAIMS, WHETHER RELATING TO BODILY INJURY OR PROPERTY DAMAGE, RESULTING FROM THE USE OF ANY FACILITIES OR EQUIPMENT AT THE JOB SITE.

#### **IV. EXAMINATION BY SUBCONTRACTOR.**

**A. Review of all Relevant Matters.** Subcontractor has examined, investigated and familiarized itself with: (1) the Project Contract Documents; (2) the nature and location of the Job Site and all actual conditions thereof as well as those that could be expected during performance of the Contract Work; (3) the conformation of the ground and improvements of other subcontractors on which the Contract Work is to be performed; (4) the character, quality and quantity of the materials, equipment and facilities necessary to complete the Contract Work in a good and workmanlike manner and to the best of industry standards and pursuant to the Project Schedule; (5) the general and local conditions relating to the Contract Work; and (6) all other matters that may affect Subcontractor's performance of the Contract Work.

**B. No Reliance on Contractor.** Subcontractor enters into this Agreement relying solely on its own examination and investigation of the foregoing matters and not on any verbal representation or verbal information relating to the Job Site or the Contract Work (or the completion thereof) made by Contractor or Owner or any agent thereof. No estimate or bid of Subcontractor either before or after execution of this Agreement shall affect any of the terms or obligations contained herein. Subcontractor assumes the risk of Job Site conditions and releases Contractor and Owner from any claim for additional compensation resulting from any known or anticipatable Job Site conditions.

**C. Satisfaction with Plans.** If the Project Contract Documents require clarification of any inadequacy, discrepancy inconsistency or omission, or are in conflict with the Submittals, Subcontractor shall immediately request clarification in writing from Contractor. Subcontractor's failure to request clarification, suspected or reasonably inferred inadequacy, inconsistency, omission or conflict shall not relieve Subcontractor of its obligation to perform in accordance with Contractor's interpretations of those portions of the Project Contract Documents. Subcontractor shall not be entitled to any additional compensation for performing the Contract Work pursuant to Contractor's interpretation of the Project Contract Documents. Subcontractor shall notify Contractor at least 72 hours in advance of making any deviation from the Project Contract Documents by submitting to Contractor the proposed deviation and the cause therefore. If the deviation will result in a change to the Contract Price, Subcontractor shall promptly furnish Contractor with a Change Order Estimate pursuant to Section VI. Under no circumstances may any approved deviation fail to comply with all Laws, and Subcontractor assumes all responsibility for compliance with all Laws, notwithstanding any permitted deviation or change to the Contract Work.

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Subcontractor shall not be entitled to an increase of the Contract Price or time extension, due to compliance with Laws, in place as of the Effective Date.

**D. Design Build.** Subcontractor shall be solely responsible for the design of the Contract Work and the issuance of any applicable permits for the Contract Work (the "Design"). The Design Documents shall include the Design. The Contract Price includes any costs, fees, and expenses associated with the Design and any permits related to the Design, including without limitation any costs, fees, or expenses required for any third-party service providers or engineers necessary for the Design or its approval. Notwithstanding any provision of this Agreement, Subcontractor shall (1) assume complete responsibility for the constructability of the Design; (2) shall not be entitled to any additional compensation from Owner or Contractor for any cost or fee increases resulting from any errors or omissions in the Design, including, without limitation, any coordination issues and any comments or requests for changes provided by any applicable government agency or regulatory body; (3) perform, at Subcontractor's sole cost and expense, all construction administration services in connection with the Contract Work; and (4) not be entitled to, and shall not submit any change order for, any increase in the Contract Price or any delay days in the Project Schedule unless Contractor delivers a Change Request to Subcontractor expressly instructing Subcontractor to increase the scope of the Design.

#### **V. INSURANCE.**

**A. Coverage.** Subcontractor shall maintain in effect at all times and at its own expense the following insurance coverages:

**1. Worker's Compensation:** Coverage A Statutory policy form; Coverage B Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.

**2. Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.

**3. Comprehensive General Liability or Commercial General Liability.** "Occurrence Form" only. "Claims Made" is not acceptable. The limits of liability shall not be less than:

**i. Comprehensive General Liability:** \$1,000,000 combined single limit bodily property damage per occurrence or,

**ii. Commercial General Liability:** The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).

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4. **Excess Liability:** Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.

5. **OCIP.** The Project is covered by an OCIP. Subcontractors shall enroll into this OCIP. Subcontractors shall be responsible for a deductible/SIR equal to that of the subcontractor's non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium trade contractors and \$75,000 for high trade contractors.

6. **Deductibles and Retention.** Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.

7. **Form Requirements.** Liability Policy forms must include: (a) premises and operation with no X, C or U exclusions; (b) products and completed operations coverage (Subcontractor agree to maintain this coverage for a minimum of one year following completion of the Contract Work); (c) full blanket contractual coverage; and (d) broad form property damage including completed operations or its equivalent.

B. **General Requirements.** Before starting the Work, Subcontractor shall furnish Contractor certificates of insurance, endorsements, or copies of policies that demonstrate that Subcontractor has obtained the required coverage from carriers reasonably acceptable to Contractor. All policies must be written by insurance companies domiciled in the United States and qualified to do business in Nevada. Each policy of insurance shall (1) provide that the coverage may not be terminated or modified without 30 days prior written notice being received by all Additional Insureds, (2) name Contractor and Owner and any other required interest as additional insureds, (3) stipulate that the coverage afforded to the additional insureds is primary and any other coverage maintained by such additional insureds shall be excess and non-contributing and (4) must be an "occurrence" form ("Claims Made" and modified "Occurrence" forms shall not be acceptable).

C. **Waivers of Subrogation.** Contractor and Subcontractor waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Agreement or any Prime Contract, except such rights as they have to proceeds of such insurance held by Contractor or Owner as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

D. **Beneficiaries.** Subcontractor's insurance obligations set forth in this Section V shall be for the benefit of Contractor, Owner and their respective successors and assigns.

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## **VI. CHANGES IN THE CONTRACT WORK.**

**A. Request for Change.** Contractor may, at any time and from time to time, without affecting the validity of this Agreement, order additions, deletions or other modifications to the Contract (the "Change Request"). Contractor's Designated Representative shall be the only person authorized to make Change Requests. Upon written acceptance of Subcontractor's Change Order Estimate (as defined below) by Owner and Contractor, Subcontractor shall execute Contractor's standard form Change Order which shall, incorporate all of the terms and conditions of this Agreement (the "Change Order"). All labor, materials or equipment utilized shall be consistent with the terms of the Agreement and the Change Request. Subcontractor shall maintain complete records of all duly authorized modifications made to the Contract Work. Upon completion of the Project Work, Subcontractor shall provide Contractor with a redlined set of Project Contract Documents, showing any modifications of the Contract Work. Contractor is relying on Subcontractor's specialized knowledge related to performance of the Contract Work. Subcontractor shall be liable to Contractor and Owner for all additional costs created by or arising out of any unauthorized changes to the Contract Work.

**B. Change Order Estimate.** Upon receipt of a Change Request, Subcontractor shall promptly furnish to Contractor a statement in the form of **Addendum 6** (the "Change Order Estimate") setting forth in detail, with a labor and material breakdown by trades and work classifications. Subcontractor's prices for Change Order modifications shall be consistent with the contract prices covered by this Agreement. Contractor shall have the option to engage another third-party to perform the work set forth in any Change Request. Subcontractor shall have no claim for additional compensation as a result of the Change Request unless the Change Order is accepted by Contractor in writing. Expedious handling of such Change Requests by Subcontractor is material to Contractor's entering into this Agreement with Subcontractor.

**C. Value Engineering.** In the event that Contractor delivers written notice to Subcontractor of a specific value engineering initiative (the "VE Initiative"), Subcontractor will provide to Contractor, within three days, a revised Contract Price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Contractor (the "Value Engineering Deduct"). Notwithstanding any provision of this Agreement, in the event that Subcontractor fails to comply with the previous sentence of this Section VI(C), Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly. Notwithstanding any provision of this Agreement, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Contractor, Contractor shall have the right to obtain an alternate price from a third-party, and if Subcontractor fails to meet such price, Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly.

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**D. Owner's Approval of Change Estimate.** If the work for which Subcontractor claims extra compensation, is determined by Owner not to entitle Contractor to a Change Order, Contractor shall not be liable to Subcontractor for any extra compensation for such work, unless, Contractor agreed, in writing, to such extra compensation specifically excluding Owner's approval and payment.

## **VII. WARRANTY, TESTING AND CORRECTION.**

**A. Warranty of Materials and Workmanship.** Subcontractor expressly warrants that all labor, material, equipment, and fixtures furnished or installed by it (or by its subcontractors or materialmen) under the terms of this Agreement shall be of good quality and to the best of industry standards, free of any faults and defects whatsoever, and shall be completed in accordance with and shall meet or exceed the requirements of the Project Contract Documents and applicable Laws and standards. Subcontractor shall promptly provide sufficient evidence of such conformance, if requested. This warranty shall survive for so long as Contractor or Owner may be held liable for the matters warranted hereunder (in their respective roles as contractor, builder or seller) but in no event less than a period of two years from the date of completion and final acceptance of the Contract Work. The above express warranty of Subcontractor shall not limit or affect other warranties or guarantees expressly or impliedly made by Subcontractor or any of its subcontractors or materialmen and shall not limit or affect any remedies that are awarded by law with respect to express or implied warranties or negligent or willful acts or omissions of Subcontractor or any of its subcontractors or materialmen. The above warranties issued by Subcontractor shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Test and Inspection of the Contract Work.** Contractor shall not be responsible for reviewing or accepting, the safety or design of the Contract Work or any part thereof or a determination of conformance with Laws or other requirements of any public utility. However, Contractor shall be entitled (but not required) to test and inspect the Contract Work or cause the same to be accomplished without notice to Subcontractor. Subcontractor shall notify Contractor in writing of any prudent, reasonable, or required inspection or testing that must be performed, within a certain time period, so as not to require modification of the Contract Work or the work of others in connection with the inspection, testing and approval. Failure of Subcontractor to so notify Contractor shall result in Subcontractor assuming full responsibility for, and all costs of the uncovering of the Contract Work, or the work of others, in order to allow the required inspection, testing and approval. As part of the Project Work, Subcontractor shall be responsible for the execution of all inspections, tests and testing required by the specifications, and by all governmental authorities having jurisdiction.

**C. Correction and Removal of Defective Contract Work.** Subcontractor shall, at its own expense, provide all materials and labor to correct any defects in the Contract Work's materials or equipment (together with any damage to all finishes, fixtures, equipment and personal property damage as a result of such

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defects) and to remedy any violation of Laws in a manner reasonably satisfactory to Contractor. Subcontractor shall begin all corrective and remedial work necessary to cure any defect in the Contract Work, materials or equipment and to remedy any violation of Laws within 48 hours after receipt of a notice from Contractor. However, any defect related to life saving systems, plumbing, heating, electrical and roofing shall be completed immediately after the notice to repair is delivered to Subcontractor. Subcontractor shall diligently pursue all corrective and remedial work to completion. Subcontractor shall provide a written report to Contractor's office immediately upon completion of the corrective or remedial work. If Contractor remedies any defect for Subcontractor, Subcontractor shall pay to Contractor the costs of all corrective work plus a 20% handling charge.

#### **VIII. INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY.**

##### **A. Indemnification.**

1. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, Owner, and their respective subsidiaries, owners, affiliates, directors, shareholders, members, officers, managers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out or resulting from or in connection with (a) any breach of this Agreement by Subcontractor; (b) the negligence or willful misconduct of Subcontractor or any subcontractor or supplier of Subcontractor or any of their respective agents or employees; or (c) the Contract Work.

2. Provided that Subcontractor has paid all undisputed outstanding Invoices, in the event that Contractor is joined as a party in a lawsuit or arbitration filed by Subcontractor or any subcontractor or supplier of Subcontractor concerning sums allegedly due to such party, Subcontractor shall provide a bond or other security agreeable to Contractor to protect the interests of Contractor and Owner. The amount of bond or security provided by Subcontractor shall be equal to 150% of the amount allegedly due to Subcontractor or the applicable subcontractor or supplier of Subcontractor.

3. Subcontractor further agrees to indemnify, hold harmless and defend Contractor from and against any loss, including but not limited to fines, penalties and corrective measures that Contractor may sustain by reason of Subcontractor's failure to comply with all applicable federal, state and local laws, ordinances, rules, regulations and other acts of any governmental authority, in performance of the Contract Work.

4. The primary duty for the safety of Subcontractor's employees, materials, conditions and equipment shall lie with Subcontractor. Subcontractor will furnish an active and enacted Safety Program to Contractor's Superintendent prior to personnel or material entering the Project Site. Subcontractor further agrees to indemnify, hold harmless, protect and defend Contractor and Owner, its

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successors or assignees, its clients and the user of Subcontractor's goods and services against all suits and from all claims, demands, judgments, costs and attorneys fees for actual or alleged infringement of letters, patents, trademarks and copyrights in connection with goods and services supplied hereunder provided that they are used as normally intended.

5. Any indemnification set forth in this Section VIII(A) shall be effective after completion of the Contract Work as well as during the progress of the Contract Work, and shall not be limited by the insurance requirements of Section V. Any indemnity provided for in this Section VIII(A) shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Release.** Subcontractor hereby expressly waives and releases Contractor and Owner from all claims, demands, expenses, debts, damages and liabilities, including, without limitation, lost wages, pain and suffering, permanent or temporary disability, medical and hospital expenses, attorneys' fees and costs of repair and replacement of Subcontractor's property, which in any way arise from or relate to (1) the physical condition, security, or maintenance of the Job Site and the vicinity thereof; (2) vandalism, theft or any other willful or negligent act by any person or entity at the Job Site or in the vicinity thereof, including, without limitation, the operation of a motor vehicle; or (3) the activities, omissions or behavior, whether or not negligent, of suppliers and other contractors and subcontractors, whose services have been or are being utilized by or on behalf of Contractor, as well as the activities, omissions or behavior of their agents and employees, whether or not actively or passively negligent. Nothing in this Section VIII(B) shall be construed to release the Indemnified Parties or any of them from their exclusive (i) willful or (ii) grossly negligent acts.

**C. Limitation of Liability.**

1. Subcontractor's right to recover damages or losses of any kind or nature resulting from any breach of this Agreement by Contractor shall be governed and limited by the provisions of this Section VIII(C). The terms of this Section VIII(C) shall create no separate right to recover damages.

2. Subcontractor shall keep on a daily and current basis, separate, accurate records of all man-hours, equipment, supplies, materials and tools that it claims it used and/or lost (and the value thereof) as a result of any breach of this Agreement by Contractor. With respect to each and every day that Subcontractor claims it has incurred any losses or increased costs or suffered any damages as a result of any breach of this Agreement by Contractor or otherwise incurred because of Contractor, Subcontractor shall deliver to Contractor on or before 1:00 p.m. (local time) of the following day, a written notice setting forth and describing in detail such, and the amount of the loss and/or damage claimed by Subcontractor for such day, attaching thereto a complete, true and accurate copy of the records required the previous sentence of this Section VIII(C)(2). Subcontractor shall give a daily notice and attach the material referred to by this Section VIII(C)(2).

HELIX00858

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

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**Supreme Court Case No. 77320**  
***Consolidated with 80508***

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

**APCO CONSTRUCTION, INC., A NEVADA CORPORATION,**

Respondent.

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**JOINT APPENDIX**  
**VOLUME 80**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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

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

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

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

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

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



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

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

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

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

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<sup>1</sup> Filed January 31, 2018

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

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

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

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



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

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

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

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

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

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

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

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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018



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

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<sup>4</sup> Filed January 31, 201883

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

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

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

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

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

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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>



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

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

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

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

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

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

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

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



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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

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

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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

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

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

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

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



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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>08-06-19</b>	<b>Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA007316- JA007331</b>	<b>101</b>
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC’s Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.’s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Nevada, LLC, SWPPP Compliance Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
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	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
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	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
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	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
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	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
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	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
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	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
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	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
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<b>06-01-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>



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01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
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11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
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	<b>APCO TRIAL EXHIBITS:</b>		
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	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
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	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
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	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

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

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

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



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

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

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

<sup>5</sup> Filed January 31, 2018

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

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

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

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

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<sup>8</sup> Filed January 31, 2018

3. If any arbitrator, court of competent jurisdiction or appellate court determines that Contractor is liable to Subcontractor as a result of any breach for any reason, the amount for which Contractor is liable shall not exceed the actual direct field costs incurred by Subcontractor, as per the actual daily direct field costs reflected in the daily records kept by Subcontractor and delivered to Subcontractor on a daily basis pursuant to Section VIII(C)(2). Contractor shall not be liable to Subcontractor for any costs, expenses, losses or damages of any kind if Subcontractor did not comply with the provisions of this Section VIII(C).

4. If Subcontractor commences an action against Contractor seeking recovery of damages or losses for breach of this Agreement, or other reasons caused by Contractor, Subcontractor shall be precluded from proving its costs and damages by "total cost", quantum meruit, "equitable adjustment" or in any way other than specifically identifying and proving the direct field costs that resulted each day from each separate breach, or other cause.

5. Notwithstanding any provision of this Agreement, Contractor shall not be liable to Subcontractor for loss, interest, loss of profit, nor for any indirect, special or consequential damages. Provided that Subcontractor's lien rights are not impaired, Subcontractor shall look solely to the property of Owner for all amounts due Subcontractor hereunder if (a) Subcontractor is not paid undisputed amounts otherwise due Subcontractor pursuant to this Agreement and (b) Contractor has not received payment from Owner of the undisputed amounts due Subcontractor.

**IX. AS-BUILTS, FINAL CLOSE OUT REQUIREMENTS.** All life safety systems, electrical, mechanical, plumbing, heating, air conditioning, fire sprinkler, drainage, and utility Subcontractors must, prior to receiving Final Payment, furnish Contractor with complete and accurate "as-built" records which shall be maintained at all times during construction showing exact location and dimensions of all control systems, shutoffs, emergency operators, main lines, branch lines, valves, drains, clean outs, etc. in accordance with the Project Contract Documents. All final close out documents (including, without limitation, all maintenance and operational manuals, start-up procedures, brochures, and as-built records as required herein or in any Project Contract Documents) must be provided to Contractor, in triplicate, before Final Payment, in a form reasonably acceptable to Contractor and Owner. Final close out documents must be provided by Subcontractor to Contractor before Contractor can release any monies, over 75% of the Contract Price.

**X. LIENS AND STOP NOTICES.** Subcontractor shall pay when due, all claims asserted by and debts in favor of persons or entities who furnish labor, material, services, fixtures or equipment applied to or utilized in the performance of the Contract Work. Subcontractor shall prevent the recordation of any claim of lien upon Owner's property, the imposition of any stop notice or bonded stop notice on funds held by a lender that are intended to be paid to Contractor or to Owner pursuant to an agreement to finance completion in whole or in part of the Project, and the garnishment or attachment of funds held by Contractor or

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Owner, by promptly satisfying all claims and debts that are or may be asserted against Subcontractor or Subcontractor's subcontractors by such persons or entities. Any sums paid to Subcontractor under this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor, materials and equipment to Subcontractor for the Contract Work. If Subcontractor fails to effect any release or dismissal Contractor may take such action as it deems appropriate to effect such release or dismissal and all costs thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor and if not so paid, shall be deducted from amounts due Subcontractor under this Agreement, or any other Agreement between the parties.

**XI. DEFAULT OF SUBCONTRACTOR; REMEDY; TERMINATION; DISPUTE RESOLUTION.**

**A. Default.** The term "Default" shall mean any failure by Subcontractor, at any time, to: (1) supply sufficient skilled workers or proper materials; (2) properly and diligently prosecute the Contract Work as required by this Agreement; (3) make prompt payment to its workers, sub-subcontractors, suppliers or consultants, or becomes delinquent with respect to contributions or payments required to be made to any insurance company, workman's compensation fund, health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust; (4) provide adequate insurance as required by Section V, (5) to provide Contractor with adequate assurance of its ability and willingness to perform pursuant to this Agreement within 48 hours of receiving a written notice from Contractor requesting such assurance, or (5) is otherwise in breach of a material provision of this Agreement. Immediately upon the occurrence of any Default, Contractor shall have the right, without prejudice to any other rights or remedies at law or in equity, to immediately invoke any and all of the remedies set forth in Section XI(C).

**B. Liquidated Damages.** In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against Contractor by Owner, as provided in the Prime Contract, for any Project delays caused by Subcontractor. Such damages shall be paid for each day the Contract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by Contractor, and granted by Owner. Subcontractor's obligation to pay the above liquidated damages shall be for the benefit of Contractor, Owner, and their respective successors and assigns.

**C. Remedies.** If Subcontractor fails to remedy any Default within 48 hours after receipt of written notice from Contractor, Contractor shall be entitled to any one or more of the following remedies, none of which shall be deemed exclusive of any other:

1. Contractor may immediately terminate the Agreement for cause.

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2. Contractor may immediately terminate the right of Subcontractor to prosecute the performance of the Contract Work in whole or in part without liability to Subcontractor for any Contract Work thereafter performed by Contractor or anyone else.

3. Upon receipt of written notice from Contractor, Subcontractor must immediately exit the Job Site leaving all materials and equipment in place and not return without the prior written permission of Contractor.

4. Upon receipt of written notice from Contractor, Subcontractor must immediately return all Design Documents to Contractor.

5. Subcontractor must (a) deliver all Subcontractor permits to Contractor and (b) execute and deliver all documents and take any additional actions necessary to transfer such permits to Contractor or its designee.

6. Contractor may pursue any other remedy provided elsewhere in this Agreement.

7. Contractor may withhold payment of any monies due until the Default of Subcontractor has been cured and a final accounting of Contractor's costs and appropriate deductions have been made as permitted under this Agreement, including without limitation, any liquidated damages attributable to or caused by Subcontractor's failure to prosecute the Contract work within the Project Schedule.

8. Contractor may set off the costs to complete the performance of the Contract Work and any other damages due Contractor against monies due under any other contract between Contractor (or any entity owned, controlled by, affiliated with or under common control with Contractor) and Subcontractor (or any entity owned, controlled by, affiliated with or under common control with Subcontractor), whether such contract shall be in effect prior or subsequent to this Agreement.

9. Contractor may pay any sums to any such persons, firms, itself or other entities to whom Subcontractor shall be obligated and to charge such sums paid to the account of Subcontractor without recourse by Subcontractor. If such sum is greater than the amount then due Subcontractor, the excess shall be a debt due from Subcontractor to Contractor and shall bear interest at the rate of 10% per annum from the date due until paid.

10. Contractor shall also be entitled to use any of Subcontractor's equipment and consume any materials on the Job Site (without further compensation to Subcontractor for such use) until it is completed. Subcontractor shall pay Contractor the cost of such completion or correction, plus a 20% handling charge. Subcontractor shall receive no additional payment until the Contract Work is completed.

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11. Any Attorneys' fees and other damages incurred by Contractor as a result of a Default shall be considered a cost to complete the Contract Work and shall be paid by Subcontractor.

12. Contractor may pursue any and all such other remedies as may be provided at law or in equity.

**D. Termination for Insolvency.** In addition to the rights of Contractor set forth in Sections XI(B) and (C), Contractor may immediately invoke the remedies set forth in Section XI(C) without waiting 48 hours upon the occurrence of any of the following: (1) the filing of a petition for relief under the Bankruptcy Code or the institution of any other Insolvency proceedings by, against, or on behalf of Subcontractor or Owner, (2) the appointment of a receiver for Subcontractor or Owner, (3) the death, dissolution or liquidation of Subcontractor, (4) the transfer to others of more than 25% of the assets or ownership interest of Subcontractor, and (5) any act of insolvency by Subcontractor or Owner.

**E. Termination by Contractor.** Upon 48 hours written notice to Subcontractor, Contractor shall be entitled to terminate this Agreement for any cause whatsoever, regardless of whether Subcontractor has begun performance of the Contract Work. In such circumstance, Subcontractor shall be entitled to receive that portion of the Contract Price earned by Subcontractor for Contract Work performed to the satisfaction of Contractor, including shop drawings, submittals, and reasonable mobilization costs, less any payments made prior to the date of termination of this Agreement upon receipt by Contractor of payment from Owner. Subcontractor shall not be entitled to any additional compensation or damages as a result of termination of this Agreement pursuant to this Section XI(E). Subcontractor shall make all reasonable efforts to procure cancellation of all existing orders or contracts upon terms approved by Contractor.

**F. Dispute Resolution/Arbitration.**

1. **Claim.** The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of any Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between Contractor and Subcontractor arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

2. **Mediation.**

(a) Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

(b) The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the Construction Industry Mediation Rules of the

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American Arbitration Association in effect as of the date that such Claim arises. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Las Vegas, Nevada. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **3. Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section XI(F)(2).

(b) Any Claims not resolved by mediation shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date that such Claim arises. The demand for arbitration shall be filed in writing with the other party to the Agreement and the American Arbitration Association.

(c) A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

(d) The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

(e) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**4. Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Contractor and Subcontractor related to the Contract Work or this Agreement, Contractor shall diligently continue to perform the Contract Work to the full extent practicable pending resolution of the unresolved Claim, and Contractor

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shall continue to make payment required under this Agreement for all Contract Work that is not directly implicated in the Claim.

**XII. REPRESENTATIONS OF SUBCONTRACTOR.** To induce Contractor to enter into this Agreement, Subcontractor covenants, represents and warrants as follows:

**A. Authority.** Subcontractor is duly organized and in good standing under the laws of the State of Nevada, and has all necessary powers to carry on its business and has the right, power, legal capacity and authority to enter into this Agreement.

**B. Litigation.** Except as disclosed to Contractor, in writing, prior to the Effective Date, there is no bankruptcy, reorganization, suit, action, arbitration, or legal administrative or other proceeding, or non-insured workers' compensation claim or governmental investigation pending or threatened, against Subcontractor or to the knowledge of Subcontractor, against any affiliate, general partners or shareholders of Subcontractor.

**C. Financial Capability and Skill.** Subcontractor is and must continue to remain financially solvent and financially capable of discharging its obligations under this Agreement. Subcontractor and everyone acting on behalf of Subcontractor in connection with the performance of the Contract Work is skilled in performing the Contract Work and in the means, methods, techniques, sequences and procedures related to completing the Contract Work in the most expeditious and economical manner consistent with the interest of Contractor.

**D. Licenses/Permits.** Subcontractor has and shall maintain, or shall pay for and maintain, all necessary licenses, Subcontractor specific permits, and governmental fees necessary to perform the Contract Work and all other obligations of Subcontractor under this Agreement.

**XIII. MISCELLANEOUS.**

**A. Nondiscrimination.** Subcontractor shall abide by and comply with all procedures, rules and regulations concerning nondiscrimination issued by any governmental agency or authority, insofar as they apply to Subcontractor's performance of this Agreement.

**B. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (1) by personal delivery, when delivered personally; (2) by overnight courier, upon written or electronic verification of receipt; (3) by electronic mail or facsimile, upon transmission; or (4) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the first page of this Agreement or such other address as either party may specify in writing.

**C. Construction; No Waiver.** Whenever used in this Agreement, the singular shall include the plural and the plural the singular. Delay in the enforcement of any

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remedy in the event of a breach of any term or condition hereof or in the exercise by either party of any right hereunder shall not be construed as a waiver. This Agreement and all of the addenda, attachments, schedules and exhibits hereto, which are hereby incorporated into this Agreement by this reference, constitute the entire Agreement between the parties.

**D. Injunctive Relief for Breach.** Subcontractor's obligations under this Agreement are of a unique character that gives them particular value. A breach of any of such obligations will result in irreparable and continuing damage to Contractor for which there will be no adequate remedy at law. In the event of such breach, Contractor will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

**E. Merger Clause.** This Agreement represents the entire and integrated agreement between Contractor and Subcontractor related to the subject matter hereof and supersedes all prior negotiations, representations, agreements, communications, bids, proposals, and estimates, whether written or oral.

**F. Amendment and Termination.** Subject to Section VI(C) and Sections XI(C) and (D), this Agreement may be amended or terminated only by written instrument executed by both Contractor and Subcontractor.

**G. Severability.** If any portion of this Agreement is declared by court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable portion had not been a part of this Agreement.

**H. Assignment.** Contractor and Owner may, at any time, assign the whole or any part of this Agreement. Subcontractor shall not assign or further subcontract (with the exception of those subcontractors listed by Subcontractor pursuant to Section Addendum 3) any portion of the Contract Work without the prior written consent of Contractor. Contractor's consent to an assignment shall not relieve or release Subcontractor from all obligations of the Agreement. Subcontractor acknowledges the reasonableness of this provision due to the personal service nature of this Agreement.

**I. Title to Improvements.** Title to all materials, fixtures, plans and installations shall be deemed vested in Contractor when such has been installed, affixed permanently to the realty, or otherwise delivered to and accepted by Contractor. Contractor shall not be liable for loss or damage to any material or fixtures as to which title is not then vested in Contractor at the time of such loss or damage as herein provided, whether such material or fixtures are on the Job Site, in transit, or under the control of Contractor.

HELIX00865

**J. Continuation of Work.** During all disputes, actions, claims or other matters arising out or relating to this Agreement or the breach thereof, Subcontractor shall carry on its duties hereunder and maintain the schedule for performance for the Contract Work. Subcontractor shall be paid for performance of undisputed Contract Work, in accordance with the terms of this Agreement.

**K. Interpretation and Governing Law; Time.** This Agreement shall not be construed against the party who prepared it, but shall be construed as though prepared by both parties; the parties thereby waiving the effect of any statute or law providing for uncertainties in a contract to be construed against the party who prepared the agreement. This Agreement shall be construed and governed by the laws of the State of Nevada. Subject to Section XI(F), any litigation or other proceedings regarding this Agreement shall be brought in the applicable court in Clark County, Nevada. It is mutually accepted that time is of the essence in this Agreement.

**L. Litigation Fees.**

**1. Payment to Prevailing Party.** It is expressly understood that this Agreement shall include an Arbitration Provision as shown in Section XI(F). In the event that any negotiation, suit, action, arbitration, or mediation is instituted to enforce or interpret any provision in this Agreement or to resolve any dispute arising from or related to the Work, the prevailing party in such negotiation, suit, action, arbitration, or mediation shall be entitled to recover, in addition to any other relief to which it is entitled, from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals. For purposes of this Agreement, the "prevailing party" shall be the party who recovers a greater percentage of the disputed amount, as well as a party who dismisses an action for recovery hereunder in exchange for greater settlement of the sums allegedly due.

**2. Attorneys' Fees In Third Party Litigation.** If any party is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim as well as any claim brought by Owner) because of the other party's breach or alleged breach of this Agreement, and such party is the prevailing party in such action or proceeding, such shall be entitled to its attorneys' fees.

**M. Independent Contractor.** Subcontractor is an independent contractor and shall, at Subcontractor's sole expense, and without increase in the Contract Price, comply with all Laws and pay all manufacturers' sales, use and processing taxes and all federal, state and local taxes.

**N. Survival of Obligations.** Any indemnity, guaranty, representation or warranty given by Subcontractor to Contractor in this Agreement shall survive the expiration or termination of this Agreement.

HELIX00866

**O. Third Party Beneficiaries.**

1. Subject to Section XIII(O)(2) and as expressly set forth elsewhere in this Agreement, this Agreement is between Contractor and Subcontractor. Except as expressly set forth herein, no other person or entity is intended to be, nor shall be, benefited by the terms hereof, whether as a third party beneficiary or otherwise.

2. Notwithstanding any provision of this Agreement, it is expressly agreed that Owner is a third-party beneficiary of Subcontractor's obligations under this Subcontractor Agreement, including without limitation, any indemnity, warranty, insurance, or liquidated damage provisions obtained by Contractors.

**P. Substance Abuse Testing.** Contractor shall have the right (but not the obligation) to require all personnel of Subcontractors, and its subcontractors, to be tested for substance abuse. Should any individual refuse to be so tested than that individual shall be considered an unfit person per Section III(A) and shall not work on the Project Site.

**Q. Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Signatures to this Agreement may be transmitted via facsimile or PDF, and such signatures shall be deemed to be originals.

**R. APCO Relationship.** Subcontractor was previously engaged to perform the Contract Work by Asphalt Products Corporation ("APCO"). Notwithstanding any provision of this Agreement, this Agreement shall not (1) be construed to alter any contractual relationship between Subcontractor and APCO prior to the Effective Date or (2) prejudice any rights or obligations of APCO and Subcontractor, to each other, arising or applicable under the any such agreement prior to the Effective Date; provided however, that Subcontractor shall not be entitled to payment from both APCO and Contractor for performing the exact same Contract Work.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.**

**Subcontractor**

\_\_\_\_\_, a \_\_\_\_\_ (circle one)  
corporation, sole proprietorship, partnership,  
limited liability company

\_\_\_\_\_  
By:  
Its:

HELIX00867

**Contractor**

Camco Pacific Construction Company, Inc.,  
a California corporation

---

By:

Its:

---

Contractor's License Number:

---

Federal Tax ID or FICA No.:

HELIX00868



## ADDENDUM 1

### FURTHER DESCRIPTION OF THE CONTRACT WORK

Subcontractor shall furnish and install all labor, material, supervision, equipment, tools, transportation, submittals, taxes, hoisting, scaffolding, specialty permits and incidentals as are required to install and complete all Site and Building Electrical Work (including high and low voltage) per the Project Contract Documents and the Project Schedule for the following amounts per building:

Building	Amount
Building 2	\$698,000
Building 3	\$698,000
Building 7	\$1,858,500
Building 8	\$1,064,000
Building 9	\$1,064,000
Total:	\$5,382,500

The Contract Work is hereby limited by the following:

[Insert Inclusions and Exclusions from Item 29 of the Helix proposed amendment to APCO. Craig Colligan is reviewing them now.]

In addition to the Contract Price, Contractor has approved and executed the following Change Orders for the corresponding amounts set forth below (the "Approved Change Orders"):

[Insert list of approved change orders]

As Subcontractor has had the Project Contract Documents in its possession for several months and has been working on the Project since construction commenced, Subcontractor has had ample opportunity to review the Project Contract Drawings and submit any Change Orders that may have been necessary. Subject to the payment of the Contract Price and the amounts required by the Approved Change Orders, but notwithstanding any provision of this Agreement, any construction necessities, or design issues, it is hereby expressly agreed that Subcontractor will neither submit another Change Order nor request any additional payment or time extension in connection with this Project.

HELIX00869

## **ADDENDUM 2**

### **PROJECT CONTRACT DOCUMENTS**

Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction Drawings November 5, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to Subcontractor all of the shop drawings for the Project (collectively, the "Project Contract Documents"). Prior to the Effective Date, (a) Subcontractor received and reviewed the Project Contract Documents and (b) both parties hereby acknowledge that the version of such documents as of November 5, 2008 are hereby incorporated into this Agreement and shall serve as the relevant construction documents for purposes of this Agreement.

HELIX00870

**ADDENDUM 3**

**LIST OF SUPPLIERS AND SUBCONTRACTORS**

The following is a list of all suppliers and subcontractors whose materials and services will be or have been utilized by Subcontractor in the performance of the Contract Work or as described in the Invoice, together with a description of the materials and services provided by such suppliers and subcontractors in connection with the Contract Work, and the price charged by such suppliers and subcontractors for such materials and services. If necessary, this list will be continued on an additional sheet. If this list is being submitted with an Invoice, attach a copy of each invoice submitted by the following suppliers and subcontractors representing all of the materials and services that Subcontractor has provided during the applicable Invoice period.

Name and Address	Material or Service Provided	Price Charged
1. Name: Address:		
2. Name: Address:		
3. Name: Address:		
4. Name: Address:		

Invoice Period: \_\_\_\_\_, 200\_\_ to \_\_\_\_\_, 200\_\_

Helix Electric of Nevada LLC

By: \_\_\_\_\_  
Its:

HELIX00871

**ADDENDUM 4**

**PROJECT SCHEDULE**

**[THIS SCHEDULE WILL BE UPDATED AND BASED ON REALITY. CRAIG COLLIGAN WILL  
DELIVER IT SHORTLY.]**

**HELIX00872**

## **ADDENDUM 5**

### **CONTRACT PRICE, SCHEDULE OF VALUES, UNIT PRICES, AND ALLOWANCES**

1. Contract Price: **\$5,382,500**
2. Schedule of Values: See Attached.
3. Unit Prices: See Attached.
4. Allowances: Contractor and Subcontractor acknowledge that the costs of certain options of the Project Work are incapable of exact determination at the time of execution of this Agreement. Contractor and Subcontractor have agreed upon reasonable estimates of such costs based upon all available information for such portion of the Contract Work. These estimates are called "Allowances."

**HELIX00873**

**ADDENDUM 6**  
**FORM OF CHANGE ORDER ESTIMATE**

**HELIX00874**

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period.

The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Helix Electric of Nevada LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Notice:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.

HELIX00875

**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**  
**Amount of Disputed Claims:**

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the money he receives from the final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Helix Electric of Nevada LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

HELIX00876



**CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period.

Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Helix Electric of Nevada LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

HELIX00877

**UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Bellway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC.  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**  
**Amount of Disputed Claims:**

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above.

The undersigned warrants that he either has already paid or will use the money he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Helix Electric of Nevada LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Notice:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.

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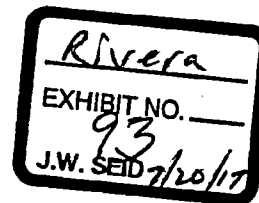
**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST, LAS VEGAS, NV  
(HE JOB #16713)  
Page 1**

The following terms will replace the corresponding portions of the paragraphs in the Subcontract Agreement Terms and Conditions:

Check List      Item 6, Delete in its entirety.  
Check List      Item 7, Delete in its entirety.  
Check List      Item 8, Delete in its entirety.  
Cover Sheet     Insurance, 2<sup>nd</sup> Sentence, Delete: "...General..."  
Cover Sheet     Submittals, Delete in its entirety.  
Cover Sheet     Clean-Up, Delete the last sentence. ("Please be advised that there will be a twenty percent (20T) handling fee for all backcharges against this Subcontract.")  
Cover Sheet     Close-Out Documents, 1<sup>st</sup> sentence, Revise to read as follows: "All close out documents must be turned in before Camco Pacific can release final payment."  
Payment Request      Delete in its entirety, continue with current billing procedures.  
Agreement        Contract Price, Correct sum to reflect the following:

<u>Building</u>	<u>Amount</u>
Building 2	\$ 698,000
Building 3	\$ 698,000
Building 7	\$1,858,500
Building 8	\$1,064,000
Building 9	\$1,064,000
Phase I, Submittals, Trailers, Permits, Super	\$ 172,500
Phase I Total	\$5,555,000

7,675,000



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Page 2**

Agreement  
I. The Contract  
Work

**B. Plans and Specifications. Delete the last 2 Sentences (Lines 23 through 27),  
in their entirety.**

Agreement  
I. The Contract  
Work

**C. Submittals, Delete in its entirety.**

Agreement  
I. The Contract  
Work

**F. Reduction in the Contract Work, 5<sup>th</sup> Line, Delete the following: "...or without..."**

Agreement  
I. The Contract  
Work

**I. Specific Articles, Delete in its entirety.**

Agreement  
I. The Contract  
Work

**J. Job Site Excavation, 2<sup>nd</sup> and 3<sup>rd</sup> Sentences, (Lines 3 through 7), Delete in their  
entirety.**

Agreement  
I. The Contract  
Work

**K. Project Schedule, 4<sup>th</sup> Sentence (Lines 8 through 12), Delete in its entirety.**

Agreement  
I. The Contract  
Work

**K. Project Schedule, Add the following Paragraph: "Subcontractor received a  
project schedule on 11/18/08 at the jobsite. Schedule had no date but reflected an  
overall completion date of 2/20/09 for punchlist in Building 7. This schedule will be the  
schedule of record for this section of the agreement.**

Helix has reviewed the schedule and intends to supply the following peak manpower:

Building 7	7 men
Building 8	4 men
Building 9	4 men
Site	3 men

Overall Total – 14 men

Contractor agrees that the Subcontractor is not required to provide manpower beyond

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that listed above per buildings, site, and overall total. The overall total represents the peak manpower based on any combination of the men listed per building and site. If Contractor demands Subcontractor to provide manpower above the peaks listed, Contractor agrees to compensate Subcontractor for costs incurred to supply the additional manpower.

Building 7 Fire/Life Safety Testing requires 6-8 weeks to complete. Fire Alarm graphics panel is still being delayed due to no smoke control drawings."

Agreement  
I. The Contract  
Work

**L. Delay, Lines 7 and 8, Delete the following: "Subcontractor shall not be entitled to any additional compensation for any delays."**

Agreement  
II. Contract Price  
and Payment

**A. Contract Price, Lines 7 and 8, Delete the following: "...an appropriate contingency and..."**

Agreement  
II. Contract Price  
and Payment

**A. Contract Price, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Sentences (Lines 9 through 21), Delete in their entirety.**

Agreement  
II. Contract Price  
and Payment

**C. Monthly Progress Payments, 3<sup>rd</sup> Sentence (Lines 6 through 9), Delete in its entirety.**

Agreement  
II. Contract Price  
and Payment

**C. Monthly Progress Payments, 6<sup>th</sup> Sentence (Lines 13 through 17), Delete in its entirety.**

Agreement  
II. Contract Price  
and Payment

**D. Final Payments, Item (5), Delete in its entirety.**

Agreement  
II. Contract Price  
and Payment

**H. Withholding of Payments, Item (4), Delete in its entirety.**

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Agreement II. Contract Price and Payment	<b>I. Payment of Withheld Amount, 1<sup>st</sup> Sentence, Delete the following: "less any expenses incurred by Contractor or damages sustained by Contractor."</b>
Agreement III. Job Conditions and Supervision	<b>B. No Defects, Delete the 1<sup>st</sup> Sentence.</b>
Agreement III. Job Conditions and Supervision	<b>C. Signs, Delete the 1<sup>st</sup> Sentence.</b>
Agreement III. Job Site Conditions and Supervision	<b>E. Hazardous Material, 1<sup>st</sup> Sentence, Delete the following: "... (inclusive of Proposition 65)..."</b>
Agreement III. Job Site Conditions and Supervision	<b>F. Cleanup, Storage, Reserved Gate and Safety, Delete Item (2) in its entirety.</b>
Agreement III. Job Site Conditions and Supervision	<b>F. Cleanup, Storage, Reserved Gate and Safety, Item (3), 2<sup>nd</sup> Sentence, Delete the following: "It is understood that Contractor may charge Subcontractor for trash dumpster usage, if Subcontractor uses Contractor's dumpster."</b>
Agreement III. Job Site Conditions and Supervision	<b>F. Cleanup, Storage, Reserved Gate and Safety, 14<sup>th</sup> Line, Delete the following: "...plus a 20% handling fee."</b>
Agreement III. Job Site Conditions and Supervision	<b>F. Cleanup, Storage, Reserved Gate and Safety, Last Sentence, Delete in its entirety. ("Contractor, may seize 1.5% of Subcontractor's total contract amount as a penalty for not maintaining the job site, and the vicinity thereof, in a clean, neat and safe condition to Contractor's satisfaction.")</b>

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Page 5**

Agreement  
IV. Examination  
by Subcontractor

**A. Review of all Relevant Matters, Item (6), Delete in its entirety.**

Agreement  
IV. Examination  
by Subcontractor

**B. No Reliance on Contractor, Delete the Last Sentence in its entirety.**

Agreement  
IV. Examination  
by Subcontractor

**C. Satisfaction with Plans, 3<sup>rd</sup> Sentence (Lines 8 through 10), Delete in its entirety.**

Agreement  
V. Insurance

**A. Coverage, Delete Items 3, 3i, and 3ii in their entirety.**

Agreement  
V. Insurance

**A. Coverage, Delete Item 4 in its entirety.**

Agreement  
V. Insurance

**A. Coverage, Add the following: "Subcontractor has a \$25,000 for medium trade contractor deductible/SIR limit."**

Agreement  
V. Insurance

**C. Waivers of Subrogation, Delete the 2<sup>nd</sup> Sentence in its entirety.**

Agreement  
VII. Warranty,  
Testing and  
Correction

**A. Warranty of Materials and Workmanship, 3<sup>rd</sup> Sentence (lines 8 through 12), Delete in its entirety and Replace with the following: "This warranty shall be for a period of 2 years from the date of completion and final acceptance of the contract work."**

Agreement  
VII. Warranty,  
Testing and  
Correction

**B. Test and Inspection of the Contract Work, Delete the 4<sup>th</sup> Sentence (Lines 10 through 14) in its entirety.**

Agreement  
VII. Warranty,  
Testing and  
Correction

**C. Correction an Removal of Defective Contract Work, Las Sentence, Delete "20%" and Replace with "5%"**

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(HE JOB #16713)  
Page 6**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**A. Indemnification, Item 4, Last Sentence, Delete the following: "...for actual or alleged infringement of letters, patents, trademarks and copyright sin connection with goods and services supplied hereunder provided that they are used as normally intended."**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**B Release, Item (1), Delete in its entirety.**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**B. Release, Item (2), Delete in its entirety.**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**B. Releases, Item (3), Line 13, Delete the following: "...whether or not actively or passively negligent." Line 15, Delete the following: "... (i) willful or (ii) grossly negligent acts."**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**C. Limitation of Liability, Item 2, Delete in its entirety.**

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BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST, LAS VEGAS, NV  
(HE JOB #16713)  
Page 7**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**C. Limitation of Liability, Item 3, Lines 3 through 8, Delete the following: "...the amount for which Contractor is liable shall not exceed the actual direct field costs incurred by Subcontractor as per the actual daily direct field costs reflected in the daily records kept by the Subcontractor and delivered to Subcontractor on a daily basis pursuant to Section VIII (C) (2). Contractor shall not be liable to Subcontractor for any costs, expenses, losses or damages of any kind if Subcontractor did not comply with the provision of this Section VIII (C)."**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**C. Limitation of Liability, Item 4, Delete in its entirety.**

Agreement  
VIII.  
Indemnification,  
Release and  
Limitation of  
Liability

**C. Limitation of Liability, Item 5, Delete in its entirety.**

Agreement  
IX. As-Builts,  
Final Close Out  
Requirements

**Delete the last sentence in its entirety.**

Agreement  
X. Liens and  
Stop Notices

**Delete the last sentence in its entirety.**

Agreement  
XI. Default of  
Subcontractor;  
Remedy;  
Termination;  
Dispute  
Resolution

**C. Remedies, Items 9 and 10, Delete in their entirety.**

3078 E. Sunset Road, Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 732-4386

License# 0053810

HELIX00888



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST, LAS VEGAS, NV  
(HE JOB #16713)**

Page 8

Agreement XIII. Miscellaneous      H. Assignment, Delete 1<sup>st</sup> Sentence and Last Sentence in their entirety.

Addendum 1      Correct Contract Amount to Reflect the following:

<u>Building</u>	<u>Amount</u>
Building 2	\$ 698,000
Building 3	\$ 698,000
Building 7	\$1,858,500
Building 8	\$1,064,000
Building 9	\$1,064,000
Phase I, Submittals, Trailers, Permits, Super	<u>\$ 172,500</u>
Phase I Total	\$5,555,000

Addendum 1      The attached Helix Electric Approved Change Order Log for APCO Change Orders 2 through 15 in the total amount of \$480,689 represents the approved change orders for Addendum 1.

Addendum 1      Following is the Revised Contract Amount including Approved Change Orders:

Original Contract Amount	\$5,555,000
Approved Change Orders	<u>480,689</u>
Revised Contract Amount	\$6,035,689

Addendum 1      Attached is Helix Electric Cost Estimate Log for Outstanding Change Orders. Contractor will issue change orders for total of \$213,840 plus the settlement of Delta 2 amount of \$143,000 currently being negotiated.

Addendum 1      Last Paragraph delete the following: "...it is hereby expressly agreed that Subcontractor will neither submit another change order nor request any additional payment or time extension in connection with this project."

Addendum 2      Contractor has not delivered a disk entitled "Manhattan West Construction Drawings November 5, 2008" as identified.

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License# 0053810

HELIX00889



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AND HELIX ELECTRIC.  
FOR MANHATTAN WEST, LAS VEGAS, NV  
(HE JOB #16713)  
Page 9**

- |            |   |
|------------|---|
| Addendum 2 | Delete the last sentence in its entirety.   |
| Addendum 4 | Delete in its entirety.   |
| Addendum 5 | 1. Contract Price, Revise Price to \$5,555,000 plus \$480,689 in approved change orders for a Revised Contract Amount of \$6,035,689. |
| Addendum 5 | 3. Units Pricing – None   |
| Addendum 5 | 4. Allowances – Delete this item in its entirety.   |

\_\_\_\_\_  
Victor Fuchs  
President

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

3078 E. Sunset Road, Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 732-4386  
License# 0053810

HELIX00890

HELIX COST ESTIMATE LOG SUBMITTED AS ATTACHMENT TO CAMCO PACIFIC SUBCONTRACT AGREEMENT

HELIX #	Date Submitted	Description	Submitted Amount	APCO CO #	Change Order Amount
		6/29 Drawings (Delta 2)-Pending Negotiation	\$143,000.00		
		<b>GEMSTONE/CAMCO TAKEOVER</b>			
28	9/12/2008	Phase II Site Conduits (see CO#6)	\$14,011.00		
30	9/24/2008	Work Order #108-Type S Recessed Fixture	\$3,559.00		
31	9/29/2008	Delta 7 (HVAC changes)	\$34,434.00		
32	9/29/2008	Delta 8 (low voltage equip. room, signage)	\$63,847.00		
33	10/2/2008	B8/B9-Change Romex to MC Floors 1-3 Corridors	\$6,183.00		
	10/7/2008	Pump/guardhouse	\$62,300.00		
	10/21/2008	Missing Options B7, B8 & B9	\$14,010.00		
34	10/22/2008	Work Order #110-B8; units 154 & 454 wine bar	\$575.00		
35	10/22/2008	Work Order #101-Relocate Ceiling Fans	\$3,640.00		
36	10/22/2008	Work Order #106-Relocate Outlets	\$2,669.00		
37	10/22/2008	Work Order #105-Relocate Fireplace B7-256	\$281.00		
38	10/22/2008	Work Order #107-Relocate closet light EC1 units	\$668.00		
39	10/22/2008	Work Order #113-EC2 units 2-5 (drywall installed)	\$1,665.00		
40	11/4/2008	Work Order #111-Unit Labeling	\$3,010.00		
41	11/4/2008	Work Order #104-B9/467 change breakers	\$2,028.00		
42	11/4/2008	Work Order #112-B8/262 cabinet change	\$960.00		
<b>TOTAL:</b>			<b>\$356,240.00</b>		

UPDATED 9/29/2008

HELIX ELECTRIC APPROVED CHANGE ORDER LOG

SUBMITTED AS AN ATTACHMENT TO THE CAMCO PACIFIC -  
SUBCONTRACT AGREEMENT

HEI CE #	Date Submitted	Description	Submitted Amount	APCO CO #	Change Order Amount
1	10/10/2007	Hook up GC's office trailers	\$1,622.00	2	\$1,622.00
2	11/27/2007	Overtime Week Ending 11/18/07	\$583.00	4	\$583.00
4	11/28/2007	Overtime Week Ending 11/25/07	\$868.00	4	\$868.00
5	12/5/2007	Overtime Week Ending 12/02/07	\$4,007.00	4	\$4,007.00
6	12/12/2007	Overtime Week Ending 12/09/07	\$4,542.00	4	\$4,542.00
		Delete Utility Stubs Phase 1	(\$15,000.00)	5	(\$15,000.00)
7	1/3/2008	Conduit for CO Sensors	\$21,500.00	11	\$21,500.00
	1/25/2008	6/29 Drawings (Delta 2)	\$76,500.00	12	\$76,500.00
	2/20/2008	Credit for Site Utility Conduits	(\$13,000.00)	6	(\$13,000.00)
13	2/20/2008	Delta 3 Revisions	\$92,117.00	14	\$92,117.00
14	2/20/2008	Delta 5 Revisions	\$94,990.00	15	\$94,990.00
	2/20/2008	Delta 5 Revisions C2 Split	\$53,756.00	13	\$53,756.00
	3/25/2008	Option Package #1 for B9	\$45,472.00	7	\$45,472.00
16	5/7/2008	Overtime 2nd Floor Deck B7	\$3,841.00	10	\$3,841.00
	5/7/2008	Option Package #1 for B8	\$42,994.00	8	\$42,994.00
	5/29/2008	Option Package #2 for B8 & B9	\$40,258.00	8	\$40,258.00
	7/31/2008	Option Package B7	\$25,639.01	9	\$25,639.01
		APPROVED CHANGE ORDER TOTALS	\$480,689.01		\$480,689.01

HELIX00892

**Receipt/Conformed Copy**

Requestor:

LEGAL WINGS

01/29/2009 00:00:52 T20090030945

Book/Instr: 20090129-0000237

Lien Page Count: 28

Fees: \$41.00 N/C Fee: \$0.00

**ASSESSORS PARCEL NO:**

163-32-112-001 thru 163-32-112-246,

163-32-101-020, 163-32-101-022 & 163-32-101-023  
(formerly known as 163-32-101-019)

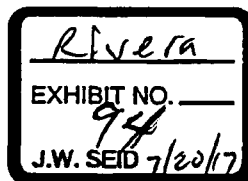
Debbie Conway  
Clark County Recorder

**AMENDED NOTICE OF LIEN**

This document amends and restates that certain Notice of Lien recorded in the official records of the County Recorder's Office for Clark County, Nevada, on January 12, 2009, in Book 20090112, as Instrument No. 0002864 (the "Original Lien").

The undersigned lien claimant claims an amended lien upon the Property or Improvements described in this Amended Notice of Lien ("Amended Lien") for work, materials or equipment furnished for the Property or an Improvement thereon:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the amended lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. \_\_\_\_\_
8. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.



APCO 103562

9. A description of the property to be charged with the lien is:

County Assessor Description: Manbattan West Condominiums (Project)  
Spring Valley  
See Attached Exhibit B  
SEC 32 TWP 21 RNG 60  
County Assessor Parcel No. 163-32-112-001 thru 163-32-112-246,  
163-32-101-020, 163-32-101-022 &  
163-32-101-023  
(formerly known as 163-32-101-019)

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By *Robert D. Johnson*  
Print Name: Robert D. Johnson  
Title: Vice President

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

Robert D. Johnson, being first duly sworn on oath according to law, deposes and says:

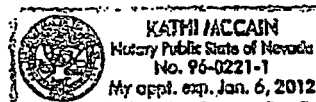
I have read the foregoing Amended Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By *Robert D. Johnson*  
Print Name: Robert D. Johnson  
Title: Vice President

SUBSCRIBED AND SWORN To Before me  
this 27 day of January 2009.

*Kathi McCain*  
NOTARY PUBLIC In and For Said  
County & State



RECORDED AT THE REQUEST OF AND  
WHEN RECORDED RETURN TO:  
  
Richard L. Peel, Esq.  
PEEL BRIMELY LLP  
3333 E. Serene Avenue Suite 200  
Henderson, NV 89074-6571

APCO 103563

EXHIBIT A  
CALCULATION OF LIENABLE AMOUNT

Contract Description	Name of Higher-tiered Customer  (See #6 of Notice of Lien Form)	Original Contract Price  (See #1 of Notice of Lien Form)	Amount of Additional of Changed Work, Materials or Equipment  (See #2 of Notice of Lien Form)	Total Amount of All Payments Received  (See #3 of Notice of Lien Form)	Lienable Amount  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
TOTAL LIENABLE AMOUNT					\$3,186,102.67

APCO 103564



County Assessor Parcel Nos.: 163-72-112-001 thru 163-72-112-246,  
163-72-101-020, 163-72-101-022 & 163-72-101-023  
(formerly known as 163-72-101-017)

\*Lion Cement has provided the best estimate of the amount owed to Lion Cement with respect to materials and equipment furnished by Lion Cement for the improvement of the property. Lion Cement reserves the right to amend or modify the amount owed at Lion Cement's discretion.

*"Lien Chienist has provided the best estimate of the amount owed to Lien Chienist with respect to materials and equipment furnished by Lien Chienist for the improvement of the property. Lien Chienist reserves the right to amend or modify the amount owed at Lien Chienist's discretion."*

\*Lisa Chisment has provided the best estimate of the amount owed to Lisa Chisment with respect to materials and equipment furnished by Lisa Chisment for the improvement of the property. Lisa Chisment reserves the right to amend or modify the amount owed to Lisa Chisment's decedent.

\*Lien Chienant has provided the best animals of the amount owed to Lien Chienant with respect to materials or equipment furnished by Lien Chienant for the improvement of the property. Lien Chienant reserves the right to demand or modify the amount owed at Lien Chienant's discretion.











Parcel Number/ Location & Address/ Township	Property Description	Owner Name & Address
163-32-112-218 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 413 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-248 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 414 Block 9 SEC 32 TWP 21 R40 G 61	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-241 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 415 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-242 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 416 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-243 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 417 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-244 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 418 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-245 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 419 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-112-246 Spring Valley	Manhattan West-Phase 1 Plot Book 141 Page 28 Unit 420 Block 9 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-181-628 Spring Valley	PT N&S NW4 SEC 32 21 60 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-181-623 Spring Valley	PT N&S NW4 SEC 32 21 60 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233
163-32-181-623 Spring Valley	PT N&S NW4 SEC 32 21 60 SEC 32 TWP 21 R40 G 60	Quantum Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1233

\*Lisa Chismont has provided the best estimate of the amount owed to Lisa Chismont with respect to materials or equipment furnished by Lisa Chismont for the improvement of the property. Lisa Chismont reserves the right to amend or modify the amount owed to Lisa Chismont's discretion.

**Receipt/Conformed Copy**

Requestor:

HELIX ELECTRIC OF NEVADA

01/12/2009 10:40:43 T20090009700

Book/Instr: 20090112-0002864

Lien Page Count: 3

Fees: \$16.00 N/C Fee: \$0.00

ASSESSORS PARCEL NO: 163-32-101-019

Debbie Conway  
Clark County Recorder

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this Notice of Lien for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.

APCO 103572



8. A description of the property and/or the improvements to be charged with the lien is

Manhattan West Condominiums (Project)  
9205 W. Russell Rd  
Spring Valley

County Assessor Description: PT NE4 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60  
County Assessor Parcel No. 163-32-101-019

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

STATE OF NEVADA )  
                          ) ss:  
COUNTY OF CLARK )

Robert D. Johnson, being first duly sworn on oath according to law, deposes and says:

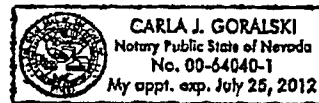
I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

SUBSCRIBED AND SWORN To Before me  
this 23<sup>rd</sup> day of December 2008.

Carla J. Goralski  
NOTARY PUBLIC In and For Said  
County & State



RECORDED AT THE REQUEST OF AND  
WHEN RECORDED RETURN TO:  
  
Richard L. Peel, Esq.  
PEEL BRIMLEY LLP  
3333 E Serene Avenue, Suite 200  
Henderson, NV 89074-6571

APCO 103573

**EXHIBIT A**  
**CALCULATION OF LIENABLE AMOUNT**

Contract Description	Name of Higher-tiered Customer  (See #6 of Notice of Lien Form)	Original Contract Price  (See #1 of Notice of Lien Form)	Amount of Additional of Changed Work, Materials or Equipment  (See #2 of Notice of Lien Form)	Total Amount of All Payments Received  (See #3 of Notice of Lien Form)	Lienable Amount  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
<b>TOTAL LIENABLE AMOUNT</b>					<b>\$3,186,102.67</b>

APCO 103574

JA005608

### ***FIFTEEN-DAY NOTICE OF INTENT TO LIEN***

Pursuant to NRS 108.226.6, be advised that if the undersigned is not paid for the work, materials and/or equipment that it has furnished or may furnish for the property or any improvements thereon described in this Notice, the undersigned intends to record a notice of lien against the property and any improvements thereon:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.
8. A description of the property and/or improvements to be charged with the lien is:

	Manhattan West Condominiums (Project)
	9205 W. Russell Rd
	Spring Valley
County Assessor Description:	PT NE4 NW4 SEC 32 21 60
	SEC 32 TWP 21 RNG 60
County Assessor Parcel No.	163-32-101-019

Dated this 23<sup>rd</sup> day of December 2008.

**HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC**

By Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

APCO 103575

**EXHIBIT A**  
**CALCULATION OF LIENABLE AMOUNT**

Contract Description	Name of Higher-tiered Customer  (See #6 of Notice of Lien Form)	Original Contract Price  (See #1 of Notice of Lien Form)	Amount of Additional of Changed Work, Materials or Equipment  (See #2 of Notice of Lien Form)	Total Amount of All Payments Received  (See #3 of Notice of Lien Form)	Lienable Amount  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
<b>TOTAL LIENABLE AMOUNT</b>					<b>\$3,186,102.67</b>

APCO 103576

## APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

Page 1 of 2

TO (Owner): **Apco Construction**  
 3432 N. 5th Street  
 North Las Vegas, Nv. 89032  
 Attn: Shawn Bowne

PROJECT: **Manhattan Condominiums**  
 30 E. Serene  
 Las Vegas, NV 89123

FROM: **Helix Electric**  
 (Contractor) 3078 E. Sunset Rd., Ste#9  
 Las Vegas, NV 89120

VIA (ARCHITECT):

APPLICATION NUMBER: 16713-011R1  
 PERIOD TO: 8/31/2008  
 PROJECT NOS

CONTRACT DATE:

Distribution to:

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR

CONTRACT FOR:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Applications made for Payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. PARTIAL CONTRACT SUM \$ 13,230,000.00

2. Net change by Change Orders 341,081.00

3. CONTRACT SUM TO DATE (Line 1+2) \$ 13,571,081.00

4. TOTAL COMPLETED & STORED TO DATE \$ 5,131,207.11  
 (Column G on G703)

5. RETAINAGE:

a. 10% of Completed Work \$ 513,120.71  
 (Column D + E on G703)

b. 10% of Stored Material \$ -  
 (Column F on G703)

Total Retainage (Line 5a + 5b or  
 Total in Column I of G703) \$ 513,120.71

6. TOTAL EARNED LESS RETAINAGE \$ 4,618,086.40  
 (Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 4,291,476.40  
 (Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ 328,610.00

9. BALANCE TO FINISH, PLUS RETAINAGE \$ 8,952,994.60  
 (Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total Changes approved in previous months by Owner		
Total Approved this Month		
TOTALS	-	-
NET CHANGES by Change Order	341,081.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Robert D. Johnson  
 By: Robert D. Johnson  
 Robert D. Johnson, Vice President

Date: 8/20/08

State Of: NEVADA  
 County Of: CLARK

Subscribed and sworn to before  
 me this 20th day of August, 2008

Edna K. Bennett  
 Notary Public:

My Commission expires: 1/9/2010



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certified to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

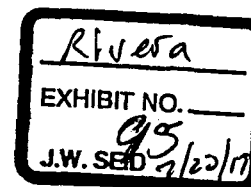
AMOUNT CERTIFIED..... \$328,610.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the prejudice to any rights of the Owner or Contractor under this Contract.



HELIX00378

JA005611

## CONTINUATION SHEET

AIA DOCUMENT G703

Page 2 of 2

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing  
Contractor's signed Certification is attached.  
In tabulations below, amounts are stated to the nearest dollar.  
Use Column 1 on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER: 16713-011R1  
APPLICATION DATE: 8/20/2008  
PERIOD TO: 8/31/2008  
ARCHITECT'S PROJECT NO:

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN DORE)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
1	ELECTRICAL ENGINEERING	155,000.00	83,700.00			83,700.00	54%	71,300.00	8,370.00
2	MOBILIZATION	60,000.00	60,000.00			60,000.00	100%	-	6,000.00
3	Office Trailer/Admin. 24 months	120,000.00	55,000.00	5,000.00		60,000.00	50%	60,000.00	6,000.00
4	Project Engineer, CAD, Project Assistant	75,000.00	59,875.00	7,500.00		67,375.00	90%	7,625.00	8,737.50
5	Electrical Permits	65,000.00	40,000.00			40,000.00	62%	25,000.00	4,000.00
6	Submittals	10,000.00	10,000.00			10,000.00	100%	-	1,000.00
7	Supervision/Planning/Coordination	120,000.00	96,250.00	12,000.00		108,250.00	90%	11,750.00	10,825.00
8	BUILDING #1-TYPE V (32 units)		-			-		-	-
9	Light Fixture Package	76,000.00	-			-		76,000.00	-
10	Distribution Package	70,000.00	-			-		70,000.00	-
11	Low Voltage Systems (FA, CCTV, CA, etc)	40,000.00	-			-		40,000.00	-
12	Underlab Branch Conduit & Wire	57,000.00	-			-		57,000.00	-
13	Garage & 1st floor deck-conduit/wire	275,000.00	-			-		275,000.00	-
14	1st Floor Rough Walls/Ceilings	65,000.00	-			-		65,000.00	-
15	1st Floor Device and Fixture Trim	10,000.00	-			-		10,000.00	-
16	2nd Floor Rough Walls/Ceilings	65,000.00	-			-		65,000.00	-
17	2nd Floor Device and Fixture Trim	10,000.00	-			-		10,000.00	-
18	3rd Floor Rough Walls/Ceilings	65,000.00	-			-		65,000.00	-
19	3rd Floor Device and Fixture Trim	10,000.00	-			-		10,000.00	-
20	4th Floor Rough Walls/Ceilings	65,000.00	-			-		65,000.00	-
21	4th Floor Device and Fixture Trim	10,000.00	-			-		10,000.00	-
22	BUILDING #2-TYPE II		-			-		-	-
23	Light Fixture Package	65,950.00	58,950.00			58,950.00	90%	6,550.00	5,895.00
24	Distribution Package	25,000.00	22,500.00	2,500.00		25,000.00	100%	-	2,500.00
25	Low Voltage Systems (FA, CCTV, CA, etc.)	50,000.00	37,500.00	2,500.00		40,000.00	80%	10,000.00	4,000.00
26	2nd Sublevel Garage UG and Deck	200,000.00	190,000.00			190,000.00	95%	10,000.00	19,000.00
27	1st Sublevel Garage and Deck	255,000.00	242,500.00			242,500.00	95%	12,500.00	24,250.00
28	1st Floor Rough and Trim	25,000.00	17,500.00	5,000.00		22,500.00	90%	2,500.00	2,250.00
29	2nd Floor Rough and Trim	25,000.00	17,500.00	5,000.00		22,500.00	90%	2,500.00	2,250.00
30	3rd Floor Rough and Trim	25,000.00	17,500.00	5,000.00		22,500.00	90%	2,500.00	2,250.00
31	4th Floor Rough and Trim	25,000.00	17,500.00	5,000.00		22,500.00	90%	2,500.00	2,250.00
32	Roof Plan	2,500.00	-			-		2,500.00	-
33	BUILDING #3-TYPE II		-			-		-	-
34	Light Fixture Package	65,950.00	58,950.00			58,950.00	90%	6,550.00	5,895.00
35	Distribution Package	25,000.00	22,500.00			22,500.00	90%	2,500.00	2,250.00
36	Low Voltage Systems (FA, CCTV, CA, etc.)	50,000.00	20,000.00	5,000.00		25,000.00	50%	25,000.00	2,500.00
37	2nd Sublevel Garage UG and Deck	200,000.00	190,000.00			190,000.00	95%	10,000.00	19,000.00
38	1st Sublevel Garage and Deck	255,000.00	242,500.00			242,500.00	95%	12,500.00	24,250.00
39	1st Floor Rough and Trim	25,000.00	5,000.00	5,000.00		10,000.00	40%	15,000.00	1,000.00
40	2nd Floor Rough and Trim	25,000.00	5,000.00	5,000.00		10,000.00	40%	15,000.00	1,000.00
41	3rd Floor Rough and Trim	25,000.00	5,000.00	5,000.00		10,000.00	40%	15,000.00	1,000.00
42	4th Floor Rough and Trim	25,000.00	5,000.00	5,000.00		10,000.00	40%	15,000.00	1,000.00
43	Roof Plan	2,500.00	-			-		2,500.00	-
44	BUILDING #4-TYPE V (52 units)		-			-		-	-
45	Light Fixture Package	76,000.00	-			-		76,000.00	-

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
46	Distribution Package	70,000.00	-	-	-	-	-	70,000.00	-
47	Low Voltage Systems (FA, CCTV, CA, etc)	40,000.00	-	-	-	-	-	40,000.00	-
48	Underlab Branch Conduit & Wire	57,000.00	-	-	-	-	-	57,000.00	-
49	Garage & 1st floor deck-conduit/wire	275,000.00	-	-	-	-	-	275,000.00	-
50	1st Floor Rough Walls/Ceilings	65,000.00	-	-	-	-	-	65,000.00	-
51	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
52	2nd Floor Rough Walls/Ceilings	65,000.00	-	-	-	-	-	65,000.00	-
53	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
54	3rd Floor Rough Walls/Ceilings	65,000.00	-	-	-	-	-	65,000.00	-
55	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
56	4th Floor Rough Walls/Ceilings	65,000.00	-	-	-	-	-	65,000.00	-
57	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
58	BUILDING #5-TYPE I (76 units)	-	-	-	-	-	-	-	-
59	Light Fixture Package	106,000.00	-	-	-	-	-	106,000.00	-
60	Distribution Package	83,000.00	-	-	-	-	-	83,000.00	-
61	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	-	-	-	-	-	50,000.00	-
62	Underlab Branch Conduit & Wire	85,000.00	-	-	-	-	-	85,000.00	-
63	Garage & 1st floor deck-conduit/wire	400,000.00	-	-	-	-	-	400,000.00	-
64	1st Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
65	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
66	2nd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
67	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
68	3rd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
69	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
70	4th Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
71	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
72	BUILDING #6-TYPE I (76 units)	-	-	-	-	-	-	-	-
73	Light Fixture Package	106,000.00	-	-	-	-	-	106,000.00	-
74	Distribution Package	83,000.00	-	-	-	-	-	83,000.00	-
75	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	-	-	-	-	-	50,000.00	-
76	Underlab Branch Conduit & Wire	85,000.00	-	-	-	-	-	85,000.00	-
77	Garage & 1st floor deck-conduit/wire	400,000.00	-	-	-	-	-	400,000.00	-
78	1st Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
79	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
80	2nd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
81	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
82	3rd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
83	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
84	4th Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
85	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
86	BUILDING #7-TYPE III (76 units)	-	-	-	-	-	-	-	-
87	Light Fixture Package	141,000.00	92,250.00	-	-	92,250.00	65%	48,750.00	9,225.00
88	Distribution Package	225,000.00	158,000.00	34,000.00	-	192,000.00	85%	33,000.00	19,200.00
89	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	10,000.00	10,000.00	-	20,000.00	40%	30,000.00	2,000.00
90	Generator	100,000.00	95,000.00	-	-	95,000.00	95%	5,000.00	9,500.00
91	Underlab Branch Conduit & Wire	68,000.00	64,500.00	-	-	64,500.00	95%	3,500.00	6,450.00
92	Garage & 1st floor deck-conduit/wire	330,000.00	313,500.00	-	-	313,500.00	95%	16,500.00	31,350.00
93	1st Floor Rough Deck/Walls/Ceilings	95,500.00	47,750.00	-	-	47,750.00	50%	47,750.00	4,775.00
94	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
95	2nd Floor Rough Deck/Walls/Ceilings	95,500.00	78,750.00	4,500.00	-	81,250.00	85%	14,250.00	8,125.00
96	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
97	3rd Floor Rough Deck/Walls/Ceilings	88,500.00	76,750.00	4,500.00	-	81,250.00	85%	14,250.00	8,125.00

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
98	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
99	4th Floor Rough Deck/Walls/Ceilings	95,500.00	66,850.00	14,400.00	-	81,250.00	85%	14,250.00	8,125.00
100	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
101	5th Floor Rough Deck/Walls/Ceilings	95,500.00	47,750.00	33,500.00	-	81,250.00	85%	14,250.00	8,125.00
102	5th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
103	6th Floor Rough Deck/Walls/Ceilings	95,500.00	47,750.00	-	-	47,750.00	50%	47,750.00	4,775.00
104	6th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
105	7th Floor Rough Deck/Walls/Ceilings	95,500.00	47,750.00	-	-	47,750.00	50%	47,750.00	4,775.00
106	7th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
107	8th Floor Rough Deck/Walls/Ceilings	95,500.00	29,000.00	19,750.00	-	47,750.00	50%	47,750.00	4,775.00
108	8th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
109	9th Floor Rough Deck/Walls/Ceilings	95,500.00	29,000.00	19,750.00	-	47,750.00	50%	47,750.00	4,775.00
110	9th Floor Device and Fixture Trim	5,000.00	-	-	-	-	-	5,000.00	-
111	BUILDING #8-TYPE I (76 units)	-	-	-	-	-	-	-	-
112	Light Fixture Package	108,000.00	84,500.00	11,000.00	-	95,500.00	90%	10,500.00	9,550.00
113	Distribution Package	83,000.00	78,500.00	-	-	78,500.00	95%	4,500.00	7,850.00
114	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	35,000.00	10,000.00	-	45,000.00	90%	5,000.00	4,500.00
115	Underslab Branch Conduit & Wire	85,000.00	78,500.00	-	-	78,500.00	90%	8,500.00	7,850.00
116	Garage & 1st floor deck-conduit/wire	400,000.00	380,000.00	-	-	380,000.00	95%	20,000.00	38,000.00
117	1st Floor Rough Walls/Ceilings	75,000.00	71,250.00	-	-	71,250.00	95%	3,750.00	7,125.00
118	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
119	2nd Floor Rough Walls/Ceilings	75,000.00	71,250.00	-	-	71,250.00	95%	3,750.00	7,125.00
120	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
121	3rd Floor Rough Walls/Ceilings	75,000.00	67,750.00	3,500.00	-	71,250.00	95%	3,750.00	7,125.00
122	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
123	4th Floor Rough Walls/Ceilings	75,000.00	67,750.00	3,500.00	-	71,250.00	95%	3,750.00	7,125.00
124	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
125	BUILDING #9-TYPE I (76 units)	-	-	-	-	-	-	-	-
126	Light Fixture Package	108,000.00	84,500.00	11,000.00	-	95,500.00	90%	10,500.00	9,550.00
127	Distribution Package	83,000.00	79,000.00	-	-	79,000.00	95%	4,000.00	7,900.00
128	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	35,000.00	10,000.00	-	45,000.00	90%	5,000.00	4,500.00
129	Underslab Branch Conduit & Wire	85,000.00	78,500.00	-	-	78,500.00	90%	8,500.00	7,850.00
130	Garage & 1st floor deck-conduit/wire	400,000.00	380,000.00	-	-	380,000.00	95%	20,000.00	38,000.00
131	1st Floor Rough Walls/Ceilings	75,000.00	71,250.00	-	-	71,250.00	95%	3,750.00	7,125.00
132	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
133	2nd Floor Rough Walls/Ceilings	75,000.00	71,250.00	-	-	71,250.00	95%	3,750.00	7,125.00
134	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
135	3rd Floor Rough Walls/Ceilings	75,000.00	67,750.00	3,500.00	-	71,250.00	95%	3,750.00	7,125.00
136	3rd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
137	4th Floor Rough Walls/Ceilings	75,000.00	67,750.00	3,500.00	-	71,250.00	95%	3,750.00	7,125.00
138	4th Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
139	BUILDING #10-TYPE I (76 units)	-	-	-	-	-	-	-	-
140	Light Fixture Package	108,000.00	-	-	-	-	-	108,000.00	-
141	Distribution Package	83,000.00	-	-	-	-	-	83,000.00	-
142	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	-	-	-	-	-	50,000.00	-
143	Underslab Branch Conduit & Wire	85,000.00	-	-	-	-	-	85,000.00	-
144	Garage & 1st floor deck-conduit/wire	400,000.00	-	-	-	-	-	400,000.00	-
145	1st Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
146	1st Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
147	2nd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-
148	2nd Floor Device and Fixture Trim	10,000.00	-	-	-	-	-	10,000.00	-
149	3rd Floor Rough Walls/Ceilings	75,000.00	-	-	-	-	-	75,000.00	-



A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
150	3rd Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
151	4th Floor Rough Walls/Ceilings	75,000.00	.	.	.	.	.	75,000.00	.
152	4th Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
153	BUILDING #11-TYPE I (76 units)	.	.	.	.	.	.	.	.
154	Light Fixture Package	106,000.00	.	.	.	.	.	106,000.00	.
155	Distribution Package	83,000.00	.	.	.	.	.	83,000.00	.
156	Low Voltage Systems (FA, CCTV, CA, etc)	50,000.00	.	.	.	.	.	50,000.00	.
157	Underlab Branch Conduit & Wire	85,000.00	.	.	.	.	.	85,000.00	.
158	Garage & 1st floor deck-conduit/wire	400,000.00	.	.	.	.	.	400,000.00	.
159	1st Floor Rough Walls/Ceilings	75,000.00	.	.	.	.	.	75,000.00	.
160	1st Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
161	2nd Floor Rough Walls/Ceilings	75,000.00	.	.	.	.	.	75,000.00	.
162	2nd Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
163	3rd Floor Rough Walls/Ceilings	75,000.00	.	.	.	.	.	75,000.00	.
164	3rd Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
165	4th Floor Rough Walls/Ceilings	75,000.00	.	.	.	.	.	75,000.00	.
166	4th Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
167	BUILDING #12-TYPE IV (66 units)	.	.	.	.	.	.	.	.
168	Light Fixture Package	98,000.00	.	.	.	.	.	98,000.00	.
169	Distribution Package	77,500.00	.	.	.	.	.	77,500.00	.
170	Low Voltage Systems (FA, CCTV, CA, etc)	45,000.00	.	.	.	.	.	45,000.00	.
171	Underlab Branch Conduit & Wire	78,000.00	.	.	.	.	.	78,000.00	.
172	Garage & 1st floor deck-conduit/wire	350,000.00	.	.	.	.	.	350,000.00	.
173	1st Floor Rough Walls/Ceilings	70,000.00	.	.	.	.	.	70,000.00	.
174	1st Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
175	2nd Floor Rough Walls/Ceilings	70,000.00	.	.	.	.	.	70,000.00	.
176	2nd Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
177	3rd Floor Rough Walls/Ceilings	70,000.00	.	.	.	.	.	70,000.00	.
178	3rd Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
179	4th Floor Rough Walls/Ceilings	70,000.00	.	.	.	.	.	70,000.00	.
180	4th Floor Device and Fixture Trim	10,000.00	.	.	.	.	.	10,000.00	.
181	SITE LIGHTING	.	.	.	.	.	.	.	.
182	Furnish Landscape Lighting	257,000.00	.	.	.	.	.	257,000.00	.
183	Furnish Courtyard Lighting	59,000.00	.	.	.	.	.	59,000.00	.
184	Furnish Sports Lighting	6,000.00	.	.	.	.	.	6,000.00	.
185	Furnish Parking Lot Pole Lighting	64,000.00	.	.	.	.	.	64,000.00	.
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204	.	.	.	.	.	.	.	.	.
205	.	.	.	.	.	.	.	.	.
Original Contract Totals		13,230,000.00	4,848,325.00	268,900.00		4,917,225.00 / 37%		8,312,775.00	491,722.60

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	CHANGE ORDERS								
206	CO#1-Contract Adjustment (Inc. above)								
207	CO#2-Apco Trailer Hookup	1,622.00	1,622.00	-		1,622.00	100%	-	162.20
208	CO#3-Options (voided change order #)		-	-		-		-	-
209	CO#4-Overtime B8 & B9	10,000.00	10,000.00	-		10,000.00	100%	-	1,000.00
210	CO#5-Delete Utility Struts Phase I	(15,000.00)	(15,000.00)	-		(15,000.00)	100%	-	(1,500.00)
211	CO#6-Delete Site Conduits-Phase I & II	(13,000.00)	(13,000.00)	-		(13,000.00)	100%	-	(1,300.00)
212	CO#7-Building #9 Options	54,843.00	28,281.04	17,500.00		43,781.98	80%	10,781.04	4,378.20
213	CO#8-Building #8 Options	62,053.00	27,098.00	22,500.00		49,598.00	80%	12,457.00	4,959.60
214	CO#9-Split Delta 5	53,756.00	33,868.40	8,000.00		42,868.40	80%	10,889.60	4,286.64
215	Delta 3 Changes	92,117.00	24,180.75	22,000.00		46,180.75	50%	45,936.25	4,618.08
216	Delta 3 Changes	94,990.00	24,935.00	23,000.00		47,935.00	50%	47,055.00	4,793.50
217			-			-		-	-
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219			-			-		-	-
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224			-			-		-	-
225			-			-		-	-
226			-			-		-	-
227			-			-		-	-
228			-			-		-	-
229	Delta 2 Changes \$354,780.00								
230	Add Dampers Exhaust Fans \$69,900.00								
231									
232									
233									
234									
235									
236									
	Total Change Orders	341,081.00	119,982.11	94,000.00		213,982.11	63%	127,098.89	21,398.21
	Total Revised Contract	13,571,081.00	4,768,307.11	382,900.00		5,431,207.11	38%	8,439,873.89	513,120.71

**Brian Fisher**

**From:** Craig Colligan [CraigC@gemstonedev.com]  
**Sent:** Tuesday, August 12, 2008 5:26 PM  
**To:** Andrew Rivera; vincent.poolsbygrube@verdemail.com; accuracyglass@earthlink.net; laura@cabinetec.com; franka@carpetsnmore.com; lsmith@cell-crete.com; dependable1@lvcoxmail.com; randy@sundanceplastering.com; gabriel@distinctivemarble.com; stephanie.coughlin@hlinternational.net; Dwayne Garrison; cdown@hl-techfabrication.com; jeffrey.lehman@mascoos.com; pauls@ipair.com; lindacs@ipair.com; jeffheit2@yahoo.com; lvpipeline@embarquemail.com; mmorrow3@themasontygroup.com; rick@nvgypsum.com; brianf@nevadaprefabengineers.com; pdm-rcn@embarqmail.com; patricia.lang@otis.com; TOM@sierrareinforcing.com; scott.butler@thyssenkrupp.com; tricitydrywallinc@gmail.com; psychetiavterry@whirlpool.com; royzitling@hotmail.com; lremmert@readymixinc.com  
**Cc:** Peter Smith; Jennifer Griffith; Jill Gisondo; Steve Alexander  
**Subject:** Manhattan West project /Gemstone's financing  
**Attachments:** SFC Letter APCQ 7 30 08.pdf

August 12, 2008

Subcontractors

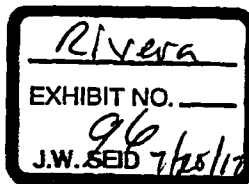
Manhattan West Project

**E: Subcontractor Concerns**

Attention Subcontractors:

In light of the recent work stoppage at the Manhattan West site, it has come to our attention that several of the subcontractors for the Manhattan West project are under the impression that Gemstone Development West, Inc. ("Gemstone") is in default of, or is otherwise having trouble with, the financing for the Manhattan West project. In contrast, the recent work stoppage was actually the result of an ongoing dispute between Gemstone and its general contractor and had nothing to do with Gemstone's financing for the project.

As the attached letter from Gemstone's lender demonstrates, there are no issues related to the funding of the Manhattan West project, and Gemstone has the necessary funding to pay any amounts owed to the subcontractors by Gemstone. To our knowledge, the only delayed payments to subcontractors are in connection with certain change orders that are still being verified and negotiated by the relevant parties. Gemstone is working diligently to resolve any outstanding disputes related to the change orders and is dedicated to paying any change orders for which it is actually responsible.



NVPE000247

In short, despite some annoying s p, Gemstone's financing is not in jeopardy, work will continue at full speed, and Manhattan West will be completed as soon as possible.

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

**Gemstone Development West, Inc.**

**Craig Colligan**

**Vice President of Construction**

Craig Colligan  
Vice President of Construction  
Gemstone Development

**ManhattanWest**

**Residences  
Offices  
Shops**

9121 W. Russell Road Suite 117  
Las Vegas, NV 89148  
P (702) 614-3193  
F (702) 614-6669  
[www.gemstonewest.com](http://www.gemstonewest.com)  
[www.manhattanwest.com](http://www.manhattanwest.com)

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.6.0/1604 - Release Date: 8/11/2008 5:50 AM

## **NOTICE**

**TO: ALL MANHATTEN WEST SUBCONTRACTORS**  
**FROM: APCO CONSTRUCTION**  
**JAMES BARKER, ESQ./CORPORATE COUNSEL**

Attached hereto is APCO Construction's Notice of Stopping Work and Notice of Intent to Terminate Contract for nonpayment. As of 5:00 p.m., Thursday, August 21, 2008 all work in furtherance of the subcontracts you have with APCO CONSTRUCTION on the Manhattan West project is to stop until you are advised otherwise, in writing, by APCO CONSTRUCTION.

NRS 624.610(7) states:

If a prime contractor stops work pursuant to subsection 1, each lower tiered Subcontractor with whom the prime contractor has entered into an agreement and who has not fully performed under that agreement may also stop work on the work of improvement. If a prime contractor terminates an agreement pursuant to this section, all such lower tiered subcontractors may terminate their agreements with the prime contractor.

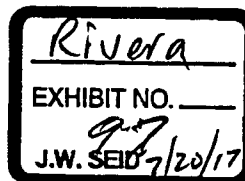
### **NOTE**

Pursuant to statute, APCO CONSTRUCTION is only stopping work on this project. At this time it has not terminated its contract with Gemstone. As such, all subcontractors, until advised in writing by APCO CONSTRUCTION, remain under contract with APCO CONSTRUCTION.

If you have any questions regarding this matter we urge you to seek advice from your legal counsel.

*Additionally, due to the work stoppage for non-payment, the subcontractor meeting previously set for Friday, August 22<sup>nd</sup> at 11 a.m. is cancelled.*

James M. Barker, Esq.  
Corporate General Counsel  
APCO CONSTRUCTION  
702.251.5800



HELIX00465



August 21, 2008

VIA FACSIMILE (702-614-0669)  
AND U.S. MAIL

Mr. Alexander Edelstein, CEO  
Gemstone Development  
9121 W. Russell Road, Suite 117  
Las Vegas, Nevada 89148

**RE: MANHATTAN WEST MIXED USE DEVELOPMENT  
APCO CONSTRUCTION – NOTICE OF STOPPING WORK & NOTICE OF INTENT TO  
TERMINATE CONTRACT  
DEADLINE: THURSDAY, AUGUST 21, 2008 – 5:00 PM**

Dear Mr. Edelstein:

On August 11, 2008, APCO provided Gemstone with written notice that unless APCO was paid the full amount of \$6,183,445.24 by close of business on Thursday, August 21, 2008, that APCO would stop work on the Project. Gemstone has failed to make full payment as required by statute, despite having no good faith contractual or proper statutory basis for withholding the payment. As a result, APCO is stopping work on the Manhattan West Project effective immediately.

In addition to stopping work on the project, APCO hereby asserts its rights to terminate the contract pursuant to NRS 624.610(2). **THIS LETTER SHALL SERVE AS APCO'S NOTICE OF INTENT TO TERMINATE THE MANHATTAN WEST GENERAL CONSTRUCTION AGREEMENT FOR GMP PURSUANT TO NRS 624.606 THROUGH NRS 624.630, INCLUSIVE. PURSUANT TO THE TERMS OF NRS 624.610, THE AGREEMENT SHALL BE TERMINATED AS OF SEPTEMBER 5, 2008.**

Nothing herein shall be construed to limit or waive any other rights, claims or defenses that APCO may have under statutory or common law.

Thank you for your attention to this matter.

Sincerely,

APCO CONSTRUCTION

  
JAMES M. BARKER, ESQ.  
Corporate Counsel

Cc: Peter Smith, Gemstone  
Craig Colligan, Gemstone  
All Subcontractors

HELIX00466

**Brian Fisher**

**From:** Jill Gisondo [JillG@gemstonedev.com]  
**Sent:** Thursday, August 28, 2008 5:44 PM  
**To:** gus@nvgypsum.com; hhuckabay@larrymethvin.com; jeffrey.hehman@mascocks.com; lamar@noordametals.com; mark.walke@noordametals.com; scott.olsen@thyssenkrupp.com; ron.harrell@thyssenkrupp.com; Andrew Rivera; paul@lpair.com; lindacs@lpair.com; tim@lpair.com; Jason Forsgren; jiml@nevadaprefabengineers.com; brianf@nevadaprefabengineers.com; dreynosa@nstarlv.com; rthornton@nstarlv.com; bjohnson@helixelectric.com; Dave Parry; bob.purvis@hotmail.com; hnguyen@arcadiainc.com; schladenj@earthlink.net; chirschi@themasonrygroup.com; jdague@creativehometheatre.com; Andrew Rivera; jeff.sprague@wrgdesign.com; tricitydrywallinc@gmail.com; Keith Wendt; lvpipeline@earthlink.net; ray@prsofnvada.us; lybport22@yahoo.com; Yvonne Farren; Dave Parry  
**Cc:** Peter Smith; Craig Colligan; Jennifer Griffith  
**Subject:** Pertinent Information

All,

The June checks should be complete and run at this time. An APCO representative has to sign all of the subcontractor checks due to Gemstone's request to prepare the "joint checks". An APCO signer should be doing that by the end of today or tomorrow morning. At that time, NCS will contact all of the subcontractors to pick up their checks. Furthermore, today the APCO July pay application was submitted to NCS.

As mentioned in the meeting on Monday, August 25, 2008, enclosed is the contact information for Camco Pacific regarding pay applications.

Camco Pacific  
Attention: Yvonne Farren  
2925 E. Patrick Lance, Suite G  
Las Vegas, NV 89120  
702.798.6611

Please forward your July and August pay requests to Yvonne. Obviously, July was already submitted to NCS but we would like Camco to have record of the most current pay requests.

Thank you.

If you have any questions, please feel free to contact Yvonne, myself and/or Jennifer Griffith.

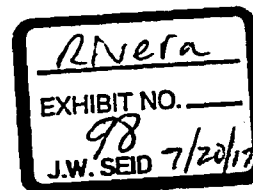
Respectfully,

Jill Gisondo  
Asst. Project Manager  
Gemstone Development

**ManhattanWest**

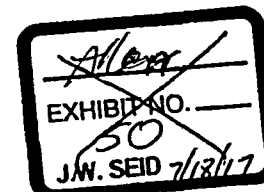
Residences  
Offices  
Shops

9121 W. Flamingo Road, Suite 117  
Las Vegas, NV 89148  
P (702) 790-8206  
F (702) 614-0659  
C (702) 523-2152  
www.gemstonedev.com  
www.manhattanlv.com  
www.manhattanwest.com



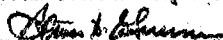
Pay App. #	Date Submitted	Payment Period	Amount Sought (Gross)	Payment Due Date	Date Higher-Tiered Party Objected to Pay App (If Any)	Date Payment Received	Amount Paid	Balance Due	Date Sent Dispute in Good Faith Letter
<b>APCO Construction</b>									
16713-001 - Void Rebilled Oct	09/20/07	09/30/07	-	10/30/2007				0.00	
16713-001R3	10/20/07	10/31/07	188,750.00	11/30/2007	11/14/07	12/7/2007	169,875.00	18,875.00	
16713-002R2	11/20/07	11/30/07	882,700.00	12/30/2007	12/07/07	1/31/2008	500,000.00	382,700.00	
						2/8/2008	294,430.00	-294,430.00	
16713-003	12/20/07	12/31/07	873,750.00	1/30/2008		2/20/2008	786,375.00	87,375.00	
16713-004	01/18/08	01/31/08	826,000.00	2/29/2008		3/25/2008	743,400.00	82,600.00	
16713-005R1	02/20/08	02/29/08	262,500.00	3/30/2008	03/20/08	4/22/2008	236,250.00	26,250.00	
16713-006R2	03/20/08	03/31/08	222,625.00	4/30/2008	04/14/08	5/22/2008	200,362.00	22,263.00	
16713-007R1	04/20/08	04/30/08	410,900.00	5/30/2008	06/20/08	6/20/2008	369,810.00	41,090.00	
16713-M001 Zitting	05/08/08					5/22/2008		0.00	
16713-008R2	05/15/08	05/31/08	298,647.00	6/30/2008	07/28/08	7/31/2008	268,783.00	29,864.00	
16713-M002 Zitting	05/18/08					6/23/2008		0.00	
16713-M003 Gemstone	06/12/08							0.00	
16713-009R5	06/20/08	06/30/08	235,485.11	7/30/2008	09/03/08	9/4/2008	211,936.11	23,549.00	
16713-010R2	07/18/08	07/31/08	566,950.00	8/30/2008	09/03/08	9/24/2008	510,255.00	56,695.00	
16713-011	08/20/08	08/31/08	362,900.00	9/30/2008		10/28/2008	55,543.35	307,356.65	
							279,166.65	-279,166.65	
<b>APCO TOTALS</b>			<b>5,131,207.11</b>				<b>4,347,019.46</b>	<b>784,187.65</b>	
							<b>\$4,626,186.11</b>	<b>\$505,021.00</b>	

Retention



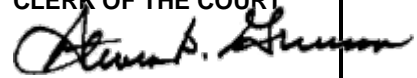


CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE



CLERK OF THE COURT

JA005623



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

APCO CONSTRUCTION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GEMSTONE DEVELOPMENT WEST INC., )  
 )  
Defendant. )  
AND OTHER PARTIES )

CASE NO. 08A571228  
DEPT NO. XIII

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

FRIDAY, JANUARY 19, 2018

**BENCH TRIAL - DAY 3**

APPEARANCES:

FOR APCO, LYNN, PELAN:

MARY E. BACON, ESQ.  
CODY S. MOUNTEER, ESQ.  
JOHN R. JEFFERIES, ESQ.

FOR HELIX ELECTRIC, SWPP,  
CACTUS ROSE, FAST GLASS,  
HEINAMAN:

ERIC B. ZIMBELMAN, ESQ.

FOR NATIONAL WOOD PRODUCTS:

JOHN TAYLOR, ESQ.  
JUDY HIRAHARA, ESQ.

FOR ZITTING BROTHERS:

I-CHE LAI, ESQ.

RECORDED BY: JENNIFER GEROLD, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

**JA005624**

## W I T N E S S E S

### **WITNESSES FOR APCO:**

BRIAN BENSON

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MARY JO ALLEN

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JOE PELAN

Direct Examination by Mr. Jefferies	149
Cross-Examination by Mr. Zimbelman	151
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### **WITNESSES FOR HELIX:**

ANDREW RIVERA

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CLAY JORGENSEN

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-------------------------------------	-----

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**WITNESSES FOR NATIONAL WOOD PRODUCTS:**

NICHOLAS COX

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**E X H I B I T S**

**APCO EXHIBITS ADMITTED:**

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231	Document	155
307	Withdrawn, including demonstratives	145
311	Withdrawn, including demonstratives	145
314	Document	155
320	Demonstrative exhibit	148
321	Demonstrative exhibit	148

**HELIX EXHIBITS ADMITTED:**

536	Demonstrative exhibit	147
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**FAST GLASS EXHIBITS ADMITTED:**

801-808	Documents	119
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**NATIONAL WOOD EXHIBITS ADMITTED:**

3176	Document	140
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1       **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 19, 2018, 9:05 A.M.**

2                               \* \* \* \* \*

3               THE COURT: Good morning. Please be seated.

4               The Court calls the case of APCO Construction versus  
5 Gemstone Development. I'm going to make -- I'm calling for  
6 purposes of the motion at this time. So I'd like appearances  
7 relative to the motion. It's on the calendar today.

8               MR. MOUNTEER: Yes, Your Honor. Cody Munteer on  
9 behalf of APCO Construction.

10              MR. LAI: I-Che Lai for Zitting Brothers.

11              THE COURT: Okay. It's a motion for stay by APCO.

12              MR. MOUNTEER: Yes. Your Honor, the original motion  
13 was brought during a time when we had the pending motions for  
14 reconsideration. So I will concede with the Court and counsel  
15 that under NRCP 62(b), which governs pending motions, that  
16 issue has become moot at this time; however, NRCP 62(h) is  
17 still ripe and is operative here.

18              The NRCP governs stays pending final order, 62 --  
19 pending the final order of the Court and judgment when you have  
20 here multiple parties, and multiple claims, and I know that the  
21 Nevada Supreme Court from personal experience likes to hear  
22 everything all at once. They don't like to grant certification  
23 for 54B unless the Court, yourself, or the parties and what not  
24 understand that all issues have been resolved to avoid multiple  
25 appeals or multiple actions taken up in the same type of

1 action, and here, this Court's well aware, we have a  
2 significantly large consolidated action, and part of that  
3 consolidation is Zitting. They're in that action.

4 What we have is a situation where we're asking for  
5 just a temporary stay. There already was a temporary stay  
6 pursuant to the rules of procedure of 10 days, pending the  
7 judgment that was entered or noticed by Zitting on January  
8 2nd. So it wasn't that long ago.

9 The Court also has before it a motion pending for  
10 Zitting's fees and costs, and that's going to be determined  
11 here in the next couple weeks, but at the same time, while we  
12 have this trial that's ongoing, and hopefully we'll come to an  
13 end fairly in the near future with at least regard to APCO and  
14 the subcontractors that are proceeding against APCO, and at  
15 that point it would be appropriate for the Court to then lift  
16 the stay that we're asking for, this short stay, and then  
17 certify the entire case against APCO so that a single appeal  
18 could be taken should APCO choose to take an appeal.

19 And at that point APCO would also be able to make the  
20 decision -- do we want to appeal the decision? Is there  
21 judgments against us that may come out of the trial that's  
22 happening or not or just Zitting alone?

23 But what it does not do by not granting the motion  
24 today, what it would allow to happen is it would force APCO to  
25 make that decision if it wants to seek 54(b) certification,

1 take an appeal, and then to stop procedurally any type of  
2 collection, go and get a supersedeas bond, something that's  
3 very difficult when the primary actors that control the entire  
4 company of APCO are sitting here in the courtroom in a trial  
5 and cannot be back at the office talking with the principals  
6 and making those other type of decisions.

7           So what we're really asking for from the Court in our  
8 motion is a short temporary stay pending the conclusion of this  
9 trial against APCO amongst all parties. We're asking that  
10 because it's so short that no bond be -- have to be produced  
11 because if we have to go and acquire a bond, the supersedeas  
12 bond will take its place. There's obviously no threat as  
13 Zitting seems to put that we're going to go and start taking  
14 assets and moving assets or anything because APCO has been in  
15 business since the '70s here.

16           We have ongoing projects, and I know counsel is going  
17 to get up and say that bankruptcy was mentioned in the past.  
18 That was an option when we were facing much more liability,  
19 when there was 10, 15 parties in this case and we were looking  
20 at \$20 million. Now, we're not looking at that. We're looking  
21 at trying to determine what is the outcome of this trial, what  
22 the actual issues on appeal need to be, and if that's the case,  
23 then we will take the proper measures.

24           Should the stay be granted, another thing that  
25 protects Zitting and its judgment on appeal, should the stay be

1 granted and we choose to go get a supersedeas bond, the bond is  
2 there to protect Zitting's collection. So at that point it  
3 wouldn't matter what we did with our assets or not, because as  
4 the Court's well aware, in construction bonds there's most  
5 likely going to be personal guarantees and other things of that  
6 nature to go and acquire that money and is secured at that  
7 point.

8           So with that, Your Honor, I will step back and allow  
9 Zitting to speak to the Court unless the Court has any other  
10 questions for us.

11           THE COURT: Okay. Thank you.

12           MR. MOUNTEER: Thank you.

13           MR. LAI: Your Honor, with respect to Rule 62(h),  
14 although there's multiple parties in this case, Zitting's claim  
15 is --

16           THE COURT: We don't have a final judgment yet  
17 either.

18           MR. LAI: We don't, Your Honor. And on that basis  
19 the motion is sort of unripe in a sense.

20           THE COURT: Right. Exactly. My thoughts exactly.

21           MR. LAI: And at the same time, to the extent that  
22 Zitting is trying to perfect --

23           THE COURT: No. What I mean to say is I think  
24 execution might be ripe -- not ripe.

25           MR. LAI: And Zitting has not mentioned anything



1 about moving forward with the execution of this case. We just  
2 don't want to have, even though trial is underway right now, to  
3 kind of stop Zitting from trying to perfect a final judgment  
4 and try to get things, you know, set in place. By the time it  
5 decides to execute, there's not this stay hanging over its head  
6 in trying to move forward with any sort of collection effort.

7 And that's what we're really doing with this case, is  
8 making sure that there's nothing stopping Zitting from trying  
9 to perfect the final judgment like this Court says in trying to  
10 get everything set in place. That way once final judgment is  
11 entered, we can go ahead and move forward with collection  
12 without any delay.

13 THE COURT: So what are you -- I want to make sure I  
14 understand what you're saying there.

15 MR. LAI: We're not sure -- based on what the  
16 motion's seeking, we're not sure if that's actually stopping  
17 Zitting to make any efforts to try to perfect the final  
18 judgment because what they're seeking here is sort of all  
19 actions related to execution, and that could be implied to  
20 cover any efforts to perfect a final judgment, and we just want  
21 to make sure that it doesn't stop us from trying to get a final  
22 judgment in this case. And that's -- and on that we'll rest on  
23 our briefs.

24 THE COURT: Well, let me make sure I understand what  
25 Zitting is seeking. There's no final judgment here. So

1 there's no execution.

2 MR. MOUNTEER: Well, Your Honor, that was part of the  
3 procedural cloud that we're kind of stuck in. It's our  
4 position there's no final judgment. It's our position --

5 THE COURT: Well, it says right in the item that was  
6 filed on December 29, 2017, on the last page, line 1, that's  
7 page 11, line 1, It is further ordered that this Court will  
8 enter final judgment on Zitting CI claims upon a decision on  
9 the fees and costs, et cetera. Will enter, so there is no --

10 MR. MOUNTEER: That has been our position.

11 THE COURT: Right.

12 MR. MOUNTEER: What spawned this motion is the  
13 judgment that the Court signed, and that was entered back in  
14 January 2nd, was represented that there are potential  
15 arguments; we don't think they're valid, but that judgment  
16 because of the number that is within the order itself could be  
17 argued that collection efforts could start. Now, we don't  
18 believe collection efforts could start. So that's why we  
19 brought this motion before the Court.

20 Because if the argument that final judgment has been  
21 entered, the 10-day stay hasn't even started. The whole reason  
22 this motion was brought --

23 THE COURT: All right. Rule 62, which is invoked in  
24 your motion, is entitled Stay of Proceedings to Enforce a  
25 Judgment. Okay. So that's what you're seeking, as I

1 understand it, is to stay execution on the judgment, on the  
2 face of which indicates that it's not the item that's the  
3 subject of your motion is not the final judgment. So I don't  
4 know that there could be execution on it in any event.

5 MR. MOUNTEER: We don't believe there could be. So  
6 if Your Honor would be so inclined to deny our motion, but in  
7 the order put that there's not a final judgment at this time --

8 THE COURT: Right.

9 MR. MOUNTEER: -- that execution cannot take place,  
10 then my client would be sufficiently happy with that.

11 THE COURT: Yes.

12 MR. MOUNTEER: We just don't want them to start going  
13 and pulling money out and everything else --

14 THE COURT: Right.

15 MR. MOUNTEER: -- when we haven't even had the  
16 opportunity to finish up with this trial or seek a supersedeas  
17 bond appeal rights.

18 THE COURT: All right. Thank you. The Court will  
19 deny the motion without prejudice to renewal once there's been  
20 entry of final judgment, okay, or certification of judgment,  
21 whatever. There is no 54(b) certification of the item that's  
22 before the Court at this time. So it's without prejudice to  
23 renewal with the understanding that the Court does not consider  
24 that the item that was entered on December -- I'm sorry,  
25 January 2nd, 2018, entitled Findings of Fact and Conclusions

1 of Law and Order Granting Zitting Brothers Construction Inc.'s  
2 Motion for Partial Summary Judgment Against APCO Consideration,  
3 the Court does not consider that to be a judgment subject to  
4 execution.

5 MR. MOUNTEER: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. MOUNTEER: I'll prepare an order.

8 THE COURT: So I guess I need an order on that.

9 MR. MOUNTEER: I will prepare an order, run it by  
10 counsel and present it to the Court.

11 THE COURT: Okay.

12 MR. MOUNTEER: Thank you, Your Honor.

13 MR. LAI: Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 All right. Now, in the same case, APCO Construction  
16 versus Gemstone Development West, Inc. Resuming nonjury trial.  
17 Please state appearances of counsel, identify parties and party  
18 representatives who are present today.

19 MR. JEFFERIES: Randy Jefferies of Spencer Fain on  
20 behalf of APCO, along with Mr. Pelan and Lisa Lynn of APCO.

21 MR. ZIMBELMAN: Eric Zimbelman on behalf of Helix  
22 Electric, Heinaman Contract Glazing, Fast Glass Inc., Cactus  
23 Rose, and SWPP Compliance, along with my client representative  
24 for Helix, Andy Rivera.

25 THE COURT: All right.

1 MR. TAYLOR: John Taylor and Judy Hirahara. Nicholas  
2 Cox is also present.

3 THE COURT: Okay. Again, this is resumption of the  
4 nonjury trial. Counsel, are the parties ready to proceed?

5 MR. TAYLOR: Yes, Your Honor.

6 THE COURT: And as we were going into the Wood  
7 Products case; is that correct?

8 MR. TAYLOR: Yes.

9 THE COURT: Okay.

10 MR. TAYLOR: National Wood, would call Nicholas Cox.

11 **NICHOLAS COX**

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

14 THE CLERK: You may be seated. Can you please state  
15 and spell your name for the record.

16 THE WITNESS: My name is Nicholas Cox.  
17 N-i-c-h-o-l-a-s, C-o-x.

18 DIRECT EXAMINATION

19 BY MR. TAYLOR:

20 Q Good morning, Mr. Cox.

21 A Good morning.

22 Q I appreciate you coming out today. What -- what type  
23 of business was Cabinetec?

24 A Kitchen and bath cabinetry.

25 Q Do you know when it was first started?

1           A     I believe it was 1984.

2           Q     Now --

3           A     That's what I always -- I always heard growing up. I  
4 was 4 years old. So.

5           Q     Okay. You heard it growing up. So who were the  
6 owners of Cabinetec initially?

7           A     My parents, Don and Sally Cox.

8           Q     When did you start working there?

9           A     I worked -- obviously I worked off and on when I was,  
10 like, really young, you know, just like stocking parts and  
11 pieces, that kind of stuff. When I officially started my,  
12 quote, unquote, career, would've been in '97. I moved from  
13 Vegas to -- from St. George to Vegas and started working here.  
14 I was 17.

15          Q     And did you continue working there until Cabinetec  
16 closed?

17          A     Yes.

18          Q     When did Cabinetec close?

19          A     '09.

20          Q     What was your -- what was your highest title at  
21 Cabinetec?

22          A     President.

23          Q     Were you with Cabinetec during the Manhattan West  
24 project?

25          A     Yes.

1           Q     Do you know whether Cabinetec had appropriate  
2 licenses through the work that it did on the Manhattan West  
3 project?

4           A     Yeah. Yes. To the best of my knowledge for sure.  
5 They would -- they wouldn't have signed contracts with us if we  
6 didn't have the licenses.

7           Q     I'd like -- speaking of the contract, I'd like you to  
8 look at the book in front of you, Exhibit 3002. They should be  
9 marked along the side. I'll put some of the things up on the  
10 screen, too. It might make it easier to see. Exhibit 3002,  
11 which is in evidence by a stipulation is entitled subcontract  
12 agreement. Is that a subcontract agreement between Cabinetec  
13 and APCO?

14          A     Yes.

15          Q     If you look back at --

16                THE COURT: What's the -- how is it identified? What  
17 is it?

18                MR. TAYLOR: 3002.

19                THE COURT: 3002.

20                MR. TAYLOR: It's entitled Subcontract Agreement.

21 BY MR. TAYLOR:

22          Q     If you look back at the last page of this exhibit,  
23 there is a signature of Leo Duckstein. Was he authorized to  
24 sign this document on behalf of Cabinetec?

25          A     Yes.

1           Q     And if you look two pages earlier, there's another  
2 signature from Leo Duckstein. Does that appear to be his  
3 signature as well? On page -- in the bottom left corner, it's  
4 marked as page, hyphen, 015.

5           A     Yeah.

6           Q     Okay. Do you know if there were ever -- were you  
7 ever aware of any problems between APCO and Gemstone?

8           A     Not really. I mean, obviously we didn't -- we were  
9 so busy staying on schedule because in this type of  
10 environment, you get held accountable to your schedule. So we  
11 were just heads down just getting the job done. We didn't  
12 really know what was going on behind the scenes, that there was  
13 any type of, you know, friction there until it was, like, okay,  
14 APCO went away, and this new company Camco came on the scene,  
15 but we were -- again we were head down getting work done.

16          Q     Did -- did Cabinetec ever fall behind in its  
17 construction?

18          A     No. We were one of the only ones that were, like,  
19 always ahead of schedule.

20          Q     Cabinetec ultimately stopped working before the job  
21 was completed; is that correct?

22          A     Before the job was completed -- what do you --

23          Q     Before the buildings were ready for occupancy.

24          A     Yeah. So there was two of the midrise four levels --  
25 projects that were -- units that were done, I believe,



1 completely, and then we started on the high-rise, the 10 -- I  
2 think it was 10 story one.

3 Q Okay. But Cabinetec didn't finish all of its work;  
4 is that correct?

5 A Well, we weren't able to finish all of it because  
6 obviously it got shut down.

7 Q Okay. Up until Cabinetec stopped work, had you  
8 received any information to indicate that APCO's contract was  
9 canceled?

10 A Not to my knowledge, no.

11 Q Did you understand that you were still operating with  
12 a contract with APCO up until the end?

13 A Yes. Because we were working with -- we signed with  
14 APCO, signed the contract, and we started going. We would not  
15 have -- obviously we kept working with those guys. We did not  
16 know that anything was happening. So, yes, for sure.

17 Q I'll show you another exhibit, 3096, which should be  
18 toward the back there. This one's entitled Ratification and  
19 Amendment of Subcontract Agreement Cabinetec. This one is in  
20 evidence by stipulation. If you look at this exhibit, on the  
21 fourth page there is a signature from someone at Cabinetec. Do  
22 you recognize that signature?

23 A It looks like Leo Duckstein again.

24 Q Okay. And would he have had authority to sign this  
25 on behalf of Cabinetec?

1           A     Yeah.

2           Q     And when this -- this agreement was signed with  
3 Camco, did you have any understanding as to whether or not APCO  
4 was being released?

5           A     No. As I understand it from -- again, this is a  
6 decade ago, but my understanding is obviously that Camco was  
7 taking over, but nothing that we had previously signed or  
8 agreed upon was not being released. We were still wanting to  
9 be paid for work we had done with the companies that we signed  
10 contracts with.

11          Q     So -- so you -- so you could've been paid by Gemstone  
12 the owner, right?

13          A     (No audible response.)

14          Q     Now, and you could've been paid by APCO, correct?

15          A     Correct.

16          Q     You could've been paid by Camco, right?

17          A     We just wanted to be paid for the work we did. So  
18 absolutely.

19          Q     And would that include the entirety of all of the  
20 work that was done and unpaid?

21          A     Yeah.

22          Q     I'd like you to look at Exhibit 3003, which is a  
23 document entitled Invoice, and this bears a date of 7/31, 2008.

24                THE COURT: Is 3000 which?

25                MR. TAYLOR: 3003. And I believe this is in evidence

1 by a stipulation.

2 BY MR. TAYLOR:

3 Q Is this a Cabinetec invoice relating to this project?

4 A Yes.

5 Q And it says in the basically in the center of the  
6 page, it says Manhattan West Building 8, Unit 152, Plan P,  
7 hyphen, B, 4, A. Does that mean this invoice relates to that  
8 specific unit?

9 A Yes.

10 Q Okay. If you look at the next exhibit, 3004, which  
11 is in evidence by stipulation. It's entitled Conditional  
12 Waiver and Release. This one also states toward the top that  
13 it relates to 8, hyphen, 152. Now, does this relate to  
14 Unit 152 in Building 8 as well?

15 A It sure looks like it.

16 Q And this one -- so this one would relate to the same  
17 unit as the invoice we just looked at, right?

18 A Yes.

19 Q And I'm not going to go through each one of them, but  
20 could you look through Exhibits 3005 through 3082, and I know  
21 it's a -- it's a bunch of them there. These are all in  
22 evidence by stipulation. Do those also appear to be invoices  
23 and conditional waivers from July 31st, 2008, for work on the  
24 Manhattan West project?

25 A You said 3080 what?

1 Q 3082.

2 A (Witness reviews documents.)

3 Yes, these are all invoices and releases.

4 Q Okay. I will now call your attention to Exhibit 3090  
5 which is in evidence by stipulation. It is a document that  
6 indicates it has a statement date in the upper right corner of  
7 8/8/2008. Is this a statement from Cabinetec for work that had  
8 been invoiced on the Manhattan West project?

9 A Yes.

10 Q And it shows a total on the second page of \$179,180.  
11 Do you see that?

12 A Yes.

13 Q Now, was Cabinetec still working on the project in  
14 August of 2008?

15 A I would assume so, but it was so long ago --

16 Q Well, let's put it this way. From the time --

17 A The fact that we're invoicing on this, I would assume  
18 so, but I don't know.

19 Q So from the time --

20 A A decade ago.

21 Q From the time Cabinetec started until the time  
22 Cabinetec left, did it continue working throughout?

23 A Yeah.

24 Q Were there any big gaps of time when Cabinetec shut  
25 down?

1           A     It was pretty steady.

2           Q     Okay. I'd like you to look at Exhibit "3105," which  
3 is going to be in the next book I believe. This is a document  
4 entitled Invoice. It's dated October 24th, 2008. This  
5 exhibit "3005" is in evidence by stipulation. Does this appear  
6 to be an invoice for work on the project --

7           A     Yes.

8           Q     -- dated October of 2008?

9           A     Yes.

10          Q     If you could look through -- it's a smaller stack  
11 this time -- from this exhibit through 3140. Do those appear  
12 to all be invoices and conditional waivers as of October 24th,  
13 2008?

14          A     (Witness reviews documents.) What number do you want  
15 me to go to?

16          Q     This group goes through 3140. There will be one more  
17 group, and it's even smaller.

18          A     Yeah. Invoices and (unintelligible) release  
19 payments.

20          Q     And then look at Exhibit 3147. Does this appear to  
21 be an invoice for work on the project dated November 12th,  
22 2008?

23          A     Yes.

24          Q     And looking through this group, all the way through  
25 3152, does that appear to be invoices and conditional waivers

1 as of November 12, 2008?

2 A Yes.

3 MR. JEFFERIES: Your Honor, if I might, just a  
4 procedural matter, from the exhibits that counsel's now going  
5 into, you can see that they relate to Camco. I had filed a  
6 motion in limine to limit the evidence against APCO subject to  
7 the disclosures. I have a copy of your order and your ruling,  
8 and Your Honor wanted to see the disclosures at trial. I have  
9 those.

10 So if I could just pose an objection. I don't mean  
11 to interfere with his presentation of this evidence, but for  
12 the record, I have the objection for the record per the motion  
13 in limine to any amounts beyond what was billed to APCO, and  
14 when the witness with Your Honor's concurrence, I'll present  
15 that argument more fully when he's finished.

16 THE COURT: Okay.

17 MR. TAYLOR: Right. And we can argue that after Mr.  
18 Cox is on his way.

19 THE COURT: All right. That's fine. Thank you.

20 BY MR. TAYLOR:

21 Q These -- these invoices that you've looked at, are  
22 they invoices for work that was actually done?

23 A Yeah. We don't invoice until it's done.

24 Q And were the amounts billed reasonable for the work  
25 that was actually done?

1           A     Yeah. Everything looked pretty normal. I mean,  
2 obviously I don't have the contracts in front of me. So I  
3 can't tell you, yes, 100 percent for certain, but yes, they  
4 look pretty reasonable.

5           Q     I'm talking about even forgetting the contract. Do  
6 you -- was the amount billed by Cabinetec for the work that it  
7 did a reasonable price for the work that it actually did?

8           A     Yes.

9           Q     I'd like you to look at Exhibit 3171. This is a  
10 document entitled Notice of Intent to Lien, which is -- it's  
11 been admitted by stipulation. It is signed by -- it appears to  
12 me that the signature is by Justin Watkins. Do you know who  
13 Justin Watkins is?

14          A     I know we had several attorneys. I don't remember  
15 all their names.

16          Q     Okay. This indicates contract prices and amounts  
17 paid. Do you have any reason to believe that any of the  
18 numbers on this notice are inaccurate?

19               MR. JEFFERIES: I'm going to object. Could we get  
20 some foundation.

21               THE COURT: Sustained.

22               BY MR. TAYLOR:

23          Q     Do you have any specific knowledge of the amount that  
24 was actually billed to -- the total amounts that were billed to  
25 this project?

1           A     Ironically enough, I talk about this all the time.  
2 This is like the, you know, the project that really took my  
3 family's company out of business, and I've always told the  
4 story that we got taken for about 750,000, and that's why we  
5 went out of business. So, yeah, that's right on the money.

6           Q     Okay. But you don't know the specific, exact number;  
7 is that right?

8           A     No.

9           Q     Okay.

10          A     I just know it was in that -- in that region.

11          Q     Okay. Have you -- have you been to the project after  
12 work stopped?

13          A     I actually went -- I went there a couple years ago  
14 when that new developer bought it or whatever.

15          Q     And did you actually walk through any of the  
16 buildings?

17          A     I walked back to the two four-story buildings. I  
18 walked through them.

19          Q     Why?

20          A     Because they were asking us to look at it when I --  
21 for the company I was working for (unintelligible) they asked  
22 me to walk the unit and see what it was going to take to get it  
23 so they could start renting or selling the units.

24          Q     Did you have the opportunity to look at the cabinets  
25 that had been installed in those units?



1           A     Yes.

2           Q     What was the -- did you notice any problems with the  
3 workmanship on any of the cabinets in the units of buildings  
4 3 and 4 -- sorry, 8 and 9, the two four-story buildings?

5           A     To be honest, I was shocked at how well they had held  
6 up being the fact that they had just been set there for a  
7 decade. There was animal prints all over a lot of the cabinets  
8 and stuff, like birds and cats and stuff, but other than that,  
9 they were actually in still pretty damn good shape for just  
10 sitting there.

11          Q     As I understand, there were no cabinets actually  
12 installed in the nine story building; is that right?

13          A     I believe there was units installed in that nine  
14 story. I believe there was a model, models, and there was  
15 several units. I don't know the number. I'm not going to be  
16 held on that, but --

17          Q     Okay. Were there any cabinets that were built and  
18 not installed?

19          A     Lots.

20          Q     Approximately how many?

21          A     I would say at least two or three trailers worth. I  
22 don't know how many that would, you know, how many, you know,  
23 units that would be per trailer.

24          Q     Well --

25          A     Guesstimate, probably 10.

1 Q What type of trailer are you talking about?

2 A The diesel trailers.

3 MR. TAYLOR: Okay. I don't have anything further.

4 They may have questions for you though.

5 THE COURT: All right. Cross.

6 MR. JEFFERIES: Should we just, Your Honor, address  
7 my objection to the evidence after we excuse the witness?

8 THE COURT: Yes. Uh-huh.

9 MR. JEFFERIES: Okay.

10 CROSS-EXAMINATION

11 BY MR. JEFFERIES:

12 Q Mr. Cox, did you participate in bidding Cabinetec's  
13 work for the project?

14 A You said bidding?

15 Q Bidding.

16 A Yeah, I was involved mainly on the overseeing part of  
17 it. I wasn't really involved in the initial doing the numbers  
18 or whatever. I was kind of overseeing once it got all done.  
19 So I guess yeah, I would be involved to a degree.

20 Q Okay. And what was your personal role with  
21 supervising the work of Cabinetec?

22 A So I was the president. So I would come in. I had  
23 general field superintendents and supervisors on those tracts.  
24 So they would, you know, obviously report to me, let me know  
25 how things were going, if there was an issue. If anything was

1 going on, then obviously I would get involved, but for the most  
2 part, it was going really, really good.

3 Q Did you have any responsibility for negotiating  
4 contracts relative to the project?

5 A Yeah.

6 Q Okay. What was your role in negotiating or reviewing  
7 the subcontract between APCO and Cabinetec?

8 A Obviously when I got the paperwork we just -- we'd  
9 review it and make sure that the pricing that we've given them  
10 was accurate to APCO, what APCO was obviously contracting us  
11 with, but you're talking about I think it was 10 years ago.  
12 That's the best of my ability. That's the only involvement I  
13 really would've had.

14 Q Okay. I respect you may have seen the document at  
15 some point, and I respect it's been some time.

16 A Ten years and three kids later.

17 Q Understood. Do you have any recollection of actually  
18 negotiating an agreement with APCO? You personally, not the  
19 collective we?

20 A I know I was involved in several of the different  
21 conversations just trying to get it locked down at the very end  
22 because it was us and a couple other companies were bidding it.  
23 So I had some involvement. My main salesperson -- I had  
24 somebody that was actually on it, and I was over them.

25 Q Okay. Did you participate in any negotiations or

1 discussions with Camco -- you personally -- regarding the  
2 ratification agreement?

3 A Not that I remember.

4 Q Okay. Did you personally have any discussions with  
5 Gemstone, who you may recall was the owner-developer, regarding  
6 the ratification document?

7 A Not that I can remember to be honest with you.

8 Q Okay. What was your role in the billing for the  
9 project? Your personal role.

10 A Well, I had a whole billing team. So they would get  
11 it all ready, and it would be sent out, and really they only  
12 brought us in if there was issues. Obviously, there was issues  
13 towards the end of the existence of Gemstone.

14 Q Okay. Sir, isn't it true that APCO paid Cabinetec  
15 all of the invoices that Cabinetec served or delivered to APCO  
16 while APCO was serving as the general contractor?

17 A I don't know, and that's not how I remember it.

18 Q Okay.

19 A Again, that's a -- you're asking a decade  
20 conversation with isn't it true. Not that I remember.

21 Q Okay. Did Cabinetec ever bill APCO for retention?

22 A I have no idea. I would assume so. I would assume  
23 the invoices went out to APCO. Everything I've seen right now,  
24 that was all APCO invoices.

25 MR. JEFFERIES: Okay. May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. JEFFERIES:

3 Q Sir, I'm going to ask you to turn to Exhibit 149. I  
4 think it's probably another copy of the contract.

5 THE COURT: Which one is it, Counsel?

6 MR. JEFFERIES: Exhibit 149.

7 BY MR. JEFFERIES:

8 Q Is this the Cabinetec-APCO subcontract?

9 A It sure looks like it. I don't know why there's more  
10 pages than the last one, but yeah.

11 Q Sir, would you turn to paragraph 3.8 found on  
12 page 4 of Exhibit 149.

13 A Page 4?

14 Q Yes, sir. And you don't have to read it out loud,  
15 but take a minute if you would and review paragraph 3.8.

16 Have you had a chance to look at it?

17 A Yeah, I believe so.

18 Q Do you recognize that, or would you agree that is the  
19 retention payment schedule under the subcontract?

20 A So when -- any time we ever do retention, it would be  
21 like I would finish X amount of units, and they would pay a  
22 retention. That's pretty much blanket for our industry, and  
23 it's funny now that I'm reading it. It says -- obviously it  
24 reads the project at the end, but I also remember that this  
25 project was so big they broke it in to different contracts. So

1 I wonder if that's how they verbalized it, and it would've been  
2 per contract because it was so many buildings. So, but as far  
3 as that reads, it's 10 percent and project, but we would get  
4 paid.

5 Because I did Manhattan on the Las Vegas Boulevard  
6 for the same developer, and we'd do a phase of it. We'd get  
7 paid for it, and then we'd do the final pick up and get paid  
8 retention. So.

9 Q Let me do it this way. You actually have -- there's  
10 an Exhibit A found on page 15 of Exhibit 149. That's your  
11 scope of work, and any -- that and page 16 are special  
12 conditions, correct?

13 A You said page 16?

14 Q 15 and 16. My question to you is as you look at  
15 that, did Cabinetec ever revise the retention payment schedule  
16 found in paragraph 3.8 of the subcontract?

17 A I would say no, but again it's been a decade. I  
18 can't remember if we did or not.

19 Q Do you see that anywhere in Exhibit 149?

20 A No.

21 Q While APCO was serving as the general contractor on  
22 the project, did Cabinetec ever fulfill these requirements for  
23 release of Cabinetec's retention?

24 A Again I don't know, long time ago, brother.

25 Q Okay. Sir, would you turn to Exhibit 150. Is that

1 in that notebook?

2 A 150, yes.

3 Q Okay.

4 THE COURT: That's 150 you said, Counsel?

5 MR. JEFFERIES: Yes, sir.

6 BY MR. JEFFERIES:

7 Q Can you identify those documents for me.

8 A They look like invoices.

9 Q Are these essentially the same products or materials  
10 that were billed or referenced in Exhibit 303 -- strike that.

11 Sir, would you keep Exhibit 150 in front of you and  
12 also look at Cabinetec's Exhibit 3090 if you would. My  
13 question to you is do these two summaries relate to the same  
14 work or materials provided by Cabinetec?

15 A I would assume so.

16 Q You would agree the amounts correspond to one  
17 another, correct?

18 A Just based on the building number and the unit  
19 number, I would assume so.

20 Q Is that a yes?

21 A Yes, to the best of my knowledge.

22 Q Fair enough. Now, directing your attention to  
23 Exhibit 150, page 2, would it be a correct statement that as of  
24 August 6, 2008, Cabinetec had merely delivered or -- strike  
25 that. As of the date on Exhibit "50", page 2, had Cabinetec

1 delivered materials -- these materials to the site?

2 A I don't know. You're saying based on this you're  
3 coming up with a delivery date?

4 Q Okay. Let's look at the notes down below. Do you  
5 see where it says 70,836 is due no later than 30 days from  
6 delivery. Do you see reference to August 1, 2008?

7 A Okay.

8 Q Does that suggest to you that, in fact, these  
9 materials were merely delivered to the job on August 1, 2008?

10 A I don't know. I don't know if he's saying it's  
11 August 1st, that's when it delivered or that's when the  
12 expectation of the amount is.

13 Q You don't know?

14 A No.

15 Q Okay. Look at the next item under notes. It says,  
16 \$8,854.54 is due no later than 30 days from day of  
17 installation. Does that suggest to you that as of August 6th,  
18 2008, these cabinet materials had not been installed on the  
19 project?

20 A All it looks to me is that the amount to install is  
21 due 30 days after it was installed, whatever date that would've  
22 been. That's how that reads to me.

23 Q Okay. But per your billing practice, you're not  
24 billing either the installation price or the retention in this  
25 Exhibit 150, are you?



1           A     I don't remember them breaking it out like this to  
2 where they broke out the installation as well, but it looks  
3 like they broke out everything.

4           Q     Okay. My question was a little bit different. Based  
5 on your billing practice, would it be fair to conclude that  
6 through Exhibit 150 Cabinetec is not yet billing installation  
7 or retention?

8           A     Yeah, based on this right here. Again I don't know  
9 if August 1st was the day that it was going to install, or  
10 the day -- yeah, I don't know. I don't know how they broke  
11 that down. I don't know what the purpose behind them breaking  
12 it down. I don't remember them doing that. I remember  
13 obviously retention. I don't remember them breaking out  
14 install and delivery.

15          Q     Have you seen Exhibit 150 before today?

16          A     I'm sure I have, but again 10 years ago. I've gone  
17 through a lot of contracts and a lot of paperwork since then.

18          Q     Sir, would you turn to Exhibit 3089. I'm hoping it's  
19 in -- there's more books up there. And if you would, sir, go  
20 to the second page of the exhibit. Do you see this August  
21 6th, 2008, letter on Cabinetec letterhead?

22          A     Okay.

23          Q     You take a minute and review it.

24                 Have you had a chance to read it?

25          A     Yeah.

1 Q Would you agree based on this document that as of  
2 August 6, 2008, Cabinetec had not actually installed its  
3 cabinets on the project, but merely delivered and was storing  
4 the materials?

5 A I don't know. Maybe it reads that way, but I don't  
6 know. I don't know if they're backdating and just covering  
7 their butts on paperwork. I don't know. I do know, like I  
8 said, I have walked the units. I know what units were  
9 installed on Building 8 and 9. So I don't know.

10 Q Ultimately.

11 A Yeah.

12 Q But --

13 A Timingwise.

14 Q I respect that. Let me make sure my record is clear.  
15 As of August 6, 2008, you don't have any information to  
16 contradict the implication in Exhibit 3089 that as of August 6,  
17 2008, the cabinets were not installed. They're merely being  
18 stored on-site. Correct?

19 A Yeah. I don't know yes or no whether that was the  
20 case. Yeah. I wouldn't argue against it.

21 Q In looking at Exhibit 3090, which is the invoice, one  
22 of the summary invoices of these, would you agree that payment  
23 even for this amount was not due until 30 days after August 8,  
24 2008?

25 A Yeah, I would assume so. Again, I don't know if this

1 is -- if this is sent before or this is the only one we have on  
2 in court. You know what I mean? I don't know if this is -- or  
3 I'd already -- been sent previous times, but based on this  
4 paperwork, yes. We all know in this industry its you can send  
5 it. It got lost. You can't find it, resend it. That type of  
6 stuff happens all the time.

7 Q Are you aware of another billing to APCO beyond  
8 Exhibit 3090?

9 A If there's another billing outside of this one?

10 Q Yes, sir.

11 A I don't know. If we would've done this, you know,  
12 like two years after this would've happened, I might have a  
13 little more memory. This stuff drags out.

14 Q Would you look at Exhibit 3093 and 3094. My question  
15 to you regarding both documents is going to be do you recall  
16 receiving APCO's notices to all Manhattan West subcontractors  
17 of payment issues with Gemstone?

18 A I don't remember this happening, but I'm sure --  
19 again it was 10 years ago, but this looks, like, legit.

20 Q Exhibit 3096 is the ratification agreement, and if  
21 you go to page 4, that document was, in fact, signed by -- is  
22 it Duckstein?

23 A Duckstein, something like that.

24 Q It was signed by Cabinetec, correct?

25 A Yes.

1           Q     Okay. And directing your attention to the first page  
2 of the exhibit, paragraph B, you understood that through this  
3 ratification agreement that Camco was, in fact, replacing APCO  
4 as the prime contract -- prime contractor under the subcontract  
5 agreement that Cabinetec had with APCO, correct?

6           A     So again we're talking 10 years ago, but the biggest  
7 thing I don't want to "implement" is that I -- there was  
8 definitely no release of APCO from what we had already done  
9 with you guys for sure. I don't know, my lawyer didn't say  
10 that wrong. As far as Camco, obviously you guys were stepping  
11 out and Camco was stepping in.

12          Q     Okay. And candidly, in fairness to you and the  
13 record, in paragraph 7 of the same document Cabinetec did  
14 reserve its rights against APCO for materials that had been  
15 delivered to APCO, correct?

16               MR. TAYLOR: Calls for a legal conclusion. I don't  
17 know that we have this witness's personal knowledge of this  
18 prior to today.

19               THE COURT: What was the -- I didn't hear the  
20 statement.

21               MR. TAYLOR: Well, I don't think we have any  
22 information that this witness actually negotiated this  
23 document. So if he's just looking at it today, it would be  
24 speculation for him to try to interpret it today --

25               THE WITNESS: And my viewpoint on that --

1 MR. TAYLOR: -- calls for a legal conclusion.

2 THE WITNESS: -- is that you guys should handle that,  
3 not me. I don't want to be answering that.

4 THE COURT: I'll overrule the objection. You can ask  
5 the question.

6 BY MR. JEFFERIES:

7 Q Okay. Directing your attention, sir, to paragraph 7,  
8 was this what you were referring to in your testimony where you  
9 said you were reserving your payment rights against APCO?

10 A Yeah, we weren't giving up any rights to -- like I  
11 mentioned earlier, we just wanted to get paid. I don't care if  
12 it was Gemstone, APCO, Camco, Pamco [phonetic]. It didn't  
13 matter we just wanted to get paid for the work we did and the  
14 work that was in progress, and I don't want to answer that  
15 because the lawyer jargon and ratification and stuff, that's  
16 for you guys to figure out how that works. I'm going to plead  
17 the Fifth on that one. I don't understand what it means.

18 Q Okay. Sir, but going forward from and after the  
19 point that Cabinetec signed the ratification agreement with  
20 Camco, you knew and understood that Camco was going to be the,  
21 quote, contractor, as that term was used in the original  
22 subcontract that Cabinetec had for the project, correct?

23 A So APCO was going away and Camco was coming on.  
24 That's what was happening.

25 Q That's --

1           A     I don't --

2           Q     Is that a yes?

3           A     Yes, that's what was happening, but again it doesn't  
4 release APCO of anything that we had already agreed and done  
5 with you guys.

6           Q     Sir, would you look at Exhibit 3105.

7           A     That's the other book.

8           Q     In your direct examination, sir, you referenced --  
9 you went from the APCO billings to Exhibit 3105, and this would  
10 be your bill for materials fabricated and installed while Camco  
11 had replaced APCO, correct?

12          A     So again, I'm not going to get lawyered. So what I'm  
13 going to say is as far as that goes, it looks like this is  
14 Building 7. That's Building 8, and they would obviously be  
15 billing to, yes, for cabinets, materials, install. That's what  
16 this looks like. Again, you're asking me to look at a piece of  
17 paper that's 10 years old and dissect and know exactly what it  
18 is. So I don't want, you know, to get lawyered. Again, excuse  
19 the term.

20                But and I don't know where this is going as far as  
21 both -- both APCO and Camco, but again from our standpoint I'm  
22 going to say the same thing I said earlier. I don't care who  
23 paid us. We just wanted to get paid. So if we're -- if you're  
24 showing the same invoices from both companies, I was going to  
25 invoice Joe Schmoe if that helped us get paid.

1 MR. JEFFERIES: Your Honor, I would move to strike  
2 the answer as nonresponsive.

3 THE COURT: Motion's denied.

4 BY MR. JEFFERIES:

5 Q Sir, did there come a point in time when you were  
6 just billing Camco and not APCO?

7 A I can't answer that. I don't know. I don't  
8 remember.

9 Q After APCO left the project and was replaced by  
10 Camco, did Cabinetec enter into change orders with Camco and/or  
11 Gemstone?

12 A I have no idea.

13 Q Have you had any involvement in reviewing the lawsuit  
14 that Cabinetec filed against APCO?

15 A Like, from, like, a long time ago?

16 Q Yes.

17 A Not really. Again, just I've seen some of these  
18 papers -- some of these papers, just because -- in reviews for  
19 this was obviously coming up, but I hadn't -- none of the stuff  
20 from Cabinetec, mainly the National Wood stuff. A lot of these  
21 papers I haven't seen forever. It's kind of weird. To see the  
22 Cabinetec logo is kind of a -- kind of a trip.

23 Q Would you look at Exhibit 3103. What is this?

24 A It looks like a retention invoice.

25 Q And it's directed to whom?

1           A     Camco.

2           Q     Okay. Would this be the retention related to the  
3 invoices that were in --

4           A     Which goes back to exactly what I just said. I  
5 would've sent an invoice to JoeCo [phonetic] in order to get  
6 paid. I'm not going to let you lawyer me into saying yes.  
7 APCO and "Comco". It doesn't matter who it was. We would've  
8 sent invoices to everybody if it would have increased the  
9 chances of us getting paid for work we had done.

10           MR. JEFFERIES: Your Honor, I would move to strike  
11 that.

12           THE COURT: The motion's granted.

13           BY MR. JEFFERIES:

14           Q     Sir, my question simply was -- I'm trying to  
15 correlate numbers. The amounts that you're billing to Camco in  
16 Exhibit 3103, is it the retention mathematically based upon the  
17 invoices that were sent to APCO that are summarized in  
18 Exhibit 3090?

19           A     The numbers -- that's 10 percent. So.

20           Q     Is the answer yes to my question?

21           A     Again I would say, yes, that looks like 10 percent of  
22 that number. That's all I'm going to say yes to.

23           Q     Okay. Were you involved in preparing the lien for  
24 Cabinetec?

25           A     Ten years ago, brother. I'm going to have to keep



1 pulling that card because I don't -- I don't remember.

2 MR. JEFFERIES: I don't I think I have any further  
3 questions.

4 MR. TAYLOR: No redirect, Your Honor.

5 THE COURT: All right. You may stand down, sir.  
6 Thank you.

7 THE WITNESS: Let me close the books.

8 MR. JEFFERIES: Do you have another witness?

9 MR. TAYLOR: Well, I want to examine Ray Joe Allen  
10 and Mr. Benson, but I think you're going to examine first.

11 MR. JEFFERIES: Yes, Your Honor. If we could for the  
12 record address our -- our motion in limine that we had filed on  
13 the related ruling.

14 THE COURT: Okay.

15 MR. JEFFERIES: May I approach? I'll show you a copy  
16 of your order for your convenience.

17 MR. TAYLOR: Which one are you showing him?

18 THE COURT: Just tell me the date. I can access it  
19 here.

20 MR. JEFFERIES: January 4, 2018.

21 THE COURT: Okay. I can access it right here.

22 That's the amended order -- oh, amended nunc pro tunc  
23 order. Is that what you're referencing there?

24 MR. JEFFERIES: Yes. And if I might, exhibits -- our  
25 motion, if you recall, was based upon the damage disclosures

1 prior to the close of discovery. Exhibit 157 is in evidence,  
2 and directing the Court's attention to Exhibit 157, this is  
3 National Wood's initial disclosures under Rule 16.1 filed  
4 September 30, 2016. On page 5 of the exhibit, Your Honor will  
5 note that the damages sought against APCO were \$30,110.95.

6 THE COURT: That's 157?

7 MR. JEFFERIES: 157. Exhibit 158 is the National  
8 Wood first supplemental disclosure under Rule 16.1. It is  
9 filed March 3, 2017. Directing Your Honor's attention to  
10 page 6 within Exhibit 158, you will see again that Cabinetec,  
11 slash, National Wood is disclosing damages in the amount of  
12 \$30,110.95 against APCO.

13 Exhibit 159 is National Wood's second supplemental  
14 disclosure pursuant to Rule 16.1. It was filed on November  
15 13th of this -- of 2017, which was after the close of the  
16 discovery that you opened on October -- that closed on  
17 October 31, 2017, shortly before the first, I believe it was  
18 the first calendar call, and -- and on page 6 of Exhibit 159,  
19 for the first time there's a whole bunch of figures, but  
20 essentially National Wood is now disclosing damages of  
21 \$1,154,680, which form the basis of our motion.

22 So we would -- it's obviously not entirely clear with  
23 the evidence coming in against APCO and Camco, but as far as  
24 APCO's involvement with the evidence, we'd renew our objection  
25 and motion to exclude any evidence of damage beyond the

1 materials that were actually delivered to APCO by Cabinetec and  
2 billed.

3 MR. TAYLOR: First, Your Honor, I'd like to explain a  
4 little bit of the procedural history of this motion.  
5 Originally APCO's motion was to preclude us from offering  
6 evidence in excess of the original 16.01 disclosure number, and  
7 you did not grant that motion that broadly. All you granted  
8 was you granted that we couldn't enter evidence that was not  
9 previously improperly disclosed, the evidence itself.

10 For example, if you look at Exhibit 157, the initial  
11 disclosure that APCO refers to, the evidence, the underlying  
12 invoices, all of it, the \$750,000 of invoices are attached  
13 thereto. They had the evidence itself. So they had that.  
14 They could make whatever interpretation they wanted from that  
15 evidence, but that's the evidence that we're presenting again  
16 today.

17 The next argument I guess that they make is that they  
18 were somehow misled as to how much we were seeking. I could  
19 point to the -- the mechanics lien, the mechanics lien which is  
20 Exhibit 3172. That indicates that mechanics lien is for work  
21 against APCO and -- APCO Construction and Camco Pacific  
22 Construction for the \$750,102. So even before the suit was  
23 filed, they knew that was the amount being sought.

24 But more specifically, in the Complaint itself, in  
25 the Complaint, Cabinetec's statement of facts constituting the

1   lien claim and complaint and intervention filed February 6th,  
2   2009. In the prayer, it specifically says, Cabinetec prays as  
3   follows, that this Court enter a judgment in favor of Cabinetec  
4   and against defendants jointly and severally in the amount of  
5   \$750,102 plus interest thereon. So the Complaint itself made  
6   it clear that Cabinetec, now National Wood, was seeking a joint  
7   and several judgment for \$750,000 against APCO -- no surprise  
8   there.

9           The next issue would be they say that somehow, even  
10   though they were on notice that we were seeking 750,000 against  
11   them, even though they were provided all of the documents to  
12   support that, that somehow they would've prepared the case  
13   differently except for the 16.1 disclosures. We thought they  
14   understood the 16.1 disclosure and understood the scope of the  
15   claim. When they raised that issue very late in the game, we  
16   said, Wait a minute, we're seeking it all. And for that reason  
17   we did an amended 16.1 disclosure.

18           But Helix has a claim of 500,000 principal or more.  
19   I don't mean to limit what Helix is claiming, but they were  
20   claiming nearly half a million dollars from APCO, and if you  
21   look at what APCO did to prepare its case against Helix and  
22   compare it to what they did against National Wood, slash,  
23   Cabinetec, you'll see that they did the exact same things.

24           They did the exact verbatim interrogatories. They  
25   did the exact requests for production. They had the right to

1 take depositions. Even after November when this issue rose, we  
2 said, if you want to take a deposition of somebody from  
3 National Wood, fine, you can if you think that somehow you  
4 were -- you misunderstood this, but APCO can't say, well, had  
5 we known about the million dollar claim that you really meant  
6 what you said in your Complaint, we would've done something  
7 differently. We would've presented a much different case.  
8 They did the exact same discovery against National Wood that  
9 they did against Helix. Therefore, I don't think that there's  
10 any prejudice that they could possibly show.

11 And the Court should err on the side of ruling on  
12 cases on their merits, and when there's been absolutely no  
13 prejudice from two 16.1 disclosures that had a number that APCO  
14 did not understand, there's no prejudice here. APCO has had  
15 the evidence. APCO has known that we were seeking a joint and  
16 several judgment. I think that the Court should consider it  
17 all.

18 Thank you.

19 MR. JEFFERIES: Your Honor, if I might, I'll address  
20 that last point first. APCO did take deposition of the PMK of  
21 Helix. So there was a difference in approach to discovery.  
22 With regard to the Complaint, it is in the record as Exhibit  
23 156. This is the Cabinetec Complaint that counsel referred to.  
24 He took you to the end. If you go to -- in order to put the  
25 prayer in context, you have to review the prior allegations

1 within --

2           And in fairness to the record, the only time joint  
3 and several liability is mentioned in the body of the Complaint  
4 itself is in the third cause of action for unjust enrichment,  
5 line 27. Cabinetec did seek joint and several liability  
6 against APCO, Camco and Gemstone admittedly; however, you can  
7 go to -- I'll represent to the Court when you see this, and it  
8 is in evidence, there was no joint and several liability  
9 requested for breach of contract and breach of covenant of good  
10 faith and fair dealing.

11           But then you get to the fifth cause of action, and I  
12 would direct Your Honor's attention to paragraph 35, and it  
13 says, APCO and/or Gemstone owes Cabinetec the sum of \$19,547  
14 together with interest accruing thereon for portions of the  
15 work, and mathematically, that \$19,000 appears to be consistent  
16 with the retention billing plus some interest as of that date,  
17 and if you go to paragraph 36, they're very clear that their  
18 damage claim against Camco was for the \$730,000 that you'll see  
19 in the next paragraph.

20           Again, if you go to the sixth -- sixth cause of  
21 action is quantum meruit. If you go to the seventh cause of  
22 action, on page 7 of Exhibit 156, paragraph 47, there was and  
23 has been an account stated by APCO setting forth the sums due  
24 and owing to Cabinetec, which account, as stated by APCO, is  
25 the amount of 19,547. Paragraph 48 confirms that it's \$730,000

1 against Cabinetec.

2           So I would submit to you it's probably not  
3 appropriate to go right to the prayer for relief, and at  
4 reference joint and several liability, but that that prayer  
5 must be read in conjunction with the specific allegations of  
6 fact, and I would submit to you that it's a legal admission  
7 that that's all the amount they were seeking or entitled to  
8 from APCO.

9           THE COURT: All right. Thank you.

10           The order that's the subject of the argument now is  
11 the one that was entered on January 4th, 2018. The title of  
12 it is Amended nunc pro tunc order regarding APCO Construction  
13 Inc.'s omnibus motion in limine, dash, motion in limine No. 7,  
14 correct? That's what we're talking about, right?

15           MR. JEFFERIES: I believe so based on the disclosure.

16           THE COURT: Okay. The language of that order states  
17 and I'll just -- it's pretty short. I'll just poke on it.

18           The Court's order of December 28th, 2017,  
19 regarding APCO Construction Inc.'s omnibus motion in  
20 limine is amended nunc pro tunc with regard to APCO's  
21 motion in limine No. 7 as follows:

22           APCO's Motion in Limine No. 7, parentheses,  
23 seeking to strike evidence or argument of damages  
24 greater than what the parties listed in their special  
25 master questionnaires or official damage disclosures,

1 end parentheses, is granted to the extent that it  
2 seeks to preclude evidence that should have been but  
3 was not properly disclosed. Of course, making any  
4 such determination will require an examination of the  
5 disclosure history of any specific evidence  
6 proffered, end quote, and then, it is so ordered.

7 All right. So part of the motion seeks to strike  
8 evidence. Okay. The evidence -- I'm not going to strike the  
9 evidence because it -- the evidence has come in, and it may be  
10 applicable to Camco or whatever. I'm not going to strike the  
11 evidence. I think the best way to handle this at this time,  
12 the Court -- the other aspects is for argument of damages.

13 Okay. I think we get to the argument of damages at  
14 the conclusion of the evidence in the case, and I'll properly  
15 apply what I think is appropriate relative to what's -- what  
16 evidence is applicable against APCO and Camco.

17 All right. I think you make an excellent point with  
18 respect to -- you make excellent points with respect to the  
19 disclosures that were made and the things that were stated.  
20 Okay. But I don't know that I need -- I don't think that I  
21 need to make that determination right now we're in the midst of  
22 the trial, presentation of the evidence. I'm not striking  
23 evidence. I'll just give it proper application at the  
24 appropriate time.

25 MR. JEFFERIES: Thank you, Your Honor.



1 THE COURT: Okay.

2 MR. TAYLOR: Thank you.

3 THE COURT: Okay. When I say you make excellent  
4 points, I'm referring to APCO. Okay. So your next witness.

5 MR. TAYLOR: Ms. --

6 THE COURT: Do want to take a break here?

7 MR. TAYLOR: Yes, Your Honor.

8 MR. JEFFERIES: Yeah. I was going to ask if we could  
9 have a biologic.

10 THE COURT: All right. Why don't we break until a  
11 quarter to 11.

12 MR. JEFFERIES: Thank you very much.

13 MR. TAYLOR: Thank you.

14 THE COURT: Okay.

15 (Proceedings recessed 10:35 a.m. to 10:44 a.m.)

16 THE COURT: You may be seated. Back on the record.  
17 All right.

18 MR. JEFFERIES: Your Honor, we're at a point in the  
19 case and the witnesses where it's procedurally it's a little  
20 out of sorts just because of plaintiff and then the claims  
21 against us. We have agreed to essentially call Mr. Benson and  
22 Mary Jo Allen out of order, but partially in our defensive  
23 case, and Cabinetec and potentially Helix want to get some of  
24 their evidence in through cross as part of their case in chief.

25 THE COURT: I see.

1 MR. JEFFERIES: So I tell you this because we're  
2 going to kind of go back and forth, and I'd like to when I --  
3 when we get through the evidence, and Mr. Taylor feels like  
4 he's got enough of his case in, I want to make some oral  
5 motions.

6 THE COURT: I see.

7 MR. JEFFERIES: So.

8 THE COURT: Okay. So in other words we're going to  
9 APCO is then -- now going to present its case in chief or  
10 commence presentation of its case in chief.

11 MR. JEFFERIES: Its defense, yes.

12 THE COURT: Okay. All right.

13 MS. BACON: Your Honor, and we'll be calling Brian  
14 Benson.

15 THE COURT: Okay.

16 **BRIAN BENSON**

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

19 THE CLERK: Okay. You may be seated. Can you please  
20 state and spell your name for the record.

21 THE WITNESS: Brian Benson. B-r-i-a-n, B-e-n-s-o-n.

22 DIRECT EXAMINATION

23 BY MS. BACON:

24 Q Good morning, Mr. Benson.

25 A Good morning.

1 Q And where do you work?

2 A APCO Construction.

3 Q And what is your position at APCO?

4 A Project manager.

5 Q Okay. How long have you worked at APCO?

6 A 10 years.

7 Q And what did you do before you worked at APCO?

8 A Same line of work, construction for over 25 years.

9 Q Okay. And did you work on the Manhattan West

10 project?

11 A Yes.

12 Q And did you have any duties on the Manhattan West

13 project?

14 A Yes.

15 Q And what were those?

16 A Overseeing all the activities in the field.

17 Q Okay. And you also acted as the PMK for APCO on

18 construction issues in this case?

19 A Yes.

20 Q Okay. Did APCO finish the project as the general

21 contractor?

22 A No.

23 Q And when did APCO leave the project?

24 A August 21st of 2008.

25 Q And once you knew the project was shut down, did you

1 take any actions to document the state of the project?

2 A Yes. We ended up taking videos of the current status  
3 of the project at the time.

4 Q Okay. So you took photos or videos on how many  
5 occasions?

6 A Five or six, but mainly two days prior to our shut  
7 down and walking away from the project.

8 Q Okay. And once you guys shut down and walked away  
9 from the project, did you become aware that there was a new  
10 general contractor on the project?

11 A Yes.

12 Q And who was that?

13 A Camco Pacific.

14 Q Okay. And did you become aware at the time that  
15 Camco had shut down the project as well?

16 A Yes.

17 Q Do you know the approximate time frame?

18 A It was roughly towards the end of November of 2008.

19 Q And did you take photos after Camco left the project  
20 as well?

21 A Yes, I did.

22 MS. BACON: Okay. We're going to go through  
23 Exhibit 17 through 22, Your Honor. These have already been  
24 admitted into evidence, and they are in videos that I will  
25 quickly ask Mr. Benson about, and then we'll go ahead and watch

1     them, and he's going to detect what's in the videos.

2             THE COURT:   Okay.

3             MS. BACON:   I'm trying to -- I guess I should start  
4     them and then ask him (inaudible).

5     BY MS. BACON:

6             Q     Okay.  All right.  Mr. Benson, did you take the  
7     photos that we're about to watch?

8             A     Yes, and the videos.

9             Q     And that's your voice in the videos?

10            A     Yes, ma'am.

11            Q     And are these an accurate representation of the state  
12    of the project on -- or do you recall the date the videos were  
13    taken?

14            A     Both the 19th and 20th of August.

15            Q     Two thousand --

16            A     Oh, 2008.  Sorry.

17            Q     Okay.  And they're a correct and accurate  
18    representation of the status of the project at that time?

19            A     Absolutely.

20            Q     And an accurate reproduction?

21            A     Yes.

22            MS. BACON:   Okay.  So, Your Honor, we're about to  
23    play Exhibit 17.

24     BY MS. BACON:

25            Q     Mr. Benson, please feel free to tell us what we're

1 seeing.

2 A Yes, ma'am. This video is up on the fourth floor of  
3 Building 8. This is the status of where Zitting Construction  
4 would have been as far as it pertains to drywall, and as you  
5 can see, it's just at the barely started stage of putting the  
6 drywall in. There's no tape, finish or texture.

7 It also depicts the status of Helix's work, where you  
8 can see they had their rough-in cans in place, but none of the  
9 finishes were installed at that time. Also the paint, none of  
10 the paint was done. None of the finishes were in place in  
11 order for cabinets to be installed or doors or anything of that  
12 nature or any bathroom or kitchen fixtures, and as you can see,  
13 multiple places you see the wires just roughed in to the wall.  
14 They would still have to come back and trim up all those  
15 fixtures, put in the light fixtures themselves and all the life  
16 safety features into the room as well, and that's pretty much  
17 what this video's showing right here, status of the fourth  
18 floor.

19 In the ceiling you can see there's just rough-in cans  
20 there. There's no drywall. There's very little electrical  
21 roughed in at that point. Now, we're into the bathroom, same  
22 thing. We don't have any fixtures in there, both plumbing,  
23 electrical. Drywall's not complete. So there would be no room  
24 to put in paint and finished cabinets or anything like that.  
25 It's pretty much standard throughout the rest of this going

1 down to the first floor level within that same unit.

2 As we're coming down the stairs again, you can see  
3 the electrical is just at the rough-in stage. There's a  
4 electrical panel that's not completed, just the wires run to  
5 it. They would have to put in those panels, put in the labels,  
6 get all their inspections for that to deem that completed.  
7 Same thing with the ceiling soffits we're looking at right now.

8 This is the washer dryer room, the same thing.  
9 You've got your rough in completed but none of the finishes,  
10 none of the ceiling's completed as well, and this is out back  
11 into the unit itself, and again the drywall is not finished.  
12 It's not ready for paint. So there's no room to put in  
13 cabinets, trim out electrical or any of that stuff.

14 This is going back in towards the other rest room,  
15 which is the same status as the other one, and then you're  
16 going into a bedroom, which again we were just roughed in on  
17 electrical. No finishes are completed in order to allow for  
18 any cabinetry or finished electrical to be completed. And this  
19 is showing more. It's again in the ceiling here.

20 And then we're going back out to the center of the  
21 unit, which would be the living room for lack of a better term,  
22 and again in the ceiling, very little electrical even roughed  
23 in at that point. So they would still have to get that  
24 electrical all roughed in, along with fire alarm and life  
25 safety requirements in order to get the room taken care of

1 before you can put in the finishes.

2 And that's the water closet. And this is just  
3 further -- further down. You'll see electrical panel sitting  
4 there. That would have to be completed, made up, labeled,  
5 inspected, signed off by all the entities before we could even  
6 bring power into that unit.

7 And this is another rest room. Again just the  
8 drywall is in on the walls, but it's not finished or ready for  
9 any other finishes. Same thing with the electrical fixtures.

10 MS. BACON: Okay. Your Honor, we're about to play  
11 Exhibit 18.

12 THE COURT: I beg your pardon?

13 MS. BACON: We're about to play Exhibit 18.

14 THE WITNESS: When we started there again, this is  
15 another floor showing the same, very similar to the last floor.  
16 The building was a four-story building. So these are the two  
17 top floors, and again this one's even less further along in the  
18 ceilings as the other one is. You don't see much of the  
19 electrical or cans roughed into the ceilings here.

20 BY MS. BACON:

21 Q Mr. Benson, do you know what building this is in?

22 A This is Building 8.

23 Q Okay.

24 A Again, the drywall is in the same status as the last  
25 floor. Drywall's up but there's no finished tape, mud on



1 those. So no finishes could be completed at that time. Thus  
2 we couldn't put in any cabinets, paint or any of the other,  
3 trim out fixtures of the electrical, and this continues out,  
4 shows the patio.

5 The exterior fixtures aren't out on the patio, which  
6 you have to have along with your horn strobe and your life  
7 safety requirements that are required for any type of sign off  
8 or completion of work.

9 Q Of what work?

10 A Of the project as itself or even making the building  
11 occupiable. Without that signed off, no one can occupy the  
12 building.

13 And again this is representative of the last one.  
14 Rough electrical is in, no trim work, no finishes both on the  
15 drywall, plumbing, electrical, and even in the sprinklers for  
16 that (unintelligible) weren't signed off at this point.

17 Q And what is the status of the cabinets in this video?

18 A They're not even -- at this point, this is the point  
19 where they could probably come in and start measuring to start  
20 fabrication of cabinets because you have to have the drywall on  
21 the walls. So they could come out and field measure to start  
22 even production of the cabinets.

23 This is another. Once again, it's the -- going back  
24 out to it looks -- the kitchen area. Same -- same thing here.  
25 Its electrical is roughed in. Drywall is in, no mud tape. No

1 finishes could be allowed at that time.

2 And we've got the same status coming up the stairway  
3 where the HVAC is not completed. Plumbing is not completed.  
4 Drywall is not completed. Electrical is roughed in. Again in  
5 the ceilings here, you've got a little bit of electrical  
6 roughed in, but there is no conduit and wires run to them. So  
7 they're beginning stages of roughing in the ceilings.

8 This rest room represents the back wall. As you can  
9 see, it's not even drywalled or insulated because the  
10 electrical wasn't completed for them to be able to do that and  
11 keep moving forward. Again we don't have mud and tape on the  
12 walls, electrical panels in the wall, and once again that'd  
13 have to be landed, properly labeled and inspected by all the  
14 public entities to sign that off, and (inaudible).

15 MS. BACON: And, Your Honor, this is Exhibit 19.

16 BY MS. BACON:

17 Q Mr. Benson, do you know what building were in?

18 A I believe this is still Building No. 8.

19 Q Okay.

20 A This is out in the corridors where you still see wood  
21 and open framing. So the drywall wasn't completed. What's on  
22 the ceiling here is only partial what's required. Once those  
23 sprinklers were done, the electricians would have to come in  
24 and rough in all the ceiling lights and cans down through this  
25 whole corridor. None of that rough in was even started at this

1 phase.

2           This is another room. Once again that's the --  
3 electrical's not completed. Drywall is not completed. The  
4 framing was just barely completed at that point. They just  
5 started the insulation. That's why you're getting a lot of  
6 pictures of the insulation. And again walking down this whole  
7 corridor, this corridor would have had a whole ceiling in it  
8 which would have had all the light cans, life safety features,  
9 sprinkler system drop heads would be down through that finished  
10 ceiling, and as you can see, the drywall is not completed on  
11 the walls throughout the whole corridor as well. And as we  
12 further go down, it's basically this way all the way throughout  
13 this whole building and floor, very similar.

14           And you keep coming through, and again just still no  
15 electrical roughed in. The drywall is not finished. The  
16 insulation wasn't even in these walls at this time because  
17 we're still waiting for the other sign-offs to be done which  
18 are the electrical and plumbing have to be signed off before we  
19 can put in insulation and start putting that in.

20           Again, another ceiling coming here. There's no  
21 electrical roughed in. Drywall is still off throughout these  
22 units in this whole section here, and that's pretty much  
23 throughout this whole unit, and this is the status of where  
24 they were at. All they got to is the putting in the  
25 insulation. So the drywall would still have to finish, and

1 then they'd have to come back and rough in all their ceilings  
2 and do once again the HVAC and electrical. Fire alarm, life  
3 safety issues would all have to be addressed.

4 That was the elevator core there. That shaft is a  
5 rated shaft which wasn't completed either. That's required by  
6 fire code, and now we're continuing back down the corridor to  
7 the residential units. And once again it's the same thing  
8 where there's no electrical roughed in, but this is what I was  
9 talking about earlier in the ones where we didn't have the  
10 framing in. The framing's in. So, once again, once this  
11 framing is in, down in the areas that didn't have it, the  
12 electrical, HVAC, life safety and all those pertinent things  
13 would follow, and that continues around the rest of the  
14 corridor.

15 And then this is another one of the mechanical  
16 closets with the same -- same status.

17 And then in this unit you can see this part of the  
18 corridor. Once again the hat channel is up. The insulation  
19 still has to go in. That hadn't gone in because the electrical  
20 needed to be completed in those areas before they could start  
21 putting that in, and then there's the exterior stairwell, which  
22 electrical wasn't completed in.

23 MS. BACON: Okay. And, Your Honor, this is  
24 Exhibit 20.

25 / / /

1 BY MS. BACON:

2 Q Mr. Benson, do you know which building this is in?

3 A This is Building 8 as well, this first floor.

4 Electrical panel, once again the panel is there. All  
5 the wires aren't landed to it. It's not completely trimmed out  
6 and labeled. This unit you can see is different than the other  
7 units. They do have mud and tape on the drywall in these  
8 units.

9 The ceilings are in the same condition as they were  
10 on the other three floors. They have electrical rough-in  
11 completed, but that's it. They couldn't close up the ceilings  
12 because they were waiting for electrical to get in and get  
13 signed off, and then they could come in and do the electrical  
14 and then start working.

15 The ceiling in this one here is what I've been  
16 talking about. That's where the status they would have to get  
17 to. At this point you'd get ready to come in and start  
18 prepping for paint, putting in door frames, and then once all  
19 that was done, then you'd come in and actually start trimming  
20 out your fixtures. That ceiling there is soffit, fire rated  
21 soffit plenum that was left open because the life safety  
22 electrical wasn't completed at the time. So those soffits  
23 remained open, and that would be throughout the building  
24 because it's a rated plenum.

25 Mechanical closet, the electrical is not completed in

1 there as well as the mechanical. Same thing here. They're  
2 just barely getting to the stages where they come in and put  
3 texture on the walls, and then get ready for paint.

4 Q And are there cabinets in this unit?

5 A No. They would have to complete all these ceilings.  
6 Everything would have to be completed in there, textured, and  
7 then painted, and then they would come in, but at this stage,  
8 they could actually come in and start taking their measurements  
9 for fabrication of the cabinets.

10 Another ceiling. Once again, it's no electrical in  
11 it. Another rated soffit and plenum back there that also has  
12 electrical that's not in it. That's not in place.

13 Incompleted HVAC, and then once again another rest  
14 room. We have the same scenario where the electrical is not  
15 completed, and the life safety issues as well, and that's the  
16 reason those ceilings are still left open, and, of course, the  
17 plumbing fixtures aren't completed.

18 And I'm coming back out to the living room and  
19 kitchen. Again the drywall started. There's the other open  
20 plenum. Inspections and life safety issues. Still kept those  
21 open so we could enclose those, which delayed us from being  
22 able to start finishing and/or installing any type of finishes,  
23 including cabinets or doors or things of that nature. Same  
24 thing in the mechanical closet, same issue.

25 And that was the end of that unit.

1 MS. BACON: And, Your Honor, this is Exhibit 21.

2 BY MS. BACON:

3 Q Mr. Benson, do you know which building this is in?

4 A This is Building 9, first floor. Walking into this  
5 unit, similar to the other one, the walls, they just started  
6 the tape and mud and texture. The ceilings are the same  
7 scenario where the electrical and life safety wasn't signed off  
8 and installed in order to close up those ceilings and start  
9 completing them.

10 So upon completion of the ceilings, once again we'd  
11 be able to then finally come in and do the texture on the walls  
12 and start doing painting and then install any cabinets or any  
13 of the other finishes. So this again is another scenario where  
14 this would've been in about the time they could come in and  
15 start doing the field measurements for the cabinets and things  
16 of that nature.

17 Same thing in the mechanical closets and all of the  
18 rest rooms we'd have the same scenario because the electrical,  
19 life safety things weren't completed, we couldn't close those  
20 ceilings.

21 I got out of focus there.

22 Once again, one of those other rated plenums. This  
23 one doesn't even have the electrical light cans even roughed  
24 into it, and this was on the first floor.

25 Going back to the living room area, same scenario.

1 They would have to trim out everything, put in the fixtures.

2 Outside patio, outside closet, the electrical is not  
3 in there for the water heater's not completed. Light fixtures  
4 aren't there. The horn strobes aren't out there either, which  
5 also would hold up the life safety being signed off and being  
6 able to close that in.

7 Same thing with that soffit. We've had the same  
8 issues here once again, and mechanical closet, and then back in  
9 to another one, and then this is going back in to another unit  
10 where we had the same scenario out into the soffit into the  
11 rest room there.

12 Q And should there have been cabinets in the rest room?

13 A No. Once again we'd have to come in -- the ceilings  
14 have to be completed first, and they were held up because the  
15 electrical for the life safety is not completed and signed off.  
16 Once it would be, the drywall would go on the ceilings. Then  
17 the tape, texture, and then you'd paint, and then the cabinets  
18 could go in. So you're a substantial point away from that  
19 point.

20 Q And this is Exhibit 22, the last video. And,  
21 Mr. Benson, do you know which building we're in?

22 A This would also be Building 9. And this is out in  
23 the corridors, and as you can see, the ceilings are started  
24 getting roughed in. The electricians started to rough in.  
25 It's not completed. They're at the insulation point in some



1 areas. Some areas, as you can see, they didn't even get the  
2 insulation finished yet. So therefore the drywall is not  
3 finished, and you can't put in any of the finished fixtures.

4 Down the corridor very much the same thing. The  
5 electrical needs to be finished. All the life safety horn  
6 strobes that are required would have to be all through this  
7 corridor, inspected and signed off, and then the drywall would  
8 go in. They would mud, tape, texture, and then you would paint  
9 and then put in your finishes with the doors and the lights and  
10 stuff that go down this whole corridor.

11 And this is -- this pretty much continues the same  
12 way throughout this whole corridor on this entire building.

13 Same thing here. It's just the electrical is not  
14 completed in order for us to dry -- dry in the rest of these  
15 and complete the ceilings, and as you can see there, just  
16 there's no electrical up in that ceiling lid coming into this  
17 unit. And more of the same, the shaft coming out is off the  
18 elevator core.

19 And now we're going out towards the courtyards, and  
20 again there's no electrical roughed in to the ceilings. None  
21 of the life safety requirements are roughed in.

22 And now in this part of the thing you do start  
23 finally seeing some of the cans for the electrical roughed in.  
24 There's no wire or anything, (unintelligible) or conduit  
25 installed. It's just the cans put into the ceiling. They were

1 just getting ready to start on actually getting the conduits  
2 run to those cans at this point.

3 And it continues down through the rest of this  
4 corridor the same way.

5 Same thing as we continued around the whole -- whole  
6 footprint of the building it's pretty much the same thing where  
7 electrical is incomplete. Drywall couldn't have finished, no  
8 painting, texture or anything else would have happened at that  
9 time, and all the finishes would've been quite a ways off.

10 And then going out to the stairs, stairs the same  
11 thing. We don't have any of our life safety or emergency  
12 lighting or horn strobes, any of our smoke detectors or  
13 anything else roughed in or even in place out in the stairways,  
14 and without those, that wouldn't allow you to get signed off  
15 for occupancy as well.

16 And that would've been throughout all the way down  
17 through.

18 MS. BACON: Can you switch us to the Elmo, please.  
19 BY MS. BACON:

20 Q Thank you, Mr. Benson. Now, I'm going to show you  
21 some of the photos of the project, and you can let me know if  
22 these were the photos you took.

23 MS. BACON: Okay. Your Honor, I have Exhibit 108 on  
24 the Elmo.

25 / / /

1 BY MS. BACON:

2 Q Mr. Benson, can you tell me what this is.

3 A That's a picture of one of the video clips that we  
4 just reviewed.

5 Q And did you -- one of the videos that you took?

6 A Yes, ma'am.

7 Q And what does this photo show?

8 A This again shows the status of the ceilings where we  
9 don't have the electrical roughed in, life safety roughed in.  
10 So therefore we couldn't complete drywall and complete the  
11 finishes or trim out any of the electrical features.

12 Q Okay. And what about this Exhibit 109?

13 A Very similar to the last one. This is also off of  
14 one of the -- it's a video still from one of the videos we just  
15 saw, and it also shows that there's no electrical or any of the  
16 life safety requirements in the ceiling thus far. We couldn't  
17 put in drywall and/or finish -- do any of the finishes.

18 Q Okay. And what is the date of this photo?

19 A 8/20/2008.

20 Q Okay. And in relation to the projects, can you  
21 remind us when that was?

22 A 8/20/2008?

23 Q Uh-huh.

24 A 10 and a half years ago I believe.

25 Q In relation to when APCO left the project. Sorry

1 about that.

2 A Oh, I'm sorry. 8/20 was the day before. Sorry.

3 Q Okay. And what about this photo, Exhibit 110?

4 A This is also a video still off of the videos we just  
5 watched, and this is one of the shots down the corridors where  
6 the walls were left open because the electrical and life safety  
7 wasn't completed, and therefore drywall, insulation wasn't  
8 installed, and therefore, we couldn't do any finishes and start  
9 closing out.

10 Q Okay. And I have Exhibit 111.

11 A This is also another shot down the corridor. It's  
12 basically depicting the same thing that the electrical and life  
13 safety things weren't completed, and therefore, we couldn't  
14 close up the walls and start finishes.

15 Q Okay. And Exhibit 112.

16 A 112 is within a unit, and that also shows that both  
17 on the walls and in the ceiling that the electrical rough in  
18 wasn't completed, and then again we couldn't do the drywall,  
19 couldn't do any of the finishes that fall left of that as well.

20 Q And would those finishes include cabinets?

21 A Yes.

22 Q And Exhibit 113.

23 A Exhibit "13" is another shot from within the units  
24 that show that the electrical wasn't completed. We were only  
25 to the drywall stages at that point, and we still have to come

1 in and do the drywall, texture, tape, paint, finish, and then  
2 you can install finishes.

3 Q And Exhibit 114.

4 A Exhibit 114 is once again another shot of the ceiling  
5 units showing the incomplete electrical work that once again  
6 holds up all the other things that follow.

7 Q Okay. And these are some of the photos. Do you know  
8 the date these -- are these photos that you took?

9 A Yes.

10 Q And what was the date of this photo?

11 A It was August 20th of 2008.

12 Q And what does this photo depict?

13 A This depicts the status of the exterior of the  
14 buildings. At that point, they were just starting the exterior  
15 brick veneer work as well as the stucco work, and it also  
16 depicts that none of the light fixtures -- light fixtures, life  
17 safety fixtures and all those features that belong on the  
18 exterior of the building were in place as well as the parking  
19 lots and the site wasn't developed. So we didn't have any of  
20 the site lighting in place or trimmed in or anything at that  
21 time as well.

22 Q Do you know which building this is?

23 A That building I believe is I want to say Building 9.

24 THE COURT: Is that 115, Counsel?

25 MS. BACON: Yes.

1 THE COURT: Okay.

2 MS. BACON: Oh, no. I lied. That's 51.

3 THE COURT: 51.

4 MS. BACON: Yes.

5 BY MS. BACON:

6 Q And this is Exhibit 52. Can you tell me what this  
7 is.

8 A This is another shot of -- this is on the back side  
9 of Building 8, and again this shows the status of the exterior  
10 finishes started, and it also depicts that the exterior light  
11 fixtures, life safety fixtures weren't in place. Horn strobes,  
12 emergency lighting wasn't in place, as well as none of the site  
13 lighting is in place as well.

14 Q And the date of this photo?

15 A This is also 8/20/2008.

16 Q So right before APCO left the project?

17 A Yes, ma'am.

18 MS. BACON: And, Your Honor, this is Exhibit 53.

19 THE WITNESS: This is Building 2, which is a  
20 commercial building. It basically depicts the status of the  
21 exterior, which is the DensGlass on the exterior. At that  
22 point the only electrical was just a rough in. You don't have  
23 any of the light fixtures on the building. You don't have any  
24 of the horn strobes or life safety requirements on the  
25 building, and again we don't have any of the exterior lighting

1 fixtures or the parking lot lights in place at the time.

2 BY MS. BACON:

3 Q And Exhibit 54.

4 A This also shows -- that's Building 2 again. And then  
5 Building 7 is the building to the left. That's the building  
6 that was basically demolished when they completed the project.  
7 So it was never completed after we left. Camco didn't do any  
8 further work on it, and it was ultimately demolished as a  
9 whole.

10 Building 2 depicts the DensGlass once again. The  
11 electrical was roughed in, but there's no finishes completed at  
12 that time. It also depicts that none of the parking lot lights  
13 were in or any of the life safety or any of the horn strobes or  
14 of that nature were in.

15 Q Okay. And Exhibit 55.

16 A This is Building 3. Once again shows the DensGlass.  
17 The electrical was just roughed in. None of the parking lot  
18 lights were in. None of the horn strobes or life safety  
19 requirements of the electrical are in or completed at that  
20 time.

21 Q Okay. And Exhibit 56.

22 A Exhibit 56 is the back side of Building 9. It shows  
23 the exterior work being started on the building. Once again  
24 the electrical life safety horn strobes and stuff weren't  
25 completed, and it also depicts right in front of the orange

1 dumpster that's the Nevada Power transformer pad.

2 None of the transformers were in place because Helix  
3 didn't have the switchgear on-site, and once the switchgear is  
4 on-site, they're supposed to send the panels out for metering.  
5 Once metering happens, then they -- they get the meters  
6 installed back in the panel. Then you can call Nevada Power,  
7 and without any of that in place, you would have no power in  
8 place to energize these buildings.

9 Q And Exhibit 57.

10 A Once again this sort of captures the between of 8 and  
11 9 with 7 in the background. Again depicts the exteriors being  
12 started, the rough in's done, but none of the finish lights are  
13 in place. None of the site lighting is in place. None of the  
14 life safety lighting is in place, and the horn strobes and  
15 exterior lighting's on the buildings are not completed at this  
16 time.

17 Q So the photos and video we just went over were right  
18 before APCO left the project; is that correct?

19 A Yes.

20 MS. BACON: Your Honor, I'm going to move to  
21 Exhibit 62 through 65, and I'll represent that these are dated  
22 September 5th.

23 BY MS. BACON:

24 Q Mr. Benson, do you recognize this photo?

25 A Yes.



1 Q Did you take it?

2 A Yes.

3 Q Can you tell me what this photo is depicting.

4 A This is -- this is the exterior of Building 8 once  
5 again, and it basically just shows the change in progress from  
6 August 20th to the 5th of September. Once again, they're  
7 still working on the exterior of the building, putting on the  
8 finishes of stone veneer, and once again it depicts that the  
9 lighting fixtures weren't completed on the outside as well as  
10 any of the life safety or horn strobes on the exterior, and  
11 also still depicts that none of the site lighting or emergency  
12 lighting is in place.

13 Q And what is the September 5th date in relation to  
14 the project when APCO left?

15 A It would've been -- I don't know how many days after.  
16 You put me on the spot there. Eleven days after we left I  
17 guess.

18 Q Okay. And what about Exhibit 63?

19 A This is the back side of Building 9, and once again  
20 shows the progress of the exterior of the building, which again  
21 none of the lighting or horn strobes or life safety things are  
22 in place. None of the site lighting is in place as well. It  
23 just basically documents how far they got with the exterior  
24 finishes again.

25 Q Okay. And 64.

1           A     This is Building 2, which is basically almost at the  
2 same status it was in the pictures I took on 8/20. The  
3 DensGlass is in place. They haven't started on any of the  
4 exterior finishes. So none of the site lighting -- I'm sorry.  
5 None of the building lighting or life safety lighting or horn  
6 strobes are completed on this building either.

7           Q     Okay. And Exhibit 65.

8           A     This is also -- this is Building 3 as well, and once  
9 again it just shows the status was the same as it was on  
10 8/20 where you just have the exterior DensGlass on. Electrical  
11 is only roughed in. There's no finished lights, no finished  
12 life safety or horn strobes or emergency lighting in place.

13           MS. BACON: Okay. Your Honor, we're going to move to  
14 Exhibit 67 through 69, and I'll represent these are dated  
15 October 1st, 2008.

16           MR. ZIMBELMAN: Aren't those already subject to the  
17 stipulation?

18           MS. BACON: Yes. Just because right now everyone's  
19 pulling them up in their binders, I just wanted to let you  
20 know.

21 BY MS. BACON:

22           Q     This is Exhibit 67. Can you tell me what's in  
23 Exhibit 67.

24           A     This is the exterior picture of Building 8. Once  
25 again just documenting the progress that they're making on the

1 exterior of the building. At this point they're still  
2 continuing on with the exterior finishes. It still depicts  
3 that the electrical was not completed. Exterior lights, horn  
4 strobes and life safety's items and emergency lighting are in  
5 place.

6 Q Okay. And Exhibit 68.

7 A This is a shot between both Buildings 8 and 9 once  
8 again depicting the status of where the finishes were, but also  
9 still depicting that the electrical is not completed for the  
10 lights, horn strobes, life safety and emergency lighting.

11 Q Okay. And Exhibit 69.

12 A This is a shot of Building 9, once again depicting  
13 the status of where they were at on the -- I'm sorry. I stand  
14 corrected. Building 3. Once again just showing that the  
15 DensGlass is on the exterior there, and the electrical is not  
16 completed for the lighting, horn strobes, emergency lighting  
17 and the life safety issues.

18 Q And on October 1st when these photos were taken, do  
19 you know who the general contractor was on the project?

20 A Camco Pacific was still in place.

21 MS. BACON: Okay. Your Honor, we're about to go to  
22 Exhibit 70 through 72, and I'll represent these are dated  
23 October 11th, 2008.

24 BY MS. BACON:

25 Q Mr. Benson, can you tell me what's in trial

1 Exhibit 70.

2 A This is again Building 8 just depicting the finishes.  
3 As you can see in this one, they started actually doing some of  
4 the paint on the exterior at this point. Once again the  
5 electrical is not completed on the lights, emergency lighting,  
6 life safety and the horn strobes.

7 Q Okay. And on Exhibit 71.

8 A This is Building 9 basically depicting the same  
9 thing, that they're still working on the exterior, and none of  
10 the electrical features are -- were required weren't completed.

11 Q And Exhibit 72.

12 A A shot between both buildings again showing -- this  
13 also includes Building 7 to the left, which shows the status of  
14 where that was from when we left. They had a couple extra  
15 glass panels get completed up on that building. The exteriors  
16 of 8 in the background once again shows the status of where  
17 they're at. The electrical was not completed on those as far  
18 as it pertains to the exterior lighting, life safety, horn  
19 strobes and the lighting itself.

20 And then the same thing with Building 3 in the  
21 background there, also depicts the same thing that none of the  
22 electrical requirements were completed, and at this stage, the  
23 site lighting wasn't started or completed either.

24 Q Okay. And we'll look at Exhibit 73 and 74, and I'll  
25 represent these are dated October 17th, 2008. Mr. Benson,

1 can you tell me what's in Exhibit 73.

2 A Again just updating the status on where the exterior  
3 of the building was, but it also depicts that the electrical  
4 lighting, life safety, horn strobes and emergency lighting  
5 weren't in place.

6 Q Okay. And Exhibit 74.

7 A This is Building 3, which also still depicts that the  
8 electrical wasn't completed, the same way that --

9 Q Okay. And these are the last photos. They're  
10 Exhibits 32 through 38, and I'll represent they're dated  
11 November 20th. Mr. Benson, what's the significance of the  
12 November 20th date in relation to the project?

13 A It was three months to the day from when APCO left  
14 the project, and at this point Camco Pacific was no longer on  
15 the project.

16 Q Okay. And what's in the first photo?

17 A This is a picture up on the fourth floor in  
18 Building 9, and it depicts that the electrical wasn't completed  
19 in these walls. The insulation wasn't completed. The drywall  
20 by Zitting wasn't completed, and we still had -- everything  
21 needed to get in place before you can close up these walls and  
22 start paint and texturing and start finishes.

23 Q And by finishes, that would include cabinets?

24 A Yes.

25 Q And what does Exhibit 33 represent?

1           A     This shows the same. All you have in is framed  
2 walls. You have some conduits that are roughed in. They're  
3 not completed, and this basically depicts that once again the  
4 insulation, drywall by Zitting would have to be installed, mud,  
5 taped, textured, painted and then once again the finishes would  
6 follow.

7           Q     Okay. And Exhibit 34.

8           A     Exhibit 34 depicts again there's no electrical within  
9 this unit. They just started installation in some of the  
10 walls, and it shows the unit's still wide open due to the  
11 soffits. The framing's just in the completed stages, and so  
12 none of the electrical is completed in order to close up these  
13 walls and start putting the drywall.

14          Q     Do you know which building we're in in this photo?

15          A     This one would've been Building 9.

16          Q     Okay. And Exhibit 35.

17          A     This is Building 8. This depicts the corridors,  
18 which again the electrical cans are roughed in. There is some  
19 conduit roughed into the ceiling, but the drywall's in the  
20 hallways, as you can see, is not completed. It's not drywalled  
21 on the lid or the insulation in. Therefore, none of the  
22 electrical finishes could be completed, or the life safety  
23 emergency lighting items that would be required in this  
24 corridor aren't completed either.

25          Q     Okay. And Exhibit 36.

1           A     This is within one of the units on the fourth floor.  
2 From this again they have some electrical cans roughed in, but  
3 the electrical is not completed. So the lid's still left open.  
4 Because on the inspections, the drywall and the walls isn't  
5 completed, it was -- in this stage it was just installed. They  
6 still have to mud, tape it, texture it, and then start the  
7 painting, and then you'd be able to start installing finishes.

8           Q     And Exhibit 37.

9           A     This is another shot of a penthouse unit on that same  
10 floor. This one doesn't even have any electrical roughed into  
11 it. They just got done with the framing stages of what this  
12 depicts. So they would still have to rough in all the  
13 electrical. It looks like the sprinkler heads need to be  
14 completed, and then they would come in and trim out and then  
15 put in the insulation, drywall, tape, texture, paint and then  
16 start finishes.

17          Q     Okay. And lastly, Exhibit 38.

18          A     This is another shot of another open ceiling with the  
19 same scenario where there is very little electrical roughed in.  
20 They would still have to come in and complete the rough in of  
21 the electrical cans, put in insulation, drywall, paint, tape,  
22 texture.

23               MS. BACON: I think we're done. Thank you,  
24 Mr. Benson.

25               THE WITNESS: Yes, ma'am.

1 MS. BACON: We're not done. Stay there.

2 THE COURT: All right. Cross-examination.

3 MR. ZIMBELMAN: Yes, Your Honor. Thank you.

4 CROSS-EXAMINATION

5 BY MR. ZIMBELMAN:

6 Q Hello again, Mr. Benson.

7 A How you doing.

8 Q You remember that I took your deposition?

9 A Yes, sir.

10 Q We met then. Nice to see you again. You identified  
11 yourself today as a project manager for APCO. You were not a  
12 project manager at the time of the Manhattan West project  
13 though, correct?

14 A Correct.

15 Q What was your position on that at that time?

16 A General superintendent.

17 Q And the project manager was Randy Nickerl, right?

18 A Correct.

19 Q And you reported to him, correct?

20 A Correct.

21 Q And you were designated at the time of your  
22 deposition as the person most knowledgeable for APCO, correct?

23 A Correct.

24 Q For all issues except financial issues, correct?

25 A Correct.



1 Q And the person that was designated for the financial  
2 issues was Mary Jo Allen, right?

3 A Correct.

4 Q And I believe you identified her as an accounts  
5 payable clerk for APCO?

6 A Yes, sir.

7 Q Helix never contended that it had completed its work  
8 on this project, did it?

9 A To me in general or --

10 Q Sure.

11 A I'm not sure I understand your question.

12 Q As far as the -- has Helix ever asserted to you or to  
13 your knowledge to anybody that it was a hundred percent clear  
14 of its work?

15 A To me. No. As far as anyone else, I can't speak  
16 about.

17 Q And so the videos that we're looking at that were  
18 taken shortly before APCO left the project should come as no  
19 surprise that the work wasn't complete, right?

20 A Correct.

21 Q APCO wasn't complete with its project, correct?

22 A Correct.

23 Q In fact, the project was behind schedule at the time  
24 APCO left the job, wasn't it?

25 A Correct.

1 Q And it had been behind schedule for several months,  
2 hadn't it?

3 A No.

4 Q When was it becoming behind schedule?

5 A I'd say roughly in May, June of that year.

6 Q Oh. A few months. That would be fair?

7 A A few months, yes.

8 Q Since May. Let's be precise.

9 A Yes.

10 Q So since May the project is getting behind schedule.  
11 In fact in response to that, APCO had been directing  
12 subcontractors, including Helix, to accelerate their work;  
13 isn't that true?

14 A Correct.

15 Q That means taking on extra shifts, correct?

16 A Yes.

17 Q Working overtime?

18 A Extra shifts only.

19 Q Just extra shifts?

20 A Yes, sir.

21 Q And that was true for a lot of the subcontractors,  
22 correct?

23 A Yes.

24 Q Was it true for all the subs that were at least  
25 on-site at the time?

1           A     Yes.

2           Q     So working really hard, going full blast, right? As  
3 well as you could?

4           A     Certain contractors, yes. Helix was one that wasn't  
5 because they were fighting me on doing the second shift even  
6 though it was in the contract.

7           Q     Okay. We'll look at that issue. Helix also had an  
8 issue with the fact that it wasn't having its change orders  
9 approved, didn't?

10          A     Correct.

11          Q     And there was a lot of back and forth between you and  
12 Andy Rivera about that issue, wasn't there?

13          A     Our back and forth was more on the second shifts than  
14 it was the change orders.

15          Q     Okay. But certainly he informed you that Helix was  
16 unsatisfied with the pace of approval of its change order  
17 requests?

18          A     Yes.

19          Q     Right?

20          A     Yes.

21          Q     In fact, at the time there was a major change to the  
22 electrical, which was the Delta 2 revisions to the contract  
23 drawings, right?

24          A     Yes.

25          Q     And that presented changes to Helix's scope; did it

1 not?

2 A Yes.

3 Q And under discussion was a change order request or  
4 several change order requests from Helix to the owner through  
5 you with respect to those drawing changes. Wasn't that true?

6 A Through APCO, not me directly, but --

7 Q Understand. When I say you, I mean APCO. If I'm  
8 going to want something from you personally, I'll be a little  
9 more specific.

10 A Fair enough.

11 Q Okay. I think we understand each other. Now, APCO  
12 left the job on August 21st, right?

13 A Yes.

14 Q And on August 19th and 20th, you walked the job and  
15 took all these videos that we've seen today, correct?

16 A This is a partial of the videos, but, yes.

17 Q Right. There's a lot more that we didn't see today,  
18 isn't there?

19 A Yes, sir.

20 Q How many hours of video are there total?

21 A I don't -- that I don't recall. I just know I spent  
22 two solid days doing it.

23 Q Two solid days, two full days walking the job, taking  
24 video, right?

25 A And pictures.

1 Q There is a lot of video to look at, isn't there?

2 A Yes.

3 Q Okay. And for purposes of the trial today, you  
4 selected these particular snippets, correct?

5 A Say that again. Sorry.

6 Q Sure. For purposes of the trial today, you selected  
7 these particular snippets?

8 A I did not pick these ones.

9 Q Okay. Somebody picked them, correct?

10 A Yes.

11 Q Okay. And presumably you reviewed them before your  
12 testimony today, didn't you?

13 A Yes.

14 Q To prepare to talk about what was in them?

15 A Yes.

16 Q Okay. Now, you're familiar with the payment  
17 application process, aren't you?

18 A Yes.

19 Q And you reviewed Helix's payment applications.

20 A Yes.

21 Q You assisted in preparing APCO's payment  
22 applications?

23 A No.

24 Q You -- did you provide information to those who did?

25 A Yes.

1 Q And would that information include Helix's payment  
2 applications?

3 A Yes.

4 Q And -- well, let me ask you to open Exhibit 31, which  
5 should be in a binder behind you.

6 MR. TAYLOR: Do you know what volume it would be in  
7 by any chance?

8 MR. ZIMBELMAN: That is a good question.

9 BY MR. ZIMBELMAN:

10 Q Actually, you know what --

11 MR. TAYLOR: Oh, I got it.

12 BY MR. ZIMBELMAN:

13 Q No, strike that. I'm not going to have you look at  
14 31. I want you to look at --

15 MR. ZIMBELMAN: May I approach the witness, Your  
16 Honor?

17 THE COURT: Yes.

18 BY MR. ZIMBELMAN:

19 Q I want you to look at 501. It's the first tab in  
20 this binder, and specifically please turn to page 371, and I'm  
21 going to put that up here on the Elmo as well. You're welcome  
22 to look at the hard copy, or you're welcome to look at the  
23 screen or both. It's entirely up to you.

24 A That's not -- oh, 371 doesn't show that in the book  
25 you just gave me. 371 shows the labor of payment affidavit.

1 MR. ZIMBELMAN: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. ZIMBELMAN:

4 Q Oh, I'm sorry. I want you to look at these numbers  
5 here which says trial exhibit.

6 A Oh.

7 Q Because there are a couple of different Bates  
8 numbers. I apologize for any confusion. So lower left-hand  
9 side should be the --

10 A Got it.

11 Q -- G702 document dated August -- or for the period of  
12 August 31, 2008.

13 A I got it.

14 Q From Helix to APCO. Do you see that?

15 A Yes, sir.

16 Q Do you recognize this as the last payment application  
17 that Helix submitted to APCO?

18 A I don't know if it would be the last, but I can't  
19 speak to if it was the last. Mary Jo would be able to speak to  
20 if this was the last --

21 Q Okay.

22 A -- payment that was --

23 Q Okay. It is a payment application, however, correct?

24 A Yes.

25 Q And it's around the time that APCO stopped working on

1 the project, correct?

2 A Yes.

3 Q And it is for the period through August 31st, 2008,  
4 which is 10 days after APCO left the site, right?

5 A Yes.

6 Q And again, when a payment application is for the  
7 period, it is a little bit of a forward-looking document as far  
8 as percentage of complete is concerned, isn't it? If it's a  
9 payment period through the 31st, but it's only showing -- but  
10 it is submitted earlier. So, for example, the date on this  
11 document is August 20th. Do you see that?

12 A Yes.

13 Q That's normal on this project, isn't it?

14 A I want to -- restate your question (inaudible).

15 Q Sure. The fact that the document is dated August  
16 20th, but provides information through August 31st, it's a  
17 little bit of forward-looking in terms of when the work is  
18 done --

19 A Yes.

20 Q -- isn't it?

21 A Yes.

22 Q Okay. Would you look at the next page, please. I'm  
23 specifically pointing you to line items 1 through 7 on the G703  
24 document. This is the document in which the contractor shows  
25 the percentage of completion; isn't that correct?



1           A     Yes.

2           Q     Would you agree with me that Helix has a scheduled  
3 value for electrical engineering of \$165,000, and this document  
4 shows that it has previously billed 83,700 of that amount,  
5 correct?

6           A     Yes.

7           Q     Not billed any amount for this period, right?

8           A     Correct.

9           Q     And then the balance to finish of 71,300, correct?

10          A     Yes.

11          Q     Did you have any issue with that particular line  
12 item?

13          A     Not that I recall.

14          Q     The next line item is mobilization, and it's a  
15 \$60,000 number, and it shows that it's been previously billed  
16 the full \$60,000 or 100 percent of that line item, correct?

17          A     Yes.

18          Q     And that's something that would've been done at the  
19 very beginning of the project, correct?

20          A     Generally it's -- they do it either within the first  
21 or second month of the project, depending on when they're  
22 completely mobilized on the project.

23          Q     So it wouldn't surprise you that by August they're at  
24 100 percent on that line item, right?

25          A     No.

1 Q Office trailer admin, 24 months, \$120,000. It looks  
2 like \$55,000 has been billed, correct?

3 A Yes.

4 Q With 5,000 this period and 60,000 to go, correct?

5 A Yes.

6 Q That's simply a matter of months on the job, isn't  
7 it?

8 A Yes.

9 Q Do you agree with that line item?

10 A Yes, I do.

11 Q Project engineer, CAD, project assistant. There's  
12 \$75,000 billed. Previous applications for 59,375. In this  
13 period Helix was seeking \$7,500. Do you recall believing that  
14 that was in any way incorrect?

15 A I don't recall, but I don't see why not.

16 Q You believe it was probably accurate?

17 A Yes.

18 Q And then there's electrical permits at a total  
19 scheduled value of 65,000 and previous billings of 40,000.  
20 Nothing sought in this particular application. Do you recall  
21 ever having an issue with how much Helix had billed for  
22 electrical permits?

23 A I don't recall.

24 Q Submittals, \$10,000. Submittals are things that a  
25 subcontractor will provide or a contractor will provide to the

1 owner to have approved in terms of whether it's materials,  
2 products, processes, sometimes, correct?

3 A Yes.

4 Q That's done early in the job as well, isn't it?

5 A Yes.

6 Q And so it wouldn't come as a surprise that that had  
7 been billed 100 percent at the time, right?

8 A Correct.

9 Q And then the last thing is supervision, planning and  
10 coordination, \$120,000. Helix has billed 96,000 of that,  
11 96,250 and seeking another \$12,000, showing 90 percent of its  
12 money there. Now, they're not 90 percent of the way through  
13 the full 24 months of this anticipated project, right?

14 A Correct.

15 Q But the project is also a little bit behind schedule,  
16 correct?

17 A Yes.

18 Q And nonetheless Helix has taken the position that  
19 it's entitled to bill this 96,000 previously approved and  
20 12,000 for this pay period, right?

21 A Yes.

22 Q Did you ever have an issue with the amount that Helix  
23 was billing for supervision?

24 A Yes.

25 Q And did you provide any kind of a written notice to

1 Helix that you disputed their supervision number?

2 A I personally did not, no.

3 Q Who decides the -- whether a percentage of completion  
4 on a particular line item on a pay application from a  
5 subcontractor and from APCO are correct? Who decides that?

6 A Gemstone, the owner.

7 Q And, in fact, the subcontract agreement between Helix  
8 and APCO states as much, doesn't it?

9 A Without reviewing -- it's been a while -- I'd have to  
10 see the document.

11 Q I'll be happy to refresh your recollection.

12 A Are we done with this one?

13 Q I'd like you to --

14 Yeah, you can close that. Thank you. Or actually  
15 can you just leave it by the side. I might have another  
16 question for you.

17 So if you could open Exhibit 45. That should be  
18 behind you, probably in Volume I. These are APCO's exhibits.

19 Do you have 45 in front of you?

20 A Yes.

21 Q And I've also got it up on the screen for you.

22 Exhibit 45, you'll see in the bottom hand, I've got that up  
23 here on the screen here. There's an exhibit tab, Benson

24 Exhibit No. 15. You looked at this at your deposition, didn't  
25 you?

1           A     Yes.

2           Q     And this is what APCO has asserted to be the  
3 subcontract agreement between APCO and Helix, isn't it?

4           A     Yes.

5           Q     Showing you paragraphs 3.4 and 3.5 -- it should be  
6 one more page over -- the center of paragraph 3.4 in the  
7 highlighted section, it states,

8                     The estimates of owner as to the amount of  
9 work completed by subcontractor shall be binding upon  
10 contractor, and subcontractors shall -- and shall  
11 conclusively --

12           Excuse me. Let me restate that.

13                     The estimates of owner as to the amount of  
14 work completed by subcontractor shall be binding upon  
15 contractor and subcontractor.

16           In other words upon APCO and Helix, right?

17                     And shall conclusively establish the amount  
18 of work performed by subcontractor, correct?

19           A     Yes.

20           Q     Did I read that accurately?

21           A     Yes.

22           Q     And again in 3.5, again in the highlighted section,

23                     The estimates of owner as to the amount of  
24 work completed by subcontractor shall be binding upon  
25 contractor and subcontractor and shall conclusively

1 establish the amount of work performed by  
2 subcontractor.

3 Correct?

4 A Yes.

5 Q Same language, right?

6 A Yes.

7 Q And that's the provision that made the owner's  
8 determination conclusive, correct?

9 A Without being the owner, I can't say that was the  
10 only determination that would make it conclusive. It's  
11 (unintelligible) --

12 Q Well, this is what APCO and Helix agreed to, isn't  
13 it?

14 A That it is, yes.

15 Q And that's in fact what happened on the project,  
16 right?

17 A Yes. But there were other factors, but, yes.

18 Q But the owner made the final decision, right?

19 A Correct.

20 Q And the owner sometimes rejected Helix pay  
21 applications, didn't they?

22 A Yes.

23 Q Going back to Exhibit No. 501. And this time I'd  
24 like you to look at page 375. One of the videos that we looked  
25 at --

1           A     Oh, let me get there.

2           Q     Oh, sure. Go ahead. I didn't mean to rush you.

3                     In, I believe, one of the videos or the photographs  
4 that you testified about a moment ago, you talked about site  
5 lighting.

6           A     Yes, sir.

7           Q     This is part of the G703 document from Helix, and  
8 this is the portion that relates to site lighting, isn't it?

9           A     Yes.

10          Q     Has Helix billed anything for site lighting?

11          A     I'm not sure what the date of this application is,  
12 but --

13          Q     It's the same one you looked at.

14          A     -- on this one, no.

15          Q     Same one we looked at before, August 20th, for the  
16 pay period through August 31st.

17                     MR. JEFFERIES: Eric, can I talk to you for 30  
18 seconds.

19                     Your Honor.

20                     THE COURT: Yes.

21                     MR. JEFFERIES: Could we have a quick sidebar?

22                     THE COURT: Sure.

23                     MR. JEFFERIES: Amongst counsel.

24                     Your Honor, there was a point in time when APCO was  
25 questioning certain -- prepared to present certain offsets

1 against Helix's billing. Given the testimony from Mr. Rivera  
2 yesterday, we've agreed for the record not to pursue any  
3 offsets.

4 THE COURT: All right.

5 MR. ZIMBELMAN: Does that include everything that's  
6 in those demonstrative exhibits, including the one prepared by  
7 Mary Jo Allen?

8 MR. JEFFERIES: It involves the lighting you're going  
9 to touch on, the general conditions.

10 MS. BACON: And there was one demonstrative with  
11 what --

12 MR. ZIMBELMAN: Something from the Gramercy project  
13 is the one we were trying to assert.

14 MR. JEFFERIES: No, that's -- that's --

15 MR. ZIMBELMAN: Also not asserted?

16 MR. JEFFERIES: That's correct.

17 MR. ZIMBELMAN: Okay. So are you willing to remove  
18 that exhibit from evidence given that that's the only purpose?

19 MR. JEFFERIES: Yes.

20 MR. ZIMBELMAN: So when we break we'll discuss, and  
21 we'll determine which of those exhibits should be properly  
22 removed.

23 THE COURT: All right. Thank you.

24 MR. ZIMBELMAN: Thank you, Your Honor.

25 That may shorten up my cross-examination. Just give



1 me a moment.

2 BY MR. ZIMBELMAN:

3 Q Now, you haven't prepared any kind of line item by  
4 line item analysis of completion of the work that would  
5 accompany your videos, for example, have you?

6 A No.

7 Q And you're not aware of any expert report that's been  
8 prepared to address the percentage completion of the project at  
9 the time APCO stopped work?

10 A No.

11 MR. ZIMBELMAN: Thank you, Your Honor. Pass the  
12 witness.

13 MR. TAYLOR: Thank you.

14 THE WITNESS: Hey, there. This is yours.

15 MR. ZIMBELMAN: No, that stays up there, sir. That's  
16 the clerk's copy.

17 THE WITNESS: It's the one you took from over here  
18 and gave me.

19 MR. ZIMBELMAN: Yeah. We'll put it back in a moment.

20 THE WITNESS: Okay.

21 MR. ZIMBELMAN: Thank you.

22 CROSS-EXAMINATION

23 BY MR. TAYLOR:

24 Q Good morning, Mr. Benson. I'm John Taylor. Although  
25 we've met before, I'll remind you that I represent National

1 Wood Products, who is advancing the claims of Cabinetec.

2 Am I correct that when APCO was on the project, APCO  
3 never had any problem with Cabinetec's being on schedule?

4 A No.

5 Q In fact, Cabinetec was ahead of schedule, right?

6 A Yes.

7 Q You showed some videos that you took on August 20.  
8 As of August 20, Cabinetec had already delivered some cabinets,  
9 correct?

10 A Yes.

11 Q And although they hadn't been installed, they were  
12 stored in the parking garage, correct?

13 A Yes.

14 Q And you also showed some pictures from November  
15 of 2008. When you went through the project in November  
16 of 2008, you did see that at that point in time there were  
17 cabinets installed in some units, correct?

18 A Yes.

19 Q You just didn't show any of those pictures today  
20 because the pictures didn't have any cabinets, right?

21 A The ones that were represented here, no.

22 Q Okay. And you don't know any reason why Cabinetec  
23 would not be entitled to be paid for the work it did other than  
24 for the fact that Gemstone did not pay for that work; is that  
25 correct?

1           A     No, that's not correct.

2           Q     What other reasons can you think of that Cabinetec  
3 should not be paid for its work?

4           A     One on the one that he touched on, but the work that  
5 would've been put in place, one, the installation wasn't done.  
6 Two, the owner didn't sign off on the product and accept the  
7 cabinets that Cabinetec would've put in. APCO didn't accept  
8 the project that was put in because it wasn't completed yet.  
9 Then there would've been all the electrical and plumbing rough  
10 ins that would've had to been done into those cabinets in order  
11 for them to be inspected and signed off by the public entity to  
12 give us a final sign off at that time. So without all those  
13 requirements in place, that all takes into account what gets  
14 paid.

15                   MR. TAYLOR: Your Honor, I'd like to read from Mr.  
16 Benson's deposition taken on June 5th, 2017.

17                   THE COURT: Is the deposition the original deposition  
18 here?

19                   MR. TAYLOR: It's been -- the original is not, but a  
20 copy was marked for identification as Exhibit 272, APCO  
21 exhibit --

22                   THE COURT: Do counsel consent that the deposition  
23 can be published -- the copy of the deposition can be  
24 published?

25                   MR. JEFFERIES: Yes, Your Honor.

1 THE COURT: All right. So that needs to made -- make  
2 it available to the clerk.

3 MR. TAYLOR: I have one question and answer that I  
4 would like to read.

5 THE COURT: Okay.

6 MR. JEFFERIES: And just what is it in the record?  
7 Exhibit 272?

8 MR. TAYLOR: Yeah.

9 THE COURT: Has there been a -- is it stipulated as  
10 an exhibit, the entirety of the deposition?

11 MR. TAYLOR: No, it's not been stipulated for the  
12 entirety of the deposition. We have agreed that we can use  
13 copies as though they were the original to avoid having three  
14 originals.

15 THE COURT: All right. So the copy will be  
16 published. So you need to get with the clerk during the recess  
17 and make sure she has the item.

18 MR. TAYLOR: Okay. I'm going to read from page 49,  
19 line 13 through 17.

20 Question, Do you know of any reason why or  
21 any complaints that were made that Cabinetec should  
22 not be paid for any reason other than the fact that  
23 Gemstone did not make payment?

24 Answer, Not that I'm aware of.

25 I have nothing further.

1 THE COURT: All right.

2 THE WITNESS: Was that a question, or was that a  
3 statement?

4 THE COURT: That was --

5 THE WITNESS: Was that a statement or a question? Do  
6 I respond to that?

7 MR. TAYLOR: Just a depo read.

8 THE COURT: I beg your pardon?

9 MR. TAYLOR: A depo read, not looking for comment.

10 THE COURT: Okay. Do you have redirect?

11 MS. BACON: Give me one minute. I'm sorry.

12 REDIRECT EXAMINATION

13 BY MS. BACON:

14 Q Mr. Benson, I just have a few quick follow-up  
15 questions. For the change orders that Helix's counsel  
16 mentioned, who was responsible for making the decision on  
17 change orders?

18 A The final decision came from the owner.

19 Q Okay. And as far as your designation as a PMK, that  
20 was on construction issues only for APCO; is that correct?

21 A Correct.

22 MS. BACON: Thank you, sir.

23 THE WITNESS: Yeah.

24 THE COURT: Any recross?

25 MR. ZIMBELMAN: No. Thank you, Your Honor.

1 MR. TAYLOR: Nothing further, Your Honor.

2 THE COURT: All right. Sir, you may stand down.

3 THE WITNESS: Yes, sir. Thank you.

4 THE COURT: All right. It's five to 12. We might as  
5 well recess for lunch now and reconvene at 1:30.

6 MS. BACON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Proceedings recessed 11:52 a.m. to 1:33 p.m.)

9 THE COURT: Good afternoon. Please be seated. We're  
10 back on the record. All right.

11 MR. ZIMBELMAN: Your Honor, with counsel's  
12 agreement -- I thank them -- we'd like to at this time take a  
13 presentation of Camco's witness and -- not Camco, excuse me,  
14 for Fast Glass's claims out of order so we can present those  
15 today because my witness will not be available next week.

16 THE COURT: All right.

17 MR. ZIMBELMAN: I meant to advise you of that  
18 yesterday.

19 THE COURT: All right. Okay. You may.

20 MR. ZIMBELMAN: So I'd like to call Clay Jorgensen to  
21 the stand.

22 **CLAY JORGENSEN**

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

25 THE CLERK: Okay. You maybe seated. Can you please

1 state and spell your name for the record.

2 THE WITNESS: Clay Jorgensen. C-l-a-y,  
3 J-o-r-g-e-n-s-e-n.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. ZIMBELMAN:

7 Q Clay, could you please tell the Court your  
8 relationship to Fast Glass Inc.

9 A I'm the vice president.

10 Q Do you have familiarity with Fast Glass's  
11 participation in the Manhattan West project?

12 A Yes.

13 Q Back in 2008?

14 A Yes.

15 Q What was your role on the project for Fast Glass?

16 A I oversaw the project management and the whole  
17 process.

18 Q Okay. Are you familiar with the contract that Fast  
19 Glass entered into with Camco?

20 A Yes.

21 Q Tell the Court how you came to be on that project.

22 A Camco invited us to bid the project that they had  
23 taken over, and once they took over the job, they were looking  
24 for a glazing contractor to do all the retail storefront, and  
25 we sent them our bid, and our number was the low bid they

1 wanted, and we started working for them.

2 Q You never worked for APCO on this project, correct?

3 A No. No, we didn't.

4 Q Just for our record, were you available to come in  
5 next week to testify?

6 A No.

7 Q Why not?

8 A I'm going to be out of the country on Tuesday.

9 Q And would you have been available had we had trial,  
10 say, last month?

11 A Yes.

12 Q And/or in November?

13 A Yes.

14 Q So thank you for coming here today. Are you local,  
15 or did you come from somewhere else?

16 A I came from Reno.

17 Q That's where you reside?

18 A Yeah.

19 THE COURT: If I could just establish for the record,  
20 where will you be going out of the country?

21 THE WITNESS: To Mexico.

22 THE COURT: To Mexico. And how long will you be  
23 there?

24 THE WITNESS: I'll be there from Tuesday through  
25 Sunday of next week.



1 THE COURT: Okay. So you will be coming back to the  
2 United States --

3 THE WITNESS: Yes.

4 THE COURT: -- on Sunday?

5 THE WITNESS: Sunday night, yes.

6 THE COURT: Okay. And do you live in Reno?

7 THE WITNESS: I live in Reno.

8 THE COURT: Okay. Would you be available after  
9 Sunday by way of telephone if necessary?

10 THE WITNESS: If necessary, yes.

11 THE COURT: Okay.

12 MR. ZIMBELMAN: I'd be happy to make him available  
13 that way, Your Honor.

14 THE COURT: Okay.

15 MR. ZIMBELMAN: We certainly want to give Camco's  
16 counsel an opportunity --

17 THE COURT: Right.

18 MR. ZIMBELMAN: And thank you for accommodating our  
19 need to take him out of order.

20 BY MR. ZIMBELMAN:

21 Q Clay, is Fast Glass licensed in the Nevada State  
22 Contractors Board?

23 A Yes. License No. 0015323.

24 Q Was it licensed at the time of the Manhattan West  
25 project?

1           A     Yes.

2           Q     And did it have the appropriate licenses for the work  
3 it contracted to perform and did perform?

4           A     Yes.

5           Q     Could you turn, please, to Exhibit 801.  It's the  
6 first tab in the binder in front of you.  And specifically  
7 beginning at page 4, if you look in the lower left-hand corner,  
8 it says FG, dash, TR, dash, EX, 801, dash, 004?

9           A     Uh-huh.

10          Q     That's the Fast Glass trial exhibit number.  Okay.  
11 So if I ask you to look for a page number, that's where I want  
12 you to look, and I'm going to put that page up on the screen.  
13 Do you recognize this page and the following as a contract  
14 between Fast Glass and Camco?

15          A     Yes.

16          Q     And is there any signature on page 33?

17          A     Yes.

18          Q     Whose signature is that?

19          A     Mitch Rato [phonetic] was our commercial manager at  
20 that point in time.

21          Q     And was he authorized to enter into that contract?

22          A     Yes, he was.

23          Q     On behalf of Fast Glass?

24          A     Yes.

25          Q     And that's dated October 20th, 2008, correct?

1           A     Yes.

2           Q     Do you know when you first stepped foot on the  
3 project?

4           A     It was probably about four weeks after that.

5           Q     Okay. And there's also an addendum on the next page,  
6 34. What is that document?

7           A     It's just a further description of any of our  
8 exclusions or the contract work they wanted us to do.

9           Q     Is the handwriting done by Fast Glass?

10          A     Yes.

11          Q     And did you return the signed contract to Camco in  
12 this form with these exclusions written in?

13          A     Yes.

14          Q     I noticed that we didn't see a signature page from  
15 Camco. Do you know why that is?

16          A     Usually they have us send the contract to them  
17 signed, and then they'll send one back.

18          Q     And if there isn't one in your file, what does that  
19 generally indicate?

20          A     They may not have sent one back, but I -- I'm not  
21 sure on that.

22          Q     Did Camco ever tell you that they were rejecting your  
23 written contract?

24          A     No.

25          Q     Or that they rejected the exclusions that you put in

1 there?

2 A No.

3 Q Showing you Addendum No. 5, and this was as it was  
4 presented to you by Camco, correct?

5 A Correct.

6 Q What is this addendum?

7 A Which page is that on?

8 Q That is on page 38.

9 A 38. Okay. It's just basically a summary of the  
10 contract price and what we agreed upon.

11 Q Which is \$199,000, correct?

12 A That's correct. Yep.

13 Q So generally what was it Fast Glass was hired to do?

14 A To install the storefront in the retail areas of the  
15 first floor of the Manhattan West project.

16 Q So it wasn't all the glass on the project?

17 A Correct.

18 Q It was just a limited section of it?

19 A That's correct.

20 Q Would you turn to Exhibit 802. Do you recognize this  
21 document?

22 A Yeah. It's our preliminary notice.

23 Q Is that something that you issue?

24 A Yes.

25 Q And turning, please, to page 4 of Exhibit 802, what

1 is that document?

2 A That is our notice of lien.

3 Q Is it a notice of lien or notice of right to lien?

4 A It's a notice of right, a preliminary notice, a  
5 notice of right to lien.

6 Q And do you understand what the purpose of this  
7 document is?

8 A Yes, to notify the owner that we're doing the job.

9 Q Is that a statutory requirement?

10 A Yes.

11 Q And did you indeed provide that to the owner?

12 A Yes, we did.

13 Q Page 6 of Exhibit 802, what are we looking at?

14 A That's our certified mail receipt of the preliminary  
15 notice.

16 Q And that was sent to Camco?

17 A Correct.

18 Q Do you believe it was also sent to the owner?

19 A Yes.

20 Q Now, did Fast Glass actually perform the work that it  
21 contracted to perform?

22 A Yes.

23 Q And approximately how long did that take?

24 A We worked for probably eight weeks, close to that.

25 Q Were you done with your scope of work before Camco

1 shut down the project or the owner shut down the project?

2 A We were substantially complete, yes.

3 Q There may have been punch lists, but you were  
4 otherwise done?

5 A Right. Yep.

6 Q Could you turn to Exhibit 807. That document is  
7 approximately 48 pages. The first page I'm going to just put  
8 up on the screen and ask you to generally describe once again  
9 Exhibit 807.

10 A It's just a summary of where we were working that day  
11 and who was working on that job.

12 Q And what about the remaining 40-some pages?  
13 Generally how would you describe what's in this exhibit?

14 A They're our reports, our daily activity reports from  
15 our shop of who worked when and where and what the progress of  
16 the job was.

17 Q So reflecting that you were indeed on site on the  
18 various days, correct?

19 A That's correct.

20 Q And the second to the last page of Exhibit 40H is  
21 dated what date?

22 A 12/15 of '08.

23 Q And do you know if that's the date that the project  
24 approximately was closed?

25 A That was closed, yes.

1           Q     Turning to Exhibit 808, and this is again a very  
2 lengthy document or exhibit I should say, approximately 450  
3 pages. Could you tell the Court generally what is -- can be  
4 found within Exhibit 808.

5           A     Generally this is all the drawings of the work we  
6 did, the fabrication sheets, the glass orders, the order  
7 confirmations of the product, the --

8           Q     So --

9           A     -- any correspondence with -- between back and forth  
10 between architect and us and Camco.

11          Q     Is it fair to call it a project record?

12          A     Yes.

13          Q     Did Fast Glass submit request for payment to Camco?

14          A     Yes.

15          Q     Would you turn to Exhibit 803 at page 11. What is  
16 that document?

17          A     That is our payment request from Camco.

18          Q     What's the date of that payment request?

19          A     It was for the period 12/1 to 12/31 dated 12/10.

20          Q     And what's the total amount that you billed by way of  
21 this payment request?

22          A     The way this payment request, we billed all pretty  
23 much except for retention.

24          Q     So the work completed to date as of 12/31 would've  
25 been \$199,000, correct?

1 A Correct.

2 Q And that's the amount of your contract, isn't it?

3 A That's correct.

4 Q Did you ever receive any payments from Camco?

5 A No.

6 Q Did you ever receive payments from any source on this  
7 project?

8 A No.

9 Q Did you incur costs involving this project?

10 A Substantial.

11 Q Such as what?

12 A Well, all the costs related to the project, and then  
13 after it failed, I had to beg my vendors to let me pay over six  
14 months to pay off all the product costs.

15 Q You also had to pay your laborers, right?

16 A Yes.

17 Q And your other employees that worked on the project?

18 A Labor employees and admin and, yeah.

19 Q Did Fast Glass send any demands for payments to  
20 Camco?

21 A We sent our payment requests in, and then we ended up  
22 filing our lien. We did contact them multiple times.

23 Q Showing you exhibit -- and if you would please turn  
24 to Exhibit 806. It looks to be a letter dated December 22nd,  
25 2008, from Ryan Bellows at the McDonald Carano Wilson law firm?



1 A Uh-huh.

2 Q Is that a law firm retained by Fast Glass --

3 A Yes, it is.

4 Q -- for a time?

5 A Yes.

6 Q And what is this letter?

7 A This is a demand for payment.

8 Q Did this result in any payments being made?

9 A No.

10 Q And also Exhibit 806, page 4, what is this letter?

11 A It's a letter to the bonding company making a claim

12 on the bond.

13 Q Which bond is that?

14 A The bond that Camco Pacific held.

15 Q And the next page of that had a letter. What is

16 that?

17 A That's the summary of amounts owed.

18 Q Again the \$199,000, correct?

19 A Yes.

20 Q And what is that document?

21 A This is the claim form from the -- from us to Zürich

22 American Insurance stating approval of our claim.

23 Q So just documenting your claim on Camco's bond?

24 A That's correct.

25 Q Is that their contractor licensing bond?

1           A     Yes.

2           Q     Showing you Exhibit 804, page 1, this is a letter  
3 from Camco December 22nd, to Mitch Rato. Are you familiar  
4 with this letter?

5           A     Yes, I am.

6           Q     What is this letter?

7           A     This is a letter to all the subcontractors from Camco  
8 suspending construction basically.

9           Q     And it indicates -- first of all, who's it written  
10 by?

11          A     David Pari.

12          Q     David Parry?

13          A     Parry.

14          Q     Do you know that he was with Camco?

15          A     Yeah. We had communications with him often.

16          Q     And he purports to be including a letter from Alex  
17 Edelstein of Gemstone as well, correct?

18          A     Correct.

19          Q     On page 2 of the letter, Mr. Parry writes, In light  
20 of the foregoing, Camco is left with no choice but to terminate  
21 our agreement with Gemstone and all subcontracts on the  
22 project. Do you see that?

23          A     Yes.

24          Q     And he also writes in the next paragraph,  
25                 Please submit to Camco all amounts you

1 believe are due and owing on your subcontract. We  
2 will review and advise you of any issues regarding  
3 any amounts you claim are owed. For such amounts  
4 that are properly -- should be properly billed to  
5 Gemstone, Camco will forward to Gemstone such amounts  
6 for payment by Gemstone. If your claim appears to be  
7 excessive, we will ask you to justify and/or revise  
8 the amount. Did I read that accurately?

9 A Yes.

10 Q Did you get an opportunity to submit to Camco all  
11 amounts you believe were due and owing under the subcontract?

12 A Yes.

13 Q And was that done before or after this letter?

14 A It was done -- let's see. This letter's dated --

15 Q December 22nd.

16 A December 22nd. So, yeah, we sent all of our bills  
17 in.

18 Q Probably before and after, right?

19 A Right. Both times. Multiple times.

20 Q Now, that letter we just looked at was dated December  
21 22nd, right?

22 A Yes.

23 Q Do you remember getting a subsequent letter from  
24 Mr. Parry?

25 A Yes.

1 Q On that same day?

2 A Yes.

3 Q Going to page 5 of Exhibit 804, that's a fax cover of  
4 a page to you from Dave Parry, correct?

5 A That is correct.

6 Q Also dated December 22nd?

7 A Yes.

8 Q And what does he state in the message?

9 A Please disregard the previous letter which was sent  
10 in error.

11 Q And behind that cover page was this letter, correct?

12 A Yes.

13 Q And is this different from the letter he first sent  
14 you?

15 A Yes.

16 Q So, for example, the beginning paragraph:

17 As you may have already become aware, it  
18 has come to Camco Pacific Construction Inc.'s Camco  
19 attention that funding for the completion of the  
20 Manhattan West project, the project has been  
21 withdrawn.

22 Was that language in the first letter?

23 A No.

24 Q And going over to page 2 of the letter, which is  
25 Exhibit 804, dash, 007, he writes, Payment -- Based on the

1 foregoing facts and information, Camco has no alternative but  
2 to immediately terminate all subcontracts on the project. Is  
3 that different from the first letter?

4 A Yes.

5 Q How so?

6 A Well, it stated in the first one they were  
7 terminating their agreement with Gemstone and all subcontracts.

8 Q And now they're just saying subcontracts, right?

9 A Yes.

10 Q He also writes,

11 With respect to any contract balance that  
12 you may claim to be due and owing, please be advised  
13 that you have acknowledged that Camco is not liable  
14 to you for payment unless and until Camco receives  
15 the corresponding payment from the owner.

16 Do you see that?

17 A Yes.

18 Q Was that on the first letter?

19 A No.

20 Q Did he invite you to submit your proof of monies  
21 owing as he had in the first letter?

22 A No, not in the second letter.

23 Q And what he's referring to is what we call a  
24 pay-if-paid agreement, right?

25 A Correct.

1 Q Mr. Parry also writes,  
2 Camco's contract with Gemstone is a  
3 cost-plus agreement wherein the subcontractors and  
4 suppliers were paid directly by Gemstone and/or its  
5 agent Nevada Construction Services based on the  
6 invoices and/or payment applications submitted  
7 through voucher control. As such, Camco has not  
8 received nor will it receive any payment on behalf of  
9 the subcontractors and suppliers on the project.  
10 Therefore, Camco has no contractual and/or statutory  
11 obligation to pay any claim that may be alleged by  
12 any of the subcontractors and/or suppliers on the  
13 project.  
14 Was that new?  
15 A Yes.  
16 Q And did you agree with that?  
17 A No.  
18 Q Did you stop pursuing money from Camco based on that  
19 letter?  
20 A No.  
21 Q Could you turn to Exhibit 805. What are we looking  
22 at here?  
23 A It's the notice of lien.  
24 Q And is that Fast Glass's notice of lien?  
25 A Yes.

1           Q     Recorded in the Clark County recorder's office in the  
2 instrument number as shown on the document?

3           A     That's correct, yes.

4           Q     And what's the amount of your lien?

5           A     199,000.

6           Q     Who is that signed by?

7           A     Eugene Button [phonetic], who is our manager in our  
8 Las Vegas location.

9           Q     Very good. Thank you. It's also signed by Mitch  
10 Rato, isn't it?

11          A     No, because he was based out of Reno.

12          Q     Oh, I gotcha.

13          A     So we had Gene deliver it and take it to the county  
14 courthouse.

15          Q     Very good. And did Fast Glass serve the notice of  
16 lien on the owner and Camco?

17          A     Yes.

18          Q     Looking at page 5 of Exhibit 805, what are we looking  
19 at there?

20          A     That is the information from the certified mail  
21 receipt sent from McDonald Carano to -- to Camco.

22          Q     And what about on page 6?

23          A     That's the information sent to Gemstone.

24          Q     Demonstrating service of the notice of lien, correct?

25          A     Yes.

1           Q     Do you believe you've complied with your statutory  
2 obligations with respect to perfecting your lien?

3           A     Yes.

4           Q     Has anybody ever told you that you have failed to do  
5 that properly?

6           A     No.

7           Q     How much of the amount that you liened for is still  
8 outstanding?

9           A     A hundred percent.

10          Q     How much of the money you have demanded from Camco is  
11 still outstanding?

12          A     A hundred percent.

13          Q     And that number again is what?

14          A     199,000.

15               MR. ZIMBELMAN: Your Honor, just to be clear, I want  
16 to offer Exhibits 801 through 808, and I know that they were  
17 okayed by the stipulation, but of course Camco's counsel isn't  
18 here. So I suppose if he offers any objections, we'll deal  
19 with it then, but I would like to offer them at this time.

20               THE COURT: Okay. They'll be admitted.

21               (Trial Exhibit Nos. 801-808 admitted.)

22               MR. ZIMBELMAN: Thank you. No other questions for  
23 the witness.

24               THE COURT: Okay. Does anybody else have any  
25 questions?



1 MR. TAYLOR: No questions, Your Honor.  
2 MR. JEFFERIES: No, Your Honor.  
3 THE COURT: And their admission is subject to any --  
4 MR. ZIMBELMAN: Cross that may occur.  
5 THE COURT: Right. And any --  
6 MR. ZIMBELMAN: Understood. And we'll do everything  
7 we can to make him available.  
8 THE COURT: -- contention that may be advanced once  
9 Camco's counsel is present.  
10 MR. ZIMBELMAN: Absolutely.  
11 THE COURT: Okay.  
12 MR. ZIMBELMAN: Can the witness be excused for the  
13 time being?  
14 THE COURT: All right. You can stand down, sir.  
15 THE WITNESS: Thank you.  
16 MR. ZIMBELMAN: Thank you, Your Honor.  
17 THE COURT: So you can get back to Reno.  
18 All right. Where are we now then?  
19 MS. BACON: I believe Camco is going to call Mary Jo  
20 Allen, Your Honor.  
21 THE COURT: Okay.  
22 MARY JO ALLEN  
23 [having been called as a witness and being first duly sworn,  
24 testified as follows:]  
25 THE CLERK: You may be seated.

1 THE WITNESS: Thank you.

2 THE CLERK: Can you please state and spell your first  
3 and last names.

4 THE WITNESS: Sure. It's Mary Jo Allen. It's  
5 M-a-r-y, space, J-o, and the last name is Allen, A-l-l-e-n.

6 DIRECT EXAMINATION

7 BY MS. BACON:

8 Q Good afternoon, Ms. Allen.

9 A Hi.

10 Q Where do you work?

11 A APCO Construction.

12 Q Okay. And what's your position at APCO?

13 A I'm a bookkeeper.

14 Q Okay. And how long have you been a bookkeeper?

15 A Just about 13 years there.

16 Q And what did you do before you were a bookkeeper with  
17 APCO?

18 A I have been a bookkeeper for about 40 years.

19 Q Okay. And did you work on the Manhattan West  
20 project?

21 A Yes, ma'am.

22 Q In which capacity?

23 A I assisted in the -- the preparing the pay  
24 applications for the owner, and I'm the accounts payable clerk.

25 Q Okay. And you acted as a PMK for APCO on all

1 financial issues; is that correct?

2 A Yes, ma'am.

3 Q Okay. Did APCO finish the project as the general  
4 contractor?

5 A No.

6 Q When did APCO leave the project?

7 A August the 21st, 2008.

8 Q And what is your understanding of why APCO left?

9 A Lack of payment.

10 Q Okay. And do you know approximately how much APCO  
11 was owed from Gemstone when it left the project?

12 A Approximately 1.4 million.

13 Q Okay. I'm going to be smart and learn how to make  
14 this bigger.

15 MS. BACON: Can everybody see this, or should I learn  
16 how to make it bigger?

17 THE COURT: We can see it.

18 MS. BACON: Excellent.

19 BY MS. BACON:

20 Q Okay. And, Ms. Allen, do you recognize the  
21 demonstrative I just put on the Elmo?

22 A Yes.

23 Q What is it?

24 A It's the payments that APCO did not receive payment  
25 for from Gemstone for June, July and August.

1 Q Okay. And we'll look at those pay applications  
2 really quickly just to confirm your numbers, but this is what  
3 you created to confirm \$1.4 million, correct?

4 A Yes, ma'am.

5 Q Okay. Can you please grab APCO's Exhibits,  
6 Volume I --

7 A Wait.

8 Q -- Nos. 1 through 45?

9 A Just a minute. This is Fast Glass. Where does this  
10 go? Just anywhere?

11 Q Just right behind you.

12 A Okay.

13 THE COURT: What's the identification of this  
14 particular item that's on the screen now?

15 MS. BACON: This is a demonstrative of --

16 THE COURT: Oh, okay.

17 MS. BACON: -- June, July and August 2008 payments.

18 BY MS. BACON:

19 Q The first binder I believe. Does that say APCO 1  
20 through 45?

21 A 1 through 35.

22 Q 1 through 45?

23 A 35.

24 Q Oh. That should match. Open it up. What's the  
25 Exhibit 4?

1 THE COURT: You may approach and help her if you  
2 want.

3 MS. BACON: Thank you, Your Honor.

4 THE WITNESS: This says 35 to --

5 BY MS. BACON:

6 Q Okay. Please turn to Exhibit 4. Do you recognize  
7 this?

8 A Yes, ma'am.

9 Q What is it?

10 A This is APCO Construction's June pay application to  
11 Gemstone.

12 Q Okay. And please turn to page 21.

13 THE COURT: You said that's 154. What was the --

14 MS. BACON: Oh, I'm sorry. This is Exhibit 4.

15 THE COURT: 4. Okay.

16 THE WITNESS: Okay. Excuse me.

17 BY MS. BACON:

18 Q Could you turn to the page 21, please.

19 A Certainly.

20 Q And what is this chart?

21 A This chart is a summary of the amounts -- the gross  
22 amounts that were billed on the owner's pay application for  
23 each subcontractor and how much was put on the bill for them.

24 Q Okay. And what does gross amounts mean?

25 A Gross amounts is previous to -- prior to any

1 retention held.

2 Q Okay. And how much did APCO bill Gemstone for its  
3 June 2008 pay application?

4 A Gross, 778,669.89.

5 Q And that's reflected in the chart?

6 A Yes.

7 Q Okay. And less retention, how much was APCO due for  
8 the June 2008 pay application?

9 A It would be less the 10 percent, which is 77,866.99  
10 for a net payment of \$700,802.90.

11 Q And that's the amount that you've put on your  
12 demonstrative?

13 A Yes.

14 Q Okay. Please turn to Exhibit 8.

15 A Okay.

16 Q Do you recognize this document?

17 A Yes.

18 Q What is it?

19 A This is the July pay application to Gemstone for the  
20 Manhattan West project.

21 Q Okay. And please turn to page 22. How much did APCO  
22 bill Gemstone for its July 2008 pay application?

23 A A gross amount of \$479,092.97.

24 Q Okay. So less retention. What would have been due  
25 to APCO for --

1           A     Less the \$47,000 would be a net check of \$431,183.67.

2           Q     And is that the amount you have reflected in the  
3 second line of your chart?

4           A     Yes, ma'am.

5           Q     Please turn to Exhibit 31. Do you recognize this  
6 document?

7           A     Yes.

8           Q     What is it?

9           A     This is the August pay application to Gemstone for  
10 the Manhattan West project.

11          Q     Okay. Please turn to page 22. How much did APCO  
12 bill Gemstone for its August 2008 pay application?

13          A     A gross billing of \$297,833.53.

14          Q     So less retention, how much would have been due under  
15 August's pay application?

16          A     The 10 percent, less the \$29,000, the net check would  
17 be \$268,050.18.

18          Q     Okay. And that's the amount you have reflected in  
19 the third line of your chart?

20          A     Yes, ma'am.

21          Q     And was APCO entitled to any reimbursements from  
22 Gemstone?

23          A     Yes. There was approximately -- it was less than  
24 \$200,000.

25          Q     And those amounts are not reflected in this chart?

1           A     No.

2           Q     And has APCO ever received any of these amounts from  
3 Gemstone?

4           A     No.

5           Q     From anybody else?

6           A     No.

7           Q     Has APCO been awarded any sort of judgment to fulfill  
8 these amounts?

9           A     No.

10          Q     Okay. And does this \$1.4 million reflect any of the  
11 retention that Gemstone withheld from APCO for the project?

12          A     No. We weren't due any retention.

13          Q     Okay. And did you bill APCO for retention?

14          A     No.

15          Q     Did you bill Gemstone for retention?

16          A     Okay. No. I didn't bill anybody for retention.

17          Q     Did you assist in coordinating subcontractor pay  
18 applications on the project?

19          A     Yes.

20          Q     Okay. Did Helix ever send billings to APCO after the  
21 August 2008 pay application?

22          A     No.

23          Q     Was Helix's August "2000" pay application paid?

24          A     Yes.

25          Q     Did Cabinetec ever send billings to APCO after its



1 August 2008 pay application?

2 A No.

3 Q Was Cabinetec's August 2008 pay application paid?

4 A Actually their last pay application was in July, and  
5 it was paid.

6 Q Okay. Did Cabinetec -- or sorry. Did Helix ever  
7 bill APCO for its retention?

8 A Say again, please.

9 Q Did Helix ever bill APCO for its retention?

10 A No.

11 Q Did Cabinetec ever send APCO a billing for its  
12 retention?

13 A No.

14 Q Did APCO ever bill Gemstone for either Cabinetec or  
15 Helix's retention?

16 A No.

17 Q And did you have a chance to review Cabinetec or  
18 Helix's billings to Camco once they were provided in discovery?

19 A Yes.

20 Q And did you make any determinations about either  
21 Cabinetec's or Helix's retention billings based upon your  
22 review?

23 A It really didn't have anything to do with me because  
24 I had nothing to do with Camco, but I believe Cabinetec did  
25 send them a bill for retention.

1           Q     Okay. Were you able to notice anything on the pay  
2 applications as far as the retention -- their total retention  
3 on the project?

4           A     Which bills?

5           Q     On the Helix bills to Camco or the Cabinetec bills to  
6 Camco, were you able to make any determinations upon their  
7 retention?

8           MR. ZIMBELMAN: Your Honor, I'm going to object to  
9 lack of foundation. She's testified she has nothing to do with  
10 the billings to Camco.

11          THE COURT: Lay a foundation.

12          THE WITNESS: One thing --

13          THE COURT: Well, hold on a second.

14          THE WITNESS: Oh, I'm sorry.

15          THE COURT: There's an objection, and I've sustained  
16 it. So you can seek a foundation.

17          MS. BACON: I think I will start from the beginning.

18 BY MS. BACON:

19          Q     Were you able to review Helix's or Cabinetec's  
20 billings to Camco once the project was over when they were  
21 turned over in discovery?

22          A     Yes.

23          Q     And were you able to determine whether or not the  
24 retention that Helix or Cabinetec were billing to Camco was, in  
25 fact, rolled over into those billings?

1           A     Yes, ma'am, it was.

2           MR. ZIMBELMAN:  Objection, Your Honor.  Same  
3 objection.  And in addition, it seems to be kind of trying to  
4 backdoor some expert analysis without any kind of a report.

5           THE COURT:  I'll overrule it.  She can testify as to  
6 what she saw in the records that she reviewed.

7           THE WITNESS:  Yes.

8           MS. BACON:  Okay.

9           THE WITNESS:  Yes, Your Honor.  Thank you.  I did see  
10 that.

11 BY MS. BACON:

12          Q     And we'll move along here.

13          A     Okay.

14          Q     Ms. Allen, do you recognize the demonstrative I just  
15 put on the Elmo?

16          A     Yes.

17          Q     And is this something you created?

18          A     Yes, it is.

19          Q     And how many invoices did Cabinetec submit to APCO on  
20 the project?

21          A     There was two invoices for July, one for Building 8  
22 and one for Building 9.

23          Q     Okay.  Can you please turn to Exhibit 148, please.

24                 Is this Cabinetec's first invoice to APCO?

25          A     Yes.

1 Q And what is the amount of this invoice?

2 A This is for Building 8, and it's \$70,836.

3 Q Okay. And please turn to page 2. This is  
4 Exhibit 148 again.

5 A Yes. This is for Building 9. It's for \$72,540.

6 Q Okay. And let me get you a calculator real quick.

7 MS. BACON: Thank you.

8 Your Honor, may I approach?

9 THE COURT: Yes.

10 MS. BACON: Thank you.

11 THE WITNESS: Thank you.

12 BY MS. BACON:

13 Q What is the gross billings of Cabinetec's two  
14 invoices?

15 A It's the one, forty-three. Should I add them here?  
16 143,376.

17 Q Okay. And less 10 percent retention, how much would  
18 Cabinetec have been entitled to for these two invoices?

19 A \$129,038.40.

20 Q Okay. Please turn to Exhibit 154.

21 A Okay.

22 Q How much did the owner pay Cabinetec on behalf of  
23 APCO for the project?

24 A \$161,262.

25 Q And were you able to make any determinations based on

1 this accounting?

2 A That they were overpaid.

3 Q And how much were they overpaid?

4 A \$32,223.60.

5 Q And how did you arrive at that determination?

6 A Well, I subtracted.

7 MS. BACON: Thank you. Give me one second.

8 I think that's it, Ms. Allen. Thank you.

9 THE COURT: Cross.

10 MR. TAYLOR: Thank you, Your Honor.

11 THE WITNESS: Do I put these back?

12 THE COURT: Just leave them where they are for now.

13 THE WITNESS: Thank you. Thank you, sir.

14 THE COURT: He may have questions about them.

15 THE WITNESS: Sure.

16 CROSS-EXAMINATION

17 BY MR. TAYLOR:

18 Q Ms. Allen, I'd like you to look at Exhibit 151. The  
19 first two pages of this exhibit are an invoice from Cabinetec,  
20 correct?

21 A It's a statement, sir.

22 Q A statement from Cabinetec, right?

23 A That's correct.

24 Q And in the -- on the first page, there is some  
25 handwriting. That's your handwriting, correct?

1 A That's correct.

2 Q You allocated this statement between Building 8 and  
3 Building 9, correct?

4 A That's correct.

5 Q You also were involved in preparing a pay application  
6 relating to the amounts on that statement, correct?

7 A Yes, sir.

8 Q I'd like you to look at Exhibit 8. This is a pay  
9 application for the month ending July 31, 2008, correct?

10 A Yes, sir.

11 Q And it's your signature there on the first page,  
12 correct?

13 A Uh-huh.

14 Q I'd like you to turn through to page 22. I believe  
15 that you looked at that just a minute ago.

16 A Yes.

17 Q This shows the amount submitted for payment to  
18 Gemstone for this pay application broken down by subcontractor,  
19 correct?

20 A Yes, sir.

21 Q And you submitted to Gemstone pay application for  
22 Cabinetec in the amount of \$179,180 before retention, correct?

23 A Yes.

24 Q And Gemstone approved that, correct?

25 A Yes.

1 Q And Gemstone paid that less retention, correct?

2 A That's correct.

3 Q But now you're saying that perhaps you made a mistake  
4 and it was too high. Is that what you're saying?

5 A There were circumstances with this pay application,  
6 sir, that happened, why this was caused. The --

7 Q So but you're saying the application that you  
8 prepared is mistaken. Is that what you're saying?

9 A I received those two invoices after I received the  
10 statement. The statement came to us late, and we were asked to  
11 please put on money. So my boss said -- we had prepared the  
12 pay application at that point. I just received the statement  
13 that showed \$179,000.

14 Q And Gemstone approved it, correct?

15 A Yes.

16 Q Okay. Do you know whether Cabinetec performed any  
17 work in August of 2008?

18 A Not to my knowledge. I didn't receive a pay  
19 application.

20 Q So if you don't receive a pay application, you don't  
21 know whether or not they worked in that month or not; is that  
22 right?

23 A That's correct.

24 Q I'd like you to look at Exhibit 31. I believe you  
25 looked at that briefly as well. This is another pay

1 application. This one is for the month ending August 31st,  
2 2008, correct?

3 A Yes, sir.

4 Q It's signed by Randy Nickerl, and you notarized his  
5 signature, correct?

6 A Uh-huh.

7 Q Did you have any involvement in the preparation of  
8 this pay application?

9 A Yes.

10 Q I'd like to -- and were any pay applications prepared  
11 by APCO after this pay application?

12 A None.

13 Q So this would be the final pay application showing  
14 you everything that was done by APCO or subcontractors working  
15 under APCO through the end of August 2008; is that right?

16 A Yes, sir.

17 Q Okay. The -- I'd like you to look at Exhibit 2.  
18 Keep this one handy though. So maybe keep a finger in it.

19 A 2?

20 Q Yes. Exhibit 2 is the contract between Gemstone and  
21 APCO. Have you ever looked at this document before?

22 A Yes.

23 Q If you look internally, the page that's numbered in  
24 the bottom right-hand corner, No. 23, exhibit page 0023, if you  
25 look there at the Section 5.01, do you see there that it states



1 that the contract sum is \$153,472,300?

2 A Yes, sir.

3 Q And did you understand that was the total price for  
4 the entire project?

5 A For Phase 1 and Phase 2, that's correct.

6 Q Okay. Looking back at Exhibit 31, the final pay  
7 application, this was the original contract sum to be  
8 78 million --

9 A Nine, thirty-eight --

10 Q -- \$938,160. Where does that number come from?

11 A I believe Phase 1.

12 Q APCO also did work under a grading contract, correct?

13 A Yes.

14 Q Is that grading contract price included --

15 A Yes.

16 Q -- in this number at all?

17 A Yes, sir.

18 Q So this would be Phase 1 plus the grading contract;  
19 is that right?

20 A Yes, sir.

21 Q Okay. Exhibit 31, line 2 -- line 2 reflects net  
22 change by change orders. That would be the gross total of  
23 changes by change orders whether done or not; is that correct?

24 A On here?

25 Q Exhibit 31, line -- page 1, line 2.

1 A Net change by change order?

2 Q Yes.

3 A Let's see if that's -- I have to take my glasses off  
4 to see something. Okay.

5 Q I do as well.

6 A That amount there, the 3 -- the total on line 3 of  
7 81 million --

8 Q Yes.

9 A -- agrees with the schedule of values on page No. 17,  
10 which is the total bottom line there.

11 Q Okay. So that is the -- so line 2 is the net change  
12 orders and a gross number, not --

13 A That's correct.

14 Q Okay. So that other number that you just read to us,  
15 the 81 million figure on line 3 --

16 A Uh-huh.

17 Q That would be the total amount that Gemstone would  
18 pay if Phase 1 and the grading contract were performed  
19 completely with no new change orders; is that right?

20 A Yes, sir, with no new change orders.

21 Q Okay. Then the next line, line 4, what does that  
22 line 4 signify?

23 A Total work completed to date and stored. That's how  
24 much the gross billing that we were billing them for to that  
25 date.

1 Q For Phase 1 and for the --  
2 A Grading.  
3 Q -- grading?  
4 A Yes, sir.  
5 Q And that includes not only work performed by APCO.  
6 That also includes work performed by subcontractors, correct?  
7 A Yes, sir.  
8 Q And that would include among others work that was  
9 billed for Cabinetec, correct?  
10 A Yes, sir.  
11 Q And what is that total?  
12 A The gross?  
13 Q Yes.  
14 A \$62,101,823 -- -823.10.  
15 Q Okay. Now, then the Section 5 there, "retainage".  
16 A Uh-huh.  
17 Q That has two line items. The first is at 10 percent.  
18 That's for the Phase 1, correct?  
19 A That's for Phase 1 of the building, yes.  
20 Q And then the 5 percent retention there, that's  
21 relating to the grading contract, correct?  
22 A That's correct.  
23 Q So that is -- so that amount of -- total amount of  
24 \$5,964,426.21 is the total retention for Phase 1 and the  
25 grading contract as of August 31st, 2008, right?

1           A     Uh-huh.

2           Q     Yes?

3           A     Yes.

4           Q     So then line 6, that is the amount that as of August  
5 31st, 2008, that is the amount that Gemstone should have paid,  
6 which would be the gross billings, less retention; is that  
7 right?

8           A     Yes.

9           Q     And you're saying of this grand total on line 6, only  
10 1.4 million is owing to APCO; is that right?

11          A     Yes.

12               MR. TAYLOR: All right. I have an exhibit, a new  
13 exhibit that I'd like to show the witness. I've marked it as  
14 National Wood Product Exhibit 3176. That's the -- the original  
15 that I'm giving to the Court is a certified copy of the notice  
16 of lien recorded by APCO. Should I give the witness the copy  
17 or the original?

18               THE COURT: Give the original to the clerk first to  
19 have it marked. 3176 you said?

20               MR. TAYLOR: Yes, Your Honor.

21          BY MR. TAYLOR:

22           Q     Have you ever seen this --

23               MR. TAYLOR: And I would offer this -- request the  
24 Court to take judicial notice and offer this public record as  
25 an exhibit.

1 MR. JEFFERIES: No objection.

2 THE COURT: It's admitted.

3 (National Wood Exhibit No. 3176 admitted.)

4 BY MR. TAYLOR:

5 Q Have you ever seen this notice of lien before?

6 A I've seen it.

7 Q Were you involved at all in its preparation?

8 A Nope.

9 Q Were you involved in coming up with the numbers that  
10 are on this?

11 A The only thing I probably did was confirm the total  
12 payments to date.

13 Q Okay. So that would be line item No. 3 where it says  
14 total amount of all payments received to date, \$48,711,358.26  
15 is that that figure?

16 A That's the figure.

17 Q That would include checks that were written by  
18 Gemstone directly to APCO, correct?

19 A No, not checks. We didn't receive checks. There was  
20 wiring and stuff.

21 Q Okay. So money -- that would include money that was  
22 received by APCO directly from Gemstone or Gemstone's lender,  
23 correct?

24 A Uh-huh.

25 Q Yes?

1           A     Yes, sir.

2           Q     And it also would include money that went from  
3 Gemstone or its lender to the subcontractors by the joint  
4 checks, correct?

5           A     Correct.

6           Q     And so that total is everything that was paid both to  
7 APCO, which APCO kept, and to the subcontractors up through  
8 APCO's leaving the project, correct?

9           A     Correct.

10          Q     What about -- I noticed on line 1 it says that the  
11 total amount of the contract is \$153,472,300. That was the  
12 gross number from the contract we looked at Exhibit 2. That  
13 would be Phases 1 and 2, correct?

14          A     Uh-huh.

15          Q     Yes?

16          A     Yes.

17          Q     But --

18          A     I didn't prepare this document, sir.

19          Q     I understand. I understand. This document, Note 1,  
20 it says the original -- if you look at Note 1 at the bottom of  
21 the page, it says there in Note 1 that, The actual -- the  
22 actual original contract amount performed and billed through  
23 APCO Construction's termination of contract, i.e. August 2008,  
24 is \$60,325,901.89. Did you have any involvement in determining  
25 that number?

1 A No.

2 Q Do you know where that number came from?

3 A I don't.

4 Q Footnote No. 2 talks about the amount of change order  
5 work that has been done. It comes up with a number of  
6 \$9,168,116.32. Do you know where that number came from?

7 A I don't.

8 Q Line Item No. 4 in the body says the amount of the  
9 lien after deducting all just credits and offsets is  
10 \$20,782,659.95. Do you see that?

11 A Uh-huh.

12 Q Yes?

13 A Yes, sir.

14 Q That's -- did you have any involvement in computing  
15 that number?

16 A No, sir.

17 Q That's considerably higher than the 1.4 million that  
18 you say that APCO was owed specifically to APCO, correct?

19 A Yes, sir.

20 Q Do you have any reason to believe that this does not  
21 include APCO seeking to also recover its retention?

22 A I have no idea. I didn't do this document. I have  
23 no idea where these numbers came from other than they would've  
24 asked me how much money we received. Our lawyers and Randy  
25 Nickerl did this. I did not.

1           Q     In the -- do you have any understanding as to whether  
2 or not this number includes the retentions for the  
3 subcontractors?

4           A     I have no idea.

5           Q     Were you involved at all in the preparation of the  
6 motion for summary judgment by APCO in this matter?

7           A     If they asked me for a number, what a subcontractor  
8 was paid or anything like that, I can give them that, but no.  
9 I -- I would have to see the document.

10          Q     Are you aware that APCO has obtained a summary  
11 judgment in this matter in the amount of \$20,782,659.95 as the  
12 principal obligation?

13          A     No, I do not.

14          Q     Now, in your mind, that number that APCO received, if  
15 APCO received that amount as a summary judgment, that would be  
16 about "\$18,000" too high, right?

17          A     Yes, sir.

18          Q     And you have no explanation as to why APCO would get  
19 a judgment for "\$18 million" more than the amount that was  
20 specifically owed to APCO directly?

21          A     I had nothing to do with it.

22          Q     And you were designated to be APCO's representative  
23 for financial issues for deposition, correct?

24          A     Yes. For accounting, for paying the subs, that's  
25 correct. I did not prepare this document.



1           Q     Do you know whether APCO sought to also collect money  
2 which was owed to subcontractors while APCO was on the job?

3           A     I don't understand your question, sir.

4           Q     APCO had a -- APCO submitted a pay application on  
5 behalf of itself and subcontractors, Exhibit 31, correct?

6           A     Yes, sir.

7           Q     Do you know if APCO took any effort to try to collect  
8 on behalf of not only itself, but also those subcontractors?

9           A     Every subcontractor was paid that we billed for,  
10 except for APCO.

11          Q     All right.

12          A     Everyone received every dime that they -- that was on  
13 the bill that they billed for other than APCO. APCO did not  
14 receive funds for June, July or August.

15          Q     With the exception of retention, correct?

16          A     That's correct.

17          Q     For example, Cabinetec's invoice statement that we  
18 were just looking at included retention in the statement, but  
19 that was not billed through to Gemstone, correct?

20          A     That's correct. No retention was due.

21               MR. TAYLOR: I don't have anything further.

22               MS. BACON: Your Honor, we don't have anything.

23               MR. ZIMBELMAN: Just very briefly, Your Honor.

24               MS. BACON: I'll let Eric go first.

25                       (Colloquy off the record.)

1           MR. ZIMBELMAN: So, Your Honor, before I -- in order  
2 to shorten up our cross-examination, we had discussion earlier  
3 about APCO withdrawing some exhibits that had previously been  
4 admitted by stipulation, and specifically those exhibits are  
5 41, 42, 43, 307 and 311, and certainly the demonstrative  
6 portions. There was some backup of some of those. We're going  
7 to discuss and negotiate and figure that out for certain  
8 whether we can leave some of the backup in its form, but at  
9 least removing the demonstrative portion, correct?

10           MR. JEFFERIES: We agree.

11           THE COURT: All right. Just make sure the clerk is  
12 on the same page.  
13 (APCO Exhibit Nos. 41-43, 307, 311 & demonstratives withdrawn.)

14           MR. ZIMBELMAN: May I approach the witness with a  
15 calculator, Your Honor?

16           THE COURT: Yes.

17           THE WITNESS: I have one.

18           MR. ZIMBELMAN: Oh, great, and mine, you know, I had  
19 to turn it sideways in order to get numbers big enough.

20           THE WITNESS: Probably too small for my fingers.

21           MR. ZIMBELMAN: Hopefully yours -- yours will do it.

22           THE WITNESS: Okay.

23                           CROSS-EXAMINATION

24 BY MR. ZIMBELMAN:

25           Q     The amounts on this notice of lien document, I want

1 to just do a quick math exercise, and then we'll let you go.  
2 Okay. In footnote 1, as counsel demonstrated to you, APCO has  
3 stated that the original contract amount of work performed and  
4 billed through APCO's Construction's termination of contract  
5 is 60,325,901.89. So I'd like you to enter that number. Let  
6 me know when you're done.

7 A Okay.

8 Q And then to that I'd like you to add the amount in  
9 footnote 2, which is the actual or additional change order  
10 work, materials and equipment performed through APCO  
11 Construction's termination of contract. 9,168,116.32.

12 A \$69,494,018.21.

13 Q Now, say it one more time. 69 million?

14 A \$69,494,018.21.

15 Q All right. Great. So if you just look on the screen  
16 and tell me whether I've got this correct so far.

17 A Sure.

18 Q Okay. Now, if you subtract from that 69,494,018.21,  
19 the total of the payments received to date of 48,711,358.26,  
20 what do you get?

21 A This is not that kind of calculator. Can I have the  
22 first number again.

23 Q You bet. Starting with --

24 A Just put it back on the screen.

25 Q This sum -- the sum to begin --

1           A     Yeah.

2           Q     -- was sixty-nine million --

3           A     I'm sorry.

4           Q     69,494,018.21.

5           A     Twenty thousand --

6           Q     20 million?

7           A     20,782,659.95.

8           Q     And would you agree with me that that is the number

9     that's shown as the amount of the lien after deducting all just

10    offsets and credits in line 4?

11          A     Yes.

12               MR. ZIMBELMAN: Your Honor, I'd like to offer the

13    document we just created as a demonstrative and call it Helix

14    Trial Exhibit 536, which is the next in our line.

15               THE COURT: Any objection?

16               MR. JEFFERIES: No objection.

17               THE COURT: All right. Have it marked by the --

18                       (Helix Exhibit No. 536 admitted.)

19               MR. ZIMBELMAN: Got it. Hand that to the clerk?

20               THE COURT: Yes.

21               MR. ZIMBELMAN: Helix 536.

22               No other questions, Your Honor. Thank you.

23               THE COURT: All right.

24               MS. BACON: Do you know what our next number

25    (inaudible)?

1           Your Honor, I just wanted to mark the two  
2 demonstratives that I spoke with Ms. Allen about as exhibits.

3           THE COURT: Very well.

4                               REDIRECT EXAMINATION

5 BY MS. BACON:

6           Q     And, Ms. Allen, I want to confirm. I believe I asked  
7 you this before, but APCO did not bill Gemstone for its  
8 retention; is that correct?

9           A     That's correct.

10           THE CLERK: (Inaudible.)

11           MS. BACON: Yes. Can I mark these as APCO 320 and  
12 321.

13           THE CLERK: Which one?

14           MS. BACON: Sorry. APCO 320 and 321. Thank you so  
15 much.

16           Nothing else.

17           THE WITNESS: I'm done?

18           THE COURT: No objection to those demonstratives?

19           MR. ZIMBELMAN: Was that what you had on the screen?

20           MS. BACON: Yes.

21           MR. ZIMBELMAN: No objection, Your Honor.

22           MR. TAYLOR: No objection.

23           THE COURT: They're admitted.

24                       (APCO Exhibit Nos. 320-321 admitted.)

25           THE COURT: No further questions, right?

1 MR. ZIMBELMAN: No. Thank you.

2 THE WITNESS: I'm done?

3 THE COURT: Okay. You may stand down. Thank you.

4 THE WITNESS: Thank you, sir.

5 Do I leave this here?

6 MR. JEFFERIES: Yeah. I think that might be the  
7 official copy. Just leave it up there, and we'll take care of  
8 it.

9 THE WITNESS: Okay.

10 MR. JEFFERIES: Your Honor, we would recall  
11 Mr. Pelan.

12 THE COURT: Do you realize you're still under oath,  
13 sir?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Please state your name again.

16 THE WITNESS: Joe Pelan.

17 THE COURT: Okay.

18 DIRECT EXAMINATION

19 BY MR. JEFFERIES:

20 Q Mr. Pelan, I am -- we are in our very brief defensive  
21 mode in light of the Cabinetec and Helix claims. So I'm going  
22 to be bouncing around.

23 Did APCO receive any benefit from the work or  
24 materials that Helix performed or provided to the project after  
25 August 21, 2008?

1           A     No.

2           Q     Did APCO receive any benefit from the work or  
3 materials that Helix -- excuse me, that Cabinetec performed or  
4 provided after August 21, 2008?

5           A     No.

6           Q     Was APCO physically asked to leave the project as of  
7 the end of August 2008?

8           A     Yes, we were.

9           Q     Okay. From and after that point did APCO or any of  
10 its personnel ever provide any direction or exercise any  
11 control over any of the work that Helix or Cabinetec or any  
12 other subcontractor performed after that point?

13          A     No.

14          Q     Did Helix or Cabinetec ever submit any claims or  
15 demands for payment for the -- to APCO for the work or  
16 materials or services that they provided to Camco or Gemstone  
17 after the end of August 2008?

18          A     Not to us.

19          Q     I may have asked you this before, and if I did, I  
20 apologize. Has APCO ever received retention for Helix or  
21 Cabinetec or any other subcontractor on the project?

22          A     No, we have not.

23          Q     Do you recall the retention payment schedule set  
24 forth in paragraph 3.8 of the Helix subcontract and the  
25 Cabinetec subcontract?

1           A     Yes, I do.

2           Q     Were any -- strike that. Were the preconditions to  
3 those subcontractors' entitlement to retention ever satisfied  
4 while APCO was serving as the prime contractor on the project?

5           A     They were not.

6           Q     I want to make sure our record's clear. Was  
7 Cabinetec paid for all amounts that it invoiced to APCO less  
8 retention?

9           A     Yes.

10          Q     Was Helix paid all amounts that it invoiced to APCO  
11 less retention?

12          A     Yes, it was.

13               MR. JEFFERIES: That's all the questions I have, Your  
14 Honor.

15               THE COURT: All right. Cross.

16               MR. ZIMBELMAN: Just very briefly, Your Honor.

17               May I approach the witness with a binder, Your Honor?

18               THE COURT: Yes.

19                               CROSS-EXAMINATION

20       BY MR. ZIMBELMAN:

21           Q     Mr. Pelan, I'm asking you to turn to Exhibit 512,  
22 specifically page 96.

23           A     I'm missing a number.

24           Q     96 in the lower left-hand corner. Helix trial  
25 exhibit number.



1           A     Okay.  Sorry.

2           Q     Yeah.  No.  That's fine.

3                   MR. JEFFERIES:  Mine only goes up to 76.  512?  Put  
4 it on the screen, and I'll --

5                   MR. ZIMBELMAN:  It's just a notice of lien, and it's  
6 on the screen.

7                   MR. JEFFERIES:  Okay.

8 BY MR. ZIMBELMAN:

9           Q     So page 96 of Exhibit 512 is the first page of  
10 Helix's amended notice of lien.  Do you see that?

11          A     Yes.

12          Q     Recorded on January 29th, 2009?

13          A     Yes.

14          Q     And if you turn two more pages, you'll see the  
15 Exhibit A to that document, which is called calculation of  
16 lienable amount.

17          A     Yes.

18          Q     And it has a description in the second column of a  
19 name of higher-tiered contractor.  Do you see that?

20          A     Yes.

21          Q     It says Phase 1 and 2, APCO Construction, thirteen  
22 million, two, thirty is the original contract price, and the  
23 lienable amount is 2,145,116.73, correct?  Am I reading that  
24 correctly?

25          A     Yes.

1           Q     And page 99 is an affidavit of service of the amended  
2 notice of lien serving the respondent APCO Construction by  
3 serving James P. Barker as registered agent. Is James P.  
4 Barker the registered agent for APCO?

5           A     Yes.

6           Q     In fact, he's corporate counsel for APCO, isn't he?

7           A     Yes.

8           Q     And would you agree with me that Helix provided APCO  
9 with service of its amended notice of lien?

10          A     Yes.

11          Q     And that by way of that amended notice of lien Helix  
12 put APCO on notice that it was seeking at least \$2,145,116.73  
13 from APCO?

14          A     Yes.

15               MR. ZIMBELMAN: No other questions, Your Honor.

16               MR. TAYLOR: Do you know if the National Wood  
17 Products books are still up there? I don't believe they are.

18               May I approach, Your Honor?

19               THE COURT: Yes.

20                               CROSS-EXAMINATION

21       BY MR. TAYLOR:

22          Q     I'd like you to look at Exhibit 3172.

23          A     All right.

24          Q     This is Cabinetec's notice of lien. Do you see there  
25 where it has a total amount of lien, line 4, \$750,102?

1           A     Yes, sir.

2           Q     And do see there in line item 6 it indicates that the  
3     lien claimant was employed or that the APCO Construction and  
4     Camco Pacific Construction were the parties to whom this work  
5     was performed?

6           A     Yes.

7           Q     If you look at the second page, there is a return  
8     receipt from APCO Construction. Do you have any reason to  
9     believe that APCO Construction did not receive this notice of  
10    lien?

11          A     Say it again. I'm sorry.

12          Q     Do you have any reason to believe that APCO  
13    Construction did not believe -- receive this notice of lien?

14          A     No.

15          Q     I'd like you to look at the loose exhibit that's up  
16    here, the notice of lien that was filed by APCO. Earlier in  
17    your testimony you indicated -- in your first phase of  
18    testimony, you indicated you weren't sure where the  
19    \$20,782,659.95 came from that was in APCO's summary judgment.  
20    I'm asking just you've heard the testimony of Mary Jo Allen; is  
21    that correct?

22          A     Yes.

23          Q     Do you have any reason to believe that this  
24    \$20,782,659.95 in line item 4 does not include the retentions  
25    that had not been paid on the Manhattan West project through

1 APCO's tenure?

2 A I think I testified to this before that I have no  
3 clue. I don't know how that number was arrived at.

4 Q So you can't -- you can't exclude retentions as being  
5 part of that number?

6 A I didn't help prepare that.

7 MR. TAYLOR: Nothing further.

8 THE COURT: All right.

9 MR. JEFFERIES: No further questions.

10 THE COURT: All right. Sir, you may stand down.

11 THE WITNESS: Okay.

12 MR. JEFFERIES: Your Honor, I think that concludes  
13 our defensive portion of the case. Before I look to the other  
14 side to see if they have any rebuttal, I had a few housekeeping  
15 issues I'd like to get on the record regarding exhibits. I had  
16 a few documents that have been objected to. I think we've  
17 worked out a resolution to those objections such that  
18 Exhibit 231 and 314 will come into evidence.

19 MR. ZIMBELMAN: Yes, Your Honor. Helix agrees.

20 THE COURT: What were they? 231 and --

21 MR. JEFFERIES: 231 and 314.

22 THE COURT: All right.

23 (APCO Exhibit Nos. 231 and 314 admitted.)

24 MR. JEFFERIES: And then I've reached an agreement  
25 with Mr. Taylor that Exhibit 228 will come into the record for

1 the limited purpose of --

2 How are we phrasing it?

3 MR. TAYLOR: Can I say it?

4 Well, 228 is APCO's answer and affirmative defenses.  
5 I don't mind the Court having it for its consideration and  
6 convenience. I do believe that the content is hearsay, and to  
7 the extent it's offered for the truth of the content, I don't  
8 believe it would be properly admitted, but if the Court wants  
9 to see the claims and --

10 THE COURT: Well, counsel just said it was limited  
11 admission, right?

12 MR. TAYLOR: Right.

13 MR. JEFFERIES: Yes.

14 THE COURT: Okay.

15 (APCO's Exhibit No. 228 admitted.)

16 MR. JEFFERIES: So with that I think we rest our  
17 defensive portion of the case.

18 THE COURT: All right.

19 MR. ZIMBELMAN: Helix would like to call Andy Rivera  
20 briefly for rebuttal, very brief.

21 THE COURT: Okay. Do you have anything after that,  
22 or do you want to take a break now?

23 MR. ZIMBELMAN: Not for Helix, no.

24 THE COURT: Will anybody have anything else this  
25 afternoon? So just go ahead and do it then?

1 MR. TAYLOR: I believe we might be about to get  
2 argument of a motion, Your Honor.

3 MR. JEFFERIES: I'm not. We're good.

4 MR. TAYLOR: No. All right.

5 THE COURT: Okay. Let's go ahead then.

6 MR. ZIMBELMAN: May I call Mr. Rivera?

7 THE COURT: Yes.

8 THE CLERK: Raise your right hand.

9 THE COURT: He's been sworn.

10 You realize you are still under oath, sir?

11 THE WITNESS: I do.

12 THE COURT: And you can just state your name.

13 THE WITNESS: Andrew Rivera. A-n-d-r-e-w,  
14 R-i-v-e-r-a.

15 DIRECT EXAMINATION

16 BY MR. ZIMBELMAN:

17 Q Andy, I don't want to belabor the point because it  
18 looks like APCO is no longer contending that it's entitled to  
19 offsets arising from the percentage of completion of Helix's  
20 work, correct? However, you were here for the presentation of  
21 the video snippets that Mr. Benson testified about, weren't  
22 you?

23 A Yes.

24 Q Did you see anything in the videos of the status of  
25 the condition of the work at the time where Mr. Benson's

1 descriptions specific to Helix's work that you thought was  
2 incorrect?

3 A Yes.

4 Q Such as what?

5 A Statements were made regarding light fixtures not  
6 installed in I believe the third and fourth floor of Buildings  
7 8 and 9. Most of our work is in the rough stages. So if  
8 drywall is on the wall, our work is 90 percent complete. So  
9 the things that you saw not done electrically made sense to me.  
10 The corridors that he mentioned, said there was no  
11 light fixtures down the corridors. I think we had a light  
12 fixture every 20 feet, a smoke device every 30 feet. So if the  
13 corridor is 200-foot long, we might have a dozen devices. So  
14 to do corridor work is quick. There's not too much labor  
15 involved there.

16 A lot of our work is prefabricated. The electrical  
17 panel that he mentioned that would have to be tagged and  
18 numbered and terminated, if he would've removed the cardboard  
19 from the panel, he would've seen that that was all done. The  
20 panel he did show was a low-voltage panel, not an electrical  
21 panel. The low voltage was not our scope to terminate. So  
22 there -- our work was maybe more complete than what I even  
23 "built".

24 Q The low-voltage you said is somebody else's job,  
25 right?

1           A     Correct. Telephone, TV.

2           Q     With respect to the photographs that Mr. Benson  
3 showed and described later in the project when Camco was on  
4 site or after, did you have any -- did you hear anything that  
5 Mr. Benson described that you disagreed with?

6           A     Yes.

7           Q     Such as what?

8           A     Site lighting, pole lighting, landscape lighting,  
9 building lighting. We didn't bill for any of that. He  
10 mentioned life safety devices exterior buildings. There are no  
11 life safety devices on exterior buildings.

12                     The commercial buildings our contract was a vanilla  
13 shell, which is basically the distribution and an exit light  
14 over a door. So it's very minimal. So there would not be  
15 conduit wire in the two commercial shell buildings. He made a  
16 statement that the power was not ready on those two buildings  
17 because it would've been sitting on the pad. I can guarantee  
18 the distribution was there just waiting to go on the pad. He  
19 took a picture, and he didn't show the gear in the picture.

20           Q     Is there anything you observed in the videos taken at  
21 the time APCO left the project which causes you to doubt in any  
22 way your earlier testimony that the percentage of completion of  
23 work that you reported by way of the pay applications was in  
24 any way overstated?

25           A     No.



1           Q     Is there anything you saw by way of the presentation  
2 of the photographs taken later that caused you to doubt that  
3 the monies you billed while Camco was on the project were in  
4 any way overstated?

5           A     No.

6           MR. ZIMBELMAN: That's all I have, Your Honor.

7           THE COURT: All right.

8           MR. JEFFERIES: Just one quick question.

9                               CROSS-EXAMINATION

10          BY MR. JEFFERIES:

11           Q     You would agree, would you not, sir, that the video  
12 and photographs accurately depicted the status of the job on  
13 the dates that were referenced?

14           A     In those rooms, correct.

15           Q     Okay. And the bottom line is you're not contending  
16 that Helix was complete with its work, are you, as of those  
17 dates?

18           A     Nor were we billed complete for the work.

19           Q     Okay. Just so my -- I understand your point. Let me  
20 make sure my record's clear. You're not contending here that  
21 Helix was completed with its work under the APCO scope --

22           A     No.

23           Q     -- of the subcontract, are you?

24           A     No.

25           MR. JEFFERIES: Okay. Nothing further.

1 THE COURT: Okay. Thank you. Anything else?  
2 MR. TAYLOR: Nothing, Your Honor.  
3 MR. ZIMBELMAN: Thank you, Your Honor.  
4 THE COURT: Okay. You can stand down. Thanks.  
5 UNIDENTIFIED SPEAKER: Anybody else?  
6 MR. ZIMBELMAN: No. Helix has no other witnesses,  
7 Your Honor.  
8 THE COURT: Okay. So we're scheduled to resume in  
9 this case on Tuesday at 9:00 o'clock, right?  
10 MR. ZIMBELMAN: Correct. I hope to be able to  
11 present testimony from Heinaman Contract -- Contract Glazing on  
12 Tuesday, and that may be it.  
13 MR. TAYLOR: I have I believe on Tuesday I've got one  
14 project manager to testify.  
15 MR. ZIMBELMAN: So obviously I'll let you go first.  
16 MR. TAYLOR: Okay.  
17 MR. ZIMBELMAN: Complete your case.  
18 THE COURT: And these are Camco related?  
19 MR. ZIMBELMAN: And Camco --  
20 MR. TAYLOR: To some extent mine is APCO related. I  
21 don't think it's very controversial, and I understand Ms. Bacon  
22 may have been drafted to come be here for that again.  
23 THE COURT: When was Mr. Morris scheduled to be back?  
24 MR. ZIMBELMAN: He said Tuesday the 23rd.  
25 THE COURT: Okay. So that's what we'll do. We'll

1 resume at 9:00 a.m. on Tuesday the 23rd. Okay.

2 MR. TAYLOR: Yes, Your Honor.

3 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

4 THE COURT: Have a great weekend, everybody.

5 UNIDENTIFIED SPEAKER: You, too.

6 (Proceedings recessed for the evening 3:01 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

12

Dana L. Williams

13

Dana L. Williams  
Transcriber

14

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17

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24

25

  
CLERK OF THE COURT

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16 Attorneys for Helix Electric of Nevada, LLC d/b/a Helix Electric

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

11 ACCURACY GLASS & MIRROR  
12 COMPANY, INC., a Nevada corporation,

13 Plaintiff,

14 vs.

15 ASPHALT PRODUCTS CORP., a Nevada  
16 corporation; APCO CONSTRUCTION, a  
17 Nevada corporation; CAMCO PACIFIC  
18 CONSTRUCTION COMPANY, INC., a  
19 California corporation; GEMSTONE  
20 DEVELOPMENT WEST, INC., Nevada  
21 corporation; FIDELITY AND DEPOSIT  
22 COMPANY OF MARYLAND; SCOTT  
23 FINANCIAL CORPORATION, a North Dakota  
24 corporation; DOES I through X; ROE  
25 CORPORATIONS I through X; BOE  
26 BONDING COMPANIES I through X; LOE  
27 LENDERS I through X, inclusive,

28 Defendants.

22 HELIX ELECTRIC OF NEVADA, LLC, a  
23 Nevada limited-liability company, d/b/a HELIX  
24 ELECTRIC,

25 Plaintiff in Intervention,

26 vs.

27 ASPHALT PRODUCTS CORP., a Nevada  
28 corporation; APCO CONSTRUCTION, a  
Nevada corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

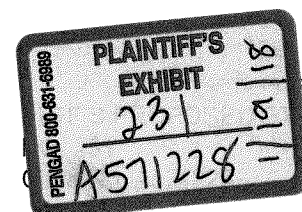
Consolidated with:

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

**HELIX ELECTRIC'S AMENDED  
STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

**EXEMPTION FROM ARBITRATION:  
Title to Real Estate**

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



X0231-0001  
HIBIT

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3333 E. SEReno AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
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1 DEVELOPMENT WEST, INC., Nevada  
2 corporation; FIDELITY AND DEPOSIT  
3 COMPANY OF MARYLAND; SCOTT  
4 FINANCIAL CORPORATION, a North Dakota  
5 corporation; DOES I through X; ROE  
6 CORPORATIONS I through X; BOE  
7 BONDING COMPANIES I through X; LOE  
8 LENDERS I through X, inclusive,

9 Defendants.

10  
11 HELIX ELECTRIC OF NEVADA, LLC d/b/a HELIX ELECTRIC ("Helix") by and  
12 through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting  
13 a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named  
14 defendants complains, avers and alleges as follows:

15 **THE PARTIES**

16 1. Helix is and was at all times relevant to this action a Nevada limited-liability  
17 company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding  
18 a Nevada State Contractor's license, which license is in good standing.

19 2. Helix is informed and believes and therefore alleges that Defendant GEMSTONE  
20 DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant  
21 to this action, the owner, reputed owner, or the person, individual and/or entity who claims an  
22 ownership interest in that certain real property portions thereof located in Clark County, Nevada  
23 and more particularly described as follows:

24  
25 Manhattan West Condominiums (Project)  
26 Spring Valley  
27 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
28 PT N2 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and  
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-  
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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- Helix Electric of NV\056 - APCO [Manhattan  
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1 appurtenances thereto, and surrounding space may be required for the convenient use and  
2 occupation thereof, upon which Owners caused or allowed to be constructed certain  
3 improvements (the "Property").

4 3. The whole of the Property is reasonably necessary for the convenient use and  
5 occupation of the improvements.

6 4. Helix is informed and believes and therefore alleges that Defendant APCO  
7 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this  
8 action doing business as a licensed contractor authorized to conduct business in Clark County,  
9 Nevada. APCO may also be known as Asphalt Products Company.

10 5. Helix is informed and believes and therefore alleges that Defendant CAMCO  
11 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was  
12 at all times relevant to this action doing business as a licensed contractor authorized to conduct  
13 business in Clark County, Nevada.

14 6. Helix is informed and believes and therefore alleges that Defendant, FIDELITY  
15 AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a  
16 bonding company licensed and qualified to do business as a surety in Nevada.

17 7. Helix is informed and believes and therefore alleges that Defendant Scott Financial  
18 Corporation ("SFC") is a North Dakota corporation with its principle place of business in  
19 Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,  
20 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust  
21 securing loans given to the Owner for, inter alia, development of the Property.

22 8. Helix does not know the true names of the individuals, corporations, partnerships  
23 and entities sued and identified in fictitious names as DOES I through X, ROE  
24 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE

1 LENDERS I through X. Helix alleges that such Defendants claim an interest in or to the  
2 Properties, and/or are responsible for damages suffered by Helix as more fully discussed under  
3 the claims for relief set forth below. Helix will request leave of this Honorable Court to amend  
4 this Amended Complaint to show the true names and capacities of each such fictitious Defendant  
5 when Helix discovers such information.  
6

7 **FIRST CAUSE OF ACTION**  
8 **(Breach of Contract against APCO)**

9 9. Helix repeats and realleges each and every allegation contained in the preceding  
10 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
11 follows:

12 10. On or about April 17, 2007 Helix entered into an Agreement with APCO (the  
13 "APCO Agreement") to provide certain electrical related work, materials and equipment (the  
14 "APCO Work") for the Property located in Clark County, Nevada.

15 11. Helix furnished the APCO Work for the benefit of and at the specific instance and  
16 request of APCO and/or Owner.

17 12. Pursuant to the APCO Agreement, Helix was to be paid an amount in excess of  
18 Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO  
19 Work.  
20

21 13. Helix furnished the APCO Work and has otherwise performed its duties and  
22 obligations as required by the APCO Agreement.

23 14. APCO has breached the APCO Agreement by, among other things:  
24 a. Failing and/or refusing to pay the monies owed to Helix for the APCO Work;  
25 b. Failing to adjust the APCO Agreement price to account for extra and/or  
26 changed work, as well as suspensions and delays of APCO Work caused or ordered by the  
27 Defendants and/or their representatives;  
28

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1 c. Failing to promptly recognize and grant time extensions to reflect additional  
2 time allowable under the APCO Agreement and permit related adjustments in scheduled  
3 performance;

4 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law;  
5 and  
6

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
8 with Helix's performance of the APCO Work.

9 15. Helix is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
10 APCO Work.

11 16. Helix has been required to engage the services of an attorney to collect the APCO  
12 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and  
13 interest therefore.  
14

15 **SECOND CAUSE OF ACTION**  
16 **(Breach of Contract against CPCC)**

17 17. Helix repeats and realleges each and every allegation contained in the preceding  
18 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
19 follows:

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

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

25 20. Pursuant to the CPCC Agreement, Helix was to be paid an amount in excess of  
26 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC  
27 Work.  
28

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1 21. Helix furnished the CPCC Work and has otherwise performed its duties and  
2 obligations as required by the CPCC Agreement.

3 22. CPCC has breached the CPCC Agreement by, among other things:

- 4 a. Failing and/or refusing to pay the monies owed to Helix for the CPCC Work;  
5  
6 b. Failing to adjust the CPCC Agreement price to account for extra and/or  
7 changed work, as well as suspensions and delays of CPCC Work caused or ordered by the  
8 Defendants and/or their representatives;  
9  
10 c. Failing to promptly recognize and grant time extensions to reflect additional  
11 time allowable under the CPCC Agreement and permit related adjustments in scheduled  
12 performance;  
13  
14 d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;  
15 and  
16 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
17 with Helix's performance of the CPCC Work.

18 23. Helix is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
19 CPCC Work.

20 24. Helix has been required to engage the services of an attorney to collect the CPCC  
21 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and  
22 interest therefore.

23 **THIRD CAUSE OF ACTION**  
24 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

25 25. Helix repeats and realleges each and every allegation contained in the preceding  
26 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
27 follows:  
28

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1           26.    There is a covenant of good faith and fair dealing implied in every agreement,  
2 including the APCO Agreement.

3           27.    APCO breached its duty to act in good faith by performing the APCO Agreement  
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Helix's  
5 justified expectations.  
6

7           28.    Due to the actions of APCO, Helix suffered damages in an amount to be  
8 determined at trial for which Helix is entitled to judgment plus interest.

9           29.    Helix has been required to engage the services of an attorney to collect the APCO  
10 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and  
11 interest therefore.

12                                   **FOURTH CAUSE OF ACTION**  
13                   **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

14           30.    Helix repeats and realleges each and every allegation contained in the preceding  
15 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
16 follows:

17           31.    There is a covenant of good faith and fair dealing implied in every agreement,  
18 including the CPCC Agreement.  
19

20           32.    CPCC breached its duty to act in good faith by performing the CPCC Agreement  
21 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Helix's  
22 justified expectations

23           33.    Due to the actions of CPCC, Helix suffered damages in an amount to be  
24 determined at trial for which Helix is entitled to judgment plus interest.  
25

26           34.    Helix has been required to engage the services of an attorney to collect the CPCC  
27 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and  
28 interest therefore.

**FIFTH CAUSE OF ACTION**  
**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

35. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

36. Helix furnished the APCO Work and the CPCC Work for the benefit of and at the specific instance and request of the Defendants.

37. As to APCO and CPCC, this cause of action is being pled in the alternative.

38. The Defendants accepted, used and enjoyed the benefit of the APCO Work and CPCC Work.

39. The Defendants knew or should have known that Helix expected to be paid for the APCO Work and CPCC Work.

40. Helix has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Helix.

43. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

**SIXTH CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien)**

44. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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1           45.    The provision of the Work was at the special instance and request of the  
2 Defendants for the Property.

3           46.    As provided at NRS 108.245 and common law, the Defendants had knowledge of  
4 Helix's delivery of the APCO Work and CPCC Work to the Property or Helix provided a Notice  
5 of Right to Lien.  
6

7           47.    Helix demanded payment of an amount in excess of Ten Thousand and no/100  
8 Dollars (\$10,000.00), which amount remains past due and owing.

9           48.    On or about January 12, 2009, Helix timely recorded a Notice of Lien in Book  
10 20090112 of the Official Records of Clark County, Nevada, as Instrument No. 0002864 (the  
11 "Original Lien").

12           49.    On or about January 29, 2009, Helix timely recorded an Amended Notice of Lien  
13 in Book 20090129 of the Official Records of Clark County, Nevada, as Instrument No. 0000237  
14 (the "Amended Lien").  
15

16           50.    The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

17           51.    The Liens were in writing and were recorded against the Property for the  
18 outstanding balance due to Helix in the amount of Three Million One Hundred Eighty-Six  
19 Thousand One Hundred Two and 67/100 Dollars (\$3,186,102.67).  
20

21           52.    The Liens were served upon the Owner and/or its authorized agents, as required by  
22 law.

23           53.    Helix is entitled to an award of reasonable attorney's fees, costs and interest on the  
24 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the  
25 Nevada Revised Statutes.

26    ///

27    ///

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**SEVENTH CAUSE OF ACTION**  
**(Claim of Priority)**

54. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

55. Helix is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

56. Helix is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Helix's statutory mechanics' lien thereby elevating Helix's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

57. Helix's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

58. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Work due and owing for the APCO Work and CPCC Work, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

**EIGHTH CAUSE OF ACTION**  
**(Claim Against Bond – CPCC Surety)**

59. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

60. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).

61. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

62. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

63. Helix furnished the CPCC Work as stated herein and has not been paid for the same. Helix therefore claims payment on said Bond.

64. The CPCC Surety is obligated to pay Helix the sums due.

65. Demand for the payment of the sums due to Helix has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Helix.

66. CPCC and the CPCC Surety owe Helix the penal sum of the Bond.

67. Helix was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to Helix and Helix is entitled to recover its reasonable attorney's fees and costs therefore.

**NINTH CAUSE OF ACTION**  
**(Violation of NRS 624 - APCO)**

68. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

69. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as APCO), to, among other things, timely pay their subcontractors (such as Helix), as provided in the in the Statute.

70. In violation of the Statute, APCO have failed and/or refused to timely pay Helix monies due and owing.

1 71. APCO's violation of the Statute constitutes negligence per se.

2 72. By reason of the foregoing, Helix is entitled to a judgment against APCO in the  
3 amount of the APCO Outstanding Balance.

4 73. Helix has been required to engage the services of an attorney to collect the APCO  
5 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and  
6 interests therefore.  
7

8 **TENTH CAUSE OF ACTION**  
9 **(Violation of NRS 624 - CPCC)**

10 74. Helix repeats and realleges each and every allegation contained in the preceding  
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 75. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors such as  
13 CPCC to, among other things, timely pay their subcontractors (such as Helix), as provided in the  
14 in the Statute.

15 76. In violation of the Statute, CPCC failed and/or refused to timely pay Helix monies  
16 due and owing.

17 77. CPCC's violation of the Statute constitutes negligence per se.

18 78. By reason of the foregoing, Helix is entitled to a judgment against CPCC in the  
19 amount of the CPCC Outstanding Balance  
20

21 79. Helix has been required to engage the services of an attorney to collect the CPCC  
22 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and  
23 interests therefore.  
24

25 ///

26 ///

27 ///

28 ///

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**ELEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment)**

80. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

83. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Helix's mechanics' lien.

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books



1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
2 Senior Debt Deed of Trust.

3 85. Helix is informed and believes and therefore alleges that construction on the  
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
5 law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt  
6 Deed of Trust.

7  
8 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
11 subordinate to all mechanics' liens, including Helix's.

12 87. A dispute has arisen, and an actual controversy now exists over the priority issue  
13 of Helix's mechanics' lien over other encumbrances on the property.

14 88. Helix is entitled to a court order declaring that its mechanics' lien has a superior  
15 lien position on the Property over any other lien or encumbrance created by or for the benefit of  
16 SFC or any other entity.

17 **WHEREFORE**, Helix prays that this Honorable Court:

18  
19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
20 the APCO Outstanding Balance and CPCC Outstanding Balance amounts;

21  
22 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
23 Helix's reasonable costs and attorney's fees incurred in the collection of the APCO Outstanding  
24 Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

25 3. Enter a judgment declaring that Helix has valid and enforceable mechanic's liens  
26 against the Property, with priority over all Defendants, in an amount of the APCO Outstanding  
27 Balance and CPCC Outstanding Balance;

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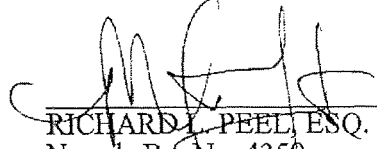
1           4.     Adjudge a lien upon the Property for the APCO Outstanding Balance and CPCC  
2 Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this  
3 Honorable Court enter an Order that the Property, and improvements, such as may be necessary,  
4 be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied  
5 to the payment of sums due Helix herein;  
6

7           5.     Enter a judgment declaring that Helix' mechanics' lien enjoys a position of  
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
9 entity; and

10          6.     For such other and further relief as this Honorable Court deems just and proper in  
11 the premises.

12           Dated this 22 day of June 2009.

13                   **PEEL BRIMLEY LLP**

14                     
15                   RICHARD L. PEEL, ESQ.

16                   Nevada Bar No. 4359

17                   MICHAEL T. GEBHART, ESQ.

18                   Nevada Bar No. 7718

19                   DALLIN T. WAYMENT, ESQ.

20                   Nevada Bar No. 10270

21                   3333 E. Serene Avenue, Suite 200

22                   Henderson, Nevada 89074-6571

23                   Telephone: (702) 990-7272

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25                   rpeel@peelbrimley.com

26                   mgebhart@peelbrimley.com

27                   dwayment@peelbrimley.com

28                   Attorneys for Helix Electric of Nevada, LLC

d/b/a Helix Electric

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*Alma S. Williams*

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CLERK OF THE COURT

**JA005801**

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**DECLARATION OF VICTOR FUCHS**

I, VICTOR FUCHS, declare as follows:

1. I am President of Helix Electric ("Helix") and make this declaration in support of Helix's Motion for Partial Summary Judgment against Gemstone Development West, Inc. ("Gemstone"). Helix is a construction company that specializes in electrical-related Work.

2. I am competent to testify as to the matters stated herein; and from my review of Helix's records and files kept in the normal course of business regarding Gemstone, I have personal knowledge as to each of the allegations made herein, unless otherwise stated.

3. Gemstone hired APCO Construction ("APCO") to act as general contractor in construction of a mixed use development project, which includes the "Manhattan Condominiums" located at 9205-9255 W. Russell Road, Las Vegas, Nevada and more particularly described as Assessor's Parcel Number 163-32-101-019 (the "Property").

4. On or around April 17, 2007, APCO contracted with Helix to perform certain work on the Property.

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

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

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

8. The sum total of all contracted work was \$13,968,257.26.

9. During the course of construction, Helix was asked to perform additional Work.

HELIX00984

APCO



HIBIT

**JA005802**

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See Change Orders and Work Orders attached hereto as **Exhibit 2**.

10. To date, Helix has been paid \$4,626,186.11 for Work performed. See copies of invoices, payment applications, and checks attached hereto as **Exhibit 3**.

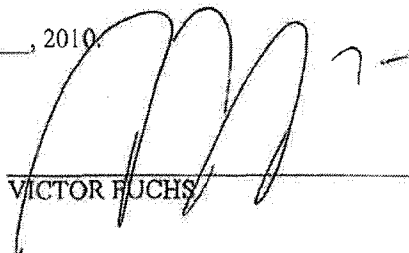
11. Despite the fact that Helix performed its work and requested payment as required under the Subcontract, Helix has not been fully paid for the work it performed on Gemstone's Property. After making all necessary adjustments, Helix is owed \$2,906,936.02 for work performed on Gemstone's Property.

12. Helix properly and timely served and/or recorded a Notice of Right to Lien, a 15-Day Notice of Right to Lien, and a Notice of Lien. Copies of Helix's Notices and Liens are attached hereto as **Exhibit 4**.

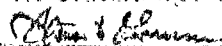
13. At no time did APCO, Camco, and/or Gemstone dispute Helix's provision and/or quality of work.

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

DATED this 5 day of May, 2010.

  
VICTOR FUCHS

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DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE



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CLERK OF THE COURT

**JA005804**

## JUNE, JULY & AUGUST 2008 BILLINGS NOT PAID TO APCO

	GROSS AMT	LESS RET.	NET AMT.
June Billing to Gemstone	778,669.89	77,866.99	700,802.90
July Billing to Gemstone	479,092.97	47,909.30	431,183.67
August Billing to Gemstone	297,833.53	29,783.35	268,050.18
Total for June, July & August Not Paid to APCO	1,555,596.39	155,559.64	1,400,036.75

APCO WAS NOT PAID A TOTAL OF \$1,400,0036.75 THAT WAS BILLED TO GEMSTONE FOR JUNE, JULY & AUGUST 2008

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*[Signature]*  
CLERK OF THE COURT

JA005805



**OVERPAYMENT MADE TO CABINETEC  
FROM APCO FOR MANHATTAN WEST PROJECT**

	Invoice Total
Cabinetec Bldg. 8 Invoice for Base Material Costs	70,836.00
Cabinetec Bldg. 9 Invoice for Base Material Costs	<u>72,540.00</u>
 Gross Billing Request for Base Materials Bldgs. 8 & 9	 143,376.00
Less 10% Retention (Per Contract)	<u>(14,337.60)</u>
 Balance for Base Materials for Bldgs. 8 & 9	 129,038.40
Less Pymt Received from Owner on Behalf of APCO	<u>(161,262.00)</u>
 Overpayment Made to Cabinetec	 (32,223.60)

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

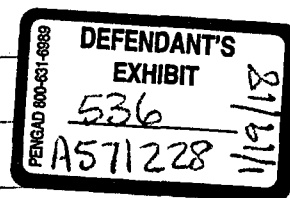
  
CLERK OF THE COURT  
**JA005806**





$$\begin{array}{r}
 60,325,901.89 \\
 + 9,168,116.32 \\
 \hline
 69,494,018.21 \\
 - 48,711,358.26 \\
 \hline
 20,782,659.95
 \end{array}$$

HELIX-TR-EX 536



CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE



CLERK OF THE COURT

**JA005808**

Fast Glass Proposed Exhibit

**NO. FG-TR-EX-804**

Case No. 08A571228

**JA005809**

December 22, 2008



Mr. Mitch Ratto  
Estimator  
Fast Glass  
1650 Greg Street  
Sparks, Nevada 89431

VIA FAX: (775) 331-6848

**RE: ManhattanWest Mixed Use Project (the "Project")**

Mr. Ratto:

Camco recently received the following email from Alex Edelstein of Gemstone Development West, Inc. ("Gemstone"), the owner of the Project:

*To all Manhattan West subcontractors and vendors:*

*Effective immediately, construction of the Manhattan West project is suspended. Over the weekend, Gemstone determined that its construction lenders do not expect to disperse further funds for construction. As a result, Gemstone does not have funds sufficient to pay out the October draw or other obligations.*

*We apologize earnestly to all the companies to whom we currently owe money. Gemstone procured sufficient funding to finish the Project, but was surprised by the revelation that APCO had generated approximately seventeen million dollars in cost overruns and defect remediation costs. In the current economic chaos, we were unable to find a solution for generating the extra money, and as a result funding has stopped.*

*Gemstone is currently working to secure new financing, but has no visibility as to when and how this will be accomplished.*

*-I am available to speak directly with you, face to face, if you so desire. Thank you for your cooperation during this process.*

*Respectfully*

*Alex Edelstein  
CEO  
Group Gemstone*

FG 00099

**CAMCO PACIFIC CONSTRUCTION COMPANY, INC.**

**Corporate Office**

17891 Cartwright Road, Suite 100 • Irvine • California • 92614  
TEL: (949) 251-1300 • FAX: (949) 251-1333

**Nevada Office**

2925 E. Patrick Lane, Suite G • Las Vegas • Nevada • 89120  
TEL: (702) 798-6611 • FAX: (702) 798-6655

[www.camcopacific.com](http://www.camcopacific.com)

Mr. Mitch Ratto  
Page Two

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

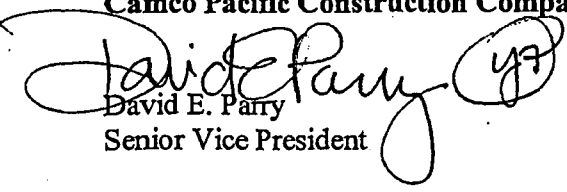
Please submit to Camco all amounts you believe are due and owing on your subcontract. We will review and advise you of any issues regarding any amounts you claim are owed. For all amounts that should properly be billed to Gemstone, Camco will forward to Gemstone such amounts for payment by Gemstone.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

Furthermore, we will keep you informed of any status regarding the funding for the Project as we become aware of such information.

Please contact me if you have any questions.

Sincerely,

**Camco Pacific Construction Company, Inc.**



David E. Parry  
Senior Vice President

FG 00100



December 22, 2008

Mr. Mitch Ratto  
Estimator  
Fast Glass  
1650 Grog Street  
Sparks, Nevada 89431

VIA FAX: (775) 331-6848

**RE: ManhattanWest Mixed Use Project (the "Project")**

Mr. Ratto:

Camco recently received the following email from Alex Edelstein of Gemstone Development West, Inc. ("Gemstone"), the owner of the Project:

*To all Manhattan West subcontractors and vendors:*

*Effective immediately, construction of the Manhattan West project is suspended. Over the weekend, Gemstone determined that its construction lenders do not expect to disperse further funds for construction. As a result, Gemstone does not have funds sufficient to pay out the October draw or other obligations.*

*We apologize earnestly to all the companies to whom we currently owe money. Gemstone procured sufficient funding to finish the Project, but was surprised by the revelation that APCO had generated approximately seventeen million dollars in cost overruns and defect remediation costs. In the current economic chaos, we were unable to find a solution for generating the extra money, and as a result funding has stopped.*

*Gemstone is currently working to secure new financing, but has no visibility as to when and how this will be accomplished.*

*-I am available to speak directly with you, face to face, if you so desire. Thank you for your cooperation during this process.*

*Respectfully*

*Alex Edelstein  
CEO  
Group Gemstone*

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FG 00101

Mr. Mitch Ratto  
Page Two

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

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

Furthermore, we will keep you informed of any status regarding the funding for the Project as we become aware of such information.

Please contact me if you have any questions.

Sincerely,

Camco Pacific Construction Company, Inc.



David E. Parry

Senior Vice President

FG 00102



FAX COVER SHEET

TO: Mitch Ratto DATE: 12/22/08

COMPANY: \_\_\_\_\_ FAX NO. 715) 331-6848

FROM: David Parry

REGARDING: Manhattan West

MESSAGE:

Please disregard previous letter,  
which was sent in error.

☐ Original Mailed

☐ For Your Information

☐ Please Respond A.S.A.P.

NUMBER OF PAGES INCLUDING COVER  
SHEET: \_\_\_\_\_

3

☐ Fax is from Project Site - Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
2925 E. Patrick Lane, Suite G \* Las Vegas \* Nevada \* 89120  
Phone: (702) 798-6611 \* Fax: (702) 798-6655

FG 00103



December 22, 2008



Mr. Mitch Ratto  
Fast Glass  
1650 Greg Street  
Sparks, Nevada 89431

VIA FAX: (775) 331-6848

Dear Mr. Ratto:

As you may have already become aware, it has come to Camco Pacific Construction Company, Inc.'s ("Camco") attention that funding for the completion of the Manhattan West project (the "Project") has been withdrawn. Camco recently received the following email from Alex Edelstein of Gemstone Development West, Inc. ("Gemstone"), the owner of the Project:

*To all Manhattan West subcontractors and vendors:*

*Effective immediately, construction of the Manhattan West project is suspended. Over the weekend, Gemstone determined that its construction lenders do not expect to disperse further funds for construction. As a result, Gemstone does not have funds sufficient to pay out the October draw or other obligations.*

*We apologize earnestly to all the companies to whom we currently owe money. Gemstone procured sufficient funding to finish the Project, but was surprised by the revelation that APCO had generated approximately seventeen million dollars in cost overruns and defect remediation costs. In the current economic chaos, we were unable to find a solution for generating the extra money, and as a result funding has stopped.*

*Gemstone is currently working to secure new financing, but has no visibility as to when and how this will be accomplished.*

*I am available to speak directly with you, face to face, if you so desire. Thank you for your cooperation during this process.*

*Respectfully*

*Alex Edelstein  
CEO  
Group Gemstone  
702.614.3193  
[www.groupgemstone.com](http://www.groupgemstone.com)*

FG 00104

**CAMCO PACIFIC CONSTRUCTION COMPANY, INC.****Corporate Office**

17891 Cartwright Road, Suite 100 • Irvine • California • 92614  
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[www.camcopacific.com](http://www.camcopacific.com)

Mr. Ratto  
Page Two

Based on the foregoing facts and information, Camco has no other alternative but to immediately terminate all subcontracts on the Project, including the agreement with your company.

With respect to any contract balance that you may claim to be due and owing, please be advised that you have acknowledged that Camco is not liable to you for payment unless and until Camco receives the corresponding payment from the Owner. Furthermore, you have also explicitly agreed to share the risk that the Owner may for any reason, including, but not limited to, insolvency or an alleged dispute, fail to make payments to Camco for all or a portion of the contract work.

Camco's contract with Gemstone is a cost plus agreement wherein the subcontractors and suppliers were paid directly by Gemstone and/or its agent, Nevada Constructions Services, based on the invoices and/or payment applications submitted through voucher control. As such, Camco has not received nor will it receive any payment on behalf any of the subcontractors and suppliers on the Project. Therefore, Camco has no contractual and/or statutory obligation to pay any claim that may be alleged by any of the subcontractors and/or suppliers on the Project.


While your company possesses statutory rights with respect to claims for payment against Gemstone and the Project under Nevada Revised Statutes Chapter 108, which rights and remedies have not been waived and/or infringed upon in any way by your agreement with Camco, any claim for payment alleged against Camco will result in additional fees, costs, and damages for which your company will ultimately be held liable under your agreement with Camco. Therefore, all claims for payment must be directed to and/or alleged against Gemstone and the Project.

Camco will be exercising it's lien rights and recording a notice of lien against the project in an attempt to secure Camco's right to payment.

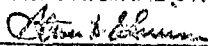
Please contact me if you any questions.

Sincerely,

Camco Pacific Construction Company, Inc.

  
David E. Parry  
Senior Vice President

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT  
JA005816

FG 00105

FG-TR-EX-804-007

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

---

**Supreme Court Case No. 77320**  
***Consolidated with 80508***

---

**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

**APCO CONSTRUCTION, INC., A NEVADA CORPORATION,**

Respondent.

---

**JOINT APPENDIX**  
**VOLUME 81**

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Eric B. Zimbelman, Esq. (9407)  
**PEEL BRIMLEY LLP**  
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*Attorneys for Respondent*

## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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

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

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

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

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



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

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

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

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

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

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<sup>1</sup> Filed January 31, 2018

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

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

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



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

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

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

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

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

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

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

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



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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

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

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<sup>4</sup> Filed January 31, 201883

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

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

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

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

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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
<b>06-15-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007190- JA007192</b>	<b>99</b>
<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
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<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

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

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

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

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

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

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

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



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

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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

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

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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

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

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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
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	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

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



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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

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

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

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

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

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

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



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

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

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

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

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<sup>5</sup> Filed January 31, 2018

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

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

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

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

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<sup>8</sup> Filed January 31, 2018

20081106-0003327

Fee: \$15.00

N/C Fee: \$0.00

11/06/2008

13:04:39

T20080270637

Requestor:

PARADIGM ATTORNEY SERVICE INC

Debbie Conway

KXC

Clark County Recorder Pgs: 2

APN: 163-32-101-019

After Recording Mail to:

APCO CONSTRUCTION  
c/o Gwen Rutar Mullins, Esq.  
Howard & Howard  
3800 Howard Hughes Pkwy., Ste. 1400  
Las Vegas, Nevada 89169

## NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$153,472,300.00<sup>1</sup>.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$14,597,570.26<sup>2</sup>.
3. The total amount of all payments received to date is: \$48,711,358.26.
4. The amount of the lien, after deducting all just credits and offsets, is: \$20,782,659.95.
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Gemstone Development West, Inc.

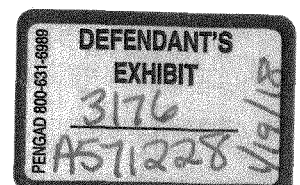
<sup>1</sup> The actual original contract amount performed and billed through APCO Construction's termination of contract (i.e. August 2008) is \$60,325,901.89.

<sup>2</sup> The actual additional or change order work, materials and equipment performed through APCO Construction's termination of contract (i.e. August 2008) is \$9,168,116.32.

#443400-v1

NWP-TR-EX03176-001

JA005817





7. A brief statement of the terms of payment of the lien claimant's contract is: Payments were to be made to the undersigned each month as work progressed.

8. A description of the property to be charged with the lien is: Manhattan West Mixed-Use Development Project, commonly referred to as 9205 W. Russell Road, Clark County, Nevada and described in the contract as being located on Assessors Parcel Numbers 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010 and 163-32-101-014 but listed by the Clark County Assessors Office as APN #163-32-101-019, and further described as PT NE4 NW4 SEC 32 21 60, SEC 32 TWP 21 RNG 60 and more fully described in that certain Grant Bargain Sale Deed recorded on February 7, 2008 in Book 20080207 as Instrument No. 01481 of the Official Records of Clark County Recorder.

APCO CONSTRUCTION

By:   
James M. Barker, Esq., General Counsel

STATE OF NEVADA       )  
                                  )ss.:  
COUNTY OF CLARK     )

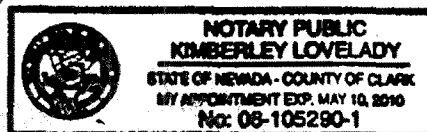
James M. Barker, Esq., the General Counsel of APCO CONSTRUCTION, being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.

  
James M. Barker, Esq., General Counsel

SUBSCRIBED AND SWORN to before me  
this 5th day of November 2008.

  
NOTARY PUBLIC in and for said  
County and State

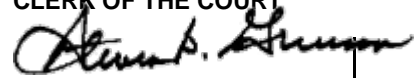


CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
REDACTED PORTIONS

2018 18. JAN.

*Debbie Conway*  
RECORDER

JA005819



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

APCO CONSTRUCTION, et al.	.	
	.	
Plaintiffs	.	CASE NO. 08-A-571228B
	.	
vs.	.	
	.	
GEMSTONE DEVELOPMENT WEST,	.	DEPT. NO. XIII
INC., et al.	.	
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 5**

WEDNESDAY, JANUARY 24, 2018

COURT RECORDER:

JENNIFER GEROLD  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

**JA005820**

APPEARANCES:

FOR THE PLAINTIFFS:

MARY BACON, ESQ.  
J. "RANDY" JEFFERIES, ESQ.  
STEVEN MORRIS, ESQ.  
ERIC ZIMBELMAN, ESQ.

FOR THE DEFENDANTS:

BRAD SLIGHTING, ESQ.  
JOHN TAYLOR, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 24, 2018, 9:04 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Please be seated. We're  
4 resuming non-jury trial with Apco Construction, et al., versus  
5 Gemstone Development West, Inc., et al. Please state  
6 appearances of counsel, identify parties, party  
7 representatives who are present today.

8 MR. JEFFERIES: Randy Jefferies and Mary Bacon with  
9 Spencer Payne on behalf of Apco, along with Mr. Pelan and Lisa  
10 Lynn of Apco.

11 MR. ZIMBELMAN: 'Morning, Your Honor. Eric  
12 Zimbelman on behalf of Helix, Fast Glass, Cactus Rose, SWPPC,  
13 and Heinaman.

14 MR. TAYLOR: John Taylor on behalf of National Wood  
15 Products.

16 MR. MORRIS: Good morning, Your Honor. Steven  
17 Morris on behalf of Camco Pacific Construction. And Mr. David  
18 Parry is present with me, the PMK for Camco.

19 MR. SLIGHTING: Good morning, Your Honor. Brad  
20 Slighting on behalf of United Subcontractors.

21 THE COURT: All right. As indicated, this is the  
22 resumption of a non-jury trial. Are counsel and the parties  
23 ready to proceed?

24 MR. JEFFERIES: We are, Your Honor.

25 THE COURT: All right. So where are we now?

1 MR. MORRIS: Your Honor, if we could take care of a  
2 housekeeping matter before we get started. There's something  
3 that demands the Court's attention with respect to the claims  
4 against Camco Pacific and Camco's defenses to those claims.  
5 It would behoove the Court to hear that before. I know that  
6 Mr. Slighting, who represents United Subcontractors has other  
7 places to go, but came here today to take care of some of  
8 these housekeeping matters. If I could address the Court with  
9 respect to those issues.

10 THE COURT: All right.

11 MR. MORRIS: Your Honor, it was Camco's  
12 understanding at the calendar call when this trial was set  
13 that trial would essentially be bifurcated, that the claims  
14 against Camco would proceed in my absence, and upon my return  
15 claims against Camco would be presented and then Camco  
16 obviously would have an opportunity to present its defenses to  
17 those claims.

18 It has come to my attention that some of the claims  
19 against Camco have already been presented in evidence in my  
20 absence. Obviously Camco has a problem with that. It has  
21 also come to my attention that United Subcontractors, who has  
22 claims against Camco, would need a two-week lead time in order  
23 to bring their witness in. So, again, I'm here today  
24 obviously because Mr. Parry has been called in Apco's case in  
25 chief, and they intend to call him today and take testimony

1 from him before they conclude with the defense of the claims  
2 against Apco. However, the claims against Camco, as I  
3 understand it, will proceed at this point. And the problem  
4 that we have is that in the days that are remaining, as the  
5 Court has indicated in the letter dated January 4, 2018, with  
6 this week being the conclusion, it's not looking like it's  
7 going to work.

8           Part of the problem we have is United Subcontractors  
9 is not prepared to proceed. Mr. Parry, who is Camco's person  
10 most knowledgeable, is no longer an employee for Camco.  
11 Again, he's here today in Apco's case in chief, but he will  
12 not be available this Friday. And so I believe what we're  
13 going to have to do, Your Honor, is kick the claims against  
14 Camco and Camco's defense of those claims out in order to  
15 accommodate the various parties and the issues that are before  
16 us at this time.

17           And I'll let Brad speak to United Subcontractors.

18           MR. SLIGHTING: I don't have a whole lot to add to  
19 that, Your Honor, other than to say it was my understanding,  
20 as well, that the claims against Camco would be bifurcated and  
21 that's -- United Subcontractors only has claims against Camco.  
22 Understanding that Mr. Morris is going to be out of the  
23 country, I understood that there would need to be some  
24 coordination upon his return. To compound that problem, we  
25 never received a copy of the Court's letter outlining -- until

1 yesterday, when Mr. Morris forwarded it to us, outlining the  
2 dates for trial. So when we knew he was back we contacted him  
3 to say, okay, hey, Steve, you know, how are we going to  
4 proceed. And that's kind of when this issue blew up a little  
5 bit. I started to prepare a motion to continue the trial  
6 yesterday, but had a conversation with Mr. Morris last night  
7 and we're hoping to be able to just do this orally. I can  
8 file something if you need me to, but my clients are in  
9 Minnesota. We need some time to get here.

10 THE COURT: I know that one witness was called  
11 relative to Camco I think it was last week with the  
12 understanding that that witness would be available to be  
13 examined by telephone, okay. There's -- problem with a case  
14 like this is the witness availability and everything else.  
15 And yesterday there was a witness who was called on the 23rd  
16 with the understanding that Mr. Morris was going to be back on  
17 the 22nd and would be available on the 23rd. And that witness  
18 had come from California to testify, and that's why I  
19 permitted him to testify, again, with the understanding that  
20 he would be available for cross-examination by telephone.

21 MR. MORRIS: Part of the problem I with that, Your  
22 Honor, is obviously, you know, me not having an opportunity to  
23 hear the direct examination. No transcripts have been offered  
24 to me of the direct examination.

25 THE COURT: Have you sought the transcripts?



1           MR. MORRIS: Well, you know, that's a hardship and a  
2 prejudice on Camco now to have to pay for these transcripts.

3           THE COURT: So everyone's supposed to just be --  
4 wait around until Camco's ready; is that what we're talking  
5 about here?

6           MR. MORRIS: No. Your Honor, I don't know that --

7           THE COURT: This is a case involving multiple  
8 parties, multiple witnesses having to come from all over the  
9 place.

10          MR. MORRIS: It is, Your Honor. And I recognize  
11 that and understand that. But it was my understanding, and I  
12 believe Brad's as well, that this was going to be a bifurcated  
13 case and we weren't going to have to worry about --

14          THE COURT: Again, the only witness who was called  
15 before the 22nd, as I recall, was the one who -- and made it  
16 clear would be available for cross-examination. Then  
17 yesterday was a day after you had indicated you were going to  
18 be back. So that was why I permitted that witness to testify  
19 yesterday. He had come from California. I mean, I'm not  
20 saying that we can't, you know, be flexible here. It's just  
21 that I want to make it clear for the record why certain things  
22 happened the way they did.

23          MR. MORRIS: And I recognize that, Your Honor. I  
24 understand that. And -- I do. Obviously I want to work with  
25 the Court. I know this case is old. But at the same time I

1 want to avoid prejudice to my client.

2 THE COURT: I understand.

3 MR. MORRIS: You know, they have a right to be  
4 present when claims are being presented against them. And in  
5 the event of witness unavailability and the Court trying to  
6 accommodate that and put that evidence on I think steps need  
7 to be taken to provide me with the transcript.

8 THE COURT: Okay.

9 MR. MORRIS: And so that's what I would ask for.

10 THE COURT: Well, but wait a minute now. I want to  
11 make sure I understand the steps that need to be taken. I'm  
12 not sure that the steps need to be taken by opposing parties  
13 to provide the transcript. I think that steps need to be  
14 taken by Camco to obtain the transcript.

15 MR. MORRIS: Well, and we can do that, Your Honor.  
16 But had this gone the way that -- again, my presumed  
17 understanding and United Subcontractors, as well, that no  
18 evidence was going to be presented during that time period  
19 against Camco. And I understand that things come up,  
20 witnesses have issues. We have them now, Your Honor, and  
21 that's why we're before you saying --

22 THE COURT: Okay.

23 MR. MORRIS: We're asking -- we're asking for this  
24 to be pushed out. If that's the case, then we will have some  
25 time to obtain those transcripts and take a look at that and

1 cross-examine these witnesses. But that's what we're asking,  
2 Your Honor, is to push that all.

3 THE COURT: Just a thought that occurs to me is the  
4 concept of possibly being able to listen to the -- these are  
5 recorded, okay --

6 MR. MORRIS: Yes.

7 THE COURT: -- and maybe make arrangements to do  
8 that.

9 MR. MORRIS: And that would be fine, Your Honor.

10 THE COURT: And in fact I was just handed a note by  
11 the recorder indicating, I quote, "Would burning CDs help,"  
12 end quote. Maybe that could happen.

13 MR. MORRIS: It would. It would, Your Honor. At  
14 least provide an opportunity to hear what was presented to  
15 prepare our defenses. I think Camco's entitled to that. I  
16 don't think I'm asking for anything that is amiss. But that's  
17 going to require time. And given, you know, what has  
18 transpired here within -- again, we're trying to work within  
19 the parameters that have been given us. But under the  
20 circumstances it doesn't look like we can get this taken care  
21 of by Friday, January 26th, given witness availability, given  
22 United Subcontractors issues that -- again, they didn't  
23 receive a copy of this letter when it was issued. They're  
24 going to need some time.

25 Again, with respect to Camco I believe Camco is

1 entitled to hear all of the claims against it before it puts  
2 on its case in chief and its defense. And with that being  
3 stated, Your Honor, I think we're going to need some  
4 additional time to do that. So that's what we're requesting.

5 THE COURT: When are the United Subcontractors  
6 witnesses available?

7 MR. SLIGHTING: Well, they just need -- they just  
8 need some -- they could be available I think as soon as two  
9 weeks.

10 THE COURT: Oh. I see.

11 MR. SLIGHTING: They just needed some time, some  
12 lead time so they're not coming out here to sit around. So if  
13 we could get a firm --

14 THE COURT: How much time do you think that's going  
15 to take to present --

16 MR. SLIGHTING: We just need I think one day.

17 THE COURT: And how much time do you think your case  
18 in chief's going to take?

19 MR. MORRIS: One day, Your Honor. Yeah. I don't  
20 think it's going to take all that long to present our case in  
21 chief. So --

22 THE COURT: Okay. Let me hear from opposing counsel  
23 now.

24 MR. MORRIS: Sure.

25 MR. ZIMBELMAN: Thank you, Your Honor.

1 Well, you know, the old adage, quit while you're  
2 ahead. I think you understand I have been as accommodating as  
3 I can be with Mr. Morris and understand that he was going to  
4 be out of the country. But we came here to calendar call, and  
5 I advised the Court that we had claims against -- some of the  
6 parties had claims against both Apco and Camco, including  
7 Helix, including National Wood. It makes no sense to have us  
8 come back and put on our case again. That makes zero sense.  
9 Mr. Morris can get the transcript, he can get the recording.

10 THE COURT: Well, you don't have to put your case on  
11 again, but the question is can he cross-examine your  
12 witnesses.

13 MR. ZIMBELMAN: Well, he can. But the question is  
14 when, all right. I mean, we had two weeks set out for trial,  
15 and we're quickly running out of the second week. And I don't  
16 want to be, you know, in March trying to close on a case that  
17 we put on our evidence on in January. You know, we feel like  
18 we've put our case forward.

19 Now, I want to remind the Court of one further  
20 thing. With respect to my client's claims against Camco there  
21 is an order in limine. And that order says that Camco cannot  
22 assert or offer evidence at trial that the work was defective,  
23 that it was not done in a workmanlike manner, that it was not  
24 done in compliance with the parties' agreement, or that any of  
25 my clients have breached their agreements with Camco other

1 than with respect to pay if paid, for which there's a summary  
2 judgment, and may not assert evidence at trial to dispute the  
3 amounts invoiced, paid, and that remain to be owed, as  
4 asserted by my clients in their respective requests for  
5 admissions, and, finally, they cannot assert or offer evidence  
6 at trial that any liens recorded by my clients were in any way  
7 defective or unperfected and are otherwise valid and  
8 enforceable. In other words, what are they going to prove?  
9 Their case should be pretty darn simple. Thank you.

10 THE COURT: Well, they're not -- you know, you say  
11 what are they going to prove. I mean, the question is what  
12 are they going to defend; right?

13 MR. ZIMBELMAN: Well, I understand. But those -- if  
14 you're not asserting those things because you're barred from  
15 doing so, what's your defense? I mean, that's really my  
16 point, what's your defense. They don't really have one.

17 MR. TAYLOR: Your Honor, the witness that was  
18 presented last week from National Wood is from Cabinetec, not  
19 even my client, not even -- I don't know that I could bring  
20 him back for cross-examination again, because he was quite --

21 THE COURT: Well, I didn't say you had to bring him  
22 back. I think the question was whether or not he'd be  
23 available for cross-examination by telephone.

24 MR. TAYLOR: Well, it's quite frustrating. Because  
25 when we were here at the calendar call we made it quite clear,

1 both Mr. Zimbelman and I, that Helix and National Wood had  
2 claims against both parties. If we were going to be waiting  
3 as to Camco to put on our case and have to wait till sometime  
4 in the future, February or March or whatever, why were we here  
5 last week at all? You know, why -- we made it quite clear  
6 then that we were going to put on our claims and they related  
7 both to Apco and Camco. And Camco at that calendar call made  
8 the election that they wouldn't show up for that part of the  
9 testimony. I think that testimony -- that part of the case  
10 should be done. We shouldn't have to --

11 THE COURT: Here are the minutes from the calendar  
12 call of January 2nd. I don't have the transcript of it, but  
13 let's see. "Court noted having trial down for 12 days, which  
14 Mr. Zimbelman would be a little light with the number of  
15 parties. Mr. Morris noted discussions had at the pretrial  
16 conference as to how the trial would proceed, with Apco going  
17 first and then Camco, advised the Court he would be out of the  
18 country January 8th through the 22nd, 2018. Mr. Zimbelman  
19 stated counsel discussed proceeding without Mr. Morris and the  
20 claims against Camco being set when he is available. Mr.  
21 Morris concurred, noting he did not have to be present for the  
22 Apco portion of the trial." Then it says "Colloquy." So I'm  
23 not sure what the colloquy was, okay. So --

24 MR. MORRIS: And, Your Honor, they're here because  
25 they have claims against Apco. It was clearly understood that

1 those were going to go forward. They say, well, why were we  
2 here; because they have claims against Apco, you know. So  
3 come on.

4 THE COURT: But I don't see anything here indicating  
5 that you wouldn't be available to proceed after the 22nd.

6 MR. MORRIS: After that point, that's correct, Your  
7 Honor. And that was understood. But, again, the  
8 understanding was after that point we would determine how that  
9 would happen. And what I'm saying is Camco has a right to  
10 hear all the claims against before it puts on its defense.  
11 And if they say we don't have any defenses, file your motion  
12 for summary judgment, you know. Come on. We absolutely have  
13 defenses.

14 THE COURT: When can you come in and --

15 MR. MORRIS: And valid defenses.

16 THE COURT: When can you listen to the CDs?

17 MR. MORRIS: As soon as they're provided, Your  
18 Honor. But we -- you know, we've got an issue with United  
19 Subcontractors now that say, you know, we can't get a witness  
20 in for another couple weeks. And we want to be able to hear  
21 all this evidence against --

22 THE COURT: Another couple of weeks? I didn't hear  
23 -- what's another couple of weeks?

24 MR. SLIGHTING: They need some lead time to make  
25 travel arrangements coming from Minnesota, that's all. I



1 mean, part of the problem was -- you know, my understanding at  
2 calendar call was because the claims against Apco would  
3 proceed first and not having got the letter outlining the  
4 exact dates for trial to begin with, what am I supposed to  
5 tell my client? I mean, I don't know how quickly the claims  
6 against Apco are going to proceed. Tell them to come and be  
7 here for a week and sit around? I mean, that was kind of the  
8 -- that was kind of my understanding, that there would have to  
9 be some coordination with --

10 THE COURT: Were you present at the calendar call?

11 MR. SLIGHTING: I was.

12 THE COURT: Okay.

13 MR. SLIGHTING: So, I mean, look. I mean, obviously  
14 we want to be flexible and work with the Court, too. But my  
15 clients have asked for at least a couple of weeks' lead time  
16 to be able to make arrangements --

17 THE COURT: Couple weeks is difficult, you know.  
18 It's difficult because I'm starting a jury trial, I think, on  
19 February 12th, and I think I've got some things before that,  
20 okay. Let me take a quick recess. Let me confer with my JEA.

21 MR. SLIGHTING: Okay. Thank you, Your Honor.

22 (Court recessed at 9:20 a.m., until 9:24 a.m.)

23 THE COURT: Okay. Back on the record. I have my  
24 JEA present now, Lorraine. The letter that was referenced  
25 earlier, one of January 4, went out to persons that she

1 understood were of record. And the last paragraph of the  
2 letter says, "If I have not included someone in this letter,  
3 please feel free to forward it to them. Should you have any  
4 questions, please do not hesitate to contact me."

5 Well, the letter -- I mean, with a case of this type  
6 and the number of counsel involved and everything else it can  
7 happen that something can slip through the cracks. But, in  
8 any event, the letter went out to let people know what days  
9 we'd be in session, okay.

10 Now, you indicated -- Counsel, state your name  
11 again.

12 MR. SLIGHTING: Brad Slighting.

13 THE COURT: And you're with which firm?

14 MR. SLIGHTING: Fabian VanCott.

15 THE COURT: Okay. All right. I can't set this out  
16 a couple of weeks, but I can set it out a few days -- or some  
17 days, I should say. I could give time next week, okay. I can  
18 give possibly some time the following week, all right. The  
19 problem is I may not be available after the 8th -- or the 8th  
20 or after. I have something that's going to perhaps take me  
21 out of town. I'm not sure.

22 Each of you has indicated, what, a day or so; right?

23 MR. MORRIS: Yeah. Correct, Your Honor. I think it  
24 could be -- in fact, they could probably go in the morning.  
25 Again, I don't know how many witnesses you're going to have.

1 Camco will likely have one witness in the defense of these  
2 claims, Your Honor. And so we could probably even finish it  
3 in a day.

4 THE COURT: And you're going to want to examine the  
5 witnesses who testified, or --

6 MR. MORRIS: Again, that depends. I mean, I haven't  
7 -- I haven't listened to what's been presented thus far, so  
8 that will be telling. So we'll get a copy of the recordings  
9 of that testimony, see what was said.

10 THE COURT: Keep in mind that this question also --  
11 this issue, I should say, also has to do with argument to the  
12 Court, you know. I mean, just putting that out, too. Right?

13 MR. MORRIS: That's correct, Your Honor.  
14 Understood. Yeah, understood.

15 THE COURT: So I think -- how much time was  
16 anticipated for argument in this case so far by counsel?

17 MR. JEFFERIES: Well, Your Honor, I was going to  
18 take the position that this was largely a legal issue, and I  
19 wanted to present it to you more fully in a post-hearing  
20 brief. I know --

21 THE COURT: Oh. I see. Yeah. Okay. Right. So,  
22 in other words, it wasn't necessarily going to take place  
23 right after, as I recall. We've had some discussions about  
24 this. It wasn't going to necessarily take place right after  
25 the evidence closed; right? Or was it?

1           MR. ZIMBELMAN: Well, I think what we discussed  
2 yesterday is that I would certainly like to present a oral  
3 closing followed by proposed findings of fact and conclusions  
4 of law --

5           THE COURT: Right. Right.

6           MR. ZIMBELMAN: -- that I know Your Honor prefers.  
7 And I think legal questions could be addressed, you know, in  
8 those proposed findings of fact, conclusions of law. If  
9 there's some distinct legal issue Counsel wants to brief, I  
10 mean, I think we should be offered an opportunity to respond  
11 to that. But I wasn't intending on doing something like that.

12           MR. JEFFERIES: And I'm fine making a few oral  
13 comments. Frankly, I was prepared to do it today, because I  
14 think with Mr. Parry and National Wood has one quick witness,  
15 I think the Apco portion of the case will be done today. Make  
16 a few closing comments subject to us doing a brief.

17           THE COURT: What do you think of that, Mr.  
18 Zimbelman, having argument on the Apco aspect and deferring  
19 argument --

20           MR. ZIMBELMAN: I guess that's fine, although  
21 obviously my claims certainly on behalf of Helix cover claims  
22 against both Apco and Camco. So --

23           THE COURT: Right.

24           MR. ZIMBELMAN: -- you know, if Counsel wants to  
25 hear my case against his client before he puts on his --

1 that's fine.

2 MR. MORRIS: I'm going to hear it anyway.

3 MR. ZIMBELMAN: I'm prepared to go. I'll do it  
4 today, absolutely.

5 MR. MORRIS: I'm going to hear it anyway. He has an  
6 obligation to put his case out before I put my defenses on  
7 anyway. So, you know, they're not going to be prejudiced at  
8 all. I would be prejudiced.

9 THE COURT: No. I'm talking about the argument  
10 relative to Apco. In other words, I could hear all that and  
11 then defer argument on Camco until after the Camco evidence is  
12 all complete.

13 MR. ZIMBELMAN: Well, that's fine. And I think that  
14 the -- you know, I can set aside part of my discussion about  
15 the claims against Camco. Obviously part of it has to come  
16 in, but part of it I can set aside.

17 THE COURT: Okay. Well, what I'm thinking is --

18 MR. ZIMBELMAN: And, Your Honor, I probably need 45  
19 minutes to do my closing. I've got a fair amount to cover.

20 THE COURT: Okay. Well, that's no problem. I'm  
21 just trying to figure out when I'm going to set the time for  
22 the remainder of the proceedings regarding Camco. Do you have  
23 your calendars?

24 MR. MORRIS: I do, Your Honor.

25 MR. SLIGHTING: I got a message that end of next

1 week would be better for my client.

2 THE COURT: I think I have a settlement conference  
3 on Friday, the 2nd. Yeah. I have two settlement conferences,  
4 Business Court settlement conferences on Friday, the 2nd.

5 MR. SLIGHTING: I understand this message to mean  
6 that, you know, Thursday next week would be fine.

7 THE COURT: I have motions in the morning, okay. So  
8 I'd only have half day on Thursday. So I'm looking at  
9 Wednesday, the 31st. Or I guess I could do Tuesday, the 6th  
10 of February.

11 MR. SLIGHTING: Can we do the 6th?

12 THE COURT: Let me ask counsel if they're available.

13 MR. JEFFERIES: I don't intend to be here, Your  
14 Honor.

15 THE COURT: Right. Okay. Mr. Zimbelman, Tuesday,  
16 the 6th?

17 MR. TAYLOR: Both of those dates would work for  
18 National Wood, Your Honor. I do want to put out there there's  
19 scheduling problems for people coming from out of state. I  
20 would think that those witnesses could testify orally --  
21 telephonically.

22 THE COURT: Well, you can confer about that.

23 Mr. Zimbelman, the 6th of February?

24 MR. ZIMBELMAN: Yeah. I was just looking at my  
25 calendar. I think both those dates work for me. The question

1 that I have is in the interim if Mr. Morris is intending to  
2 cross-examine any of the witnesses I've put on already against  
3 his client, I'd sure like to know that. If we could --

4 THE COURT: Yes. You're going to have to confer  
5 with Mr. Zimbelman and make arrangements.

6 MR. MORRIS: I will, Your Honor. But it's really  
7 going to take an opportunity to get a copy --

8 THE COURT: Right. You're going to have to confer  
9 with counsel, as well, National Wood, about --

10 MR. ZIMBELMAN: Is it possible to tentatively  
11 reserve a date, you know, next week, so I can at least alert  
12 my witnesses? Maybe we could reserve the 31st for that  
13 purpose, and the 6th to come back for them to put on their  
14 cases.

15 THE COURT: Oh. Okay.

16 MR. MORRIS: That would be fine, Your Honor.

17 THE COURT: All right. Did you hear? Mr. Morris  
18 said that would be fine.

19 MR. MORRIS: That'll give me some time to get the  
20 recordings --

21 THE COURT: Right.

22 MR. MORRIS: -- go through it to make a  
23 determination --

24 THE COURT: Right. Is that going to be enough time  
25 to get the recordings?

1 THE COURT RECORDER: I can burn it today.

2 THE COURT: Okay. You'll have to identify the  
3 witnesses and make sure that the recorder understands what you  
4 need.

5 MR. ZIMBELMAN: And my only caveat, Your Honor, is I  
6 haven't talked to any of my witnesses, so I need to confirm  
7 availability.

8 THE COURT: Right. So the 31st will be tentative  
9 relative to the cross-examination of witnesses who were called  
10 regarding Camco; right?

11 MR. MORRIS: Correct.

12 THE COURT: And the 31st will be the date that we  
13 will present, you know, the additional evidence; correct?

14 MR. MORRIS: Against Camco.

15 THE COURT: I'm sorry. Against Camco. Did I say --  
16 what did I say?

17 MR. MORRIS: The 6th.

18 MR. ZIMBELMAN: And will that be the date that Camco  
19 is --

20 THE COURT: The 31st is the tentative date for  
21 cross-examination of those witnesses, and the 6th is the date  
22 for the rest of it, right --

23 MR. MORRIS: Rest of it.

24 THE COURT: -- relative to Camco.

25 MR. ZIMBELMAN: Including Camco's witnesses.



1 THE COURT: Right. Okay?

2 MR. MORRIS: Understood.

3 THE COURT: Does that work?

4 MR. ZIMBELMAN: Sooner you can tell me, Steve, is --

5 MR. MORRIS: Well, I've got to get a hold of this

6 stuff.

7 MR. ZIMBELMAN: I understand.

8 THE COURT: Okay. Thank you very much.

9 And you'll get your people from Minnesota. They can

10 get out of the snow.

11 MR. MORRIS: Thank you, Your Honor.

12 THE COURT: Okay. All right. Now let's go ahead.

13 MR. JEFFERIES: Your Honor, as part of our defense

14 of the case and to kind of close out the story line we wanted

15 to call Mr. David Parry.

16 DAVID PARRY, PLAINTIFFS' WITNESS, SWORN

17 THE CLERK: Please state your name for the record

18 and spell both your first and your last name, please.

19 THE WITNESS: David Parry, D-A-V-I-D P-A-R-R-Y.

20 DIRECT EXAMINATION

21 BY MR. JEFFERIES:

22 Q Good morning, Mr. Parry.

23 THE COURT: And I just want to make sure I

24 understand the configuration here. Is this -- this is what,

25 rebuttal, or what is --

1 MR. JEFFERIES: Well, candidly, per the agreement of  
2 parties I was going to just get my evidence from Mr. Parry  
3 when --

4 THE COURT: Right.

5 MR. JEFFERIES: -- Mr. Morris was going to present  
6 his case. So --

7 THE COURT: All right.

8 MR. JEFFERIES: He's not prepared to go beyond what  
9 I was otherwise going to do, so he was kind enough to make him  
10 available to me today.

11 THE COURT: Oh. I see. Okay. Very well. Thank  
12 you.

13 BY MR. JEFFERIES:

14 Q Mr. Parry, are you familiar with the Manhattan West  
15 project for Gemstone?

16 A Yes.

17 Q Okay. Throughout this examination I may just  
18 shorthandedly say "the project." Please understand that's  
19 what I'm referring to; okay?

20 A Okay.

21 Q What was your role on the project?

22 A I was a project manager for Camco at the time.

23 Q And how long did you serve in that capacity?

24 A Roughly three or four months.

25 Q Okay. How did Camco come to get involved with the

1 project?

2 A We were asked to look at the project by Gemstone.  
3 We had a few meetings with them, and it eventually led to our  
4 becoming involved with the project.

5 Q Okay. Had -- how long had you been with Camco prior  
6 to the project?

7 A Twenty-plus years.

8 Q Okay. Had Camco worked with Gemstone before?

9 A No.

10 Q Do you know how Gemstone and Camco were introduced  
11 to one another relative to the project?

12 A A painting subcontractor made an introduction.

13 Q Had Camco done work with Helix before the project?

14 A Yes.

15 Q Had Camco done work with Cabinetec before the  
16 project?

17 A I don't recall.

18 Q Did you play a role in negotiating the agreement  
19 between Camco and Gemstone?

20 A I worked with counsel to come up with an agreement,  
21 yes.

22 Q Okay. Sir, would you look at Exhibit 162. This  
23 should be in a notebook behind you, unless it's --

24 MR. JEFFERIES: May I approach, Your Honor?

25 THE COURT: Yes. Uh-huh.

1 BY MR. JEFFERIES:

2 Q Do you recognize Exhibit 162 as being the contract  
3 between Camco and Gemstone?

4 A Yes.

5 Q Okay. And what I would like to do is direct your  
6 attention to paragraph 2.01 of Exhibit 162.

7 A Okay.

8 Q And I've put it up on the Elmo. I've highlighted a  
9 sentence that says, "General contractor shall engage the  
10 third-party service providers listed on Exhibit C, the  
11 existing third-party service providers." Do you see that?

12 A Yes.

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

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

17 Q Okay. So you were assuming the subcontracts that  
18 Apco had issued on the project; is that right?

19 A Yes.

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

23 A Yes.

24 Q As part of the contracting process with Gemstone did  
25 Camco representatives and Gemstone representatives tour and

1 examine the state of the project after Apco left?

2 A Yes.

3 Q Okay. And if you would, sir, look at Exhibit E.  
4 Exhibit E to Exhibit 162, does this document represent the  
5 efforts by Camco and Gemstone to summarize the then current  
6 state of completion on the project?

7 A Yes.

8 Q Would it be a fair statement that Exhibit E  
9 represents probably the best estimate of completion of the  
10 individual items at the point that Camco took over?

11 A Yes.

12 Q Did Camco ever have any contact or involvement with  
13 Apco on the project?

14 A I don't believe we did.

15 Q From and after the point that Camco signed  
16 Exhibit 162, which for the record has an effective date of  
17 August 25, 2008, did Apco provide any direction, scheduling  
18 for the project to Camco or the subcontractors?

19 A I don't believe they did to Camco. I don't know  
20 what they did with subcontractors.

21 Q Based on your personal involvement, you didn't see  
22 Apco providing any direction to --

23 A No. That's correct.

24 Q Okay. Sir, would you look at Exhibit 218 -- well,  
25 strike that. I want to -- before I get there -- Would you

1 look at Exhibit 172. Are you there, sir?

2 A I am.

3 Q Do you recognize this document?

4 A Yes.

5 Q The cover page of Exhibit 172 is a transmittal from  
6 Gemstone to Helix dated September 4, 2008. Do you see that?

7 A Yes.

8 Q And it is transmitting -- well, first there's a  
9 cover letter, and then there is a ratification and amendment  
10 of subcontractor agreement for Helix Electric. Do you see  
11 that?

12 A Yes.

13 Q Okay. Would it be accurate to state that it was --  
14 through Exhibit 172 it was Camco's intention and understanding  
15 that it was replacing Apco as the contractor in the Apco Helix  
16 subcontract?

17 MR. ZIMBELMAN: I'll object, Your Honor. He's  
18 asking the witness to speculate about what Helix's state of  
19 mind was.

20 THE COURT: He can state his understanding.

21 THE WITNESS: Can you repeat the question.

22 BY MR. JEFFERIES:

23 Q Yes, sir. Through Exhibit 172 was it Camco's intent  
24 and understanding that it was to replace Apco with regard to  
25 the Apco Helix subcontract?

1           A     Yes.

2           Q     Now, this document that has been produced to us in  
3     discovery admittedly has not been signed by the parties.  
4     Showing you page 4 of the document. My question to you is did  
5     Exhibit 172 form the basis of Camco's agreement in allowing  
6     Helix to proceed on the project?

7           A     I believe so. I think attorneys would have to  
8     determine the legality, but that's my understanding.

9           Q     Okay. Now I'd like to look at Exhibit 218. Do you  
10    have Exhibit 218 in front of you?

11          A     Yes.

12          Q     Okay. I'm going to put the first page of the  
13    document up. I don't know what I did, but --

14                         (Pause in the proceedings)

15    BY MR. JEFFERIES:

16          Q     Sir, showing the first page of Exhibit 218, is this  
17    the first pay application that Camco submitted to Gemstone on  
18    the project?

19          A     I believe so.

20          Q     You'll note that it is for the period through  
21    August 31, 2008. Do you see that?

22          A     Yes.

23          Q     Okay. And that would suggest to you this is the  
24    first one?

25          A     That's correct.

1           Q     Now, I have highlighted the retainage line item of  
2 \$5,337,982.74. Do you see that?

3           A     Yes.

4           Q     What did that figure represent?

5           A     The retainage that was being withheld on the  
6 project.

7           Q     And who was the retainage being withheld by?

8           A     Gemstone, the owner.

9           Q     And would it be accurate to state that as of  
10 August 31, 2008, that \$5.3 million retention, that wasn't in  
11 fact the Apco retainage account that was being carried  
12 forward?

13          A     I don't understand your question.

14          Q     Okay. You certainly had done work sufficient to  
15 have retention of 5.3 million as of August 31, 2008; correct?

16          A     Yeah, that's correct.

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

20          A     That's correct.

21          Q     And would it be fair to say -- I don't want to take  
22 the time to go through all of the financial information in  
23 Exhibit 218, but would it be accurate to state that as you  
24 took over the project for Apco you used the same schedule of  
25 values that Apco had been using in its pay applications?



1           A     Yes.

2           Q     And you used the same cost coding that Apco had been  
3 using on the project?

4           A     Yes.

5           Q     And you essentially inherited through your  
6 agreements -- through your agreement with Gemstone you are  
7 inheriting and agreeing to perform essentially the same  
8 technical scope of work that Apco had committed to; correct?

9           A     As far as the construction, yes. As far as  
10 management, we were more of a construction manager at this  
11 point than a general contractor.

12          Q     And I respect that. Your business deal was slightly  
13 different than Apco's.

14          A     That's correct.

15          Q     But in terms of plans, specifications, physical  
16 scope of work, it pretty much remained the same as Apco's;  
17 correct?

18          A     Yes.

19          Q     If you would, sir, go to page 10 within Exhibit 218.  
20 And I believe it is page 15 of 15 within the pay application.  
21 And I want to direct your attention -- I've put up on the Elmo  
22 someone columns that I have highlighted.

23          A     Okay.

24          Q     If I could, the first is the total -- it says "Total  
25 Contract Phase 1." Do you see that?

1           A     Yes.

2           Q     And then if I move over, there's a percentage of  
3 74 percent.     What does that represent?

4           A     Percentage complete of work for this phase.

5           Q     Okay. That's the overall estimated state of  
6 completion for Phase 1; correct?

7           A     Yes.

8           Q     Okay. And then the next number is five million,  
9 seven hundred and forty-five thousand -- I can't read the  
10 other -- the dollars beyond that. What does that represent?

11          A     Total retainage withheld.

12          Q     Sir, would you look at Exhibit 220. You know what?  
13 I think we can just try from the Elmo, if I can -- if you  
14 can't read it, we can get you a hard copy.

15                 Would you agree, sir, that Exhibit 220 appears to be  
16 your second pay application now through September 30, 2008?

17          A     Yes.

18          Q     And now -- strike that. This was submitted on  
19 October 17, 2008; correct?

20          A     What date? I'm sorry. Yes.

21          Q     And you've now accounted for the project retention  
22 to be \$6,004,763; is that correct?

23          A     Yes.

24          Q     Now, would this billing have included work that  
25 Helix and Cabinetec had performed during the month of

1 September 2008?

2 A I'd have to see the rest of the schedule.

3 Q Okay. Maybe -- I would ask you to get the hard  
4 copy, then. I was -- you're going to be more proficient with  
5 the form than I am and the attached documents. So if you  
6 would look at it, sir, with this question in mind. Did this  
7 pay application include amounts that Helix had billed to Camco  
8 for completed work in September 2008?

9 Sir, maybe I can short-circuit this. Will you keep  
10 your finger where you're at just in case this doesn't work.

11 A Sure.

12 Q And go to page 149 within Exhibit 220.

13 A What's the Bate stamp on it?

14 Q 397. 397.

15 A Okay.

16 Q Does this --

17 A I can see that Helix has billed on the project.

18 Q Okay.

19 A I was looking for Cabinet's after that.

20 Q Oh. Okay. Well, I think my question -- I phrased  
21 it just a little bit -- Exhibit 220 does include billings from  
22 Helix to Camco that you're passing through to Gemstone for  
23 work that Helix completed in September 2008; correct?

24 A Yes.

25 Q Okay. Then, follow on, does your second billing

1 include any amounts for Cabinetec for completed work?

2 A Give me a moment and I'll finish finding it.

3 Unless I missed it, I don't see a billing from  
4 Cabinetec in this time period.

5 Q So that my record is clear, would you go back to  
6 Exhibit 218. Did Cabinetec bill Camco for any work during the  
7 August 2008 time period?

8 A There's approximately \$6,000 attributed to a finish  
9 carpentry budget, and I don't know if that would be the  
10 Cabinet people or not without digging deeper. This says  
11 "Budget" next to it, so I don't know.

12 Q Okay. Let me do it this way. From your review of  
13 that exhibit you can't see where Cabinetec billed Camco for  
14 completed work in August 2008; correct?

15 A That's correct.

16 Q Okay. For sake of time I'm not going to go through  
17 your next two or three applications. For our record, they're  
18 in evidence as Exhibits 221 and 222.

19 What I would like to do next, sir, is fast forward  
20 to what I believe is your final billing. If you'd look at  
21 Exhibit 163. Can you identify this for me, please.

22 A Yes.

23 Q What is it?

24 A Application 15 through 12/31.

25 Q Okay. Would this represent Camco's final billing on

1 the project before Gemstone shut the project down?

2 A I don't recall if this was a final one or not.

3 Q Okay. If it goes through the period December 31,  
4 2008, would that have been the final period that you were on  
5 the project?

6 A I don't recall.

7 Q Okay. As of January 26, 2009, you are showing a  
8 total retention of approximately 7.6 million. Do you see  
9 that?

10 A 7.4.

11 Q Okay. 7.4 for Phase 1?

12 A Yes.

13 Q Okay. Did Camco ever bill Gemstone --

14 A I'm sorry. It is 7.6. Forgive me.

15 Q When you add in the grading?

16 A The sitework, yeah.

17 Q Did -- speaking of which, did Camco ever do any work  
18 under the grading contract?

19 A I don't -- I don't recall if we did. I believe the  
20 grading was completed by the time we started.

21 Q Okay. Did Camco ever bill Gemstone for retainage?

22 A I don't recall.

23 Q Okay. In Exhibit 163 this is a billing for just the  
24 work in the field, it's not a billing for retention; correct?

25 A That is correct.

1 Q Was Camco ever paid retention by Gemstone?

2 A No.

3 Q Sir, if you would go to the last page of

4 Exhibit 163. What does your estimate -- strike that. Based

5 on the exhibit what was your estimate of the then current

6 state of completion as of January 26, 2009?

7 A 86 percent.

8 Q Did Camco ever finish the project?

9 A No.

10 Q Were the buildings on the project ever powered up,

11 if that's the right word?

12 A I don't recall.

13 Q I want to just show you for point of reference and

14 to refresh your memory if you'd look at Exhibit 165.

15 A Yes.

16 Q This is your notice to Gemstone that you're

17 terminating Camco -- I'm paraphrasing -- terminating Camco

18 agreements related to the project; is that right?

19 A Yes.

20 Q And if you just look at the date, December 19, 2008,

21 going back to my prior question, would Exhibit 163 represent

22 Camco's final work on the project?

23 A Yes.

24 Q Sir, in order for Apco -- excuse me. In order for

25 Camco to proceed with its work on the project, opposed to

1 Apco, the permits for the project had to be reissued in  
2 Camco's name; correct?

3 A I don't recall if that happened or not.

4 Q In order for the Camco to get inspections on the  
5 project wouldn't you need to have permits in Camco's name?

6 A I believe we would.

7 Q One final --

8 MR. JEFFERIES: Well, I think that's all I have,  
9 Your Honor.

10 Thank you, sir.

11 MR. ZIMBELMAN: Could we take a 5-minute biologic  
12 break here?

13 THE COURT: Sure. Let's make it 10. We'll resume  
14 at 10:20.

15 (Court recessed at 10:10 a.m., until 10:21 a.m.)

16 THE COURT: Please be seated. We're back on the  
17 record. You may resume.

18 MR. ZIMBELMAN: May I proceed with cross-  
19 examination, Your Honor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. ZIMBELMAN:

23 Q Good morning again, Mr. Parry. And, as you know,  
24 I'm Eric Zimbelman. I represent Helix and a number of other  
25 subcontractors. We met at your deposition. Do you recall

1 that?

2 A Yes.

3 Q I've put some binders out in front of you more or  
4 less the order I'm going to proceed in, so the one that I  
5 opened to Exhibit 40, could you take a look at that, please.

6 A Yes.

7 Q And I'm putting the first page of Exhibit 40 up on  
8 the screen, on the Elmo. Do you recognize this  
9 correspondence?

10 A Yes.

11 Q This was a letter that came that you prepared, isn't  
12 it?

13 A Yes.

14 Q To the subcontractors, to include a note from Alex  
15 Edelstein of Gemstone; isn't that right?

16 A Yes.

17 Q Advising, "Mr. Edelstein advises that Gemstone  
18 procured sufficient funding to finish the project but was  
19 surprised by the revelation that Apco had generated  
20 approximately \$17 million in cost overruns and defect  
21 remediation costs."

22 Are you familiar or are you aware of any cost  
23 overruns or defect remediation costs that Mr. Edelstein is  
24 discussing in this correspondence?

25 A Not really. That was before my time.



1 Q Okay. And did Mr. Edelstein ever talk to you about  
2 those costs?

3 A Not --

4 MR. JEFFERIES: Objection. Hearsay.

5 THE WITNESS: Not specifically.

6 THE COURT: The question was whether or not he ever  
7 talked with them. That's a fact, not as to what the content  
8 of the conversation was, but whether he had a conversation.

9 MR. ZIMBELMAN: Gemstone's a party.

10 THE WITNESS: Ask it again and I'll answer again.

11 BY MR. ZIMBELMAN:

12 Q Sure. Did Mr. Edelstein describe any of the  
13 remediation costs to you that he's referring to in this  
14 letter?

15 THE COURT: Without stating what any description  
16 was, just whether or not he did describe.

17 THE WITNESS: I don't recall.

18 BY MR. ZIMBELMAN:

19 Q Did Gemstone ever ask Camco to perform any work with  
20 respect to remediation?

21 A We did discuss remediation.

22 Q With respect to remediation of conditions that  
23 existed prior to Camco; correct?

24 A Yes. Yes.

25 Q Looking at page 2 of your letter, this is you

1 writing now; correct?

2 A Yes.

3 Q And you're writing the subs, and you say that,  
4 "Based on the foregoing facts and information Camco has no  
5 alternative but to immediately terminate all subcontracts on  
6 the project, including the agreement with your company." And  
7 you sent this to every subcontractor, didn't you?

8 A I believe so.

9 Q And this was Camco's way of terminating those  
10 subcontracts; correct?

11 A Yes.

12 Q And two more paragraphs down you write, "Camco's  
13 contract with Gemstone is a cost-plus agreement wherein the  
14 subcontractors and suppliers were paid directly by Gemstone  
15 and/or its agent, Nevada Construction Services."

16 Was that a true statement when you wrote it?

17 A Yes.

18 Q And further you wrote, "As such, Camco has not  
19 received nor will it receive any payment on behalf any of the  
20 subcontractors and suppliers on the project."

21 Is that also a true statement?

22 A Yes.

23 Q "Therefore --" and this was your legal position.  
24 "Therefore, Camco has no contractual and/or statutory duty --  
25 excuse me -- obligation to pay any claim that may be alleged

1 by any of the subcontractors and/or suppliers on the project."

2 That's what you advised the subcontractors of;

3 correct?

4 A Yes.

5 Q And finally, in the last paragraph you wrote that,  
6 "Any claim for payment alleged against Camco," presumably by a  
7 subcontractor, "will result in additional fees, costs, and  
8 damages for which your company will ultimately be held liable  
9 under your agreement with Camco."

10 That was also your -- that's essentially a threat to  
11 the subcontractors, isn't it, not to sue Camco?

12 A I don't know if it'd be considered a threat or not.

13 Q It's advice to the subcontractors not to sue Camco.  
14 Would you agree with that?

15 A Yes.

16 Q Now, with respect to the cost-plus agreement you  
17 know the difference between a cost-plus agreement and a lump-  
18 sum contract, don't you?

19 A Yes.

20 Q You know the difference between a cost-plus  
21 agreement and a guaranteed maximum price agreement, don't you?

22 A Yes.

23 Q Explain to the Court very briefly what the  
24 difference is between a cost-plus agreement and a guaranteed  
25 maximum price agreement.

1           A     A guaranteed maximum price is typically a cost-plus  
2 agreement with a maximum cap on the amount.

3           Q     And does the contractor have risks in that process  
4 with respect to the guaranteed maximum price?

5           A     They have the risk of they have to stay under the  
6 guaranteed maximum price.

7           Q     Whereas with a cost-plus agreement you're just  
8 getting a fee on top of whatever costs are incurred on the  
9 project; isn't that true?

10          A     That's correct.

11          Q     You don't have any risk with respect to the -- an  
12 overage of the overall contract price; isn't that correct?

13          A     Yes.

14          Q     Could you please open up the next notebook, and it  
15 should be Exhibit 138. Do you recognize this letter from Brad  
16 Scott of Scott Financial Corporation?

17          A     Yes.

18          Q     Mr. Scott was the -- at least the representative of  
19 the lender Scott Financial Corporation; correct?

20          A     He was -- yes.

21          Q     And in fact he calls himself the president of the  
22 company; right?

23          A     Yes.

24          Q     Did he prepare this at Camco's request?

25          A     I don't recall. We had some conversation with him.

1 I don't recall if we requested that he write this or not.

2 Q And he's writing to the Nevada State Contractors  
3 Board; correct?

4 A Yes.

5 Q And that is because there were claims that had been  
6 made to the Contractors Board by various subcontractors  
7 against Camco; isn't that true?

8 A Yes.

9 Q And this letter is written essentially in support of  
10 Camco --

11 A Correct.

12 Q -- with respect to the Board action; correct?

13 A Right.

14 Q Looking at the second page of the letter, Mr. Scott  
15 writes that, "Apco was terminated by Gemstone for causes in  
16 August 2008. After such termination Gemstone engaged Camco to  
17 serve as general contractor for the project. When this  
18 substitution occurred the payment process used during the Apco  
19 engagement was continued with some alterations."

20 Would you agree with that statement?

21 A I don't know what the payment process was with Apco,  
22 so I can't answer that.

23 Q Okay. That's a fair answer.

24 Then in the next paragraph Mr. Scott wrote that,  
25 "Apco had agreed to deliver the project for a guaranteed

1 maximum price and received a fee for its services based on a  
2 percentage of each payment application."

3 Do you know if that's true or not?

4 A I believe that was true, yes.

5 Q "Consequently, Apco assumed responsibility for the  
6 financial aspects of the project and the proper engagement and  
7 payment of the trade contractors."

8 Do you know if that's a true statement?

9 A Yes.

10 Q In the next paragraph Mr. Scott writes, "In  
11 contrast, Camco was paid a basic fee of \$100,000 per month  
12 plus certain expenses to serve as the general contractor on  
13 the project."

14 That's true, isn't it?

15 A Yes.

16 Q And then your agreement -- the agreement with  
17 Gemstone was in fact to pay Camco a flat fee of \$100,000 per  
18 month to be reduced at some point to 30,000 per month;  
19 correct?

20 A I believe that's correct.

21 Q And when Camco requested payment from Gemstone there  
22 was no retention for the money that was owed to Camco, was  
23 there?

24 A I don't remember if that's the case or not.

25 Q Could you turn to Exhibit Number 162, and

1 specifically page 10 of Exhibit 162, lower right-hand corner.

2 A Okay.

3 Q The Apco tracking number Exhibit 162-0010. You see  
4 that?

5 A Uh-huh.

6 Q All right. And looking at -- this is -- by the way,  
7 I'll show you the first page of the document. This is the  
8 amended and restated Manhattan West General Construction  
9 agreement that you looked the with Mr. Jefferies, right, that  
10 you testified was in fact the agreement between Gemstone and  
11 Camco; right?

12 A Yes.

13 Q And in paragraph 7.08(a) -- excuse me, 7.03(a), "No  
14 retention shall be withheld from the general contractor fee or  
15 the general contractor expenses"; correct?

16 A Okay. Yeah.

17 Q So you would agree with me that there is no  
18 retention of moneys to be paid to Camco; correct?

19 A To be withheld.

20 Q To be withheld.

21 A Yes.

22 Q Thank you. In contrast to subcontractors who  
23 continue to have retention withheld; correct?

24 A Yes.

25 Q Now, back to the letter that you wrote to the

1 subcontractors on -- excuse me, that Mr. Scott wrote to the  
2 Contractors Board in April of 2008. He writes that, "In  
3 contrast to Apco, Camco was paid a basic fee of \$100,000 a  
4 month. Further, because of this shifting responsibility, all  
5 decisions and communications for payment authorization and  
6 processing were handled by Gemstone without Camco's ongoing  
7 involvement."

8 Is that a true statement?

9 A Yes.

10 Q And further that, "Camco's only role in the payment  
11 process was to complete and submit each initial payment  
12 application."

13 Is that also a true statement?

14 A It is.

15 Q "As a result, NCS --"

16 Nevada Construction Services; correct?

17 A Yes.

18 Q "-- NCS never sent payment for trade contractors to  
19 Camco. Instead, such payments were sent directly to the trade  
20 contractors."

21 Is that also correct?

22 A It is correct.

23 Q Moving on to the next page of Mr. Scott's letter, he  
24 writes that, "In addition, Camco had no physical control over  
25 the funds, and all disbursements were completed between NCS



1 and the trade contractors directly."

2 Is that a true statement?

3 A Yes.

4 Q And a couple lines further, "Second, the terms of  
5 the engagement contracts between Camco and each trade  
6 contractor and Camco and Gemstone described the relationship."

7 Do you believe that to be accurate?

8 A I'd have to look at it. I don't recall.

9 Q All right. I'd ask you to look at Exhibit  
10 Number 510 in the -- it should be the next binder over.

11 A Are we done with this binder?

12 Q Yes. At least for the moment.

13 You know what, I apologize. Could you please go  
14 back to Exhibit 162, which is the Camco-Gemstone agreement.  
15 And open to page 3.

16 A Okay.

17 Q And I'm putting up the part I want to talk about on  
18 the Elmo. Under Article 3, "Express Exclusions from the  
19 Services." These are items that the general contractor,  
20 Camco, is not responsible for; correct?

21 A Yes.

22 Q And among those -- under 3.01 it says, "The  
23 following items shall be the sole responsibility of  
24 developer." Developer's Gemstone; correct?

25 A Yes.

1           Q     "And developer is required to perform these  
2 responsibilities," and so forth.

3           A     Okay.

4           Q     Going on to the next page, under (a), "Developer  
5 shall be responsible for and shall coordinate all construction  
6 means, methods, techniques, sequences, procedures necessary  
7 for or related to the work."

8                     Would you agree with me that those are tasks  
9 generally performed or usually performed by a general  
10 contractor?

11          A     Yes.

12          Q     And so in this case Camco is not performing those  
13 tasks; correct?

14          A     That's correct.

15          Q     And going on to Section 3.02 o in the next page,  
16 page 5 --

17          A     Okay.

18          Q     -- under "Express Exclusions. The following items  
19 are expressly excluded from the services," in other words, the  
20 services that Camco is to perform; correct?

21          A     Yes.

22          Q     Among those are, "General contractor," that's Camco,  
23 "shall not be responsible for any of the costs, fees, or  
24 expenses related to the work"; correct?

25          A     Correct.

1           Q     That was in fact the way it worked between Gemstone  
2 and Camco; correct?

3           A     Yes.

4           Q     "Furthermore, the general contractor under (c) shall  
5 not be responsible to developer for acts, errors, omissions of  
6 developer or any third-party service provider." In other  
7 words, subcontractors; correct?

8           A     I don't recall if third-party service provider would  
9 be a subcontractor or not.

10          Q     Oh. I thought that you looked at that with Mr.  
11 Jefferies. Let's go back to page 2 of the document --

12          A     Okay.

13          Q     -- under Section 2.01.

14          A     Okay.

15          Q     All right. And it states that, "General contractor  
16 shall engage licensed and insured contractors, subcontractors,  
17 sub subcontractors, vendors, and suppliers, known as the  
18 third-party service providers." You would agree with me that  
19 included subcontractors; right?

20          A     Yes. Uh-huh.

21          Q     So back to 3.02(c), Camco's not responsible for  
22 errors and omissions of any subcontractors; correct?

23          A     Yes.

24          Q     They expressly excluded Camco from that obligation  
25 or potential liability; correct?

1           A     Yes.

2           Q     Also excluded any potential liability to Camco with  
3 respect to the performance of any third-party service  
4 providers. And that's in (e); correct?

5           A     Right.

6           Q     So if a subcontractor doesn't perform, it's not your  
7 problem; correct?

8           A     Yes.

9           Q     In addition, under (f), not responsible for any cost  
10 overruns by a third-party service provider.

11          A     Right.

12          Q     Also not responsible for any delays by a third-party  
13 service provider; right?

14          A     Right.

15          Q     So essentially you were there to lend your license,  
16 weren't you?

17          A     We also had supervision there.

18          Q     And some supervision responsibilities.

19          A     We did have supervision.

20          Q     Okay. Except that you didn't have responsibility  
21 for ensuring that subcontractors performed; right?

22          A     We were assuming subcontractors. Many of them we  
23 didn't know, and we made that a condition of going out and  
24 doing the work for them.

25          Q     Well, let's look at the items that you were

1 responsible for. Article 2 starts at the bottom of page 1 of  
2 the agreement. Do you see that right where my finger is  
3 pointing?

4 A Uh-huh.

5 Q And continues on to the next page. "In exchange for  
6 the consideration to be provided to general contractor  
7 pursuant to Article 6 general contractor shall provide the  
8 services set forth below defined as "the services"; right?

9 A Right.

10 Q And so the items that are in 2.01 through 2.04 and  
11 then on the next page 2.05 through 2.09, those are all the  
12 things that Camco contracted to perform --

13 A Yes.

14 Q -- in exchange for its \$100,000 per month; right?

15 A Yes.

16 Q Can you show me in Sections 2.01 through 2.09 where  
17 it says you're responsible for supervision?

18 A 2.03.

19 Q 2.03?

20 A Right.

21 Q Specifically where are you referring to?

22 A "Contractor shall employ at its own expense any  
23 staff that is not primarily located at the project site.  
24 General contractor shall employ at developer's expense the  
25 personnel identified on Exhibit D at the rates stated

1   therein."   And then it continues talking about employing  
2   additional personnel at developer's expense and remove them,  
3   et cetera.   So that personnel is for the supervision of the  
4   project.   2.03.

5           Q     I don't see the word "supervision."

6           A     It may not be there.   I don't see word  
7   "supervision."

8           Q     It isn't there, is it?

9           A     No.

10          Q     Okay.   Now, in any event, you would agree with me  
11   that some of the terms and conditions we looked at in the  
12   Gemstone-Camco agreement, the exclusions, the fact that you're  
13   essentially a cost-plus contractor, right, the fact that you  
14   don't have responsibility for the performance of the  
15   subcontractors, the fact that the developer and not Camco is  
16   responsible for means and methods and scheduling and so forth;  
17   right?   All those things you'd agree with me are terms of the  
18   engagement contract between Camco and Gemstone described in  
19   the relationship as Mr. Scott wrote in his letter on page 3  
20   that we looked at earlier.   "Second, the terms of the  
21   engagement contracts between Camco and each trade contractor  
22   and Camco and Gemstone describe this relationship"; right?

23          A     I believe so.

24          Q     That fairly describes what Mr. Scott had put into  
25   his letter, doesn't it?

1           A     I believe that does, yes.

2           Q     Now please turn to Exhibit 510, and specifically

3 page 6.

4           A     What's the Bate stamp number?

5           Q     Yeah. Lower left-hand corner it should say 510-006.

6           A     Okay. Thank you. Do you recognize this as a form,

7 the form contract Camco used with its subcontractors for an

8 agreement on the Manhattan West project?

9           A     Yes.

10          Q     And this one lists Helix Electric of Nevada as a

11 subcontractor; right?

12          A     Yes.

13          Q     That document was, however, never signed; correct?

14          A     I believe that's correct.

15          Q     And you testified earlier about a ratification

16 agreement that also was not signed with Helix; correct?

17          A     I don't recall talking about that today.

18          Q     I believe Mr. --

19          A     Was that the ratification agreement we talked about

20 earlier?

21          Q     Yeah.

22          A     Okay.

23          Q     With Mr. Jefferies.

24          A     Okay.

25          Q     It also was not signed; right?

1           A     I believe that's correct.

2           Q     Mr. Jefferies asked you if that was the document  
3 that in your mind formed the basis of the agreement between  
4 Camco and Helix, the ratification agreement; right?

5           A     Yes.

6           Q     What about the subcontract agreement? Did that form  
7 the basis of the contract between Camco and Helix in your  
8 mind?

9           A     I really don't -- I don't know.

10          Q     Well, they're two different agreements, aren't they?

11          A     They are.

12          Q     Does one agreement control over the other?

13          A     If you were to ask me, I would have believed sitting  
14 where I am today that we sent one and not both. So I'm a  
15 little bit confused about the two right now.

16          Q     Okay. That's fair. If you look at the lower right-  
17 hand corner of page 6 of Exhibit 510, do you see the Helix  
18 Bate stamp?

19          A     Yes.

20          Q     That indicates that it came from Helix's production.

21          A     Okay.

22          Q     If you will look further onto page 104 of  
23 Exhibit 510, you'll see that same document that you looked  
24 at with are Jefferies as Exhibit 172. In this case it's  
25 Exhibit 510 at 104, the ratification agreement with respect to



1 Camco and Helix. I'll wait for you.

2 A Let me see the bottom, please.

3 Q Sure.

4 A Because that will help me.

5 Q Page 104 on the left-hand corner.

6 A Right.

7 Q That appears to be the same document you looked at

8 as Exhibit 172 with Mr. Jefferies, isn't it?

9 A Yes.

10 Q And in this case the reason I'm showing you this

11 version is this also has the Helix Bate stamp number. Do you

12 see that?

13 A Yes, I do.

14 Q So it indicates that Helix received both of these

15 documents, doesn't it?

16 A Yes.

17 Q Neither of which was entered into; correct?

18 A I don't believe so.

19 Q Now -- and I'm going to back to Exhibit -- excuse

20 me, page -- well, back to construction agreement --

21 A Yes.

22 Q -- document.

23 A Uh-huh.

24 Q And I specifically want to go to page 110 -- excuse

25 me, page 10 of the exhibit, in the lower right-hand corner

1 510-010.

2 A Okay.

3 Q All right. And that is Section 2, "Contract Price  
4 and Payment." You see that language? And I've highlighted  
5 what I --

6 A Yes.

7 Q -- specifically want to talk about here. I'm going  
8 to try to blow it up for you a little bit.

9 Under (a), "Contract Price," this document states,  
10 "For and in consideration of subcontractor's agreement to  
11 perform all of the terms and conditions of this agreement and  
12 in consideration of the faithful and full performance by  
13 subcontractor contractor shall pay, subject to increases and  
14 decreases as provided in this agreement, the contract price";  
15 right?

16 A Yes.

17 Q That indicates that Camco, who is the contractor, is  
18 going to pay the subcontractor, doesn't it?

19 A Yes.

20 Q Now, furthermore, a little bit further down you can  
21 see my highlighting. It starts "Subcontractor."  
22 "Subcontractor under this agreement shall be made [sic] by  
23 contractor solely out of funds actually received by contractor  
24 from owner"; correct?

25 A Yes.

1 Q And in fact Camco never received funds directly from  
2 the owner, did it?

3 A No.

4 Q The section (a) goes on to say, "Upon receipt of  
5 such payment from owner contractor will then promptly pay  
6 subcontractor." That never happened, either, did it?

7 A No.

8 Q I'd like you also now to look at Exhibit 801, the  
9 next binder over or the furthest binder over from you,  
10 specifically turning to page 7 of Exhibit 801. Again, lower  
11 left-hand corner, 801-007.

12 A Okay.

13 Q Now, this is that same Camco agreement between  
14 contractor and subcontractor with Fast Glass as the  
15 subcontractor; correct?

16 A Yes.

17 Q And I only brought selected portions with me. Would  
18 you just scroll through that binder, please, and find the  
19 signature part and tell me if this in fact a document that was  
20 entered into between Fast Glass and Camco.

21 A It was executed by Fast Glass, but not by Camco.

22 Q Okay. Do you know if there is a signed version by  
23 Camco?

24 A I don't know.

25 Q Is it Camco's position that there isn't, that this

1 agreement wasn't entered into between Fast Glass and Camco, or  
2 do you know?

3 A Where I'm sitting right now I don't know.

4 Q Okay. But this is the form document as we looked at  
5 earlier with regard to the unsigned version for Helix;  
6 correct?

7 A I'd have to review the two.

8 Q Okay.

9 A If you would like me to do that, I could.

10 Q I would. I want you to confirm that they are  
11 substantively identical.

12 A What was the exhibit?

13 Q Sure. The Helix one is in 510, starting at page 6.

14 A Thank you. Yes.

15 Q Appears to be the same; correct?

16 A Yes.

17 Q And in fact this is an agreement you entered into  
18 with a number of different subcontractors, isn't it?

19 A At least these two.

20 Q At least these two.

21 A Well, I say that. I don't know if Helix's was  
22 replaced by the ratification at a later date and that's why it  
23 wasn't signed.

24 Q All right. So -- and we're almost done here.

25 A Thank you.

1           Q     I want to just go back to the Brad Scott letter,  
2 Exhibit 138, and specifically to page 3. And you're welcome  
3 to look at the screen, as well, where Mr. Scott writes,  
4 "Second, the terms of the engagement contracts between Camco  
5 and each trade contractor and Camco and Gemstone describe this  
6 relationship."

7                     Having looked at the subcontract agreement both for  
8 Helix and for Fast Glass, neither of those documents -- that  
9 agreement, that construction agreement, Camco's subcontract  
10 agreement, it doesn't say that Gemstone is going to make all  
11 the payments through NCS to the subcontractors, does it?

12          A     No.

13          Q     It says that Camco is going to do so, doesn't it?

14          A     With money paid from Gemstone.

15          Q     It doesn't say that Camco's only role in the payment  
16 process was to compile and submit each initial payment  
17 application, does it?

18          A     Where do you want me to look?

19          Q     Sure. On the prior page, page 2.

20          A     I'm looking on the screen.

21          Q     Yeah. I'm sorry. I didn't have that out there. My  
22 mistake. Right where my finger is.

23          A     Oh. That's correct. That's correct.

24          Q     Camco's only role. That's correct; right?

25          A     Uh-huh. Yes.

1           Q     Now, looking at the ratification agreement, the  
2 unsigned one with Helix, that's Exhibit 510 at page 104, had  
3 that been entered into under (b) of the recitals it states,  
4 "Subcontractor and Camco desire to acknowledge, ratify, and  
5 agree to the terms of the subcontract agreement --"

6                     And the subcontract agreement is the agreement  
7 between Apco and the subcontractor; right?

8           A     Yes.

9           Q     It says, agree to ratify -- excuse me, "acknowledge,  
10 ratify, and agree to the terms of the subcontract agreement  
11 whereby Camco will replace Apco as the contractor under the  
12 subcontract agreement, but subject to the terms of this  
13 ratification. All other terms and conditions of the  
14 subcontract agreement will remain in full force and effect."

15                     You're familiar with the Apco subcontract agreement?

16          A     I was at the time.

17          Q     You were not at the time?

18          A     I was at the time. I don't recall what it is today.

19          Q     Okay. And did the Apco subcontract agreement, to  
20 your recollection, advise subcontractors that payments would  
21 not be coming through Apco?

22          A     I don't believe so.

23          Q     In fact it advised the payments would be coming  
24 through Apco; correct?

25          A     I believe that's the way it was.

1           Q     And I think there's plenty of testimony already  
2 before the Court that that is indeed how it occurred at least  
3 until the very end of Apco reign.

4           A     Not to my knowledge. I'm not aware of that.

5           Q     Okay. Well, the Court has heard other testimony.  
6 I just want to move on.

7           A     Okay.

8           Q     The point I want to discuss with you, sir, is there  
9 anything in the ratification and amendment document that  
10 advises the subcontractors that Camco's stepping into the  
11 shoes of Apco on its subcontract agreement, that Camco would  
12 not be receiving payments from Gemstone and then passing those  
13 payments on to the subcontractors?

14          A     I don't believe so, no.

15               MR. ZIMBELMAN: Thank you. No other questions, Your  
16 Honor.

17               THE WITNESS: Another one?

18               MR. TAYLOR: Your Honor, may I approach the witness?

19               THE COURT: Yes.

20                       CROSS-EXAMINATION

21 BY MR. TAYLOR:

22           Q     Mr. Parry, I'm John Taylor, and I represent National  
23 Wood Products, which is advancing claims of Cabinetec in this  
24 matter.

25                       On the direct examination from Apco's counsel you

1 were asked did certain pay applications include Cabinetec.  
2 And there was -- you looked to see if Cabinetec was listed on  
3 some pay applications. Do you recall there being any delay in  
4 Cabinetec's work being included in pay applications?

5 A No.

6 Q I'd like you to look at Exhibit 3142, which is from  
7 an email. This indicates that -- who's Yvonne Ferrin?

8 A She was one of our accountants.

9 Q As I look at this email it appears that Yvonne  
10 Ferrin has asked some questions, and the responses to those  
11 questions are interlineated. For example, she says in the  
12 opening unnumbered paragraph she says, "The following subs'  
13 billings are either not included or only partially included  
14 until I have the following questions answered." Do you see  
15 that?

16 A Uh-huh. I do.

17 Q And then Question Number 1 says, "PRS is billing for  
18 change orders not issued in the amount of \$57,057, no  
19 descriptions. Do you want to issue a change order, or exclude  
20 from billing?" And then it looks like someone has answered  
21 that in a different font, "Not approved." Is that the way  
22 this appears to you?

23 A Let me look at it for a moment.

24 Q Okay.

25 A Yes, I believe that's correct.



1           Q     Okay. And then Number 11 relates to Cabinetec.  
2     Number 11 in this October 28th, 2008, email she says,  
3     "Cabinetec \$1,075,500. No contract. What lines on billing  
4     should they be included in?" Do you see that?

5           A     Yes.

6           Q     Then the answer is, "Contract is over to your office  
7     today." And then it gives two lines items for the Cabinetec  
8     billing should be included; correct?

9           A     Yes.

10          Q     Do you recall that by October 28, 2008, the  
11     Cabinetec contract had not yet been finalized?

12          A     According to this, it had not been.

13          Q     I'd like you to turn to Exhibit 3164. And I'll  
14     start with the page -- well, the first page is a fax cover  
15     sheet; right?

16          A     It looks like a transmittal cover sheet.

17          Q     Okay. From Yvonne Ferrin to Laura Cox at Cabinetec;  
18     correct?

19          A     Yes.

20          Q     And it was sent on December 8; right?

21          A     Yes.

22          Q     And the remark in the middle of the page says,  
23     "Enclosed please find one fully executed copy of --" I believe  
24     the word should be "your subcontract agreement for the above-  
25     referenced project." You see that?

1           A     I do.

2           Q     Okay. And then following that is a copy of a  
3 ratification and amendment of subcontract agreement; correct?

4           A     Yes.

5           Q     And on the page that's numbered in the bottom left  
6 corner as 3164-005 there is a signature for Camco. Do you see  
7 that?

8           A     I do.

9           Q     Is that your signature?

10          A     It is.

11          Q     Go back to the first page of this ratification and  
12 amendment. That's the second page of the exhibit. There is a  
13 Post-It on that page that has the name "Craig" on it. Would  
14 that be Craig Culligan?

15          A     I believe it would be.

16          Q     And it's got a date on there, December 1st, 2008.  
17 Is that -- was this Post-It a note from Craig to you  
18 indicating as of December 1st that it was okay for you to sign  
19 this contract?

20          A     It may be.

21               MR. TAYLOR: I don't have anything further.

22               MR. JEFFERIES: No further questions.

23               THE COURT: Anybody else have any questions?

24               MR. ZIMBELMAN: No, thank you.

25               THE COURT: All right, sir. You may stand down.

1 THE WITNESS: Thank you.

2 MR. TAYLOR: Your Honor, at this point in our lineup  
3 National Wood is going to call Robert Thompson.

4 THE COURT: Okay.

5 ROBERT THOMPSON, DEFENDANTS' WITNESS, SWORN

6 THE CLERK: Please state your name for the record  
7 and spell both your first and last names.

8 THE WITNESS: Robert Thompson, R-O-B-E-R-T  
9 T-H-O-M-P-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Thompson, where were you employed in 2008?

13 A Cabinetec.

14 Q And how long had you been employed by Cabinetec at  
15 that point in time?

16 A Since 1992.

17 Q Were you involved with Cabinetec's work on the  
18 Manhattan West project?

19 A I was.

20 Q What was your involvement in that project?

21 A I was a project manager.

22 Q What work did Cabinetec do on that project?

23 A Cabinet installation.

24 Q Did Cabinetec have any involvement in the building  
25 of those Cabinets?

1           A     Absolutely.

2           Q     Were you involved in overseeing that?

3           A     I was not in charge of the building, but I was in  
4 charge of installation of the product.

5           Q     And being in charge of installation at the project,  
6 were you aware of when the cabinets were in fact built?

7           A     I was.

8           Q     Where were cabinets ultimately installed on the  
9 project?

10          A     Cabinets were installed in Buildings A and B from  
11 the first floor to the third floor.

12          Q     Were those two 4-story buildings?

13          A     Yes, sir.

14          Q     And in what parts of the units were those cabinets  
15 installed? Was it garage cabinets, was it --

16          A     They were kitchens and baths.

17          Q     Okay. Did you ever receive any complaints from  
18 anyone about the quality of the work done by Cabinetec?

19          A     No, sir.

20          Q     Did anyone ever indicate to you compliments about  
21 Cabinetec's work?

22          A     We had a few compliments that were ahead of the --  
23 ahead of the schedule.

24          Q     Do you know whether those compliments were from Apco  
25 or Camco or both?

1           A     They were from Apco.

2           Q     Were there ever any cabinets built that were not  
3 actually installed?

4           A     Yes, there was.

5           Q     Do you recall approximately how many cabinets or  
6 what units those were for or anything to that effect?

7           A     The building, the 9-story, there was probably two  
8 floors that were not installed. Cabinets were still sitting  
9 in the units. And there was two trailers down in the -- down  
10 on the ground that was full of cabinets for that building.

11          Q     I'm going to put up on the screen rather than bring  
12 a document up to you, a document which is Exhibit 3087. This  
13 is a document that is signed off on August 5th, 2008 by  
14 someone from Gemstone and someone from Cabinetec, indicating  
15 that cabinets were delivered to the property on August 1st.  
16 Do you recall specifically delivering -- that cabinets were  
17 delivered and stored in a garage?

18          A     Absolutely.

19          Q     After those cabinets were delivered on August 1st,  
20 did Cabinetec continue working on the project?

21          A     Absolutely.

22          Q     Was there any gap between August 1st and continuing  
23 work?

24          A     No.

25          Q     So from --

1           A     We were told by Apco, the owner of Apco that we  
2 would -- to continue building and installing cabinets because  
3 we were going to get paid.

4           Q     So after that delivery on August 1st, Cabinetec  
5 continued -- continued manufacturing and when buildings were  
6 ready continued installing into the project; is that right?

7           A     That is correct.

8           Q     Do you recall approximately -- Did the pace of work  
9 done by Cabinetec go up and down or was it -- did it continue  
10 steadily after that point in time?

11          A     It was steady.

12               MR. TAYLOR: Okay. Nothing further, Your Honor.

13               Oh, and by the way, Your Honor, this testimony is  
14 offered both against Apco and Camco, and if Camco has any  
15 cross-examination it will be given today as well.

16               THE COURT: All right, very well.

17               Who wants to cross first? Okay.

18                       CROSS-EXAMINATION

19 BY MR. JEFFERIES:

20          Q     Were you involved in the billing process for  
21 Cabinetec?

22          A     No, sir.

23          Q     Okay. Are you aware of any records that would  
24 suggest or confirm when Cabinetec installed cabinets?

25          A     No. I know they ordered them and we delivered them.

1 Q Okay. Who is Rob Trickett?

2 A He was one of the managers, general manager of  
3 Cabinetec.

4 Q Okay. You need -- well, strike that. Describe for  
5 the Court what is your predecessor's scope of work before you  
6 can install your completed cabinets.

7 A Well, it has to be drywalled and painted before the  
8 cabinets are installed onto the walls.

9 Q Okay. I guess you weren't here, but I'll represent  
10 to you that the Court has seen video and photographs of the  
11 state of the project when Apco left. I'll represent to you  
12 that that was August 20, 2008 that some of those videos were  
13 taken. Would it be fair to say that as of that date -- well,  
14 strike that. You continued work under Apco and then under  
15 Camco; correct?

16 A Correct.

17 Q Okay. This was a long time ago; right?

18 A Yes.

19 Q Okay. I guess my question is do you have any  
20 documentation, any daily reports, any photographs that would  
21 show the Court when Cabinetec ultimately installed cabinets in  
22 the various buildings of phase one?

23 A No, I don't have any documentation of that.

24 Q All right. Did Cabinetec -- strike that. Do you  
25 have access to any daily reports that would help us evaluate

1 when you physically installed cabinets?

2 A No, sir.

3 Q Do you recall there being a point in time that Apco  
4 was actually accommodating Cabinetec by making space available  
5 on the project so that Cabinetec could store cabinets until  
6 they were installed?

7 A Absolutely.

8 MR. JEFFERIES: I've got nothing further.

9 CROSS-EXAMINATION

10 BY MR. MORRIS:

11 Q Good morning, sir.

12 A How are you doing?

13 Q Steven Morris representing Camco Pacific  
14 Construction. Do you recall the last day that you were  
15 physically on the project?

16 A I was there until the job was closed down, and I  
17 couldn't tell you exact date.

18 Q Do you recall the month, December 2008 --

19 A God --

20 Q -- were you there?

21 A I know it was after 2008. I was there till -- I was  
22 with Cabinetec till 2009, when they closed the doors.

23 Q Okay. Did Cabinetec finish its scope of work on the  
24 project?

25 A Uh, everything was finished, Buildings A and B



1 completed. There were several floors on the building, the  
2 9-story that was completed and a lot of cabinets were just  
3 sitting in the units not installed.

4 Q Did Cabinetec ever retrieve any of those uninstalled  
5 cabinets after the project -- after funding was pulled in  
6 December of 2008?

7 A Negative.

8 Q They just stayed on site?

9 A Yeah.

10 MR. MORRIS: No further questions.

11 MR. TAYLOR: Nothing further, Your Honor. I'd ask --  
12 Oh, do you need more?

13 MR. JEFFERIES: No.

14 MR. TAYLOR: Nothing further. I'd ask that this  
15 witness be excused.

16 THE COURT: All right, sir, you may stand down.

17 THE WITNESS: Thank you.

18 THE COURT: You're free to go. Thank you.

19 MR. TAYLOR: And then, Your Honor, one final  
20 housekeeping matter. After Mr. Cox testified I got a question  
21 from Apco's counsel about -- inquiring about National Wood's  
22 standing here. And I gave him a copy of the order allowing  
23 National Wood to intervene in this action. But just to go  
24 full belts and suspenders, after that I asked Mr. Cox to sign  
25 an assignment of claims, just confirming that Cabinetec claims

1 have been assigned to National Wood. I put it in the book and  
2 I've given copies to counsel of that assignment, Exhibit 3177,  
3 and I would ask that it be received.

4 MR. JEFFERIES: Your Honor, obviously this was just  
5 generated yesterday. It hasn't been disclosed. With that  
6 said, I would recognize that Cabinetec could at any time  
7 assign its rights, so -- but I would object to its admission  
8 on timeliness.

9 THE COURT: Do you want to respond to that?  
10 Anything to say in response?

11 MR. TAYLOR: Yes, Your Honor. As counsel said,  
12 Cabinetec could assign its claims at any point in time. It  
13 could assign its claims even after judgment is entered, if  
14 that were the case. I just wanted to make sure to clarify.  
15 We already intervened way back when and I just wanted to make  
16 sure that there was no doubt at all about our standing.

17 THE COURT: Okay. This is -- all right, it's  
18 admitted.

19 MR. TAYLOR: Thank you, Your Honor.

20 (Defendants' Exhibit 3177 admitted)

21 THE COURT: Okay.

22 MR. JEFFERIES: With that, I don't think we have any  
23 more witnesses in what I would consider the Apco portion of  
24 the case.

25 MR. ZIMBELMAN: Nor does Helix.

1 MR. TAYLOR: Nor National Wood, Your Honor.

2 THE COURT: Okay. So --

3 MR. ZIMBELMAN: Do you want us to try to close the

4 Apco portion at this point?

5 THE COURT: What's your thinking?

6 MR. JEFFERIES: Like I said, my emphasis, candidly,

7 is going to be on the written presentation because there's

8 exhibits in the record, stipulated into the record that you

9 haven't even seen before, but I'm prepared to make a few

10 closing remarks because I do think at some point we could use

11 some direction from Your Honor as to what claims are going to

12 go forward. So I'd be prepared to make some closing remarks.

13 THE COURT: Okay. Do you want a brief recess before

14 you do it or do you want to just go right into it?

15 MR. ZIMBELMAN: We can just go ahead and do it. I

16 told you about 45 minutes. It could go a little bit over.

17 THE COURT: Okay.

18 MR. ZIMBELMAN: So if you want to do -- maybe take

19 lunch and come back and close right after lunch, that works,

20 too. So I'm --

21 THE COURT: Well, if you don't mind having a break

22 between closings, we can go ahead and start now.

23 MR. ZIMBELMAN: All right, I'm happy to.

24 //

25 //

1                               HELIX ELECTRIC'S CLOSING ARGUMENT

2                               MR. ZIMBELMAN: Your Honor, I said at the outset  
3 that this is a search for the truth and I think there are some  
4 fundamental truths that were revealed by the case that's been  
5 presented to you so far. Among those are that a great number  
6 of subcontractors, including Helix, were left holding the bag  
7 when mommy and daddy had a fight. Apco and Gemstone got into  
8 a gigantic row, somebody terminated somebody and there we  
9 were. And then Gemstone brought in Camco under terms -- and I  
10 think you heard the testimony today from Mr. Parry, especially  
11 on cross-examination, under terms that frankly were  
12 misrepresented to the subcontractors. Their contracts don't  
13 say what Mr. Scott wrote in his letter.

14                            Mr. Parry confirmed they brought them in to rent  
15 the -- it's a rental license agreement and they had no  
16 responsibility, no obligations, no means and methods. I mean,  
17 none of the things that a general contractor typically does.  
18 He said they were brought in to basically shuffle paperwork.  
19 But the agreements that they were supposed to be entering into  
20 with their subcontractors, the ones that Helix received,  
21 reviewed, revised, sent back, with the Helix exhibit, are  
22 nothing like what is described in Mr. Scott's letter, nothing  
23 like what is described as Mr. Parry agreed to.

24                            So at the end of the story, you know, two or three  
25 months after Apco leaves the project, the whole thing

1 collapses in the worst economic condition that we've had in  
2 this country in a long, long time and under -- you know,  
3 frankly, circumstances that I certainly blame Scott Financial  
4 for in part, all right. I mean, these are the guys that had  
5 put money into the NCS account and then pulled it back out.  
6 But it was a condition that was set up by a contract entered  
7 into -- and I'm speaking purely for Helix today because that's  
8 the one that has claims against both parties and certainly the  
9 only one of my clients that has a claim against Apco.

10 Helix entered into a contract of some kind with  
11 Apco. What is that contract? Well, you know, we've seen the  
12 document that Apco relies heavily upon, a written subcontract  
13 agreement. But I spent a great deal of time demonstrating to  
14 Your Honor that there's at the very least some significant  
15 questions of fact as to whether or not Helix and Apco ever had  
16 a meeting of the minds on that document and I would submit to  
17 you that they don't. They -- you will recall that Helix  
18 received and returned the subcontract agreement, that was  
19 Exhibit 45. Helix interspersed the attached Helix Electric  
20 exhibit. It's also part of the subcontract agreement. Made  
21 an initial box, initialed, and it was returned months later  
22 by Apco, as noted, initialed by Mr. Nickerl.

23 So Mr. Nickerl takes the Helix amendment and he  
24 marks the heck out of it and five months later he sends it  
25 back. Showing you the signature page showing that Victor

1 Fuchs, president of Helix, signed that on November 28th of  
2 '07 and Mr. Nickerl signed and presumably returned it shortly  
3 thereafter on April 8th of 2008, right, five months later,  
4 and Mr. Nickerl proceeded to mark up the Helix amendment,  
5 right.

6           So there's not an agreement on the terms and  
7 conditions of this subcontract as of this point. And in fact,  
8 as you saw in Exhibit 506 and I'd like to remind the Court  
9 about that document, which is an email from Mr. Nickerl back  
10 to Bob Johnson. Mr. Johnson testified about this, where Mr.  
11 Nickerl on July 8th -- excuse me, July 11th of 2008 sends back  
12 another version of the Helix Electric exhibit with further  
13 markups by Mr. Nickerl and he says, "Bob, I've gone through  
14 and done all I can. I think I left it intact for you. Go  
15 ahead and review, sign and get it back and we'll put this to  
16 rest."

17           Of course that never happened because Helix didn't  
18 agree to all these changes, didn't agree to Apco rejecting  
19 important protections, some of which Apco had previously  
20 agreed to give, right? So, for example, you might remember  
21 we talked about the preservation or the limitation on change  
22 work without a written change document. Well, you saw during  
23 the testimony that Apco initially agreed to that, but by July  
24 of 2008 they're not agreeing to that. They've struck that  
25 provision in the Helix amendment. You can see that on page 4

1 of Exhibit 506 under Item 15. Add the following language,  
2 "notwithstanding any other provision," and so forth. Talks  
3 about the \$15,000 without a fully agreed -- executed and  
4 agreed upon change order. Why? Why didn't they sign that,  
5 agree to that then when they were prepared to agree to that  
6 before? Well, obviously there's a big hullabaloo brewing  
7 right now. By this point in time, by May, according to Mr.  
8 Benson, Apco's witness, by May this was already a big dispute  
9 between Apco and Cam-- excuse me, Apco and Gemstone. And Apco  
10 is looking to the exits. They are planning their exit  
11 strategy. And trust me, it doesn't put Helix first in their  
12 mind.

13           Among the revisions that Helix had made to the  
14 document by way of the Helix Electric exhibit was trying to  
15 strike out the pay if paid provisions important to Helix.  
16 It turns out even more important. Although at the end of the  
17 day this Court has ruled that is an unenforceable provision,  
18 of course we didn't have the benefit of that ruling at that  
19 time. We also tried to strike out the assumption of the risk  
20 provision, except in the July 11th '08 version, now they  
21 apparently were willing to accept the assumption -- the  
22 deletion of the assumption of the risk provision. I mean,  
23 essentially more pay if paid but it's odd, right? You have,  
24 yeah, we'll agree to this pay if paid portion being taken out  
25 but not that one.

1           There's a provision saying that Helix proposes back  
2 in November of '07 that Apco allows -- agrees to in March --  
3 excuse me, in April of '08 that says that Helix can have the  
4 same rights of termination as against Apco that Apco has  
5 against the owner. And now in the July '08 version, Exhibit  
6 506, they don't agree to that anymore. That's not a  
7 coincidence, Your Honor.

8           So I think the fundamental question is do we have a  
9 meeting of the minds on this written agreement? I think the  
10 answer is no. And if we don't, what do we have an agreement  
11 on? I would argue that, Your Honor, we have an agreement on  
12 the essential elements, the work to be performed, the contract  
13 price and when payments were going to be made. And the  
14 parties in fact complied with those essential elements for  
15 months. In fact, there's really no dispute that Helix  
16 ultimately was paid the amounts it was due, less retention.  
17 Helix' claim against Apco, in addition to obviously not --  
18 excluding for a moment the monies that were earned under Camco  
19 and I'll talk about that in a moment, Helix doesn't dispute  
20 and I don't think Apco disputes that that number is about  
21 \$505,072. That number isn't changing. That's how much we had  
22 earned while Apco was still the general contractor but had not  
23 been paid.

24           Now, Apco wants to say, well, hey, you need to look  
25 at the written agreement and you need to enforce certain



1 provisions, specifically 3.8, right, and 3.8 being the  
2 contract provision that requires Helix to jump through  
3 impossible hoops in order to get paid its retention, right,  
4 including completing the project, providing as-built drawings,  
5 doing all the things you normally do at a close-out of a  
6 construction project and which, had things gone as they were  
7 supposed to go, right, had the intent of the parties'  
8 agreement been fulfilled, we would have done. Helix didn't  
9 have anything to do with the fact that Apco stopped working on  
10 the project. Helix didn't have anything to do with the fact  
11 that Apco and Gemstone apparently terminated their agreement.  
12 We just did our work and we are entitled to be paid for that  
13 work.

14 I will try to go into some more detail in my  
15 proposed findings of fact and conclusions of law so that you  
16 can see specifically the provisions that we're talking about  
17 here. I'm really trying to make sure that we get a chance to  
18 get done today, so I'm going to shortcut it a little bit. But  
19 if we don't have a written document, we either have a verbal  
20 contract or we've got an implied agreement, right, a quantum  
21 meruit analysis. And the reasonable value of the work is the  
22 way to determine what Helix is entitled to. And there's only  
23 one party that has testified about the reasonable value of the  
24 work and that's Helix, and there's nobody that's disputed it.  
25 And in fact, it's virtually indisputable because you have

1 payments that were made based on payment applications that  
2 Helix submitted that Apco adopted as part of its payment  
3 applications to the owner, adopted 100 percent; received  
4 money, paid money on those payment applications. You know,  
5 the best analysis or the best determination of a fair price,  
6 right, is what a reasonable buyer or a reasonable seller will  
7 agree to. That's what the parties did and that was the course  
8 of their performance on this contract.

9           So I would argue that there is no written agreement.  
10 I think there is an agreement. If there isn't one, it's  
11 reasonable value of the work. But again, I think the  
12 agreement is we're going to do this work for this price. We  
13 didn't get paid that price. Period, the end. We're entitled  
14 to receive the benefit of our bargain, which is the \$505,000  
15 left unpaid.

16           And you'll see in the proposed findings of fact and  
17 conclusions of law that I'm going to submit -- I mean, I don't  
18 think any of the legal analysis that we're going to put into  
19 our proposed findings of fact and conclusions of law is in any  
20 way, you know, controversial, right. This is just basic  
21 Hornbook case law. And one of the cases you're going to see  
22 is Certified Fire Protection, Inc. v. Precision Construction,  
23 128 Nev. 371. It's a 2012 case that talks about among other  
24 things quantum meruit and it states that its first application  
25 is in actions based upon contracts implied in fact, right.

1 Agreement manifested by conduct that arises from the tacit  
2 agreement of the parties. So, for example, Helix performing  
3 work and Apco paying for that work, that's the performance of  
4 the parties and I think a contract can be implied in fact from  
5 those activities. Quantum meruit insures the laborer receives  
6 the reasonable value, usually market price, for his services.  
7 That's straight out of the Precision case and that's exactly  
8 what we're asking for here.

9           Now, let's go to this analysis of Section 3.8  
10 because Apco is again taking the position that that's our  
11 agreement, that even though they never agreed to all of our  
12 changes and we never agreed to their rejection of our changes,  
13 that somehow we have this written agreement. Well, under  
14 3.8 Apco's position is that we have to complete the entire  
15 project, that we have to get approval and final acceptance  
16 from the owner, that we have to provide a delivery of as-  
17 builds, a delivery of waiver of claims, all in order to get  
18 the money that we had earned under Apco.

19           Well, of course that's not possible because the  
20 contract -- the project ended incomplete, through no fault of  
21 our own. It's essentially asking Helix to perform a futile  
22 act, right, and I'm going to cite to you Mayfield v. Koroghli,  
23 I believe it's pronounced, 124 Nev. 343, an '08 case. It says  
24 that if one party abandons the contract, the other party need  
25 not engage in futile gestures to preserve contractual rights.

1 It's futile for a party to make a demand if the other party  
2 has repudiated the contract or otherwise indicated he refuses  
3 to perform. And this is exactly this situation and it's not a  
4 situation of our creation.

5 And this Court will recall one of the causes of  
6 action that we have asserted in the alternative in this  
7 action, in addition to breach of contract and quantum meruit,  
8 lien foreclosure and a claim on Camco's bond, and we'll talk  
9 about that after we're done there, is the cause of action of  
10 breach of the duty of good faith and fair dealing, the seminal  
11 case being the Hilton Hotels Corporation v. Butch Lewis  
12 Productions, 107 Nev. 226 from 1991; an older case but it's a  
13 goodie. It says basically that when one party performs a  
14 contract in a manner that is unfaithful to the purpose of the  
15 contract and the justified expectations of the other party are  
16 thus denied, damages may be awarded against the party who does  
17 not act in good faith.

18 An example that the court gives in that case at  
19 footnote 6 was where a lessee intentionally reduces its sales  
20 so as to deprive the lessor of a percentage of receipts, where  
21 the -- you know, the agreement, the lease agreement provides  
22 for the landlord to get a certain percentage of the gross  
23 receipts, right. If you intentionally reduce that to spite  
24 the landlord, that's a breach of the duty of good faith and  
25 fair dealing.

1           So for Helix to say, hey, we have this deal, we're  
2 going to go forward -- excuse me, for Apco to say we have this  
3 deal and we're all going to sing Kumbaya together, we're going  
4 to complete the project and we're going to make sure you get  
5 your retention at the end of the deal, and then take off  
6 halfway through and then say, hey, too bad, you didn't  
7 complete the project, you're not entitled to any money from  
8 us, I think is a perfect example of the breach of the duty of  
9 good faith and fair dealing. So if we don't have that -- you  
10 know, this contract -- I should say if we do have this written  
11 contract, they're asking the Court to interpret it in a way  
12 that is not faithful to the clear intent of the parties.

13           And what's the best example of that? It's that Apco  
14 themselves ignore similar provisions in their own agreement  
15 with Gemstone. You'll remember that Apco asked for, and  
16 it's in the pretrial memorandum, asked for and apparently  
17 received an order of summary judgment of twenty million  
18 dollars; 20,782,659.95, right. And we looked at their lien  
19 and we showed the Court that their lien math, which is that  
20 exact number, comes from their calculation of the original --  
21 actual original contract amount performed and billed through  
22 Apco Construction's termination of the contract, i.e., August  
23 2008, is 60,325,901.89, plus actual change work performed of  
24 9,168,160.32, less -- the total amount of all payments  
25 received of 48 million and change to get to that 20 million

1 number, right.

2           Where did those numbers come from? They came from  
3 us, right. And we've showed Your Honor that Apco's payment  
4 applications are a compilation of all the subcontractor claims  
5 that they wrap onto their payment application document, they  
6 certify up to the owner. That's how they got their \$20  
7 million lien amount. And we watched Mary Jo Allen the other  
8 day and I don't mean to be pejorative, but it was a dog and  
9 pony show because what they tried to show you was that somehow  
10 Apco was only looking for Apco's money. Apco only applied for  
11 Apco's \$1.4 million. Remember that? That's not what Apco  
12 did. Apco's payment application includes a list of monies  
13 owed to the subcontractors, right, and that's how they get up  
14 their total amount. That's what they were asking for, that's  
15 what they proceeded against, that's what they -- that was  
16 their position all the way up until Mary Jo testified.

17           THE COURT: Does the record reflect why there was  
18 never a significant order on that summary judgment?

19           MR. ZIMBELMAN: It doesn't. We don't know. We  
20 don't know. We do know that Judge Delaney was replaced with  
21 Judge Scann somewhere along the line. That was after Judge  
22 Delaney had initially ruled in favor of the lien claimants,  
23 including Apco, on the priority question. Judge Scann came  
24 on board, reversed that decision and then it went up to the  
25 supreme court. So all that was happening around that time.

1 I just don't think there is one. I think the court intended  
2 to enter one, but it never happened.

3           So if you're going to enforce the written document,  
4 you can't look at 3.8 in a vacuum. You also have to consider  
5 the termination provisions of Article 9 because like any  
6 construction agreement it anticipates the possibility of  
7 termination for convenience or any other -- or other types of  
8 termination, right, default and so forth. Section 9.1 states,  
9 Right to Terminate for Convenience. Contractor -- that's Apco  
10 -- shall have the right to terminate for convenience at any  
11 time with or without cause subcontractor's performance of all  
12 or part of the subcontract or subcontract work. Notice to  
13 subcontractor is required. Contractor shall provide  
14 subcontractor with written notice of the termination two  
15 calendar days in advance of the effective date of the  
16 termination.

17           Mr. Pelan testified Apco never gave a written notice  
18 of termination to Apco -- to Helix. There just isn't one.  
19 They never gave a written notice of termination to any  
20 subcontractor. Ironically, Camco showed us how to do that by  
21 way of the letter we looked at today with Mr. Parry, where  
22 he's forwarding on the email from Alex Edelstein about the  
23 project closing and complaints about Apco. And in it he  
24 writes, "We have no choice but to terminate your subcontract."  
25 That's how you do it. Apco never did it.

1           Now, 9.3 talks about things that a subcontractor has  
2 to do upon the receipt of written notice of termination. But  
3 again, Mr. Pelan acknowledged 9.3 has no application here  
4 because they never gave a written notice of termination.

5           So, then maybe we go down to Section 9.4, Effect of  
6 Owner's Termination of Contractor. Before we look at that, I  
7 want the Court to be aware of something, in all fairness. The  
8 contract at 18.6 states that "all sections and headings are  
9 descriptive only and are not controlling." So the header here  
10 is, Effect of Owner's Termination of Contract," but the  
11 language is this. "If there has been a termination of the  
12 contractor's contract with the owner, the subcontractor shall  
13 be paid the amount due from owner to contractor for the  
14 subcontractor's completed work, as provided in the contract  
15 documents, after payment by the owner to the contractor."  
16 In other words, pay if paid if there's a termination of the  
17 contractor's contract.

18           So, has there been a termination of the Apco/  
19 Gemstone agreement? You know, they both terminated each  
20 other, right, because remember there was a long and sort of  
21 garish process that went back and forth between Apco and  
22 Gemstone to see who could terminate first, beginning probably  
23 earlier than this but looking at Exhibit No. 6, this was the  
24 July 28th letter by Apco telling Gemstone that they provided  
25 written notice and they're going to stop work effective



1 immediately, saying "the letter shall serve as Apco's notice  
2 of intent to terminate as of August 14th." Except, for  
3 whatever reason, they never did that.

4           And we have some superseding correspondence that  
5 goes on, for example, Exhibit 10, which is Apco's letter  
6 dated August 11th to Gemstone. And in this one Apco advises  
7 Gemstone that the correct amount of the June progress payment  
8 should be 6,184,445.24. As an aside, that's a lot more than  
9 \$1.4 million, right? I mean, this is again evidence that Apco  
10 has always been seeking the full amount, including the monies  
11 sought by the subcontractors. But pertinent to the current  
12 discussion Apco writes that in Apco's notice of intent to stop  
13 work, "unless it's paid a total amount of \$6,183,445.00 and  
14 that it reserves the right to stop work on the project any  
15 time after that date." So it hasn't terminated and it's  
16 reserving the right to stop work.

17           Then by way of Exhibit 15, on August 19th Apco  
18 writes Gemstone again and this is because by this time  
19 Gemstone has taken the initiative and that's in Exhibit 13.  
20 And in Exhibit 13 on August 15th Gemstone provides notice to  
21 Apco that it's going to give it a notice of termination with  
22 cause and opportunity to cure. It is hereby providing 48  
23 hours notice that Gemstone will terminate the agreement with  
24 cause pursuant to Section 10.02(b), which gives it eleven days  
25 to terminate. So it's essentially starting that termination

1 process on August 15th, which is going to beat Apco to the  
2 punch. Apco doesn't like that. Apco writes back, and that's  
3 why I had Exhibit 15 up. This is from Randy Nickerl himself  
4 of Apco. And he's writing to Gemstone and he says, "I find it  
5 interesting that you sent us letters to terminate the contract  
6 all within the time that we were allowed to provide you notice  
7 of our intent to suspend the work if the change orders on the  
8 June pay application were not paid. Now your lawyer is  
9 proposing we agree to a termination before that date. We will  
10 not agree and intend to fully proceed with our contract  
11 obligations." So they're not going to agree to that, okay.  
12 That isn't stopping Gemstone. Gemstone, you know, goes on  
13 ahead.

14                   And by way of Exhibit 28, on September 5th Apco  
15 sends their own termination notice to Gemstone, saying,  
16 "Therefore this letter is confirmation that Apco has  
17 terminated the agreement in accordance with the statute,  
18 NRS 624.610. But Gemstone has already done it a few days  
19 earlier by way of their notice, Intent to Terminate, and we  
20 know that because on August 28th, in Exhibit No. 27, Gemstone  
21 writes to Apco and states, "Furthermore, pursuant to Manhattan  
22 West's August 15, 2008 notice regarding the termination of  
23 phase one for cause and Apco's failure to cure the breaches  
24 set forth in the notice prior to August 17th, the agreement  
25 terminated for cause on August 24th. And consequently, Apco

1 is not entitled to receive any further payments until the  
2 work, as defined in the agreement, is finished."

3           So all that, you know, is a long-winded way of  
4 saying they're both pointing fingers at each other. Like I  
5 said, mommy and daddy are fighting. What do the subcontractors  
6 know? All they know is Apco is not here anymore and they have  
7 contracts to perform work. And importantly, they've been told  
8 by the party with whom they have a contract that they are to  
9 continue the work. For example, Exhibit 23, which was sent to  
10 the contractors on or about August 21st after Apco writes to  
11 Gemstone of its notice of intent to terminate as of September  
12 5th, which eventually it does. A copy of that notice is sent  
13 to the subcontractors and they are advised expressly by James  
14 Barker, Esquire, the corporate general counsel of Apco, that  
15 "Apco construction is only stopping work on the project. At  
16 this time it has not terminated its contract with Gemstone.  
17 As such, all subcontractors, until advised in writing by Apco  
18 Construction, remain under contract with Apco Construction."

19           Apco never, ever rescinds that. In fact, they had  
20 given something similar to that on the prior go-around. If  
21 you look at Exhibit 48, which accompanied an earlier stop work  
22 notice of July 28th, this is an email from Randy Nickel to all  
23 Manhattan West subs and he states that the issuance of a stop  
24 work notice to Gemstone -- and he says, "This suspension is  
25 not a termination of the general contract at this time and as

1 such all subcontractors are still contractually bound to the  
2 terms of their respective subcontracts with Apco  
3 Construction." So we get this exact same information twice.

4 MR. JEFFERIES: What exhibit was that?

5 MR. ZIMBELMAN: And there is nothing in the record --

6 MR. JEFFERIES: Eric, what exhibit was that?

7 MR. ZIMBELMAN: -- that demonstrates that Apco  
8 subsequently withdrew that or terminated the subcontracts.

9 THE COURT: It's 48, I believe. Is that 48?

10 MR. ZIMBELMAN: Excuse me?

11 THE COURT: Is that No. 48?

12 MR. ZIMBELMAN: That was 48.

13 THE COURT: Counsel was asking which number it was.

14 MR. ZIMBELMAN: Oh, I'm sorry, I didn't hear you.

15 MR. JEFFERIES: Thank you. Thank you, Your Honor.

16 MR. ZIMBELMAN: I'm a little bit deaf. I apologize.  
17 I wasn't ignoring you. Exhibit 48, correct. And Exhibit 48  
18 is essentially the companion to Exhibit 6, the July 28th, '08,  
19 notice.

20 MR. ZIMBELMAN: And I know they argue that all  
21 subcontractors was a cc on their September 5th termination  
22 notice to Gemstone, but you'd think in all the reams of  
23 paperwork that exist in this case that we'd have a copy of  
24 that document in Helix' files. Somebody would have proof of  
25 service. Somebody would have an email. Somebody would have a

1 fax, as Mr. Pelan testified. There isn't one. Maybe some  
2 did. It doesn't appear that Helix did. You know, at the end  
3 of the day, Your Honor, does it matter? Does it matter who  
4 terminated whom? Because the only provision that we looked at  
5 in 9.4 that talks about what happens if there's a termination  
6 of the prime contract is a pay if paid clause. And since that  
7 can't be enforced, where do we go? Do we just say, oh, well,  
8 we'll just pretend that there hasn't been a termination and  
9 you've got to do all these things in 3.8 that are utterly  
10 futile for you to perform in order to get your retention pay?  
11 That's absurd and the law isn't going to enforce an absurdity.

12 Now, part of their argument is two-fold. One, we  
13 take the position, of course, that Apco continues to bear  
14 responsibility for the monies that we earned after they left  
15 the project because we never had our contract terminated. We  
16 agreed to complete the project and we did just that, or tried  
17 to until it closed. Their position is that somehow we agreed  
18 to stop looking to Apco and go work for Camco. And I want to  
19 tell the Court why that's factually and legally wrong. We  
20 were presented, as I've show you today by way of cross-  
21 examination of Mr. Parry, with a new general contractor who  
22 is nothing more, at best, a construction manager, putting no  
23 responsibility whatsoever for the performance of the work for  
24 the actions or inactions of the subcontractors. I mean, we  
25 call this a license rental because that's what it is. It's a

1 license rental. We need somebody to complete our project.  
2 Apco is gone; let's bring in Camco.

3 And in my opinion that's what occurred here. And if  
4 you look at the agreement that Camco has with Gemstone, and we  
5 went over those provisions in some detail today, that's really  
6 what they're saying. You know, here's your obligation. Your  
7 obligation is to push some paper. That's it.

8 Meanwhile, Mr. Scott's letter, which Mr. Parry  
9 agreed with, explained that that's essentially what Camco's  
10 responsibilities were, at least with respect to payment. No  
11 responsibility with respect to payment. And yet Camco is  
12 handing out contracts, subcontract agreements, which Helix  
13 didn't sign but some contractors did, that says we're going to  
14 get paid and then we're going to pay you.

15 And I'm not even talking about the pay if paid  
16 provision, which is of course unenforceable. I'm talking  
17 about the fact that the agreement -- excuse me, Your Honor --  
18 that the agreement or the proposed agreement anticipates  
19 Camco have a responsibility for collecting money from  
20 Gemstone to pass back down to the contractors, the trade  
21 contractors, the people that did the work and are incurring  
22 the costs and are paying their trades and their subs and their  
23 suppliers and who -- many of whom, regrettably, no longer  
24 exist in part because of this project.

25 That's not the deal that they were given. The deal

1 they were given was you were supposed to be like Apco and be a  
2 general contractor. That's what the contract, the subcontract  
3 document says. That is an absolute, fundamental  
4 misrepresentation of what actually occurred between Camco and  
5 Gemstone. So when Mr. Scott says in his letter that the Camco  
6 subcontract agreement explained this relationship that they  
7 had, that was just absolutely false. It did nothing of the  
8 kind. It misrepresented the relationship.

9           So with that background in mind, here's Helix and  
10 other subcontractors with the party it -- that hired it to  
11 perform work having left the project and having advised that  
12 you are still under contract, is presented with the  
13 opportunity to do what they were hired to do, which is to  
14 complete the project, and they do so. And while -- and  
15 particularly in the case of Helix, while they're negotiating  
16 potential new contracts, which they never signed, and trying  
17 to do what they were hired to do, which is complete the  
18 project, the project folds, again through absolutely no fault  
19 of their own.

20           And so because of that Apco says, hey, there's been  
21 a novation. Somehow you've agreed to go to work for Camco and  
22 stopped looking at us, and the evidence of that is because the  
23 payment applications simply kept going, right, in number and  
24 in dollars, including retention, that process kept going  
25 because that's how the owner wanted it; that therefore you

1 stopped looking to us. That's -- it's novation by  
2 implication. There plainly is no novation by a written  
3 agreement because we never signed their stinking ratification  
4 agreement. We did not agree to those terms and there is  
5 nobody that can say that we did. So the best argument they've  
6 got is that somehow, you know, there's this implied novation  
7 where you implicitly stopped looking at us.

8           Now, National Wood has briefed very nicely the  
9 question of novation and I don't want to beat that dead horse,  
10 but you do have to have some things that you have to show.  
11 And frankly, they can't get there. It's not even close to  
12 demonstrating that somehow all these players, for example,  
13 were parties to a novation contract. Apco is not. Even if we  
14 had signed the ratification agreement, which we didn't, Apco  
15 is not a party to that agreement, so how could that possibly  
16 -- how can that factor be accurate? It's not.

17           We intended to release Apco. Where is the evidence  
18 of that, that somehow we implicitly agreed under circumstances  
19 completely out of our control where we're trying to complete a  
20 project that we had contracted to perform, that we therefore  
21 -- yeah, sure, Apco, no problem. I mean, that's absurd. No  
22 contractor would do that.

23           Now, I know there will be noise made about whether  
24 Helix entered into the ratification agreement because we said  
25 in our complaint that we did. And I advised you of that at



1 the outset and I said, you know, we are asking the Court to  
2 allow us to amend. That's a mistake. There's nobody that has  
3 a copy of a signed agreement. There's no testimony that we  
4 did. You know, the truth is the truth. And if you want to  
5 say, well, you know, I'm going to allow that as some kind of  
6 an admission, well, you know, it's countermanded by the facts,  
7 by the truth and it simply didn't happen. We never agreed to  
8 that. And as I said, even if we had, it still doesn't meet  
9 the standard of a novation that's required by the Nevada  
10 Supreme Court. But we didn't. We never did. In fact, we  
11 provided a Helix exhibit and we sent it back to Camco and that  
12 Helix exhibit never came back to us, not signed by Camco, not  
13 rejected by -- they didn't even do what Mr. Nickerl did for  
14 Apco where he marked it up and sent it back and said I didn't  
15 agree to this. They did nothing of the kind. And then the  
16 project collapsed somewhere in that process.

17           So, the long and short, we don't have some secondary  
18 agreement. We have an implied agreement with Camco to perform  
19 the work and to be paid because they were representing to us  
20 to be a general contractor and we did continue and perform and  
21 we did submit payment applications to them as they requested.  
22 We can talk about all of that when we get to the Camco portion  
23 of the case. I mean, you can have both, right? You can have  
24 a contract with two different parties to do the same work  
25 without releasing one of the parties. Otherwise, every time

1 you have a replacement contract you'd have a novation, right?  
2 A renter breaches and defaults and you kick him out and you  
3 bring in a new renter, that doesn't mean you've released the  
4 prior renter from the obligation that they had to you. That's  
5 why novation requires all those additional elements.

6           So, I guess by way of summation, Your Honor, at  
7 least with respect to the claims against Apco, Apco hired us.  
8 Whether we have a written agreement or not, I think the result  
9 is the same. They hired us to perform some work. We agreed  
10 to perform that work. We worked and we tried to perform under  
11 that agreement. They stopped working and they left the  
12 project but they never terminated our agreement. And, you  
13 know, we tried to complete the work under challenging  
14 circumstances, including being presented with a replacement  
15 subcontract agreement that was nothing of the kind. And then  
16 the thing collapses.

17           If the law allows Apco to escape responsibility to  
18 Helix under those circumstances, the law is truly an ass  
19 because that is just fundamentally unfair. And Apco knows it.  
20 And they know it and the way we know they know it is that they  
21 sought the same relief against Gemstone that we are seeking  
22 against them. And they apparently obtained a summary judgment  
23 to that effect, and we went over that previously. Those  
24 numbers match identically to the Apco payment applications.  
25 Identical. That's what they sought. They sought our money.

1 If they have a right to our money, why don't we?

2           You know, some of this, unfortunately, applies to  
3 Camco and that is with respect to the mechanic's lien  
4 foreclosure. There's been no serious dispute that Helix and  
5 all of the other clients I represent perfected their lien  
6 claims. The only issue is whether -- and we went over this  
7 in the briefing on Apco's motion for summary judgment with  
8 respect to the lien foreclosure cause of action, right,  
9 whether the fact that the money is not there anymore, that  
10 somebody had a prior right to it means we don't have a right  
11 to have our lien deemed valid and enforceable. We do.

12           And I would just refer the Court back to the  
13 briefing on that summary judgment. The fact of priority and  
14 the right of lien are two different things. And we've proved  
15 that up and we've proved entitlement to relief under the  
16 statute. And if at the end of the day that doesn't give us  
17 any money, then it doesn't give us any money, but that doesn't  
18 mean we're not entitled to that, to have that cause of action  
19 enforced.

20           So by way of summation, we've either got a breach  
21 of the contract, written or oral or an implied contract, or  
22 there's been some form of unjust enrichment because -- I  
23 didn't address that question, but if you look at the  
24 Precision case that I cited earlier it also talks about unjust  
25 enrichment. You know, Apco says we didn't collect the money,

1 either, so that isn't fair to have unjust enrichment. But  
2 what did they do? They asked the Court for an order of  
3 summary judgment for our money, okay. That's enrichment.  
4 It's unjust if they are now to turn around and say, hey, you  
5 don't get the same rights that we have. That's breach of good  
6 faith. That's rancid hypocrisy. And that's fundamentally  
7 what the case is about.

8           We did the work. We're entitled to be paid. And  
9 we're entitled to be paid for everything that we incurred on  
10 this job. And I think I showed you previously and there's an  
11 exhibit with the amounts, but the total claim that Helix is  
12 asking for, exclusive of interest, costs and attorney fees,  
13 the principal amount we're asking for is \$505,072, if I  
14 remember correctly. And then the monies earned under Camco,  
15 and that included the monies in the summary document, as well  
16 as the final pay application that we showed you when Mr.  
17 Rivera was on the stand. And I would like to give the Court  
18 those exact numbers so we're entirely clear. You'll remember  
19 this was Mr. Rivera's summary document that he corrected at  
20 his deposition -- 505,021. Excuse me, I gave the Court the  
21 incorrect number; 505,021 was the retention earned before Apco  
22 ceased on the project.

23           I apologize, Your Honor. I thought I had pulled the  
24 documents relative to the monies earned under -- oh, I do have  
25 that. I believe it's Exhibit 508 for the Helix exhibits,

1 payment applications to Camco. The 393,841, the 189,435, the  
2 177,195, which accumulated in the preliminary summary  
3 document, less payments, of 584,692, but we had to add the  
4 final payment application that didn't make it onto the  
5 spreadsheet of 249,783. And that number is I believe \$834,000  
6 and change and it's on that -- I think it's Exhibit 536, which  
7 was the handwritten math that I went through with Mr. Rivera.

8           So long and short, Helix is entitled to both of  
9 those sums from Apco, and I look forward to providing you a  
10 little more detail in form of the written findings of fact and  
11 conclusions of law.

12           Thank you for your attention.

13           THE COURT: All right, thank you. We'll recess now  
14 for lunch and reconvene --

15           MR. JEFFERIES: Your Honor, before we do --

16           THE COURT: Yes?

17           MR. JEFFERIES: -- could I make one inquiry just for  
18 the Court to consider? You know, I filed a motion of this --  
19 before the trial started as to an election of remedy. I  
20 respect the Court's ruling that the parties can plead  
21 alternative claims, but it was my understanding that at some  
22 point before the case was submitted to Your Honor for a  
23 decision there was going to have to be some election made.  
24 And having sat through that closing, I've heard yes, there is  
25 a contract, no, there isn't a contract and unjust enrichment

1 slash quantum meruit. And I respectfully would request the  
2 Court's guidance on how you want to handle that issue.

3 THE COURT: I think it's going to have to be  
4 determined after I've heard argument on -- and heard all the  
5 evidence; heard all the evidence and argument on it. I mean,  
6 yes, I understand your point about an election of remedy, but  
7 I think there are a lot of ambiguous things here that I can't  
8 specifically say there's been an election. There's been an  
9 assertion of alternative remedies and the Court will have to  
10 determine which one is applicable. But I can't say at this  
11 point that I deem that there has been an unequivocal election  
12 of remedies by arguing facts that are quite -- I mean, there's  
13 a lot of ambiguity in the facts or a lot of --

14 MR. ZIMBELMAN: Your Honor, if I may, I agree with  
15 that but it's more than that. It's not -- I don't think  
16 that's a fair use of the doctrine of election of remedies.  
17 We're talking about alternative theories of relief.

18 THE COURT: Right.

19 MR. ZIMBELMAN: And that's what I presented to Your  
20 Honor. And, you know, we're hearing different defenses and  
21 I've presented to you our position on those defenses. There  
22 is a pathway to relief for Helix and it's one or all of them.

23 THE COURT: Well, that's what I'm saying. I don't  
24 think there's been an election of a remedy. I think that the  
25 -- that the Helix parties are basically asserting alternative

1 remedies that the Court is going to have to determine, okay.

2 MR. ZIMBELMAN: Exactly.

3 THE COURT: That's the way -- as I listen to the  
4 evidence, that's the way it -- and argument, so far that's the  
5 way it comes out to me.

6 MR. JEFFERIES: Understood.

7 THE COURT: Okay?

8 MR. ZIMBELMAN: Thank you, Your Honor.

9 THE COURT: So, anyway, I'll see you at 1:30, then.  
10 Thank you.

11 MR. JEFFERIES: Thank you.

12 MR. ZIMBELMAN: 1:30, Your Honor?

13 THE COURT: Yeah, uh-huh.

14 MR. ZIMBELMAN: Thank you.

15 (Court recessed at 12:08 p.m., until 1:36 p.m.)

16 THE COURT: Good afternoon. You may be seated.  
17 We're back on the record.

18 All right, Mr. Taylor.

19 NATIONAL WOOD PRODUCTS' CLOSING ARGUMENT

20 MR. TAYLOR: Good afternoon, Your Honor.

21 Cabinetec had a signed subcontract with Apco,  
22 Exhibit 3002, requiring Cabinetec to do work on Buildings 7,  
23 8, and 9. Cabinetec performed that work, actually built the  
24 cabinets according to Brian Benson, Apco's employee.  
25 Cabinetec was one of the few that was on -- working on

1 schedule. Cabinetec actually installed cabinets in the  
2 kitchens and bathrooms in Buildings 8 and 9 and two floors of  
3 Building 7. Also built additional cabinets for Building 7,  
4 which, although were not installed, filled several trailers  
5 and were onsite. No one had any complaints about Cabinetec's  
6 work.

7           Cabinetec invoiced Apco for its work through July  
8 2008. And that's Exhibits 3003 to 3082. They continued  
9 working in August of 2008, but the next invoices that we  
10 have aren't dated until October 24th, 2008. Those are  
11 Exhibits 3105 through 3140. And there was a final round of  
12 invoices on November 12th, 2008, Exhibits 3147 through 3152.

13           There are three components to Cabinetec's claim  
14 which are being advanced by National Wood. The first is for  
15 the retention for the work done through July 31st, the second  
16 is for the work that was done in August before Apco left the  
17 job, and then the third is for the work done after August  
18 2008.

19           With regard to the first issue, the work done  
20 through July 31st, 2008, the issue there is Cabinetec was not  
21 paid the retention. I think that the evidence is quite clear  
22 that Apco is responsible for this retention. That work was  
23 done, it was approved by Apco, it was approved by Gemstone,  
24 was included in a pay app that resulted in payment of the 90  
25 percent of those invoices. The balance, what we're talking



1 about, no additional work needed to be done to earn that  
2 balance. But I think that the most significant point on this  
3 issue is the fact that Apco has sued for Cabinetec's  
4 retention, and Apco has received summary judgment for  
5 Cabinetec's retention.

6 THE COURT: Actually didn't receive a judgment, got  
7 a ruling; right?

8 MR. TAYLOR: Received an order on motion for summary  
9 judgment, correct. And Exhibit 3176, the notice of lien filed  
10 by Apco, now, Mary Jo Allen said that she in fact computed the  
11 number in line 3. The total amount of all payments received  
12 to date is \$48,711,358.26. She confirmed that included not  
13 only money paid directly to Apco, it also included money where  
14 Apco only signed a joint check. So this was all of the money  
15 that was paid under Apco's progress billings. Therefore, it  
16 shows that Apco is not talking here only about Apco's work,  
17 Apco's receipts for its own work; this is in fact all of the  
18 work that was done under Apco, paid under Apco.

19 According to Mary Jo Allen, the total amount owing  
20 directly to Apco for Apco to keep was 1.4 million. We heard  
21 other testimony, Mr. Pelan, that maybe Apco was owed  
22 8 million. But there's been no offer of any evidence to  
23 suggest how you get to the \$20 million, except for the obvious  
24 fact that the \$20 million includes considerable sums that Apco  
25 was obligated to pay through to the subcontractors, including,

1 among other things, the retention. There's no other way to  
2 get that extra \$12 million if you don't include the retentions  
3 in that demand.

4           There's no reason why Apco should be entitled to  
5 collect on the retention and not then also be responsible to  
6 the subs with one slight exception. The one argument that  
7 Apco could possibly have is until we collect on the  
8 \$20 million we shouldn't have to pay it through. But that's  
9 the pay if paid argument, which we've already heard and we  
10 know doesn't stand in the way of the subcontractors being  
11 paid. The subcontractors don't have to wait for Apco to  
12 collect on its claim against Gemstone before the  
13 subcontractors can demand payment.

14           All right. The second component that we have is the  
15 work that was done in August. Our second round of invoices,  
16 which were in October, were for \$598,475. We submit that on  
17 that issue Apco was still on the project during August,  
18 Cabinetec was still on the project during August. The only  
19 evidence on the issue was that Cabinetec was continuing to  
20 work full speed during the month of August. Although that  
21 work did not result in a separate bill to Gemstone, that work  
22 was actually done and that work was actually earned in August.

23           The evidence that we have on that -- and I  
24 acknowledge that the evidence on how much that work was for  
25 August is not the most perfect evidence. However, the law

1 says you must prove the fact of damages with specificity, but  
2 the amount does not require absolute specificity. What we've  
3 -- so the fact of the damage is clear. Cabinetec did work in  
4 August. The amount we have to -- we have to determine what we  
5 can as best for that. My suggestion is that the bills in  
6 October, which were for August, September, October, was about  
7 \$600,000. I think that \$200,000 would be an appropriate,  
8 reasonable valuation of the first month of that three-month  
9 period for the damages there.

10           The final component of our damage is the work that  
11 was done after Apco left the job. I note that Apco's argument  
12 here is that when Camco came on the job there was a novation.  
13 Novation is an affirmative defense, so therefore it must be  
14 proven by Apco, not -- we don't have to prove the absence of  
15 novation. And in fact, as I pointed out in my trial brief,  
16 the affirmative defense must be proven by clear and convince  
17 evidence. I don't think that there is any clear and  
18 convincing evidence on at least two of the prongs of the  
19 novation argument. First, Apco cannot show by clear and clear  
20 and convincing evidence or any evidence at all that all of the  
21 parties agreed to a novation. The subcontract ratification  
22 agreement that they try to point to, Apco's not a party to  
23 that. Secondly, in that document Section 7 specifically talks  
24 about the fact that this does not change the Apco contract as  
25 it existed through August 26, 2008. And that contract as it

1 existed through August 26, 2008, included all of the work that  
2 Cabinetec performed on Buildings 7, 8, and 9. Therefore, the  
3 entirety of the work that was done by Cabinetec was preserved  
4 even under that ratification agreement.

5 Another prong is Apco can't show that Cabinetec ever  
6 released Apco from the original contract. There's nothing, no  
7 evidence shown in any way to indicate that Cabinetec agreed to  
8 only look to Camco. Instead, as Mr. Cox testified, Cabinetec  
9 was looking for Apco and Camco and, frankly, Gemstone, if  
10 possible, to pay. So that would be the balance of the second  
11 round of billing and also the final round of billing, which  
12 was \$88,735.

13 We've had some discussion, we've had some argument,  
14 and I won't belabor it, about the potential impact of the  
15 16.1 disclosure that was done. But I will point out that Apco  
16 throughout was on notice of the full balance of the claim by  
17 Cabinetec. Exhibit 3171 is the notice of intent to lien from  
18 Cabinetec, which indicates that it has not been paid by Apco  
19 or Camco for the \$750,000. That was back in 2009.

20 Similarly, the notice of lien, Exhibit 3172, we  
21 talked --

22 THE COURT: The one you just referenced, the notice  
23 of lien, which number was that?

24 MR. TAYLOR: 3171. 3172 is the notice of lien, and  
25 it indicates again the total claim of \$750,000, and it says,

1 "The person who -- by whom lien claimant was employed or to  
2 whom the lien claimant furnished or agreed to furnish work,  
3 materials, or equipment, Apco Construction and Camco Pacific  
4 Construction, making it clear that this work was done for  
5 both. That was also in 2009.

6           Then there's the complaint, and I just want to point  
7 out some parts of the complaint that put Apco on notice. Now,  
8 of course, the breach of contract portion of the complaint has  
9 the generic language in Section 17 that Apco owes an amount in  
10 excess of \$10,000. I realize that that doesn't give the full  
11 number. But in the quantum meruit claim, in the quantum  
12 meruit claim, which is against all defendants, says that, "The  
13 work has a reasonable value of \$750,102. Cabinetec has not  
14 been paid this amount. Cabinetec has sustained damages in  
15 that amount." So it's putting Apco on notice that the claim  
16 is \$750,102.

17           Apco has pointed out that in some of the -- some of  
18 the allegations of the common counts there is a different  
19 delineation. For example, the account stated claim, invoices  
20 that were sent to Apco were different than the invoices sent  
21 to Camco. So for the account stated that would be the amounts  
22 that was actually in the invoices. And I understand that one  
23 is broken out between two different numbers. But, you know,  
24 the causes of action that could go jointly and severally, for  
25 example, in the prayer Cabinetec quite clearly says,

1 "Cabinetec prays as follows, that this Court enter a judgment  
2 in favor of Cabinetec and against defendants jointly and  
3 severally in the amount of \$750,102 plus interest thereon.

4           So Apco was clearly on notice of the full extent of  
5 Cabinetec's claim.

6           So then it would seem to me that the next issue  
7 would be prejudice. And I appreciate that this Court has been  
8 very indulgent on allowing things to proceed if there is no  
9 prejudice. For example, we're not finishing the trial as  
10 originally scheduled because postponing part of it and doing  
11 it next week or the week after is not going to serve to  
12 prejudice anyone. The Court has been careful to make sure  
13 that no one is being prejudiced. Helix's -- some of the  
14 witnesses may have to testify by phone on cross-examination to  
15 avoid prejudice, et cetera. Well, here Apco's had no  
16 prejudice from any potential reliance that it might have had  
17 looking only at the 16.1 disclosure. Apco had all of the  
18 documentary evidence that supported our entire claim from the  
19 very beginning. The initial disclosure, and it's one of the  
20 exhibits, has all of the invoices attached, the full \$750,102.  
21 They're all attached and all produced initially. Apco did the  
22 exact same discovery against us that it did against Helix, so  
23 it can't very well argue that, oh, we would have done  
24 different discovery if we'd have known your different claim.  
25 Because the Helix claim is about a million dollars, the

1 Cabinetec claim is 750,000. They did the exact same  
2 discovery. The one potential issue there would be  
3 depositions. However, in November, November 15, 2017, after  
4 we had -- we made -- Apco had advised of their  
5 misunderstanding, we had then served the supplemental  
6 disclosure that clarified the issue. On November 15, 2017, we  
7 made Mr. Cox and Mr. Thompson, our two witnesses here,  
8 available for deposition, and I was the only attorney that  
9 showed up. Nobody else cared enough to show up. Apco could  
10 have shown up, could have done whatever examination they  
11 wanted at that point. They elected not to, apparently  
12 deciding to stand on this claim that they're somehow  
13 prejudiced.

14 But I submit there is no prejudice, that Apco should  
15 be required to respond in damages on the merits and not on  
16 procedure. So therefore our claim is that Apco should be paid  
17 -- should be required to pay the full amount of all unpaid  
18 amounts to Cabinetec. Thank you, Your Honor.

19 THE COURT: Thank you.

20 CLOSING ARGUMENT

21 MR. JEFFERIES: Your Honor, I'm not going to take a  
22 lot of time, because, candidly, taking Mr. Zimbelman's closing  
23 I would submit to you that there were several key points that  
24 he stated up here at the podium that are going to be refuted  
25 by the testimony of his own witnesses when we get the

1 transcript and submit our briefing.

2           You've heard -- you've heard reference to the  
3 complaint, and now Helix wants to say it was all in error.  
4 For your notes, Exhibit 77 and Exhibit 231 are the original  
5 complaint and then the amended complaint. Both are in  
6 evidence.

7           THE COURT: You're speaking of the one of National  
8 Wood or Cabinetec, or the one of --

9           MR. JEFFERIES: Helix.

10          THE COURT: Talking about the Apco complaint? Or  
11 which complaint? I just want to make sure.

12          MR. JEFFERIES: Okay. I'll clarify. I'm going to  
13 talk about just Helix for the moment.

14          THE COURT: Okay. So you're talking about the Helix  
15 complaint and amended complaint? That's what you're  
16 referencing?

17          MR. JEFFERIES: Yes. Yes, Your Honor.

18          Exhibit 77 is Helix's first complaint, Exhibit 231  
19 is their amended complaint. This is in Exhibit 231, page 4,  
20 you will see that Helix alleges a breach of contract and then  
21 makes an admission of fact in paragraph 11 that says, "On or  
22 about April 17, 2007, Helix entered into an agreement with  
23 Apco, the Apco Agreement, to provide certain electrical-  
24 related work, materials, and equipment --" and this is  
25 interesting, because they define it as "-- the Apco work for



1 the property located in Clark County, Nevada. Helix furnished  
2 the Apco work for the benefit of and at the specific  
3 insistence and request of Apco and/or owner." I would submit  
4 to Your Honor that that is an admission that there was in fact  
5 a binding contract. You'll see reference to the date of  
6 April 17, and just for the moment I'm going to put up  
7 Exhibit 45, which is the Helix subcontract, and you will see  
8 -- somewhere in here I thought there was a date -- yes,  
9 April 17, 2007. So Helix is admitting that this is in fact  
10 the agreement that they're suing for breach of. And I would  
11 submit to you when we do the briefing you will see that both  
12 Mr. Johnson and Mr. Rivera admitted that this was the  
13 agreement that formed the basis of their breach of contract  
14 claim. So there is no dispute that this is the document.

15           Secondly, I want to put up Exhibit 314. This is a  
16 declaration of the president of Helix. It was stipulated into  
17 evidence in lieu of calling him as a witness. You will recall  
18 hearing references to Mr. Fuchs. He swears under oath that he  
19 is the president of Helix Electric, he's competent to testify.  
20 He talks about the Apco agreement. And then if you look at  
21 paragraph 4, he says, "On or around April 17, 2007, Apco  
22 contracted with Helix to perform certain work on the  
23 property." It gets better. He says, "Helix's relationship  
24 with Apco was governed by a subcontract which provided the  
25 scope of Helix's work and method of billing and payments to

1 Helix for work performed on the property. A true and correct  
2 copy of the subcontract is attached." It's not attached to  
3 this exhibit, but it references the date of Exhibit 45.

4 In paragraph 6 Mr. Fuchs admits that Helix also  
5 performed work and provided equipment and services directly  
6 for and to Gemstone, namely, design, engineering, and  
7 temporary power.

8 And then in paragraph 7, "Camco Construction  
9 replaced Apco as general contractor. Thereafter Helix  
10 performed its work for Gemstone and/or Camco." There was no  
11 dispute issue as to who Helix was providing the services to  
12 post August 26th, when -- excuse me, August 21, when Apco left  
13 the project.

14 We heard a lot from Mr. Zimbelman about the back and  
15 forth on certain terms and conditions within Exhibit 45, and I  
16 noted with interest when he was going through that exercise  
17 with Mr. Johnson he asked about a whole lot of selected  
18 provisions that they were going back and forth on. And I  
19 would submit to you none of those are at issue in this case.

20 What is at issue is paragraph 3.8. And when we do  
21 the briefing you're going to hear Mr. Johnson confirm that  
22 that was in fact the agreed-upon retention payment schedule.  
23 So 3.8 is the key to the case contractually, and both parties  
24 in this court have now acknowledged that that is the retention  
25 payment schedule that governed what truly is the retention

1 issue in the case.

2 I asked Mr. Johnson specifically, showing the Court  
3 Exhibit 45, if you look at paragraph 7, this is the proposed  
4 change that Helix made to paragraph 3.8. They wanted a  
5 numerical change to the percentage, which Apco didn't have  
6 with the owner, so that was a no. But the rest of paragraph  
7 3.8 pretty much stands as written, except for the agreed-upon  
8 addition of that sentence, "If the retention does get reduced,  
9 Apco would provide a corresponding reduction."

10 So from Apco's perspective there is no dispute that  
11 Exhibit 45 is the agreement and, more specifically, that  
12 paragraph 3.8 was the agreed-upon retention schedule. I think  
13 if this Court's going to be true to the analysis and reasoning  
14 of Padilla versus Big D, that we are entitled as a matter of  
15 law to have paragraph 3.8 enforced as written. The evidence  
16 was undisputed that those conditions and those requirements  
17 were not met.

18 THE COURT: The allegations in the amended complaint  
19 that you referenced, they don't allege a written agreement.  
20 They allege an agreement; right? I know there is -- later on  
21 there's a reference to a subcontract was attached to the  
22 declaration --

23 MR. JEFFERIES: Yes.

24 THE COURT: -- that you just -- that would be a  
25 written item, I think. But --

1 MR. JEFFERIES: I can --

2 THE COURT: You were putting up the allegations in

3 the -- I think it was the amended complaint.

4 MR. JEFFERIES: It's in both.

5 THE COURT: And it had the date that coincided with

6 the date in the written agreement, but it doesn't say it was a

7 written agreement. It says "On or around" or whatever an

8 agreement was entered into. It doesn't say it was a written

9 agreement; right?

10 MR. JEFFERIES: Actually, Your Honor, it says -- I

11 don't dispute what you're saying. It says, "entered into an

12 Agreement." I was looking quickly to see if that was a

13 defined term before that, and I don't -- I don't see it.

14 THE COURT: All I'm saying is that that doesn't

15 necessarily exclude the concept of an oral contract, does it,

16 or verbal agreement? I mean, it doesn't necessarily do it. I

17 understand -- I mean, I understand your point that it could

18 very well be referencing what you're saying, a written

19 agreement. But it doesn't specifically say that.

20 MR. JEFFERIES: I think that's what the briefing and

21 citation of Mr. Johnson's testimony will firm up.

22 THE COURT: Okay. I interrupted you. So I'm sorry.

23 MR. JEFFERIES: That's okay. I'd rather answer your

24 questions.

25 I was making the point --

1           THE COURT: I think the reason why I interrupted you  
2 when I did was because your terminology was that Apco can't  
3 dispute that it is the agreement. I mean, that's why I was  
4 questioning whether the fact that it's not alleged to be a  
5 written agreement could still lead to a dispute.

6           MR. JEFFERIES: Okay. And I respect that, and I'll  
7 focus on that in the briefing, because I would submit that  
8 between Messrs. Johnson and Rivera I think there was  
9 confirmation that this was the agreement and that there wasn't  
10 a disagreement on paragraph 3.8. Which brings me to the point  
11 of -- and the 3.8 analysis also applies to Cabinetec, so I  
12 won't repeat myself when I get to that point, because nobody  
13 has presented evidence that 3.8 and the conditions therein  
14 were met. In fact, I would submit to you the fact that  
15 neither Helix or Cabinetec even billed retention ever to Apco  
16 is consistent with the parties' intentions. It is also clear  
17 that Apco never received their retention, and it's also  
18 undisputed that neither Cabinetec or Helix ever billed Apco  
19 for work that they did while Camco was on the project.

20           So as we sit here today neither Cabinetec or  
21 National Wood have cited a provision of their respective  
22 contracts that Apco has violated.

23           The second count in Helix's complaint is for breach  
24 of implied covenant of good faith and fair dealing. You heard  
25 evidence that in fact Apco went out of its way to ensure that

1 every subcontractor on its watch was paid. The only thing  
2 that was not paid was retention, and retention never became  
3 due under paragraph 3.8.

4           Everybody was poking a Mary Jo Allen, but the fact  
5 of the matter is her calculation is unrefuted and it's  
6 accurate in that when you look at the three billings that were  
7 submitted by Apco to the owner before it left the job, yes, it  
8 totalled a big number. All of those subcontractor amounts  
9 included in those billings were paid, either by Apco or  
10 through a joint check. What Ms. Allen was testifying about  
11 was Apco's share of those unpaid billings was the million  
12 four. That was never paid by Gemstone.

13           The other thing that Apco did was you will recall  
14 there's an exhibit whereby Apco tendered in the permits. As a  
15 matter of law, for Camco to proceed with the work they need  
16 the permits. So Apco was cooperating. It's clear there's a  
17 dispute, there's going to be a termination, so they were  
18 cooperating on that front.

19           And then there was further cooperation by Apco  
20 because it didn't have the right to terminate these  
21 subcontracts. Under the prime contract Gemstone was entitled  
22 to an assignment of those under Article 10. In fact, when Mr.  
23 Zimbelman showed you Exhibit 13, which you will recall is the  
24 Gemstone notice of default of August 15, when he put this up  
25 in his closing what he didn't show you was the last page in

1 which paragraph 3, assignment of third-party agreements and  
2 permits.

3           So Apco, albeit there is a dispute, they were acting  
4 in good faith to cooperate for the transition and both with  
5 permits and these subcontracts. So Apco did not have the  
6 right to terminate this Helix or Camco subcontract. So I  
7 would submit to Your Honor as we sit here today there is no  
8 evidence that Apco acted in bad faith in any respect.

9           The third count of Helix's complaint is for unjust  
10 enrichment. Obviously it's our clear position that through  
11 Exhibit 45 there is no basis for that type of equitable  
12 relief, and I would submit to you that even if you were to  
13 consider that, part of the equation is that there has to be an  
14 unjust enrichment to Apco. We are essentially here for  
15 retention, which the record reflects Apco did not get the  
16 retention. So there has been no unjust enrichment, there's  
17 been no enrichment at all.

18           The fourth count is the mechanic's lien foreclosure  
19 in Helix's complaint. Obviously there's been no evidence or  
20 legal position advocated that would render Apco liable for the  
21 lien. I understand we're fighting about contract and/or  
22 unjust enrichment, but there's nothing presented that makes  
23 Apco the guarantor of the property's liability for the lien.

24           Helix's fifth count was a violation of NRS 624. In  
25 our prehearing brief we cited Your Honor to 624.624. This was

1 the exact same provision that Your Honor interpreted and  
2 applied in Padilla, and this Court ruled that that provision  
3 was to ensure that general contractors paid subcontractors  
4 when they were paid. And that obligation to pay the  
5 subcontractors is triggered if payment is made in accordance  
6 with a payment schedule or the obligation to pay the  
7 subcontractors arises within 10 days after the general  
8 received the money for the sub. And I would submit to you the  
9 evidence is clear neither has occurred in this case. So there  
10 is no violation of NRS 624.

11 Unless you have questions of me on Helix, I'll move  
12 to Cabinetec real quick.

13 I will concede that Apco was on fair notice that  
14 Cabinetec sought its retention in this case, and the \$19,000  
15 figure, as I mentioned to you when I re-urged our motion, the  
16 \$19,000 figure would be consistent with a \$17,000 retention  
17 plus some interest that had potentially accrued as of that  
18 date.

19 I think it is inappropriate for Cabinetec to issue  
20 two 16.1 disclosures identifying a \$30,000 amount and then  
21 after discovery closes we get a \$1.-something million  
22 disclosure. That is not fair or appropriate, and it is  
23 particularly not appropriate to stand up here and say we  
24 somehow were not prejudiced. I'm not going to dispute -- I  
25 did get a call from Mr. Taylor's office, and I got -- it was,



1 if you recall -- and I'm going to get the date wrong, but the  
2 first calendar call in this case was either in November or the  
3 first week in December, and we were trying to get ready for  
4 trial, and I did get a phone call, and Mr. Taylor says, I'm  
5 going to depose my own witness and you need to come so you can  
6 hear what he has to say. And I would submit to you that is  
7 not proper disclosure, nor is it proper under any scenario  
8 under our rules.

9           Today at the podium was the first time I also heard  
10 that there was a 200,000 -- I think I wrote that down right --  
11 \$200,000 value for work done by Cabinetec in August of 2008.  
12 That amount has never been billed, it's never been documented,  
13 it's never been disclosed, and I would submit to Your Honor  
14 that there's no basis in this record for you to make a factual  
15 determination that \$200,000 is an appropriate figure for  
16 anything done in August.

17           I would to the extent I can incorporate my comments  
18 on the breach of contract. Same comments apply, as well as  
19 the breach of covenant of good faith and fair dealing. Apco  
20 hasn't done anything that has been in bad faith.

21           As far as the unjust enrichment, the same analysis  
22 applies. Apco has received nothing that belongs to Cabinetec,  
23 and there has been no unjust enrichment, there's been no  
24 enrichment at all. Cabinetec also has a claim that we  
25 violated 624, and I would submit to you that there's no

1 evidence of that, because there was no payment received.

2           So unless you have questions of me, I would propose  
3 to put the rest of it in a brief that outlines our proposed  
4 findings based on the testimony and not the argument of  
5 counsel.

6           THE COURT: Okay. Thank you.

7           Rebuttal?

8           MR. TAYLOR: Your Honor, it was agreed with Mr.  
9 Zimbelman that I'll do my rebuttal first.

10          THE COURT: Okay.

11                   NATIONAL WOOD PRODUCTS' REBUTTAL

12          MR. TAYLOR: I just want to agree with argument that  
13 was just made -- request that was just made that Your Honor  
14 base the ruling on the evidence and not on the argument of  
15 counsel. One pretty clear example of that is Counsel argued  
16 several times that there was -- Cabinetec never invoiced for  
17 its retention and no evidence of Cabinetec billing for its  
18 retention. But one of the exhibits in evidence is Exhibit  
19 3090. It's a statement from Cabinetec of August 8, 2008.  
20 Mary Jo Allen indicated that she had it. That's her  
21 handwriting on this exhibit. And that statement includes the  
22 entirety of \$179,180. That's the entirety of the July  
23 billing, including the retention, indicates that it's a  
24 current obligation.

25          THE COURT: What's that exhibit number?

1 MR. TAYLOR: It's Exhibit 3090. So the idea that  
2 there was no billing for the retention -- and I don't know why  
3 there even needs to be a billing for retention to be due, but  
4 that's clearly a billing. And in our post-trial brief we'll  
5 also point out other things that Counsel said, quote, "there's  
6 no evidence of," that in fact there is. Thank you.

7 HELIX ELECTRIC'S REBUTTAL

8 MR. ZIMBELMAN: Helix entered into an agreement with  
9 Apco. That's exactly what I told you when I began my closing.  
10 We believe there was an agreement. We don't believe that  
11 every word and letter of the written document that was never  
12 fully consummated is the agreement. For that reason you  
13 should enforce that which the parties clearly agreed to, which  
14 was the work and the price. That was the argument that I  
15 made, and I stand by it.

16 If that's not the case, then there's no agreement  
17 and you've got quantum meruit. And if that's not the case, if  
18 what they say is true, that somehow we've agreed by sloppy  
19 drafting in a pleading or some way that we have admitted that  
20 despite the fact we never satisfied or never resolved the  
21 ongoing disputes about the language of the contract documents,  
22 okay, that somehow despite that fact, which is undisputed, we  
23 have by admission agreed that that is the document, okay.

24 Then you go to the 3.8 argument that they've been  
25 making and, as I have suggested before, they're talking out of

1 both sides of their mouth. Because while they're saying to  
2 us, you know, we're gone, see ya, but tough beans to you, you  
3 can't get the money you've earned under us because you haven't  
4 completed the project, right -- that's what they're saying.  
5 That has nothing to do with whether they're obligated to us  
6 for the money we earned while Camco was onsite. Has nothing  
7 to do with that. That's a completely independent argument  
8 that they would make even if Camco hadn't come along, even if  
9 the project had stopped on August 31st. That's the same  
10 argument, right. And their argument is, we created a  
11 situation that prevents you from completing the project and  
12 since you can't complete the project you can't comply with 3.8  
13 and you have no claim against us to be paid. That's just  
14 fundamentally absurd, and it's hypocritical, Your Honor,  
15 because their own agreement with Gemstone has very similar  
16 language.

17           In Exhibit 2 under 5.06, "A final payment  
18 constituting the entire unpaid balance of the contract sum,  
19 the final payment, shall be made by developer to general  
20 contractor when the following conditions have been met, the  
21 general contractor has fully performed, a final certificate  
22 for payment has been issued," and so forth. Yet they're out  
23 there demanding to be paid in full for their work in spite of  
24 that fact.

25           5.07 deals with retainage, with retention, and

1 specifically 5.07(f) which I have up on the screen now, says  
2 that "Any remaining standard retainage, monthly retainage, or  
3 milestone retainage shall be released to the general  
4 contractor on the date that final completion is attained and  
5 all outstanding disputes between developer or general  
6 contractor and developer and any third-party service providers  
7 have been resolved any liens against the project relating to  
8 such disputes have been removed."

9           Your Honor, it's undisputed that none of those  
10 conditions have been met. None of them. Yet they had  
11 no problem asking this Court for a summary judgment of  
12 \$20 million, which, as we've seen before, is the result of the  
13 unpaid balance of the payment applications they submitted to  
14 Gemstone before they left the project, or at least for the  
15 work performed before they left the project, which, yes,  
16 includes our retention. You know, it's [unintelligible], but  
17 hypocrisy thy name is Apco. That's what's happening here.  
18 They're asking you to enforce something that they themselves  
19 don't think applies to them.

20           And even 3.8 applies, Your Honor, what about  
21 Article 9? What about termination? What is what happened to  
22 Helix and the other subcontractors if not a termination for  
23 convenience? Because their contract with Apco can no longer  
24 proceed. Apco has taken steps to terminate their contract  
25 with the owner and/or the owner has asserted a right to

1 terminate Apco, and none of the kids know whether mommy's  
2 right or daddy's right. But clearly some kind of termination  
3 event has occurred that we can interpret, you know, looking  
4 back on the facts.

5           Must have gotten a page out of order. Well, since I  
6 don't have it handy, you'll remember that 9.2 talked about  
7 termination for convenience, 9.1, and said that Apco had to  
8 give written notice. Well, that didn't happen. But there's  
9 another section, 9.4, that talked about termination by the  
10 owner, and yet it also says if the prime contractor's been  
11 terminated, all right. So it could be interpreted either way.  
12 And then it goes on to say what happens in that event. And in  
13 that event we're entitled to be paid full value of the money  
14 we've earned, okay, but for a pay if paid addendum or clause  
15 that's part of that section. I wish I had it in front of me.  
16 I seem to have misplaced it. 9.5, I'd like to show it to the  
17 Court. See if I maybe have the page out of place. Oh. Here  
18 it is. I did have it just out of place.

19           So 9.4, "Effect of owner's termination of contract,"  
20 and then it says, "if there has been a termination of  
21 contractor's with the owner," all right. So I think  
22 particularly under 18.6 it says, "Sections and headings are  
23 not determinative. So you have to say, well, there's been a  
24 termination event of some kind. "The subcontractor shall be  
25 paid the amount due from owner to the contractor for

1 subcontractor's completed work as provided in the contractor's  
2 document after payment by the owner to the contractor." So  
3 that last bit is pay if paid, which, of course, Your Honor has  
4 ruled is not valid and enforceable in the state correctly.  
5 It's not. And so therefore I think you have to take  
6 everything before the "after payment to the owner."

7 We're entitled to be paid something. It's just not  
8 fair that we don't get the value of our work performed. And  
9 that's irrespective of what happens after.

10 THE COURT: I keep hearing that my ruling on the pay  
11 if paid is inconsistent with my ruling in Padilla  
12 Construction. And in my review of the Padilla Construction  
13 case I don't see any -- I don't see a similarity. I mean --

14 MR. ZIMBELMAN: I'm not sure I understand. I  
15 haven't made an argument that ruling is inconsistent. I'm  
16 not --

17 THE COURT: No, not you. I keep hearing it from  
18 Apco.

19 MR. ZIMBELMAN: I think what I heard was -- and  
20 maybe I missed that argument. But what they're relying on is  
21 Padilla; right? They're saying that somehow Padilla says  
22 624.624 allows pay if paid. It plainly does not. It says you  
23 have to pay promptly, right. And the only exception is, well,  
24 if there's a schedule of payments --

25 THE COURT: Well, in Padilla the owner didn't accept

1 the work, so --

2 MR. ZIMBELMAN: Right. That's --

3 THE COURT: -- that was as far as I was concerned.

4 MR. ZIMBELMAN: It's completely different factually.  
5 And they're taking some language from Padilla out of context  
6 and without really looking at it under a pay if paid analysis.  
7 I wasn't in your court and tried that case, but certainly at  
8 the Supreme Court level the decision I have read they're not  
9 even addressing that question, okay. So that's why Padilla is  
10 basically irrelevant to this analysis. It's just you have to  
11 pay.

12 And that's what the honor 624 claim is that we've  
13 made for all my clients, is you have an obligation to promptly  
14 pay and you didn't, period, the end, all right. So at the  
15 very least it's an alternative basis for holding that there's  
16 entitlement to be paid for what we did.

17 There was some discussion about assignment. First  
18 I'd like the Court to take a look at Exhibit Number 14. And  
19 that's a letter from Apco's attorneys to attorneys for  
20 Gemstone. And they've been asked by their client, Apco, to  
21 respond to the August 15 letter. That's the termination  
22 letter from Gemstone. And they assert, "Apco is not in  
23 default of the agreement," and that "the timing of Gemstone's  
24 letter leaves little doubt as to its true purpose. Apco has  
25 provided Gemstone with a 10-day notice to stop work," and so



1 forth. In other words, they're complaining -- perhaps  
2 correctly so, that's never been adjudicated, so who knows, but  
3 they're complaining that, hey, we put you on notice that we  
4 were setting you up to terminate under 624, under NRS 624 and  
5 you jumped the gun by asserting that you have a right to  
6 terminate us for cause and because their 48 hours plus 11 gets  
7 there before our 10 days plus 15 under the statute, right,  
8 that -- they complaining that Gemstone has basically outfoxed  
9 them in terms of who can terminate first.

10           And one of the things that they argue is every  
11 contract in the state of Nevada contains an implied duty of  
12 good faith and fair dealing. And they're saying, no, you're  
13 just not being genuine and you're not being fair and you're  
14 acting in bad faith in the way you're trying to manipulate the  
15 situation. And, Your Honor, I believe that that's same thing  
16 that's being done to my client.

17           But there was an argument that the Gemstone  
18 agreement allowed it to -- allowed it an assignment of the  
19 subcontracts. And there's an important condition to that, and  
20 that's in 10.04. And this is in Exhibit 2. And it says,  
21 "Each third-party agreement for a portion of the work is  
22 hereby assigned by general contractor to developer, provided  
23 that such assignment is effective only after termination of  
24 the agreement by developer for cause pursuant to Section  
25 10.02. Apco doesn't agree that there was a termination for

1 cause pursuant to 10.02." That's what the attorney letter  
2 says. That's the position they've asserted throughout this  
3 proceeding, there was no for cause termination. If that's the  
4 case, any right of assignment is gone. So for them to suggest  
5 that somehow we consented to them stepping out of the picture  
6 by way of a provision in their prime contract that allows for  
7 assignment in the event of a termination for cause when their  
8 position is they've terminated under 624, I mean, that's just  
9 disingenuous.

10           So at the end of the day we haven't been paid in  
11 full, and we ought to be paid in full. We completed as much  
12 of the work as we were allowed to complete, and we weren't  
13 paid for that. And the party that hired us to do this work  
14 and who never terminated our contract is the only party we  
15 have left to look to to recover the value of the work that we  
16 performed, the costs that we incurred, the subs and suppliers  
17 that we paid that we were stuck with. And they're asking the  
18 Court to put form over substance to focus on one section of a  
19 written agreement that is in dispute in spite of their own  
20 willingness to ignore similar provisions as they pursue money  
21 against the owner. You know, what's good for the goose is  
22 good for the gander. They want to receive the money, we want  
23 to receive the money. That they didn't receive the money has  
24 no bearing on whether we're entitled to be paid by the party  
25 that we contracted with to be paid. And that's all we're

1 asking. Thank you, Your Honor.

2 THE COURT: All right. That concludes the Apco  
3 portion; correct?

4 Now, I know we talked about briefing and submission  
5 of findings of fact and conclusions of law. Do you want me to  
6 go ahead and schedule that for the Apco portion at this time,  
7 or should I wait until the Camco portion has been completed  
8 and then I can have submissions that have to do with all  
9 issues?

10 MR. ZIMBELMAN: Yeah. I'd just as soon do it all at  
11 once, Your Honor. I mean, it doesn't make a lot of sense to  
12 -- I mean, I'm obviously going to have a lot of repeat if I  
13 try to split it up between Camco and Apco, and it doesn't make  
14 a whole lot of sense.

15 THE COURT: That gives you additional time.

16 MR. JEFFERIES: That's probably a fair comment, and  
17 it does give me time --

18 MR. MORRIS: Gives us time to get transcripts, too.

19 MR. JEFFERIES: We're requesting transcripts  
20 hopefully today or tomorrow, and --

21 THE COURT: Okay. But my understanding is that  
22 counsel will be wanting to submit briefs and proposed findings  
23 of fact and conclusions of law; right?

24 MR. JEFFERIES: Yes, Your Honor.

25 THE COURT: Why don't I defer setting the date for

1 those things until after we've closed the Camco portion of it,  
2 and then we can have everything.

3 MR. JEFFERIES: Okay. That makes sense. And I  
4 understand that's going to move fairly --

5 THE COURT: Right now we've got the -- what did we  
6 say, the 31st for the --

7 MR. MORRIS: 31st. If we have any cross-  
8 examination, then the 6th, I believe, Your Honor.

9 THE COURT: Right. Okay. So how do we determine  
10 whether or not you're going to have -- will you be notifying  
11 the Court and counsel that you intend to proceed?

12 MR. MORRIS: For the 31st?

13 THE COURT: Right. Okay.

14 MR. JEFFERIES: Okay, Your Honor.

15 THE COURT: Okay. Very good.

16 MR. ZIMBELMAN: Can you make that decision by say  
17 Monday?

18 MR. MORRIS: Yes.

19 MR. ZIMBELMAN: Because I really need to give my  
20 witnesses adequate time to --

21 THE COURT: Okay. Very well. Interesting case,  
22 everybody. Appreciate your presentations, and I'll see you  
23 perhaps on the 31st and definitely on the 6th; right?

24 MR. ZIMBELMAN: Thank you, Your Honor.

25 THE COURT: Thank you. Court's adjourned.

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(Court recessed at 2:35 p.m., until the following  
Wednesday, January 31, 2018, at 9:00 a.m.)

\* \* \* \* \*

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESSES

David Parry	23	37/61		
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\* \* \*

DEFENDANTS' WITNESSES

Robert Thompson	65	68/70		
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\* \* \*

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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DEFENDANTS' EXHIBIT NO.

3177	72
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\* \* \*

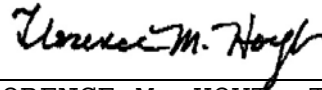
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT**  
**Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

1/30/18

\_\_\_\_\_  
DATE

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# PEEL BRIMLEY LLP

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A LIMITED LIABILITY LAW PARTNERSHIP

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FROM THE DESK OF:  
ERIC ZIMBELMAN, ESQ.  
PARTNER  
ezimbelman@peelbrimley.com

March 8, 2018

Via Hand Delivery

Honorable Mark R. Denton  
Eighth Judicial District Court  
Department 13, Courtroom 3D  
200 Lewis Avenue  
Las Vegas, NV 89155

Re: **APCO Construction v. Gemstone Development et al.**

Case No.: A571228

Our Client: Helix Electric of Nevada, LLC ("Helix")

Our Matter No.: 5226.002

**Proposed Findings of Fact and Conclusions of Law for Helix**

Dear Judge Denton:

Enclosed is Helix Electric of Nevada's (Proposed) Findings of Fact and Conclusions of Law. A Word version is being provided on the enclosed thumb drive. This letter and the enclosure was served on all counsel via e-service.

Sincerely,

**PEEL BRIMLEY LLP**

/s/ Eric Zimbelman

Eric Zimbelman, Esq.

Enclosure as stated  
cc: All Counsel via e-service

**JA005953**



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*Attorneys for Helix Electric of Nevada LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

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

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AS TO THE  
CLAIMS OF HELIX ELECTRIC OF  
NEVADA, LLC**

(PROPOSED)

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

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP

Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Cactus Rose Construction Co., Inc. ("Cactus Rose")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law Firm of Cadden & Fuller LLP

**A. Procedural History.**

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

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

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

1 contractor continued to pursue claims for non-payment from APCO and Camco. The trial  
2 focused on these claims.

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

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

16 2. **Order Granting in Part and Denying in Part Helix’s Motions in Limine**  
17 **Against APCO.** On December 29, 2017 the Court issued an order on motions in limine brought  
18 by Helix against APCO. Specifically, the Court precluded APCO from asserting or offering  
19 evidence that any of Helix’s work on the Project was (i) defective, (ii) not done in a  
20 workmanlike manner or (iii) not done in compliance with the terms of the parties’ agreement  
21 because APCO’s person most knowledgeable was not aware of, and APCO did not otherwise  
22 offer, any evidence to support such claims.

23 3. **Order on Peel Brimley Lien Claimants’ Motion in Limine Against Camco.**  
24 On December 29, 2017 the Court issued an order on motions in limine brought by the Peel  
25 Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco from  
26 asserting or offering evidence that any of the Peel Brimley Lien Claimants’ work on the Project  
27 was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in compliance with the

28 <sup>1</sup> The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.

terms of the parties' agreement because Camco's person most knowledgeable was not aware of, and APCO did not otherwise offer, any evidence to support such claims. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial that the Peel Brimley Lien Claimants have breached their agreements other than with respect to pay-if-paid agreements, evidence and argument of which is otherwise precluded by the Partial Summary Judgment discussed above. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial to dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel Brimley Lien Claimants in their respective Requests for Admission. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial that any liens recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected and are otherwise valid and enforceable.

**C. Findings of Fact.**

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

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

2. Among other things, and in exchange for a guaranteed maximum price ("GMP") of \$153,472,300 as forth in the APCO-Gemstone Agreement (Ex. 2, ¶ 5.02(a)), APCO agreed to:

- "Complete the work" required by the APCO-Gemstone Agreement, "furnish efficient business administration and superintendence" and "use its best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- "...engage contractors, subcontractors, sub-subcontractors, service providers, [and others, collectively referred to as "Third-Party Service Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- Monthly submit to Gemstone "applications for payment for the previous month on forms similar to AIA G702 and G703 and a corresponding approved

Certificate for Payment;” [Ex 2., ¶ 5.05(a)]. Each payment application was to be “based on a Schedule of Values [that] shall allocate the entire GMP among the various portions of the Work” with APCO’s fee to be shown as a separate line item.” [Ex 2., ¶ 5.05(b)]; The payment applications were to “show the Percentage of Completion of each portion of the Work as of the end of the period covered by the Application for Payment. [Ex 2., ¶ 5.05(c)]; and

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

3. APCO in turn hired various subcontractors to perform certain scopes of work. Of the claimants that participated in trial and/or have not otherwise been dismissed or whose claims have not been otherwise resolved, only two remain: Helix and National Wood.

4. After APCO provided its form Subcontract Agreement (“the APCO Subcontract”). Helix modified, signed and on or about November 28, 2007 returned the same to APCO for its review, consideration and execution. [Exhibit 45 - “the Helix-APCO Subcontract”]. Helix’s proposed modifications were contained in an attachment called the Helix Electric Exhibit to the Standard Subcontract Agreement [between APCO and Helix (hereinafter, “the Helix Exhibit (APCO)”]. [See Ex. 45-016-023]. Helix also interlineated Section 1.1 of the Helix-APCO Subcontract to reflect that “the attached Helix Electric Exhibit is also part of this Subcontract Agreement.” [Ex. 45, ¶ 1.1]. Among the modifications proposed by Helix were:

- Deleting “Pay-if-Paid” language, including a provision purporting to require Helix to assume the risk that the owner may become insolvent. [See also Trial Transcript Vol. 1 pp.116:2-117-18<sup>3</sup>];

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

<sup>3</sup> References to the Trial Transcript will hereafter be in the following format to represent the day/volume, page and line citation: “TR1-116:2-117-18.” The identity of the witness will appear in a footnote. In this instance the witness is Robert Johnson.

- Deleting section 5.4 that, among other things, would allow APCO to bind Helix to APCO's litigation of claims affecting Helix, even in the event of a negative outcome, without similarly binding APCO such that APCO could pursue claims to its benefit without ever admitting liability to Helix if it was successful in pursuing such claims. [See also TR1-119:13-24<sup>4</sup>];
- Adding a limitation on APCO's ability to require Helix to perform changed or additional work without a written change order. [See also TR1-120:22-121:7]. The purpose of this revision was to reduce Helix's exposure to the cost of unapproved changes because the APCO-Helix Subcontract otherwise permits APCO to direct Helix to proceed with changed work even if the parties have not agreed on the price therefore. [See TR1-121:4-14<sup>5</sup>].
- Adding a provision granting to Helix the right to "terminate this Subcontract ... for the same reasons and under the same circumstances and procedures with respect to [APCO] as [APCO] may terminate its agreement with respect to [Gemstone]." [See also TR1-120:11-19<sup>6</sup>];

5. On or about April 8, 2008 (i.e., nearly 5 months after Helix submitted its proposed amendments to APCO), APCO signed and returned the Helix-APCO Subcontract with numerous changes to the proposed Helix Exhibit-APCO rejecting many of Helix's proposed revisions. Helix did not consent to APCO's proposed revisions to the Helix Exhibit (APCO).

6. To the contrary, on July 11, 2008 (at a time when APCO was threatening to stop work on the Project and terminate its agreement with Gemstone and shortly before it did so) APCO's Project Manager (Nickerl) sent Helix's Vice President, Robert Johnson ("Johnson"), another marked-up revision of the Helix Exhibit-APCO stating in an accompanying email "I have gone through and done all I can ..." [See **Exhibit 506**].

7. APCO's July 11, 2008 revision [Ex. 506] of the Helix Exhibit (APCO), APCO removed two provisions to which it had earlier agreed. Specifically:

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<sup>4</sup> Testimony of Robert Johnson.

<sup>5</sup> Testimony of Robert Johnson.

<sup>6</sup> Testimony of Robert Johnson.

- 1           •     Item 17. Whereas APCO was previously willing to agree to grant to Helix the  
2                     same rights of termination that APCO had as against Gemstone, APCO struck  
3                     that provision, apparently concerned with “their current expose on the project  
4                     and them not wanting us to have the same protection that they were trying to  
5                     afford themselves.” [TR1-121:17-122:6<sup>7</sup>].
- 6           •     Item 15. Whereas APCO was previously willing to limit Helix’s obligation to  
7                     perform changes in the work without a written change order, APCO now struck  
8                     that provision, apparently because “at that time [Helix] had nine hundred and  
9                     some thousand out in change orders on the project.” [TR1-122:7-16<sup>8</sup>].

10           8.     Johnson’s undisputed testimony is that Helix did not agree to or accept APCO’s  
11     July 11, 2008 revisions. [TR1-113:20 – 114:8].<sup>9</sup> Accordingly, and in the absence of evidence to  
12     the contrary, the Court finds that Helix and APCO did not reach a meeting of the minds with  
13     respect to the Helix-APCO Subcontract.

14           9.     However, for the reasons discussed below, the Court concludes that Helix and  
15     APCO did reach an agreement with respect to material terms constituting a contract. The  
16     evidence is undisputed that Helix performed agreed-upon work on the Project for APCO,  
17     submitted multiple payment applications to APCO for an agreed-upon price, and (except for  
18     some payments made to Helix from a voucher control company after APCO left the Project),  
19     was paid directly by APCO throughout APCO’s time on the Project. [See e.g., **Exhibit 501**].

20           10.    Helix’s payment applications, payments and amounts unpaid are summarized at  
21     page 393 of Exhibit 501, as corrected by page 253 of **Exhibit 535**. Helix’s Andy Rivera  
22     (“Rivera”) testified that page 253 of Exhibit 535 is identical to page 393 of Exhibit 501 except  
23     for his correction – made during his deposition – of a spreadsheet error that failed to account for  
24     a final payment. As supported by Rivera’s testimony and this summary document, the Court  
25     finds that over the course of Helix’s work while APCO was the general contractor, Helix billed  
26     \$5,131,207.11 and was paid the sum of \$4,626,186.11. Helix was not paid the sum of

27           <sup>7</sup> Testimony of Robert Johnson.

28           <sup>8</sup> Testimony of Robert Johnson.

<sup>9</sup> Testimony of Robert Johnson.

1 \$505,021.00 with respect to these pay applications. APCO does not dispute these figures.

2 11. APCO included in its payment applications to Gemstone the amounts billed by  
3 the subcontractors, including Helix. [See e.g., **Exhibit 4**; TR1-28:25-29:8].<sup>10</sup> Helix provided  
4 undisputed testimony that the amounts it billed were reasonable for the work performed. [TR2-  
5 64:24-65:1].<sup>11</sup> Because this testimony was undisputed and because APCO and Gemstone both  
6 made payment in part (i.e., less retention) for these amounts, the Court finds that the amounts  
7 Helix billed APCO for its work were reasonable for the work performed.

8 12. APCO and Helix agree that the remaining sum of \$505,021.00 not paid to Helix  
9 for work performed while APCO was the general contractor is monies withheld from Helix as  
10 “retention.” In construction projects, retention (also known as “retainage”) is monies earned by  
11 a contractor but withheld from progress payments (usually 5-10%)<sup>12</sup> until the conclusion of the  
12 project in case the contractor abandons the project, fails to complete its work or there is  
13 otherwise some kind of dispute relating to the contractor’s work. [See e.g., TR2-38:2-22].<sup>13</sup>  
14 Retention is not a bonus or additional payment but rather an “escrow account” of temporarily  
15 withheld portion of the monies otherwise earned by the contractor for its work in place. [See  
16 e.g., TR2-38:8-13; TR2-39:1-3<sup>14</sup>]. By way of its progress payment applications on the forms  
17 required by APCO, Helix showed a gross billing, 10% retention and a “net amount due this  
18 period.” [See e.g. Ex. 501-006].

19 13. There is no evidence of any allegations or claims against Helix that may have  
20 allowed APCO to withhold Helix’s retainage. [See e.g., TR2-38:23-39:1].<sup>15</sup> In addition, the  
21 Court previously granted Helix’s Motions in Limine Nos. 1-3 against APCO precluding APCO  
22 from asserting or offering any evidence that any of Helix’s work was defective, not done in a  
23 workmanlike manner or otherwise not in compliance with the terms of the parties’ agreement.  
24 [See 12/28/2017 Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s

25 <sup>10</sup> Testimony of APCO’s Joe Pelan identifying Exhibit 4 as “typical of a monthly pay application.”

26 <sup>11</sup> Testimony of Andy Rivera.

27 <sup>12</sup> By way of amendments to NRS 624 that took effect after the events of this Project (and therefore not applicable to  
this Project), retention from a lower-tiered subcontractor is now limited to 5%. NRS 624.624(2)(a)(1).

28 <sup>13</sup> Testimony of Andy Rivera.

<sup>14</sup> Testimony of Andy Rivera.

<sup>15</sup> Testimony of Andy Rivera.



Motions in Limine against APCO Construction].

14. APCO ceased work on the Project in or about the end of August 2008. APCO and Gemstone each claim to have terminated the other. Among other events leading up to APCO's stopping work on the Project are the following:

- On July 17, 2008, APCO provided Gemstone with a written notice that unless APCO was paid the full amount of \$3,434,396 by the close of business on July 28, 2008, APCO would stop work on the Project. [See **Exhibit 6**];
- On July 28, 2008, APCO provided written notice to Gemstone that it was stopping work, that is asserted a right to terminate the APCO-Gemstone Agreement pursuant to NRS 624.610(2) and that it intended to terminate the APCO-Gemstone Agreement as of August 14, 2008. [Ex. 6];
- On August 11, 2008, APCO issued a notice of intent to stop work (pursuant to NRS 624.606 through NRS 624.630 inclusive), unless by August 21, 2008 Gemstone paid APCO the sum of \$6,183,445.24. [**Exhibit 10**]. This notice superseded and replaced the notice APCO issued on July 28, 2008 (i.e., Exhibit 6). [See, TR1-73:5-20<sup>16</sup>];
- On August 15, 2008, Gemstone provided notice to APCO that Gemstone intended to terminate APCO for cause pursuant to Section 10.02(b) of the APCO-Gemstone Agreement unless within 48 hours APCO cured certain alleged breaches, including but not limited to its failure to comply with Section 2.01(a) of the APCO-Gemstone Agreement; [**Exhibit 13**]. Gemstone's notice stated its intention, without further notice, to terminate APCO within 7 days after expiration of the 48-hour period if the breaches were not cured (i.e., on August 24, 2008). [*Id.*];
- In response to Gemstone's Notice of Termination, APCO's counsel wrote to Gemstone's counsel on August 15, 2008 disputing Gemstone's contentions and generally denying that APCO was in default. [**Exhibit 14**]. Noting that "[t]he

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<sup>16</sup> Testimony of Joe Pelan.

1 timing of Gemstone's letter leaves little doubt as to its true purpose," APCO's  
2 counsel complained that Gemstone's Notice of Termination was, in essence, an  
3 attempt to claim that it had terminated APCO (i.e., on August 24, 2008) before  
4 APCO could affect its termination of Gemstone pursuant to its August 11, 2008  
5 notice and by operation of NRS Chapter 624 (i.e., on September 5, 2008). [*Id.*].

- 6 • Similarly, on August 19, 2008, APCO's Project Manager, Randy Nickerl  
7 ("Nickerl"), wrote to Gemstone's principals "as a supplement to our lawyer's  
8 letter that responded to your 48-hour notice." [**Exhibit 15**]. Among other things,  
9 Nickerl complained that Gemstone "sent us letters to terminate the contract all  
10 within the time we were allowed to provide you with notice of our intent to  
11 suspend the work..." [*Id.*].
- 12 • As also acknowledged by APCO's primary witness, Joe Pelan ("Pelan"),  
13 Gemstone's letter was an attempt to "outfox" APCO by trying to terminate  
14 APCO before the expiration of the ten-day (stop work) and 15-day (termination)  
15 periods required by NRS 624 could elapse. [TR1-79:25-80:12<sup>17</sup>].
- 16 • On August 21, 2008, APCO provided Gemstone with written notice that APCO  
17 was stopping work effective immediately and that APCO intended to terminate  
18 the APCO-Gemstone Agreement on September 5, 2008 pursuant to NRS  
19 624.606 through NRS 624.630 inclusive. [**Exhibit 23**].
- 20 • On September 5, 2008, APCO wrote to Gemstone confirming that, pursuant to its  
21 August 21, 2008 notice (Ex. 23) it "has terminated the [APCO-Gemstone  
22 Agreement] in accordance with NRS 624.610." [**Exhibit 28**]. Although the  
23 notice contains the notation "Cc: All Subcontractors" APCO was unable to  
24 demonstrate that it actually provided a copy of this notice to Helix.

25 15. APCO continues to assert and maintain the position that Gemstone had no right  
26 to and/or did not terminate the APCO-Gemstone Agreement, but that APCO did so pursuant to  
27 NRS Chapter 624. [See TR1-80:13-25<sup>18</sup>]. This issue was never resolved on the merits because

28 <sup>17</sup> Testimony of Joe Pelan.

<sup>18</sup> Testimony of Joe Pelan.

on May 26, 2010 this Court's predecessor, Judge Delaney, issued an Order striking Gemstone's Answer and Counterclaims for failure to give reasonable attention to matters, failure to obtain new counsel and failure to appear at hearings. [See Joint Pre-Trial Memorandum ¶ 16]. APCO subsequently filed a motion for summary judgment seeking confirmation that (i) APCO complied with and Gemstone materially breached the terms of the APCO-Gemstone Agreement and (ii) Gemstone owes APCO \$20,782,659.95. [Id. ¶17]. Although the Court minutes of June 13, 2013 reflect that APCO's motion (not opposed by the defaulted Gemstone) was verbally granted with some unspecified "qualifications," the parties are unable to locate any written Order. [Id.; see also TR1-5:2-7<sup>19</sup> and TR1-7:14-22].<sup>20</sup>

16. APCO's summary judgment amount of \$20,782,659.95 is identical to the Notice of Lien that it recorded in 2008. [**Exhibit 3176** – "the APCO Notice of Lien"]. The APCO Notice of Lien describes the manner in which this amount was calculated. Specifically, the APCO Notice of Lien identifies the original amount of the APCO-Gemstone Agreement as \$153,472,300 but states in a footnote that "the original contract amount performed and billed through [APCO's] termination of contract (i.e., August 2008) is \$60,325,901.89. The APCO Notice of Lien also adds "actual or additional change order work, materials and equipment performed through [APCO's] termination of contract" of \$9,168,116.32. From that sum, APCO deducts "the total amount of all payments received to date" of \$48,711,358.26." The math is as follows:

Amount of work performed:	\$60,325,901.89
Additional or changed work performed:	<u>\$ 9,168,116.32</u>
Subtotal work performed:	\$69,494,018.22
Less Payments:	<u>(\$48,711,358.26)</u>
 TOTAL:	 \$20,782,659.96 <sup>21</sup>

17. By way of APCO's final certified payment application [**Exhibit 31**], which it submitted on October 3, 2008 (i.e., more than a month after stopping work and terminating the

<sup>19</sup> Opening Statement of APCO's counsel.

<sup>20</sup> Opening Statement of Helix's counsel.

<sup>21</sup> **Exhibit 536** is this math as performed by APCO's witness, Mary Jo Allen, during cross examination. [See also TR3-145:25-147:22].

APCO-Gemstone Agreement) APCO showed similar figures. Specifically, on the Contractor's Application for Payment document [Ex. 31-002], APCO showed "total completed & stored to date" of \$62,101,623.10 and a current payment due of \$5,276,181.54. While these figures are lower than the subtotal of work performed, and the amounts owed as represented by the APCO Notice of Lien, APCO's Joe Pelan testified that APCO was owed for changed work that Gemstone had not approved and allowed to be billed. [See TR1-65:7-9]. APCO's Mary Joe Allen contradicted APCO's Joe Pelan by testifying that APCO was owed only approximately \$1.4 million when it stopped work on the Project. [TR3-122:10-12]. However, it is clear that Ms. Allen's calculations only selected line items earned by APCO and did not include any amounts owed to subcontractors that had otherwise been included in APCO's pay applications. In any event, the Court finds that APCO billed for and included in its Notice of Lien amounts earned by (but not paid to) subcontractors, including their retention.

18. APCO admits that it did not issue to Helix any notice of termination or notice of intent to terminate the APCO-Helix Subcontract, nor did it do so for any other subcontractors. [TR1-70:15-19].<sup>22</sup> As more fully discussed herein, APCO contends that the Helix-APCO Subcontract was entered into and controls those parties' relationship. One of the provisions of the Helix-APCO Subcontract is Section 9.2, which gives APCO the right to terminate Helix for APCO's convenience (i.e., without cause) if it gives Helix "written notice of the termination two calendar days in advance of the effective date of the termination" commencing upon Helix's receipt of such notice. [Ex. 45, ¶9.2]. As noted, APCO gave no such notice.

19. To the contrary, while APCO was threatening to stop work and terminate its contract with Gemstone, APCO repeatedly advised Helix and its other subcontractors that they remained under contract with APCO. Specifically, but without limitation, APCO gave the following notices to its subcontractors:

- **Exhibit 48:** A notice emailed to "ALL MANHATTEN WEST SUBS" (CAPS in original) on July 29, 2008 (i.e., one day after issuing to Gemstone its "Notice of Intent to Terminate Contract" – see Ex. 6). By way of Exhibit 48, APCO advised

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<sup>22</sup> Testimony of Joe Pelan.

its subcontractors of its “issuance of a STOP WORK NOTICE to GEMSTONE” but that “ALL SUBCONTRACTORS ARE STILL CONTRACTUALLY BOUND TO THE TERMS OF THEIR RESPECTIVE SUBCONTRACTS WITH APCO CONSTRUCTION ...” (CAPS in original).

- **Exhibit 23:** A notice to “ALL MANHATTEN WEST SUBCONTRACTORS” (CAPS in original) attaching APCO’s NOTICE OF STOPPING WORK AND NOTICE OF INTENT TO TERMINATE CONTRACT (CAPS in original) that it sent to Gemstone on August 21, 2008. By way of the notice to subcontractors, APCO again informed the subcontractors that “**APCO CONSTRUCTION is only stopping work on this project**” and that “**all subcontractors, until advised in writing by APCO CONSTRUCTION, remain under contract with APCO CONSTRUCTION.**” (CAPS and bold in original). APCO never advised Helix or any of the other subcontractors that they were no longer under contract with APCO.

20. Just as APCO was advising its subcontractors of its notices of intent to stop work and terminate its agreement with Gemstone (*see e.g.*, Exs. 23, 48), Gemstone notified the subcontractors that it disputed APCO’s claims. For example, on August 12, 2008, in response to a work stoppage by APCO, Gemstone issued an email to Helix and other subcontractors advising them that (i) “the work stoppage was actually the result of an ongoing dispute [with APCO] and had nothing to do with Gemstone’s financing for the project” and (ii) “Gemstone is working diligently to resolve any outstanding disputes relating to the change orders and is dedicated to paying any change orders for which it is actually responsible.” [Exhibit 12]. In December 2008, in announcing that work on the Project was suspended because Gemstone’s lenders “do not expect to disperse further funds for construction, Gemstone advised Helix and the other subcontractors that it was “surprised by the revelation that APCO has generated approximately seventeen million dollars in cost overruns and defect remediation costs.” [Exhibit 40].

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21. After APCO stopped work, Helix had a meeting with Gemstone's principal, Alex Edelstein, and a Camco representative in which Gemstone represented to Helix that "work was still proceeding, nothing had changed with our contracts with the current APCO relationship, and that we were to take direction for construction from Camco, and they wanted to negotiate a contract." [TR2-22:10-23:3<sup>23</sup>]. Despite repeatedly requesting to know what happened to APCO, Helix "never got a clear signal. So you stop asking after a while because you get different messages from everybody. Our people had even asked in the field what's going on, and people didn't know. So it was just confusion." [TR2-23:8-14].<sup>24</sup>

22. Helix's Robert Johnson testified that, from Helix's perspective, "until APCO does something contractually to inform me our relationship is different, it's not changed." [TR2-23:17-19]. As noted, APCO never gave Helix written notice of termination of the Helix-APCO Subcontract. [TR1:126:1-4].<sup>25</sup> It also never advised Helix that by way of an incorporation clause in the APCO Subcontract the termination of the APCO-Gemstone Agreement somehow served to terminate the APCO Subcontract by implication. [TR1:126:12-22].<sup>26</sup> Indeed, as discussed above, APCO had rejected Helix's attempt to modify the APCO Subcontract by including language in the Helix Exhibit (APCO) that would have granted Helix the same rights of termination that APCO possessed in the APCO-Gemstone Agreement. [See Ex. 506-004; TR1-121:17-122:6].<sup>27</sup>

23. Mr. Johnson also testified that, unlike APCO, Helix did not believe it had a legal right to stop work on the Project after APCO did so. [TR1:128:12-16]. In fact, Helix worried that if it had stopped work it "would have been at full risk of [APCO] pursuing us for abandoning the contract." [TR1:128:15-16]. APCO did not dispute this point.

24. Section 10.04 of the APCO-Gemstone Agreement provides in part:

Each Third-Party Agreement for a portion of the Work is hereby assigned by [APCO] to [Gemstone] provided that such assignment is effective only after termination of the Agreement by [Gemstone] for cause pursuant to Section 10.02

<sup>23</sup> Testimony of Robert Johnson on cross-examination by APCO's counsel.

<sup>24</sup> Testimony of Robert Johnson on cross-examination by APCO's counsel.

<sup>25</sup> Testimony of Robert Johnson.

<sup>26</sup> Testimony of Robert Johnson

<sup>27</sup> Testimony of Robert Johnson.

1 and only for those Third-Party Agreements which developer accepts by notifying  
2 [APCO] and the applicable Third-Party Provider in writing.

3 There was no evidence presented at trial that Gemstone ever notified APCO, Helix or any other  
4 subcontractor of its acceptance of an assignment of the relevant subcontracts. [See e.g., TR2-  
5 36:12-16].<sup>28</sup>

6 25. After APCO ceased work on the Project, Gemstone hired Camco to be its general  
7 contractor pursuant to an Amended and Restated ManhattanWest General Construction  
8 Agreement effective as of August 25, 2008 (“the Camco-Gemstone Agreement”). [See **Exhibit**  
9 **162**]. However, the Camco-Gemstone Agreement [Ex. 162] is significantly different than the  
10 APCO-Gemstone Agreement [Ex. 2]. Unlike the APCO-Gemstone Agreement, the Camco-  
11 Gemstone Agreement is not a guaranteed maximum price agreement (“GMP”) but rather, as  
12 described by Camco, it is a “cost plus agreement.” [See Exhibit 40; TR5-42:1-13].<sup>29</sup> Unlike the  
13 GMP agreement, the contractor with a cost-plus agreement is not at risk with respect to the price  
14 of the construction. Pursuant to the Camco-Gemstone Agreement, Camco was entitled to  
15 receive a fee of \$100,000.00 per month [see Ex. 162, ¶6.01] on top of whatever costs the owner  
16 incurs on the Project. [TR5-42:1-13].

17 26. The APCO-Gemstone Agreement and the Camco-Gemstone Agreement are also  
18 vastly different with respect to the duties of the contractor and the owner. Unlike the APCO-  
19 Gemstone Agreement, the Camco-Gemstone Agreement expressly exempts Camco from many  
20 the traditional general contractor obligations. For example, Article III obligates Gemstone,  
21 rather than Camco, to “be responsible for and shall coordinate all construction means, methods,  
22 techniques, sequences, procedures necessary for or related to the work.” [Ex. 162, ¶3.01(a)]. As  
23 Camco’s Dave Parry admitted, these are tasks that are usually performed by a general  
24 contractor.” [TR5-48:4-11]. The Camco-Gemstone Agreement also contains “Express  
25 Exclusions” from Camco’s responsibility, including:

- 26 • responsibility for any of the costs, fees or expenses related to the work; [Ex. 162,  
27 ¶3.02(a)];

28 <sup>28</sup> Testimony of Robert Johnson.

<sup>29</sup> Testimony of David Parry.

- any requirement to deliver daily reports; [Ex. 162, ¶3.02(b)]; and
- responsibility for the acts, errors or omissions of its subcontractors. [Ex. 162, ¶3.02(c)].

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

28. Mr. Parry described Camco as "more of a construction manager at this point than a general contractor" [TR5-31:10-11].<sup>30</sup> Nonetheless, the Camco-Gemstone Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone Agreement also requires Camco, in the same way that APCO did, to aggregate payment applications from subcontractors and prepare and submit to Gemstone payment applications for the amounts represented by the subcontractor payment applications and Camco's fee. [See Ex. 162-008-010, ¶7.01].

29. Camco continued the same payment application format and numbering and same schedule of values that APCO had been following. [See **Exhibit 218**; TR5-30:21-31:4].<sup>31</sup> Like APCO before it, Camco compiled and included in its payment applications to Gemstone the amounts billed by its subcontractors, including Helix. [See *e.g.*, **Exhibit 522-001-011**]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone Agreement required Camco, upon receipt of a progress payment from Gemstone, to "promptly pay each [subcontractor] the amount represented by the portion of the Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-010, ¶7.03(e)].<sup>32</sup> It is only after Gemstone announced that the Project would be suspended that Camco asserted otherwise.

30. Camco's initial letter to subcontractors following Gemstone's announcement, demonstrates both that it believed it had subcontracts (because it purported to terminate the

<sup>30</sup> Testimony of Dave Parry.

<sup>31</sup> Testimony of Dave Parry.

<sup>32</sup> Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be paid to Camco (through retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].



1 same) and that it intended to continue to forward payment applications to Gemstone. [See e.g.,  
2 Exhibit 804-003-004]. Specifically, Camco wrote:

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

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

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

14 31. Camco quickly retracted its initial communication and replaced it with a second  
15 letter [See e.g., Ex. 804-005-007] asking the subcontractors to “please disregard previously  
16 letter which was sent in error.” [See e.g., Ex. 804-005]. Among other things, Camco’s second  
17 letter:

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

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

32. Some subcontractors stopped working after APCO left the Project. Others, such  
as Helix, continued to work on the Project and began working for Camco as the general

1 contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started working on  
2 the Project only after APCO left and worked only for Camco.

3 33. Camco presented some subcontractors with a standard form subcontract  
4 Agreement (“the Camco Subcontract”), a representative example of which is Camco’s  
5 subcontract with Fast Glass. [See **Exhibit 801-007-040**; TR5-57:8-16].<sup>33</sup> Among other  
6 provisions, the Camco Subcontract (consistent with the Camco-Gemstone Agreement), requires  
7 Camco, no later than 10 days after receiving payment from Gemstone in response to its payment  
8 applications, to “pay to Subcontractor, in monthly progress payments, 90%<sup>34</sup> of labor and  
9 materials placed in position by Subcontractor during [the month preceding a payment  
10 application].” [See Ex. 701-012, ¶ II(C)].

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

18 35. Camco also presented subcontractors who had previously worked for APCO,  
19 including Helix and Cabintec (National Wood), with a document titled Ratification and  
20 Amendment of Subcontract Agreement (“the Camco Ratification”). [See *e.g.*, **Exhibit 3164**].

21 36. Based on Helix’s undisputed testimony and the lack of signed agreements, the  
22 Court finds that Helix did not sign or enter into either the Camco Subcontract or the Camco  
23 Ratification. Although Camco presented each of these forms to Helix, the testimony is  
24 undisputed that Helix did not execute either. [See **Exhibit 510-006-042**; **Exhibit 172-003-011**;  
25 **TR1-123:1-124:25**].<sup>35</sup> As it did with the APCO Subcontract, Helix prepared a Helix Electric  
26 Exhibit (“the Helix Exhibit (Camco)”) to the Camco Subcontract with multiple proposed

27 <sup>33</sup> Testimony of Dave Parry.

28 <sup>34</sup> i.e., less retention.

<sup>35</sup> Testimony of Robert Johnson.

revisions to which Camco never agreed. [See **Exhibit 510-043-045**; TR1-125:2-10<sup>36</sup>].<sup>37</sup>

37. Among other things, by way of the Helix Exhibit (Camco), Helix noted in Item 1 that [“p]rior to the removal of APCO as the contractor and the issuance of this Ratification and Amendment of Subcontract Agreement, Helix Electric and APCO were in the process of completing negotiations of the [Helix Exhibit (APCO)]....” Helix attempted to incorporate into the Helix Exhibit (Camco) the last version of the Helix Exhibit (APCO) that was acceptable to Helix. [See Ex. 510-043]. Helix felt it had to do so “because we’re still under contract with APCO.” [TR125:11-25].<sup>38</sup>

38. As it was instructed to do, and while it continued to negotiate with Camco with respect to the Camco Subcontract, the Camco Ratification Agreement and the Helix Exhibit (Camco), Camco continued to perform the work it had agreed to perform on the Project until Gemstone suspended work on December 15, 2008. As it was also instructed to do, Helix submitted payment applications to Camco using the same forms and same procedures as it had employed while APCO was still on the Project. [See e.g., Ex. 508-067-074]. Camco in turn submitted its pay applications to Gemstone in the same way, and using the same forms, as APCO had used. [See e.g., Ex. 522-001-011].

39. Helix submitted gross payment applications to Camco totaling \$1,010,255.25 (i.e., inclusive of retention). [See Ex. 508-001-002; 037-038; 049; 068-069].<sup>39</sup> Helix was paid only \$175,778.80 and is owed the balance, \$834,476.45.

40. The Court finds that Helix and Camco did not enter into the Camco Subcontract or the Camco Ratification. However, the Court finds that Helix and Camco entered into a contractor/subcontractor relationship and agreement whereby they agreed on the material terms of a contract – i.e., the work to be performed, the price for the work and Camco’s obligation to pay. The Court finds that Camco breached its obligation to pay Helix the sum of \$834,476.45.

<sup>36</sup> Testimony of Robert Johnson.

<sup>37</sup> APCO argues that by way of its initial pleading in this action Helix admitted to entering into the Camco Ratification. However, (i) Helix moved to amend its pleading during opening statement to correct this mis-statement [see TR1:9:19-25]; (ii) Helix provided credible and undisputed testimony is the pleading is incorrect and that it did not in fact sign or agree to the document which (iii) outweighs any pleading admission. A trial is a search for the truth and the evidence at trial supports the truth that Helix did not enter into the Camco Ratification.

<sup>38</sup> Testimony of Robert Johnson.

<sup>39</sup> See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See TR3-68:17-69:7].

41. Helix provided undisputed testimony that the amounts it billed were reasonable for the work performed. [TR2-71:22-72:3].<sup>40</sup> Because (i) this testimony was undisputed, (ii) Camco submitted these amounts on its certified pay applications to Gemstone, and (iii) Helix was paid in part for these amounts, the Court finds that the amounts Helix billed Camco for its work were reasonable for the work performed.

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

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

**B. Conclusions of Law.**

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

2. Because there was no meeting of the minds with respect to materials terms of the APCO Subcontract, the Court concludes that this document does not constitute the parties' agreement.

3. However, the Court concludes that APCO and Helix entered into a contract for an agreed-upon sum for the work performed by Helix, that Helix performed that work and that

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<sup>40</sup> Testimony of Andy Rivera.

1 in breach of that contract, APCO has not paid Helix in full. APCO owes Helix the principal sum  
2 of \$505,021.00 for monies earned and not paid to Helix while APCO was on site as the general  
3 contractor.<sup>41</sup>

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

16 5. Where an implied-in-fact contract exists “quantum meruit ensures the laborer  
17 receives the reasonable value, usually market price, for his services.” *Precision Constr.*, 128  
18 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment § 31 cmt. e (2011),  
19 *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) (“The doctrine of quantum meruit  
20 generally applies to an action ... involving work and labor performed which is founded on a[n]  
21 oral promise [or other circumstances] on the part of the defendant to pay the plaintiff as much as  
22 the plaintiff reasonably deserves for his labor in the absence of an agreed upon amount.”). Here,  
23 the only and undisputed testimony was that the monies Helix billed for its work were a  
24 reasonable value for the work performed. Moreover, APCO’s submission of such amounts to  
25 Gemstone as part of its own pay application estopps APCO from disputing the reasonable value  
26 of Helix’s work. Because Helix has been paid all but \$505,021.00 of the value its established for  
27 the work it performed while APCO was on site as the general contractor, APCO owes Helix no

28 <sup>41</sup> Helix’s claim that APCO is also liable for sums earned by Helix after APCO left the site and while Camco was on  
site as the general contractor is discussed *infra*.

1 less than that amount.

2 6. Alternatively, and even if (as APCO contends despite of the lack of a fully  
3 executed agreement) Helix and APCO entered into the APCO Subcontract and that document is  
4 therefore controlling, the court concludes that APCO is nonetheless in breach of that agreement  
5 for failure to pay Helix in full as required by that document for the work Helix performed while  
6 APCO was on site as the general contractor.

7 7. For the reasons discussed below, the Court rejects APCO's contention that it  
8 does not owe Helix any retention because Helix did not comply with certain conditions found in  
9 Section 3.8 of the Helix-APCO Subcontract.

10 8. Section 3.8 of the Helix-APCO Subcontract provides in part:

11 The 10 percent withheld retention shall be payable to Subcontractor upon, and  
12 only upon the occurrence of all of the following events, each of which is a  
13 condition precedent to Subcontractor's right to receive final payment hereunder  
14 and payment of such retention: (a) Completion of the entire project described in  
15 the Contract Documents; (b) The approval and final acceptance of the project  
16 Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d)  
17 Delivery to Contractor from Subcontractor all as-built drawings from its scope of  
18 work and other close-out documents; (e) Delivery to Contractor from  
19 Subcontractor a Release and Waiver of Claims from all of Subcontractor's  
20 laborers, material and equipment suppliers, and subcontractors ...

21 APCO argues that because Helix it did not comply with these conditions it has no right to  
22 receive its retention. The Court rejects this argument because (i) Section 3.8 otherwise assumes  
23 that the Project would be completed such that Helix's compliance with Section 3.8 would not  
24 otherwise be impossible and futile, (ii) enforcement of Section 3.8 as demanded by APCO  
25 would impermissibly avoid APCO's payment obligations under NRS 624 and attempt to waive  
26 or impair lien rights, and (iii) there was a termination event that triggers APCO's payment  
27 obligations pursuant to Section 9.4, which overrides the provisions of Section 3.8.

28 9. When one party abandons contract, the other party need not "engage in futile  
gestures to preserve contractual rights." *Mayfield v. Koroghli*, 124 Nev. 343, 349, 184 P.3d 362,  
366 (2008). Furthermore, it is futile for a party to make a demand "if the other party has  
repudiated the contract or otherwise indicated [he] refuses to perform." *Id.* Here, it was

impossible and would have been futile for Helix to comply with the provisions of Section 3.8. For example, the “entire project” was never completed through no fault of Helix, nor was there any “approval and final acceptance of the project Owner” as Section 3.8 otherwise plainly anticipated. Of course, “receipt of final payment by Contractor from Owner” is a Pay-if-Paid clause that is void and unenforceable.

10. To the extent Section 3.8 serves to avoid APCO’s obligation to promptly pay Helix for its work on the Project (as it is obligated to do pursuant to NRS 624.624), it is a “condition stipulation or provision” that is against public policy, void and unenforceable pursuant to NRS 624.628(3) because it “(a) Requires a lower-tiered subcontractor to waive any rights provided in NRS 624.624 to 624.630, inclusive, or which limits those rights; [or] (b) Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to NRS 624.624 to 624.630, inclusive.”<sup>42</sup>

11. Similarly, if Section 3.8 prevents Helix from being paid in full it violates the Nevada Mechanic’s Lien Statute and is void and unenforceable because it impermissibly “require[s] a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants” (NRS 108.2453(2). See also, NRS 108.2457(1) and (2))<sup>43</sup> and is a

<sup>42</sup> NRS 624.628(3) provides:

3. A condition, stipulation or provision in an agreement which:

(a) Requires a lower-tiered subcontractor to waive any rights provided in NRS 624.624 to 624.630, inclusive, or which limits those rights;

(b) Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to NRS 624.624 to 624.630, inclusive; or

(c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the lower-tiered subcontractor is not responsible,

↪ is against public policy and is void and unenforceable.

<sup>43</sup> NRS 108.2453(2) provides:

2. A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this State that attempts to do any of the following is contrary to public policy and is void and unenforceable:

(a) Require a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants, other than as expressly provided in NRS 108.221 to 108.246, inclusive;

(b) Relieve a person of an obligation or liability imposed by the provisions of NRS 108.221 to 108.246, inclusive;

(c) Make the contract or other agreement subject to the laws of a state other than this State;

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; or

1 “term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor  
2 or supplier” (NRS 108.2457(1)).<sup>44</sup>

3 12. More fundamentally, the termination of the APCO-Gemstone Agreement  
4 triggered Section 9.4 of the Helix-APCO Subcontract, overrides Section 3.8 and requires APCO  
5 to pay Helix in full. Section 9.4 provides:

6 Effect of Owner’s Termination of Contractor. If there has been a termination of the  
7 Contractor’s contract with the Owner, the Subcontractor **shall be paid** the amount  
8 due from the Owner to the Contractor for the Subcontractor’s completed work ...  
after payment by the Owner to the Contractor.

9 [Ex. 45, ¶9.4, emphasis added].

10 13. Irrespective of who terminated first (i.e., APCO or Gemstone), there was clearly  
11 “a termination of the Contractor’s contract with the Owner” and the plain language of Section  
12 9.4 requires APCO to then pay Helix in full for its completed work “after payment by the  
13 Owner.” Because that final clause (“after payment by the Owner”) is a Pay-if-Paid clause it is  
14 void as against public policy, unenforceable and must therefore be ignored. The Court therefore  
15 concludes that once the APCO-Gemstone Agreement was terminated (i.e., no later than  
16 September 5, 2008), APCO became obligated to pay Helix in full, including its retention.

17 14. The first sentence of Subsection 9.4 (“Effect of Owner’s Termination of  
18 Contractor”) does not affect the Court’s analysis, particularly where APCO and Gemstone both  
19 claimed to have terminated the other. First, Subsection 18.6 provides that “all sections and  
20 headings are descriptive only and not controlling.” Second, the header of Section 9 as a whole is  
21 “Termination for Convenience,” the text of Section 9 identifies only APCO as having the right

22 (e) Require a prime contractor or subcontractor to waive, release or extinguish a claim or right that the prime  
23 contractor or subcontractor may otherwise possess or acquire for delay, acceleration, disruption or impact damages or  
24 an extension of time for delays incurred, for any delay, acceleration, disruption or impact event which was  
unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered  
into, or for which the prime contractor or subcontractor is not responsible.

<sup>44</sup> NRS 108.2457(1) provides:

25 1. Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier  
26 is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not obtain the waiver of,  
or impair the lien rights of, a contractor, subcontractor or supplier, except as provided in this section. Any written  
consent given by a lien claimant that waives or limits any lien rights is unenforceable unless the lien claimant:

27 (a) Executes and delivers a waiver and release that is signed by the lien claimant or the lien claimant’s authorized  
agent in the form set forth in this section; and

28 (b) In the case of a conditional waiver and release, receives payment of the amount identified in the conditional  
waiver and release.



1 of termination for convenience<sup>45</sup> and no other provision grants Helix a right of termination for  
2 convenience. As such, the Court may ignore the descriptive heading of Subsection 9.4 and apply  
3 the text of the subsection because there “has been a termination of the Contractor’s Contract  
4 with Owner.”

5 15. Moreover, even if Section 9.4 is intended to apply only when the owner has  
6 terminated APCO and the Court were to assume that APCO’s termination of the owner takes  
7 precedence over the owner’s termination of APCO,<sup>46</sup> APCO admits that it never exercised its  
8 right to terminate Helix for convenience. As such, the provisions of (i) Subsection 9.3  
9 (“Subcontractor’s Obligations” - describing the procedures Helix would be required to follow)  
10 and (ii) Subsection 9.5 (“Compensation” - describing the compensation to which Helix would  
11 be entitled) in the event of an APCO termination for convenience are inapplicable. Because the  
12 agreement is otherwise silent as to Helix’s rights when APCO terminates its contact with the  
13 owner but fails to terminate its contract with Helix, it is appropriate for the Court to “invoke  
14 quantum meruit as a gap-filler to supply absent terms” and “ensure the laborer receives the  
15 reasonable value ... for his services.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.  
16 371, 380, 283 P.3d 250, 257 (2012). See also discussion *infra* at Conclusion of Law ¶ 20.

17 16. Even if the Court were to (i) ignore the termination of the APCO-Gemstone  
18 Agreement and (ii) otherwise enforce Subsection 3.8 of the Helix-APCO Agreement (as APCO  
19 urges) so as to preclude Helix from receiving its retention until, among other things,  
20 “completion of the entire project,” APCO’s decision to stop work on the Project and  
21 subsequently seek to enforce this provision constitutes a breach of the duty of good faith and  
22 fair dealing that is implied in every contract in Nevada. *See Hilton Hotels Corp. v. Butch Lewis*  
23 *Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923–24 (1991).

24 17. When one party performs a contract in a manner that is unfaithful to the purpose  
25 of the contract and the justified expectations of the other party are thus denied, damages may be

26 <sup>45</sup> See, e.g., Subsection 9.1 (“The Contractor [i.e., APCO] shall have the right to terminate for convenience, at any  
time, with or without cause, Subcontractor’s performance of all or part of the Subcontract or Subcontract Work ...”).

27 <sup>46</sup> As noted above, such a conclusion is not at all certain, especially when APCO itself recognized that the date of  
28 Gemstone’s contractual termination, if otherwise sustainable, preceded the earliest date that APCO’s statutory  
termination (i.e., pursuant to the provisions of NRS 624) could have been effective. [See Exs. 14 and 15 and Findings  
of Fact ¶¶ 14, 15].

1 awarded against the party who does not act in good faith. *Butch Lewis Prods.*, 107 Nev. at 234.  
2 Here, by (i) terminating its relationship with Gemstone and (ii) failing to terminate APCO for  
3 convenience pursuant to Subsection 9.2<sup>47</sup> (and thereby establishing a procedure and contractual  
4 basis for Helix to recover the value of its work performed to that point), APCO effectively  
5 deprived Helix of a contractual means of recovery. APCO also exposed Helix to the risk that the  
6 project would not be completed while compelling Helix to “remain under contract” [see Ex. 23]  
7 and continuing working to its ultimate detriment.

8 18. In addition, and while APCO contends that Helix is barred from recovering its  
9 retention pursuant to Subsection 3.8 of the Helix-APCO Subcontract, it hypocritically sought  
10 and obtained a summary judgment against Gemstone for all monies it earned, including  
11 retention, despite the fact that its agreement with Gemstone contains similar language.  
12 Specifically, but without limitation, the APCO-Gemstone Agreement:

- 13 • requires APCO to “complete the work” and “use its best efforts to complete the  
14 Project” [Ex. 2, ¶2.01(a)];
- 15 • conditions APCO’s entitlement to final payment until, among other things,  
16 APCO “has fully performed the contract” [Ex. 2, ¶5.06(a)(i)], and “a final  
17 Certificate of Payment has been issued by the architect” [Ex. 2, ¶5.06(a)(iv)]; and
- 18 • conditions payment of retention to APCO on (i) attainment of final completion,  
19 (ii) resolution of “all outstanding disputes,” and (iii) removal of all liens. [Ex. 2,  
20 ¶5.07(f)].

21 19. Like the provisions of Section 3.8 of the Helix-APCO Subcontract, compliance  
22 with these provisions of the APCO-Gemstone Agreement also would not have been possible  
23 once APCO and/or Gemstone terminated the APCO-Gemstone Agreement. APCO nonetheless  
24 sought recovery and obtained a summary judgment of all sums earned, including retention.  
25 APCO is therefore estopped to deny Helix a recovery on grounds that APCO does not apply to  
26 itself

27 20. Finally, even if Helix were not entitled to payment from APCO for work Helix

28 <sup>47</sup> Indeed, as noted above, APCO informed Helix that it was “STILL CONTRACTUALLY BOUND” [see Ex. 48]  
and “remain[s] under contract” [see Ex. 23] to APCO. [See supra, Finding of Fact ¶ 19].

1 performed while APCO was on site as the general contractor for any of the foregoing reasons as  
2 urged by APCO, the Court concludes in the alternative that APCO has been unjustly enriched to  
3 the extent of the monies Helix earned but was not paid during that time.

4 21. A claim for unjust enrichment arises when a “plaintiff confers a benefit on the  
5 defendant, the defendant appreciates such benefit, and there is ‘acceptance and retention by the  
6 defendant of such benefit under circumstances such that it would be inequitable for him to retain  
7 the benefit without payment of the value thereof.’” *Certified Fire Prot.*, 128 Nev. at 381, 283  
8 P.3d 250, 257 (2012) citing *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272,  
9 1273 (1981). Here, APCO benefitted from Helix’s work and the monies it otherwise earned by  
10 (i) submitting the same as part of its own pay applications, (ii) including in its Notice of Lien all  
11 amounts earned by (but not paid to) subcontractors, including their retention.

12 22. For all of the foregoing reasons, and in the alternative, Helix is entitled to an  
13 award of \$505,021 for monies earned and not paid to Helix while APCO was on site as the  
14 general contractor.<sup>48</sup>

15 23. The Court also concludes that Camco and Helix entered into an oral or implied-  
16 in-fact contract whereby they agreed on the material terms of a contract – i.e., the work to be  
17 performed, the price therefore and Camco’s obligation to pay. The Court further concludes that  
18 Camco failed to pay Helix the undisputed sum of \$834,476.45 without excuse (other than  
19 Camco’s reliance on Pay-if-Paid, which the Court has previously rejected).

20 24. Helix is therefore entitled quantum meruit damages for recovery of the full and  
21 reasonable value of the work it performed less monies received. *See Certified Fire Prot.*, 128  
22 Nev. at 380. Camco did not dispute Helix’s testimony that the amounts it billed were a  
23 reasonable value for the work performed, and the reasonableness thereof was demonstrated by  
24 Camco’s payment in part and its inclusion of Helix’s billings in its own payment applications to  
25 Gemstone. The court therefore concludes that the unpaid value of Helix’s work while Camco  
26 was on site as the general contractor is \$834,476.45 and that Helix should be awarded that  
27 principal amount against Camco for that principal amount.

28 <sup>48</sup> As noted, Helix’s claim that APCO is also liable for sums earned by Helix after APCO left the site and while  
Camco was on site as the general contractor is discussed *infra*.

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

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

18           27.     As between Helix and Camco specifically, and even if Pay-if-Paid was a viable  
19 legal defense (which it is not), Helix and Camco did not reach a meeting of the minds on either  
20 the Camco Subcontract or the Camco Ratification through which Camco asserts Pay-if-Paid.  
21 As there is no other factual basis for a Pay-if-Paid agreement as between Helix and Camco, the  
22 Court rejects any such defense for Camco as against Helix.

23           28.     For the following reasons, the court concludes that in addition to the \$505,021.00  
24 that Helix earned but was not paid while APCO was on site as the general contractor, Helix is  
25 also entitled to judgment against APCO for the amounts Helix earned but was not paid  
26 (\$834,476.45) while Camco was on site.

27           29.     First, as discussed above, APCO never terminated its subcontract with Helix and  
28 instead repeatedly informed Helix that it was "STILL CONTRACTUALLY BOUND" [see Ex.

1 48] and “remain[s] under contract” [see Ex. 23] to APCO. That Helix subsequently contracted  
2 (expressly or impliedly) with Camco to continue the work Helix was contractually bound to  
3 APCO to perform is of no consequence to APCO’s liability to Helix for the full amount of  
4 Helix’s unpaid work. As Helix testified, and APCO did not dispute, Helix reasonably concluded  
5 that it was still under contract with APCO and exposed to a claim of abandonment of contract if  
6 it failed to continue working (unless and until APCO terminated Helix or otherwise directed it  
7 to stop working, which it never did).

8 30. First, APCO hired Helix to perform work at a specific price and/or for a  
9 reasonable value for the duration of the Project and never terminated that relationship. To the  
10 contrary, APCO repeatedly informed Helix and other subcontractors that they were “still  
11 contractually bound to” and “remain under contract with” APCO. [See Ex. 23, 48].

12 31. Second, the mere fact that a non-breaching party, such as Helix, enters into a  
13 subsequent contract with a third party for the same or similar purpose does not create a novation  
14 that absolves the breaching party, APCO, or otherwise terminates the first agreement  
15 (irrespective of breach). Under Nevada law, “the party asserting novation has the burden of  
16 providing all essentials of novation by clear and convincing evidence.” *United Fire Ins. Co. v.*  
17 *McClelland*, 105 Nev. 504, 509 (1989). The elements which APCO must prove by clear and  
18 convincing evidence are the following: “(1) there must be an existing valid contract; (2) all  
19 parties must agree to a new contract; (3) the new contract must extinguish the old contract; and  
20 (4) the new contract must be valid.” *Id.* at 508.

21 32. APCO has not established a novation by clear and convincing evidence. First,  
22 there is no evidence that “all parties” (i.e., Helix, APCO and Camco) agreed to a new contract  
23 because APCO is not a party to any agreement (express or implied between Helix and Camco.  
24 Second, APCO cannot prove that the Helix-Camco Subcontract “extinguished” the Helix-APCO  
25 Subcontract. To establish this element, the party claiming novation must show that the creditor  
26 clearly intended to release the original obligor. See *Pink v. Busch*, 100 Nev. 684 (1984) (“the  
27 intent to cause a novation must be clear” and the evidence must show a “clear understanding  
28 that a complete novation is proposed.”).

1           33. In *Pink*, the plaintiff sold a business to certain parties with a guaranty of  
2 performance. Thereafter, the buyers sold to new buyers, who provided a new guaranty of  
3 performance. When the new buyers defaulted, Pink sued the original and new buyers and all of  
4 the guarantors. The original guarantors claimed that the contract had been novated, but the  
5 Nevada Supreme Court ruled that even the plaintiff's acceptance of the new guarantees (as  
6 found by the trial court) did not serve to release the original guarantors. 100 Nev. at 690-691.  
7 Instead, this merely provided additional security for the Plaintiff. In fact, "the failure of the  
8 creditor to cancel the original note [served] to negate one of the essential elements of a novation  
9 – that the parties agreed to extinguish the original debt or obligation." *Id.* at 690.

10           34. Similarly here, Helix's agreement to work for Camco was a reasonable means of  
11 seeking additional security for payment of the work it had agreed to perform for APCO, but it  
12 does not relieve APCO of its continuing obligation to pay Helix for that work. Like the plaintiff  
13 in *Pink*, Helix also did not terminate its agreement with APCO or ever agree to stop looking to  
14 APCO for payment.

15           35. Finally, even where a party might appear to have given consent to a novation  
16 (which Helix did not do), if it has not been given full details regarding the transaction, the  
17 apparent consent may not be effective. *United Fire*, 105 Nev. at 509 (apparent acquiescence  
18 "did not constitute consent when plaintiff knew nothing" of certain key facts). Here, because  
19 Helix was never provided with the Camco-Gemstone Agreement, Helix was not informed that  
20 Camco was not acting the nature of a true general contractor. Instead of being incentivized to  
21 earn a profit for completing the Project (like a true general contractor), Camco was at best a  
22 project supervisor hired to rent its license to Gemstone for a fee of \$100,000 per month whether  
23 the Project was moving forward or not – and whether the subcontractors were being paid or not.  
24 Helix was also not informed that payments would not pass through Camco even though the  
25 Camco Subcontract (which Helix received and reviewed, even if it was never agreed to)  
26 provides otherwise. Given these conditions, any consent to novation that might be implied to  
27 Helix is excused by its ignorance of the true facts.

28           36. Accordingly, the Court concludes that, in addition to the \$505,012.00 awarded to

1 helix against APCO for unpaid work while APCO was on site serving as the general contractor,  
2 Helix is entitled to an additional award against APCO for \$834,476.45 for Helix's unpaid work  
3 after APCO left the Project.

4 37. Helix is therefore awarded the principal sum of \$1,339,488.45 against APCO and  
5 may apply for judgment as to the same.

6 38. Helix is also awarded the principal sum of \$834,476.45 against Camco and may  
7 apply for judgment as to the same. This amount shall be deemed a joint and several obligation  
8 as between and among APCO and Camco.

9 39. The Court denies all of APCO's affirmative defenses.

10 40. The Court denies all of Camco's affirmative defenses.

11 41. Helix is entitled to prejudgment interest pursuant to NRS 108.237 and/or NRS  
12 17.130 and is granted leave to apply for the same by way of an amendment or supplement to  
13 these Findings of Fact and Conclusions of Law and for judgment as to the same.

14 42. Helix is the prevailing party and/or prevailing lien claimant as to APCO and  
15 Helix and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237 and/or  
16 the APCO Subcontract and/or the Camco Subcontract. Helix is granted leave to apply for the  
17 same by way of an amendment or supplement to these Findings of Fact and Conclusions of Law  
18 and for judgment as to the same.

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

21 ///

22 ///

23 ///

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

**IT IS SO ORDERED** this \_\_\_\_\_ day of March, 2018.

DISTRICT COURT JUDGE

Submitted by:

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File No. 5026372.0002

March 8, 2018

**VIA HAND DELIVERY**

The Honorable Mark R. Denton  
Eighth Judicial District Court  
Department 13, Courtroom 3D  
200 Lewis Avenue  
Las Vegas, NV 89155

**Re: Apco Construction v. Gemstone Development West, Inc.**  
**Case No. 08A571228**  
**Proposed Findings of Fact and Conclusions of Law and Post-Trial Brief**

Dear Judge Denton,

Enclosed please find APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law. A Word version is being provided on the enclosed thumb drive. This letter and the enclosures were served on all counsel via e-service. For the sake of judicial efficiency, please note that the fact sections in both the post-trial brief and proposed findings of fact and conclusions of law are substantially similar.

Sincerely,

*/s/ Mary Bacon*

Mary E. Bacon

MEB/  
cc: All Counsel via E-Service

Phoenix 118901.1

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20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 APCO CONSTRUCTION, a Nevada  
23 corporation,

24 Plaintiff,

25 v.

26 GEMSTONE DEVELOPMENT WEST,  
27 INC., A Nevada corporation,

28 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

**FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**

**Date of Trial: January 17, 2018**

29 AND ALL RELATED MATTERS

30 This matter having come on for a non-jury trial on January 17-February 6, 2018  
31 APCO Construction, Inc., appearing through Spencer Fane, LLP and Marquis & Aurbach,

1 Camco Construction, Inc., through Grant Morris Dodds, National Wood Products, LLC  
2 through Cadden Fuller and Richard L. Tobler, Ltd., United Subcontractors, Inc. through  
3 Fabian Vancott, and Helix Electric of Nevada, LLC, SWPP Compliance Solution, Cactus  
4 Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all through Peel  
5 Brimley, and, the Court having heard the testimony of witnesses, having reviewed the  
6 evidence provided by the parties, having heard the arguments of counsel, and having read  
7 and considered the briefs of counsel and good cause appearing; the Court hereby enters the  
8 following:

9 **I. FINDINGS OF FACT**

10 **A. The Project**

- 11 1. This action arises out of a construction project in Las Vegas, Nevada known as the  
12 Manhattan West Condominiums project in Clark County Nevada, (the "Project").  
13 2. Gemstone Development West, Inc. ("Gemstone") was the owner and developer of the  
14 Project that contracted APCO to serve as the prime contractor.  
15 3. On or about September 6, 2007, Gemstone and APCO entered into the Manhattan West  
16 General Construction Contract for GMP (the "Contract")<sup>1</sup>.  
17 4. The Contract included Phase 1 and Phase 2 and consisted of nine buildings, with five of  
18 the nine buildings in Phase 1 (buildings 2, 3, 7, 8 and 9).<sup>2</sup>  
19 5. The Contract price for Phase 1 was \$78,938,160.<sup>3</sup> APCO started work on the Project in  
20 September, 2007.<sup>4</sup>

21  
22  
23  
24  
25 <sup>1</sup> Exhibit 2. Gemstone and APCO also entered into a grading contract on April 17, 2017  
but that contract is not the subject of this lawsuit. Exhibit 1.

26 <sup>2</sup> Testimony of Joe Pelan (APCO) Day 1, pp. 19 and 22; Exhibit 13, p.1. Joe Pelan is the  
General Manager of APCO Construction.

27 <sup>3</sup> Testimony of Joe Pelan (APCO), Day 1, p. 28.

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

1                    **B. The Contract**

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

3                    **1. Completion**

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

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

15                    8. Given the ultimate disputes between APCO and Gemstone, APCO did not meet this  
16                    definition of completion.<sup>6</sup>

17                    **2. Progress Payments.**

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

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

23                    ...

24                    (e) Upon receipt of an Application for Payment that is  
25                    acceptable to Developer pursuant to Sections 5.05(a-d),  
26                    Developer shall, within 12 calendar days, submit, to  
27                    Developer's lender or such lender's authorized designee, the  
28                    corresponding draw application for the undisputed amount to  
29                    be paid pursuant to such Application for Payment (the "Draw  
30                    Application"). Thereafter, Developer shall take such actions as  
31                    are necessary for the payment if the amount owed to General  
32                    Contractor pursuant to such Draw Application of the amount  
33                    owed to the General Contractor pursuant to such Draw  
34                    Application (the "Progress Payment"). In the event that a Draw

35                    <sup>5</sup> Exhibit 2, Section 2.10.

36                    <sup>6</sup> Testimony of Joe Pelan (APCO), Day 1, p. 23.



1 Application is not submitted to Developer's lender or such  
2 lender's authorized designee within the above 12 calendar day  
3 period, Developer shall pay to General Contractor \$5,000 for  
4 each day that the submission of the Draw Application is  
5 delayed after such 12 calendar day period.

6 ...

7 (g) Upon receipt of the Progress Payment, General Contractor  
8 shall promptly pay each Third-Party Service Provider the  
9 amount represented by the portion of the Percentage of Work  
10 Completed that was completed by such Third-Party Service  
11 Provider during the period covered by the corresponding  
12 Progress Payment. General Contractor shall, by appropriate  
13 agreement with each Third-Party Service Provider, require  
14 each Third-Party Service Provider to make payment to sub-  
15 contractors in a similar manner.<sup>7</sup>

16 10. Per this provision, on the 20<sup>th</sup> of each month subcontractors submitted their billings to  
17 APCO for the current month (including a projection of what each intended to complete  
18 through the end of that month).<sup>8</sup>

19 11. APCO would then provide all of these documents to Gemstone.<sup>9</sup>

20 12. Gemstone would then walk the Project and determine the percentage each  
21 subcontractor had completed.<sup>10</sup>

22 13. Gemstone would adjust each subcontractor's billings to match its estimate of the  
23 percentage complete.<sup>11</sup>

24 14. Gemstone would give the revised billings back to APCO, and APCO would return  
25 them to each subcontractor to revise.<sup>12</sup>

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

28 <sup>8</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

<sup>9</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

<sup>10</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

<sup>11</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

<sup>12</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

1 15. Once revised, the subcontractors would submit them to APCO, APCO would submit  
2 them to Gemstone, and Gemstone would submit them to its construction funds control  
3 company, Nevada Construction Services ("NCS") for further review and payment.<sup>13</sup>

4 16. NCS would then send an inspector to verify the work was complete.<sup>14</sup>

5 17. NCS would then request funds from the lender and pay the total amount directly to  
6 APCO.<sup>15</sup>

7 18. APCO then paid the subcontractor the final amount received from Gemstone.<sup>16</sup>

8 19. As discussed more fully below, this process continued until June 2008.<sup>17</sup>

### 9 3. Final Payment

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

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

14 (i) All maintenance and operating manuals;

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

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

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

21 (v) A list of the names, address and phone numbers of all  
22 parties providing guarantees and warranties, and  
23  
24

---

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

26 <sup>14</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

27 <sup>15</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25, and 59.

28 <sup>16</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

<sup>17</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

(vi) verification that all waivers that should be issued to Developer concurrent with Final payment.<sup>18</sup>

21. APCO admitted that none of these preconditions were met while APCO was on the Project.<sup>19</sup>

#### 4. Retainage

22. Section 5.07 contained the Contract's retention (or retainage) payment schedule.<sup>20</sup>

23. Retainage is a portion of a billing that is retained by Gemstone to ensure that the work is complete properly, that all material suppliers are paid and lien releases have been provided, and that all certificates of occupancy were issued.<sup>21</sup>

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

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

26. Section 5.05(f) sets forth the preconditions for APCO to receive its retention:

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

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

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

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<sup>18</sup> Exhibit 2 at Section 5.06(c).

<sup>19</sup> Testimony of Joe Pelan (APCO), Day 1, p. 63.

<sup>20</sup> Exhibit 2 at Section 5.07.

<sup>21</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25; Exhibit 2 at Section 5.07.

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

<sup>23</sup> Testimony of Joe Pelan (APCO), Day 1, p. 26.

<sup>24</sup> Exhibit 2 at Section 5.07(f).

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

1                                   **5. Termination for Convenience**

2   29. Section 10.01 of the Contract is entitled "Termination by the Developer Without  
3   Cause."<sup>27</sup>

4   30. In the construction industry, this is known as a "termination for convenience."<sup>28</sup>

5   31. Gemstone never terminated the Contract for convenience.

6                                   **6. Termination for Cause**

7   32. Section 10.02 of the Contract is entitled "Termination by Developer With Cause" and  
8   states:

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

13                                  ...

14                                  (ii) Accept assignment of any Third-Party Agreements  
15                                  pursuant to Section 10.04.<sup>29</sup>

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

18                                   **7. Assignment**

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

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

27   Exhibit 2 at Section 10.01.

28   <sup>28</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

29   <sup>29</sup> Exhibit 2 at Section 10.02(b)(2).

30   <sup>30</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

31   <sup>31</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.



1 35. At that point, Gemstone would be responsible for any amounts that Gemstone had not  
2 already paid APCO for the subcontractors' work;

3 10.04 Assignment. Each Third-Party Agreement for a portion  
4 of the Work is hereby assigned by General Contractor to  
5 Developer provided that such assignment is effective only after  
6 termination of the Agreement by Developer for cause pursuant  
7 to Section 10.02 and only for those Third-Party Agreements  
8 which Developer accepts by notifying General Contractor and  
9 the applicable Third Party Service Provider in writing. General  
10 Contractor shall execute and deliver all such documents and  
11 take all such steps as Developer *may* require for the purpose of  
12 fully vesting in Developer the rights and benefits of General  
13 Contractor under such documents. Upon the acceptance by  
14 Developer of any Third-Party Agreement, subject to the other  
terms of this Article X; Developer shall pay to the  
corresponding Third-Party Service Provider any undisputed  
amounts owed for any Work completed by such Third Party  
Provider, prior to the underlying termination for which  
Developer has not yet paid General Contractor prior to such  
underlying termination.<sup>32</sup>

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

17 37. Notably, the Contract and this assignment clause were incorporated into the APCO  
18 subcontracts.<sup>34</sup>

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

21  
22  
23  
24  
25 

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<sup>32</sup> Exhibit 2, Section 10.04 (p. 36).

26 <sup>33</sup> Testimony of Joe Pelan (APCO), Day 1, p. 75.

27 <sup>34</sup> Exhibit 45 (Helix Subcontract) and Exhibit 149 (CabineTec Subcontract), Section 1.1.

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

## C. Subcontracts

### **1. Helix**

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

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

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

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

43. So Helix's work was based, in part, on the electrical drawings that Helix prepared under contract to Gemstone.<sup>41</sup>

44. The Helix subcontract included the following relevant provisions:

- Section 1.1: The subcontract incorporates the Contract including all exhibits and attachments, specifically including the Helix exhibit.
- Section 1.3: Helix was bound to APCO to the same extent and duration that APCO was bound to Gemstone.

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<sup>36</sup> Testimony of Joe Pelan (APCO), Day 1, p. 58.

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

<sup>38</sup> Testimony of Bob Johnson (Helix) Day 2, p. 6.

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

<sup>40</sup> Testimony of Bob Johnson (Helix) at Day 2, p. 10.

<sup>41</sup> Testimony of Bob Johnson (Helix) Day 2, p. 7.

- 1           ○ Section 3.4 outlined the agreed upon progress payment schedule as follows:  
2           Progress Payments

- 3           ▪ The progress payment to Subcontractor shall be one  
4           hundred percent (100%) of the value of Subcontract  
5           work completed (less 10% retention) during the  
6           preceding month as determined by the Owner, less such  
7           other amounts as Contractor shall determine as being  
8           property withheld as allowed under this Article or as  
9           provided elsewhere in this Subcontract. The estimates of  
10          Owner as to the amount of Work completed by  
11          Subcontractor shall be binding upon Contractor and  
12          Subcontractor and shall conclusively establish the  
13          amount of Work performed by Subcontractor. As a  
14          condition precedent to receiving partial payments from  
15          Contractor for Work performed, Subcontractor shall  
16          execute and deliver to Contractor, with its application  
17          for payment, a full and complete release (Forms  
18          attached) of *all* claims and causes of action  
19          Subcontractor may have against Contractor and Owner  
20          through) the date of the execution of said release, save  
21          and except those claims specifically listed on said  
22          release and described in a manner sufficient for  
23          Contractor to Identify such claim or claims with  
24          certainty. Upon the request of Contractor, Subcontractor  
25          shall provide an Unconditional Waiver of Release in  
26          form required by Contractor for any previous payment  
27          made to Subcontractor. Any payment to Subcontractor  
28          shall be conditioned upon receipt of the actual payments  
            by Contractor from Owner. Subcontractor herein agrees  
            to assume the same risk that the Owner *may* become  
            insolvent that Contractor has assumed by entering Into  
            the Prime Contract with the Owner.

- 22          ○ 3.5 Progress Payments

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

<sup>42</sup> Exhibit 45.

1  
2 45. Of critical importance to the present action and claims, the Helix Subcontract contained  
3 the following agreed upon retention payment schedule:

4     o Section 3.8: Retainage

5     The 10 percent withheld retention shall be payable to Subcontractor upon,  
6     and only upon the occurrence of all the following events, each of which is a  
7     condition precedent to Subcontractor's right to receive final payment  
8     hereunder and payment of such retention: (a) completion of the entire project  
9     as described in the Contract Documents; (b) the approval of final acceptance  
10    of the project Work by Owner, (c) Receipt of final payment by Contractor  
11    from Owner; (d) Delivery to Contractor from Subcontractor all as-built  
12    drawings for it's scope of work and other close out documents; (e) Delivery  
13    to Contractor from Subcontractor a Release and Waiver of Claims from all of  
14    Subcontractor's laborers, material and equipment suppliers, and  
15    subcontractors, providing labor, materials or services to the Project.<sup>43</sup>

16 46. As documented below, Helix admitted that these preconditions were not met while  
17 Apco was the contractor.<sup>44</sup>

18     **D. Helix Clearly had a Subcontract with APCO.**

19 47. In its lien documents,<sup>45</sup> complaint against APCO,<sup>46</sup> and its amended complaint, Helix  
20 has unequivocally admitted that it had a binding subcontract with APCO.<sup>47</sup>

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

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

27     5. Helix's relationship with APCO was governed by a  
28     subcontract, which provided the scope of Helix's work and  
29     method of billing and payments to Helix for work performed

30 <sup>43</sup> Exhibit 45.

31 <sup>44</sup> Testimony of Bob Johnson, Day 2, pp. 36 and 37.

32 <sup>45</sup> Exhibits 512 pp. 5-6, 7-9, 10-11.

33 <sup>46</sup> Exhibit 77.

34 <sup>47</sup> Exhibit 231.

35 <sup>48</sup> Testimony of Bob Johnson (Helix), Day 1, p. 108.



1 on the Property (the "Subcontract"). A true and correct copy  
2 of the Subcontract is attached hereto as Exhibit 1.

3 6. Helix also performed work and provided equipment and  
4 services directly for and to Gemstone, namely design  
5 engineering and temporary power.

6 7. Camco Pacific Construction Company, Inc. ("Camco")  
7 replaced APCO as the general contractor. Thereafter, Helix  
8 performed its Work for Gemstone and/or Camco...<sup>49</sup>

9 Exhibit 1 to the declaration was the first fifteen pages of Exhibit 45.<sup>50</sup>

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

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

14 A. Okay.

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

17 A. I do.

18 Q. And in fairness to you and the record, you did propose a  
19 change to paragraph 3.8. Could you turn to page 16 of the  
20 exhibit, Exhibit 45? And directing your attention to paragraph  
21 7, does this reflect your proposed change to the retention  
22 payment schedule in the original form of Exhibit 45?

23 A. In the original form, yes.

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

27 A. Correct.

28 Q. Through your change in paragraph 7, on page 16 of Exhibit  
29 45, you did not otherwise modify the preconditions in the  
30 retention payment schedule of 3.8, did you?

31 A. We did not.<sup>51</sup>

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

34 <sup>49</sup> Exhibit 314.

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

37 <sup>51</sup> Testimony of Bob Johnson, Day 2, pp. 17-18.

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

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

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

5 A. For the Manhattan West project.

6 Q. Is there a document?

7 A. There is a document.

8 Q. Okay. And, sir, would you turn—if you could, grab Exhibit  
45. You spent some time talking about this yesterday.

9 A. Okay.

10 The Court: Which item is it, counsel?

11 Mr. Jefferies: Exhibit 45.

12 Q. Is it your position that APCO breached this agreement?

13 A. My assumption would be they breached it, yes.

14 Q. Okay. But this is the document that represents the  
agreement between APCO and Helix for the project?

15 A. It is the agreement between APCO and Helix.<sup>52</sup>

16 So Helix's counsel's attempts to avoid the agreed upon retention schedule are unpersuasive  
17 and not supported by the evidence.

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

#### 20 **E. CabineTec**

21 52. Gemstone also selected CabineTec, Inc. ("CabineTec") to serve as APCO's cabinet  
22 subcontractor.<sup>53</sup>

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

25 54. CabineTec's Subcontract contained the same retention and progress payment schedules  
26 quoted above from the Helix Subcontract.<sup>55</sup>

27 <sup>52</sup> Testimony of Bob Johnson (Helix), Day 2, p. 9.

28 <sup>53</sup> Testimony of Joe Pelan (APCO), Day 1, p. 89.

<sup>54</sup> Exhibit 149, CabineTec Subcontract.

<sup>55</sup> Exhibit 149.

1 55. CabineTec's Nicholas Cox<sup>56</sup> admitted CabineTec did not change the retention payment  
2 schedule found in Section 3.8.<sup>57</sup>

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

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

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

9 **F. The Contract was terminated.**

10 59. APCO did not finish the Project as the general contractor.<sup>60</sup>

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

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

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

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

20  
21  
22 <sup>56</sup> Mr. Cox was the president of CabineTec during the Project. Testimony of Nicholas Cox  
(CabineTec) Testimony Day 3, p. 13.

23 <sup>57</sup> Testimony of Nicholas Cox (CabineTec), Day 3, p. 29.

24 <sup>58</sup> Exhibit 152.

25 <sup>59</sup> Exhibit 152.

26 <sup>60</sup> Testimony of Brian Benson (APCO) at Day 3, p. 50; Testimony of Mary Jo Allen  
(APCO), Day 3, p. 122.

27 <sup>61</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 31.

28 <sup>62</sup> Exhibit 212-1.

<sup>63</sup> Exhibit 5.

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

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

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

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

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

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

25  
26 <sup>64</sup> Exhibit 4.

27 <sup>65</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 29; Exhibit 4.

28 <sup>66</sup> Exhibit 4; Testimony of Joe Pelan (APCO), Day 1, p. 30.

<sup>67</sup> Exhibit 5.



1 As you area aware, on July 17, 2008, APCO provided  
2 Gemstone with written notice that unless APCO was paid the  
3 full amount of \$3,434,396 by the close of business on Monday,  
4 July 28, 2008, that APCO would stop work on the Project.  
5 Gemstone failed to make full payment and has improperly  
6 withheld \$203,724.29, despite having no good faith or proper  
7 statutory basis for withholding the payment. AS a result,  
8 APCO is stopping work on the Manhattan West Project  
9 effective immediately.

10 In addition to stopping work on the project, APCO hereby  
11 asserts its rights to terminate the contract pursuant to NRS  
12 624.610(2). THIS LETTER SHALL SERVICE AS APCO'S  
13 NOTICE OF INTENT TO TERMINATE THE  
14 MANHATTAN WEST GENERAL CONSTRUCTION  
15 CONTRACT FOR GMP PURSUANT TO NRS 624.606  
16 THROUGH NRS 624.630, INCLUSIVE, PURSUANT TO  
17 THE TERMS OF THE NRS 624.610, THE CONTRACT  
18 SHALL BE TERMINATED AS OF AUGUST 14, 2008.<sup>68</sup>

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

21 70. Gemstone ultimately paid APCO for May.<sup>71</sup>

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

23 As most of you are now aware, APCO Construction and  
24 GEMSTONE are embroiled in an unfortunate contractual  
25 dispute which has resulted in the issuance of a STOP WORK  
26 NOTICE to GEMSTONE. While it is APCO Construction's  
27 desire to amicably resolve these issues so work may resume, it  
28 must also protect its contractual and legal rights. This directive  
is to advise all subcontractors on this project that until further  
notice, all work on the Manhattan West project will remain  
suspended.

THIS SUSPENSION IS NOT A TERMINATION OF THE  
GENERAL CONTRACT AT THIS TIME AND AS SUCH  
ALL SUBCONTRACTORS ARE STILL  
CONTRACTUALLY BOUND TO THE TERMS OF THEIR  
RESPECTIVE SUBCONTRACTS WITH APCO

68 Exhibit 6.

69 Exhibit 506, p. 1.

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

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

1 CONSTRUCTION. Additionally, the subcontractors are  
2 advised that, at the present time they are not obligated to  
3 perform any subcontract work on the project at the direction or  
4 insistence of Gemstone.

5 We will keep all subcontractors advised on a timely basis if the  
6 status of the work suspension changes. Should you have any  
7 questions, feel free to call.<sup>72</sup>

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

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

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

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

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<sup>72</sup> Exhibit 48.

<sup>73</sup> Exhibit 7.

<sup>74</sup> Exhibit 313.

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

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

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

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

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

28 75. All subcontractors were copied on this notice.<sup>76</sup>

76. APCO informed all subcontractors that it intended to terminate the Contract as of  
September 5, 2008.<sup>77</sup>

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

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

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

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

1 78. After receipt of APCO's written notice, Gemstone sent a letter on Friday, August 15,  
2 2008, claiming that APCO was in breach of contract and that Gemstone would  
3 terminate the Contract for cause if the alleged breaches were not cured by Sunday,  
4 August 17, 2008.<sup>80</sup>

5 79. That letter divided APCO's alleged breaches into curable breaches and non-curable  
6 breaches<sup>81</sup> and also confirmed that upon termination: "(a) all Third-Party Agreements  
7 shall be assigned to Gemstone and (b) APCO must execute and deliver all documents  
8 and take such steps as Gemstone may require for the purpose of fully vesting in  
9 Gemstone the rights and benefits of such assigned Third-Party Agreements."<sup>82</sup>

10 80. APCO's counsel responded to the letter the same day, August 15, 2008.<sup>83</sup>

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

13 Gemstone's demand is factually incorrect as APCO is not in  
14 default of the agreement, and even if APCO was in default of  
15 the Agreement as alleged, the issues set forth by Gemstone  
16 would not support a termination of the contract...APCO has  
17 provided Gemstone with a 10 day Notice of Intent to Stop  
18 Work on the project due to Gemstone's failure to pay the June  
19 2008 Application. Instead of making the payment that is due,  
Gemstone is seeking to terminate the contract on or before the  
date that APCO will stop work on the project...APCO has  
received a copy of the e-mail sent to APCO's subcontractors by

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20 <sup>78</sup> Andy Rivera was Helix's Project Manager. Testimony of Andy River (Helix), Day 2, p.  
21 48. As the Project Manager, he was in charge of labor, materials, subcontractors, labor  
22 reports, billings, change orders, submittals, requests for information, and most other  
23 documents on the Project. Mr. Rivera reported to Robert Johnson. Testimony of Andy  
24 Rivera (Helix), Day 2, p. 48. Andy Rivera prepared Helix's pay applications. Testimony of  
Bob Johnson (Helix), Day 2, p. 8. So while Robert Johnson signed the pay applications for  
Helix, Mr. Andy Rivera had the most personal knowledge of the financial aspects of the  
Project for Helix and was actually designated as Helix's PMK on Helix's claim. Testimony  
of Andy Rivera, Day 2, p. 73.

25 <sup>79</sup> Testimony of Bob Johnson (Helix), Day 1, p. 113.

26 <sup>80</sup> Exhibit 13; Testimony of Joe Pelan (APCO), Day 1, pp. 35-36.

27 <sup>81</sup> Exhibit 13 - 1-13.

28 <sup>82</sup> Exhibit 13, p. 14, Section C.3.

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

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



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

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

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

11 84. On or about August 15, 2008, prior to its purported termination, Gemstone improperly  
12 contacted APCO's subcontractors and notified them that Gemstone was terminating  
13 APCO as of Monday, August 18, 2008.<sup>87</sup>

14 85. Gemstone confirmed it had already retained a replacement general contractor.<sup>88</sup>  
15 Gemstone advised the APCO subcontractors as follows:

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

23 86. The replacement contractor turned out to be Camco.<sup>90</sup>

24 87. On August 18, 2008, APCO emailed Gemstone objecting to such direct  
25 communications with the subcontractors: "The APCO Construction GMP and Grading  
26 Contracts are still in effect and as such Gemstone shall not meet with our  
27

28 <sup>85</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 100.

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

<sup>87</sup> Exhibit 215; Testimony of Joe Pelan (APCO), Day 1, pp. 34 and 35.

<sup>88</sup> Exhibit 215.

<sup>89</sup> Exhibit 215-2.

<sup>90</sup> Exhibit 162, Camco/Gemstone Prime Contract.

1 subcontractors. Please read the contract and other correspondence closely. If APCO  
2 didn't (and APCO did) cure the breach, Gemstone must issue a seven day notice of  
3 termination. You are disrupting my ability to perform the work."<sup>91</sup>

4 88. That same day, APCO submitted its July 2008 pay application for \$6,307,487.15.<sup>92</sup>

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

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

22 90. On August 19, 2008, Gemstone confirmed that joint checks to the Subcontractors and  
23 Apco would be written for the June 2008's pay application: "I'd like to have dual  
24 checks cut for this [June, 2008] pay application directly to the subs and the general. I  
25  
26

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27 <sup>91</sup> Exhibit 216-1.

28 <sup>92</sup> Exhibit 8.

<sup>93</sup> Exhibit 15.

1 believe this is different than what we have historically done on ManhattanWest, but  
2 similar to how we have paid some Manhattan Pay Apps in the past.”<sup>94</sup>

3 91. Gemstone confirmed that all future payments would essentially go directly from  
4 Nevada Construction Control to the subcontractors.<sup>95</sup>

5 92. Although it disagreed with Gemstone’s conduct, APCO cooperated in this post  
6 termination process to ensure that all subcontractors were properly paid for work  
7 performed on APCO’s watch:

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

16 93. None of the joint checks that NCS and Gemstone issued and that APCO properly  
17 endorsed included any funds for APCO.<sup>97</sup>

18 94. And none of the joint checks accounted for any APCO or subcontractor retention  
19 because retention had not been earned under either the Contract or the various  
20 subcontracts.<sup>98</sup>

21 95. As of the end of August, the Project was only about 74% complete.<sup>99</sup>

23  
24 <sup>94</sup> Exhibit 16; Testimony of Joe Pelan (APCO), Day 1, p. 38.

25 <sup>95</sup> Testimony of Joe Pelan (APCO), Day 1, p. 38.

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

27 <sup>97</sup> Testimony Day 1, p. 38.

28 <sup>98</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 38-39.

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

1 96. Ultimately, APCO was not paid for its share June Application even though the  
2 subcontractors received their money.<sup>100</sup>

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

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

15 98. On August 21, 2008 APCO also provided Gemstone with written notice of APCO's  
16 intent to terminate the Contract as of September 5, 2008.<sup>102</sup>

17 99. APCO's last work on the Project was August 21, 2008.<sup>103</sup>

18 100. On August 22, 2008, APCO sent a letter to the Clark County Building Department  
19 advising that APCO was withdrawing as the general contractor for the Project.<sup>104</sup>

20 101. APCO was required to cancel its current building permits so the Project permits  
21 could be issued and transferred to Camco.<sup>105</sup>

22  
23  
24 <sup>100</sup> Testimony of Joe Pelan (APCO), Day 1, p. 33.

25 <sup>101</sup> Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 32.

26 <sup>102</sup> Exhibit 23.

27 <sup>103</sup> Testimony of Brian Benson (APCO), Day 3, p. 50; Testimony of Joe Pelan (APCO),  
Day 1, p. 40.

28 <sup>104</sup> Exhibit 24; Testimony of Joe Pelan (APCO), Day 1, p. 40.

<sup>105</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.



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

3 Furthermore, pursuant to the ManhattanWest's August 15,  
4 2008 notice regarding Termination of Phase 1 for Cause, and  
5 APCO's failure to cure the breaches set forth in the notice prior  
6 to August 17, 2008, the Contract terminated for cause on  
7 August 24, 2008. Consequently, pursuant to Section 10.02(c)  
8 of the Contract, APCO is not entitled to receive any further  
9 payments until the Work [as defined in the Contract] is  
finished. Later today, Gemstone will issue joint checks to the  
subcontractors pursuant to the June Progress Payment;  
however, payment will not include any fees or general  
conditions to APCO.<sup>106</sup>

10 103. APCO contested Gemstone's purported termination and APCO's evidence was  
11 uncontested on that issue that it was not in default.<sup>107</sup>

12 104. APCO properly terminated the Contract for cause in accordance with NRS 624.610  
13 and APCO's notice of termination since Gemstone did not pay the June Application, as  
14 of September 5, 2008.<sup>108</sup>

15 105. Helix and CabineTec both received a copy of the termination letter.<sup>109</sup> APCO  
16 considered its notice of termination to be effective as of September 5, 2008.<sup>110</sup>

17 106. But Gemstone proceeded with the Project as if it had terminated the Contract with  
18 APCO.<sup>111</sup> APCO was physically asked to leave the Project as of the end of August,  
19 2008.<sup>112</sup>

20 107. And all subcontractors received notice from Gemstone that APCO was terminated  
21 on August 26, 2008 and would not be returning to the Project.<sup>113</sup>

22  
23 <sup>106</sup> Exhibit 27; Testimony of Joe Pelan (APCO), Day 1, p. 41.

24 <sup>107</sup> Testimony of Joe Pelan (APCO), Day 1, p. 42.

25 <sup>108</sup> Exhibit 28; Testimony of Joe Pelan (APCO), Day 1, pp. 73 and 80.

26 <sup>109</sup> Exhibit 28; Testimony of Bob Johnson (Helix), Day 1, p. 113.

27 <sup>110</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 42-43.

28 <sup>111</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 100-101; Exhibit 29.

<sup>112</sup> Testimony of Joe Pelan (APCO) Day 3, p. 150.

<sup>113</sup> Exhibit 118.

**G.Gemstone owed APCO \$1.4 million when APCO left the Project.**

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

109. Gemstone also owed APCO \$200,000 from various reimbursements.<sup>115</sup>

110. APCO has never received payment in any form from any entity for these pay applications or the \$200,000 in reimbursements.<sup>116</sup>

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

112. Ultimately, Gemstone would not accept APCO's final August 2008 pay application.<sup>118</sup>

113. So Camco submitted APCO's August 2008 billing so APCO's subcontractors would get paid.<sup>119</sup>

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

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

<sup>115</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>116</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>117</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

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

<sup>119</sup> Exhibit 218; Testimony of Joe Pelan (APCO), Day 1, pp. 43-44.

<sup>120</sup> Testimony of Joe Pelan (APCO), Day 1, p. 44; Exhibit 218-2.

1 115. As of its last pay application, APCO believed it was 76% complete with the  
2 Project.<sup>122</sup>

3 116. Despite the amounts owed to APCO, the evidence was uncontested that the  
4 subcontractors received all of their billed amounts, less retention, up through August  
5 2008.<sup>123</sup>

6 **H.APCO did not terminate the Helix or CabineTec Subcontracts.**

7 117. During this dispute, APCO did not terminate the Helix or CabineTec  
8 subcontracts,<sup>124</sup> but advised its subcontractors that they could suspend work on the  
9 Project in accordance with NRS Chapter 624.<sup>125</sup>

10 118. If APCO wanted to terminate its subcontractors, it had to do so in writing.<sup>126</sup>

11 119. Helix admitted it knew APCO was off the Project as of August 28, 2008<sup>127</sup> and that  
12 neither APCO nor Helix terminated the Helix Subcontract.<sup>128</sup>

13 120. Additionally, Helix admitted it never issued a stop work notice to APCO pursuant  
14 to NRS 624 because it had no payment disputes with APCO.<sup>129</sup>

15 121. In fact, per Gemstone's notice dated August 15, 2008, Gemstone gave APCO notice  
16 that it exercised its right under Contract Section 10.04 to accept an assignment of the  
17 APCO subcontracts.<sup>130</sup>

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20 <sup>121</sup> Exhibit 218-10.

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

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

25 <sup>124</sup> Testimony of Joe Pelan (APCO), Day 1, p. 39.

26 <sup>125</sup> Exhibit 23.

27 <sup>126</sup> Testimony of Joe Pelan (APCO) Day 1, p. 71.

28 <sup>127</sup> Testimony of Andy Rivera (Helix) Day 2, p. 62.

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

<sup>129</sup> Testimony of Bob Johnson (Helix) Day 1, p. 127.

<sup>130</sup> Exhibit 13.

1 122. Accordingly, any purported termination of a subcontract by APCO would have  
2 breached the Contract.<sup>131</sup>

3 123. During August 2008, subcontractors on the Project were getting information  
4 directly from Gemstone.<sup>132</sup>

5 124. Helix and CabineTec both continued work on the Project for Gemstone and Camco,  
6 and submitted their August billings to Camco.<sup>133</sup>

7 **I. Status of the Project when APCO was off the Project**

8 125. Before APCO was asked to leave the Project on August 19 and 20, 2008, APCO  
9 documented the as-built conditions and confirmed that Helix and CabineTec were not  
10 anywhere close to completing their respective scopes of work.<sup>134</sup>

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

13 **J. Camco became the Prime Contractor.**

14 127. Camco and Gemstone had several meetings and Gemstone contracted with Camco  
15 to complete the Project on August 25, 2008.<sup>135</sup>

16 128. In terms of the plans, specifications and technical scope of work, Camco's work  
17 was the same as APCO's.<sup>136</sup>

18 129. In fact, Camco used the same schedule of values and cost coding that APCO had  
19 been using on the Project.<sup>137</sup>

20 130. Camco obtained permits in its own name to complete the Project.<sup>138</sup>

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22 <sup>131</sup> Testimony of Joe Pelan (APCO) Day 1, p. 75.

23 <sup>132</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

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

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

<sup>135</sup> Exhibit 162, Camco/Gemstone Prime Contract; Testimony of Steve Parry (Camco) Day  
5, pp. 25-26.

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

<sup>137</sup> Testimony of Steve Parry (Camco) Day 5, pp. 30-31.