EXHIBIT 3

In The Matter Of:

O'CONNELL v.

WYNN LAS VEGAS, LLC

YVONNE O'CONNELL

March 19, 2015

Lawyer Solutions Group

900 S. Fourth Street, Suite 100

Las Vegas, Nevada 89101

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Page 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 YVONNE O'CONNELL,
individually,
5
6 Plaintiff,
7 vs. Case No. A-12-655992-C
8 WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company,
doing business as WYNN LAS
9 VEGAS; DOES I through X; and
ROE CORPORATIONS I through X,
10 inclusive,
11 Defendants.__)
12
13
14 DEPOSITION OF YVONNE O'CONNELL
15 VOLUME I
16 (PAGES 1-161)
17
18 Thursday, March 19, 2015
19 10:11 a.m.
20 900 South Fourth Street
21 Las Vegas, Nevada
22
23
24
25 Reported by: Allyson W. Harris, NV CCR #740

Page 2

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Page 3

1 INDEX OF EXAMINATION
2 WITNESS: YVONNE O'CONNELL
3 EXAMINATION PAGE
4 By Mr. Semenza 4
5
6
7
8 INDEX TO EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Documents Bates stamped WYNN-O'CONNELL00470 through 00481	51
Exhibit 2	Incident File Full Report	105

13
14
15
16
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22
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Page 4

1 Deposition of Yvonne O'Connell
2 Thursday, March 19, 2015
3 (Prior to the commencement of the
4 deposition, all counsel present agreed to waive
5 statements by the court reporter pursuant to Rule
6 30(b)(4) of the NRCP.)
7 YVONNE O'CONNELL, having been first duly
8 sworn, was examined and testified as follows:
9
10 EXAMINATION
11 BY MR. SEMENZA:
12 Q. Good morning, Ms. O'Connell.
13 A. Good morning.
14 Q. My name is L.J. Semenza, and I represent the
15 Wynn here today. Also with me is Chris Kircher, who
16 works with me in my office.
17 Have you ever had your deposition taken
18 before?
19 A. Yes.
20 Q. When was that?
21 A. In the '90s.
22 Q. How many times have you had your deposition
23 taken?
24 A. Several times.
25 Q. Okay. Can you tell me what instances that

Page 5

1 you were deposed previously?
2 A. Yes. Some related to a business that I
3 had.
4 Q. Okay. Any others?
5 A. And an insurance -- Acme's Insurance suit.
6 Q. Tell me about the business depositions.
7 What was that deposition relating to?
8 A. I bought a franchise store. I paid for
9 three, only got one, and it failed, and the franchisor
10 left the country. So there were lawsuits from the
11 mall, the equipment company, and several stemming from
12 that. They were suing the franchisor, but in
13 addition, they were also suing me. They named me,
14 too.
15 Q. Okay. So you were a defendant in that
16 action as well as the plaintiff?
17 A. Yes.
18 Q. Okay. Where was this lawsuit located? In
19 California?
20 A. Yes.
21 Q. What was the franchise?
22 A. Treats.
23 Q. And what -- how many times were you deposed
24 in that case?
25 A. Several times.

Page 6

1 Q. And this was in the mid-'90s you said?
2 A. Early '90s. It lasted a few years.
3 Q. Do you know who your counsel was in that
4 business dispute?
5 A. Yes.
6 Q. Who was that?
7 A. Weldon Diggs.
8 Q. And what part of California? Northern
9 California?
10 A. Southern California.
11 Q. Southern California. Okay.
12 And what was the resolution of the lawsuit?
13 A. I'm sorry. I'm sorry. What exactly are you
14 asking?
15 Q. What happened? How did it end? Did you
16 receive compensation or was it dismissed? Did it
17 settle? Did it go to trial?
18 A. I'm sorry. I don't quite know how to answer
19 that.
20 Q. Okay.
21 A. Can you be more specific?
22 Q. Did you receive any settlement payment out
23 of the resolution of the litigation?
24 A. No.
25 Q. Did you have to pay anything out of the --

Page 7

1 A. Yes.
2 Q. -- resolution of the litigation? Okay.
3 How much did you have to pay?
4 A. I believe there may have been something I
5 had to sign, a nondisclosure.
6 Q. Okay. Let me -- and I don't want to get
7 into the specific details if there was a
8 nondisclosure, but did the resolution end in your
9 favor or against you?
10 A. Against me. Well, to be clear, because it
11 was a -- there were so many parties involved with them
12 suing the franchisor and just additionally naming me,
13 there were different outcomes.
14 Q. Okay. And then you said you had also had an
15 insurance lawsuit; is that correct?
16 A. Yes.
17 Q. Okay. And you were a plaintiff in that
18 particular case?
19 A. Yes.
20 Q. Where was that litigation? In California or
21 Nevada?
22 A. California.
23 Q. Southern California again?
24 A. Yes.
25 Q. Where -- what time frame was it?

Page 8

1 A. It started mid-'80s.
2 Q. Okay. And did that litigation get resolved
3 in some manner?
4 A. Yes.
5 Q. And, again, are there any confidentiality
6 provisions relating to the resolution of that
7 litigation, to your knowledge?
8 A. Yes.
9 Q. And without going into specifics, was that
10 a -- was the resolution in your favor or against you?
11 A. In my favor.
12 Q. Okay. Were you the only party to the
13 litigation or did you -- well, you were a plaintiff in
14 that case?
15 A. Yes.
16 Q. Were there any other plaintiffs along with
17 you in that particular case?
18 A. No.
19 Q. Who was your counsel in that particular
20 case?
21 A. I'm sorry. I don't recall.
22 Q. That's fine.
23 So notwithstanding the fact that you've been
24 deposed a number of times, you sort of have a general
25 familiarity with the process; is that correct?

Page 9

1 A. I'm sorry. Which process are you talking
2 about?
3 **Q. Of the deposition.**
4 A. It's been a long time.
5 **Q. I'll go over some ground rules for you here**
6 **this morning.**
7 **The oath you just took is the same oath you**
8 **would take in a court of law and carries with it the**
9 **same punishment, I guess, or penalties for not telling**
10 **the truth.**
11 **Do you understand that?**
12 A. Yes.
13 **Q. I don't want you to guess today. This is**
14 **not a knowledge test, so if there's a question that I**
15 **pose to you and you don't know the answer to it, just**
16 **let me know and I'll rephrase it.**
17 **Do you understand that?**
18 A. Yes.
19 **Q. If you answer a question, I'm going to**
20 **assume that you understood it and that -- is that fair**
21 **as well?**
22 A. Yes.
23 **Q. If you need to take a break at any --**
24 A. Excuse me.
25 **Q. Go ahead.**

Page 10

1 A. I'm so sorry.
2 **Q. No, you're fine.**
3 A. If I don't understand something and I answer
4 it, I don't know that I didn't understand it. If I'm
5 misunderstanding your question, then --
6 **Q. That's fair. If I pose a question to you**
7 **and you respond to it and answer it, then I'm going to**
8 **assume that you understood it. If for any reason you**
9 **don't understand one of my questions, please let me**
10 **know and I'll rephrase it.**
11 A. Okay.
12 **Q. Is that fair?**
13 A. Yes.
14 **Q. There may be times at which your counsel**
15 **objects to some of my questions. Unless she instructs**
16 **you otherwise, notwithstanding the objections I'd ask**
17 **you to answer my particular question.**
18 **Fair enough?**
19 A. Yes.
20 **Q. Did you do anything to prepare for your**
21 **deposition today?**
22 A. Yes.
23 **Q. What did you do?**
24 A. I went through things that I had written
25 before.

Page 11

1 **Q. Tell me -- these were handwritten documents**
2 **of yours?**
3 A. No.
4 **Q. What documents did you review prior to your**
5 **deposition here today?**
6 A. Part of my complaint.
7 **Q. Any other documents other than part of your**
8 **complaint?**
9 A. Well, I reviewed the things that were sent
10 to you -- one thing that was sent to you.
11 **Q. What was that?**
12 A. What Mr. Dilbeck sent me.
13 **Q. Okay. And I can help it along, I think.**
14 **Did you review any medical records in**
15 **preparation for your deposition today?**
16 A. A few.
17 **Q. Okay. What medical records did you review,**
18 **to the extent you can recall?**
19 A. What time frame are you going back? Are you
20 saying --
21 **Q. Just to the extent you know and can recall.**
22 **It doesn't matter the time frame how far back.**
23 **Did you -- let me ask it this way: Did you**
24 **review any medical records prior to the fall at the**
25 **Wynn on February 8th of 2010?**

Page 12

1 A. I don't recall.
2 **Q. Okay. Did you review any medical records**
3 **after February 8, 2010?**
4 A. Yes.
5 **Q. And do you have any recollection as to what**
6 **those documents were or what treatment those documents**
7 **related to?**
8 A. I think there were some from the GI
9 doctors.
10 **Q. Okay. Any other ones you can recall besides**
11 **those from the GI doctors?**
12 A. That's what I recall right now.
13 **Q. Okay. And did you also have occasion to**
14 **review what are called interrogatory responses, your**
15 **answers to certain questions that the Wynn had posed**
16 **to you?**
17 A. Is that the same thing that -- is that what
18 Mr. Dilbeck submitted?
19 **Q. I believe so.**
20 A. Some time ago, yes, I reviewed those.
21 **Q. Okay.**
22 A. Not --
23 **Q. Not recently?**
24 A. Not in detail. I just. . .
25 **Q. Okay. And, again, one of the other rules,**

Page 13

1 and I forgot to mention this, and I'm guilty of this
2 myself, is that because the court reporter is taking
3 down everything that is said, it's important that you
4 let me finish my question, and it's equally important
5 for me to let you finish your answer, which I didn't
6 do right now, so I will try to work on that as well.
7 Are you on any medication today?
8 A. No.
9 Q. Did you meet with your counsel prior to your
10 deposition today?
11 A. Yes.
12 Q. When did you do that?
13 A. Yesterday.
14 Q. How long did you meet with her?
15 A. I didn't time it.
16 Q. Can you approximate for me?
17 A. A couple hours.
18 Q. And have you consumed any alcohol within the
19 past 24 hours?
20 A. No.
21 Q. And you, of course, haven't used any illegal
22 drugs or anything like that; fair enough?
23 A. Fair enough.
24 Q. Okay. How did you arrive here today?
25 A. By car.

Page 14

1 Q. And did you drive yourself?
2 A. Yes.
3 Q. Did anyone accompany you?
4 A. No.
5 Q. Did anyone assist you in driving --
6 A. In driving?
7 Q. -- here today?
8 Yes.
9 A. No.
10 Q. And I noticed you have an assistive device.
11 What is this called?
12 A. Walker.
13 Q. Okay. How long have you been utilizing the
14 walker?
15 A. I believe since a month after -- since
16 sometime March 2010.
17 Q. And was it prescribed or did you purchase it
18 separately? How --
19 A. Prescribed.
20 Q. What doctor prescribed it?
21 A. Dr. Cash.
22 Q. Okay. Do you have any other assistive
23 devices that help you with your mobility other than
24 the walker with you here today?
25 A. I have another walker.

Page 15

1 Q. Is there any particular reason you use one
2 or the other or just to make sure you have one handy?
3 A. I keep one in my home and one in the car.
4 Q. Okay. Are you in pain currently?
5 A. Yes.
6 Q. Okay. What is your -- well, where are you
7 currently experiencing pain right now?
8 A. In my neck.
9 Q. Just your neck?
10 A. My right buttocks hurts a little.
11 Q. Any other locations you're currently
12 experiencing right now?
13 A. Not right now.
14 Q. What is your pain level on a scale of 1 to
15 10?
16 A. It just hurts.
17 Q. Can you identify what level it is on a scale
18 of 1 to 10?
19 A. Not really. It just hurts, and it's
20 starting to make my -- it's going up my head.
21 Q. Okay. And if there are points in the
22 deposition that you need to stand up, sit down, take a
23 break, that's obviously fine. You just need to let us
24 know, okay?
25 A. Thank you.

Page 16

1 Q. Does the pain you're experiencing now, is
2 that going to in any way affect your ability to answer
3 my questions here today?
4 A. It just makes it harder, but I will answer
5 them.
6 Q. Okay. And is there any particular reason
7 why I can't have your most accurate answers during the
8 deposition today? I know it's a strange question.
9 A. I will make them as accurate as possible.
10 Q. Perfect.
11 The pain in your neck and the pain in your
12 right buttocks that you had described, has that been
13 persistent or is that just today?
14 A. It's persistent.
15 Q. And how long have you had the neck and the
16 buttocks pain?
17 A. Since the fall.
18 Q. It has been constant all the way since
19 February 8th of 2010 to now?
20 A. I'm sorry. What do you mean by --
21 Q. The pain you're experiencing here today
22 you've identified you've had consistently throughout
23 time since the fall at the Wynn; is that correct?
24 A. Not the same level.
25 Q. Okay.

Page 17

A. Depending on how I move or my position, it will come and go from that.
Q. Overall has the pain in your neck and your right buttocks decreased over time or increased over time since the fall?
A. Increased. Excuse me. That's not exactly accurate. The pain in my neck has increased, and the pain in my buttocks is about the same.
Q. The pain in your buttocks, is it sciatica?
A. I've been told that it's sciatica.
Q. And, I'm sorry, the pain in your neck has increased and the pain in your buttocks has decreased; is that correct?
A. No, that's about the same.
Q. It's about the same. Okay. I'm sorry. Do you have an understanding as to why your neck hurts?
A. A general understanding.
Q. What is that understanding?
A. My discs are damaged and I have nerve compression.
Q. Are you currently under any treatment relating to your neck?
A. I need to see other doctors and then I'm going to get the surgery on my neck.

Page 18

Q. And what do you understand that surgery to be on your neck? Is it going to be a fusion or --
A. Three discs.
Q. And they're going to fuse three discs?
A. Well, they're going to -- I can't tell you specifically, but they're going to work on three discs.
Q. Okay. And the pain in your neck, do you contribute that to the fall at the Wynn on February 8th of 2010?
A. Yes.
Q. And with regard to pain in your buttocks, are you currently seeking treatment for that?
A. That -- with the same doctor after the neck surgery, then he'll do the back surgery.
Q. Your understanding is that the pain you're experiencing relates to your back but travels down into your buttocks?
A. Yes.
Q. And that's Dr. Cash as well?
A. No.
Q. Who is that doctor?
A. Dr. Dunn.
Q. And would Dr. Dunn be the one performing the surgery both on your neck and your back?

Page 19

A. Yes.
Q. And what do you understand the surgery on your back to involve?
A. He says I have three flat discs. I mean, he says they're like flat tires.
Q. Okay. And do you have any specific understanding as to what the surgical procedure would be to resolve that issue or to fix those discs?
A. Only that it's even harder than the neck.
Q. Do you have the neck surgery scheduled as of now?
A. I can't. He said for me to get an eye clearance first.
Q. What is an eye clearance?
A. After the MRIs my eyes started detaching -- the left eye started detaching, and so now both of them are detaching.
Q. Okay. So before you can schedule the neck surgery, the doctor wants to make sure your eyes are --
A. That has to stop detaching.
Q. Okay. And by "detaching" do you have an understanding what that means just from a layman's perspective so I understand it?
A. There's a risk of the retina detaching.

Page 20

Q. And have either of your retinas in your eyes detached?
A. I need to go back and get it checked again because, you know, they're monitoring it for that.
Q. Okay. But as of now are they normal? Are there issues with your --
A. They're not normal.
Q. Okay. When did you begin having issues with your eyes?
A. The issue we're talking about?
Q. Yes.
A. After the MRIs in June.
Q. June of 2014?
A. Yes.
Q. Okay. Do you attribute the current issues with your eyes to the fall that took place on February 8th of 2010 at the Wynn?
A. Maybe to the treatment that was necessary after that.
Q. The treatment on your eyes after that?
A. Like X-rays and MRIs.
Q. Okay. But that doesn't specifically relate to your eyes, does it?
A. I'm sorry?
Q. Well, and backing up, so do you know what

Page 21

1 your diagnosis is currently, relating to your eyes?
2 A. They're detaching.
3 Q. Okay. The retinas are detaching in both
4 eyes?
5 A. Hopefully not the retinas. The vitreous --
6 the way I understand it, the vitreous is detaching
7 from the retina which could make the retinas detach,
8 and I'm supposed to watch them.
9 Q. Okay. And that first -- you first started
10 experiencing issues relating to this in June of 2014?
11 A. Yes.
12 Q. Okay. Who's your eye doctor currently?
13 A. I have three.
14 Q. Okay. Can you tell me who those are?
15 A. The retina specialist, Dr. Yepremyan, and he
16 referred me to the ophthalmologist, Dr. Perozek, who
17 referred me to the neuro-ophthalmologist,
18 Dr. Houchin.
19 Q. So are you currently seeing Dr. Houchin
20 relating to your eyes or are you still seeing all
21 three of them?
22 A. Dr. Houchin was going to monitor this, but
23 my primary doctor told me that I have to go get my --
24 go back to the cardiologist first before I go back to
25 Dr. Houchin.

Page 22

1 Q. Okay. So before you get your neck done you
2 have to get your eyes cleared. In order to get your
3 eyes cleared you have to go to the cardiologist first.
4 A. Yes.
5 Q. Who is your cardiologist?
6 A. I'll be going back to Dr. Wesley.
7 Q. Let me go back to -- I just want to
8 understand, with regard to your eyes, what you've
9 currently been experiencing since June of 2014. Do
10 you attribute that to your fall at the Wynn on
11 February 8, 2010?
12 A. Only in that but for that fall I wouldn't
13 have had to have these MRIs and the CAT scans and the
14 X-rays.
15 Q. Okay. And so the MRIs, CAT scans and the
16 X-rays you attribute to damaging your eyes or --
17 MS. MORRIS: I'm just going to object to
18 foundation. Sorry.
19 BY MR. SEMENZA:
20 Q. Go ahead. You can answer if you understand
21 the question.
22 A. I don't know.
23 Q. Is it that there's a timing coincidence from
24 your point of view? You've had X-rays, MRIs, CT
25 scans, and then you started experiencing these issues

Page 23

1 with your eyes?
2 A. It's that in addition to the fact that after
3 I fell and hit my head, I had symptoms on the left
4 side of my face, including my left eye.
5 Q. Okay. We'll get to that. Okay.
6 A. Oh, and also that when they took the first
7 neck MRI --
8 Q. Yes.
9 A. -- in 2010, they couldn't finish. They had
10 to get me out because I had extreme pain in my head.
11 Q. Okay. Do you remember when that was?
12 A. In March 2010 -- I'm sorry. In or around
13 that time.
14 Q. Sure. Okay.
15 A. Please let me say that if I tell you a date
16 and a time and I forget to tell you that it's around
17 that time --
18 Q. That's fine.
19 A. -- I mean it's around that time.
20 Q. I understand. That's fine.
21 A. I don't know exactly.
22 Q. No problem with that.
23 And I just want to sort of close the
24 discussion relating to your eyes. Is it fair to say
25 you don't have any understanding as to whether your

Page 24

1 current eye symptoms have any relationship to the fall
2 in February of 2010?
3 MS. MORRIS: Object to form and
4 foundation.
5 BY MR. SEMENZA:
6 Q. If you understood the question, you can
7 answer.
8 A. I don't know.
9 Q. Okay. Are you, to your knowledge, seeking
10 any damages in this particular lawsuit relating to
11 your treatment of your eyes from June of 2014 forward?
12 MS. MORRIS: Object to form and foundation.
13 BY MR. SEMENZA:
14 Q. You can answer.
15 A. Excuse me. My attorney said something.
16 MS. MORRIS: Yes. Unless I tell you "Don't
17 answer that question," then you can go ahead and
18 answer the question, if you understand it. I'm just
19 objecting for a purpose that is to preserve it for the
20 record either based on the form or what I think for
21 objection based on foundation of the answer that
22 you're about to give, but you can still answer the
23 question.
24 THE WITNESS: Okay. I'm sorry.
25 MR. SEMENZA: Could I have you read that

Page 25

1 back.
2 (Record read.)
3 THE WITNESS: I don't know.
4 BY MR. SEMENZA:
5 Q. Okay. You had also mentioned your
6 cardiologist. Do you currently have issues with your
7 heart that you're aware of?
8 A. Yes. After the fall, they took an
9 echocardiogram, because I had chest pains, and it
10 showed damage to the valve, and then they took another
11 follow-up one one or two years later, and then it
12 showed I had damage to two valves. So I have to have
13 another one, a follow-up echocardiogram, to see if
14 that is still progressing.
15 Q. Okay. Is it -- and just so I'm clear, the
16 first time you went, when were you diagnosed with the
17 valve issue, the first valve issue?
18 A. After I fell and I had chest pains, I was
19 sent to a cardiologist.
20 Q. Do you know approximately what month?
21 A. It was in 2010.
22 Q. Okay. And so there was damage to one of
23 your valves?
24 A. Yes.
25 Q. Okay. Do you have -- well, do you know

Page 26

1 whether that damage to the valve related to your fall
2 on February 8, 2010, or whether that was a preexisting
3 condition?
4 A. To my knowledge, it wasn't a preexisting
5 condition. I never had any heart issues or chest
6 pains, that I recall.
7 Q. Approximately how much later in time did you
8 come to understand that you had an additional valve
9 problem?
10 A. I believe approximately two years later they
11 took another echocardiogram and it was in that.
12 Q. Okay. So we're talking about two total
13 valves, not three total valves. So it wasn't one
14 valve the first time around and then two valves; is
15 that correct? Do you have two valves that are at
16 issue or three valves that are at issue?
17 A. At that time, the last echocardiogram, there
18 were two valves.
19 Q. Okay. And the second valve problem, do you
20 attribute that to the fall that took place on February
21 8, 2010?
22 A. I believe it was caused by that.
23 Q. Do you have any understanding as to why the
24 second valve problem didn't show up at the time the
25 first valve problem showed up if it was related to the

Page 27

1 fall?
2 A. Because it wasn't there. The second valve
3 tearing is caused by the first valve.
4 Q. How soon after you fell did you start
5 experiencing chest pain?
6 A. Immediately.
7 Q. Literally within five minutes of falling or
8 right when you fell?
9 A. Well, it was that area; it was my
10 shoulder.
11 Q. Okay. How long after you fell did you first
12 go see a cardiologist?
13 A. Shortly after.
14 Q. Within the first couple weeks would you
15 estimate?
16 A. No.
17 Q. Okay.
18 A. Probably a couple months.
19 Q. Okay. And what did the cardiologist explain
20 to you regarding your valves? What treatment have
21 they recommended?
22 A. They recommended that I have another
23 follow-up echocardiogram just to check it.
24 Q. Now, we are going to jump around a little
25 bit, so I apologize in advance.

Page 28

1 Where were you born?
2 A. California.
3 Q. Where in California?
4 A. City you mean?
5 Q. Um-hmm, yes.
6 A. Tehachapi.
7 Q. And when did you first move to Las Vegas?
8 A. 1996.
9 Q. And were you in Tehachapi prior to that?
10 A. I'm sorry. Do you mean did I live in
11 Tehach- -- did I move from Tehachapi? Is that what
12 you're asking?
13 Q. Yes.
14 A. No.
15 Q. Immediately prior to 1996 where did you
16 live?
17 A. Newport Coast.
18 Q. How long did you live there?
19 A. Not long, but I think a year and a half. I
20 don't recall, but not a long time.
21 Q. And then prior to the Newport Coast where
22 did you reside?
23 A. Claremont.
24 Q. How long did you live in Claremont?
25 A. One or two years.

Page 29

1 Q. And prior to Claremont where did you live?
2 A. Irvine, around there.
3 Q. Okay. How long did you live in Irvine?
4 A. Less than a year.
5 Q. Is there a reason that you moved around
6 quite a bit?
7 A. Yes.
8 Q. What was that reason?
9 A. I got a divorce and my whole life changed
10 and I was starting over.
11 Q. When did you get a divorce?
12 A. It was final in 1993.
13 Q. And what was your ex-husband's name?
14 A. Barney Streit.
15 Q. How do you -- is his last name S-t-r-a-i-t
16 or --
17 A. S-t-r-e-i-t.
18 Q. And is he still living?
19 A. I don't know.
20 Q. Do you have any children?
21 A. No.
22 Q. Did Mr. Streit have any children?
23 A. No.
24 Q. What was his profession?
25 A. Dentist.

Page 30

1 Q. Is that the only marriage you've ever had?
2 A. No.
3 Q. Tell me what other marriages you had.
4 A. One other.
5 Q. And when was that?
6 A. I'm sorry. When did I get married?
7 Q. When was your first marriage?
8 A. When was my first marriage?
9 Q. Yes.
10 A. Are you asking the year I got married?
11 Q. Yes, please.
12 A. 1979.
13 Q. And how long did that marriage last?
14 A. Thirteen, fourteen years, but that's
15 include -- I'm talking about until the final divorce,
16 but we were separated while we were going through the
17 divorce.
18 Q. Okay.
19 A. Excuse me. Do you want me to get that
20 specific when you ask a question?
21 Q. If there's more information that I need from
22 you, I'll go ahead and ask. So you're doing fine.
23 What was the name of your first husband?
24 A. Barney Streit.
25 Q. And then your second husband?

Page 31

1 A. John O'Connell.
2 Q. Okay. And when did you marry John
3 O'Connell?
4 A. 1993.
5 Q. Is he still alive?
6 A. No.
7 Q. He passed away, then. Okay.
8 A. Yes.
9 Q. What year did he pass away?
10 A. 2002.
11 Q. And did you move to Las Vegas with
12 Mr. O'Connell?
13 A. Yes.
14 Q. Was he employed?
15 A. When?
16 Q. Good question. From 1996 forward.
17 A. No.
18 Q. And did you guys move out to Las Vegas
19 because he was retired?
20 A. Yes.
21 Q. Okay. Was he working when you first met
22 him?
23 A. Yes.
24 Q. What was his profession?
25 A. Law professor.

Page 32

1 Q. And when did he retire?
2 A. From being a law professor?
3 Q. Yes.
4 A. I don't recall.
5 Q. Where was he a law professor at?
6 A. Western State. Western State I think it's
7 called.
8 Q. You and Mr. O'Connell did not have any
9 children; correct?
10 A. Together?
11 Q. Yes.
12 A. Correct.
13 Q. Did he have children from a prior
14 relationship?
15 A. Yes.
16 Q. How many?
17 A. Six.
18 Q. Are you close with them?
19 A. No.
20 Q. When was the last time you spoke to any of
21 his children?
22 A. At the funeral. Well, I'm sorry. Maybe --
23 Q. Shortly thereafter?
24 A. Yeah.
25 Q. Did you have a falling-out with the

Page 33

1 children? Did you not get along or was it -- what was
2 the relationship? How would you characterize it?
3 A. They were -- we didn't live in the same
4 area. We didn't really have a relationship.
5 Q. When you and Mr. O'Connell were married,
6 were they all grown up?
7 A. Yes.
8 Q. Was he in the military at some point?
9 A. Yes.
10 Q. What branch?
11 A. Air Force.
12 Q. What did he do in the Air Force?
13 A. Colonel.
14 Q. Are you currently in any sort of romantic
15 relationship?
16 A. No.
17 Q. Have you been in a romantic relationship
18 since the fall in February 2010?
19 A. Yes.
20 Q. And who was that with?
21 A. Sal Risco.
22 Q. Can you spell his last name for me?
23 A. R-i-s-c-o.
24 Q. Does he reside here in Las Vegas?
25 A. Yes.

Page 34

1 Q. Do you still communicate with him?
2 A. Occasionally.
3 Q. How long did you two date?
4 A. Seven and a half years.
5 Q. And when did you end your romantic
6 relationship with him?
7 A. Around May 2011.
8 Q. What was the cause, if you will, of the end
9 of that relationship?
10 A. I couldn't keep up with him.
11 Q. Can you tell me your education level,
12 please?
13 A. I have a bachelor's.
14 Q. From where?
15 A. U.C. San Francisco.
16 Q. In what?
17 A. Dental hygiene.
18 Q. And were you a dental hygienist for a period
19 of time?
20 A. Yes.
21 Q. For how long?
22 A. Approximately 13 years. Wait. I have to
23 count.
24 Q. That's okay.
25 A. I think it was around there.

Page 35

1 Q. Was it a bachelor of arts or bachelor of
2 science?
3 A. B.S.
4 Q. And did you work as a dental hygienist
5 exclusively in California or anywhere else?
6 A. California.
7 Q. What year did you stop working as a dental
8 hygienist?
9 A. 1986.
10 Q. Have you been employed since 1986?
11 A. Yes.
12 Q. Where at?
13 A. Maybe I didn't phrase that correctly. I was
14 the owner of a franchise bakery, then I was the owner
15 of a wholesale bakery.
16 Q. All in California?
17 A. Yes.
18 Q. And this was the Treats entity?
19 A. The franchise one was the Treats entity.
20 Q. And the wholesale -- what was the wholesale
21 one called?
22 A. Muffin Artistry.
23 Q. And how long did you have those businesses?
24 A. Treats was about a year and a half. Muffin
25 Artistry was close to a year.

Page 36

1 Q. Did the Treats business close because of the
2 litigation?
3 A. No.
4 Q. Why did it close?
5 A. Because the franchisor stopped giving me
6 product, and I started making sandwiches and other
7 product, because I couldn't get it from the
8 franchisor, and then the mall told me to stop doing
9 that; it wasn't on my lease.
10 Q. Okay. And that forced the business to
11 close, essentially?
12 A. Yes.
13 Q. Okay. And then the Muffin Artistry, why did
14 that stop?
15 A. Because it was growing fast. I had a
16 salesman out there getting new accounts. I couldn't
17 keep up. I needed a loan, and the divorce tied up --
18 filed -- in the divorce they filed a lis pendens to
19 tie up my property so I couldn't get a loan. So I
20 closed temporarily, but unfortunately it became
21 permanent.
22 Q. Is it fair to say your divorce was not
23 pleasant; it was contentious?
24 A. That's fair to say.
25 Q. And obviously I want to tread very lightly,

Page 37

1 but were there some issues in that marriage that
2 involved some domestic violence?
3 A. Some.
4 Q. Okay. And that was with Mr. Streit?
5 A. Yes.
6 Q. Was that the cause of the divorce or was it
7 a number of different things?
8 A. Number of different things.
9 Q. Other than the Muffin Artistry and the
10 Treats businesses, did you have any other employment
11 since 1986?
12 A. No.
13 Q. And have you had any other education since
14 receiving your bachelor of science degree in dental
15 hygiene?
16 A. No.
17 Q. How are you currently supporting yourself?
18 A. My husband left me his military -- half of
19 his retirement.
20 Q. Other than Sal Risco, who we talked briefly
21 about, who are your close friends in Las Vegas?
22 A. Now I don't have close friends in
23 Las Vegas.
24 Q. Since when did you stop having close friends
25 in Las Vegas?

Page 38

1 A. Well, Sal Risco and I had many
2 acquaintances, not close friends, but many
3 acquaintances.
4 Q. And when was the last time you went out
5 socially?
6 A. I'm sorry. Are you asking with --
7 Q. Not with Sal. Just generally with friends.
8 A. Well, I will go out by myself. The last
9 time -- is that what you're asking? Have I met people
10 or -- I don't understand.
11 Q. Well, what I'm trying to understand is do
12 you socialize with friends still or are you sort of on
13 your own, I guess?
14 A. Right now I'm sort of on my own.
15 Q. Is there a particular reason?
16 A. It's just hard for me to get around and plan
17 things and -- because I plan to do something and then
18 I can't. It's easier if I just go out when I'm able
19 to.
20 Q. Okay. When you were at the Wynn on February
21 8, 2010, were you with anyone?
22 A. Could you be more specific, please?
23 Q. Did anyone accompany you to the Wynn on
24 February 8, 2010?
25 A. No.

Page 39

1 Q. What were you doing at the Wynn on that
2 particular day?
3 A. My usual routine. I went to the buffet
4 first, and then I -- it was just the usual routine.
5 Q. Did you eat alone?
6 A. No.
7 Q. Who did you eat with?
8 A. My cousins.
9 Q. And who are they?
10 A. Helen, Ellen Straub.
11 Q. Helen Ellen, E-l- --
12 A. I'm sorry. I'm sorry.
13 Q. No, you're fine.
14 A. Helen and Ellen Straub.
15 Q. Okay. And they live here in Las Vegas?
16 A. No.
17 Q. Where do they live?
18 A. California.
19 Q. Were they staying at the Wynn?
20 A. I think they were.
21 Q. How long had they been there before February
22 8, 2010?
23 A. I'm sorry?
24 Q. How long had they been staying at the Wynn
25 before --

Page 40

1 A. Oh, I don't know.
2 Q. Were they there on vacation?
3 A. Yes.
4 Q. Were they accompanied by anyone else or was
5 it just those two who came from California?
6 A. I don't know. They probably had friends. I
7 don't know.
8 Q. How did you come to understand that they
9 were at the Wynn on that particular day?
10 A. Because they come, usually, once a year. Or
11 they had been coming once a year.
12 Q. So sort of walk me through what happened.
13 Did they call you and say they were coming to town?
14 Did they --
15 A. I don't remember that, but --
16 Q. Okay.
17 A. -- previously, once a year they would come
18 into town and we would meet for lunch.
19 Q. Okay. So you don't know how they initially
20 contacted you, but the idea was that they were going
21 to meet you at the buffet at the Wynn on that
22 particular day?
23 A. Yes.
24 Q. About what time did you get to the Wynn?
25 A. I don't recall.

Page 41

1 **Q. And you actually met them for lunch?**
2 A. Yes.
3 **Q. Before you went to the buffet, did you do**
4 **anything else at the Wynn? Did you gamble? Did**
5 **you --**
6 A. Before?
7 **Q. Yes.**
8 A. No, I started with that, I believe.
9 **Q. And do you recall where you parked?**
10 A. In the parking structure.
11 **Q. Did you valet or --**
12 A. No.
13 **Q. So you parked in the self-park. Do you know**
14 **which garage it was?**
15 A. No. I mean, I don't know what you call
16 it.
17 **Q. Where was it located, to the best you**
18 **recall?**
19 A. I usually parked in that garage. I parked
20 there many, many times, same garage, and it's the one
21 that when you park there, you go into the Wynn and you
22 pass, I think, the Ferrari place.
23 **Q. Okay. So it's the garage over by the**
24 **Ferrari dealership?**
25 A. Yes.

Page 42

1 **Q. So when you arrived at the Wynn, you parked**
2 **in the garage, sort of the normal spot?**
3 A. Normal spot.
4 **Q. Okay. And then did you walk straight to the**
5 **buffet from the garage?**
6 A. I probably went to the bathroom first.
7 **Q. Okay. And then you met your cousins. Did**
8 **you all go in together or were they already seated?**
9 A. I tried -- I don't recall.
10 **Q. Did all three of you eat?**
11 A. Yes.
12 **Q. Did anyone have any alcohol?**
13 A. I doubt it.
14 **Q. Okay. You don't recall, though,**
15 **specifically?**
16 A. I don't recall them ever having alcohol when
17 we met.
18 **Q. You didn't have an alcoholic beverage?**
19 A. No.
20 **Q. How long did you sit at the buffet would you**
21 **estimate?**
22 A. Long time.
23 **Q. Could you estimate for me?**
24 A. I'm sorry.
25 **Q. More than two hours? Less than two hours?**

Page 43

1 A. Could have been more than two hours.
2 **Q. Okay. And then at the conclusion of lunch**
3 **who paid the bill, do you recall?**
4 A. I think I got a comp.
5 **Q. Okay. Why would you get a comp?**
6 A. Because it was -- my usual routine I'd go
7 and they'd give me a comp for lunch and give me some
8 play money.
9 **Q. Do you have a Red Card with Wynn?**
10 A. I did.
11 **Q. And did you gamble at Wynn?**
12 A. That day?
13 **Q. No. Generally speaking.**
14 A. Yes.
15 **Q. Okay. Did you gamble that day?**
16 A. Not really.
17 **Q. What does that mean, "not really"?**
18 A. It means that when I was trying to get back
19 to my car, I sat at a lot of machines that I typically
20 don't play, and so I sat there, and it took like
21 probably -- I don't recall right now, but a couple
22 hours to get to my car and sitting at a lot of
23 machines. So if I gambled, it was just very little of
24 pressing the button.
25 **Q. And this would have been after the fall but**

Page 44

1 **before you got to your car?**
2 A. Trying to work my way to my car.
3 **Q. Okay. And you do believe you think you**
4 **gambled at that point in time?**
5 A. Maybe the amount that they put in my card.
6 **Q. Okay. So it would have been comped play or**
7 **something like that?**
8 A. I think so.
9 **Q. Okay. Is there a particular reason why you**
10 **chose the Wynn buffet on that particular day? Was it**
11 **because you had a comp or just wanted to go to the**
12 **buffet?**
13 A. It's my favorite buffet.
14 **Q. When you were to gamble at Wynn, what games**
15 **did you play?**
16 A. Just the video poker.
17 **Q. Did you always use your Red Card?**
18 A. I tried to.
19 **Q. How often would you go frequent the Wynn**
20 **prior to the fall?**
21 A. I know I was there a couple weeks before
22 that. And I was there many times since they opened.
23 **Q. Was that your favorite place to gamble?**
24 A. No, not necessarily. It's my favorite place
25 to eat.

Page 45

1 Q. Since the fall have you been back to the
2 Wynn?
3 A. No.
4 Q. Do you still currently gamble at all?
5 A. Some.
6 Q. Where do you gamble at currently?
7 A. Rampart Casino.
8 Q. And around the time that the fall took
9 place, did you also gamble at the Rampart? I know
10 it's a poor question, but in February 2010 were you
11 gambling at the Rampart as well?
12 A. Are you ask- -- yes.
13 Q. Okay. Any other locations in February 2010
14 that you would frequent and gamble at other than the
15 Rampart and the Wynn?
16 A. In -- I mean -- did you say February?
17 Q. February 2010, yes.
18 A. I don't recall. I'm sorry. Could you be
19 more specific about that?
20 Q. Generally speaking, in February 2010, in
21 that entire month, do you recall where you would have
22 gambled other than the Rampart and the Wynn?
23 A. Not that month.
24 Q. And let me just ask the broad question.
25 Other than the Wynn and the Rampart Casino, generally

Page 46

1 in 2010, or that time period, where would you gamble?
2 A. Planet Hollywood.
3 Q. Anywhere else or were those typically the
4 three?
5 A. Those were typically the three.
6 Q. What were your cousins Helen and Ellen doing
7 after your lunch? What were they doing?
8 A. I don't know.
9 Q. Did they carry cell phones?
10 A. Oh, excuse me. I think they were going
11 home --
12 Q. They were flying --
13 A. -- after lunch. I think they had to catch a
14 flight.
15 Q. Had they checked out of the hotel prior to
16 the buffet lunch or would that have taken place after
17 the lunch?
18 A. I don't know.
19 Q. Did you have your cell phone with you on
20 that particular day?
21 A. Yes.
22 Q. And did they have their cell phones with
23 them on that particular day?
24 A. I wouldn't know.
25 Q. Do you have their cell phone numbers?

Page 47

1 A. On me you mean?
2 Q. Well, and I'll just ask you: After you
3 fell, did you make any attempt to contact them?
4 A. No.
5 Q. On February 8, 2010, after your fall, you
6 made no effort to give them a call to tell them what
7 happened or touch base with them?
8 A. No.
9 Q. Is there any particular reason why you
10 didn't do that?
11 A. I never told them.
12 Q. They still don't know to this day?
13 A. They still don't know.
14 Q. Do they still come back every year as they
15 did before?
16 A. I saw them. I don't know when if -- I don't
17 know when they'd come, but I saw them three years
18 later.
19 Q. Is there any particular reason why you
20 wouldn't tell them that you fell on that day?
21 A. Yes.
22 Q. Why?
23 A. Because I don't see them very often, and I'm
24 lucky to see them once a year, and I'm not going to
25 tell them something negative.

Page 48

1 Q. So after the lunch, they went their separate
2 ways with you? They left; you went your separate way?
3 A. Yes.
4 Q. Then where did you go after you left the
5 buffet?
6 A. I believe I went to get my coat first.
7 Q. Where would your coat have been?
8 A. In my car.
9 Q. Okay. Why did you need to go back to your
10 car to get your coat?
11 A. Because I was going to go walk on the
12 Strip.
13 Q. Is that something you typically do?
14 A. Yes.
15 Q. How long would you walk for?
16 A. At least two miles, two to three miles.
17 Q. Did you have a particular route?
18 A. Yes.
19 Q. What was it?
20 A. Through all the Cache stores and Marshall
21 Rousso; so I went down to Planet Hollywood.
22 Q. Okay. So you go back to your car; you get
23 your coat. You didn't move your car or anything like
24 that?
25 A. No.

Page 49

1 **Q. Okay. Then after you retrieved your coat,**
2 **where did you go?**
3 A. Then I went out of my way to go through the
4 gardens.
5 **Q. All right. When you say you went out of**
6 **your way to go through the gardens, what do you mean**
7 **by that?**
8 A. I meant instead of taking the direct route
9 to where I was going, I went around to go through the
10 gardens because they usually have it decorated really
11 pretty.
12 **Q. Where would you have exited the Wynn to go**
13 **on your walk? Would it have been through the mall?**
14 A. At this time you would have to show me a
15 picture, but I would have gone a different way,
16 through the casino, I think.
17 **Q. Okay. So you started walking through the**
18 **area where all the plants are.**
19 A. Yes.
20 **Q. Did you have any eye issues on that**
21 **particular day?**
22 A. No, other than I wear glasses to drive,
23 that's it.
24 **Q. Okay. Do you recall what you were wearing**
25 **on that day?**

Page 50

1 A. I didn't until I recently found a picture of
2 me and my cousins, so now I know.
3 **Q. Do you still have the clothing that you were**
4 **wearing on that day?**
5 A. Probably.
6 **Q. Do you still have the shoes that you were**
7 **wearing on that day?**
8 A. Oh, I don't know.
9 **Q. Did you wear the shoes that you were wearing**
10 **on that day after the fall?**
11 A. Probably.
12 **MR. SEMENZA:** Okay. Why don't we take a
13 quick break. Is that okay with you?
14 **MS. MORRIS:** Yes.
15 **THE WITNESS:** Okay.
16 (Recess taken.)
17 **MR. SEMENZA:** Are you ready to go back on
18 the record?
19 **THE WITNESS:** Yes.
20 **BY MR. SEMENZA:**
21 **Q. All right. Before we broke we talked about**
22 **sort of a practice and pattern that you had of going**
23 **to Wynn and taking your walk. How many times had you**
24 **done that before the February fall?**
25 A. Many. Many times. Since they opened.

Page 51

1 **Q. Was it your normal practice to go the Wynn,**
2 **eat at the buffet and go for a walk?**
3 A. Yes.
4 **Q. Would you generally eat alone or would you**
5 **go with someone?**
6 A. Well, I would eat alone or go with my
7 boyfriend or meet people or --
8 **Q. Okay.**
9 A. I went with my boyfriend a lot and I went
10 alone a lot.
11 **Q. And is it fair to say that you were familiar**
12 **with the layout of the Wynn and its exits and**
13 **entrances?**
14 A. Well, just my routine.
15 **Q. Your routine. And was it your routine to**
16 **always walk through the arboretum, I guess is what I'd**
17 **call it, inside?**
18 A. The gardens?
19 **Q. The gardens, that's fine.**
20 A. Yes.
21 (Exhibit 1 was marked for identification.)
22 **BY MR. SEMENZA:**
23 **Q. All right. I'm showing you what's been**
24 **marked as Exhibit 1. It's a compilation of a number**
25 **of documents. Can I have you turn to -- and at the**

Page 52

1 **bottom of the documents there's a number. If you**
2 **could turn to 471, which I think is the second**
3 **photograph. Can you tell me what this picture**
4 **depicts?**
5 A. Yes, this is where I was.
6 **Q. Prior to your fall does it show where you**
7 **were coming from?**
8 A. Yes.
9 **Q. Okay. I'm going to give you a pen --**
10 **although there's pens right in front of me -- could**
11 **you place an arrow from the general location you were**
12 **coming from and the direction you were traveling to?**
13 A. Yes. I started over here (indicating). Do
14 you want an arrow?
15 **Q. Yes. Yes, please.**
16 A. Okay. Start here and then I keep arrowing
17 the way I went?
18 **Q. Yes, sure. Your general route, that's fine.**
19 A. Started way at this end and I walked this
20 way to the other end towards this entrance over here
21 (indicating).
22 **Q. Did you come off on this particular side?**
23 A. You mean here (indicating)?
24 **Q. Yes.**
25 A. No. I was there (indicating).

Page 53

1 Q. So you were traveling in this direction
2 (indicating). Go ahead and put a larger arrow where
3 you were going.
4 A. (Writing.)
5 Q. Okay. Perfect. And that was page 471 where
6 you've identified the direction you were coming from
7 and the direction you were traveling. And then you
8 would have walked from that direction out into, I
9 guess, the mall area to Las Vegas Boulevard?
10 A. Yes.
11 Q. Okay. Let me have you turn to the next
12 page, which is Bates No. 472. Does this picture --
13 what does this picture depict?
14 A. The area, the same area, type of area.
15 Q. Okay. Could I have you put an X on the
16 location where you believe you slipped and fell, if
17 it's depicted in this photograph.
18 A. I started my slip and fall around here
19 (indicating). You wanted an X?
20 Q. Yes.
21 A. I started my slip and fall around here.
22 (Writing.)
23 Q. Where did you end up?
24 A. It's not quite in this picture.
25 Q. Just put a circle in the general area --

Page 54

1 although it's not in the picture -- of where it would
2 have been in relation to the picture, if that makes
3 sense.
4 A. Well, it's not in the picture, so you want
5 me to --
6 Q. You would have landed about --
7 A. Well, it would have been past this point I
8 would have landed (indicating).
9 Q. Go ahead and put a circle on that general
10 area.
11 A. (Writing.)
12 Q. Let me have you turn to the next page, which
13 is 473. What does this photo depict?
14 A. This is where my right buttocks hit, and
15 here's the drain, and this is where they left me
16 standing (indicating).
17 Q. So put a square where you think your
18 buttocks hit, if you don't mind.
19 A. A square?
20 Q. Yes.
21 A. Where I hit?
22 Q. As dark as you can get it since it's a dark
23 picture.
24 A. (Writing.)
25 Q. And then where was your head? Where did

Page 55

1 your head land?
2 A. Part of me was in this area. And I don't
3 know if it hit the drain or what, but part of me was
4 in this area (indicating).
5 Q. Okay. And where were your feet?
6 A. You mean when I was on the ground?
7 Q. Yeah. In relation -- in this photograph
8 we've identified where your -- this is where your --
9 in the square where your buttocks was.
10 A. Right.
11 Q. Was this the right side of your buttocks,
12 the left, or just both?
13 A. Well, what I know is the bruise that I was
14 aware of was on my right buttocks.
15 Q. Okay. So you believe that that square
16 depicts the location where your right buttocks was?
17 A. Yes.
18 Q. Now, in that picture, was your head in the
19 bushes? Was your head in that direction of the
20 plants?
21 A. I'm not sure if it was over here, but it
22 was -- or here (indicating). I'm not exactly sure
23 where my head landed.
24 Q. You don't know whether it was in the plants
25 or somewhere else?

Page 56

1 A. I just know that part of me was in the
2 plants. Well, I think part of my shoulder was in the
3 plants, so my head must have been.
4 Q. Okay. So your head would have fallen --
5 your head would have been closer to the plants than
6 the walkway; is that fair to say?
7 A. Probably -- well, probably.
8 Q. Okay. If I asked you to draw generally a
9 circle on where you think your head may have basically
10 landed, could you do that?
11 A. I'm not really sure.
12 Q. Okay.
13 A. I'm not really sure if it was closer to this
14 drain here or closer to the divider (indicating).
15 Q. Okay. The only thing you're certain of is
16 that -- by virtue of the square that you put on where
17 your buttocks landed?
18 A. Yes.
19 Q. You don't know where your feet were in
20 relation to this photograph, do you?
21 A. I know where my feet were once they picked
22 me up.
23 Q. Okay. But not immediately after the fall?
24 A. Not immediately after the fall.
25 Q. Okay. Does this picture depict where your

Page 57

1 feet were when you were picked up?
2 A. Yes.
3 Q. Can you put a star on that location?
4 A. (Writing.)
5 Q. Okay. And is it fair to say, then, that you
6 may have moved prior to someone helping you or
7 assisting you up, moved your feet?
8 A. I doubt it.
9 Q. You doubt it. Okay.
10 There's a sign depicted in this particular
11 photograph (indicating). Was that sign present when
12 you fell?
13 A. I assume it was.
14 Q. Did you see the sign before you fell?
15 A. I don't remember.
16 Q. Let me have you turn back to 470 now. And,
17 again, in looking at the picture that's Bates labeled
18 470, you don't recall whether you saw that sign or not
19 prior to falling?
20 A. I'm not sure.
21 Q. Okay. Immediately prior to your fall, where
22 were you looking?
23 A. In the direction I was going, I guess, or I
24 might have still been looking at the plants.
25 Q. Is it fair to say that at the moment you

Page 58

1 fell you weren't looking down at where you were
2 walking?
3 A. No.
4 Q. That's not fair to say?
5 A. That's not fair to say.
6 Q. So immediately prior to the fall you were
7 looking down at where you were walking?
8 A. I was rounding the corner; so I probably was
9 looking closer to where -- the floor.
10 Q. But you don't recall specifically where you
11 were looking, though?
12 A. No.
13 Q. Could I -- does 470 depict the location of
14 where the liquid was -- or the alleged liquid was?
15 A. Yes.
16 Q. Okay. Could you generally place a circle
17 in -- outline where you believe the spill to have
18 taken place or where it was located?
19 A. Yes. The whole spill -- I'm sorry. I think
20 I didn't understand your question.
21 Q. Okay. Could you just outline on this
22 photograph with your pen the location of where you
23 believe the liquid was?
24 A. Okay. Yeah, the entire part?
25 Q. Yes.

Page 59

1 A. Okay. Yes. (Writing.)
2 Okay. This is pen and I wasn't able to
3 correct those other lines, so --
4 Q. That's okay.
5 A. It was closer to this. Those don't count
6 (indicating).
7 Q. Put an X on the location of those lines that
8 don't count. Just X them out.
9 A. (Writing.)
10 Q. Okay. So what you've drawn on here is where
11 you believe the liquid substance to have been located?
12 A. Yes.
13 Q. After you fell, did you see the liquid
14 substance?
15 A. Yes.
16 Q. Okay.
17 A. Part of it.
18 Q. Part of it. Explain that to me.
19 A. They left me standing on part of it. So I
20 looked down and I saw part of it was nearly dry and
21 extending to my right; so I could see that. Couldn't
22 really see towards the left because some of it was
23 into here, and that part wasn't dry (indicating).
24 Q. Okay. So just for reference, you see this
25 individual here at the bottom of the photograph

Page 60

1 (indicating)?
2 A. Yes.
3 Q. What you were explaining was that the liquid
4 substance that was on the floor was drying in the
5 location or at the -- in the direction of this
6 individual (indicating)?
7 A. Yes.
8 Q. And in the opposite direction back towards
9 the flowers that are on the floor, the substance was
10 still liquid?
11 A. Yes.
12 Q. Okay. And do you recall on what part of the
13 liquid substance you fell on? Was it the drying part
14 or the liquid part?
15 A. Oh, the liquid part.
16 Q. Okay. The position where you fell, was that
17 on the mosaic flowers or on the other portion of the
18 floor?
19 A. The colored part -- wait. I'm sorry. I
20 misunderstood the question.
21 Q. That's fine.
22 Where did you fall? Did you fall on the
23 flower part, the mosaic part, or the other part of the
24 floor?
25 A. Specifically are you asking where I landed

Page 61

1 or what --
2 Q. Where you slipped and fell.
3 A. Where I started -- where I --
4 Q. Where you started, that's fine.
5 A. -- started to slip.
6 Q. Let's start there. On the flowers or on
7 the --
8 A. Oh, on the flowers.
9 Q. Okay. On the mosaic flowers.
10 A. Yes.
11 Q. And then when you were falling, were you
12 falling from the position of being on the flowers or
13 on the general floor?
14 A. Oh, it happened suddenly so --
15 Q. You don't know.
16 A. No.
17 Q. When you slipped, was it an immediate fall
18 or did you -- and it's difficult to sort of
19 characterize, but did you immediately fall once you
20 slipped or was there a slight delay where you were
21 trying to regain your balance?
22 A. It happened suddenly.
23 Q. Okay. Just so I'm clear and that the record
24 is clear, you started slipping on the portion of the
25 floor that contained the mosaic which includes the

Page 62

1 flowers; right?
2 A. Yes.
3 Q. Okay. Do you recall the mechanics of your
4 fall, meaning did your right leg slip? Did your left
5 leg slip? Did your legs fall behind you or in front
6 of you?
7 A. It happened suddenly.
8 Q. Okay.
9 A. I just know I was on the ground.
10 Q. Okay. Was the liquid substance in any way
11 colored?
12 A. The drying part of it had a very slight tint
13 of color.
14 Q. And what was that color?
15 A. Just a hint of green.
16 Q. Okay. Did you see, after you fell, whether
17 there were any empty glasses or any cups that were
18 located in that immediate area where you fell?
19 A. There was nothing.
20 Q. Immediately prior to your slip, were you
21 doing anything in a distracted fashion? Were you on
22 the phone? Were you texting? Were you in your purse
23 for any particular reason?
24 A. No.
25 Q. Did you have your coat on at that point?

Page 63

1 A. No.
2 Q. Were you holding your coat?
3 A. I assume -- you know, no, I wouldn't have
4 had my coat on. I must have been holding it.
5 Q. What did you have with you on that day? You
6 had a purse?
7 A. A purse.
8 Q. Okay. And your coat? Anything else?
9 A. No.
10 Q. No bags or anything like that?
11 A. No.
12 Q. And are you left-handed or right-handed?
13 A. Right-handed.
14 Q. Is there a particular hand that you normally
15 carry your purse?
16 A. Shoulder.
17 Q. Okay. Do you recall how you were
18 configured, if you will, immediately before your fall,
19 whether you had your coat on your shoulder, whether
20 you were carrying it with your left hand and holding
21 your purse with your right or had your purse on your
22 shoulder? Do you recall any of that?
23 A. Oh, no, I don't.
24 Q. The liquid substance that was on the floor,
25 you don't know what the liquid substance was, do you?

Page 64

1 A. I believe I do.
2 Q. You do. What was it?
3 A. I believe it was water.
4 Q. And on what basis do you believe that it was
5 water?
6 A. Could you rephrase that, please.
7 Q. Why do you think it was water?
8 A. Because when I was on the ground I thought
9 it was water, and now I'm more convinced it was
10 water.
11 Q. Even though it had a green tint to it?
12 A. Yes.
13 Q. Do you have any understanding as to why it
14 would have been -- it would have had a green tint if
15 it was water?
16 A. I have my belief.
17 Q. What is that?
18 A. That it had been on the -- either running
19 through or over the plants and out of the drain or
20 around the drain and so that's why it had the greenish
21 tint.
22 Q. Well, okay, and I understand that, but why
23 would it have been -- what is the significance of the
24 greenish tint then?
25 A. Maybe it had fertilizer in it. But I

Page 65

1 believe it was coming from water off the plants or out
2 of the drain.
3 **Q. Immediately after the fall did you see any**
4 **liquid leaking from planters onto the walkway?**
5 A. It was absolutely up against the planters,
6 so that's why I thought it came from there.
7 **Q. Okay. But there was no liquid substance**
8 **coming from the planters that you saw onto the**
9 **walkway, onto the mosaic?**
10 A. I could just see it up against. I didn't --
11 so I just assumed it was from there. I'm sorry. I
12 think I didn't understand that question.
13 **Q. Okay. You didn't see any continuing or --**
14 **well, you didn't see any liquid running from the**
15 **planters onto the --**
16 A. Running? Running water?
17 **Q. Yes.**
18 A. I didn't see any running liquid.
19 **Q. And you had identified that the substance**
20 **was sticky as well, the liquid?**
21 A. Yes, a little sticky.
22 **Q. Water would not have been sticky, would it**
23 **have been?**
24 A. Sure, if it would have been -- it wasn't
25 that sticky. It -- it -- if it had come off the

Page 66

1 plants or even had fertilizer in the water, sure it
2 would be. I believe it would be.
3 **Q. It also could have been somebody's drink; is**
4 **that true?**
5 A. I doubt it.
6 **Q. You don't believe that that could have**
7 **happened?**
8 A. Not where that was.
9 **Q. Could it have been a margarita with a slight**
10 **green tint?**
11 A. I doubt that.
12 **Q. Is that a no? I know you said you doubt it,**
13 **but --**
14 A. I -- I --
15 **Q. You don't believe it could have been?**
16 A. I don't believe it could have been. It just
17 didn't make sense.
18 **Q. Is it fair to say you don't know how the**
19 **substance got there, the liquid substance?**
20 A. It's fair to say that I believe I know how
21 it got there.
22 **Q. And how did it get there?**
23 A. What I believe?
24 **Q. Yes.**
25 A. I believe that it was water either meant --

Page 67

1 you know, on the plants, meant to go into that drain
2 or came out of the drain, but it was water, something
3 to do with that drain.
4 **Q. Mechanically how did it happen?**
5 A. Oh, I wouldn't know that. Just overflow or
6 whatever.
7 **Q. You don't know; is that correct?**
8 A. I wouldn't know that one.
9 **Q. Okay. You don't know how long that liquid**
10 **substance was present on that floor before you slipped**
11 **on it, do you?**
12 A. I know that it was on the floor long enough
13 for part of it to almost dry and accumulate some
14 footprints.
15 **Q. But, again, you don't know how long that**
16 **would have taken, do you?**
17 A. Not time, no.
18 **Q. Is it fair to say that you don't have any**
19 **understanding as to whether any Wynn employee placed**
20 **that liquid substance on the ground?**
21 A. I don't know.
22 **Q. And, to your knowledge, you don't have any**
23 **evidence that would suggest Wynn or any of its**
24 **employees knew that the liquid was on the ground**
25 **immediately prior to your fall?**

Page 68

1 **MS. MORRIS:** Object to form and
2 foundation.
3 **BY MR. SEMENZA:**
4 **Q. You can answer.**
5 A. I'm sorry. I'm sorry. Could you repeat
6 that.
7 **Q. Sure. Is it fair to say that you don't have**
8 **any evidence to suggest that either Wynn or any of its**
9 **employees knew that liquid substance was on the ground**
10 **immediately prior to your fall?**
11 **MS. MORRIS:** I'm going to object to form and
12 foundation.
13 **THE WITNESS:** I'm so sorry. I believe
14 that -- I think I'm confusing your question, and my
15 response would not answer exactly what you're asking,
16 and I'm very sorry, but could you rephrase?
17 **BY MR. SEMENZA:**
18 **Q. Sure. Based on your knowledge, you don't**
19 **have any evidence to suggest that the Wynn or any of**
20 **its employees knew that there was a liquid substance**
21 **on the ground immediately prior to your fall?**
22 **MS. MORRIS:** Object to form and foundation.
23 **THE WITNESS:** I don't know that.
24 **BY MR. SEMENZA:**
25 **Q. And is it fair to say you don't have any**

Page 69

1 evidence to suggest that Wynn or its employees knew
2 that there was a liquid substance on the --
3 A. Before?
4 Q. Yes, before your fall.
5 MS. MORRIS: Object to form and
6 foundation.
7 THE WITNESS: Before my fall?
8 BY MR. SEMENZA:
9 Q. Yes.
10 A. I don't know if I have evidence of that.
11 Q. Is there any evidence you can identify here
12 today that would suggest that either Wynn or any of
13 its employees knew that there was a liquid substance
14 on the floor immediately prior to your fall?
15 MS. MORRIS: Object to form and foundation.
16 THE WITNESS: I'm sorry. Wasn't that the
17 same question?
18 BY MR. SEMENZA:
19 Q. Slightly different.
20 A. I didn't understand the difference.
21 MR. SEMENZA: Could you read that back for
22 me.
23 (Record read.)
24 THE WITNESS: I don't know if we have
25 evidence.

Page 70

1 BY MR. SEMENZA:
2 Q. As you sit here today, there's no evidence
3 that you can identify right now, is there?
4 MS. MORRIS: Object to form.
5 THE WITNESS: Okay. I'm sorry. You're
6 asking if anybody knew that it was there before I
7 fell?
8 BY MR. SEMENZA:
9 Q. Yes.
10 A. I don't know if we have evidence of that.
11 Q. Okay. And is it fair to say that you don't
12 have any evidence here today that either Wynn or any
13 of its employees should have known that there was a
14 liquid substance on the floor immediately prior to
15 your fall?
16 MS. MORRIS: Object to form and
17 foundation.
18 THE WITNESS: Excuse me. Am I -- is there a
19 question here?
20 BY MR. SEMENZA:
21 Q. Yes. You can go ahead and answer it.
22 MR. SEMENZA: Can you go ahead and read that
23 back for me.
24 (Record read.)
25 THE WITNESS: Oh, yes, I believe, I believe

Page 71

1 that we have evidence of that.
2 BY MR. SEMENZA:
3 Q. What is that evidence?
4 A. If I understood your question correctly, I
5 believe that they knew that there was a drain here and
6 that they knew that the drain was for the purpose of
7 the water, so they should know that water is in that
8 area.
9 Q. Okay. But my question was: Do you have any
10 evidence that suggests that Wynn knew that there was a
11 liquid substance on the floor at that location
12 immediately prior to your fall?
13 MS. MORRIS: Object to form and foundation;
14 asked and answered.
15 BY MR. SEMENZA:
16 Q. What is that -- and you described a drain.
17 What were you referring to?
18 A. The drain in the picture right here
19 (indicating).
20 Q. And you're referring to page 470? Let's see
21 if there's a better image.
22 Okay. Let's look at 473. Could you put a
23 circle around the location of what you describe to be
24 a drain.
25 A. Yes. (Writing.) Is that what you wanted?

Page 72

1 Q. Yes. And could you just write a D on top
2 of --
3 A. On top of the drain?
4 Q. Yeah.
5 A. (Writing.)
6 Q. Okay. How do you know that that's a drain?
7 A. Well, because that's what it looks like.
8 Q. Okay. Just based upon your observation as
9 to what it looks like?
10 A. Yes.
11 Q. Did you see any Wynn employees immediately
12 in the area surrounding where you fell -- let me
13 strike that. Let me ask a different way.
14 When was the first time you saw any Wynn
15 employee at the location after you fell?
16 A. The first employee came from my left.
17 Q. Okay. Where would that employee have been
18 coming from?
19 A. He was the one who had the -- you know, was
20 cleaning -- had that big machine, that big sweeper.
21 Q. How long after you fell did he arrive?
22 A. I'm not sure.
23 Q. Was it five minutes? Three minutes? If you
24 can estimate.
25 A. Well, he said -- he came up to me and said

Page 73

1 he saw everything. So -- and then there's a report
2 that he filled out; so that's what I would have to go
3 by.
4 **Q. Your belief is that this individual actually**
5 **saw you fall?**
6 A. I thought that that's what he meant, but I
7 read his report recently, that I saw recently, and
8 apparently -- well, it says what he meant in there.
9 **Q. Well, is it your understanding that in his**
10 **report he said he didn't see you fall?**
11 A. I don't think he worded it that way, but I
12 think he said -- said it a different way.
13 **Q. Was that his gist, though? Was that his**
14 **basic -- well, strike that.**
15 **And, again, you don't recall how long after**
16 **your fall you first saw him?**
17 A. Oh. Oh, okay. Once they left me
18 standing -- I know that he came immediately after I
19 was left standing.
20 **Q. And how long was that? So after the fall**
21 **can you estimate for me how long until it was when he**
22 **arrived on the scene?**
23 A. Well, I don't know how long I was on the
24 ground. So does that --
25 **Q. Okay.**

Page 74

1 A. Does that answer your question or --
2 **Q. Were you on the ground for more or less than**
3 **a minute if you could --**
4 A. I wouldn't know.
5 **Q. Okay. You don't know? It could have been**
6 **five minutes?**
7 A. I could have been. I don't know how long I
8 was on the ground.
9 **Q. Do you know the name of the individual?**
10 A. The report, I think it's the -- Terry.
11 **Q. Okay. Immediately preceding the fall were**
12 **you looking at your feet as you were walking?**
13 A. I'm sorry?
14 **Q. When you were walking immediately prior to**
15 **your falling, were you looking down at where you were**
16 **going or were you looking up at the plants?**
17 A. I'm not sure.
18 **Q. Okay. Is it fair to say that you were**
19 **probably looking at the plants, otherwise you might**
20 **not have fallen if you had been looking down towards**
21 **your feet?**
22 A. No.
23 **Q. Had you been looking down at your feet while**
24 **you were walking, do you believe that you would have**
25 **seen the liquid substance prior to your fall?**

Page 75

1 A. No.
2 **Q. Why is that?**
3 A. Because when I was standing and I tried to
4 look to the left where Terry went, at the end of it I
5 still couldn't see it because it was on this colored
6 tile.
7 **Q. The mosaic?**
8 A. Yeah.
9 **Q. Can you explain why part of the liquid**
10 **substance was drying and sticky and part of it was**
11 **still wet?**
12 MS. MORRIS: Object to form and
13 foundation.
14 BY MR. SEMENZA:
15 **Q. You can answer that if you understood it.**
16 A. Well, are you asking if I can think of a
17 reason or --
18 **Q. Yeah, do you have an understanding as to why**
19 **part of it would have been sticky and dry, as you**
20 **characterized it, and part of it was wet?**
21 A. I don't know the mechanics of it. Is that a
22 good answer? I mean, did I answer the question?
23 **Q. Yes, you answered the question.**
24 A. I don't know the mechanics of it.
25 **Q. All right. When you fell, what did you hit?**

Page 76

1 **What portions of your body impacted the ground?**
2 **Let's break it up a little bit. When you**
3 **slipped, what portions of your body hit the -- we'll**
4 **say the tile floor or marble flooring?**
5 A. I'm positive that my right buttocks hit this
6 triangle part of the planter divider (indicating).
7 **Q. And that -- let me stop you there real**
8 **quickly. That portion of the -- this is a raised**
9 **divider; is that correct?**
10 A. Yes.
11 **Q. And this forms a barrier between the plants**
12 **and the rest of the flooring; is that correct?**
13 A. Yes.
14 **Q. Okay. And so your right buttock hit that**
15 **divider?**
16 A. That triangle part.
17 **Q. Okay. Why don't you put a triangle on that.**
18 **And we're looking at page 473.**
19 A. You want a triangle in the box?
20 **Q. Yeah.**
21 A. (Writing.)
22 **Q. Okay. All right. What else do you recall**
23 **hitting or contacting your body?**
24 A. Well, I had a bruise on my leg also, and I
25 know I was completely on the ground, and I was in so

Page 77

1 much pain in other parts of my body, so I could have
2 even hit the drain.
3 **Q. Okay. You don't know if you hit the drain**
4 **or not?**
5 A. I know I hit things, and other than -- I'm
6 positive that's where my -- the triangle part is where
7 that bruise came from, but I don't know what else I
8 hit other than I was completely on the ground.
9 **Q. Okay. You don't know if you hit your head**
10 **or not?**
11 A. Well, I must have hit my head.
12 **Q. Why do you say that?**
13 A. Because I was completely on the ground.
14 **Q. Okay. Where -- well, okay. You don't**
15 **specifically recall hitting your head, do you?**
16 A. Oh, it happened suddenly, and I just know
17 that I was on the ground and people woke me up.
18 **Q. Okay. Oh, they woke you up?**
19 A. Yes.
20 **Q. Did you lose consciousness?**
21 A. Well, people woke me up, so --
22 **Q. And how do you know people woke you up? Do**
23 **you recall losing consciousness?**
24 MS. MORRIS: Object to foundation.
25 THE WITNESS: I recall people waking up -- I

Page 78

1 recall people waking me up. I recall that's why -- it
2 was like people were waking me up, talking to me.
3 **BY MR. SEMENZA:**
4 **Q. Did you have any bumps or bruises on your**
5 **head anywhere?**
6 A. I don't know.
7 **Q. Okay. And you had mentioned a bruise on**
8 **your leg. Where was the bruise?**
9 A. The thigh.
10 **Q. On your right thigh?**
11 A. Yes.
12 **Q. Okay. Any other bruises that you can**
13 **recall?**
14 A. I wasn't in a position to see them. The
15 doctor's the one who told me I had them.
16 **Q. Okay. To your knowledge, though, you didn't**
17 **see any other bruises other than the one on your**
18 **buttocks and one on your thigh?**
19 A. I wasn't able to look. I could have had
20 more, but I wasn't able to look.
21 **Q. Okay. And you do recall falling into the**
22 **plants, though?**
23 A. I think part of me was in the plants.
24 **Q. Okay. And you were just pointing to your**
25 **shoulder. You think --**

Page 79

1 A. I think part of my shoulder was in the
2 plants.
3 **Q. And that tends to indicate that your head**
4 **was also in the plants?**
5 A. Probably. If my shoulder was, I assume my
6 head was.
7 **Q. Okay. And is it your belief, then, that you**
8 **hit something with your head in the planter or do you**
9 **not know?**
10 A. I don't know what I hit, but now I believe
11 that maybe I -- parts of my body hit the drain also
12 just because I -- I don't know what else I hit.
13 **Q. Give me one second.**
14 **Who do you recall first coming to your**
15 **assistance?**
16 A. Terry.
17 **Q. No one assisted you prior to Terry's arrival**
18 **to the scene?**
19 A. Oh, I'm sorry. The people who picked me up,
20 is that what you mean?
21 **Q. Who were the people that picked you up,**
22 **yeah.**
23 A. I don't know who they were.
24 **Q. How long were they on the scene with you?**
25 A. I don't know how long they were there before

Page 80

1 they woke me up and I don't -- I know they were there
2 long enough to pick me up and leave me standing
3 there.
4 **Q. You don't know who they were or where they**
5 **went?**
6 A. No. I didn't see.
7 **Q. Do you recall communicating with them at**
8 **all?**
9 A. Only they asked me if I could get up, and I
10 couldn't.
11 **Q. Okay.**
12 A. So I believe that was the only
13 communication. They picked me up, and they were
14 gone.
15 **Q. How many people were there?**
16 A. I'm not sure.
17 **Q. Can you describe any of them?**
18 A. No.
19 **Q. Male or female?**
20 A. No. I mean, I believe they were men that
21 picked me up, but there could have been some females
22 there.
23 **Q. Okay. And did they -- they physically**
24 **picked you up?**
25 A. Physically.

Page 81

1 **Q. How did they do that?**
2 A. I'm not sure. I just -- I couldn't get up,
3 and they lifted me up and left me standing.
4 **Q. Okay. And you said you couldn't get up.**
5 **What was the reason as to why you couldn't get up at**
6 **that point in time?**
7 A. I was in excruciating pain.
8 **Q. And was that pain on a 10 out of 10 scale?**
9 A. It was off the charts.
10 **Q. The most excruciating pain you've ever**
11 **experienced?**
12 A. Well, I -- it was just immediate pain.
13 **Q. Okay. What at that point in time do you**
14 **recall hurting?**
15 A. My shoulder.
16 **Q. Which shoulder?**
17 A. The right one.
18 **Q. Okay.**
19 A. My arms and hands.
20 **Q. Both arms, both hands?**
21 A. Yes. My buttocks.
22 At what time specifically are you asking?
23 **Q. Immediately after the fall.**
24 A. Are you asking -- okay. Are you asking when
25 I was standing?

Page 82

1 **Q. Well, did your pain change during that**
2 **period of time from when you were on the ground to**
3 **when you were standing?**
4 A. I think I was more aware of specifically
5 where it was hurting once I was standing and later,
6 sitting.
7 **Q. Okay. So let's take it from there.**
8 **So when you were standing, when the**
9 **individuals assisted you up, you said your right**
10 **shoulder, both arms, both hands and your buttocks.**
11 **Anything else?**
12 A. I'm so sorry.
13 **Q. That's okay.**
14 A. I think you're being specific, so I've got
15 to listen closer. I'm sorry. What specifically --
16 you're talking about a specific time and --
17 **Q. Right.**
18 A. -- you're breaking it down so --
19 **Q. Immediately after the fall, after you've**
20 **been assisted to stand up --**
21 A. Okay.
22 **Q. -- you have identified that you had pain in**
23 **your right shoulder, both arms, both hands and your**
24 **buttocks. Was there anything else?**
25 A. Okay. At that time I just knew I was in a

Page 83

1 lot of pain.
2 **Q. Okay. So at that point in time you didn't**
3 **know where you were hurting?**
4 A. I hadn't broken it down.
5 **Q. Okay.**
6 A. I just hurt.
7 **Q. What was the time frame that we -- that you**
8 **identified specific areas that hurt? What was the**
9 **time frame after the fall that you were able to**
10 **identify or that you were referring to in your prior**
11 **answer?**
12 A. Then after some of the employees came and I
13 had to sit, I had to limp to a -- the closest place to
14 sit, and so at that time I knew my foot was hurting
15 and my leg was hurting. And when I was sitting, I
16 knew my buttocks was hurting, so that's my foot and my
17 buttocks, and my back was hurting. And -- oh, also
18 when I was standing, I wanted to take pictures, but I
19 couldn't. I couldn't get my camera or my phone out of
20 my purse, so I knew that my arms and hands were
21 hurting.
22 **Q. Okay. Why did you think it was important to**
23 **take photographs or why did you want to take**
24 **photographs?**
25 A. Well, because I was standing there, and I

Page 84

1 had just fallen, and I was in pain, and I know you're
2 supposed to take pictures.
3 **Q. Did you actually take any pictures?**
4 A. I wasn't physically able to.
5 **Q. Did you ask anyone --**
6 A. Yes.
7 **Q. -- to take photographs?**
8 A. Yes.
9 **Q. Who did you ask?**
10 A. The Wynn employees.
11 **Q. So as you were stood up, you walked with a**
12 **limp, as you characterized it, to a location where you**
13 **sat down. Where was that?**
14 A. Okay. I was standing; it was off to the
15 left.
16 **Q. In the casino or some private area?**
17 A. No, in the casino. It was a machine, the
18 closest machine.
19 **Q. Okay. At a slot machine?**
20 A. Yes.
21 **Q. You sat down?**
22 A. Yes.
23 **Q. Okay. And was Terry still there?**
24 A. Terry, he had -- once he came to me he had
25 moved to my left in the back of me. So when I limped

Page 85

1 to the machine, I believe he was still there.
2 **Q. Okay. Who else was present with you when**
3 **you sat down at a machine?**
4 A. At any time that I was sitting at the
5 machine do you mean?
6 **Q. Yes.**
7 A. Okay. Then a short time later the security
8 guard, Corey, he came, and then the lady -- I believe
9 her name is -- I think there's a report in there, that
10 must have been her -- Yanet Elias, I believe.
11 **Q. Okay.**
12 A. And then they -- when I was sitting there,
13 they're the two that came, and then -- and then Terry
14 came with his report.
15 **Q. Let me have you turn to 475 on the exhibit,**
16 **please. All right. Do you know what this picture**
17 **depicts?**
18 A. Yes.
19 **Q. Okay. What does it depict?**
20 A. Corey, the security guard, asked me where I
21 was hurting, and I told him, and I also told him my
22 foot was hurting; so he asked if he could take a
23 picture, and so he did.
24 **Q. Okay. And what foot was hurting? The right**
25 **foot?**

Page 86

1 A. The right foot.
2 **Q. Okay. And was this a picture that was taken**
3 **while you were sitting at the slot machine?**
4 A. Yes.
5 **Q. Were any of your clothes wet?**
6 A. I don't recall.
7 **Q. Okay. So security arrived at the location**
8 **where you were sitting at the slot machine?**
9 A. Yes.
10 **Q. Did you go somewhere else or did your**
11 **interaction with security occur at the slot machine?**
12 A. With him just there.
13 **Q. At any point in time prior to exiting the**
14 **Wynn, did you go anywhere else? Did they take you**
15 **into a security office? Did they --**
16 A. Oh, did they take me?
17 **Q. Yeah.**
18 A. No.
19 **Q. Let me have you turn to page 476. Have you**
20 **seen this document before?**
21 A. Yes.
22 **Q. When did you last see it?**
23 A. Just recently.
24 **Q. Do you recall declining any medical**
25 **assistance?**

Page 87

1 A. Yes.
2 **Q. Why did you do that?**
3 A. Because I was alone and afraid and nobody
4 knew I was there.
5 **Q. Nobody knew you were at the Wynn, is that**
6 **what you're referring to?**
7 A. Yes. I mean, of course my cousins knew I
8 was there, but they were out of the picture.
9 **Q. But were they out of the picture? You**
10 **didn't attempt to try to contact them at that point in**
11 **time, did you?**
12 A. They wouldn't be anybody that I would
13 contact for that.
14 **Q. Just so I'm clear, you declined medical**
15 **attention at that point in time because you were alone**
16 **and afraid?**
17 A. Yes.
18 **Q. Okay. What were you afraid of?**
19 A. I was just -- I was dazed and I didn't -- I
20 was alone. I didn't know what to do. I was just
21 dazed and afraid.
22 **Q. Okay. You don't dispute that you declined**
23 **medical attention from Wynn, do you?**
24 A. Well, to clarify, I told them -- I told
25 security that if I couldn't get back to my car on my

Page 88

1 own, then -- because I didn't really know to the
2 extent that I was injured. If I couldn't get back
3 there, then I might have to call them.
4 **Q. And how would you have done that at that**
5 **point in time? If you were attempting to get back to**
6 **your car at that point in time and believed that you**
7 **were unable to do so, what would you have done? What**
8 **was your plan if that was the case?**
9 A. I don't know. I would have contacted
10 somebody if I couldn't go by myself.
11 **Q. And again my question is: How would you**
12 **have done that? What would you have done in order to**
13 **contact someone?**
14 A. Then I would have followed up at the Wynn.
15 **Q. Right. If you're on your way out and you**
16 **don't believe that you're capable of either driving at**
17 **that point in time or of getting to your car in the**
18 **first place, did you have an idea as to how you were**
19 **going to make contact with anyone at Wynn to assist**
20 **you?**
21 A. Oh, I was still there.
22 **Q. Right.**
23 A. And there's -- all the employees are there.
24 **Q. So you would have -- your plan was that you**
25 **would have --**

Page 89

1 A. I would just tell them. It's easy to
2 contact any employee there.
3 **Q. Okay. How long were you sitting at the slot**
4 **machine, dealing with security and Terry, before you**
5 **decided that you were going to go and leave?**
6 A. I'm not sure how long they kept me there,
7 sitting there. It was -- I wasn't aware of the time
8 other than Miss Elias had given a time and I
9 believe -- because I had written it down; it was 2:30.
10 So after they finished up, I don't know how long I was
11 with them.
12 **Q. Was it longer than an hour? Less than --**
13 A. Oh, no, no. It was just long enough for him
14 to fill out his report and, you know, for them to
15 question me, and he took his picture. And so I'm not
16 really sure how long that all took.
17 **Q. Okay. You had a chance to review Terry's**
18 **statement; is that correct?**
19 A. Yes.
20 **Q. Is there anything in Terry's statement you**
21 **dispute?**
22 A. Oh, I -- I didn't review it close enough to
23 dispute anything. I mean, his statement is his
24 statement.
25 **Q. And did you have a chance to review the**

Page 90

1 **statement from Miss Elias?**
2 A. I read it.
3 **Q. Again, is there anything in there that you**
4 **read that you dispute at this point in time?**
5 A. I didn't read it with the intention of
6 disputing anything so --
7 **Q. So no?**
8 A. So no.
9 **Q. Let me have you turn to 479 of Exhibit 1.**
10 **Okay. Do you recognize this document?**
11 A. Well, I've seen it recently.
12 **Q. Okay. What is it?**
13 A. It says, "Guest Accident or Illness Report."
14 **Q. Did you fill out this document or somebody**
15 **else?**
16 A. Somebody else.
17 **Q. Who?**
18 A. The security officer. Is that Corey?
19 **Q. I don't know who it is offhand, so -- okay.**
20 **But you didn't handwrite this out at all?**
21 A. No. He did. I wasn't able to.
22 **Q. Is there anything on this document that you**
23 **don't believe is accurate?**
24 A. Well, you want me to read it?
25 **Q. Have you not -- when was the last time you**

Page 91

1 **looked at this?**
2 A. Well, I first saw it about a month ago. So
3 probably not -- a month or two, so at that time.
4 **Q. Yeah, go ahead and read it.**
5 A. It's been a month at least.
6 **Q. Let me know if there's anything inaccurate**
7 **that you believe is contained within that document.**
8 A. Oh, probably not. It's probably okay.
9 **Q. Okay. Did you sign this document?**
10 A. Yes.
11 **Q. And you read it before you signed it?**
12 A. No, I was dazed. I wasn't able to. I was
13 dazed and I just signed it.
14 **Q. By "dazed" were you able to speak?**
15 A. I was able to speak.
16 **Q. And you were able to listen?**
17 A. Not -- not clearly, but --
18 **Q. Okay. Were you able to ambulate, walk at**
19 **this point in time?**
20 A. I was able to limp.
21 **Q. Okay. And so you identified to the security**
22 **officers that you didn't want any medical attention.**
23 **Did you tell the security officers that you were going**
24 **to be leaving the premises?**
25 A. Well, I told them I would try.

Page 92

1 **Q. Okay. Explain to me or tell me what the**
2 **conversation you had with the security officers was.**
3 A. Okay. He asked me if I had had any
4 injuries, if I hurt and where I hurt.
5 **Q. And what did you say in response?**
6 A. And I said it was hurting to sit, my foot
7 was hurting, my hands and arms hurt, and I couldn't --
8 so that's why he filled out the form, and I was
9 dazed.
10 **Q. You told him you were dazed?**
11 A. I told him that I wasn't able to -- I
12 believe I told him I wasn't really able to -- well,
13 fill out the forms or -- so he did things for me. So
14 he did that for me.
15 **Q. Okay. Then what happened with the**
16 **discussion between you and the security guards? Was**
17 **there one or just two -- or was it two or was there**
18 **just one security guard?**
19 A. I believe there was one.
20 **Q. Okay. Go ahead and continue as far as what**
21 **your communications were with the security guard.**
22 A. Okay. So I told him it hurt to sit, my foot
23 was hurting, hands and arms were hurting and -- you
24 know, my shoulder, my hands and arms.
25 So he took the picture of my foot, and then

Page 93

1 he talked to Miss Elias, and then Terry give him his
2 report. And I think Corey asked -- oh, Corey asked me
3 if I wanted a wheelchair, and I told him that -- at
4 that time I said, "Well, I'm going to try to get back
5 to my car. I don't know if I'm going to be able to go
6 on my own. And if I can't, then I'll call you."
7 **Q. Okay.**
8 A. So I didn't want a wheelchair because then I
9 wouldn't know how -- how injured I was --
10 **Q. Okay.**
11 A. -- or if I would be able to -- how far I'd
12 be able to walk.
13 **Q. Okay. So you declined a wheelchair. And**
14 **was there anything else that you recall talking with**
15 **the security guard about?**
16 A. Right now at this time I don't recall. I
17 wrote things down, and so right now that's what I
18 remember.
19 **Q. Okay. Where did you write things down?**
20 A. Well, I mean, since then --
21 **Q. Okay. Where --**
22 A. -- I have things down.
23 **Q. By having things written down, are these**
24 **handwritten notes of yours? Are they on computer?**
25 A. Not anymore. Handwritten would have gone

Page 94

1 into the -- you know, the papers that went to the
2 lawyers.
3 **Q. Okay. So you provided to your counsel**
4 **handwritten notes?**
5 A. Yes, or from my handwritten notes I turned
6 them into typed notes.
7 **Q. And you provided those to your counsel?**
8 A. Yes.
9 **Q. Your prior counsel?**
10 A. Yes.
11 **Q. Okay. Have you provided any of those notes,**
12 **whether in handwritten form or typewritten form, to**
13 **your current counsel?**
14 A. I believe they have everything.
15 **Q. Okay. And these were notes that you**
16 **prepared for what purpose?**
17 A. For the lawyer, notes I gave to the
18 lawyer.
19 **Q. Okay. Were these notes prepared for the**
20 **lawyers or were they prepared for your own benefit**
21 **that you gave to the lawyers?**
22 A. I had a few things written because Corey --
23 like, for example, Corey gave me his card with his
24 number to call him. Oh, that's right. That's how I
25 was going -- he gave me his card with his number to

Page 95

1 call him.
2 **Q. Okay. Okay. And you still have that card**
3 **somewhere?**
4 A. Might be -- I assume it's in the papers.
5 **Q. Okay. Is that something that you provided**
6 **to your counsel?**
7 A. Yes.
8 **Q. Okay. Not your current counsel, but your**
9 **prior counsel?**
10 A. I'm not sure. I assume she got everything.
11 That I don't -- I'm not sure if it's in there or
12 not.
13 **Q. Okay. And these handwritten notes, these**
14 **were notes that you crafted to recall events that took**
15 **place?**
16 A. Yeah, just a few little things like that.
17 **Q. Okay. Okay. So was there anything else**
18 **that we haven't talked about or you haven't identified**
19 **for me that related to the conversation that you had**
20 **with the security guard?**
21 A. At this time that's what I remember. Could
22 have left something out that I'll remember later, but
23 right now that's what I remember.
24 **Q. And then you departed from the location.**
25 **Did Corey, as you identified him, the security**

Page 96

1 **guard -- did Corey offer to walk you out or follow you**
2 **out?**
3 A. I don't recall.
4 **Q. Is that something that he offered and you**
5 **declined?**
6 A. No.
7 **Q. But he did not accompany you, or any Wynn**
8 **employee, to your vehicle?**
9 A. No one accompanied me.
10 **Q. Okay. And did you -- so at that point in**
11 **time does Corey depart, or do you depart at the same**
12 **time?**
13 A. I don't recall.
14 **Q. You don't recall sitting at the slot machine**
15 **for a period of time, being alone at that same slot**
16 **machine where you were sitting the first time?**
17 A. I'm not sure.
18 **Q. Is it fair to say that you made your way to**
19 **the parking garage and then to your vehicle?**
20 A. Eventually I made it there.
21 **Q. When you say "eventually," what do you mean**
22 **by that?**
23 A. It took me a couple hours to get there.
24 **Q. And during this period of time you didn't**
25 **think that you needed any assistance, and so you**

Page 97

1 didn't call the security guard?
2 A. I was hoping I didn't need assistance. I
3 was trying to figure out if I should -- what I should
4 do. I didn't know.
5 Q. And during this two-hour period, did you
6 explain to me where you were -- where you were going
7 and what were the obstacles to you getting there in
8 sort of a more efficient manner?
9 A. First I went to the bathroom, and I stayed
10 there for at least a half hour because I was -- I was
11 really trying to figure out who I would call -- who I
12 could call or what I should do, and I didn't know if I
13 was -- it was going to be foolish to try to drive. I
14 didn't know what I was going to do. So then I finally
15 got up, left the bathroom, limped to a machine and
16 sat, and then I kind of went from machine to machine,
17 from one end of the casino towards the other end,
18 towards my car, and then I felt that I would try to
19 get to the wall. So I limped to the wall, and then I
20 limped, got to my car. I made it, and then I thought,
21 well, if I made it to my car, then I could probably
22 drive.
23 Q. Okay. And you did drive home?
24 A. Yes.
25 Q. Did you stop anywhere before you went home?

Page 98

1 A. Yes.
2 Q. Where did you go?
3 A. I went to the Rampart Casino.
4 Q. Okay. And what did you do at the Rampart
5 Casino?
6 A. I sat at machines.
7 Q. Okay. How long were you there at the
8 Rampart Casino?
9 A. I'm not sure.
10 Q. A couple hours?
11 A. I'm not sure.
12 Q. Okay. Did you gamble?
13 A. Probably.
14 Q. Okay. While you were in the bathroom, did
15 you call anyone?
16 A. I was trying to think of who I could call.
17 I couldn't think of anybody I could call. The only
18 people would be -- my boyfriend was out of town, and I
19 couldn't think of anybody to call --
20 Q. Okay.
21 A. -- other than I thought, well, maybe I'd
22 have to call back Corey. He gave me his number --
23 Q. Okay. So --
24 A. -- and he was there.
25 Q. So from the time that the security guard --

Page 99

1 you end your interaction with the security guard to
2 the time that you leave the Rampart Casino, did you
3 call anyone during that period of time?
4 A. No.
5 Q. Okay. So after the Rampart Casino, where
6 did you go?
7 A. Home.
8 Q. Do you recall whether it was light out or
9 dark?
10 A. Dark.
11 Q. Did you eat anything there at the Rampart
12 Casino?
13 A. I doubt it.
14 Q. Okay. Did you drink anything?
15 A. I'm just guessing; if I did, it would have
16 been water.
17 Q. You don't recall having any alcoholic
18 beverages while you were at the Rampart Casino?
19 A. Oh, I -- no. It would have been water if I
20 drank anything.
21 Q. Do you recall how much you gambled at the
22 Rampart Casino?
23 A. No.
24 Q. And it's your recollection that you believe
25 you might have gambled at Wynn after your fall but --

Page 100

1 A. Oh --
2 Q. -- before you departed?
3 A. -- I did at those machines when I was
4 sitting there.
5 Q. Okay.
6 A. As I sat there, I had my card in and I did a
7 little bit, but not machines that I --
8 Q. Normally play?
9 A. -- normally gamble.
10 Q. That evening did you do -- did you go
11 anywhere else?
12 A. No.
13 Q. When you got home, what did you do?
14 A. Went to bed.
15 Q. Immediately when you got home?
16 A. Probably.
17 Q. What time do you normally go to bed in the
18 evenings?
19 A. Well, it depends.
20 Q. You don't have sort of a normal --
21 A. You mean now?
22 Q. No, back in 2010.
23 A. Back in 2010 I had a different routine. So
24 you're asking what time I normally went to bed in
25 2010?

Page 101

1 Q. Um-hmm.
2 A. It would depend on the night.
3 Q. Okay. Your boyfriend at the time was
4 Sal Risco?
5 A. Yes.
6 Q. Where was Sal?
7 A. He was out of town.
8 Q. Where out of town?
9 A. I think in Florida.
10 Q. What was he doing in Florida?
11 A. He was on a cruise.
12 Q. Oh, okay. Just alone or with other people?
13 A. I think he went alone.
14 Q. Was it something you didn't get invited to?
15 A. No, I got invited.
16 Q. You didn't want to go, though?
17 A. I had something to do. I couldn't go or
18 something.
19 Q. Okay. How long was the cruise?
20 A. At least a week.
21 Q. And was he reachable on a phone?
22 A. Not that I knew of.
23 Q. Did you talk to him at any point in time
24 while he was on the cruise?
25 A. Yes.

Page 102

1 Q. How did you do that?
2 A. Well, no, I don't think while he was on the
3 cruise. I'm not sure.
4 Q. You didn't attempt to try and reach him
5 while he was on the cruise, did you?
6 A. No, not that I remember.
7 Q. Was there anyone else that you thought of
8 calling but didn't on that particular day?
9 A. I didn't have anybody else.
10 MR. SEMENZA: Now is probably a good time to
11 take a lunch break before it gets too late. Is that
12 fine with you?
13 THE WITNESS: (Nods head up and down.)
14 MR. SEMENZA: How long would you like? A
15 short lunch or longer lunch?
16 THE WITNESS: I don't know. Is there a
17 place to eat somewhere?
18 MR. SEMENZA: We can go off the record.
19 (Lunch recess taken.)
20 MR. SEMENZA: Are you ready to go?
21 THE WITNESS: Yes.
22 MR. SEMENZA: Back at it.
23 BY MR. SEMENZA:
24 Q. In February of 2010 did you reside with
25 Mr. Risco?

Page 103

1 A. I stayed at his house half the time.
2 Q. Okay. Did he stay at your house at all?
3 A. No. I mean, at that time? No.
4 Q. Okay. Was there a set schedule that you
5 would stay at his house on? Particular days or
6 anything like that?
7 A. Pretty much.
8 Q. Okay. What was the schedule?
9 A. Friday nights, Saturday nights, Sundays,
10 Wednesdays.
11 Q. And this would have been both before and
12 after the fall on February 8, 2010?
13 A. After the fall I believe it was less.
14 Q. Okay. How long after the fall did he return
15 to Las Vegas?
16 A. A week.
17 Q. A full week after?
18 A. Oh.
19 Q. After the fall?
20 A. So you're asking how many days or --
21 Q. Yes.
22 A. -- do you want really specific?
23 Okay. General, a week.
24 Q. Okay. You said the cruise was about a week.
25 So how long had he been gone as of February 8, 2010?

Page 104

1 A couple days?
2 A. How long had he been gone? A day or two.
3 Q. Okay. And you said -- I think you had
4 testified you had another commitment and that was one
5 of the reasons why you didn't go on the cruise with
6 him; is that correct?
7 A. Yes.
8 Q. What was that other commitment?
9 A. Oh, it may have been that I wanted to see my
10 cousins.
11 Q. Okay. You don't recall any other conflict
12 or any other scheduling issue, though?
13 A. I don't recall anything else.
14 Q. During this period of time, February of
15 2010, did you and Sal, or Mr. Risco, share any of your
16 finances?
17 A. No.
18 Q. And if I asked you this, I apologize. What
19 does he do?
20 A. He's retired.
21 Q. Okay. When did he retire?
22 A. It could have been the early '90s or maybe
23 it was -- you know, I'm not really sure.
24 Q. Okay. And is it your testimony that your
25 relationship ended in part because of your

Page 105

1 limitations, your physical limitations after the fall?
2 A. A hundred percent because of it.
3 Q. I'm going to jump around a little bit, so I
4 apologize.
5 In looking at page 470 of Exhibit 1, you had
6 previously marked the location of the liquid substance
7 on the floor. Is there any particular reason why,
8 when you were walking, you were hugging, I guess, this
9 sort of raised divider near the garden?
10 A. Oh, because I was turning the corner.
11 Q. Okay. And that was the only reason why you
12 were on that side?
13 A. Well, I had been walking on that side, so I
14 turned the corner on that side.
15 Q. Okay.
16 MR. SEMENZA: Can I have that marked as
17 Exhibit 2, please.
18 (Exhibit 2 was marked for identification.)
19 BY MR. SEMENZA:
20 Q. I'm showing you what I've marked as
21 Exhibit 2. Have you seen this document before?
22 A. Yes.
23 Q. Okay. When did you last review it?
24 A. Probably a month ago.
25 Q. Can I have you look at the contents of the

Page 106

1 document and identify for me if there is anything that
2 you believe is inaccurate as reported by the reporting
3 officer, Officer Prowell?
4 MS. MORRIS: I'm just going to object to
5 form and foundation.
6 THE WITNESS: Yeah, I'm not really sure.
7 BY MR. SEMENZA:
8 Q. You're not really sure of what?
9 A. I think you'd have to ask me more
10 specifically what you're looking for, what you're
11 asking.
12 Q. Okay. Well, let's go to the second
13 paragraph.
14 A. Okay.
15 Q. In the third line it states, "Miss O'Connell
16 stated she had moderate to severe pain in her right
17 shoulder, right ankle, and right buttocks."
18 Is that a right statement --
19 A. Yes.
20 Q. -- to the best of your knowledge?
21 A. Yes.
22 Q. Okay. And just so I'm clear, Corey Prowell,
23 which is the individual who completed this report, is
24 the security officer you interacted with on that
25 particular day of the fall?

Page 107

1 A. I believe so.
2 Q. Okay. Was there a lot of foot traffic in
3 that garden area just prior to your fall, do you
4 recall?
5 A. I may have even been the only one there.
6 There wasn't very much at all, not in between those
7 gardens where I was walking.
8 Q. Okay. You didn't see any additional people
9 walking through or anything like that?
10 A. If there were any, it wasn't very many.
11 Q. Okay. And then after your interaction with
12 the security officer, Mr. Prowell, you previously
13 testified that it took you a period of time to go from
14 the casino to your car, and I believe you had
15 testified that you had gambled or you thought you had
16 gambled during part of that period of time; is that
17 correct?
18 A. Yes.
19 Q. And do you recall how many different
20 machines you may have played at during that particular
21 time?
22 A. I just know there were several along the
23 way.
24 Q. Okay. So you stopped at several different
25 locations?

Page 108

1 A. I believe I did.
2 Q. Okay. And each time, to your recollection,
3 did you use your Red Card?
4 A. Probably.
5 Q. Okay. Do you recall the denominations that
6 you gambled?
7 A. No.
8 Q. Do you recall whether you won or lost?
9 A. Oh, I'm sure I lost.
10 Q. But you don't recall going to the cashier?
11 A. Oh, no, no.
12 Q. Or ticket redemption or anything like that?
13 A. I wasn't really gambling. I was just trying
14 to -- you know, I was sitting there at each machine
15 for some time. So while I was sitting there, I felt
16 like I had to press the button a few times.
17 Q. Okay. And, again, you had testified that
18 you thought it was about two hours from the time you
19 left the interaction or ended your interaction with
20 the security guard until the time you got to your car;
21 is that a fair estimate?
22 A. I believe it is.
23 Q. Okay. And out of that period of time, that
24 two-hour period of time, how long do you think you
25 might have been gambling for?

Page 109

1 A. All along -- from the time -- okay. First I
2 left them -- do you want me to continue?
3 **Q. Yes, please. I'm sorry.**
4 A. Oh. And then I went into the bathroom for
5 at least a half hour, and then I made my way to my
6 car, stopping at machines to sit, and I believe I got
7 to my car around 4:30.
8 **Q. Okay. And so at that point in time you get**
9 **in your car and you drive directly to the Rampart**
10 **Casino?**
11 A. Yes.
12 **Q. Okay. Do you recall where you parked at the**
13 **Rampart Casino?**
14 A. Only in that I parked the same place there,
15 too.
16 **Q. And where did you go once you got into the**
17 **Rampart?**
18 A. Into the casino.
19 **Q. And, again, correct me if I'm wrong, how --**
20 **well, how long were you at the Rampart Casino?**
21 A. I'm not sure, but I didn't want to leave, so
22 a few hours. I'm not sure.
23 **Q. Okay. Do you recall how much you gambled at**
24 **the Rampart?**
25 A. No.

Page 110

1 **Q. Do you recall whether you used your rewards**
2 **card at the Rampart?**
3 A. Probably did.
4 **Q. And then you previously testified that you**
5 **went directly home after that?**
6 A. Yes.
7 **Q. Do you recall what you did the next day?**
8 A. Yes.
9 **Q. What did you do?**
10 A. I stayed in bed.
11 **Q. Did you take any medication?**
12 A. No.
13 **Q. Did you take any medication after you got**
14 **home on February 8, 2010?**
15 A. No.
16 **Q. Is there a particular reason why you didn't**
17 **take any medication or pain reliever, for example?**
18 A. I don't have any.
19 **Q. Where did you go after you went to the**
20 **Rampart? Did you go to your home or your boyfriend's**
21 **home?**
22 A. I had to go to my home.
23 **Q. And what's the address of that location?**
24 A. 8764 Captains Place, Las Vegas, 89117.
25 **Q. Generally speaking, what area of town is**

Page 111

1 **that? What are the major cross streets, I guess?**
2 A. Sahara and Durango. It's called the
3 Lakes.
4 **Q. Is there a particular subdivision that you**
5 **live in?**
6 A. Yes.
7 **Q. What's it called?**
8 A. I believe it's called Lakes -- Lakes at Lake
9 Sahara, something like that. I'm sorry.
10 **Q. And where was your boyfriend's residence**
11 **located?**
12 A. He lives at Sun City Summerlin.
13 **Q. Okay. So the day following the fall, on**
14 **February 9, 2010, you didn't go anywhere the entire**
15 **day?**
16 A. I'm sorry. You said the day after the fall
17 did I go -- I stayed in bed.
18 **Q. The entire day? You didn't leave your home?**
19 A. I don't think I did.
20 **Q. Okay. And why did you stay in bed?**
21 A. Because I hurt.
22 **Q. All right. The following day, February 10,**
23 **2010, do you recall what you did?**
24 A. Yes.
25 **Q. What did you do?**

Page 112

1 A. I went to UMC Quick Care or urgent care.
2 **Q. Do you recall which one you went to?**
3 A. Yes.
4 **Q. Which one?**
5 A. It's one close to my house on Sahara.
6 **Q. And had you called for an appointment before**
7 **you went or did you just go?**
8 A. I just went.
9 **Q. And do you have a particular physician that**
10 **you see at the Quick Care or was this just a general**
11 **physician, next person --**
12 A. The general, next person.
13 **Q. Okay. And why did you go to UMC Quick Care?**
14 A. Because I was in pain and I was scared.
15 **Q. On the day that you went to the Quick Care,**
16 **do you recall what your pain level was?**
17 A. I just recall that I hurt.
18 **Q. Okay. And you said you were also scared.**
19 **Why were you scared?**
20 A. Oh, because I didn't know why I was still in
21 pain.
22 **Q. What symptoms or what issues did you discuss**
23 **with the doctor about on that particular day?**
24 A. Well, I had pain in several places, and they
25 asked me "Where does it hurt the most," so she focused

Page 113

1 on the back.
2 **Q. And did the physician at Quick Care make any**
3 **diagnoses or recommendations?**
4 A. Yes.
5 **Q. And what were those?**
6 A. She prescribed things.
7 **Q. What did she prescribe?**
8 A. Three drugs, mineral oil, Fleet enema, ice,
9 and then she had back X-rays taken.
10 **Q. Okay. You said mineral oil, and what were**
11 **the three drugs that she --**
12 A. Well, you know, something for pain and I --
13 I'm not sure what the other two were. I can't
14 remember. You know, probably inflammation and I don't
15 know what else.
16 **Q. Did you get those prescriptions filled?**
17 A. Oh, yes.
18 **Q. And did you take the medication?**
19 A. Almost all of them.
20 **Q. And you said one was for pain? At least one**
21 **was for pain?**
22 A. Yes. I believe so.
23 **Q. Okay. And what did the X-rays reveal, to**
24 **your recollection?**
25 A. My back discs were damaged.

Page 114

1 **Q. And that was a diagnosis that was revealed**
2 **at the UMC Quick Care on that particular day?**
3 A. I believe so.
4 **Q. And it was your understanding that your back**
5 **discs were damaged as a result of the fall?**
6 A. Yes.
7 **Q. You had no broken bones?**
8 A. No.
9 **Q. Okay. And how long did that appointment**
10 **last?**
11 A. I don't recall.
12 **Q. What did you do after the appointment was**
13 **over?**
14 A. Got my prescriptions filled.
15 **Q. Okay. Then after that?**
16 A. Went home.
17 **Q. Other than to the doctor's office, or the**
18 **Quick Care office, did you go anywhere else -- strike**
19 **that.**
20 **Other than the doctor's office and to get**
21 **your prescriptions filled, did you go anywhere else on**
22 **February 10, 2010?**
23 A. I don't recall.
24 **Q. Did you go to the casino?**
25 A. I don't think so.

Page 115

1 **Q. Okay. Let me ask you a quick question**
2 **relating to this.**
3 **I'm showing you what's been marked as**
4 **Exhibit 1. It's page 473. We've been talking about**
5 **this object that you identified as a drain; is that**
6 **correct?**
7 A. Yes.
8 **Q. Could that be a speaker and not a drain?**
9 A. I guess it could.
10 **Q. Okay. You don't know one way or the other**
11 **what it is?**
12 A. Right.
13 **Q. The liquid substance that you testified to**
14 **that was on the floor, you had mentioned that there**
15 **were footprints in it; is that correct?**
16 A. Yes.
17 **Q. How many footprints were at that location**
18 **where the sticky substance was?**
19 A. Oh, I didn't count them. A few.
20 **Q. There were a few? Okay.**
21 **And were they dark in color? Is that how**
22 **you were able to see them?**
23 A. Dirty footprints. Like after you mop your
24 floor, you walk on it and it leaves dirty
25 footprints.

Page 116

1 **Q. Do you recall the pain medication that you**
2 **were prescribed at UMC Quick Care?**
3 A. Oh, no, but I'm sure there's records of
4 it.
5 **Q. Does tramadol ring a bell?**
6 A. I don't know the names, but --
7 **Q. Okay.**
8 A. -- whatever the records say.
9 **Q. Prior to the fall, can you tell me what**
10 **medical conditions you suffered from?**
11 **MS. MORRIS:** Object to form.
12 **THE WITNESS:** I wasn't aware of any medical
13 conditions except for I had had an IBS issue that I
14 had totally under control. That's about it.
15 **BY MR. SEMENZA:**
16 **Q. And IBS is irritable bowel syndrome?**
17 A. Constipation.
18 **Q. Okay. Prior to the fall, when was the last**
19 **time you experienced any symptoms relating to IBS?**
20 A. Oh, years.
21 **Q. And did you have IBS symptoms after the**
22 **fall?**
23 A. I had severe constipation.
24 **Q. Do you attribute the severe constipation to**
25 **your fall on February 8, 2010?**

Page 117

1 A. Yes.
2 **Q. Do you have any understanding how your fall**
3 **in February 2010 would lead to IBS symptoms returning?**
4 A. I'm not really saying IBS symptoms. I'm
5 saying I was constipated and it was out of control.
6 **Q. And I want you to understand I'm not trying**
7 **to be flip with you, but I'm trying to understand how**
8 **the fall that took place on February 8th would have**
9 **created a constipation issue. Do you have any**
10 **understanding as to how that happened?**
11 A. Just that my system stopped functioning.
12 And as far as exactly how that happened, I'm -- I just
13 know that that's what happened.
14 **Q. Okay. Did you have a history of**
15 **fibromyalgia prior to the fall in February 2010?**
16 A. I had been told 20-something years before
17 that maybe I had fibromyalgia, but I didn't have any
18 symptoms since that time.
19 **Q. Okay. Did you believe that you had**
20 **fibromyalgia prior to the fall?**
21 A. No.
22 MS. MORRIS: I'm just going to object to
23 form as to time.
24 BY MR. SEMENZA:
25 **Q. Did you have any history of falling before**

Page 118

1 **the fall that took place on February 8, 2010?**
2 A. No.
3 MS. MORRIS: Object to form.
4 BY MR. SEMENZA:
5 **Q. Did you have any prior back injuries before**
6 **February 8, 2010?**
7 A. Twenty years before.
8 **Q. Okay. Tell me about that.**
9 A. My ex-husband pushed me and I got muscle
10 spasms in my back.
11 **Q. How long did the muscle spasms last?**
12 A. I'm not sure, but I went to a physical
13 therapist, and then she gave me some exercises, and
14 then they went away.
15 **Q. Prior to the fall on February 8, 2010, did**
16 **you have any issues related to GERD?**
17 A. A long time before, years.
18 **Q. And how was that treated?**
19 A. I think that went along with the
20 constipation, so I treated it just with exercises and
21 good diet.
22 **Q. When was the last time you had any symptoms**
23 **relating to GERD prior to the fall on February 8,**
24 **2010?**
25 A. Oh, years.

Page 119

1 **Q. Okay. Would you characterize the back**
2 **injury you had relating to your husband --**
3 A. Excuse me. Ex-husband.
4 **Q. I'm sorry. I'm sorry. Ex-husband.**
5 **Would you consider that a minor injury, a**
6 **moderate injury, or a severe injury?**
7 MS. MORRIS: Object to foundation.
8 THE WITNESS: I'm sorry. Am I -- is there a
9 question?
10 BY MR. SEMENZA:
11 **Q. Yes. The back injury that you suffered**
12 **relating to your ex-husband, would you consider that a**
13 **minor back injury, a moderate back injury, or a severe**
14 **back injury?**
15 MS. MORRIS: Just renewing my objection to
16 foundation.
17 THE WITNESS: Minor.
18 BY MR. SEMENZA:
19 **Q. How long did you experience symptoms, if you**
20 **can recall?**
21 A. I know as soon as I went to the physical
22 therapist and she gave me exercises, it went away. So
23 until I got to her. So I'm not sure how long.
24 **Q. Can you estimate? A month? Two weeks?**
25 **Three weeks?**

Page 120

1 A. Oh, a few months.
2 **Q. Did you have a hand injury at any point in**
3 **time prior to February 8, 2010?**
4 A. Yes.
5 **Q. What was that?**
6 A. Around 1986 a friend kind of pinned me up
7 against a building. He just kind of went back. Not
8 on purpose.
9 **Q. Okay.**
10 A. And we were on vacation in Mexico when that
11 happened.
12 **Q. Okay. What was the injury?**
13 A. It just swelled up some.
14 **Q. And this was in Mexico?**
15 A. Yes.
16 **Q. In '86?**
17 A. Yeah.
18 **Q. And it resolved on its own?**
19 A. Yes.
20 **Q. How long did it take to resolve?**
21 A. I was back to work as a dental hygienist
22 shortly after. So -- it all resolved and I kept
23 working for several months.
24 **Q. Okay.**
25 A. But then my -- it completely resolved except

Page 121

1 for I was having trouble -- I kept dropping my
2 instruments when I was scaling teeth.
3 **Q. That cannot be good.**
4 A. Yeah, that wasn't good.
5 **Q. Did the back and the hand injury, in your**
6 **opinion, lead to any other medical conditions?**
7 **MS. MORRIS:** Object to form.
8 **BY MR. SEMENZA:**
9 **Q. Do you understand the question?**
10 A. I'm trying to think. I think I understand
11 the question. Well, I had anxiety, so at that time --
12 it was a tough time.
13 **Q. But other than the anxiety, nothing else?**
14 A. I believe that was it.
15 **Q. What is stress disorder?**
16 A. That's what that is, the anxiety that I got
17 then for that -- from that, from my ex-husband and
18 going through that.
19 **Q. And were you professionally diagnosed as**
20 **having stress disorder?**
21 A. No.
22 **Q. Is that something you just believed you had?**
23 A. Oh, oh. Excuse me. I'm sorry. I --
24 because -- because of that I had to go for biofeedback
25 therapy. So I went through that and then it was

Page 122

1 gone.
2 **Q. How long did that stress disorder last?**
3 A. Well, the divorce lasted a few years, so I
4 had all the anxiety from that.
5 **Q. Is stress disorder, in your understanding, a**
6 **medical term or is it how you describe what you were**
7 **experiencing?**
8 A. How I describe what I was experiencing.
9 **Q. And this was back in the '80s?**
10 A. Late '80s.
11 **Q. Late '80s. Okay.**
12 **What is hypermobility syndrome?**
13 A. It's just that because of cleaning teeth and
14 because my fingers were extra limber, they move more.
15 So it's just limber, and at that time I just didn't
16 have the strength to keep them from bending anymore
17 when I scaled teeth. So that's what they said, well,
18 it's just the -- they're limber or hypermobile.
19 **Q. Did you seek medical treatment relating to**
20 **hypermobility syndrome?**
21 A. Treatment? No.
22 **Q. But you were diagnosed with having**
23 **hypermobility syndrome?**
24 A. No.
25 **Q. Is that just something you -- is that**

Page 123

1 **something that you -- is that how you describe your**
2 **symptoms, as hypermobility syndrome?**
3 A. If I understand your question correctly --
4 actually, I think I don't understand your question.
5 I'm sorry.
6 **Q. Okay. Did a medical professional ever tell**
7 **you you had hypermobility syndrome?**
8 A. No.
9 **Q. It's just something you believe you had?**
10 A. They said that because I'm limber that maybe
11 I had it.
12 **Q. Did the hypermobility syndrome cause you any**
13 **problems or issues?**
14 A. No.
15 **MS. MORRIS:** I'm just going to object to --
16 a late objection to form.
17 **THE WITNESS:** Except for my fingers. I was
18 dropping instruments.
19 **BY MR. SEMENZA:**
20 **Q. Okay. Prior to the fall on February 8,**
21 **2010, were you ever diagnosed as having Marfan's?**
22 A. No.
23 **Q. How about Ehlers-Danlos?**
24 A. No. But that's all the same thing.
25 **Q. That's all hypermobility syndrome?**

Page 124

1 A. Yeah. I was told, "Well, you're limber.
2 Maybe you have that." But those two things, those are
3 hypermobility syndromes. That's, you know -- they
4 said "You're limber. Maybe that's". . .
5 **Q. Okay. And at some point in time prior to**
6 **the fall on February 8, 2010, did you develop some**
7 **sort of drug intolerance?**
8 A. Only in that I don't take drugs.
9 **Q. It's just a conscious decision on your part**
10 **not to take --**
11 A. Conscious decision. I try to do the best
12 way possible. If I need an antibiotic, I need an
13 antibiotic, but. . .
14 **Q. So your reluctance to take pharmaceutical**
15 **medications, that's purely your choice? There's no**
16 **medical reason for it?**
17 A. Well, if it's something that will help me,
18 I'll take it.
19 **Q. When you're prescribed medication by medical**
20 **professionals, does that mean that medication is**
21 **needed by you?**
22 **MS. MORRIS:** Object to foundation.
23 **BY MR. SEMENZA:**
24 **Q. And that's a poor question. I apologize.**
25 **So do you take the medications that are**

Page 125

1 prescribed to you by medical professionals or does it
2 depend on what you personally feel as to whether
3 they're going to benefit you or not?
4 A. It depends on if they tell me they'll
5 benefit me.
6 Q. If they're prescribing you a medication,
7 wouldn't you assume that they're doing so because they
8 have a belief that it's going to assist in helping --
9 A. No. I would ask them.
10 Q. Okay. And is that your practice, to ask
11 whatever medication you're being prescribed --
12 A. Yes.
13 Q. -- as to whether it's going to --
14 A. Yes.
15 Q. -- help you or not?
16 MS. MORRIS: You have to let him finish the
17 question, too, just because it makes for an unclear
18 transcript.
19 BY MR. SEMENZA:
20 Q. Prior to the fall on February 8, 2010, did
21 you ever have any chest pain?
22 MS. MORRIS: Object to form.
23 THE WITNESS: Prior to the fall?
24 BY MR. SEMENZA:
25 Q. Yes.

Page 126

1 A. Ever in my life?
2 Q. Yes.
3 A. Not that I recall.
4 Q. Did you ever have, prior to the fall on
5 February 8, 2010, any dizzy spells?
6 MS. MORRIS: Object to form.
7 THE WITNESS: Not that I recall.
8 BY MR. SEMENZA:
9 Q. Prior to the fall did you ever experience
10 any chills?
11 MS. MORRIS: Object to form. Are we asking
12 for her entire 60-something years of life?
13 MR. SEMENZA: Yes.
14 THE WITNESS: You are asking for my
15 entire --
16 BY MR. SEMENZA:
17 Q. Yes.
18 A. Well, I'm sure. That's something that
19 everybody has in their lifetime.
20 Q. Have you ever been diagnosed, prior to the
21 fall, with any thyroid issues?
22 A. No. Excuse me. I'm so sorry. But if I
23 answered some of those questions and you meant my
24 entire lifetime, you know, whatever normal people
25 have. Like chills, I'm not going to tell you that in

Page 127

1 60 years I didn't have chills. I'm a normal person.
2 Q. Okay. No, I appreciate that.
3 Other than what we've talked about over the
4 last 20 minutes or so, are you aware of any other
5 medical conditions that you experienced prior to the
6 fall on February 8, 2010?
7 A. Not that I -- not that I recall.
8 Q. Okay. Prior to the fall on February 8,
9 2010, did you experience any psychological issues of
10 any sort?
11 MS. MORRIS: Object to form.
12 THE WITNESS: In my lifetime?
13 MS. MORRIS: And foundation.
14 BY MR. SEMENZA:
15 Q. Yes.
16 A. Well, like I said before, when I was going
17 through my -- the time with my ex-husband, I had to go
18 through the -- I went to this psychologist, who sent
19 me to the biofeedback therapy, and that was that.
20 Q. And what did the biofeedback -- what was it
21 intended to do for you?
22 A. To train -- to teach me how to go through a
23 stressful period like that and try not to be affected
24 by it.
25 Q. Okay. Did you experience depression during

Page 128

1 this period of time?
2 A. When I was going through my divorce, yes.
3 Q. Other than the biofeedback, did you have any
4 other mental health care I guess I'd put it?
5 A. No.
6 Q. Okay. After the fall after -- and I'll
7 jump ahead now. After your visit to UMC, I believe,
8 on February 10, 2010, when do you recall the next
9 medical appointment you had?
10 A. I recall in February that I went to a
11 Dr. Thompson.
12 Q. Okay. And what did Dr. Thompson do for you?
13 A. He examined me and told me to get an
14 abdominal ultrasound.
15 Q. What kind of doctor is Dr. Thompson? Is he
16 a gastroenterologist?
17 A. No. No, no. I think he's a D.O.
18 Q. Oh, okay. Was he your general care
19 physician?
20 A. No. I didn't have one.
21 Q. So explain to me what you saw him for.
22 A. Because I still had all this pain.
23 Q. Okay. Where was your pain located at when
24 you went to see Dr. Thompson?
25 A. In my neck, back, knees, hands, and still

Page 129

1 the pain from my back going down to my foot.
2 **Q. And what did he do for you?**
3 A. He just examined me.
4 **Q. Did he have any diagnoses for you?**
5 A. Yes.
6 **Q. What were those?**
7 A. Told me that the fall caused a pain
8 syndrome.
9 **Q. Do you know the medical term for it?**
10 A. Some kind of muscle syndrome. I forgot.
11 Muscle pain something.
12 **Q. Is the syndrome physiologically based or is**
13 **it a psychological issue? And, again, I don't mean**
14 **any disrespect. I'm just trying to understand.**
15 **MS. MORRIS:** Object to form and foundation.
16 **THE WITNESS:** Well, what I believe is it's
17 definitely not a psychological issue.
18 **BY MR. SEMENZA:**
19 **Q. Do you have an understanding as to --**
20 A. Oh, excuse me.
21 **Q. Uh-huh.**
22 A. I'm sorry.
23 **Q. Go ahead.**
24 **THE WITNESS:** Did you get that I said that
25 it definitely is not a psychological issue? "Not,"

Page 130

1 was that clear?
2 (Record read.)
3 **THE WITNESS:** Yeah, was that clear? Yeah, I
4 should have said it the other way.
5 **BY MR. SEMENZA:**
6 **Q. Do you have an understanding, then, on what**
7 **the physiology is as to how this condition manifests**
8 **itself, how it's created?**
9 **MS. MORRIS:** Object to form and foundation.
10 Calls for expert testimony.
11 **BY MR. SEMENZA:**
12 **Q. You can go ahead and answer.**
13 A. Other than he said because of the fall I had
14 all that pain now.
15 **Q. What were his recommendations moving**
16 **forward?**
17 A. I -- I don't recall.
18 **Q. Did he give you any specific course of**
19 **treatment going forward?**
20 A. I don't recall.
21 **Q. Did you continue to see him?**
22 A. No.
23 **Q. Is there a particular reason why you stopped**
24 **seeing him?**
25 A. My boyfriend didn't like him.

Page 131

1 **Q. Why was that?**
2 A. I don't know.
3 **Q. He didn't like him on a personal level or a**
4 **professional level?**
5 A. I'm not sure.
6 **Q. Would your boyfriend accompany you to your**
7 **appointments with Dr. Thompson?**
8 A. He -- I only had the one, and my boyfriend
9 was with me.
10 **Q. You had no issue with Dr. Thompson**
11 **personally, but it was your boyfriend that had the**
12 **issue?**
13 A. Yes.
14 **Q. Okay. And you stopped seeing Dr. Thompson**
15 **specifically because your boyfriend didn't like him?**
16 A. Yes.
17 **Q. And your understanding as to why your**
18 **boyfriend didn't like him was because of what?**
19 A. I'm not sure. He just said he didn't like
20 him, so --
21 **Q. And you didn't question that in any way?**
22 A. No. I only went to Dr. Thompson once.
23 **Q. Did he prescribe you any medication?**
24 A. Not that I recall.
25 **Q. Did Mr. Risco provide opinions on other**

Page 132

1 **doctors you saw?**
2 A. I -- I don't -- I don't think he saw many
3 more with me, so I don't think he did.
4 **Q. Was that the only doctor that he accompanied**
5 **you to see?**
6 A. No.
7 **Q. Okay. What other doctors did he accompany**
8 **you to appointments with?**
9 A. Dr. Cash.
10 **Q. And Mr. Risco's opinion of Dr. Cash was**
11 **what?**
12 A. He liked him.
13 **Q. When did you tell Mr. Risco that you had**
14 **fallen at the Wynn?**
15 A. I believe that we had a phone conversation
16 before he got back, shortly before.
17 **Q. And do you recall what you discussed?**
18 A. Yes. I told him I fell.
19 **Q. And what did he say?**
20 A. He was sorry.
21 **Q. Did you discuss hiring an attorney at that**
22 **point in time?**
23 A. I doubt it.
24 **Q. How long after the fall did you discuss**
25 **hiring counsel?**

Page 133

1 MS. MORRIS: I'm just going to object to
2 foundation.
3 THE WITNESS: I don't recall.
4 BY MR. SEMENZA:
5 Q. Okay. What's the next doctor you recall
6 seeing after Dr. Thompson?
7 A. Dr. Prabhu.
8 Q. Could you spell that for me?
9 A. P-r-a-b-h-u, I believe.
10 Q. Okay. And what kind of doctor is
11 Dr. Prabhu?
12 A. He may just be a primary doctor. I'm not
13 sure. Just maybe an internist. I forgot.
14 Q. Was he affiliated with UMC or some other?
15 A. Summerlin Hospital, I think, gave me his
16 name, so I don't know if he was affiliated with them
17 or not.
18 Q. How did Summerlin Hospital give you his
19 name?
20 A. I didn't have a doctor, I didn't know who to
21 go to, so I called Summerlin Hospital for names.
22 Q. Okay. Out of curiosity, who did you call at
23 Summerlin Hospital? Did you just call the general
24 number or --
25 A. Yes.

Page 134

1 Q. Okay. And how many times did you see
2 Dr. Prabhu?
3 A. Once.
4 Q. And what was that for?
5 A. Same thing. The pain still hadn't gone
6 away.
7 Q. And what did he diagnose you as having?
8 MS. MORRIS: Object to foundation.
9 BY MR. SEMENZA:
10 Q. Did he make a diagnosis of your condition?
11 A. Yeah, I think he said, "Well, the fall
12 caused a lot of pain."
13 Q. Did he conclude that you also had pain
14 syndrome?
15 MS. MORRIS: Object to foundation.
16 THE WITNESS: I just know that he -- I don't
17 remember if he said pain syndrome but that I just had
18 a lot of pain from -- I still had the pain from the
19 fall.
20 BY MR. SEMENZA:
21 Q. Approximately when did you see him?
22 A. I believe it might have been February or
23 March of 2010.
24 Q. And did you see him specifically because of
25 the pain you were experiencing?

Page 135

1 A. Yes.
2 Q. Did he set forth a course of treatment for
3 you going forward?
4 A. I believe he sent me for a blood test.
5 Q. Do you have an understanding as to what the
6 intended blood test would or might reveal?
7 A. I know that it didn't reveal anything.
8 Q. Is there a reason you didn't follow up with
9 Dr. Prabhu?
10 A. Well, I only went to him once, and after the
11 blood test, then I went back to UMC, a primary doctor
12 at UMC instead.
13 Q. If you only saw him once, how did you get
14 the test results of your blood?
15 A. I'm almost -- okay. I'm almost positive I
16 only saw him once.
17 Q. Okay.
18 A. You know, I can get my own test results.
19 Q. Okay.
20 A. So if I'm not remembering that right, it's
21 possible, but I believe I only saw him once.
22 Q. Okay. So was there any particular reason
23 why you decided not to go back to him?
24 A. Well, I wanted to go to UMC.
25 Q. Why was UMC important to you?

Page 136

1 A. I just -- well, because I didn't have a
2 doctor I believed that because it's -- I thought it
3 was a teaching place and I thought maybe I could find
4 a good doctor there.
5 Q. Did you have any issues with Dr. Prabhu's
6 care of you?
7 A. Well, I only saw him once.
8 Q. I understand that.
9 A. He didn't do anything -- I mean, except for
10 send me for a blood test, I believe.
11 Q. Was that an issue that you had with him,
12 that he only wanted to give you a blood test as
13 opposed to something more aggressive?
14 A. I believe that I didn't really have an issue
15 other than I was just looking for a doctor that I
16 wanted to stay with.
17 Q. Okay. Then you went back to UMC; correct?
18 A. Yes.
19 Q. Who did you see at UMC as your primary care?
20 A. Dr. Subramanyam.
21 Q. Subramanyam?
22 A. Subramanyam.
23 Q. Okay. And what kind -- male or female?
24 A. Male.
25 Q. What kind of doctor was he?

Page 137

1 A. You mean other than a primary doctor?
2 **Q. Yeah. Does he have any special training, to**
3 **your knowledge?**
4 A. Oh, I should know that. I probably knew it,
5 but I forgot.
6 **Q. Are you still seeing him?**
7 A. Oh, yes. He's my primary doctor.
8 **Q. Still. Okay.**
9 A. He's the one who's directing everything.
10 **Q. And do you recall when you first started**
11 **seeing him?**
12 A. March 2010.
13 **Q. What has Dr. Subramanyam's care of you**
14 **entailed?**
15 A. He has been seeing me on a regular basis.
16 He's been giving me the referrals and kind of like --
17 well, you know, kind of like the director of all the
18 treatment. I mean, not of the treatment, but where I
19 go and what I should do.
20 **Q. Has he made a specific diagnosis, to your**
21 **knowledge, of what conditions you have as a result --**
22 **or after the fall on February 8, 2010?**
23 A. The way I believe it, because I think that
24 he said so much in certain -- other terms, but I
25 believe that he said that he'd leave all that up to

Page 138

1 the specialist. He would just refer me and the
2 specialist would have to -- and he also said that they
3 don't even follow up sometimes. They don't even send
4 him -- they don't all send him the reports.
5 **Q. Okay.**
6 A. So he's just following it.
7 **Q. So is it fair to say that he hasn't**
8 **diagnosed you, to your knowledge, with anything**
9 **specific and that he's merely directing, essentially,**
10 **specialists to manage your care?**
11 A. That's how I believe it's happening.
12 **Q. And what doctors has Dr. Subramanyam**
13 **referred you to?**
14 A. Okay. Orthopedic -- several different
15 specialists. Now, are you asking for specific ones?
16 **Q. Yeah.**
17 A. Okay. Well, he's referred me to orthopedic
18 surgeons --
19 **Q. Okay.**
20 A. -- and cardiologists --
21 **Q. Okay.**
22 A. -- GI doctors, and recently the -- okay.
23 Orthopedic surgeons, GI, cardiology. I'm leaving some
24 out I know.
25 **Q. Has he referred you to any eye doctors?**

Page 139

1 A. Yes.
2 **Q. Ophthalmologists?**
3 A. Yes.
4 **Q. How about physical therapy?**
5 A. He's not the one that referred me to
6 physical therapy. I was referred to therapy, but not
7 by him.
8 **Q. Who referred you to physical therapy?**
9 A. Dr. Cash and Dr. Trainor.
10 **Q. Okay. Now, Dr. Cash is one of your**
11 **orthopedic surgeons?**
12 A. He was.
13 **Q. Okay. You no longer see him?**
14 A. Right.
15 **Q. And is Dr. Trainor also an orthopedic**
16 **surgeon?**
17 A. Yes.
18 **Q. Do you still see him?**
19 A. No.
20 **Q. Why do you not see Dr. Cash anymore?**
21 A. He dropped Tricare.
22 **Q. Is that the only reason?**
23 A. Yes.
24 **Q. Why do you not see Dr. Trainor anymore?**
25 A. He dropped Tricare.

Page 140

1 **Q. Okay. Are there other orthopedic surgeons**
2 **that you've seen, or orthopedic doctors, other than**
3 **Dr. Cash and Dr. Trainor?**
4 A. Yes.
5 **Q. Who?**
6 A. Dr. Thomas Dunn and Dr. Martin.
7 **Q. Are you still seeing Dr. Martin?**
8 A. I made several appointments with him, and he
9 was unavailable to keep them. So I believe he left
10 that -- he was in Dr. Dunn's group. I believe he's
11 gone now. So I want to stay with that group, so I
12 want to --
13 **MS. MORRIS:** Is Dr. Martin the orthopedic
14 surgeon?
15 **THE WITNESS:** He's the one that I went --
16 **MR. SEMENZA:** That we talked about
17 earlier.
18 **MS. MORRIS:** The one who just had the
19 article in the paper, is that the one?
20 **MR. SEMENZA:** Oh.
21 **MS. MORRIS:** I think it might be.
22 **MR. KIRCHER:** What's his name?
23 **MS. MORRIS:** Last name's Martin.
24 Is he a younger fellow, Dr. Martin?
25 **THE WITNESS:** Yeah.

Page 141

1 MR. SEMENZA: Was he African-American or do
2 you know?
3 THE WITNESS: I -- gee, I'm not sure.
4 MS. MORRIS: We can talk about it after, but
5 there was a Dr. Martin who's an orthopedic surgeon.
6 It was just in the news.
7 THE WITNESS: Really?
8 MR. SEMENZA: He was the one that got into a
9 bunch of trouble.
10 We can go off the record.
11 MS. MORRIS: Let's go off the record.
12 (Discussion off the record.)
13 MR. SEMENZA: We'll go back on the record.
14 BY MR. SEMENZA:
15 Q. So Dr. Martin, Dr. Dunn -- and Dr. Dunn is
16 the one you're still seeing and has recommended the
17 neck and back surgeries?
18 A. Yes.
19 Q. Any other orthopedic surgeons you believe
20 you've seen?
21 A. Well, no, not yet because I have to find --
22 I have to follow up on my knees now.
23 Q. Okay. Are you currently having issues with
24 your knees?
25 A. Yes. That's why I saw Dr. Martin.

Page 142

1 Q. What was the issue with your knees?
2 A. Well, he sent me for MRIs. I've had issues
3 with them since I fell.
4 Q. When did you first start seeking treatment
5 relating to your knees?
6 A. Right after I fell.
7 Q. Okay.
8 A. When I went to UMC Quick Care.
9 Q. Okay. Is Dr. Dunn someone that you can see
10 for your knees as well?
11 A. No. That's why he sent me to Dr. Martin.
12 Q. Okay. Any orthopedic doctors that you've
13 seen other than who we've talked about?
14 A. Okay. At this time, I don't recall. One
15 for neck and back, one for knees. Now, the hand
16 surgeon, is he considered an orthopedic surgeon?
17 Q. If I had to venture a guess, I would say no,
18 but --
19 A. He might be an orthopedic surgeon. I'm not
20 sure.
21 Q. Okay. And did Dr. Prabhu refer you out to
22 the hand doctor?
23 A. Yes.
24 Q. Who is the hand doctor?
25 A. Dr. Sorelle.

Page 143

1 Q. And he has diagnosed you with carpal tunnel?
2 A. Yes.
3 Q. I thought I saw in there also a reference to
4 trigger finger?
5 A. Yes.
6 Q. What is that?
7 A. Some -- I can't tell you exactly what it is,
8 but it's very painful.
9 Q. Okay. In your index finger?
10 A. Well, I'm not sure exactly.
11 Q. Okay.
12 A. I just know it's my left hand.
13 Q. And you haven't undergone any surgery as it
14 relates to your hand, have you?
15 A. Not yet.
16 Q. Do you have any surgeries scheduled?
17 A. Not yet.
18 Q. Are you planning on having surgery on your
19 hands?
20 A. I have to.
21 Q. Why do you have to?
22 A. Well, Dr. Sorelle said this isn't going to
23 get better; it's only going to get worse, so I have to
24 have surgery.
25 Q. And is it your opinion that the carpal

Page 144

1 tunnel and trigger finger diagnoses by Dr. Sorelle are
2 the result of the fall on February 8, 2010?
3 MS. MORRIS: Object to form and
4 foundation.
5 THE WITNESS: Yes.
6 BY MR. SEMENZA:
7 Q. Is that something Dr. Sorelle has told you
8 or something you simply believe?
9 A. Dr. Sorelle said so.
10 Q. At the time of the fall did you injure your
11 hand?
12 A. Yes.
13 Q. Both hands?
14 A. Yes.
15 Q. And where did you injure them?
16 A. I'm sorry. What do you mean "where"?
17 Q. How did you injure them in the fall?
18 A. I don't know. It's just when I -- when they
19 stood me up and I tried to take pictures, I tried to
20 get my camera out of my purse and I couldn't. That's
21 when I realized that I was hurt.
22 Q. Well, I know you testified to and the report
23 says you had hurt your arm. Is it --
24 A. Oh, and I couldn't fill out the forms
25 because my hands were hurting.

Page 145

1 **Q. Both hands?**
2 A. They were both hurting.
3 **Q. Did you impact the floor at any point in**
4 **time with your hands?**
5 A. I must have. My body was completely on the
6 ground.
7 **Q. Okay. You don't have a specific**
8 **recollection of hitting your hands on any portion of**
9 **the floor, though, do you?**
10 A. No. What I remember is when I woke up, when
11 they woke me up and I was on the ground, on the
12 floor.
13 **Q. Okay. And with regard to your cardiologist,**
14 **have you seen the same doctor from the date of the**
15 **fall forward, or have you moved around with doctors**
16 **relating to your heart care?**
17 A. I've seen two cardiologists.
18 **Q. Who are they?**
19 A. Dr. Wesley, Dr. Fotedar. It's either d-o-r,
20 d-a-r.
21 **Q. Are they with the same group?**
22 A. No.
23 **Q. Who are you currently seeing?**
24 A. I'm going -- my next appointment I have to
25 see Dr. Wesley. I go back to him.

Page 146

1 **Q. When was the last time you've seen**
2 **Dr. Fotedar?**
3 A. Around September 2012.
4 **Q. How many appointments did you have with**
5 **Dr. Fotedar?**
6 A. I believe just one.
7 **Q. Is there a particular reason you just had**
8 **one with him?**
9 A. I just went for a second opinion.
10 **Q. What was the second opinion?**
11 A. The echocardiograms showed -- you know, I
12 had two echocardiograms, and so I wanted to know what
13 his opinion was about the valves.
14 **Q. Did he provide you with an opinion?**
15 A. What he said is that I needed a follow-up
16 echocardiogram.
17 **Q. And did you get that follow-up**
18 **echocardiogram?**
19 A. That's my next thing. I've got to do
20 that.
21 **Q. Okay. That was more than two years ago,**
22 **though.**
23 A. Well, the first one was in 2010.
24 **Q. Okay.**
25 A. The second one was in 2012. So now I'm due

Page 147

1 for the next one.
2 **Q. So are you planning on going back to see**
3 **Dr. Fotedar at all?**
4 A. No. I'm going back to Dr. Wesley.
5 **Q. When did you -- well, approximately how many**
6 **times have you seen Dr. Wesley?**
7 A. I saw him in 2010 maybe one or two times, I
8 believe. 2012, then I went to see him, and to his
9 office several times because he did a series of heart
10 tests.
11 **Q. Okay. And what did those tests reveal, to**
12 **your knowledge?**
13 A. Well, the echocardiograms, the valves; and I
14 believe everything else was normal.
15 **Q. So from 2010 to 2012 your echocardiograms**
16 **were normal, to your knowledge?**
17 A. Echocardiograms?
18 **Q. Yes.**
19 A. No.
20 **Q. Okay. What did you -- and I apologize.**
21 **Maybe I missed it. What did you say was normal?**
22 A. All the other tests.
23 **Q. All the other tests.**
24 A. I'm sorry. Maybe I -- that's not what I
25 meant if that's what I said.

Page 148

1 **Q. Late in the day we start getting tired.**
2 A. Yes.
3 **Q. Bear with me.**
4 A. And me, too.
5 **Q. So, to your knowledge, was your**
6 **echocardiogram normal?**
7 A. No. I mean, to my knowledge, it was not
8 normal.
9 **Q. Okay. But the other tests that were**
10 **performed after the echocardiograms, those came back**
11 **normal?**
12 A. Yes.
13 **Q. Okay. Do you know what those tests were?**
14 A. Yes.
15 **Q. What were those tests?**
16 A. Well, I know some of them. They did a CAT
17 scan.
18 **Q. Okay.**
19 A. And I'm not sure which other ones they take,
20 but it's a series of tests, I guess, routine tests.
21 **Q. Okay. And what do you understand an**
22 **echocardiogram to do? What does it test?**
23 A. Are you still talking about an
24 echocardiogram --
25 **Q. Yeah.**

Page 149

1 A. -- or the electrocardiogram?
2 **Q. They're two different things?**
3 A. I believe so.
4 **Q. Okay. Explain to me the difference if**
5 **you --**
6 A. I don't know what the difference is, but
7 what I'm telling you is echocardiograms, those are the
8 ones that showed the valves, the heart valves, and
9 that's the one that I need a follow-up on, an
10 echocardiogram.
11 **Q. And that's the one that showed an**
12 **abnormality, in your viewpoint?**
13 A. In the valves, yes.
14 **Q. Has Dr. Wesley, to your knowledge, provided**
15 **any opinion that your valve issues were the result of**
16 **the fall on February 8, 2010?**
17 A. Not to --
18 **MS. MORRIS:** Object to form.
19 **BY MR. SEMENZA:**
20 **Q. You can go ahead and answer.**
21 A. I'm not sure.
22 **Q. But you believe personally that the heart**
23 **valve issues do relate to the fall?**
24 **MS. MORRIS:** Object to form and
25 foundation.

Page 150

1 **BY MR. SEMENZA:**
2 **Q. Is that correct?**
3 **MS. MORRIS:** Misstates her testimony.
4 **BY MR. SEMENZA:**
5 **Q. You can go ahead and answer.**
6 A. What I know is I had chest pains after the
7 fall; that's why I went to the cardiologist. And the
8 echocardiogram shows a valve, something with the
9 valve. And a couple years later I had the follow-up
10 echocardiogram, and then that one showed an additional
11 valve, and Dr. Fotedar said that that second valve
12 typically is the cause of that first valve, something
13 like that. That's how I understand it.
14 **Q. Okay. And I just wanted to understand, you**
15 **don't know one way or the other whether the heart**
16 **issues that you've identified have any relationship to**
17 **your fall in February 2010?**
18 A. I just know that the timing and my lack of
19 symptoms before make me think that.
20 **Q. Okay. Make you think that it could be**
21 **related, is that what you're saying?**
22 A. Yes.
23 **Q. Okay. Let's turn to the gastroenterologist.**
24 **Who are you seeing relating to your stomach issues**
25 **after the fall?**

Page 151

1 A. Dr. Shaposhnikov, Dr. Lacayo, Dr. Singh.
2 **Q. Okay. Let's start with Dr. Singh, because**
3 **his name is easier to pronounce. How many times have**
4 **you seen him?**
5 A. Twice.
6 **Q. What did you see him for?**
7 A. I was still having the pains in my abdomen.
8 **Q. Approximately when did you see him these two**
9 **times?**
10 A. I believe in 2012.
11 **Q. Okay. Did he provide you with any sort of**
12 **diagnosis relating to your abdominal pain?**
13 A. I don't think so.
14 **Q. Did he provide any recommendations moving**
15 **forward or plan or course of treatment?**
16 A. He recommended tests.
17 **Q. Okay. What kind of tests, if you can**
18 **recall?**
19 A. Probably colonoscopy. I believe that's what
20 that was.
21 **Q. Have you had a colonoscopy?**
22 A. No.
23 **Q. Is there any particular reason?**
24 A. Why I haven't?
25 **Q. Yes.**

Page 152

1 A. Because I have had the constipation issue,
2 and it feels like it's making the tissue bulge or, you
3 know, when it gets -- so I'm afraid that if I do have
4 one, that they'll perforate the tissue, and I have
5 been told by all those doctors that that's one of the
6 risks.
7 **Q. Okay. Have any of the gastroenterologists**
8 **that you've seen recommended that you have a**
9 **colonoscopy?**
10 A. They've recommended it, but they also said
11 that there's a risk of perforation.
12 **Q. And you've decided against doing that**
13 **because of the --**
14 A. I don't want them to perforate.
15 **Q. So other than the colonoscopy, were there**
16 **any other tests that you can recall that Dr. Singh had**
17 **recommended?**
18 A. Not that I recall.
19 **Q. And Dr. Lacayo, how many times have you**
20 **seen --**
21 A. I believe I saw him once.
22 **Q. And how -- backing up, how did you get to**
23 **Dr. Singh? Was it a referral?**
24 A. Yes.
25 **Q. Okay. From whom?**

Page 153

1 A. Doctor -- I believe it was Sorelle.
2 **Q. Okay. When did you see Dr. Lacayo?**
3 A. It was in 2010. It was after I saw --
4 shortly after I saw Dr. Shaposhnikov, so maybe the
5 April, May, June period of 2010.
6 **Q. Okay. And did he provide any specific**
7 **diagnosis for your abdomen issues?**
8 A. No.
9 **Q. Did he provide any or opine as to any course**
10 **of treatment?**
11 A. Same as Dr. Singh.
12 **Q. He recommended you have a colonoscopy?**
13 A. Yes.
14 **Q. Is there a reason you stopped going to**
15 **Dr. Lacayo?**
16 A. I only went for a second opinion, and he had
17 the same recommendation, so. . .
18 **Q. And how many times have you seen**
19 **Dr. Shaposhnikov?**
20 A. I believe I saw him twice.
21 **Q. And that was after Dr. Lacayo or before?**
22 A. No. He was the first one.
23 **Q. And approximately when did you see him the**
24 **two times?**
25 A. Probably around March, April, May period of

Page 154

1 2010.
2 **Q. Okay. How did you get to him?**
3 A. Dr. Subramanyam.
4 **Q. And did he provide any diagnoses as to**
5 **your abdominal issues?**
6 A. He just said what it could be. He just
7 said, "Well, it could be a hernia or an ulcer. You
8 need to get a colonoscopy."
9 **Q. Did he ever specifically diagnose you with a**
10 **hernia?**
11 A. No. He just told me he couldn't diagnose
12 anything because -- without the test.
13 **Q. Without a colonoscopy first?**
14 A. Right.
15 **Q. Okay.**
16 A. And then he also said colonoscopy and the
17 endoscopy. Is that it?
18 **Q. Have you had the endoscopy procedure?**
19 A. No.
20 **Q. Is there a particular reason why?**
21 A. I -- same reason as the colonoscopy, the
22 damage they can do.
23 **Q. To your esophagus?**
24 A. Yes, or whatever damage they do.
25 **Q. Okay. Do you still have abdominal issues?**

Page 155

1 A. That particular issue, I have it under
2 control, but the other pains I still have, because
3 Dr. Cash told me it's not that type of -- it's
4 referred pain.
5 **Q. So we're talking about your back and neck**
6 **issues?**
7 A. No, no. The abdominal issues --
8 **Q. Yes.**
9 A. -- were in more than one place I thought,
10 but now I know -- now I know that it's just the
11 referred pain. The rib -- it's around the ribs, and
12 that's why I had the abdominal ultrasound for that rib
13 pain.
14 **Q. What did the abdominal ultrasound reveal?**
15 A. Nothing -- well, I believe nothing.
16 **Q. When did you have that done?**
17 A. Dr. Thompson is the one that prescribed it
18 in February, so probably February 2010.
19 **Q. And do you believe that the abdominal issues**
20 **that you've been experiencing relate to the fall that**
21 **you took in February of 2010?**
22 MS. MORRIS: Object to form and
23 foundation.
24 THE WITNESS: Well, Dr. Cash told me that
25 some of those pains are coming -- aren't abdominal

Page 156

1 issues. They're coming -- they're referred pain. So
2 now I know what that is.
3 BY MR. SEMENZA:
4 **Q. Okay. They're coming from a different**
5 **location in your abdomen or coming from your back and**
6 **neck and it's --**
7 A. No. It's from the chest area.
8 **Q. Okay. And where is the origination of that**
9 **pain? What is that -- what's causing that pain?**
10 MS. MORRIS: Object to foundation.
11 THE WITNESS: Well, that's the pain that I
12 had when I fell.
13 BY MR. SEMENZA:
14 **Q. Okay.**
15 A. The original pain.
16 **Q. Hypothetically speaking, if one of your**
17 **doctors were to conclude that some of the symptoms**
18 **you're experiencing were unrelated to the fall of**
19 **February 2010, would you accept that doctor's opinion**
20 **on the issue?**
21 MS. MORRIS: Object to form.
22 THE WITNESS: I'm sorry. Could you
23 rephrase?
24 BY MR. SEMENZA:
25 **Q. Hypothetically speaking, if one of your**

Page 157

1 doctors provided an opinion that identified or
2 concluded that some of the symptoms you were
3 experiencing, whether the abdominal symptoms or the
4 irritable bowel symptoms or GERD, were unrelated to
5 the fall that you took in February 2010, would you
6 accept that doctor's opinion?
7 MS. MORRIS: Object to form.
8 THE WITNESS: If another doctor also said
9 it, I certainly would.
10 BY MR. SEMENZA:
11 Q. Okay. So if -- and just so I'm clear, so
12 you'd need, essentially, one doctor to make that
13 conclusion and then a second opinion that it was
14 unrelated, is that --
15 MS. MORRIS: Object to form and
16 foundation.
17 THE WITNESS: Well, they always say get
18 second opinions.
19 BY MR. SEMENZA:
20 Q. Okay. To your knowledge, have you ever been
21 refused medical care?
22 A. Not to my knowledge.
23 Q. Have you ever been told by a medical
24 provider that they cannot assist you?
25 A. Yes.

Page 158

1 Q. Okay. Who was that?
2 A. The physical therapist at Sports.
3 Q. We'll come back to that.
4 Okay. So with regard to your vision issues,
5 you're seeing an ophthalmologist?
6 A. Yes.
7 Q. How many have you seen?
8 A. Since the fall?
9 Q. Yes.
10 A. In 2010 I saw one and then just the end of
11 2014, three different kinds.
12 Q. Okay. Who was your doctor, ophthalmologist,
13 in 2010?
14 A. Dr. Carr.
15 Q. How many times did you see him?
16 A. Once or twice.
17 Q. What did you see him for?
18 A. After I fell, I was dazed, and I had some --
19 the left side of my face -- issues with a drooping eye
20 and twitching and other issues on the left side of my
21 face. So it was for the twitching eye and drooping.
22 Q. And did the doctor diagnose you with
23 anything specific?
24 A. I think he said that I had the early stages
25 of a cataract.

Page 159

1 Q. That wouldn't explain the droopiness,
2 though, would it?
3 A. No.
4 Q. What did he say about the drooping of your
5 eye?
6 A. I don't believe he said anything about it.
7 I believe he was just -- just a regular
8 ophthalmologist.
9 Q. Do you attribute the drooping of your face
10 to an injury you suffered as a result of the fall?
11 MS. MORRIS: Object to form and
12 foundation.
13 THE WITNESS: It's -- I went to Dr. Houchin,
14 a neuro-ophthalmalogist for that, and he said it's
15 probably from the headaches. The headaches are from
16 the neck pain.
17 MR. SEMENZA: Now is a good time to break.
18 Why don't we take a quick break.
19 (Recess taken.)
20 MR. SEMENZA: The parties have agreed to
21 suspend today's deposition to be continued to a later
22 date, in all likelihood sometime in April, and then
23 we'll have an additional three hours to conduct the
24 deposition of Ms. O'Connell at that time, and
25 obviously plaintiff's counsel will have an opportunity

Page 160

1 to ask any additional follow-up questions she would
2 like.
3 MS. MORRIS: That's correct.
4 MR. SEMENZA: Okay. Thank you.
5 MS. MORRIS: We've got two exhibits only so
6 far; is that correct?
7 THE REPORTER: Yes. And do you need a copy
8 of the transcript?
9 MS. MORRIS: Yes, please.
10 (The proceedings concluded at 3:37 p.m.)
11
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1 REPORTER'S CERTIFICATE
2 I, the undersigned, a Certified Court
3 Reporter of the State of Nevada, do hereby certify:
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of the
11 testimony given.
12 Further, that before completion of the
13 proceedings, review of the transcript was not
14 requested.
15 I further certify I am neither financially
16 interested in the action nor a relative or employee of
17 any attorney or party to this action.
18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.
20
21 Dated: 4/27/2015
22
23 /s/ Allyson W. Harris
24 ALLYSON W. HARRIS
CCR No. 740
25

EXHIBIT 4

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT MOSTAD,
Appellant,
vs.
PARK PLACE ENTERTAINMENT CORPORATION; PARBALL CORPORATION; AND BALLY'S - LAS VEGAS, D/B/A BALLY'S OF LAS VEGAS,
Respondents.

No. 46597

FILED

NOV 13 2007

BARBARA M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

After appellant Scott Mostad slipped and fell, allegedly having stepped on an unknown foreign substance in the buffet area at Bally's Hotel and Casino, Mostad filed a complaint against respondents Park Place Entertainment Corporation, Parball Corporation, and Bally's-Las Vegas (collectively, "Bally's"), alleging that Bally's had negligently maintained its premises.

Bally's filed a summary judgment motion, arguing that Mostad's negligence claim failed as a matter of law because Mostad had failed to demonstrate any factual issues with respect to whether Bally's was responsible for the foreign substance on the property or had any actual or constructive notice of its existence. Bally's noted that Mostad failed to present any deposition testimony, affidavits, or other evidence demonstrating how the substance got on the floor or that Bally's had actual or constructive notice of the substance's presence.

Mostad opposed the motion, arguing that he would present evidence and witness testimony supporting his claims at trial.

07-24660

On December 7, 2005, based on Bally's arguments, the district court granted Bally's motion for summary judgment. Mostad's timely appeal followed.

This court reviews orders granting summary judgment de novo.[1] Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in the light most favorable to Mostad, demonstrate that no genuine issue of material fact remained in dispute and that Bally's was entitled to judgment as a matter of law.[2] To withstand summary judgment, Mostad could not rely solely on the general allegations and conclusions set forth in his complaint, but must instead have presented specific facts demonstrating the existence of a genuine factual issue supporting his claims.[3]

Upon our review of the record and consideration of the parties' appellate arguments,[4] we perceive no error in the district court's summary judgment. Although the presence of a foreign substance on the floor may be contrary to ordinary care,[5] liability for any injuries Mostad sustained

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[1]See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[2]Id.

[3]Id. at 731, 121 P.3d at 1030-31.

[4]We decline to consider any issues that Mostad presented in his reply brief that were not first raised in his opening brief. See City of Elko v. Zillich, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) (providing that a party may not raise a new issue or argument for the first time in the reply brief).

[5]See Asmussen v. New Golden Hotel Co., 80 Nev. 260, 262, 392 P.2d 49, 49 (1964) (noting that a business owes its customers a duty to keep its premises in a reasonably safe condition for the customers' use).

after slipping in the substance and falling may be found only if Bally's employees created the condition or had actual or constructive notice of its existence.[6] Thus, in order to defeat Bally's summary judgment motion, Mostad was required to offer evidence suggesting that the employees had spilled or otherwise deposited the substance on the floor, or that they had constructive notice of its existence.[7] Accordingly, because Mostad failed to do so, he failed to demonstrate any material factual issues with regard to Bally's negligence, and we

ORDER the judgment of the district court AFFIRMED.[8]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

---

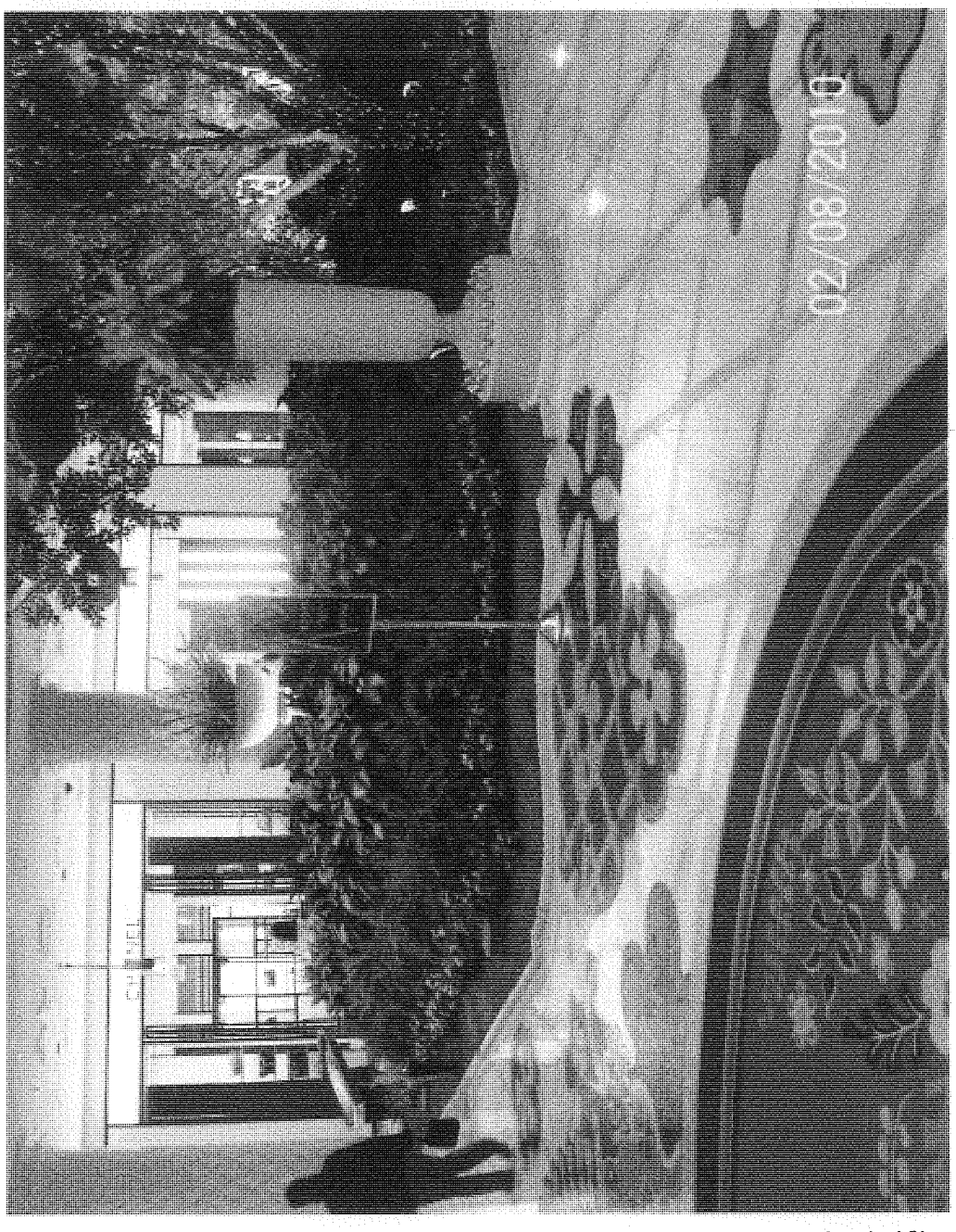
[6]Id. at 262, 392 P.2d at 50; Sprague v. Lucky Stores, Inc., 109 Nev. 247, 250, 849 P.2d 320, 322-23 (1993).

[7]Wood, 121 Nev. at 731, 121 P.3d at 1030-31; Sprague, 109 Nev. at 250, 849 P.2d at 322-23.

[8]We reject Mostad's view that a foreign substance on the floor created a per se inference that Bally's was responsible or had actual or constructive knowledge of the substance's presence on the floor before Mostad's slip and fall. "The nonmoving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Wood, 121 Nev. at 732, 121 P.3d at 1031 (quoting Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).

cc: Hon. Michelle Leavitt, District Judge
Carolyn Worrell, Settlement Judge
Ryan, Mercaldo, & Worthington, LLP
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Eighth District Court Clerk

EXHIBIT 5



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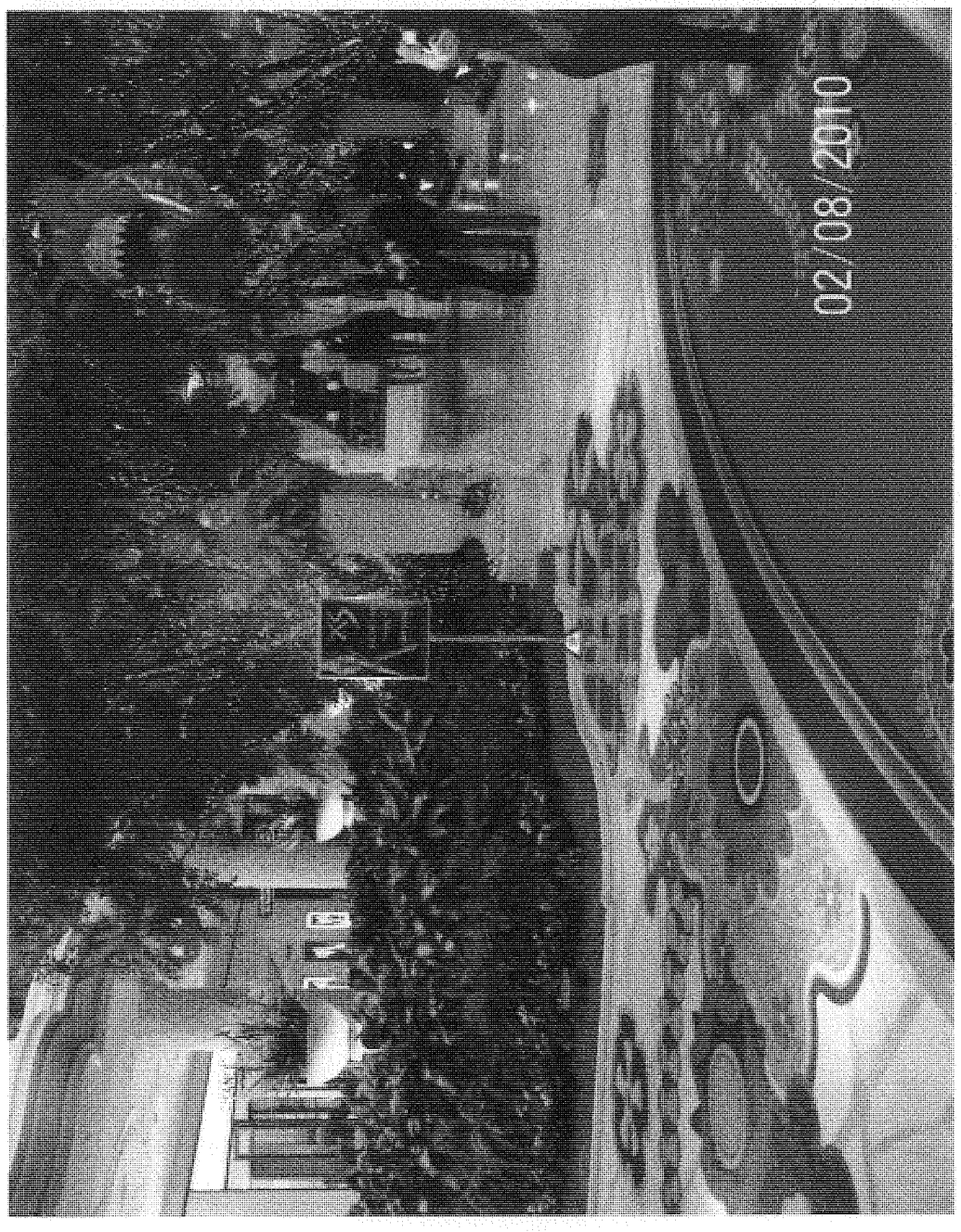

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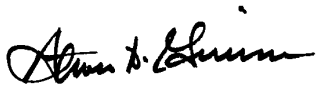

CLERK OF THE COURT

ERR
BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
brian@nettleslawfirm.com
christian@nettleslawfirm.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual, Plaintiff, vs. WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-12-655992-C DEPARTMENT NO. V **PLAINTIFF'S ERRATA TO OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** Hearing Date: 09/17/2015 Hearing Time: 9:00 a.m.

COMES NOW, Plaintiff YVONNE O'CONNELL, by and through her counsel Brian D. Nettles, Esq. and Christian M. Morris, Esq., of the Nettles Law Firm, and hereby submits the following Errata to Plaintiff's Opposition to Defendant's Motion for Summary Judgment filed on July 27, 2015, to include Gary A. Presswood, ScD, PE's expert report dated April 10 2015 which was inadvertently omitted. Mr. Presswood's report should have been included as Exhibit 6 to the Opposition and is further evidence that Wynn was on notice that the walkway upon which Plaintiff fell was hazardous due to the nature of the marble. Plaintiff's expert, Gary Presswood, stated in his report, that the walkway where Plaintiff Yvonne O'Connell fell "should be

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Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

considered hazardous to pedestrians especially when wet as evidenced and verified by Wynn employees" ***See April 10, 2015 expert report authored by Gary Presswood attached hereto and incorporated as Exhibit 6 to the Opposition.***

DATED this 11th day of August, 2015.

NETTLES LAW FIRM

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiffs

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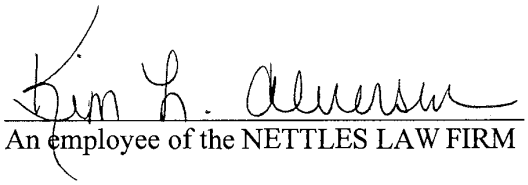
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 11th day August, 2015, I served the foregoing ***Plaintiff's Errata to Opposition To Defendant's Motion For Summary Judgment*** to the following party by electronic transmission through the Wiznet system:

Lawrence J. Semenza, III, Esq.
Christopher D. Kircher, Esq.
Lawrence J. Semenza, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant
Wynn Las Vegas, LLC dba
Wynn Las Vegas



An employee of the NETTLES LAW FIRM

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THE ACCIDENT EXPERT™
8635 W. SAHARA AVE., #435
LAS VEGAS, NEVADA 89117

April 10, 2015

Ms. Christian M. Morris, Esq.
Nettles Law Firm
1389 Galleria Drive. Ste 200
Henderson, NV 89104

Re: YVONNE O'CONNEL vs. WYNN LAS VEGAS, LLC
Case No. A-12-655992-C

Dear Ms. Morris:

At your request, I analyzed the site of an incident wherein your client, Yvonne O'Connell, slipped, fell, and sustained significant injuries. Pursuant to this assignment, I reviewed data provided by your office in addition to technical publications contained within my professional library. I also inspected the site of this event wherein I tested for the traction on the walkway where this incident occurred. This letter shall serve as my report.

INCIDENT

On February 8, 2010, Yvonne O'Connell was a patron at WYNN LAS VEGAS (hotel and casino) located at 3131 Las Vegas Boulevard South, Las Vegas, (Clark County), Nevada. At approximately 2:30 in the afternoon she slipped and fell into a landscape display within the foyer adjacent to the south valet. Ms. O'Connel reported a "large liquid substance on the floor" which, according to the Incident Data (Incident File #IN20100002152), was verified by "Manager (Yanet) Elias who, according to Security Officer Corey Prowell, " stated upon her arrival, she noticed the liquid substance on the floor; she immediately assigned an attendant to clean up the area in order to prevent further incidents. . . [1]."

Reportedly, security video cameras failed to capture this event.

ANALYSIS

I inspected the site of Ms. O'Connell's slip and fall on April 1, 2015, at which time I photographed and measured critical site elements. I also measured for the walkway's slip-resistance in the area of her fall.

I tested for the slip-resistance or traction qualities in two areas of the walkway, within close proximity to each other. Both areas tested were within the building, near the south valet entrance, and close to a curbed landscaped feature. One area tested was along a decorative mosaic tiled surface. The second area tested was along a smooth marble surfaced section of walkway. Both walkways were found to be clean and were located slightly beyond and to the west of a carpeted oval along the walkway entrance.

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[1] Incident File Full Report, Page 1 of 3, Bates: WYNN-O'CONNELL00511-00513.

Inspection/Slip-resistance.

I tested the floor surface for the static coefficient of friction (SCOF) which is a determination of the relative slipperiness or quality of traction along a walkway. A Horizontal Pull Slipmeter (HPS) was used in accordance with strict test protocol as established by the American Society of Testing and Materials (ASTM) in accordance with ASTM Stnd. F609 which requires the use of neolite as a test specimen. I also tested with ASTM mandated leather for specification testing as established by ASTM Stnd. D-2047.

The minimum permissible SCOF value for a *slip-resistant* walkway as defined by ASTM Stnd. D-2047 is 0.5 (read, "zero, point five"). Greater values indicate higher degrees of slip-resistance while values lower that 0.5 indicate slippery surfaces, the lower the value, the less traction. Note, while other sources may reference the requirement of a "slip-resistant" walkway without definition or minimum acceptable value, ASTM Stnd. D2047 is the only credible source where the 0.5 standard for slip-resistance can be found.

I tested in an "in situ" or "as found" condition for both neolite and leather. Following the initial utilization of neolite as a test material, I tested both areas with the Federally designated leather (Federal standard KK-L-165C). Neolite was used because that material is referenced in the current F609 standard and is also used by some other testing devices; however, there is no credible standard of slip-resistance for neolite or any test material other than the Federally designated leather. There is, however, an acceptable standard for leather (Federal standard KK-L-165C) as described in ASTM Stnd. D2047.

Note the tests for the mosaic tile are available but unreliable due to the small tile sizes (3/4" square +/-) which results in higher than realistic readings due to the tile edges "catching" the test feet thus yielding inconsistent readings. The following indicates the results of my tests on the smooth marble section of walkway.

$SCOF_{dry}$

	Neolite/in situ	Leather/in situ
Max.	**0.38**	**0.26**
Min.	**0.33**	**0.25**
Avg.	**0.36**	**0.26-**

The low test values obtained on the clean dry surface (i.e., less than 0.50), indicate a slippery surface in the best of conditions (i.e., clean and dry). As a result of my tests and technical evaluation, the subject floor should be considered potentially hazardous to pedestrians.

In the event a floor is wet as reported, I have found the SCOF of a walkway wetted with distilled water is typically about 70% that of the tested dry value; however, I did not test for a wet surface at the site of this event since (1) the referenced ASTM test standards do not permit testing on any debris covered or wetted surface for specification determination (2), the quantity and quality of the contaminant and other unknown variables are often unknown and (3), there is no acceptable standard of slip-resistance for a wet surface. Tests for any wet or contaminated surface would be speculative at best and not expected to provide

scientifically credible and reliable results except, by analogy, to relate a wet walkway to roadway surface conditions following a Las Vegas area rain. I suggest most everyone would recognize the increased degree of slipperiness and hazard on a rain-surfaced local street as should also exist for a wet walkway.

To reiterate, the actual precise referenced 0.5 value for slip-resistance is contained in only one credible source as a standard for a "slip-resistant" walkway surface. In ASTM Standard D2047 which contains the test protocol for a "James Machine," sections 3, 4, & 5 contain detailed reference to 0.5 as an acceptable value of "slip-resistance" and defines "leather, conforming to Federal Specification KK-L-165C" as the only material to be used for "specification testing" (such as the 0.5 specification).

I am critical of test devices with support the use of neolite as a test specimen particularly since there is no reliable standard for neolite. One of these devices, still in use by some, was withdrawn by the ASTM in 2006 as an approved test protocol. Within the ASTM D2047 standard there is also found the following critical caution:

> Note 3–The static coefficient of friction measured with elastomeric compositions are frequently as much as 0.3 to 0.5 higher than leather.

Elastomeric compositions include neolite and rubber and are not suited for specification testing.

Although the purpose of ASTM Standard D 2047 is for the James Machine (a laboratory device), it is critical to emphasize that this standard is the only credible standard which dictates a minimum acceptable value for the determination of the static coefficient of friction. Furthermore, this standard mandates a single test material (i.e., Federal standard KK-L-165C leather) for determination of a value of "specification." Any other test material (such as neolite) is not supported by any recognized and credible entity for "specification" testing.

The excessively smooth floor found in the area of Ms. O'Connell's slip, fall, and injuries, provides only minimal traction and is hazardous to pedestrians especially when wet. It has also been my experience that most slips and falls occur on relatively smooth walkway surfaces as found at the site of this event although additives which are virtually undetected can be added to a potentially slippery floor surface and significantly increase the safety of a smooth walkway.

OPINION

It is therefore my opinion, as a licensed professional engineer in the State of Nevada and other states, and as one proficient in the analysis and evaluation of safe pedestrian walkways, that the marble walkway where Yvonne O'Connell slipped, fell, and sustained significant injuries should be considered hazardous to pedestrians especially when wet as evidenced and verified by Wynn employees. Finally, the evidence does not indicate that Ms. O'Connell contributed to this event in any way except to have walked in an area she expected to be free of unexpected hazards..

This concludes my report; however, you are encouraged to contact me if you require additional information or clarification. During the course of this litigation, I reserve the right to augment this report especially if additional information becomes available. I assure you, the opinions expressed herein are rendered with a high degree of engineering and

scientific certainty. Finally, thank you for selecting us for this task.

Sincerely,

4.10.15

PROFESSIONAL ENGINEER-STATE OF NEVADA
GARY A. PRESSWOOD
EXP 12.31.15
CIVIL
No. 7569

Dr. Gary A. Presswood, ScD, PE

attach: Exhibits 1 - 6

EXHIBIT 1

PHOTOGRAPHIC EXHIBIT

PHOTOGRAPHIC EXHIBIT

Case: MORRIS:O'Connell **Source:** G A Presswood

Date: 4-1-15 **Location:** WYNN-S' Valet Foyer, LV, NV

Photo1

Photo 2

Photo 3

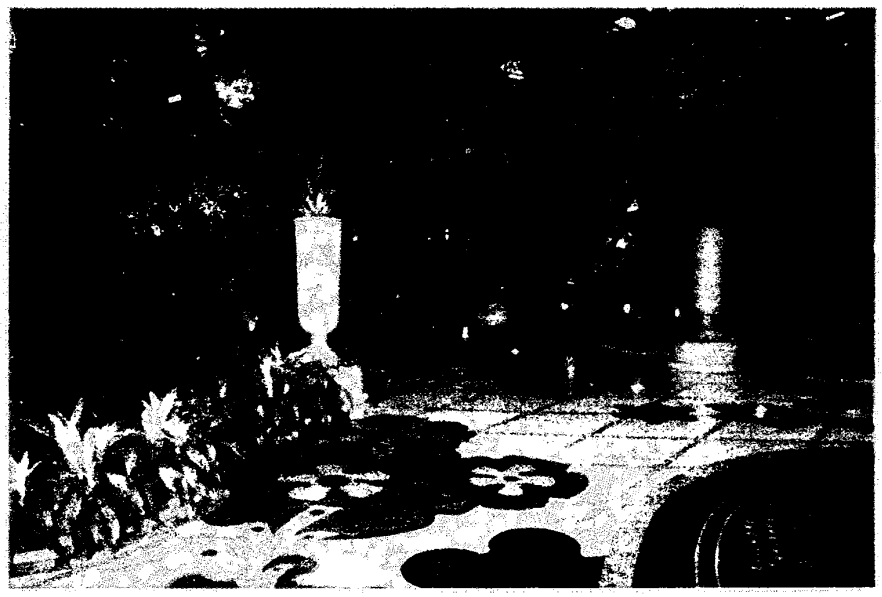


Photo 4

Photo 5

Photo 6

Photo 7

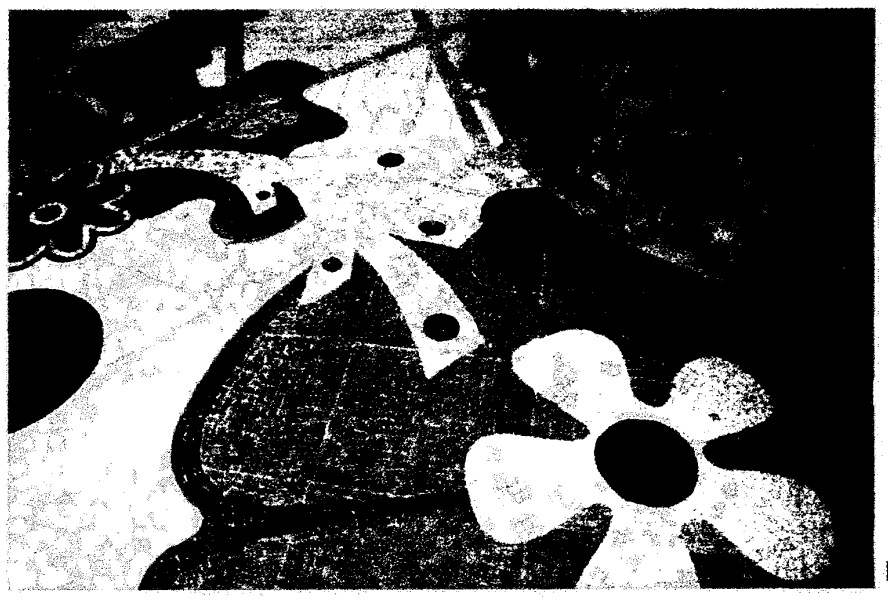


Photo 8

Photo 9

Photo 10

Photo 11

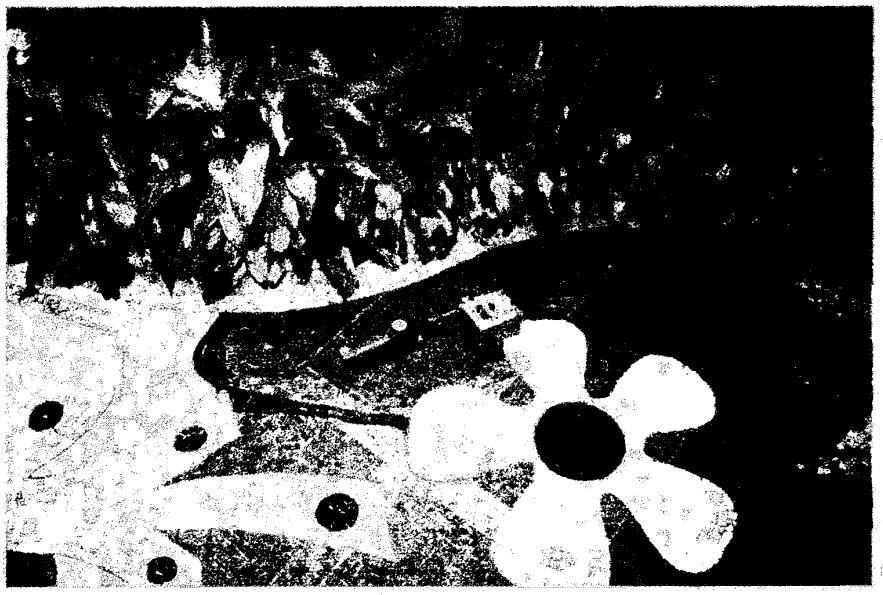


Photo 12

Photo 13

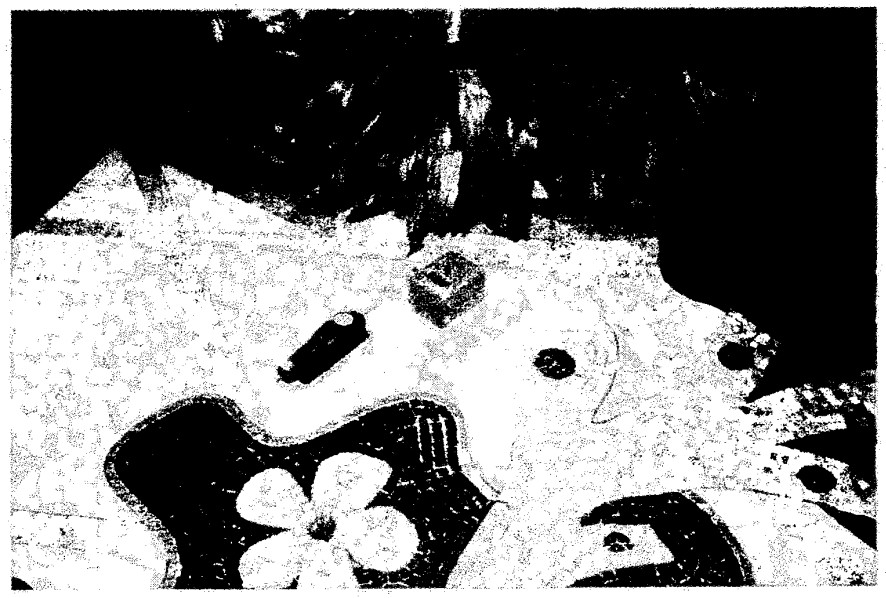


Photo 14

Photo 15

Photo 16

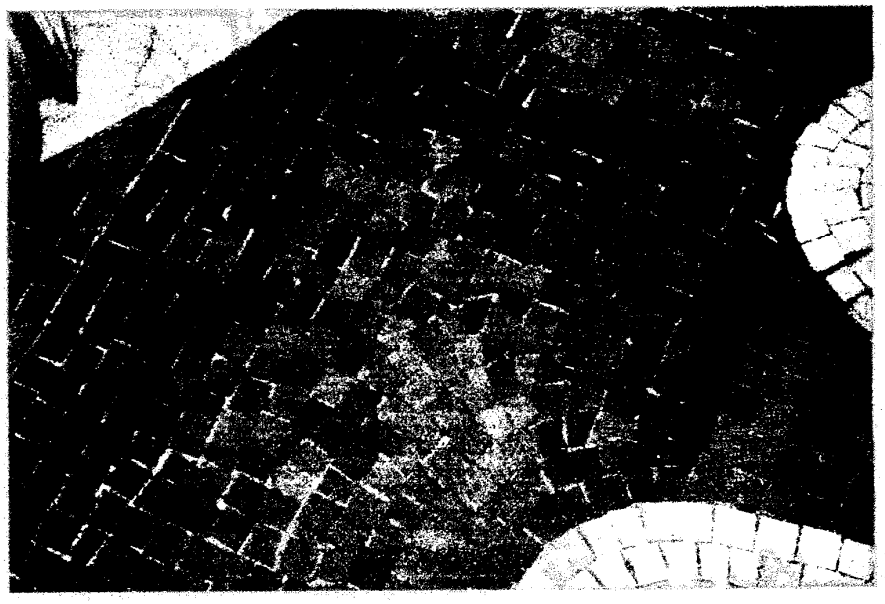
Photo 17

Photo 18

Photo 19

Photo 20

Photo 21



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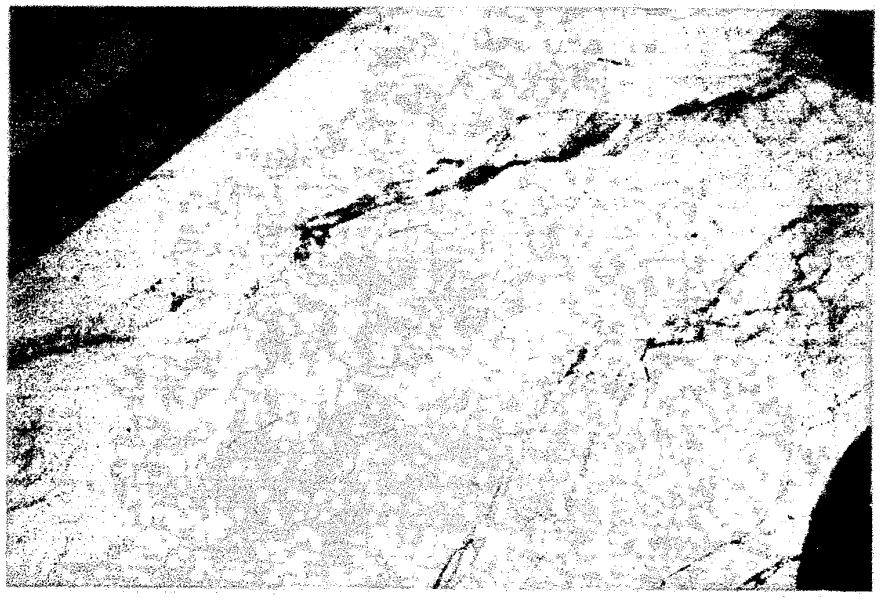

Photo 23

Photo 24

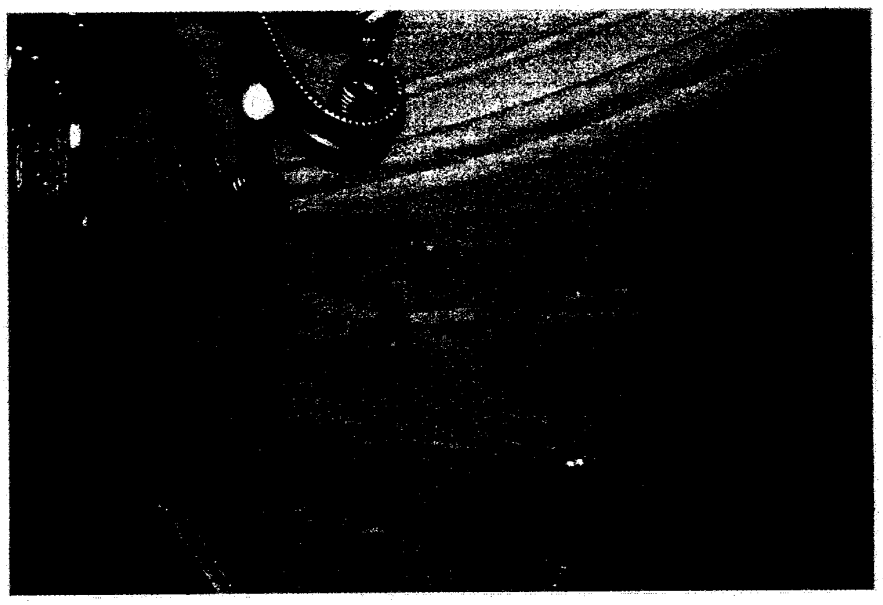

Photo 25

EXHIBIT 1

Data Relied Upon/Basis of Opinions
by Dr. Gary A. Presswood, ScD, PE

Data Relied Upon/Basis of Opinions
Dr. Gary A. Presswood, ScD, PE

- Exhibits: Bates: WYNN-O'CONNELL00474, 00479, 00481, 001511 - 00515.
- Kohr, Robert L., CSP, CPP, Accident Prevention for Hotels, Motels, and Restaurants, Van Nostrand Reinhold, NY, NY 1991.
- American Society of Testing and Materials Stnd. D2047-04, ASTM International, West Conshohocken, PA.
- American Society of Testing and Materials Stnd. F609, ASTM International, West Conshohocken, PA.
- American Society of Testing and Materials Stnd. F1637, ASTM International, West Conshohocken, PA.
- American Society of Testing and Materials Stnd. F1679, ASTM International, West Conshohocken, PA.
- Rosen, Stephen I., JD, PhD, The Slip and Fall Handbook, Hanrow Press, Del Mar, CA.
- English, William, CSP, PE, Slips, Trips and Falls–Safety Engineering Guidelines for the Prevention of Slip, Trip and Fall Occurrences, Hanrow Press, Del Mar, CA.

EXHIBIT 2

Curriculum Vitae, Dr. Gary A. Presswood, ScD, PE

CURRICULUM VITAE

Gary A. Presswood, ScD, PE

EDUCATION:
BS, Southern Illinois University, 1970
MPA, University of Nevada, Las Vegas, 1992
ScD, So. California University for Professional Studies, 2002

PROFESSIONAL ENGINEERING REGISTRATION:

Nevada (Civil), 1987	#7569
Arizona (Civil), 2010	#50954
Florida, 1984 (Inactive)	#35215
Indiana, 1975 (Inactive)	#16032
Illinois, 1975	#62-33079
Pennsylvania, 1986 (Inactive)	#PE-035007-E

PROFESSIONAL SOCIETY MEMBERSHIP:
American Society of Civil Engineers
National Academy of Forensic Engineers (Board Certified Forensic Engineer)
National Society of Professional Engineers
National Safety Council
American Society for Testing and Materials (Past F-13 Committee Member - "Safety and Traction for Footwear")
International Conf. of Building Officials (Past Professional Member)
Human Factors and Ergonomics Society (Past Member)

PROFESSIONAL EMPLOYMENT:

1968-1972 **Phelps, Dodge Cable & Wire Co.**, DuQuoin, Illinois
Quality Control Supervisor in responsible charge of production testing of low and high-voltage electrical transmission cable.

1972-1974 **Noblewood Construction**, Mt. Vernon, Illinois
President & Chief Engineer for residential/commercial construction firm. Designed & built subdivisions and residential structures.

1974-1975 **Indiana State Board of Health**, Indianapolis, Indiana
Industrial Waste Disposal Engineer for State of Indiana. Responsible for enforcement and compliance of industrial waste disposal throughout State of Indiana.

1975-1984 **City of Mt. Vernon**, Mt. Vernon, Illinois
City Engineer in charge of all public works design and construction for the City. Duties included plan review and approval of all residential subdivisions and commercial construction, facility design and approval for roadways, street lighting, traffic control, water supply system, wastewater treatment & disposal, landfill, stormwater drainage plus road construction & maintenance. Assisted Police Dept. in vehicle accident reconstructions.

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WEBSITE: ACCIDENTEXPERT.COM EMAIL:CRASH@ ACCIDENTEXPERT.COM
LAS VEGAS, PHOENIX,, SAN DIEGO, ST LOUIS

1980-1984 **Presswood Engineering**, Mt. Vernon, Illinois
President and Chief Engineer. Performed surveying services and site design for commercial sites, residential subdivisions, school playgrounds, and public parking facilities. Provided expert witness testimony and opinion for state EPA, and local attorneys.

1984-1987 **Reynolds, Smith & Hills**, Jacksonville, Florida
Site Development Department Head. Directed engineering and surveying for public and private clients including NASA, Depts. of Army, Navy, & Air Force. Performed complex engineering functions for international clients on various projects located in the Bahamas, China, Saudi Arabia, & Spain. Managed design of major highways and streets, airfields, boat harbors, shopping centers, industrial complexes, and land development projects generally from 100 to 10,000 acres in size. Served as firm's expert in matters concerning site development, construction failures, and environmental permitting.

1987-1992 **City of Las Vegas**, Las Vegas, Nevada
City Engineer directly responsible for all engineering design and construction of public facilities including streets, storm drainage facilities, sanitary sewer collection and distribution, and traffic control. Also responsible for code compliance and plan review/approval of all private "on-site" construction projects as dictated by NRS and local ordinances. Served as City Project Officer in charge of coordination, development and approval of major projects including Summerlin, Del Webb Sun City, and CitiBank expansion.

1991-Present **Gary Presswood Inc., dba The Accident Expert™**, Las Vegas, Nevada
Multi-state licensed, professional engineer serving attorneys, insurance companies, and land developers. Provide technical analysis and evaluation of vehicle accidents, slip/trip & fall, construction accidents & construction related issues. Extensive experience in issues of code compliance/interpretation, including UBC, IBC, ADA, OSHA, etc.

PUBLICATIONS/PRESENTATIONS:

Vehicle Tire Failure and Sport Utility Vehicle Performance in a Consumer Society, Doctoral Treatise, 2001

The Skid to Stop Formula-Its Use and Misuse, Advocate (Journal of the Nevada Trial Lawyers Association), February, 1995.

Slips, Trips and Falls: A Primer, Nevada Lawyer, April, 1995.

MYTHS OF LOW-SPEED IMPACTS REVEALED! (Proposed for Publication), National Academy of Forensic Engineers.

A CURRENT EVALUATION OF SLIP AND TRIP/FALL ACCIDENTS, Peer-reviewed

Presentation to Investigative Engineers Association Seminar, Golden Nugget Hotel/Casino, Las Vegas, Nevada, Nov. 13, 2009.

VEHICLE ACCIDENT RECONSTRUCTION TECHNIQUES, Peer-reviewed Presentation to Investigative Engineers Association Seminar, Golden Nugget Hotel/Casino, Las Vegas, Nevada, Nov. 13, 2009.

FORENSIC ENGINEERING EVALUATION OF STATISTICAL VALIDITY IN LOW-SPEED VEHICLE IMPACT CASES, Peer-reviewed Presentation to the National Academy of Forensic Engineers, Hollywood, Florida, Jan. 10, 2015.

PROFESSIONAL EXPERIENCE (SUMMARY):

Site Design	Forensic Investigations
Slip/Trip Fall Analysis	Vehicle Accident Reconstruction
Construction/ADA Code Compliance	Roadway Design/Construction

DETAILED ROADWAY EXPERIENCE

Gary A. Presswood, ScD, PE

A licensed Civil Engineer (in 6 states), Dr. Presswood designed and directed the design, construction, and maintenance of numerous roadways in many states and some foreign countries.

1975-1984 **City Engineer, City of Mt. Vernon, Illinois**

As City Engineer for Mt. Vernon, Illinois, Dr. Presswood had ultimate technical authority over the design approval for new municipal streets. He also directed all street maintenance and was a principal participant in Mt. Vernon's award of a $6.43 million Urban Development Action Grant (UDAG) which included development of major access roads and utilities for industrial development.

1984-1987 **Site Development Department Head, Reynolds, Smith and Hills, Jacksonville, Florida**

Site Development Department Head for the international architectural, engineering and planning firm of Reynolds, Smith, and Hills, Dr. Presswood designed numerous local roads and street, collector routes, arterial roadways and interstate highways. The majority of roadway design was for Southeast U.S. locations and clients including U.S. Departments of the Army and Navy and NASA (Shuttle Rocket Booster Rehab. Facility). Dr. Presswood also designed roadways for projects located in the Bahamas, Spain and Saudi Arabia.

1987-1992 **City Engineer, City of Las Vegas, Nevada**

Las Vegas City Engineer, Gary Presswood, had ultimate authority for the design, construction and maintenance for all roadways within the City, including the widening of West Sahara Avenue and the design and construction of the Summerlin Parkway and related streets, intersections, and traffic control devices. Summerlin is a major master-planned community (30,000 +/-) for which Dr. Presswood was the City's designated authority for all development and approval. The Summerlin roadway system included innovative "roundabouts", typically a European roadway development.

1992-Present **President, Gary Presswood Inc. dba The Accident Expert™, Las Vegas, Nevada**

Dr. Presswood is the principal in the forensic and design firm of Gary Presswood Inc. He has served as a forensic engineer and expert witness in over 1,000 cases, approximately 40% of which relate to vehicle accident reconstruction and/or roadway design and maintenance. Dr. Presswood also serves as a design and construction consultant for land development projects which include roadway design and construction and traffic control (i.e., signage, striping, lighting, etc.)

EXHIBIT 3

Fee Schedule, Gary A. Presswood & Associates

FEE SCHEDULE

RATES

PROFESSIONAL ENGINEER Engineering Services	$300/hr.
Testimony (Arbitration, Deposition & Trial-2 hr min. chg. from scheduled time)	$400/hr.
LICENSED CONTRACTOR	$150/hr
TECHNICIAN I Technical analysis & research	$ 75/hr.
TECHNICIAN II Research, computations, document retrieval	$ 50/hr.
COMPUTER ILLUSTRATION & ANIMATION	Quoted
TRAVEL & MISCELLANEOUS EXPENSES	At cost.

CONDITIONS

1. All time is measured portal to portal. Travel time, expenses and costs for overnight or elongated stay (as required) will be billed at applicable rates (indicated above).
2. A Non-refundable retainer of **$2,500.00** is required prior to inception of work or designation as expert.
3. "Client" is hereby defined as the person and firm to whom the cover letter is addressed.
4. Client is responsible for payment of all fees and expenses of forensic services as related to this engagement. No work will be performed for adverse or opposing parties (i.e., research, reproduction, review/response to discovery, etc.) without direction and/or concurrence from the client.
5. Fees and expenses may be billed monthly or as time and expenses accrue unless other arrangements are made with the firm of Gary Presswood Inc.
6. Rates are valid for one year from the date of this agreement and are subject to change without notice.
7. **Payment is due upon receipt of invoice.** Payments not received within **60 days** are subject to interest charges at the rate of 1 1/2% per month (18% annual rate) on any unpaid balance. Client (attorney) agrees to reimburse engineer for invoiced charges **regardless** of case outcome. Checks must be made payable to **Gary Presswood Inc.**
8. Work by this firm will cease until all fees are paid if unpaid fees exceed $3,000.

Gary A. Presswood, PE
Effective date: Sept., 2011, Rev. 2.1.15

BUSINESS STATEMENT

To provide the most expeditious, convenient and highest quality service to our clients, **The Accident Expert**™ (Gary A. Presswood Inc.) operates with the latest information and telecommunications technology. We encourage you to use email or our central toll-free numbers for phone and FAX. This will assure your case will be processed quickly, and immediately directed to the appropriate office location. (888.XPRT123 Office &

888.XPRT456 FAX)

When you are ready to retain our services, we ask you to provide relevant data such as complaint documentation, deposition transcripts, statements, photos, and other items you may determine to be critical to your needs.

Our goal is to treat each assignment with the expertise it deserves, without compromising quality. In addition to meeting your technical requirements, we will provide you with timely financial statements, on a monthly basis, detailing financial obligations under our contract. Please note that our work may cease, or be suspended temporarily, on any assignment with an outstanding balance due in excess of $3,000. In addition, all our fees must be paid in full prior to attendance for Depositions, Hearings, Trial, or other court appearances. Under ethical obligations and standards mandated by the engineering profession, at no time will our charges be reduced as a result of the outcome of a case.

Thank you for choosing **The Accident Expert**™ (Gary Presswood Inc.) and accepting the terms of this BUSINESS STATEMENT as part of our contract.

Please Note: It has come to our attention that recently, reference to this firm and/or the name " Gary Presswood", has occasionally been made to opposing attorneys as having been retained as a technical consultant or expert regarding a particular case without our knowledge or retention. In addition and although rarely, refund of retainers have occasionally been requested wherein a case may settle prior to any significant technical input by this firm although our firm may have been referenced in a professional capacity. Obviously we appreciate your trust in our experience and expertise however; we cannot allow our firm to be used in such a manner. Accordingly, while we believe these to be rare occurrences, retainers will not be returned based on outcome of a case or our minimal involvement.

As in the past, retainers serve to primarily secure exclusive representation as your agent regarding a particular case and to initiate case review and research as needed. We trust you understand our position and thank you for your interest in our firm. Finally, we offer best wishes for the success of your respective businesses.

Effective date: Jan. 1, 2013
Rev. 2.1.15

EXHIBIT 4

Deposition Experience of Dr. Gary A. Presswood, ScD, PE
(preceding five years +)

DEPOSITIONS

The following is a compilation of cases wherein depositions were given by Gary A. Presswood, ScD, PE during the preceding five+ years. All cases are within the jurisdiction of the Eighth Judicial District Court, Las Vegas, Nevada unless otherwise noted.

DATE	CASE NAME	CASE NO.
4/19/09	Hansen v. Wynn Resorts Holdings, LLC	A545910
6/26/09	Dreibholz v. Parball Corp.	A543251
9/11/09	D'Agostino-Short v. Wal-Mart Stores, Inc	U.S.D.C..No. 2:09-cv-00238-LDG-PAL
9/13/09	Asato v. Cox Communications	A554665
9/29/09	Stone v. Wal-Mart Stores, Inc.	A561637
10/12/09	Hurt v. Ahern Rentals et al.	A536648
10/21/09	Parkinson v. Bernstein	A528576
11/16/09	Sanders v. Central Pony Express	08A555712
1/27/10	Oshins v. Marriott International, Inc.	A551408
2/9/10	Andrews v. Fiesta Palms	A539430
2/12/10	Wise v. Cordoso, City of Tucson, AZ, et al.	Pima County, Arizona C20090130
2/24/10	Ware v. City of Peoria, AZ	Maricopa Cnty, Arizona CV 2008022165
5/18/10	Marks v. Dakdduk	A597965
6/11/10	Harris v. City of Tucson	Pima county, Arizona C20092922
7/13/10	Wise v. City of Tucson	Pima County, Arizona C20090130
10/27/10	Pelletier v. City of Chandler	Maricopa County, Arizona CV2008-013965
12/21/10	Ochoa v. Metroflag & Metroflag v. Schindler Elevator	A558646
4/14/11	Sponcey v. Carpenter	CV09-3434 Reno, Nevada
4/25/11	Cadieux-Major v. The Mirage	A-10-613939C
7/27/11	Rupkin v. Discount Firearms	A602099
11/7/11	Reichardt v. Blue Martini, LLC	A-10-608169-C
11/27/11	Painter v. Circus Circus Casinos, Inc., et al.	A-09-592282-C
1/8/12	Boots v. M & H Enterprises, Inc.	A584358

2/28/12	Lebitski vs. Drai's After Hours, LLC	A621418
6/6/12	Cantu vs. Simon/Chelsea Las Vegas Development	A-11-635193-C
6/26/12	Hinds-Greenwood v. McDermott	Sangamon County, Illinois 2010-L-201
4/15/13	Becker v. Desert palace	A-11649220-C
4/17/13	Pikulinski v. Wal-Mart Stores	2:12-cv-00823-GMN-GWF
6/13/13	Carrasquillo vs. Wells Cargo Inc.	A-12-654508-C
10/18/13	McCafferty vs. Paris Las Vegas Operating Company, LLC	A644985
10/22/13	Harmon vs.Toll Bros.	A-12-664793-C
10/28/13	Pederson vs, ROMACORP, Inc.	A-10-622286-C
10/31/13	Bruce et al. vs. Kingman Unified Scholl dist #20	CV 2012-924
11/4/13	Garcia vs. Circus Circus Casinos, Inc.	A-11-656270-C
12/9/13	Aronson et al. vs. Kruskie, et al.	12 096823 Charlevoix County, MI
12/16/13	Bingham v. YoCup Yogurt, et al.	CGC 12-6526476 Superior Court of Calf. County of San Francisco
12/17/13	Tzarchei vs. Venetian Casino Resort, LLC	A 616069
1/23/14	Passante vs. The Vons Companies, Inc.	A-13-676040-C
4/8/14	Bonnie Lee Horsley vs. Versacold Logistics Services US, LCC	A-12-668007-C
4/11/14	Sheree Conlon v. Aria Resort & Casino Holding, LLC, et al.	A-12-662718-C
4/21/14	Karen S. & Eban Milmeister vs. Coast Hotels and Casino, Inc.	A-12-672331
4/23/14	Caroline Hacker vs. Hilton Grand Vacations Management, LLC	A-12-659583-C
4/24/14	Schaffer v. Bill Howe Plumbing	37-2013-000474660CU-PA-CTL San Diego County Superior, Central, State of California
6/18/14	Rushing vs. City of Phoenix	CV2011-009110 Superior Court, County of Maricopa, State of Arizona

7/15/14	Debra Stebbins v. Tropicana Express, LLC	A-12-656252-C
8/7/14	Baccellieri v. Estate of Roman Sicho	A-12-665105-C
10/16/14	Smythe v. The Bunkerville Irrigation company	A-12-661680-C
10/29/14	Rolfe vs. The Salvation Army	A-14-698146-C
10/30/14	Hill v. CP Las Vegas, d/b/a/ The Westin	A-13-680804-C
12/10/14	Ly vs. Costco Wholesale Corp.	2:14-cv-004540LDG
1/29/15	Downs vs Dollar Tree Stores, Inc. et al.	2:14-cv-00831-APG-CWH
2/9/15	Margaret Marksberry v. Amigo, LLC d/b/a Desert Sands RV Park	A-13-691206-C
2/26/15	Brown vs. PK Hall Construction, Ltd, et al.	82395 Lamar County, Texas 67th Judicial Dist.
2/13/15	LaVerda Patterson vs. Alexis Heights Unit Owners Assoc.	A-13-676248
4/9/15	Deborah Tourtillott, et al. vs. Yuma County (Arizona)	S1400-CV-2014-00497

EXHIBIT 5

Trial/Testimony Experience of Dr. Gary A. Presswood, ScD, PE
(preceding five years +)

TRIALS/Testimony

The following is a compilation of cases wherein trial, arbitration, or mediation testimony was given by Gary A. Presswood, ScD, PE for the past five+ years. All cases within the jurisdiction of the Eighth Judicial District Court, Las Vegas, Nevada unless otherwise noted.

DATE	CASE NAME	CASE NO.
1/11/08	Parker v. New York-New York, et al.	A496321
2/25/09	Preston v. City of Tucson, Arizona, Pima County Superior Court	C 2004 2292
8/17/09	Buehler v. Palms Hotel & Casino	A521243
8/25/09	Sansom v. Stone Ridge Condominium Assoc.	A529257
2/11/10	Ashenfelter-Tisdale v. Gardner & Assoc.	A508247
6/15/11	Sponcey v. Carpenter, 2nd District Court, Washoe County, Nevada	CV09-3434
8/18/11	Parkinson v. Bernstein, et al.	A528576
9/24/12	Rios v. Quechan Paradise Casino	Claim No. 2009094766 Yuma, AZ
12/11/12	Hurlburt v. The Mirage Hotel, et al.	A-10-617-994-C
8/22/13	Farber vs. Excellent Adult Care	A-11-639065-C
6/19/14	Schaffer v. Bill Howe Plumbing	37-2013-000474660CU-PA-CTL San Diego County Superior, Central
8/28/14	Vicki Nihart v. National Park Service	2:12-cv-291-MMD-GWF
9/9/14	Bullard v. Bellagio	A-11-640310-C
3/6/15	Toya Keyes vs. Edgewater Gaming, LLC	A-12-12666916-C
3/19/15	Sheree Conlon v. Aria Resort & Casino Holding, LLC, et al. (Arbitration)	A-12-682718-C

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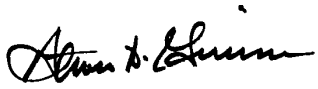

CLERK OF THE COURT

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Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually, Plaintiff, v. WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I through X; inclusive; Defendants.	Case No. A-12-655992-C Dept. No. V **DEFENDANT'S MOTION IN LIMINE [#1] TO EXCLUDE PURPORTED EXPERT WITNESS GARY PRESSWOOD**

Defendant Wynn Las Vegas, LLC ("Wynn") hereby moves for an Order excluding any and all evidence, references to evidence, testimony or argument relating to Plaintiff Yvonne O'Connell's ("Plaintiff") purported expert witness, Gary Presswood, ScD, PE ("Presswood"). As required by E.D.C.R. 2.47, counsel for Wynn has made a good-faith effort to resolve this matter in a satisfactorily manner but was unsuccessful.

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This Motion is made and based upon the following points and authorities, the attached declaration of counsel for Wynn as required by E.D.C.R. 2.47, all pleadings and papers on file herein and any oral arguments this Court may entertain at the hearing of this Motion.

DATED this 13th day of August, 2015.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher

Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
10161 Park Run Drive, Suite 150
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Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada 89155, Eighth Judicial District Court, Las Vegas, Nevada, on the 17 day of Sept., 2015, at 9:00 a.m., before Department V, or as soon thereafter as counsel may be heard, for a hearing on **DEFENDANT'S MOTION IN LIMINE [#1] TO EXCLUDE PURPORTED EXPERT WITNESS GARY PRESSWOOD**.

DATED this 13th day of August, 2015.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a simple slip and fall case. Plaintiff alleges she sustained injuries when she slipped on an unidentified liquid ("foreign substance") on the mosaic tile in the atrium of Wynn's property in February 2010 (the "Incident"). Plaintiff has brought a claim for Negligence against Wynn.

Presswood, Plaintiff's purported expert witness, should be precluded from testifying at trial in this case because he cannot meet the "Assistance Requirement" of NRS 50.275. Specifically, 1) Presswood's purported expert opinion is irrelevant because he failed to analyze the area where Plaintiff unequivocally claims she slipped in Wynn's atrium; 2) his test results are completely unreliable because Presswood failed to properly prepare and calibrate the device that he utilized to conduct his slip-resistance testing at Wynn's property; 3) Presswood concedes there is no acceptable standard of slip-resistance for a wet surface, making his testing entirely speculative; and 4) his alleged laboratory testing, which he bases his opinion, is not the product of reliable methodology.

Therefore, Presswood should be precluded from testifying as an expert witness because he cannot meet the stringent requirements of *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646, 650 (2008).

II. PERTINENT FACTUAL BACKGROUND

On February 8, 2010, at approximately 2:30 p.m., Plaintiff was allegedly walking through the atrium of Wynn's property. As she was walking and not particularly paying attention where she was walking, Plaintiff allegedly slipped on the foreign substance in Wynn's atrium. (Deposition of Yvonne O'Connell, 60:12-62:2, pertinent portions attached hereto as **Exhibit 2**.) Plaintiff claims the foreign substance was green in color and sticky. (*Id.* at 62:10-15, 65:19-21.) Plaintiff alleges she slipped on the flower mosaic tile in Wynn's atrium as opposed to the other marble surface:

> Q: Where you slipped and fell.
>
> A. Where I started -- where I --
>
> Q. Where you started, that's fine.

A. -- started to slip.

Q. Let's start there. On the flowers or on the --

A. Oh, on the flowers.

Q. Okay. On the mosaic flowers.

A. Yes.

...

Q. Okay. Just so I'm clear and that the record is clear, you started slipping on the portion of the floor that contained the mosaic which includes the flowers, right?

A. Yes.

(*Id.* at 61:2-10, 61:23-24:2; *see also* Pictures of Wynn's Atrium Bates Nos. WYNN-O'CONNELL00470-473, attached hereto as **Exhibit 3**.)

On April 1, 2015, Presswood conducted a site inspection of Wynn's property in the area that Plaintiff allegedly slipped and fell. (Presswood's Expert Report, attached hereto as **Exhibit 4**.) According to his purported expert report, Presswood photographed and measured "site elements" and "measured for the walkway's slip-resistance in the area of [Plaintiff's] fall." (*Id.*) Specifically, Presswood measured the slip-resistance of two areas of the walkway in Wynn's atrium: 1) the flower tile mosaic where Plaintiff unequivocally claims she slipped and 2) the smooth marble surface in the walkway. (*Id.*)

Presswood utilized a Horizontal Pull Slipmeter (hereinafter "HPS") to test these areas for the static coefficient of friction. (*Id.*) However, Presswood's expert report only provides his purported test results for the smooth marble surface in the walkway, which is not where Plaintiff alleges she slipped. (*Id.*) Again, Plaintiff alleges she slipped on the tile flower mosaic tile in Wynn's atrium. (Ex. 2, 60:12-62:2.)

For the reasons set forth below, the Court should not permit Presswood to testify at trial.

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III. EXPERT WITNESS STANDARD

"[I]n Nevada, NRS 50.275 is the blueprint for the admissibility of expert witness testimony." *Higgs v. State*, 222 P.3d 648, 658 (Nev. 2010). "To testify as an expert witness under NRS 50.275, the witness must satisfy the following three requirements:"

(1) He or she must be qualified in an area of "scientific, technical or other specialized knowledge" (the qualification requirement);

(2) **His or her specialized knowledge must "assist the trier of fact to understand the evidence or to determine a fact in issue" (the assistance requirement)**; and

(3) His or her testimony must be limited "to matters within the scope of [his or her] specialized knowledge" (the limited scope requirement).

Hallmark, 124 Nev. at 498, 189 P.3d at 650 (emphasis added). An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology." *Id.* at 651. "Just because a witness may be qualified as an expert does not automatically qualify him to give an opinion necessarily based on facts beyond his knowledge." *Choat v. McDorman*, 86 Nev. 332, 335 (1970).

Expert testimony may be considered unless it consists of a "legal conclusion." *U.S. v. Scholl*, 166 F.3d 964, 973 (9th Cir. 1999); *Aguilar v. International Longshoremen's Union*, 966 F.2d 443, 447 (9th Cir. 1992) (noting matters of law are for the court's determination, not that of an expert witness); see also *Marx & Co. v. Diners' Club, Inc.*, 550 F.2d 505, 509-10 (2d Cir. 1977) (expert testimony consisting of legal conclusions inadmissible). "[A]n expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law. Similarly, instructing the jury as to the applicable law is the distinct and exclusive province of the court." *Hangarter v. Provident Life and Accident Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (internal quotation and citation omitted).

Moreover, for a witness specifically retained to provide expert testimony, the expert is required to provide a written report containing, among other things, "a complete statement of all opinions to be expressed and the basis and reasons therefor" and "the data or other information considered by the witness in forming the opinions[.]" Nev. R. Civ. P. 16.1(a)(2)(B). An expert

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witness cannot testify to information and opinions outside the expert report. *FCH1, LLC v. Rodriguez*, 326 P.3d 440 (Nev. 2014).

Based on this standard, Presswood should be precluded from testifying as an expert witness because he cannot meet the requirements under Nevada law.

IV. ARGUMENT

A. Presswood Cannot Meet the Assistance Requirement Because He Fails to Analyze the Tile Flower Mosaic Where Plaintiff Alleges She Slipped, Making His Opinions Irrelevant and Inadmissible for Any Purpose

Presswood's purported expert opinion is completely irrelevant because his expert report is based entirely on his testing of the marble walkway in Wynn's atrium, which is not where Plaintiff alleges she slipped.[1] (*See* Ex. 3.) Plaintiff unambiguously claims she slipped on the flower mosaic tile in Wynn's atrium. (Ex. 2, 60:12-62:2.) Yet, Presswood does not provide test results for the tile flower mosaic. (Ex. 3, pg. 2.) Therefore, Presswood's purported expert opinion is irrelevant and will not assist the jury because he fails to analyze the area where Plaintiff alleges she slipped in Wynn's atrium.

B. Presswood's Purported Results Are Entirely Unreliable Because His Testing Device Was Not Calibrated and He Failed to Properly Sand the Test Foots Before Conducting His Testing

Prior to conducting his tests at Wynn's property, Presswood failed to calibrate the Chatillon gage of the HPS that he utilized to conduct his purported slip-resistance testing. (Ex. 5, pg. 3; Picture of Presswood's Chatillon Gage from Rebuttal Expert Report, attached hereto as **Exhibit 6**.) The standard procedure is to calibrate the Chatillon gage annually by sending the unit to the factory or service center. (Ex. 5, pg. 3.) After re-calibration, an updated label is affixed to the unit by the factory or service center. (*Id.*)

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[1] Presswood asserts that "the tests for the mosaic tile are available but unreliable due to the small tile sizes (3/4" square +/-) which results in higher than realistic readings due to the tile edges 'catching' the test feet thus yielding inconsistent readings." (Ex. 3, p. 2.) Put differently, Presswood's testing of the tile flower mosaic found it to be slip-resistant, obviously something he did not want to disclose. (Wynn's Rebuttal Expert Report of N. Opfer, pgs. 3-4, attached hereto as **Exhibit 5**.)

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Incredibly, Presswood has not calibrated his device for over 18 years. (*Id.*) According to his device, it was last calibrated on August 1, 1995, and was due for re-calibration on August 1, 1996. (Ex. 6.) For this reason, his test results obviously cannot be reliable if he has failed to calibrate his device for 18 years. Therefore, the Court should preclude Presswood from testifying since his measurements are erroneous.

More reason exists to seriously doubt the accuracy of Presswood's measurements. Before conducting his floor tests, it appears Presswood failed to adhere to the ATSM F-609 standards when preparing the test foot of the HPS. (Ex. 5, pg. 3.) ASTM F-609 states the "sanding procedure [of the test foot] should consist of five strokes of 5 to 6 in. in length, parallel to the friction measurement direction, followed by five strokes of 5 to 6 in. in length, perpendicular to the friction measurement direction." Wynn's expert witness, Neil Opfer, did not observe Presswood conduct the second set of sanding perpendicular to the friction measurement direction. (*Id.*) Consequently, Presswood's test results are invalid and the Court should preclude Presswood from testifying at trial.

C. Presswood's Opinions Are Irrelevant and Inadmissible Because There Is No Applicable Standard Upon Which He Can Reply to Support His Conclusions

Presswood concedes "there is no acceptable standard of slip-resistance for a wet surface." (Ex. 3, pg. 2.) Further, Presswood "did not test for a wet surface at the site of this event since (1) the referenced ASTM test standards do not permit testing on any debris covered or wetted surface for specification determination (2), the quantity and quality of the contaminant and other unknown variable are often unknown . . . ." (*Id.*) Therefore, Presswood's conclusions cannot assist the jury since there is no mandatory standard for wet floor test results.

Tellingly, Presswood seemingly tries to overcome the irrelevance of his testimony/expert report by creating his own standard. Presswood states: "In the event a floor is wet as reported, I have found the SCOF of a walkway wetted with distilled water is typically about 70% that of the tested dry value . . . ." (*Id.*) However, Presswood failed to produce a copy of his alleged tests or provide any other information relating to his alleged tests, making his tests unverifiable. Because

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Presswood's conclusions are based on unverifiable tests, his purported expert opinions should be excluded.

D. Presswood's Alleged Laboratory Tests Will Not Assist the Jury Because It Is Not Based on Reliable Methodology and Is Irrelevant

To determine whether an expert's opinion is based upon reliable methodology, the Nevada Supreme Court has instructed a district court to consider whether the opinion is:

> (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization. **If the expert formed his or her opinion based upon the results of a technique, experiment, or calculation, then a district court should also consider whether** (1) the technique, experiment, or calculation was controlled by known standards; (2) the testing conditions were similar to the conditions at the time of the incident; (3) the technique, experiment, or calculation had a known error rate; and (4) it was developed by the proffered expert for purposes of the present dispute.

Hallmark, 124 Nev. at 500-502, 189 P.3d at 651-652 (citations omitted) (emphasis added). These factors are not exhaustive and may be accorded varying weights depending on the case. *Id.*

Here, Presswood's testimony will not assist the jury because it is clearly not the product of reliable methodology. First, Wynn could not locate any cases that have recognized the HPS's use as a recognized field of expertise. Assuming *arguendo* that HPS testing is a recognized field of expertise, there is no evidence that Presswood's alleged laboratory results are testable and have in fact been tested. As such, Presswood undoubtedly fails to meet the first two factors in considering whether his testing is the product of reliable methodology.

Second, Presswood's laboratory tests have not been published or subjected to peer review based on the information disclosed to Wynn. For example, his Curriculum Vitae does not list laboratory testing for wet SCOFF or peer review of the same.

Third, it is very clear that Presswood's conclusions are not accepted in the scientific community. As stated previously, Presswood admits "there is no acceptable standard of slip-resistance for a wet surface." (Ex. 3, pg. 2.) Quite tellingly, Presswood fails to include a copy of the F-609 Standard for HPS testing despite stating the HPS "was used in accordance with strict

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test protocol as established by the American Society of Testing and Materials (ASTM) in accordance with ASTM Stnd. F609 which requires the use of neolite as a test specimen." (*Id.*) The reason Presswood did not include a copy of the F-609 Standard with his report, despite "strictly" complying with it, is as follows:

> The [HPS] is a laboratory and field instrument designed to provide information about the slip index characteristics between walkway surfaces and a test foot material under dry conditions. **The HPS cannot be used on wet surfaces.**
>
> Slip index, as determined by the HPS, most likely will not give useful information for evaluating liquid contaminated surfaces, and therefore, **will not provide an effective assessment of a potential slipping hazard on a walkway surface under these conditions.**

(Emphasis added). Therefore, it is clear Presswood did not "strictly" comply with the test protocol in accordance with the F-609 Standard or follow the conclusions accepted by the scientific community by using the HPS to test the SCOF of a wet floor.

Fourth, because Presswood's opinions are based upon the results of an experiment or calculation, he has to prove that the experiment, *i.e.,* his laboratory testing, was controlled by known standards. *See Hallmark*, 124 Nev. at 502, 189 P.3d at 652. Yet, he could not do that. The F-609 Standard specifically states the HPS will not provide an effective assessment of a potential slipping hazard on a wet floor.

Fifth, Presswood's testing conditions were not remotely similar to those at the time of the Incident. Plaintiff testified the foreign substance was green in color and sticky. (Ex. 2 at 62:10-15, 65:19-21.) A Wynn employee wrote in her statement that it was "syrupy." Presswood's alleged laboratory testing, however, utilized "distilled water." (Ex. 3, pg. 2.) Besides being sticky and syrupy, it is highly unlikely that a tourist (or whoever spilled the alleged substance) spilled distilled water. Further, Presswood fails to state what type of flooring he utilized in his laboratory testing, let alone whether it was the same type of flooring in this case, *i.e.,* marble mosaic tiling. Even more importantly is Presswood's admission that "the quantity and quality of the contaminant and other unknown variables are often unknown" and "[t]ests for any wet or contaminated surface would be speculative at best and not expected to provide scientifically credible and reliable results

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. . . ." *Id.* Thus, it is clear Presswood's testing cannot assist the jury since the conditions were not remotely comparable to those at the time of the Incident.

Sixth, there is no evidence to suggest that Presswood's laboratory testing had a known error rate and, since there is no standard for the HPS on wet floors, it is impossible for Presswood to have an accepted base rate upon which to test an error rate. *Hallmark*, 124 Nev. at 502, 189 P.3d at 652.

Seventh, Presswood clearly did not design his alleged laboratory testing for the present lawsuit. *See id.* He specifically states that he did not test for a wet surface at the site of the Incident.

Finally, Presswood conclusion that the "marble walkway where [Plaintiff] slipped . . . should be considered hazardous to pedestrians especially when wet" is highly speculative, not based on specialized, technical or scientific knowledge and will not assist the jury in understanding the evidence or in determining a fact issue. *Hallmark*, 124 Nev. at 502, 189 P.3d at 652. For these reasons, Presswood's testimony will not assist the jury because it is clearly not the product of reliable methodology.

V. CONCLUSION

Based on the foregoing, the Court should grant Wynn's Motion in Limine [#1] and preclude Presswood from testifying at trial in this case.

DATED this 13th day of August, 2015.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 13th day of August, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **DEFENDANT'S MOTION IN LIMINE [#1] TO EXCLUDE PURPORTED EXPERT WITNESS GARY PRESSWOOD** to the following registered e-mail addresses:

NETTLES LAW FIRM
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Attorneys for Plaintiff

/s/ Lawrence J. Semenza
An Employee of Lawrence J. Semenza, III, P.C.

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EXHIBIT 1

EXHIBIT 1

DECLARATION OF CHRISTOPHER D. KIRCHER, ESO. IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE (#1) TO EXCLUDE PURPORTED EXPERT WITNESS GARY PRESSWOOD

I, CHRISTOPHER D. KIRCHER, ESQ., states and declares as follows:

1. My law firm represents Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn") in its lawsuit against Plaintiff Yvonne O'Connell ("Plaintiff"). I make this Declaration in support of Plaintiff's Motion in Limine (#1) to Exclude Purported Expert Witness Gary Presswood ("Motion"). All of the statements contained in this Declaration are made on the basis of personal knowledge and I am competent to testify as to the truth of these statements if called upon do to so.

2. On Wednesday, August 12, 2015 at 3:30 p.m., I held a telephone conference with Plaintiff's counsel, Christian Morris, Esq., and conducted an EDCR 2.47 conference in a good faith effort to confer on the subject of Wynn's Motion, the other motions in limine that Wynn intends to file and Plaintiff's motion in limine that she intends to file with the Court.

3. During the EDCR 2.47, the parties were unable to resolve this matter satisfactorily because Plaintiff's counsel would not agree to exclude Presswood from testifying at trial.

4. At this time, the parties are unable to resolve the pending issues relating to Wynn's Motion and the other motions in limine. As such, Wynn is filing the instant Motion and its other motions in limine. Wynn's Motion is not brought for any proper purpose or to delay these proceedings.

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED on this 13th day of August, 2015, at Las Vegas, Nevada.

/s/ Christopher D. Kircher
CHRISTOPHER D. KIRCHER, ESQ.

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EXHIBIT 2

EXHIBIT 2

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 YVONNE O'CONNELL,
individually,
5
Plaintiff,
6
vs. Case No. A-12-655992-C
7
WYNN LAS VEGAS, LLC, a Nevada
8 Limited Liability Company,
doing business as WYNN LAS
9 VEGAS; DOES I through X; and
ROE CORPORATIONS I through X,
10 inclusive,
11 Defendants.__)
12
13
14 DEPOSITION OF YVONNE O'CONNELL
15 VOLUME I
16 (PAGES 1-161)
17
Thursday, March 19, 2015
18
10:11 a.m.
19
20 900 South Fourth Street
21 Las Vegas, Nevada
22
23
24
25 Reported by: Allyson W. Harris, NV CCR #740

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1 INDEX OF EXAMINATION

2 WITNESS: YVONNE O'CONNELL

3 EXAMINATION PAGE

4 By Mr. Semenza 4

5

6

7

8 INDEX TO EXHIBITS

9 NUMBER DESCRIPTION PAGE

10 Exhibit 1 Documents Bates stamped 51
11 WYNN-O'CONNELL00470 through 00481

12 Exhibit 2 Incident File Full Report 105

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1 Deposition of Yvonne O'Connell
2 Thursday, March 19, 2015
3 (Prior to the commencement of the
4 deposition, all counsel present agreed to waive
5 statements by the court reporter pursuant to Rule
6 30(b)(4) of the NRCP.)
7 YVONNE O'CONNELL, having been first duly
8 sworn, was examined and testified as follows:
9
10 EXAMINATION
11 BY MR. SEMENZA:
12 Q. Good morning, Ms. O'Connell.
13 A. Good morning.
14 Q. My name is L.J. Semenza, and I represent the
15 Wynn here today. Also with me is Chris Kircher, who
16 works with me in my office.
17 Have you ever had your deposition taken
18 before?
19 A. Yes.
20 Q. When was that?
21 A. In the '90s.
22 Q. How many times have you had your deposition
23 taken?
24 A. Several times.
25 Q. Okay. Can you tell me what instances that

1 fell you weren't looking down at where you were
2 walking?
3 A. No.
4 Q. That's not fair to say?
5 A. That's not fair to say.
6 Q. So immediately prior to the fall you were
7 looking down at where you were walking?
8 A. I was rounding the corner; so I probably was
9 looking closer to where -- the floor.
10 Q. But you don't recall specifically where you
11 were looking, though?
12 A. No.
13 Q. Could I -- does 470 depict the location of
14 where the liquid was -- or the alleged liquid was?
15 A. Yes.
16 Q. Okay. Could you generally place a circle
17 in -- outline where you believe the spill to have
18 taken place or where it was located?
19 A. Yes. The whole spill -- I'm sorry. I think
20 I didn't understand your question.
21 Q. Okay. Could you just outline on this
22 photograph with your pen the location of where you
23 believe the liquid was?
24 A. Okay. Yeah, the entire part?
25 Q. Yes.

1 A. Okay. Yes. (Writing.)
2 Okay. This is pen and I wasn't able to
3 correct those other lines, so --
4 Q. That's okay.
5 A. It was closer to this. Those don't count
6 (indicating).
7 Q. Put an X on the location of those lines that
8 don't count. Just X them out.
9 A. (Writing.)
10 Q. Okay. So what you've drawn on here is where
11 you believe the liquid substance to have been located?
12 A. Yes.
13 Q. After you fell, did you see the liquid
14 substance?
15 A. Yes.
16 Q. Okay.
17 A. Part of it.
18 Q. Part of it. Explain that to me.
19 A. They left me standing on part of it. So I
20 looked down and I saw part of it was nearly dry and
21 extending to my right; so I could see that. Couldn't
22 really see towards the left because some of it was
23 into here, and that part wasn't dry (indicating).
24 Q. Okay. So just for reference, you see this
25 individual here at the bottom of the photograph

1 (indicating)?
2 A. Yes.
3 Q. What you were explaining was that the liquid
4 substance that was on the floor was drying in the
5 location or at the -- in the direction of this
6 individual (indicating)?
7 A. Yes.
8 Q. And in the opposite direction back towards
9 the flowers that are on the floor, the substance was
10 still liquid?
11 A. Yes.
12 Q. Okay. And do you recall on what part of the
13 liquid substance you fell on? Was it the drying part
14 or the liquid part?
15 A. Oh, the liquid part.
16 Q. Okay. The position where you fell, was that
17 on the mosaic flowers or on the other portion of the
18 floor?
19 A. The colored part -- wait. I'm sorry. I
20 misunderstood the question.
21 Q. That's fine.
22 Where did you fall? Did you fall on the
23 flower part, the mosaic part, or the other part of the
24 floor?
25 A. Specifically are you asking where I landed

1 or what --
2 Q. Where you slipped and fell.
3 A. Where I started -- where I --
4 Q. Where you started, that's fine.
5 A. -- started to slip.
6 Q. Let's start there. On the flowers or on
7 the --
8 A. Oh, on the flowers.
9 Q. Okay. On the mosaic flowers.
10 A. Yes.
11 Q. And then when you were falling, were you
12 falling from the position of being on the flowers or
13 on the general floor?
14 A. Oh, it happened suddenly so --
15 Q. You don't know.
16 A. No.
17 Q. When you slipped, was it an immediate fall
18 or did you -- and it's difficult to sort of
19 characterize, but did you immediately fall once you
20 slipped or was there a slight delay where you were
21 trying to regain your balance?
22 A. It happened suddenly.
23 Q. Okay. Just so I'm clear and that the record
24 is clear, you started slipping on the portion of the
25 floor that contained the mosaic which includes the

1 flowers; right?
2 A. Yes.
3 Q. Okay. Do you recall the mechanics of your
4 fall, meaning did your right leg slip? Did your left
5 leg slip? Did your legs fall behind you or in front
6 of you?
7 A. It happened suddenly.
8 Q. Okay.
9 A. I just know I was on the ground.
10 Q. Okay. Was the liquid substance in any way
11 colored?
12 A. The drying part of it had a very slight tint
13 of color.
14 Q. And what was that color?
15 A. Just a hint of green.
16 Q. Okay. Did you see, after you fell, whether
17 there were any empty glasses or any cups that were
18 located in that immediate area where you fell?
19 A. There was nothing.
20 Q. Immediately prior to your slip, were you
21 doing anything in a distracted fashion? Were you on
22 the phone? Were you texting? Were you in your purse
23 for any particular reason?
24 A. No.
25 Q. Did you have your coat on at that point?

1 A. No.
2 Q. Were you holding your coat?
3 A. I assume -- you know, no, I wouldn't have
4 had my coat on. I must have been holding it.
5 Q. What did you have with you on that day? You
6 had a purse?
7 A. A purse.
8 Q. Okay. And your coat? Anything else?
9 A. No.
10 Q. No bags or anything like that?
11 A. No.
12 Q. And are you left-handed or right-handed?
13 A. Right-handed.
14 Q. Is there a particular hand that you normally
15 carry your purse?
16 A. Shoulder.
17 Q. Okay. Do you recall how you were
18 configured, if you will, immediately before your fall,
19 whether you had your coat on your shoulder, whether
20 you were carrying it with your left hand and holding
21 your purse with your right or had your purse on your
22 shoulder? Do you recall any of that?
23 A. Oh, no, I don't.
24 Q. The liquid substance that was on the floor,
25 you don't know what the liquid substance was, do you?

1 A. I believe I do.
2 Q. You do. What was it?
3 A. I believe it was water.
4 Q. And on what basis do you believe that it was
5 water?
6 A. Could you rephrase that, please.
7 Q. Why do you think it was water?
8 A. Because when I was on the ground I thought
9 it was water, and now I'm more convinced it was
10 water.
11 Q. Even though it had a green tint to it?
12 A. Yes.
13 Q. Do you have any understanding as to why it
14 would have been -- it would have had a green tint if
15 it was water?
16 A. I have my belief.
17 Q. What is that?
18 A. That it had been on the -- either running
19 through or over the plants and out of the drain or
20 around the drain and so that's why it had the greenish
21 tint.
22 Q. Well, okay, and I understand that, but why
23 would it have been -- what is the significance of the
24 greenish tint then?
25 A. Maybe it had fertilizer in it. But I

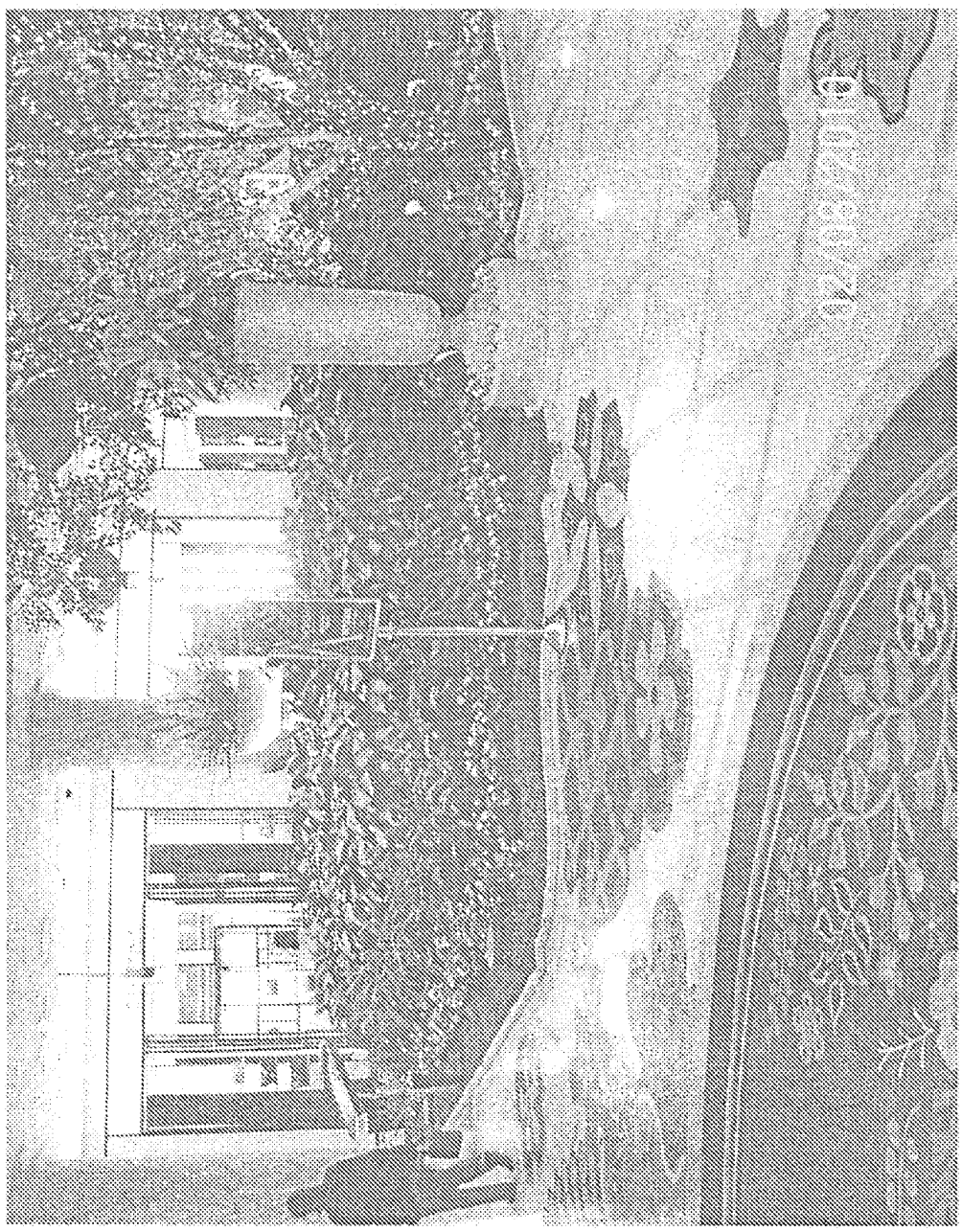
1 believe it was coming from water off the plants or out
2 of the drain.
3 Q. Immediately after the fall did you see any
4 liquid leaking from planters onto the walkway?
5 A. It was absolutely up against the planters,
6 so that's why I thought it came from there.
7 Q. Okay. But there was no liquid substance
8 coming from the planters that you saw onto the
9 walkway, onto the mosaic?
10 A. I could just see it up against. I didn't --
11 so I just assumed it was from there. I'm sorry. I
12 think I didn't understand that question.
13 Q. Okay. You didn't see any continuing or --
14 well, you didn't see any liquid running from the
15 planters onto the --
16 A. Running? Running water?
17 Q. Yes.
18 A. I didn't see any running liquid.
19 Q. And you had identified that the substance
20 was sticky as well, the liquid?
21 A. Yes, a little sticky.
22 Q. Water would not have been sticky, would it
23 have been?
24 A. Sure, if it would have been -- it wasn't
25 that sticky. It -- it -- if it had come off the

1 REPORTER'S CERTIFICATE
2 I, the undersigned, a Certified Court
3 Reporter of the State of Nevada, do hereby certify:
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of the
11 testimony given.
12 Further, that before completion of the
13 proceedings, review of the transcript was not
14 requested.
15 I further certify I am neither financially
16 interested in the action nor a relative or employee of
17 any attorney or party to this action.
18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.
20
21 Dated: 4/27/2015
22
23 /s/ Allyson W. Harris
24 ALLYSON W. HARRIS
CCR No. 740
25

EXHIBIT 3

EXHIBIT 3

Media Attachment



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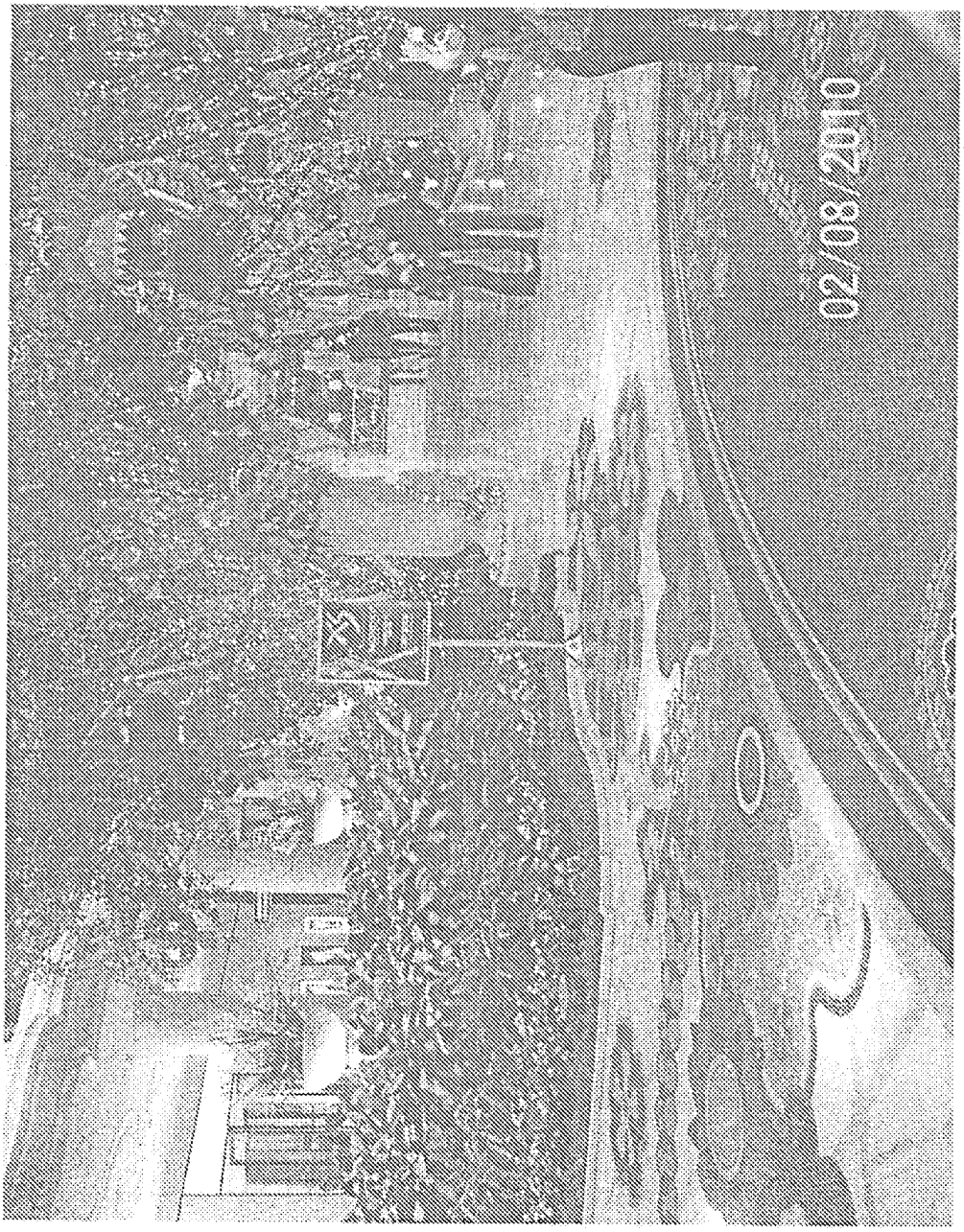

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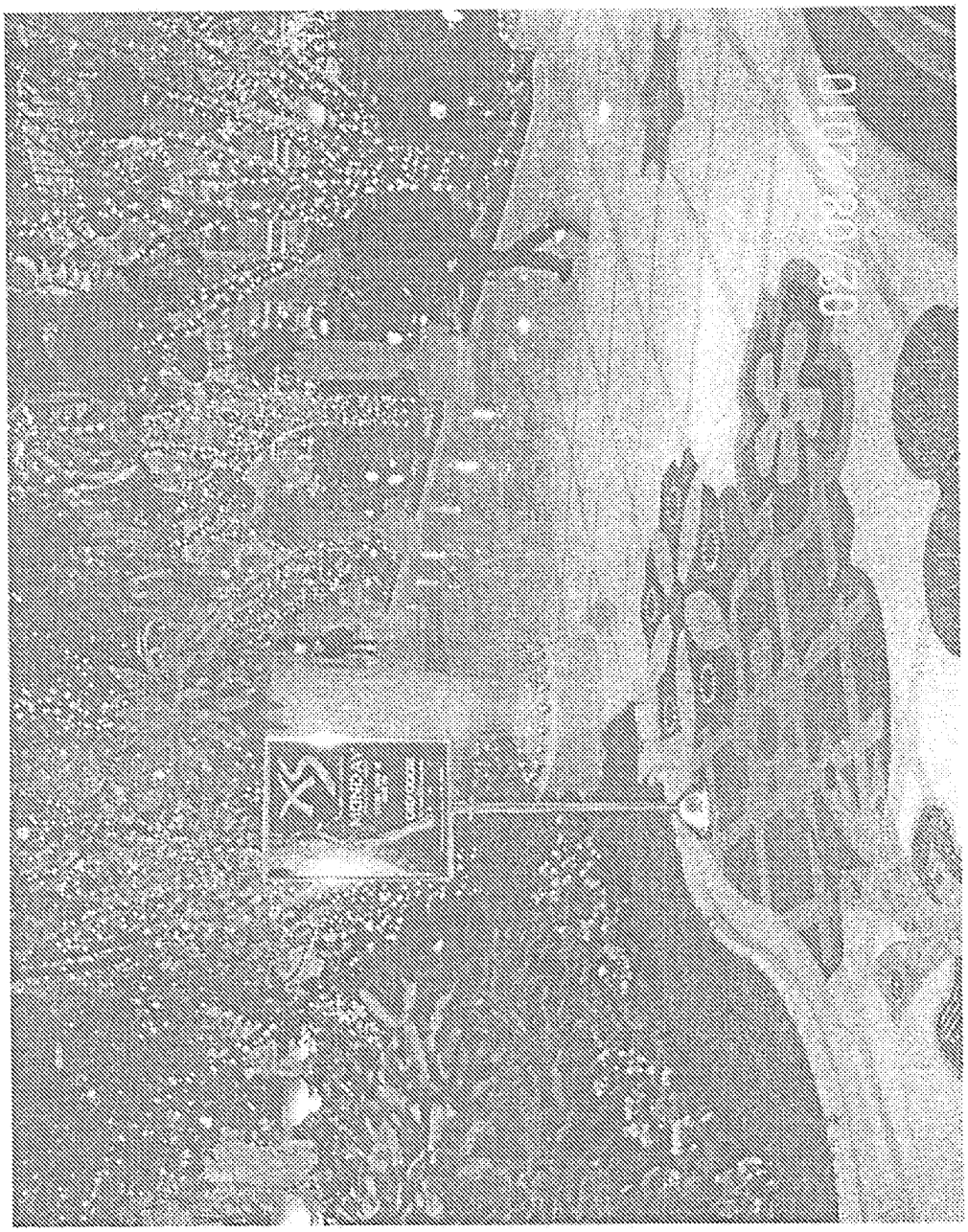

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Docket Nos. 70583 (L), 71789

In the

Supreme Court

for the

State of Nevada

Electronically Filed
May 01 2017 12:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

WYNN LAS VEGAS, LLC d/b/a WYNN LAS VEGAS,
Appellant and Cross-Respondent,

v.

YVONNE O'CONNELL,

Respondent and Cross-Appellant.

Appeal from Judgment on Jury Verdict,
Eighth Judicial District Court, State of Nevada in and for the County of Clark
District Court Case No. A-12-671221-C · Honorable Jennifer P. Togliatti

APPELLANT'S APPENDIX
VOLUME 2 OF 18 – Pages 222 to 430

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Docket 70583 Document 2017-14292

CHRONOLOGICAL INDEX

Description	Page
VOLUME 1 OF 18 – Pages 1 to 221	
Complaint, Filed February 7, 2012	1
Summons [Amended Complaint], Filed March 20, 2012	22
Affidavit of Service [Summons], Filed April 4, 2012	28
Answer to Amended Complaint, Filed July 24, 2013	32
Plaintiff's Early Case Conference Disclosures, Filed October 9, 2013	37
Order Setting Civil Non-Jury Trial and Calendar Call, Filed December 5, 2013	46
Amended Order Setting Civil Jury Trial and Calendar Call, Filed October 1, 2014	49
Plaintiff's First Supplement to and Amendment of Initial 16.1 Disclosures, Filed March 16, 2015	52
Plaintiff's Second Supplement to Initial 16.1 Disclosures, Filed March 18, 2015	70
Plaintiff's Initial Expert Disclosures, Filed April 13, 2015	90
Exhibit 1	93
Plaintiff's Third Supplement to Initial 16.1 Disclosures, Filed June 12, 2015	128
Defendant's Motion for Summary Judgment, Filed July 13, 2015	150
Exhibit 1	162
Exhibit 2	179
Exhibit 3	181
Exhibit 4	195
Plaintiff's Fourth Supplement to Initial 16.1 Disclosures, Filed July 14, 2015	200

VOLUME 2 OF 18 – Pages 222 to 430

Plaintiff's Opposition to Defendant's Motion for Summary Judgment, 222
Filed July 27, 2015
Exhibit 1 238
Exhibit 2 283
Exhibit 3 308
Exhibit 4 353
Exhibit 5 358

Plaintiff's Errata to Opposition to Defendant's Motion for Summary Judgment, 361
Filed August 11. 2015
Exhibit 6 364

Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness 398
Gary Presswood,
Filed August 13, 2015
Exhibit 1 410
Exhibit 2 412
Exhibit 3 426
(EXHIBITS CONTINUED IN VOLUME 3)

VOLUME 3 OF 18 – Pages 431 to 640

Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness
Gary Presswood,
Filed August 13, 2015 (EXHIBITS CONTINUED FROM VOLUME 2)
Exhibit 4 431
Exhibit 5 470
Exhibit 6 571

Plaintiff' Amended Fourth Supplement to Initial 16.1 Disclosures, 574
Filed August 27, 2015

Plaintiff's Opposition to Wynn's Motion in Limine [#1] to Exclude Purported Expert 596
Witness Gary Presswood,
Filed August 27, 2015
Exhibit 1 602
Exhibit 2 607
Exhibit 3 611
Exhibit 4 613
Exhibit 5 616

Reply in Support of Defendant's Motion for Summary Judgment, 619
Filed September 10, 2015

Reply in Support of Defendant's Motion in Limine [#1] to Exclude Purported Expert 636
Witness Gary Presswood,
Filed September 10, 2015

VOLUME 4 OF 18 – Pages 641 to 861

Reply in Support of Defendant's Motion in Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions, Filed September 10, 2015 641
Exhibit 1 650
Exhibit 2 698

Recorder's Transcript re: Defendant's Motion for Summary Judgment, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: September 17, 2015 (Filed On: January 11, 2017) 701

Plaintiff' Fifth Supplement to Initial 16.1 Disclosures, Filed September 18, 2015 706

Plaintiff' Sixth Supplement to Initial 16.1 Disclosures, Filed September 28, 2015 727

Transcript of Proceedings re: Defendant's Motions In Limine and Plaintiff's Omnibus Motions In Limine, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: October 1, 2015 (Filed On: October 12, 2015) 749

Order Denying Defendant's Motion for Summary Judgment, Filed October 9, 2015 805

Notice of Entry of Order Denying Defendant's Motion for Summary Judgment, Filed October 12, 2015 807
Order Denying Defendant's Motion for Summary Judgment 809

Defendant's Supplemental Brief to Exclude Plaintiff's Treating Physician Expert Witnesses, Filed October 27, 2015 811
Exhibit 1 818
Exhibit 2 839

(EXHIBITS CONTINUED IN VOLUME 5)

VOLUME 5 OF 18 – Pages 862 to 1049

Defendant's Supplemental Brief to Exclude Plaintiff's Treating Physician Expert Witnesses, Filed October 27, 2015 (EXHIBITS CONTINUED FROM VOLUME 4)
Exhibit 3 862
Exhibit 4 885
Exhibit 5 916

Plaintiff's Brief as to Doctor Tingey's Testimony at Trial, Filed October 27, 2015 946
Exhibit 1 956
Exhibit 2 979

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Verdict Forms, Filed October 27, 2015 983

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Voir Dire Questions, Filed October 27, 2015 988

Plaintiff's Proposed Verdict Forms, Filed October 28, 2015 993

Plaintiff's Proposed Voir Dire Questions, Filed October 28, 2015 997

Defendant's Proposed Jury Instructions, Dated October 28, 2015 1001

VOLUME 6 OF 18 – Pages 1050 to 1271

Defendant's Proposed Jury Instructions (Without Citations), Dated October 28, 2015 1050

Transcript of Proceedings re: Plaintiff's Emergency Motion to Continue Trial and for Sanctions on Order Shortening Time: Supplemental Brief on Motion In Limine, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: October 29, 2015 (Filed On: January 12, 2016) 1098

Order Granting Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood, Filed November 2, 2015 1137

Order Denying Without Prejudice Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions, Filed November 2, 2015 1139

Transcript of Proceedings – Jury Trial – Day 1, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 4, 2015 (Filed January 12, 2016) 1142

VOLUME 7 OF 18 – Pages 1272 to 1470

Notice of Entry of Order, Filed November 5, 2015 1272

Order on Plaintiff's Omnibus Motions In Limine 1274

Notice of Entry of Order, 1277
Filed November 5, 2015
Order Granting Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood 1279

Notice of Entry of Order, 1281
Filed November 5, 2015
Order Denying Without Prejudice Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions 1283

Transcript of Proceedings – Jury Trial – Day 2, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1286
Date of Proceedings: November 5, 2015 (Filed January 12, 2016)

Jury List, 1408
Filed November 9, 2015

Defendant's Bench Brief Regarding Future Pain and Suffering, 1409
Dated November 9, 2015

Defendant's Bench Brief Regarding Exclusion of Plaintiff's Treating Physician Testimony Solely Based on Plaintiff's Self-Reporting, 1412
Dated November 9, 2015
Exhibit 1 1415

Plaintiff's Brief as to Testimony Regarding Future Pain and Suffering, 1423
Filed November 9, 2015
Exhibit 1 1429
Exhibit 2 1433
Exhibit 3 1438

Plaintiff's Brief Regarding Causation Testimony by Drs. Dunn and Tingey, 1464
Filed November 9, 2015

VOLUME 8 OF 18 – Pages 1471 to 1691

Transcript of Proceedings – Jury Trial – Day 3, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1471
Date of Proceedings: November 9, 2015 (Filed January 12, 2016)

Defendant's Bench Brief Regarding Future Pain and Suffering, 1612
Dated November 10, 2015

Defendant's Bench Brief Regarding Exclusion of Plaintiff's Treating Physician Testimony Solely Based on Plaintiff's Self-Reporting, 1615
Dated November 10, 2015
Exhibit 1 1618

Transcript of Proceedings – Jury Trial – Day 4, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 10, 2015 (Filed January 12, 2016) (TRANSCRIPT CONTINUED IN VOLUME 9) 1626

VOLUME 9 OF 18 – Pages 1692 to 1912

Transcript of Proceedings – Jury Trial – Day 4, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 10, 2015 (Filed January 12, 2016) (TRANSCRIPT CONTINUED FROM VOLUME 8)

Amended Jury List, Filed November 12, 2015 1883

Plaintiff's Brief as to Constructive Notice, Filed November 12, 2015 1884

Defendant's Bench Brief Regarding Expert Medical Testimony to Apportion Damages, Filed November 12, 2015 1891

Transcript of Proceedings – Jury Trial – Day 5, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 12, 2015 (Filed January 12, 2016) (TRANSCRIPT CONTINUED IN VOLUME 10) 1895

VOLUME 10 OF 18 – Pages 1913 to 2133

Transcript of Proceedings – Jury Trial – Day 5, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 12, 2015 (Filed January 12, 2016) (TRANSCRIPT CONTINUED FROM VOLUME 9) (TRANSCRIPT CONTINUED IN VOLUME 11)

VOLUME 11 OF 18 – Pages 2134 to 2353

Transcript of Proceedings – Jury Trial – Day 5, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 12, 2015 (Filed January 12, 2016) (TRANSCRIPT CONTINUED FROM VOLUME 10)

Transcript of Proceedings – Jury Trial – Day 6, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: November 13, 2015 (Filed January 12, 2016) 2228

Verdict Form, Filed November 16, 2015 2277

Jury Instructions, 2278
Filed November 16, 2015

Verdict(s) Submitted to Jury But Returned Unsigned, 2321
Filed November 16, 2015

Transcript of Proceedings – Jury Trial – Day 7, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 2323
Date of Proceedings: November 16, 2015 (Filed January 12, 2016)

Judgment on Verdict, 2338
Filed December 15, 2015

Notice of Entry of Judgment on Verdict, 2340
Filed December 15, 2015
Judgment on Verdict 2342

Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey, 2344
Filed December 23, 2015

Notice of Posting Supersedeas Bond, 2347
Filed December 23, 2015

VOLUME 12 OF 18 – Pages 2354 to 2543

Notice of Entry of Order, 2354
Filed December 28, 2015
Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey 2356

Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 2359
Filed December 30, 2015
Exhibit 1 2387
Exhibit 2 2403
Exhibit 3 2419
Exhibit 4 2429
Exhibit 5 2449
Exhibit 6 2462
Exhibit 7 2475
Exhibit 8 2477
(EXHIBITS CONTINUED IN VOLUME 13)

VOLUME 13 OF 18 – Pages 2544 to 2764

Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur,
Filed December 30, 2015 (EXHIBITS CONTINUED FROM VOLUME 13)
Exhibit 9 2544
Exhibit 10 2595

Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial, 2631
Filed January 19, 2016
Exhibit 1 2657
(EXHIBITS CONTINUED IN VOLUME 14)

VOLUME 14 OF 18 – Pages 2765 to 2985

Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial,
Filed January 19, 2016
Exhibit 1 (EXHIBITS CONTINUED FROM VOLUME 13)
Exhibit 2 2799
(EXHIBITS CONTINUED IN VOLUME 15)

VOLUME 15 OF 18 – Pages 2986 to 3206

Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial,
Filed January 19, 2016
Exhibit 2 (EXHIBITS CONTINUED FROM VOLUME 14)
Exhibit 3 3057
(EXHIBITS CONTINUED IN VOLUME 16)

VOLUME 16 OF 18 – Pages 3207 to 3432

Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial,
Filed January 19, 2016
Exhibit 3 (EXHIBITS CONTINUED FROM VOLUME 15)

Defendant Wynn Las Vegas, LLC's Reply in Support of Renewed Motion for Judgment as Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 3391
Filed January 28, 2016

Notice of Related Authorities in Support of Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 3408
Filed March 3, 2016
Exhibit 1 3411

VOLUME 17 OF 18 – Pages 3433 to 3638

Minutes from Docket [All Pending Motions], Dated March 4, 2016 — 3433

Transcript re: Hearing: All Pending Motions, Eighth Judicial District Court – Civil/Criminal Division – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, Date of Proceedings: March 4, 2016 (Filed September 13, 2016) — 3444

Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur, Filed May 24, 2016 — 3472

Notice of Entry of Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur, Filed May 25, 2016 — 3486

- Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur — 3488

Notice of Appeal, Filed June 8, 2016 [June 16, 2016] — 3502

- Case Appeal Statement — 3505
- Case Summary — 3510
- Civil Cover Sheet — 3523
- Judgment on Verdict — 3524
- Notice of Entry of Judgment on Verdict — 3526
- Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur — 3530
- Notice of Entry of Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur — 3544
- Court Minutes [Various Dates] — 3560
- Plaintiff's Proposed Exhibits — 3595
- Wynn's Proposed Exhibit List — 3597
- Joint Stipulated Exhibits of the Parties — 3602

DEFENDANT'S TRIAL EXHIBITS

Defendant's Trial Exhibit No. B-1 – University Medical Center – Ambulatory Care Medical History Form [Record [Pages 54 and 55] 3606

Defendant's Trial Exhibit No. E-1 – Clinical Neurology [Pages 1 and 2] 3608

Defendant's Trial Exhibit No. G-1 – Patient Health Questionnaire – PHQ [Page 1 Only] 3610

Defendant's Trial Exhibit No. I – Southern Nevada Pain Center [Pages 1 to 4] 3611

Defendant's Trial Exhibit No. P-1 – Andrew M. Cash, M.D. Report 3615

Defendant's Trial Exhibit No. R – Report Taken February 17, 2010 [Pages 1 to 6] 3620

Defendant's Trial Exhibit No. Y – Yvonne S. O'Connell Patron Information 3626

Defendant's Trial Exhibit No. Z – Wynn Atrium Log 3629

VOLUME 18 OF 18 – Pages 3639 to 3770

Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions and Damages Claimed by Plaintiff, Filed August 13, 2015 3639

Exhibit 1 3653
Exhibit 2 3655
Exhibit 3 3685
Exhibit 4 3692
Exhibit 5 3699
Exhibit 6 3704
Exhibit 7 3714
Exhibit 8 3719

Plaintiff's Opposition to Wynn's Motion Motion In Limine [#2] to Exclude Unrelated Medical Conditions and Damages Claimed by Plaintiff and Motion for Sanctions for Violation of HIPPA Protected Information, Filed August 27, 2015 3742

Exhibit 1 3748

ALPHABETICAL INDEX

Affidavit of Service [Summons], 28
Filed April 4, 2012

Amended Order Setting Civil Jury Trial and Calendar Call, 49
Filed October 1, 2014

Answer to Amended Complaint, 32
Filed July 24, 2013

Complaint, 1
Filed February 7, 2012

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Verdict Forms, 983
Filed October 27, 2015

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Voir Dire Questions, 988
Filed October 27, 2015

Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 2359
Filed December 30, 2015

Exhibit 1 2387
Exhibit 2 2403
Exhibit 3 2419
Exhibit 4 2429
Exhibit 5 2449
Exhibit 6 2462
Exhibit 7 2475
Exhibit 8 2477
Exhibit 9 2544
Exhibit 10 2595

Defendant Wynn Las Vegas, LLC's Reply in Support of Renewed Motion for Judgment as Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 3391
Filed January 28, 2016

Defendant's Bench Brief Regarding Exclusion of Plaintiff's Treating Physician Testimony Solely Based on Plaintiff's Self-Reporting, 1412
Dated November 9, 2015

Exhibit 1 1415

Defendant's Bench Brief Regarding Exclusion of Plaintiff's Treating Physician Testimony Solely Based on Plaintiff's Self-Reporting, 1615
Dated November 10, 2015

Exhibit 1 1618

Defendant's Motion for Summary Judgment, 150
Filed July 13, 2015
Exhibit 1 162
Exhibit 2 179
Exhibit 3 181
Exhibit 4 195

Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness 398
Gary Presswood,
Filed August 13, 2015
Exhibit 1 410
Exhibit 2 412
Exhibit 3 426
Exhibit 4 431
Exhibit 5 470
Exhibit 6 571

Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions and
Damages Claimed by Plaintiff, 3639
Filed August 13, 2015
Exhibit 1 3653
Exhibit 2 3655
Exhibit 3 3685
Exhibit 4 3692
Exhibit 5 3699
Exhibit 6 3704
Exhibit 7 3714
Exhibit 8 3719

Defendant's Bench Brief Regarding Future Pain and Suffering, 1409
Dated November 9, 2015

Defendant's Bench Brief Regarding Future Pain and Suffering, 1612
Dated November 10, 2015

Defendant's Proposed Jury Instructions (Without Citations), 1050
Dated October 28, 2015

Defendant's Proposed Jury Instructions, 1001
Dated October 28, 2015

Defendant's Supplemental Brief to Exclude Plaintiff's Treating Physician Expert 811
Witnesses,
Filed October 27, 2015
Exhibit 1 818
Exhibit 2 839
Exhibit 3 862
Exhibit 4 885
Exhibit 5 916

DEFENDANT'S TRIAL EXHIBITS

Defendant's Trial Exhibit No. B-1 – University Medical Center – Ambulatory Care Medical History Form [Record [Pages 54 and 55] 3606

Defendant's Trial Exhibit No. E-1 – Clinical Neurology [Pages 1 and 2] 3608

Defendant's Trial Exhibit No. G-1 – Patient Health Questionnaire – PHQ [Page 1 Only] 3610

Defendant's Trial Exhibit No. I – Southern Nevada Pain Center [Pages 1 to 4] 3611

Defendant's Trial Exhibit No. P-1 – Andrew M. Cash, M.D. Report 3615

Defendant's Trial Exhibit No. R – Report Taken February 17, 2010 [Pages 1 to 6] 3620

Defendant's Trial Exhibit No. Y – Yvonne S. O'Connell Patron Information 3626

Defendant's Trial Exhibit No. Z – Wynn Atrium Log 3629

Jury List,
Filed November 9, 2015 1408

Minutes from Docket [All Pending Motions],
Dated March 4, 2016 3433

Notice of Appeal,
Filed June 8, 2016 [June 16, 2016] 3502

- Case Appeal Statement 3505
- Case Summary 3510
- Civil Cover Sheet 3523
- Judgment on Verdict 3524
- Notice of Entry of Judgment on Verdict 3526
- Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur 3530
- Notice of Entry of Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur 3544
- Court Minutes [Various Dates] 3560
- Plaintiff's Proposed Exhibits 3595
- Wynn's Proposed Exhibit List 3597
- Joint Stipulated Exhibits of the Parties 3602

Notice of Entry of Judgment on Verdict, 2340
Filed December 15, 2015
Judgment on Verdict 2342

Notice of Entry of Order, 2354
Filed December 28, 2015
Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey 2356

Notice of Entry of Order, 1272
Filed November 5, 2015
Order on Plaintiff's Omnibus Motions In Limine 1274

Notice of Entry of Order, 1277
Filed November 5, 2015
Order Granting Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood 1279

Notice of Entry of Order, 1281
Filed November 5, 2015
Order Denying Without Prejudice Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions 1283

Notice of Entry of Order Denying Defendant's Motion for Summary Judgment, 807
Filed October 12, 2015
Order Denying Defendant's Motion for Summary Judgment 809

Notice of Entry of Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur, 3486
Filed May 25, 2016
Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur 3488

Notice of Posting Supersedeas Bond, 2347
Filed December 23, 2015

Notice of Related Authorities in Support of Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur, 3408
Filed March 3, 2016
Exhibit 1 3411

Order Denying Defendant's Motion for Summary Judgment, 805
Filed October 9, 2015

Order Denying Defendant's Renewed Motion for Judgment as Matter of Law or Alternatively for a New Trial or Remittitur, 3472
Filed May 24, 2016

Order Denying Without Prejudice Defendant's Motion In Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions, Filed November 2, 2015 — 1139

Order Granting Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood, Filed November 2, 2015 — 1137

Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey, Filed December 23, 2015 — 2344

Order Setting Civil Non-Jury Trial and Calendar Call, Filed December 5, 2013 — 46

Plaintiff' Amended Fourth Supplement to Initial 16.1 Disclosures, Filed August 27, 2015 — 574

Plaintiff's Brief as to Doctor Tingey's Testimony at Trial, Filed October 27, 2015 — 946
- Exhibit 1 — 956
- Exhibit 2 — 979

Plaintiff's Brief as to Testimony Regarding Future Pain and Suffering, Filed November 9, 2015 — 1423
- Exhibit 1 — 1429
- Exhibit 2 — 1433
- Exhibit 3 — 1438

Plaintiff' Fifth Supplement to Initial 16.1 Disclosures, Filed September 18, 2015 — 706

Plaintiff' Sixth Supplement to Initial 16.1 Disclosures, Filed September 28, 2015 — 727

Plaintiff's Brief Regarding Causation Testimony by Drs. Dunn and Tingey, Filed November 9, 2015 — 1464

Plaintiff's Early Case Conference Disclosures, Filed October 9, 2013 — 37

Plaintiff's Errata to Opposition to Defendant's Motion for Summary Judgment, Filed August 11. 2015 — 361
- Exhibit 6 — 364

Plaintiff's First Supplement to and Amendment of Initial 16.1 Disclosures, Filed March 16, 2015 — 52

Plaintiff's Fourth Supplement to Initial 16.1 Disclosures, Filed July 14, 2015 — 200

Plaintiff's Initial Expert Disclosures, 90
Filed April 13, 2015
Exhibit 1 93

Plaintiff's Opposition to Defendant's Motion for Summary Judgment, 222
Filed July 27, 2015
Exhibit 1 238
Exhibit 2 283
Exhibit 3 308
Exhibit 4 353
Exhibit 5 358

Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial, 2631
Filed January 19, 2016
Exhibit 1 2657
Exhibit 2 2799
Exhibit 3 3057

Plaintiff's Opposition to Wynn's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood, 596
Filed August 27, 2015
Exhibit 1 602
Exhibit 2 607
Exhibit 3 611
Exhibit 4 613
Exhibit 5 616

Plaintiff's Opposition to Wynn's Motion Motion In Limine [#2] to Exclude Unrelated Medical Conditions and Damages Claimed by Plaintiff and Motion for Sanctions for Violation of HIPPA Protected Information, 3742
Filed August 27, 2015
Exhibit 1 3748

Plaintiff's Proposed Verdict Forms, 993
Filed October 28, 2015

Plaintiff's Proposed Voir Dire Questions, 997
Filed October 28, 2015

Plaintiff's Second Supplement to Initial 16.1 Disclosures, 70
Filed March 18, 2015

Plaintiff's Third Supplement to Initial 16.1 Disclosures, 128
Filed June 12, 2015

Recorder's Transcript re: Defendant's Motion for Summary Judgment, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 701
Date of Proceedings: September 17, 2015 (Filed On: January 11, 2017)

Reply in Support of Defendant's Motion for Summary Judgment, 619
Filed September 10, 2015

Reply in Support of Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood, 636
Filed September 10, 2015

Reply in Support of Defendant's Motion in Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions, 641
Filed September 10, 2015
Exhibit 1 650
Exhibit 2 698

Summons [Amended Complaint], 22
Filed March 20, 2012

Transcript of Proceedings – Jury Trial – Day 1, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1142
Date of Proceedings: November 4, 2015 (Filed January 12, 2016)

Transcript of Proceedings – Jury Trial – Day 2, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1286
Date of Proceedings: November 5, 2015 (Filed January 12, 2016)

Transcript of Proceedings – Jury Trial – Day 3, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1471
Date of Proceedings: November 9, 2015 (Filed January 12, 2016)

Transcript of Proceedings re: Defendant's Motions In Limine and Plaintiff's Omnibus Motions In Limine, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 749
Date of Proceedings: October 1, 2015 (Filed On: October 12, 2015)

Transcript of Proceedings re: Plaintiff's Emergency Motion to Continue Trial and for Sanctions on Order Shortening Time: Supplemental Brief on Motion In Limine, District Court – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 1098
Date of Proceedings: October 29, 2015 (Filed On: January 12, 2016)

Transcript re: Hearing: All Pending Motions, Eighth Judicial District Court – Civil/Criminal Division – Clark County, Nevada, Before the Honorable Carolyn Ellsworth, 3444
Date of Proceedings: March 4, 2016 (Filed September 13, 2016)

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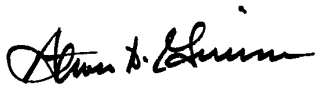

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DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual, Plaintiff, vs. WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-12-655992-C DEPARTMENT NO. V **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** Hearing Date: 09/17/2015 Hearing Time: 9:00 a.m.

Plaintiff, Yvonne O'Connell, by and through her counsel, Brian D. Nettles, Esq. and Christian M. Morris, Esq. of the Nettles Law Firm, submits the following in opposition to Defendant's Motion for Summary Judgment.

This Opposition is made and based upon the attached memorandum of points and authorities, all papers and pleadings on file herein and such oral argument as the court may allow

....

....

....

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at hearing on this matter.

DATED this 27th day of July, 2015.

NETTLES LAW FIRM

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

The present case arises out of a an incident on or about February 8, 2010, where Plaintiff Yvonne O'Connell was a customer and invited guest of Defendant Wynn Las Vegas at their hotel and casino located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada. Plaintiff was at the location on this day for purposes of gambling and dining. When Plaintiff was walking near the south entrance of the casino through the Atrium Walkway, on the shadowed, multi-colored floor, she suddenly and unexpectedly slipped and fell in a large pool of liquid substance present on the floor. As a result of the fall the Plaintiff sustained injuries.

The pool of liquid which caused the fall had been present on the floor for such a long period of time that it had footprints in it and had begun to dry. All evidence presented shows the pool of liquid substance was approximately seven (7) feet long. The substance on the floor was witnessed by multiple employees of Wynn as well as the Plaintiff.

The area where Plaintiff fell is a beautiful walkway which leads to the shops and casino, and is surrounded by trees, plants and flowers. Wynn employees admit they were tasked with monitoring the area to ensure there were no dangerous conditions; however, there was no set

schedule and they were only required to walk through the area every "hour or two." Wynn has been unable to identify the individuals responsible for maintaining the area at the time Plaintiff fell. Wynn also admits that there was a substance on the floor and the substance had been on the floor long enough to dry in certain areas and become sticky. Wynn's Porter Supervisor, Yanet Elias, also admits that there was an employee in the direct vicinity of Plaintiff when she fell.

The instant Motion for Summary Judgment alleges that Yvonne has failed to present triable issues of fact on the claims of liability. Despite the allegations contained in Defendant's Motion for Summary Judgment, there are multiple issues of triable fact showing that Defendant was negligent and that negligence caused injury to Plaintiff.

II.

CONCISE STATEMENTS / UNDISPUTED FACTS

The Liquid Substance Was Approximately Seven (7) Feet Long and so Large that a Sweeper Machine Was Unable to Cover the Entire Area:

See, June 9, 2015, deposition transcript of Plaintiff Yvonne O'Connell at pg. 271 ll. 2-10, attached as Exhibit 1.

Q: And did he have any equipment with him when he came over?

A: He had that large sweeper.

Q: And - - and what did he do with that large sweeper, if anything, if you remember?

A: After he came and apologized, he took the large sweeper, he went to my left, and - - and to - - to the back of me, and placed his machines at the end of the liquid.

See, March 24, 2015, deposition transcript of Yanet Elias at pg. 16, ll. 21–25, attached hereto as Exhibit 2.

Q: So where was the sweeper placed? The sweeper machine that you talked about, from what you just said, I think you said they put it over the substance on the floor?

A: Yes.

. . . .

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The Liquid Substance had been on the Floor for Such a Long Period of Time it Had Started to Dry and Contained Footprints:

See, March 19, 2015, deposition transcript of Plaintiff Yvonne O'Connell, at pg. 59, ll. 15-23, pg. 60, ll. 8-15 and pg. 61 l. 9, Exhibit 3.

Q: After you fell, did you see the liquid substance?

A: They left me standing on part of it. So I looked down and I saw part of it was nearly dry and extending to my right; so I could see that. Couldn't really see towards the left because some of it was into here, and that part wasn't dry (indicating).

Q. And in the opposite direction back towards the flowers that are on the floor, the substance was still liquid?

A. Yes.

Q. Okay. And do you recall on what part of the liquid substance you fell on? Was it the drying part or the liquid part?

A. Oh, the liquid part.

Q. Okay. On the mosaic flowers.

See, March 19, 2015 deposition transcript of Plaintiff Yvonne O'Connell, at pg. 67, ll. 9-14, Exhibit 3.

Q. Okay. You don't know how long that liquid substance was present on that floor before you slipped on it, do you?

A. I know that it was on the floor long enough for part of it to almost dry and accumulate some footprints.

See, March 19, 2015, deposition transcript of Plaintiff Yvonne O'Connell, at pg. 115, ll. 13-25, Exhibit 3.

Q. The liquid substance that you testified to that was on the floor, you had mentioned that there were footprints in it; is that correct?

A. Yes.

Q. How many footprints were at that location where the sticky substance was?

A. Oh, I didn't count them. A few.

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Q. There were a few? Okay. And were they dark in color? Is that how you were able to see them?

A. Dirty footprints. Like after you mop your floor, you walk on it and it leaves dirty footprints.

See, June 9, 2015, deposition transcript of Plaintiff Yvonne O'Connell, at pg. 275, ll. 9-25, pg. 276 ll. 1-21, Exhibit 1.

Q. The area that you were standing, you said you were still standing in the liquid while they were cleaning the other end of the liquid; is that correct?

A. Yes.

Q. And how could you tell that you were still standing in the liquid?

A. Well, it – the liquid covered a large area, **at least 7 feet**. And the part that I slipped on in the walkway towards the back of me was still really slippery. And the part – once the people picked me up, the part over here in the open, two different pathways because it was – it was like a diagonal. So that part in the open under the lights, it had like – at least a 3-foot part of it had almost dried already. And so I was standing on the part, it wasn't slippery anymore. Little bit sticky and some footprints around it."

Wynn Admits Employees Should Have Monitored the Area Where Plaintiff Fell; But Can't Identify the Employees:

See, March 24, 2015, deposition transcript of Yanet Elias at pg. 74, ll. 1-5, and pg. 32, ll. 10-14, Exhibit 2.

Q: Okay. So, it's my understanding from your testimony that it's the public areas department that is responsible for ensuring that the floor is clean and free of debris.

A: Yes.

Q: Now, it's been stated that there were two attendants in the area where Miss. O'Connell fell that were continuously inspecting the property and the grounds. Do you know who those attendants were?

A: No.

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Wynn Failed to Maintain a Sweep Log of the Area Where Plaintiff Fell:

See, March 24, 2015, deposition transcript of Yanet Elias at pg. 51, ll. 1-11 and pg. 52, ll. 5-17, Exhibit 2.

Q: Do you know if the porters have to maintain something called like a sweep log to show that they've been to a certain area and that it's clean or that there was something there?

A: They don't have -- they don't have a log. They have to walk in the area, check the area, make sure the area is clear before they can move to the other area.

Q. How do you know or ensure, as an assistant manager and now as a shift manager, that that porter has actually gone to a certain area and ensured it's clean?

A. Because our responsibility is to walk in these areas, in different locations, like walk in the retail, pass by the gardens, check the areas of the casino, and then they go back in the – I cannot say an hour or two hours. It all depend how long they take to go around the casino to go back to these areas.

Q. Any other way that you are ensured that they have gone to the areas that they need to go to?

A. This is the only way for right now. They don't have a schedule to, like, you have to be in the garden every hour, it's like –

Q. There's not that, right?

A. No.

Q. Okay. Is there any kind of documentation to show what areas have been essentially checked for safety purposes?

A. When I know, no.

III.

ARGUMENT

Standard of Review

Summary judgment is only appropriate when, after reviewing the record in a light most favorable to the non-moving party, there remain no issues of material fact and the moving party

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is entitled to judgment as a matter of law. Nev. R. Civ. P. 56(c); *Rockwell v. Sue Harbor Budget Suites*, 112 Nev. 1217, 1222, 925 P.2d 1175, 1179 (1996). "In determining whether summary judgment is proper, ***the nonmoving party is entitled to have the evidence and all reasonable inferences accepted as true***." *Id.* (emphasis added). The court shall accept as true the allegations and affirmations favorable to the position of the plaintiff. *Parman v. Petricciani*, 70 Nev. 427, 430, 272 P.2d 492, 493 (1954). Summary judgment under NRCP 56 may not be used as a shortcut to resolution of disputes upon facts material to a determination of the legal rights of a party. *Id.* at 436, 272 P.2d at 496. A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble,* 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989).

In *Tolan v. Cotton*, the Court broke from its normal routine of refusing to hear summary judgment appeals to "correct a clear misapprehension of summary judgment standards." 134 S. Ct. 1861, 1867–1868 (May 5, 2014) (per curiam) (vacating grant of summary judgment to defendant in civil rights action).[1] The Court's decision in *Tolan* clarifies the degree to which reasonable inferences must be drawn in favor of the non-moving party and competent evidence, even when circumstantial, is enough to survive summary judgment. *Id.* at 1868.

Additionally, the Nevada Supreme Court sought strong preference for the evidence of a party opposing summary judgment in *Angel v. Cruse*, 130 Nev. Adv. Op. 25, 7, (2014) (vacating summary judgment for defendant). Explaining its decision to vacate in *Angel*, the Court repeatedly emphasized the need to construe evidence in favor of the non-moving party. *Id.* at 7, 8, 10. Together, *Tolan* and *Angel* stand as efforts by the Courts to strengthen the preference district courts give to non-moving party's evidence so that disputes may be "resolved by juries." *Tolan* 134 S.Ct. at 1868.

In a negligence action, summary judgment should be considered with caution. *Id.* "[C]ourts are reluctant to grant summary judgment in negligence cases because foreseeability,

---

[1] Admittedly, the issues here are unrelated to *Tolan*'s civil rights issues. Nevertheless, *Tolan* supports this Opposition to the extent it steers lower courts toward a more non-moving-party friendly application of the summary judgment standard.

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duty, proximate cause and reasonableness usually are questions of fact for the jury."[2] *Lee v. GNLV Corp.*, 117 Nev. 291, 295-96, 22 P.3d 209, 212 (2001). Summary judgment is only appropriate when a plaintiff, as a matter of law, cannot recover. *Id.* Moreover, in the recent case of *Rios v. Wal-Mart Stores, Inc.*, the Plaintiff slipped and fell in spilled yogurt; Wal-Mart filed a Motion for Summary Judgment to which the Court denied stating "the evidence of constructive notice provided by Rios isn't strong, but it is enough to establish a genuine issue of dispute for trial." *2014 WL 1413639 at *1* (noting a Nevada district court judge's earlier ruling).

The deposition testimonies demonstrate there are genuine issues of material fact that preclude summary judgment as a matter of law, and the cited case law supports Plaintiff's position, not the Defendant's. The cited case law emphasizes that the issues presented, notice and breach of duty, are issues of fact for the jury, not matters of law. The cases have holdings that support Defendants' liability for Yvonne's slip and fall because the law, as applied to this case, indicates that Defendants indeed had actual or constructive notice of the dangerous condition on the floor. Also, there is indeed evidence of both notice and breach of duty caused by the subject incident. Because genuine issues of material fact exist regarding Defendants' constructive or actual notice of the substance on the floor on which Yvonne fell, summary judgment should not be granted as a matter of law and Defendants' Motion for Summary Judgment should be denied.

A. Genuine Issues of Material Fact Exist Regarding Defendant's Notice of the Dangerous Condition, Thus Summary Judgment Should Not Be Granted as a Matter of Law

The four elements of a negligence claim are: (1) duty, (2) breach, (3) proximate causation, and (4) damages. *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1100, 864 P.2d 796, 798 (1993). A proprietor owes an invitee a duty to use reasonable care to keep the premises in a reasonably safe condition for use. *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1101, 864 P.2d 796, 799 (1993). The proprietor has a duty to an invitee to inspect the premises to discover dangerous conditions not known to him and to "take reasonable precautions to protect

---

[2] The four elements a plaintiff must establish to succeed on a negligence claim for liability are: (1) duty, (2) breach, (3) proximate causation, and (4) damages. *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1100, 864 P.2d 796, 798 (1993).

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the invitee from dangers which are foreseeable from the arrangement or use." *Twardowski v. Westward Ho Motels*, 86 Nev. 784, 787, 476 P.2d 946, 947-48 (1970).

"The presence of a foreign substance on a floor generally is not compatible with the standard of ordinary care." *Asmussen v. New Golden Hotel Co.*, 80 Nev. 260, 262, 392 P.2d 49, 50 (1964). If one slips and falls because of a foreign substance, liability may be found if the condition was created by the proprietor or his agent or, if created by another, the proprietor had actual or constructive notice of its existence. *Id.* If a peril is hidden or latent, such as water on the floor, ordinary care requires a proprietor with actual or constructive knowledge of the peril to warn the invited guest who is without such knowledge. *Worth v. Reed*, 79 Nev. 351, 354, 384 P.2d 1017, 1018 (1963).

"***Whether [a defendant] was under constructive notice of the hazardous condition is, in accordance with the general rule, a question of fact properly left for the jury.***" *Sprague v. Lucky Stores*, 109 Nev. 247, 250, 849 P.2d 320, 323 (1993) (emphasis added). None of the cases cited by Defendants regarding slip and falls and summary judgment rule that notice is a subject appropriate for summary judgment. The Supreme Court of Nevada in *Sprague*, 109 Nev. 247, 849 P.2d 320, reversed the district court's grant of summary judgment, and the U.S. District Court of Nevada in *Linnell v. Carrabba's Italian Grill, LLC*, 833 F. Supp. 2d 1235 (D. Nev. 2011) denied summary judgment. In their motion, Defendants cite an unpublished Order in an attempt to draw comparisons to the case at hand. ***See, Exhibit 4***. Contrary to the Defendant's motion, this Order is not binding authority, nor is it comparable to the instant case. Unlike *Mostad*, Plaintiff has proactively produced evidence that includes depositions, affidavits, and a retained expert to show that Defendant had notice. Considering there is no law to support Defendant's argument that Plaintiff's claims should be summarily adjudicated ***as a matter of law***, Defendant's Motion should be denied.

Although there is no law to support Defendant's request, in an abundance of caution Plaintiff will also address the issues of material fact showing that Defendant indeed had notice of the foreign substance on the floor on which Plaintiff slipped and fell.

Contrary to Defendant's representation, the Nevada Supreme Court has not "defined" constructive notice as whether Defendant "could have known 1) that the hazard in question was

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frequently on the floor in the subject area, 2) that the presence of this condition was a hazard to customers, and 3) that sweeping (or mopping) could not wholly keep the floor free of debris." *See,* Defendants' Motion, at p. 11:1-7 (citing *Sprague*, 109 Nev. at 251, 849 P.2d at 323). The Court ruled that evidence presented by the plaintiff supported the denial of summary judgment because "a reasonable jury could have found that Lucky knew that produce was frequently on the floor, that this produce created a hazard to shoppers, and that sweeping the floor could not wholly keep the floor free of debris." *Sprague*, 109 Nev. at 251, 849 P.2d at 323. The Court held that the district court erred in granting summary judgment because "material issues of fact exist[ed] as to whether: (1) there was a continual build-up of debris on Lucky's produce department floor; (2) Lucky, because of the debris, had constructive notice that a hazardous condition might exist at any given time; and (3) Lucky failed to exercise reasonable care in not providing skid mats to counter the continuous spillage of produce." *Id.* *Sprague* thus does not define constructive notice or provide elements that must be satisfied, as Defendant represents and argues in it's Motion, thus the law and argument does not support summary judgment. Rather, *Sprague* sets forth factors that evidence genuine issues of material facts that preclude summary judgment. *Sprague*, 109 Nev. at 251, 849 P.2d at 323. They are not elements that ***must*** be met in a case in order to prove constructive notice and/or present claims of negligence to a jury, nor are they an exhaustive or exclusive list of factors that may indicate a defendant had constructive notice of a dangerous condition.

In this case, there is a multitude of evidence that indicates Defendant had constructive notice of the foreign substance on which Plaintiff slipped and fell. Defendant highlights the Plaintiff's misidentification of an audio speaker as a lack of evidence of the foreign substance's source. However, ***where*** the substance came from is not the issue; the issue is whether Defendant had actual or constructive notice of it. The substance may have come from a guest or an employee. It does not matter as long as Plaintiff provides evidence that Defendant knew (actual notice) or should have known (constructive notice), of the dangerous condition.

B. Plaintiff Slipped In A "Continuous Risk" Or "Recurrent Risk" Area Located On A "Special Use" Walkway That Wynn Created To Attract Guests To Walk Through Their Indoor Garden.

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The recurrent risk approach was laid out in *Sprague v. Lucky Stores, Inc.* In *Sprague*, the Nevada Supreme Court held that whether the property owner had knowledge of "chronic hazard" of debris on floor in produce department, was an **issue for the jury to decide**.

In considering whether reasonable care was taken, the fact-finder must also take into account the surrounding circumstances, such as whether nearby [store] displays were distracting and whether the landowner had reason to suspect that the entrant would proceed despite a known or obvious danger." Foster v. Costco Wholesale Corp., 291 P.3d 150, 156, 2012 Nev. LEXIS 123, *7-8, 128 Nev. Adv. Rep. 71, 2012 WL 6754112 (Nev. 2012).

In this case, Wynn created a "special use" walkway through their indoor gardens to attract customers to walk through and under their trees and view their decorations and plants. The walkway was dark and the trees cast shadows on the slippery, multi-colored tile. ***See Photographs of Atrium area attached hereto as Exhibit 5.*** The walkway leads to the shops, the casino, the south entrance and the Parasol Up Bar. There is deposition testimony the indoor atrium was watered regularly by the horticulture department, and there was a multitude of guests attracted to the area to view the flower displays and access the bar, casino and shops. All of these factors create a "continuous risk" or "recurrent risk" area. The risk of there being a liquid substance in the area where Plaintiff fell is continuous.

Wynn specifically created an attraction to draw the public to walk through the Atrium area. The area is designed for people to look at the flowers and the trees and not on the ground. Moreover, the mosaic tiled floor with its multiple colors and designs masks liquid or debris on the floor, making it difficult for patrons to determine whether there is something on the floor that can create a hazard.

Based on the foregoing, it is clear that this Atrium Area Walkway was a special use walkway. Additionally, Plaintiff has testified that the liquid substance was starting to dry and had footprints in it. This is solid evidence that the liquid had been there for quite some time. In an area, like this Atrium, which attracts guests and is subject to watering of plants the likelihood of recurrent hazardous conditions is extremely high; therefore, there must be a defined sweep log schedule to ensure the area is hazard free. The failure of Wynn to implement a sweep schedule,

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and simply allow the employees to walk through "every hour or two" was insufficient, and rises to the level of negligence.

The Large Liquid Substance was Located in the Atrium Area Walkway Designed to Attract Guests

In considering the *Sprague* factors of constructive notice, **first**, the substance in this case was located within the atrium area, on a tiled marble floor adjacent to the botanical landscape. Public Area Department Shift Manager, Yanet Elias, testified that the Horticulture Department would "work in the gardens" taking care of all the plants and water them by using a cart and little container with water. She further testified that they would have a container with a stick, and the stick would have water coming out of it. ***See, Exhibit 2 at pg. 39, ll. 18-20.*** Thus, it is foreseeable based on the location of the walkway were Plaintiff fell to the Atrium that requires watering, that there may be liquid on the floor and therefore it must be carefully monitored.

Also, it is foreseeable that the Defendant had notice in the atrium area because of its likelihood to attract many visiting guests, as well as proximity to the entrance/exit of the premises, the casino, and various retail shops. The Atrium area is beautiful with different floral designs changed out often to continue to attract guests to that area. Additionally, the atrium itself serves as a walkway for navigating through the premises. Similar to *Sprague*, where the Court found that a reasonable jury could conclude that the produce section of a store would frequently result in produce on the floor just by virtue of the environment, a reasonable jury in the instant case could find that the nature and position of the atrium guests frequently walk through the atrium, and liquid spills might occur.

It is Undisputed that a Seven (7) Foot Pool of a Liquid Substance in a Walkway Constitutes a Hazard

Second, liquid spills on the floor are slip or trip hazards to invitees. This is evidenced by the fact Defendant hires employees to clean the premises to prevent any such incidents from occurring. Similar to *Sprague*, where the Court found that a reasonable jury could conclude that produce on the floor was a slip hazard, a reasonable jury in the instant case could find that liquid on the tiled floor is a slip/trip hazard. In every case that Plaintiff found, there was no question

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that water or any liquid on the floor was a hazardous condition; the question was whether the substance was obvious to the plaintiff or a hidden/latent condition. *See, e.g., Worth v. Reed*, 79 Nev. 351, 354, 384 P.2d 1017, 1018 (1963) (concerning water on the floor and stating that "If a peril is hidden, latent or concealed, ordinary care requires an owner, with actual or constructive knowledge of the peril, to warn the invited guest who is without such knowledge"). Thus, it is clear that the foreign substance on the floor would be hazardous, or at the very least, a question to submit to the jury. It is unreasonable to argue that this Court should rule, as a matter of law, that the foreign substance on the floor in this case was not hazardous. *Worth*, 79 Nev. at 354, 384 P.2d at, 1018-19 ("the peril (water on a tiled floor) cannot, in good sense, be deemed 'obvious' as a matter of law").

Sweep Logs Are Required to Ensure the Walkway through the Atrium was Free from Hazardous Conditions

Third, it is evident in this case that merely sweeping or mopping was insufficient to prevent spills on the floor and thus prevent hazards because deponent Yanet Elias testified that the staff has no sweep logs, no inspection schedule; nothing maintained by the janitorial staff to evidence any such inspections were completed by Wynn Employees.

Q: Do you know if the porters have to maintain something called like a sweep log to show that they've been to a certain area and that it's clean or that there was something there?

A: They don't have -- they don't have a log. They have to walk in the area, check the area, make sure the area is clear before they can move to the other area."

See, March 24, 2015, deposition transcript of Yanet Elias at pg. 50, ll. 18-25, Exhibit 2.

Checking the Atrium Walkway Area Every Couple of Hours in Insufficient

When asked what is done to ensure that the Atrium Walkway area is cleaned and free from hazards, the individual in charge of the porters on the casino floor stated that there is no set schedule and they just walk through every hour or two hours.

See, March 24, 2015, deposition transcript of Yanet Elias at pg. 51, ll. 5–11, Exhibit 2.

A: Because our responsibility is to walk in these areas, in different locations, like walk in the retail, pass by the gardens, check the areas of the casino, and then they

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go back in the – I cannot say an hour or two hours. It all depend how long they take to go around the casino to go back to these areas.

This shows that the Defendant did not provide evidence to show they checked the area in question to clear any spill. It is their burden to prove that there are undisputed facts that they indeed performed such duties. Here, the Defendant did not meet this burden. Similar to *Sprague*, where the Court found that a reasonable jury could conclude that the defendant knew their cleaning policy was not sufficient to prevent hazards and it should have taken additional precautions, a reasonable jury in the instant case could find that Defendant did not clean the spill, and/or that Defendant's cleaning was insufficient to prevent slip/trip hazards and they should have taken additional precautionary measures, such as cleaning more frequently.

Defendant's duty of care to Plaintiff and their other convention guests is dictated by law. Plaintiff provides extensive case law above that supports denying summary judgment as to Defendant's liability and notice of a hazardous condition because they are issues of material facts proper for the jury, and not matters of law. Defendant provides no law that states notice of a hazardous condition is a matter of law appropriate for summary judgment. Rather, Defendant referred to unbinding Orders that do not reflect the instant case. For example, the unpublished Order found that the Plaintiff did not present any evidence demonstrating how the Defendant was negligent for their slip and fall in a buffet. Here, Plaintiff completed several depositions, affidavits, and produced an expert witness. Defendant must exercise reasonable care to keep their premises in a reasonably safe condition for their guests' use, including Plaintiff's, and Defendant must inspect the premises to discover dangerous conditions, as well as take reasonable precautions to protect Plaintiff and other invited guests from such conditions. A foreign substance on the floor indicates that Defendant ***did not*** meet its standard of care towards Plaintiff, and evidence in this case shows that they did not inspect the premises adequately and they should have known of the substance on which Plaintiff slipped. The exact factors and evidence that show Defendant had (or did not have) constructive notice of the dangerous condition, and whether its actions satisfied its duties to maintain and inspect the premises, are specifically for the jury to determine. They are not matters of law appropriate for summary judgment. There is enough evidence in this case indicating that Defendant did not comply with

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the applicable standards of care and create genuine issues of fact that should be presented to the jury. Therefore, summary judgment should not be granted as a matter of law and Defendant's Motion should be denied.

The Nevada Supreme Court repeatedly rules that the courts' preference is to resolve cases upon the merits rather than dispositive motions. *See, e.g. Intermountain Lumber and Builders Supply, Inc. v. Glen Falls Ins. Co.*, 83 Nev. 126, 130, 525 P.2d 884, 886 (1967). The issues presented in Defendant's Motion may be appropriate for cross-examination or motions *in limine*, but they are not proper subjects for summary judgment. Defendant does not provide law with binding authority to support its request for summary judgment. Because there are genuine issues of material fact regarding liability in this case and the law does not support Defendant's request, summary judgment should not be granted as a matter of law and Defendant's Motion should be denied.

IV.

CONCLUSION

Based on the foregoing law, facts, and analysis, Plaintiff respectfully requests this Court to DENY Defendant's Motion for Summary Judgment.

DATED this 27th day of July, 2015.

NETTLES LAW FIRM

By:_____

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 27th day July, 2015, I served the foregoing ***Plaintiff's Opposition To Defendant's Motion For Summary Judgment*** to the following party by electronic transmission through the Wiznet system:

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Christopher D. Kircher, Esq.
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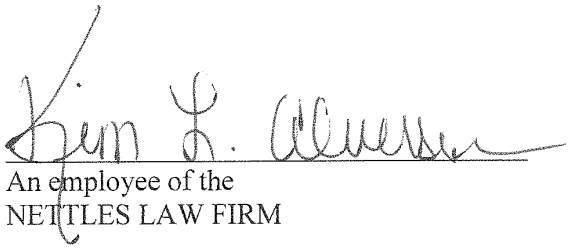

An employee of the
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EXHIBIT 1

In The Matter Of:

O'CONNELL v.

WYNN

YVONNE O'CONNELL

June 9, 2015

Lawyer Solutions Group

900 S. Fourth Street, Suite 100

Las Vegas, Nevada 89101

Lawyer Solutions Group

Min-U-Script® with WordIndex

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 YVONNE O'CONNELL, individually,)
5 Plaintiff,)
6 vs.) CASE NO. A-12-655992-C
7) DEPT. NO. V
8 WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as)
9 WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I)
10 through X; inclusive,)
11 Defendant.)
12
13
14
15
16
17 VOLUME II, PAGES 162 through 278
18 DEPOSITION OF YVONNE O'CONNELL
19 LAS VEGAS, NEVADA
20 JUNE 9, 2015
21
22
23
24
25 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

1 DEPOSITION OF YVONNE O'CONNELL,
2 taken at 900 South Fourth Street, Room 100, Las Vegas,
3 Nevada, on Tuesday, June 9, 2015, at 1:03 p.m., before
4 Kristy L. Clark, Certified Court Reporter, in and for
5 the State of Nevada.
6
7 APPEARANCES:
8 For the Plaintiff:
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25

1 I N D E X
2 WITNESS: YVONNE O'CONNELL

3 EXAMINATION	PAGE
4 By Mr. Kircher	166
5 By Ms. Morris	269

6
7
8 INDEX TO EXHIBITS

9 NUMBER	DESCRIPTION	MARKED
10 3	Second Supplement of Initial Disclosures	169
12 4	Photocopies of photographs	182
14 5	S.P.O.R.T.S. document	188
15 6	Patient Information Form	200
17 7	Documents Bates Stamped PLTF000005 - 10	208
19 8	Steinberg Diagnostic Medical Imaging document	215
21 9	Heart Center of Nevada document	221
22 10	Advanced Orthopedic and Sports Medicine document	228
25 11	Desert Oasis Clinic document	242

1 INDEX TO EXHIBITS (continued)

2 NUMBER	DESCRIPTION	MARKED
3 12	Patient Health Questionnaire	244
5 13	Desert Institute of Spine Care letter dated 3/23/10	251
7 14	Documents Bates stamped PLTF715 through 716	254
9 15	Matt Smith Physical Therapy Daily Note	259

10
11
12
13
14
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Page 166

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 9, 2015;
2 1:03 P.M.
3 -oOo-
4
5 (In an off-the-record discussion held
6 prior to the commencement of the
7 deposition proceedings, counsel agreed
8 to waive the court reporter
9 requirements under Rule 30(b)(4) of the
10 Nevada Rules of Civil Procedure.)
11
12 Thereupon--
13 YVONNE O'CONNELL,
14 was called as a witness, and having been first duly
15 sworn, was examined and testified as follows:
16
17 EXAMINATION
18 BY MR. KIRCHER:
19 **Q. Ms. O'Connell, my name's Chris Kircher. I**
20 **met you the last time. I'm one of the attorneys for**
21 **Wynn Las Vegas. I won't go over everything that we**
22 **went over previously about the deposition. I'm**
23 **assuming you remember a lot of it. This is a**
24 **question-and-answer session. I'm going to ask you some**
25 **questions. You give me your best answer. Try not to**

Page 167

1 **guess. Use verbal -- verbally. Don't say uh-huh or**
2 **huh-uh. Just yes, no, just so the court reporter can**
3 **take it down.**
4 **Do you understand that?**
5 A. Yes.
6 **Q. And are you on any drugs or medications today**
7 **that would prevent you from giving your best answers?**
8 A. No.
9 **Q. Okay. And did you review any documents in**
10 **preparation for the deposition today?**
11 A. I did read my deposition.
12 **Q. Oh, you read the depo? Okay.**
13 **I guess, talking about your previous**
14 **deposition, was there anything inaccurate that you**
15 **testified to that you would like to change now that you**
16 **can remember? If not --**
17 A. You'd have to ask specific questions.
18 **Q. Okay. So you're fine with your testimony?**
19 **There was nothing that stuck out to you about, oh, this**
20 **is -- I -- this -- I misunderstood this question or**
21 **anything like that?**
22 A. Nothing stuck out. Just that I said one
23 doctor referred me somewhere and -- but actually, it
24 was another doctor.
25 **Q. Okay.**

Page 168

1 A. I maybe -- maybe I got a date wrong.
2 **Q. Right, right. I think when I read it**
3 **yesterday, you kind of prefaced some of your answers**
4 **with this is what I kind of remember, but I'm not**
5 **really sure, and I need to look at the medical records**
6 **or you can look at those. So that's fine.**
7 **And then I think last -- when I was reading**
8 **the deposition transcript last -- yesterday, you said**
9 **you were in some pain.**
10 **Do you remember that?**
11 A. Yes.
12 **Q. Sitting here today, are you still in some**
13 **pain?**
14 A. Yes.
15 **Q. Okay. And what -- where are you feeling pain**
16 **at?**
17 A. Well, while I was getting ready to -- to
18 come, my -- my back down to my foot started hurting.
19 And then I had to drive here, and I guess I didn't keep
20 my legs straight enough because now my knee is hurting
21 and it feels like it's swelling. And my back -- my
22 seat, now my foot hurts. And also when I was driving,
23 I had to turn my head too much. So my neck popped and
24 made me dizzy, and now the pain's going from my neck up
25 to my head. It's affecting my eye. And it's -- it's

Page 169

1 starting to go down my -- my arms. It's a little numb
2 on my left arm. But -- but I'm okay.
3 **Q. Okay. You're still okay to proceed?**
4 A. Yes, I'm okay. I got here. I got here. I'm
5 fine.
6 **Q. If you need a break or anything, just let me**
7 **know. We can take a break if it's an appropriate time.**
8 **And you were kind of pointing to your right**
9 **knee that was hurting?**
10 A. Yes.
11 **Q. And was it the -- basically the right side of**
12 **your body or is it --**
13 A. Today?
14 **Q. Today, yes.**
15 A. Well, the driving made the right side hurt
16 more.
17 **Q. Okay. Okay.**
18 **MR. KIRCHER:** And we'll just start with --
19 can I have this marked as Exhibit 1.
20 (Defendant's Exhibit 3 was marked.)
21 **MR. KIRCHER:** Oh, wait. I think we had two
22 exhibits marked last time. Can we have it as
23 Exhibit 3. I think we had two last time.
24 Do you remember?
25 **MS. MORRIS:** I don't remember.

Page 170

1 MR. KIRCHER: Yeah, so Exhibit 3. First page
2 has the list of the exhibits too.
3 MS. MORRIS: Oh, I see.
4 BY MR. KIRCHER:
5 Q. And here you go. And I've handed you which
6 is Exhibit 3, and this is entitled Plaintiff's Second
7 Supplement to Initial 16.1 disclosures. And I want to
8 go over some of the witnesses that you've identified or
9 that your attorney has identified on your behalf.
10 Can you turn to page 12.
11 A. Thank you.
12 Q. And I'm looking at No. 21. I just want to go
13 over the witnesses that have been identified and what
14 their relationship is to you and how you know them and
15 some of the background.
16 A. Yes.
17 Q. So Troy Valdez is identified as your brother?
18 A. Yes.
19 Q. Okay. And he lives in California?
20 A. Yes.
21 Q. And is he your full brother by blood?
22 A. Yes.
23 Q. Okay. Same parents?
24 A. Yes.
25 Q. Okay. And how often do you talk to him?

Page 171

1 A. Well, definitely all the holidays and
2 birthdays and sometime in between.
3 Q. And how often do you see each other?
4 A. Actually, unfortunately, I haven't seen him
5 in a year.
6 Q. Okay. And the last time you saw him, did he
7 come to Las Vegas or did you go visit him?
8 A. He came here.
9 Q. And if you can estimate, how many times have
10 you seen him since the incident at the Wynn Las Vegas
11 in 2010?
12 A. Oh, since the incident?
13 Q. Yeah. Yes, sorry.
14 A. He and his family came once since then.
15 Q. Okay.
16 A. Or, excuse me, maybe twice since then.
17 Q. Twice. Okay. Do you remember how long he
18 stayed or did he stay with you?
19 A. You know, I'm so sorry. You asked me how
20 many times I've seen him since the incident.
21 Q. Correct.
22 A. Okay. I think he and his family came
23 probably twice since then, and then he came last year
24 by himself.
25 Q. Okay. Makes sense.

Page 172

1 And then when he comes to visit you, does he
2 generally stay with you or does he get a hotel?
3 A. He gets a hotel.
4 Q. Okay. And his family, he has children?
5 A. Yes.
6 Q. Okay. How many children does he have?
7 A. Two.
8 Q. Okay. And -- okay. And it states that he's
9 going to testify regarding your health and
10 circumstances prior to and after the -- after the
11 incident?
12 A. Yes.
13 Q. Okay. So he generally knows about how you --
14 how physically active you were prior to the incident?
15 A. Yes.
16 MS. MORRIS: Going to object to foundation.
17 BY MR. KIRCHER:
18 Q. Okay. And the same question: He generally
19 knows the -- how it affected you -- the incident
20 affected you physically afterwards?
21 MS. MORRIS: Object to foundation.
22 THE WITNESS: What he knows is he used to see
23 me a lot before, and he knew how I was then. And so he
24 knows that I'm -- everything's changed.
25 /////

Page 173

1 BY MR. KIRCHER:
2 Q. And he saw you a lot before.
3 How often would he see you?
4 A. Well, they all came in July. I went there in
5 October. They all came I think November, December. So
6 every couple months, we'd see each other, and we were
7 very active. We stayed on The Strip and did a lot of
8 things together.
9 Q. So you would see each other maybe three or
10 four times a year roughly?
11 A. Well, the year before the accident, we saw
12 each other quite a few times.
13 Q. Okay. And have you told him anything about
14 your incident at the Wynn Las Vegas?
15 A. He knows I fell.
16 Q. Okay. What else does he know about it?
17 A. Well, he knows that I just -- because of
18 that, I've just changed, and that's why I haven't been
19 able to go see him in California since.
20 Q. Did you tell him anything about the actual
21 fall at the Wynn?
22 A. Other than -- than I fell, I don't think so.
23 Q. Have you told him anything about your medical
24 treatment that you received since then?
25 A. Only that I need surgeries.

Page 174

1 **Q. Okay. Did you tell him the specific**
2 **surgeries that you need?**
3 A. I doubt it. I don't know how specific I got.
4 I basically don't get specific with him. I just told
5 him I need surgeries.
6 **Q. And then looking at No. 22, it's Holly**
7 **Valdez.**
8 **Is that his wife?**
9 A. Yes.
10 **Q. And you mentioned that they've came twice,**
11 **his whole family, since the incident at Wynn Las Vegas?**
12 A. Since the incident, the whole family came I
13 believe twice.
14 **Q. Okay. And you consider yourself close with**
15 **his wife?**
16 A. Yes.
17 **Q. Okay. How long have you known her for?**
18 A. Well, he first brought her here to meet me in
19 July of 2009.
20 **Q. How long have they been married for?**
21 A. They got married in October 2009.
22 **Q. And are the children, they have those two**
23 **children together?**
24 A. One is theirs together, and the other one
25 Holly had when they got married.

Page 175

1 **Q. And have you discussed with her the incident**
2 **at Wynn Las Vegas?**
3 A. The -- basically the same thing I told my
4 brother.
5 **Q. Have you discussed your medical treatment**
6 **with her?**
7 A. The same things that I told my brother.
8 **Q. And then going to 23, it looks like Dave**
9 **Brobeck, Holly's father?**
10 A. Yes.
11 **Q. Okay. How long have you known him for?**
12 A. I met him at their wedding in October, and I
13 went to their house the same time. October of 2009
14 when they got married.
15 **Q. Okay. And how many times have you seen him**
16 **since -- after the wedding?**
17 A. I haven't been able to go. So I haven't seen
18 him.
19 **Q. Do you talk to him on the phone?**
20 A. I talked to him once.
21 **Q. I'm sorry. You said once?**
22 A. Once since the wedding.
23 **Q. Okay. When was that?**
24 A. I believe it was in February of 2010.
25 **Q. Okay. Do you remember if it was before or**

Page 176

1 **after the incident at Wynn Las Vegas?**
2 A. It was after.
3 **Q. Do you remember the substance of your**
4 **conversation?**
5 A. Excuse me?
6 **Q. What did you talk about?**
7 A. What did we talk about? Oh, I told him about
8 the accident.
9 **Q. Okay. Okay. And since that time you haven't**
10 **talked to him?**
11 A. Correct.
12 **Q. Okay. And then going to 24 is Gaye Brobeck?**
13 A. Yes.
14 **Q. Holly's mother?**
15 A. Yes.
16 **Q. I'm assuming you met her at the wedding in**
17 **October of 2009 as well?**
18 A. At the wedding and at her home for dinner the
19 night before.
20 **Q. Okay. And how many times have you talked to**
21 **her since the wedding?**
22 A. Since the wedding, I haven't talked to her.
23 **Q. And then 25, David Brobeck, Holly's brother?**
24 A. Yes.
25 **Q. When was the first time you met him?**

Page 177

1 A. We met at the wedding.
2 **Q. And have you talked to him since the wedding?**
3 A. No.
4 **Q. And I'm turning the page to 213, and is it**
5 **Mele Brobeck? Did I pronounce it --**
6 A. Mele.
7 **Q. Mele. And that's Holly's sister-in-law?**
8 A. Yes.
9 **Q. So is that David's wife?**
10 A. Yes.
11 **Q. Okay. Did you meet her at the wedding as**
12 **well?**
13 A. Yes.
14 **Q. Have you talked to her since the wedding?**
15 A. No.
16 **Q. And next is Larry Muro?**
17 A. Yes.
18 **Q. M-u-r-o. And this is Troy Valdez's friend?**
19 A. Yes.
20 **Q. Okay. And how long have you known him for?**
21 A. Well, he's -- he's Troy's childhood friend,
22 so many years.
23 **Q. How old is your brother, Troy?**
24 A. He's around 53.
25 **Q. So you're pretty close in age?**

Page 178

1 A. Thank you.
2 **Q. So the childhood friend.**
3 **So you've known him for quite some time?**
4 A. Yes.
5 **Q. Okay. And when was the last time you saw**
6 **him?**
7 A. Troy's wedding.
8 **Q. When was that? Oh, that was the --**
9 A. October of 2009.
10 **Q. Okay. And have you talked to him since then?**
11 A. No.
12 **Q. Okay. If you haven't talked to him, I guess**
13 **you haven't seen him since then either.**
14 A. Right.
15 **Q. And then Janine Muro, and that's Troy's --**
16 **another friend of Troy's.**
17 A. Yes, Larry's wife.
18 **Q. Okay. How long have you known her for?**
19 A. I've known of her since she married Larry. I
20 saw her at the wedding.
21 **Q. Was that the last time you saw her?**
22 A. Yes.
23 **Q. And have you talked to her since the wedding?**
24 A. No.
25 **Q. And then Jim Holloway?**

Page 179

1 A. Yes.
2 **Q. And another friend of Troy's?**
3 A. Yes.
4 **Q. Okay. And did you see him at the wedding as**
5 **well?**
6 A. Yes.
7 **Q. Okay. And have you talked to him since the**
8 **wedding?**
9 A. I don't think I did. No.
10 **Q. Okay.**
11 A. I mean, we've -- Troy talks about him all the
12 time, but I don't think I -- I don't believe I spoke to
13 him.
14 **Q. Okay. And Renee Holloway, is that Jim**
15 **Holloway's wife?**
16 A. Yes.
17 **Q. And did you see her at the wedding as well?**
18 A. Yes.
19 **Q. Have you talked to her since the wedding?**
20 A. No.
21 **Q. And 31, is ^Allen Stroub, S-t-r-o-u-b?**
22 A. Yes.
23 **Q. And that's your cousin?**
24 A. Yes.
25 **Q. How old is Allen?**

Page 180

1 A. Oh, he's probably around maybe 66.
2 **Q. Okay. And mother's or father's side?**
3 A. Oh, no. He's married to my cousin Helen.
4 **Q. Okay. And when was the last time you saw**
5 **Allen?**
6 A. Last time I saw Allen was February of this
7 year.
8 **Q. Okay. Did you see Helen as well at that**
9 **time?**
10 A. Yes.
11 **Q. And how often do you see them?**
12 A. Well, they usually come for the Super Bowl.
13 I saw them this year, last year. But then after the
14 incident, I didn't see them for three years, so not
15 every year.
16 **Q. Okay. So in 2010, you did not see them? You**
17 **did not see Allen and Helen in 2010, the year of the**
18 **incident?**
19 A. I saw them on the day of the incident.
20 **Q. Oh, these are the cousins you were visiting**
21 **at the Wynn buffet?**
22 A. We met at the buffet.
23 **Q. Okay. And after the day of the incident, I**
24 **think, if I recall correctly, you didn't talk to them**
25 **that day after you allegedly slipped and fell; correct?**

Page 181

1 A. Correct.
2 **Q. Okay. When was the next time you talked to**
3 **them after the incident, if you remember?**
4 A. I know I saw them three years later. And
5 they didn't come in between that -- or they may have
6 come, but we didn't speak. There may have been some
7 e-mails in between about -- you know, because once a
8 year, I send them an e-mail and ask if they're coming.
9 But we don't speak.
10 **Q. And these e-mails, did you talk about what**
11 **happened that day after you ate at the buffet with**
12 **them?**
13 A. Never.
14 **Q. Okay. Okay.**
15 A. They still don't know.
16 **Q. They still don't know about the incident?**
17 A. Right. I've never told them.
18 **Q. So they obviously don't know about this**
19 **lawsuit?**
20 A. Right.
21 **Q. Okay. And have you talked anything about any**
22 **of your medical conditions?**
23 A. To them?
24 **Q. To them specifically.**
25 A. Only this year in February, I met them, and

Page 182

1 of course they saw me with my walker. And I may have
2 mentioned that I need surgery because they said that
3 they had gone through some kind of knee surgery or
4 something.
5 **Q. Were they surprised about the issues you've**
6 **been having?**
7 A. Well, I didn't go into detail. I just said,
8 well, I need a surgery on my knee too.
9 **Q. Okay.**
10 **MR. KIRCHER:** Let's mark this -- I'm sorry.
11 I'm going to show these pictures that were produced. I
12 guess mark this as Exhibit 4.
13 (Defendant's Exhibit 4 was marked.)
14 **BY MR. KIRCHER:**
15 **Q. I apologize. This is embarrassing at all. I**
16 **will say that Christian and I were -- had the privilege**
17 **of meeting Sal Risko, and he's a very nice man. So we**
18 **kind of talked about these, and the way understand**
19 **it -- do you remember when these pictures were taken?**
20 A. Yes.
21 **Q. When were they taken?**
22 A. Well, I believe this was on Valentine's Day,
23 this one up here, and Sal took it. That's in his --
24 it's in his bathroom, and he took that. I believe it
25 was Valentine's Day.

Page 183

1 **Q. Of 2010?**
2 A. Yes.
3 **Q. And I guess take a step back.**
4 **You recognize these pictures?**
5 A. Excuse me. I'm so sorry. I'm counting to
6 give you a more accurate answer. Yeah, I think that is
7 accurate. I'm sorry.
8 **Q. Okay. And you recognize these -- these -- I**
9 **think there's four pictures.**
10 A. Yes.
11 **Q. Okay.**
12 A. Okay. That -- you asked me -- I was telling
13 you about when he took that one (witness indicating).
14 **Q. Right now you're looking at PLTF000720?**
15 A. Yes.
16 **Q. And the top picture was taken on Valentine's**
17 **Day?**
18 A. Yes.
19 **Q. And this picture was taken in Mr. Risko's**
20 **bathroom?**
21 A. Yes.
22 **Q. And is it -- on the left, is that a picture**
23 **of you?**
24 A. Yes. Well -- yes.
25 **Q. You from behind I should say.**

Page 184

1 A. Yes.
2 **Q. Was he taking this picture to take pictures**
3 **of the -- it looks like there's a bruise on your**
4 **buttocks?**
5 **MS. MORRIS:** Object to foundation.
6 **MR. KIRCHER:** Let me strike that question.
7 **BY MR. KIRCHER:**
8 **Q. Why did Sal Risko take these pictures?**
9 **MS. MORRIS:** Object to foundation.
10 **THE WITNESS:** The doctor told me I had
11 bruises there. So I asked him to take pictures.
12 **BY MR. KIRCHER:**
13 **Q. What doctor told you that?**
14 A. The doctor at UMC.
15 **Q. So this was after the fall at the Wynn**
16 **Las Vegas?**
17 A. Couple of days after.
18 **Q. And then after you saw the first doctor, you**
19 **took these pictures?**
20 A. Yeah. I saw the first doctor couple of days
21 later, the 10th. And then when Sal got back -- he was
22 gone. So when he came back, then he took those.
23 **Q. Okay. And the bottom picture on PLTF000720,**
24 **what does that picture depict?**
25 A. That's the bruise on my leg, my right leg.

Page 185

1 **Q. Okay. What part of your leg is this?**
2 A. The thigh. And close to the knee, I guess.
3 **Q. And is the bruise depicted in the middle of**
4 **this picture?**
5 A. Yes.
6 **Q. Okay. Roughly how big do you think that**
7 **bruise is? Is it the size of a quarter?**
8 A. Oh, I'm sorry. I can't tell.
9 **Q. Do you remember how big that bruise was?**
10 A. I couldn't really see it. I mean, I -- I
11 couldn't. The doctor's the one who told me, and I
12 couldn't really position myself to see this.
13 **Q. Was it on the back of your thigh?**
14 A. No. This was on the side.
15 **Q. Side. And then going to the next page, 721,**
16 **and what does the top picture depict?**
17 A. It's the bruise.
18 **Q. And --**
19 A. Bruises.
20 **Q. Okay. Can you, I guess, circle the bruises**
21 **on the -- give you a pen -- that are on the picture.**
22 A. That are on this picture that --
23 **Q. Yes.**
24 A. -- I see here?
25 **Q. Yes.**

Page 186

1 A. Okay. The ones that are on here -- well, it
2 looks like it's this whole area. And I am not sure if
3 it was bruised up here.
4 **Q. And then you can do the same thing for the**
5 **bottom picture on 721.**
6 A. (Witness complies.)
7 Is that what you wanted?
8 **Q. Yes. Wherever you think that you were**
9 **bruised and what that picture depicts that bruise?**
10 A. This doesn't go down far enough. Okay.
11 **Q. Okay. And so it looks like you circled**
12 **almost all of the picture; is that correct?**
13 A. Yes.
14 **Q. So it was a pretty substantial bruise?**
15 A. Well, it wasn't one. It covered pretty much
16 the whole substantial space.
17 **Q. Okay. And this is your whole behind, the**
18 **whole buttocks?**
19 A. Pretty much.
20 **Q. And would you say it's just on the right side**
21 **or was it on the left side as well?**
22 A. It looks like it goes into the left side.
23 **Q. Was it more on the right side than the left**
24 **side?**
25 A. It was more on the right side.

Page 187

1 **Q. Okay. And did you have them take these**
2 **pictures because you couldn't see them and you wanted**
3 **to see what was going on back there and how badly you**
4 **were injured?**
5 A. Yes.
6 **Q. Okay. Okay. And at that time, when -- do**
7 **you remember when Mr. Risko got back from the cruise**
8 **that he was on?**
9 A. I believe it was that day.
10 **Q. So he came back on Valentine's Day 2010?**
11 A. I'm pretty sure.
12 **Q. And do you remember, did he arrive back to**
13 **Vegas by plane, car? Do you remember?**
14 A. Plane.
15 **Q. Okay. Did you pick him up from the airport?**
16 A. Yes.
17 **Q. And did you drive to the airport to pick him**
18 **up?**
19 A. Yes.
20 **Q. And did you drive him -- where did you take**
21 **him after you picked him up from the airport?**
22 A. I believe we went to his house.
23 **Q. Okay. And when did you first tell him about**
24 **your slip and fall at the Wynn Las Vegas?**
25 A. I believe that when he saw me limping -- when

Page 188

1 I picked him up and I was limping, I think -- I think
2 that's the first he knew about it. I -- he may have
3 called that day before. I'm not sure. But I think it
4 was just that day.
5 **Q. Okay. And after you picked him up at the**
6 **airport, did you drive back to his house or did you --**
7 **did he drive back to your house?**
8 A. I probably drove back.
9 **Q. Okay. Were you in any pain while you were**
10 **driving?**
11 A. Very much.
12 **Q. Try to quickly go through some of these**
13 **medical records.**
14 **MR. KIRCHER:** Have this one marked next
15 exhibit.
16 (Defendant's Exhibit 5 was marked.)
17 **BY MR. KIRCHER:**
18 **Q. Keep all these separate.**
19 **What's in front of you is marked as**
20 **Exhibit 5.**
21 **Do you recognize this document?**
22 A. Sorry. Yes.
23 **Q. Okay. What is this document?**
24 A. It's a letter to Dr. Trainor for -- from a --
25 from a physical therapist at S.P.O.R.T.S.

Page 189

1 **Q. Okay. And who is Dr. Trainor again? Was he**
2 **your primary care physician?**
3 A. No. He's the orthopedic surgeon that I was
4 sent to for my hip and knee.
5 **Q. And it looks like this letter's dated**
6 **September 18th, 2012?**
7 A. Yes.
8 **Q. So this is roughly 2 1/2 years after the**
9 **incident at the Wynn?**
10 A. Yes.
11 **Q. Okay. Do you remember how many times you**
12 **went to S.P.O.R.T.S. Physical Therapy?**
13 A. Yes.
14 **Q. How many times did you go?**
15 A. Once.
16 **Q. And did you just go for an evaluation?**
17 A. Well, I wanted him to help me.
18 **Q. Okay. Why did you only go once?**
19 A. Because he said he couldn't help me, and I
20 needed to start -- he believed that I needed to start
21 with pool therapy.
22 **Q. What's pool therapy?**
23 A. You walk in a pool and do exercises in a
24 pool.
25 **Q. Okay. And they didn't do pool therapy at**

Page 190

1 **S.P.O.R.T.S.?**
2 A. I guess not.
3 **Q. Okay. And then turning to page 2 of this**
4 **letter, which is Bates labeled Wynn O'Connell 526, and**
5 **at the very top, it says "Consultations." The**
6 **patient -- "The patient has seen several physicians**
7 **with no direction, she states. Patient's replied every**
8 **doctor she has seen has not helped her or does not know**
9 **how to treat this."**
10 **Do you remember telling the therapist these**
11 **statements?**
12 A. Well, I'm sure I told him that -- that I had
13 been to several physicians, and I'm sure I told him
14 that I was still in pain, I still had these problems,
15 and so I'm sure I told him that.
16 **Q. Do you remember what his response was?**
17 A. Well, other than he didn't believe that he
18 could help me, and he thought that maybe the pool
19 therapy would help me, that I would have to start with
20 that.
21 **Q. Do you remember what kind of evaluation they**
22 **gave you at S.P.O.R.T.S. Physical Therapy?**
23 A. I'm sorry. What do you mean?
24 **Q. Did they have you do any exercises?**
25 A. Oh, no. He examined me.

Page 191

1 **Q. Okay. So he did a physical examination of**
2 **you?**
3 A. Well, he moved me around and ...
4 **Q. Did he ask where it hurt?**
5 A. Yes.
6 **Q. Okay. And as he moved you around, did he ask**
7 **you if this hurt if you moved your leg this way?**
8 A. Yes.
9 **Q. Okay. And then looking at this, it's about**
10 **halfway in the middle of the page, it says, Increases**
11 **pain at this time with everything. I am always in**
12 **pain, a 10, everywhere on my body.**
13 **Do you see that?**
14 A. Yes, I see it.
15 **Q. Okay. Is this something that you told him?**
16 A. Well, I'm sure I told him that when I move,
17 certain ways that I move, certain positions I'm in,
18 cause extreme pain.
19 **Q. And you -- it's caused to a Level 10 out 10?**
20 A. If I move wrong, if I move in certain
21 positions -- I mean, move certain ways or if I'm in a
22 certain position, it will cause that. I mean, I'm
23 not -- I don't know what a 10 is. But -- but certain
24 movements, certain positions cause more pain. And --
25 and if I -- if I get out of those positions and stop

Page 192

1 doing that, the pain will subside.
2 **Q. And in September of 2012, when you met with**
3 **S.P.O.R.T.S. Physical Therapy, do you remember what**
4 **positions caused you this Level 10 pain?**
5 A. The positions he was putting me in, I don't
6 specifically know, or I don't remember what positions
7 or where he was touching me. I don't remember that.
8 **Q. And then going down the pain scale, it says,**
9 **On a scale of 0 to 10, with 10 being the worst and 0**
10 **being the best, currently is 10 100 percent of the**
11 **time, the patient states.**
12 **So was it in certain positions you were at a**
13 **Level 10, or is it all the time you were at a Level 10**
14 **in September of 2012?**
15 A. For sure, in certain ways that I move, in
16 certain positions that I am in can increase the pain.
17 And -- and also, when I get the -- the pain at my neck
18 into my head, if I don't do what I need to do to make
19 that subside, it will turn into a pain that doesn't
20 stop for a couple of days. And that -- that pain is
21 unbearable.
22 **Q. And is that still the case today?**
23 A. If I do the moves and put myself in those
24 positions that -- that cause that, yes, it gets there.
25 But I have learned how to make it subside.

Page 193

1 **Q. What do you do to make it subside?**
2 A. Well, I have to stop moving. I have to lie
3 down, rest my neck, put it -- you know, the special
4 pillows, put it in a certain position, and I have to
5 just keep all the pressure off it, stop the movement,
6 until it subsides.
7 **Q. And --**
8 A. If I -- if I catch it early. But then if I
9 don't, if I don't take care of it -- and which I didn't
10 know at the time, but if I don't catch it on time and
11 let it go into -- then it's just out of control for too
12 long. But I've learned.
13 **Q. When did you learn that if you did that, that**
14 **your pain would subside?**
15 A. Well, there are certain things that physical
16 therapists told me to do, certain moves, and so of
17 course I did them. And then I would get that extreme
18 pain going up my neck into my head. First time I
19 didn't know where that came from. But then I went to
20 another physical therapist, they told me to do the same
21 thing. Of course, I did it. The pain into the head, I
22 got that again. So then I figured it out. I can't --
23 I can't move my arms like that.
24 **Q. How many physical therapists have you seen**
25 **since the incident at the Wynn?**

Page 194

1 A. Well, I've been to four physical therapy
2 offices, but then of course when you go there,
3 sometimes you see more than one physical therapist.
4 **Q. Okay. And roughly how many physical therapy**
5 **sessions have you completed since?**
6 A. Around 45.
7 **Q. Do you still attend any physical therapy**
8 **sessions?**
9 A. Not right now.
10 **Q. When was the last time you went to a physical**
11 **therapy?**
12 A. When I went to the pool therapy, I believe.
13 I mean, I exercise every day. I spend a lot of time
14 exercising every day. But actually going to the
15 physical therapist, the pool session was the last.
16 **Q. Do you roughly remember when that was?**
17 A. Yes.
18 **Q. When was that?**
19 A. Sometime around the end or beginning of --
20 end of 2012, beginning of 2013.
21 **Q. How many pool therapy sessions did you do?**
22 A. I believe 20, around there.
23 **Q. Do you believe they helped with your pain?**
24 A. Then again, there were certain movements I
25 could not do. Otherwise, that would cause pain. And,

Page 195

1 so I was very careful with the movements I did. In
2 general, pool therapy, you know, makes you stronger in
3 general, but -- but I had certain moves that I could
4 not do because that would cause the pain.
5 **Q. And did you tell the therapist that you**
6 **couldn't do certain moves when they asked you to do**
7 **them?**
8 A. I tried them. And then I would tell them,
9 well, I'm doing this, and I'm getting more pain
10 wherever. So then -- so then they'd say, well, then
11 try it this way and don't do this, and ...
12 **Q. You mentioned you exercised daily.**
13 **What do you do to exercise every day? What**
14 **kind of exercises do you do?**
15 A. Oh, well, I do -- I spend hours throughout
16 the day. I -- I can't -- like, in the middle of the
17 night, I wake up in pain, so I have to sit up for at
18 least a half hour. And it's stretching over, and --
19 and so it's a lot of stretching until the pain
20 subsides. And then when I get up, I can't -- you know,
21 get up for the day, I can't stand up straight, and I
22 wake up and my back and my leg are hurting. So I have
23 to sit up again, and I do the stretches and -- over and
24 up. So it takes me at least an hour to stretch and to
25 where I'm able to stand up straight.

Page 196

1 Then -- then I try -- there's other
2 exercises. Then I do Qi Gong.
3 **Q. How do you spell that?**
4 A. I believe it's Q-i G-o-n-g. I do that almost
5 every day. And then I -- I do a little bit of stepping
6 very carefully. You know, in the way that I can do it.
7 And so just several hours throughout the whole day.
8 Otherwise, I wouldn't be able to stand up straight.
9 **Q. Okay. Going to the -- talking about the**
10 **stretching, what part of -- what parts of your body do**
11 **you stretch? You kind of leaned forward. It looked**
12 **like you were stretching your neck. Do you stretch**
13 **your neck?**
14 A. Well, it's all the way down, you know, to --
15 it eventually gets my back. That stretch pretty much
16 gets your whole body. The Qi Gong pretty much gets
17 your whole body. It's the arms and it's everything.
18 It's a deep breathing.
19 **Q. And can you explain to me what Qi Gong is?**
20 **I'm sorry.**
21 A. It's -- I think it's kind of, like, a form of
22 Tai Chi. You know, it's the slow movements a certain
23 way and the deep breathing.
24 **Q. And then stepping, what is stepping?**
25 A. Well, you know, I try to lift my feet and --

Page 197

1 and, you know, step.
2 **Q. Are you standing or sitting when you're doing**
3 **this stepping?**
4 A. Oh, well, that one, I'm standing, and then --
5 then there's the one where I'm sitting, and I put my
6 legs -- you know, my leg up to try to strengthen my
7 knees. I do that every day.
8 And I have to do my back exercises. I have
9 to do that every day, you know, the knees to the chest.
10 And then one knee to the chest and back and forth like
11 that with your legs up (witness indicating). I -- I
12 work on every part of my body that I can.
13 **Q. And do you do those exercises to help you**
14 **become more active, or is it because you're in pain and**
15 **that's the only thing that alleviates the pain?**
16 A. The most important thing is it alleviates the
17 pain, and I have no choice but to do them. However, I
18 was always very physically active, and I always
19 exercised. And so in addition to I have to do them, it
20 makes me feel good to be able to do them.
21 **Q. I think you mentioned that other physical**
22 **therapists have hurt you with some of their exercises**
23 **or some of the exercises they told you to do were**
24 **painful; is that correct?**
25 A. Yes.

Page 198

1 **Q. Okay. And do you remember specifically what**
2 **exercises or what part of the body you were exercising**
3 **that was giving you pain?**
4 A. Yes.
5 **Q. What -- what are -- what parts of the body**
6 **was that?**
7 A. Well, I didn't realize that it affected my
8 neck. But what they were giving me -- they had me do
9 arm exercises and pulling on, you know, the -- the
10 bands, and -- and pulling on, you know a towel and
11 doing the -- what do you call it? But pulling on
12 things with your arms up in -- and that -- you know,
13 with the arms straight up and -- and pulling a certain
14 way. And that -- that gave me an extreme pain in my
15 neck and it popped. And -- and -- and the pain just
16 got all the way up my head, and so that's -- that's an
17 exercise I can't do.
18 **Q. Was there any other exercise that you can't**
19 **do?**
20 A. Well, then a physical therapist -- I let him
21 do everything he needed to do to evaluate me, you know,
22 move me every which way he wanted to. And when my leg
23 or my arms are moved a certain way, it gives me a
24 stabbing pain in my chest.
25 **Q. Was it a sudden pain or was it a constant**

Page 199

1 **pain in your chest?**
2 A. Stabbing and then it took some time for it to
3 subside. So then they sent me to the heart doctor.
4 **Q. And what did the heart doctor say?**
5 A. He took tests.
6 **Q. What kind of tests did he take, if you**
7 **remember?**
8 A. Well, there was quite a few.
9 **Q. Did he -- did any of the tests come back and**
10 **say there was any medical issues or health issues you**
11 **had?**
12 A. I believe just the echocardiograms.
13 **Q. And do you remember what they stated?**
14 A. Something to do with my valves, first one,
15 and then -- then it progressed to two.
16 **Q. I guess generally speaking, did you think any**
17 **of the physical therapy you went through helped with**
18 **your pain that you were experiencing?**
19 A. Well, generally I -- I know that exercising
20 is good for me. I have always loved to exercise. But
21 unfortunately, now I know that there's some moves that
22 I cannot do. And -- and like one doctor told me that
23 he wouldn't -- wouldn't even send me to physical
24 therapy because of the nerves.
25 **Q. Okay.**

Page 200

1 **MR. KIRCHER:** Mark this as Exhibit 6, please.
2 (Defendant's Exhibit 6 was marked.)
3 **BY MR. KIRCHER:**
4 **Q. Okay. What's in front of you has been marked**
5 **as Exhibit 6.**
6 **Do you recognize this?**
7 A. Okay. I -- it's my handwriting, so yes.
8 **Q. Okay. So this is a document you completed?**
9 A. Yes.
10 **Q. And in the upper left, it looks like The Hand**
11 **Institute; is that correct?**
12 A. Yes.
13 **Q. I don't see a date when it was completed.**
14 **Do you remember when you completed this**
15 **document?**
16 A. There's no date?
17 **Q. I'm not seeing one.**
18 A. Well, oh, okay. I know with my hand surgeon,
19 Dr. Sorelle, and I saw him in 2012. So it would be
20 when I was -- you know, around the time I saw him.
21 **Q. So this was completed probably sometime in**
22 **2012?**
23 A. Yes.
24 **Q. Okay. And looking at the first page, Bates**
25 **Wynn O'Connell 1110, under Patient Medical History, do**

Page 201

1 **you see that?**
2 A. Yes.
3 **Q. And then it says Major Events,**
4 **Hospitalizations, and Surgeries.**
5 **Do you see that?**
6 A. Yes.
7 **Q. Okay. And then it says -- and correct me if**
8 **I misstate this at all -- Slip and fall, February 8th,**
9 **2010. 2/8/10, healthy, exercised daily, swing danced**
10 **four to six hours a week, controlled LBS or IBS?**
11 A. IBS.
12 **Q. And controlled stress disorder.**
13 **Is that correct?**
14 A. Yes.
15 **Q. Okay. And what's the stress disorder that**
16 **you're talking about right here?**
17 A. I -- when I lost my husband around 2002 and
18 he was sick a year before that, I was very stressed.
19 And -- and I went to Nellis, and they told me, well --
20 I just had like constipation and I was just stressed.
21 So -- so I was referring pretty much to that. And now
22 I'm -- I was faced with a very life changing -- another
23 life-changing problem here, and I was letting them
24 know, like, I'm stressed over this.
25 **Q. You said you went to Nellis.**

Page 202

1 **Was that Nellis Air Force Base?**
2 A. Yes.
3 **Q. Do you remember where you went?**
4 A. Well, you know, for the -- they took X rays
5 of -- you know, told me I had the IBS constipation.
6 They told me that's all it was.
7 **Q. Okay. And it's just from the stresses of why**
8 **you were there?**
9 A. Yeah, I was losing my husband.
10 **Q. Of course. I'm sorry.**
11 **And so you considered this, the event,**
12 **another life-changing event; is that correct?**
13 A. Yes. It ruined my life.
14 **Q. Why do you say it ruined your life?**
15 A. Well, it had -- I had -- why do I say it
16 ruined my life?
17 **Q. Yes.**
18 A. Oh, okay. Well, I was a lucky woman. I had
19 a great life and I loved it. I was happy. It robbed
20 me of that life. It changed the way that I plan on
21 living the rest of my life. I couldn't do anything to
22 the level I could do before the accident. I -- I had a
23 great -- you know, I had -- my late husband and I, we
24 went on long walks. We traveled. We had a lot of fun,
25 and then I was lucky enough to find another man. We

Page 203

1 went on long walks. We traveled. And we had a lot of
2 fun, but we also swing danced several hours a week for
3 years.
4 Now I use a walker and I'm afraid to travel
5 because it causes more pain and it bothers my head.
6 And we had a great physical relationship. Now I don't
7 want him to touch me because I'm in pain. My boyfriend
8 and I, we were always around people, on the go. Now
9 it's difficult for me to leave my house. It's
10 difficult for me to get around, and I should be able to
11 do it. So -- so my boyfriend and I broke up four years
12 ago.
13 I used to be able to drive for hours. We
14 traveled all over. I drive all over. And now I'm
15 afraid to drive. It -- it hurts my neck when I turn my
16 head, and my neck will pop and the pain will go all the
17 way up my head into my eye and I get dizzy, and then
18 the pain goes from neck down my arms into my hands. My
19 back hurts all the way down to my foot. And I used to
20 run up and down -- I loved running up and down my
21 stairs. Now I can barely get around in my own house.
22 I used to sleep well. Now I don't. I could breathe
23 easily through my nose. Now I breathe through my
24 mouth. I could type really fast and play the piano.
25 And now I am losing the use of my left hand. And I --

Page 204

1 I could easily take care of myself. Now everything I
2 do is difficult.
3 So it changed my life. It robbed me of it.
4 **Q. And you attribute -- attribute all of that to**
5 **the fall at the Wynn?**
6 A. I was a totally different person. I was
7 happy. I was completely different. And after I fell,
8 I had there immediate pain, and my life has never been
9 the same. So I didn't have all of this. I didn't even
10 have a doctor. I didn't go to doctors.
11 **Q. And have you had a doctor tell you what's**
12 **causing you all this pain over the last four or five**
13 **years, like why you have so much pain from this?**
14 A. Well, I've been to different specialists for
15 different parts of the body.
16 **Q. Okay. And you say you are losing the use of**
17 **your left hand.**
18 **Do you know why that's occurring?**
19 A. Well, I know that ever since I fell, a few
20 days later, I had -- I had symptoms on the left side of
21 my face and my left arm went numb, and I know that
22 certain positions, when I move my neck a certain way,
23 put them in different movement, different positions,
24 then the pain will start going down my arm into my
25 hands. My -- they'll go numb. I know that.

Page 205

1 **Q. And has a doctor told you why you're having**
2 **this pain on the left side of your body?**
3 A. Well, I have it on the right side too, but I
4 was specifically talking about that. Well, I need
5 surgery on the hands, both of them.
6 **Q. And why do you need surgery on the hands?**
7 A. Well -- okay. One is trigger finger in the
8 left.
9 **Q. You were diagnosed with trigger finger?**
10 A. Yes.
11 **Q. Were you diagnosed with anything else?**
12 A. Carpal tunnel on both. And also I was told
13 that the neck -- because the -- the neck is -- there's
14 severe damage in my neck that causes -- it's causing
15 my -- the numbness.
16 **Q. Have you had a doctor tell you that your fall**
17 **at the Wynn Las Vegas caused the carpal tunnel?**
18 A. Well, I know that I didn't have this symptom
19 before. I was a swing dancer. And then there, at the
20 Wynn when I was there, then all of a sudden after --
21 after -- immediately after the accident, my arms and
22 hands, shoulder hurt so much. I couldn't even take my
23 camera out of my purse and take pictures. And I
24 couldn't fill out the form. The security guard wanted
25 me to fill out his forms. I couldn't even do that.

Page 206

1 So -- so I'm perfectly capable and healthy,
2 and then I fall right there and I can't do that?
3 **Q. But have you had a doctor tell you that your**
4 **carpal tunnel was caused by the fall?**
5 A. I was told that the injury causes that.
6 **Q. The -- what injury are you talking about**
7 **right now? The fall?**
8 A. That was my understanding.
9 **Q. Okay. Do you remember which doctor told you**
10 **that?**
11 A. I believe Dr. Sorelle said that.
12 **Q. And did a doctor tell you that the trigger**
13 **finger issue was caused by the fall at the Wynn**
14 **Las Vegas?**
15 A. Oh, yeah, that -- that happened right then.
16 **Q. Which doctor?**
17 A. It was hurting right then.
18 **Q. What doctor told you that the fall caused the**
19 **trigger finger?**
20 A. Well, that's my hand doctor. The injury
21 caused that.
22 **Q. So Dr. Sorelle told you that?**
23 A. I believe he did.
24 **Q. Do you remember if he specifically told you**
25 **that or not?**

Page 207

1 A. I believe he did. That was my under -- it
2 was my understanding, and I -- and I told -- I know I
3 told him I never had that, and then immediately after I
4 fell, I -- I had all this pain.
5 **Q. And you said you had severe damage in your**
6 **neck; is that correct?**
7 A. Yes.
8 **Q. And did a doctor ever tell you that that was**
9 **caused by the slip and fall at Wynn Las Vegas?**
10 A. I'm positive that I didn't have the pain or
11 the symptoms or any of that when I went there to the
12 Wynn.
13 **Q. But a doctor hasn't told you that that's what**
14 **caused the pain; is that correct?**
15 A. It was my understanding that -- that I --
16 that's what they said. It's my understanding that
17 that's what they said.
18 **Q. Who said that for the neck pain?**
19 A. Well, I believe Dr. Cash said that the
20 injury -- an injury causes this.
21 **Q. Did he specifically say that the fall is what**
22 **caused this?**
23 A. Well, I specifically told him I was perfectly
24 healthy. I didn't have any of this when I was -- when
25 I went to the Wynn, and then immediately when I was

Page 208

1 there, immediately after -- after the fall, I had all
2 these symptoms.
3 **MR. KIRCHER:** Exhibit 7, please.
4 (Defendant's Exhibit 7 was marked.)
5 **BY MR. KIRCHER:**
6 **Q. What's in front of you is marked as**
7 **Exhibit 7. It's Bates numbered PLTF000005 through 10.**
8 **Have you seen this document before?**
9 A. Yes.
10 **Q. What is this document? Or documents I should**
11 **say.**
12 A. It looks like it's from my hand surgeon.
13 **Q. Okay. And then turning to the second page,**
14 **Plaintiff's 6, so this is your hand surgeon, Minimally**
15 **Invasive Hand Institute; is that correct?**
16 A. Yes.
17 **Q. Okay. In the upper right, it looks like you**
18 **were seen by Jonathan Sorrelle?**
19 A. Yes.
20 **Q. On -- this is February 14th, 2012; is that**
21 **correct?**
22 A. I'm sorry. I missed it. Oh, yeah. Okay.
23 Up on top?
24 **Q. Yes.**
25 A. Yes.

Page 209

1 **Q. Okay. At one point, it says, The patient had**
2 **a life-altering fall on 2/8/2010. The fall was from**
3 **standing height. The patient is very tangential with a**
4 **number of her symptoms.**
5 **Do you know what he's talking about when he**
6 **said the patient is very tangential with a number of**
7 **her symptoms?**
8 A. No.
9 **Q. Okay. And then looking at the, I guess,**
10 **second-to-last paragraph, at one point, it says, The**
11 **patient has not tried NSAIDS for this problem, and**
12 **she's deathly afraid of all medical treatments and/or**
13 **diagnostic studies.**
14 **Are you afraid of all medical treatments**
15 **and -- and -- and/or diagnostic studies?**
16 A. If they're going to help me and heal me, I
17 need them. If they're going to hurt me, I don't want
18 them or, you know, if we are -- they're going to do --
19 injure me, of course I don't want them. I don't want
20 to take drugs just to take drugs.
21 **Q. Did you ever tell them that, that you were**
22 **deathly afraid of medical treatments?**
23 A. I'm not sure.
24 **Q. You just don't remember whether or not you**
25 **told him that?**

Page 210

1 A. Apparently he got that impression.
2 **Q. And I guess February, 14th, 2012, do you**
3 **remember what kind of medical treatment Dr. Sorelle**
4 **wanted to give you?**
5 A. Well, Dr. Sorelle, I just went to him for my
6 hands, and -- and what he said what I needed is surgery
7 on both hands.
8 **Q. Okay. And then I'm looking at Plaintiff's 8.**
9 A. Page 8.
10 **Q. Page 8, yes. Actually, can you turn to**
11 **page 9.**
12 A. (Witness complies.)
13 **Q. At the very top, it says -- it was cut off on**
14 **page 8 -- The patient has the above symptoms which have**
15 **not improved. The patient now mentions she has fallen**
16 **on her right shoulder a while back, and she has never**
17 **had X rays performed. The patient has not tried**
18 **NSAIDS.**
19 **What -- what fall are they talking about on**
20 **the right shoulder?**
21 A. Well, the fall at Wynn on February 8th, 2010.
22 **Q. He's talking about that fall?**
23 A. Yes.
24 **Q. Have you --**
25 A. That was -- that was an immediate injury and

Page 211

1 pain there.
2 **Q. Have you fell since that time?**
3 A. No. I -- I -- my leg and my knees give out
4 on me, but I haven't had complete falls. So I use my
5 walker so I don't fall.
6 **Q. Okay. That was all the questions I had on**
7 **that one.**
8 **And after the fall at Wynn, do you remember**
9 **going through numerous tests by Steinberg Diagnostics?**
10 A. Yes.
11 **Q. Okay. Do you remember what those tests were?**
12 A. Yes. Well, you know, most of them.
13 **Q. Can you list those for me.**
14 A. Steinberg?
15 **Q. Yes.**
16 A. Yeah, I've had -- specifically Steinberg?
17 **Q. Yes.**
18 A. Well, MRIs. They did an MRI on my back, and
19 they tried to do an MRI on my neck, but they couldn't.
20 They had to get me out because it caused extreme pain,
21 and they had to get me out. My head was -- I couldn't
22 stand it. So -- so they weren't able to finish that
23 one.
24 Then they took a lot of X rays. They took --
25 in 2010, they took X rays of my knee, my chest, my

Page 212

1 neck. And then 2011, they took more X rays. And so
2 basically the MRI and a lot of X rays. Right now,
3 that's what I remember.
4 **Q. Okay. And the pain that you had with your**
5 **neck MRI, that was pain in your head? Is that that**
6 **pain that you were having during the MRI?**
7 A. Yes.
8 **Q. Like headache kind of pain or ...**
9 A. Well, it wasn't merely a headache. It was a
10 lot of pain in my head.
11 **Q. Felt pressure in your head?**
12 A. Well, just a lot of pain, and they had to get
13 me out.
14 **Q. Have you had a neck MRI done since then?**
15 A. Oh, yes.
16 **Q. Okay. Do you remember what the results were?**
17 A. Yes.
18 **Q. What were those results?**
19 A. A lot of damage to the disks, and I think the
20 nerves.
21 **Q. I guess talking about the test you did in**
22 **2010, do you remember what the tests revealed?**
23 A. Oh, also they did X rays of my hip.
24 **Q. In 2010?**
25 A. Yes.

Page 213

1 **Q. Okay. So let's talk about the hip X ray.**
2 **Was there anything wrong with your hip**
3 **from --**
4 A. In the X ray, not in my hip.
5 **Q. What about the knee?**
6 A. In the X ray, not in my knee. In the --
7 excuse me in 2010, right.
8 **Q. Yeah, we're talking 2010 right now.**
9 A. Yeah.
10 **Q. And then the chest X ray they did?**
11 A. Just something about the thoracic thing, just
12 a little something. I forget what it said.
13 **Q. Okay. And neck X ray, was there anything**
14 **wrong?**
15 A. Yes.
16 **Q. What was that?**
17 A. Damage to my disks and nerves.
18 **Q. Have you received treatment for the damage to**
19 **your disks?**
20 A. Not yet. I mean -- I mean, I went to
21 physical therapy a lot, but I haven't had any treatment
22 yet.
23 **Q. Okay. Are you planning on receiving**
24 **treatment in the future?**
25 A. Yes.

Page 214

1 **Q. What kind of treatment have you been told you**
2 **need?**
3 A. I need surgery on three of my disks in my
4 neck, three of my disks in my back -- you know, I'm
5 really sorry. What was your question?
6 **Q. What kind of treatment do you need for your**
7 **neck?**
8 A. Oh, for my neck? Yeah, three of my disks in
9 my neck.
10 **Q. Okay. And what's the issue with the neck?**
11 **Was it an injury that was attributed to the fall at the**
12 **Wynn Las Vegas?**
13 A. Yes.
14 **Q. Well, and --**
15 A. I had -- I hadn't -- okay. I had no issue
16 with my neck at all. I was a swing dancer. When I
17 went there to the Wynn, I was perfectly healthy. After
18 the fall, immediately there, I had all this pain and --
19 and symptoms.
20 **Q. But has a doctor told you that your neck**
21 **problems are from the fall at the Wynn?**
22 A. Well, I told him that I had no symptoms
23 and -- and how healthy I was and that I had,
24 immediately right there, the -- the symptoms and the
25 pain.

Page 215

1 **Q. I guess I'm -- in some of these records, and**
2 **we'll get to them, I guess, but one of them I think I**
3 **remember seeing that there was a degenerative problem**
4 **with either your lumbar spine or neck.**
5 **Do you know anything about that?**
6 A. I'm sorry?
7 **Q. You have some kind of degenerative -- let's**
8 **see if I can find -- with your disks. I believe in --**
9 **MR. KIRCHER:** I'll have this marked as
10 Exhibit 8, next exhibit.
11 (Defendant's Exhibit 8 was marked.)
12 **BY MR. KIRCHER:**
13 **Q. Okay. I'm looking at -- this is Exhibit 8,**
14 **and this is Plaintiff 25.**
15 **Do you recognize this document?**
16 A. Yes.
17 **Q. And it looks like it's from Steinberg**
18 **Diagnostic Medical Imaging Centers; is that correct?**
19 A. Yes.
20 **Q. Do you remember having a service done on**
21 **March 19th, 2010?**
22 A. Well, I know that that's one of the X rays I
23 had.
24 **Q. Okay. And the one I'm looking at, it says**
25 **cervical spine, plain film?**

Page 216

1 A. Yes.
2 **Q. Okay. Clinical history: Pain?**
3 A. Yes.
4 **Q. So you were having pain at this time?**
5 A. Yes.
6 **Q. Okay. And the impression -- on the**
7 **Impression part, it says, Straightening of the normal**
8 **cervical lordosis and nonspecific major positional or**
9 **due to muscle spasm. And No. 2, he says, Moderate mid**
10 **cervical degeneration.**
11 **Do you know what No. 2 means?**
12 A. Not really.
13 **Q. Has a doctor ever discussed this with you,**
14 **the mid cervical degeneration?**
15 A. I'm sorry?
16 **Q. Have you ever talked to a -- has a doctor**
17 **discussed the mid cervical degeneration with you?**
18 A. Are you talking about this thing -- this --
19 this -- did they discuss this document with me? Is
20 that what you're saying?
21 **Q. Yes. It looks like one of your doctors**
22 **requested that you have some tests done; is that**
23 **correct?**
24 A. Yes.
25 **Q. And then you went to Steinberg and had some**

Page 217

1 **tests done?**
2 A. Oh, yeah. Okay. The -- it says right here
3 that Dr. Subramanyam requested this. This is my
4 primary doctor, and he sent me for this X ray. And
5 then when the X ray came back, then he said that I
6 needed to go see the orthopedic surgeon.
7 **Q. And who did he refer you to?**
8 A. Dr. Cash.
9 **Q. Dr. Cash. Okay.**
10 **Then turning to 29. Are you there?**
11 A. Yes.
12 **Q. And on the top, it looks like it says,**
13 **Physician Andrew Cash.**
14 **Do you see that?**
15 A. Yes.
16 **Q. Okay. And so did Dr. Cash have you do an MRI**
17 **of the lumbar spine -- lumbar spine it looks like?**
18 A. Yes.
19 **Q. Okay. And it says, Date of service:**
20 **4/8/2010.**
21 **Does that sound about right?**
22 A. Yes.
23 **Q. Okay. And says Clinical History: Right**
24 **buttock and right leg pain; is that correct?**
25 A. Yes.

Page 218

1 **Q. Okay. And then on the Impression, it has**
2 **this Degenerative disk disease greatest at L3 through**
3 **L4 with involvement of L4 through L5 and L5 through S1.**
4 **Do you see that?**
5 A. Yes.
6 **Q. Okay. Did you have a discussion with**
7 **Dr. Cash about what this meant?**
8 A. Oh, he just told me that my disks and nerves
9 were damaged.
10 **Q. Did he tell you how they became damaged?**
11 A. Well, like I said before, I was perfectly
12 healthy and didn't have any problems with my -- this is
13 my back, didn't have any problems with my back. I was
14 a swing dancer and I told him I had no symptoms. And I
15 told them that when I fell -- immediately right then,
16 when I fell, then I started getting all -- I had all
17 this -- these symptoms and the pain. So I told him
18 that.
19 **Q. Did he ever say that the -- that the**
20 **degenerative disk disease was caused by your fall at**
21 **the Wynn?**
22 A. I don't know if those were his words.
23 **Q. What were his words?**
24 A. I'm sorry. I don't know his exact words, but
25 I didn't have any of these symptoms. I was a swing

Page 219

1 dancer. I went to the Wynn, fell, and then that's --
2 immediately there, I had all these symptoms. So I told
3 him that. And -- and he told me, Well, your disk and
4 your nerves are damaged.
5 But I'm sorry, his exact words, I can't tell
6 you, but that was the gist of it.
7 **MR. KIRCHER:** Let's take a quick break.
8 (Whereupon a short recess was taken.)
9 **MR. KIRCHER:** Okay. We're back on the
10 record.
11 **BY MR. KIRCHER:**
12 **Q. We're looking at PLTF29. We just talked**
13 **about the degenerative disk disease under the**
14 **Impression, and then underneath that, it says, Left**
15 **paracentral disk bulge at L3-L4 with 2-millimeter disk**
16 **protrusions at L2-L3, L4-L5, and L5-S1. No canal**
17 **stenosis or neural foraminal narrowing.**
18 **Do you know what that means?**
19 A. Well, I just told you that my nerves were
20 affected by now.
21 **Q. So this relates to your nerve in your spine?**
22 A. The disk and the nerves. That's my
23 understanding.
24 **Q. What did Dr. Cash tell you specifically?**
25 A. Well, my general understanding is that my

Page 220

1 disk and my nerves are damaged.
2 **Q. Did he tell you how they became damaged?**
3 A. Well, I told him that I had no symptoms. I
4 was a swing dancer, I was perfectly healthy that day,
5 and then I fell and immediately, I had all these
6 symptoms and pain.
7 **Q. Do you remember what his response was?**
8 A. Well, that -- that my disks and my nerves are
9 damaged. Now, those aren't his exact words, but that
10 was my general understanding.
11 **Q. Okay. Did he ever talk to you about whether**
12 **your fall at the Wynn caused these disk issues or if**
13 **the fall at the Wynn could have contributed to these**
14 **disk issues at all?**
15 A. I don't think he went into that detail.
16 **Q. Okay. Did you ever ask him the question?**
17 **Like, why is this occurring to me or ...**
18 A. Well, I knew why it was occurring to me. To
19 me, I was perfectly healthy. I didn't have any of
20 this. A swing dancer -- in fact, I swing danced
21 several hours just before that. I mean, I was
22 perfectly healthy, and then I -- then I go there, and
23 all of a sudden, I'm not.
24 **Q. Okay. I'm going to jump around a little bit**
25 **with your medical records.**

Page 221

1 **(Defendant's Exhibit 9 was marked.)**
2 **MR. KIRCHER:** Okay. I'm going to clean some
3 of these up in front of you.
4 **BY MR. KIRCHER:**
5 **Q. What's in front of you has been marked as**
6 **Exhibit 9.**
7 **Do you recognize this letter?**
8 A. Yes.
9 **Q. And what -- who sent this letter?**
10 A. Excuse me. It says Dr. Fotedar.
11 **Q. And who is Dr. Fotedar and is he one of your**
12 **physicians?**
13 A. Yes. He was a -- well, he's a cardiologist
14 that I went to for a second opinion.
15 **Q. When did you go to him for a second opinion?**
16 A. On this day that -- what does he say?
17 Well --
18 **Q. September 7th, 2012, on the top or --**
19 A. Well -- well, that's when he wrote the
20 letter. So around then when I went. I just saw him
21 the once.
22 **Q. Okay. And what did he give you a second**
23 **opinion regarding?**
24 A. I told him about the fall and the symptoms
25 that I had and that I still was having the chest pain,

Page 222

1 and that the first echocardiogram had showed damage to
2 my valve. And then the second echocardiogram showed
3 that it had damage -- that the -- that the damage went
4 from one valve into two valves now. So I needed to
5 know what was going on.
6 **Q. Do you remember when you had the first**
7 **echocardiogram?**
8 A. I know that Dr. Subramanyam, when he first
9 saw me, he took a heart test. That may not have been
10 the echocardiogram, but then he referred me to the
11 cardiologist, Dr. Wesley. So this was, you know,
12 after -- shortly after the accident because I had the
13 chest pains. I believe that's when Dr. Wesley had the
14 echocardiogram done, you know, shortly after the
15 accident.
16 **Q. And when and how far --**
17 A. I'm sorry. I'm sorry. I forgot your
18 question, but that was the first echocardiogram.
19 **Q. Correct?**
20 A. Okay.
21 **Q. And then when did you have the second one**
22 **taken? Was it shortly after that?**
23 A. I believe after I -- after I went to the
24 physical therapist and Dr. Suarez, and, you know, the
25 movement triggered the pain in the chest, and he said

Page 223

1 that I needed to go to a cardiologist before he did --
2 touched me. And I -- that's when I went back to
3 Dr. Wesley. And that was, you know, 2012. And that's
4 when Dr. Wesley did a lot of tests. So I believe that
5 that's when the second echocardiogram was done.
6 **Q. Okay. And have you ever read this Exhibit 9?**
7 **Have you read this letter before?**
8 A. Yes, I have.
9 **Q. Okay. Have you read it recently?**
10 A. No.
11 **Q. I guess turning to the second page,**
12 **Plaintiff's 77. On the Recommendations, No. 1, just**
13 **want to read that real quick just to refresh your**
14 **memory before I start asking you a few questions.**
15 A. Oh, you want me to read the whole thing? Can
16 you just ask me specific questions?
17 **Q. Okay. That's fine. Well, it says he had a**
18 **long discussion with the patient. I basically tried to**
19 **assure her that she had a normal echocardiogram and her**
20 **mitral and tricuspid regurgitation described on that**
21 **echocardiogram were qualified and physiological. The**
22 **patient was not very happy with this and thought that I**
23 **was not paying a lot of attention to her echocardio**
24 **symptoms and signs. The way I'm reading this is he's**
25 **saying that your echocardiogram was fine.**

Page 224

1 **Is that the way that you remember the**
2 **conversation you had with him?**
3 A. No.
4 **Q. So what did he tell you about it?**
5 A. Well, first of all, the first echocardiogram
6 only had one valve. So if he's talking about the
7 second echocardiogram, which now has two valves,
8 that -- that isn't fine. I mean, it -- if it
9 progresses from one valve being affected to the second
10 valve being affected, that's not fine.
11 **Q. What -- what did he describe to you on that**
12 **date on what was wrong with you, for lack of a better**
13 **word?**
14 A. Well, he said, yes, the first valve, when
15 that's affected -- I mean, these aren't his exact
16 words -- when that is affected, yes, that can start
17 affecting the second valve. And he said that I needed
18 to have a follow-up -- follow-up echocardiogram and
19 also a stress test or something like that. So
20 basically that's what he said.
21 **Q. So do you disagree with his statement that he**
22 **wrote that said "she had a normal echocardiogram" --**
23 **echocardiogram? Sorry, mispronouncing that.**
24 A. I think you're reading it -- you're reading
25 it differently than I am.

Page 225

1 **Q. How are you reading it?**
2 A. I'm reading it that -- well, this -- this is
3 what I got from what he told me. He wasn't alarmed.
4 That yes, it was progressing, but he wasn't alarmed.
5 And just to get another follow-up echocardiogram and
6 get the stress test.
7 **Q. And he wrote that you were unhappy with the**
8 **way that he reviewed your echocardiogram.**
9 **Do you remember not being happy with his**
10 **recommendations?**
11 A. Well, I remember that the reason he spent
12 time with me talking is because in the beginning, he
13 didn't address the echocardiogram. Then I had to tell
14 him, Well, Doctor, if the first one just has one and
15 the second one shows now it's progressed to two, why is
16 this? And so then -- then he did. He was very nice
17 and then he did take the time. And then he explained
18 to me, and explained to me, well, you need to have
19 another follow-up. But -- but he wasn't alarmed.
20 So -- so he was very nice and -- and calmed me down.
21 **Q. Then, I guess, keep going. He says, I spent**
22 **more than 30 minutes with her trying to explain to her**
23 **that she does not have significant valvular heart**
24 **disease at this point in time based on the -- based on**
25 **echocardiogram from April and on clinical examination**

Page 226

1 and maybe her symptoms cannot be explained from that.
2 Do you remember talking -- him talking to you
3 about that?
4 A. Yes. He told -- told me he wasn't alarmed,
5 and that the chest pain maybe wasn't from this.
6 Q. I guess you keep talking about how it went
7 from one valve to two valves; is that correct?
8 A. Yes.
9 Q. And I guess I'm seeing in here where he's
10 mentioning that there was some kind of progression from
11 one valve to two valves or any problem that you had at
12 that time just reading this.
13 A. You just read that to me.
14 Q. I had a long discussion with the patient, and
15 I basically tried to assure her that she had a normal
16 echocardiogram and her mitral and tricuspid
17 regurgitation described on that echocardiogram was
18 qualified physiological.
19 I guess just confusion there. I just -- it
20 doesn't sound like he's saying what you're saying.
21 A. I think he addressed it there. Well, he
22 knew -- I think it's in there. I can't see it right
23 now. But the whole point was, I asked him, well, the
24 first one showed one, now the second one is showing
25 it's progressed to two, and -- and that was what I was

Page 227

1 asking him about. And that's what he was -- that's why
2 he took the time so that -- and telling me that he
3 wasn't alarmed by it, but just to have the follow-up
4 echocardiogram and get -- and follow it.
5 Q. And you only saw him that once?
6 A. Yes.
7 Q. Why did you not go back to him again?
8 A. Oh, because I only went to him for a second
9 opinion, and I'm going to go back to Dr. Wesley.
10 Q. In your mind, did he give the same -- did he
11 have the same opinion as Dr. Wesley?
12 A. I don't know what Dr. Wesley's opinion is.
13 Q. And do you attribute these valve issues to
14 the fall at the Wynn?
15 A. I'm positive that I didn't have chest pains
16 before I -- I fell at the Wynn.
17 Q. So you do, then?
18 A. I'm sorry?
19 Q. So you do attribute the chest pains you're
20 having to the fall at the Wynn?
21 A. I'm -- I'm positive that I didn't have the
22 chest pains before. And I'm -- and then after I fell,
23 and -- and I had the immediate pain and injuries right
24 there. I had the pain in the shoulder which is, you
25 know, where my chest is.

Page 228

1 Q. Did Dr. Wesley ever tell you that these kind
2 of problems could happen from a fall like you had at
3 the Wynn?
4 A. I'm sorry. I don't -- I don't recall him
5 saying -- I don't recall what he said about that.
6 Q. Okay. Did Dr. Fotedar ever tell you that?
7 A. Well, I saw him the one time, and I don't --
8 I just know that I told him the same. I didn't have
9 the -- these issues -- these heart issues or any
10 symptoms before. And then after I did, immediately I
11 did.
12 Q. Okay.
13 MR. KIRCHER: Have this marked as Exhibit 10,
14 please.
15 (Defendant's Exhibit 10 was marked.)
16 BY MR. KIRCHER:
17 Q. What's in front of you has been marked as
18 Exhibit 10. First page is Plaintiff's 392.
19 Do you recognize these -- this document or
20 documents?
21 A. Yes.
22 Q. And it looks like it's from Advanced
23 Orthopedics & Sports Medicine; is that correct?
24 A. Yes.
25 Q. Do you remember who -- what doctor you saw at

Page 229

1 this --
2 A. Yes.
3 Q. Who was that?
4 A. Dr. Trainor.
5 Q. This is Dr. Trainor. Okay.
6 And then turning to the second page, 393. On
7 the top, it's kind of cut off, but I think it says
8 today's date is 2/10/12.
9 Do you see that?
10 A. Yes.
11 Q. Do you remember going to visit them on
12 February 10th, 2012?
13 A. I remember seeing Dr. Trainor.
14 Q. Okay. I believe you circled it as well. All
15 right. And then turning to 395.
16 A. (Witness complies.)
17 Q. Do you remember why you went to Dr. Trainor
18 on that date?
19 A. Yes.
20 Q. Why did you go?
21 A. Because Dr. Subramanyam referred him -- me to
22 him because my hip and my knees were still hurting.
23 Q. Which knees and which -- right knee?
24 A. Well, both of my knees were hurting. But
25 specifically he was just looking at my hip and my right

Page 230

1 knee that day.
2 **Q. Okay. And then looking at these, did you**
3 **fill out this document that's marked 395?**
4 A. Yes.
5 **Q. So this is your handwriting?**
6 A. Yes.
7 **Q. And -- and just looking at this document, it**
8 **looks like there's a bunch of times you wrote slip and**
9 **fall.**
10 **Do you see that? Like, just all over the**
11 **place?**
12 A. All over the place? Okay. I believe you. I
13 mean, yes. Okay.
14 **Q. I presume you're referring to the -- your**
15 **fall at the Wynn?**
16 A. Yes.
17 **Q. And there's parts where you wrote and**
18 **circled -- you know, they're asking you, Have you ever**
19 **had any of these symptoms? If no, mark none. And**
20 **there's parts where you circled them, and wrote slip**
21 **and fall -- or squared them.**
22 **Do you see that?**
23 A. Yes.
24 **Q. So under No. 1, GI, you wrote -- there's**
25 **blood in stool and you had slip and fall above it and**

Page 231

1 **nausea.**
2 A. Yes.
3 **Q. What does that mean?**
4 A. I meant that -- that when I had the slip and
5 fall, after I slipped and fell, that I had nausea,
6 and -- and I had, you know, a problem with my -- my
7 system.
8 **Q. Okay. And then --**
9 A. Specifically, I was completely constipated.
10 I had a problem. It's like it stopped working.
11 **Q. And then under No. 4I, it says -- it looks**
12 **like you squared blurred vision?**
13 A. Yes.
14 **Q. And that started happening after this fall at**
15 **the Wynn?**
16 A. After I fell and I hit my head and I was
17 dazed right there.
18 **Q. Where? I'm sorry?**
19 A. Immediately there at the Wynn, that was one
20 of the things that I had the immediate thing. I had --
21 I was dazed. And my -- my eyes were blurry. And when
22 they -- he gave me the form to fill out, I wasn't able
23 to, and when he had me sign it, I was -- it was blurry,
24 so I had that problem right then.
25 **Q. And this was filled out on February 10th,**

Page 232

1 **2012.**
2 **This is two years after the fall at the Wynn;**
3 **is that correct?**
4 A. Yes.
5 **Q. Okay. And you still have blurred vision?**
6 A. Well -- well --
7 **Q. Or do you still --**
8 A. I still get it. I get it -- it comes and
9 goes. You know, with the neck pain, the certain
10 movements, and if I don't -- if I don't lie down and
11 let it subside, it starts going up my neck and then
12 affecting into my head, and then it affects my eyes.
13 So I still get it. So what I was saying is since the
14 slip and fall I was getting these symptoms in my head.
15 **Q. So this isn't something that's constant.**
16 **It's something that comes on --**
17 A. It comes -- it comes and goes. I mean, now I
18 know how to make it subside. I didn't know at the
19 time. I mean, when it happened, I didn't know what was
20 going on.
21 **Q. The next one, No. 5, trouble swallowing, and**
22 **I think it says sinus growth?**
23 A. Yes.
24 **Q. Can you explain that for me?**
25 A. Yes. Before that date -- when I went there

Page 233

1 that day, I was healthy. I was a swing dancer. I had
2 no issues, no symptoms. I had no issues with my head,
3 no problems with my eyes or my head. And when I fell,
4 I immediately had these symptoms and pain and I was
5 dazed, and I had this -- my head, had problems with my
6 head and neck and the rest.
7 **Q. Okay. What does sinus growth mean?**
8 A. The doctor said that I have eight, like, a --
9 I don't remember his exact words, but it's like a -- a
10 balloon that swells up and goes back down, something
11 like that.
12 **Q. Have you received any treatment for that?**
13 A. No.
14 **Q. How often does it blow up or swell up?**
15 A. On a regular basis. I mean, it's always
16 there, but just comes and goes.
17 **Q. Okay. I guess -- I think I skipped some of**
18 **these. When I look on the right, it says "Year," and I**
19 **think you marked some of these. It says slip and fall**
20 **caused -- kind of look right here, just so we're on the**
21 **same --**
22 A. Okay.
23 **Q. So slip and fall caused internal injuries,**
24 **hernia and/or ulcers.**
25 **Do you see what I'm --**

Page 234

1 A. Yes.
2 **Q. And you wrote that?**
3 A. Yes.
4 **Q. So you had a hernia?**
5 A. Well, what I'm referring to is that after I
6 slipped and fell and had pain inside and out, my system
7 stopped working. I had the constipation. I had the
8 chest pain and the pain around my ribs, and up here
9 by -- by the ribs. Okay. Those are internal. So
10 that's what I'm referring to. So when I went to
11 doctor -- the GI doctors, I told them about that. They
12 just said, well, maybe you got a hernia. Maybe it
13 caused an ulcer. Maybe, you know, it's this and this,
14 but we can't tell. You need these tests.
15 **Q. Did you have those tests conducted?**
16 A. No.
17 **Q. Okay. You never had a colonoscopy?**
18 A. No.
19 **Q. Why didn't you have those tests conducted?**
20 A. Well, because -- because they said it could
21 perforate my tissues and because I was having those
22 problems and it felt like they were -- the tissues were
23 had a problem already, for them -- to let them go there
24 and perforate my tissues, I don't -- I don't need any
25 more problems.

Page 235

1 **Q. Did a doctor ever specifically diagnose you**
2 **with a hernia?**
3 A. No. Specifically, they said, We can't tell
4 what you it is without the tests.
5 **Q. And is that true with the ulcer as well?**
6 A. Yes.
7 **Q. Okay.**
8 A. They just said, well, it could be a hernia,
9 could be this, could be that, but we need to give you
10 the tests.
11 **Q. And below that, it says, And/or aneurysm; is**
12 **that correct?**
13 A. Yes.
14 **Q. Same thing. This is something that a**
15 **doctor -- did a doctor diagnose you with an aneurysm?**
16 A. No diagnosis. They just said, well, maybe
17 could be this, that --
18 **Q. But you --**
19 A. -- but we need the test.
20 **Q. You need a test for that as well?**
21 A. Yes.
22 **Q. Is the test for the aneurysm a colonoscopy as**
23 **well? If you know.**
24 A. Oh, I don't know.
25 **Q. Okay. And then going down this, it looks**

Page 236

1 **like you marked -- I'm looking at 6. You marked chest**
2 **pain which we've talked about. Palpitations, I think**
3 **we've briefly addressed that.**
4 **Slip and fall caused that as well?**
5 A. Yes, the chest pain, and ...
6 **Q. Chronic cough, shortness of breath are marked**
7 **on there as well?**
8 A. I'm sorry. Are you asking a question?
9 **Q. Yes. So did you mark chronic cough and**
10 **shortness of breath?**
11 A. I marked it.
12 **Q. I guess I'm looking at 10, headaches,**
13 **dizziness.**
14 **And slip and fall caused that as well?**
15 A. Well, like I said, immediately there, I was
16 dazed.
17 **Q. I mean, in 2012, did you still have**
18 **headaches?**
19 A. I still get them, like today.
20 **Q. And dizziness?**
21 A. Yes. When I was driving over here. I -- my
22 neck popped and it makes me dizzy.
23 **Q. And then No. 11, depression's marked.**
24 **Do you see that?**
25 A. Yes.

Page 237

1 **Q. Did the slip and fall cause that as well?**
2 A. Well, yes. I'm -- I'm depressed that -- that
3 I have these -- these issues, and I -- and I'm --
4 I'm -- I can't -- I don't have that happy life that I
5 had.
6 **Q. Have you received treatment for that? For**
7 **any sort of depression?**
8 A. No. I mean, I'm just depressed because I
9 have to go through all this. I wish I didn't. I wish
10 it hadn't happened.
11 **Q. Have you been prescribed any drugs for**
12 **depression?**
13 A. No. I mean, doctors offer drugs. But I
14 haven't been -- I mean, they offer them, but I haven't
15 been prescribed them, and I'm not taking them.
16 **Q. Have you been to a psychiatrist?**
17 A. No. I mean, what, ever in my life?
18 **Q. In the last five years?**
19 A. No.
20 **Q. Okay. It looks like throughout this**
21 **document, you're attributing a lot of these symptoms to**
22 **the fall at the Wynn; is that correct?**
23 **MS. MORRIS:** Object to form.
24 **THE WITNESS:** What is correct is -- what I'm
25 trying to say here is I was healthy. I had no

Page 238

1 symptoms. I was a swing dancer, very active, the day
2 that I went there, and then I fall and I had the
3 immediate symptoms and pain. That's -- that's my
4 point. I didn't have it, and then all of a sudden, I
5 have them?
6 **BY MR. KIRCHER:**
7 **Q. Okay. And then looking at, have you ever**
8 **had -- towards the bottom of the document, it says**
9 **heart attack, and it looks like you wrote "No?" And**
10 **then you wrote something to the right of that.**
11 **Do you see where I'm talking about?**
12 A. Okay. What exactly -- okay. I see the area.
13 So what are you -- exactly are you asking?
14 **Q. So do you see where it says heart attack,**
15 **year, and you put no -- is that "No?"**
16 A. Yes. I'm -- I put -- I didn't know if after
17 the fall, that -- that what I had was a heart attack.
18 I didn't know if -- if that's what I had. That --
19 that's the question.
20 **Q. But when did you have a heart attack or when**
21 **did you think you possibly had a heart attack?**
22 A. Well, I had the chest pains. And a couple of
23 days later, I had symptoms on the whole -- on the
24 entire left side of my face and my arm and hand went
25 numb.

Page 239

1 **Q. And when was this?**
2 A. Couple of days after I fell.
3 **Q. Did a doctor ever tell you that you had a**
4 **heart attack?**
5 A. No. I didn't -- I didn't ask a -- I didn't
6 go to a doctor for it.
7 **Q. Did a -- has a doctor ever -- tell you that**
8 **you had a stroke after the fall?**
9 A. I didn't go for those symptoms. I took the
10 drugs and I went to bed.
11 **Q. I guess underneath there, it says, Will go**
12 **back to the cardiologist.**
13 **Did you ever go back to the cardiologist for**
14 **the stroke or heart attack?**
15 A. Oh, yes. Then I went -- right. That's when
16 I went to Dr. Wesley, and he did all of those tests.
17 **Q. Did he find any -- that you had a stroke?**
18 A. What he did say is all the tests looked good
19 and all I had was that echocardiogram with the -- with
20 the valves.
21 **Q. So all the tests looked good for a stroke, I**
22 **guess?**
23 A. Well, I don't know that they take -- I don't
24 know that they take tests for the stroke there.
25 Besides that, I think you're -- right now you're

Page 240

1 talking about 2012. At the time two -- couple of days,
2 two, three days after the accident in 2010, that's when
3 I had the symptoms on the left side of my face and down
4 my arm. But then those went away. It wasn't
5 permanent. So -- and I didn't go to the doctor for
6 that. I had already been to the doctor, and I just
7 took the drugs.
8 **Q. What drugs did you talk?**
9 A. Well, I had been to UMC, and she gave me
10 three drugs and, you know, prescribed other things. So
11 I took those drugs.
12 **Q. Have you seen -- have you had a stroke in the**
13 **last -- since 2012?**
14 A. Not that I know of.
15 **Q. Have you had a heart attack since 2012?**
16 A. Not that I know of.
17 **Q. I'm thinking somewhere in this medical record**
18 **it's mentioned a drug intolerance.**
19 **Do you have some sort of drug intolerance?**
20 A. In that I will take drugs if the doctors tell
21 me that they will heal me. But if the doctors tell me
22 that they'll -- they won't heal me and they'll just
23 cause more problems, then I won't take them. I'm not
24 going to take drugs just to take drugs.
25 **Q. Has a doctor told you that a drug is going to**

Page 241

1 **cause more problems?**
2 A. Oh, sure. It's all over their papers. It's
3 all kinds of warnings.
4 **Q. So you're talking about the side effects?**
5 A. Right.
6 **Q. Do you have some chronic anxiety disorder?**
7 A. Only in like -- like I explained, when I was
8 losing my husband, it is extremely emotional time. And
9 when this happened, the fall and, you know, my system
10 stopped working, and I didn't know what was going on,
11 it was extremely emotional time.
12 **Q. And I know I've asked you this, and sorry,**
13 **you lost your husband in 2002?**
14 A. Yes.
15 **Q. And so the fall, did it bring back some**
16 **issues with the chronic anxiety disorder?**
17 A. In that I remembered that, yeah, it kind of
18 felt like I did at that time. Like, you know, I -- I
19 wasn't able to control what was going on.
20 **Q. Do you remember seeing Dr. Thompson shortly**
21 **after the fall?**
22 A. Yes.
23 **Q. Okay. Who -- what kind of doctor is he?**
24 A. I believe he's a D.O.
25 **Q. And why did you go see him?**

Page 242

1 A. Because I still had all these -- all the pain
2 and the symptoms since I -- I fell, and they hadn't
3 gone away yet.
4 **Q. Do you remember your pain level being a**
5 **Level 10 out of 10 at that time when you saw**
6 **Dr. Thompson?**
7 A. I remember I had a lot of pain.
8 **Q. Do you remember how far after the fall that**
9 **you saw Dr. Thompson?**
10 A. Well, I believe I saw him in that same month.
11 **Q. Okay.**
12 **MR. KIRCHER:** I'll just have this marked as
13 Exhibit 11.
14 (Defendant's Exhibit 11 was marked.)
15 **BY MR. KIRCHER:**
16 **Q. What's in front of you has been marked as**
17 **Exhibit 11.**
18 **Do you recognize this document that starts**
19 **with Bates No. PLTF398?**
20 A. Yes.
21 **Q. And are these documents from Desert Oasis**
22 **clinic?**
23 A. Yes.
24 **Q. Is that Dr. Thompson's clinic?**
25 A. Yes.

Page 243

1 **Q. Okay. Turning to 402.**
2 A. Yes.
3 **Q. And on the top, it says the dates,**
4 **February 17, 2010.**
5 **Do you see that?**
6 A. Yes.
7 **Q. Did you fill out this page?**
8 A. Yes.
9 **Q. Okay. So that's your handwriting on the top**
10 **that put the date in?**
11 A. Yes.
12 **Q. Okay. And then there's a body that's marked**
13 **up substantially.**
14 **Do you see that? Or a frontal view and a**
15 **rear view?**
16 A. Yes.
17 **Q. And you filled out this as well?**
18 A. Yes.
19 **Q. Okay. And it looks like you were having --**
20 **can you describe to me what you're trying to depict**
21 **right here?**
22 A. All I'm trying to depict is that I had pain
23 and symptoms in those areas that I marked.
24 **Q. So it looked like you had pain, looking at**
25 **the frontal view, on the right arm, right shoulder,**

Page 244

1 **right hand; is that correct?**
2 A. Yes.
3 **Q. Okay. And then the right thigh?**
4 A. Yes.
5 **Q. Okay. And right foot?**
6 A. Yes.
7 **Q. And left hand?**
8 A. Yes.
9 **Q. Okay. And your left forearm marked as well?**
10 A. Yes.
11 **Q. Okay. Do you think that's an accurate**
12 **representation of the pain that you were having at that**
13 **time?**
14 A. I'm sorry. I don't understand what that
15 means.
16 **Q. Were you having pain anywhere else besides**
17 **where you marked?**
18 A. Besides where I marked?
19 **Q. Yes.**
20 A. I don't remember other than the -- the neck
21 and the head.
22 **Q. Okay.**
23 **MR. KIRCHER:** Have this marked as Exhibit 12.
24 (Defendant's Exhibit 12 was marked.)
25 /////

Page 245

1 **BY MR. KIRCHER:**
2 **Q. What's in front of you has been marked as**
3 **Exhibit 12.**
4 **Do you recognize this document?**
5 A. I'm sorry. Are you -- where is it from? I
6 mean, it might be there in front of me, but I don't see
7 it.
8 **Q. I'm not seeing it either. It's marked**
9 **PLTF441 and 442.**
10 **Is this your handwriting on it?**
11 A. It looks like it.
12 **Q. Okay. I'm not sure where this -- exactly the**
13 **provider for this document was.**
14 **Do you remember seeing somebody on**
15 **February 21st, 2012?**
16 A. Well, I saw several around that time, so --
17 wow.
18 **Q. We might run into it later on. If not, it's**
19 **not that huge of a deal at this point.**
20 **I guess what I want to ask you is: Looking**
21 **at the four bodies on the Exhibit 12.**
22 A. Yes.
23 **Q. Okay. Do you remember X'g out the parts of**
24 **these bodies?**
25 A. It looks like I was just trying to show that

Page 246

1 I just had pain.
2 **Q. Okay. And I guess just looking at the two**
3 **exhibits, 11 and 12, it looks like that you said pain**
4 **in pretty much a lot of the same areas; is that**
5 **correct?**
6 A. Yes.
7 **Q. So and not -- in almost two years, nothing**
8 **really changed regarding where you were having pain on**
9 **your body?**
10 A. Basically I think about the same places.
11 **Q. So you consider this pretty accurate?**
12 A. Oh, I'm not saying it's accurate. It looks
13 like I just got tired and just started crossing
14 everything.
15 **Q. Looking at the 2012 one, do you think there's**
16 **somewhere that's marked that should have been marked?**
17 A. I'm sorry. Are you still on these bodies?
18 **Q. On -- on the 2012, on the four bodies,**
19 **Exhibit 12.**
20 A. I'm sorry. Could you be more specific?
21 **Q. Sure. There's Xs on these four different**
22 **views of the body.**
23 A. Right.
24 **Q. You put these Xs on the body; is that**
25 **correct?**

Page 247

1 A. Yes. I mean, yes.
2 **Q. And is there anywhere you put an X on any of**
3 **these four views of the body that you think is**
4 **incorrect? And we're still talking about 2012.**
5 A. I'm -- okay. I -- it looks like I was just
6 tired and I was just marking everything. And my whole
7 point was that I have pain and basically, I just --
8 basically it's the same areas that I had the pain in in
9 the beginning. But right here, I'm just -- it looks
10 like I'm just marking everything up.
11 **Q. Okay. So do you think the Exhibit 11 body on**
12 **PLTF402 is a more accurate representation of where you**
13 **had pain in 2012 as well?**
14 A. I tried to be more accurate there, but it was
15 too much. So just basically tried to hit the -- the
16 main areas.
17 **Q. I guess I'm just trying to figure out in 2012**
18 **where you were having pain. If it was the same areas**
19 **two years later. Was -- had anything improved at all?**
20 A. Well, basically I still have the same areas
21 that are bothering me. When -- that day, when I fell
22 and I had the immediate pain, and basically those are
23 the places that hurt. Still my neck up to my head.
24 Still my back down to my foot. Still my neck down to
25 my hands. Basically that's it. And -- and of course

Page 248

1 my -- my chest. You know, I still get that. If I move
2 a certain way, I get that pain, and I still get that
3 pain in the ribs when I move a certain way.
4 **Q. So in -- in the -- I guess, you know, between**
5 **2010 when you had the fall and 2012, you went to**
6 **numerous medical providers; is that correct?**
7 A. Well, what's numerous? I mean, I went for my
8 hands. I went for my hip and knee. I went back to
9 the -- back to Dr. Wesley for -- for the heart tests
10 that he wanted to do. And there was another one I
11 think.
12 **Q. That's fine.**
13 **So during this time, you received some**
14 **medical treatment; correct?**
15 A. You're talking about the 2012?
16 **Q. Between 2010, the fall, and 2012.**
17 A. Oh, yeah. I went to a lot of -- I went to
18 doctors. I went to them several times, and, you know,
19 I got the -- I got the X rays, the MRIs. And I went
20 for physical therapy.
21 Is that what you're asking?
22 **Q. Yes. Yes.**
23 A. Yes.
24 **Q. So did any of the physical therapy or any**
25 **other treatments, whether it be drugs, physical**

Page 249

1 **therapy, did any of it alleviate the pain in that**
2 **two-year period is what I'm trying to ask?**
3 A. Oh. I still have those -- the pain when I
4 move a certain way and in certain positions. So I
5 still have that.
6 **Q. So nothing's changed in between 2010 -- the**
7 **fall of 2010 and today?**
8 A. I still have the pain in the neck. And it --
9 and it goes up to my head. Still have the pain in my
10 back. Goes down to my foot. But -- but the certain
11 moves, certain positions trigger more pain. And now I
12 now how to make it subside. I just have to stop
13 moving, lie down, and -- and let it subside. Because
14 if I keep moving and keep doing -- making those moves
15 that are triggering it and sitting or standing up in
16 those positions, it will just keep getting worse. So
17 now I know how to make it subside.
18 **Q. But if you didn't do those movement or things**
19 **that you know now, would your pain be just as bad as it**
20 **was in 2010?**
21 A. Yes. It will keep going.
22 **Q. Has a doctor explained to you why you're**
23 **experiencing so much pain?**
24 A. My -- my general understanding is because --
25 okay, because my disks and the nerves are damaged, my

Page 250

1 knees are torn, and, you know, I have -- you know, I
2 have a trigger finger in my hand, and the carpal
3 tunnel.
4 **Q. And do you attribute --**
5 A. And I was told that those don't heal. They
6 don't heal. The knees are not going to heal the doctor
7 told me. My neck, the damage to the neck and the back,
8 those aren't going to heal. My trigger finger, that's
9 not going to heal. These are things that I was told,
10 they don't heal. And -- and they just keep getting
11 worse.
12 **Q. Which -- which doctors told you that the --**
13 **your neck wouldn't heal?**
14 A. The orthopedic surgeons. They're not going
15 to heal by themselves.
16 **Q. And what about the knee?**
17 A. Dr. Tingey said that they're not going to --
18 they're not going to heal. My knees aren't going to
19 heal. And he said, Well, you've had all this physical
20 therapy, have they healed yet? No.
21 **Q. Have they told you anything they can do for**
22 **you?**
23 A. Yes.
24 **Q. What did they tell you?**
25 A. Dr. Tingey says I need surgery on both of my

Page 251

1 knees.
2 **Q. What kind of surgery?**
3 A. I'm sorry. He said -- said they're torn,
4 and -- and that they have to go in there, and then from
5 there, they'll see how -- how bad they are.
6 **Q. What part of your knees are torn?**
7 A. I'm sorry. He -- he wrote a report.
8 **Q. Okay.**
9 A. Oh, and -- and, you know, I did -- did have
10 the MRIs on both the knees.
11 **Q. Do you remember what the results of the**
12 **MRI --**
13 A. Yeah, they're torn.
14 **Q. Was it a ligament that was torn or a**
15 **meniscus? Do you remember?**
16 A. I'm sorry. I just --
17 **Q. That's fine. If you don't remember,**
18 **that's -- we've been here for a while.**
19 **(Defendant's Exhibit 13 was marked.)**
20 **BY MR. KIRCHER:**
21 **Q. Medical records are a little out of order.**
22 **So what's in front of you has been marked as**
23 **Exhibit 13.**
24 **Do you recognize this document?**
25 A. Yes.

Page 252

1 **Q. Okay. And what exactly is this document?**
2 A. It says it's from Dr. Cash.
3 **Q. Okay. And he's your orthopedic?**
4 A. He was my orthopedic surgeon for my neck and
5 my back.
6 **Q. Okay. What years was he your orthopedic**
7 **surgeon for your neck and back?**
8 A. Well, I went to him after the accident in
9 2010, and then I went back in 2012.
10 **Q. Okay. And it looks like this is dated**
11 **March 23rd, 2010?**
12 A. Yes.
13 **Q. Do you remember seeing Dr. Cash on that date?**
14 A. Well, I know I saw him after the accident,
15 so ...
16 **Q. So this is a little over a month after the**
17 **accident?**
18 A. Yes.
19 **Q. Okay. And then under Prior Injuries it,**
20 **says, Severe back and hand injury in 1989.**
21 A. Yes.
22 **Q. And what was that severe back injury you had?**
23 A. I was going through a divorce. My ex-husband
24 pushed me, and I got a muscle spasm in my back.
25 **Q. Okay. Did that injury ever heal?**

Page 253

1 A. Yes.
2 **Q. Okay. When did it heal?**
3 A. Shortly after that. I did some -- I went to
4 physical therapy a couple of times. She gave me
5 some -- back exercises, and that took care of it.
6 Healed then.
7 **Q. Did you ever have any back pain in January of**
8 **2010?**
9 A. I'm so sorry. I'm sorry. Could you repeat
10 the question.
11 **Q. Did you ever have any back pain in January of**
12 **2010?**
13 A. No.
14 **Q. Okay.**
15 A. No. I was a swing dancer.
16 **Q. How about in 2009? Did you ever have any**
17 **back pain?**
18 A. No.
19 **Q. And then Past Medical History, fibromyalgia.**
20 **When were you diagnosed with that?**
21 A. When my husband -- or not my husband. My
22 ex-husband, way back around at the end of the 1980s,
23 when he, you know, pushed me and I had the -- the back
24 muscle spasm, and I went to the doctor, and they said,
25 well, maybe you have fibromyalgia.

Page 254

1 **Q. So did you have it or not?**
2 A. Well, I didn't have any symptoms after that.
3 **Q. Okay. Where did Dr. Cash get this medical**
4 **history from? Did you tell him you had fibromyalgia?**
5 A. When I filled out the -- all the forms, it
6 asks for history, so I put down my tonsillectomy in the
7 1950s, and then, you know, I put down my history.
8 **Q. And then looking at the bottom of it,**
9 **radiology lab, X ray, I think we went over the X ray**
10 **lumbar report previously. It looks like Dr. Cash put,**
11 **Marked multilevel degeneration of lumbar spine.**
12 **Do you remember talking about that?**
13 A. I'm sorry. With you today?
14 **Q. Yeah, with me today.**
15 A. Yes.
16 **Q. Okay. I think I asked you what the**
17 **conversation you had with Dr. Cash was.**
18 **Do you remember anything about that**
19 **conversation about the multilevel degeneration of the**
20 **lumbar spine?**
21 A. Basically my understanding was he said your
22 disks and nerves are damaged.
23 **MR. KIRCHER:** Want this as 14, please.
24 (Defendant's Exhibit 14 was marked.)
25 /////

Page 255

1 **BY MR. KIRCHER:**
2 **Q. What's in front of you has been marked as**
3 **Exhibit 14, and it's Bate -- Bates No. PLTF715 through**
4 **716.**
5 **Do you recognize this document?**
6 A. It looks like it's a report from Dr. Carr.
7 Where's the date? -- to Dr. Subramanyam, my -- yeah, it
8 says a letter to Dr. Subramanyam. He's my primary
9 doctor. And it's from Dr. Carr, I believe.
10 **Q. Is that C-a-r-r?**
11 A. I think so.
12 **Q. Okay. And what kind of doctor is he?**
13 A. I think he's an ophthalmologist.
14 **Q. Okay. I guess the upper right says, Exam**
15 **date: August 11, 2011; is that correct?**
16 A. Oh, okay. Yes, I see that.
17 **Q. Do you remember going to a Dr. Carr for some**
18 **eye issues in August of 2011?**
19 A. Yes.
20 **Q. Okay. What were those eye issues?**
21 A. The same thing. The day of the fall, right
22 there, I was dazed. And since that time, I've had
23 that -- that pain that goes from my neck up to my head,
24 and then it starts hurting my eye. And then a few days
25 later, I had had the issues on the left side of my face

Page 256

1 that also affected my -- my eye.
2 **Q. And then under Plan, in the middle of the**
3 **page, of PLTF715, second sentence, it says, Her eye**
4 **exam is essentially normal.**
5 **Do you remember that being the result of your**
6 **eye exam?**
7 A. Well, I see that that's what he wrote.
8 **Q. Well, do you think that's true or not?**
9 A. Well, if that's what -- he's saying that he
10 did the eye exam and it was essentially normal, I
11 believe him.
12 **Q. Did he do anything for your blurred vision**
13 **that you were having at that time?**
14 A. Okay. It says that he prescribed glasses,
15 but that -- that's what it says. He prescribed
16 glasses, but I had had glasses for driving.
17 **Q. So you didn't get new glasses?**
18 A. Not at that time because my glasses were fine
19 for driving.
20 **Q. Okay. And says, She has early cataract**
21 **changes.**
22 **Do you remember talking to him about that?**
23 A. Well, I see that that's what that says.
24 **Q. Do you remember talking to him about that?**
25 A. Vaguely.

Page 257

1 **Q. Okay. And I think in the -- in the first**
2 **part of your deposition, we briefly addressed you were**
3 **having some issues with your eyes detaching?**
4 A. Yes.
5 **Q. Okay. And when did you first go to a doctor**
6 **for that?**
7 A. In June of last year, I had -- when I was
8 sent for the MRIs, shortly right after that, they
9 started -- I -- they started flashing. So I believe I
10 went to my -- yes, almost positive I went to my primary
11 doctor first and then he sent me to three eye
12 specialists for it. I didn't know what it was.
13 **Q. So that didn't happen until last year?**
14 A. Right after the MRIs last year.
15 **Q. Okay. So you don't attribute whatever they**
16 **diagnosed you with the -- with the detaching eyes to**
17 **the fall at the Wynn, do you?**
18 A. I'm really sorry.
19 **Q. It was a bad question. I'm sorry.**
20 **Do you attribute the problems you're having**
21 **with your eyes to your fall at the Wynn?**
22 A. The detaching eyes?
23 **Q. Yes.**
24 A. Only in that the timing. I had the MRIs, and
25 then I had the flashing. And so I don't know if the

Page 258

1 flashing was because of the MRIs. I know for a fact
2 that in March, around there, in 2010 when I had the
3 MRI, the neck MRI, they couldn't finish. They had to
4 get me out because it affected my head. It was the
5 extreme pain. So I was afraid to get more MRIs after
6 that time.
7 So I finally did get more MRIs last year, and
8 then this is what happens. I mean, the timing is just
9 too close.
10 **Q. The timing is too close to what? The**
11 **timing --**
12 A. I get the MRIs and then I have a problem with
13 my eyes.
14 **Q. So the problems with the -- the MRIs are**
15 **causing the problems with your eyes?**
16 A. It just -- it happened after the MRIs. And I
17 was afraid to get the MRIs because I'd already had a
18 problem -- the MRI had already caused that pain in my
19 head.
20 **Q. Okay. Do you blame any of your eye issues**
21 **with your fall at the Wynn?**
22 A. Only in that that day, I had all these head
23 symptoms, and a few days later, I had the symptoms on
24 my left side of my face which included the eye. And --
25 and my whole left arm was numb.

Page 259

1 **Q. Do you remember going to Matt Smith Physical**
2 **Therapy?**
3 A. Yes.
4 **Q. When did you go to Matt Smith Physical**
5 **Therapy?**
6 A. Shortly after the accident, Dr. Cash sent me
7 there. And so I went 20-some times.
8 **Q. Excuse me, how many times, 20?**
9 A. Twenty-some.
10 **Q. Twenty-some. Okay. Wasn't sure if you said**
11 **27 or 20-some.**
12 **MR. KIRCHER:** Let's mark this as Exhibit 15,
13 please.
14 (Defendant's Exhibit 15 was marked.)
15 **BY MR. KIRCHER:**
16 **Q. And what did Matt Smith Physical Therapy,**
17 **what kind of exercises did they have you do? What --**
18 **so the first time you went to Matt Smith Physical**
19 **Therapy, what did they have you do?**
20 A. Well, I -- I think -- well, I went for the --
21 the back and the neck.
22 **Q. Okay. Dr. Cash refers you?**
23 A. Yes.
24 **Q. Okay. You didn't go for your legs or knees**
25 **or anything else?**

Page 260

1 A. I think -- I believe that Dr. Cash referred
2 me for the neck and the back.
3 **Q. Okay. And you went 20-some times to Matt**
4 **Smith?**
5 A. Yes.
6 **Q. And did the physical therapy help you at all?**
7 A. The neck exercise is the one that caused --
8 you know, caused the pain up my head. You know, I told
9 you you have the bands and the -- okay. So I couldn't
10 do that anymore.
11 The other exercises, generally they
12 strength -- make you stronger, I think. But -- but it
13 didn't take away the pain from my back down to my foot.
14 I still have that in my seat.
15 **Q. Did it help you in any other way?**
16 A. Well, it didn't -- it didn't take away the
17 problem I have in my neck and my back down to my foot
18 or my seat. It didn't take that away. But I believe
19 that, you know, in general, exercise is good. That's
20 why I do it all day long -- I mean, throughout the day.
21 **Q. Right. You know, you said you went there**
22 **over 20 times. If you're going somewhere 20 times, I**
23 **just want to know if it actually helped you or didn't**
24 **help you.**
25 A. It didn't take away the problem. It didn't

Page 261

1 take away the cause of the pain.
2 **Q. And we're looking at Exhibit 15, and the**
3 **visit date on the top right says May 3rd, 2010.**
4 **Do you remember going to Matt Smith in May of**
5 **2010?**
6 A. Well, I know I did go there around that time.
7 **Q. Do you remember approximately the dates you**
8 **visited Matt Smith Physical Therapy?**
9 A. Okay. So it would be here; right? Is it --
10 is it in this document?
11 **Q. On -- yeah, on the top. This one has the**
12 **specific date May 3rd, 2010.**
13 A. Oh, this might be the first one? This could
14 be the first one or beginning because I went over a
15 period of time and -- over 20-some times, so ...
16 **Q. Was it 27 times --**
17 A. Some.
18 **Q. -- or 20-some times over a couple-month**
19 **period?**
20 A. It was over a few months.
21 **Q. How many times a week did you go?**
22 A. I believe it was two to three times.
23 **Q. And then on the second page, Assessment, it**
24 **says, The client tolerated today's**
25 **treatment/therapeutic activity with severe complaints**

Page 262

1 **of pain and difficulty which required abbreviation of**
2 **the planned course of treatment. Presentation: Pain**
3 **behavior inconsistent with injury DX.**
4 **Do you know what "pain behavior inconsistent**
5 **with injury DX" means?**
6 A. No.
7 **Q. Did you ever have any kind of conversation**
8 **with the therapist or Matt Smith about your pain**
9 **behavior being inconsistent with your injury diagnosis?**
10 A. The -- I believe that in -- maybe I'm not
11 answering your question. I'm sorry. But the
12 conversation was the moves that he was having me do was
13 causing more pain.
14 **Q. And you told him that?**
15 A. Basically. I mean, right now -- I mean, if
16 I -- there's certain moves that I can't do because
17 they -- they create more pain and they make my arms go
18 numb.
19 **Q. I'm talking about when you visited Matt Smith**
20 **when -- when you did certain moves that caused more**
21 **pain, did you tell him that?**
22 A. Yes.
23 **Q. And did he make you -- make you continue to**
24 **do those moves?**
25 A. No.

Page 263

1 **Q. Do you know what complex regional pain**
2 **syndrome is?**
3 A. Not really.
4 **Q. Do you know if a doctor has ever diagnosed**
5 **you with that?**
6 A. I know that Dr. Trainor said that maybe I
7 have it.
8 **Q. What else did he tell you about it?**
9 A. I don't recall him really telling me about
10 it. I only went to him once.
11 **Q. Okay. Did any other doctor tell you that you**
12 **possibly had complex regional pain syndrome?**
13 A. I don't think so.
14 **Q. Okay. And you were never curious on exactly**
15 **what that is?**
16 A. Well, because he didn't say I do have it, not
17 really.
18 **Q. What's the status of your treatment today? I**
19 **know the last -- during your deposition, you kind of**
20 **had -- you had to see somebody before you saw somebody**
21 **so you could get certain things done. I believe you**
22 **had a -- I think you testified earlier you had three**
23 **disks damaged; correct?**
24 A. I need the surgery on three disks in my neck,
25 and I need surgery three discs in my back.

Page 264

1 And then since I saw you, I went to
2 Dr. Tingey, and followed up with the knees. Because I
3 had to -- you know, because my -- my other doctor left.
4 And so now I know I need surgery on both of my knees.
5 **Q. Who was your other doctor?**
6 A. I'm sorry. The one that left?
7 **Q. Yes.**
8 A. Dr. Martin.
9 **Q. Martin. And do you attribute your knee**
10 **problems to the fall at Wynn in 2010?**
11 A. Oh, absolutely. That -- that was one of the
12 immediate injuries I had.
13 **Q. Okay.**
14 A. I mean, my knees were good, and then -- then
15 I fell, and immediately, that was one of the -- the
16 pains.
17 **Q. Okay. I don't know if I asked you this: Has**
18 **a doctor told you that that fall caused your knee**
19 **problems?**
20 A. I'm positive that when I went there, I didn't
21 have any knee problems at all.
22 **Q. My question is: Has the doctor told you**
23 **that, though, that the fall at the Wynn caused your**
24 **knee problems?**
25 A. I'm positive that I told the doctors right

Page 265

1 after the fall. I told them at UMC two days later
2 about the knee. And all the -- several doctors
3 throughout that time. So I don't think that I
4 specifically asked them if a fall tore my knees because
5 I had no problems with my knees when I went there.
6 Then I fell, and immediately my knees are hurting?
7 **Q. So doctors never told you that your knee**
8 **problems were caused by the fall?**
9 A. I don't believe I asked them.
10 **Q. Okay. And what about your neck problems?**
11 **Has a doctor ever told you that your neck disk issue**
12 **was caused by the fall?**
13 A. I believe that they did. I believe that
14 because I told them I didn't have this, I didn't have
15 the symptoms, I didn't have a doctor, I had no
16 problems, and all of a sudden, immediately, I have all
17 this pain? And -- and -- and my limbs are going numb,
18 so ...
19 **Q. Okay. And has a doctor ever told you the**
20 **three discs in your back, the issues you're having with**
21 **that was caused by the fall at Wynn?**
22 A. I believe that because I told them that I
23 didn't have these symptoms before I fell, and -- and
24 that I had these immediate symptoms right after I fell,
25 I believe that they didn't -- they for sure didn't tell

Page 266

1 me, oh, well -- I don't remember their exact words.
2 But I have -- I was healthy. I didn't have it, and
3 then immediately, I have the issues -- the pain and the
4 symptoms there.
5 So I know that no one ever told me that, oh,
6 no, that wasn't caused by the fall. But specific
7 words, I can't tell you their specific words.
8 **Q. Has a doctor told you any of these medical**
9 **issues you're having were caused directly by the fall**
10 **at the Wynn?**
11 A. My understanding is that because of the
12 injuries, my disks and nerves are damaged. That's my
13 understanding that -- I believe that that was what I
14 was told. Not in those exact words.
15 **Q. Has a doctor ever told you that some of these**
16 **injuries or medical issues you had could have been**
17 **caused by something else?**
18 **MS. MORRIS:** Object to form.
19 **THE WITNESS:** Because I told the doctors that
20 I didn't have the symptoms before and that that day,
21 immediately, I did have them, I don't believe any
22 doctor told me what you just said.
23 **BY MR. KIRCHER:**
24 **Q. Okay. How much do you think the -- the Wynn**
25 **should compensate you for the fall that you had at its**

Page 267

1 **property on February 8th, 2010?**
2 **MS. MORRIS:** Object to form.
3 **THE WITNESS:** What I want is my health back.
4 **BY MR. KIRCHER:**
5 **Q. What do you think you need to do to get your**
6 **health back?**
7 **MS. MORRIS:** Object to form.
8 **THE WITNESS:** I know that I need surgeries,
9 but I'm -- I know I'm not going to be 100 percent.
10 **BY MR. KIRCHER:**
11 **Q. Has a doctor told you that?**
12 A. Yes.
13 **Q. Which doctors?**
14 A. Dr. Dunn said he could help me with the
15 surgeries, but I won't be 100 percent.
16 **Q. You haven't had a surgery between 2010 and**
17 **today, have you?**
18 A. Correct.
19 **Q. Okay. Why -- if you know, why has it taken**
20 **five years for a surgery to occur?**
21 A. Because the specialists sent me to four
22 physical therapists and they didn't rush to surgery.
23 **Q. So they were trying to do alternative methods**
24 **of healing you?**
25 A. Yes.

Page 268

1 **Q. And that was unsuccessful, you would say?**
2 A. Yes. I've been told that what I have doesn't
3 heal.
4 **Q. So even if you have a surgery, it's not going**
5 **to heal?**
6 **MS. MORRIS:** Object to form and foundation.
7 **THE WITNESS:** No. I was told that surgeries
8 will help me. I was told that I'm not going to heal by
9 myself. Oh, and also, that the physical therapy --
10 like, Dr. Cash, he -- he wouldn't even send me back to
11 physical therapy, because -- because of the nerves.
12 **BY MR. KIRCHER:**
13 **Q. Did he ever give you a diagnosis with the**
14 **nerves or whatever nerve issue you're having?**
15 A. Well, you know, he put them in the reports.
16 **Q. So you're talking about the --**
17 A. Well, you know, in the MRIs. They're in the
18 MRIs and his reports.
19 **Q. Are the nerve issues you're having causing**
20 **you the pain?**
21 A. I've been told that they are.
22 **Q. Told by Dr. Cash?**
23 A. I believe so. That was my understanding.
24 **Q. Are you taking any pain medications**
25 **currently?**

Page 269

1 A. No.
2 **Q. Have you taken any since -- between 2010,**
3 **your fall, and today?**
4 A. Pain medication?
5 **Q. Yes.**
6 A. UMC prescribed it, so I took -- took what
7 they prescribed.
8 **Q. Do you know how long you took it for?**
9 A. Well, I took most of them. They prescribed
10 three drugs. I took almost all of them.
11 **Q. Has another doctor tried -- tried to**
12 **prescribe you pain medication and did you decline?**
13 A. Most of the doctors offer drugs. And if they
14 tell me that they're going to heal me, I'll take them.
15 If they tell me they're not going to heal me, and --
16 and I've been told me just -- the pain drugs, then I'll
17 just have another problem. So if it's going to cause
18 more problems and it's not going to heal me, so I don't
19 take them.
20 **MR. KIRCHER:** I think that's all I have.
21 **MS. MORRIS:** I have a couple of quick
22 questions.
23
24 /////
25 /////

Page 270

1 EXAMINATION
2 BY MS. MORRIS:
3 **Q. Yvonne, earlier you testified that the fall**
4 **at the Wynn ruined your life; is that accurate?**
5 A. Well, it robbed me -- I had a great life, and
6 I loved it and I was happy. It robbed me of that.
7 **Q. Okay. It didn't -- I mean, the statement is**
8 **pretty profound, it ruined your life.**
9 **Did you mean it literally ruined your entire**
10 **life?**
11 A. It changed my life completely.
12 **Q. So it changed your life.**
13 A. It changed my life. It changed the way that
14 I planned to live the rest of my life.
15 **Q. I want to just clarify a couple of things**
16 **that were stated in the deposition that you had**
17 **earlier, the first half of your deposition. I want to**
18 **be clear on the fall that you had.**
19 **At the time that you fell, do you recall the**
20 **identity of the first person who was employed by Wynn,**
21 **to your knowledge, to come over to where you had**
22 **fallen?**
23 A. Yes.
24 **Q. Who was that?**
25 A. Terry, I believe his name's -- last name's

Page 271

1 Rubio. He was the sweeper.
2 **Q. And did he have any equipment with him when**
3 **he came over?**
4 A. He had that large sweeper.
5 **Q. And -- and what did he do with that large**
6 **sweeper, if anything, if you remember?**
7 A. After he came and apologized, he took the
8 large sweeper, he went to my left, and -- and to -- to
9 the back of me, and placed his machine at the end of
10 the liquid.
11 **Q. Okay. And who was the next person, if**
12 **anyone, that came to -- over to where you fell that was**
13 **employed by the Wynn?**
14 A. There was a short little lady who came with a
15 mop, and she came to the left of me, and -- you know,
16 between me and Terry, and started mopping up the
17 liquid.
18 **Q. And who is the next person, if you can**
19 **recall, who was employed by Wynn that came over to the**
20 **area where you fell?**
21 A. Lynnette Ellias.
22 **Q. And when Ms. Ellias was there, was the woman**
23 **with the mop still cleaning up the liquid?**
24 A. Yes.
25 **Q. And was Terry still there at the time?**

Page 272

1 A. Yes.
2 **Q. And did anyone else come over to the area**
3 **where you had fallen that was employed by Wynn, to your**
4 **knowledge?**
5 A. Yes.
6 **Q. Who was that?**
7 A. He was a man who had the same kind of uniform
8 that Ms. Ellias had, and he was stocky, dark
9 complected, and had a dark mustache.
10 **Q. Do you know his name?**
11 A. I didn't get his name.
12 **Q. And did you talk with him?**
13 A. Yes.
14 **Q. What was that conversation?**
15 A. I told him that they were already cleaning up
16 the liquid, and that I -- I -- I wanted pictures, but I
17 wasn't able to take pictures. I physically wasn't able
18 to get my camera out. And he said, Oh, don't worry, we
19 have it all on camera, and then he pointed up above us.
20 And he said, See the camera. We have it all on camera.
21 So he assured me they were going to -- well, my
22 understanding preserve all the evidence and get all the
23 pictures, they'd have it.
24 **Q. When you were standing near the area where**
25 **you fell, did any security guard from Wynn come over to**

Page 273

1 **that area where you fell?**
2 A. I don't think so. I mean, not when I'm
3 standing there, no.
4 **Q. Did a security guard ever go over to you and**
5 **take some information from you after you fell at the**
6 **Wynn?**
7 A. Yes. After I limped to the -- to the left to
8 the closest machine to sit, after I sat there for some
9 time, then Corey, the security guard, came up to me and
10 talked to me.
11 **Q. Okay. Is that the man who took pictures of**
12 **your feet?**
13 A. Yes.
14 **Q. Okay. Did anyone else employed by the Wynn**
15 **approach you and talk to you after you fell aside from**
16 **the people that you've told us about?**
17 A. Well, Corey was there, and then Yvette came
18 up to where Corey was where I was sitting, and then
19 Terry came with his report. But as far as other people
20 coming from the Wynn coming and talking to me, I think
21 that was it. But I did see that while we were
22 sitting -- while I was sitting there and Corey was
23 there, I saw a group of Wynn employees around the area
24 where I fell.
25 **Q. So while you were sitting over near the**

Page 274

1 **machines with the security guard, you -- you were**
2 **looking over to the area where you'd fallen and you're**
3 **seeing Wynn employees over there?**
4 A. Actually, maybe Corey hadn't come yet. Just
5 while I was waiting, I -- yeah, while I was waiting,
6 and -- and I was looking over there, that's when I saw
7 the group of people talking -- discussing it.
8 **Q. Do you know how -- approximately how long it**
9 **was that you sat at the machine before Corey got**
10 **to-- to you?**
11 A. It was -- it was some time, but I don't
12 remember exactly.
13 **Q. When you left the scene where you had**
14 **fallen -- when you left the area where you fell and**
15 **went over to the machine, was the liquid still being**
16 **cleaned up on the floor or had they completed the**
17 **cleanup of the liquid on the floor?**
18 A. No, the liquid was still there. They were
19 still cleaning, and they hadn't even started cleaning
20 the part that I was standing on.
21 **Q. What part were they cleaning?**
22 A. The liquid -- the part that was still very --
23 the part that I slipped on and to the back of me inside
24 that walkway, the slippery part.
25 **Q. Okay. And was it just the one woman with the**

Page 275

1 **mop cleaning it up or was Terry doing anything that you**
2 **could see?**
3 A. At that time, I just saw the woman with the
4 mop cleaning it, and I just saw Terry standing there
5 with his machine.
6 **Q. With -- the woman with the mop, did she have**
7 **a bucket with her?**
8 A. Not sure.
9 **Q. The area that you were standing, you said you**
10 **were still standing in the liquid while they were**
11 **cleaning the other end of the liquid; is that correct?**
12 A. Yes.
13 **Q. And how could you tell that you were still**
14 **standing in the liquid?**
15 A. Well, it -- the liquid covered a large area,
16 at least 7 feet. And the part that I slipped on in the
17 walkway towards the back of me was still really
18 slippery. And the part -- once the people picked me
19 up, the part over here in the open, two different
20 pathways because it was -- it was like a diagonal. So
21 that part in the open under the lights, it had like --
22 at least a 3-foot part of it had almost dried already.
23 And so I was standing on the part, it wasn't slippery
24 anymore. Little bit sticky and some footprints around
25 it.

Page 276

1 **Q. Was it around the liquid or actually in the**
2 **liquid?**
3 A. I'm sorry. The footprints?
4 **Q. Yeah.**
5 A. Well, I was standing in -- it wasn't liquid.
6 It was almost dry.
7 **Q. So that area was dry?**
8 A. So I was standing on it, and that part wasn't
9 slippery. And the people who picked me up, they left
10 their footprints.
11 **Q. Okay. Do you know that those were the**
12 **footprints of the people that picked you up or could**
13 **they have been footprints from other people?**
14 A. There weren't that many footprints. So I
15 believe, because I was standing and I looked down, and
16 I saw the kind of footprints I was making. And -- and
17 the footprints that were in that 3-foot part,
18 approximately, they looked about the same. So I
19 believe that they were just made at the time that they
20 picked me up and, you know, at the time that I was
21 standing in them.
22 **Q. Okay.**
23 **MS. MORRIS:** All right. I don't have any
24 other questions.
25 **MR. KIRCHER:** Nothing.

Page 277

1 **MS. MORRIS:** Do you have any follow-up?
2 **MR. KIRCHER:** No.
3 **MS. MORRIS:** Okay. All right.
4 (Thereupon, the deposition
5 concluded at 3:52 p.m.)
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Page 278

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
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13
14 * * * * *
15 I, Yvonne O'Connell, deponent herein, do
16 hereby certify and declare the within and foregoing transcription to be my deposition in said action under
17 penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.
18
19 YVONNE O'CONNELL, Deponent Date
20
21
22
23
24
25

Page 279

1 CERTIFICATE OF REPORTER
2
3 STATE OF NEVADA)
) ss:
COUNTY OF CLARK)
4 I, Kristy L. Clark, a duly commissioned
5 Notary Public, Clark County, State of Nevada, do hereby
6 certify: That I reported the deposition of Yvonne
7 O'Connell, commencing on Tuesday, June 9, 2015, at 1:03
8 o'clock p.m.
9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript is a
13 complete, true and accurate transcription of my said
14 shorthand notes, and that a request has been made to
15 review the transcript.
16 I further certify that I am not a relative or
17 employee of counsel of any of the parties, nor a
18 relative or employee of the parties involved in said
19 action, nor a person financially interested in the
20 action.
21 IN WITNESS WHEREOF, I have set my hand in my
22 office in the County of Clark, State of Nevada, this
23 22nd day of June, 2015.
24
25 /s/ Kristy L. Clark
KRISTY L. CLARK, CCR #708

/

///// (5)
172:25;244:25;
254:25;269:24,25

^

^Allen (1)
179:21

A

abbreviation (1)
262:1
able (12)
173:19;175:17;
195:25;196:8;197:20;
203:10,13;211:22;
231:22;241:19;272:17,
17
above (3)
210:14;230:25;
272:19
absolutely (1)
264:11
accident (11)
173:11;176:8;
202:22;205:21;222:12,
15;240:2;252:8,14,17;
259:6
accurate (8)
183:6,7;244:11;
246:11,12;247:12,14;
270:4
active (5)
172:14;173:7;
197:14,18;238:1
activity (1)
261:25
actual (1)
173:20
actually (7)
167:23;171:4;
194:14;210:10;260:23;
274:4;276:1
addition (1)
197:19
address (1)
225:13
addressed (3)
226:21;236:3;257:2
Advanced (1)
228:22
affected (10)
172:19,20;198:7;
219:20;224:9,10,15,16;
256:1;258:4
affecting (3)
168:25;224:17;
232:12
affects (1)
232:12
afraid (7)
203:4,15;209:12,14,
22;258:5,17
afterwards (1)
172:20
again (5)
189:1;193:22;
194:24;195:23;227:7
age (1)
177:25
ago (1)
203:12
agreed (1)
166:7
Air (1)
202:1
airport (4)
187:15,17,21;188:6
alarmed (5)
225:3,4,19;226:4;
227:3
allegedly (1)
180:25
Allen (4)
179:25;180:5,6,17
alleviate (1)
249:1
alleviates (2)
197:15,16
almost (7)
186:12;196:4;246:7;
257:10;269:10;275:22;
276:6
alternative (1)
267:23
always (6)
191:11;197:18,18;
199:20;203:8;233:15
and/or (4)
209:12,15;233:24;
235:11
Andrew (1)
217:13
aneurysm (3)
235:11,15,22
anxiety (2)
241:6,16
anymore (2)
260:10;275:24
apologize (1)
182:15
apologized (1)
271:7
Apparently (1)
210:1
approach (1)
273:15
appropriate (1)
169:7
approximately (3)
261:7;274:8;276:18
April (1)
225:25
area (12)
186:2;238:12;
271:20;272:2,24;
273:1,23;274:2,14;
275:9,15;276:7
areas (6)
243:23;246:4;247:8,
16,18,20
arm (8)
169:2;198:9;204:21,
24;238:24;240:4;
243:25;258:25
arms (9)
169:1;193:23;
196:17;198:12,13,23;
203:18;205:21;262:17
around (22)
177:24;180:1;191:3,
6;194:6,19,22;200:20;
201:17;203:8,10,21;
220:24;221:20;234:8;
245:16;253:22;258:2;
261:6;273:23;275:24;
276:1
arrive (1)
187:12
aside (1)
273:15
Assessment (1)
261:23
assuming (2)
166:23;176:16
assure (2)
223:19;226:15
assured (1)
272:21
ate (1)
181:11
attack (8)
238:9,14,17,20,21;
239:4,14;240:15
attend (1)
194:7
attention (1)
223:23
attorney (1)
170:9
attorneys (1)
166:20
attribute (8)
204:4,4;227:13,19;
250:4;257:15,20;264:9
attributed (1)
214:11
attributing (1)
237:21
August (2)
255:15,18
away (7)
240:4;242:3;260:13,
16,18,25;261:1

B

back (62)
168:18,21;183:3;
184:21,22;185:13;
187:3,7,10,12;188:6,7,
8;195:22;196:15;
197:8,10;199:9;
203:19;210:16;211:18;
214:4;217:5;218:13,
13;219:9;223:2;227:7,
9;233:10;239:12,13;
241:15;247:24;248:8,
9;249:10;250:7;252:5,
7,9,20,22,24;253:5,7,
11,17,22,23;259:21;
260:2,13,17;263:25;
265:20;267:3,6;
268:10;271:9;274:23;
275:17
background (1)
170:15
bad (3)
249:19;251:5;257:19
badly (1)
187:3
balloon (1)
233:10
bands (2)
198:10;260:9
barely (1)
203:21
Base (1)
202:1
based (2)
225:24,24
basically (16)
169:11;174:4;175:3;
212:2;223:18;224:20;
226:15;246:10;247:7,
8,15,20,22,25;254:21;
262:15
basis (1)
233:15
Bate (1)
255:3
Bates (5)
190:4;200:24;208:7;
242:19;255:3
bathroom (2)
182:24;183:20
became (2)
218:10;220:2
become (1)
197:14
bed (1)
239:10
beginning (5)
194:19,20;225:12;
247:9;261:14
behalf (1)
170:9
behavior (3)
262:3,4,9
behind (2)
183:25;186:17
below (1)
235:11
Besides (3)
239:25;244:16,18
best (3)
166:25;167:7;192:10
better (1)
224:12
big (2)
185:6,9
birthdays (1)
171:2
bit (3)
196:5;220:24;275:24
blame (1)
258:20
blood (2)
170:21;230:25
blow (1)
233:14
blurred (3)
231:12;232:5;256:12
blurry (2)
231:21,23
bodies (4)
245:21,24;246:17,18
body (16)
169:12;191:12;
196:10,16,17;197:12;
198:2,5;204:15;205:2;
243:12;246:9,22,24;
247:3,11
both (7)
205:5,12;210:7;
229:24;250:25;251:10;
264:4
bothering (1)
247:21
bothers (1)
203:5
bottom (4)
184:23;186:5;238:8;
254:8
Bowl (1)
180:12
boyfriend (2)
203:7,11
break (3)
169:6,7;219:7
breath (2)
236:6,10
breathe (2)
203:22,23
breathing (2)
196:18,23
briefly (2)
236:3;257:2
bring (1)
241:15

Brobeck (4)
175:9;176:12,23;
177:5
broke (1)
203:11
brother (6)
170:17,21;175:4,7;
176:23;177:23
brought (1)
174:18
bruise (8)
184:3,25;185:3,7,9,
17;186:9,14
bruised (2)
186:3,9
bruises (3)
184:11;185:19,20
bucket (1)
275:7
buffet (3)
180:21,22;181:11
bulge (1)
219:15
bunch (1)
230:8
buttock (1)
217:24
buttocks (2)
184:4;186:18

C

California (2)
170:19;173:19
call (1)
198:11
called (2)
166:14;188:3
calmed (1)
225:20
came (21)
171:8,14,22,23;
173:4,5;174:10,12;
184:22;187:10;193:19;
217:5;271:3,7,12,14,
15,19;273:9,17,19
camera (5)
205:23;272:18,19,
20,20
can (24)
167:2,16;168:6;
169:7,19,22;170:10;
171:9;185:20;186:4;
192:16;196:6,19;
197:12;203:21;210:10;
211:13;215:8;223:15;
224:16;232:24;243:20;
250:21;271:18
canal (1)
219:16
capable (1)
206:1
car (1)
187:13
cardiologist (5)
221:13;222:11;
223:1;239:12,13
care (4)
189:2;193:9;204:1;
253:5
careful (1)
195:1
carefully (1)
196:6
Carpal (4)
205:12,17;206:4;
250:2
Carr (3)
255:6,9,17
C-a-r-r (1)
255:10
case (1)
192:22
Cash (17)
207:19;217:8,9,13,
16;218:7;219:24;
252:2,13;254:3,10,17;
259:6,22;260:1;
268:10,22
cataract (1)
256:20
catch (2)
193:8,10
cause (11)
191:18,22,24;
192:24;194:25;195:4;
237:1;240:23;241:1;
261:1;269:17
caused (30)
191:19;192:4;
205:17;206:4,13,18,21;
207:9,14,22;211:20;
218:20;220:12;233:20,
23;234:13;236:4,14;
258:18;260:7,8;
262:20;264:18,23;
265:8,12,21;266:6,9,17
causes (4)
203:5;205:14;206:5;
207:20
causing (5)
204:12;205:14;
258:15;262:13;268:19
Centers (1)
215:18
certain (31)
191:17,17,20,21,22,
23,24;192:12,15,16;
193:4,15,16;194:24;
195:3,6;196:22;
198:13,23;204:22,22;
232:9;248:2,3;249:4,4,
10,11;262:16,20;
263:21
cervical (5)
215:25;216:8,10,14,
17
change (1)
167:15
changed (10)
172:24;173:18;
202:20;204:3;246:8;
249:6;270:11,12,13,13
changes (1)
256:21
changing (1)
201:22
chest (19)
197:9,10;198:24;
199:1;211:25;213:10;
221:25;222:13,25;
226:5;227:15,19,22,25;
234:8;236:1,5;238:22;
248:1
Chi (1)
196:22
childhood (2)
177:21;178:2
children (4)
172:4,6;174:22,23
choice (1)
197:17
Chris (1)
166:19
Christian (1)
182:16
Chronic (4)
236:6,9;241:6,16
circle (1)
185:20
circled (4)
186:11;229:14;
230:18,20
circumstances (1)
172:10
Civil (1)
166:10
clarify (1)
270:15
clean (1)
221:2
cleaned (1)
274:16
cleaning (8)
271:23;272:15;
274:19,19,21;275:1,4,
11
cleanup (1)
274:17
clear (1)
270:18
client (1)
261:24
clinic (2)
242:22,24
Clinical (3)
216:2;217:23;225:25
close (5)
174:14;177:25;
185:2;258:9,10
closest (1)
273:8
colonoscopy (2)
234:17;235:22
coming (3)
181:8;273:20,20
commencement (1)
166:6
compensate (1)
266:25
complaints (1)
261:25
complected (1)
272:9
complete (1)
211:4
completed (6)
194:5;200:8,13,14,
21;274:16
completely (3)
204:7;231:9;270:11
complex (2)
263:1,12
complies (3)
186:6;210:12;229:16
concluded (1)
277:5
conditions (1)
181:22
conducted (2)
234:15,19
confusion (1)
226:19
consider (2)
174:14;246:11
considered (1)
202:11
constant (2)
198:25;232:15
constipated (1)
231:9
constipation (3)
201:20;202:5;234:7
Consultations (1)
190:5
continue (1)
262:23
contributed (1)
220:13
control (2)
193:11;241:19
controlled (2)
201:10,12
conversation (7)
176:4;224:2;254:17,
19;262:7,12;272:14
Corey (6)
273:9,17,18,22;
274:4,9
correctly (1)
180:24
cough (2)
236:6,9
counsel (1)
166:7
counting (1)
183:5
couple (10)
173:6;184:17,20;
192:20;238:22;239:2;
240:1;253:4;269:21;
270:15
couple-month (1)
261:18
course (8)
182:1;193:17,21;
194:2;202:10;209:19;
247:25;262:2
court (2)
166:8;167:2
cousin (2)
179:23;180:3
cousins (1)
180:20
covered (2)
186:15;275:15
create (1)
262:17
crossing (1)
246:13
cruise (1)
187:7
curious (1)
263:14
currently (2)
192:10;268:25
cut (2)
210:13;229:7

D

daily (2)
195:12;201:9
damage (9)
205:14;207:5;
212:19;213:17,18;
222:1,3,3;250:7
damaged (10)
218:9,10;219:4;
220:1,2,9;249:25;
254:22;263:23;266:12
danced (3)
201:9;203:2;220:20
dancer (9)
205:19;214:16;
218:14;219:1;220:4,
20;233:1;238:1;253:15
dark (2)
272:8,9
date (14)
168:1;200:13,16;
217:19;224:12;229:8,
18;232:25;243:10;
252:13;255:7,15;
261:3,12

dated (2)
189:5;252:10
dates (2)
243:3;261:7
Dave (1)
175:8
David (1)
176:23
David's (1)
177:9
day (31)
180:19,23,25;
181:11;182:22,25;
183:17;187:9,10;
188:3,4;194:13,14;
195:13,16,21;196:5,7;
197:7,9;220:4;221:16;
230:1;233:1;238:1;
247:21;255:21;258:22;
260:20,20;266:20
days (11)
184:17,20;192:20;
204:20;238:23;239:2;
240:1,2;255:24;
258:23;265:1
dazed (5)
231:17,21;233:5;
236:16;255:22
deal (1)
245:19
deathly (2)
209:12,22
December (1)
173:5
decline (1)
269:12
deep (2)
196:18,23
Defendant's (13)
169:20;182:13;
188:16;200:2;208:4;
215:11;221:1;228:15;
242:14;244:24;251:19;
254:24;259:14
definitely (1)
171:1
degeneration (5)
216:10,14,17;
254:11,19
degenerative (5)
215:3,7;218:2,20;
219:13
depict (4)
184:24;185:16;
243:20,22
depicted (1)
185:3
depicts (1)
186:9
depo (1)
167:12
deposition (11)
166:7,22;167:10,11,
14;168:8;257:2;
263:19;270:16,17;
277:4
depressed (2)
237:2,8
depression (2)
237:7,12
depression's (1)
236:23
describe (2)
224:11;243:20
described (2)
223:20;226:17
Desert (1)
242:21
detaching (3)
257:3,16,22
detail (2)
182:7;220:15
diagnose (2)
235:1,15
diagnosed (5)
205:9,11;253:20;
257:16;263:4
diagnosis (3)
235:16;262:9;268:13
diagnostic (3)
209:13,15;215:18
Diagnostics (1)
211:9
diagonal (1)
275:20
different (8)
204:6,7,14,15,23,23;
246:21;275:19
differently (1)
224:25
difficult (3)
203:9,10;204:2
difficulty (1)
262:1
dinner (1)
176:18
direction (1)
190:7
directly (1)
266:9
disagree (1)
224:21
disclosures (1)
170:7
discs (2)
263:25;265:20
discuss (1)
216:19
discussed (4)
175:1,5;216:13,17
discussing (1)
274:7
discussion (4)
166:5;218:6;223:18;
226:14
disease (4)
218:2,20;219:13;
225:24
disk (11)
218:2,20;219:3,13,
15,15,22;220:1,12,14;
265:11
disks (14)
212:19;213:17,19;
214:3,4,8;215:8;218:8;
220:8;249:25;254:22;
263:23,24;266:12
disorder (4)
201:12,15;241:6,16
divorce (1)
252:23
dizziness (2)
236:13,20
dizzy (3)
168:24;203:17;
236:22
doctor (62)
167:23,24;184:10,
13,14,18,20;190:8;
199:3,4,22;204:10,11;
205:1,16;206:3,9,12,
16,18,20;207:8,13;
214:20;216:13,16;
217:4;225:14;228:25;
233:8;234:11;235:1,
15,15;239:3,6,7;240:5,
6,25;241:23;249:22;
250:6;253:24;255:9,
12;257:5,11;263:4,11;
264:3,5,18,22;265:11,
15,19;266:8,15,22;
267:11;269:11
doctors (14)
204:10;216:21;
234:11;237:13;240:20,
21;248:18;250:12;
264:25;265:2,7;
266:19;267:13;269:13
doctor's (1)
185:11
document (20)
188:21,23;200:8,15;
208:8,10;215:15;
216:19;228:19;230:3,
7;237:21;238:8;
242:18;245:4,13;
251:24;252:1;255:5;
261:10
documents (4)
167:9;208:10;
228:20;242:21
done (7)
212:14;215:20;
216:22;217:1;222:14;
223:5;263:21
doubt (1)
174:3
down (26)
167:3;168:18;169:1;
186:10;192:8;193:3;
196:14;203:18,19,20,
20;204:24;225:20;
232:10;233:10;235:25;
240:3;247:24,24;
249:10,13;254:6,7;
260:13,17;276:15
Dr (59)
188:24;189:1;
200:19;206:11,22;
207:19;210:3,5;217:3,
8,9,16;218:7;219:24;
221:10,11;222:8,11,13,
24;223:3,4;227:9,11,
12;228:1,6;229:4,5,13,
17,21;239:16;241:20;
242:6,9,24;248:9;
250:17,25;252:2,13;
254:3,10,17;255:6,7,8,
9,17;259:6,22;260:1;
263:6;264:2,8;267:14;
268:10,22
dried (1)
275:22
drive (8)
168:19;187:17,20;
188:6,7;203:13,14,15
driving (6)
168:22;169:15;
188:10;236:21;256:16,
19
drove (1)
188:8
drug (3)
240:18,19,25
drugs (17)
167:6;209:20,20;
237:11,13;239:10;
240:7,8,10,11,20,24,
24;248:25;269:10,13,
16
dry (2)
276:6,7
due (1)
216:9
duly (1)
166:14
Dunn (1)
267:14
during (3)
212:6;248:13;263:19
DX (2)
262:3,5

E

earlier (3)
263:22;270:3,17
early (2)
193:8;256:20
easily (2)
203:23;204:1
echocardio (1)
223:23
echocardiogram (23)
222:1,2,7,10,14,18;
223:5,19,21,25;224:5,
7,18,22,23;225:5,8,13,
25;226:16,17;227:4;
239:19
echocardiograms (1)
199:12
effects (1)
241:4
eight (1)
233:8
either (3)
178:13;215:4;245:8
Ellias (3)
271:21,22;272:8
else (8)
173:16;205:11;
244:16;259:25;263:8;
266:17;272:2;273:14
e-mail (1)
181:8
e-mails (2)
181:7,10
embarrassing (1)
182:15
emotional (2)
241:8,11
employed (5)
270:20;271:13,19;
272:3;273:14
employees (2)
273:23;274:3
end (5)
194:19,20;253:22;
271:9;275:11
enough (3)
168:20;186:10;
202:25
entire (2)
238:24;270:9
entitled (1)
170:6
equipment (1)
271:2
essentially (2)
256:4,10
estimate (1)
171:9
evaluate (1)
198:21
evaluation (2)
189:16;190:21
even (7)
199:23;204:9;
205:22,25;268:4,10;
274:19
event (2)
202:11,12
Events (1)
201:3
eventually (1)

196:15
everything's (1)
172:24
everywhere (1)
191:12
evidence (1)
272:22
exact (7)
218:24;219:5;220:9;
224:15;233:9;266:1,14
exactly (6)
238:12,13;245:12;
252:1;263:14;274:12
Exam (4)
255:14;256:4,6,10
EXAMINATION (4)
166:17;191:1;
225:25;270:1
examined (2)
166:15;190:25
excuse (6)
171:16;176:5;183:5;
213:7;221:10;259:8
exercise (7)
194:13;195:13;
198:17,18;199:20;
260:7,19
exercised (3)
195:12;197:19;201:9
exercises (13)
189:23;190:24;
195:14;196:2;197:8,
13,22,23;198:2,9;
253:5;259:17;260:11
exercising (3)
194:14;198:2;199:19
Exhibit (42)
169:19,20,23;170:1,
6;182:12,13;188:15,16,
20;200:1,2,5;208:3,4,7;
215:10,10,11,13;221:1,
6;223:6;228:13,15,18;
242:13,14,17;244:23,
24;245:3,21;246:19;
247:11;251:19,23;
254:24;255:3;259:12,
14;261:2
exhibits (3)
169:22;170:2;246:3
ex-husband (2)
252:23;253:22
experiencing (2)
199:18;249:23
explain (3)
196:19;225:22;
232:24
explained (5)
225:17,18;226:1;
241:7;249:22
extreme (5)
191:18;193:17;
198:14;211:20;258:5
extremely (2)
241:8,11
eye (12)
168:25;203:17;
255:18,20,24;256:1,3,
6,10;257:11;258:20,24
eyes (9)
231:21;232:12;
233:3;257:3,16,21,22;
258:13,15

F

face (5)
204:21;238:24;
240:3;255:25;258:24
faced (1)
201:22
fact (2)
220:20;258:1
fall (73)
173:21;184:15;
187:24;201:8;204:5;
205:16;206:2,4,7,13,
18;207:9,21;208:1;
209:2,2;210:19,21,22;
211:5,8;214:11,18,21;
218:20;220:12,13;
221:24;227:14,20;
228:2;230:9,15,21,25;
231:5,14;232:2,14;
233:19,23;236:4,14;
237:1,22;238:2,17;
239:8;241:9,15,21;
242:8;248:5,16;249:7;
255:21;257:17,21;
258:21;264:10,18,23;
265:1,4,8,12,21;266:6,
9,25;269:3;270:3,18
fallen (5)
210:15;270:22;
272:3;274:2,14
falls (1)
211:4
family (5)
171:14,22;172:4;
174:11,12
far (4)
186:10;222:16;
242:8;273:19
fast (1)
203:24
father (1)
175:9
father's (1)
180:2
February (12)
175:24;180:6;
181:25;201:8;208:20;
210:2,21;229:12;
231:25;243:4;245:15;
267:1
feel (1)
197:20
feeling (1)
168:15
feels (1)
168:21
feet (3)
196:25;273:12;
275:16
fell (33)
173:15,22;180:25;
204:7,19;207:4;211:2;
218:15,16;219:1;
220:5;227:16,22;
231:5,16;233:3;234:6;
239:2;242:2;247:21;
264:15;265:6,23,24;
270:19;271:12,20;
272:25;273:1,5,15,24;
274:14
Felt (3)
212:11;234:22;
241:18
few (7)
173:12;199:8;
204:19;223:14;255:24;
258:23;261:20
fibromyalgia (3)
253:19,25;254:4
figure (1)
247:17
figured (1)
193:22
fill (5)
205:24,25;230:3;
231:22;243:7
filled (3)
231:25;243:17;254:5
film (1)
215:25
finally (1)
258:7
find (3)
202:25;215:8;239:17
fine (10)
167:18;168:6;169:5;
223:17,25;224:8,10;
248:12;251:17;256:18
finger (6)
205:7,9;206:13,19;
250:2,8
finish (2)
211:22;258:3
first (29)
166:14;170:1;
174:18;176:25;184:18,
20;187:23;188:2;
193:18;199:14;200:24;
222:1,6,8,18;224:5,5,
14;225:14;226:24;
228:18;257:1,5,11;
259:18;261:13,14;
270:17,20
five (3)
204:12;237:18;
267:20
flashing (3)
257:9,25;258:1
floor (2)
274:16,17
follow (1)
227:4
followed (1)
264:2
follows (1)
166:15
follow-up (6)
224:18,18;225:5,19;
227:3;277:1
foot (8)
168:18,22;203:19;
244:5;247:24;249:10;
260:13,17
footprints (8)
275:24;276:3,10,12,
13,14,16,17
foraminal (1)
219:17
Force (1)
202:1
forearm (1)
244:9
forget (1)
213:12
forgot (1)
222:17
form (8)
196:21;205:24;
231:22;237:23;266:18;
267:2,7;268:6
forms (2)
205:25;254:5
forth (1)
197:10
forward (1)
196:11
Fotedar (3)
221:10,11;228:6
foundation (5)
172:16,21;184:5,9;
268:6
four (11)
173:10;183:9;194:1;
201:10;203:11;204:12;
245:21;246:18,21;
247:3;267:21
friend (5)
177:18,21;178:2,16;
179:2
front (11)
188:19;200:4;208:6;
221:3,5;228:17;
242:16;245:2,6;
251:22;255:2
frontal (2)
243:14,25
full (1)
170:21
fun (2)
202:24;203:2
future (1)
213:24

G

gave (5)
190:22;198:14;
231:22;240:9;253:4
Gaye (1)
176:12
general (6)
195:2,3;219:25;
220:10;249:24;260:19
generally (6)
172:2,13,18;199:16,
19;260:11
gets (5)
172:3;192:24;
196:15,16,16
GI (2)
230:24;234:11
gist (1)
219:6
gives (1)
198:23
giving (3)
167:7;198:3,8
glasses (5)
256:14,16,16,17,18
goes (9)
186:22;203:18;
232:9,17;233:10,16;
249:9,10;255:23
Gong (3)
196:2,16,19
G-o-n-g (1)
196:4
good (6)
197:20;199:20;
239:18,21;260:19;
264:14
great (4)
202:19,23;203:6;
270:5
greatest (1)
218:2
group (2)
273:23;274:7
growth (2)
232:22;233:7
guard (5)
205:24;272:25;
273:4,9;274:1
guess (29)
167:1,13;168:19;
178:12;182:12;183:3;
185:2,20;190:2;
199:16;209:9;210:2;
212:21;215:1,2;
223:11;225:21;226:6,
9,19;233:17;236:12;

239:11,22;245:20; 246:2;247:17;248:4; 255:14

H

half (2) 195:18;270:17
halfway (1) 191:10
Hand (13) 200:10,18;203:25; 204:17;206:20;208:12, 14,15;238:24;244:1,7; 250:2;252:20
handed (1) 170:5
hands (9) 203:18;204:25; 205:5,6,22;210:6,7; 247:25;248:8
handwriting (4) 200:7;230:5;243:9; 245:10
happen (2) 228:2;257:13
happened (6) 181:11;206:15; 232:19;237:10;241:9; 258:16
happening (1) 231:14
happens (1) 258:8
happy (6) 202:19;204:7; 223:22;225:9;237:4; 270:6
head (28) 168:23,25;192:18; 193:18,21;198:16; 203:5,16,17;211:21; 212:5,10,11;231:16; 232:12,14;233:2,3,5,6; 244:21;247:23;249:9; 255:23;258:4,19,22; 260:8
headache (2) 212:8,9
headaches (2) 236:12,18
heal (21) 209:16;240:21,22; 250:5,6,6,8,9,10,13,15, 18,19;252:25;253:2; 268:3,5,8;269:14,15,18
healed (2) 250:20;253:6
healing (1) 267:24
health (4) 172:9;199:10;267:3, 6
healthy (12) 201:9;206:1;207:24; 214:17,23;218:12; 220:4,19,22;233:1; 237:25;266:2
heart (14) 199:3,4;222:9; 225:23;228:9;238:9, 14,17,20,21;239:4,14; 240:15;248:9
height (1) 209:3
held (1) 166:5
Helen (3) 180:3,8,17
help (11) 189:17,19;190:18, 19;197:13;209:16; 260:6,15,24;267:14; 268:8
helped (4) 190:8;194:23; 199:17;260:23
hernia (5) 233:24;234:4,12; 235:2,8
himself (1) 171:24
hip (8) 189:4;212:23;213:1, 2,4;229:22,25;248:8
History (7) 200:25;216:2; 217:23;253:19;254:4, 6,7
hit (2) 231:16;247:15
holidays (1) 171:1
Holloway (2) 178:25;179:14
Holloway's (1) 179:15
Holly (2) 174:6,25
Holly's (4) 175:9;176:14,23; 177:7
home (1) 176:18
Hospitalizations (1) 201:4
hotel (2) 172:2,3
hour (2) 195:18,24
hours (6) 195:15;196:7; 201:10;203:2,13; 220:21
house (6) 175:13;187:22; 188:6,7;203:9,21
huge (1) 245:19
huh-uh (1) 167:2
hurt (7) 169:15;191:4,7; 197:22;205:22;209:17; 247:23
hurting (9) 168:18,20;169:9; 195:22;206:17;229:22, 24;255:24;265:6
hurts (3) 168:22;203:15,19
husband (7) 201:17;202:9,23; 241:8,13;253:21,21

I

IBS (3) 201:10,11;202:5
identified (4) 170:8,9,13,17
identity (1) 270:20
Imaging (1) 215:18
immediate (8) 204:8;210:25; 227:23;231:20;238:3; 247:22;264:12;265:24
immediately (18) 205:21;207:3,25; 208:1;214:18,24; 218:15;219:2;220:5; 228:10;231:19;233:4; 236:15;264:15;265:6, 16;266:3,21
important (1) 197:16
impression (5) 210:1;216:6,7;218:1; 219:14
improved (2) 210:15;247:19
inaccurate (1) 167:14
incident (19) 171:10,12,20; 172:11,14,19;173:14; 174:11,12;175:1; 176:1;180:14,18,19,23; 181:3,16;189:9;193:25
included (1) 258:24
inconsistent (3) 262:3,4,9
incorrect (1) 247:4
increase (1) 192:16
Increases (1) 191:10
indicating (2) 183:13;197:11
information (1) 273:5
Initial (1) 170:7
injure (1) 209:19
injured (1) 187:4
injuries (6) 227:23;233:23; 252:19;264:12;266:12, 16
injury (13) 206:5,6,20;207:20, 20;210:25;214:11; 252:20,22,25;262:3,5,9
inside (2) 234:6;274:23
Institute (2) 200:11;208:15
internal (2) 233:23;234:9
into (14) 182:7;186:22; 192:18,19;193:11,18, 21;203:17,18;204:24; 220:15;222:4;232:12; 245:18
intolerance (2) 240:18,19
Invasive (1) 208:15
involvement (1) 218:3
issue (5) 206:13;214:10,15; 265:11;268:14
issues (22) 182:5;199:10,10; 220:12,14;227:13; 228:9,9;233:2,2;237:3; 241:16;255:18,20,25; 257:3;258:20;265:20; 266:3,9,16;268:19

J

Janine (1) 178:15
January (2) 253:7,11
Jim (2) 178:25;179:14
Jonathan (1) 208:18
July (2) 173:4;174:19
jump (1) 220:24
JUNE (2) 166:1;257:7

K

keep (10) 168:19;188:18; 193:5;225:21;226:6; 249:14,14,16,21; 250:10
kind (28) 168:3,4;169:8;182:3, 18;190:21;195:14; 196:11,21;199:6; 210:3;212:8;214:1,6; 215:7;226:10;228:1; 229:7;233:20;241:17, 23;251:2;255:12; 259:17;262:7;263:19; 272:7;276:16
kinds (1) 241:3
KIRCHER (45) 166:18,19;169:18, 21;170:1,4;172:17; 173:1;182:10,14; 184:6,7,12;188:14,17; 200:1,3;208:3,5;215:9, 12;219:7,9,11;221:2,4; 228:13,16;238:6; 242:12,15;244:23; 245:1;251:20;254:23; 255:1;259:12,15; 266:23;267:4,10; 268:12;269:20;276:25; 277:2
knee (20) 168:20;169:9;182:3, 8;185:2;189:4;197:10; 211:25;213:5,6; 229:23;230:1;248:8; 250:16;264:9,18,21,24; 265:2,7
knees (19) 197:7,9;211:3; 229:22,23,24;250:1,6, 18;251:1,6,10;259:24; 264:2,4,14;265:4,5,6
knew (4) 172:23;188:2; 220:18;226:22
knowledge (2) 270:21;272:4
known (6) 174:17;175:11; 177:20;178:3,18,19
knows (6) 172:13,19,22,24; 173:15,17

L

L2-L3 (1)

219:16
L3 (1)
218:2
L3-L4 (1)
219:15
L4 (2)
218:3,3
L4-L5 (1)
219:16
L5 (2)
218:3,3
L5-S1 (1)
219:16
lab (1)
254:9
labeled (1)
190:4
lack (1)
224:12
lady (1)
271:14
large (4)
271:4,5,8;275:15
Larry (2)
177:16;178:19
Larry's (1)
178:17
LAS (14)
166:1,21;171:7,10;
173:14;174:11;175:2;
176:1;184:16;187:24;
205:17;206:14;207:9;
214:12
last (23)
166:20;168:7,8;
169:22,23;171:6,23;
178:5,21;180:4,6,13;
194:10,15;204:12;
237:18;240:13;257:7,
13,14;258:7;263:19;
270:25
late (1)
202:23
later (9)
181:4;184:21;
204:20;238:23;245:18;
247:19;255:25;258:23;
265:1
lawsuit (1)
181:19
LBS (1)
201:10
leaned (1)
196:11
learn (1)
193:13
learned (2)
192:25;193:12
least (4)
195:18,24;275:16,22
leave (1)
203:9
left (28)
169:2;183:22;
186:21,22,23;200:10;
203:25;204:17,20,21;
205:2,8;219:14;
238:24;240:3;244:7,9;
255:25;258:24,25;
264:3,6;271:8,15;
273:7;274:13,14;276:9
leg (9)
184:25,25;185:1;
191:7;195:22;197:6;
198:22;211:3;217:24
legs (4)
168:20;197:6,11;
259:24
letter (7)
188:24;190:4;221:7,
9,20;223:7;255:8
letter's (1)
189:5
letting (1)
201:23
Level (7)
191:19;192:4,13,13;
202:22;242:4,5
lie (3)
193:2;232:10;249:13
life (19)
201:22;202:13,14,
16,19,20,21;204:3,8;
237:4,17;270:4,5,8,10,
11,12,13,14
life-altering (1)
209:2
life-changing (2)
201:23;202:12
lift (1)
196:25
ligament (1)
251:14
lights (1)
275:21
limbs (1)
265:17
limped (1)
273:7
limping (2)
187:25;188:1
liquid (15)
271:10,17,23;
272:16;274:15,17,18,
22;275:10,11,14,15;
276:1,2,5
list (2)
170:2;211:13
literally (1)
270:9
little (8)
169:1;196:5;213:12;
220:24;251:21;252:16;
271:14;275:24
live (1)
270:14
lives (1)
170:19
living (1)
202:21
long (14)
171:17;174:17,20;
175:11;177:20;178:18;
193:12;202:24;203:1;
223:18;226:14;260:20;
269:8;274:8
look (4)
168:5,6;233:18,20
looked (6)
196:11;239:18,21;
243:24;276:15,18
looking (24)
170:12;174:6;
183:14;191:9;200:24;
209:9;210:8;215:13,
24;219:12;229:25;
230:2,7;236:1,12;
238:7;243:24;245:20;
246:2,15;254:8;261:2;
274:2,6
looks (29)
175:8;184:3;186:2,
11,22;189:5;200:10;
208:12,17;215:17;
216:21;217:12,17;
228:22;230:8;231:11;
235:25;237:20;238:9;
243:19;245:11,25;
246:3,12;247:5,9;
252:10;254:10;255:6
lordosis (1)
216:8
losing (4)
202:9;203:25;
204:16;241:8
lost (2)
201:17;241:13
lot (20)
166:23;172:23;
173:2,7;194:13;
195:19;202:24;203:1;
211:24;212:2,10,12,19;
213:21;223:4,23;
237:21;242:7;246:4;
248:17
loved (4)
199:20;202:19;
203:20;270:6
lucky (2)
202:18,25
lumbar (6)
215:4;217:17,17;
254:10,11,20
Lynnette (1)
271:21

M

machine (5)
271:9;273:8;274:9,
15;275:5
machines (1)
274:1
main (1)
247:16
Major (2)
201:3;216:8
Makes (4)
171:25;195:2;
197:20;236:22
making (2)
249:14;276:16
man (4)
182:17;202:25;
272:7;273:11
many (14)
171:9,20;172:6;
175:15;176:20;177:22;
189:11,14;193:24;
194:4,21;259:8;
261:21;276:14
March (3)
215:21;252:11;258:2
mark (6)
182:10,12;200:1;
230:19;236:9;259:12
marked (45)
169:19,20,22;
182:13;188:14,16,19;
200:2,4;208:4,6;215:9,
11;221:1,5;228:13,15,
17;230:3;233:19;
236:1,1,6,11,23;
242:12,14,16;243:12,
23;244:9,17,18,23,24;
245:2,8;246:16,16;
251:19,22;254:11,24;
255:2;259:14
marking (2)
247:6,10
married (6)
174:20,21,25;
175:14;178:19;180:3
Martin (2)
264:8,9
Matt (9)
259:1,4,16,18;260:3;
261:4,8;262:8,19
may (8)
181:5,6;182:1;188:2;
222:9;261:3,4,12
maybe (16)
168:1,1;171:16;
173:9;180:1;190:18;
226:1,5;234:12,12,13;
235:16;253:25;262:10;
263:6;274:4
mean (33)
179:11;185:10;
190:23;191:21,22;
194:13;213:20,20;
220:21;224:8,15;
230:13;231:3;232:17,
19;233:7,15;236:17;
237:8,13,14,17;245:6;
247:1;248:7;258:8;
260:20;262:15,15;
264:14;270:7,9;273:2
means (4)
216:11;219:18;
244:15;262:5
meant (2)
218:7;231:4
medical (21)
168:5;173:23;175:5;
181:22;188:13;199:10;
200:25;209:12,14,22;
210:3;215:18;220:25;
240:17;248:6,14;
251:21;253:19;254:3;
266:8,16
medication (2)
269:4,12
medications (2)
167:6;268:24
Medicine (1)
228:23
meet (2)
174:18;177:11
meeting (1)
182:17
Mele (3)
177:5,6,7
memory (1)
223:14
meniscus (1)
251:15
mentioned (5)
174:10;182:2;
195:12;197:21;240:18
mentioning (1)
226:10
mentions (1)
210:15
merely (1)
212:9
met (8)
166:20;175:12;
176:16,25;177:1;
180:22;181:25;192:2
methods (1)
267:23
mid (3)
216:9,14,17
middle (4)
185:3;191:10;
195:16;256:2
might (3)
245:6,18;261:13
mind (1)
227:10
Minimally (1)
208:14
minutes (1)
225:22

mispronouncing (1)
224:23
missed (1)
208:22
misstate (1)
201:8
misunderstood (1)
167:20
mitral (2)
223:20;226:16
Moderate (1)
216:9
month (2)
242:10;252:16
months (2)
173:6;261:20
mop (5)
271:15,23;275:1,4,6
mopping (1)
271:16
more (24)
169:16;183:6;186:23,25;191:24;194:3;195:9;197:14;203:5;212:1;225:22;234:25;240:23;241:1;246:20;247:12,14;249:11;258:5,7;262:13,17,20;269:18
MORRIS (16)
169:25;170:3;172:16,21;184:5,9;237:23;266:18;267:2,7;268:6;269:21;270:2;276:23;277:1,3
most (4)
197:16;211:12;269:9,13
mother (1)
176:14
mother's (1)
180:2
mouth (1)
203:24
move (12)
191:16,17,20,20,21;192:15;193:23;198:22;204:22;248:1,3;249:4
moved (4)
191:3,6,7;198:23
movement (4)
193:5;204:23;222:25;249:18
movements (5)
191:24;194:24;195:1;196:22;232:10
moves (11)
192:23;193:16;195:3,6;199:21;249:11,14;262:12,16,20,24
moving (3)
193:2;249:13,14
MRI (11)
211:18,19;212:2,5,6,14;217:16;251:12;258:3,3,18
MRIs (15)
211:18;248:19;251:10;257:8,14,24;258:1,5,7,12,14,16,17;268:17,18
much (13)
168:23;186:15,19;188:11;196:15,16;201:21;204:13;205:22;246:4;247:15;249:23;266:24
multilevel (2)
254:11,19
Muro (2)
177:16;178:15
M-u-r-o (1)
177:18
muscle (3)
216:9;252:24;253:24
mustache (1)
272:9
myself (4)
185:12;192:23;204:1;268:9

N

name (2)
272:10,11
name's (3)
166:19;270:25,25
narrowing (1)
219:17
nausea (2)
231:1,5
near (2)
272:24;273:25
neck (53)
168:23,24;192:17;193:3,18;196:12,13;198:8,15;203:15,16,18;204:22;205:13,13,14;207:6,18;211:19;212:1,5,14;213:13;214:4,7,8,9,10,16,20;215:4;232:9,11;233:6;236:22;244:20;247:23,24;249:8;250:7,7,13;252:4,7;255:23;258:3;259:21;260:2,7,17;263:24;265:10,11
need (26)
168:5;169:6;173:25;174:2,5;182:2,8;192:18;205:4,6;209:17;214:2,3,6;225:18;234:14,24;235:9,19,20;250:25;263:24,25;264:4;267:5,8
needed (8)
189:20,20;198:21;210:6;217:6;222:4;223:1;224:17
Nellis (3)
201:19,25;202:1
nerve (3)
219:21;268:14,19
nerves (14)
199:24;212:20;213:17;218:8;219:4,19,22;220:1,8;249:25;254:22;266:12;268:11,14
neural (1)
219:17
NEVADA (2)
166:1,10
new (1)
256:17
next (8)
177:16;181:2;185:15;188:14;215:10;232:21;271:11,18
nice (3)
182:17;225:16,20
night (2)
176:19;195:17
none (1)
230:19
nonspecific (1)
216:8
normal (6)
216:7;223:19;224:22;226:15;256:4,10
nose (1)
203:23
nothing's (1)
249:6
November (1)
173:5
NSAIDS (2)
209:11;210:18
numb (7)
169:1;204:21,25;238:25;258:25;262:18;265:17
number (2)
209:4,6
numbered (1)
208:7
numbness (1)
205:15
numerous (3)
211:9;248:6,7

O

Oasis (1)
242:21
object (9)
172:16,21;184:5,9;237:23;266:18;267:2,7;268:6
obviously (1)
181:18
occur (1)
267:20
occurring (3)
204:18;220:17,18
O'CONNELL (4)
166:13,19;190:4;200:25
October (6)
173:5;174:21;175:12,13;176:17;178:9
off (3)
193:5;210:13;229:7
offer (3)
237:13,14;269:13
offices (1)
194:2
off-the-record (1)
166:5
often (5)
170:25;171:3;173:3;180:11;233:14
old (2)
177:23;179:25
once (11)
171:14;175:20,21,22;181:7;189:15,18;221:21;227:5;263:10;275:18
one (52)
166:20;167:22;174:24,24;182:23;183:13;185:11;186:15;188:14;194:3;197:4,5,10;199:14,22;200:17;205:7;209:1,10;211:7,23;215:2,22,24;216:21;221:11;222:4,21;224:6,9;225:14,14,15;226:7,11,24,24,24;228:7;231:19;232:21;246:15;248:10;260:7;261:11,13,14;264:6,11,15;266:5;274:25
ones (1)
186:1
Only (11)
173:25;181:25;189:18;197:15;224:6;227:5,8;241:7;257:24;258:22;263:10
oOo- (1)
166:3
open (2)
275:19,21
ophthalmologist (1)
255:13
opinion (6)
221:14,15,23;227:9,11,12
order (1)
251:21
orthopedic (6)
189:3;217:6;250:14;252:3,4,6
Orthopedics (1)
228:23
Otherwise (2)
194:25;196:8
out (26)
167:19,22;191:19,25;193:11,22;205:23,24,25;211:3,20,21;212:13;230:3;231:22,25;234:6;242:5;243:7,17;245:23;247:17;251:21;254:5;258:4;272:18
over (34)
166:21,22;170:8,13;195:18,23;201:24;203:14,14;204:12;230:10,12;236:21;241:2;252:16;254:9;260:22;261:14,15,18,20;270:21;271:3,12,19;272:2,25;273:4,25;274:2,3,6,15;275:19
own (1)
203:21

P

page (18)
170:1,10;177:4;185:15;190:3;191:10;200:24;208:13;210:9,10,11,14;223:11;228:18;229:6;243:7;256:3;261:23
pain (125)
168:9,13,15;188:9;190:14;191:11,12,18,24;192:1,4,8,16,17,19,20;193:14,18,21;194:23,25;195:4,9,17,19;197:14,15,17;198:3,14,15,24,25;199:1,18;203:5,7,16,18;204:8,12,13,24;205:2;207:4,10,14,18;211:1,20;212:4,5,6,8,10,12;214:18,25;216:2,4;217:24;218:17;220:6;221:25;222:25;226:5;227:23,24;232:9;233:4;234:6,8,8;236:2,5;238:3;242:1,4,7;243:22,24;244:12,16;246:1,3,8;247:7,8,13,18,22;248:2,3;249:1,3,

8,9,11,19,23;253:7,11,17;255:23;258:5,18;260:8,13;261:1;262:1,2,4,8,13,17,21;263:1,12;265:17;266:3;268:20,24;269:4,12,16
painful (1) 197:24
pains (6) 222:13;227:15,19,22;238:22;264:16
pain's (1) 168:24
Palpitations (1) 236:2
papers (1) 241:2
paracentral (1) 219:15
paragraph (1) 209:10
parents (1) 170:23
part (20) 185:1;196:10;197:12;198:2;216:7;251:6;257:2;274:20,21,22,23,24;275:16,18,19,21,22,23;276:8,17
parts (6) 196:10;198:5;204:15;230:17,20;245:23
Past (1) 253:19
pathways (1) 275:20
patient (14) 190:6,6;192:11;200:25;209:1,3,6,11;210:14,15,17;223:18,22;226:14
Patient's (1) 190:7
paying (1) 223:23
pen (1) 185:21
people (8) 203:8;273:16,19;274:7;275:18;276:9,12,13
percent (3) 192:10;267:9,15
perfectly (7) 206:1;207:23;214:17;218:11;220:4,19,22
perforate (2) 234:21,24
performed (1) 210:17
period (3) 249:2;261:15,19
permanent (1) 240:5
person (4) 204:6;270:20;271:11,18
phone (1) 175:19
physical (35) 188:25;189:12;190:22;191:1;192:3;193:15,20,24;194:1,3,4,7,10,15;197:21;198:20;199:17,23;203:6;213:21;222:24;248:20,24,25;250:19;253:4;259:1,4,16,18;260:6;261:8;267:22;268:9,11
physically (4) 172:14,20;197:18;272:17
physician (2) 189:2;217:13
physicians (3) 190:6,13;221:12
physiological (2) 223:21;226:18
piano (1) 203:24
pick (2) 187:15,17
picked (7) 187:21;188:1,5;275:18;276:9,12,20
picture (13) 183:16,19,22;184:2,23,24;185:4,16,21,22;186:5,9,12
pictures (14) 182:11,19;183:4,9;184:2,8,11,19;187:2;205:23;272:16,17,23;273:11
pillows (1) 193:4
place (2) 230:11,12
placed (1) 271:9
places (2) 246:10;247:23
plain (1) 215:25
Plaintiff (1) 215:14
Plaintiff's (5) 170:6;208:14;210:8;223:12;228:18
plan (2) 202:20;256:2
plane (2) 187:13,14
planned (2) 262:2;270:14
planning (1) 213:23
play (1) 203:24
please (5) 200:1;208:3;228:14;254:23;259:13
PLTF000005 (1) 208:7
PLTF000720 (2) 183:14;184:23
PLTF29 (1) 219:12
PLTF398 (1) 242:19
PLTF402 (1) 247:12
PLTF441 (1) 245:9
PLTF715 (2) 255:3;256:3
PM (2) 166:2;277:5
point (7) 209:1,10;225:24;226:23;238:4;245:19;247:7
pointed (1) 272:19
pointing (1) 169:8
pool (10) 189:21,22,23,24,25;190:18;194:12,15,21;195:2
pop (1) 203:16
popped (3) 168:23;198:15;236:22
position (3) 185:12;191:22;193:4
positional (1) 216:8
positions (15) 191:17,21,24,25;192:4,5,6,12,16,24;204:22,23;249:4,11,16
positive (6) 207:10;227:15,21;257:10;264:20,25
possibly (2) 238:21;263:12
prefaced (1) 168:3
preparation (1) 167:10
prescribe (1) 269:12
prescribed (8) 237:11,15;240:10;256:14,15;269:6,7,9
Presentation (1) 262:2
preserve (1) 272:22
pressure (2) 193:5;212:11
presume (1) 230:14
pretty (11) 177:25;186:14,15,19;187:11;196:15,16;201:21;246:4,11;270:8
prevent (1) 167:7
previous (1) 167:13
previously (2) 166:22;254:10
primary (4) 189:2;217:4;255:8;257:10
prior (4) 166:6;172:10,14;252:19
privilege (1) 182:16
probably (4) 171:23;180:1;188:8;200:21
problem (13) 201:23;209:11;215:3;226:11;231:6,10,24;234:23;258:12,18;260:17,25;269:17
problems (23) 190:14;214:21;218:12,13;228:2;233:3,5;234:22,25;240:23;241:1;257:20;258:14,15;264:10,19,21,24;265:5,8,10,16;269:18
Procedure (1) 166:10
proceed (1) 169:3
proceedings (1) 166:7
produced (1) 182:11
profound (1) 270:8
progressed (3) 199:15;225:15;226:25
progresses (1) 224:9
progressing (1) 225:4
progression (1) 226:10
pronounce (1) 177:5
property (1) 267:1
protrusions (1) 219:16
provider (1) 245:13
providers (1) 248:6
psychiatrist (1) 237:16
pulling (4) 198:9,10,11,13
purse (1) 205:23
pushed (2) 252:24;253:23
put (14) 192:23;193:3,4;197:5;204:23;238:15,16;243:10;246:24;247:2;254:6,7,10;268:15
putting (1) 192:5

Q

Qi (3) 196:2,16,19
Q-i (1) 196:4
qualified (2) 223:21;226:18
quarter (1) 185:7
question-and-answer (1) 166:24
quick (3) 219:7;223:13;269:21
quickly (1) 188:12
quite (3) 173:12;178:3;199:8

R

radiology (1) 254:9
ray (9) 213:1,4,6,10,13;217:4,5;254:9,9
rays (9) 202:4;210:17;211:24,25;212:1,2,23;215:22;248:19
read (9) 167:11,12;168:2;223:6,7,9,13,15;226:13
reading (7) 168:7;223:24;224:24,24;225:1,2;226:12

ready (1)
168:17
real (1)
223:13
realize (1)
198:7
really (12)
168:5;185:10,12;203:24;214:5;216:12;246:8;257:18;263:3,9,17;275:17
rear (1)
243:15
reason (1)
225:11
recall (6)
180:24;228:4,5;263:9;270:19;271:19
received (5)
173:24;213:18;233:12;237:6;248:13
receiving (1)
213:23
recently (1)
223:9
recess (1)
219:8
recognize (11)
183:4,8;188:21;200:6;215:15;221:7;228:19;242:18;245:4;251:24;255:5
Recommendations (2)
223:12;225:10
record (2)
219:10;240:17
records (5)
168:5;188:13;215:1;220:25;251:21
refer (1)
217:7
referred (4)
167:23;222:10;229:21;260:1
referring (4)
201:21;230:14;234:5,10
refers (1)
259:22
refresh (1)
223:13
regarding (3)
172:9;221:23;246:8
regional (2)
263:1,12
regular (1)
233:15
regurgitation (2)
223:20;226:17
relates (1)
219:21
relationship (2)
170:14;203:6
remember (73)
166:23;167:16;168:4,10;169:24,25;171:17;175:25;176:3;181:3;182:19;185:9;187:7,12,13;189:11;190:10,16,21;192:3,6,7;194:16;198:1;199:7,13;200:14;202:3;206:9,24;209:24;210:3;211:8,11;212:3,16,22;215:3,20;220:7;222:6;224:1;225:9,11;226:2;228:25;229:11,13,17;233:9;241:20;242:4,7,8;244:20;245:14,23;251:11,15,17;252:13;254:12,18;255:17;256:5,22,24;259:1;261:4,7;266:1;271:6;274:12
remembered (1)
241:17
Renee (1)
179:14
repeat (1)
253:9
replied (1)
190:7
report (4)
251:7;254:10;255:6;273:19
reporter (2)
166:8;167:2
reports (2)
268:15,18
representation (2)
244:12;247:12
requested (2)
216:22;217:3
required (1)
262:1
requirements (1)
166:9
response (2)
190:16;220:7
rest (4)
193:3;202:21;233:6;270:14
result (1)
256:5
results (3)
212:16,18;251:11
revealed (1)
212:22
review (1)
167:9
reviewed (1)
225:8
ribs (3)
234:8,9;248:3
Right (65)
168:2,2;169:8,11,15;178:14;181:17,20;183:14;184:25;186:20,23,25;194:9;201:16;205:3;206:2,7,15,17;208:17;210:16,20;212:2;213:7,8;214:24;217:2,21,23,24;218:15;226:22;227:23;229:15,23,25;231:17,24;233:18,20;238:10;239:15,25;241:5;243:21,25,25;244:1,3,5;246:23;247:9;255:14,21;257:8,14;260:21;261:3,9;262:15;264:25;265:24;276:23;277:3
Risko (3)
182:17;184:8;187:7
Risko's (1)
183:19
robbed (4)
202:19;204:3;270:5,6
roughly (5)
173:10;185:6;189:8;194:4,16
Rubio (1)
271:1
ruined (6)
202:13,14,16;270:4,8,9
Rule (1)
166:9
Rules (1)
166:10
run (2)
203:20;245:18
running (1)
203:20
rush (1)
267:22

S

S1 (1)
218:3
Sal (4)
182:17,23;184:8,21
Same (22)
170:23;172:18;175:3,7,13;186:4;193:20;204:9;227:10,11;228:8;233:21;235:14;242:10;246:4,10;247:8,18,20;255:21;272:7;276:18
sat (2)
273:8;274:9
saw (34)
171:6;173:2,11;178:5,20,21;180:4,6,13,19;181:4;182:1;184:18,20;187:25;200:19,20;221:20;222:9;227:5;228:7,25;242:5,9,10;245:16;252:14;263:20;264:1;273:23;274:6;275:3,4;276:16
saying (8)
216:20;223:25;226:20,20;228:5;232:13;246:12;256:9
scale (2)
192:8,9
scene (1)
274:13
seat (3)
168:22;260:14,18
Second (18)
170:6;208:13;221:14,15,22;222:2,21;223:5,11;224:7,9,17;225:15;226:24;227:8;229:6;256:3;261:23
second-to-last (1)
209:10
security (5)
205:24;272:25;273:4,9;274:1
seeing (9)
200:17;215:3;226:9;229:13;241:20;245:8,14;252:13;274:3
send (3)
181:8;199:23;268:10
sense (1)
171:25
sent (8)
189:4;199:3;217:4;221:9;257:8,11;259:6;267:21
sentence (1)
256:3
separate (1)
188:18
September (4)
189:6;192:2,14;221:18
service (2)
215:20;217:19
session (2)
166:24;194:15
sessions (3)
194:5,8,21
several (8)
190:6,13;196:7;203:2;220:21;245:16;248:18;265:2
severe (5)
205:14;207:5;252:20,22;261:25
short (2)
219:8;271:14
shortly (7)
222:12,14,22;241:20;253:3;257:8;259:6
shortness (2)
236:6,10
shoulder (5)
205:22;210:16,20;227:24;243:25
show (2)
182:11;245:25
showed (3)
222:1,2;226:24
showing (1)
226:24
shows (1)
225:15
sick (1)
201:18
side (19)
169:11,15;180:2;185:14,15;186:20,21,22,23,24,25;204:20;205:2,3;238:24;240:3;241:4;255:25;258:24
sign (1)
231:23
significant (1)
225:23
signs (1)
223:24
sinus (2)
232:22;233:7
sister-in-law (1)
177:7
sit (3)
195:17,23;273:8
Sitting (8)
168:12;197:2,5;249:15;273:18,22,22,25
six (1)
201:10
size (1)
185:7
skipped (1)
233:17
sleep (1)
203:22
slip (13)
187:24;201:8;207:9;230:8,20,25;231:4;232:14;233:19,23;236:4,14;237:1
slipped (5)
180:25;231:5;234:6;274:23;275:16
slippery (4)
274:24;275:18,23;276:9
slow (1)
196:22
Smith (9)
259:1,4,16,18;260:4;

261:4,8;262:8,19
somebody (3)
245:14;263:20,20
sometime (3)
171:2;194:19;200:21
sometimes (1)
194:3
somewhere (4)
167:23;240:17;
246:16;260:22
Sorelle (5)
200:19;206:11,22;
210:3,5
Sorrelle (1)
208:18
sorry (40)
171:13,19;175:21;
182:10;183:5,7;185:8;
188:22;190:23;196:20;
202:10;208:22;214:5;
215:6;216:15;218:24;
219:5;222:17,17;
224:23;227:18;228:4;
231:18;236:8;241:12;
244:14;245:5;246:17,
20;251:3,7,16;253:9,9;
254:13;257:18,19;
262:11;264:6;276:3
sort (2)
237:7;240:19
sound (2)
217:21;226:20
space (1)
186:16
spasm (3)
216:9;252:24;253:24
speak (2)
181:6,9
speaking (1)
199:16
special (1)
193:3
specialists (3)
204:14;257:12;
267:21
specific (9)
167:17;174:1,3,4;
223:16;246:20;261:12;
266:6,7
specifically (14)
181:24;192:6;198:1;
205:4;206:24;207:21,
23;211:16;219:24;
229:25;231:9;235:1,3;
265:4
spell (1)
196:3
spend (2)
194:13;195:15
spent (2)
225:11,21
spine (7)
215:4,25;217:17,17;
219:21;254:11,20
spoke (1)
179:12
SPORTS (6)
188:25;189:12;
190:1,22;192:3;228:23
squared (2)
230:21;231:12
stabbing (2)
198:24;199:2
stairs (1)
203:21
stand (4)
195:21,25;196:8;
211:22
standing (16)
197:2,4;209:3;
249:15;272:24;273:3;
274:20;275:4,9,10,14,
23;276:5,8,15,21
start (7)
169:18;189:20,20;
190:19;204:24;223:14;
224:16
started (8)
168:18;218:16;
231:14;246:13;257:9,
9;271:16;274:19
starting (1)
169:1
starts (3)
232:11;242:18;
255:24
stated (2)
199:13;270:16
statement (2)
224:21;270:7
statements (1)
190:11
states (3)
172:8;190:7;192:11
status (1)
263:18
stay (2)
171:18;172:2
stayed (2)
171:18;173:7
Steinberg (5)
211:9,14,16;215:17;
216:25
stenosis (1)
219:17
step (2)
183:3;197:1
stepping (4)
196:5,24,24;197:3
sticky (1)
275:24
still (39)
168:12;169:3;
181:15,16;190:14,14;
192:22;194:7;221:25;
229:22;232:5,7,8,13;
236:17,19;242:1;
246:17;247:4,20,23,24,
24;248:1,2;249:3,5,8,9;
260:14;271:23,25;
274:15,18,19,22;
275:10,13,17
stocky (1)
272:8
stool (1)
230:25
stop (5)
191:25;192:20;
193:2,5;249:12
stopped (3)
231:10;234:7;241:10
straight (5)
168:20;195:21,25;
196:8;198:13
Straightening (1)
216:7
strength (1)
260:12
strengthen (1)
197:6
stress (4)
201:12,15;224:19;
225:6
stressed (3)
201:18,20,24
stresses (1)
202:7
stretch (4)
195:24;196:11,12,15
stretches (1)
195:23
stretching (4)
195:18,19;196:10,12
strike (1)
184:6
Strip (1)
173:7
stroke (6)
239:8,14,17,21,24;
240:12
stronger (2)
195:2;260:12
Stroub (1)
179:21
S-t-r-o-u-b (1)
179:21
stuck (2)
167:19,22
studies (2)
209:13,15
Suarez (1)
222:24
Subramanyam (5)
217:3;222:8;229:21;
255:7,8
subside (11)
192:1,19,25;193:1,
14;199:3;232:11,18;
249:12,13,17
subsides (2)
193:6;195:20
substance (1)
176:3
substantial (2)
186:14,16
substantially (1)
243:13
sudden (5)
198:25;205:20;
220:23;238:4;265:16
Super (1)
180:12
Supplement (1)
170:7
sure (16)
168:5;186:2;187:11;
188:3;190:12,13,15;
191:16;192:15;209:23;
241:2;245:12;246:21;
259:10;265:25;275:8
surgeon (7)
189:3;200:18;
208:12,14;217:6;
252:4,7
surgeons (1)
250:14
surgeries (7)
173:25;174:2,5;
201:4;267:8,15;268:7
surgery (16)
182:2,3,8;205:5,6;
210:6;214:3;250:25;
251:2;263:24,25;
264:4;267:16,20,22;
268:4
surprised (1)
182:5
swallowing (1)
232:21
sweeper (4)
271:1,4,6,8
swell (1)
233:14
swelling (1)
168:21
swells (1)
233:10
swing (12)
201:9;203:2;205:19;
214:16;218:14,25;
220:4,20,20;233:1;
238:1;253:15
sworn (1)
166:15
symptom (1)
205:18
symptoms (39)
204:20;207:11;
208:2;209:4,7;210:14;
214:19,22,24;218:14,
17,25;219:2;220:3,6;
221:24;223:24;226:1;
228:10;230:19;232:14;
233:2,4;237:21;238:1,
3,23;239:9;240:3;
242:2;243:23;254:2;
258:23,23;265:15,23,
24;266:4,20
syndrome (2)
263:2,12
system (3)
231:7;234:6;241:9

T

Tai (1)
196:22
talk (11)
170:25;175:19;
176:6,7;180:24;
181:10;213:1;220:11;
240:8;272:12;273:15
talked (18)
175:20;176:10,20,
22;177:2,14;178:10,12,
23;179:7,19;181:2,21;
182:18;216:16;219:12;
236:2;273:10
talking (28)
167:13;196:9;
201:16;205:4;206:6;
209:5;210:19,22;
212:21;213:8;216:18;
224:6;225:12;226:2,2,
6;238:11;240:1;241:4;
247:4;248:15;254:12;
256:22,24;262:19;
268:16;273:20;274:7
talks (1)
179:11
tangential (2)
209:3,6
telling (4)
183:12;190:10;
227:2;263:9
Terry (6)
270:25;271:16,25;
273:19;275:1,4
test (7)
212:21;222:9;
224:19;225:6;235:19,
20,22
testified (4)
166:15;167:15;
263:22;270:3
testify (1)
172:9
testimony (1)
167:18
tests (19)
199:5,6,9;211:9,11;
212:22;216:22;217:1;
223:4;234:14,15,19;
235:4,10;239:16,18,21,
24;248:9

theirs (1)
174:24
therapist (9)
188:25;190:10;193:20;194:3,15;195:5;198:20;222:24;262:8
therapists (4)
193:16,24;197:22;267:22
Therapy (30)
189:12,21,22,25;190:19,22;192:3;194:1,4,7,11,12,21;195:2;199:17,24;213:21;248:20,24;249:1;250:20;253:4;259:2,5,16,19;260:6;261:8;268:9,11
Thereupon (1)
277:4
Thereupon- (1)
166:12
thigh (3)
185:2,13;244:3
thinking (1)
240:17
Thompson (3)
241:20;242:6,9
Thompson's (1)
242:24
thoracic (1)
213:11
though (1)
264:23
thought (2)
190:18;223:22
three (15)
173:9;180:14;181:4;214:3,4,8;240:2,10;257:11;261:22;263:22,24,25;265:20;269:10
throughout (5)
195:15;196:7;237:20;260:20;265:3
times (21)
171:9,20;173:10,12;175:15;176:20;189:11,14;230:8;248:18;253:4;259:7,8;260:3,22,22;261:15,16,18,21,22
timing (4)
257:24;258:8,10,11
Tingey (3)
250:17,25;264:2
tired (2)
246:13;247:6
tissues (3)
234:21,22,24
to- (1)
274:10
today (13)
167:6,10;168:12;169:13,14;192:22;236:19;249:7;254:13,14;263:18;267:17;269:3
today's (2)
229:8;261:24
together (3)
173:8;174:23,24
told (83)
173:13,23;174:4;175:3,7;176:7;181:17;184:10,13;185:11;190:12,13,15;191:15,16;193:16,20;197:23;199:22;201:19;202:5,6;205:1,12;206:5,9,18,22,24;207:2,3,13,23;209:25;214:1,20,22;218:8,14,15,17;219:2,3,19;220:3;221:24;225:3;226:4,4;228:8;234:11;240:25;250:5,7,9,12,21;260:8;262:14;264:18,22,25;265:1,7,11,14,19,22;266:5,8,14,15,19,22;267:11;268:2,7,8,21,22;269:16;272:15;273:16
tolerated (1)
261:24
tonsillectomy (1)
254:6
took (25)
182:23,24;183:13;184:19,22;199:2,5;202:4;211:24,24,25;212:1;222:9;227:2;239:9;240:7,11;253:5;269:6,6,8,9,10;271:7;273:11
top (12)
183:16;185:16;190:5;208:23;210:13;217:12;221:18;229:7;243:3,9;261:3,11
tore (1)
265:4
torn (5)
250:1;251:3,6,13,14
totally (1)
204:6
touch (1)
203:7
touched (1)
223:2
touching (1)
192:7
towards (2)
238:8;275:17
towel (1)
198:10
Trainor (7)
188:24;189:1;229:4,5,13,17;263:6
transcript (1)
168:8
travel (1)
203:4
traveled (3)
202:24;203:1,14
treat (1)
190:9
treatment (13)
173:24;175:5;210:3;213:18,21,24;214:1,6;233:12;237:6;248:14;262:2;263:18
treatment/therapeutic (1)
261:25
treatments (4)
209:12,14,22;248:25
tricuspid (2)
223:20;226:16
tried (10)
195:8;209:11;210:17;211:19;223:18;226:15;247:14,15;269:11,11
trigger (7)
205:7,9;206:12,19;249:11;250:2,8
triggered (1)
222:25
triggering (1)
249:15
trouble (1)
232:21
Troy (4)
170:17;177:18,23;179:11
Troy's (5)
177:21;178:7,15,16;179:2
true (2)
235:5;256:8
Try (6)
166:25;188:12;195:11;196:1,25;197:6
trying (8)
225:22;237:25;243:20,22;245:25;247:17;249:2;267:23
TUESDAY (1)
166:1
tunnel (4)
205:12,17;206:4;250:3
turn (5)
168:23;170:10;192:19;203:15;210:10
turning (8)
177:4;190:3;208:13;217:10;223:11;229:6,15;243:1
Twenty-some (2)
259:9,10
twice (5)
171:16,17,23;174:10,13
two (20)
169:21,23;172:7;174:22;199:15;222:4;224:7;225:15;226:7,11,25;232:2;240:1,2;246:2,7;247:19;261:22;265:1;275:19
two-year (1)
249:2
type (1)
203:24

U

ulcer (2)
234:13;235:5
ulcers (1)
233:24
UMC (4)
184:14;240:9;265:1;269:6
unbearable (1)
192:21
under (9)
166:9;200:25;207:1;219:13;230:24;231:11;252:19;256:2;275:21
underneath (2)
219:14;239:11
unfortunately (2)
171:4;199:21
unhappy (1)
225:7
uniform (1)
272:7
unsuccessful (1)
268:1
up (55)
168:24;182:23;186:3;187:15,18,21;188:1,5;193:18;195:17,17,20,21,21,22,23,24,25;196:8;197:6,11;198:12,13,16;203:11,17,20,20;208:23;221:3;232:11;233:10,14,14;234:8;243:13;247:10,23;249:9,15;255:23;260:8;264:2;271:16,23;272:15,19;273:9,18;274:16;275:1,19;276:9,12,20
upper (3)
200:10;208:17;255:14
Use (5)
167:1;203:4,25;204:16;211:4
used (4)
172:22;203:13,19,22
usually (1)
180:12

V

Vaguely (1)
256:25
Valdez (2)
170:17;174:7
Valdez's (1)
177:18
Valentine's (4)
182:22,25;183:16;187:10
valve (10)
222:2,4;224:6,9,10,14,17;226:7,11;227:13
valves (6)
199:14;222:4;224:7;226:7,11;239:20
valvular (1)
225:23
VEGAS (15)
166:1,21;171:7,10;173:14;174:11;175:2;176:1;184:16;187:13,24;205:17;206:14;207:9;214:12
verbal (1)
167:1
verbally (1)
167:1
view (3)
243:14,15,25
views (2)
246:22;247:3
vision (3)
231:12;232:5;256:12
visit (4)
171:7;172:1;229:11;261:3
visited (2)
261:8;262:19
visiting (1)
180:20

W

wait (1)
169:21
waiting (2)
274:5,5
waive (1)
166:8
wake (2)
195:17,22
walk (1)
189:23
walker (3)
182:1;203:4;211:5

walks (2)
202:24;203:1
walkway (2)
274:24;275:17
warnings (1)
241:3
way (23)
182:18;191:7;
195:11;196:6,14,23;
198:14,16,22,23;
202:20;203:17,19;
204:22;223:24;224:1;
225:8;248:2,3;249:4;
253:22;260:15;270:13
ways (3)
191:17,21;192:15
wedding (18)
175:12,16,22;
176:16,18,21,22;177:1,
2,11,14;178:7,20,23;
179:4,8,17,19
week (3)
201:10;203:2;261:21
weren't (2)
211:22;276:14
Wesley (9)
222:11,13;223:3,4;
227:9,11;228:1;
239:16;248:9
Wesley's (1)
227:12
What's (15)
188:19;189:22;
200:4;201:15;204:11;
208:6;214:10;221:5;
228:17;242:16;245:2;
248:7;251:22;255:2;
263:18
Where's (1)
255:7
Whereupon (1)
219:8
Wherever (2)
186:8;195:10
whole (14)
174:11,12;186:2,16,
17,18;196:7,16,17;
223:15;226:23;238:23;
247:6;258:25
wife (5)
174:8,15;177:9;
178:17;179:15
wish (2)
237:9,9
without (1)
235:4
witness (13)
166:14;172:22;
183:13;184:10;186:6;
197:11;210:12;229:16;
237:24;266:19;267:3,
8;268:7
witnesses (2)
170:8,13
woman (5)
202:18;271:22;
274:25;275:3,6
word (1)
224:13
words (11)
218:22,23,24;219:5;
220:9;224:16;233:9;
266:1,7,7,14
work (1)
197:12
working (3)
231:10;234:7;241:10
worry (1)
272:18
worse (2)
249:16;250:11
worst (1)
192:9
wow (1)
245:17
wrong (5)
168:1;191:20;213:2,
14;224:12
wrote (12)
221:19;224:22;
225:7;230:8,17,20,24;
234:2;238:9,10;251:7;
256:7
Wynn (58)
166:21;171:10;
173:14,21;174:11;
175:2;176:1;180:21;
184:15;187:24;189:9;
190:4;193:25;200:25;
204:5;205:17,20;
206:13;207:9,12,25;
210:21;211:8;214:12,
17,21;218:21;219:1;
220:12,13;227:14,16,
20;228:3;230:15;
231:15,19;232:2;
237:22;257:17,21;
258:21;264:10,23;
265:21;266:10,24;
270:4,20;271:13,19;
272:3,25;273:6,14,20,
23;274:3

X

X'g (1)
245:23
Xs (2)
246:21,24

Y

year (18)
171:5,23;173:10,11;
180:7,13,13,15,17;
181:8,25;201:18;
233:18;238:15;257:7,
13,14;258:7
years (13)
177:22;180:14;
181:4;189:8;203:3,11;
204:13;232:2;237:18;
246:7;247:19;252:6;
267:20
yesterday (2)
168:3,8
Yvette (1)
273:17
YVONNE (2)
166:13;270:3

0

0 (2)
192:9,9

1

1 (3)
169:19;223:12;
230:24
1/2 (1)
189:8
1:03 (1)
166:2
10 (17)
191:12,19,19,23;
192:4,9,9,10,13,13;
208:7;228:13,15,18;
236:12;242:5,5
100 (3)
192:10;267:9,15
10th (3)
184:21;229:12;
231:25
11 (7)
236:23;242:13,14,
17;246:3;247:11;
255:15
1110 (1)
200:25
12 (7)
170:10;244:23,24;
245:3,21;246:3,19
13 (2)
251:19,23
14 (3)
254:23,24;255:3
14th (2)
208:20;210:2
15 (3)
259:12,14;261:2
16.1 (1)
170:7
17 (1)
243:4
18th (1)
189:6
1950s (1)
254:7
1980s (1)
253:22
1989 (1)
252:20
19th (1)
215:21

2

2 (4)
189:8;190:3;216:9,
11
2/10/12 (1)
229:8
2/8/10 (1)
201:9
2/8/2010 (1)
209:2
20 (4)
194:22;259:8;
260:22,22
2002 (2)
201:17;241:13
2009 (6)
174:19,21;175:13;
176:17;178:9;253:16
2010 (33)
171:11;175:24;
180:16,17;183:1;
187:10;201:9;210:21;
211:25;212:22,24;
213:7,8;215:21;240:2;
243:4;248:5,16;249:6,
7,20;252:9,11;253:8,
12;258:2;261:3,5,12;
264:10;267:1,16;269:2
2011 (3)
212:1;255:15,18
2012 (26)
189:6;192:2,14;
194:20;200:19,22;
208:20;210:2;221:18;
223:3;229:12;232:1;
236:17;240:1,13,15;
245:15;246:15,18;
247:4,13,17;248:5,15,
16;252:9
2013 (1)
194:20
2015 (1)
166:1
20-some (5)
259:7,11;260:3;
261:15,18
21 (1)
170:12
213 (1)
177:4
21st (1)
245:15
22 (1)
174:6
23 (1)
175:8
23rd (1)
252:11
24 (1)
176:12
25 (2)
176:23;215:14
27 (2)
259:11;261:16
29 (1)
217:10
2-millimeter (1)
219:15

3

3 (4)
169:20,23;170:1,6
3:52 (1)
277:5
30 (1)
225:22
30b4 (1)
166:9
31 (1)
179:21
392 (1)
228:18
393 (1)
229:6
395 (2)
229:15;230:3
3-foot (2)
275:22;276:17
3rd (2)
261:3,12

4

4 (2)
182:12,13
4/8/2010 (1)
217:20
402 (1)
243:1
442 (1)
245:9
45 (1)
194:6
4I (1)
231:11

5

5 (3)
188:16,20;232:21
526 (1)
190:4
53 (1)
177:24

6

6 (5)
200:1,2,5;208:14;
236:1
66 (1)
180:1

7

7 (4)
208:3,4,7;275:16
716 (1)
255:4
721 (2)
185:15;186:5
77 (1)
223:12
7th (1)
221:18

8

8 (7)
210:8,9,10,14;
215:10,11,13
8th (3)
201:8;210:21;267:1

9

9 (5)
166:1;210:11;221:1,
6;223:6

EXHIBIT 2

Page 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 YVONNE O'CONNELL, an individual,
4 Plaintiff,
5 vs. CASE NO. A655992
6 DEPT. NO. V
WYNN LAS VEGAS, LLC, a Nevada
7 Limited Liability Company, doing
business as WYNN LAS VEGAS; DOES
8 I through X, and ROE CORPORATIONS
I through X, inclusive,
9 Defendants.
10 ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
11
12 DEPOSITION OF
13 YANET ELIAS
14
15 March 24, 2015
16 10:30 a.m.
17
18
19 Resort Management Conference Room
3131 Las Vegas Boulevard South
20 Las Vegas, Nevada
21
22
23 Gary F. Decoster, CCR No. 790
24
25

Page 2

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Page 3

1 INDEX OF EXAMINATION
2
3 WITNESS: YANET ELIAS
4
5 EXAMINATION PAGE
6 By Ms. Morris 4
7 By Mr. Kircher --
8
9
10
11
12 INDEX TO EXHIBITS
13

Exhibit	Description	Initial Reference
1	Guest/Employee Voluntary Statement by Yanet Elias	8
2	Photograph	37
3	Photograph	40
4	Incident File Full Report created by eslabaugh	45
5	Wynn Las Vegas policies	62
6	Guest/Employee Voluntary Statement by Terry M. Ruby	84
7	Photograph	86
8	Guest Accident or Illness Report	87

Page 4

1 Deposition of Yanet Elias
2 March 24, 2015
3 (Prior to the commencement of the
4 deposition, all of the parties present agreed to
5 waive statements by the court reporter, pursuant to
6 Rule 30(b)(4) of NRCP.)
7
8 YANET ELIAS, having been first duly sworn,
9 was examined and testified as follows:
10 EXAMINATION
11 BY MS. MORRIS:
12 Q. All right, can you please state your full
13 name?
14 A. Yanet Elias.
15 Q. And can you spell it as well?
16 A. Y-A-N-E-T E-L-I-A-S.
17 Q. All right. We're here for your deposition
18 today. I introduced myself before the deposition, but
19 my name is Christian Morris, and I represent the
20 plaintiff in a matter. Her name is Yvonne O'Connell.
21 We're here today at the Wynn for your deposition, and
22 I want to know if you've ever had your deposition
23 taken before.
24 A. No.
25 Q. Okay. So the oath that you took is the same

Page 5

1 oath that you would take in a court of law, holds with
2 it the same obligations to tell the truth as well as
3 the same penalties as perjury; do you understand that?
4 A. Yes.
5 Q. The court reporter is taking down everything
6 that we're saying in the room today, so it's important
7 that we try not to speak over one another. If you are
8 anticipating what my question is going to be, still
9 let me complete asking it, and then you can answer the
10 question.
11 When we talk over each other, it gets
12 confusing in the transcript, so as much as we're --
13 we're both going to try to help each other out because
14 sometimes I start to talk over people as well.
15 Counsel might have an objection. Allow him
16 to state his objection, and you'll continue and try
17 and answer the question, if you're capable, unless he
18 instructs you not to answer it; does that make sense?
19 A. Yes.
20 Q. Great. If you don't understand a question
21 that I've asked, I want you to tell me that you don't
22 understand it, okay?
23 A. Okay.
24 Q. If you don't recall something, because we're
25 talking about things that happened back in 2010,

Page 6

1 telling me that you don't recall it is a perfectly
2 fine answer; do you understand that?
3 A. Yes.
4 Q. I never want you to guess in the deposition,
5 so if you are -- I'm asking you a question and you
6 don't have any basis of knowledge to answer it, I want
7 you to tell me, That would be a guess, and so because
8 it's your testimony under oath, I never want you to
9 guess; does that make sense?
10 A. Yes.
11 Q. Okay. Also, you're doing a great job with
12 your verbal responses. Try as best you can to not say
13 "uh-huh" or "uh-uh" or even kind of "okay," because
14 that can be misconstrued when you're reading the
15 transcript later.
16 I can see you now and I can hear the
17 inflection in your voice and I think I know what
18 you're saying, uh-huh as in yes, but to the best of
19 your ability, where it's applicable, if you could use
20 yes or no, then it will clearly represent your
21 testimony in the transcript; does that make sense?
22 A. Yes.
23 Q. Great. I am entitled to your best estimate
24 during this deposition. So if you can give me your
25 best recollection or your best estimate of something

Page 7

1 -- we always, as attorneys, use this idea of lengths,
2 so if you were comfortable giving me a length, and
3 we're sitting here at this table, and you'd say, Well,
4 my best estimate of the length of the table is, blank,
5 then I'm entitled to that.
6 But if I asked you to give me the length of
7 the desk in my office, and you've never been in my
8 office, that would be a complete guess.
9 So where I'll ask you, say, approximately,
10 say, in this case, we're talking about liquid, you
11 know, how large was it, if you can give me your best
12 estimate because you saw it, then I'm entitled to
13 that, but I never want you to guess, as giving me
14 information that you have absolutely no basis of
15 knowledge for.
16 Do you understand the difference between a
17 guess and an estimate?
18 A. Yes.
19 Q. Great. Are you on any kind of medication
20 that would affect your memory or your ability to give
21 your most accurate and honest testimony today?
22 A. No.
23 Q. What did you review to prepare for today's
24 deposition?
25 A. My review?

Page 8

1 Q. What did you look at? Did you look at any
2 documents to prepare for today's deposition?
3 A. Only my statement.
4 Q. Your handwritten statement?
5 A. Yes.
6 Q. Okay. I'll hand you -- we'll mark it as
7 Plaintiff's Exhibit 1. Is this the handwritten
8 statement that you were talking about?
9 A. Yes.
10 Q. Okay. And when did you review that document?
11 A. This morning.
12 Q. Did you review anything else, any pictures or
13 anything, to prepare for today?
14 A. No.
15 Q. Did you look at any video?
16 A. No.
17 Q. Now, when you reviewed --
18 A. Sorry.
19 Q. No. When you reviewed this statement today,
20 did that refresh your recollection of what happened
21 back on February 8th, 2010?
22 A. Not too much.
23 Q. Okay. Do you have a memory of that day? Do
24 you remember being there and seeing Miss O'Connell and
25 liquid on the floor?

Page 9

1 A. I don't remember seeing her -- I see her in
2 the floor, I remember when I read this statement, but
3 not the complete scenario about it.
4 Q. Not the complete scenario?
5 A. No.
6 Q. It's kind of an odd question, but do you have
7 an independent memory of this aside from what's
8 written down on that paper?
9 A. No.
10 Q. When you read -- when you read this
11 handwritten statement, did you have any disagreements
12 with what was in there? Did it seem accurate to you?
13 A. No.
14 Q. Did you have any disagreement with the
15 information in that document?
16 A. What's that?
17 Q. Okay. So you read the document, correct?
18 A. Yes.
19 Q. Okay. When you read the document, did you
20 think, Oh, that doesn't seem right, something was
21 incorrect in that document?
22 A. Something incorrect?
23 Q. Yes.
24 A. Like what?
25 Q. Well, when you read the document, did it

Page 10

1 comport with what you can remember happening on
2 February 8th, 2010?
3 A. I remember a little bit about this incident,
4 not the complete scenario, because it was a long time
5 ago.
6 Q. What's the little bit that you remember?
7 A. When they call me and when I be in there, I
8 see the lady stand up and they pass, because I start
9 receiving call in for another -- calls waiting for
10 security, and see security talk to the lady.
11 Q. Okay.
12 A. Because I have to wait for security for
13 something happen.
14 Q. Who called you?
15 A. Dispatch.
16 Q. Where were you when they called you?
17 A. In another areas in the casino.
18 Q. Do you remember what you were doing?
19 A. Checking my areas, like I always do. This is
20 my work.
21 Q. Do you know why dispatch called you?
22 A. They have an incident.
23 Q. Why don't we go through it, and if you
24 wouldn't mind reading out loud your statement for me,
25 because I want to make sure that I am reading it

Page 11

1 accurately.
2 A. Okay.
3 Q. Okay? So just read Exhibit 1 out loud.
4 A. On Monday 2-8-10 around 2:00 p.m., I receive
5 a call for one PAD employees to let me know that a
6 lady fell in the south entrance between Cartier and
7 Chanel store. I go to see what happened and I see a
8 lady stand up close to the garden area and a employee
9 cover a spill with the sweeper machine.
10 I call the person working in the area and I
11 ask if she -- I think I don't complete the sentence
12 here -- the spill and when she cleaned the area is
13 nothing in this moment. She attend the call to sweep
14 Parasol-Up bar, left the area in good condition.
15 When I check the spill, it's something like a
16 syrup, not to liquid. I call security because she
17 want to make a report.
18 When security show up, ask the lady what
19 happened, and she explained how she fell. Security
20 offer to take her to the clinic to check if something
21 serious, because she state her arm is in pain. She
22 decline the assistance, tell the security officer
23 maybe because is happen in this moment to tell us
24 later if she's okay. After she sign some papers, she
25 left.

Page 12

1 Q. All right, Yanet, are you comfortable doing
2 this deposition without an interpreter?
3 A. Yes.
4 Q. Okay. I just notice that you had difficulty
5 understanding some of my questions, which might be my
6 fault, because I ask --
7 A. Maybe it's mine.
8 Q. How long have you been speaking English?
9 A. Well, the time when I working in here, ten
10 years.
11 Q. And what's your first language?
12 A. Spanish.
13 Q. How did you learn English?
14 A. In the house with my kids.
15 Q. Yeah. Are you comfortable going through this
16 deposition without an interpreter? Do you have
17 concerns that you might not understand my questions?
18 A. Some words, yes, I don't understand, but if
19 you comfort with me.
20 Q. Say it again?
21 A. If you comfort with my English. If not, I
22 can --
23 Q. I'm only concerned that because it's your
24 testimony under oath, I don't want you to not
25 understand a question --

Page 13

1 A. Okay.
2 Q. -- and still be answering it; does that make
3 sense?
4 A. Yes.
5 Q. So I want -- we're going to go slow, okay?
6 A. Okay.
7 Q. So make sure that if you don't understand a
8 question --
9 A. Yes.
10 Q. -- I need you to let me know.
11 A. Okay.
12 Q. I don't want you to try and answer it. I
13 want you to say, I don't understand that question.
14 A. Okay.
15 Q. Does that make sense?
16 A. Yes.
17 Q. Okay.
18 A. But if it's better for both parties if I can
19 for an interpreter, if you guys okay with that.
20 Q. Well, let's try, if everyone's okay, let's
21 move forward a little bit. If it becomes a little bit
22 difficult, we might need to just do this with an
23 interpreter.
24 MR. KIRCHER: Just try to go slow, and then
25 if, you know, you don't understand something she's

Page 14

1 saying --
2 THE DEPONENT: Ask the question again.
3 MR. KIRCHER: -- ask her a question.
4 THE DEPONENT: Okay.
5 MR. KIRCHER: And if you don't understand a
6 word, ask her what that word means.
7 THE DEPONENT: Okay.
8 MR. KIRCHER: And she'll be able to explain
9 it to you. And, you know, if there is a problem
10 later, we can -- you know, we'll work on that.
11 THE DEPONENT: Okay.
12 MS. MORRIS: Okay.
13 MR. KIRCHER: Since we're all here, let's try
14 to --
15 THE DEPONENT: Yes.
16 MS. MORRIS: I want to be fair to you.
17 THE DEPONENT: Oh, that's fine.
18 MS. MORRIS: I don't want you testifying
19 about something that you didn't understand.
20 THE DEPONENT: Okay.
21 MS. MORRIS: Okay.
22 BY MS. MORRIS:
23 Q. You said in your written statement --
24 A. Yes.
25 Q. -- that it was like a syrup, not a liquid; is

Page 15

1 that correct?
2 A. Yes.
3 Q. Okay. Did you physically touch what was on
4 the floor?
5 A. No.
6 Q. Why do you say it was like a syrup?
7 A. When I go in the area, when they -- when I
8 read the statement right now, I try to remember what
9 happened that day. It's early in the morning. It's
10 the lady stand up by the garden, and the guy working
11 in that area, when they clean, they use the machine to
12 clean; but before this guy, they clean with the
13 machine, it's the lady walking with the sweeper to
14 make sure it's no leaves, it's no trash in the floor.
15 I called the lady, asked if she see
16 something, and she don't see nothing. She is in the
17 Parasol-Up cleaning because the Parasol-Up is open at
18 that time.
19 And he put the machine on top of the spill,
20 supposed to be, but she -- he don't clean, I'm sorry,
21 he don't clean. They have to wait for security to see
22 exactly how the area look like because they always
23 take pictures when they -- when it's an accident or
24 something.
25 When security approached he move the machine,

Page 16

1 and it's not water, it's something like sticky, but I
2 don't touch.
3 Q. Okay. So you asked the lady in the Parasol
4 place if she had seen anything?
5 A. Yes.
6 Q. Okay. And she hadn't seen anything?
7 A. No.
8 Q. And describe to me what you mean by a sweeper
9 machine.
10 A. The sweeper machine is a machine when they
11 put water on it and they clean the entire marble in
12 the casino, but they don't do it early in the morning
13 because it's a lot of guests that's walking around.
14 They do it at around say 5:00, 5:30, every single day.
15 Q. So there was a sweeper machine that was
16 placed over the substance that caused Miss O'Connell
17 to fall; is that correct?
18 MR. KIRCHER: Objection; form.
19 THE DEPONENT: No.
20 BY MS. MORRIS:
21 Q. So where was the sweeper placed? The sweeper
22 machine that you're talking about, from what you just
23 said, I think you said they put it over the substance
24 on the floor?
25 A. Yes.

Page 17

1 Q. Right?
2 A. Um-hum.
3 Q. And then when security came, they moved the
4 sweeper machine?
5 A. Yes.
6 Q. Is that correct?
7 A. Um-hum.
8 Q. When they moved the sweeper machine, was the
9 substance still on the floor?
10 A. The sticky part, the sticky, like the syrup,
11 it's not the wet. He don't use the machine to clean
12 nothing on it.
13 Q. Did the machine clean up anything while it
14 was over the substance?
15 A. No.
16 Q. When the machine moved, was moved, could you
17 still see the substance on the floor?
18 A. Not water.
19 Q. Could you still see the substance on the
20 floor?
21 A. Yes.
22 Q. Did security take pictures of the substance
23 on the floor?
24 A. I be on the side when security approach to
25 the lady. I'm not sure exactly if they take pictures

Page 18

1 or not.
2 Q. Have you been at an incident previously where
3 someone else has fallen on liquid at Wynn?
4 A. No.
5 Q. Okay. Do you know if security has to take
6 photographs of the substance before it gets cleaned
7 up?
8 A. Most of the times.
9 Q. Do you know why?
10 A. Because this is the procedures for us.
11 Q. Did you ever, in this whole process, actually
12 touch the substance?
13 A. I don't remember to touch, no.
14 Q. What makes you say it was sticky?
15 A. Because it's like, it's not liquid. It's
16 something like stay in the floor, like a spot in
17 there.
18 Q. Spots of it?
19 A. Like a -- yeah, like not water. The water is
20 liquid, you can see go around in different areas, but
21 it's not water. I never saw water in this area.
22 Q. Did you -- do you have an opinion on what
23 that substance was?
24 A. Opinion?
25 Q. Yes.

Page 19

1 A. I see something like a sticky on the floor.
2 Q. Was it like gum, was it, when you say --
3 A. No gum, gum is a little piece. No, it's like
4 something like a little bit more than -- for me, I
5 think like something like candy or like a sugary,
6 something like that, something sticky on the floor.
7 Q. Can you describe what you mean by -- you keep
8 kind of making movements with your hands.
9 A. Sorry.
10 Q. No, and I just want to be able to understand
11 what you mean by that. Was it not a solid pool of
12 substance; is that what you're saying? It wasn't like
13 a circle of substance?
14 A. Can you explain me this?
15 Q. Yeah, you've been making kind of movements
16 with your hands showing dots in separate areas.
17 A. With the area, when -- it's like the area,
18 when I remember, is in the corner of the garden. It's
19 like a little bit corner in there, it's like a little
20 bit in the section.
21 Say this is the corner of the garden, it's
22 like a little bit in here, not too much, but like a
23 something sticky in this section, nothing around it.
24 Q. So you just saw one section?
25 A. Yes.

Page 20

1 Q. Okay. And did it have color?
2 A. I don't remember.
3 Q. Do you remember if it had a green color?
4 A. I don't remember the color; to be honest with
5 you, I don't remember.
6 Q. No, that's fine. That's a perfectly fine
7 answer, okay?
8 That sweeper machine, is it possible that
9 when the sweeper machine was put on top of it, it
10 removed some of the substance when it was moved?
11 A. No, they can't, because they have to put
12 water on it, the machine can work.
13 Q. Did you see the substance before the sweeper
14 machine was put on top of it?
15 A. No, because when they call me, everything is
16 already there. When I be in the area, when I come in
17 and see the area, everything is like how I explain. I
18 be there, the lady stand up, and then the sweeper is
19 there.
20 Q. So when you got to this location with
21 Miss O'Connell, the sweeper machine was already over
22 the substance?
23 A. Yes.
24 Q. And so you didn't see the substance before
25 they put the sweeper machine over it?

Page 21

1 A. No.
2 Q. Is that correct?
3 A. Yes.
4 Q. Did you speak with Miss O'Connell?
5 A. I asked the lady if she's okay, and wait for
6 security, that's it.
7 Q. What did she tell you, do you remember, after
8 you asked if she was okay?
9 A. No.
10 Q. Do you remember what she looked like?
11 A. No.
12 Q. Do you remember if she was older, younger?
13 A. No, I don't remember. It's too many years
14 ago.
15 Q. Do you remember anything about her?
16 A. No.
17 Q. Do you remember if you saw any kind of injury
18 on her?
19 A. No. No.
20 Q. Do you remember anyone else who came to the
21 scene that day, anyone who works at Wynn who responded
22 to this incident?
23 A. Security.
24 Q. Do you remember the name of the security
25 officer?

Page 22

1 A. No.
2 Q. Anyone else that you can remember coming to
3 this area?
4 A. No.
5 Q. Do you remember seeing the substance cleaned
6 up?
7 A. After the lady left, I have to stay there
8 till they clean this like syrup when I told you about
9 it, and then I need to leave, make sure the area is
10 okay.
11 Q. Did you see who cleaned it up?
12 A. I don't remember who clean it up. I don't
13 remember if it's the guy with the machine or they
14 called somebody, because my shift is almost over and I
15 have to leave and pass to day shift.
16 Q. Do you remember how they cleaned the
17 substance up?
18 A. No, I don't see how they clean.
19 Q. So when you left this area to -- you think
20 because your shift was over; is that right?
21 A. Almost over.
22 Q. Almost over?
23 A. Yes.
24 Q. Was Miss O'Connell still there?
25 A. No, she left.

Page 23

1 Q. Did you see her leave?
2 A. Yes.
3 Q. Do you remember if when she left, she was
4 limping at all?
5 A. I don't make attention to see. It is the
6 last thing is she stay with security. Then after they
7 finish with the security, they call me to make this
8 statement, whatever I saw.
9 Q. Where were you when you wrote this statement?
10 A. I don't remember if it's in my office or I
11 think -- I'm sorry, it's in the office, because I
12 don't fill it up right in the garden.
13 Q. So you went to your office to fill it out?
14 A. I really don't remember if it's that day or
15 later because security is the one they call us when
16 they have to write a statement on everything.
17 Q. When you left the area, were you the one who
18 inspected the floor to make sure that it was clean?
19 A. No.
20 Q. Who was in charge of making sure that the
21 area had been properly cleaned?
22 A. All the managers, when they working, I answer
23 the call. I have my crew; in this time I have a
24 special crew when I have to taking care, and that's
25 why I been there because I close to the area.

Page 24

1 Q. But who was in charge of looking at the floor
2 to make sure it was clean after it had been cleaned
3 up?
4 A. Every manager when he's in the area, around
5 the area.
6 Q. So it wasn't your job to inspect the area and
7 make sure --
8 A. It's my job to make sure everything is okay.
9 Q. Did you, in this case, inspect the area to
10 make sure it was okay before you left?
11 A. When they finish to clean, no, I don't see.
12 I tell the guys to make sure they clean the area and I
13 left. Then when I go back later, I see the area is
14 clean.
15 Q. Do you know who was still in the area when
16 you left?
17 A. Security, with the lady.
18 Q. So Miss O'Connell was still there?
19 A. Yeah, they have questions, they ask
20 questions.
21 Q. Okay. When you left this area,
22 Miss O'Connell was still at the area where she fell?
23 A. Yes.
24 Q. Okay. She hadn't left yet?
25 A. No.

Page 25

1 Q. So security was there?
2 A. Security is there.
3 Q. Miss O'Connell?
4 A. Miss O'Connell, they asking questions. I go
5 in back and they ask -- they ask questions, she sign
6 papers, and left.
7 Q. Did you see security taking any photographs?
8 A. No.
9 Q. Did you see security taking any photographs
10 of Miss O'Connell?
11 A. I don't remember if they take, no.
12 Q. Is this the first time, while you've worked
13 at Wynn, that you've ever had a guest fall and you've
14 had to report to that area?
15 A. Yes.
16 Q. How long have you worked here?
17 A. Ten years.
18 Q. What's your current position?
19 A. Now?
20 Q. Yes.
21 A. Shift manager.
22 Q. Back in 2010, what was your position?
23 A. Assistant manager.
24 Q. Can you tell me what your job duties were as
25 assistant manager?

Page 26

1 A. Assistant manager, just helping my manager,
2 working in the casino, check the areas, look in the
3 areas where the employees are working, make sure the
4 job is done, assist the guests, whatever they need,
5 whatever they -- I can help them.
6 Q. What department do you work in?
7 A. PAD. PAD, public area.
8 Q. Public area?
9 A. Yes.
10 Q. What's the D stand for, public area
11 department?
12 A. Yes, public area department.
13 Q. Okay, PAD?
14 A. Um-hum.
15 Q. Okay. When were you promoted to manager?
16 A. 2005.
17 Q. Assistant manager then; is that correct?
18 A. Shift manager.
19 Q. Shift manager. So at the time this happened
20 in 2010, you were assistant manager; is that correct?
21 A. In 2010, I'm assistant.
22 Q. Assistant manager; is that right?
23 A. Yes. Yes.
24 Q. Currently you're shift manager; is that
25 right?

Page 27

1 A. Yes.
2 Q. Okay. When were you promoted to shift
3 manager?
4 A. In May in, like, 2010.
5 Q. May 2010?
6 A. I think, yes, if I'm not wrong with the time,
7 like, yes.
8 Q. So approximately May 2010?
9 A. Yes.
10 Q. Okay. Might not be exactly, but
11 approximately?
12 A. No, yes.
13 Q. Okay. What's your job duties as shift
14 manager?
15 A. It is almost the same like assistant manager,
16 but now I have more responsibility with the assistants
17 to tell exactly what they need to do in the floor,
18 what they need to check in the floor, helping the
19 department with all the paperwork when they ask to do
20 it, be in the floor most of the time, checking the
21 areas when I work, walking in the different locations.
22 Most of the time to be in the floor.
23 Q. Are you assigned to a certain location on the
24 floor?
25 A. No, I can walk in all the casino areas.

Page 28

1 Q. When you were the assistant manager, were you
2 assigned to certain areas on the floor?
3 A. I'm assignment to working with my 3:00 a.m.
4 crew that is a special project, this is my area when I
5 working, and help graveyard when their manager is
6 taking break, or all the areas close to my guys they
7 work.
8 Q. Okay. Did you say cleaning crew, is that
9 what you said earlier on?
10 A. Yeah, it's a special project crew. It's most
11 of the high dusting, all the detail in the casino, all
12 of the details in the casino.
13 Q. Do you remember what your shift was back in
14 February 2010?
15 A. My shift?
16 Q. Yeah, hours.
17 A. Is 3:00 to 11:00, but I have to go downstairs
18 around 8 o'clock to help the other managers.
19 Q. So am I understanding 3:00 p.m. to 11:00 p.m.
20 or --
21 A. A.m.
22 Q. 3 a.m.?
23 A. Um-hum.
24 Q. Okay. 3:00 a.m. to 11:00 a.m. was your
25 shift?

Page 29

A. Um-hum.
Q. But what happened at 8 o'clock?
A. I need to go downstairs to help with the shift change.
Q. And what do you mean by downstairs?
A. To the office, PAD office.
Q. Where is that located?
A. In the basement.
Q. So basically you have to leave the floor and go down to the basement at 8:00?
A. Yes.
Q. Is that correct?
A. Um-hum.
Q. What's your current shift?
A. Right now?
Q. Correct.
A. It's 11:30 to 8:30; they changed my work hours.
Q. 11:30 a.m.?
A. 11:30 p.m. to 8:30 a.m.
Q. Is it in your job duties -- or was it, sorry, in your job duties as an assistant manager to assign people to certain areas in the casino for cleaning purposes, for making sure there's nothing on the floor?

Page 30

A. Right now, yes. Before, the manager is the one they assign the people in the areas.
Q. Do you remember who your manager was in 2010?
A. No, because it's different managers going in the department.
Q. Do you remember if it was Shirley Hebert?
A. Shirley Hebert is assistant director.
Q. What does that mean, assistant director?
A. It's the director and then the assistant director.
Q. Do you remember if Shirley Hebert was ever your manager and assigning people to certain areas of the floor for cleaning purposes?
A. The managers or the employees?
Q. The manager who was in charge of assigning employees.
A. No, it's not her.
Q. Okay.
A. She never work in the floor, most she work in the office.
Q. Do you remember ever working with a Terry Ruby?
A. No. Terry Ruby?
Q. He's been listed as an attendant.
A. No, I don't remember Terry Ruby.

Page 31

Q. And how about an Anna Sylvia Hernandez as a porter; do you remember ever working with her?
A. Anna Sylvia, yes, she work in the retail.
Q. Say it again.
A. She work in the retail area.
Q. What does that mean?
A. The store areas. And I don't remember if she's assignment in, what is the name, North Garden and South Garden.
Q. The area where Miss O'Connell fell is referred to as what, the South Garden?
A. South Garden.
Q. Where is the retail area?
A. Retail area is start by the -- it's the Esplanade; it's starting by the Dior, go all the way to the Breone.
Q. To the what?
A. To the Breone store. It's where all the stores they are, this is the retail area or the Esplanade.
Q. Can you spell that store name for me?
A. Breone?
Q. Yes.
A. B-R-E-O-N-E.
Q. And you recall that Anna Sylvia Hernandez was

Page 32

assigned to the retail area at some point; is that correct?
A. If she is the one they working in this moment, she is in the Parasol-Up cleaning.
Q. Do you know if she still works here at Wynn?
A. I don't know because she working day shift. She work 8:00 to 4:00.
Q. Do you remember an Anna Rivas, R-I-V-A-S?
A. No.
Q. Now, it's been stated that there were two attendants in the area where Miss O'Connell fell that were continuously inspecting the property and the grounds. Do you know who those two attendants were?
A. No.
Q. Do you know who would know that information?
A. Maybe the scheduling lady or the day shift manager.
MR. KIRCHER: You're talking about in 2010, right, when this happened?
MS. MORRIS: Yes.
MR. KIRCHER: Okay.
MS. MORRIS: Thanks, sorry about that.
MR. KIRCHER: Sure.
BY MS. MORRIS:
Q. Do you know who the scheduling lady is?

Page 33

1 A. I don't know if it's the same lady, but right
2 now the name is Miyra.
3 Q. M-I --
4 A. M-I-Y --
5 Q. Oh, Maya?
6 A. M-I-R -- Miyra, M-I-Y-R-A.
7 Q. So she's the current scheduling lady; is that
8 correct?
9 A. Right now, yes.
10 Q. You don't know if she was the one back in
11 2010?
12 A. No.
13 Q. So it would either be the scheduling lady or
14 the manager?
15 A. Yes.
16 Q. Okay. So currently you're the one who, if I
17 am understanding correctly, schedules attendants to
18 certain areas to constantly look for, you know, issues
19 on the property grounds to make sure it's clean?
20 A. In the 2010 or right now?
21 Q. Currently that's what you do, is that
22 correct, as a shift manager?
23 A. In graveyard, yes. In day shift it's the
24 manager when they working. Carlos and I is the one
25 working in graveyard to move the schedule or put the

Page 34

1 schedule when they're working; it all depends what
2 employees have to work every day. They have stations
3 to work.
4 Q. Are you in charge of scheduling these
5 attendants for the entire casino floor?
6 A. To the scheduling?
7 Q. Currently, now, when you schedule people to
8 certain areas, are you scheduling attendants for the
9 entire casino floor or are you responsible for only
10 certain areas, such as the gaming area, the retail
11 area?
12 A. No, they give us the schedule with the
13 employees working on graveyard, and each employee have
14 his own area to work, and our job is only to -- in the
15 schedule, is see who is working in what area, because
16 they almost working five days a week, and if
17 somebody's call in, I have to replace the people when
18 they have to work.
19 Q. Is there a certain number of employees that
20 have to be scheduled on the floor as attendants at all
21 times?
22 MR. KIRCHER: I'm going to object to the
23 extent it calls for speculation.
24 Go ahead.
25 THE DEPONENT: Can you repeat?

Page 35

1 BY MS. MORRIS:
2 Q. Sure. If you know, are you ensuring that
3 there are a certain amount of attendants that need to
4 be on the floor at all times?
5 A. No.
6 Q. Okay. Do you have a certain number that you
7 want on the floor at all times as shift manager?
8 A. They give us the numbers.
9 Q. Who is "they"?
10 A. The scheduling lady, they give the amount of
11 employees to working in the casino.
12 Q. When you were originally hired at Wynn, what
13 was the position you were hired for?
14 A. Assistant manager.
15 Q. So you've only ever been assistant manager
16 and shift manager during your time here; is that
17 accurate?
18 A. Yes.
19 Q. Now, Wynn has stated that approximately two
20 attendants were in the area where Miss O'Connell fell
21 back in 2010. Is an attendant the same thing as a
22 porter, if you know, or are those two separate
23 positions?
24 A. There is a porter and there is utility.
25 Q. Say that again.

Page 36

1 A. Excuse me?
2 Q. What did you say?
3 A. You say the positions with the employees,
4 they working in the area, is the porters.
5 Q. Okay, they're porters?
6 A. Um-hum.
7 MR. KIRCHER: And just to clarify, you're
8 saying the porters or attendants are the same thing;
9 is that what you are asking her?
10 MS. MORRIS: Yeah.
11 THE DEPONENT: The attendants, they're called
12 porters.
13 MR. KIRCHER: Okay.
14 THE DEPONENT: In our department.
15 MS. MORRIS: Okay.
16 MR. KIRCHER: Okay.
17 THE DEPONENT: The porters is the people when
18 they don't use the heavy equipment, and the utility is
19 the employees when they use the heavy equipment.
20 BY MS. MORRIS:
21 Q. The sweeper machine, would that be considered
22 heavy equipment?
23 A. Yes.
24 Q. So if a sweeper machine was used to clean up
25 this area, it would have been a utilities employee; is

Page 37

1 that correct?
2 A. Yes.
3 (Ms. Espinosa left the room.)
4 BY MS. MORRIS:
5 Q. I'll show you a picture, and we will mark it
6 as Plaintiff's Exhibit 2. In this picture that I'm
7 showing you, do you recognize that area?
8 A. The garden.
9 Q. Is that the South Garden?
10 A. The South Garden, yes.
11 Q. When you look at that picture, can you see in
12 that picture the area where the substance was on the
13 floor?
14 A. I don't remember exactly the area, but they
15 can be around this in here, I think. Sorry.
16 Q. No. Can you mark where you're pointing?
17 A. Even when I don't really remember?
18 Q. We'll understand that this is the general
19 area where you recall it being and this is not the
20 specific area.
21 A. Okay, this can be around these sections.
22 Q. Do you remember when you arrived at the area,
23 whether that sign that we see in the photograph was
24 there?
25 A. I don't remember sign in the area. Don't

Page 38

1 remember if it's in there because -- because this is
2 the XS, they tell us when they want the sign to put
3 in.
4 Q. Okay. You said XS, the club?
5 A. Nightclub, um-hum.
6 Q. Okay. They tell you when they want that sign
7 put there?
8 A. Sometimes they tell us where they want it,
9 like with the special events, they tell us where the
10 signs have to be in the casino to make sure the
11 guests, they know about it.
12 Q. Know where to go?
13 A. Yes.
14 Q. Gotcha. Do you remember if there was any
15 damage to the landscaping or to the flower garden as a
16 result of Miss O'Connell's fall; did you see any
17 damage?
18 A. I don't remember it was damaged. I don't
19 think so because they always have people working in
20 the gardens to make sure everything is okay.
21 Q. What do you mean, "working in the gardens"?
22 A. They have the department taking care of all
23 the plants and everything.
24 Q. Do you know the name of that department?
25 A. Horticulture.

Page 39

1 Q. The horticulture department?
2 A. The horticulture department.
3 Q. Do you know if there was anyone working in
4 the gardens at the time Miss O'Connell fell?
5 A. I don't remember seeing nobody.
6 Q. Have you ever seen anyone from the
7 horticulture department watering the plants in the
8 South Garden area?
9 A. In the nighttime.
10 Q. You have?
11 A. Yes, I see the guys working in the gardens.
12 Q. Do you ever see them watering in the garden?
13 A. No.
14 Q. Do you know how they water the garden?
15 A. They have a little container, it's like a
16 little cart and a little container with the water and
17 they have the irrigation and they water the plants.
18 Q. So they have a container and like a little
19 stick on the front of the container?
20 A. Yes.
21 Q. And then the water comes out of the stick?
22 A. Um-hum.
23 Q. And you said you've seen it at night; is that
24 right?
25 A. Yes.

Page 40

1 Q. Is that because you think it's only done at
2 night, or you're only working at night, so that's when
3 you see it?
4 A. Because I working in the night.
5 Q. Okay.
6 A. I work in day shift only like not too much,
7 but I never saw the guys working in the garden. Most
8 of the work in the garden is done in the nighttime.
9 Q. Okay.
10 A. Sorry. I hate to read only, my glasses.
11 Q. Oh. Thank you. Here's a little closer up
12 photograph that was taken, and we'll mark it as
13 Plaintiff's Exhibit 3, appears to be a closer-up image
14 of what was Plaintiff's Exhibit 2.
15 In looking at this up-close photograph, does
16 that help refresh your memory in any way as to the
17 location of that substance that was on the floor?
18 A. No.
19 Q. Do you know if that, this picture here,
20 Exhibit 3 --
21 A. It's the same, um-hum.
22 Q. -- do you know if it shows the area where the
23 substance was?
24 A. I don't remember exactly where is the spill
25 because they cover this section in here.

Page 41

1 Q. The sweeper covered the section?
2 A. There, in here.
3 Q. So can you indicate on Plaintiff's Exhibit 3
4 where the sweeper had been located?
5 A. In this section right here.
6 Q. And you're drawing it with that pen?
7 A. Hmm?
8 Q. Can you draw it a little darker so we can
9 see?
10 A. Oh.
11 MR. KIRCHER: And you remember that for sure?
12 THE DEPONENT: Hmm?
13 MR. KIRCHER: You remember that for sure,
14 yes?
15 THE DEPONENT: I don't remember for sure, but
16 they have to be in this section.
17 MR. KIRCHER: Okay.
18 BY MS. MORRIS:
19 Q. The sweeper?
20 A. Yes.
21 Q. Okay. So you're saying that's where the
22 sweeper was located; is that correct?
23 A. I don't remember exactly the area, but have
24 to be in here because I'm, like, pretty sure they have
25 in -- have to be in this area; this is the one that

Page 42

1 have the spill.
2 Q. So I want to be clear that I've understood
3 your time line. You got called and you went to the
4 scene; is that correct?
5 A. Um-hum.
6 Q. When you got there, the sweeper had been
7 placed over the substance on the floor?
8 A. Yes.
9 Q. And Miss O'Connell was there; is that
10 correct?
11 A. Yes.
12 Q. The lady who fell?
13 A. Um-hum.
14 Q. And then security came; is that correct?
15 A. Yes.
16 Q. And at that point, is that when the sweeper
17 was removed from the substance?
18 A. Yes.
19 Q. So when the sweeper was removed from the
20 substance, security was there; is that accurate?
21 A. I don't remember if security is there because
22 I have to call to security to come to the area.
23 Q. Do you know, when security arrived, had the
24 liquid been cleaned up yet or the substance been
25 cleaned up yet?

Page 43

1 A. They not clean. They not clean. They never
2 clean nothing till security coming and inspect the
3 area.
4 Q. Okay. And do you remember the name of the
5 security officer that responded?
6 A. I don't remember, no.
7 Q. Do you remember if you told the security
8 officer who showed up that you had seen a liquid
9 substance on the floor?
10 A. No.
11 Q. Do you disagree with that statement?
12 A. With my statement?
13 Q. No, the security report says that I spoke
14 with manager Elias -- am I saying your name right?
15 A. Yes.
16 Q. Okay. Who stated upon her arrival, she
17 noticed a liquid substance on the floor.
18 Do you disagree that you told him it was a
19 liquid substance?
20 A. I don't remember told him it's a liquid
21 because when I coming, it's nothing on the floor. I
22 not be in that area in the moment when the lady fell.
23 I'm arrive when they call us when I coming to the
24 casino areas when I working, and when I being there,
25 it's no liquid. I don't see liquid in the floor

Page 44

1 myself.
2 Q. Because you saw like a sticky substance?
3 A. Yes.
4 Q. Okay. Are you saying that you didn't see
5 what she actually fell on, you just saw a substance --
6 A. Yes.
7 Q. -- a sticky substance on the floor?
8 A. Because when I being there, everything is set
9 up. Like the guy -- I don't know if the guy is around
10 the area when they call dispatch. I don't know who
11 called dispatch. I only know they call us, one of the
12 managers, to go to the area because it's an accident
13 in the garden.
14 This is when I'm arriving there and when I
15 see what I put in my statement. After, in the moment
16 when the accident, I don't know exactly how the area
17 look like till when I being there.
18 Q. So if it's my understanding if the security
19 report says that you noticed a liquid substance on the
20 floor, you would disagree with that statement; is that
21 correct?
22 A. I don't know what the security writed up, but
23 this is why -- I don't know if they asked me, I don't
24 remember if they asked me, why they called him. The
25 only thing when I say is they called because they have

Page 45

1 water in the floor, but when I come in, I don't see no
2 water in the floor.
3 Q. Did you see liquid?
4 A. No liquid.
5 Q. Okay. I'm just going to show you -- we'll
6 mark it as Plaintiff's Exhibit 4. Just, it's the one,
7 two, three, fourth paragraph down, if you want to just
8 read that paragraph.
9 A. Okay. Okay.
10 Q. So do you disagree with that statement that
11 you reported seeing a liquid substance on the floor?
12 A. The liquid is not like water. It's like I
13 told you, it's something like sticky, because it's not
14 something like a really, really like a water. It's
15 like something like a syrup, like a drink, like
16 something like that, but not like they go more than a
17 little space.
18 (Discussion off the record.)
19 BY MS. MORRIS:
20 Q. But when you say drink, I think of liquid.
21 A. This is what they tell us when they happen,
22 but when I been there, like I told you, I don't see
23 exactly the scenario until I arrive to the area when
24 they happen.
25 When they call us, they say they have

Page 46

1 something liquid. They always call a spill something
2 not really like a liquid or something. Sometimes it's
3 like a food, sometimes it's like something, another
4 kind of stuff; like they always call us because it's
5 like spills.
6 Q. Right. But the officer who responded said
7 that you told him it was a liquid substance, according
8 to his report; do you disagree with that?
9 A. I don't disagree if they put liquid because I
10 don't see liquid. This is my point with you guys, I
11 don't see liquid.
12 Q. Right.
13 A. I don't know why he put liquid in the
14 statement, I don't know, but --
15 Q. So did you tell him -- did you tell him it
16 was a liquid substance?
17 A. When they asked me why they call him, I think
18 I have to explain what they tell us when they call us.
19 See, they call us because they say it's a spill in the
20 floor, like a liquid in the floor.
21 Q. And I understand that.
22 A. Yes.
23 Q. But this specifically says you reported to
24 him a liquid substance that you saw, not that you were
25 told about.

Page 47

1 A. I don't saw the liquid.
2 Q. Okay, so you didn't see a liquid substance?
3 A. No, I don't see.
4 Q. Okay. And you didn't tell the security
5 officer --
6 A. No, he --
7 Q. Wait, let me finish, sorry.
8 A. I'm sorry.
9 Q. No. And you didn't tell the security officer
10 that you saw a liquid substance on the floor; is that
11 correct?
12 A. Um-hum.
13 Q. Is that a yes?
14 A. Yes.
15 Q. Okay.
16 A. Sorry.
17 Q. We're falling apart at this point.
18 A. I know, it's like . . .
19 MR. KIRCHER: She's trying to ask you, is the
20 statement right or wrong that the security officer
21 wrote. Do you think that's a right statement, that
22 you told him that, or is it a wrong statement, that
23 you didn't tell him that?
24 THE DEPONENT: I don't know if word he used
25 is the same thing when I wrote in my statement,

Page 48

1 because he wrote his own statement and I wrote my
2 statement.
3 BY MS. MORRIS:
4 Q. Right. But you're speaking to him at this
5 point, according to his report.
6 A. When they --
7 Q. "Who stated upon her arrival, she noticed the
8 liquid substance."
9 A. I don't see liquid, this is what I -- I don't
10 see the liquid in the floor.
11 Q. Okay.
12 MR. KIRCHER: Do you remember telling him
13 that?
14 THE DEPONENT: I don't remember to tell him.
15 I remember they ask questions about what happened.
16 BY MS. MORRIS:
17 Q. Right, and when they asked questions about
18 what happened, did you tell them that I arrived here
19 and noticed liquid substance on the floor?
20 A. No.
21 Q. You did not tell him that?
22 A. No.
23 Q. Is that correct?
24 A. It's correct.
25 Q. Okay, too many negatives.

Page 49

1 Let me take a look at -- can you help me
2 understand what your department is in charge of? It's
3 called the public area department.
4 A. Public area.
5 Q. What are the -- what are the responsibilities
6 of the public area department, if you know?
7 A. In the area when they have the accident or
8 all the --
9 Q. Just in general, what is the public area
10 department in charge of?
11 A. To clean in the casino, clean the gardens,
12 make sure everything is in the condition for the
13 guests and everything, sweep any debris in the floor,
14 clean ashtrays, vacuum the casino areas, vacuum the
15 restaurants, the entire cleaning in the casino, this
16 is the only thing. If they have like an incident when
17 they call, to make sure to go in the area and clean to
18 prevent future incidents.
19 Q. Do you know what the policy is in the
20 department for ensuring there's nothing on the floor
21 that could cause a dangerous condition? Are there
22 essentially roving people who are supposed to be
23 looking for anything on the floor that needs to be
24 cleaned?
25 A. They have to walk in the areas to make sure

Page 50

1 it's clear of liquids, like any spill, any drink, any
2 food. With the people walking, they drop papers and
3 everything, to make sure everything is around to make
4 sure everything is clean.
5 Q. Are the porters responsible for going to
6 certain areas at certain times during their shifts?
7 MR. KIRCHER: I'm going to object to the
8 extent it calls for speculation, but --
9 BY MS. MORRIS:
10 Q. If you know.
11 A. How often they have to be in the area? It is
12 hard to say how often they have to be because it's not
13 stay in one area; they have to walking in the
14 different areas.
15 I don't know, I cannot say every hour or
16 every 30 minutes; it's all depends how long they take
17 to go around the casino area when they work.
18 Q. Do you know if the porters have to maintain
19 something called like a sweep log to show that they've
20 been to a certain area and that it's clean or that
21 there was something there?
22 A. They don't have -- they don't have a log.
23 They have to walk in the area, check the area, make
24 sure the area is clear before they can move to the
25 other area.

Page 51

1 Q. How do you know or ensure, as an assistant
2 manager and now as a shift manager, that that porter
3 has actually gone to a certain area and ensured it's
4 clean?
5 A. Because our responsibility is to walk in
6 these areas, in different locations, like walk in the
7 retail, pass by the gardens, check the areas of the
8 casino, and then they go back in the -- I cannot say
9 an hour or two hours. It all depend how long they
10 take to go around the casino to go back to these
11 areas.
12 Any incident, whatever spills, sometimes the
13 different departments they call our dispatch to let us
14 know if they have a spill in the garden or they have
15 food dropping in the buffet.
16 Say like in the buffet, with like the food
17 and everything in there, they have porters assignment,
18 but then not specific stay in one area. They have to
19 walking around the entire buffet.
20 Incidents that can happen in the seafood and
21 the guy is cleaning the bathrooms, the employees
22 working in the buffet, they call our department so the
23 attendant can go and taking care.
24 Q. But how do you, as a manager, ensure that the
25 porters have gone to all of the locations that they're

Page 52

1 assigned?
2 A. When they are walking around the areas.
3 Q. Because you see them?
4 A. Yes.
5 Q. Any other way that you are ensured that they
6 have gone to the areas that they need to go to?
7 A. This is the only way for right now. They
8 don't have a schedule to, like, you have to be in the
9 garden every hour, it's like --
10 Q. There's not that, right?
11 A. No.
12 Q. Okay. Is there any kind of documentation to
13 show what areas have been essentially checked for
14 safety purposes?
15 A. For the employees?
16 Q. Correct.
17 A. When I know, no.
18 Q. When you work your shift currently, how much
19 of your shift is spent on the casino floor?
20 A. The managers?
21 Q. Yes, of your shift, yes.
22 A. In my shift, I am spend most of like, I say
23 the 85, 90 percent on the floor.
24 Q. Back when you were an assistant manager, what
25 percentage of your shift was spent actually on the

Page 53

1 casino floor?
2 A. This is the time when our department expect
3 for us to be in the floor all the time.
4 Q. Was it 85 to 90 percent?
5 A. Percent, yes.
6 Q. When you're on the floor, what are you doing?
7 A. I'm check the areas, different areas, when,
8 like, in the daytime, it all depend how many managers
9 is in the floor.
10 Some managers, they start checking in the
11 retail, and every shift is different. Every shift is
12 completely, completely different, day shift to swing
13 shift, compared to swing shift.
14 Swing shift is really, really busy.
15 Graveyard is more like, when I start, is when it's
16 busy, and I talking about my shift because I'm in
17 graveyard. It's like kind of busy in beginning. Like
18 around 3 o'clock, 4 o'clock is kind of slow, is when
19 the porters can start using the heavy equipment like
20 vacuums, sweepers, lifts, boom lifts in the casino
21 area.
22 (Discussion off the record.)
23 BY MS. MORRIS:
24 Q. Okay. Back in 2010, what would you classify
25 your shift as? Were you on the swing shift?

Page 54

1 A. I think I'm in between days and -- grave and
2 swing.
3 Q. Okay. So you didn't have like a specific
4 shift?
5 A. No, after when I be a shift manager, I be
6 3:00 to 11:00, and right now I'm 11:00 to -- 11:30 to
7 8:30.
8 Q. When you were assistant manager back in 2010
9 and you're on the floor, is part of your job to ensure
10 that the porters are adequately going to their
11 sections and ensuring there's nothing on the floor?
12 A. Yes.
13 Q. Have you ever, in your time as an assistant
14 manager, discovered a porter not doing his assignment
15 or her assignment?
16 A. No.
17 Q. How would you know if they haven't been; what
18 do you look for?
19 A. Because when I'm -- you can see that a porter
20 is not staying in the casino section. You can see if
21 the porter is not doing the job because you can found
22 the ashtrays dirty. In the floor you can see a lot of
23 debris in the carpet. If you inspect the bathrooms,
24 you can see the bathrooms is not fresh and clean if
25 they not been in the restroom when they supposed to

Page 55

1 be.
2 You can tell right away if he's not doing his
3 job because you can found dirty toilets, trash
4 overflowing and dirty floor and everything. But if
5 you constantly check, you know these employees, they
6 are in the area when they work.
7 Q. Do you know approximately how many porters
8 are on the floor at any time? Is it like 15, 20? Do
9 you have an average number of porters that are working
10 during your shift?
11 A. It depends of the day, because not the day is
12 the same amount of porters in the floor.
13 Q. Can you give me a range of the least amount
14 of porters to the most that you've seen on the floor?
15 MR. KIRCHER: Is this now or in 2010?
16 MS. MORRIS: Currently.
17 MR. KIRCHER: Currently?
18 THE DEPONENT: Currently? Well, in
19 graveyard, it's say 55, with utilities and porters.
20 Because it's not all the employees are in the casino.
21 They have in the restaurants. They have in the pool.
22 They have in the outside. The amount is the total to
23 cover all the areas in the casino.
24 Q. And as shift manager currently, are you
25 responsible for looking at all of those areas during

Page 56

1 your shift or only the casino floor?
2 A. Depends what zone, because right now in 2010
3 they don't have zones. Now, I'm not too familiar with
4 the zone because I'm in light duty for like four
5 months. They make a lot of changes in our department
6 when I have to be familiar because I'm in light duty.
7 I'm back to work last Wednesday.
8 Q. Okay.
9 (Discussion off the record.)
10 BY MS. MORRIS:
11 Q. So you're on light duty at the moment, you
12 said?
13 A. Yes.
14 Q. Why is that??
15 A. Because I have an accident.
16 Q. Oh, okay, so you got hurt?
17 A. Yes.
18 Q. Okay. How long have you been out of work?
19 A. Four months.
20 Q. Okay. How are you feeling, are you okay?
21 A. Pain, but try to work.
22 Q. Okay. So now you're back and you're on light
23 duty, right?
24 A. I'm on light duty.
25 Q. Okay. Let's go back to 2010. You are the

Page 57

1 assistant manager, correct?
2 A. Um-hum.
3 Q. Were you in charge, back in 2010, of making
4 sure the porters were in all of those areas -- you
5 mentioned the pool and the restaurants -- were you in
6 charge of looking to make sure they were doing their
7 job or were you only in charge of essentially the
8 casino floor area?
9 A. In that time period, they let us work in the
10 other areas in the casino.
11 Q. And can you list those areas for me?
12 A. All the areas?
13 Q. That you as the assistant manager were in
14 charge of.
15 A. It's like two or three managers. Some
16 managers they cover the casino, another manager cover
17 the retail and another manager cover the basement.
18 In the pool, they have a manager to taking
19 care of the pool. The exterior manager, they have to
20 taking care of the exterior.
21 Q. How about your job duty as assistant manager
22 back in 2010; what were you responsible for?
23 A. I don't remember what area they covered, but
24 if it's a manager in the casino when they call, any
25 manager can responding to go and check the area.

Page 58

1 Q. On February 8th, 2010, do you remember what
2 section you were responsible for covering?
3 A. No, I don't remember.
4 Q. Do you remember where you were when you got
5 called about this incident?
6 A. No.
7 Q. Were you on the casino floor?
8 A. I'm in the casino floor, but I don't remember
9 the area.
10 Q. If you were on the casino floor, would that
11 lead you to believe you were assigned to the casino
12 that day?
13 A. I can be in the retail and I can go check the
14 casino. I can go check the restrooms. I can be in
15 the different areas of the casino.
16 This is what I think right now, because they
17 don't explain me yet, that make the zones, that every
18 manager now they can be in the area when they supposed
19 to work the night or whatever happens, these managers
20 they can be their responsibility for him to check,
21 make sure that area is in control.
22 Q. I gotcha, so now it's different?
23 A. Right now, now is different.
24 Q. Yes.
25 A. Every director, they have his different way

Page 59

1 to work, and they already have, till now, three
2 directors.
3 Q. Do you remember back in 2010, when this
4 incident occurred, if you were the only manager,
5 assistant manager, on shift?
6 A. I don't remember.
7 Q. Do you remember back in 2010 approximately
8 how many attendants would be assigned to the casino
9 area for the shift that you were working?
10 A. No, I don't remember.
11 Q. Do you know if there's any documents that
12 would show if there was another assistant manager on
13 at the time that you were?
14 A. I think there can be.
15 Q. Like a scheduling document?
16 A. Like a scheduling document.
17 Q. There's a scheduling office; is that correct?
18 A. At the PAD office, they have the scheduling
19 and everything all together.
20 Q. And that's the one who is currently Miyra?
21 A. I don't know if it's Miyra. I don't remember
22 if it's Miyra because I have different ladies in the
23 scheduling. I don't know at this time who is the
24 ladies in there.
25 Q. I understand. Okay. So back in 2010, you

Page 60

1 don't remember exactly what area you were assigned to
2 be monitoring; is that correct?
3 A. Um-hum.
4 MR. KIRCHER: Was that a yes?
5 MS. MORRIS: Thank you. Is that a yes?
6 THE DEPONENT: I'm sorry, yes. I'm sorry.
7 MR. KIRCHER: It's okay.
8 BY MS. MORRIS:
9 Q. But you were the one who received the call to
10 come over to that location?
11 A. Not the specific person that received the
12 call.
13 Q. Okay, they didn't specifically call you?
14 A. No.
15 Q. Okay.
16 A. They call, they have a spill in the retail or
17 in the garden, and if it's a manager close to the area
18 or the only one in the casino to respond is when I
19 respond.
20 Sometimes, like say right now I'm in the
21 ballrooms and they have a spill in baccarat or they
22 have a spill in the Tower Suites, I can respond, I'm
23 on my way there or I'm close to the area to check.
24 Q. Gotcha. So you responded because you were
25 close?

Page 61

1 A. Yes.
2 Q. You said that there's a horticulture
3 department that maintains the gardens; is that right?
4 A. Yes.
5 Q. What, if any, responsibilities do the porters
6 have in the garden area, if you know?
7 A. Sweep the marble, the carpets in the area,
8 sweep, too, because in daytime they cannot use
9 vacuums. Only in graveyard they can use vacuums.
10 And go around the marble, clean the ashtrays.
11 Go inside the Parasol-Up when it's open and sweep and
12 go check the main entrance to clean the mirrors and
13 the doors, and the same in the south entrance.
14 (Ms. Espinosa entered the room.)
15 BY MS. MORRIS:
16 Q. We'll probably use this picture here; I think
17 it's Plaintiff's Exhibit 3. There's an item over
18 here; do you see what I'm pointing to?
19 A. This one?
20 Q. Yes. Do you know what that is?
21 A. I'm not sure if it's the power or light,
22 because they have lights around the garden. I'm not
23 sure.
24 Q. So it could be either one of those two; is
25 that correct?

Page 62

1 A. Lights or power or -- I don't know.
2 Q. Okay.
3 A. Or the speakers, because they have speakers,
4 too.
5 Q. For the music?
6 A. Yes.
7 Q. Okay. Thank you.
8 A. Because our porters, they not going too far
9 on this marble. They have to clean the marble this
10 way.
11 Q. So they don't go past the marble?
12 A. No.
13 Q. Is that what you're saying?
14 A. No.
15 Q. So I've been given these policies and
16 procedures, and we'll just mark this packet as
17 Exhibit 5.
18 Please take a look through this packet, if
19 you wouldn't mind, before we talk about it.
20 Flip through all the pages, make sure you're
21 familiar -- or are you familiar with this document;
22 have you seen it before?
23 A. Yes.
24 Q. Okay. There's more pages. Can you kind of
25 give me a description of what you're looking at?

Page 63

1 A. On the hard floors?
2 Q. Yeah, so this is policies and procedures
3 that's been given to me by Wynn, and it appears to be,
4 and you tell me if I'm wrong, the policies and
5 procedures for essentially cleaning?
6 A. Um-hum.
7 Q. Would you agree with that?
8 A. Yes.
9 Q. Okay. Is this some policy and procedure that
10 you implement or use in some fashion?
11 A. In the areas.
12 Q. Is this something that you use to train the
13 porters?
14 A. Yes.
15 Q. The ones that work in the public area
16 department?
17 A. Um-hum.
18 Q. What I'm looking for in this document that I
19 can't see, and maybe you can help me find, is where it
20 instructs the porters on how to roam, how to look in
21 their department to see if there's anything, any kind
22 of dangerous condition or debris on the floor, and I'm
23 just wondering if there's a specific instruction
24 somewhere in this packet that I missed.
25 A. The instructions the way the porters when

Page 64

1 they working in the garden, you're saying the garden
2 or in what area in the casino?
3 Because the casino is a difference like how
4 you working in the garden and how you working in the
5 bathrooms, how you working in the restaurant, how you
6 working in baccarat.
7 Some chores you cannot do in the daytime and
8 not in swing shift, it's only the job you can do it in
9 graveyard when it's not too many people around there.
10 Q. Okay.
11 A. Like the heavy equipment, you can never use
12 it in the daytime or in the swing shift because it's a
13 lot of guests and it's a lot of people walking in the
14 areas.
15 The most of the mop is bathrooms, you can mop
16 the bathrooms, but make sure when the employees they
17 want to mop the floor, they have to put in the
18 entrance to the bathrooms a Wet sign to let the guests
19 know the floor, they can be wet or not too wet, one in
20 the middle of the area but in the sink areas and one
21 by the stalls.
22 This is different within the gardens. In the
23 gardens they don't use the mops. Only like in the
24 cage when they call for spills, the guys they have to
25 use dry towels to clean the spill. They have the

Page 65

1 chemicals, they can spray and they can -- the area
2 they can be dry complete.
3 If it's something like a very sticky like
4 soda or drink, when it's like a sugar, they have to
5 clean with a dry -- with a wet towels, never use mop
6 in daytime or swing shift.
7 They always use the machine in graveyard,
8 early in the morning, and that is the machines they
9 have the water, but they have a squishy behind the
10 machine when they pick up all the water, and they
11 always have to put the signs to make sure.
12 Q. So there's different procedures for each
13 area?
14 A. Each shift, yes.
15 Q. Is that correct?
16 A. Yes.
17 Q. Okay.
18 A. And each shift is different.
19 Q. Is this a written policy for each shift and
20 each department? Is this somewhere in writing?
21 A. Yes.
22 Q. That says if you're working graveyard and
23 you're in the gardens, you need to do this?
24 A. Yes.
25 Q. Is it in this packet that I gave you?

Page 66

1 A. I don't know if it's in the packet, but when
2 the people they working in the areas, they have to
3 training how they can use equipment, what they need to
4 put when they working with equipment. This is the
5 marble. This is in the marble. This is a dust mop
6 and the mop.
7 Before they use like some dust -- the dust
8 mop is not -- how can I explain how is the dust mop?
9 It's a little stick with the dust mop, is like a long
10 piece of material, not wet. They pick up all the
11 debris. They don't have water on it.
12 Q. Okay.
13 A. This is the dust mop.
14 Q. And is that used on a specific shift and a
15 specific time?
16 A. The dust mop they can use in day shift
17 because there's no water, like you go in the marble
18 like with the little stick with the dust and they go
19 around the marble to pick up all the debris. When you
20 finish to clean the floor, they have to use like a pan
21 and broom to pick up whatever they have in the dust
22 mop.
23 Q. Can you look through the rest of that packet
24 for me and tell me if somewhere in this packet there
25 is instructions as to what a porter needs to do in a

Page 67

1 certain area during a certain shift?
2 A. Specifically in what kind of cleaning, the
3 cleaning?
4 Q. So from my understanding, porters are
5 assigned to certain areas; is that correct?
6 A. Um-hum.
7 Q. Is there a policy that says, Okay, porter,
8 you're working in the garden area today and you're on
9 the swing shift, these are your duties, these are what
10 you should be doing?
11 A. In writing?
12 Q. Yes.
13 A. No.
14 Q. How are they trained?
15 A. Before, with the new employees coming to
16 work, they training in how they can work in the
17 casino, they're training how they can work in the
18 restrooms, how have to use when they go in the
19 different areas of the casino. After they training,
20 they let the people the areas when they have to work.
21 Q. Is there any kind of policy and procedure
22 that's given out, if you know --
23 A. Every night?
24 Q. No, when, say, an employee starts and they're
25 trained on how to work.

Page 68

1 A. They give you this book.
2 Q. They give you this book?
3 A. Yes, these policies.
4 Q. Is there a separate book that says, If you're
5 assigned to the garden area, you need to do this
6 during these shifts?
7 A. They know because before they go into the
8 casino, they tell the employee what they need to do in
9 the different areas when they work.
10 Q. So they're only verbally told that?
11 A. Before they training to working with some of
12 the employees when they work -- like say you are new
13 in our department; before I let you work alone in one
14 area, you have to training with some of the managers,
15 walking in the areas, explain exactly what they need
16 to do, and before you go in there, you work with one
17 employee where they have like previous years working
18 in the casino, that they know the area really well,
19 and then explain you exactly what they need to do, and
20 you working with this person maybe one or two days,
21 all depends how you feel comfort to be alone in the
22 area.
23 Q. So this packet that we're looking through
24 right now, can you finish looking through it and tell
25 me if this is the complete policies and procedures

Page 69

1 that you're aware of for instructions on how to clean
2 in the casino?
3 A. I think they make this more simple because
4 they have how they use the equipment when they clean
5 the marble, the dust mop, Wet Spill signs, and they
6 have in here Wet Floor signs, when they use it.
7 Q. Have you seen this kind of printed out Power
8 Point before?
9 A. No.
10 Q. Okay.
11 A. This is new for me.
12 Q. Okay. The policies before the printed out
13 Power Point, have you seen those before?
14 A. Like this, um-hum.
15 Q. Yes, you're familiar with that?
16 A. Yes.
17 Q. Okay. Do you have a full policies and
18 procedure manual that you keep in maybe your office?
19 A. I think Patricia is the one that have all
20 this. The ladies in charge with the training have
21 this one and give it us when they have new employees
22 coming aboard to training.
23 MR. KIRCHER: Did you say Teresa?
24 THE DEPONENT: Patricia.
25 MR. KIRCHER: Okay.

Page 70

1 MS. MORRIS: Patricia.
2 MR. KIRCHER: Okay.
3 MS. MORRIS: I thought I heard Teresa, too.
4 THE DEPONENT: Patricia.
5 BY MS. MORRIS:
6 Q. Do you have -- do you keep your own policies
7 and procedures handbook? Do you have one?
8 A. Yes.
9 Q. Do you keep it in your office?
10 A. I'm pretty sure I have in the office.
11 Q. Is it thicker?
12 A. Yes.
13 Q. Is it more papers than what we're seeing
14 here?
15 A. Yes.
16 Q. Do you remember what kind of areas it covers?
17 This kind of covers cleaning; is that right?
18 A. Yeah.
19 Q. What other sections are there, do you
20 remember?
21 A. The sections in the casino?
22 Q. Sections in the casino in the handbook, the
23 handbook that you have in your office.
24 A. I got these policies.
25 Q. Yeah, that's part of it, correct?

Page 71

1 A. I think it's everything.
2 MR. KIRCHER: A second ago you said that it
3 is probably thicker and there might have been more
4 policies, so she's trying to figure out if it is
5 thicker and there's more than that, what else is in
6 the policy handbook.
7 THE DEPONENT: I don't remember.
8 BY MS. MORRIS:
9 Q. Do you know if there's a section in there
10 that talks about what to do in the event a customer is
11 injured on the property?
12 A. Like a book when that happen with the -- like
13 a guest injured?
14 Q. Correct.
15 A. No.
16 Q. How were you trained, or if you were, on what
17 to do in the event a guest is injured on the property?
18 A. The training when I got when I'm starting in
19 here is like if you see a guest fall, go and try to
20 help the guest, whatever you can. Don't move. Don't
21 touch. Ask how he feel. Wait for security to help
22 the guest.
23 If they need maybe paramedic or maybe they
24 need different kind assistance is depend the
25 situations, but I have to wait to see the security

Page 72

1 finish to make his job, and then our part, if there's
2 something that have to be cleaned, they have to clean,
3 or things to be removed, like if it's blood, have to
4 wait for the guys to come in and clean the bio or use
5 the proper equipment to clean the bio, and it just all
6 depends.
7 Q. Did you say clean the tile or the bile?
8 A. Bio. When they have like a biohazard, like
9 blood or vomit --
10 Q. Oh, bio, gotcha.
11 A. -- pee, this kind of stuff, security, they
12 never clean. They call us to finish to clean.
13 Q. Okay.
14 A. After security make all the report, maybe the
15 guest or whatever, they have an accident, take to the
16 ambulance, or the guest get up and nothing happen.
17 Q. So you were trained about that when you were
18 originally hired?
19 A. Yes.
20 Q. Do you remember if it ever came to you in a
21 written policy or procedure, like a document that kind
22 of stated those things?
23 A. I don't remember.
24 Q. Were you ever instructed in your training
25 that it was in some way your job to take photographs

Page 73

1 of whatever caused the injury?
2 A. Not us.
3 Q. No, you were trained that it was security's
4 job?
5 A. Security is the one that take all the
6 paperwork for the people when they're injured.
7 Q. Okay. So your job is simply to respond?
8 A. Yes.
9 Q. And assist in some fashion?
10 A. Assist, yes.
11 Q. And call security?
12 A. Yes.
13 Q. You said something about don't touch, when
14 you respond, not to touch or move; is that correct?
15 A. Yes.
16 Q. Are you talking about not to touch or move
17 the person --
18 A. The guest.
19 Q. -- who has fallen?
20 A. Yes.
21 Q. Were you trained not to touch or move
22 anything in the area as well?
23 A. Um-um, till security coming.
24 Q. So the answer is yes, not to move anything?
25 A. Yes, yes.

Page 74

1 Q. Okay. So it's my understanding from your
2 testimony that it's the public areas department that
3 is responsible for ensuring that the floor is clean
4 and free of debris.
5 A. Yes.
6 Q. Is that accurate? Yes?
7 A. Yes.
8 MR. KIRCHER: Are you doing okay? Do you
9 need a break or --
10 THE DEPONENT: No, I'm okay.
11 MS. MORRIS: I'm almost all done.
12 MR. KIRCHER: All right, you're fine?
13 THE DEPONENT: Yeah.
14 MR. KIRCHER: Good.
15 MS. MORRIS: And I'm almost all done.
16 THE DEPONENT: Okay.
17 MS. MORRIS: Okay?
18 THE DEPONENT: It's only when I get up -- can
19 I get up a little bit?
20 MS. MORRIS: Stand up?
21 THE DEPONENT: Yes.
22 MS. MORRIS: Yeah
23 THE DEPONENT: Stand up a little bit?
24 MS. MORRIS: Sure.
25 THE DEPONENT: Because I cannot be like that

Page 75

1 because of my back. Thank you.
2 MS. MORRIS: And, yeah, stand as long as you
3 want, don't worry about that at all.
4 THE DEPONENT: Stand a little bit because
5 sitting or walking too much is my problem right now.
6 MR. KIRCHER: If you want to stand while she
7 asks you the questions, you can do that, too.
8 MS. MORRIS: Yeah.
9 THE DEPONENT: Yeah, I can be a little bit,
10 thank you.
11 BY MS. MORRIS:
12 Q. And it kind of goes to my next section, I
13 wanted to ask a little bit about you.
14 A. About me? Okay.
15 Q. We generally do that at the beginning, but
16 I'm doing it at the end today.
17 A. Okay.
18 Q. So where are you from originally?
19 A. From?
20 Q. Yes.
21 A. Mexico.
22 Q. And when did you move to Las Vegas?
23 A. Ooh, in 1999.
24 Q. Do you remember why you moved to Las Vegas?
25 A. Work.

Page 76

1 Q. Did you move here to work at Wynn? Not yet?
2 A. In Wynn?
3 Q. No, where did you -- where did you work when
4 you moved here?
5 A. Where I work, picking grapes in California.
6 Q. What part of California?
7 A. Delano, close to Bakersfield.
8 Q. Who did you move here -- or who did you move
9 to the United States with?
10 A. Who I moved with?
11 Q. Yes.
12 A. With my husband and my two kids.
13 Q. How old are your children?
14 A. My children, the biggest one is 32 and the
15 youngest one is 22.
16 Q. So how long were you in California picking
17 grapes?
18 A. A year and a half.
19 Q. Where did you go after California?
20 A. Las Vegas.
21 Q. Did you have a job here when you moved?
22 A. No, I come in and apply.
23 Q. Where did you apply?
24 A. Golden Nugget, Tropicana and Mirage.
25 (Discussion off the record.)

Page 77

1 BY MS. MORRIS:
2 Q. Okay. Did you get hired?
3 A. In the Golden Nugget.
4 Q. What did you get hired as? What was your
5 position?
6 A. GRA.
7 Q. What's that stand for?
8 A. Maid.
9 Q. Oh, maid?
10 A. Um-hum.
11 Q. Okay. But you said GRA?
12 A. Yeah, this is what they --
13 Q. Guest room attendant?
14 A. Guest room attendant.
15 Q. Oh, okay.
16 A. GRA.
17 Q. All right. How long did you work at the
18 Golden Nugget?
19 A. 16 years.
20 Q. When did you start working at Wynn?
21 A. When they open it, 2005.
22 Q. So were you working at both Wynn and Golden
23 Nugget at the same time?
24 A. No. I left the Golden Nugget the 26th and I
25 start in the Wynn the 28th.

Page 78

1 Q. How long did you say you worked at the Golden
2 Nugget?
3 A. 16 years.
4 Q. Mathematically that doesn't work.
5 A. Why not?
6 Q. You moved from Mexico in 1999?
7 A. No, here to Las Vegas.
8 Q. Okay, you moved to Las Vegas in 1999?
9 A. 1999, um-hum.
10 Q. So if you worked at the Golden Nugget for
11 16 years, you'd still be working there, mathwise,
12 right? Am I doing it wrong?
13 MR. KIRCHER: No, you're right.
14 THE DEPONENT: 1999?
15 MR. KIRCHER: So you moved to Las Vegas in
16 1999?
17 THE DEPONENT: Right.
18 MS. MORRIS: '89?
19 THE DEPONENT: '89.
20 MS. MORRIS: '89.
21 MR. KIRCHER: You moved to Vegas in '89?
22 THE DEPONENT: Yeah, '89.
23 MR. KIRCHER: Okay, I heard '99, too.
24 THE DEPONENT: Yes, I'm sorry.
25 MS. MORRIS: No.

Page 79

1 MR. KIRCHER: That's all right.
2 THE DEPONENT: Yeah. Yeah, my son was born
3 in 1993.
4 BY MS. MORRIS:
5 Q. And you were at the Golden Nugget?
6 A. Yes.
7 Q. Okay.
8 A. '89, I wanted to be younger. Sorry for my
9 math.
10 Q. All right.
11 A. Yeah, '89.
12 Q. So you started working at Wynn in 2000, you
13 said, is that correct?
14 A. I start in the Wynn in 2005 when they open.
15 Q. 2005, sorry, thank you.
16 A. Yes.
17 Q. And are you still married?
18 A. Yes.
19 Q. Okay. And what's your husband do?
20 A. He work -- is necessary?
21 Q. Yeah. Well, I mean, I'm not going to go any
22 further than that.
23 A. He have his own business. He have a photo
24 studio and also he work in driving limousines.
25 Q. And are your kids still here in Las Vegas?

Page 80

1 A. Two live in Fresno and two stay here. Two
2 with us and two married already.
3 Q. So you've got four kids total?
4 A. Yes, two girls and two boys.
5 Q. Aside from this deposition that you're here
6 for today where you're essentially a witness, have you
7 ever been involved in any other litigation?
8 A. Um-um.
9 Q. Have you ever had an injury that you've made
10 a claim for?
11 A. For me or for another --
12 Q. No.
13 A. Like this?
14 Q. For you, like have you ever made a claim for
15 a personal injury?
16 A. I don't know if it's a claim or something,
17 because I fell in the Golden Nugget a long time ago, I
18 don't remember, and no, I be like on light duty like
19 right now and, no.
20 Q. Did you have something called a workers'
21 compensation claim?
22 A. No.
23 Q. Okay. So when you fell at the Golden Nugget,
24 you hurt yourself?
25 A. Um-hum.

Page 81

1 Q. And then did they give you time off of work?
2 A. Yes.
3 Q. Okay.
4 A. Like light duty and be off, light duty, back
5 to work.
6 Q. Okay. And that was some years ago?
7 A. Oh, yes, like, I don't remember how long ago,
8 but --
9 Q. Did the Golden Nugget ever have to give you
10 any money as a result of your fall?
11 A. I don't remember.
12 Q. Okay. And currently your back still hurts,
13 you've hurt it again; is that correct?
14 A. But in the Golden Nugget, it's not my back,
15 it's my knee.
16 Q. Okay, sorry, I thought you said back, my bad.
17 A. No, it was my knee.
18 Q. Okay. So, okay, but currently your back
19 hurts you; is that right?
20 A. Yes.
21 Q. Did you fall again?
22 A. Here, yes.
23 Q. Okay. And so now you're on light duty; is
24 that right?
25 A. Um-hum.

Page 82

1 Q. Have you made a workers' compensation claim
2 for your back?
3 A. No.
4 Q. Okay. Have you ever been in a car accident?
5 A. No.
6 Q. You've never been in a car accident?
7 A. Um-um.
8 Q. That's impressive.
9 MR. KIRCHER: That is.
10 MS. MORRIS: That's amazing, in Las Vegas
11 especially.
12 MR. KIRCHER: Yeah.
13 THE DEPONENT: No. They hit me, but I
14 never --
15 MR. KIRCHER: Okay. Have you ever filed a
16 lawsuit?
17 THE DEPONENT: No.
18 MR. KIRCHER: Okay.
19 BY MS. MORRIS:
20 Q. Okay, so this is the only time you've ever
21 really had any kind of involvement in litigation; is
22 that right?
23 A. Um-hum.
24 Q. Okay. Have you ever been convicted of a
25 felony?

Page 83

1 A. No.
2 Q. Have you ever been convicted of a crime of
3 dishonesty?
4 A. No.
5 Q. See, you were anticipating my question.
6 A. Sorry.
7 MR. KIRCHER: Yeah.
8 BY MS. MORRIS:
9 Q. And I hate to ask those questions, but if I
10 don't, I kick myself later.
11 A. You kick yourself later.
12 Q. I do.
13 A. No, thank God, nothing happened.
14 Q. Okay. Let's see, do you recall ever working
15 with a security assistant manager, Eddie Hoang,
16 H-O-A-N-G?
17 A. I don't know the names of the security
18 managers or security officers, I'm not --
19 Q. Not familiar with them?
20 A. No. It's when they need, any security can
21 go.
22 Q. I'm going to show you the statement of Terry
23 Ruby.
24 A. Okay.
25 Q. And I just want you to read through it.

Page 84

1 We'll mark it as Plaintiff's Exhibit 6.
2 A. Yeah.
3 Q. Have you ever seen that statement before?
4 A. No.
5 Q. Do you know if Terry Ruby was a porter?
6 A. I don't remember.
7 Q. Okay. Do you remember the time that this
8 incident occurred?
9 A. No.
10 Q. The security incident says it happened at
11 14:40, which I believe means 2:40 in the afternoon.
12 A. Okay.
13 Q. Is 2:40 in the afternoon an appropriate time
14 for vacuuming to be occurring?
15 A. Before, not now, they use one -- one little
16 machine with no cord that have like its own little
17 battery and they can sweep the carpet.
18 Q. Back then, is that what you're talking about,
19 2010?
20 A. Yes, um-hum.
21 Q. Do you know if that's the type of vacuum that
22 he was using at the time?
23 A. I think so. I don't remember what kind. If
24 this vacuum is what I think, the vacuum what they used
25 before, it's a little -- look like a little turtle,

Page 85

1 and then like they run the vacuum.
2 Q. A little what, are you saying?
3 MR. KIRCHER: Toro?
4 THE DEPONENT: Yeah, turtle.
5 MS. MORRIS: Okay.
6 MS. ESPINOSA: Turtle.
7 MR. KIRCHER: Turtle.
8 MS. MORRIS: Turtle.
9 THE DEPONENT: Sorry.
10 MS. MORRIS: That's okay, it still doesn't
11 clear it up for me.
12 THE DEPONENT: My pronunciation needs a lot
13 of work; it's bad, I know.
14 Yeah, no, I never see this report before.
15 BY MS. MORRIS:
16 Q. Did you happen to have a chance to look at
17 the shoes Miss O'Connell was wearing that day?
18 A. No, I don't make attention to this kind of
19 stuff.
20 Q. Okay. You weren't ever trained to look at
21 the shoes of the person who -- or the guest who had
22 fallen?
23 A. In our employees, yes, not in the guests.
24 Q. So if an employee working here falls, you
25 look at their shoes?

Page 86

1 A. Yes, because supposed to have nonslippery
2 shoes.
3 Q. How do you know if a shoe is a nonslippery
4 shoe or not?
5 A. Because it's too obvious for us, how you say,
6 like work shoes or like dressing shoes.
7 Q. I'll show you, and we'll mark it --
8 A. And now, it's different kind of shoes.
9 Q. -- as Plaintiff's Exhibit 6.
10 THE COURT REPORTER: 7.
11 MS. MORRIS: 7, thank you.
12 BY MS. MORRIS:
13 Q. In your opinion, does that look to be like a
14 nonslip shoe to you?
15 MR. KIRCHER: Object; calls for speculation,
16 picture speaks for itself.
17 THE DEPONENT: I'm not sure.
18 BY MS. MORRIS:
19 Q. If you came upon an employee who had fallen
20 and looked at that shoe and had to give an opinion,
21 what would your opinion be of the shoe?
22 A. Looks like work shoes.
23 Q. Looks like work shoes?
24 A. Looks.
25 Q. Are work shoes nonslip shoes?

Page 87

1 A. Yeah, but I'm not sure.
2 Q. Thanks. I'm just going to show you what
3 we'll mark as Exhibit 7. Take a look at that -- 8,
4 thank you -- and let me know if you've seen this
5 document before.
6 A. No.
7 Q. Are you able to read what the document says?
8 A. Yes.
9 Q. Can you read it out loud so we're all on the
10 same page as to what it says, the description?
11 A. Everything?
12 Q. Just the description.
13 A. Right here?
14 Q. Yes, I guess.
15 MR. KIRCHER: Yeah.
16 BY MS. MORRIS:
17 Q. This area right here, make sure you can read
18 it.
19 A. Is it rounding corner, passing directional
20 sign, slipped and fell, something in green liquid
21 substance.
22 Q. And then I think below here it says, Whom do
23 you consider the blame for the accident?
24 A. The green liquid.
25 Q. Would you disagree -- that's Miss O'Connell's

Page 88

1 -- well, her signed statement, although she didn't
2 write it, according to her testimony.
3 A. Okay.
4 Q. Would you disagree with her that there was a
5 green liquid on the floor?
6 MR. KIRCHER: Objection; calls for
7 speculation.
8 THE DEPONENT: It's not green liquid.
9 BY MS. MORRIS:
10 Q. But you didn't actually see her fall; is that
11 correct?
12 A. No.
13 Q. Okay. So if she says that she fell in green
14 liquid, would you disagree with her based on what you
15 saw after --
16 A. Yes.
17 Q. -- the sweeper moved?
18 A. Liquid. I don't see the lady when they fell.
19 Is when after she fell, she stand up, I don't know who
20 help her, but when I been there, she's already stand
21 up. She's not in the floor.
22 Q. Did you ask her what happened?
23 A. I asked the employees and I say -- I asked is
24 she okay. She say, Yes. I say, Do you want to go --
25 to call security, and I called security. But to see

Page 89

1 the lady in the floor, I don't see the lady in the
2 floor.
3 Q. When you did get to the scene, though, did
4 you specifically ask her what happened?
5 A. I don't remember, really don't remember I ask
6 her.
7 Q. How did you find out what happened?
8 A. The employee told me.
9 Q. Which employee?
10 A. I don't remember who employee, the one that
11 have the machine.
12 Q. You think, right, you're not sure about that?
13 A. No.
14 Q. Okay. Do you remember if there were other
15 guests around Miss O'Connell?
16 A. I don't remember seeing.
17 Q. Did you see any other guests ever assist
18 Miss O'Connell?
19 A. No.
20 Q. So when you got there, she had -- she was
21 standing up; is that accurate?
22 A. Um-hum.
23 Q. Okay.
24 MS. MORRIS: All right, I don't think I have
25 any other questions. Are you going to have any

Page 90

1 questions?
2 MR. KIRCHER: No, I don't think so.
3 MS. MORRIS: Okay. All right, it's over.
4 THE DEPONENT: Thank you.
5 MS. MORRIS: I know.
6 MR. KIRCHER: Good job.
7 MS. MORRIS: You have an option: You can
8 review your transcript and read through it,
9 essentially to ensure its accuracy, and you can make
10 changes to it if you'd like.
11 However, if you make changes to the
12 transcript after it's been created, and those changes
13 are substantive, you know, to the issue that we've
14 been talking about, primarily this substance on the
15 floor, we can comment on those changes because you're
16 making changes to a deposition transcript.
17 You don't have to make any changes; you can
18 read through it and sign it. But you either read
19 through it and sign it or you waive your right to read
20 through it and sign it.
21 I don't know what you'd like to do. If you
22 waive your right, it stands as it's created today.
23 THE DEPONENT: Can I wait?
24 MR. KIRCHER: Do you want to read through it?
25 THE DEPONENT: Yes.

Page 91

1 MR. KIRCHER: Okay.
2 MS. MORRIS: Okay, so you're going to read
3 and sign; is that correct?
4 THE DEPONENT: Um-hum.
5 MS. MORRIS: Is that yes?
6 MR. KIRCHER: Is that a yes?
7 THE DEPONENT: Yes.
8 MS. MORRIS: We're done.
9 (Thereupon, the deposition concluded
10 at 12:10 p.m.)
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Page 92

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)
4 I, Gary F. Decoster, a Certified Court
5 Reporter licensed by the State of Nevada, do hereby
6 certify: That I reported the deposition of YANET
7 ELIAS, on Tuesday, March 24, 2015, commencing at
8 10:30 a.m.
9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said stenographic notes via
12 computer-aided transcription into written form, and
13 that the typewritten transcript is a complete, true
14 and accurate transcription of my said stenographic
15 notes. That review of the transcript was requested.
16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of
18 any of the parties involved in the proceeding, nor a
19 person financially interested in the proceeding, nor
20 do I have any other relationship that may reasonably
21 cause my impartiality to be questioned.
22 IN WITNESS WHEREOF, I have set my hand in
23 my office in the County of Clark, State of Nevada,
24 this 3rd day of April, 2015.
25
GARY F. DECOSTER, CCR NO. 790

Page 93

DEPOSITION ERRATA SHEET

Our Assignment No. 300733
Case Caption: O'CONNELL vs. WYNN LAS VEGAS, LLC

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___.

_____
YANET ELIAS

Page 94

DEPOSITION ERRATA SHEET

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SIGNATURE:_____DATE:_____
YANET ELIAS

Page 95

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