

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS A. REIF, an incompetent person
by and through his Conservator CINDY
REIF,

Appellant,

vs.

ARIES CONSULTANTS, INC.

Respondent.

Supreme Court Case No. 76121
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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S APPENDIX
VOLUME 1 OF 2**

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CHRONOLOGICAL INDEX TO RESPONDENT'S APPENDIX

| Date | Document Title | Vol. | Pages |
|-------------|--|-------------|-----------------------------|
| 07/28/2017 | Plaintiff's Opposition to Defendant Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim Pursuant to NRS 11.259 (First Action A-17-752432-C) | 1 | RESP.APP.0001-RESP.APP.0008 |
| 11/07/2017 | Plaintiff's Motion to Amend Complaint on Order Shortening Time (First Action A-17-752432-C) | 1 | RESP.APP.0009-RESP.APP.0071 |
| 11/17/2017 | Aries Consultants, Inc.'s Limited Opposition to Plaintiff's Motion to Amend Complaint on Order Shortening Time (First Action A-17-752432-C) | 1 | RESP.APP.0072-RESP.APP.0077 |
| 01/31/2018 | Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 1 | RESP.APP.0078-RESP.APP.0111 |
| 02/02/2018 | Certificate of Service of Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 1 | RESP.APP.0112-RESP.APP.0113 |
| 02/20/2018 | Plaintiff's Opposition to Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 1-2 | RESP.APP.0114-RESP.APP.0366 |
| 03/29/2018 | Notice of Entry of Order Granting Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 2 | RESP.APP.0367-RESP.APP.0372 |
| 08/02/2018 | Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration (Second Action A-18-770951-C) | 2 | RESP.APP.0373-RESP.APP.0378 |

ALPHABETICAL INDEX TO RESPONDENT'S APPENDIX

| Date | Document Title | Vol. | Pages |
|------------|--|------|-----------------------------|
| 11/17/2017 | Aries Consultants, Inc.'s Limited Opposition to Plaintiff's Motion to Amend Complaint on Order Shortening Time (First Action A-17-752432-C) | 1 | RESP.APP.0072-RESP.APP.0077 |
| 02/02/2018 | Certificate of Service of Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 1 | RESP.APP.0112-RESP.APP.0113 |
| 01/31/2018 | Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 1 | RESP.APP.0078-RESP.APP.0111 |
| 03/29/2018 | Notice of Entry of Order Granting Defendant Barker Drott Associates, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (First Action A-17-752432-C) | 2 | RESP.APP.0367-RESP.APP.0372 |
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DISTRICT COURT

CLARK COUNTY, NEVADA

18 **MARCUS A. REIF, an individual;**
19 **Plaintiff,**
20 **vs.**

21 **EDGEWATER GAMING, LLC, a Nevada**
22 **Limited Liability Company, doing business as**
23 **EDGEWATER HOTEL AND CASINO,**
24 **GILLETT CONSTRUCTION LLC, a Nevada**
25 **Limited Liability Company, ARIES**
26 **CONSULTANTS INC., a Nevada Corporation,**
27 **DOES 1 through 40, and ROE CORPORATIONS**
28 **1 through 40, inclusive,**
Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

PLAINTIFF'S OPPOSITION TO
DEFENDANT ARIES
CONSULTANTS, INC.'S MOTION
TO DISMISS OR IN THE
ALTERNATIVE TO STRIKE
COMPLAINT AND CROSSCLAIM
PURSUANT TO NRS 11.259

29 Plaintiff Marcus Reif, by and through his attorneys, Glen Lerner Injury Attorneys and Napoli
30 Shkolnik PLLC, hereby submits its Opposition to Defendant Aries Consultants, Inc.'s ("Aries")

1 Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim Pursuant to NRS
2 11.259 ("Aries' Motion").

3 This Opposition is based on the pleadings, the attached Memorandum of Points and
4 Authorities, the attached declaration, and any oral argument and evidence the Court may allow at
5 the hearing on Aries' Motion.

6 DATED this 28th day of July, 2017.

7 Respectfully Submitted,

8 GLEN LERNER INJURY ATTORNEYS

9 NAPOLI SHKOLNIK PLLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION, BACKGROUND, AND PROCEDURAL HISTORY**

3 Defendant Aries Consultants, Inc.'s ("Aries") Motion to Dismiss or in the alternative to Strike
4 Complaint and Crossclaim pursuant to NRS 11.259 ("Aries's Motion") should be denied because
5 Plaintiff Marcus Reif's ("Plaintiff") Complaint does not implicate NRS 11.259; Aries's Motion is
6 based on affidavits and documents beyond Plaintiff's Complaint such that the Court should treat the
7 motion as one for summary judgement and permit Plaintiff reasonable discovery; and there is a set
8 of facts whereby Plaintiff can plausibly show that Aries is not a design professional.

9 On March 16, 2016, Plaintiff suffered catastrophic and life-threatening injuries when the vehicle
10 he was driving fell five floors because a barrier wall on the fifth floor of the Edgewater Casino
11 parking structure gave way upon slight impact. Comp. ¶¶ 8, 17.

12 On March 14, 2017, Plaintiff filed suit in the District Court of Clark County Nevada alleging
13 tort causes of action against Defendants Edgewater Gaming, LLC, Edgewater Hotel and Casino,
14 Gillett Construction, LLC, Aries Consultants, Inc., DOES 1 through 40, and ROE Corporations 1
15 through 40. *Id.* Plaintiff's Complaint does not allege tortious conduct involving architecture, interior
16 design, residential design, landscape architecture, professional engineering, or land surveying. *Id.*
17 Plaintiff did *not* name Barker Drottar, the design engineering firm that prepared the engineering
18 plans for a remodel of the parking structure that occurred in 2015. *Id.* Plaintiff concedes that to
19 name design professional Barker Drottar in the instant action necessarily would require both an
20 affidavit and expert report pursuant to NRS 11.259.

21 On July 11, 2017, Aries moved to dismiss or in the alternative to strike Plaintiff's Complaint
22 arguing that the actions against it were void *ad initio* under NRS 11.258 and 11.259 because
23 Plaintiff did not file an affidavit and expert report at the time the Complaint was filed. Aries' Mot.,
24 4:23-26. Aries' Motion contained two exhibits which are supplemental evidence supporting its
25 position. *Id.* [Ex. A—Decl. of Jerry B. Reynolds; Ex. B. Aries' Final Quality Assurance Report].

26 For NRS 11.258 and 11.259 requirements to attach, the action must be against a design
27 professional *and* involve "the design, construction, manufacture, repair, or landscaping" of a
28 nonresidential building or structure. Plaintiff concedes that the Edgewater Casino Parking Structure

1 is a nonresidential structure; however, the allegations in Plaintiff's Complaint do not necessarily
2 support a finding that Aries is a design professional.

3 II. LEGAL STANDARD

4 Contrary to Defendant's assertion, its motion to dismiss is not for lack of subject matter
5 jurisdiction under NRCP 12(b)(1). The legislature did not create a distinct adjudicative body or
6 exclusive administrative remedies when a negligence action involves a design professional—the
7 Nevada District Courts retain subject matter jurisdiction over negligence actions against design
8 professionals. N.R.S. 11.256 *et seq.* Requirement for Actions Involving Nonresidential Construction
9 Against Design Professionals (the "Statute"). Accordingly, Aries' Motion is properly categorized as
10 a NRCP 12(b)(5) motion to dismiss for failure to state a claim upon which relief could be granted,
11 and it is based on matters outside of the pleadings.

12 A. Motion to Dismiss where matters beyond the pleadings are presented to the Court.

13 Where, as here, matters outside of the pleadings are presented to the court in a Rule 12(b)(5)
14 motion, the court will treat the motion as one for summary judgment and it will be disposed of under
15 Rule 56, and "all parties shall be given reasonable opportunity to present all material made pertinent
16 to such a motion." N.R.C.P. 12(c); *see also Stevens v. McGimsey*, 99 Nev. 840, 673 P.2d 499
17 (1983); *MacDonald v. Kassel*, 97 Nev. 305, 629 P.2d 1200 (1981).

18 B. A Motion to Strike a Defendant from a lawsuit is not proper relief under the Statute.

19 Under NRCP 12(f), a court "may order stricken from any pleading any insufficient defense or any
20 redundant, immaterial, impertinent, or scandalous matter." Aries is alternatively seeking to be
21 stricken entirely from the Complaint. Aries' Mot., 10:3-4. Here, if the Statute applies, Plaintiff
22 admits that he did not file an affidavit and export report, and "the court shall dismiss [the] action."
23 NRS 11.259. Given the legislative mandate in the Statute, a design professional shall be dismissed
24 from the action not stricken from the lawsuit. Accordingly, Plaintiff will not address Aries'
25 alternative motion to strike.

26 IV. ARGUMENT

27 "An action 'involving nonresidential construction' is defined in pertinent part, as an action
28 'against a design professional' that pertains to the 'design, construction, manufacture, repair, or

1 landscaping' of a nonresidential building." *Converse Prof'l Grp. v. Eighth Judicial Dist. Grp.*, 310
2 P.3d 574, 578 (Nev. 2013) (*quoting* NRS 11.2565(1)) (hereinafter "*Converse*"). Plaintiff agrees that
3 the actions against Aries pertain to the repair of a nonresidential building. However, it is not
4 necessarily the case that Aries is a design professional.

5 Recently, the Nevada Supreme Court has interpreted the meaning of "design professional"
6 within the Statute to differing results. In *State DOT v. Eighth Judicial District Court*, 368 P.3d 385
7 (Nev 2016), the Supreme Court held that State DOT was not a design professional in part because it
8 was not primarily engaged in the practice of professional engineering even though it did employ
9 licensed professional engineers and also because State DOT was not a person as defined in the
10 Statute. *Id.* At 387-88. Conversely, in *Converse* [2013] the Supreme Court held that a party who
11 provided third-party quality control and assurance inspections is a design professional under the
12 Statute, but the Court did not consider whether such services were the primary function of
13 Defendant *Converse*. *Converse*, 310 p.3d at 579.

14 **A. Aries' Motion with supporting documents suggests that it is a design professional,**
15 **whereas Plaintiff's Complaint does not.**

16 A design professional is someone who holds "a professional license or certificate issued
17 pursuant to chapter 623 [Architecture, Interior Design and Residential Design], 623A [Landscape
18 Architects] or 625 [Professional Engineers and Land Surveyors] of NRS or a person primarily
19 engaged in the practice of professional engineering, land surveying, architecture or landscape
20 architecture." NRS 11.2565(2)(b). The "practice of professional engineering" includes, but is not
21 limited to . . . "[a]ny professional service which involves the application of engineering principles
22 and data, such as . . . consultation, investigation, evaluation, planning and design, or responsible
23 supervision of construction . . . wherein the public welfare or the safeguarding of life, health or
24 property is concerned" NRS 625.050(1)(a). The practice of engineering also includes services
25 that are "necessary to the planning, progress and completion of any engineering project or to the
26 performance of any engineering service." NRS 625.050(1)(b).¹

27
28 ¹ Aries supporting documents confirm that a design professional [Barker Drott] did provide engineering services and
plans for the nonresidential construction performed to Edgewater's parking structure. Plaintiff did not name this design
professional in his Complaint; however, if discovery and expert analysis confirm negligence on the part of Barker

1 Here, the allegations in Plaintiff's Complaint do not indicate that Aries is a design
2 professional. Although Aries subsequently provided supporting documentation in its motion
3 suggesting otherwise, the Court in *Converse* looked only to the allegations in the pleadings to
4 ascertain whether that Defendant was a design professional under the Statute. *Converse*, 310 P.3d at
5 579-80. There, the pleadings included allegations that (1) Converse was required to inspect the steel
6 work for irregularities and deficiencies and make certain that the installation of the steel comported
7 with construction plans and specifications;" (2) Converse's "services included, but [were] not
8 limited to, inspections of the steel, conducting tension tests, and quality assurance services; and (3)
9 the pleadings referenced the agreement governing Converse's services, where Converse was
10 responsible for "the sampling and testing of materials as they were being installed and the
11 performance of tensile strength tests on steel." *Id.* From the allegations in the pleadings, the Court
12 determined that Converse was a design professional within the meaning of the Statute. *Id.* Whereas
13 in the instant action, and in accordance with Nevada's notice pleading standard, Plaintiff pleaded
14 negligence-based causes of action and did not make any allegations that would implicate the
15 practice of professional engineering.

16 Accordingly, allegations in the pleadings do not provide a basis for a determination as a
17 matter of law that Aries is a design professional under the Statute, and Aries' Motion should be
18 denied.

19 **B. Plaintiff could establish a set of facts that Aries is not a design professional and request**
20 **Rule 56(f) Time to Conduct Discovery to do so.**

21 "A Complaint will not be dismissed for failure to state a claim unless it appears beyond a
22 doubt that the Plaintiff could prove no set of facts which, [if true], would entitle him or her to
23 relief." *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217, 14 P.3d
24 1275, 1278 (2000).

25 Here, and applying the Court's analysis in *State DOT*, Plaintiff could provide a set of facts to
26 show that Aries is not primarily engaged in the practice of professional engineering such that it is
27 not a design professional within the meaning set forth in the Statute. Specifically, Plaintiff requests

28 Drottar, Plaintiff will include the required affidavit and expert report in an amended pleading naming Barker Drottar as a Defendant.

1 Rule 56(f) discovery to take the depositions of Jerry Reynolds, Neil Haynes, James Martinez,
2 Robert Morrison, Aries as an organization under NRCP 30(b)(6), and the Clark County Building
3 Department as an organization under NRCP 30(b)(6). If such discovery establishes that Aries'
4 primary purpose is not the practice of professional engineering, then Aries likely is not a design
5 professional within the meaning of the Statute.

6 Given that Aries has put forth evidence to support its contention that it is a design
7 professional, there is a genuine issue of material fact present in this matter: whether Aries is design
8 professional under NRS 11.258. Further, the Court should permit Plaintiff Rule 56(f) time to
9 conduct discovery to do the same before ruling on Aries' Motion.

10 Alternatively, If this court determines that NRS 11.258 applies, this court cannot dismiss the
11 entire Complaint; rather, only the claims against Aries Consultants. See *Converse*, 310 P.3d at 580.
12 Accordingly, in the event this court grants Aries' Motion to dismiss, the claims against Edgewater
13 Gaming, LLC and Gillett Construction, LLC would remain nonetheless. Further, pursuant to NRCP
14 15, Plaintiff requests leave to amend the Complaint to add any parties or claims in the interest of
15 justice.

16 **C. Plaintiff's Joinder in Edgewater Opposition to Aries' Motion to Dismiss or in the**
17 **Alternative to Strike Complaint and Crossclaim**

18 Pursuant to EDCR 2.20(d), Plaintiff hereby joins in Edgewater Gaming LLC's opposition to
19 Aries' Motion to Dismiss to the extent that Edgewater Gaming, LLC asserts that NRS 11.258 and
20 11.259 are inapplicable to this action.

21 **V. CONCLUSION**

22 For the reasons set forth above, Plaintiff requests the Court deny Aries' Motion based on the
23 pleadings; or, in the alternative, grant Plaintiff's Rule 56(f) request for more time and limited
24 discovery before ruling on Aries' Motion.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a) and N.E.F.C.R. 9, I hereby certify that I am an
3 employee of GLEN LERNER INJURY ATTORNEYS, and on the 28th day of July, 2017 the
4 foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT ARIES CONSULTANTS, INC.'S**
5 **MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE COMPLAINT AND**
6 **CROSSCLAIM PURSUANT TO NRS 11.259** was served by electronic copy via the Eighth
7 Judicial Court's Odyssey E-File and Serve system, to the following counsel of record:

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21 /s/ Alisha Wagner
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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person by and
through his Conservator CINDY REIF,

Case No.: A-17-752432-C
Dept. No.: XXX

Plaintiff,

vs.

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT ON ORDER
SHORTENING TIME**

EDGEWATER GAMING, LLC, a Nevada Limited
Liability Company, doing business as
EDGEWATER HOTEL AND CASINO, GILLET
CONSTRUCTION, LLC, a Nevada Limited
Liability Company, ARIES CONSULTANTS, INC.,
a Nevada Corporation, BARKER DROTTAR
ASSOCIATES, LLC, a Nevada Limited Liability
Company, doing business as BARKER
STRUCTURAL, DOES 1 through 40, and ROE
CORPORATIONS 1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

COMES NOW, Plaintiff MARCUS A. REIF, pursuant to NRCP 15, requests leave of this
Court to file a First Amended Complaint, a copy of which is attached as Exhibit 1. This motion is
based on the declaration of Phillip Peche, attached as Exhibit 2, the following memorandum of points

1 and authorities, the papers and pleadings on file with this Court, and any oral argument allowed by
2 the Court.

3 GLEN LERNER INJURY ATTORNEYS

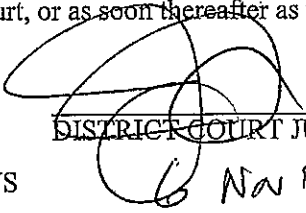
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10 Attorneys for Plaintiff
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ORDER SHORTENING TIME

TO: ALL PARTIES, and their attorneys of record.

Please take notice that the undersigned will bring the foregoing Motion to Extend Discovery on Order Shortening Time will come on for hearing on the 28th day of November, 2017, at 9:00 am before the above-entitled Court, or as soon thereafter as the parties may be heard.



DISTRICT COURT JUDGE

GLEN LERNER INJURY ATTORNEYS

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Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this personal injury action, Plaintiff Marcus Reif ("plaintiff") seeks leave of this Court to
4 file his First Amended Complaint primarily to substitute CINDY REIF as CONSERVATOR of the
5 PERSON and ESTATE of MARCUS REIF, an incompetent person, and add Defendant Barker
6 Drott Associates, LLC and related causes of action. *See* Ex. 1 [Plaintiff's First Amended Complaint
7 with Exhibits]. Defendant Aries Consultants, Inc. would not stipulate to plaintiff's First Amended
8 Complaint as written, and thus plaintiff requests the Court grant plaintiff's leave to amend and file
9 his First Amended Complaint.

10 **II. FACTS**

11 Plaintiff filed his complaint on March 14, 2017, plaintiff suffered catastrophic and life-
12 threatening injuries when the vehicle he was driving fell five floors because a barrier wall on the fifth
13 floor of the Edgewater Casino parking structure gave way upon slight impact. Comp. ¶¶ 8, 17.

14 On October 26, 2017, Reif's counsel contacted Defendants' counsel by e-mail to determine if
15 Defendants' counsel would stipulate to Reif's proposed Amended Complaint. *See* October 26, 2017,
16 email from Plaintiff's counsel to Defendants, attached as Exhibit 3. Counsel for Defendant Aries
17 declined to stipulate to amend Reif's Complaint to the Proposed Amended Complaint. *See* Ex. 3.

18 **III. LEGAL STANDARD**

19 "Rule 15(a) of the Nevada Rules of Civil Procedure clearly provides that leave to amend shall
20 be freely given when justice so requires." *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104,
21 105, 507 P.2d 138, 139 (1973). "[I]n the absence of any apparent or declared reason--such as undue
22 delay, bad faith or dilatory motive on the part of the movant--the leave sought should be freely
23 given." *Id.*, 89 Nev. at 106, 507 P.2d at 139. Although granting leave to amend is discretionary with
24 the trial court, "leave to amend should be permitted when no prejudice to the defendant will result
25 and when justice requires it." *Fisher v. Executive Fund Life Ins. Co.*, 88 Nev. 704, 705, 504 P.2d
26 700, 702 (1972) (reversing district court's order denying motion for leave to amend filed early in
27 case before discovery had even begun).

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IV. ARGUMENT

A. Plaintiff should be granted leave to amend his complaint.

“Rule 15(a) of the Nevada Rules of Civil Procedure clearly provides that leave to amend shall be freely given when justice so requires.” *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973).

Here, subsequent to filing suit, plaintiff has had a Conservator appointed, which this Court has recognized; and initial discovery has unveiled evidence of liability on the part of structural engineering firm Barker Drott Associates, LLC. As named defendants have appeared, and not all named defendants will stipulate to plaintiff filing his First Amended Complaint as it is written, plaintiff requests the Court grant him leave to file his First Amended Complaint. As fully set forth in Exhibit 1 and the exhibits attached thereto, the Court should grant plaintiff’s request to file a First Amended Complaint.

V. CONCLUSION

For the reasons set forth above, Reif requests his motion be granted in its entirety.

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EXHIBIT 1

EXHIBIT 1

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13 DISTRICT COURT
CLARK COUNTY, NEVADA

14 MARCUS A. REIF, an incompetent person by and
15 through his Conservator CINDY REIF,

16 Plaintiff,

17 vs.

18 EDGEWATER GAMING, LLC, a Nevada Limited
Liability Company, doing business as
EDGEWATER HOTEL AND CASINO, GILLET
19 CONSTRUCTION, LLC, a Nevada Limited
Liability Company, ARIES CONSULTANTS. INC.,
20 a Nevada Corporation, BARKER DROTTAR
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21 Company, doing business as BARKER
STRUCTURAL, DOES 1 through 40, and ROE
22 CORPORATIONS 1 through 40, inclusive,

23 Defendants.

24 AND ALL RELATED CLAIMS.
25

Case No.: A-17-752432-C
Dept. No.: XXX

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

26 COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
27 Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
28 GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint

1 against Defendants EDGEWATER GAMING LLC, a Nevada Limited Liability Company, doing
2 business as EDGEWATER HOTEL AND CASINO, (hereinafter "EDGEWATER"), GILLETT
3 CONSTRUCTION LLC, a Nevada Limited Liability Company, (hereinafter "GILLETT"), ARIES
4 CONSULTANTS INC., a Nevada Corporation, (hereinafter "ARIES"), BARKER DROTTAR
5 ASSOCIATES, LLC, a Nevada Limited Liability Company, doing business as BARKER
6 STRUCTURAL, (hereinafter "BARKER DROTTAR") DOES 1 through 20, and ROE
7 CORPORATIONS 1 through 20, inclusive, (hereinafter referred to collectively as "Defendants")
8 allege and aver as follows:

9 **JURISDICTION AND VENUE**

10 1. The incident complained of herein occurred in Clark County, Nevada, on March 16,
11 2016, granting jurisdiction and venue upon this Honorable Court (hereinafter the "subject incident").

12 2. That all requirements set forth pursuant to applicable Nevada law have been adhered
13 to and are further substantiated by the affidavit of attorney with exhibits attached hereto.

14 3. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and
15 resided in San Bernardino County, California.

16 4. At all times relevant, CINDY REIF is over eighteen years old, resided in San
17 Bernardino County, California, is the mother and CONSERVATOR of the PERSON and ESTATE of
18 MARCUS REIF, an incompetent person [Ex. 1], with foreign guardianship for MARCUS REIF
19 registered in Nevada [Ex. 2].

20 5. At all times mentioned herein, Defendant EDGEWATER was a Nevada Limited
21 Liability Company duly organized under the laws of the State of Nevada and authorized to conduct
22 business in the State of Nevada.

23 6. At all times mentioned herein, Defendant GILLETT was a Nevada Limited Liability
24 Company duly organized under the laws of the State of Nevada and authorized to conduct business in
25 the State of Nevada.

26 7. At all times mentioned herein, Defendant ARIES was a Nevada Corporation duly
27 organized under the laws of the State of Nevada and authorized to conduct business in the State of
28 Nevada.

1 8. At all times mentioned herein, Defendant BARKER DROTTAR was a Nevada
2 Limited Liability Company duly organized under the laws of the State of Nevada and authorized to
3 conduct business in the State of Nevada.

4 9. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of Defendants DOES 1 through 20 and/or ROE CORPORATIONS 1 through 40, inclusive, are
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is
7 informed, believes and thereupon alleges that the Defendants designated herein as DOES 1 through
8 40 and/or ROE CORPORATIONS 1 through 20, inclusive, are any one of the following:

- 9 (a) Parties responsible in some manner for the events and happenings herein referred to
10 that caused injuries and damages proximately thereby to MARCUS A. REIF as herein
11 alleged;
- 12 (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants,
13 each of them acting within the course and scope of their agency, employment or
14 contract;
- 15 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
16 responsible for the premises referred to hereinafter;
- 17 (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue
18 of an agreement, sale, transfer or otherwise; and/or
- 19 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle
20 barrier wall on the north side of the fifth floor of the parking garage at issue herein.

21 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
22 capacities of said Defendants, DOES 1 through 20 and ROE CORPORATIONS 1 through 20,
23 inclusive, when the same has been ascertained by the Plaintiff, together with appropriate charging
24 allegations, and to join said Defendants in the action.

25 **GENERAL ALLEGATIONS**

26 10. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
27 incorporates the same by reference as though fully set forth at length herein.

28 ...

1 11. On or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
2 Expedition, bearing California license plate number 5PKT385 (hereinafter the “subject vehicle”).

3 12. At all times relevant, Defendants EDGEWATER, DOES 1-5, and ROE
4 CORPORATIONS 1-5 were the owners, controllers, managers, and maintainers of the premises and
5 subject parking structure, located at 2020 South Casino Drive, Laughlin, NV 89029 (hereinafter
6 “parking structure”), that is classified as nonresidential construction.

7 13. On or about 2002, a vehicle exited the side of the parking structure and fell several
8 floors (hereinafter the “first prior incident”).

9 14. On or about December 8, 2014, a vehicle owned and operated by Defendants
10 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 impacted and dislodged a barrier wall
11 segment on the fifth level of the parking structure (hereinafter the “second prior incident”).

12 15. Shortly after the second prior incident, Defendants EDGEWATER, DOES 1-5, and
13 ROE CORPORATIONS 1-5 had installed a steel vehicle barrier approximately three feet in front of
14 the barrier wall segment that was dislodged as a result of the second prior incident (hereinafter the
15 “steel vehicle barrier”).

16 16. Subsequent to the second prior incident and before the subject incident, Defendants
17 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 chose not to have installed any
18 additional steel vehicle barriers in front of any other barrier wall segments in the parking structure.

19 17. Subsequent to the second prior incident and before the subject incident, Defendants,
20 and each of them—in whole or in part—designed, engineered, repaired, inspected, and rebuilt each
21 individual barrier wall segment in the parking structure, including the specific barrier wall segment
22 that gave way and resulted in subject incident, in accordance with the applicable building codes of
23 Clark County, Nevada in place in 2015 (hereinafter the “parking structure remodel”).

24 18. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted
25 with Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10 to provide
26 structural engineering services in conjunction with the parking structural remodel.

27 19. Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10
28 provided structural engineering services in conjunction with the parking structural remodel.

1 20. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted
2 with Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 to provide building and
3 repair services in conjunction with the parking structure remodel.

21. Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 provided building and repair services in conjunction with the parking structure remodel.

22. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 to provide special inspection and quality assurance services in conjunction with the parking structure remodel.

23. Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 provided special inspection and quality assurance services in conjunction with the parking structure remodel.

24. On or about March 16, 2016, MARCUS A. REIF traveled in the subject vehicle northbound through the parking structure, and as a result of the Defendants' conduct, the subject vehicle exited the side of the fifth level of parking structure and fell several floors causing severe injuries to MARCUS A. REIF (the subject incident).

FIRST CLAIM FOR RELIEF

(Negligence against Defendants EDGEWATER, DOES 1-5, and ROE Corporations 1-5)

25. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

18 26. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
19 dangerous condition.

20 27. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous,
21 non-obvious condition.

28. Defendant's negligence directly and proximately caused Plaintiff serious injury.

23 29. As a direct and proximate result of the negligence, Plaintiff has incurred damages in
24 excess of fifteen thousand dollars (\$15,000.00).

SECOND CLAIM FOR RELIEF

SECOND CLAIM FOR RELIEF
(Negligence Against Defendants GILLET, DOES 11-15, and ROE Corporations 11-15)

27 30. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
28 incorporates the same by reference as though fully set forth at length herein.

1 31. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
2 dangerous condition.

3 32. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous,
4 non-obvious condition.

5 33. Defendant's negligence directly and proximately caused Plaintiff serious injury.

6 34. As a direct and proximate result of the negligence, Plaintiff has incurred damages in
7 excess of fifteen thousand dollars (\$15,000.00).

8 **THIRD CLAIM FOR RELIEF**

9 (Negligence Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)

10 35. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
11 incorporates the same by reference as though fully set forth at length herein.

12 36. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
13 dangerous condition.

14 37. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous,
15 non-obvious condition.

16 38. Defendant's negligence directly and proximately caused Plaintiff serious injury.

17 39. As a direct and proximate result of the negligence, Plaintiff incurred damages in
18 excess of fifteen thousand dollars (\$15,000.00).

19 **FOURTH CLAIM FOR RELIEF**

20 (Negligence against Defendants BARKER DROTTAR, DOES 6-10, and
21 ROE Corporations 6-10)

22 40. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
23 incorporates the same by reference as though fully set forth at length herein.

24 41. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
25 dangerous condition.

26 42. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous,
27 non-obvious condition.

28 43. Defendant's negligence directly and proximately caused Plaintiff serious injury.

 44. As a direct and proximate result of the negligence, Plaintiff incurred damages in
excess of fifteen thousand dollars (\$15,000.00).

1 SEVENTH CLAIM FOR RELIEF
2 (Negligence Per Se Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)
3 57. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
4 incorporates the same by reference as though fully set forth at length herein.
5 58. Defendant violated Nevada Revised Statutes and/or county building codes governing
6 the building, maintenance, and/or repair of the parking structure.
7 59. As a result of Defendant's violations, Plaintiff sustained injuries.
8 60. Plaintiff was and is a member of the class persons that the statutes and/or county
9 building codes were intended to protect.
10 61. Plaintiff sustained the type of injuries that the statutes and/or county building codes
11 were intended to prevent.
12 62. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
13 in excess of fifteen thousand dollars (\$15,000.00.)
14 EIGHTH CLAIM FOR RELIEF
15 (Negligence Per Se Against Defendants BARKER DROTTAR, DOES 6-10, and ROE
16 Corporations 6-10)
17 63. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
18 incorporates the same by reference as though fully set forth at length herein.
19 64. Defendant violated Nevada Revised Statutes and/or county building codes governing
20 the building, maintenance, and/or repair of the parking structure.
21 65. As a result of Defendant's violations, Plaintiff sustained injuries.
22 66. Plaintiff was and is a member of the class persons that the statutes, and/or county
23 building codes were intended to protect.
24 67. Plaintiff sustained the type of injuries that the statutes and/or county building codes
25 were intended to prevent.
26 68. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
27 in excess of fifteen thousand dollars (\$15,000.00.)
28 ...
...

1 **ELEVENTH CLAIM FOR RELIEF**
2 **(Negligent Performance of an Undertaking Against Defendants ARIES, DOES 16-20, and ROE**
3 **Corporations 16-20)**

4 81. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
5 incorporates the same by reference as though fully set forth at length herein.

6 82. Defendant undertook, gratuitously or for consideration, to render services to
7 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
8 protection.

9 83. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
10 Plaintiff.

11 84. Defendant failed to exercise reasonable care in its undertaking.

12 85. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

13 86. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
14 Defendant's undertaking.

15 87. As a direct and proximate result of Defendant's failure to exercise reasonable care,
16 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

17 **TWELFTH CLAIM FOR RELIEF**
18 **(Negligent Performance of an Undertaking Against Defendants BARKER DROTTAR, DOES**
19 **6-10, and ROE Corporations 6-10)**

20 88. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
21 incorporates the same by reference as though fully set forth at length herein.

22 89. Defendant undertook, gratuitously or for consideration, to render services to
23 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
24 protection.

25 90. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
26 Plaintiff.

27 91. Defendant failed to exercise reasonable care in its undertaking.

28 92. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

93. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
Defendant's undertaking.

1 94. As a direct and proximate result of Defendant's failure to exercise reasonable care,
2 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 5 (a) For general damages in an amount in excess of fifteen thousand dollars
6 (\$15,000.00) for each claim for relief;
7 (b) For special damages in an amount in excess of fifteen thousand dollars
8 (\$15,000.00) for each claim for relief;
9 (c) For pecuniary and economic losses according to proof;
10 (d) For past and future medical and related expenses according to proof;
11 (e) For damage to personal property according to proof;
12 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
13 (d) For such other and further relief as the Court may deem just and proper.

14
15 GLEN LERNER INJURY ATTORNEYS

16
17 /s/ Glen J. Lerner
18 Glen J. Lerner, Esq.
19 Nevada Bar No. 4314
20 4795 South Durango Drive
21 Las Vegas, Nevada 89147
22 Attorneys for Plaintiff
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on ____ day of October,
3 2017, I served the foregoing **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY**
4 **TRIAL** was served by electronic copy via the Court's electronic service system WIZNET, to the
5 following counsel of record:

6 M. Craig Murdy, Esq.
7 Nausheen K. Peters, Esq.
8 **LEWIS BRISBOIS BISGAARD & SMITH**
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 *Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC*

12 Theodore Parker III, Esq.
13 **PARKER, NELSON, & ASSOCIATES, CHTD.**
14 2460 Professional Court, Suite 200
15 Las Vegas, NV 89128
16 *Attorney for Defendant*
17 *Gillett Construction, LLC*

18 Craig J. Mariam, Esq.
19 Robert S. Larsen, Esq.
20 Wing Yan Wong, Esq.
21 **GORDON & REES, LLP**
22 300 South Fourth Street, Suite 1550
23 Las Vegas, NV 89101
24 *Attorney for Defendant*
25 *Aries Consultants, Inc.*

26
27
28

An Employee of Glen Lerner Injury Attorneys



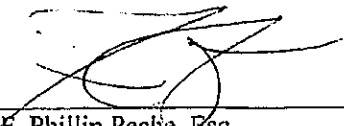
**NAPOLI
SHKOLNIK PLLC**
ATTORNEYS AT LAW

Mark Twain Plaza II
103 West Vandalia Street, Suite 125
(212) 397-1000
www.NapoliLaw.com

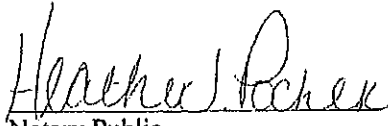
AFFIDAVIT OF F. PHILLIP PECHE, ESQUIRE

Before me, a notary, appear F. Phillip Peché, Esquire, being duly deposed and sworn does as follows:

1. I am an attorney in good standing and admitted to the courts in the State of California, State Bar Number 300198.
2. I am admitted Pro Hac Vice in the Eighth Judicial District Court, Clark County, Nevada for the action *REIF v. EDGEWATER GAMING, LCC et al.*, case number A-17-752432.
3. I, as a member of the law firm NAPOLI SHKOLNIK PLLC and along with Hunter J. Shkolnik and Joseph P. Napoli, personally represent Plaintiff MARCUS A. REIF as co-counsel with Glen Lerner (Nevada Bar Number 4314), GLEN LERNER INJURY ATTORNEYS, in the instant action.
4. I have reviewed the facts of this case, and pursuant to NRS 11.258 requirements for bringing an "Action involving nonresidential construction" against a "design professional," shall file this affidavit concurrently with service of the First Amended Complaint, which names design professional BARKER DROTTAR ASSOCIATES, LLC ("Barker Drottart") as a Defendant in this case. Defendant ARIES CONSULTANTS, INC. ("Aries") has moved to dismiss the instant action against it on grounds that it is a design professional within the meaning of NRS 11.256 *et seq.* and that Plaintiff did not comply with the pre-filing requirements set forth in the same. Independent of the Court's ruling on this pending legal issue, this Affidavit and attached expert report comport with the spirit and legislative intent of NRS 11.256 *et seq.* such that Aries pending motion to dismiss will become moot upon the filing and service of Plaintiff's First Amended Complaint.
5. I have consulted with engineering expert, Jerry L. Miles, P.E., Bert L. Howe & Associates, Inc., regarding the facts of this case and the alleged tortious conduct arising therefrom.
6. I reasonably believe Jerry L. Miles, P.E. to be an expert knowledgeable in the relevant discipline—professional engineering—which is the subject of Mr. Miles' report, and which is also readily apparent from the contents of his Curriculum Vitae attached hereto.
7. I have concluded on the basis of my review and my consultation with expert professional engineer Jerry L. Miles that the instant action has a reasonable basis in law and fact.


F. Phillip Pechie, Esq.

Sworn to and subscribed this 28st day of September, 2017, in the City of Edwardsville and the State of Illinois.


Notary Public



| | | |
|---|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Jennifer Liakos (SBN 207487), F. Phillip Peche (SBN 300198) FIRM NAME: Napoli Shkolnik PLLC STREET ADDRESS: 525 South Douglas Street, Suite 260 CITY: El Segundo STATE: CA ZIP CODE: 90245 TELEPHONE NO.: (310) 331-8224 FAX NO.: (646) 843-7603 E-MAIL ADDRESS: jliakos@napolilaw.com; ppeche@napolilaw.com ATTORNEY FOR (name): Cindy G. Relf | | FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT MAY 15 2017 BY <u>Connie Carter</u> DEPUTY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415-0212 BRANCH NAME: Probate Division of the San Bernardino District | | |
| CONSERVATORSHIP OF (name): MARCUS REIF | | CASE NUMBER: CONPS 170071 |
| ORDER APPOINTING <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship | | |
| WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED. | | |

1. The petition for appointment of ☐ successor conservator came on for hearing as follows (check boxes c, d, e, and f or g to indicate personal presence):
- a. Judicial officer (name): Cynthia Ludwigsen
- b. Hearing date: May 10, 2017 Time: 9:30am ☒ Dept.: S36 ☐ Room:
- c. ☒ Petitioner (name): Cindy G. Relf
- d. ☒ Attorney for petitioner (name): F. Phillip Peche
- e. ☒ Attorney for ☒ person cited ☐ the conservatee on petition to appoint successor conservator:
 (Name): Sherri Kashlahn (Telephone): (760) 948-0927
 (Address): 18950 Covina Street
 Hesperia, CA 92345
- f. ☒ Person cited was ☒ present. ☐ unable to attend. ☐ able but unwilling to attend. ☐ out of state.
- g. ☐ The conservatee on petition to appoint successor conservator was ☐ present. ☐ not present.

THE COURT FINDS

2. All notices required by law have been given.
3. Granting the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
4. (Name): Marcus Reif
- a. ☒ is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
- b. ☒ is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
- c. ☐ has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
5. The conservatee
- a. ☒ is an adult.
- b. ☐ will be an adult on the effective date of this order.
- c. ☐ is a married minor.
- d. ☐ is a minor whose marriage has been dissolved.
6. ☒ There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
☐ The conservatee is an adherent of a religion defined in Probate Code section 2355(b).
7. ☐ Granting the ☐ successor conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.
8. ☐ The conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

Do NOT use this form for a temporary conservatorship.

Page 1 of 3

| | | |
|-------------------------------|----------------------------|-------------------------------|
| CONSERVATORSHIP OF (name): | MARCUS REIF CONSERVATEE | CASE NUMBER: CONPS 1700114 |
|-------------------------------|----------------------------|-------------------------------|

9. ☐ The conservatee has dementia as defined in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 20.
10. ☒ Attorney (name): Sherril Kastlahn has been appointed by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is: \$
The conservatee has the ability to pay ☐ all ☐ none ☐ a portion of this sum (specify): \$
11. ☒ The conservatee need not attend the hearing.
12. ☒ The appointed court investigator is (name):
(Address and telephone):

13. ☐ (For limited conservatorship only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.
14. ☐ The ☐ successor conservator is a professional fiduciary as defined by Business and Professions Code section 6501(f).
15. ☐ The ☐ successor conservator holds a valid, unexpired, unsuspended license as a professional fiduciary issued by the Professional Fiduciaries Bureau of the California Department of Consumer Affairs under chapter 6 (commencing with section 6500) of division 3 of the Business and Professions Code.
- License no.: Issuance or last renewal date: Expiration date:

16. (Either a, b, or c must be checked):
- a. ☒ The ☐ successor conservator is not the spouse of the conservatee.
- b. ☐ The ☐ successor conservator is the spouse of the conservatee and is not a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
- c. ☐ The ☐ successor conservator is the spouse of the conservatee and is a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage. It is in the best interest of the conservatee to appoint the spouse as ☐ successor conservator.
17. (Either a, b, or c must be checked):
- a. ☒ The ☐ successor conservator is not the domestic partner or former domestic partner of the conservatee.
- b. ☐ The ☐ successor conservator is the domestic partner of the conservatee and has neither terminated nor intends to terminate their domestic partnership.
- c. ☐ The ☐ successor conservator is the domestic partner or former domestic partner of the conservatee and intends to terminate or has terminated their domestic partnership. It is in the best interest of the conservatee to appoint the domestic partner or former domestic partner as ☐ successor conservator.

THE COURT ORDERS

18. a. (Name): Cindy G. Reif (Telephone): (951) 999-7285
(Address): 31 S. Valley Mesa
Needles, CA 92363
Is appointed ☐ successor ☒ conservator ☐ limited conservator of the PERSON of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification. (Telephone): (951) 999-7285
- b. (Name): Cindy G. Reif
(Address): 31 S. Valley Mesa
Needles, CA 92363
Is appointed ☐ successor ☒ conservator ☐ limited conservator of the ESTATE of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification.
19. ☒ The conservatee need not attend the hearing.
20. a. ☒ Bond is not required.
- b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
- c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location):

and receipts shall be filed. No withdrawals shall be made without a court order.
☒ Additional orders in attachment 20c.

| | | |
|-------------------------------|----------------------------|-------------------------------|
| CONSERVATORSHIP OF (name): | MARCUS REIF CONSERVATEE | CASE NUMBER: CONPS 1700114 |
|-------------------------------|----------------------------|-------------------------------|

20. (cont.)

d. ☒ The ☐ successor conservator is not authorized to take possession of money or any other property without a specific court order.

21. ☐ For legal services rendered, ☐ conservatee ☐ conservatee's estate shall pay the sum of: \$
to (name):

☐ forthwith ☐ as follows (specify terms, including any combination of payors):

☐ Continued in attachment 21.

22. ☐ The conservatee is disqualified from voting.

23. ☒ The conservatee lacks the capacity to give informed consent for medical treatment and the ☐ successor conservator of the person is granted the powers specified in Probate Code section 2355.

☐ The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).

24. ☐ The ☐ successor conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in attachment 24 ☐ subject to the conditions provided.

25. ☐ Orders relating to the capacity of the conservatee under Probate Code sections 1873 or 1901 as specified in attachment 25 are granted.

26. ☐ Orders relating to the powers and duties of the ☐ successor conservator of the person under Probate Code sections 2351-2358 as specified in attachment 28 are granted. (Do not include orders under Probate Code section 2356.5 relating to dementia.)

27. ☐ Orders relating to the conditions imposed under Probate Code section 2402 on the ☐ successor conservator of the estate as specified in attachment 27 are granted.

28. ☐ a. ☐ The ☐ successor conservator of the person is granted authority to place the conservatee in a care or nursing facility described in Probate Code section 2358.5(b).

b. ☐ The ☐ successor conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2358.5(c).

29. ☒ Other orders as specified in attachment 29 are granted.

30. ☐ The probate referee appointed is (name and address):

Patrick B. Wright, Probate Referee
306 W 2nd Street, Ste. 200
San Bernardino, CA 92401
(909) 885-5194

31. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the person under Probate Code section 2351.5 as specified in attachment 31 are granted.

32. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the estate under Probate Code section 1830(b) as specified in attachment 32 are granted.

33. ☐ (For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee as specified in attachment 33 are granted.

34. ☒ This order is effective on the ☒ date signed ☐ date minor attains majority (specify):

35. Number of boxes checked in items 18-34: 9

36. Number of pages attached: 1

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Attachment 20 c and 29

1. Petitioner is appointed as Conservator of the Estate for the purposes of representation of Marcus Reif in the personal injury litigation in Nevada.

2. Petitioner is appointed as the Guardian ad Litem for Marcus Reif, in the Estate of Dale Milton Reif.

May 15, 2017



IT IS SO ORDERED

Cynthia Ludvigsen
Judge Cynthia Ludvigsen

Steven D. Grierson

1 NOE
2 Glen J. Lerner, Esq.
3 Nevada Bar No. 4314
4 GLEN LERNER INJURY ATTORNEYS
5 4795 South Durango Drive
6 Las Vegas, Nevada 89147
7 Telephone: (702) 877-1500
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9 glerner@glenlerner.com
10 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

11 MARCUS A. REIF, an individual;
12 Plaintiff,
13 vs.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

14 EDGEWATER GAMING, LLC, a Nevada
15 Limited Liability Company, doing business as
16 EDGEWATER HOTEL AND CASINO,
17 GILLETT CONSTRUCTION LLC, a Nevada
18 Limited Liability Company, ARIES
19 CONSULTANTS INC., a Nevada Corporation,
20 DOES 1 through 40, and ROE CORPORATIONS
21 1 through 40, inclusive,

**NOTICE OF ENTRY OF ORDER
GRANTING APPLICATION TO
REGISTER FOREIGN
GUARDIANSHIP ORDER**

22 Defendants.

23 AND ALL RELATED CLAIMS.

24 PLEASE TAKE NOTICE that an Order Granting Application to Register Foreign
25 Guardianship Order, was entered and filed on the 23rd day of October, a copy of the Order is
26 attached hereto.

GLEN LERNER INJURY ATTORNEYS

27 /s/ Glen J. Lerner
28 Glen J. Lerner, Esq.
Nevada Bar No. 4314
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

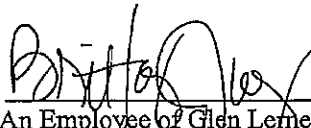
CERTIFICATE OF SERVICE BY MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on 25 day of October, 2017, I served the foregoing **Notice of Entry of Order Granting Application to Register Foreign Guardianship Order** was served by electronic copy via the Court's electronic service system WIZNET, to the following counsel of record:

M. Craig Murdy, Esq.
Nausheen K. Peters, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC

Theodore Parker III, Esq.
PARKER, NELSON, & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, NV 89128
*Attorney for Defendant
Gillett Construction, LLC*

Craig J. Mariam, Esq.
Robert S. Larsen, Esq.
Wing Yan Wong, Esq.
GORDON & REES, LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101
*Attorney for Defendant
Aries Consultants, Inc.*


An Employee of Glen Lerner Injury Attorneys

Steven D. Grierson

1 **ORDER**

2 Glen J. Lerner, Esq.
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Attorneys for Plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 MARCUS A. REIF, an individual;
10 vs. Plaintiff,

CASE NO.: G-17-048624-A

CLARK DISTRICT FAMILY
DOMESTIC

11 EDgewater Gaming, LLC, a Nevada
12 Limited Liability Company, doing business as
13 EDgewater Hotel and Casino,
14 Gillett Construction LLC, a Nevada
15 Limited Liability Company, ARIES
16 CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

Defendants.

17 AND ALL RELATED CLAIMS.

18 **ORDER GRANTING APPLICATION TO REGISTER FOREIGN GUARDIANSHIP ORDER**

19 The Application to Register Foreign Guardianship Order filed by the law firm of GLEN LERNER
20 INJURY ATTORNEYS, the Court, having reviewed the pleadings and papers on file herein and no
21 Opposition or other pleading having been filed; and good cause appearing therefore,
22

23 ///

24 ///

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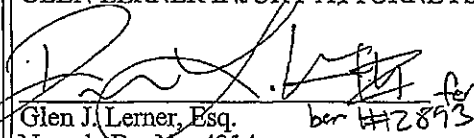
1 IT IS HEREBY ORDERED that the Application to Register Foreign Guardianship Order by the law
2 firm of Glen Lerner Injury Attorneys is hereby GRANTED.
3

4
5 DATED this 19th day of October 2017
6

7 
8 DISTRICT COURT JUDGE

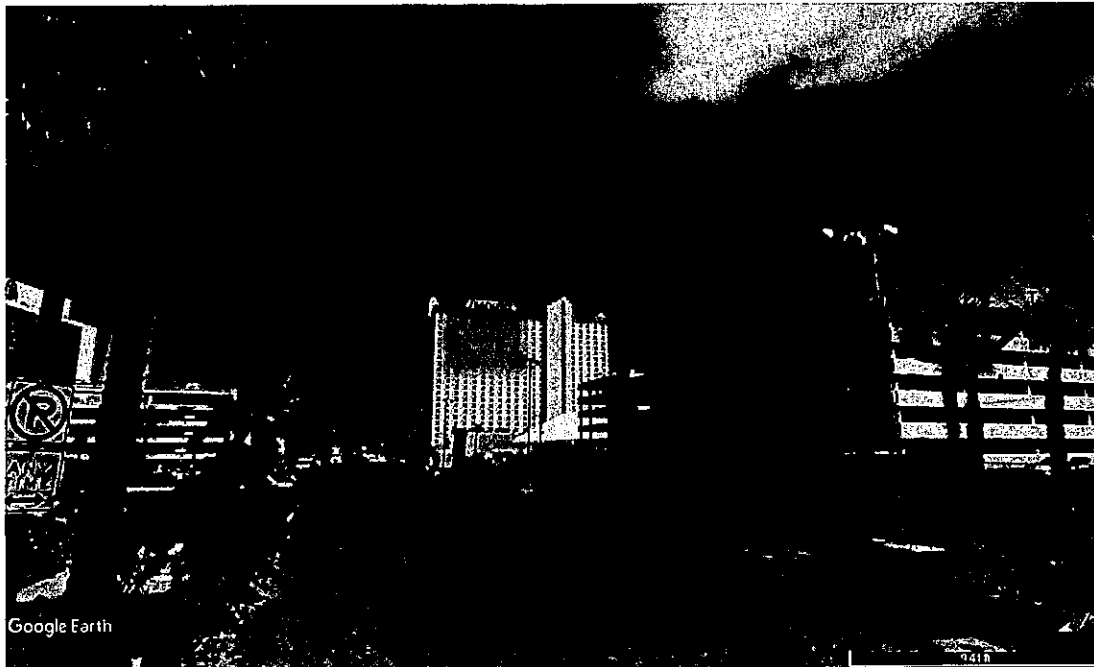
9 Submitted by:

10 GLEN LERNER INJURY ATTORNEYS

11 
12
13 Glen J. Lerner, Esq. bar #2893
14 Nevada Bar No. 4314
15 4795 S. Durango Dr.
16 Las Vegas, Nevada 89147
17 Attorneys for Plaintiff
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Preliminary Report of Findings – Spandrel Anchors
Parking Structure at Edgewater Hotel Casino
2020 Casino Drive, Laughlin, Nevada

Marcus Reif v Edgewater Gaming
BHA Project # NV16-6103
September 28, 2017



**Preliminary Report of Findings for Spandrel Vehicle
Barrier Anchors on Parking Structure of the Edgewater
Hotel Casino at 2020 Casino Drive in Laughlin, Nevada**

Prepared by:

Jerry L. Miles, P.E.
Bert L. Howe & Associates, Inc.
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Page 1 of 16

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RESP.APP.0037

Scope of Evaluation

This evaluation report is being prepared for Napoli Shkolnik PLLC to evaluate the failure of anchors in a vehicle barrier spandrel on the fifth level of the parking structural at the Edgewater Hotel Casino in Laughlin. The installed anchors failed during a collision/crash with the spandrel when a vehicle driven by Marcus Reif struck the spandrel acting as a vehicle barrier at the end of a drive lane on the north side of the subject parking structure.

Documents Analyzed

As part of this evaluation, the following documents were reviewed and analyzed:

- *State of Nevada Traffic Crash Report (Crash Date: March 16, 2016)*, prepared by the Las Vegas Metro PD, Crash Number LVM160316001078; Investigator – Freeman (ID Number 4487), dated August 23, 2016, Reviewed by Robert Stauffer, dated September 1, 2016.
- *Collision Investigation Supplement*, prepared by the Las Vegas Metro PD, Event Number 160316-1078; Primary Investigator – Detective David Freeman.
- *Sections of the 2012 International Building Code (IBC)*, including Section 406.4.3 and Sections 1607.8.3 & 1607.9.
- *Section 4.5.3 of ASCE 7-10, Minimum Design Loads and Associated Criteria for Buildings and Other Structures*.
- *Parking Garage Repairs Edgewater Hotel Casino Plans*, prepared by Marnell Architecture and Barker Drott Associates, L.L.C., Dated February 5, 2015.
- *ICC-ES Evaluation Report ESR-2508*, Reissued 07/2017 – Evaluation Subject: Simpson Strong-Tie® SET-XP® Epoxy Adhesive Anchors for Cracked and Uncracked Concrete.
- *Letter from Barker Drott to Mr. David Howryla, ALA, Marnell Companies*, dated December 22, 2014, with Attached SK1 and SK2 (Spandrel Anchor Details), dated 12/18/2014.
- *Consulting Agreement between Aries Consultants and Edgewater Gaming, LLC*, dated February 6, 2015.
- *Final Quality Assurance Report, Edgewater Hotel Casino – Garage (CCDB Permit # 15-6880 BUI)*, prepared by Aries Consultants, dated March 23, 2015.
- *Ten (10) Scene Photos taken after Reif Crash Incident*, Unknown Origins.

Background Information

The Edgewater Hotel Casino in Laughlin, Nevada has a six (6) level parking structure/garage near the northwest corner of the site. The garage is a concrete reinforced structure with suspended concrete slabs at each level supported by rectangular and round concrete columns. The structure contains parking stalls, drive aisles, ramps, stairwells and an elevator.

Mr. Kris Barker in his above mention letter to Mr. Howryla with Marnell Companies discusses a prior incident where an unmanned pickup truck rolled from its parked position down a ramp, impacted a barrier spandrel on the east side of the 5th level of the Edgewater Hotel Casino's

parking garage. This impact broke the spandrel from its anchors and the spandrel fell to the ground below. Mr. Barker states that this incident led to concerns about the structural integrity of the spandrel connections to their supporting members. Mr. Barker concludes that the existing spandrel connections were inadequate and that the welded floor slab connection in his opinion had “practically no strength.” Attached to Mr. Barker’s letter, he provided SK1 and SK2 which are stamped and signed engineered (By Mr. Barker), new proposed spandrel connection to adjacent support columns.

Repair plans were prepared by Marnell Architecture and Barker Drott Associates consisting of the repair of the missing (broken) spandrel on the 5th level of the garage, installation of a temporary barrier at the missing spandrel location on the 5th level, strengthening of the spandrel connections to the columns on level 2 through 6, installation of pipe bollard near the elevators on level 2 through 6 and cutting spandrel to spandrel connections on the east side of level 2. These plans were stamped by Kurt Guidice (State of Nevada PE No. 21312) and dated February 5, 2015.

These plans were submitted to Clark County and the county issued a building permit for the repairs. The county required special inspection for portions of the construction including the installation of the retrofit epoxy anchors at the spandrel to column connections. Edgewater Gaming contracted with Aries Consultants to provide special inspection services for the repairs to the parking garage, including the retrofit epoxy anchors at the new spandrel connection to the columns. Aries Consultants’ Final Quality Assurance Report indicates that the repairs to the Edgewater’s parking garage were performed in February and March of 2015.

Per the Las Vegas Metro PD’s Traffic Crash Report, Marcus Reif was driving a vehicle on the 5th level of the Edgewater parking garage on the morning of March 16, 2016. This report indicates that Mr. Reif’s vehicle impacted to low speed a spandrel/vehicle barrier at the end of a drive aisle on the north side of the garage. Mr. Reif then accidentally pushed on the gas pedal in lieu of the brake pedal. The barrier broke away from the installed retrofit epoxy anchors and fell to the ground in the alley adjacent to the north side of the garage. Mr. Reif’s vehicle was unable to stop and also fell to the alley below, landing on the roof of the vehicle.

Observations

The author of this report attended a site inspection at the Edgewater parking garage (including examination of the concrete spandrel that fell, the failed retrofit epoxy anchors still attached to the angle braces and various failed concrete pieces, the site of the failed spandrel connections at the repaired Reif crash site on the north side of the 5th level of the parking garage and the repaired spandrel section and connections at the prior failed spandrel barrier on the east side of the 5th level parking garage) on August 18, 2017. I photographed the inspected items and took pertinent measurements of those items and areas. Sample photographs presented in the Photo Index (pages 8 – 16) are representative examples of the photographs taken of pertinent information.

Spandrel Panel lying in Alley along North Side of Parking Garage: (see Photos 2 through 13 of the Photo Index) The fallen spandrel panel had been pushed from its original fallen position to

a position parallel to the north side of the parking garage along the chain link fence. The fallen spandrel was mostly intact but was cracked and broken in several areas. A cone shaped area of pulled out concrete was observed at the east end retrofitted epoxy anchor. Pieces of this cone shaped concrete were preserved and were provided for observation. Measurements showed the base of the cone (at the interior face of the panel) was estimated to be 12" by 10" and 4" by 3" at the bottom of the hole. Measurement of the depth of this hole varied from 3-1/2" to 3-5/8".

The upper east end of the panel was broken off. A triangular portion of the concrete at the upper portion of the spandrel was broken leaving the reinforcing bars exposed. The center of this triangular portion of missing concrete was located approximately seven (7) feet from the east end of the spandrel and was approximately four (4) wide at the top. The total length of the panel was measured to be approximately 29'-7" with a width of approximately 6" deep. The edges of the panel were beveled with a 3/4" chamfer. The interior spandrel panel face measured approximately 42" tall. The exterior face of the panel had a 3" thick slab cover leg that extends approximately 8" below the interior panel height. Much of the concrete slab cover leg was broken off, especially along the east end.

The concrete failed in an edge blowout type failure at west end retrofitted epoxy anchor. The location of the west end failed retrofit epoxy anchor had been despoiled when discarded concrete was placed near this location. It appears that some of this discarded concrete flowed over and covered the failed concrete at the failed west end anchor. This discarded concrete has hardened and no observations of the concrete immediately around the anchor location could be made. Five (5) embedded weld angles were observed along the bottom of the interior face of the panel. These weld angles were welded to weld angles installed in the 5th floor slab edge. Observed weld plate connections failures were weld failures or the floor slab weld angle pulled out of the slab.

The steel angle connections installed to connect the spandrel panel to the columns were also preserved and provided for observation. The retrofit anchors that broke away from the spandrel panel were still attached to the angles. Since the west end anchor location on the spandrel panel was despoiled, the anchor depth from the angle connection plate used on the west end of the spandrel was measured to be 4-3/4".

Repaired spandrel location at the Reif crash site on the 5th level of the garage: (see Photos 14 through 17 of the Photo Index) A replacement concrete spandrel panel had been installed at this location. A temporary barrier consisting of a HSS 12x6 was still in place and spanned between the east and west columns. The spandrel barrier had two steel angle connections with epoxy anchors to the columns at each end of the spandrel, one above and one below the originally installed angle connection. The original epoxy anchors installed in the columns had been cut off at the face of the columns. New slab weld angles had been installed using epoxy anchors into the slab at locations where the weld angles had broken free of the slab.

Evaluation

The repairs plans prepared by Marnell Architecture and Barker Drott Associates for the parking garage at the Edgewater Hotel Casino specified the use of retrofit epoxy anchors for connections of the concrete spandrel panels to the structural columns for all of the spandrel panel on levels 2 through 6 of the garage. In the General Structural Notes on Sheet S1.00, it states that the design and construction of the repairs were to comply with the 2012 International Building Code (IBC). The spandrel connection to column details on S1.00 specify that a 3/4" Simpson SET-XP epoxy anchor to be used at each spandrel-column connection and embedded 6" per ESR-2508. These details nor anywhere on these plans is the spandrel panel thickness called out. "Special Inspection" of the installation of the specified epoxy anchors was required per the plans. Edgewater contracted with Aries Consultants to provide the required special inspection of the installation of the anchors and other special inspection services.

In Section 406.4.3 of the 2012 IBC states that vehicle barriers shall be placed at the ends of drive lanes and at the end of parking spaces where the vertical distance to the ground or surface directly below is greater than 1 foot. It further states that vehicle barriers shall comply with the loading requirements of Section 1607.8.3 of the 2012 IBC. The spandrel panel barrier at the Reif crash site was on the fifth level of the garage and at the end of a drive lane. Therefore, the subject spandrel panels was required to be designed and constructed as a vehicle barrier and comply with the vehicle barrier loading requirements of IBC Section 1607.8.3. Section 1607.8.3 requires vehicle barrier to resist a concentrated load of 6,000 pounds in accordance with Section 4.5.3 of ASCE 7, which stated that the required 6,000 pound load is to be applied horizontally at a height of between 1 ft 6 in and 2 ft 3 in in height above the floor located to produce the maximum load effects.

The IBC requires building products and/or systems to be tested and evaluated to insure compliance with the code and to provide structural capacities through standard testing practices and scientific/engineering evaluation processes. An ESR (evaluation report) is then issued with the results and code compliant structural capacities of the products or systems. The ESR also contains installation guidelines and requirements in an effort to insure that the products/systems are installed in a manner that complies with the testing performed on the products.

Simpson Strong-Tie Company issued an approved ESR-2508 on their SET-XP Epoxy Adhesive Anchors for Cracked and Uncracked Concrete. Table 1 of ESR-2508 is titled "SET-XP Epoxy Adhesive Anchor Installation Information". Table 1 specifies that the permitted embedment depth range of a 3/4" diameter rod is a minimum of 3-1/2" and a maximum of 15". It also states that the minimum concrete thickness is required to be $h_{ef} + 5d_o$. Simpson defines h_{ef} as the embedment of the anchor and d_o indicates the nominal diameter of the specified anchor. This indicates that the repair plans specified 3/4" diameter spandrel to column connection anchors with a 6" embedment would have required a minimum concrete thickness of $[6" + (5 \times 0.75")]$ 9-3/4". The existing spandrel panels of the parking garage had an approximate thickness of 6". The specified 6" embedment depth would have required drilling through the entire panel thickness and won't have left any concrete below the anchors.

Aries Consulting's *Final Quality Assurance Report* contained a Non-Compliance Report, Report #: NCR-X-1, dated 2/27/15 that stated that the embedment depth of 6" minimum was changed to

4" minimum because the spandrels are only 6" thick. It further states that an engineering fix is required approving this change of anchor embedment depth. Aries' Report also contains a Report of Corrections, Report #: ROC-X-1, dated 3/20/15 and states this report clears NCR # X-1, dated 2/27/15. It further states the changed epoxy embedment depth (6" to 4") per Clark County Department of Building approved plan revision, dated March 9, 2015. Aries provided Post-Installed Adhesive Anchor Clearance Reports (dated 2/27/15, 3/3/15 & 3/4/15) with 4"x1" hole depth & diameter for the epoxy anchors. These reports state that the minimum anchor embedment depth was required to be 4" minimum. Examination of the failed spandrel panel and anchors from the Reif crash site indicated anchor embedment depths of less than the minimum 4" required. Aries was certifying the changed anchor depth prior to Clark County's approval of the revised embedment depth.

Clear copies of the above mentioned County approved, revised repair plans specifying the epoxy anchor depth as 4" was not available when this report was prepared. However, it appears that Marnell Architecture/Barker Drott's repair plans were modified and approved by the County for the change of anchor embedment. The specified change to 4" anchor embedment still violated Simpson's mandated minimum concrete thickness $[4" + (5 \times 0.75")]$ of 7-3/4" with 6" minimum spandrel panels. Simpson provides free anchor design software to assist engineers and other anchor designers design appropriate and code compliant anchors. Simpson's software allows for a variety of anchor designs including their SET-XP epoxy anchors. Evaluation of the specified and installed anchors with Simpson's software indicates that the software will not calculate SET-XP anchor capacity without the mandated minimum concrete thickness, which neither the originally specified 6" anchor embedment nor the revised 4" anchor embedment provided with the 6" thick spandrel panels. The failure of Simpson's software to calculate the anchor capacity without the mandated concrete thickness is an indication of the importance of the minimum concrete thickness in the SET-XP epoxy manufacturer's installation requirements.

It would appear the Mr. Barker in his letter to Mr. Howryla with Marnell Companies was correct in his assertion that the slab to panel weld plate connections had little to no strength. Examination of the subject spandrel and anchors from the Reif crash site indicate that the anchors most likely failed as a result of a combination of inadequate concrete thickness and inadequate anchor capacity.

Conclusions

1. Barker Drott along with Kris Barker, P.E. and Kurt Guidice, P.E. negligently designed and specified inappropriate spandrel to column connection SET-XP epoxy anchor depth on their original Parking Garage Repair plans. They further failed in their duties as design professionals when their modified design of 4" SET-XP epoxy anchor embedment depth still violated the manufacturer's required minimum concrete thickness when installed on a 6" thick spandrel panel.
2. Observed and measured embedment depths on the connection anchors installed on the spandrel panel involved in the Reif crash incident did not meet the modified repair plans specified 4" embedment depth. Since Aries Consulting provided code mandated special inspection of these anchors and certified the installation of these anchors, they failed in their duty to ensure that these anchors were installed with the minimum specified embedment depth.

I conclude that there is a reasonable basis for filing this action. I am an experienced professional engineer with extensive experience in the structural design of epoxy anchors, which is the subject of this report.

The opinions and conclusions expressed in this preliminary report are based upon my visual inspection of the incident site and failed spandrel panel and connection anchors, evaluation of the documentation that has been received, and my understanding of applicable engineering practices that are standard in the industry. I reserve the right to re-evaluate these opinions and conclusions if presented with further documentation or evidence that would be of such a nature that would warrant revising these opinions and conclusion.

Photo Index

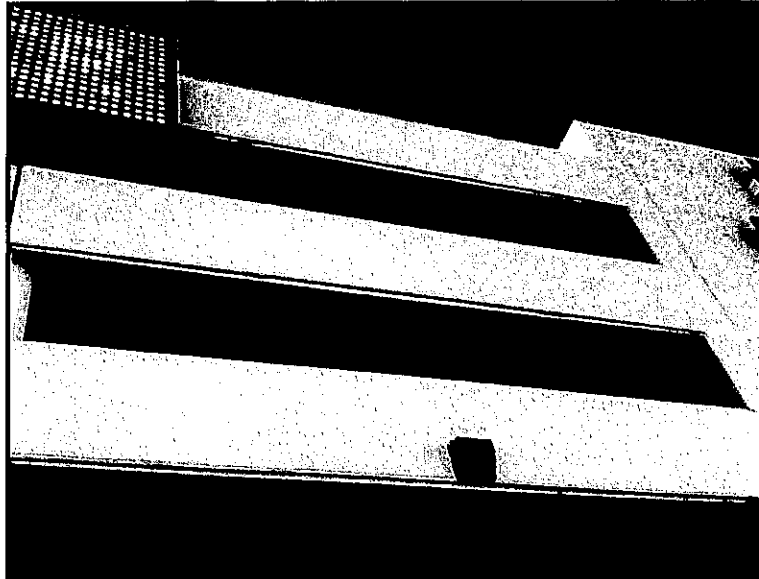


Photo 1: Replacement Spandrel Barrier on North Side of Garage



Photo 2: Eastern End of Spandrel Barrier in Alley on North side of Garage

Photo Index

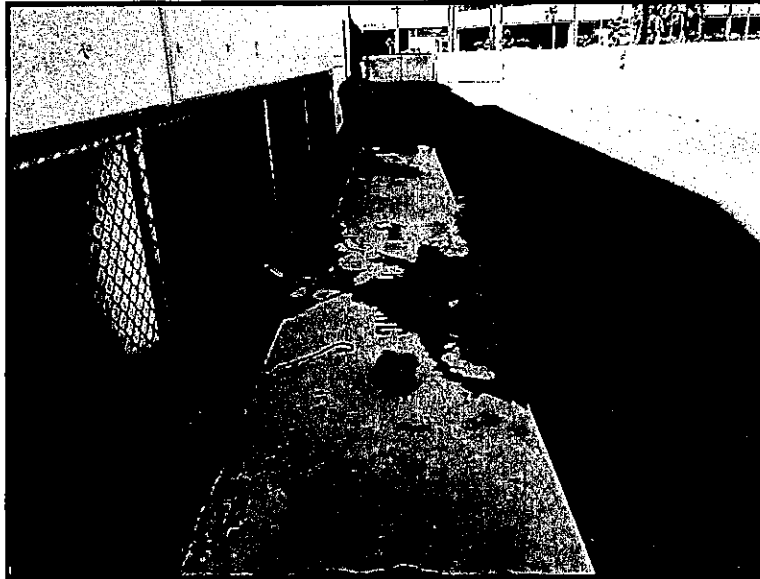


Photo 3: View of Spandrel Barrier in Alley Looking West

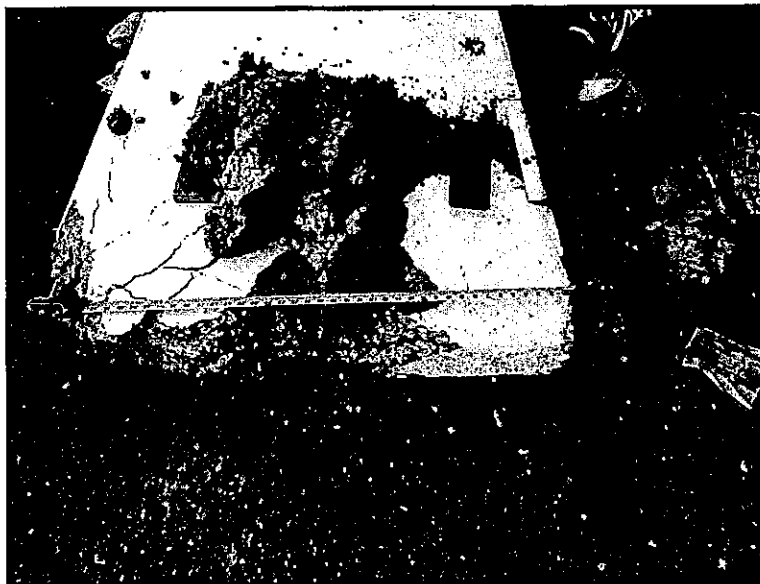


Photo 4: West End of Spandrel Barrier – Despoiled Anchor Failure Location

Photo Index



Photo 5: East End Retrofit Anchor Failure Location



Photo 6: East End Retrofit Anchor Failure Location

Photo Index

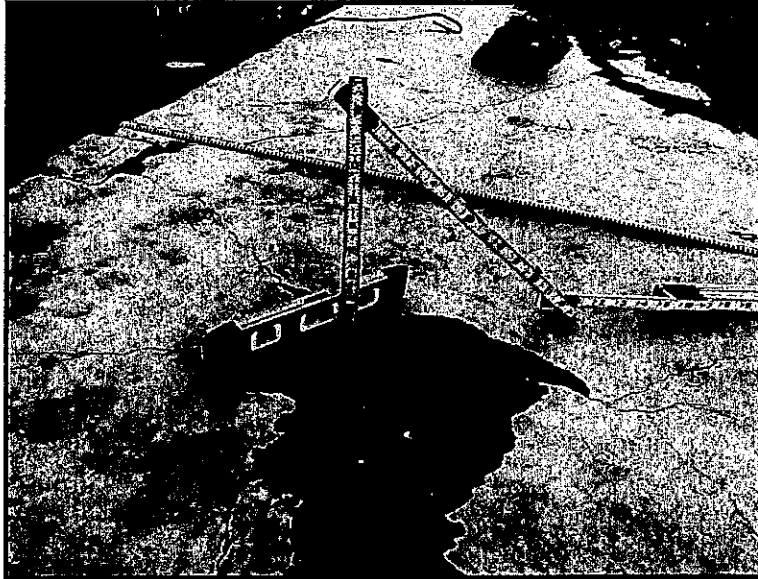


Photo 7: View of East End Spandrel Concrete Failure Depth at Retrofit Epoxy Anchor

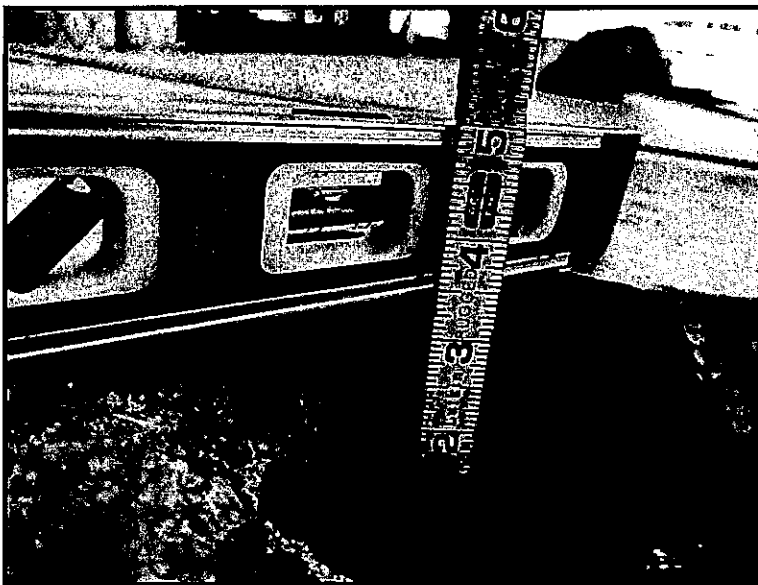


Photo 8: Approximate Depth Measurement of Concrete Failure

Photo Index



Photo 9: Measurement of Panel Thickness at West End of Spandrel



Photo 10: Approximate Total Length Measurement of Spandrel Panel

Photo Index



Photo 11: Retrofit Epoxy Anchor Embedment Depth at West End of Spandrel

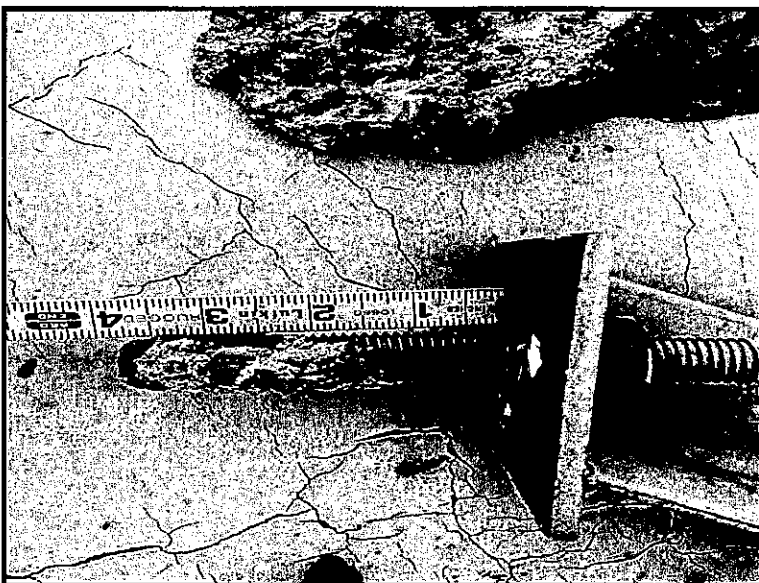


Photo 12: Close-up of Measurement of Retrofit Epoxy Anchor Embedment

Photo Index



Photo 13: Preserved Failed Concrete at East End Anchor of Spandrel

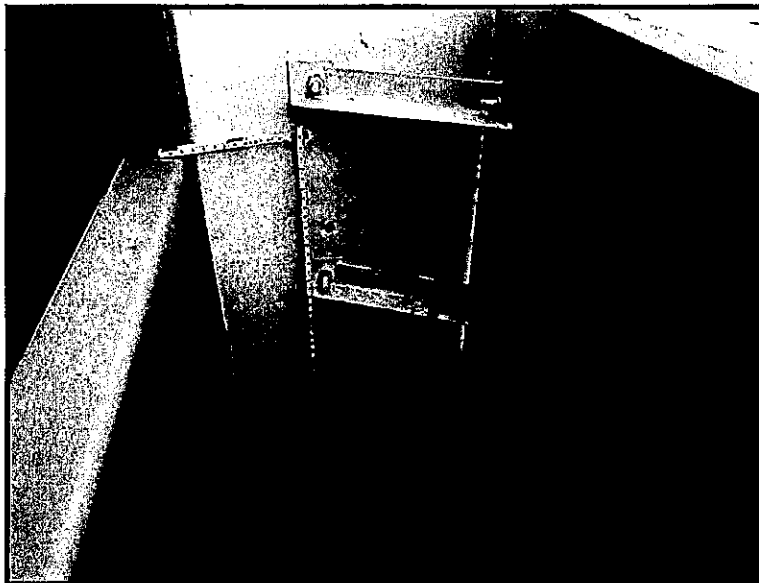


Photo 14: Repaired West End of Spandrel Barrier at Reif Crash Site

Photo Index

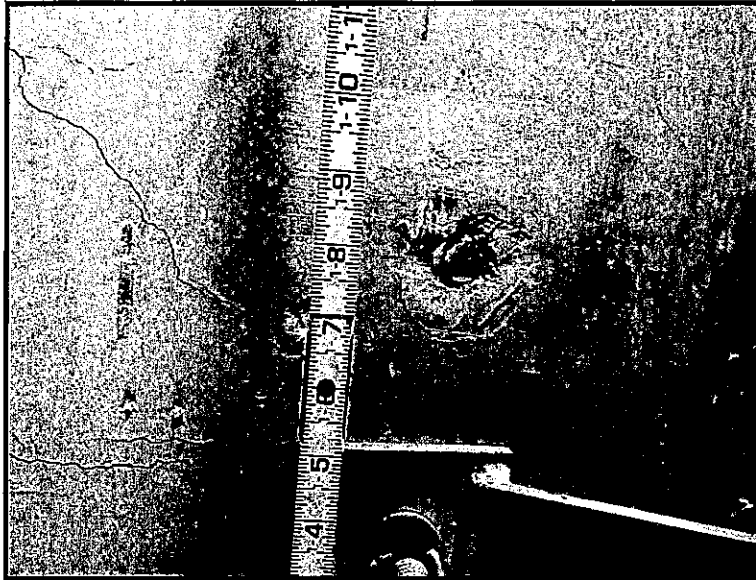


Photo 15: Cut-off Anchor in Rectangular Column at West End of Spandrel

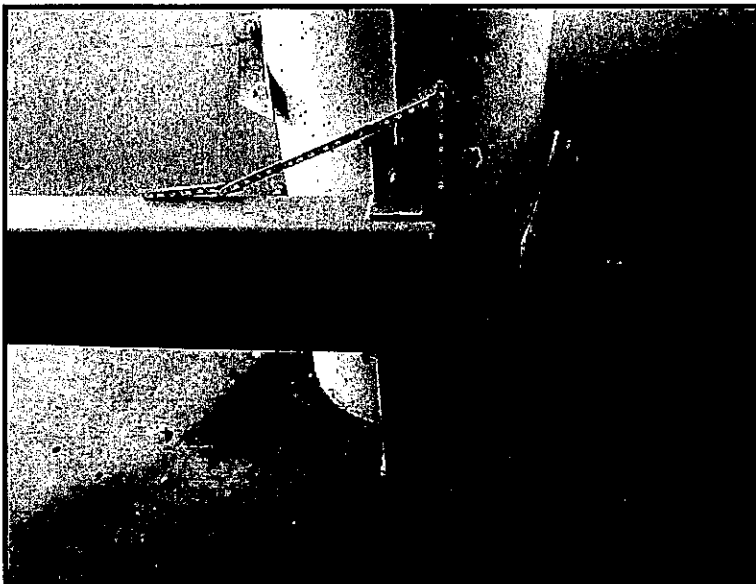


Photo 16: Repaired Spandrel Connections Configuration at Round Column (East End)

Photo Index

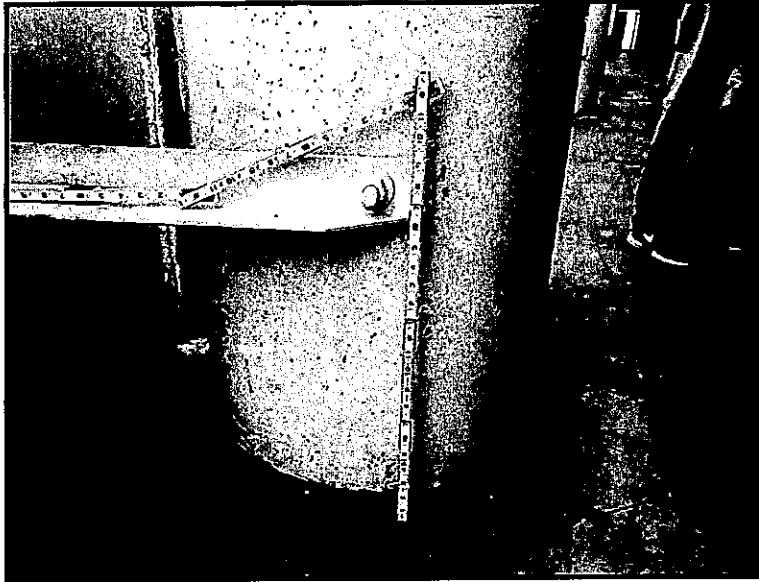


Photo 17: Repaired Lower Angle Panel Support at East End Round Column



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Jerry L. Miles, P.E. **Civil Engineer**

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EXPERIENCE

Mr. Miles has a diverse engineering background in design, fieldwork, and forensic work on a variety of different projects, ranging from custom residential homes to large scale commercial projects. His more than 33 years of engineering experience includes geotechnical evaluations, structural design of wood-framed, masonry, and concrete tilt-up buildings, small and large subdivision engineering construction/improvements plans, hydrology/hydraulic reports and design, forensic investigation and expert witness testimony. Mr. Miles has qualified as an expert in numerous jurisdictions and Federal court. He has given deposition testimony more than fifty times and has successfully testified at arbitration and trial.

Mr. Miles has been a licensed civil engineer in California since 1987, and has served as the lead civil engineer on many projects in several states. His experience includes contract administration services as the owner's representative on a variety of projects including master planned communities, residential subdivisions, shopping centers and multi-family residential projects. He has also been involved in providing water quality management plans and storm water pollution prevention plans. Mr. Miles has served on the Town of Apple Valley's Building Department Dispute Resolution Board.

Miles's career as an engineer saw him as a lead design civil engineer on several high profile projects throughout the US including the site engineering construction/improvement plans for the Monte Carlo Hotel/Casino in Las Vegas, Nevada; Raysor Ranch Planned Community ($\pm 1,200$ -acre mixed use community) in Denton County, Texas; Trophy Club Shopping Center (Award winning shopping center for design) in Trophy Club, Texas; and Sultana High School (± 20 -acre high school



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campus through the Department of the State Architect) in Hesperia, California.

His forensic experience ranges from determining cause and repair recommendation for foundation problems on single family residence to large commercial buildings. As a Construction Specialist for Bert L. Howe & Associates Inc., Mr. Miles conducts investigations and database occurrence analysis, analysis of construction documents, comparative analysis between as designed to as-built conditions, development of repair protocols, contracts and mediation/settlement negotiations. He has provided expert witness testimony for metal building failures, collapsed roofs, construction defects, handicap accessibility issues, and building storm damage.

Mr. Miles spent several months in the New Orleans and east Texas area providing building damage assessments and repair recommendations after the Katrina and Rita hurricanes. He is also an Adjunct Faculty instructor at Victor Valley Community College teaching a CADD based course in civil engineering and surveying design and drafting.

AREAS OF SPECIALIZATION

- ☒ Mediation Support
- ☒ Allocation of Subcontractor Liability
- ☒ Land Acquisition Disputes
- ☒ Land Entitlement Issues
- ☒ Land Development Delay/Stoppage
- ☒ Development Agreement Liability
- ☒ Architectural Design Defects
- ☒ Specification Non-Compliance
- ☒ On-Site Construction Defects
- ☒ Off-Site Construction Failures
- ☒ AIA Contract(s) Analysis
- ☒ Subcontract Agreement Analysis
- ☒ Scope of Work Determination
- ☒ Change Order Analysis
- ☒ Construction Scheduling
- ☒ RFI Analysis/Construction Delay/Acceleration Claims
- ☒ Construction Means and Methods
- ☒ Billing Procedure Standards
- ☒ SB 800 Repair Recommendations
- ☒ New Construction Estimating

• Expert Testimony / Trial Support Services • Cost Estimating & General Contracting • Professional Engineering Services
• Building Envelope Specialists • Roofing & Waterproofing • Forensic Architecture

Curriculum Vitae - Jerry L. Miles Page 2

RESP.APP.0054



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AREAS OF SPECIALIZATION *(continued)*

- ▣ Repair Estimating
- ▣ Water Intrusion Analysis
- ▣ Concrete Defect Analysis
- ▣ Framing Defect Analysis
- ▣ Stucco Defect Analysis
- ▣ EIFS Systems Evaluation
- ▣ Roofing And Waterproofing Defects
- ▣ Project Management Performance
- ▣ Job Site Personal Injuries
- ▣ Insurance Policy Conformance
- ▣ Fire Reconstruction
- ▣ Industry Breech of Standards Care
- ▣ Site Inspections and Analysis
- ▣ Personal Injury Responsibility

PROJECT EXPERIENCE

Condominiums/Multifamily
Medical Facilities
Public Universities
Schools/Educational
Production Homes
Hotels/Hospitality
Institutional Projects
Custom Homes
Commercial Developments
Mid-Rise
Retail/Regional Malls

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CONTINUING EDUCATION

Slope Stability Course, Cal-Poly, Pomona University - 1986

Hydrology Software Seminar - 1990

Municipal Planning and Land Use Seminar - 1992

Softdesk Software Training - 1999

Foundation Engineering Seminar, University of Wisconsin, Madison,
Wisconsin - 2003

REPRESENTATIVE TESTIMONY EXPERIENCE

Case Name: Karifi v Inland Engineering

Location: Carlsbad, CA

Type: Deposition

Party: Inland (surveyor)

Description: Property Line Dispute

Case Name: Stater Bros v Hi-Desert Concrete

Location: Phelan, CA

Type: Deposition

Party: Stater Bros

Description: Concrete Wall Defect

Case Name: Gonzalez v Residence Inn

Location: Addison, TX

Type: Deposition

Party: Gonzalez

Description: Construction Defect

Case Name: Williams v State Farm Ins.

Location: Mesquite, TX

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Bryce v 21st Century Insurance

Location: Garland, TX

Type: Deposition

Party: 21st Century Ins.

Description: Wind/Storm Damage

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REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Case Name: Muscate v Warner Utilities

Location: Richland Hills, TX

Type: Deposition

Party: Warner Utilities

Description: Wall/Slope Failure

Case Name: Garland Auto v CNA

Location: Garland, TX

Type: Deposition

Party: CAN

Description: Concrete Defect

Case Name: City of Texoma v Mercury Ins.

Location: Texoma, TX

Type: Deposition

Party: City of Texoma

Description: Wind/Hail Damage

Case Name: Sheraton Hotel v Century Ins.

Location: Irving, TX

Type: Deposition

Party: Century Ins.

Description: Construction Defect

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Deposition

Party: Arkansas Erectors

Description: Metal Building Collapse

Case Name: Montgomery v Liberty Ins.

Location: Longview, TX

Type: Deposition

Party: Liberty Ins.

Description: Pool Damage

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Curriculum Vitae - Jerry L. Miles Page 5

RESP.APP.0057



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REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Deposition

Party: CNA Ins.

Description: Metal Building Damage

Case Name: Gomez v Allstate Insurance

Location: Farmer's Branch, TX

Type: Deposition

Party: Allstate Ins.

Description: Foundation Damage

Case Name: Deli Management v Allweather Roofs

Location: Arlington, TX

Type: Deposition

Party: Allweather Roofs

Description: Roof Collapse

Case Name: Pebblebrook Baptist v Foremost

Location: El Paso, TX

Type: Deposition

Party: Foremost Ins.

Description: Fire Damage Repairs

Case Name: Ft. Worth Art Museum v Gallego Construction

Location: Ft Worth, TX

Type: Deposition

Party: Gallego Construction

Description: Construction Defect

Case Name: Johnson v Farmer's Insurance

Location: Bedford, TX

Type: Deposition

Party: Farmer's Insurance

Description: Foundation Damage

• Expert Testimony / Trial Support Services • Cost Estimating & General Contracting • Professional Engineering Services
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RESP.APP.0058



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REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Case Name: Hadley v State Farm Ins.

Location: Carrollton, TX

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Marian v All-State Inspections

Location: Victorville, CA

Type: Deposition

Party: Marian

Description: Foundation Damage

Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Deposition

Party: Potter

Description: Construction Defects

Case Name: Tulsa Schools v Sooner Const.

Location: Tulsa, OK

Type: Deposition

Party: Sooner Const.

Description: Metal Building Collapse

Case Name: Franks v Mercedes Homes

Location: Plano, TX

Type: Arbitration

Party: Franks (Owner)

Description: Construction Defect/Backfill

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Trial

Party: CNA Ins

Description: Metal Building Damage

• Expert Testimony / Trial Support Services • Cost Estimating & General Contracting • Professional Engineering Services
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RESP.APP.0059



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REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Trial

Party: Arkansas Erectors

Description: Metal Building Collapse

Case Name: Palmer v Farmers

Location: Waco, TX

Type: Arbitration

Party: Farmers

Description: Foundation Damage

Case Name: Hadley v State Farm Insurance

Location: Carrollton, TX

Type: Arbitration

Party: State Farm Insurance

Description: Foundation Damage

Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Arbitration

Party: Potter

Description: Construction Defects

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Curriculum Vitae - Jerry L. Miles Page 8

RESP.APP.0060

EXHIBIT 2

EXHIBIT 2

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EXHIBIT 3

EXHIBIT 3

Miriam Alvarez

From: Miriam Alvarez
Sent: Wednesday, October 25, 2017 8:54 AM
To: 'Gayle Angulo'; 'Murdy, Craig'; tparker@pnalaw.net
Cc: Peters, Nausheen; January, Pamela; Lara, Mariana; McKeown, Jackie; enunez@pnalaw.net; Rachel Wise; Patsy Price; Marie Ogella; Robert Larsen; hunter@napolilaw.com; ppeche@napolilaw.com; Randolph Westbrook; Wing Yan Wong; Craig Mariam
Subject: Reif, Marcus v. Edgewater, et al.:
Attachments: Reif SAO to Amend Comp.pdf

Dear Counsel:

Attached is the Stip and Order to Amend the Complaint along with the proposed Amended Complaint with Exhibits for your review. We apologize for the delay as we were waiting for the Order Granting the Guardianship to Grant the Foreign Guardianship.

Please sign and let us know when we can send our runner to pick up the signed original. Thank you for your attention to this matter.

Miriam Alvarez | Paralegal

GLEN LERNER INJURY ATTORNEYS

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malvarez@glenlerner.com



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EXHIBIT 4

EXHIBIT 4

Miriam Alvarez

From: Wing Yan Wong <wwong@grsm.com>
Sent: Tuesday, October 31, 2017 5:07 PM
To: 'Hunter Shkolnik'; Phillip Peche
Cc: Joseph Napoli; Glen Lerner External; Scott P. Guido; Randolph Westbrook; Jennifer Liakos; Jeanne R. Jurmain; Miriam Alvarez; Brian Walters; Craig Mariam; 'CGPROF_1138650 _ Marcus A_ Reif v Aries Consultants Inc_ et al_ _Correspondence _ E_Mail'
Subject: RE: 1680156LV Reif, Marcus v. Edgewater, et al.: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Hunter,

Aries will have to reserve its objection by filing an opposition. For that reason, Aries will not agree to stipulate.

Wing

WING YAN WONG | Associate

GORDON & REES

SCULLY MANSUKHANI

300 South Fourth Street, Suite 1550

Las Vegas, NV 89101

D: 702-577-9310

vCard

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www.grsm.com

From: Hunter Shkolnik [mailto:Hunter@NapoliLaw.com]
Sent: Tuesday, October 31, 2017 4:16 PM
To: Wing Yan Wong; Phillip Peche
Cc: Joseph Napoli; Glen Lerner; Scott Guido; Randolph Westbrook; Jennifer Liakos; Jeanne R. Jurmain; Miriam Alvarez; Brian Walters; Craig Mariam; 'CGPROF_1138650 _ Marcus A_ Reif v Aries Consultants Inc_ et al_ _Correspondence _ E_Mail'
Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Wing

This does not seem to require a change in the stip, am I wrong?

Hunter

From: Wing Yan Wong [<mailto:wwong@grsm.com>]

Sent: Tuesday, October 31, 2017 6:09 PM

To: Phillip Peche <PPeche@NapoliLaw.com>

Cc: Hunter Shkolnik <Hunter@NapoliLaw.com>; Joseph Napoli <JNapoli@NapoliLaw.com>; Glen Lerner <glenlerner@aol.com>; Scott Guido <sguido@glenlerner.com>; Randolph Westbrook <rwestbrook@glenlerner.com>; Jennifer Liakos <JLiakos@NapoliLaw.com>; Jeanne R. Jurmain <JJurmain@NapoliLaw.com>; Miriam Alvarez <malvarez@glenlerner.com>; Brian Walters <bwalters@grsm.com>; Craig Mariam <cmariam@grsm.com>; 'CGPROF_1138650 __ Marcus A_ Reif v Aries Consultants Inc_ et al_ _Correspondence __ E_Mail' <F5273056.LEGAL@worksite.gordonrees.com>

Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Hi Phil,

Aries will reserve its right to object to the affidavit and expert report through an opposition or a limited opposition. Aries does not object to plaintiff's plan to bring in Barker.

Wing

WING YAN WONG | Associate

GORDON & REES

SCULLY MANSUKHANI

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Las Vegas, NV 89101

D: 702-577-9310

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Utah | Virginia | Washington | Washington, D.C. | West Virginia | Wisconsin
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From: Phillip Peche [<mailto:PPeche@NapoliLaw.com>]

Sent: Tuesday, October 31, 2017 9:49 AM

To: Wing Yan Wong

Cc: Hunter Shkolnik; Joseph Napoli; Glen Lerner; Scott Guido; Randolph Westbrook; Jennifer Liakos; Jeanne R. Jurmain; Miriam Alvarez

Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Importance: High

Hi Wing,

I appreciate your timely reply.

What specifically are Aries' issues with the stipulation as drafted?

If we can come to an agreement, I'll make the changes and recirculate stip; if not, I'll notice and file motion for leave to amend and file FAC.

Best,

Phil

Attorneys for Plaintiff

From: Wing Yan Wong [<mailto:wwong@grsm.com>]

Sent: Tuesday, October 31, 2017 11:18

To: Phillip Peche <PPeche@NapoliLaw.com>; Eloisa Nunez <ENunez@pnalaw.net>; 'Murdy, Craig' <Craig.Murdy@lewisbrisbois.com>; Teddy Parker <TParker@pnalaw.net>; Craig Mariam <cmariam@grsm.com>; Brian Walters <bwalters@grsm.com>

Cc: Peters, Nausheen <Nausheen.Peters@lewisbrisbois.com>; January, Pamela <Pamela.January@lewisbrisbois.com>; Lara, Mariana <Mariana.Lara@lewisbrisbois.com>; McKeown, Jackie <Jackie.McKeown@lewisbrisbois.com>; Rachel Wise <rwise@grsm.com>; Patsy Price <pprice@grsm.com>; Marie Ogella <mpinillos@grsm.com>; Robert Larsen <rlarsen@grsm.com>; Hunter Shkolnik <Hunter@NapoliLaw.com>; Randolph Westbrook <rwestbrook@glenlerner.com>; Gayle Angulo <gangulo@grsm.com>; 'Miriam Alvarez' <malvarez@glenlerner.com>; Joseph Napoli <JNapoli@NapoliLaw.com>; Jennifer Liakos <JLiakos@NapoliLaw.com>; Jeanne R. Jurmain <JJurmain@NapoliLaw.com>; 'Glen Lerner' <glenlerner.esq@aol.com>; 'CGPROF_1138650 _ Marcus A _ Reif v Aries Consultants Inc _ et al _ Correspondence _ E _ Mail' <F5273056.LEGAL@worksite.gordonrees.com>

Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Phil,

Aries is not stipulating to the amendment as drafted.

Wing

WING YAN WONG | Associate

GORDON & REES

SCULLY MANSUKHANI

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Las Vegas, NV 89101

D: 702-577-9310

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New Jersey | New York | North Carolina | Ohio | Oklahoma | Oregon
Pennsylvania | Rhode Island | South Carolina | South Dakota | Texas
Utah | Virginia | Washington | Washington, D.C. | West Virginia | Wisconsin
www.grsm.com

From: Phillip Peche [<mailto:PPeche@NapoliLaw.com>]

Sent: Tuesday, October 31, 2017 8:49 AM

To: Eloisa Nunez; 'Murdy, Craig'; Teddy Parker; Craig Mariam; Wing Yan Wong

Cc: Peters, Nausheen; January, Pamela; Lara, Mariana; McKeown, Jackie; Rachel Wise; Patsy Price; Marie Ogella; Robert Larsen; Hunter Shkolnik; Randolph Westbrook; Gayle Angulo; 'Miriam Alvarez'; Joseph Napoli; Jennifer Liakos; Jeanne R. Jurmain; 'Glen Lerner'

Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Importance: High

Counsel:

It appears both Edgewater and Gillett are stipulating to plaintiff filing FAC. Unless I am mistaken, Aries has not yet stipulated.

--

Hi Wing, is Aries stipulating? If not please advise us as soon as possible. I will wait to file motion with the Court until Wednesday for leave to file FAC if I don't hear from you today.

Best Regards,

Phil

Counsel for Plaintiff

From: Eloisa Nunez [<mailto:ENunez@pnalaw.net>]

Sent: Monday, October 30, 2017 18:32

To: Phillip Peche <PPeche@NapoliLaw.com>; 'Murdy, Craig' <Craig.Murdy@lewisbrisbois.com>; Teddy Parker <TParker@pnalaw.net>; Craig Mariam <cmariam@gordonrees.com>; Wing Yan Wong <wwong@gordonrees.com>
Cc: Peters, Nausheen <Nausheen.Peters@lewisbrisbois.com>; January, Pamela <Pamela.January@lewisbrisbois.com>; Lara, Mariana <Mariana.Lara@lewisbrisbois.com>; McKeown, Jackie <Jackie.McKeown@lewisbrisbois.com>; Rachel Wise <rwise@gordonrees.com>; Patsy Price <pprice@gordonrees.com>; Marie Ogella <mogella@gordonrees.com>; Robert Larsen <rlarsen@gordonrees.com>; Hunter Shkolnik <Hunter@NapoliLaw.com>; Randolph Westbrook <rwestbrook@glenlerner.com>; Gayle Angulo <gangulo@gordonrees.com>; 'Miriam Alvarez' <malvarez@glenlerner.com>; Joseph Napoli <JNapoli@NapoliLaw.com>; Jennifer Liakos <JLiakos@NapoliLaw.com>; Jeanne R. Jurmain <JJurmain@NapoliLaw.com>; 'Glen Lerner' <glenlerner.esq@aol.com>
Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Please see attached executed Stipulation. The original is ready for pick up with the receptionist.

Thank you,



Eloisa Nunez
Legal Assistant to Theodore Parker, III, Esq.
and Shana D. Weir, Esq.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Direct No. (702) 868-8014
Main No. (702) 868-8000
Fax No. (702) 868-8001
Email: enunez@pnalaw.net
www.pnalaw.net

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From: Phillip Peche [mailto:PPeche@Napolilaw.com]

Sent: Saturday, October 28, 2017 7:34 AM

To: 'Murdy, Craig'; Teddy Parker; Craig Mariam; Wing Yan Wong

Cc: Peters, Nausheen; January, Pamela; Lara, Mariana; McKeown, Jackie; Eloisa Nunez; Rachel Wise; Patsy Price; Marie Ogella; Robert Larsen; Hunter Shkolnik; Randolph Westbrook; Gayle Angulo; 'Miriam Alvarez'; Joseph Napoli; Jennifer Liakos; Jeanne R. Jurmain; 'Glen Lerner'

Subject: RE: Reif, Marcus v. Edgewater, et al.: Stip to file FAC

Importance: High

Counsel:

Attached is an updated version of the stipulation with Exhibit A including required expert report. Please execute Monday and advise of the same, or raise objections no later than close of business Monday. Upon notification, we will send runner to pick up executed stip from each office.

Plaintiff will not agree to timing and scope of the proposed deposition of Marcus Reif in exchange for this stipulation.

If required, on Tuesday, plaintiff will simply seek leave from the Court via motion to file FAC.

Best Regards,

Phillip

F. Phillip Peche, Esq.

Air, Land, Sea & Space Trial Lawyer

Expert Aircraft Crash Reconstructionist

Commercial-rated Helicopter & Airplane Pilot

California | Illinois/Metro St. Louis Offices

Lieutenant Colonel, US Marines Reserve

Naval Aviator, Callsign "Precious"

Aviation Safety Officer

Marine Corps Forces, Pacific



**NAPOLI
SHKOLNIK PLLC**
ATTORNEYS AT LAW

(310) 331-8224 ext. 3415 | PPeche@Napolilaw.com

525 S. Douglas St, Ste. 260 El Segundo, CA 90245

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From: Miriam Alvarez [<mailto:malvarez@glenlerner.com>]

Sent: Thursday, October 26, 2017 1:47 PM

To: Gayle Angulo; 'Murdy, Craig'; tparker@pnalaw.net

Cc: Peters, Nausheen; January, Pamela; Lara, Mariana; McKeown, Jackie; enunez@pnalaw.net; Rachel Wise; Patsy Price; Marie Ogella; Robert Larsen; Hunter Shkolnik; Phillip Peche; Randolph Westbrook; Wing Yan Wong; Craig Mariam

Subject: Reif, Marcus v. Edgewater, et al.:

Counsel—I'm following up re: the attached Stip and Order to Amend Complaint. Please advise. Thank you.

Miriam Alvarez | Paralegal

GLEN LERNER INJURY ATTORNEYS

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malvarez@glenlerner.com



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From: Miriam Alvarez

Sent: Wednesday, October 25, 2017 8:54 AM

To: 'Gayle Angulo'; 'Murdy, Craig'; tparker@pnalaw.net

Cc: Peters, Nausheen; January, Pamela; Lara, Mariana; McKeown, Jackie; enunez@pnalaw.net; Rachel Wise; Patsy Price; Marie Ogella; Robert Larsen; hunter@napolilaw.com; ppeche@napolilaw.com; Randolph Westbrook; Wing Yan Wong;

Craig Mariam

Subject: Reif, Marcus v. Edgewater, et al.:

Dear Counsel:

Attached is the Stip and Order to Amend the Complaint along with the proposed Amended Complaint with Exhibits for your review. We apologize for the delay as we were waiting for the Order Granting the Guardianship to Grant the Foreign Guardianship.

Please sign and let us know when we can send our runner to pick up the signed original. Thank you for your attention to this matter.

Miriam Alvarez | Paralegal

GLEN LERNER INJURY ATTORNEYS

4795 S. Durango Dr. Las Vegas, NV 89147 | Main: 702-877-1500 | Direct: 702-214-5518 | Fax: 702-307-5762

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1 **OPPS**
2 CRAIG J. MARIAM, ESQ.
3 Nevada Bar No. 10926
4 ROBERT S. LARSEN, ESQ.
5 Nevada Bar No. 7785
6 BRIAN K. WALTERS, ESQ.
7 Nevada Bar No. 9711
8 WING YAN WONG, ESQ.
9 Nevada Bar No. 13622
10 GORDON REES SCULLY MANSUKHANI, LLP
11 300 South Fourth Street, Suite 1550
12 Las Vegas, Nevada 89101
13 Telephone: (702) 577-9300
14 Facsimile: (702) 255-2858
15 E-Mail: cmariam@grsm.com
16 rlarsen@grsm.com
17 bwalters@grsm.com
18 wwong@grsm.com

19 *Attorneys for Aries Consultants, Inc.*

20 EIGHTH JUDICIAL DISTRICT COURT

21 CLARK COUNTY, NEVADA

22 MARCUS A. REIF, an individual,
23
24 Plaintiff,

25 vs.

26 EDGEWATER GAMING, LLC, a Nevada Limited
27 Liability Company, doing business as
28 EDGEWATER HOTEL AND CASINO; GILLET
CONSTRUCTION LLC, a Nevada Limited Liability
Company; ARIES CONSULTANTS, INC., a Nevada
corporation; DOES 1 through 40; and ROE
CORPORATIONS, 1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-17-752432-C
Dept. No.: XXX

The Honorable Jerry A. Wiese, II

**ARIES CONSULTANTS, INC.'S
LIMITED OPPOSITION TO
PLAINTIFF'S MOTION TO
AMEND COMPLAINT ON
ORDER SHORTENING TIME**

Date of Hearing: November 28, 2017

Time of Hearing: 9:00 a.m.

Aries Consultants, Inc. ("Aries"), by and through its attorneys of record, the law firm of
Gordon Rees Scully Mansukhani, LLP, respectfully submits its Limited Opposition to Plaintiff
Marcus A. Reif's Motion to Amend Complaint on Order Shortening Time.

1 This Limited Opposition is based on the papers and pleadings on file in this action, the
2 attached Memorandum of Points and Authorities, and any oral argument permitted by the Court.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Aries submits this Limited Opposition¹ to preserve its position that Plaintiff's Complaint
6 was void *ab initio* pursuant to NRS 11.256 *et seq.* and cannot be cured by amendment as to
7 Aries. This action arose out of an incident in which Plaintiff drove his car off of an elevated
8 parking structure owned and controlled by defendant Edgewater. Aries was a Clark County-
9 approved quality assurance inspector that was involved in certain repairs performed to the
10 parking structure. Since Aries is a design professional as defined under NRS 11.256, Plaintiff
11 had the obligation to file the required expert report and attorney's affidavit at the time initial
12 pleading was filed pursuant to NRS 11.258. Plaintiff failed to do so. Therefore, Plaintiff's
13 Complaint was void and cannot be cured by amendment.

14 Aries had previously moved to dismiss the Complaint pursuant to NRS 11.256 *et seq.*,
15 but the Court granted NRCP 56(f) relief to Plaintiff (and Edgewater Gaming, LLC, which had
16 filed a Crossclaim against Aries, also in violation of NRS 11.258). In light of this Court's prior
17 ruling, Aries intends to assert its defense under NRS 11.256 *et seq.* on a motion for summary
18 judgment.

19 **II. RELEVANT PROCEDURAL HISTORY**

20 In response to Plaintiff's Complaint and Edgewater Gaming, LLC's ("Edgewater")
21 Crossclaim, Aries filed a Motion to Dismiss or in the Alternative to Strike Complaint and
22 Crossclaim Pursuant to NRS 11.259 on July 11, 2017. Plaintiff and Edgewater failed to submit
23 an expert report and an affidavit "concurrently with the service of the first pleading in the action"
24 pursuant to NRS 11.258(1). Their failure to do so warranted dismissal of the Complaint and

25
26 ¹ Aries has no objection to Plaintiff's amendment of the complaint for the purposes of substituting Ms. Cindy Reif as
27 plaintiff, and Aries reserves its right to challenge whether Mr. Marcus Reif is incompetent. Aries also has no
objection to Plaintiff's amendment to add Barker Drott Associates, LLC ("Barker") as an additional defendant and
related causes of action against Barker.

1 Crossclaim because the pleadings were void *ab initio*. NRS 11.259; *Otak Nevada v. Eighth*
2 *Judicial Dist. Ct.*, 127 Nev. ___, 260 P.3d 408 (2011) (a pleading served in violation of NRS
3 11.258 “is void *ab initio* and of no legal effect”). Plaintiff and Edgewater opposed Aries’
4 Motion and sought NRCP 56(f) relief to conduct discovery as to Aries’ status as a design
5 professional. The Court denied Aries’ Motion to Dismiss without prejudice and granted Plaintiff
6 and Edgewater’s NRCP 56(f) request. *See* Order Denying Aries’ Motion to Dismiss or in the
7 Alternative to Strike Complaint and Crossclaim, entered on September 14, 2017.

8 Now, Plaintiff seeks to amend the Complaint to name Barker as an additional defendant.
9 Plaintiff submits an expert report and attorney affidavit, purportedly to satisfy the requirements
10 under NRS 11.258 as to Barker, who may be a “design professional” as defined in NRS
11 11.2565(2)(b). While the arguments in Plaintiff’s Motion are completely silent as to the
12 deficiencies Aries initially raised in its Motion to Dismiss, the attached expert report and
13 affidavit contain language to the effect that the proposed amended complaint will retroactively
14 cure the fatal defects in the Complaint as to Aries. Specifically, Plaintiff’s counsel stated that
15 “this Affidavit and attached expert report comport with the spirit and legislative intent of NRS
16 11.256 *et seq.* such that Aries pending motion to dismiss will become moot upon the filing and
17 service of Plaintiff’s First Amended Complaint.” *See* ¶ 4 of Affidavit of F. Phillip Peche,
18 Esquire attached to Plaintiff’s Motion to Amend Complaint.

19 Plaintiff’s position is wrong. This amendment cannot cure the deficiencies, and Aries is
20 not waiving its defense under NRS 11.256 *et seq.* as to the Complaint, Crossclaim, and any
21 amendments thereto.

22 **III. LEGAL ARGUMENTS**

23 Nevada case law is clear that a defective complaint under NRS 11.256 *et seq.* cannot be
24 cured by amendments. *Otak*, 310 P.3d at 576 (“the district court did not have discretionary
25 authority to allow the parties to amend their pleadings to cure their failure to comply with NRS
26 11.258.”). NRS 11.258 imposes extensive requirements on the filing party:

[I]n an action involving nonresidential construction, the attorney for the complainant *shall* file an affidavit with the court concurrently with the service of the *first pleading in the action* stating that the attorney:

- (a) Has reviewed the facts of the case;
- (b) Has consulted with an expert;
- (c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
- (d) Has concluded on the basis of the review and the consultation with the expert that the action has a reasonable basis in law and fact.

NRS 11.258(1) (emphasis added). Further,

- 3. In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and must include, without limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in preparing the report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

NRS 11.258(3). This Court “*shall*” dismiss an action for failure to comply with NRS 11.258.

NRS 11.259(1); *Otak Nevada, LLC*, 260 P.3d at 409.

In *Otak Nevada, LLC*, the Nevada Supreme Court granted Otak’s petition for extraordinary relief to dismiss Otak because the complaint was void and could not be cured by amendment. *Otak*, at 260 P.3d at 412. In that case, PSC served its initial pleading without concurrently filing the attorney affidavit and expert report, in violation of NRS 11.258. *Id.* The district court denied Otak’s motion to dismiss and later granted PSC’s motion to amend. *Id.* at 410. The Nevada Supreme Court disagreed, concluding, “Because the initial pleading was void for violating NRS 11.258, the district court had no discretionary authority to allow PCS to amend its pleading.” *Id.* at 412. A party cannot avoid dismissal by serving the requisite expert report and attorney’s affidavit through an amended pleading. *Id.* (“a void pleading does not legally exist and thus cannot be amended.”).

1 Plaintiff's proposed amended complaint is still defective as to Aries. There is no dispute
2 that Plaintiff failed to file any expert report and attorney's affidavit at the time the initial
3 Complaint was filed. Because a void pleading cannot be cured by amendment, the question as to
4 whether Plaintiff complied with NRS 11.256 *et seq.* remains even if Plaintiff files an amended
5 complaint. Plaintiff's attempt to cure the initial pleading's deficiencies by filing an amended
6 complaint is improper. Since Plaintiff's initial complaint was void, it cannot be cured.

7 For these reasons, Aries files this Limited Opposition to preserve its position that
8 Plaintiff's amendment cannot address the deficiency under NRS 11.256 *et seq.*

9 **IV. CONCLUSION**

10 Based on the foregoing, Aries respectfully requests that any Order entered by this Court
11 granting Plaintiff's Motion to Amend provide that the attorney affidavit and expert report
12 submitted by Plaintiff with its Amended Complaint does not cure the deficiencies with its initial
13 pleading pursuant to NRS 11.256 *et seq.* and *Otak Nevada v. Eighth Judicial Dist. Ct.*, 127 Nev.
14 ___, 260 P.3d 408 (2011).

15
16 DATED this 17th day of November, 2017.

17 Respectfully Submitted,

18 GORDON REES SCULLY
19 MANSUKHANI, LLP

20
21 /s/ Craig J. Mariam
22 Craig J. Mariam, Esq.
23 Nevada Bar No. 10926
24 Robert S. Larsen, Esq.
25 Nevada Bar No. 7785
26 Brian K. Walters, Esq.
27 Nevada Bar No. 9711
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Attorneys for Aries Consultants, Inc.

Gordon Rees Scully Mansukhani, LLP
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Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of GORDON REES SCULLY MANSUKHANI, LLP, and that on the 17th day of November, 2017, the foregoing **ARIES CONSULTANTS, INC.'S LIMITED OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT ON ORDER SHORTENING TIME** was served upon those persons designated by the parties in the E-Service Master List in the Eighth Judicial District court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules, upon the following:

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Attorneys for Gillett Construction, LLC

Attorneys for Plaintiff

/s/ Gayle Angulo
An Employee of GORDON REES SCULLY
MANSUKHANI, LLP



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12 Attorneys for Counter-Defendant,
13 BARKER DROTTAR ASSOCIATES, LLC

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 MARCUS A. REIF, an incompetent person by and
13 through his Conservator CINDY REIF,

14 Plaintiff,

15 v.

16 EDGE WATER GAMING, LLC, a Nevada Limited
17 Liability Company, doing business as
18 EDGEWATER HOTEL AND CASINO, GILLET
19 CONSTRUCTION, LLC, a Nevada Limited
20 Liability Company, ARIES CONSULTANTS. INC.,
21 a Nevada Corporation, BARKER DROTTAR
22 ASSOCIATES, LLC, a Nevada Limited Liability
23 Company, doing business as BARKER
24 STRUCTURAL, DOES 1 through 40, and ROE
25 CORPORATIONS 1 through 40, inclusive,

26 Defendants.

27 AND ALL RELATED CLAIMS.
28

Case No.: A-17-752432-C

Dept. No.: XXX

DEFENDANT BARKER DROTTAR
ASSOCIATES, LLC'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT

Hearing Date:

Hearing Time:

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1 **BARKER DROTTAR ASSOCIATES, LLC'S MOTION TO DISMISS PLAINTIFF'S**
2 **FIRST AMENDED COMPLAINT**

3 COMES NOW Defendant, BARKER DROTTAR ASSOCIATES, LLC (hereinafter
4 "BDA"), by and through its attorneys of record, the law firm of Weil & Drage, APC, and moves
5 this Court for dismissal of Plaintiff MARCUS A. REIF'S ("Plaintiff") First Amended Complaint.

6 This Motion is based on the Memorandum of Points and Authorities submitted herein, all
7 pleadings, papers, and files herein, the evidence adduced at hearing, and any oral argument this
8 Honorable Court will entertain.

9 DATED this 31st day of January, 2018.

10 WEIL & DRAGE, APC

11 */s/ John T. Wendland*

12 By: _____

13 CHRISTINE E. DRAGE, ESQ.

14 (Nevada Bar No. 6624)

15 JOHN T. WENDLAND, ESQ.

16 (Nevada Bar No. 7207)

17 2500 Anthem Village Drive

18 Henderson, NV 89052

19 Attorneys for Defendant,

20 BARKER DROTTAR ASSOCIATES, LLC
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NOTICE OF MOTION

TO: ALL PARTIES; AND

TO: THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that BARKER DROTTAR ASSOCIATES, LLC will, and hereby does, move this Court located at 200 Lewis Avenue, Las Vegas, Nevada 89155, in Department XXX, on the 8 day of March, 2018, at the hour of 9:00 a.m. for a hearing on DEFENDANT BARKER DROTTAR ASSOCIATES, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT.

DATED this 31st day of January, 2018.

WEIL & DRAGE, APC

/s/ John T. Wendland

By: _____

CHRISTINE E. DRAGE, ESQ.

(Nevada Bar No. 6624)

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

BARKER DROTTAR ASSOCIATES, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.
3 INTRODUCTION/FACTS

4 This action arises out of an incident which occurred in the parking structure at the
5 Edgewater Hotel & Casino on or about March 16, 2016. *See*, First Amended Complaint attached
6 hereto as Ex. 1. On said date, Plaintiff operating 1998 Ford Expedition drove into a barrier,
7 causing same to dislodge and resulting in Plaintiff's vehicle driving off the fifth floor of the
8 structure. *Id.* at Para. 24. As a result of the incident, Plaintiff named a number of parties
9 responsible for his injuries, including BDA. Plaintiff alleges that BDA provided structural
10 engineering services with respect to the parking garage remodel project. *Id.* at Paras. 18-19.
11 Plaintiff further alleges that BDA failed to exercise reasonable care and is responsible for his
12 damages. *Id.* at Fourth Claim for Relief, Eighth Claim for Relief and Twelfth Claim for Relief. .
13

14 As is common knowledge in Nevada litigation, when claims are being asserted against a
15 design professional, such as BDA, Plaintiff is required to concurrently file with service of the
16 first complaint against the design professional (*see*, affidavit of service attached hereto as Ex. 2),
17 an affidavit of merit report. Here, Plaintiff only filed the First Amended Complaint *with no*
18 *concurrently filed affidavit of merit as required under Nevada statute*. *See*, case docket for this
19 action which states the following:
20

21
22 12/28/2017 **Summons Electronically Issued - Service Pending**
23 12/28/2017 **Summons to Barker Drottar Associates, LLC**
24 12/28/2017 **Amended Complaint**
25 01/08/2018 **First Amended Complaint and demand for Jury Trial**
26 01/08/2018 **Answer**
27 01/17/2018 **Gillett Construction, LLC s Answer to Plaintiff s First Amended Complaint**
28 01/17/2018 **Answer**
Aries Consultants, Inc.'s Answer and Affirmative Defenses to Plaintiff's First Amended Complaint and Demand for Jury Trial
01/19/2018 **Affidavit of Service**
Affidavit of Service

1 Given that this failure is not curable rendering the First Amended Complaint as *void ab initio*,
2 BDA hereby files this motion to dismiss.

3
4 **II.**

5 **LEGAL STANDARD / STANDARD OF REVIEW**

6 NRCP 12(b) authorizes the dismissal of a lawsuit when it fails to state a claim upon which
7 relief may be granted. "When, after construing the pleading liberally and drawing every fair
8 intendment in favor of the plaintiff, no claim has been stated, dismissal is proper."¹ A motion to
9 dismiss is properly granted where the allegations in the challenged pleading, taken at "face value"
10 and construed favorably in the Plaintiff's behalf, fail to state a cognizable claim for relief.²
11 Dismissal is proper where the allegations are insufficient to establish the elements of a claim for
12 relief.³

13 Nevada's Affidavit of Merit statute, NRS 11.258, applies to actions involving
14 nonresidential construction. Pursuant to NRS 11.258, the attorney for a plaintiff *shall* file and
15 serve an Affidavit of Merit concurrently with the first pleading in the action when an action is
16 commenced against a design professional. The affidavit **SHALL** state that the attorney:

17 (1) has reviewed the facts of the case;

18 (2) has consulted with an expert;

19 (3) reasonably believes the expert who was consulted is knowledgeable in the relevant
20 discipline involved in the action; and

21 (4) has concluded on the basis of his review and the consultation with the expert that the
22 action has a reasonable basis in law and fact. NRS 11.258(1). "Design professional" includes
23 "engineer." NRS 11.2565(2)(b).

24 In addition to the statements required for the attorney affidavit, an expert report *must* be
25 attached to the affidavit. The expert report **must include**:

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27 ¹ *Brown v. Kellar* 97 Nev. 582, 583, 636 P.2d 874, 874 (Nev., 1981).

28 ² *Morris v. Bank of America Nevada*, 110 Nev. 1274, 886 P.2d 454, 456 (1994).

³ *Stockmeier v. Nevada Dept. of Corrections Psych. Rev. Panel*, 183 P.3d 133, 135 (Nev. 2008).

- 1 (1) the expert's resume;
- 2 (2) a statement that the expert is experienced in each discipline which is the subject of the
- 3 report;
- 4 (3) a copy of each non-privileged document reviewed by the expert in preparing his report
- 5 including, without limitation, each record, report and related document that the expert has
- 6 determined is relevant to the allegations of negligent conduct that are the basis for the action;
- 7 (4) the conclusions of the expert and the basis for the conclusions; and
- 8 (5) a statement that the expert has concluded that there is a reasonable basis for filing the
- 9 action. NRS 11.258(3).

10 Here, Plaintiff is not entitled to the relief sought in the First Amended Complaint because

11 he failed to comply with the condition precedent mandated in NRS 11.258. Therefore, Plaintiff's

12 First Amended Complaint fails to state a claim for relief and must be dismissed.

13 **III.**

14 **LEGAL ARGUMENT**

15 **A. NRS 11.258 IS APPLICABLE TO PLAINTIFF'S CLAIMS AND THE FIRST**

16 **AMENDED COMPLAINT AGAINST BDA**

17 In *In re CityCenter Construction & Lien Master Litigation*, the Nevada Supreme Court

18 analyzed the circumstances under which NRS 11.258 is triggered and must be followed by a

19 litigant (complainant) asserting claims against a design professional, when involving

20 nonresidential construction.¹ Specifically, the *CityCenter* Court was asked to determine whether

21 the District Court improperly denied petitioner Converse Professional Group's ("Converse")

22 Motion to Dismiss, which asserted Converse was a design professional against whom claims

23 involving nonresidential construction were asserted.²

24 In *CityCenter*, Converse was being sued by parties that were alleging Converse failed to

25

26 ¹ *In re CityCenter Construction & Lien Master Litigation*, 310 P.3d 574, 129 Nev. Adv. Op. 70. (Nev. 2013).
27 A copy of the relevant *CityCenter* case is attached hereto as *Exhibit D*.

28 ² *CityCenter*, 310 P.3d at 577.

1 properly perform consultation and inspection services provided under its role as a project quality
2 control inspector.¹ When the parties filed and served their operative pleadings on Converse, said
3 pleadings were not accompanied by NRS 11.258 affidavits of merit.² Consequently, Converse
4 moved to dismiss the pleadings arguing that the parties' filing and service of the operative
5 pleadings, without providing the NRS 11.258 affidavits of merit, rendered the pleadings void *ab*
6 *initio* and the parties could not amend their pleadings to bring them into conformance with NRS
7 11.258.³ The Nevada Supreme Court agreed with Converse's position and instructed the District
8 Court to vacate its order denying Converse's Motion to Dismiss.⁴

9 The *CityCenter* Court analyzed the pleadings filed by the parties suing Converse to
10 determine whether the contents of the pleadings triggered the necessity to comply with NRS
11 11.258.⁵ The first step in the Courts analysis was to determine if the project involved
12 nonresidential construction. The Court determined the parties were alleging Converse was
13 involved with nonresidential construction, concluding "an action involving nonresidential
14 construction includes *any* cause of action against a design professional that concerns the
15 construction of a nonresidential" structure.⁶

16 Having concluded the project involved nonresidential construction, the Court analyzed
17 whether Converse was a design professional. The Court relied upon NRS 11.2565 to define
18 "design professional".⁷ In interpreting NRS 11.2565, the Court deemed the term nonresidential
19 construction as "expansive" and that "the claims do not have to be directly based on the design,
20
21

22 ¹ *CityCenter*, 310 P.3d at 577.

23 ² *Id.*

24 ³ *Id.*

25 ⁴ *Id.*

26 ⁵ *Id.* at 578-79.

27 ⁶ *Id.* at 579.

28 ⁷ *Id.*

1 construction, or manufacture of a nonresidential building, but merely ‘involve[.]’ those activities.”¹

2 Once the Court determined the definition of “design professional” The Court turned to the
3 parties’ operative complaints to analyze whether the allegations made against Converse could be
4 interpreted to meet the definition of “design professional”. First, pursuant to well established case
5 law precedence, the Court determined it had to accept all of the allegations made within the
6 parties’ pleadings as true.² Next the Court observed that the parties’ pleadings alleged “Converse
7 was required to inspect the steel work[.]” and included “quality assurance services.”³ The Court
8 further found that Converse was allegedly “responsible for the sampling and testing of material as
9 they were being installed..., which involves engineering principles[.]”⁴ In light of Converse’s
10 alleged scope of work, the Court concluded, “These services implicate the practice of professional
11 engineering as they involve the observation and supervision of a portion of...construction.”⁵
12 Consequently, the Court determined Converse was a design professional.⁶

13 It is beyond dispute that NRS 11.258 applies to the action that the Plaintiff commenced
14 against BDA. As pled in the First Amended Complaint, the project at issue involves a parking
15 structure, a nonresidential construction. Second, Plaintiff specifically – and in no uncertain terms
16 – alleged that BDA provided structural engineering services for said project which they contend as
17 being defective (a point BDA rejects). See, Ex. 1 at Paras. 18-19; see also, relevant causes of
18 action.

19 With the foregoing facts in-hand, and the guidance of *CityCenter* to rely on, making a
20 determination whether NRS 11.258 was triggered in the instant case is not complicated. First, this
21 Court must construe the allegations in the First Amended Complaint as true. The Project is a
22

23 ¹ *CityCenter*, 310 P.3d at 578.

24 ² *Id.* at 579.

25 ³ *Id.*

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 nonresidential structure, because the Plaintiff alleges that his damages arise from the defective
2 design, construction, management of a parking structure, which by its very nature is
3 nonresidential. As discussed above, Plaintiff also alleged that BDA provided structural
4 engineering services for the subject project. Thus, based on Plaintiff's own allegations, BDA is a
5 qualified design professional that provided design professional services concerning a
6 nonresidential project.

7 Based thereon, BDA respectfully submits that just as the *CityCenter* Court determined
8 NRS 11.258 was triggered through the allegations made against Converse, this Court should
9 determine Plaintiff's allegations against BDA also trigger Plaintiff's obligation to comply with the
10 mandates of NRS 11.258.

11 **B. PLAINTIFF FAILED TO COMPLY WITH THE REQUIREMENTS OF NRS 11.258**
12 **AND BASED THEREON, PLAINTIFF'S FIRST AMENDED COMPLAINT IS**
13 **VOID *AB INITIO* REQUIRING THE DISMISSAL OF PLAINTIFF'S CLAIMS**
14 **AGAINST BDA**

15 When a party fails to file and serve a NRS 11.258 affidavit of merit and expert report
16 *concurrently with the first pleading in the action*, the Court *must dismiss the action pursuant to*
17 *statute*. Specifically, NRS 11.259 states, the "court shall dismiss an action governed by NRS
18 11.258" when an action is "commenced against a design professional ...if the attorney for the
19 [plaintiff] fails to: **(a) File an affidavit required pursuant to NRS 11.258; [or] (b) File a report**
20 **required pursuant to subsection 3 of NRS 11.258**"¹ It is abundantly clear that the First
21 Amended Complaint, as it pertains to BDA, is defective. Plaintiff did not comply with NRS
22 11.258 when he commenced this action against BDA.

23 The analysis regarding whether there has been compliance with NRS 11.258 is straight
24 forward. The statutes provide a would-be complainant (i.e. Plaintiff) clear and unambiguous
25 step-by-step instructions to follow:
26
27
28

1 **Step One:** Determine whether the party asserting the claims is asserting claims against a design
2 professional and whether the claims involve nonresidential or residential design
3 and/or construction.

- 4 • This step was discussed at length above. Based upon Plaintiff's First Amended
5 Complaint, it is undisputed that Plaintiff's claims involve a design professional
6 (BDA) and a nonresidential project (a parking structure).

7 **Step Two:** The attorney for the party asserting claims (now known as the "complainant") (here,
8 Plaintiff) shall file with the Court, *concurrently with the service of the first*
9 *pleading*, an affidavit stating the attorney has reviewed the facts of the case, that
10 attorney has consulted with an expert, that the attorney reasonably believes the
11 expert is knowledgeable in the relevant discipline involved, and that the attorney
12 concludes – based upon the consultation with the expert – that the action has a
13 reasonable basis in law and fact.

- 14 • Here, Plaintiff filed and served his First Amended Complaint, but failed to file
15 the required affidavit of merit. As the Court is aware, a "civil action is
16 commenced by filing a complaint with the court." (*see*, NRCP 3). Thus, *upon*
17 *filing* of the First Amended Complaint formally against and naming BDA,
18 Plaintiff actually commenced his legal action against BDA – an alleged design
19 professional – thereby triggering the requirement that when the First Amended
20 Complaint was first served, it necessarily had to be accompanied by an
21 attorney's affidavit in compliance with NRS 11.258, which also needed to be
22 filed with the Court. While Plaintiff filed and served the First Amended
23 Complaint on BDA, there was no attorney Affidavit of Merit filed with the Court
24 or the requisite accompanying expert report with the First Amended Complaint.

25 **Step Three:** The affidavit required in Step Two *must* be accompanied by a report from the expert
26 consulted. The report must include – *without limitation* – the resume of the expert, a
27
28

1 ¹ See, NRS 11.259(1)(a).

1 statement that the expert has experience in the relevant discipline, a copy of each
2 document reviewed, a conclusion by the expert *and* the basis for the conclusion, and
3 a statement that there is a reasonable basis for the complainant's claims. The
4 affidavit and expert report are a conjunctive threshold requirement. The
5 complainant cannot commence an action against the design professional without
6 filing an attorney's affidavit *and* the supporting report, as the affidavit and report are
7 meant to provide verification *to the Court* that the claims against the design
8 professional have merit.

- 9 • Plaintiff failed to provide the expert report required in Step Three. Similar to the
10 attorney affidavit, Plaintiff's First Amended Complaint was filed and served, but
11 did not contain an expert report.
- 12 • Consequently, Plaintiff's First Amended Complaint should be dismissed for its
13 failure to comply with NRS 11.258(1)&(3).

14 **Step Four:** If the complainant did not comply with Step Two and/or Step Three, determine
15 whether the complainant complied with NRS 11.258(2), which provides the *only*
16 statutory provision allowing the affidavit (which necessarily includes an expert
17 report) to be provided at a later date. NRS 11.258(2) in pertinent part states:

18 The attorney for the complainant *may file* the affidavit required
19 pursuant to subsection 1 *at a later time if* the attorney could not
20 consult with an expert and prepare the affidavit before filing
21 the action without causing the action to be impaired or barred
22 by the statute of limitations or repose, or other limitations
23 prescribed by law. If the attorney must submit the affidavit
24 late, the attorney shall file an affidavit concurrently with the
25 service of the first pleading in the action stating the reason for
26 failing to comply with subsection 1 and the attorney shall
27 consult with an expert and file the affidavit required pursuant
28 to subsection 1 not later than 45 days after filing the action.

25 NRS 11.258(2). (Emphasis added).

- 26 • Here, Plaintiff filed the First Amended Complaint on December 28, 2017.
27 However, Plaintiff's counsel did not provide an affidavit of any kind when the
28 First Amended Complaint was filed. Plaintiff's counsel also failed to file the

1 Affidavit of Merit and expert report required by NRS 11.258(1)&(3), and despite
2 this failure, Plaintiff's counsel also failed to provide an NRS 11.258(2) affidavit
3 explaining why Plaintiff could not comply with the other mandatory provisions
4 of NRS 11.258. As the statute cited above states, Plaintiff's counsel can be
5 excused from providing the complete affidavit required in subsection 1, but only
6 if Plaintiff's counsel provides an affidavit at the time the First Amended
7 Complaint was filed to explain why they are unable to comply with subsection 1.
8 Here, as Plaintiff's counsel did not provide *any* affidavit, Plaintiff does not
9 qualify for a waiver regarding the mandatory affidavit.

10 **Step Five:** Determine impact of NRS 11.258(4). Subsection (4) allows an incomplete expert
11 report to accompany the affidavit of counsel *if* documents cannot be readily obtained
12 prior to the complainant filing its action.

- 13 • Subsection 4 does not alleviate the need for an expert report altogether.
14 Subsection 4 merely states the expert report that must be attached to the affidavit
15 of counsel does not need to contain documents that are not in the complainant's
16 possession, and does not need to contain final conclusions by the expert. That is,
17 a report from complainant's expert is required, but may be amended once the
18 complainant has obtained further documents.
- 19 • Here, when Plaintiff commenced their action against a design professional
20 (BDA) by filing the First Amended Complaint, Plaintiff failed to provide an
21 expert report from an expert (see discussion *supra*). Therefore, there is no report
22 to amend. Consequently, any discussion regarding whether the non-existent
23 report could be amended to include documents and conclusions is moot.

24 **Step Six:** If the complainant fails to comply with the requirements of NRS 11.258, NRS
25 11.259 provides specific instructions for the Court to follow. NRS 11.259
26 specifically states:

- 27 1. *The court shall dismiss* an action involving nonresidential construction
28 *if the attorney for the complainant fails to:*
(a) File an affidavit required pursuant to NRS 11.258;

1 (b) File a report required pursuant to subsection 3 of NRS 11.258; or
2 (c) Name the expert consulted in the affidavit required pursuant to
3 subsection 1 of NRS 11.258.

4 NRS 11.259. (Emphasis added).

5 In line with the statutory provisions of NRS 11.259, the Nevada Supreme Court, in *Otak v.*
6 *Eighth Judicial District Court*, clearly announced NRS 11.259 does not allow the District Court to
7 exercise discretion if Plaintiff's counsel fails to comply with any of the three requirements stated
8 in NRS 11.259. Indeed, the *Otak* Court specifically stated, "'shall dismiss' is clear and
9 unambiguous, we must give effect to that meaning and will not consider outside sources beyond
10 that statute."¹ Therefore, dismissal of Plaintiff's First Amended Complaint is not discretionary
11 but rather, mandated by NRS 11.259 – based both on the clear language of NRS 11.258 and NRS
12 11.259 – as well as the Nevada Supreme Court's interpretation of same.

13 By walking through the preceding steps, it is indisputable that Plaintiff's First Amended
14 Complaint must be dismissed. Plaintiff's First Amended Complaint must be dismissed because:

- 15 • Plaintiff filed and served his First Amended Complaint asserting claims against
16 BDA, a design professional, involving nonresidential construction. However,
17 the Plaintiff failed to file and serve an attorney's affidavit in compliance with
18 NRS 11.258(1) when it commenced this action against BDA (the filing of the
19 First Amended Complaint).
- 20 • Plaintiff filed and served his First Amended Complaint that asserts claims
21 against BDA, a design professional, involving nonresidential construction, but
22 Plaintiff failed to file and serve an expert report from a qualified expert as
23 required by NRS 11.258(3).
- 24 • Plaintiff filed and served his First Amended Complaint that asserts claims
25 against BDA, a design professional, involving nonresidential construction, but
26 Plaintiff failed to file and serve an affidavit in compliance with NRS 11.258(2).

27 ¹ *Otak v. Eighth Judicial District Court*, 260 P.3d 408, 411, 127 Nev. Adv. Op. 53 (Nev. 2011) citing *City of*
28 *Reno v. Citizens for Cold Springs*, 126 Nev. —, —, 236 P.3d 10, 16 (2010) (quoting *NAIW v. Nevada Self-*
Insurers Association, 126 Nev. —, —, 225 P.3d 1265, 1271 (2010).

1 Therefore, BDA respectfully requests the Court comply with the mandate of NRS 11.259,
2 as required by Nevada's case law precedence of *Otak*.

3 **C. PLAINTIFF'S FIRST AMENDED COMPLAINT WAS VOID *AB INITIO* WHEN IT**
4 **WAS FILED WITHOUT THE AFFIDAVIT OF MERIT REQUIRED UNDER NRS**
5 **11.258; THEREFORE, THE FIRST AMENDED COMPLAINT CANNOT BE**
6 **AMENDED TO BRING IT INTO COMPLIANCE WITH NRS 11.258**

7 The terms of NRS 11.258 are unambiguous. NRS 11.258(1) requires that an affidavit and
8 expert report shall be filed concurrently with the first pleading in the action against BDA. The use
9 of the word "shall" means the filing of the affidavit and expert report are not optional. The use of
10 the word "concurrent" means, "[r]unning together; having the same authority; acting in
11 conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same
12 event; contemporaneous." *Black's Law Dictionary* 291 (5th Ed. 1990). There can be no dispute
13 that the Plaintiff failed to concurrently file the required affidavit and expert report when they
14 commenced this action against BDA with the filing of the First Amended Complaint.
15 Furthermore, Plaintiff did not file an affidavit required by NRS 11.258(2) if he was unable to
16 comply with NRS 11.258(1) (said provision is the only circumstance under which one can file the
17 first pleading in an action against a design professional without attaching the Affidavit of Merit
18 and expert report as required by NRS 11.258). In fact, Plaintiff's attorney did not file or serve *any*
19 affidavit *concurrently with the first pleading against BDA*.
20

21 As discussed above, there is no situation under which the Plaintiff's attorney can
22 commence an action under the circumstances found here, without concurrently filing an affidavit
23 with the First Amended Complaint. Consequently, if the Plaintiff fails to comply with the
24 requirements of NRS 11.258(2) that *first pleading is defective*. This defect renders the pleading
25 void without a right to amend/cure to bring it into compliance with NRS 11.258.
26

27 Nevada's Supreme Court case law establishes that a First Amended Complaint that fails to
28

1 comply with an Affidavit of Merit requirement is void *ab initio* and cannot be amended to cure
2 the Affidavit of Merit / expert report defect.¹

3 In *Fierle v. Jorge Perez M.D., Ltd.* the Nevada Supreme Court addressed an Affidavit of
4 Merit statute in the context of a medical malpractice action, which is analogous to NRS 11.258.
5 In *Fierle*, the plaintiffs filed a complaint against a doctor, his staff, and his professional medical
6 corporation for alleged medical malpractice. The Court noted that after initially failing to attach
7 an expert affidavit to the complaint, the plaintiffs filed their “first amended complaint” with an
8 attached medical expert’s affidavit. The defendants moved to dismiss the complaint and strike the
9 “first amended complaint”. The District Court granted the defendants’ motion.
10

11 Subsequently, the *Fierle* plaintiffs appealed to no avail. The Supreme Court held: “We
12 conclude that medical malpractice and professional negligence claims made in a complaint that
13 becomes void *ab initio* for lack of the attachment of an expert affidavit *may not be cured* by the
14 amendment to that complaint, regardless of whether other claims in the original complaint
15 survive.”²
16

17 In deciding *Fierle*, the Court relied upon its previous decision in *Washoe Med. Ctr. V.*
18 *Dist. I.*, 122 Nev. 1298, 1300 (2006), in which the Court held that “complaints filed under
19 41A.071 [the Affidavit of Merit statute for medical malpractice claims] without an affidavit from
20 a medical expert are void *ab initio* and must be dismissed.”³ The *Fierle* Court went on to state,
21 “Under this reasoning, we have concluded that *such complaints may not be amended because*
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25
26 ¹ See, *Fierle v. Jorge Perez M.D., Ltd.*, 125 Nev. 728, 219 P.3d 906 (2009).

27 ² *Id.* at 908. (Emphasis added).

28 ³ *Fierle*, 219 P.3d at 914. A copy of the *Washoe* case is attached hereto as *Exhibit G*.

1 *they are void and do not legally exist.*”¹ ‘This interpretation is consistent with the underlying
2 purpose of . . . [41A.071], which is to ensure that such actions be brought in good faith based on
3 competent expert opinion.’”²

4
5 In *Otak v. Eighth Judicial District*, the Nevada Supreme Court extended the logic of *Fierle*
6 and *Washoe* to the interpretation of NRS 11.258.³ Citing *Fierle* and *Washoe*, Nevada’s Supreme
7 Court found that an action against a design professional *must* be dismissed if the complainant fails
8 to comply with the requirements of NRS 11.258, because the underlying purpose of statutes such
9 as NRS 11.258 is to ensure actions are brought in good faith, and based on competent expert
10 opinion.⁴ When a complainant fails to comply with NRS 11.258, the Court has nothing upon
11 which to determine whether there is an appropriate basis for the claims asserted by the
12 complainant.
13

14 It is beyond dispute that the Plaintiff claims BDA provided design professional services
15 (namely, structural engineering). The First Amended Complaint further alleges that BDA acted
16 negligently in designing a nonresidential project (parking structure) and said negligence caused
17 injury to the Plaintiff. Therefore, NRS 11.258 governs Plaintiff’s claims against BDA. As
18 Plaintiff failed to provide and concurrently file the appropriate Affidavit of Merit and expert
19 report in support of their claims against BDA when the First Amended Complaint was filed, per
20 said pleading is deemed void *ab initio*. Given the Supreme Court’s determination that a pleading
21 that is void *ab initio*, it cannot be amended or cured to bring it into compliance with the applicable
22 Affidavit of Merit requirements. Moreover, there is no discretion afforded to the Court to allow a
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24

25
26 ¹ *Id.* (Emphasis added).

27 ² *Id.* (Citing *Borger v. Dist. I.*, 120 Nev. 1021, 1029 (2004)).

28 ³ *Otak*, 260 P.3d at 410.

⁴ *Id.* at 412.

1 waiver of this requirement. For said reasons, BDA respectfully requests that the Court dismiss the
2 First Amended Complaint as against BDA, without leave to amend.
3

4 IV.

5 CONCLUSION

6 The Plaintiff unambiguously alleged that BDA performed professional design services for
7 a nonresidential project. In making such allegations, Plaintiff triggered the obligation to comply
8 with NRS 11.258. As Plaintiff failed to comply with NRS 11.258, the First Amended Complaint
9 is void ab initio and dismissal is required according to NRS 11.259. The Nevada Supreme Court's
10 decision, in *Otak*, unambiguously establishes that the Plaintiff cannot amend or cure the
11 First Amended Complaint to bring it into compliance with NRS 11.258. Therefore, BDA
12 respectfully requests an order from the Court dismissing the First Amended Complaint with
13 respect to the claims alleged against it.

14 DATED this 31st day of January, 2018.

15 WEIL & DRAGE, APC

16 /s/ John T. Wendland

17 By: _____

CHRISTINE E. DRAGE, ESQ.

(Nevada Bar No. 6624)

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Counter-Defendant,

BARKER DROTTAR ASSOCIATES, LLC
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of January, 2018, service of the foregoing
DEFENDANT BARKER DROTTAR ASSOCIATES, LLC'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT was made this date by serving a true and
correct copy of the same, via US Mail, to the following parties:

Glen J. Lerner, Esq.
GLEN LERNER INJURY ATTORNEYS
4795 S. Durango Drive
Las Vegas, NV 89147
glerner@glenlerner.com
Attorneys for Plaintiff
MARCUS A. REIF

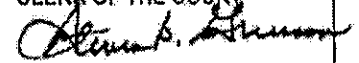
/s/ Shannon Kearsley

Shannon Kearsley, An Employee of
WEIL & DRAGE, APC

EXHIBIT 1

{00808014;1}

RESP.APP.0096



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3 Nevada Bar No. 4314
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19 *Attorneys for Plaintiff*

20 DISTRICT COURT

21 CLARK COUNTY, NEVADA

22 MARCUS A. REIF, an incompetent person by and
23 through his Conservator CINDY REIF,

24 Plaintiff,

25 vs.

26 EDGEWATER GAMING, LLC, a Nevada Limited
27 Liability Company, doing business as
28 EDGEWATER HOTEL AND CASINO, GILLET
CONSTRUCTION, LLC, a Nevada Limited
Liability Company, ARIES CONSULTANTS, INC.,
a Nevada Corporation, BARKER DROTTAR
ASSOCIATES, LLC, a Nevada Limited Liability
Company, doing business as BARKER
STRUCTURAL, DOES 1 through 40, and ROE
CORPORATIONS 1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-17-752432-C
Dept. No.: XXX

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint

1 against Defendants EDGEWATER GAMING LLC, a Nevada Limited Liability Company, doing
2 business as EDGEWATER HOTEL AND CASINO, (hereinafter "EDGEWATER"), GILLETT
3 CONSTRUCTION LLC, a Nevada Limited Liability Company, (hereinafter "GILLETT"), ARIES
4 CONSULTANTS INC., a Nevada Corporation, (hereinafter "ARIES"), BARKER DROTTAR
5 ASSOCIATES, LLC, a Nevada Limited Liability Company, doing business as BARKER
6 STRUCTURAL, (hereinafter "BARKER DROTTAR") DOES 1 through 20, and ROE
7 CORPORATIONS 1 through 20, inclusive, (hereinafter referred to collectively as "Defendants")
8 allege and aver as follows:

9 **JURISDICTION AND VENUE**

10 1. The incident complained of herein occurred in Clark County, Nevada, on March 16,
11 2016, granting jurisdiction and venue upon this Honorable Court (hereinafter the "subject incident").

12 2. That all requirements set forth pursuant to applicable Nevada law have been adhered
13 to and are further substantiated by the affidavit of attorney with exhibits attached hereto.

14 3. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and
15 resided in San Bernardino County, California.

16 4. At all times relevant, CINDY REIF is over eighteen years old, resided in San
17 Bernardino County, California, is the mother and CONSERVATOR of the PERSON and ESTATE of
18 MARCUS REIF, an incompetent person [Ex. 1], with foreign guardianship for MARCUS REIF
19 registered in Nevada [Ex. 2].

20 5. At all times mentioned herein, Defendant EDGEWATER was a Nevada Limited
21 Liability Company duly organized under the laws of the State of Nevada and authorized to conduct
22 business in the State of Nevada.

23 6. At all times mentioned herein, Defendant GILLETT was a Nevada Limited Liability
24 Company duly organized under the laws of the State of Nevada and authorized to conduct business in
25 the State of Nevada.

26 7. At all times mentioned herein, Defendant ARIES was a Nevada Corporation duly
27 organized under the laws of the State of Nevada and authorized to conduct business in the State of
28 Nevada.

1 8. At all times mentioned herein, Defendant BARKER DROTTAR was a Nevada
2 Limited Liability Company duly organized under the laws of the State of Nevada and authorized to
3 conduct business in the State of Nevada.

4 9. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of Defendants DOES 1 through 20 and/or ROE CORPORATIONS 1 through 40, inclusive, are
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is
7 informed, believes and thereupon alleges that the Defendants designated herein as DOES 1 through
8 40 and/or ROE CORPORATIONS 1 through 20, inclusive, are any one of the following:

- 9 (a) Parties responsible in some manner for the events and happenings herein referred to
10 that caused injuries and damages proximately thereby to MARCUS A. REIF as herein
11 alleged;
- 12 (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants,
13 each of them acting within the course and scope of their agency, employment or
14 contract;
- 15 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
16 responsible for the premises referred to hereinafter;
- 17 (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue
18 of an agreement, sale, transfer or otherwise; and/or
- 19 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle
20 barrier wall on the north side of the fifth floor of the parking garage at issue herein.

21 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
22 capacities of said Defendants, DOES 1 through 20 and ROE CORPORATIONS 1 through 20,
23 inclusive, when the same has been ascertained by the Plaintiff, together with appropriate charging
24 allegations, and to join said Defendants in the action.

25 **GENERAL ALLEGATIONS**

26 10. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
27 incorporates the same by reference as though fully set forth at length herein.

28 ...

1 11. On or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
2 Expedition, bearing California license plate number 5PKT385 (hereinafter the "subject vehicle").

3 12. At all times relevant, Defendants EDGEWATER, DOES 1-5, and ROE
4 CORPORATIONS 1-5 were the owners, controllers, managers, and maintainers of the premises and
5 subject parking structure, located at 2020 South Casino Drive, Laughlin, NV 89029 (hereinafter
6 "parking structure"), that is classified as nonresidential construction.

7 13. On or about 2002, a vehicle exited the side of the parking structure and fell several
8 floors (hereinafter the "first prior incident").

9 14. On or about December 8, 2014, a vehicle owned and operated by Defendants
10 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 impacted and dislodged a barrier wall
11 segment on the fifth level of the parking structure (hereinafter the "second prior incident").

12 15. Shortly after the second prior incident, Defendants EDGEWATER, DOES 1-5, and
13 ROE CORPORATIONS 1-5 had installed a steel vehicle barrier approximately three feet in front of
14 the barrier wall segment that was dislodged as a result of the second prior incident (hereinafter the
15 "steel vehicle barrier").

16 16. Subsequent to the second prior incident and before the subject incident, Defendants
17 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 chose not to have installed any
18 additional steel vehicle barriers in front of any other barrier wall segments in the parking structure.

19 17. Subsequent to the second prior incident and before the subject incident, Defendants,
20 and each of them—in whole or in part—designed, engineered, repaired, inspected, and rebuilt each
21 individual barrier wall segment in the parking structure, including the specific barrier wall segment
22 that gave way and resulted in subject incident, in accordance with the applicable building codes of
23 Clark County, Nevada in place in 2015 (hereinafter the "parking structure remodel").

24 18. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted
25 with Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10 to provide
26 structural engineering services in conjunction with the parking structural remodel.

27 19. Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10
28 provided structural engineering services in conjunction with the parking structural remodel.

20. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 to provide building and repair services in conjunction with the parking structure remodel.

21. Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 provided building and repair services in conjunction with the parking structure remodel.

22. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 to provide special inspection and quality assurance services in conjunction with the parking structure remodel.

23. Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 provided special inspection and quality assurance services in conjunction with the parking structure remodel.

24. On or about March 16, 2016, MARCUS A. REIF traveled in the subject vehicle northbound through the parking structure, and as a result of the Defendants' conduct, the subject vehicle exited the side of the fifth level of parking structure and fell several floors causing severe injuries to MARCUS A. REIF (the subject incident).

FIRST CLAIM FOR RELIEF

(Negligence against Defendants EDGEWATER, DOES 1-5, and ROE Corporations 1-5)

25. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

26. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

27. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

28. Defendant's negligence directly and proximately caused Plaintiff serious injury.

29. As a direct and proximate result of the negligence, Plaintiff has incurred damages in excess of fifteen thousand dollars (\$15,000.00).

SECOND CLAIM FOR RELIEF

(Negligence Against Defendants GILLET, DOES 11-15, and ROE Corporations 11-15)

30. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

31. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

32. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

33. Defendant's negligence directly and proximately caused Plaintiff serious injury.

34. As a direct and proximate result of the negligence, Plaintiff has incurred damages in excess of fifteen thousand dollars (\$15,000.00).

THIRD CLAIM FOR RELIEF

(Negligence Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)

35. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

36. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

37. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

38. Defendant's negligence directly and proximately caused Plaintiff serious injury.

39. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

FOURTH CLAIM FOR RELIEF

(Negligence against Defendants BARKER DROTAR, DOES 6-10, and ROE Corporations 6-10)

40. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

41. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

42. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

43. Defendant's negligence directly and proximately caused Plaintiff serious injury.

44. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

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FIFTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants EDGEWATER, DOES 1-5, and ROE Corporations 1-5)

45. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

46. Defendant violated Nevada Revised Statutes, and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

47. As a result of Defendant's violations, Plaintiff sustained injuries.

48. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

49. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

50. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

SIXTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants GILLET, DOES 11-15, and ROE Corporations 11-15)

51. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

52. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

53. As a result of Defendant's violations, Plaintiff sustained injuries.

54. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

55. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

56. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00.)

...
...

1 **SEVENTH CLAIM FOR RELIEF**
2 **(Negligence Per Se Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)**

3 57. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
4 incorporates the same by reference as though fully set forth at length herein.

5 58. Defendant violated Nevada Revised Statutes and/or county building codes governing
6 the building, maintenance, and/or repair of the parking structure.

7 59. As a result of Defendant's violations, Plaintiff sustained injuries.

8 60. Plaintiff was and is a member of the class persons that the statutes and/or county
9 building codes were intended to protect.

10 61. Plaintiff sustained the type of injuries that the statutes and/or county building codes
11 were intended to prevent.

12 62. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
13 in excess of fifteen thousand dollars (\$15,000.00.)

14 **EIGHTH CLAIM FOR RELIEF**
15 **(Negligence Per Se Against Defendants BARKER DROTTAR, DOES 6-10, and ROE**
16 **Corporations 6-10)**

17 63. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
18 incorporates the same by reference as though fully set forth at length herein.

19 64. Defendant violated Nevada Revised Statutes and/or county building codes governing
20 the building, maintenance, and/or repair of the parking structure.

21 65. As a result of Defendant's violations, Plaintiff sustained injuries.

22 66. Plaintiff was and is a member of the class persons that the statutes, and/or county
23 building codes were intended to protect.

24 67. Plaintiff sustained the type of injuries that the statutes and/or county building codes
25 were intended to prevent.

26 68. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
27 in excess of fifteen thousand dollars (\$15,000.00.)
28

1 **NINTH CLAIM FOR RELIEF**
2 **(Premises Liability Against Defendants EDGEWATER, DOES 1-5, and**
3 **ROE Corporations 1-5)**

4 69. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
5 incorporates the same by reference as though fully set forth at length herein.

6 70. Defendant owed Plaintiff a duty to maintain the parking structure in a reasonably safe
7 condition for use.

8 71. Defendant breached this duty by not ensuring that the parking structure was in a
9 reasonably safe condition for use.

10 72. Defendant's breach directly and proximately caused Plaintiff to sustain serious injury.

11 73. As a direct and proximate result of Defendant's breach, Plaintiff to incurred damages
12 in excess of fifteen thousand dollars (\$15,000.00).

13 **TENTH CLAIM FOR RELIEF**
14 **(Negligent Performance of an Undertaking Against Defendants GILLETT, DOES 11-15, and**
15 **ROE Corporations 11-15)**

16 74. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
17 incorporates the same by reference as though fully set forth at length herein.

18 75. Defendant undertook, gratuitously or for consideration, to render services to
19 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
20 protection.

21 76. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
22 Plaintiff.

23 77. Defendant failed to exercise reasonable care in its undertaking.

24 78. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

25 79. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
26 Defendant's undertaking.

27 80. As a direct and proximate result of Defendant's failure to exercise reasonable care,
28 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

...

...

1 **ELEVENTH CLAIM FOR RELIEF**
2 **(Negligent Performance of an Undertaking Against Defendants ARIES, DOES 16-20, and ROE**
3 **Corporations 16-20)**

4 81. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
5 incorporates the same by reference as though fully set forth at length herein.

6 82. Defendant undertook, gratuitously or for consideration, to render services to
7 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
8 protection.

9 83. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
10 Plaintiff.

11 84. Defendant failed to exercise reasonable care in its undertaking.

12 85. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

13 86. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
14 Defendant's undertaking.

15 87. As a direct and proximate result of Defendant's failure to exercise reasonable care,
16 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

17 **TWELFTH CLAIM FOR RELIEF**
18 **(Negligent Performance of an Undertaking Against Defendants BARKER DROTTAR, DOES**
19 **6-10, and ROE Corporations 6-10)**

20 88. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
21 incorporates the same by reference as though fully set forth at length herein.

22 89. Defendant undertook, gratuitously or for consideration, to render services to
23 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
24 protection.

25 90. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
26 Plaintiff.

27 91. Defendant failed to exercise reasonable care in its undertaking.

28 92. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

93. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
Defendant's undertaking.

1 94. As a direct and proximate result of Defendant's failure to exercise reasonable care,
2 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 5 (a) For general damages in an amount in excess of fifteen thousand dollars
6 (\$15,000.00) for each claim for relief;
7 (b) For special damages in an amount in excess of fifteen thousand dollars
8 (\$15,000.00) for each claim for relief;
9 (c) For pecuniary and economic losses according to proof;
10 (d) For past and future medical and related expenses according to proof;
11 (e) For damage to personal property according to proof;
12 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
13 (d) For such other and further relief as the Court may deem just and proper.

14
15 GLEN LERNER INJURY ATTORNEYS

16
17 /s/ Glen J. Lerner
18 Glen J. Lerner, Esq.
19 Nevada Bar No. 4314
20 4795 South Durango Drive
21 Las Vegas, Nevada 89147
22 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on 28th day of December, 2017, I served the foregoing **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served by electronic copy via the Court's electronic service system WIZNET, to the following counsel of record:

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Nausheen K. Peters, Esq.
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Las Vegas, NV 89128
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Gillett Construction, LLC*

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Wing Yan Wong, Esq.
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*Attorney for Defendant
Aries Consultants, Inc.*

/s/ Miriam Alvarez
An Employee of Glen Lerner Injury Attorneys

EXHIBIT 2

{00808014;1}

RESP.APP.0109



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DISTRICT COURT
CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual;
Plaintiff,

v.

EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

See attached.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

AFFIDAVIT OF SERVICE



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

JOHN GODWIN, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Wednesday January 10 2018; 1 copy(ies) of the:

SUMMONS; FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

I served the same on Thursday January 11 2018 at 11:00AM by:

Serving Defendant BARKER DROTAR ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, DOING BUSINESS AS BARKER STRUCTURAL, BY SERVING ALVERSON TAYLOR MORTENSEN & SANDERS, REGISTERED AGENT

by serving: TREVOR WAITE, ESQ. ON BEHALF OF ALVERSON TAYLOR MORTENSEN & SANDERS, REGISTERED AGENT, PURSUANT TO NRS 14.020 at the Defendant's Business located at 6605 GRAND MONTECITO PKWY, STE 200, LAS VEGAS, NV 89149.

SUBSCRIBED AND SWORN to before me on this
Friday January 12 2018 By the Affiant.

Thuesday

Marianne L. Telisman

Notary Public




John Godwin

Affiant: JOHN GODWIN #R-087033
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8770110.045068

RESP.APP.0111



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9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 MARCUS A. REIF, an incompetent person by and
12 through his Conservator CINDY REIF,

13 Plaintiff,

14 v.

15 EDGE WATER GAMING, LLC, a Nevada Limited
16 Liability Company, doing business as
17 EDGEWATER HOTEL AND CASINO, GILLET
CONSTRUCTION, LLC, a Nevada Limited
18 Liability Company, ARIES CONSULTANTS. INC.,
a Nevada Corporation, BARKER DROTTAR
19 ASSOCIATES, LLC, a Nevada Limited Liability
20 Company, doing business as BARKER
21 STRUCTURAL, DOES 1 through 40, and ROE
CORPORATIONS 1 through 40, inclusive,

22 Defendants.

23 AND ALL RELATED CLAIMS.
24

Case No.: A-17-752432-C

Dept. No.: XXX

CERTIFICATE OF SERVICE

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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 2nd day of February, 2018, service of DEFENDANT
3 BARKER DROTTAR ASSOCIATES, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST
4 AMENDED COMPLAINT filed on the 31st day of January, 2018, was made by electronically
5 serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the
6 following parties:

7 Glen Lerner, Esq.
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11 Attorney for Plaintiff
12 MARCUS A. REIF

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Robert S. Larsen, Esq.
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Aries Consultants, Inc.

19 /s/ Shannon Kearsley

20
21 Shannon Kearsley, An Employee of
22 WEIL & DRAGE, APC
23
24
25
26
27
28



1 **OMTD**

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18 Attorneys for Plaintiff

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 MARCUS A. REIF, an incompetent person by
18 and through his Conservator CINDY REIF,

19 Plaintiff,

20 v.

21 EDGEWATER GAMING, LLC, a Nevada
22 Limited Liability Company, doing business as
23 EDGEWATER HOTEL AND CASINO,
24 GILLETT CONSTRUCTION LLC, a Nevada
25 Limited Liability Company, ARIES
26 CONSULTANTS INC., a Nevada Corporation,
27 BARKER DROTTAR ASSOCIATES, LLC, a
28 Nevada Limited Liability Company, doing
business as BARKER STRUCTURAL, DOES 1
through 40, and ROE CORPORATIONS 1
through 40, inclusive,

26 Defendants.

27 AND ALL RELATED CLAIMS.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

**PLAINTIFF'S OPPOSITION TO
DEFENDANT BARKER DROTTAR
ASSOCIATES, LLC'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

1 Plaintiff Marcus Reif, an incompetent person by and through his Conservator Cindy Reif,
2 (hereinafter "Plaintiff"), and by and through his attorneys of record, Glen Lerner Injury Attorneys
3 and Napoli Shkolnik PLLC, hereby submits his Opposition to Defendant Barker Drott Associates,
4 LLC's (hereinafter "Defendant") Motion to Dismiss Plaintiff's First Amended Complaint
5 (hereinafter "Defendant's Motion").

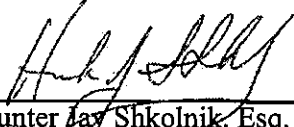
6 This Opposition is based on the attached Memorandum of Points and Authorities, the
7 attached declaration, all pleadings and papers on file with the Court, and any oral argument and
8 evidence the Court may allow at the hearing on Defendant's Motion.

9
10 DATED this 20th day of February, 2018.

11
12 Respectfully Submitted,

13 GLEN LERNER INJURY ATTORNEYS

14 NAPOLI SHKOLNIK PLLC

15
16 By: 
17 Hunter Jay Shkolnik, Esq.
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19 *Attorneys for Plaintiff*
20
21
22
23
24
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26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Plaintiff respectfully submits this Memorandum of Points and Authorities in opposition to
5 Defendant Barker Drott Associates, LLC's ("Defendant" or "Barker Drott") *Motion to Dismiss*
6 *Plaintiff's First Amended Complaint*.

7 Defendant moves to dismiss Plaintiff's First Amended Complaint (hereinafter "FAC")
8 pursuant to Nevada Revised Statutes 11.256 *et seq.* In the subject motion, Defendant argues that
9 Plaintiff's FAC is void *ab initio* under NRS 11.258 and NRS 11.259 for failure to concurrently file
10 an affidavit of merit with service of the complaint. Contrary to Defendant's disingenuous claim,
11 and as set forth below, NRS 11.256 *et seq.* does not apply to cases in which affidavits of merit have
12 been inadvertently omitted from an amended filing. Defendant's Motion fails to account for the
13 legislative intent behind Nevada's statutory laws, and that the expert affidavit and FAC were both
14 filed on this court's docket at the time the action was commenced against this Defendant. Clearly,
15 this motion has been brought before this Court in a deliberate attempt to delay proceedings and
16 waste the time of this Court and the parties. Therefore, Defendant's Motion should be denied.
17

18 **II. BACKGROUND**

19
20 The comprehensive procedural history of this litigation predates Defendant as a party to the
21 present action. On March 14, 2017, Plaintiff filed suit in the District Court of Clark County Nevada
22 alleging tort causes of action against Defendants Edgewater Gaming, LLC, Gillett Construction,
23 LLC, Aries Consultants, Inc., DOES 1 through 40, and ROE Corporations 1 through 40. Comp. ¶¶
24 18-78. While conducting initial discovery, Plaintiff learned that Barker Drott provided structural
25 engineering services and plans for the nonresidential construction performed to Defendant
26 Edgewater Gaming, LLC's parking structure (hereinafter "Edgewater's parking structure") in 2015.
27 FAC ¶¶ 18-19; *see* Ex. B, Aries' Final Quality Assurance Report. Plaintiff subsequently consulted
28

1 with an engineering expert to evaluate whether the allegations set forth in the initial complaint had a
2 reasonable basis in law and fact. See Ex. C, September 28, 2017 Affidavit of F. Phillip Peche,
3 Esquire (hereinafter "Attorney's Affidavit"); Ex. D, Preliminary Report of Findings for Spandrel
4 Vehicle Barrier Anchors on Parking Structure of the Edgewater Hotel Casino at 2020 Casino Drive
5 in Laughlin, Nevada (hereinafter "Expert Report"). Based upon the findings in the Expert Report,
6 Plaintiff filed a motion to amend the complaint on November 7, 2017, naming Barker Drott
7 Associates, LLC as an additional defendant.¹ Ex. E, Plaintiff's Motion to Amend Complaint on
8 Order Shortening Time. After reviewing the proposed FAC, Attorney's Affidavit and Expert
9 Report, this Court granted Plaintiff's motion on November 28, 2017. Ex. F, November 28, 2017
10 Hearing Transcript.

11
12 On December 28, 2017, an Order Granting Plaintiff's Motion to Amend Complaint was
13 filed, which included as exhibits the FAC, Attorney's Affidavit and Expert Report. Ex. G, Order
14 Granting Plaintiff's Motion to Amend Complaint. Plaintiff filed the FAC on December 29, 2017.
15 However, due to a clerical error, Plaintiff inadvertently failed to include the Attorney's Affidavit
16 and Expert Report in the amended filing. Defendant was served a copy of the FAC on January 11,
17 2018, and now brings this instant motion to dismiss.

18 19 **III. LEGAL STANDARD**

20 Pursuant to NRCP 12(b)(5), "[a] complaint [shall] not be dismissed for failure to state a
21 claim *unless* it appears beyond a doubt that the plaintiff could prove no set of facts which, [if true],
22 would entitle him to relief." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 (1993)
23 (emphasis added); *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217
24 (2000). When deciding a motion to dismiss, the Court "must construe the pleading liberally and
25

26
27 ¹ Both the Attorney's Affidavit, prepared and signed by F. Phillip Peche, Esq., and the Expert Report, prepared by Jerry
28 L. Miles, P.E. of Bert L. Howe & Associates, Inc., were included as exhibits to Plaintiff's Motion to Amend Complaint
on Order Shortening Time, filed with the Court on November 7, 2017. See Ex. E.

1 draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi*
2 *America, Ltd.*, 110 Nev. 481,484 (1994); *see Simpson v. Mars Inc.*, 929 P.2d 966, 967 (Nev. 1997)
3 (quoting *Squires v. Sierra Nev. Educational Found.*, 823 P.2d 256, 257 (Nev. 1991); *see also*
4 *Capital Mortgage Holding v. Hahn*, 705 P.2d 126, 126 (1985) (“Allegations in the complaint must
5 be accepted as true”).

6 7 **IV. ARGUMENT**

8 **A. NRS 11.256 ET SEQ. DOES NOT APPLY TO PLAINTIFF’S FILED AMENDED** 9 **COMPLAINT SINCE THE ALLEGATIONS ARE BASED ON VALID EXPERT** 10 **CONCLUSIONS**

11 Defendant’s sole argument hinges on the presumption that NRS 11.256 *et seq.* applies to this
12 present circumstance. Yet Defendant mistakenly focuses on a literal reading of the law, failing to
13 fully grasp the true intent behind its statutory language.

14 Courts in Nevada interpret statutes in order to conform “to reason and public policy,” with
15 an “ultimate goal of interpreting statutes...to effectuate the Legislature’s intent.” *Converse Prof’l*
16 *Group v. Eighth Judicial Dist. Group (In re CityCenter Constr.)*, 310 P.3d 574, 578 (Nev. 2013)
17 (citing *Great Basin Water Network v. State Eng’r*, 234 P.3d 912, 918 (2010)). In so doing, courts
18 avoid vastly narrow interpretations that lead to “absurd results.” *See In re CityCenter Constr.*, 310
19 P.3d at 581; *City Plan Dev., Inc. v. Office of Labor Comm’r*, 117 P.3d 182, 192 (2005)).

20 According to the Nevada Supreme Court, “the apparent intent of NRS 11.259(1) and NRS
21 11.258 is to advance judicial economy and prevent frivolous suits against design professionals.” *In*
22 *re CityCenter Constr.*, 310 P.3d at 581. Despite Defendant’s misguided efforts, Plaintiff’s
23 allegations are based on sound expert findings, which were previously disclosed to this Court and
24 have been provided to Defendant. Blindly adhering to Defendant’s logic would go against public
25 policy and effectively allow a culpable design professional to be dismissed on a technicality.

26 **1. Plaintiff’s Amended Complaint Is Based on Legitimate Expert Findings**

27 Defendant misconstrues the concept of NRS 11.258. At its core, the statute seeks to prevent
28 frivolous litigation from flooding the judicial system. However, unlike Defendant’s contentions,

1 Plaintiff's FAC alleges legitimate claims against this specific Defendant based on expert
2 conclusions acquired prior to the amended filing.

3 Plaintiff sought the advice of engineering expert Jerry L. Miles of Bert L. Howe &
4 Associates, Inc. after initial discovery unveiled evidence of liability on the part of Defendant, a
5 structural engineering firm. At Plaintiff's request, an evaluation of the nonresidential construction
6 of Edgewater's parking structure was performed. In September 2017, an expert report was obtained,
7 specifically evaluating the failure of anchors in the parking garage's fifth floor spandrel wall.
8 According to the expert's findings, Defendant:

- 9 • "[N]egligently designed and specified inappropriate spandrel to column
10 connection SET-XP epoxy anchor depth on [its] original Parking Garage Repair
11 Plans."
- 12 • "[F]ailed in [its] duties as [a] design professional [] when [its] modified
13 design of 4" SET-XP epoxy anchor embedment depth still violated the
14 manufacturer's required minimum concrete thickness when installed on a 6" thick
15 spandrel panel."

16 Pursuant to these conclusions, Plaintiff sought leave to amend his initial complaint in order to
17 include Barker Drott Associates, LLC as a named defendant. As exhibits to his motion, Plaintiff
18 provided copies of the proposed FAC, Attorney's Affidavit and Expert Report. *See* Ex. E. Based
19 on a review of the findings, this Court agreed to an amendment and refile of the complaint. *See*
20 Ex. E. Accordingly, the allegations as set forth in the FAC have a reasonable basis in law and fact,
21 and were brought by Plaintiff in good faith.

22 **2. The Plain Language of NRS 11.258 Affirms The Legislature's Intent to Prevent**
23 **Meritless Claims Against Design Professionals**

24 Courts in Nevada "interpret clear and unambiguous statutes based on their plain meaning."
25 *Cromer v. Wilson*, 225 P.3d 788, 790 (2010); *Zohar v. Zbiegien*, 334 P.3d 402, 405 (Nev. 2014).
26 But when a statute is ambiguous, consideration is given to other sources in order to "identify and
27 give effect to the Legislature's intent." *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev.
28 290, 294 (2000); *Hardy Cos., Inc. v. SNMARK, LLC*, 245 P.3d 1149, 1153 (Nev. 2010) ("The
Legislature's intent is the primary consideration when interpreting an ambiguous statute").

Defendant reads NRS 11.258 at face value, reciting each subsection without thought as to
the statute's underlying meaning or purpose. Yet, even if Defendant is correct as to the statute's lack

1 of ambiguity, the plain language nevertheless confirms its legislative intent. NRS 11.258 provides
2 for cures in deficiencies, *only* if (1) there is a failure to obtain an expert report or (2) the expert
3 report obtained lacks legally sufficient conclusions. NRS 11.258(2); NRS 11.258(4). However, the
4 statute is silent as to clerical deficiencies in the filing itself. This silence emphasizes the notion that
5 the Legislature, in establishing NRS 11.258, did not contemplate dismissals where expert reports
6 have already been obtained, vetted by a court, and unwittingly omitted from filing.

7 The overall purpose of this statute is to protect design professionals from *meritless* claims.
8 Understandably, an expert report is required in order to provide a reasonable basis with which to
9 initiate litigation. To assume, however, that this statute would apply to a properly vetted expert
10 report that was unknowingly left out of an otherwise proper filing would not only go against public
11 policy, but would allow a culpable design professional to evade liability. Moreover to allow this to
12 occur when the actual FAC and Expert Report were actual on file would be a gross injustice.

13 **3. Plaintiff's Filing Of The Motion To Amend With The Amended Complaint And Expert**
14 **Affidavit Complies With Section NRS 11.258**

15 Defendant relies on irrelevant case law to bolster its argument, conveniently glossing over
16 pertinent facts that lend support to the Legislature's intent. Although the Nevada Supreme Court
17 has seldom reviewed issues pertaining to NRS 11.258 or NRS 11.259, the Court has *never*
18 considered a case in which an expert report was obtained prior to the initial filing.

19 i. *Fierle v. Jorge Perez M.D., Ltd.*, 219 P.3d 906 (Nev. 2009)

20 Brought under analogous² expert affidavit statute NRS 41A.071, *Fierle* involved a claim for
21 medical malpractice due to failure by plaintiff's physician to correctly infuse chemotherapy
22 medication, causing subcutaneous burns. 219 P.3d at 908-09. Plaintiff originally filed suit in 2006
23 alleging malpractice against the defendant physician's corporation, nurses and nurse practitioners.

24
25 ² See *Otak Nevada, L.L.C. v. Eighth Judicial District Court*, 260 P.3d 408, 412 (Nev. 2011) ("Our analysis in *Washoe*
26 *Medical* and *Fierle* is equally applicable to the instant case, and thus we now extend our analysis in those cases to cases
27 that are governed by NRS 11.258"); see also *Zohar v. Zbiegien*, 334 P.3d 402, 404-06 (Nev. 2014) ("We conclude that
28 reason and public policy dictate that courts should read the complaint and the plaintiff's NRS 41A.071 expert affidavit
together when determining whether the expert affidavit meets the requirements of NRS 41A.071.... As we have
previously acknowledged, the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice-
pleading standard, and thus, it must be 'liberally construe[d]...in a manner that is consistent with our NRCP 12
jurisprudence.'") (citations omitted).

1 *Id.* at 909. Realizing that an expert affidavit was required, plaintiff sought an evaluation from her
2 treating physician and obtained a report in January 2007, nearly four months after the initial filing.
3 *Id.* Although plaintiff moved to amend the complaint, the Court dismissed her claim as void *ab*
4 *initio* due to failure to secure an expert report prior to filing. *Id.* at 914. Unlike *Fierle* the instant
5 case presents this Court with the opposite situation, i.e., leave to amend was properly granted upon
6 the filing and showing that the FAC was supported by an expert affidavit which was filed with the
7 Court. This was not a belated attempt to cure a deficient filing.

8 ii. *Otak Nevada, L.L.C. v. Eighth Judicial District Court*, 260 P.3d 408 (Nev. 2011)

9 Similar facts are noticeable in *Otak*. In September 2009, a general contractor filed a third-
10 party complaint against an infrastructural design architect, stemming from claims of personal injury
11 and wrongful death due to construction defects. 260 P.3d at 409. The contractor, however, failed to
12 file³ an expert report prior to serving the complaint. *Id.* Nearly four months later, as in *Fierle*, the
13 contractor obtained an expert report and refiled an amended complaint. *Id.* at 409-10. Ultimately,
14 the Court held that, under NRS 11.258, a complaint initially filed without an expert report and
15 affidavit was inherently void and could not be cured by amendment. *Id.* at 412.

17 Contrary to Defendant's intent, these two cases provide further support to Plaintiff's position
18 that NRS 11.258 and NRS 11.259 only apply to cases in which an expert report is either incomplete
19 or has not yet been obtained prior to filing. In *Fierle*, plaintiff's initial complaint purported
20 malpractice allegations against a physician that, without a report, were unsupported by expert
21 conclusions. Likewise in *Otak*, the general contractor's complaint alleged negligent construction
22 against a design architect, yet could not be substantiated without an expert report. However, unlike
23 the parties in *Fierle* and *Otak*, Plaintiff did in fact first retain an expert to evaluate Defendant's
24 structural engineering work of Edgewater's parking structure prior to filing an amended suit. The
25 expert concluded that Defendant was indeed negligent in designing both the original and modified
26

27
28 ³ Contrary to the filing in *Otak*, Plaintiff's proposed FAC, Expert Report and Attorney's Affidavit were on file with this Court as part of docket entry 11/07/17 *Motion to Amend Complaint*.

1 design plans of the subject parking structure. Based on these conclusions, Plaintiff had a reasonable
2 basis to amend his initial complaint and properly sought leave of court to amend to add the party.
3 Again, this presents the exact opposite situation as the cases at bar.

4 Expert-affidavit requirements are designed to ensure that parties file claims in good faith.
5 See *Borger v. Eighth Judicial Dist. Court*, 102 P.3d 600, 604 (Nev. 2004) (as applied to the
6 comparable medical malpractice statute, NRS 41A.071). When applied to these circumstances, it is
7 clear that the legislative intent behind NRS 11.256 *et seq.* is to prevent meritless claims from being
8 alleged against design professionals. These statutes do not, and should not, apply to situations in
9 which a valid expert report, previously vetted by the Court, was inadvertently omitted from a
10 subsequent filing.
11

12
13 **B. DEFENDANT FILED ITS MOTION TO DISMISS IN BAD FAITH AS A TACTIC**
14 **TO FURTHER DELAY PROCEEDINGS**

15 Defendant's Motion equates to nothing more than a baseless attempt to delay proceedings,
16 brought solely in bad faith. Although NRS 11.258 does require the concurrent filing of an affidavit
17 of merit with service of the complaint, both Plaintiff's Attorney's Affidavit and Expert Report were
18 already on file with the Court prior to the amended filing. As such, Plaintiff's unintentional filing
19 error does not negate the overall merits of the allegations against this Defendant.

20 Prior to the amended filing, Defendant was on actual and constructive notice of the
21 proceedings before this Court.⁴ As evidenced in its own motion, Defendant had apparent access to
22 the case docket in order to review filings. Remarkably, Defendant points to several recent entries in
23 the docket, beginning with the summons and complaint filed on December 28, 2017, in order to
24 demonstrate the errors in Plaintiff's amended filing. Yet if Defendant had instead directed its
25

26
27 ⁴ Prior to being named as a defendant in this litigation, Barker Drott Associates, LLC responded to Defendant
28 Edgewater Gaming, LLC's subpoena request for documents related to the structural engineering work performed on the
subject parking structure in 2015. See Ex. H, Barker Drott Associates, LLC Response to Defendant's Subpoena Duces
Tecum.

1 attention to the almost immediate previous entries, it would have seen this Court's *Order Granting*
2 *Plaintiff's Motion to Amend Complaint*, filed on the same day. Moreover, Defendant would have
3 been made aware of both the Attorney's Affidavit and Expert Report, attached as exhibits. *See Ex.*
4 *E.* Additionally, Defendant fails to acknowledge that the FAC, Expert Report and Attorney's
5 Affidavit were also filed along with the Plaintiff's Motion to Amend, seeming to intentionally
6 overlook the filing on November 7, 2017. At any time before filing its motion, Defendant could
7 have notified Plaintiff as to the clerical error. However, Defendant deliberately chose to remain
8 silent and wait until the eleventh hour to file its motion. Even after Plaintiff provided the expert
9 report and requested a stipulation to amend the filing to include the report, Defendant expressly
10 refused.
11

12 Defendant's Motion is merely a strategic ploy, filed in a desperate attempt to postpone
13 proceedings. As Plaintiff's Expert Report clearly describes, Defendant's actions in providing
14 structural engineering services and plans for Edgewater's parking structure were negligent and well-
15 below professional standards. This motion is nothing more than a calculated effort to cause
16 additional expense, delay and waste of judicial resources. Granting Defendant's Motion would
17 inherently turn NRCP 12(b)(5) and NRS 11.256 *et seq.* into devices for delay, rather than as means
18 for relief against truly meritless claims.
19

20
21 **C. PLAINTIFF HAS FILED A SEPARATE COMPLAINT AGAINST BARKER**
22 **DROTTAR ASSOCIATES, LLC AND WILL MOVE TO CONSOLIDATE THE**
23 **ACTIONS**

24 Pursuant to NRCP 42(a), Plaintiff has filed a separate complaint against Barker Drottat
25 Associates, LLC, individually, and will move for this Court to consolidate the action with this
26 litigation.
27

28 //

//

1 CONCLUSION

2 For the foregoing reasons, Plaintiff respectfully requests that the Court DENY Defendant's
3 Motion to dismiss Plaintiff's First Amended Complaint.

4
5 DATED this 20th day of February, 2018.

6
7 GLEN LERNER INJURY ATTORNEYS
8 NAPOLI SHKOLNIK PLLC

9 By: 

Hunter Jay Shkolnik, Esq.
Admitted Pro Hac Vice
360 Lexington Ave., 11th Floor
New York, NY 10017

11 Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a) and N.E.F.C.R. 9, I hereby certify that I am an
3 employee of GLEN LERNER INJURY ATTORNEYS, and on the 20th day of February, 2018 the
4 foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT BARKER DROTTAR**
5 **ASSOCIATES, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED**
6 **COMPLAINT** was served by electronic copy via the Eighth Judicial Court's Odyssey E-File and
7 Serve system, to the following counsel of record:

8 M. Craig Murdy, Esq.
9 Nausheen K. Peters, Esq.
10 LEWIS BRISBOIS BISGAARD & SMITH
11 6385 S. Rainbow Boulevard, Suite 600
12 Las Vegas, Nevada 89118
13 *Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC*

14 Theodore Parker III, Esq.
15 PARKER, NELSON, & ASSOCIATES, CHTD.
16 2460 Professional Court, Suite 200
17 Las Vegas, NV 89128
18 *Attorney for Defendant Gillett Construction, LLC*

19 Craig J. Mariam, Esq.
20 Robert S. Larsen, Esq.
21 Wing Yan Wong, Esq.
22 GORDON & REES, LLP
23 300 South Fourth Street, Suite 1550
24 Las Vegas, NV 89101
25 *Attorney for Defendant Aries Consultants, Inc.*

26 Christine E. Drage, Esq.
27 John T. Wendland, Esq.
28 WEIL & DRAGE, APC
2500 Anthem Village Drive
Henderson, NV 89052
Attorney for Defendant Barker Drott Associates, LLC

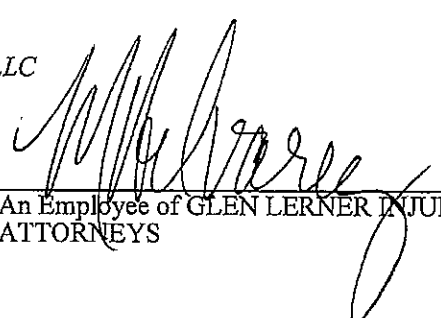

An Employee of GLEN LERNER INJURY
ATTORNEYS

EXHIBIT A

EXHIBIT A

1 **OMTD**

2 Glen J. Lerner, Esq.
3 Nevada Bar No. 4314
4 GLEN LERNER INJURY ATTORNEYS
5 4795 South Durango Drive
6 Las Vegas, Nevada 89147
7 Telephone: (702) 877-1500
8 Facsimile: (702) 877-0110
9 glerner@glenlerner.com
10 Attorneys for Plaintiff

11 Hunter Jay Shkolnik
12 *Admitted Pro Hac Vice*
13 NAPOLI SHKOLNIK, PLLC.
14 360 Lexington Ave., 11th Floor
15 New York, NY 10017
16 Telephone: (212)397-1000
17 hunter@NapoliLaw.com
18 Attorneys for Plaintiff

19 Jennifer Liakos
20 *Admitted Pro Hac Vice*
21 NAPOLI SHKOLNIK, PLLC.
22 525 South Douglas Street, Suite 260
23 El Segundo, CA 90245
24 Telephone: (310) 331-8224
25 JLiakos@NapoliLaw.com
26 Attorneys for Plaintiff

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 MARCUS A. REIF, an incompetent person by
18 and through his Conservator CINDY REIF,

19 Plaintiff,

20 v.

21 EDGEWATER GAMING, LLC, a Nevada
22 Limited Liability Company, doing business as
23 EDGEWATER HOTEL AND CASINO,
24 GILLETT CONSTRUCTION LLC, a Nevada
25 Limited Liability Company, ARIES
26 CONSULTANTS INC., a Nevada Corporation,
27 BARKER DROTTAR ASSOCIATES, LLC, a
28 Nevada Limited Liability Company, doing
business as BARKER STRUCTURAL, DOES 1
through 40, and ROE CORPORATIONS 1
through 40, inclusive,

29 Defendants.

30 AND ALL RELATED CLAIMS.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

**DECLARATION OF HUNTER
SHKOLNIK IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT BARKER DROTTAR
ASSOCIATES, LLC'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

1 **DECLARATION OF HUNTER SHKOLNIK IN SUPPORT OF PLAINTIFF'S**
2 **OPPOSITION TO DEFENDANT BARKER DROTTAR ASSOCIATES, LLC'S MOTION**
3 **TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**

4 I, Hunter Shkolnik, do certify under penalty of perjury as follows:

5 1. I am an attorney at law admitted *pro hac vice* and authorized to practice before the
6 above entitled court.

7 2. I am a partner in the law firm Napoli Shkolnik, PLLC, and the attorney for Plaintiff
8 MARCUS A. REIF, an incompetent person by and through his Conservator CINDY REIF
9 ("Plaintiff"). The matters set forth in this declaration are based on my own personal knowledge. If
10 called upon to testify, I am competent to testify to the matters set forth herein. I make this
11 declaration in support of Plaintiff's Opposition to Defendant Barker Drott Associates, LLC's
12 Motion to Dismiss Plaintiff's First Amended Complaint.

13 3. On March 14, 2017, Plaintiff filed suit in the District Court of Clark County Nevada
14 alleging tort causes of action against Defendants Edgewater Gaming, LLC, Gillett Construction,
15 LLC, Aries Consultants, Inc., DOES 1 through 40, and ROE Corporations 1 through 40. Comp. ¶¶
16 18-78.

17 4. While conducting initial discovery, Plaintiff learned that Defendant provided structural
18 engineering services and plans for the nonresidential construction performed to Defendant
19 Edgewater Gaming, LLC's parking structure in 2015. FAC ¶¶ 18-19; *see* Ex. B, Aries' Final
20 Quality Assurance Report.

21 5. Plaintiff subsequently consulted with engineering expert, Jerry L. Miles, P.E. of Bert L.
22 Howe & Associates, Inc., to evaluate whether the allegations set forth in the initial complaint had a
23 reasonable basis in law and fact. *See* Ex. C, September 28, 2017 Affidavit of F. Phillip Peche,
24 Esquire; Ex. D, Preliminary Report of Findings for Spandrel Vehicle Barrier Anchors on Parking
25 Structure of the Edgewater Hotel Casino at 2020 Casino Drive in Laughlin, Nevada.

26 6. Based upon the findings in the expert's report, Plaintiff filed a motion to amend the
27 complaint on November 7, 2017, naming Barker Drott Associates, LLC as an additional
28 defendant. Included as exhibits in the motion were the expert report compiled by Mr. Miles, as well

1 as an attorney affidavit, prepared and signed by F. Phillip Peche, Esq. of Napoli Shkolnik, PLLC.
2 Ex. E, Plaintiff's Motion to Amend Complaint on Order Shortening Time.

3 7. On November 9, 2017, Barker Drott Associates, LLC responded to Defendant
4 Edgewater Gaming, LLC's *Subpoena Duces Tecum*. See Ex. H, Barker Drott Associates, LLC
5 Response to Defendant's Subpoena Duces Tecum.

6 8. After reviewing the proposed FAC, Attorney's Affidavit and Expert Report, this Court
7 granted Plaintiff's motion on November 28, 2017. Ex. F, November 28, 2017 Hearing Transcript.

8 9. On December 28, 2017, an Order Granting Plaintiff's Motion to Amend Complaint was
9 filed, which included as exhibits the FAC, Attorney's Affidavit and Expert Report. Ex. G, Order
10 Granting Plaintiff's Motion to Amend Complaint.

11 10. Plaintiff filed the FAC on December 29, 2017. However, due to a clerical error,
12 Plaintiff inadvertently failed to include the Attorney's Affidavit and Expert Report in the amended
13 filing.

14 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
15 true and correct and was executed this 20th day of February, 2018 in El Segundo, California.

16
17 Respectfully Submitted,

18
19 By: 

Hunter Shkolnik

Admitted Pro Hac Vice

360 Lexington Ave., 11th Floor

New York, NY 10017

20
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

EXHIBIT B

EXHIBIT B

FINAL QUALITY ASSURANCE REPORT

Edgewater Hotel Casino - Garage

**2020 South Casino Drive
CCDB Permit # 15-6880 BU1
AC-2379**

**Prepared For:
Marnell Companies
222 Via Marnell Way
Las Vegas, Nevada 89119**

**Prepared By:

Aries Consultants
6635 West Sahara Street, Suite A-140
Las Vegas, Nevada 89118
Office (702) 202-2199
Facsimile (702) 202-3384**

March 23, 2015

GJL 7042

RESP.APP.0131



Aries Consultants Inc.
Material Testing & Inspection Services
ICC-CWI-ACI-NDE Consultants

Certificate of Compliance

Client: **Marnell Companies**
222 Via Marnell Way
Las Vegas, Nevada 89119

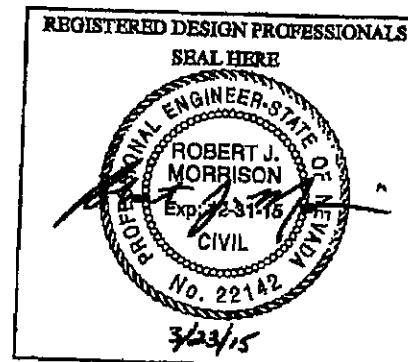
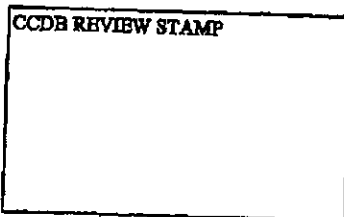
March 23, 2015

Final Report
Project Name: **Edgewater Hotel Casino - Garage**
Project Address: **2020 South Casino Drive**
Permit No.: **CCDB Permit # 15-6880 BU1**
Project No.: **AC-2379**

Aries Consultants performed and completed the special inspection services for the Edgewater Hotel Casino - Garage project and is in compliance with the Clark County Department of Building approved construction documents, and the quality assurance agency special inspection agreement. Aries Consultants performed the following Special Inspection Item(s): **"S & X"**

Only CCDB approved special inspectors were utilized to perform those specific inspections as required by the Quality Assurance Agency Special Inspection Agreement. Any items that were found to be in noncompliance with the approved construction documents were repaired or replaced, and re-inspected for acceptance.

Attached for your review are the daily inspection reports, testing results, and other applicable reports.



6635 West Badura Street, Suite A-140 | Las Vegas Nevada 89118
Office (702) 202-2199 | Facsimile (702) 202-3384

GJL 7043

RESP.APP.0132

Table Of Contents

| | |
|---|---------------------|
| Permit & Quality Control Agreement..... | Section A |
| Non-Compliance Reports And Report Of Corrections..... | Section NCR & ROC's |
| Concrete Placement..... | Section C-C |
| Concrete Reinforcing Steel..... | Section C-R |
| Structural Welding..... | Section S-W |
| Structural Steel..... | Section S-S |
| Special Cases Construction..... | Section X |

SECTION A

**Permit
QAA Agreement
Clark County Approved Inspector List
CCDDS Project Start Up Letter**



BUILDING DEPARTMENT
4701 West Russell Road • Las Vegas, NV 89118 • (702) 466-2000

PERMIT

PERMIT NUMBER: 15-6885 BUI PHONE SYSTEM NUMBER: 16338764 ISSUE DATE: 2/26/18
PROJECT NAME: EDGEWATER HOTEL CASINO SUBDIVISION:

PARCEL NO: 264-13-601-007 RANGE-TOWNSHIP-SECTION: 56-32-13

SITE ADDRESS: 2020 S CARMEL DR
TENANT NAME: EDGEWATER CASINO TENANT NO:

PROPERTY OWNER: EDGEWATER CASINO, L.L.C.
CONTRACTOR: GILLIS CONSTRUCTION LLC

PERMIT: BUILDING CONSTRUCTION
PARKING: 66112
COMMERCIAL: 66112
STRUCTURAL: 66112
PARKING GARAGE: 66112
UNITS/HOUSES: 66112
OCCUPANCY: 66112

FEE SUMMARY
PERMIT FEE: 42.47
DRAWING PC FEE: 42.47
TOTAL: 84.94
CHECK: 10850

CONDITIONS OF PERMIT

This permit is issued to the Permittee subject to the following conditions:
1. By accepting this Permit, I, the Permittee, agree to abide by the provisions of the Nevada Building Code and the Clark County Code; and
2. I agree to call 482-3000 for any other inspections on each construction phase completed.

LICENSED CONTRACTOR DECLARATION

I hereby affirm that I am licensed pursuant to the provisions of NRS 624.283.

OWNER-BUILDER DECLARATION

I am the owner of the real property upon which I will build the project described above. The project will be a residential structure which I will occupy, and it is not intended for sale or lease, or for offering for sale or lease, for at least 1 year after its completion. I intend to act as my own contractor and I have obtained my exemption pursuant to NRS 624.021(4). I understand that I may be liable to civil and criminal penalties under NRS 624.212 and NRS 624.760 if I act as a contractor in violation of NRS Chapter 624. (Note: this is in addition to the statement of intention that must be submitted on the permit application to NRS 624.773.)

2/26/18

183

Rev 10/11

GJL 7046

RESP.APP.0135



CLARK COUNTY DEPARTMENT OF BUILDING
4701 West Russell Road, Las Vegas, NV 89118 - (702) 496-3000
Commercial Building
Permit Application



ADDRESS: 204-15-001-001
JOB SITE ADDRESS: 3800 S Casino Drive, Laughlin NV 89030
TENANT NAME: Edgewater Gaming
PROJECT NAME: Facility Inspection Program Edgewater Hotel Casino - Parking Garage
SET UP BY: mem
BUILDING: _____
PROPERTY OWNER NAME: Edgewater Gaming
CONTACT NAME: Edgway Delaney
CONTACT ADDRESS: 202 VIA MARSHALL WAY
CONTACT PHONE: 702-798-3000
FAX: 702-798-3000
APPROVAL: _____
DATE: _____

Parking Garage structural enhancements. Install new pre-cast spandrel and weld into place. Drill & Epoxy braces to anchor existing spandrels to columns. Provide and install new bollards.

THIS PROPERTY IS BEING SERVICES BY: ☐ SIFTED OR ☐ SOWER
TYPE OF CONTRIBUTION: _____
NO. FTU: _____ NO. LITER: _____ NO. STORM: _____ NOA REQ'D: _____

CONTRACTOR NAME: GILBERT CONTRACTORS
ST. LAB. NO.: 6667 CLASS: A
BUSINESS LIC. N. 200057244 PHONE: 702-795-3393
MAILING ADDRESS: 980 AMERICAN PACIFIC DR #100
CITY: Henderson STATE: NV ZIP: 89014
DATE: 2-16-15
I hereby certify that the information on this application and plans is true and correct to the best of my knowledge and belief. I agree to comply with all county regulations and rules relating to building construction, and hereby authorize representatives of this county to enter upon the above described property for inspection purposes.
APPLICANT SIGNATURE: _____ DATE: _____
Comments: H-1
STANDARD PLANS: ☐ Plans Attached ☐ Plans on file ☐ No Plans
Building Material By: _____ Date: 2/13/15
Building Plans Review By: _____ Date: 2/24/15
Fees:
Permit Fee: \$ 474.73
Plan Review Fee: \$ 271.07
Building Plans Review Fee: \$ 47.47
Other Project Fees: \$
Park Fee: \$
Thoroughfare Fee: \$
Water Fee: \$
PPWA Fee: \$
SMAAP Fee: \$
Mortgage Payment Fee: \$
Title Mortgage Fee: \$
MISV Fee: \$
TOTAL: \$ 461.20
Check # 100550
Received By: _____ Date: _____




Development Services Department
County of Clark, State of Nevada

QUALITY ASSURANCE AGENCY SPECIAL INSPECTION AGREEMENT
PAC # 15-6880

On this date 2/26/2015, the Clark County Development Services Department, acting through the BUILDING OFFICIAL and EDGEWATER GAMING LLC as the OWNER or OWNER'S AGENT for the construction and/or alteration of a structure/building known as EDGEWATER GARAGE at 2020 S CASINO DR for work described as PARKING GARAGE/COMM/REMODEL with inspection or testing services being performed by Arise Consultants Inc. an approved quality assurance/testing agency in the County of Clark, State of Nevada, agree to the following:

1. That the BUILDING OFFICIAL, in accordance with Chapter 17 of the 2012 International Building Code has identified a requirement for one or more special inspection and/or testing services for that work which falls within the categories specifically identified on the attached addendum.
(Item # 8.70) Arise Consultants Inc.
2. That the OWNER or OWNER'S AGENT is responsible for obtaining all testing and/or special inspection services from a quality assurance or testing agency approved by the BUILDING OFFICIAL.
3. That all work falling within the categories identified on the attached addendum shall be inspected or tested in accordance with the provisions of Chapter 17 of the 2012 International Building Code, and that written results of these inspections or tests shall be provided to the BUILDING OFFICIAL with copies available to the permit holder upon permittee's request.
4. That the BUILDING OFFICIAL shall determine when special inspections or testing services are to commence and terminate based on the scope and program of work.
5. That no testing services will be performed by Clark County.

THIS AGREEMENT IS ACKNOWLEDGED BY THE SIGNATURE SHOWN BELOW
CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT

By: 
Christopher Casma
Director (Company Name) MARSH Companies

DEVELOPMENT SERVICES DEPARTMENT
County of Clark, State of Nevada. PAGE 19-0000

ADDENDUM TO SPECIAL INSPECTION AGREEMENT

In addition to the inspections required by Chapter 12 of the 2012 International Building Code, a special inspection must be present during construction and the following types of work, and must verify approved plans, specifications and construction of all structural members fabricated on or off site included in this work. These inspections may be made on a periodic basis to satisfy the requirements of the continuous inspection at Clark County's discretion. Agency inspections including may only be conducted by a firm approved by Clark County.

THE FINAL QAA REPORT SHALL BE SUBMITTED TO THE CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT FOR ITS ACCEPTANCE A MINIMUM OF SEVEN DAYS PRIOR TO REQUESTING A FINAL INSPECTION.

A FINAL INSPECTION REQUEST WILL NOT BE GRANTED UNTIL THE FINAL QAA REPORT HAS BEEN ACCEPTED BY THE CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT.

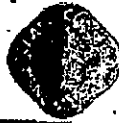
It is the Owner or their Contractor's responsibility to provide a copy of the CCDS-SD approved resolution to the approved construction documents, including any sketch, detail, engineering analysis, design, and calculations to the special inspector for the inspection services listed above.

Article Chapter 12, IBC, X

S Special construction: The special inspection for steel elements of buildings and structures shall be as required by Section 1703.2, Section 1704.10.2, Section 1704.1, and Table 1704.6.

X Special construction: Special inspections shall be required for proposed work that is, in the opinion of the building official, unusual in its nature per Section 1704.1.1. The Owner or their Contractor is responsible to provide the special inspector with the correct CCDS-SD report for the products used/installed at the time of inspection, when applicable. QAA X - Special / CCCT

APPROVED: [Signature]
SPECIAL INSPECTION



CLARK COUNTY DEPARTMENT OF BUILDING
4701 West Russell Road, Las Vegas, NV 89118 ~ (702) 455-3000
Project Start-Up Notification of Special Inspections



Pursuant to the Building Administrative Code Section 22.02.525, the approved QAAs shall notify the Building Official within 24 hours of commencement of special inspection activities on a project. Depending on the scope of the project, multiple notifications may be required, such as first notification prior to earthwork activities and second notification prior to superstructure construction.

QAA: Aries Consultants Notification Date: 2/24/15 Commenced On: 2/25/15

Project Name/Phase: Edgewater Parking Garage Permit No.: 15-6880

Project Address (cross streets): 2000 S. Casino Dr.

REQUIRED SPECIAL INSPECTION ACTIVITIES: (Mark all that apply)

- ☐ Grading (G) ☐ Drilled Piles/Caissons (R) ☐ Driven Piles (X) ☐ Concrete (C)
☐ Masonry (M) ☒ Steel (S) ☐ Smoke Control/Air Balance (K or K-TAB)
☐ Amusement/Transportation Systems (A) ☐ Wood (W) ☐ Fireproofing (F)
☐ Exterior Wall Systems (E) ☒ Special Cases (X) ☐ or Other: _____

Check all applicable boxes.

- ☐ There is no permit on site.
☐ There are no approved plans on site.
☐ NCR's are attached for your review.
☐ Unapproved fabricator.

*** Fax to Clark County Building Department at: 702-221-0630 ***

Clark County Department of Development Services-Building Division
Approved Listing of Quality Assurance Agencies, Special Inspection Personnel, and Other Organizations

Aries Consultants Inc.

| | |
|--|--|
| Organization Aries Consultants Inc. | |
| Category Prime Agency | Type Special Inspection |
| Approved to Perform N C M S R G F X N FAB-S-A FAB-S-I W B Y FAB-S- [REDACTED] C-L, M-L, F-L, G-L | Annual Renewal Group A |
| Engineering Manager Robert Morrison, P.E. | Quality Manager/Contact Person James Lopez |
| Phone 702-202-2199 | Designated NDT Level III Bill Clark |
| Fax 702-331-7159 | E-MAIL address rmorrison@ariesclv.com |
| Mailing Address 6635 West Hadden, Suite A-140 Las Vegas, NV 89118 | |

| | |
|---|---|
| Inspector/Technician Name Raskholder, Steve | Inspector/Technician Approvals ; C-SOG, F |
|---|---|

☒ TG-100 Affidavit ☒ TG Form

Carr, Michael

☒ TG-100 Affidavit ☒ TG Form

| | |
|---|---|
| Inspector/Technician Name Carr, Jason | Inspector/Technician Approvals ; C-SOG, G-B |
|---|---|

☒ TG-100 Affidavit ☒ TG Form

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|---|--|
| Inspector/Technician Name Glass, David L. | Inspector/Technician Approvals ; CC; S; M; F; UT; FAB-S-I; FAB-S-A; FAB-S-UT |
|---|--|

☒ TG-100 Affidavit ☒ TG Form

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| Inspector/Technician Name Gorski, Daniel | Inspector/Technician Approvals ; CC; F |
|--|--|

☒ TG-100 Affidavit ☒ TG Form

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|---|---|
| Inspector/Technician Name Haynes, Neil L. | Inspector/Technician Approvals ; CC; M; F |
|---|---|

☒ TG-100 Affidavit ☒ TG Form

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|---|---|
| Inspector/Technician Name Judd, Joe | Inspector/Technician Approvals ; C-SOG; G-B |
|---|---|

☒ TG-100 Affidavit ☒ TG Form

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|--|---|
| Inspector/Technician Name Levasseur, Lindsay | Inspector/Technician Approvals ; CC; S; M; F; FAB-S-I; FAB-S-A; W; B; Y |
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☒ TG-100 Affidavit ☒ TG Form

Revised: Thursday, November 06, 2014

Page 17 of 99

GJL 7051

RESP.APP.0140

Clark County Department of Development Services-Building Division

Approved Listing of Quality Assurance Agencies, Special Inspection Personnel, and Other Organizations

Aries Consultants Inc.

Lopez, James

; CC; S; M; R; FAB-S-I; FAB-S-A; FAB-S-(MT+UT); QM

☒ TG-100 Affidavit ☒ TG Form

Morrison, Robert J.

; C; R; G-B;; EM

☒ TG-100 Affidavit ☒ TG Form

Reynolds, Jerry

; C; M

☒ TG-100 Affidavit ☒ TG Form

Scott, Gene

; C-SQG; MT; W; E

☒ TG-100 Affidavit ☒ TG Form

Stark, C. John

; CC; S; M; UT

☒ TG-100 Affidavit ☒ TG Form

Torres, Harris

; CC; M; G-T

☐ TG-100 Affidavit ☒ TG Form

Organization Associated Inspection & Testing, Inc.

Category
Non-QAA Firm

Type

Annual Renewal Group
FAB

Approved to Perform
FAB-S-A FAB-S-I

Patrolman Shop Inspection/Analysis/NDT

Engineering Manager

Quality Manager/Contact Person
John S. Rice

Designated NDT Level III

Phone (951) 681-1007
Fax (951) 681-9305

Mailing : 6109 Ridgeview Ave.
Address Mira Loma

CA 91752

E-MAIL address
cw271@yahoo.com

Inspector/Technician Name

Rice, John S.

Inspector/Technician Approvals

; FAB-S-I; FAB-S-A

☒ TG-100 Affidavit ☒ TG Form

Revised Thursday, November 06, 2014

Page 18 of 99

GJL 7052

RESP.APP.0141

SECTION NCR & ROCs
Non Compliance
And
Record of Correction Reports

GJL 7053

RESP.APP.0142

Non-Compliance Report / Record of Correction Reports

(NCR/ROC x - 1)

CLARK COUNTY DEPARTMENT OF PUBLIC WORKS
Monthly Permit Renewal

PERMIT TYPE

☐ CONSTRUCTION ☐ MAINTENANCE ☐ LANDSCAPE ☐ OTHER

PROJECT INFORMATION

Project Name: SPRINGFIELD PARK
 Project Address: 1500 S. GARDEN DR.
 Project Description: REPAIR OF 6" TO 4" IN ACCUMULATED 6" TRUCK

CONTACT INFORMATION

Company Name: GENCO CONSTRUCTION
 Contact Name: JOHN
 Phone: (202) 245-3183
 Fax: (202) 417-3182

PERMIT INFORMATION

Permit Number: 15-6340
 Issue Date: 01
 Expiration Date: 01

PERMIT FEE

Permit Fee: 15.00
 Inspection Fee: 15.00
 Total Fee: 30.00

PERMITTER'S CERTIFICATION

I, the undersigned, hereby certify that the information furnished on this permit application is true and correct to the best of my knowledge and belief, and that I am a duly licensed contractor or engineer in the State of Maryland.

Signature: _____
 Title: _____

APPROVED

Signature: _____
 Title: _____

1. AT THE CONTINUATION OF THE INTERVIEW, THE REPORT IS NOT ENTERED IN CONNECTION, THE REPORT IS ONLY AND IS NOT ENTERED

ARE SPENDING ON THE
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3. IN THE STATE OF CALIFORNIA
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100. MAINTAINING, REPAIRING, OR

WE SHOWN SAT-UP PER CUMSANT ICC
INTENSUS SPECIAL INSTRUCTION.
WE, NOT CUMSANTY COMPLAINTS

COMMITMENTS SHOWN ON BALANCE SHEET.

RECEIVED, SUPPLY, INFORMATION

0857-51

25

RECORDS SET

**Clark County Department of
Building and Fire Protection**

تاریخ

renewed and Accepted
Rock Mithras
1st Building Only

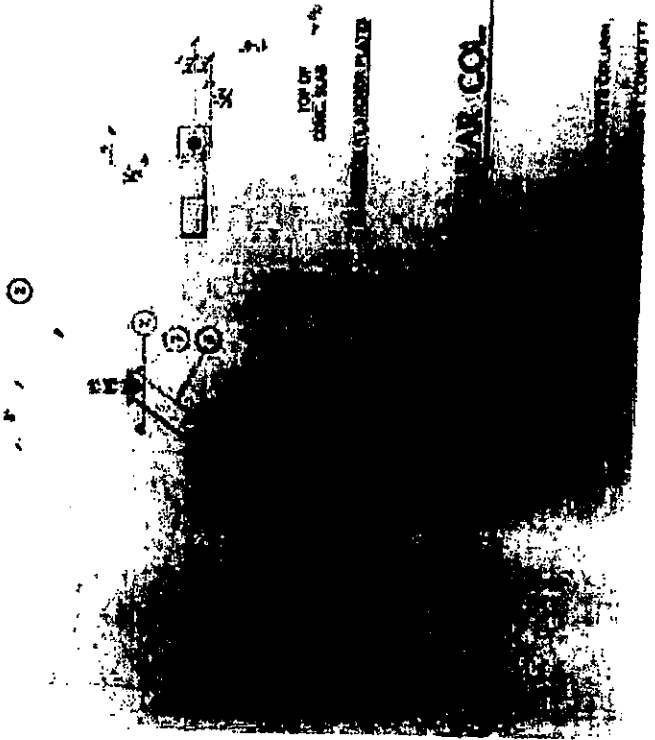
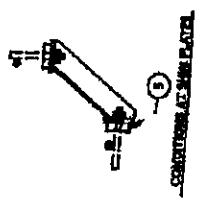
**GENERAL STRUCTURAL NOTES
AND STRUCTURAL DETAILS**

315

總 序



1. EXISTING CONCRETE SHALL BE REINFORCED WITH STEEL.
2. EXISTING PRECAST CONCRETE SHALL BE REINFORCED WITH STEEL.
3. NEW STEEL PLATE BOLDED WITH 1/2" DIA. BOLDS AND 1/2" DIA. ANCHORS. BOLDS AND ANCHORS SHALL BE WELDED TO THE EXISTING CONCRETE. SPECIAL INSPECTION IS REQUIRED FOR THE WELDS. THE WELDS SHALL BE WELDED BY A WELDER WHO IS QUALIFIED TO WELD STEEL TO CONCRETE.
4. ANCHORS SHALL BE 1/2" DIA.
5. IF REBAR IS DISCOVERED DURING THE CONSTRUCTION OF THE PLATE, THE REBAR SHALL BE LEFT IN PLACE AND THE PLATE SHALL BE WELDED TO THE REBAR.



| | | |
|--|--|--|
| NON-COMPLIANCE REPORT | ARIES CONSULTANTS INC. 6835 Badura Street, Suite A-140 Las Vegas, Nevada 89118 (702) 202-2199 • Fax (702) 202-3384 | INSPECTION DATE: <u>3/27/15</u> REPORT #: <u>NCR- X-1</u> PERMIT#: <u>15-0880</u> |
| PROJECT NAME: <u>Edgewater Parking Garage</u> CLIENT/OWNER: _____ PROJECT LOCATION: <u>0000 Casino Dr</u> CONTRACTOR: <u>Gillett</u> PROJECT NUMBER: _____ SUPERINTENDENT: <u>Brad / Ernie</u> | | |
| PLAN DATE: <u>2/28/14</u> BD APPROVAL DATE: _____ REVISED: _____ PLANS PREPARED BY: <u>Barker Drotter</u> TYPE OF INSPECTION: <u>Epoxy</u> AREA INSPECTED: <u>Spandrel Connection to Columns</u> | | |
| SEPARATE NCR SHALL BE WRITTEN FOR EACH TYPE OF NON-COMPLYING ITEM OR CONDITION | | |
| THE FOLLOWING ITEMS HAVE BEEN INSPECTED AND WERE FOUND NOT TO BE IN COMPLIANCE WITH THE APPROVED PROJECT PLANS, SPECIFICATIONS AND/OR SHOP DRAWINGS. THESE ITEMS SHOULD BE CORRECTED, THEN RE-INSPECTED AND APPROVED PRIOR TO PROCEEDING WITH THIS PHASE OF THE PROJECT. | | |
| CURRENT CONDITION: <u>Embedded depth of 6" min. was changed to 4" min. because spandrels are only 6" thick. An engineered fix is required showing this change. is OK.</u> | | |
| | | |
| REASON FOR NON-COMPLIANCE: <u>Change needs to be approved by the engineer.</u> | | |
| | | |
| ITEMS NEEDED FOR COMPLIANCE: <u>Need engineered fix</u> | | |
| | | |
| TIME IN: _____ AM / PM TIME OUT: _____ AM / PM | | PAGE <u>1</u> OF <u>1</u> |
| WEATHER CONDITIONS TEMP: _____ CLOUD COND: _____ WIND COND: _____ | | INSPECTOR'S NAME: <u>Neil Haynes</u> INSPECTOR'S SIGNATURE: <u>[Signature]</u> INSPECTOR'S CERTIFICATION #: _____ NOTIFICATION OF REPORT: _____ |

SECTION S-W

Structural Welding

Steel (S)

| | | |
|--|---|---|
| DAILY REPORT OF SPECIAL INSPECTIONS | ARIES CONSULTANTS INC. 8835 West Sahara Street, Suite A-140 Las Vegas, Nevada 89118 Ph. (702) 202-2199 • Fax (702) 202-3384 | INSPECTION DATE: <u>03/19/2015</u> REPORT #: <u>SW-1</u> PERMIT#: <u>15-6880</u> |
| PROJECT NAME: <u>EDGEWATER PARKING GARAGE</u> PROJECT LOCATION: <u>2050 CASINO DRIVE, CL NV</u> PROJECT NUMBER: _____ | | CLIENT/OWNER: _____ CONTRACTOR: <u>Collette Construction</u> SUPERINTENDENT: <u>Garie</u> |
| PLAN DATE: <u>2-5-15</u> RD APPROVAL DATE: <u>2-24-15</u> REVISED: _____ TYPE OF INSPECTION: <u>field welding</u> AREA INSPECTED: <u>REPLACEMENT STANDARD WALL SECTION FOR STAIR (EAST SIDE)</u> | | PLANS PREPARED BY: <u>BRIAN DODD</u> |
| SUMMARY OF INSPECTION: _____ <div style="text-align: right;"> <input type="checkbox"/> PROGRESS <input type="checkbox"/> COMPLETE <input type="checkbox"/> AREA SIGN OFF </div> | | |
| <p>Performed visual inspection of field welding at above noted single replacement standard Unified 12 wall embed L 4x4 x 3/8 as per detail (2) on S.I.D. to existing steel embed plate using 1/4" filler weld 4" horizontal with 1" ripples for a total of 6" total length + 4" root</p> <p>Welded process using E7018 electrodes performed by All Star Steel Certified welder</p> <p>Work looks complete and good visually acceptable per AWS standards. Inspection included verification of proper weld size, length & spacing</p> | | |
| REF DRAWINGS: <u>S.I.D.</u> | | |
| TIME IN: _____ AM / PM TIME OUT: _____ AM / PM | | PAGE _____ OF _____ |
| To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLIES <input type="checkbox"/> DOES NOT COMPLY with the <input checked="" type="checkbox"/> CCDD5 <input type="checkbox"/> JCLVBD <input type="checkbox"/> JCHBD <input type="checkbox"/> JCNLVB <input type="checkbox"/> JCCSD approved plans. Not in compliance, ref NCR | | |
| WEATHER CONDITIONS TEMP: _____ CLOUD COND: _____ WIND COND: _____ | | INSPECTOR'S NAME: <u>JAMES LOPEZ</u> INSPECTOR'S SIGNATURE: _____ INSPECTOR'S CERTIFICATION #: <u>100110416980</u> NOTIFICATION OF REPORT: <u>AWP CUBERO 5/25/15</u> |

AC Document No. 001

Approval Date: Sept. 18, 2009

Revision Date: Sept 18, 2009

GJL 7062

RESP.APP.0151

Department of Development Services Building Division

4761 W Russell Rd. • Las Vegas NV 89116
(702) 495-3000 • Fax (702) 221-6630

Ronald L. Lynn, Director/Building Official • Gregory J. Franklin, Assistant Director

WELDER QUALIFICATION RECORD (WQR) VERIFICATION

QAA Company APRIS CONSULTANTS INC Project Name Edgewood
Project Address 2026 Casino Dr Permit Number 15-68800N
City performing the welding LAUGHLIN NV All Steel

| Welder Name | Qualified Welding Process | Qualified Thickness & Position | Original Qualification Date | Update Letter Rec'd Date |
|----------------------|---------------------------|--------------------------------|-----------------------------|--------------------------|
| <u>Shane Sildn</u> | <u>Shaw D1.1</u> | <u>1/2-L</u> <u>3/8-4/8</u> | <u>10/3/11</u> | <u>1-2-1</u> |
| <u>Marco Mantner</u> | <u>Shaw D1.1</u> | <u>1/2-U</u> <u>3/8-4/8</u> | <u>1/16/13</u> | <u>1-2-15</u> |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

The inspector shall review all Welder Qualification Records (WQR) to verify that the welder is qualified to weld using the welding process qualified, the joint types, materials and material thicknesses specified in the approved project plans. The inspector shall also review welder documentation to verify that the welder's qualification is current and is in accordance with the applicable AWS welding code. The inspector certifies, by signing and dating this form, that he or she has reviewed and verified the WQR information is complete and in compliance with Clark County codes and the applicable AWS welding code.

Inspector Name Thomas Lopez Signature [Signature] Date 3-1-15

Note: This form shall be included in the QAA's final report. WQR documents are not required to be included in the QAA's final report, but are required to be maintained in the QAA's project files for future reference.

Form 229

Revised 02/2009

GJL 7063

RESP.APP.0152

ALL STAR STEEL LLC.

Welder Qualification Update Letter

The Welder noted below has not had a lapse greater than six (6) months for welding in the noted process from the original certification date. (Original certifications attached)

UPDATE: 1-2-15

PROJECT: ALL ALL STAR STEEL PROJECTS

| A / NAME | # | PROCESS, PROCEDURE, THICKNESS, ORIGINAL DATE |
|----------------|----|---|
| MARCO MARTINEZ | 3 | SHAW 36 46 UNLTD 1/16/13 NA |
| CHAZ PILLEY | 11 | SHAW 36 46 UNLTD 4-29/11 SHAW P4 UNLTD 4-19-11 SHAW PLAT 16, 18, 20ga. 03/01/11 |
| CHAZ PILLEY | 11 | SHAW 36 46 UNLTD 4-29/11 |
| SHANE SAILOR | 9 | SHAW 36 46 UNLTD 11/01/11 NA |

Print: Michael E. Greener Safety Welding O.C. CWI # 070401131

Supervisor's Name: CRAG PILLEY

Employer Representative Name and Title "Print"

Welder qualified per AWS D1.1, D1.3, D1.4 Structural Steel Welding Code-Steel

Period of Effectiveness:

States that qualification shall be considered as remaining in effect indefinitely unless,

1. The welder has not engaged in a given process, that the welder is qualified in, for a period exceeding six months.
2. There is reason to question the welder's ability.

Received By: _____

Contractor: _____

Date: _____



**IRONWORKERS WELDER
CERTIFICATION PROGRAM OF
NORTH AMERICA**

CERTIFIED WELDER
Marco Martinez

Membership #: 1428471


EFFECTIVE DATE EXPIRATION DATE
01-16-2013 01-16-2014

Process: SMAW - A1



Process: SMAW
Joint: AWS D-1.1
Spec. R AWS A5.1, AWS
Class R AWS E6010
Type: AWS A-5C
Thickness: 1"
Thickness: 1/2" in 1/2
Position: AWS A-5C
Spec: D0
Pos: 3G Up, 6G
Membership #: 1428471
FE 4
Date: 01/16/13, DLS
Status: AWS A-5C work completed 01/16/13
Virt. Prep: Vertical Up
Spec: Full PQR
TEST PERFORMED BY AN APPROVED AWS D1.1. TEST RECORD FOR THE
MEMBER OF THIS GROUP MAY BE VIEWED BY CALLING OR WRITING THE
MEMBERSHIP NATIONAL, INCLUDING IDENTIFICATION
1700 NEW YORK AVENUE, N.W. SUITE 400
WASHINGTON, D.C. 20005
PHONE: (202) 596-4000 FAX: (202) 596-4000

OKLAHOMA
DEPARTMENT OF LABOR
Welder Certification Card
 NOT VALID FOR ANY OTHER TYPE OF VESSELS
 Class: **Welding**



Mark Corbett
 Welder
 Certificate No. **31764**
 Expiration Date **03/15/2014**
 Issued: **08/31/2013**
 Not Intended for Identification Purposes

Master Card Policy No. 1040 Group "C"
Valid For: Local Community College
Code: 00000000000000000000000000000000
Phone: 00000000000000000000000000000000
Signature: 00000000000000000000000000000000
Excluded By: 00000000000000000000000000000000
Type: 00000000000000000000000000000000



(This card is valid only if the holder properly
presents a valid qualification test in accordance with
the policy rules or specifications, and is subject to
the rules and regulations of the issuer.)
By: *[Signature]* Date Valid: 06/15/2011;
AL-00000000000000000000000000000000

ALL STAR STEEL

P.O. BOX 90729
HENDERSON, NV 89009-0729

Name: Chaz Piley
Street Address: 1002 Wrenth Court
City: Henderson State: NV Zip: 89074

WELDING PERFORMANCE QUALIFICATION TEST RECORD

| | | | | | |
|----------------|-------------------------|-------------------------|-------------------------|-----------|---------------|
| Spec. Code: | <u>AWS D1.1</u> | Process: | <u>SMAW</u> | Test # | <u>ASS012</u> |
| Base Metal: | <u>A36 Plate Steel</u> | Manual / Machine: | <u>Manual</u> | Position: | |
| Material: | <u>ASTMA36</u> | Filler Metal Spec: | <u>AWS A5.1.5.5</u> | 1G: | |
| Size: | <u>5</u> | Filler Metal Class: | <u>AWS E7018</u> | 2G: | |
| Thickness: | <u>1"</u> | F #: | <u>4</u> | 3G: | <u>XX UP</u> |
| Plate: | <u>XX</u> | Current: | <u>DC+</u> | 4G: | <u>XX</u> |
| Tube: | | Polarity: | <u>Reverse</u> | 5G: | |
| Pipe: | | Amperage: | <u>90-140</u> | 6G: | |
| Backing: | <u>ASTMA36 1/4 x 1"</u> | Voltage: | <u>18-24</u> | 1F: | |
| Preheat: | <u>50 °F min.</u> | Gas: | <u>None</u> | 2F: | |
| Post Heat: | <u>None</u> | Flow Rate: | <u>None</u> | 3G: | |
| Type of Joint: | <u>AWS B-2a</u> | Quality Thickness Range | <u>1/8 to Unlimited</u> | 4G: | |

VISUAL TEST

Witnessed:

Pass: PASS
Jim Latchum
SIGNATURE OF EXAMINER

Fail: _____

Date: 04/29/2011

Remarks: Meets AWS D1.1, Table 6.1 &

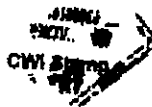
AWS D1.5 SEC 8.2.1.1

BEND OR DESTRUCTIVE TEST

| Position | Specimen # | Direction of Bend | Pass | Fail | Date | Remarks |
|----------|------------|-------------------|------|------|----------|---------|
| 3G | CP1 | SIDE | XX | | 04/29/11 | |
| 3G | CP2 | SIDE | XX | | 04/29/11 | |
| 4G | CP3 | SIDE | XX | | 04/29/11 | |
| 4G | CP4 | SIDE | XX | | 04/29/11 | |

We certify the statements in this record are true and the test welds were prepared, welded and tested in accordance with the requirements AWS D1.1, D1.5

Signature of examiner



STEEL

P.O. BOX 90729
HENDERSON, NV 89009-0729

Name: Chaz P. May
Street Address: 1002 Wreath Court
City: Henderson State: NV Zip: 89074

WELDING PERFORMANCE QUALIFICATION TEST RECORD

| | | | | | |
|----------------|---------------------------------|-------------------------|---------------------|-----------|---------------|
| Spec. Code: | <u>AWS D1.3</u> | Process: | <u>SMAW</u> | Test # | <u>ASS012</u> |
| Base Metal: | <u>Sheet Steel</u> | Manual / Machine: | <u>Manual</u> | Position: | |
| Material: | <u>ASTM A653</u> | Filler Metal Spec: | <u>AWS A5.1.5.5</u> | 1G: | <u>XX</u> |
| Size: | <u>3" x 5"</u> | Filler Metal Class: | <u>E7018</u> | 2G: | |
| Thickness: | <u>16, 18, 20 ga</u> | F #: | <u>4</u> | 3G: | |
| Plate: | <u>XX</u> | Current: | <u>DCEN</u> | 4G: | |
| Tube: | | Polarity: | <u>STRAIGHT</u> | 5G: | |
| Pipe: | | Amperage: | <u>120-140</u> | 6G: | |
| Backing: | <u>1/2" x 3" x 5" A36 Plate</u> | Voltage: | <u>18-24</u> | 1F: | |
| Preheat: | <u>None</u> | Gas: | <u>None</u> | 2F: | |
| Post Heat: | <u>None</u> | Flow Rate: | <u>None</u> | 3G: | |
| Type of Joint: | <u>Arg Spot</u> | Qualify Thickness Range | <u>16ga GALV</u> | 4G: | |

VISUAL TEST

Witnessed:

James L. Lister

SIGNATURE OF EXAMINER

Fail: _____

Date: 04/29/2011

Diameter Arc Spot 5/8"

Date 3-1-11

BEND OR DESTRUCTIVE TEST

| Position | Specimen # | Direction of Bend | Pass | Fail | Date | Remarks |
|----------|------------|-------------------|------|------|-----------------|---------|
| Flat | CP1 | Tear | XX | | <u>03/11/11</u> | |
| Flat | CP2 | Tear | XX | | <u>03/11/11</u> | |
| | | | | | | |
| | | | | | | |

We certify the parameters in this record are correct and the test welds were prepared, executed and tested in accordance with the requirements AWS D1.1, D1.3

James L. Lister

Signature of examiner

APPROVED
04/29/2011
CWL

ALL STAR STEEL

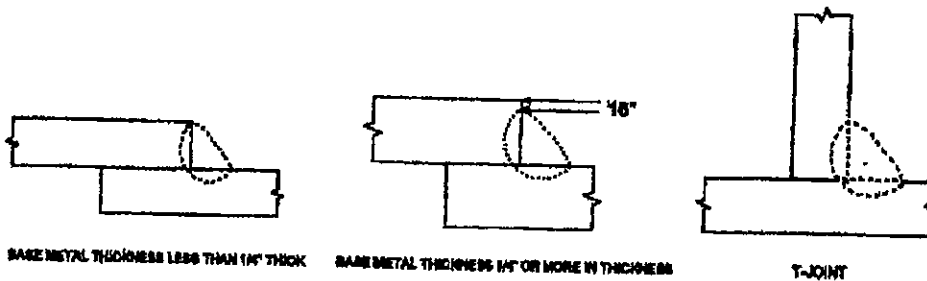
FW 1

SMAW

STANDARD WELDING PROCEDURE SPECIFICATION (WPS)

| | | | | | |
|---------------------|----------------------------|-------------------|-------------|-----------|---|
| Spec. Code: | AWS D1.1 | Process: | SMAW | Position: | |
| Base Metal: | Carbon Steel, Group I & II | Manual / Machine: | MANUAL | 1G | |
| Filler Metal Class: | AWS E7018 | Single Arc: | XX | 2G | |
| Filler Metal Spec. | AWS A5.1 | Multiple Pass: | XX | 3G | |
| Plate: | XX | F #: | 4 | 4G | |
| Tube: | XX | Current: | DCSP | 5G | |
| Pipe: | XX | Polarity: | REVERSE | 6G | |
| Root Treatment: | N/A | Amperage: | ** | 1F | X |
| Material: | Carbon Steel, Group I & II | Voltage: | ** | 2F | X |
| Preheat: | Section 5.5 Table 3.2 | Travel speed: | ** | 3F | X |
| Post Heat: | Section 5.5 | Gas: | N/A | 4F | X |
| Type of Joint: | Fillet Weld Lap / T-Joint | Thickness Range: | 1/8" - UNLT | | |

** Within the range of recommended operation by the filler metal manufacturer. See Typical Operating Procedures Chart.



| Notes | Welding Pos. Allowed | MINIMUM FILLET WELD SIZES | | | | Notes | |
|--|-------------------------|---|--|---|----------|-----------|----------|
| | All | BASE METAL THICKNESS (T) | | MINIMUM SIZE OF FILLET WELD | | | |
| | | $T \leq 1/4"$ | | 1/4" | | | |
| | | $1/4" < T \leq 1/2"$ | | 3/8" | | | |
| | | $1/2" < T \leq 3/4"$ | | 1/2" | | | |
| | | $3/4" < T$ | | 5/8" | | | |
| | | MINIMUM FILLET WELD SIZES ARE IN ACCORDANCE WITH D1.1 TABLE 6.8 | | | | | |
| | | TECHNIQUE | | ** TYPICAL OPERATING PROCEDURES CHART** | | | |
| | Wave or Stringer Bead: | Either | | Classification | Diameter | Amperage | Polarity |
| | Peening: | Not required | | E 7018 | 3/32" | 70 - 110 | DCSP |
| | Initial Cleaning: | Mechanical or Chemical Joint shall be dry prior to welding. | | E 7018 | 1/8" | 80 - 130 | DCSP |
| | Interpass Cleaning: | Mechanical only. | | E 7018 | 5/32" | 120 - 180 | DCSP |
| | Backgouging: | Mechanical or Thermal as Required | | E 7018 | 3/16" | 170 - 260 | DCSP |
| | Chipping: | Mechanical or Thermal. | | The care and storage of electrodes shall be as recommended by the electrode manufacturer. | | | |
| | Single / Multiple Pass: | Either | | | | | |
| IN ACCORDANCE WITH THE REQUIREMENTS OF AWS D1.1 / D1.1M:2004 | | | | | | | |
| Prepared by: Michael E. Gossard, Welding Specialist | | | | | | | |

IN ACCORDANCE WITH THE REQUIREMENTS OF AWS D1.1 / D1.1M-2004

Prepared by: Michael E. Greener, Welding Q.C.
Signature:

Date:

GJL 7070

RESP.APP.0159

SECTION S-S
Structural Steel

Steel (S)

| | | |
|---|---|--|
| DAILY REPORT OF SPECIAL INSPECTIONS | ARIES CONSULTANTS INC. 6635 West Badura Street, Suite A-140 Las Vegas, Nevada 89118 Ph. (702) 202-2199 • Fax (702) 202-3384 | INSPECTION DATE: <u>03/02/2015</u> REPORT #: <u>SS-1</u> PERMIT #: <u>15-6880</u> |
| PROJECT NAME: <u>EDGEWATER PARKING GARAGE</u> | | CLIENT/OWNER: _____ |
| PROJECT LOCATION: <u>8080 CASINO DRIVE, CL NV</u> | | CONTRACTOR: <u>Collette Construction</u> |
| PROJECT NUMBER: _____ | | SUPERINTENDENT: <u>COLLETT</u> |
| PLAN DATE: <u>2-5-15</u> BD APPROVAL DATE: <u>2-24-15</u> REVISED: _____ | | PLANS PREPARED BY: <u>BAILER DROTMAN</u> |
| TYPE OF INSPECTION: <u>SKW + SHW WELDING</u> | | |
| AREA INSPECTED: <u>REPLACEMENT STANDARD UNIT SECTION FOR ST (East)</u> | | |
| SUMMARY OF INSPECTION: _____ <div style="text-align: right;"> <input type="checkbox"/> PROGRESS <input checked="" type="checkbox"/> COMPLETE <input type="checkbox"/> AREA SIGN OFF </div> | | |
| <p> Performed Special Inspection of SHW Welding / Fabrication at K11 Steel Shop Facility Henderson NV Identified three total L4x4x3/8x10' long with 3/4" Nelson Threaded Rods @ 3" o.c. (Spaced) 5/16" filler weld all around typical SHW process using E7018 electrodes by K11 Steel Shop </p> <p> Above work is complete and per AWS standards </p> | | |
| REF DRAWINGS: _____ | | |
| TIME IN: _____ AM / PM TIME OUT: _____ AM / PM | | PAGE _____ OF _____ |
| To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLIES <input type="checkbox"/> DOES NOT COMPLY with the <input checked="" type="checkbox"/> CCDD <input type="checkbox"/> CLVBD <input type="checkbox"/> COHBD <input type="checkbox"/> CNLVB <input type="checkbox"/> CCSD approved plans. Not in compliance, ref NC | | |
| WEATHER CONDITIONS _____ TEMP: _____ CLOUD COND: _____ WIND COND: _____ | | INSPECTOR'S NAME: <u>JAMES LOPEZ</u> INSPECTOR'S SIGNATURE: _____ INSPECTOR'S CERTIFICATION #: <u>110416985</u> NOTIFICATION OF REPORT: <u>AWP 03/02/2015</u> |

AC Document No. 001

Approval Date: Sept. 18, 2009

Revision Date: Sept 18, 2009

GJL 7073

RESP.APP.0162

811 FAX

California Steel Industries
14000 San Bernardino Ave,
Fontana, California 92335

0002/003

CERTIFIED TEST REPORT

| FORM 787 | NO. ORDER 01-2898-08 | DATE ORDERED 01/28/16 | TELEPHONE HS 251214140 1/ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--|--|-----------------------|------------|------|----|-----|------|-------------------|------|-----|-----|-------------------|-----|------|------|------|------|-------|------|--|--|---------------------------|-----------------|---|-----------------|----------------------|------------|------|---|----|---|---|----|----|----|----|----|----|---|----|----|---|---|-----------------|------|---|------|------|----|--|----|-----|------|------|------|-----|-----|-----|-----|------|------|------|------|-------|------|--|
| CURTIS STEEL CO., INC./CRM 4858 WYNN RD. LAS VEGAS NV 89102 | | CURTIS STEEL CO., INC. C/O HANSEN STEEL SERVICE CENTER 9708 S. NORWALK BLVD SANTE FE SPRINGS CA 90670 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3/8 PL 60 x 120 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ITEM NO. | WAREHOUSE STOCK | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| TYPE | H.K. BAND - DIRECT SHIP (NON SKIN PASS) - PRIME | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOTE | FOIN CONFORMANCE WITH ASTM-A36-08 CHEMICAL AND TENSILE REQUIREMENTS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| BY | MRL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DESCRIPTION | QUANTITY | NEW MARK | <p>I certify that the material described herein has been manufactured and tested in accordance with the requirements of the relevant specification, and that it meets the requirements of the specification.</p> <p><i>[Signature]</i> Chief - Laboratory Services</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <table border="1"> <thead> <tr> <th colspan="10">MECHANICAL PROPERTIES</th> <th colspan="10">CHEMICAL ANALYSIS</th> </tr> <tr> <th>STRESS UNIT TENSILE</th> <th>YIELD STRESS</th> <th>E</th> <th>WELD TENSILE</th> <th>TENSILE REDUCTION</th> <th>ELONGATION</th> <th>TEMP</th> <th>C</th> <th>Mn</th> <th>P</th> <th>S</th> <th>Si</th> <th>Co</th> <th>Ni</th> <th>Cr</th> <th>Mo</th> <th>Al</th> <th>V</th> <th>Ca</th> <th>Ti</th> <th>B</th> <th>N</th> </tr> </thead> <tbody> <tr> <td>CA4757 41125</td> <td>56-1</td> <td>B</td> <td>44.7</td> <td>66.6</td> <td>24</td> <td></td> <td>17</td> <td>.01</td> <td>.015</td> <td>.004</td> <td>.196</td> <td>.02</td> <td>.01</td> <td>.01</td> <td>.06</td> <td>.035</td> <td>.003</td> <td>.005</td> <td>.005</td> <td>.0003</td> <td>.004</td> <td></td> </tr> </tbody> </table> <p>Steel products manufactured in the U.S. from CS 1015 84 1972 as "domestic and product" and "U.S. made and products" under the Buy American and Trade Agreement Act.</p> <p style="text-align: center;">TEST REPORT APPROVED <i>[Signature]</i></p> | | | | MECHANICAL PROPERTIES | | | | | | | | | | CHEMICAL ANALYSIS | | | | | | | | | | STRESS UNIT TENSILE | YIELD STRESS | E | WELD TENSILE | TENSILE REDUCTION | ELONGATION | TEMP | C | Mn | P | S | Si | Co | Ni | Cr | Mo | Al | V | Ca | Ti | B | N | CA4757 41125 | 56-1 | B | 44.7 | 66.6 | 24 | | 17 | .01 | .015 | .004 | .196 | .02 | .01 | .01 | .06 | .035 | .003 | .005 | .005 | .0003 | .004 | |
| MECHANICAL PROPERTIES | | | | | | | | | | CHEMICAL ANALYSIS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| STRESS UNIT TENSILE | YIELD STRESS | E | WELD TENSILE | TENSILE REDUCTION | ELONGATION | TEMP | C | Mn | P | S | Si | Co | Ni | Cr | Mo | Al | V | Ca | Ti | B | N | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CA4757 41125 | 56-1 | B | 44.7 | 66.6 | 24 | | 17 | .01 | .015 | .004 | .196 | .02 | .01 | .01 | .06 | .035 | .003 | .005 | .005 | .0003 | .004 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

GJL 7074

RESP.APP.0163

● 07 08 09

~~Confidential or Compromised~~

DATE: 10-10-68
PAGE: 1
TO: DIRECTOR, FBI
FROM: SAC, NEW YORK
SUBJECT: [REDACTED]

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主編：張其成

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Asst. Dir. of the FBI, Wash., D.C.

Confidential

SECTION X
Special Cases

Special Cases (X)

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GJL 7077

RESP.APP.0166

Use of this form serves as a Quality Assurance Agency Special Inspection Agreement between Building Official, Owner and Quality Assurance Agency for the purposes of special inspection per Section 22.02.515 of the Building Administrative Code of Clark County.

Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 458-3000 • Fax (702) 221-0830

Ronald L. Lynn, Director/Building Official

| | |
|-----------------|---------|
| Report No. | X-5 |
| Page | 1 of 1 |
| Inspection Date | 3/19/15 |
| Permit No. | 15-6880 |

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

| | | | | | |
|---------------------------|--------------------------|--------------|--|--------|--|
| Project Address: | 2020 S. Casino Dr. | Lot: | | Block: | |
| Development Name: | Edgewater Parking Garage | | | | |
| Quality Assurance Agency: | Aries | Owner/Agent: | | | |
| Owner/Agent Signature: | | | | | |
| CCBD Inspector Initials: | | | | | |
| | | | | Date: | |
| | | | | Date: | |

1ST INSTALLATION INSPECTION SUMMARY

| | | | |
|--------------------------------|------------------|---|----------------------|
| CCODE-BD Plan Approval Date: | 2/24/15 | Quantity of Rods/Bolts Installed: | 4 |
| CCODE-BD Plan Sheet & Detail | 51.0/1 | Hole Depth & Diameter: | 4" x 1" |
| Adhesive Product Name: | Simpson Set XP | Anchor Diameter, Type & Length: | 3/4" All Thread, 10" |
| Adhesive Expiration Date: | 07/2016 | Anchor Embedment Depth: | 4" min. |
| Evaluation Report No. & Date: | ESR-2508 | Anchor Spacing | N/A |
| Concrete Type and Strength | Spandrel & Walls | Anchor Edge Distance | N/A |
| Concrete Thickness & Temp (°F) | 6" thk. | Time of Installation & Cure, full (time till full cure) | Cure |
| Hole Cleaning Procedure | Brushed & Blown | | |

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

| |
|--|
| Spandrel Connection to Columns Level 5 replacement |
| Plans by Barker Drotter dated 2/23/15 |

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturer's installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

| | |
|--------------------|---------|
| Neil Haynes | |
| <i>[Signature]</i> | 3/19/15 |

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Return completed certification to Clark County Department of
Development Services - Building Division
Form 611a
ER 03/2010

DISTRIBUTION:

1. JOB FILE

2. OWNER

3. CLARK COUNTY

4. QUALITY ASSURANCE

GJL 7078

RESP.APP.0167

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Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 466-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official

| | |
|-----------------|---------|
| Report No. | X-4 |
| Page | 1 of 1 |
| Inspection Date | 3/4/15 |
| Permit No. | 15-6880 |

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

| | | | |
|---------------------------|--------------------------|--------------|--------|
| Project Address: | 2000 S. Casino Dr. | Lot: | Block: |
| Development Name: | Edgewater Parking Garage | | |
| Quality Assurance Agency: | Arles | Owner/Agent: | |
| Owner/Agent Signature: | | | |
| CCRD Inspector Initials | | Date: | |

1ST INSTALLATION INSPECTION SUMMARY

| | | | |
|--------------------------------|------------------|---|----------------------|
| CCDDM-SD Plan Approval Date: | 3/24/15 | Quantity of Rods/Bolts Installed: | 290 |
| CCDDM-SD Plan Sheet & Detail | 51.0/1 | Hole Depth & Diameter: | 4" x 1" |
| Adhesive Product Name: | Simpson Set xp | Anchor Diameter, Type & Length: | 3/4" All Thread, 10" |
| Adhesive Expiration Date: | 07/2016 | Anchor Embedment Depth: | 4" min. |
| Evaluation Report No. & Date: | ESR-2508 | Anchor Spacing | N/A |
| Concrete Type and Strength | Spandrel & Walls | Anchor Edge Distance | N/A |
| Concrete Thickness & Temp (°F) | 6" thk. | Time of Installation & cure, full (time till full cure) | Cure |
| Hole Cleaning Procedure | Brushed & Blown | | |

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

| |
|--|
| Spandrel Connection to Columns Levels 2 & 3 & 1A |
| Plans by Barker Drøttar dated 2/23/15 |

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturer's installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

| | |
|-------------|--------|
| Neil Haynes | 3/4/15 |
|-------------|--------|

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Development Services - Building Division
Form 811A
EPL 03/28/10

DISTRIBUTION:

1. JOB FILE

2. OWNER

3. CLARK COUNTY

4. QUALITY MANAGER

GJL 7079

RESP.APP.0168

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Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 435-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official

| | |
|-----------------|---------|
| Report No. | X-3 |
| Page | 1 of 1 |
| Inspection Date | 3/3/15 |
| Permit No. | 15-6880 |

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

| | | | | | |
|---------------------------|--------------------------|--------------|--|--------|--|
| Project Address: | 2020 S. Casino Dr. | Lot: | | Block: | |
| Development Name: | Edgewater Parking Garage | | | | |
| Quality Assurance Agency: | Aries | Owner/Agent: | | | |
| Owner/Agent Signature: | | | | | |
| CCBD Inspector Initials | | | | | |
| | | | | Date: | |
| | | | | Date: | |

1ST INSTALLATION INSPECTION SUMMARY

| | | | |
|--------------------------------|------------------|--|----------------------|
| CCDD-SD Plan Approval Date: | 2/24/15 | Quantity of Rod/Bolts Installed: | 280 |
| CCDD-SD Plan Sheet & Detail | 51.0/1 | Hole Depth & Diameter: | 4" x 1" |
| Adhesive Product Name: | Simpson Set XP | Anchor Diameter, Type & Length: | 3/4" All Thread, 10' |
| Adhesive Expiration Date: | 07/2016 | Anchor Embedment Depth: | 4" min. |
| Evaluation Report No. & Date: | ESR-2508 | Anchor Spacing | N/A |
| Concrete Type and Strength | Walls | Anchor Edge Distance | N/A |
| Concrete Thickness & Temp (°F) | Spandrel Columns | Time of Installation & Cure (full time 6H full cure) | 6am |
| Hole Cleaning Procedure | 6" thk. | | |
| | Brushed & Blown | | |

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

| |
|---|
| Spandrel Connection to Columns Levels 3 & 4 |
| Plans by Barker Drotter dated 2/23/15 |

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturer's installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

| | |
|--------------------|--------|
| Neil Haynes | |
| <i>[Signature]</i> | 3/3/15 |

ENGINEER STAMP HERE

Return completed certification to Clark County Department of
Development Services - Building Division
Form 011a
EN. 02/20/10

DISTRIBUTION:

1. JOB FILE

2. OWNER

3. CLARK COUNTY

4. QUALITY MANAGER

GJL 7080

RESP.APP.0169

Use of this form serves as a Quality Assurance Agency Special Inspection Agreement between Building Official, Owner and Quality Assurance Agency for the purposes of special inspection per Section 22.02.515 of the Building Administrative Code of Clark County.

Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 458-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official

| | |
|-----------------|---------|
| Report No. | X-2 |
| Page | 1 of 1 |
| Inspection Date | 2/27/15 |
| Permit No. | 15-6880 |

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

| | | | | | | | |
|---------------------------|--------------------------|--|--|--------------|--|--------|--|
| Project Address: | 2020 S. Casino Dr. | | | Lot: | | Block: | |
| Development Name: | Edgewater Parking Garage | | | | | | |
| Quality Assurance Agency: | Artes | | | Owner/Agent: | | | |
| Owner/Agent Signature: | | | | Owner/Agent: | | | |
| CCBD Inspector Initials | | | | Date: | | | |

1ST INSTALLATION INSPECTION SUMMARY

| | | | |
|--------------------------------|------------------|---|----------------------|
| CCDD-BD Plan Approval Date: | 2/24/15 | Quantity of Rods/Bolts Installed: | 224 |
| CCDD-BD Plan Sheet & Detail | 51.0/1 | Hole Depth & Diameter: | 4" x 1" |
| Adhesive Product Name: | Simpson Set XP | Anchor Diameter, Type & Length: | 3/4" All Thread, 10" |
| Adhesive Expiration Date: | 07/2016 | Anchor Embedment Depth: | 4" min. |
| Evaluation Report No. & Date: | ESR-2508 | Anchor Spacing | N/A |
| Concrete Type and Strength | Spandrel Columns | Anchor Edge Distance | N/A |
| Concrete Thickness & Temp (°F) | 6" thk. | Time of Installation & Cure, full (time till full cure) | Cure |
| Hole Cleaning Procedure | Brushed & Blown | | |

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

| |
|---|
| Spandrel Connection to Columns Levels 4 & 5 |
| Plans by Barker Dwyer dated 2/23/15 |

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturer's installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

| | |
|--------------------|---------|
| Neil Haynes | |
| <i>[Signature]</i> | 2/27/15 |

ENGINEER STAMP HERE

Return completed certification to Clark County Department of
Development Services - Building Division
Form 811d
ENL 02/28/10

DISTRIBUTION:

1. JOB FILE

2. OWNER

3. CLARK COUNTY

4. QUALITY INSPECTOR

GJL 7081

RESP.APP.0170

Use of this form serves as a Quality Assurance Agency Special Inspection Agreement between Building Official, Owner and Quality Assurance Agency for the purposes of special inspection per Section 22.02.515 of the Building Administrative Code of Clark County.

Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 466-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official

| | |
|-----------------|---------|
| Report No. | X-1 |
| Page | 1 of 1 |
| Inspection Date | 2/26/15 |
| Permit No. | 15-6880 |

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

| | | | |
|---------------------------|--------------------------|--------------|--------|
| Project Address: | 2000 S. Casino Dr. | Lot: | Block: |
| Development Name: | Edgewater Parking Garage | | |
| Quality Assurance Agency: | Aries | Owner/Agent: | |
| Owner/Agent Signature: | | Date: | |
| CCBD Inspector Initials: | | Date: | |

1ST INSTALLATION INSPECTION SUMMARY

| INSPECTION ITEM | RESULTS | INSPECTION ITEM | RESULTS |
|--------------------------------|-----------------|---|-----------------------|
| CCDDS-BD Plan Approval Date: | 2/24/15 | Quantity of Rods/Bolts Installed: | 210 |
| CCDDS-BD Plan Sheet & Detail | S1.0 / 1 | Hole Depth & Diameter: | 4" x 1" |
| Adhesive Product Name: | Simpson Set XP | Anchor Diameter, Type & Length: | 3/4", All thread, 10" |
| Adhesive Expiration Date: | 07/2016 | Anchor Embedment Depth: | 4" min |
| Evaluation Report No. & Date: | ESR-2508 | Anchor Spacing | N/A |
| Concrete Type and Strength | Spandrel Walls | Anchor Edge Distance | N/A |
| Concrete Thickness & Temp (°F) | 6" thk. | Time of Installation & Cure, full (time till full cure) | Good |
| Hole Cleaning Procedure | Brushed & Blown | | |

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

| |
|---|
| Spandrel Connection to Columns Levels G & 5 |
| Plans by Barker Drotter dated 2/23/15 |

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

| | |
|-------------|---------|
| Neil Haunes | 2/26/15 |
|-------------|---------|

ENGINEER STAMP HERE

Return completed certification to Clark County Department of

Development Services - Building Division

Form 811a
Eff. 03/29/10

DISTRIBUTION:

1. JOB FILE

2. OWNER

3. CLARK COUNTY

4. QUALITY MANAGER

GJL 7082

RESP.APP.0171

SECTION C-C

**Reinforced Concrete
Cylinders and Placement**

Concrete (C)

| | | | | |
|---|--|---|--|---|
| DAILY REPORT OF SPECIAL INSPECTIONS | | ARIES CONSULTANTS INC. 6635 West Sahara Street, Suite A-140 Las Vegas, Nevada 89114 ph. (702) 263-2119 • Fax (702) 263-2664 | | Inspection Date: <u>3/20/1</u> Report # <u>CC-2</u> Permit # <u>15-6880</u> |
| PROJECT NAME: <u>Edgewater Garage</u> PROJECT LOCATION: <u>2080 Casino Dr</u> PROJECT NUMBER: _____ | | CLIENT/OWNER: _____ CONTRACTOR: <u>Gillett</u> SUPERINTENDANT: <u>Brad</u> PLANS PREPARED BY: <u>Barker Dr</u> | | |
| PLAN DATE: _____ TYPE OF INSPECTION: _____ AREA INSPECTED: <u>Concrete</u> INSPECTION STATUS: <u>Replacement Spindrel</u> | | R/D APPROVAL DATE: _____ R/V/NO: _____ <input type="checkbox"/> IN PROGRESS <input type="checkbox"/> COMPLETE <input checked="" type="checkbox"/> AREA SHUT OFF OBSERVATIONS: | | |
| COMPLETION LETTER | | | | |
| Based on site walk through, review of CCDB approved plans, and review of QAA special inspection reports, the work and third party special inspections within the boundaries of the above referenced are complete. | | | | |
| To the best of my knowledge, the requirements of the QAA Special Inspection Agreement have been fulfilled for item: <u>C Concrete</u> | | | | |
| Referenced reports: <u>C-1</u> | | | | |
| Reference NCR/ROC reports: <u>N/A</u> | | | | |
| | | | | |
| To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLES <input type="checkbox"/> DOES NOT COMPLY WITH THE approved plans. Not in compliance, ref NCR. | | | | |
| WEATHER CONDITIONS | | QUALIFIED PERSONNEL | | |
| | | INSPECTOR'S NAME: <u>Neil Haynes</u> INSPECTOR'S SIGNATURE: <u>Neil Haynes</u> INSPECTOR'S CERTIFICATION #: _____ NOTIFICATION OF REPORT: _____ | | |

GJL 7084

RESP.APP.0173

| | | | | |
|---|--|--|--|--|
| DAILY REPORT OF SPECIAL INSPECTIONS | ARIES CONSULTANTS INC. 6635 West Badura Street, Suite A-140 Las Vegas, Nevada 89118 Ph. (702) 202-2199 • Fax (702) 202-3384 | INSPECTION DATE: <u>9/3/15</u> REPORT #: <u>CC-1</u> PERMIT#: <u>15-6880</u> | | |
| PROJECT NAME: <u>Edgewater Parking Garage</u> CLIENT/OWNER: _____ PROJECT LOCATION: <u>6020 Casino Dr</u> CONTRACTOR: <u>Gillett</u> PROJECT NUMBER: _____ SUPERINTENDENT: <u>Brad</u> | | | | |
| PLAN DATE: <u>9/3/15</u> BD APPROVAL DATE: <u>9/4/15</u> REVISED: _____ PLANS PREPARED BY: <u>Barker Dattar</u> TYPE OF INSPECTION: <u>Concrete Placement</u> AREA INSPECTED: <u>Replacement Spandrel Wall for 5th Level East side</u> | | | | |
| SUMMARY OF INSPECTION: _____ <div style="text-align: right;"> <input type="checkbox"/> PROGRESS <input type="checkbox"/> COMPLETE <input type="checkbox"/> AREA SIGN OFF </div> | | | | |
| <p>Observed placement of approx. 3 yds of S&S Concrete & Materials LLC mix # 4502CL (4500psi, 3/4" agg.) concrete placed by direct discharge and mechanically consolidated by vibration @ location noted above.</p> <p>All areas were free of debris prior to concrete placement and all reinf. steel maintained proper spacing and clearances throughout pour.</p> <p>1 set of (5) 4x8 cylinders was cast for testing</p> | | | | |
| | | | | |
| REF DRAWINGS: <u>CR-1</u> | | | | |
| TIME IN: _____ AM / PM TIME OUT: _____ AM / PM | | PAGE <u>1</u> OF <u>1</u> | | |
| To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLIES <input type="checkbox"/> DOES NOT COMPLY with the <input checked="" type="checkbox"/> CCDD <input type="checkbox"/> CLVBD <input type="checkbox"/> COHBD <input type="checkbox"/> CNLVB <input type="checkbox"/> CCSD approved plans. Not in compliance, ref NCR _____ | | | | |
| <table style="width: 100%;"> <tr> <td style="width: 40%;"> WEATHER CONDITIONS TEMP: <u>55°</u> CLOUD COND: <u>Cloudy</u> WIND COND: <u>Calm</u> </td> <td style="width: 60%;"> INSPECTOR'S NAME: <u>Neil Haynes</u> INSPECTOR'S SIGNATURE: <u>Neil Haynes</u> INSPECTOR'S CERTIFICATION #: _____ NOTIFICATION OF REPORT: _____ </td> </tr> </table> | | | WEATHER CONDITIONS TEMP: <u>55°</u> CLOUD COND: <u>Cloudy</u> WIND COND: <u>Calm</u> | INSPECTOR'S NAME: <u>Neil Haynes</u> INSPECTOR'S SIGNATURE: <u>Neil Haynes</u> INSPECTOR'S CERTIFICATION #: _____ NOTIFICATION OF REPORT: _____ |
| WEATHER CONDITIONS TEMP: <u>55°</u> CLOUD COND: <u>Cloudy</u> WIND COND: <u>Calm</u> | INSPECTOR'S NAME: <u>Neil Haynes</u> INSPECTOR'S SIGNATURE: <u>Neil Haynes</u> INSPECTOR'S CERTIFICATION #: _____ NOTIFICATION OF REPORT: _____ | | | |

AC Document No. 001

Approval Date: Sept. 18, 2009

Revision Date: Sept 18, 2009

GJL 7085

RESP.APP.0174

Centurion Consultants, Inc.

6635 BADURA ST. SUITE A140
LAS VEGAS, NV 89118

PHONE: 702 280-1391
FAX: 702 280-3921

REPORT OF CONCRETE CYLINDER TEST

Project Number: 15069-13 Report Date: 3/20/15 Lab Number: 15985
Project: EDGEWATER PARKING GARAGE
Client: ARIES CONSULTANTS, INC.
Address: 6635 WEST BADURA STREET, SUITE A-140
LAS VEGAS, NEVADA 89118
Attn: JERRY REYNOLDS

FIELD TEST CONDITIONS AND RESULTS (ASTM C 31)

Sample Date: 3/3/2015 Material Supplier: S & B
Time: 10:30 AM Delivery Ticket No: 84334
Sampled By: N. HAYNES Mix I.D. No: 4502CL
Design Strength Age: 28 Days Water Added On Site, Gal: NA
Design Strength: 4500 PSI Slump, in.: 5.0 (ASTM C 143)
Air Content, %: NA (ASTM C 231)
Concrete Temp, °F: 71
Ambient Temp, °F: 55
Plastic Unit Weight, PCF: NA

Placement Description: REPLACEMENT SPANDREL

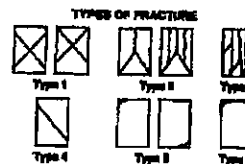
Sample Location: 5TH LEVEL WALL EAST SIDE

LABORATORY TEST RESULTS (ASTM C 39)

| Specimen | Test Date | Age | Load | Diameter | Area | Strength | Percent of Design | Type of Fracture |
|----------|-----------|-----|-------|----------|-------|----------|-------------------|------------------|
| 15985 | 3/10/2015 | 7 | 29300 | 4.00 | 12.57 | 2330 | 52% | 5 |
| 15985 | 3/17/2015 | 14 | 45700 | 4.00 | 12.57 | 3640 | 81% | 2 |
| 15985 | 3/24/2015 | 21 | 56850 | 4.00 | 12.57 | 4520 | 100% | 1 |
| 15985 | 3/31/2015 | 28 | | | | | | |
| 15985 | 3/31/2015 | 28 | | | | | | |

Remarks: PERMIT #: 15-6880

Copies to:



Reported by: SM
Steven M. Blackholder
Laboratory Manager

GJL 7086

RESP.APP.0175

SECTION C-R

Reinforced Steel in Concrete

Concrete (C)

| DAILY REPORT OF SPECIAL INSPECTIONS | | ARIES CONSULTANTS INC. 6635 West Sahara Street, Suite A-140 Las Vegas, Nevada 89118 ph. (702) 252-2150 • Fax (702) 252-2564 | | Inspection Date: <u>3/20/15</u> Report # <u>CR-2</u> Permit # <u>15-6880</u> |
|---|-----------------------------------|--|--|--|
| PROJECT NAME: <u>Edgewater Garage</u> | | CLIENT/OWNER: | | |
| PROJECT LOCATION: <u>9080 Casino Dr</u> | | CONTRACTOR: <u>Gillett</u> | | |
| PROJECT NUMBER: | | SUPERINTENDANT: <u>Brad</u> | | |
| PLAN DATE: <u>2-5-15</u> | R/D APPROVAL DATE: <u>2-24-15</u> | REVISED: _____ | | |
| TYPE OF INSPECTION: <u>Concrete Reinforcing</u> | | PLANS PREPARED BY: <u>Barker Doo</u> | | |
| AREA INSPECTED: <u>Replacement Spandrel</u> | | | | |
| INSPECTION STATUS: | | | | |
| <input type="checkbox"/> PROGRESS | | <input type="checkbox"/> COMPLETE | | <input checked="" type="checkbox"/> AREA SHUT OFF |
| OBSERVATIONS: | | | | |
| COMPLETION LETTER | | | | |
| Based on site walk through, review of CCDB approved plans, and review of QAA special inspection reports, the work and third party special inspections within the boundaries of the above referenced are complete. | | | | |
| To the best of my knowledge, the requirements of the QAA Special Inspection Agreement have been fulfilled for item: <u>"CR" Reinforcing</u> | | | | |
| Referenced reports: <u>CR-1</u> | | | | |
| Reference NCR/ROC reports: <u>N/A</u> | | | | |
| | | | | |
| To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLES <input type="checkbox"/> DOES NOT COMPLY with the approved plans. Not in compliance, ref NCR _____ | | | | |
| WEATHER CONDITIONS | | QUALIFIED PERSONNEL | | |
| | | INSPECTOR'S NAME: <u>Neil Haynes</u> | | |
| | | INSPECTOR'S SIGNATURE: <u>Neil Haynes</u> | | |
| | | INSPECTOR'S CERTIFICATION #: | | |
| | | NOTIFICATION OF REPORT: | | |

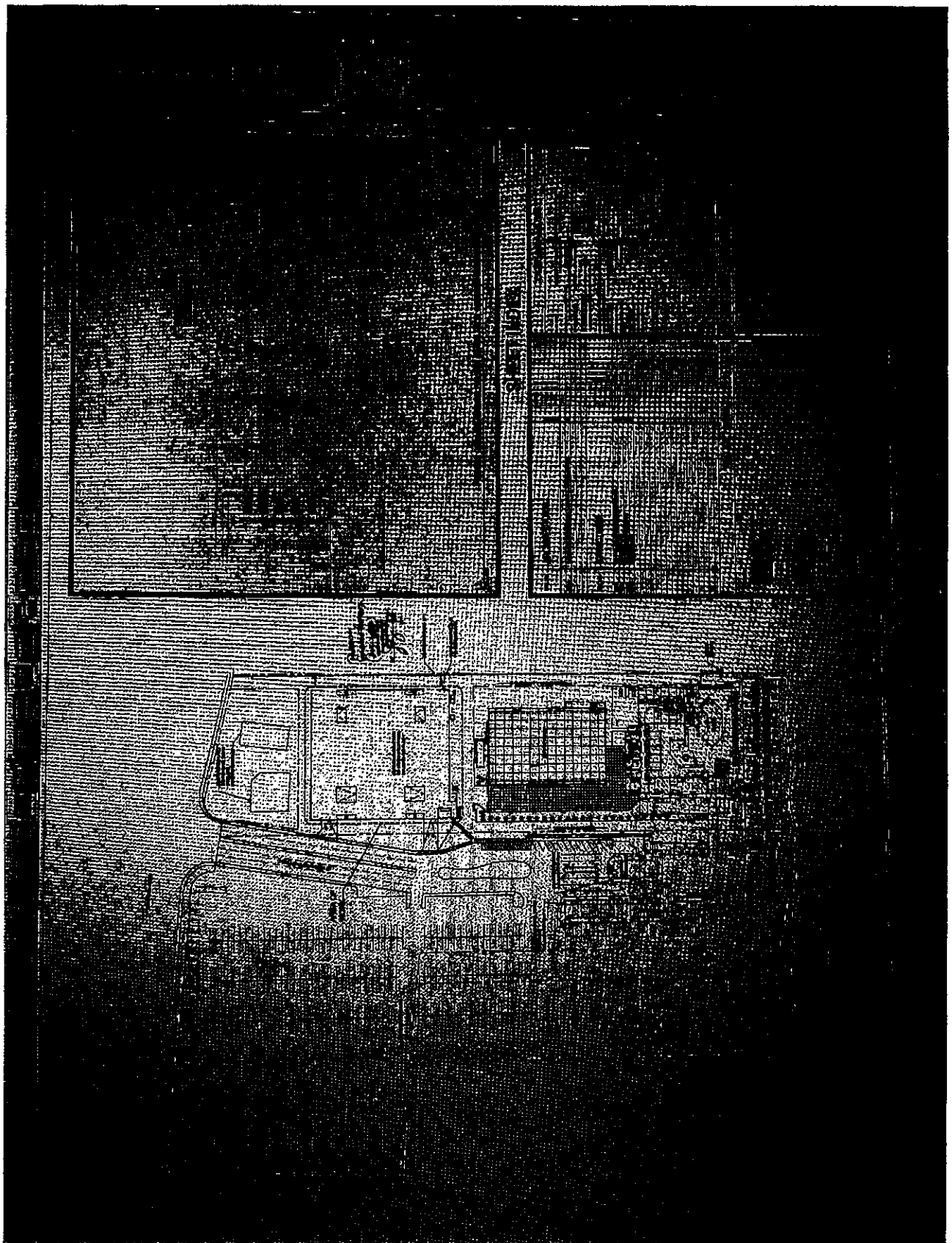
GJL 7088

RESP.APP.0177

PLAN NOTES:

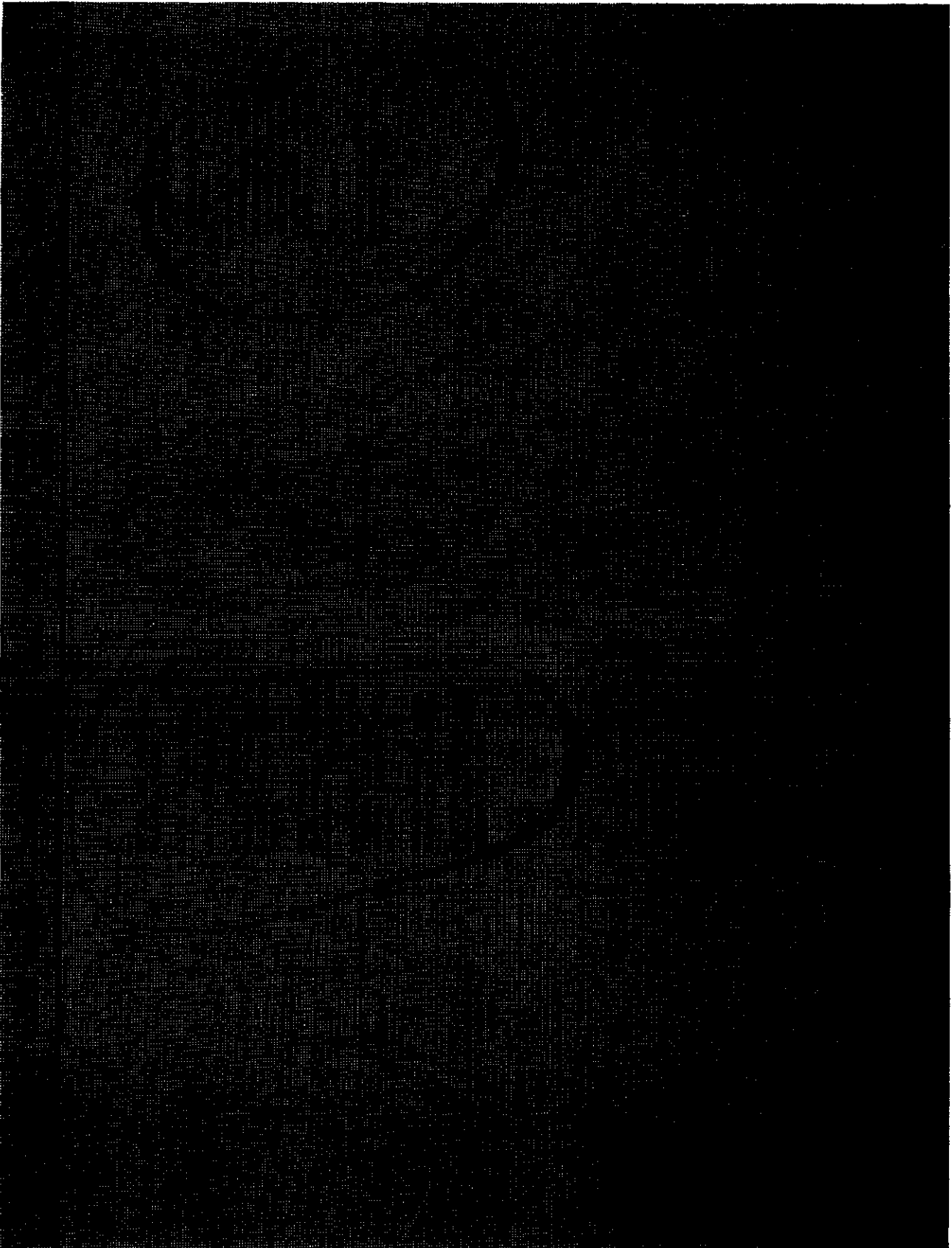
1. FIELD VERIFY ANY DIMENSIONS SHOWN.
2. CONSTRUCTION SUMMARY:
 - 2.1. REPAIR OF THE BROKEN SPANDREL IS REQUIRED AT THE 5TH LEVEL.
 - 2.2. STRENGTHENING OF THE SPANDREL CONNECTIONS TO THE COLUMNS PER DETAILS 1/S1.00 OR 2/S1.00 IS REQUIRED OF ALL SPANDRELS (EACH END OF EACH SPANDREL) AND AT EACH LEVEL. THE ONLY EXCEPTION IS THE GROUND LEVEL WHERE NO SPANDRELS OCCUR.
 - 2.3. INSTALLATION OF A PIPE BOLLARD PER DETAIL 5/S1.00 IS REQUIRED AT LEVELS 2 THROUGH 6.
 - 2.4. INSTALLATION OF A TEMPORARY BARRIER IS REQUIRED AT THE 5TH LEVEL.
 - 2.5. CUTTING OF THE SPANDREL TO SPANDREL CONNECTIONS IS REQUIRED WHERE SHOWN ALONG THE EAST SIDE OF THE 2ND LEVEL.

INSPECTION IS REQUIRED DURING INSTALLATION.



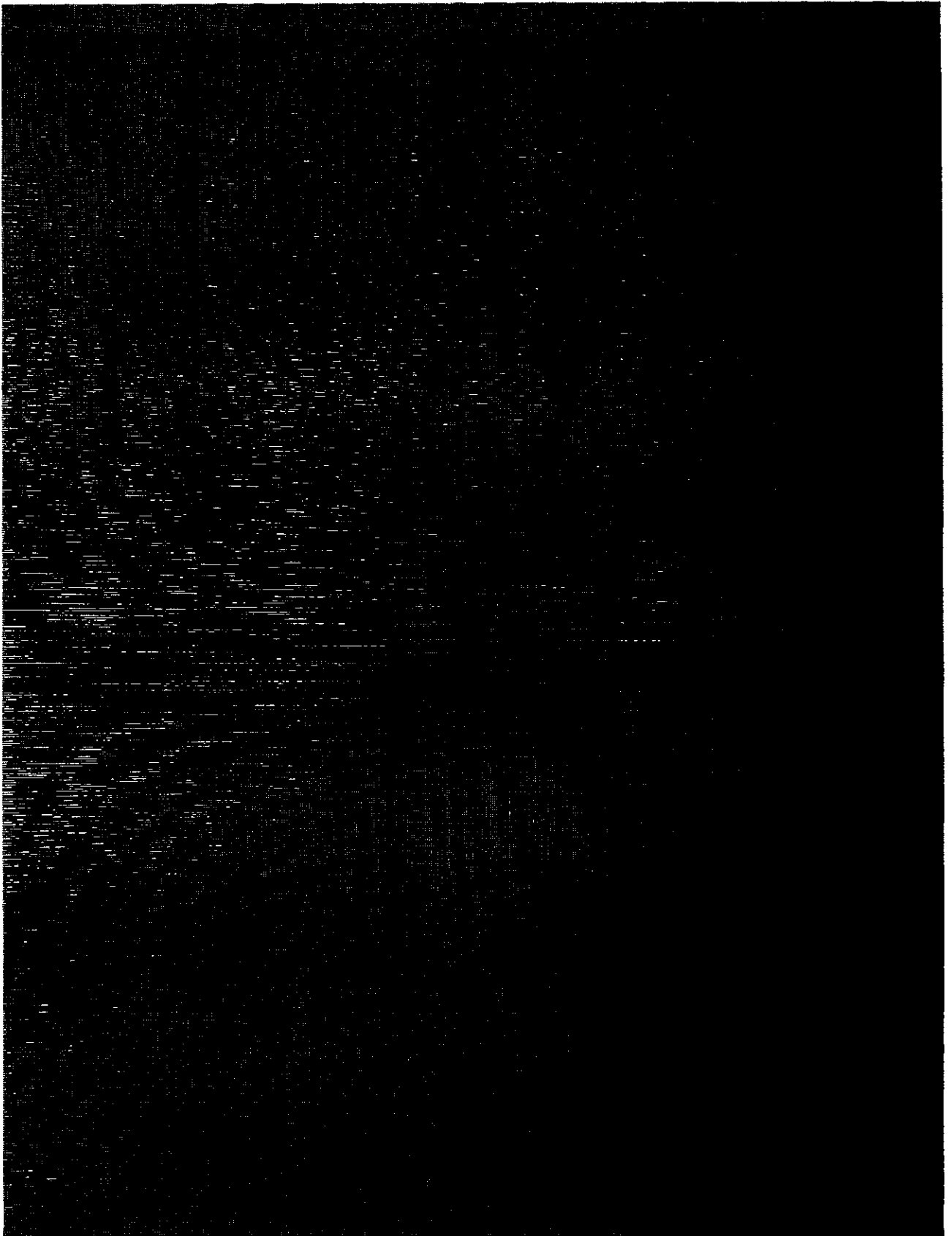
GJL 7092

RESP.APP.0181



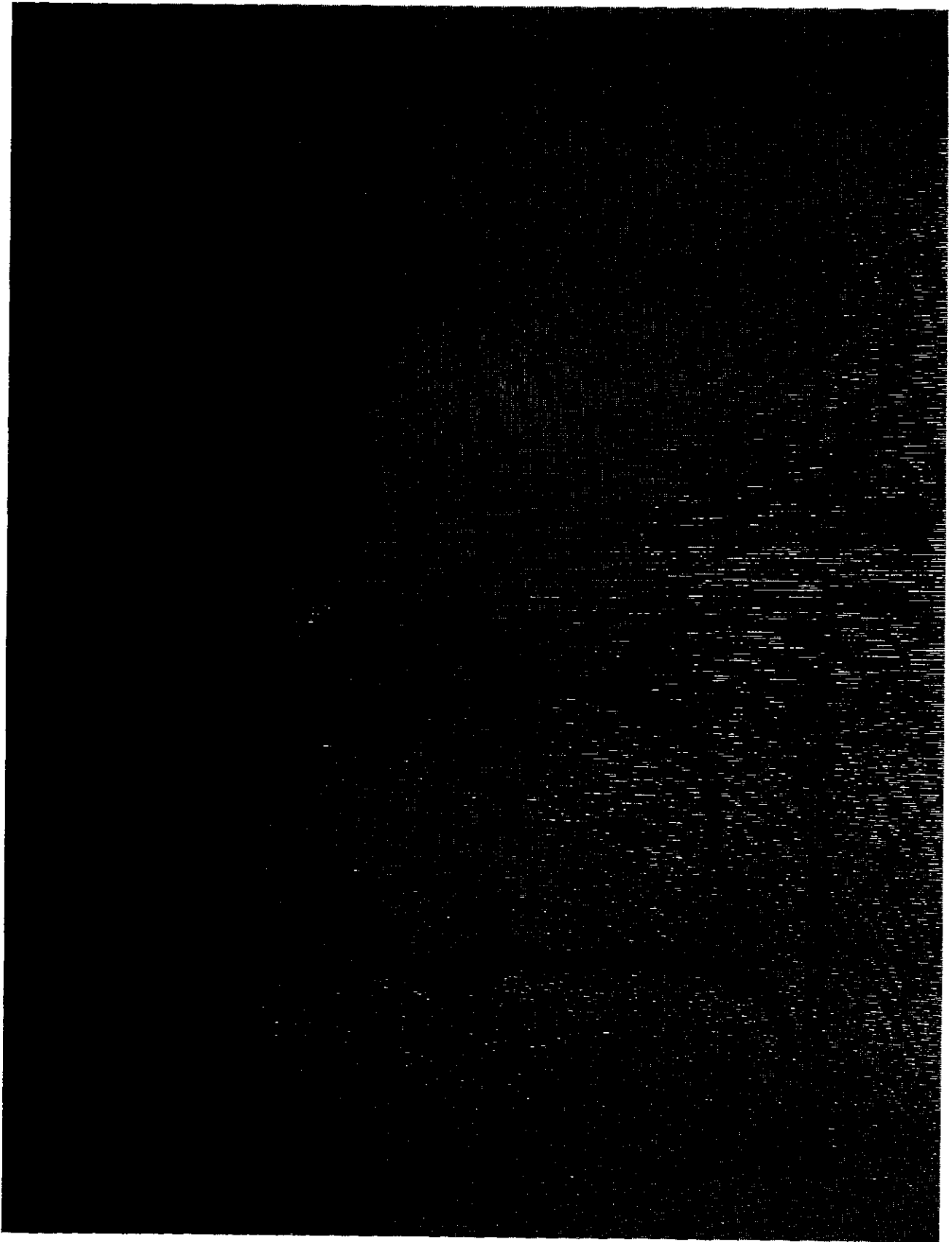
GJL 7093

RESP.APP.0182



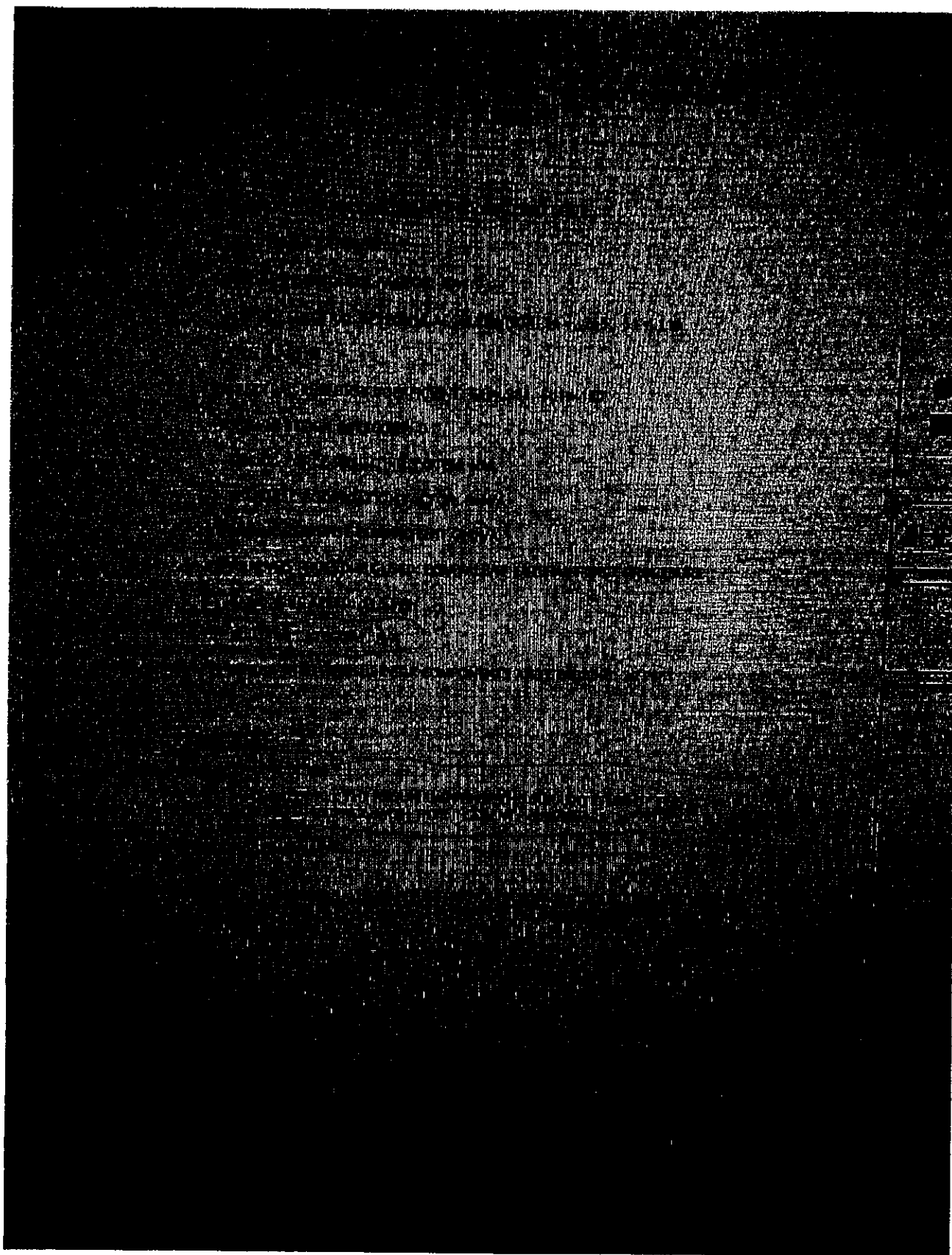
GJL 7094

RESP.APP.0183



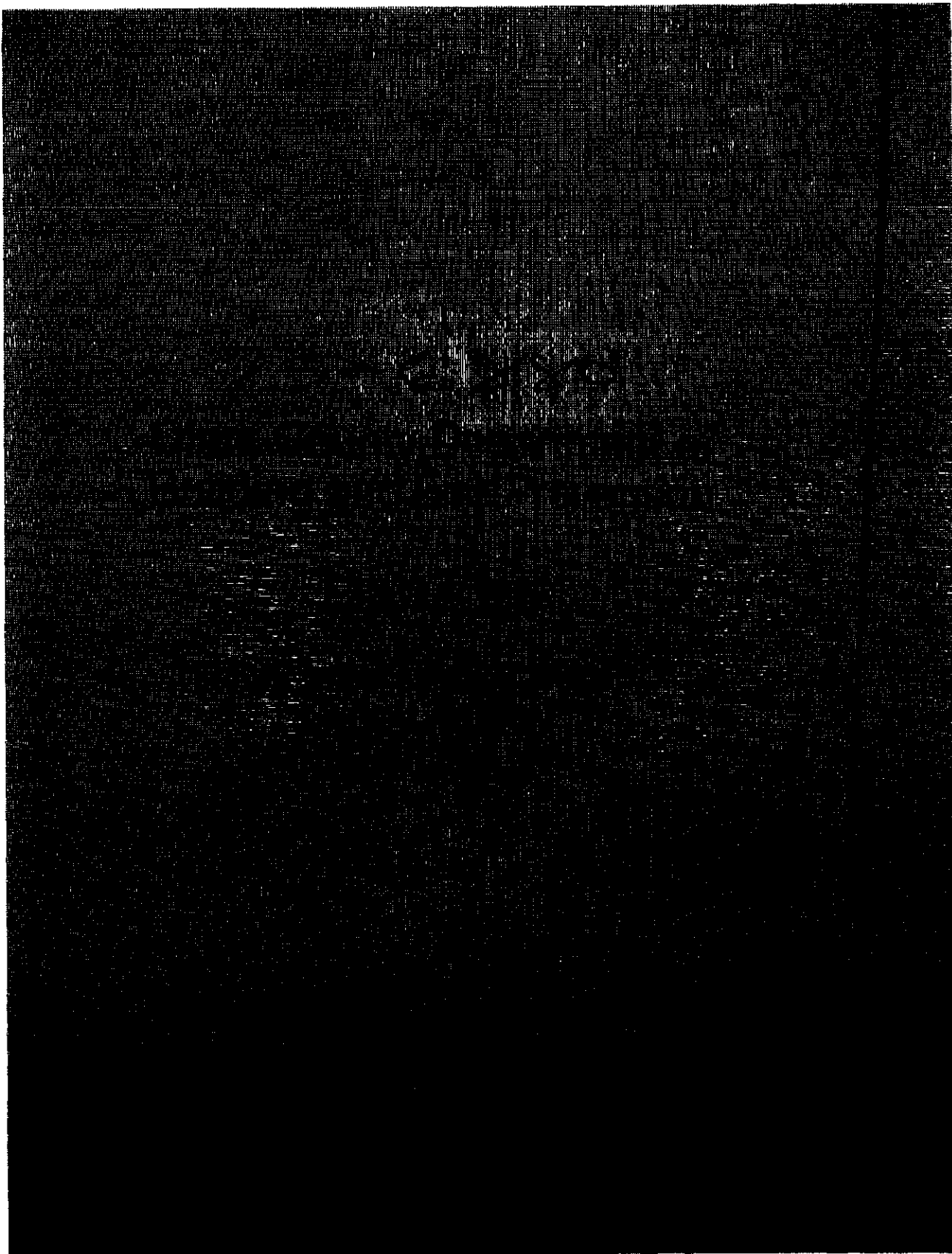
GJL 7095

RESP.APP.0184



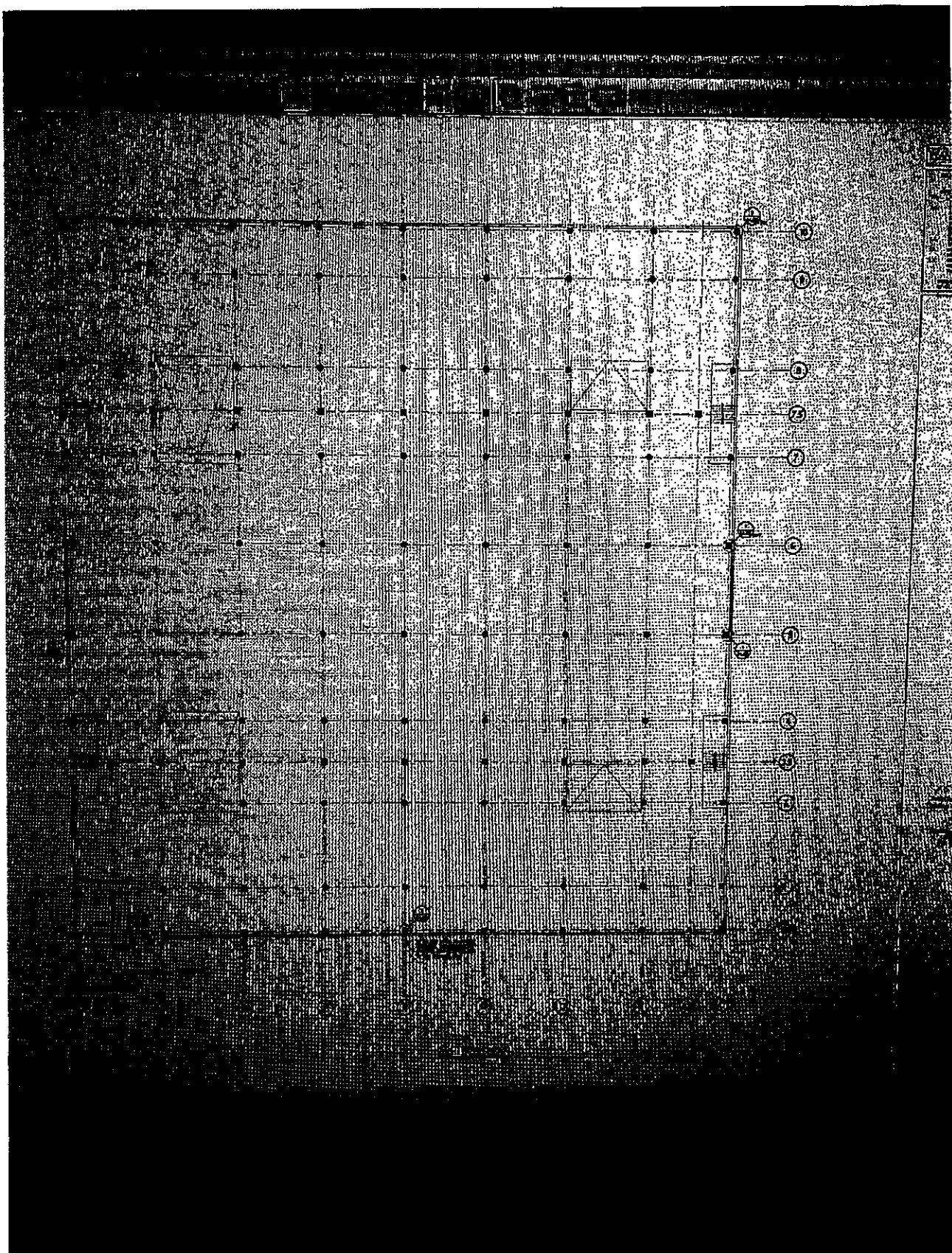
GJL 7096

RESP.APP.0185



GJL 7097

RESP.APP.0186



GJL 7098

RESP.APP.0187

NOTES:

FIELD VERIFY ANY DIMENSIONS SHOWN.

CONSTRUCTION SUMMARY:

REPAIR OF THE BROKEN SPANDREL IS REQUIRED AT
2ND FLOOR LEVEL. *why?*

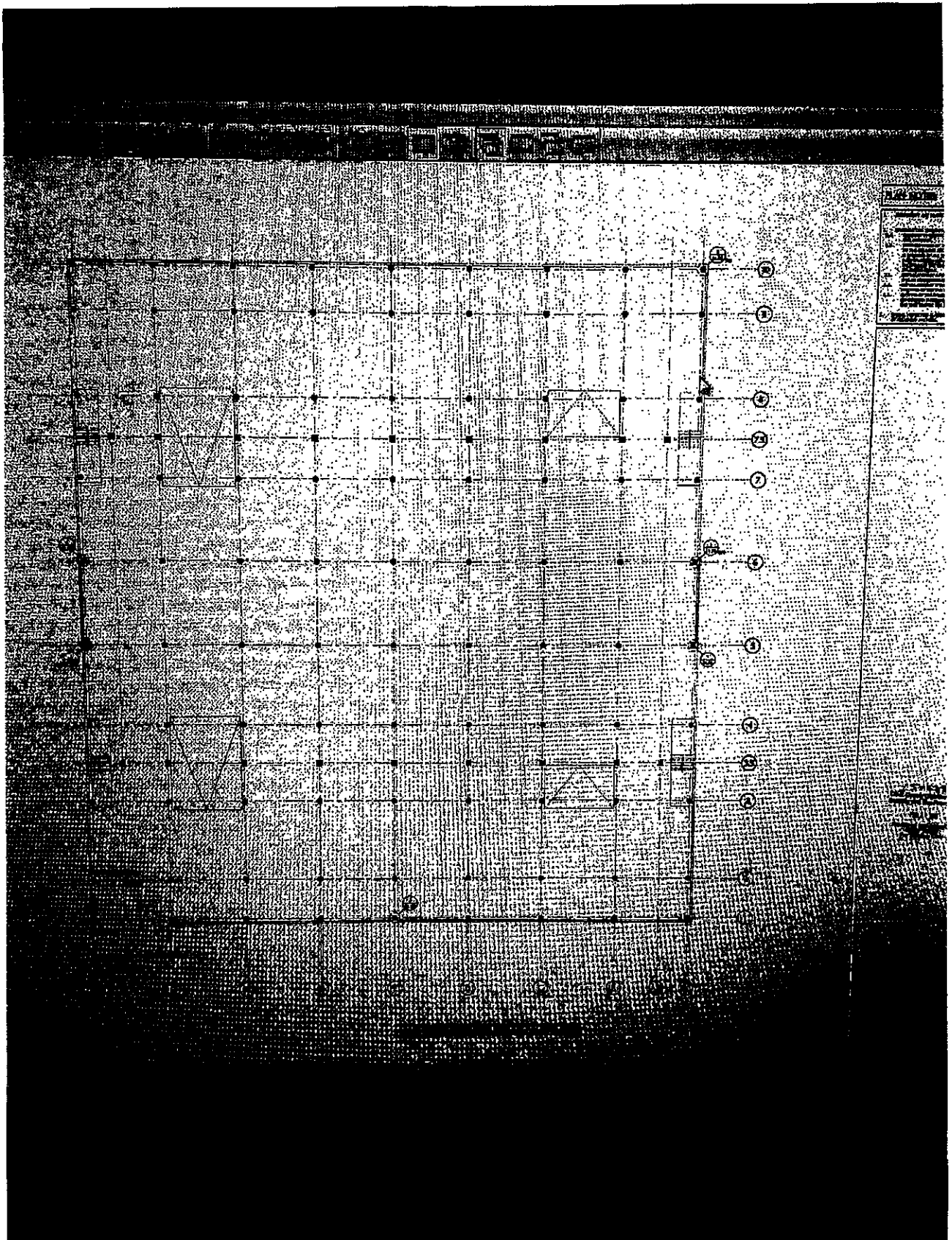
STRENGTHENING OF THE SPANDREL CONNECTIONS
AND COLUMNS PER DETAILS 1/S1.00 OR 2/S1.00

IS REQUIRED OF ALL SPANDRELS (EACH END OF
SPANDREL) AND AT EACH LEVEL. THE ONLY
EXCEPTION IS THE GROUND LEVEL WHERE NO
REPAIRS OCCUR.

INSTALLATION OF A RIPE BOLLARD PER DETAIL
1/S1.00 IS REQUIRED AT LEVELS 2 THROUGH 6.

INSTALLATION OF A TEMPORARY BARRIER IS
REQUIRED AT THE 2ND LEVEL.

ANCHORING OF THE SPANDREL TO SPANDREL
CONNECTION IS REQUIRED WHERE SHOWN ALONG
THE OUTSIDE OF THE 2ND LEVEL.



GJL 7100

RESP.APP.0189

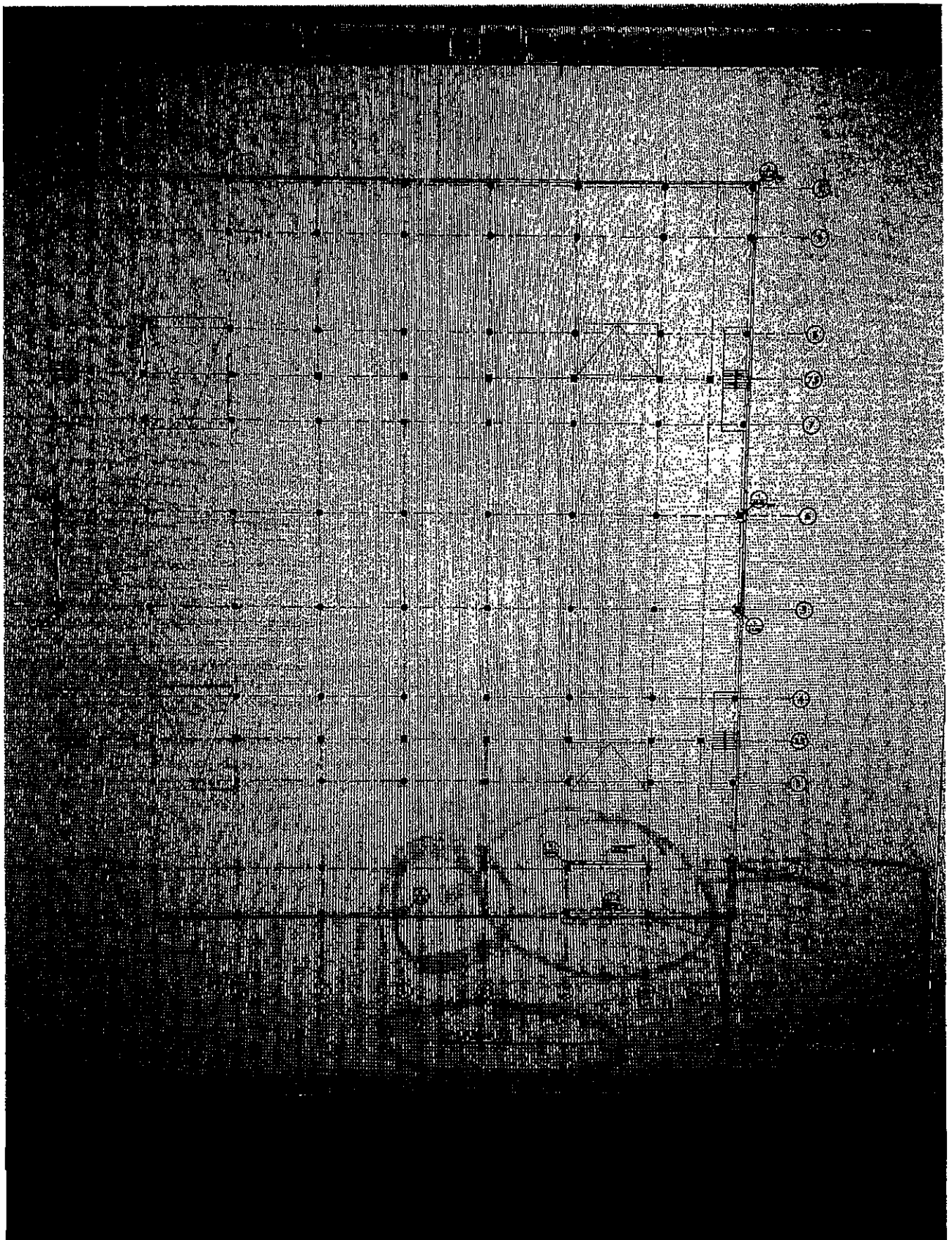
PLAN NOTES:

FIELD VERIFY ANY DIMENSIONS SHOWN.

CONSTRUCTION SUMMARY:

1. REPAIR OF THE BROKEN SPANDREL IS REQUIRED AT THE 5TH LEVEL.
2. STRENGTHENING OF THE SPANDREL CONNECTIONS TO THE COLUMNS PER DETAILS 1/S1.00 OR 2/S1.00 IS REQUIRED OF ALL SPANDRELS (EACH END OF EACH SPANDREL) AND AT EACH LEVEL. THE ONLY EXCEPTION IS THE GROUND LEVEL WHERE NO SPANDRELS OCCUR.
3. INSTALLATION OF A PIPE BOLLARD PER DETAIL 3/S1.00 IS REQUIRED AT LEVELS 2 THROUGH 6.
4. INSTALLATION OF A TEMPORARY BARRIER IS REQUIRED AT THE 5TH LEVEL.
5. CUTTING OF THE SPANDREL TO SPANDREL CONNECTION IS REQUIRED WHERE SHOWN ALONG THE EAST SIDE OF THE 2ND LEVEL.

QUALITY INSPECTION IS REQUIRED DURING INSTALLATION OF ALL WORK SHOWN.



GJL 7102

RESP.APP.0191

PLAN NOTES:

1. FIELD VERIFY ANY DIMENSIONS SHOWN.

2. CONSTRUCTION SUMMARY:

2.1 REPAIR OF THE BROKEN SPANDREL IS REQUIRED AT THE 5TH LEVEL.

2.2 STRENGTHENING OF THE SPANDREL CONNECTIONS TO THE COLUMNS PER DETAILS 1/S1.00 OR 2/S1.00 IS REQUIRED OF ALL SPANDRELS (EACH END OF EACH SPANDREL) AND AT EACH LEVEL. THE ONLY EXCEPTION IS THE GROUND LEVEL WHERE NO SPANDRELS OCCUR.

2.3 INSTALLATION OF A PIPE BOLLARD PER DETAIL 1/S1.00 IS REQUIRED AT LEVELS 2 THROUGH 6.

2.4 INSTALLATION OF A TEMPORARY BARRIER IS REQUIRED AT THE 5TH LEVEL.

2.5 CUTTING OF THE SPANDREL TO SPANDREL CONNECTION IS REQUIRED WHERE SHOWN ALONG THE EAST SIDE OF THE 2ND LEVEL.

2.6 QUALITY INSPECTION IS REQUIRED DURING AND AFTER CONSTRUCTION.

REINFORCING AND DETAILING MANUAL APPLY, ALL REINFORCING SHALL BE ASTM

GRADE 60 OR COLD DRAWN A-82
GRADE 40
A-185
GRADE 40 CHEMICAL ANALYSIS
SPECIFICATIONS FOR WELD WITHOUT PREHEAT
ASTM A-706

REINFORCING ARE AS FOLLOWS:

REINFORCING ARE AS FOLLOWS:

REINFORCING ARE AS FOLLOWS:

REINFORCING ARE AS FOLLOWS:

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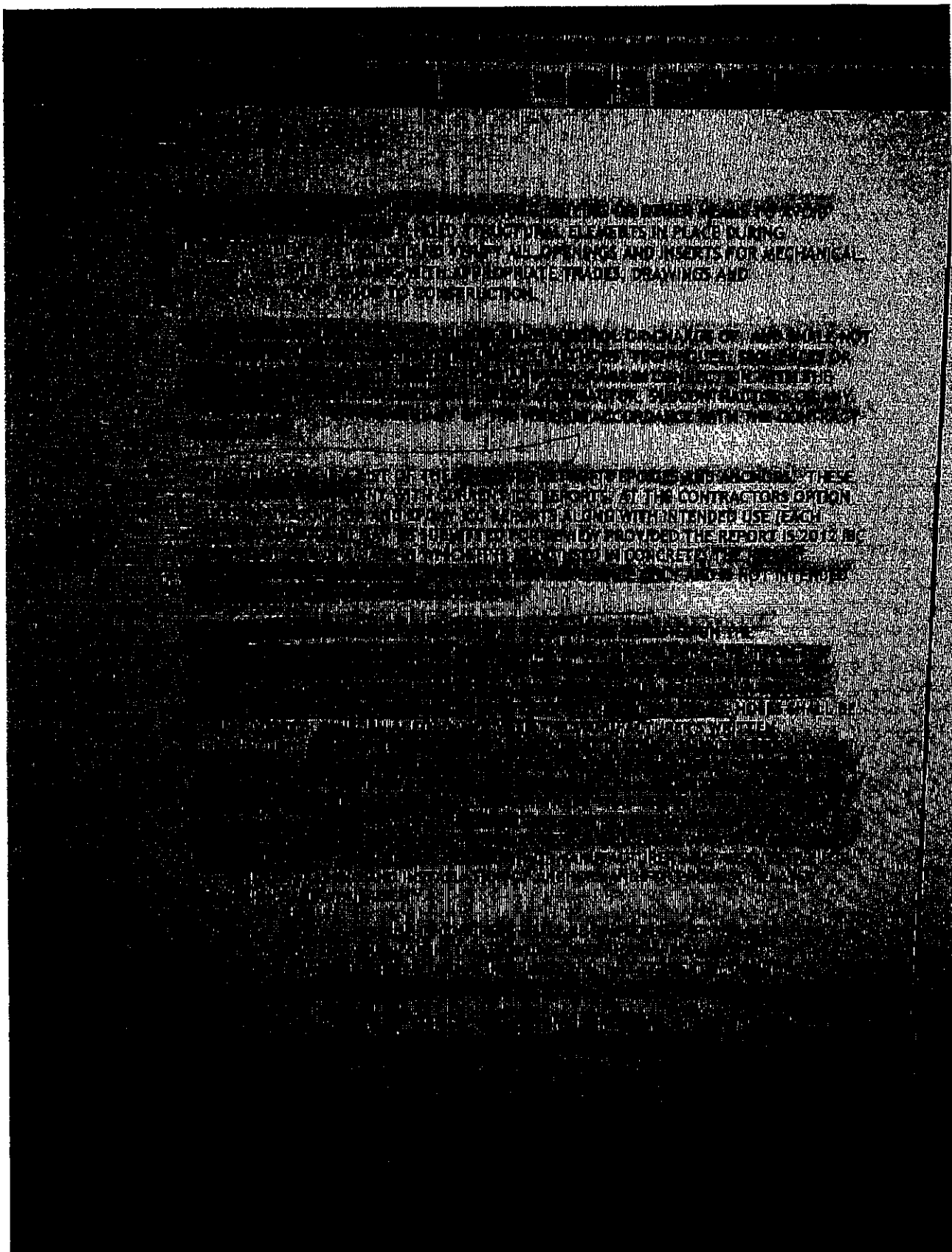
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REINFORCING ARE AS FOLLOWS:

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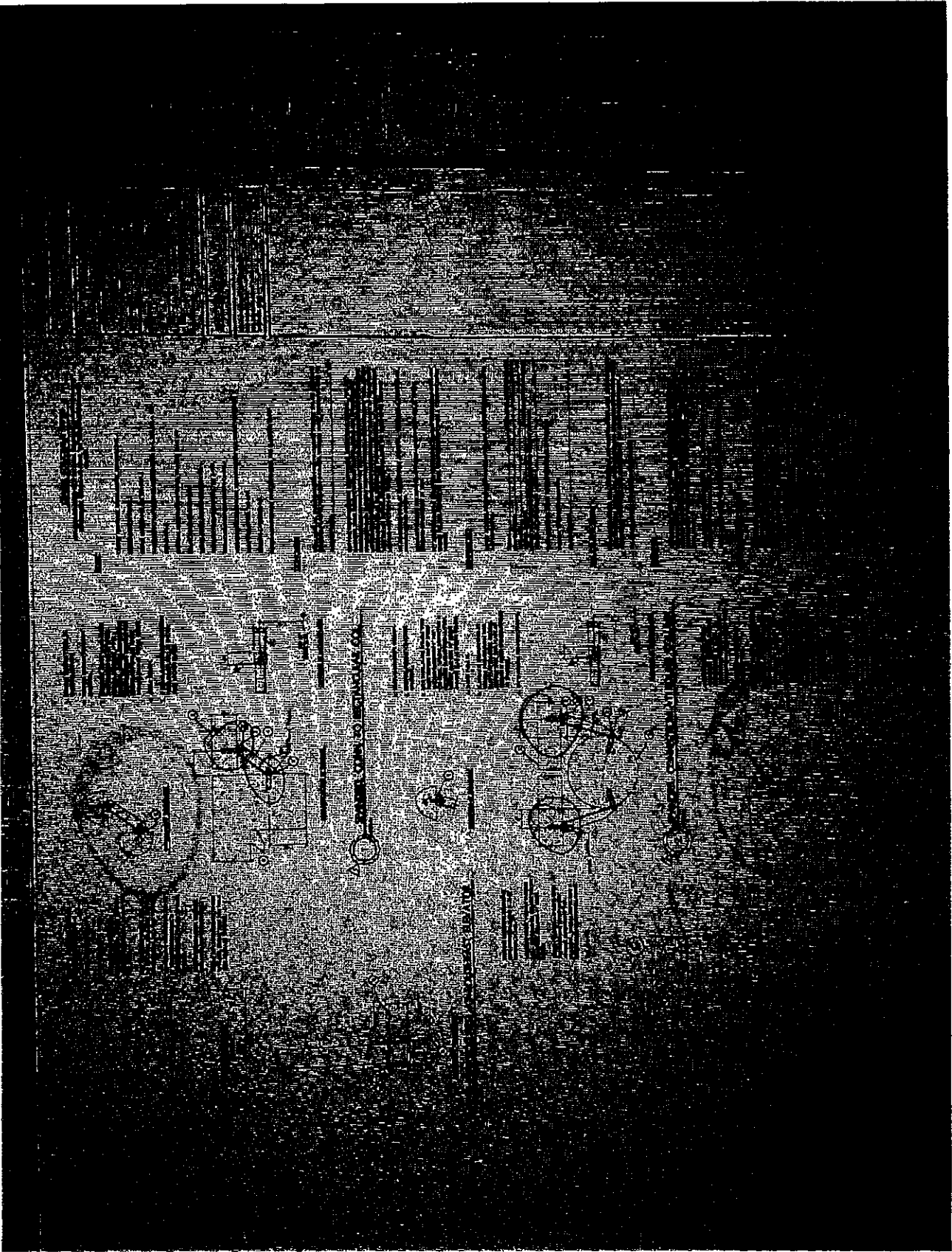
REINFORCING ARE AS FOLLOWS:

REINFORCING ARE AS FOLLOWS:



15-6880
RECORDS SET

Shipped
from
England



GJL 7108

RESP.APP.0197