IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife,	)	Supreme Court No. 76422
Appellants,	)	District Court No. A-14-705164-C
vs.	)	
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC,	)	
Respondents.	)	

JOINT APPENDIX - VOLUME 19

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any of them coming around the corner?

A. Well, the corner is the corner, but yes. All right.

Q. Okay. And -- but here he says that he comes around the corner. And then he says, "It felt like an elevator suddenly moving up."

Would you agree with me that that would be consistent with someone hitting that incline that was there on the night of his accident? If someone was running around the corner and they hit the incline and suddenly they started to go upwards with the ground, would you think that that would be a good way to explain that?

A. I'm not sure those are the words I'd use, but it does sound like maybe that's what he is saying.

Q. Okay. Fair enough. Now, when -- when someone -- in your field, when someone is faced with something that they're not expecting, like an incline per se, would you agree with me that that throws off your -- sort of your -- your gait? Is that fair?

A. It can. It depends on your cognitive awareness at that moment --

Q. Okay.

A. -- and --

Q. So if you're not aware of something --

MR. POPOVICH: Objection. Can he finish the answer, Your Honor?

THE COURT: Let him finish.

MR. DEUTSCH: Sorry. Sorry.

BY MR. DEUTSCH:

Q. Go ahead. Were you done?

A. Go ahead.

Q. Well, you said it depends on your cognitive awareness.

Does it depend on any other things?

A. And his gait, the environment. There's a series of factors, his conditioning, his posture. There's numbers of factors.

Q. Okay. And the first one you said was awareness; right?

A. Yeah.

Q. And that would be whether he was warned that there would be this change in -- in -- in grade or some other hazard; right? That would be important; right?

A. All right.

Q. Right. And you, in fact, testified in other cases or have written reports in other cases that, because someone wasn't warned of a particular change in incline, that that makes that incline more dangerous.

Haven't you given that opinion in cases

before for plaintiffs?

A. I can't recall those exact words, but I can't say it's unreasonable either. It just depends on how it strikes you and what -- his cognitive processes at the moment.

Q. Right. But you would agree with me that, if someone is not expecting a change in grade, that that could contribute to someone's fall if they don't know about it. Would you agree?

A. If they kicked the grade is what you're saying or something like that?

Q. Well --

A. I'm not -- I'm not following.

Q. Let me ask you a question. Is it possible that someone could slip and trip at the same time? Could someone come around a corner -- just -- I'm talking about a general person, not talking Mr. Cox.

Someone could come around the corner, they could feel a foot slip out from under them, and then catch a foot as they go down. Is that possible?

A. I don't know. What you just did looked like it's possible. But, I mean --

Q. What I just did looks reasonable; right? Someone could be coming around a corner, this foot could slip outwards, they -- if their momentum is going

forwards because they're running, they can slip and then catch this toe and then go down; true?

A. That's possible. Except the POI is 15 feet away.

Q. I'm not talking about this incline right now. I'm just talking about in general.

Someone could slip and then trip; right?

A. That's possible.

Q. So, in this case, it's possible that Mr. Cox, when he said he slipped, that actually happened; true?

A. That he tripped?

Q. Slipped.

A. He slipped and tripped?

Q. It's possible; right?

You say that he tripped. And the reason you say he tripped is because his foot went like this (indicating). But it's possible that Mr. Cox came around the corner, felt his left foot slip out from under him, and then, as he was falling forward, caught his toe and went down.

Could that have happened?

MR. ROBERTS: Objection to form and relevant to it's possible.

MR. DEUTSCH: Oh, it's very relevant.

THE COURT: Overruled.

THE WITNESS: I'm sorry, sir.

THE COURT: You can answer the question.

BY MR. DEUTSCH:

Q. Could that have happened in this case?

A. That seems pretty farfetched. In other words --

Q. That's not what I asked you. What I asked you is could it happen?

A. Could.

Q. Whether it's one in a hundred or one in a thousand, could it have happened?

A. I don't know. I've never heard of it before. I mean, the way you've described it, it seems like it -- it could be possible. I just have never --

Q. Do you think it's reasonable?

A. -- seen it in 25 years.

Q. Do you think it's reasonable?

A. No.

Q. You don't think it's reasonable that he could have come around the corner, that one foot could have slipped, and, as he was going forward with his momentum, that his foot hit the ground? That doesn't sound reasonable to you?

A. He hits the ground somewhere by my wall here.

Q. Like 15 feet away?

A. Yes.

Q. Okay. And -- and is it fair of me to say that the only way you could know for sure is if that video was clearer or you were standing there at the time it happened?

A. Seems reasonable.

MR. DEUTSCH: Give me one second, Your Honor.

BY MR. DEUTSCH:

Q. You're aware, are you not, of what Mr. Cox was doing at the time of his fall? True? You're aware of what he was doing?

A. Participating in the illusion.

Q. Yeah. You're aware of that; right?

A. Oh, sure.

Q. Okay. And -- and you're aware that there's been testimony in this case that he was running at the time he was doing it; true?

A. Running --

Q. At the time --

A. -- jogging, walking? What? Can you --

Q. Well, there's been lots of testimony.

You know what Mr. Cox says about it; correct?

A. He says he was running -- running pandemonium level.

Q. Right. That's what he says; right?

JA004308

A. Yes.

Q. Okay. And you know that Chris Kenner or -- maybe you don't because you didn't read the trial testimony.

You're aware that Chris Kenner admits that people run; true?

A. Okay.

Q. Okay. And you're aware that Pomai Weall also, in her deposition, testified that people run sometimes; true?

A. Okay.

Q. Okay. And you're aware, are you not, that Mr. Cox was not told where he was going and didn't know what to expect? Are you aware of that?

A. Not entirely, but I'm accepting what you're saying.

Q. Okay. And you're aware that Mr. Cox didn't know the route he was taking? Do you know that?

A. I would doubt if he would know the route, yes.

Q. Yeah, he wouldn't know the route.

And would you agree with me that running and -- and -- and you also know that there's been some testimony about whether it's dark, and it's been described in different ways like a parking lot at

night; is that fair?

A. Yes, I'm aware of that.

Q. Okay. And -- and would you agree with me that running in the dark, like a parking lot at night, not knowing where you're going, all of those things could increase your chances of falling? Would you agree with that?

A. They could.

Q. And that would be true whether Mr. Cox was at point A or point B in the route; true? Meaning, if he was where you put him landing in the cone or whether he's a few feet this way or a few feet that way, those things all remain the same; true?

A. Those are fixed.

Q. I understand.

A. The variable is back where you are.

Q. Right. But what I'm saying to you is -- is that he was doing those things that you just told me could enhance someone's opportunity to fall. Whether he fell at point A or whether he fell at point B, 12 feet, 15 feet, 5 inches, whatever it is, those things remain the same; true?

He was running at point A, and he was running at point B. Do you understand what I'm saying?

A. Sort of. If you say he's coming around the

corner, maybe it's wide or not so wide, is that what you're getting at?

Q. That's not what I was saying.

A. That's not what you're saying.

Q. So you said, based on your read of the deposition, Mr. Cox said he fell at the corner; right?

A. His words.

Q. Okay. Well, I just read to you from his trial testimony where he explains coming up the ramp, taking a few steps.

A. Did it change?

Q. Well, I don't think it did.

MR. POPOVICH: Objection. Misstates the testimony too.

MR. DEUTSCH: Well, let's read -- what was the other one? Actually, withdrawn.

BY MR. DEUTSCH:

Q. You don't know what Mr. Cox's route was around the corner. You don't know that; right?

A. When you say the "route," you mean how far he was from --

Q. Where's that diagram? Is it over here? Let's bring out your diagrams again.

Would you describe coming around the corner as still being in sort of that arc motion? Is that a

fair description?

A. Yes.

Q. Okay. So even if we were to assume, for the sake of argument, that your line -- this line is meant to represent Mr. Cox; correct?

A. Correct.

Q. And the route that -- that you -- that you think he took; correct?

A. A reasonable route.

Q. Right.

A. Right.

Q. You don't know if that's right or not --

A. You're correct.

Q. -- right?

You don't know if he was coming around the corner this way or he came around the corner that way or he came around the corner this way. All of those different curves could all meet at that point where you say he landed; true?

A. All right.

Q. Is that right?

A. Yes.

Q. Okay. And even in the line you drew, at the point that he allegedly landed, which is this star, you still have him on that curved route.

Your line that you drew in what you decided was a reasonable route is still curved; right?

A. It's curved -- if you want to call that a curve, yeah.

Q. I will call it a curve.

A. Okay.

Q. But if it's still curved, then, based on the definition you just gave me, that could still be considered coming around the corner; is that fair?

A. No.

Q. Okay.

A. The corner is back here where you see the crosshatch.

Q. Right here?

A. No. That's the path.

Q. This is the corner?

A. Bring your finger this way, to your left.

Q. That's the corner?

A. That's the corner.

Q. Right. But coming around the corner -- if someone were to say that they fell here, you wouldn't consider that coming around the corner?

In just, like, everyday parlance. Not in, like, fancy expert witness language, but in just, like, everyday, "Hey, what happened?" "I was running around

the corner and I fell," would you consider -- in everyday layperson language someone who said, "I came here and fell," would you consider that coming around the corner?

MR. POPOVICH: Objection. Speculation as to --

THE WITNESS: We'll --

THE COURT: Overruled. He can state what he understands.

THE WITNESS: Given the fact that it's 20 feet 5 inches from that --

BY MR. DEUTSCH:

Q. 20 feet 5 inches is from here to where?

A. From that to the cone, to the POI.

Q. This right here is 20 inches?

A. Right.

Q. So let me stop you for a second.

This is not to scale; is that fair?

A. That was done in the field.

Q. Right. It's not to scale.

A. It's done freehand.

Q. I'm just asking. It's not done for scale. I'm not holding it against you. I couldn't have done any better.

But it's not done to scale; is that true?

A. Yes, correct.
Q. Because, as I understand it, from here to here is 20 feet 5 inches, but from here to here is only 19 feet?
A. Right. That's correct.
Q. Okay.
A. And -- and the numbers are right; the scale is not.
Q. Understood. Got you. Okay.
Okay. In order to measure from this spot -- from the -- from -- your 20 -- 20 feet 5 inches is from anywhere along this line?
A. The curb line.
Q. So --
A. The red curb line.
Q. -- if you measured from this spot to the curb line over here, it wouldn't be 20 feet 5 inches anymore?
A. No, it wouldn't.
Q. And if it was over here, it wouldn't be 20 feet 5 inches; correct?
A. No, it would be more.
Q. And if it was over here, it would be not 20 feet 5 inches?
A. It would be more.

Q. Right? It would only be 20 feet 5 inches here, and then it would be the shortest, I guess, directly up, straight up and down?

A. It's about 19 if it's perpendicular.

Q. 19 here?

A. Yes.

Q. So if he took the route coming a little wider, it would have been less than 20 feet 5 inches?

A. Correct.

Q. If he took it in here, it would have been more than 20 feet 5 inches?

A. Yes.

Q. And you just picked something at random?

A. I picked a reasonable route.

Q. Just at random?

A. There's nothing random about it; this is a reasonable route --

Q. But --

A. -- based on that geometry.

Q. I understand the geometry, but, like, you went to the site and you saw the corner, and you just said, like, oh, it sounds like this is the way he would have come?

A. No. I watched two sets of participants, and I watched where they ran.

Q. So you just assumed that he ran in the same spot as those people?

A. Well, it would be a reasonable assumption that it's about right.

Q. Fair enough. Fair enough. Were you standing right next to those participants when they ran by?

A. No. Sorry. Didn't mean to interrupt.

Q. You were standing further back?

A. Back.

Q. You just eyeballed it?

A. I watched it, yes.

Q. I forgot to ask you this before. I think you mentioned that -- that you -- you -- when you were asked about teaching some CLE, you taught some continuing education classes; is that right? I think Mr. Popovich asked you about that.

A. I taught CLE at law firms, but I've also taught class for expert witnesses -- guys in, like, civil engineering or photography or whatever you want -- to do this work, roles, responsibilities, and ethics.

Q. So you've taught lawyers?

A. That's a different course.

Q. Okay. And you've also taught other people in your field how to be an expert witness. Is that what

you said?

A. But they're not in my field.

Q. You've taught people in other fields how to be an expert witness?

A. Yes. Well, not so much to be an expert witness; to provide litigation support.

Q. Well -- and when Mr. Popovich asked you about what forensic means, you said for public debate.

A. Yes.

Q. Just so we're clear, the only public debates that you do your forensic analysis is courtroom stuff like this?

A. That's what I'm referring to as a public debate, this forum.

Q. Got you. You just don't like using a term like "courtroom"?

A. Oh, we can use that, if you like. Sure. I just think most people --

Q. It's just that Mr. Popovich asked you the question twice and both times you said "public debate."

A. Oh, because most people think forensic means blood and fingerprints. I certainly did, so --

Q. Understand.

Did you take -- you -- I see that you measured the -- the 2.1 degrees up. Was that the old

JA004318

original or that was the new in this diagram?

A. Yeah, may I?

Q. Yeah, sure. It says "2.1 degrees up." Is that referring to -- to the way it was on the night of the accident?

A. No.

Q. That's the new one?

A. Yes.

Q. Did you take any measurements of the incline that -- the way it was on the night of the accident?

A. Yes, I did.

Q. And I'm not talking about from the top of it where the corner of the building is; I'm talking about the incline itself.

A. Yes.

Q. And -- and what was the degrees of that incline?

A. It was -- it exceeded --

Q. You have notes on it?

A. I'd have to dig them out, but I will.

Q. Go ahead. Take a look to see exactly what it is.

A. Close. Ready.

Q. What was it?

A. Okay. It was in excess of 5 degrees. And

the building code is right at about 4.76, so ...

Q. So it was actually higher than the building code permits?

A. Slightly, just slightly.

Q. Did you mention that in your report, that the incline -- that -- in the route that they were running was more than the building code permitted?

A. I don't recall because the POI was nowhere near here.

Q. You didn't mention it, though?

A. Well, it wasn't really relevant.

Q. And the building code doesn't want ramps to be bigger than 4 point --

A. 76.

Q. -- 4.76 because it could be dangerous at anything more than that; true?

A. Yeah, 1 in 12 is what they're saying.

Q. Well, the answer is that if it's steeper than that, it could be dangerous and people could trip or fall or it could cause a disruption in someone's gait as they're running?

A. That is the idea, yes.

Q. During your conversations with the attorneys in this case and all those 20 people that were there in all your inspections that you told us about, did anyone

discuss with you that the reason that they changed the ramp outside here was because the ramp violated a building code?

A. I haven't heard that. I think that's possible; I haven't heard that.

But since the POI was so far remote from there, it didn't concern me.

Q. Right. So -- so as people are running and they go up an incline that you just told us, at least according to the building code, is dangerous, do you think that that couldn't throw off someone's momentum or someone's gait to the point that that causes them to then slip or trip and fall afterwards?

A. For another 15 feet 8 inches?

Q. Yeah. Yeah, you never seen someone -- like, we've all done it. You don't live in New York, though, do you, Doctor?

A. No, sir.

Q. So -- so we in New York do this sometimes. When you're, like, walking out of a subway, and, like, you trip, and then you kind of like (demonstrates), and you run a couple. You never seen anyone do that?

A. I think that sounds all right, yeah.

Q. And sometimes, like, you could be running and you can go up that dangerous incline, and then you

could lose your balance. And then, as you're running real fast, or as fast as you feel like you could run, you could hit some dust on the ground, slide out, and then take a dinger. That could happen, couldn't it?

That's not a technical term. That just meant fall.

That can happen, right?

A. Yeah, you've just lost me.

Q. I lost myself. That's all right.

Now, in the photos that you took, I think --

Was 101 one of the ones in evidence or 100 or 101? Was that one of the ones in evidence? Or how about 106?

MR. POPOVICH: 93-100 is in.

MR. DEUTSCH: 101 is not? 93 and -- how about 9 -- anyone have any objection to -- to 106?

MR. POPOVICH: No.

MR. DEUTSCH: No objection to 106?

Okay. I'm going to show you -- I'm going to offer, Your Honor, D93-106.

MR. POPOVICH: It would actually be P.

MR. DEUTSCH: Oh, P. Sorry. P93-106.

BY MR. DEUTSCH:

Q. Let me show you this.

THE COURT: You going to offer it?

MR. DEUTSCH: Yeah, offering.

THE COURT: Any objection?

MR. POPOVICH: No objection.

MR. ROBERTS: No objection.

THE COURT: Admitted.

(Whereupon, Defendant's Exhibit 93-106 was admitted into evidence.)

BY MR. DEUTSCH:

Q. All right. 93-106. Now, this is when you went back the second time. You see that?

A. That's site inspection No. 3.

Q. Right. That's after all the changes that we talked about; right?

A. Correct.

Q. And this -- this light -- there's a doorway over here; right?

A. Over here.

Q. Doorway right there; right?

A. Yes --

Q. That's where the participants came out --

A. -- that way.

Q. -- correct? That's where the participants came out?

And there's this light over here. You see that?

A. Yes, I do.

Q. Okay. Now, you're aware from your initial site inspection that that light -- let me show you --

MR. ROBERTS: Objection, Your Honor. We didn't talk about light. Beyond the scope.

THE COURT: Well, I'm not sure where he's going with that.

BY MR. DEUTSCH:

Q. Well, let me show you --

Is 84 -- 84-23 in evidence?

THE CLERK: What number?

MR. DEUTSCH: 84-23.

THE CLERK: No.

MR. DEUTSCH: I'd like to offer it.

MR. POPOVICH: Let me see it.

No objection.

MS. FRESCH: Hold on one moment.

MR. ROBERTS: 84-23, no objection.

MR. DEUTSCH: No objection.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 84-23 was admitted into evidence.)

BY MR. DEUTSCH:

Q. And -- and, just so we're -- we're clear, this is the one -- this is you here, I think; right?

JA004324

A. Yeah, I think so.
Q. Handsome guy right there. That's you?
A. Thank you. Thank you. Yeah, I think that's me.
Q. And in this photograph, that light that we just saw, you can't see it because it's covered by a tree; is that right?
MR. ROBERTS: Objection, Your Honor. We didn't talk about light.
THE COURT: What's that?
MR. ROBERTS: May we approach?
THE COURT: Sure.
(A discussion was held at the bench, not reported.)
BY MR. DEUTSCH:
Q. Now, this photograph shows the surveillance camera that was there; is that right?
A. Correct.
Q. And when you went to do your inspection, did you identify other surveillance cameras that were at the area -- in the area?
A. No.
Q. Were you provided with -- when you first got this case, with more than one surveillance video?
A. No.

Q. Well, you have some correspondence in your folder.

A. Do I?

Q. Do you have a correspondence folder?

A. I think so, yeah.

Q. Can I take a look at it?

Actually, withdrawn.

Well, actually, let me take a look at your correspondence folder for a second.

A. Here's a couple of ...

Q. Thanks.

January 19th, 2015, Selman Breitman, Mr. Eric Freeman, "Dear Dr. Baker: Enclosed please find a flash drive containing all video captured before, during, and after the incident from three cameras."

Do you recall receiving video from three cameras?

A. No.

Q. Okay. Do you know if all three cameras -- according to that, only one of the cameras showed the fall. Are you aware of that or not?

A. Yeah. The one I'm using -- in fact, I made my own clip of it. The thing is 17 minutes long. I made a 30-second version of it so I could manipulate it. The 17 minutes is very, very memory-intensive.

But insofar as other cameras, I don't recall that.

Q. Okay.

Give me one second, Your Honor. I think I'm almost done.

That's all I have.

Thank you, Your Honor.

Thank you, Dr. Baker.

THE WITNESS: Thank you.

THE COURT: Redirect, Mr. Popovich?

MR. POPOVICH: Yes, indeedy.

REDIRECT EXAMINATION

BY MR. POPOVICH:

Q. Dr. Baker, Mr. Deutsch used Sheet 5 on MGM Demonstrative No. 1, your sheets here, and talked about the possibility that Mr. Cox took different routes to get to your --

MR. DEUTSCH: Your Honor, may I -- before he goes further, may I ask one more question?

I'm sorry, Jerry. I apologize. I just don't want to -- just literally one more question.

Sorry.

THE COURT: Reopen.

JA004327

CROSS-EXAMINATION (Continued)

BY MR. DEUTSCH:

Q. The building code that you -- the building code that you referenced that this ramp was out of code, what building code were you referring to?

A. It changes number per year. I don't know when the exact building went in, but, typically, it will say 1 in 12 is the limit, 1 in 12.

Q. Right. But is there a specific building code, the Nevada --

A. It's for ramps. It's for ramps.

Q. The Nevada building code for ramps, or is this a national?

A. Oh, no, no. No, international; IBC, international building code.

Q. IBC. For ramps, that's what you're referring to? That's all I want to know. Thank you.

A. You're welcome.

MR. DEUTSCH: Sorry, Mr. Popovich.

MR. POPOVICH: No problem.

REDIRECT EXAMINATION (Continued)

BY MR. POPOVICH:

Q. Certainly it's possible to take different routes to get to your point of rest, point of impact,

that you've calculated for Mr. Cox; correct?

A. Not so much calculated, but identified.

Q. Okay.

A. Right.

Q. Because of the using the cameras as you've described?

A. Correct.

Q. So if someone were to clear the corner --

A. I'm sorry. The corner is up here.

Q. No, I'm going the wrong way.

A. Yeah. Sorry.

Q. Clears the corner --

A. Yeah.

Q. -- and does a 90-degree turn to go right up the inside of the building --

A. Correct.

Q. -- and then takes a hard left to get to your point of impact --

A. Yes.

Q. -- and that person falls forward, what direction is that person's head going to be pointing? Will it be pointing to these doors?

A. No, it will be forward --

Q. If someone --

A. -- of his momentum.

Q. -- someone takes a wide path, goes all the way over to essentially a straight line to the point of impact and makes a hard 90 and goes to the point of impact, is that person, when they fall forward's head going to be pointed to the door over here?

A. It's going to be pointed where their momentum is taking them. And, yes, that's where it's going to be headed.

Q. From what you observed in the Exhibit 402 surveillance video, what direction did Mr. Cox's head appear to be pointed towards as he was rising up after his fall?

A. Appears that he was going right towards the open doors, and then he rose upward literally facing those doors.

Q. So does that support your idea that a reasonable path is something that you've got traced here on your notes?

A. Absolutely. That's why I drew it that way.

Q. All right.

A. Yeah.

Q. You were shown trial testimony from Mr. Cox about how he rounded a corner at speed and then got some momentum towards the doors where he talks about feeling like an elevator was coming up under him?

A. I saw that.

Q. Is that even close to what he said at deposition under oath?

MR. DEUTSCH: Objection, Your Honor. It's not for him to decide; it's for a jury to decide.

THE COURT: He can state his perception of it.

Overruled.

THE WITNESS: Perception is that, no, they're very different from each other.

BY MR. POPOVICH:

Q. All right. If someone comes around a corner at speed and yet starts to make progress towards the doors -- let's forget someone. Let's call it Mr. Cox.

Mr. Cox comes around the corner and starts getting momentum towards the door, is it likely, once he's got momentum going towards the door, that his feet are going to slip out to the left?

A. No, not at all.

Q. For his feet, and I will quote (descriptive sound) -- making a sound -- go out to the left, both of them such that he falls hard directly on his right side, which was his testimony --

A. Yes.

Q. -- is that consistent with forward progress

toward those doors?

A. No.

Q. I have a vision of cartoons of old days where some cartoon critter is -- is running in place, essentially, burning rubber, trying to get traction to go somewhere. Based on your analysis in this case, did Mr. Cox do that kind of burning-churning before he fell?

MR. DEUTSCH: Objection to form, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. The mechanism that I described earlier is the mechanism. And it's because of the intersection of those pieces of information that all fit together.

BY MR. POPOVICH:

Q. We watched that baseball player clip, not focusing on the trip for a moment --

A. Yes, sir.

Q. -- but -- well, do you follow baseball?

A. Yes.

Q. You saw him round first base with momentum?

A. Yes.

Q. Did he go to first base and, with not losing any speed, make a hard 90-degree turn towards second base?

A. No.

Q. Can somebody do that without losing speed?

A. No. My understanding is in -- in pro baseball, they have to swing wide if they're going to go for second on a double or you can't take a right -- a left right-angle turn.

Q. So if Mr. Cox testified that he ran the approximately 30 feet from the exit door to his right turn towards the casino doors --

A. Yes.

Q. -- as fast as he could go and made a hard 90-degree turn to run up alongside the building, is that something that's consistent with the mechanics of running?

A. Well, I -- I didn't see anybody ever make a hugging turn to hug the building like that. I -- I don't see that as being that practical. People would swing -- in that path that I have, swing around the corner and arc their way to the doors.

Q. And --

A. I -- it literally becomes a straight line after you get the first few feet.

Q. Have you seen any testimony from Mr. Cox, either in the trial testimony you just saw or reading his couple hundred pages of deposition, where Mr. Cox

ever indicated that he somehow tripped, spun his wheels, traveled 20 feet, and then fell?

A. I haven't seen that, no.

Q. I'm having some confusion. Your second report --

A. Yes.

Q. -- what's it dated?

A. Let me get it. March 19th. I remember submitting it on March 1st, and then I heard "more will get back to you." And then I gave the final on the 19th. It took three weeks.

Q. In your first report in 2016, you only used the term "slip." Why is that the case?

A. Couple reasons, one of which is, as I mentioned earlier, you know, as we're looking for information, my job is to be fair to both sides. And I see the slip -- the word "slip" everywhere in this case at that point, especially from Mr. Cox. I'm taking Mr. Cox at his word.

Ultimately, I can't agree with it. But at the outset, I took him at his word. He describes pretty much detail what he thinks happened. The where is incorrect for me. As far as the slip, could you slip way up the way -- it didn't make any sense to me. And that's what I put in the report. It's not clear

where he slipped. It was after that that I was asked if it was a trip or not.

Q. Moving to a different topic. The surveillance video Mr. Deutsch showed you, and he focused, I believe, on the -- the light at the bottom left corner of the video.

A. Yes, sir.

Q. And he talked about movement of visual target or something like that?

A. Yeah.

Q. Have I got the phrase right or wrong?

A. Yeah, he was taking out of context something I wrote in a report years ago -- and it was what? 2005 -- where it's a physiologic fact that if something moves, your eye will see it better than if it doesn't move. That's a human factors issue.

Q. At the point where you believe Mr. Cox impacted, center of mass --

A. Yes.

Q. -- do you believe -- where would that light have been in relationship to him when he tripped?

A. Okay. Going from the measurements -- after I identified the cone position, I was able to say that that's 19 feet 10 inches from the door -- scaling backward on the video, we can identify where the light

was.

Q. Now, I asked a bad question. You're going off in a different direction.

A. Sorry.

Q. So if Mr. Cox has made his turn and is progressing towards the door --

A. Yes.

Q. -- where is that light now in relation to him? Ahead of him? Side of him? Behind him?

A. He's made the turn?

Q. Yes.

A. The light should be out to his left somewhere when he's making the turn. He's out there illuminating --

Q. Not when he's making the turn; after he's completed the turn.

A. Oh, after he's completed? It should be in back of him.

Q. All right. At that point, does any movement of that light somehow attract his attention?

A. No. It's behind him at that point.

Q. Distract him in any way?

A. No. At that point, he's looking at the lighted doors.

Q. As you can tell, I'm working backwards on

Mr. Deutsch's points. So I've got two more points to talk about.

You talked about a push-off slip. So let's -- is that a slip of the back foot?

A. Yes.

Q. Why can't -- well, you said a push-off slip rarely results in a fall. Why?

A. May I demonstrate?

MR. POPOVICH: May he, Your Honor?

THE COURT: Yes.

BY MR. POPOVICH:

Q. Yes.

A. Okay. The idea -- the principle was that, if the center of mass is far from the slip point, that's when you're more likely to go down. If you slip pushing out, your momentum is going over a foot that's -- that's loaded.

So it's easier to get back in balance on this front foot if the rear one goes out because, again, momentum is upper body. So you can -- you can slip and still maintain balance. It's when there's some distance between your center of mass and the slip point, that's when it's hard to recover.

Q. So that rear --

A. That's when it goes out, and -- and worse is

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when a leg gets tucked under. That's the worst.

Q. That push-off slip, I think you testified that the most likely scenario for a fall from a push-off slip is straight down?

A. Yeah, if you fall.

Q. But -- for the reasons you just said.

A. Right.

Q. But if you fall, it tends to be --

A. Just as you've done.

Q. Did you ever see any testimony from Mr. Cox that he fell onto one knee?

A. No. But, see, that's where you'd go to look for the rest of the information. You'd go to look for the dust covering. You look for where the markings are. It takes more than one piece of information to make the story.

Q. Did Mr. Cox slip or trip?

A. He tripped.

MR. DEUTSCH: Objection. Asked and answered.

THE COURT: I'll allow it.

THE WITNESS: Sir, yes, he tripped.

BY MR. POPOVICH:

Q. Does fine dust like is on his clothes matter in the kind of trip he had?

A. The dust did not cause the trip. It shows

JA004338

evidence of the trip.

MR. POPOVICH: Thank you.

MS. FRESCH: I don't have any questions, Your Honor.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q. Refresh my recollection, Doctor. Let's talk about the ramp.

A. Yes, sir.

Q. The original one in 2014 when you were there.

A. That's it.

Q. Okay. What did you say you measured the ramp to be as far as slope?

A. It exceeded 5 degrees, which -- it's in the gray area there. It's not -- I mean, it's there.

Q. So when you say "exceeded 5 degrees," do you mean 6, 7, 8?

A. Yes.

Q. The standard of 1-inch rise in 12 inches?

A. 12. Yes, correct.

Q. Is that for ADA access?

A. Yeah. That -- now you're getting into fine points, but yes. The IBC has a stipulation of 1 in 12 max, 1 in 12. But then you also have ANSI-A117.1; it's

got their standards. And the ADA has theirs. Those are even more stringent. But 1 in 12 seems to be it.

Q. Do you believe that this ramp, as a human factors expert, was unreasonably dangerous before it was modified?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

MR. DEUTSCH: He testified it violated the building code.

THE COURT: What's that?

MR. DEUTSCH: He testified that it violated the building code as a matter of law.

THE COURT: Okay. Overruled.

The Court will instruct the jury.

THE WITNESS: Answer or don't answer?

BY MR. ROBERTS:

Q. You may answer.

A. Oh, you know, it's a ramp. I mean, the world is not flat. We do have these stipulations for reasons. It's better if everything is flat.

Is that unreasonably dangerous? I didn't think it was unreasonable, no.

Q. Let's talk about the more important question.

A. Yes, sir.

Q. Did the slope of the ramp have anything to do

with the fall, in your opinion?

A. No.

Q. Why not?

A. The fall is 15 feet 8 inches past the end of that ramp.

Q. Mr. Deutsch talked to you about the rates that you charge.

A. Yes.

Q. Are you aware of any experts who work in your field --

MR. DEUTSCH: Objection, Your Honor.

THE COURT: In general; right?

MR. DEUTSCH: I thought I asked --

BY MR. ROBERTS:

Q. Are you aware of any experts in your field of expertise who work for free?

A. No.

Q. And when you said -- when you agreed that you'd made millions as an expert, over how many years was that?

A. A long time. 25 years.

Q. Okay. When did you start? 1991?

A. That was full-time.

Q. Okay.

A. I did a few cases before that.

JA004341

Q. But you started full-time in 1991; correct?
A. Yes, sir.
Q. So it's been 27 years maybe, 2018?
A. Yeah.
Q. Yeah.
A. Yeah.
Q. Yeah. So --
A. Thanks.
Q. Only making 75,000 a year, you could have made millions; right?
A. I haven't done the math, but it's been good enough.
Q. It's been good enough?
A. Yeah.
Q. Okay. You mentioned, when Mr. Deutsch asked you, that, in fact, you charged less than most experts that are similarly qualified.
A. I do, yes.
Q. And you -- I think you wanted to tell the jury why you do that.
A. Yeah. It allows me to put in more hours because I tend to be -- I don't want to -- I didn't want to use the word everybody uses. It begins with an A.
But I really get into detail. And then I get

into the detail of that detail, and it drives everyone crazy. All right. But it allows me to put in more time if I have a lower bill rate.

300 sounds like a massive amount of money. Believe me, it's a lot of work doing this work.

Q. Do you always come up with the answer that your clients want you to come up with?

A. Absolutely not. I do not.

Q. Do you charge more when you have an answer that helps your clients at trial?

A. No. It's by the hour.

MR. ROBERTS: Thank you, Doctor.

THE WITNESS: Thank you.

MR. ROBERTS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STRASSBURG:

Q. Doctor, you don't know how much dust was out there that night of the accident; true?

A. True.

Q. And you don't know how much dust it would take, if at all, to make something slippery that wasn't before; true?

A. It's also true. I'd have to do that empirically with test equipment that I have to see what

JA004343

makes things slip. Any lubricant can make you slip. It would just depend on quantity, grade, and type.

Q. Let me direct your attention. We've heard testimony in this case from Mr. Cox himself, which I will pull up. Just a second. Page 100 on May 1st.

Mr. Cox was asked, "How do you know the dust was slippery?"

And his answer was, "I didn't know it was slippery. I just assumed, if it was on the concrete and I was running around as fast as I could in the dark and I took a corner and I was running up a ramp, that that was one of the factors that caused me to fall and slip."

And then the next question was "Was the concrete outside where you fell more slippery with dust or without dust?"

And his answer was "I don't know."

Do you see that?

A. I do see it, sir.

Q. You wouldn't know either; true?

A. If --

Q. As you sit here today, you wouldn't know either; true?

A. If what? Can you rephrase for me.

Q. That the concrete outside was more slippery

with dust or without dust.

A. You know, there's a lot of variables. It depends on the shoe.

Q. Yeah.

A. Not just -- not just the ground and the lubricant; it depends on the shoe. So he didn't -- says he doesn't have a perception of that, and I can understand that.

Q. Okay. Now, would you agree with me that somebody sweeping --

MR. DEUTSCH: Objection, your Honor. Outside the scope.

THE COURT: Well, I don't know if it is or not. Let's see. I want to hear the question.

BY MR. STRASSBURG:

Q. You'd agree with me that somebody sweeping on a concrete accessway, like the one in question -- in question here, who sweeps over a recessed area -- like a crack, like something recessed in the pavement, right? -- could expect that that recessed area would get a deposit of the material being swept?

A. It could, sure.

Q. You'd expect that; right?

A. Yes.

MR. STRASSBURG: I think that's enough.

Thank you, Judge.

THE WITNESS: Thank you.

MR. DEUTSCH: Just a couple, Your Honor.

RECROSS-EXAMINATION

BY MR. DEUTSCH:

Q. So, Dr. Baker, when Mr. Popovich first got up here and he was talking to you about which way the person's head would be facing -- do you remember those questions?

A. I do.

Q. Right. And he said, "If the person was coming at a 90-degree angle this way and they fell, their head would -- which way would their head be facing?" And then he said, "How about on this angle?" and "How about on this angle?"

Do you remember those?

A. I remember it, yes.

Q. And every single one of those questions, you were able to answer him; correct?

A. Based on physics, yes.

Q. Correct. But in not one of those questions did you say I would need to know whether the person slipped or tripped.

You didn't ask him to clarify that for you,

JA004346

would you?

A. Well, were we not talking about a trip?

Q. He didn't say that.

A. Well, that's what I've been assuming.

Q. He just said, "If someone fell going this direction, could they fall forward?" And you answered yes.

A. Did I say fall or --

MR. POPOVICH: Objection. Misstates --

THE WITNESS: Did I say fall or trip?

MR. DEUTSCH: The jury can remember the questions or maybe we can read it back.

BY MR. DEUTSCH:

Q. First question that Mr. Popovich asked you:

"QUESTION: Certainly it's possible to take different routes to get to your point of rest -- point of impact that you have calculated for Mr. Cox; correct?

"ANSWER: Not so much calculated, but identified.

"QUESTION: Okay.

"ANSWER: Right.

"QUESTION: Because using the cameras, as you have described?

"ANSWER: Correct.

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"QUESTION: So if someone were to clear the corner --

"ANSWER: I'm sorry. The corner is up here.

"QUESTION: I'm going the wrong way. Sorry. It clears the corner?

"ANSWER: Yeah.

"QUESTION: And does a 90-degree turn to go right up the inside of the building?

"ANSWER: Correct.

"QUESTION: And then takes a hard left to get to your point of impact?

"ANSWER: Yes.

"QUESTION: And that person falls forward. What direction is that person's head going to be pointing? Will it be pointing to these doors?

"ANSWER: No. It will be forward."

That was the first question. No mention of whether it's a trip or a slip at any time from when Mr. Popovich first started asking you questions until you gave that answer. True?

A. He said "fell forward." My mind went towards trip. We've been talking about trip all afternoon.

Q. Okay. Well, I talked to you about slip a lot

also, didn't I?

A. Well, I've seen it in print, yes.

Q. Yeah. Okay. And then he asked you about a bunch of other directions, and not one time did you ask him to clarify whether it was when a person slipped or tripped; is that true?

A. Well, I think we've ruled out the slip here --

Q. Okay.

A. -- in that conversation.

Q. I know you think that way.

A. I do, yes.

Q. You do.

A. Very much so.

Q. Now, let me ask you this: You said that I read you something about the visual targets from one of your prior reports back in 2005. Do you recall that?

A. I remember that, yeah.

Q. All right. And you told Mr. Popovich that I took it out of context.

A. Correct.

Q. What report did I get that from?

A. I can't remember the name of the litigants. Did you say Marshall or something like that?

Q. No, that wasn't it.

A. That wasn't it.

Q. The fact is, is that, since you have no idea which report I took that from, you have no idea the context that it was used in that I read it from; true?

A. That lost me.

Q. Well, you don't know what report I got it from because you've done, like, thousands and thousands and thousands of reports; true?

A. That's true.

Q. So you don't know what report I got that piece of information from; true?

A. Correct.

Q. So, therefore --

A. 2,005, correct.

Q. -- you don't know what context it was used in in that report; true?

A. True.

Q. And, therefore, you don't know whether I took it out of context or not?

A. Well, you read it to me. That's --

Q. I just --

A. To me, that was the context.

Q. I just read you a statement. You just told Mr. Popovich that I took it out of context.

You have no idea what context it was used in

in that report; isn't that true?

A. I'm not sure how to answer.

Q. How about --

A. It's not true. That you read a quote from my report, it's a valid statement.

Q. Okay.

A. But you didn't read the rest of the case.

Q. Let's move on. Let's move on.

This was interesting to me. You -- Mr. Popovich was asking you about the date of your reports. You remember that?

A. Yes.

Q. And you said that you submitted it on March 1st; right?

A. That's correct.

Q. And then you said you got it back, and then you finalized it and dated it March 18th; correct?

A. 19th.

Q. March 19th. Sorry. Is that right?

A. That's correct.

Q. Who did you submit it to?

A. Eric Freeman.

Q. So you gave Mr. Freeman a report before it was finalized and then got it back and then finalized it?

A. Well, it's not I got it back.

Q. Well, that's what you said. You said you got it back three weeks later, and then you finalized it.

A. Counselor, I got the word back.

Q. What? That it was okay? That it fit what he needed in this case?

A. That we want to use it. We want to use your report. I said okay. Well, today is now the 19th. It took them three weeks to call me.

Q. Right. But you could have given him a final report and he could have said "I want to use it" or "I don't want to use it"; right?

A. Well, it was final, as far as I was concerned.

Q. But you didn't finalize it because you gave the lawyers in this case an opportunity to check it to make sure it fit within what they needed before you finalized it; right?

A. The report was final on the 1st.

Q. It wasn't. You told us it wasn't finalized until you, quote, got it back three weeks later. That's what you said.

A. Well --

Q. You got it back from Mr. Freeman after you gave him a rough draft of the report on March 1st.

Isn't that how it happened?

A. When you say "got it back" --

Q. I didn't say that. You said that.

A. I got the word back.

Q. But --

A. Let's publish the report.

Q. You submitted him an unfinalized report on March 1st. True or not true?

A. That's true. But, in my opinion, it was finalized.

Q. Were you waiting to see if he had any comments?

A. Yes and no. Sometimes they do; sometimes not.

Q. Right. Sometimes an attorney says, "Ah, can you change this" or "Can you change that?"

A. Well, I don't do that.

Q. But then why didn't you just submit a final report on March 1st? Why did you wait three weeks later until Mr. Freeman returned it?

A. Because sometimes there's additional things they need me to treat in the same report. There's additional items that need evaluation.

Q. But you told --

A. And that was what was there at the time.

Q. But you told us that Mr. Freeman gave explicit instructions, before doing your second report two years after your first report, what he wanted you to look into. And now you're saying you gave him a rough draft just in case he had now more things for you to add?

A. There could have been any number of other issues. The next one was how. We started with where.

Q. I understand that.

A. He gave me how.

Q. I understand that, but we're past how.

He told you he wanted the how. You did a report. You didn't just do a final report; you did a rough draft which you gave the attorneys and didn't finalize it until the attorneys said it was okay. True or not true?

A. Not true. In your mind, that was a rough draft. It wasn't a rough draft.

Q. Do you want me to look back at what your testimony was about it?

A. Do whatever you want.

Q. Sure. You know what? I'm not going to waste time. I think everyone knows what you said.

Now, you mentioned also about -- you talked about the -- that -- I think it was called the push-off

slip, when you slip like that?

A. Rear foot, yes.

Q. Rear-foot slip.

A. Right.

Q. And you mentioned that part of that has to do with where your center of gravity is at the time you slip; right?

A. Correct.

Q. And would you agree with me that, when someone's walking, their center of gravity tends to be more upright?

A. Yes.

Q. And if you're running, sometimes you have a tendency that your center of gravity is forward more; right?

A. Maybe. If you look at some world-class runners, that's just the opposite.

Q. Okay. But how about somebody that's not a world-class runner? Because I already stipulated in this case that Mr. Cox was not Usain Bolt.

A. I understand that, for sure. But it depends on the individual.

Q. Okay. But you don't know --

A. You can't categorically say someone's going to lean forward because they're running.

Q. Right. And that's the point here, isn't it, Doctor, that there are lots of options of how someone could slip or trip and fall and hit the ground? There's lots of ways that could happen?

A. Correct.

Q. And you can't say -- withdrawn.

A. That's -- is that a question?

Q. Withdrawn. That wasn't a question. I withdrew it.

Let's talk about the ramp. You said it was out of building code. How about the UBC?

A. That's what I'm -- actually, it became the IBC. After 2000, the UBC became the IBC. The uniform building code became the international building code.

Q. And this ramp violated those codes?

A. When you say "violated," I mean, they're all over town. But it was -- it was in excess of the 1 in 12.

Q. Right. So if the code says it has to be 4.6, this was more than that?

A. 4.76.

Q. 4.76. This was more than that?

A. Correct.

Q. Correct. And you told -- you've now been asked a couple times, I think, what the amount was.

And I think you said 6, 7, or 8. Which one was it?

A. No, he asked me. And I think it was in the 6s.

Q. Well, do you have it in front of you?

A. No, I don't. But I believe it was in the 6s.

Q. You looked before at your notes and you said you did have it.

A. What I did have was the code.

Q. So you're telling the jury that you went out, did a site inspection of this place, took all these measurements of all these different things, and you didn't measure the degree of that ramp? Is that what you're saying?

A. No, I did.

Q. You did?

A. We just talked about it.

Q. Oh, okay. But you didn't write it down anywhere in any notes?

A. Not in that page.

Q. Well, did you write it down anywhere in your file? Can you tell me what it was specifically? We know it was either 5, 6 -- we know it was either 6, 7, or 8.

A. As I recall, it was in -- it's 6.6, in that area.

JA004357

Q. Look, do me a favor. Take a look in your file and tell us what it was.

A. All right. And, again, this is not my complete file. This is a trial file.

Q. Wait. Whoa, whoa, whoa.

A. Yeah.

Q. So you have more material that you didn't bring to court today?

A. Yes. I have notes, various things, yes.

Q. Okay. I would have liked to have seen those.

A. That's what a deposition is for.

Q. Okay. In all your -- your time testifying, have you never been told that you should bring all the materials that you used in your case to the court with you?

A. Understand, that file with all the prints is that high (witness indicating).

Q. I'm just asking if anyone has ever told you that.

A. No. No.

Q. Okay.

A. This is what I got for you.

Q. So what was it based on your notes? Can you tell me?

A. Yes. 4.76 is the standard.

JA004358

Q. I understand that, but what was this ramp?
A. 6.6.
Q. 6.6. Okay. That's what I wanted to know.
A. Yes. Thank you.
Q. All right. Two more -- two more questions.
You were asked -- and you keep saying it -- that the spot that he fell was 15.8 inches from that ramp. That's what you told us; right?
A. Center of mass.
Q. But that's not where he fell; that's where he landed. True?
A. True.
Q. Okay. So when you said -- when Mr. Roberts asked you questions and you said that the point that he fell was 15.8 inches -- 15 feet 8 inches away from the ramp, that is not where he either tripped or fell; that's where he landed?
A. Center of mass.
Q. Where he landed?
A. Correct.
Q. Okay. Mr. Strassburg asked you a question about, you know, lubricant and the floor being slippery or something.
A. Yes, sir.
Q. And you mentioned that -- that there's -- you

JA004359

have some equipment that you could use to -- to test the slipperiness of floors.

A. The coefficient of friction.

Q. Coefficient of friction.

A. Yes.

Q. And in order to determine, like in this case, whether -- what the coefficient of friction would be for a dusty floor, you would have to test it with the dust on the floor. Does that make sense?

A. It does. Actually, it does make sense to me. Most people don't do it that way.

Q. But that's the way you should do it?

A. That would be the way I would do it if I were going to do this for dust.

Q. Right, because if you were to take the coefficient of friction on the dry surface, that wouldn't give you much information about what was -- it was like with the dusty surface?

A. I agree with you.

MR. DEUTSCH: I have nothing further, Judge. Thank you, Doctor.

FURTHER REDIRECT EXAMINATION

BY MR. POPOVICH:

Q. Coefficient of friction matter in a

JA004360

trip-and-fall?

A. No.

Q. Did Mr. Deutsch's office subpoena you to demand that you bring every piece of paper you have in this file to this courtroom this day?

A. No. I actually brought more than I wanted to bring.

Q. Does that mean you get to choose what you bring?

A. Well, I brought things that were representative of what we were going to do today.

Q. All right. You said lots of ways to slip and trip. And you agreed --

A. Yes.

Q. -- in general?

A. Right.

Q. Are there a lot of ways to slip and get the marks or dust on Mr. Cox's shoes the way you see it in the photograph?

A. To me, there's only one story.

Q. Which is what?

A. He tripped on a toe catch, putting his upper body forward. He went down on an outstretched arm. And then he got dust on his frontal plane.

Q. Okay.

JA004361

A. And you can see that evidenced on the shoe and the way his metatarsals struck the ground. So there was a pretty severe toe curl. That mark wouldn't be that intense by itself if it just dragged as counsel were showing us earlier.

Q. One last topic.

When you were asked about a rear-foot slip while someone is running, because they're running, is the momentum greater than when walking?

A. Yes.

Q. Does that make it more likely someone's not going to go to the ground when there's a rear-foot slip while running because that momentum keeps it over the anchored foot?

A. No. I -- I think it still is a matter of how well you regain balance. In other words, you've got to keep the CG over the CM, center of mass, over the contact point with the ground. If that gets too far ahead or behind or some other place, that's when the fall occurs.

Q. Even if running, if there is a rear-foot slip, is the mechanism of the fall the same as walking?

A. As long as you're over that loaded foot, you'd be okay.

Q. But if you're going down, it's still going to

be a drop straight down onto a knee most likely?

A. And there should be a knee injury if it's violent, yes, sir.

MR. POPOVICH: Thank you.

MR. ROBERTS: No further questions, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. STRASSBURG:

Q. If you were going to test the coefficient of friction, you would probably want to know what kind of dust; right?

A. Yeah. May I answer that with the coefficient of friction? I know we're running out of time, but I think it might be --

Q. Do you mind if I just --

A. -- for the panel. Go ahead.

Q. Do you mind if I just ask questions, and then why don't we do it the old traditional way?

A. Shoot.

Q. And you'd probably want to know things like is it cement dust, is it Sheetrock dust, is it tire rubber transfer dust, or environmental dust, wouldn't you? Wouldn't you want to know what kind of dust it was?

JA004363

A. Actually, what I'd prefer -- no, I'd prefer to get a sample of whatever it was and use it in the test.

Q. So you'd probably want to get the clothing in the photographs that the plaintiff took in the ER -- or, I guess, the plaintiff's wife took in the ER -- right? -- so you could get a sample of the dust; right?

A. Sure. I'd like to get the same dust.

Q. Oh, but you can't do that because he washed those; right?

A. I don't know.

Q. And you'd probably want to get the shoes -- right? -- to get a sample of the dust on those; right? Wouldn't that be helpful?

A. Well, I'd like to get those landmarks on the shoes.

Q. Yeah, right. But you can't do that because he cleaned those; right?

A. I guess so. I think I've heard that, yes.

Q. At a time when he was represented by his lawyer; right?

A. That, I don't know.

Q. So you don't know if the plaintiff's lawyer, the one that doesn't represent him anymore, took any precautions to safeguard the kind of evidence that you

would want to test so you could do the coefficient of friction; right?

A. Typically, we do save -- you know, save the evidence.

Q. And it would make sense to test the -- the concrete surface that's out there, you know, subject to environmental conditions because dust in these kind of sites, it's not uniform; right?

A. You mean in the -- the density?

Q. The thickness of the dust --

A. Yeah.

Q. -- across the entire site, it's not uniform; right? It varies in thickness; right?

A. I would agree.

Q. There's patches and -- right?

A. Right. I'd agree.

Q. Okay. And you -- you would probably also want to do some sort of analysis as to the source of the dust; right?

A. Yes.

Q. And you'd probably want to check and see if there were other construction projects going on at the same time --

MR. DEUTSCH: Objection, Your Honor. Outside the scope.

BY MR. STRASSBURG:

Q. -- that might have contributed environmental dust --

THE COURT: I'll sustain the objection.

Next question.

BY MR. STRASSBURG:

Q. Well, would you want to have known alternative sources?

A. What I'd want to know is what the lubricant is between the two surfaces if we were talking about a slip; that is, with two surfaces with respect to each other.

If there's a lubricant between the two, they can slip. I'd want to know what that was that was the lubricant.

Q. Right. And your preferred approach would be to get a sample of whatever's on Mr. Cox's clothing and shoe; right?

A. Yes.

Q. And do your analysis from that; right?

A. I would, yes.

Q. Thank you, sir.

A. Thank you.

MR. DEUTSCH: Nothing, Your Honor.

THE COURT: All right. Sir, you may step

JA004366

down.

MR. DEUTSCH: No, no, no. The jury.

THE WITNESS: Not so fast.

JUROR NO. 8: This is important.

(A discussion was held at the bench, not reported.)

THE COURT: I believe I have all the questions; right? So what I will be doing is I'll be posing jurors questions to you.

THE WITNESS: Yes, sir.

THE COURT: And, following your answer to the questions, I'll allow counsel to follow up. Okay?

THE WITNESS: Yes, sir.

THE COURT: Okay?

So the first question here will be the next court exhibit in order.

In the video of the MLB player that highlighted the toe catch, the player impacted the ground, which left dirt on his uniform. Is the location of the dirt on the player's uniform consistent with the dust on Mr. Cox's clothes if, in your opinion, Mr. Cox tripped?

THE WITNESS: I would say the answer would be yes unless there was some active torsion in the process of him tripping.

JA004367

You were talking about the baseball player? Yes.

So it should be relatively similar in being on the frontal plane. It should be in the front. If you toe-catch, you interrupt the stride phase, the momentum goes forward, and down you go, just as we called when he was doing it.

Now, if, for some reason, he -- he does something in midair -- maybe, you know, maybe not -- but, as I recall, he did go forward and land on a frontal plane, and that would be consistent with Mr. Cox. He's got dust up the front.

MR. DEUTSCH: I have a follow-up.

THE COURT: Okay.

EXAMINATION

BY MR. DEUTSCH:

Q. So what you're saying is, is that someone can trip and have some sort of, as you just say, turn in midair and they could land not on their front but on their side? That's what you just said; right?

A. That's one piece. Remember, there's several pieces of information that intersect.

Q. But I'm just talking about that one piece that you just told us. You just told us that this

JA004368

baseball player who was going (descriptive sound) straight could have tripped. And, when he landed, could have had dirt on his side because, as you said, in midair, he could have had some sort of rotational turn that made him land not on his front but on his side. Isn't that what you just said?

A. Well, I didn't see him do that, but that is -- yes, that's right. That's a conceivability.

Q. So that means that after the person trips, when they land, they could have dust on their side and they could trip, or they could dust on their front and they could trip, or they could have dust all different ways and trip. That's you're trying to say?

A. Depends how he lands.

Q. Depends how he lands. And that's the same with whether they slip. They could slip and land on their front because they could have some sort of torsion -- rotational movement, or they could land on their front or their side or their back or any other way; right?

A. Feet forward. Feet have to be forward.

Q. And then they could land in any way possible, millions of different ways?

A. The feet have to be forward.

Q. Okay.

A. We don't have that in this case.

MR. DEUTSCH: I have nothing further.

MR. POPOVICH: Nothing further.

MR. ROBERTS: Nothing, Your Honor.

MR. STRASSBURG: All right. I guess since this was my doing, I ought to --

EXAMINATION

BY MR. STRASSBURG:

Q. All right, Doctor. Why don't you come down here and point to them so we can be clear what your answer is?

A. Okay.

(Whereupon video was played.)

THE WITNESS: Now, see, he turned his shoulder in.

BY MR. STRASSBURG:

Q. All right. Let's -- let's go through it --

A. It was a torsion.

Q. -- and show them what you're talking about. This is the point of the toe catch?

A. Yes, sir.

Q. And he immediately begins going down?

A. Right. Well, again, his -- his upper body --

If you could just go back maybe a couple of

JA004370

frames. Very good.

His upper body continues forward because it has weight and velocity. That's called momentum. So he's got this momentum and he's trying to get his support structure underneath that momentum.

All right. And it turns out he got interrupted here, so this continues forward. And then apparently what he does, he tries to recover. And, again, this is the panic moment when we try to recover, and it looks like he -- he tucks.

And another frame.

Q. And he has an arm out to break his fall?

A. Yeah. Breaking his fall, correct, just like you say.

And he's -- notice he's -- he's counter-rotated a little bit here. And he's on the left front side.

Q. So wouldn't you say that he comes down first on one side, and then his other side contacts the ground, then he rolls? Isn't that what that's showing?

A. Yeah. Ultimately, yes.

Q. Anything inconsistent about what you saw in the photographs of Mr. Cox?

A. Well, what's inconsistent, again, is the soft shoe that Mr. Cox has that we definitely don't have

here.

Q. No, the question's about the clothing, what's on his -- the baseball player's clothing, the marks on the clothing. Anything inconsistent about the way you see his body contact the ground here compared to the -- the Plaintiffs' Exhibit 83 photographs?

A. Well, we see clearly a left-side -- left-side torsion as he is trying to recover from this trip right here. He's trying to recover, it doesn't happen, he keeps going, his momentum takes over. And then he's got an outstretched arm, which is -- most -- most pro athletes will not do an outstretched arm because that --

Q. Right. That's an expensive piece of anatomy; right?

A. Well, yeah, it's obviously an issue.

Q. Sure.

A. However, he does. He does. He puts the outstretched arm down and --

Q. But look, Doctor, I mean, isn't what you're seeing happen here is the -- the toe catch occurs, he immediately begins going down; right?

A. Yes.

Q. He tries to get the opposite foot underneath himself; right?

A. Correct.
Q. There, he plants his right foot; right? I mean, his right foot plants on the ground; right?
A. You're going to have to back up a frame on that. It's --
Q. See, right foot contacts --
A. Right here.
Q. -- right?
So then his left -- his left side isn't in contact with the ground, but his right side is in contact with the ground, so he falls towards his left; right?
A. Correct.
Q. Anything -- I mean, that's what you'd expect; right?
A. Here, yes, in this case.
Q. And then he falls that way, but he ends up with some rotation; right?
A. He does.
Q. Look at his shoulders. See?
A. Uh-huh.
Q. Okay.
A. Very good. But it is clearly because of a drag.
Q. All right. Is there anything else about the

question and now that you've seen the video that calls for further answering, do you think? It's up to you.

A. No. And, again, we've got three things to consider, not one. And each time we do this, we look at one. We look at all three together and make them fit together to tell one story.

Q. Thank you, sir.

A. Thank you.

MR. POPOVICH: Your Honor, can I just follow up the video?

MR. DEUTSCH: And I have a follow-up as well.

MR. POPOVICH: You want to go first?

MR. DEUTSCH: You go first.

EXAMINATION

BY MR. POPOVICH:

Q. The baseball player --

MR. STRASSBURG: You want me to caddy for you?

MR. DEUTSCH: Roger, can you leave that here.

BY MR. POPOVICH:

Q. The baseball player caught which toe, left or right?

A. We have to go back. I thought it was the left.

MR. STRASSBURG: Hold on. Let's get him

JA004374

around the -- all right.

Tell me when to stop.

THE WITNESS: There it is right there. It's the left and he's dug in. And he didn't pick up the toe to give himself a stride that cleared the ground.

BY MR. POPOVICH:

Q. And then which arm was outstretched after he caught his left toe?

A. Well, he's got the left out there.

Q. Which toe did Mr. Cox catch?

A. My understanding, he's caught the right.

Q. And there's been testimony in this case that he injured his right shoulder?

A. Yes, sir.

Q. Thank you.

EXAMINATION

BY MR. DEUTSCH:

Q. Quick question -- couple of quick questions.

You just mentioned that -- something about, like, he couldn't clear his toe -- right? -- when he was running, and that's something you do with a trip?

A. Right. When you stride, you got to pick up the toe.

Q. Correct. Now, when your toe -- when you're

walking, your toe doesn't come very far off the ground when it clears it; is that true?

A. Correct.

Q. It just sort of -- just kind of whizzes by it; right?

A. A quarter of an inch.

Q. A quarter of an inch?

A. Right.

Q. Right. So even in that 1 degree of incline that you said was there, that 1 degree of incline, which, over the course of about this much, goes up three -- almost three quarters of an inch, you said?

A. Well, that's 3 inches now.

Q. No, three quarters of an inch; right?

A. Yes.

Q. Over that 32, wouldn't that be enough for someone, when their toe is coming through, to catch that incline?

A. It can, but the thing is --

Q. That's all I wanted to know is it can; right?

A. Yes. But he's running up an incline. His center of mass is rising. So we adjust. Not everything is flat, Counselor.

Q. I understand that.

A. We adjust to grades. And that quarter of an

inch adjusts to the grade, but we don't think about it.

Q. Let me ask you this question. If you took this baseball player and took away the video that shows him tripping, obviously --

A. Yeah.

Q. -- and put a tree over the middle of first and second base and all you saw was this guy at this point with the dust on his uniform, you couldn't tell us what happened to him; true?

A. Well, I'd have to see the rest of the information.

Q. Okay.

A. I'd have to see the rest of the data.

MR. DEUTSCH: I have nothing further.

THE COURT: Is that --

MR. POPOVICH: Nothing further from me.

MS. FRESCH: No.

THE COURT: Does that conclude the follow-up --

MR. DEUTSCH: Yes.

THE COURT: -- on the last question? Okay. I've got some more questions here, sir.

THE WITNESS: Yes, sir.

THE COURT: Could the top of his foot touch the top of the incline when stumbling due to the 6-plus

incline?

THE WITNESS: You're talking primarily about that mark at the metatarsal area, most likely. Not at the incline, because the touchdown is so much farther than this steep area. He negotiates the steep area. He falls 15 feet further. So I would say the answer to that is no.

EXAMINATION

BY MR. DEUTSCH:

Q. I just want to clarify again.

He didn't fall 15 feet further; he landed --

A. He touched down --

THE COURT: Sustained.

BY MR. DEUTSCH:

Q. -- right?

A. 15.8, yes.

Q. He landed?

A. Yes.

Q. He didn't fall; true? He landed?

A. That's correct.

Q. Okay. So you keep saying fall 15 feet further, but he didn't fall.

A. The POI of CM is 15.8 feet past that ramp.

Q. Well, 15.8 feet is not so long. I mean, if I were to fall down, from my foot -- from my foot -- from

my foot -- well, Mr. Cox is a pretty tall guy, isn't he?

Do you know how tall Mr. Cox is?

A. Yes, he is.

Q. Right? He's a pretty tall guy.

A. Yeah.

Q. So if I were to just go directly from this spot and just go straight down -- boop, that -- my POI from the place of my feet would be probably half my body distance, right, about 4 feet or so?

A. 3.

MR. ROBERTS: Objection, Your Honor, to --

MR. DEUTSCH: I was trying to get the witness to agree with me.

MR. ROBERTS: Objection to the math, Your Honor.

BY MR. DEUTSCH:

Q. How far would it be? Half of my -- I'm 6-7. This is my center gravity.

It's actually higher than my actual midpoint; is that fair?

MR. RUSSELL: Well, let's do it to see. Let's see what happens.

BY MR. DEUTSCH:

Q. Would you agree with me, though?

A. If --

Q. If I were to just go forward, the -- my POI, point of impact, at my center of gravity --

A. Mass.

Q. My center of mass.

A. Yes.

Q. -- would be at least a couple of feet forward from my feet right here --

A. Yes, it would.

Q. -- right?

A. Yes.

Q. And if I was moving a little bit and fell, it would be a little further; correct?

A. Correct.

Q. And the faster I was going, the further it would be?

A. Correct.

Q. Okay.

MR. DEUTSCH: I have nothing further.

MR. POPOVICH: Is it going to be 15 feet?

THE WITNESS: No.

MR. POPOVICH: Thank you.

MS. FRESCH: Nothing, Your Honor.

MR. ROBERTS: Nothing, Your Honor.

THE COURT: Mark that the next court's

exhibit in order.

All right. Next question, sir.

Did you ever consider using your equipment to determine the slip factor?

THE WITNESS: Good. Good question.

To answer that, let me say what the slip factor is. Would that be all right?

THE COURT: Just answer the question.

THE WITNESS: If we've got a ground surface and we've got some kind of a -- a weight of 10 pounds and it takes me 5 pounds to move it across friction on that surface -- so this weighs 10; it takes 5 pounds to move it. That would be a coefficient of friction of .5. .5 is what the UBC says is acceptable and appropriate, .5.

So this is more like -- let's say, when it was full, it was a pound. If I pull and say half a pound, that's .5. If I put a lubricant down, if I coat this with butter and pull on it, it's going to be less than that .5.

All right. So that's the kind of thing I think you're talking about in doing a slip coefficient test.

I have the equipment. It did not appear appropriate here because I didn't see this being a slip

after putting the information together. So I didn't do a coefficient of friction test.

THE COURT: Follow-up?

EXAMINATION

BY MR. DEUTSCH:

Q. Well, for the first two years, two and a half years that you had this case, you were analyzing it initially as a slip in your first report; true?

A. Yes. But the question was where. I only answer questions, sir. And the question was where.

Q. Right. But the question that you answered in your first report -- and I read it to you and I'll read it to you again -- was not just where.

In your first report, you answered -- you gave this answer.

"ANSWER: It is not clear why Gavin Cox slipped."

That's an answer.

A. Right.

Q. So the question now is, at the time you did this report, you weren't thinking trip; you were still thinking slip. And at the time you wrote the report, you didn't know why he slipped.

So now I want to know, just like the jury, why didn't you do any of that coefficient of friction

JA004382

testing then?

A. None of that was clear. It wasn't clear. I didn't see --

Q. It's still not clear to me, Doctor.

A. Pardon me?

Q. It's not clear to me.

A. No, it's not -- it wasn't clear to me. I could not understand how, on a 1 percent -- sorry, I said 1 percent -- 1-degree grade 15.8 feet from the ramp there would be the take-down that we see in the video. It just made no sense to me.

Q. But, Doctor, we're talking apples and oranges. We're talking about whether it was a slip or a trip.

At the time of your first thing, he could have slipped 15.8 feet this way or that way or any which way. You gave the answer where you said, "I don't know why he slipped."

The question the jury just asked you was, well, if you didn't know why he slipped, do you think maybe you should have tested the ground with a friction meter? That's what they asked you.

A. See, I could tell you from here what those numbers would be. That's maybe the part you're missing, sir.

Q. You just told Mr. Strassburg that, in order to know the numbers, you have to know the kind of dust and the this and the that. And now you're saying that you could tell us from here without knowing any of that information?

A. Yeah, I can tell you, if it's clean and dry, it's going to be slip-resistant. If we put a lubricant down, it's not. Pretty much, if it's wet, it's slippery. If it's dry, it's not.

Q. We're in agreement, then.

Nothing further.

MR. POPOVICH: No, Your Honor.

THE COURT: Okay. That's the next court exhibit.

All right. The next question, sir.

So he could have stumbled to the POI after he slipped/tripped 15 feet away; correct?

THE WITNESS: Well -- well, which is it? Because 15 feet away, if his momentum is going out from that corner, if he's swinging outward, I don't see him going forward 15.8 feet. So this slip/trip that you read doesn't -- doesn't really compute for me.

Can I clarify further or -- I mean, I don't want to just dismiss the question.

THE COURT: You can provide the full

JA004384

answer -- what you think is the full answer you want to give.

MR. DEUTSCH: No follow-up, Your Honor.

MR. POPOVICH: Nothing.

THE WITNESS: Can I hear the question again, sir.

THE COURT: So he could have stumbled to the POI after he slipped/tripped 15 feet away; correct?

THE WITNESS: Okay. Yeah, I think the operative word was the "stumble."

Have I ever seen a stumble that went that far? I haven't. I haven't seen a stumble that "boom." I have not seen that.

Is it -- is it possible? I don't know. I've not seen it. In 25 years, I haven't seen it.

MR. DEUTSCH: Nothing, Your Honor.

MR. POPOVICH: Nothing.

MR. ROBERTS: One follow-up question, Your Honor.

EXAMINATION

BY MR. ROBERTS:

Q. In the point -- the trial testimony that Mr. Deutsch read to you where Mr. Cox said that he felt his feet slip left from underneath, if his feet had

slipped left from underneath him as he went around the corner, would he have ended up in the point of impact?

A. No, no. Nowhere near it. No. That would go outward from the curve, outward from the corner. Centrifugal force takes us away from the center of the turn and sends us outward. So that would be going away from that corner, not towards the door.

THE COURT: All right. The final question, sir.

THE WITNESS: Yes.

THE COURT: All right. Is it possible that another participant could have been in the path of Mr. Cox which could have changed his path to turn sharper than reasonable? We can't see in the video; true?

THE WITNESS: Yeah, certainly there's people there. There's 13 of them. Are they bumping into each other? When I've seen it, they're sort of spaced out. The attendants space them out a bit. They don't seem to be bumping each other.

Is that the intent of the question, if that's what I'm hearing?

THE COURT: I'm just stating what the question is.

THE WITNESS: May I hear it again?

THE COURT: Yes. Is it possible that another participant could have been in the path of Mr. Cox which could have changed his path to turn sharper than reasonable? We can't see in the video; true?

THE WITNESS: Yeah. Good question. I did not -- when I watched these being done, I did not see the people that close together. They are spaced out. I don't see anybody having to do a quick jog and -- and make quick turns. I didn't see anything quick about it at all. So that would be my answer.

THE COURT: Any follow-up?

EXAMINATION

BY MR. POPOVICH:

Q. Did you read anything in Mr. Cox's deposition testimony where he said he was bumped at the time he fell?

A. No.

MR. POPOVICH: Thank you.

THE COURT: Okay. That's the --

MR. STRASSBURG: Judge, let me direct you to the official record of the court for May 1st.

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JA004387

EXAMINATION

BY MR. STRASSBURG:

Q. Morelli asked you, "And the best you can, tell us, you turned the corner, you're running quickly -- first of all, how did you turn the corner? What do you remember?"

And Mr. Cox answered, "I -- I -- I -- I remember because I saw -- as I turned the corner, I saw the lit door. So it was almost like a beacon in the darkness to me. And as I turned the corner, as fast as I could, I started to run toward it. And then it felt like an elevator suddenly moving upwards, and I'm taking the corner as fast as I could. And I feel my -- I feel my feet just slip left from under me. And all of a sudden, all of me is in midair.

"That's what it felt like. There's the speed of turning, seeing the sharpness of the turn, and the weight of my body going around. And then I just feel my feet slip straight from under me."

Now, does that sound to you like there was anybody in the way?

A. No.

Q. In fact, doesn't that sound to you like Mr. Cox's recollection involves a left -- a leftward slip --

JA004388

A. Yes.
Q. -- with both his feet that puts him into midair and puts him on the ground; right?
A. Yeah, definitely leftward. Yes.
Q. Do you see anything in there about "I stumbled," right, the stutter step; right?
A. No.
Q. Do you see anything like that?
A. No.
Q. Would you have expected someone under those circumstances to recollect a stumble?
A. Things happen fast for people in accidents, but I would expect some logic to be attached.
Q. What is this from here to here? Is that about 15 feet?
A. I would measure it for you before I'd estimate it.
Q. Yeah, why don't we do that.
MR. POPOVICH: Mr. Strassburg.
MR. STRASSBURG: Oh, thanks.
MR. DEUTSCH: Done. No, I'm just kidding.
THE WITNESS: Be 15.8.
MR. DEUTSCH: Right there.
BY MR. STRASSBURG:
Q. Right here? Why don't we put this down.

JA004389

MR. RUSSELL: Be sure because Adam thinks he's 8 feet tall.

MR. STRASSBURG: Could you hit the stop.

MR. DEUTSCH: Keep going. Keep going.

MR. STRASSBURG: Hit the stop.

MR. DEUTSCH: There you go.

MR. STRASSBURG: Thank you, sir.

THE WITNESS: May I ask?

BY MR. STRASSBURG:

Q. Oh, you want to -- I'll just verify this. Can you give me a witness, 15.8.

A. 15.8, but it depends what we're measuring.

Q. We're measuring the part from where he rounds the corner until he lands.

A. The rounding the corner, that's more than 15.8.

Q. Okay. What's 15.8?

A. 15.8 is from that seam to the end. It's 20.8 to the curb.

Q. Okay. So let's just start with 15.8. All right?

A. Okay.

Q. Just let's -- I mean, I got to do this. So just let's do it 15.8.

A. I'm out of the way.

JA004390

Q. So would you expect that, if he slips left and then he stumbles, stumbles, stumbles, stumbles down, right, does that seem reasonable to you?

A. No.

MR. DEUTSCH: Can you leave that there for a second, Roger?

MR. STRASSBURG: You want this?

MR. DEUTSCH: Yeah.

BY MR. STRASSBURG:

Q. Okay. Now, let me direct your attention to this part where, after this testimony on page 35, Morelli's asking the questions. And next he asks -- next he asks on page 36, he says, "Okay. I just want you to clarify for the jurors. When you say you turned the corner, did you turn it wide? Did you turn it narrow?"

"ANSWER: No, no, no, no, no, no, no. I took it really sharply, as sharply as I could, and I had already taken some steps toward the door. And that's when I felt this. It just felt like a motion pushing me up -- the speed of turning, and the motion of pushing me up. And then I felt my feet just slip left from under me from all -- from together."

Do you see that?

JA004391

A. Yeah I do.
Q. That's a different scenario --
MR. DEUTSCH: Objection, Your Honor.
BY MR. STRASSBURG:
Q. -- right?
A. Entirely.
MR. DEUTSCH: Objection.
BY MR. STRASSBURG:
Q. Tell me what's different.
MR. DEUTSCH: Objection, Your Honor. It's the jury's recollection and review of this evidence and whether it's different.
THE COURT: Well, he was asked --
MR. DEUTSCH: This witness is not an expert in -- in -- in analysis of -- of testimony.
MR. STRASSBURG: I'm quoting this from the official record of the Court and asking him, if he sees as a scientist a difference, what's the difference.
THE COURT: I'll allow it.
THE WITNESS: Sir --
THE COURT: You can answer.
THE WITNESS: Well, the difference here is we're talking about already now taking steps toward the door. That's new.
"And when I felt this, it just felt like a

motion pushing me up" -- he's already running up this -- this incline. So this is not slipping outward from the curb -- the corner anymore.

"The speed of turning and the motion of pushing me up" -- he has speed headed to the doors. "And then I felt my feet slip left" makes no kinematic sense to me.

BY MR. STRASSBURG:

Q. Why not?

A. Well, he's going to the door.

Q. Because he's going straight.

A. He's going straight. He's going straight, and his feet slip left. Makes no sense.

Q. And when you say it makes no sense, what -- what you mean -- you tell me if this is right -- it defies the laws of physics; right? That's what you mean when you say it makes no scientific sense?

A. I would agree with that. It -- actually, it makes no human motion sense to be going in a straight line and slip outward that way. It makes no sense. Centrifugal force is outward from the center.

Q. Okay.

A. The center is that corner.

Q. What do you mean by "centrifugal force"?

A. Centrifugal. Centrifugal.

Q. Yeah, like I said, what do you mean by that?

A. It's the force -- force being -- throwing you outward from the radius of a curve. When rounding a corner, the force is outward; it's not inward to the -- unless you got a rope on you, you're going outward.

Now that's consistent with slipping left, but he's not saying that. He's saying he's going a couple steps upward. Now he's changed direction. So all of this has got multiple stories here at the same time.

MR. DEUTSCH: Move to strike, Your Honor.

BY MR. STRASSBURG:

Q. So --

MR. DEUTSCH: It's not an opinion that he's qualified as an expert to give. That's the jury's job.

THE COURT: Lay a foundation that he can give that opinion.

BY MR. STRASSBURG:

Q. Well, what makes you think that your description is in accordance with the facts in the case?

MR. DEUTSCH: Objection. Your Honor, that's not the point of this witness. He's a human factors expert, not someone here to analyze the testimony in the case, whether things are consistent or inconsistent. That's the jury's job.

MR. STRASSBURG: He opened the door, Judge. Did I not see him read --

MR. DEUTSCH: This is a question from the jury.

MR. STRASSBURG: -- the testimony?

THE COURT: The jury can listen to his testimony in formulating their --

MR. DEUTSCH: But not his opinion on the subject, Your Honor. They could form their own opinions. He's asking for this witness's opinion, who has no -- no more any specialized knowledge in this field than the jury.

THE COURT: How is this within the scope of the question that was posed by the juror?

MR. STRASSBURG: It is -- the question, as I recollect, was is it possible that there was someone in the way, one of the 13 participants was in the way. And he has testified, based on --

THE COURT: Okay.

MR. STRASSBURG: -- the actual evidence, no.

THE COURT: I think your question goes beyond that.

MR. STRASSBURG: That's fair, Judge. It's kind of late. So why don't I withdraw it, and that's enough. Thank you.

MR. DEUTSCH: I just have one follow-up, Your Honor.

EXAMINATION

BY MR. DEUTSCH:

Q. The 15.8 feet that you keep referencing here is an arbitrary number that you guessed at because you couldn't see that actual location because it was under the tree?

MR. POPOVICH: Objection. Argumentative.

THE WITNESS: Totally wrong. You didn't -- you didn't understand what we said all day. That's not correct at all.

BY MR. DEUTSCH:

Q. You're right about a lot of it, I'll tell you. But -- but the 15 -- you don't know exactly where Mr. Cox came around that corner specifically --

A. Oh.

Q. -- and, therefore, you just picked 15.8 feet because that sounded reasonable to you in terms of where you thought he probably came around the corner?

A. That's wrong.

Q. Right?

A. That's wrong.

Q. The 15.8 feet is from the edge of the ramp to

JA004396

the -- to the location that he fell?

A. The high edge.

Q. Right. But it would depend. If he was here, it might be a little more. If he was here, it would be a less little less. And if he was a little wider, it would be. More depending on where he crossed that wide edge, that number's different; true?

A. To that, you're going to add 5 to 7 feet --

Q. Right.

A. -- depending on where he --

Q. Right.

A. So instead of 15-8, it's 22.7, 22 --

Q. My point is is that you just picked that number based on what was in the middle of this -- this -- this pathway.

A. Absolutely not.

MR. DEUTSCH: Okay. I have nothing further.

THE WITNESS: I identified --

MR. POPOVICH: I have nothing further.

THE WITNESS: I identified the point of the cone and measured back to the seam.

THE COURT: Bob, we have another question, I believe.

JUROR NO. 12: Sorry. You guys keep talking.

MR. ROBERTS: One follow-up, Your Honor.

JA004397

THE COURT: Oh, okay.

EXAMINATION

BY MR. ROBERTS:

Q. Was --

THE COURT: Everyone stay back until he does the follow-up, and then we'll review the question.

BY MR. ROBERTS:

Q. Was the 15-8 an arbitrary measurement or was it the shortest distance to the top of the ramp to the cone?

A. It was definitely the latter. The cone was placed -- the 15-8 is back to that seam. We go down another 5 feet 6 inches, that's the red corner. None of this is guesswork. This -- these are those interacting measurements that we talked about. Remember, there's one, two, three things that are irrefutable no matter who sees them? That's one of them. None of that was guesswork.

Q. Thank you, Doctor.

A. Yes, sir.

MR. DEUTSCH: Bob.

THE COURT: Do you want to approach?

(A discussion was held at the bench, not reported.)

JA004398

THE COURT: All right. I think this is the last question.

THE WITNESS: You said that an hour ago.

THE COURT: All right. I just wanted to make sure there weren't any others before I started.

Okay. Could the slope from east to west cause the leftward motion as he was navigating the right turn due to the slope variance?

THE WITNESS: Yeah, good -- good point.

At the place where I measured the excessive-angle ramp at the curb line, that's the most it is. And then it kind of grades downward as you go westward. And I guess the question is, as you go from east to west -- actually, that flattens it out. It doesn't make it worse; it makes it better. Because it's the steepest right at the curb. As you get further away from that corner -- you get further away -- that steepness decreases the way it's been graded.

Does that answer your question?

THE COURT: That's the juror's question.

THE WITNESS: Does -- you okay?

So it's not standard. That ramp is not standard. It actually planes down as you go from east to west. It's not -- it's not uniform. Okay? So,

JA004399

actually, it flattens out as you get further away.

JUROR NO. 12: I can't talk to you. I just have questions going through my mind.

THE WITNESS: It was a good question.

JUROR NO. 12: I wanted to ask another question.

THE COURT: Okay. Is there any follow-up?

MR. POPOVICH: No.

MR. ROBERTS: No.

MS. FRESCH: No.

THE COURT: All right. Sir, you may stand down.

That's next court exhibit in order.

THE WITNESS: Thank you.

THE COURT: All right. We will be adjourning now until tomorrow morning at 9:00 a.m.

All right. You're admonished in the meantime, ladies and gentlemen, not to converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio.

Counsel, I had said 9:00 a.m. Is that -- before I continue further, is another witness at 9:00 a.m.?

MR. DEUTSCH: Your Honor, there's a couple things that we need to do outside the presence of the jury that I would like to do now maybe, but I don't know what your schedule is. I mean --

THE COURT: Okay.

MR. DEUTSCH: That involve maybe the witnesses for tomorrow.

THE COURT: The thing is, I'm having the jury come back at 9:00. Should I tell them to come back a little bit later?

MR. DEUTSCH: 9:30, maybe. Well, can we approach for one second. Maybe we can resolve it.

THE COURT: Yeah.

(A discussion was held at the bench, not reported.)

THE COURT: All right. So -- okay. So I'll continue on with the admonition.

You're further admonished not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

You're directed once again to return to the outside of the courtroom tomorrow, Wednesday, May 9th,

2018, no later than 9:20 a.m. so that we can reconvene here at 9:30 a.m. with the jury. And counsel will be here at 9:00 a.m. to take up a few things outside the presence.

Okay. Have a nice night, ladies and gentlemen, see you tomorrow.

(Thereupon, the proceedings concluded at 5:36 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Kristy L. Clark

KRISTY L. CLARK, CCR #708

IN THE COURT APPEALS OF THE STATE OF NEVADA
SUPREME COURT CASE NO. 75762

GAVIN AND MIHN-HAHN COX,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD aka DAVID KOTKIN; MGM GRAND HOTEL, LLC; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; TEAM CONSTRUCTION MANAGEMENT; and BEACHERS LV, INC.

Real Parties In Interest.

From the Eighth Judicial District Court, Clark Count, Nevada
Case No. A-14-705164-C

REAL PARTIES IN INTEREST EMERGENCY PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E), IMMEDIATE ACTION IS NECESSARY AS THE TRIAL IS ALREADY IN PROGRESS

Elaine K. Fresch, Esq., Jerry C. Popovich, Esq., Eric O. Freeman, Esq. and Gil Glancz, Esq., of Selman Breitman LLP, 3993 Howard Hughes Pkwy, Suite 200, Las Vegas, NV 89169, Telephone 702-228-7717, Facsimile 702-228-8824, attorneys for the Real Parties of Interest David Copperfield's Disappearing, Inc.; David Copperfield aka David Kotkin; and MGM Grand Hotel, LLC.

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AFFIDAVIT OF GIL GLANCZ IN SUPPORT OF REAL PARTIES IN INTEREST EMERGENCY PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Gil Glancz, being first duly sworn, now depose and say:

1. I am an attorney at law duly licensed to practice in all courts of the State of Nevada, and I am counsel for Real Parties in Interest David Copperfield's Disappearing, Inc,; David Copperfield aka David Kotkin; and MGM Grand Hotel, LLC in this matter.

2. If called as a witness in this matter, I could and would testify to the facts herein, which are presently known to me.

3. I have personal knowledge of the matters set forth herein, and I am competent to testify to the matters set forth in this affidavit, and will do so if called upon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

GIL GLANCZ

SUBSCRIBED and SWORN to before me
this 9th day of May 2018.

BONNIE K. JUAREZ
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 05/100332-1
MY APPT. EXPIRES OCT. 1, 2021

NOTARY PUBLIC in and for said
County and State.

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Rule 26.1(a) of the Nevada Rules of Appellate Procedure and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

David Copperfield owns 100% of the shares of David Copperfield's Disappearing, Inc.

MGM Resorts International is a publically traded corporation that is the parent corporation of MGM Grand Hotel, LLC.

There are no parent corporations of, or publicly held corporations that hold 10% of, Backstage Employment and Referral, Inc.

There are no parent corporations of, or publicly held corporations that hold 10% of, Team Construction Management, Inc.

DATED: May 9, 2018

SELMAN BREITMAN LLP

By: */s/ Gil Glancz*

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EMERGENCY PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS

COME NOW, David Copperfield's Disappearing, Inc.; David Copperfield aka David Kotkin; MGM Grand Hotel, LLC; Backstage Employment and Referral, Inc.; Team Construction Management, Inc. and Beachers LV, LLC (hereinafter the "Real Parties in Interest"), by and through their respective counsel, hereby submit this Emergency Petition for Rehearing of Order Denying the Petition for Writ pursuant to NRAP 40 and 27(e). Specifically, the Real Parties in Interest are requesting that the dissenting opinion included on this Court's Order be reconsidered and an Amended Order Denying the Petition for Writ of Mandamus be issued after this Court, more specifically the dissenting Justice has considered the arguments of Real Parties in Interest on why the District Court properly exercised its discretion in allowing the jury view. The Real Parties in Interest are entitled to the relief sought as the dissent was issued solely on the Petitioners' writ and without the Real Parties in Interest having an opportunity to provide material facts supporting a jury view or to dispute the facts presented by Petitioners. In addition, the Real Parties in Interest were not afforded an opportunity to present relevant case precedent that directly control issues raised by Petitioners in their writ and plainly supports a jury view in this circumstance. As a result, a number of facts and law were not only overlooked, but were not even presented to this Court when it issued its order.

Rehearing would not typically be available to Real Parties in Interest under these circumstances. Because the writ was denied, Real Parties in Interest should not have been aggrieved by the decision of this Court. In this case, however, the dissent did not merely indicate that the Justice would have required briefing – the dissent expressed an opinion on the merits. Because the majority simply found that writ relief was not appropriate, in effect the dissent was a 1-0 decision on the merits with two justices abstaining. Such a decision could be presumed to weigh heavily with a trial judge trying to avoid a reversal and re-trial of a case which has been in session for over a month.

In *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 609, 245 P.3d 1182, 1184 (2010), the Nevada Supreme Court stated that "rehearings are not granted to review matters that are of no practical consequence." Rehearing is proper in this case because the dissent actually had the practical effect of prejudicing Real Parties in Interest when it became the basis of the District Court *sua sponte* reversing its own order despite the majority of this Court finding that the jury view could proceed.

I. STATEMENT OF FACTS

This case involves an incident that occurred on November 12, 2013 at the David Copperfield Show at the MGM Grand Hotel/Casino. Petitioners are husband and wife Gavin Cox and Minh-Hanh Cox. From the inception of this case

and throughout all pretrial discovery and litigation, Mr. Cox has alleged that while he was participating in the "runaround" portion of the "Thirteen" illusion, he was hurried with no guidance or instruction through a dark area outside of the MGM Grand Hotel/Casino and he slipped and fell on an outdoor concrete path designated for the participants' travel that was allegedly covered with dust. There is no dispute that the area where Mr. Cox fell is located outside of the MGM Grand Hotel/Casino building.

However, Petitioners at trial have spent considerable hours focusing on the point the participants commence their path from point A to point B to reappear, thus bringing into question how the participants were told where to go, the turns and paths they took, the actions of the stagehands who accompanied the participants and the stagehands who assisted them on the route. Based on Petitioners' focus it was clear a jury view was necessary to help the jury put the evidence into context, and that a jury view of both the outside areas of the MGM as well as the layout of the backstage area was warranted under NRS 16.100. As such, on May 4, 2018, at their first opportunity immediately following the close of Petitioners' case-in-chief, all defendants joined in an oral motion requesting a jury view. The motion was made prior to any of the defending parties beginning their respective cases-in-chief. Following roughly an hour of argument by the respective parties both for and against a jury view and the District Court's

extensive consideration of the same[1], the District Court granted the motion for a jury view to occur thirty (30) minutes after sunset of all related areas.[2]

Thereafter on May 7, 2018, Petitioners filed the instant writ of mandamus seeking to overturn the District Court's ruling to allowing a jury view to proceed. The Petitioners' Writ misstated a number of material facts with respect to Petitioners' claims, the scope of the jury view and the evidence presented to date at trial. Nevertheless, this Court denied the writ as it did not believe that extraordinary relief is warranted as the Petitioners have an adequate and speedy legal remedy in the form of an appeal. Although this Court denied the writ, the Order included a dissenting opinion from Justice Silver that set forth that she would grant the writ prohibiting the jurors from viewing the scene. This dissenting opinion expressed an opinion on the merits presented by the Petitioners even though Real Parties in Interest had received no opportunity to brief the facts and law or other due process.

On May 8, 2018, following the issuance of this Court's Order which included the dissenting opinion, the District Court reconsidered its prior ruling with respect to the jury view based at least in part on the dissenting opinion, even after acknowledging that this Court was correct in determining that the writ did not

[1] See Trial Transcript dated May 4, 2018 at 88:2-129:14, attached hereto as Exhibit "A."

[2] See Exhibit A at 125:4-13

merit extraordinary relief. The District Court considered and referenced the dissenting opinion in announcing its decision to now preclude a jury view, thereby reversing its prior ruling that a jury view may proceed.[3]

II. ARGUMENT

As more specifically described herein, it was improper for this Court to include a dissenting opinion on the merits of the trial court's discretionary decision when the defendants were never offered an opportunity to brief the issue. Here there are numerous material facts and prior case precedence that was not even presented nor considered by this Court that supports the District Court's initial ruling that a jury view is proper including, but not limited to: (A) a trial court has broad discretion whether to allow a view of the subject property; (B) Nevada law is clear that a jury view is not considered evidence; (C) new allegations and evidence presented by Petitioners justified a jury view to place the evidence in context; (D) the fundamental nature of the path is still materially the same and any changes can be easily explained to the jury; and (E) Nevada law is clear that substantial changes to an area does not preclude a jury view. Unfortunately, due to the rules for petitions for rehearing, including the maximum allowable pages, it is difficult for Defendants to provide a complete response to Petitioners' writ that includes all relevant facts and precedence.

[3] See Trial Transcript dated May 8, 2018 at 6:22-32:22, attached hereto as Exhibit "B."

A. A trial court has broad discretion to allow for a jury view

The nature and scope of Petitioners' claims make it proper for the court to order an on-site view of the subject property and backstage areas by the jury. Such a view may be allowed by the Court pursuant to N.R.S. §16.100 which provides:

> When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

It is clear from the plain language of the statute that the District Court has the authority to order a jury to view a property located in Las Vegas, Nevada. Even without express statutory authorization there is an inherent power in the trial judge to order a view by the jury. *See* 2 *McCormick on Evidence* § 219 (7th ed. 2013) and 4 *Wigmore on Evidence* § 1163 (1972) (stating a trial "court is empowered to order such a view, in consequence of its ordinary common law function, and irrespective of statutes conferring express power"). The trial court has broad discretion in deciding whether to allow a view of the subject property. *Eikelberger v. State ex rel. Dept. of Highways*, 83 Nev. 306, 310, 429 P.2d 555, 558 (1968); *State ex rel. Department of Highways v. Haapanen*, 448 P.2d 703, 84

Nev. 722 (1968). In the instant matter, the Petitioners provided no basis to support a finding that the District Court abused its discretion by granting the defendants' motion for a jury view. The District Court carefully weighed the parties' arguments and the evidence in the case and determined that the probative value to the jury outweighed any potential harm to Petitioners. While the dissent implied that the District Court's decision was rushed, no such opinion was expressed by the District Court and briefing was not requested. More time was available if the District Court had needed it. Further, the District Court ordered that the jury view take place thirty (30) minutes after sunset, **not** in the daytime as apparently believed by the dissent, to ensure that the conditions would be as close as possible to those at the time of the accident. This was not an unfair procedure for Petitioners.

B. Nevada Law is clear that a jury view is not evidence

A jury view is not evidence, but may enable the jury to more fully appreciate the evidence received during trial. *Love v. Mt. Oddie United Min. Co.*, 43 Nev. 61, 181 P. 133, 184 P. 921 (1919). The purpose of a view is to enable the jury to better understand, comprehend, and apply the evidence introduced at trial. *Id.* While a view of certain property is not evidence, it does enable the trier of fact to better appreciate the evidence received during trial. See *Eikelberger*, 83 Nev. 306, 310, 429 P.2d 555, 558 (1968).

Since a jury view is not considered evidence in Nevada there is no requirement that it has to be disclosed pursuant to NRCP 16.1 or EDCR 2.67. See generally, *Howard v. State*, 232 Md.App. 125, 156 A.3d 981, 990 n.3 (2017) ("An inspection of a crime scene before trial and a jury view of a crime scene during trial are not comparable, because a jury view is not an aspect of discovery or pre-trial procedure.")

Similarly, there is also no requirement in the rules governing jury views that a jury view must be requested at the motion in limine stage, or at any time prior to trial. The purpose of a motion in limine is to avoid the unfairness caused by the presentation of prejudicial or objectionable **evidence** to the jury, and the obviously futile attempt to "unring the bell." *Greer v. Buzgheia*, 46 Cal. Rptr. 3d 780 (Cal. App. 3d Dist. 2006) (emphasis added). As indicated a jury view is not considered evidence in Nevada, therefore a motion in limine technically would not be the proper pleading to bring a request for a jury view. Similarly, there is no requirement that a request for a jury view of a property be made prior to a defendant presenting their case-in-chief. Therefore, Real Parties in Interest had no duty to advise Petitioners that a jury view would be requested, and were entitled to evaluate the Petitioners' case in chief before deciding to request a view as part of the defense case. If the Petitioners had wanted an earlier view, they could certainly have requested one as part of their case.

C. The request for a jury view is the result of petitioners' new allegations as to the cause of Mr. Cox's slip and fall

Mr. Cox has maintained throughout all of discovery and pretrial litigation that the **dust** on the floor caused him to slip and fall. In fact, Mr. Cox testified at his deposition which was read into the record at trial that "whatever was on the floor made me slip and fall."[4] As a result, all discovery and work performed in pretrial litigation by all defendants, including the Real Parties in Interest focused on the specific allegation that the dust caused Mr. Cox to slip and fall.

However, at trial Petitioners have painted a different picture and instead for the first time claimed that there were a number of factors which allegedly caused Mr. Cox to slip and fall the night of the incident. Mr. Cox testified at trial that there were multiple contributing factors that caused him to slip and fall. Specifically Mr. Cox testified as follows:

> Q. . . .In your mind -- or what things caused you to fall? Tell the jurors what you think.
>
> A. ***The instructions to run as fast as you can. The -- the light going from light to dark to light to darkness and running at speed around a corner. The -- I don't know what you call it now -- the – the incline.*** And, as I later found out -- not at the time, but in hospital -- I had the whole of my right side covered in dust. And I felt that might have had some part to play, but not -- to my mind, that was more showing where I'd hit the ground, and it might have played a part in the fall. ***But, to my mind, the greater part was the -- the sense of sheer urgency, not knowing where we were going, running, light,***

[4] See Trial Testimony of Gavin Cox dated May 1, 2018 at 50:1-23 and 98:18-99:1-15, attached hereto as Exhibit "C."

darkness -- that -- to me, and taking -- not knowing where we were going next. To me -- to my mind, that's what caused me to slip and fall.[5](Emphasis added)

Mr. Cox testified that his belief that the dust was merely one of the contributing factors that caused him to slip and fall is "what he believes now"[6] **not** what he previously believed throughout pretrial litigation process. This litigation which was initially brought and presented as a typical slip and fall case throughout has turned into anything but that at the actual trial. Instead Petitioners have placed great emphasis on everything related to Mr. Cox's participation in the illusion from the moment the curtains were dropped around the stage prop that Mr. Cox was seated in until he fell. What was once an isolated claim with respect to one small location and the cause of Mr. Cox's fall has instead been turned into an indictment of the illusion as a whole including the entire path of the "runaround".

As a result of the new allegations and the testimony presented by Petitioners, it was determined by all defendants that a jury view was necessary for the jury to have some additional context for the evidence presented. Specifically, the jury is entitled to see the path that was utilized by the audience members participating in the illusion in the context of a walk around in order to gain a proper perspective of the path including the distances, width, angles, corners and turns as there is substantial dispute with respect to the same.

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[5] See Exhibit C at 43:6-23.

[6] See Exhibit C at 51:8-13.

D. The nature of the path is still materially the same and any changes are easily explainable to the jury

Petitioners allege that the District Court heard undisputed evidence that significant changes have been made to the outdoor portion of the path since Mr. Cox allegedly slipped and fell which have impacted the surface, lighting, incline and general overall condition of the path and surrounding area. However, the District Court in reality was presented with substantial evidence that demonstrated that the path is still materially the same as it was on the date of the incident and any changes that have been made are easily explainable to the jury. The various defendants presented evidence at the hearing that the majority of the path has not been changed, including all indoor aspects of the illusion such as the stage area and indoor hallways that Petitioners have only now at trial claimed contributed to Mr. Cox's alleged slip and fall. In addition, the Court was presented with evidence that the area where Mr. Cox actually landed as a result of his fall has not been changed and that the concrete at that location is still the same as on the date of the accident. The most significant changes that have occurred in the outdoor area where Mr. Cox fell are that a curb has been moved, the area has been cleaned over the years, including in preparation for a potential view by the jury, the ramp leading to the area where Mr. Cox fell has been removed and a large tree on the corner has been removed. With respect to those items, Mr. Cox has only claimed now at trial that the ramp may have contributed to his fall. However, based on the evidence

presented to date including video and expert testimony, it is clear that Mr. Cox had already successfully navigated the ramp prior to his fall.[7] Moreover, evidence of these changes in the form of photographs has already been presented to the jury and the changes were explained to the jury.

There is no irreparable harm that Petitioners face with regard to a jury view following their case-in-chief. All parties and the District Court agreed that Petitioners would be able to call a rebuttal witness to explain any changes to the area the jury would view. Moreover the District Court may provide instructions to the jury regarding the changes both prior to and after the jury view.

E. Nevada law is clear that substantial changes to an area do not preclude a jury view

The Nevada Supreme Court has held that substantial changes to a property do not automatically preclude a jury view. *Eikelberger v. State ex rel. Dept. of Highways*, 83 Nev. 306, 429 P.2d 555 (1969). In *Elkelberger*, a jury view was permitted over the objection of the property owner who later contended that the court abused its discretion in allowing a view since the area surrounding the condemned property had drastically changed by the removal of structures and buildings which were there when this suit was started, and at the time of the view about one half of the trailers in the park had been removed. The Supreme Court

[7] See Trail Testimony of John Baker, Ph.D dated May 8, 2018 at 270:25-271:5, 308:23-310:21, 326:6-327:16, 328:9-19, attached hereto as Exhibit "D."

held that the trial court ruling of the jury view was within the limits of proper discretion. The property in issue had not changed in general appearance and witnesses were available to the parties to fully explain any changes in the appearance of the area.

Other jurisdictions have also held that substantial changes to an area do not preclude a jury view. In action for personal injuries sustained when a ladder standing upon a painted cement patio owned by defendants slipped, causing one of the plaintiffs to fall, the trial court did not abuse its discretion in permitting a jury view of the premises, even though there had been certain changes in the patio area, especially in view of fact that the jury was advised of the changes, and was properly instructed as to the purpose of the view. *Sauls v. Scheppler*, 57 Wash.2d 273, 356 P.2d 714, 85 A.L.R.2d 506 (1960). Trial court need not reopen trial for the parties to introduce further evidence to explain conditions found at jury view, but parties may be allowed, and it is sufficient to allow them, to explain in their closing arguments any changes in condition of the premises seen at the view as they relate to the evidence. *Brookhaven Supply Co. v. DeKalb County*, 134 Ga.App. 878, 216 S.E.2d 694 (1975). In ordering a view, the District Court expressly found that the Plaintiffs' capable lawyers had demonstrated an ability to articulate the changes to the jury.

III. CONCLUSION

Based on the foregoing, the Real Parties in Interest are requesting that the dissenting opinion included on this Court's Order be withdrawn and an Amended Order Denying the Petition for Writ of Mandamus be issued. In the Alternative, the Real Parties in Interest request that the defendants be allowed to prepare a comprehensive Answer to the Petitioners' writ before any opinion on the merits of the trial court's discretionary decision is reached.

Respectfully submitted,

DATED: May 9, 2018

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of ***NRAP 32(a)(4)***, the typeface requirements of ***NRAP 32(a)(5)*** and the type style requirements of ***NRAP 32(a)(6)*** because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is either:

☒ proportionally spaced, has typeface of 14 points or more and contains 3,538 words; or

☐ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular ***NRAP 28(e)(1)***, which requires every assertion in brief regarding matters in the record to be supported by reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with requirements of the Nevada Rules of Appellate Procedure.

DATED: May 9, 2018

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I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

☐ **BY MAIL:** N.R.C.P. 5(b), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada; or

☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b)(2)(D) and addressee(s) having consented to electronic service, I served via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

a true and correct copy of the above and foregoing **REAL PARTIES IN INTEREST EMERGENCY PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E), IMMEDIATE ACTION IS NECESSARY AS THE TRIAL IS ALREADY IN PROGRESS**, this 9th day of May 2018, addressed as follows:

SEE ATTACHED SERVICE LIST

/s/ Bonnie Kerkhoff Juarez
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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SUPREME COURT CASE NO. 75762

GAVIN AND MIHN-HAHN COX,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD aka DAVID KOTKIN; MGM GRAND HOTEL, LLC; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; TEAM CONSTRUCTION MANAGEMENT; and BEACHERS LV, LLC

Real Parties In Interest.

From the Eighth Judicial District Court, Clark Count, Nevada
Case No. A-14-705164-C

NRAP 27(E), CERTIFICATE

Elaine K. Fresch, Esq., Jerry C. Popovich, Esq., Eric O. Freeman, Esq. and Gil Glancz, Esq., of Selman Breitman LLP, 3993 Howard Hughes Pkwy, Suite 200, Las Vegas, NV 89169, Telephone 702-228-7717, Facsimile 702-228-8824, attorneys for the Real Parties of Interest David Copperfield's Disappearing, Inc.; David Copperfield aka David Kotkin; and MGM Grand Hotel, LLC.

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NRAP 27(E) CERTIFICATE

COME NOW, David Copperfield's Disappearing, Inc.; David Copperfield aka David Kotkin; MGM Grand Hotel, LLC; Backstage Employment and Referral, Inc.; Team Construction Management, Inc. and Beachers LV, LLC (hereinafter the "Real Parties in Interest"), by and through their counsel, hereby submit their Emergency Petition for Rehearing of Order Denying the Petition for Writ pursuant to NRAP 40 and NRAP 27(E).

I. EMERGENCY PETITITON UNDER NRAP 27(E)

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B. Facts Showing Existence and Nature of the Claimed Emergency

Defendants' request that the dissenting opinion in this Court's Order be reconsidered and an Amended Order be issued after this Court, more specifically the dissenting Justice, has considered the arguments of Defendants on why the District Court properly exercised its discretion in allowing the jury view. Following the issuance of this Court's Order which included the dissenting opinion, The District Court considered and referenced the dissenting opinion in announcing its decision to now preclude a jury view, thereby reversing its prior ruling that a

jury view may proceed. The trial is currently ongoing; however the Real Parties in Interest are rapidly approaching the conclusion of their respective cases-in-chief. The Real Parties in Interest will suffer irreparable harm as they will be unable to proceed with a jury view of the subject property should this Court not intervene. For this reasons, it is imperative this Court hear the Petition in an expedited fashion.

C. Notice of the Emergency Petition for Rehearing of Order Denying the Petition for Writ

The District Court was served via hand delivery and the parties and their counsel were served electronically with the Emergency Petition for Rehearing of Order Denying the Petition for Writ pursuant to NRAP 27(e) simultaneously with the filing of the same.

D. Relief Sought First in the District Court

The relief sought is from an Order issued by the Court of Appeals. Therefore, the relief sought is not available in district court.

DATED: May 9, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

☐ **BY MAIL:** N.R.C.P. 5(b), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada; or

☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b)(2)(D) and addressee(s) having consented to electronic service, I served via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

a true and correct copy of the above and foregoing **NRAP 27(E), CERTIFICATE**, this 9th day of May 2018, addressed as follows:

SEE ATTACHED SERVICE LIST

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CLERK OF THE COURT

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY, MAY 9, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

JA004435

Case Number: A-14-705164-C

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Minh-Hanh Cox	46, 71	78		
David Voiss	81, 143	148		
Nicholas Yang, Ph.D.	190			

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
104		77	
406		78	
557		91	
105		152	
106		152	
107		152	
102		173	

LAS VEGAS, NEVADA, WEDNESDAY, MAY 9, 2018;

9:05 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise. Eighth Judicial District Court, Department 13, is now in session, the Honorable Mark Denton presiding.

THE COURT: Good morning. Please be seated.

IN UNISON: Good morning, Your Honor.

THE COURT: We're resuming for jury trial outside the presence of the jury at this time in Cox v. MGM Grand Hotel, LLC, et al.

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

MR. DEUTSCH: Good morning, Your Honor. Adam Deutsch on behalf of the plaintiffs. The Cox family is here as well.

MR. FALLICK: Good morning, Your Honor. Perry Fallick on behalf of the plaintiffs.

MR. POPOVICH: Good morning. Jerry Popovich for defendant MGM Grand Hotel, with Mr. Habersack for the hotel and Mr. Infuso as counsel.

MS. FRESCH: Good morning, Your Honor. Elaine Fresch for David Copperfield; David Copperfield Disappearing, Inc. And with me is Eric Freeman.

MR. RUSSELL: Good morning, Your Honor. Howard Russell and Lee Roberts on behalf of Backstage Employment and Referral.

MR. STRASSBURG: May it please the Court, Roger Strassburg, assisted by my partner Gary Call, for Team Construction Management. Good morning.

THE COURT: All right. The jury is not present. I understand you want to take up something.

MR. DEUTSCH: We have a number of items that we'd like to discuss this morning, Your Honor.

The first -- I guess I'll just go in order.

The first involves some of the opinions that were given by Dr. Baker yesterday. I can cite the Court to the specific pages of the testimony, but, at certain times during Dr. Baker's testimony, Dr. Baker was asked about his assessment of the credibility of Mr. Cox's testimony. And a number of times, I objected to that, Your Honor, and made a clear objection that it is not within the province of an expert to testify about the credibility of a witness. Dr. Baker can give his opinion, that "I think he fell over here," but he's not allowed to comment on Mr. Cox is not credible in

terms of the way he said the accident happened.

And there were a number of objections that I made with respect to those questions. One was on page 261 of the transcript, where he was asked, "You were shown trial testimony from Mr." -- I'm sorry. This starts at 260, line 22.

"You were shown trial testimony from Mr. Cox about how he rounded the corner with speed and then got some momentum towards the door, where he talks about feeling like an elevator coming up."

"I saw that."

"QUESTION: Is that even close to what he said in his deposition under oath?"

I objected. "Your Honor, it's not for him to decide; it's for a jury to decide."

And Your Honor overruled my objection, stating he could state his perception of it.

However, Your Honor, the law of this state and -- and all other states that I practice in is that an expert is not allowed to give such opinion. And I'll cite the Court to a case, State v. Eighth Judicial District. It's a Nevada Supreme Court case, 120 Nev. 613, where the court found that "an expert's bolstering of a witness and an expert's direct opinion concerning the victim's credibility or veracity are

both inadmissible. Assessing the credibility of witnesses and weighing the evidence are functions of the jury. Accordingly, to allow any expert, whether the state's or the defendants', to testify as to an opinion of the truthfulness of the victim or witness impermissibly invades the province of the jury."

And there's a number of cases that stem from that.

So I believe, Your Honor, at this time, that all of these questions involving the veracity of Mr. Cox's comments about how -- excuse me -- Dr. Baker's comments about his opinion whether or not Mr. Cox's version of the events rings true to him all must be stricken. We would ask that Your Honor strike those pieces of testimony from the record --

THE COURT: I didn't perceive it as attacking his credibility; I perceived it as showing that there were inconsistent statements and he was considering them in that light.

MR. DEUTSCH: Well, Your Honor, one of the questions -- the question that I just read specifically stated -- specifically stated -- credibility, Your Honor, is pointing out inconsistencies. That's exactly what attacking credibility is. And as I made my objections yesterday --

THE COURT: He was looking at different versions of what the plaintiff stated.

MR. DEUTSCH: I understand that. But he was permitted to testify "is that close to what he said under oath?" And he said, "No, they're very different from each other."

That's the witness directly commenting on whether testimony that Mr. Cox gave in one place versus where Mr. Cox gave testimony in another place.

THE COURT: So what are you seeking here?

MR. DEUTSCH: I would seek that that testimony be stricken, that Your Honor instruct the jury to disregard that testimony. I'll cite the Court to the next piece where he was allowed to do it on page 322, where he was read a piece of testimony by Mr. Strassburg.

And he asked him at the end, "That's a different scenario -- right? -- entirely? Tell me what's the difference."

And I objected. "Your Honor, it's the jury's recollection and review of the evidence of whether it's different or not."

And then I said, "This witness is not an expert in the analysis of testimony."

And he said, "I'm quoting from the record and

asking him if he sees a difference."

And the Court said, "I'll allow it."

Well, the differences here we're talking about are the steps that he took, and that's new. I -- and then he goes on to read the testimony and explain why Mr. Cox's deposition testimony was different than his trial testimony. That's not something that he's qualified to do, and that's not something that any expert is qualified to do.

THE COURT: He can consider what the witness says in forming his opinions and then answer questions about them.

MR. DEUTSCH: I agree. But that's not what he did.

What he did was, without saying Mr. Cox is lying, he said Mr. Cox changed his story. That, he's not allowed to do. The only person -- people that could decide that is --

THE COURT: Okay. It's now 9:20. Is there anything else you want to bring up on this particular point?

MR. DEUTSCH: Well, yes. So, going forward, with respect to Dr. Yang, who's coming in today, Dr. Yang was only --

THE COURT: No, I'm talking about this

particular point regarding the --

MR. DEUTSCH: That's all with respect to this particular point.

THE COURT: So let me hear from the other side.

MR. POPOVICH: The first one, which may have been my question, is simply asking an expert in accident reconstruction whether two versions of the -- how the accident occurred were either consistent or different. I -- I guess anytime you would ask any expert about two different versions, whether they mesh or not, plaintiffs' counsel would argue that's challenging the veracity of the plaintiff.

Certainly, Mr. Baker never expressed an opinion about Mr. -- directly, anyway -- Mr. Cox's credibility, whether he's a liar, whether -- any of those things. It's just is that a different version in how you analyzed the accident? One version coming around a corner, momentum is going one way; another version, heading toward the door, feeling like an elevator's coming up. That's momentum going another way.

We have to get into those differences to analyze each one. I don't think it should be stricken.

MS. FRESCH: I -- I don't have anything else

to add, Your Honor.

MR. ROBERTS: The only -- the only thing I would add is it's my recollection that the inconsistency in his trial testimony was actually elicited by plaintiffs' counsel. And they said, "What do you mean, he said he fell going around the corner? Didn't you -- weren't you provided his trial testimony where he said he took two steps -- several steps toward the door?"

And so they're the ones who brought up the inconsistency and that he was relying on deposition testimony when the plaintiff had said something different. So all he commented on was inconsistency relevant to his opinions, and he never commented on credibility of the witness.

Thank you, Your Honor.

MR. DEUTSCH: Well --

THE COURT: Okay.

MR. DEUTSCH: -- the only thing I would add to that, Your Honor, is that I'm not seeking to strike those opinions. What I'm seeking to strike is a question that was, "Is that even close to what he said under deposition and oath -- under oath?" That's the question. "Is that even close to what he said at deposition under oath?"

That question is what's objectionable because whether what he said in court is close to what was said at his deposition, that question -- I'm not seeking to strike all his opinions. He's allowed to testify. I mean, over my objection that I don't think he has a scientific basis for it, but we're past that already. But -- but that question, "Is that even close to what he said at deposition under oath?" is him saying, "In my view of the two testimonies, he's not being consistent." He is not allowed to say that.

So that question should be stricken and the jury should be -- disregard it.

THE COURT: Okay. Thanks. You've made your record. The motion is denied.

MR. DEUTSCH: Okay. The second thing, Your Honor, is with respect to Dr. Yang. I have here all of defendant Team Construction's designation of expert witnesses in this case with respect to Dr. Yang.

And Dr. Yang, in every -- in every one of these designations with his different reports, he was designated solely as a rebuttal expert. He was never designated as a direct expert. He was designated as a rebuttal expert for Dr. Ayres. Dr. Ayres did not get called to testify. And, therefore, Dr. Yang should not be permitted to testify based on his deposition.

THE COURT: Okay.

MR. DEUTSCH: I mean, based on his designation. Excuse me.

MR. CALL: Your Honor, as far as Dr. Yang is he's also rebuttal to plaintiffs' lay testimony that he slipped and fell or he tripped and fell or now he stumbled, slipped, and then tripped and fell. You know, we've always designated -- had Dr. Yang available. We have noted him in our pretrial report.

There's been no objection from plaintiff at that time up until now, we're in the middle of trial. So we would have Dr. Yang testify as an expert to rebut the lay testimony of plaintiff that he slipped and fell or tripped and fell or now stumbled and tripped.

THE COURT: So you won't be proffering him to rebut -- or to address what the other expert said yesterday? Right.

MR. CALL: Oh, no. And it's not going to be cumulative.

THE COURT: My understanding at the bench conference was that the objection to him had to do with it being cumulative.

MR. DEUTSCH: Well, that's my next piece of my objection. I was starting with this one, and then we're going to move on to the other ones, Your Honor.

MR. CALL: Well, why don't we address that now?

MR. DEUTSCH: Well, we can address the other one too.

Your Honor, Dr. Yang did three reports. Not surprisingly, just like Dr. Baker yesterday, his first report doesn't mention anything about a trip at all, nothing.

He then does a second report. And his second report, if you flip to the opinions in the back, the conclusions in the last page, he gives two opinions -- two conclusions. He says, "Conclusion 1. The slip index of the subject concrete surface was above .7 and sufficient for a normal gait. Opinion 2, Mr. Cox likely experienced a trip-and-fall event rather than a slip-and-fall event." Okay?

So Mr. -- Dr. Baker did not testify about the coefficient of friction specifically because he didn't test it. So that opinion, if he wants to give it, I guess, is not cumulative; however, having another expert who's aligned with the defendants on this issue that he tripped instead of slipped is just bolstering Dr. Baker -- both of their testimony. And it's cumulative. And you can't offer the same opinion by two experts when everyone's aligned.

And they are aligned on this issue. It doesn't matter that they say they're not. On this issue, they're aligned. And to have Dr. Baker say "I think it's a trip, and this is how I decided that," and then Dr. Yang come in and say, "I also think it's a trip, and maybe my analysis was a little different, but it's still a trip," it's the same opinion. And you can't get it twice.

And he then goes on and gives a third opinion in his last report, which is the location of the landing, which is Mr. Cox fell while traveling in a straight line 20 feet from the corner and 20 feet from the security -- 22 feet from the security doors.

And -- and then it goes -- so that's one -- that's the same opinion that Dr. Baker gave, that his point of impact was -- they put it in basically the exact same place, they put the location of the fall. So we have two opinions that are identical to Dr. Baker's.

The second opinion he gives in his final report, again, is that it was a trip and not a slip. And the third is what I just moved to preclude with respect to Dr. Baker, which is Mr. Cox's account of the incident conflicts with the evidence.

So I think that, with respect to the

coefficient of friction, if he wants to testify about that, he's entitled to because that's not cumulative because Dr. Baker, while he touched on it a little bit, conceded that he didn't do testing; Dr. Yang did do testing. I think there's some problems with his testing, but I will concede that that goes to my cross-examination of him.

THE COURT: So you don't think that the fact that two experts agree with each other is something that the jury's entitled to hear?

MR. DEUTSCH: Absolutely not, Your Honor. I could go get 50 experts to testify about a particular issue. You're saying I get to call all 50 of them and say --

THE COURT: No, 50 is not the same as two.

MR. DEUTSCH: If I brought two experts in a med-mal case, Your Honor -- if I had a medical malpractice case, for example -- which I do a lot more of, I think, than they do out here -- and I found two experts to say that the doctor departed, is the Court going to allow me to bring two experts to say, "Hey, two is better than one"? Of course not.

THE COURT: It depends on what the context of the case is.

MR. DEUTSCH: If they're both giving the

opinion that a doctor departed from accepted standards of care, and I bring one guy to say it and then I say, "You know what? Let's add on top of that and let's bring another guy," there is no chance in any court anywhere in this world that that would be allowed.

That is no different than this. They could go find -- what happens if -- if -- if -- if -- if --

THE COURT: Well, you're speaking in terms of parties being entirely aligned; right? That's not necessarily the case in this --

MR. DEUTSCH: But on this issue --

THE COURT: -- in this situation; right?

MR. DEUTSCH: -- they are entirely aligned. I understand that they're suing each other because of contractual indemnity, which Your Honor has now ruled does not come into this case, despite the fact that we wanted to raise it.

But on this issue, whether he tripped or slipped, they are all aligned. There's no other reason to do it other than to say, "Look, we got two guys that say it. They both say it." It's -- it's totally prejudicial. You're not allowed to bolster a witness's testimony with other witnesses. You're not allowed to call two experts to say the same thing.

If -- if Mr. Popovich wanted to call a second

expert -- Dr. Baker -- and Mr. Popovich also went out and hired Dr. Yang and wanted to call him to give the same opinion, Your Honor wouldn't let him. You wouldn't even think twice about it.

So the fact that Team Construction's doing it doesn't change anything when the point is that both of them are trying to prove that he tripped instead of slipped. It's the same opinion. It doesn't matter which one of them calls it. If -- if Backstage went out and hired their expert, would you have let them -- a third person testify about it?

You can't have more than one expert for one issue give an opinion per side unless they're saying something different. They're not saying anything different, nothing. The opinion is identical. "I think it was a trip and not a slip." You can't bolster one expert with another expert. Otherwise, every party in every case would go find two or three guys to testify about it, to say, "Hey, look, jury, I got three guys that will say it."

You can't do it. You're entitled one, one. On any issue, you're entitled one unless there's something different. And the only thing different about Dr. Yang is the fact that he tested the coefficient of friction. And while I think there's

problems the way -- with the way he did it, it goes to his creditability, and I'll attack it on cross-examination. And that's fine.

But in terms of the fact that he slipped -- tripped and not slipped and the location of the accident, it is identical testimony. It's a waste of time, and it shouldn't be allowed under the law.

THE COURT: All right.

Mr. Call?

MR. CALL: Okay. I'll try to be a little more calm when I'm arguing here.

I think that the Court noted rightly that we have three different -- well, we have several different litigants involved in this case, that we're all, you know, essentially at cross -- cross-purposes here as far as how this accident happened to a certain extent.

Okay. I want to go -- and so that's one of the reasons, you know, that we have a different expert. And you can look at Wright v. Las Vegas Hacienda, Inc., supreme court, and --

MR. DEUTSCH: Do you have a cite on that?

MR. CALL: 720 P.2d.

MR. DEUTSCH: Give me one second.

MR. CALL: And it's --

MR. DEUTSCH: What is it?

MR. CALL: 696. 720 P.2d 696.

Okay. But more -- even more important here is the expert's opinions are not, as Mr. Deutsch said, exactly alike. They're not.

Mr. Deutsch has said -- the coefficient of friction, is it? We're going to bring in testimony from Dr. Yang about the coefficient of friction.

Dr. Baker said yesterday he didn't know what happened behind the tree. We do. Dr. Yang is a biomechanical expert rather than a human factors expert. He developed a virtual computer model to show exactly how this accident happened based upon the position of Mr. Cox. And he will demonstrate that through a -- scientific facts that that is -- actually happened.

In Montgomery v. Wal-Mart, a federal case out of the Southern District of California, the court noted "the mere presence of overlap reference to another expert's report or a similar conclusion, however, does not render an expert report unnecessarily cumulative."

This -- there's so much difference here that we should be allowed to bring in Dr. Yang. Dr. Yang, you know, came to his conclusions in a wholly different manner. He's going to differentiate between a slip and a fall and a trip-and-fall here.

And plaintiffs had every opportunity to depose Dr. Yang, as well as Dr. Baker, to determine what they thought was cumulative. They failed to do so. So we're here in the court trying to argue about what is cumulative. It really is up to the Court to decide.

MR. POPOVICH: I agree.

MR. CALL: Oh, and we're also talking about multiple damage experts in cases, even the damage experts that -- plaintiff intends to bring on several neurologists. You know --

MR. DEUTSCH: We're not doing that. We're going to call one for each specialty, because that's the only thing that's proper.

MR. STRASSBURG: And they all give the same opinion, that he's injured.

MR. CALL: Yeah, that he has some kind of traumatic brain injury. So those are all bolstering.

But, in this case, Dr. Yang's opinions are very different from Dr. Baker, and he can go ahead and show how this accident happened, whether it was a slip-and-fall, trip-and-fall, now stumble, trip, or slip. And, through his computer modeling, we can show that. We can show that the surface of the area met the coefficient of friction; in fact, it exceeded the

required coefficient of friction for the area.

THE COURT: Okay.

MR. DEUTSCH: I just wanted to note, the cases that he cited, Your Honor, don't even remotely -- oh, sorry, Lee. Go ahead.

MR. ROBERTS: Thanks. What I'd like to add, Your Honor, is I -- I agree that coefficient of friction was not testified to by Dr. Baker yesterday. And that isn't a stand-alone opinion. The relevance of that is that the concrete wasn't slippery, so a slip is unlikely. So, therefore, it's tied into his opinion that it was not a slip.

The fact that he ultimately reaches the same conclusion doesn't mean that it's not probative, that he relies on some different things in order to get there. And under 48.035, there is no blanket prohibition on cumulative evidence. What the Court has to determine is if the probative value of the evidence is outweighed by needless presentation of cumulative evidence.

And, in this case, because he does rely on several different things, including the coefficient of friction, it's highly probative. And the fact that it might be cumulative in some small degree doesn't outweigh the probative value.

Thank you, Your Honor.

MR. DEUTSCH: First of all, Your Honor, it's not probative at all because the opinions are the opinions. I didn't need to depose these experts. I had their reports. Their reports told me what their opinions were. They list them. Dr. Yang lists them in a very nice paragraph at the end of each report. This is my opinion, 1, 2. So the opinions are identical.

The coefficient of friction thing is totally separate than the other opinions. He's allowed to testify that the coefficient of friction on this surface was above whatever it needed to be, and therefore it wasn't slippery. Great. He could testify about that.

The cases that Gary just cited, Wright v. Las Vegas Hacienda, have absolutely nothing to do at all with any of the discussion that we're talking about at all, not even -- like, even in the same ballpark. It talks about exclusion of a plaintiff expert was an abuse of discretion because of -- one expert testified about a cause of an accident. It's not -- it doesn't render plaintiff's expert testimony cumulative. But it doesn't even remotely stand for the proposition that two experts should be allowed to testify about the same thing.

Dr. Yang should be allowed to testify about this coefficient of friction and nothing else.

THE COURT: All right. If you think it's going to be cumulative, make your objections at that time.

MR. DEUTSCH: Okay.

The only other two things, Your Honor, that I -- couple things I wanted to bring up. We were informed yesterday, or the other day, by Ms. Fresch and then last night by Mr. Russell that the defendants intend to call -- recall to the stand Mr. and Mrs. Cox on their case.

However, I'd like to refer Your Honor to page 7 of the transcript, the very first day, 4/17. We had a discussion about the scope of their examinations of Mr. and Mr.[sic] Cox at that time; and Mr. Roberts, when we were discussing it, said, "Your Honor, in the interest of judicial economy, will we be able to go beyond the scope of the direct during the case in cross-examination?"

The Court said, "As far as I'm concerned, that's acceptable."

And I said, "To avoid having to bring them back again at a later date, obviously?"

Mr. Roberts said, "Correct."

And I said, "That's okay with us."

So I believe that the rule is that if they had limited their examination the first time to just what was done on direct exam, then they would be allowed to bring the witnesses back later to expand it past cross-examination. But once they expanded their exams past cross-examination, which they asked permission to do and did, then they don't get to bring the witnesses back. You only get one shot with each witness, Your Honor. That's the rule.

And when a defendant --

THE COURT: You keep alluding to these rules that aren't necessarily the rules.

MR. DEUTSCH: Well, as I understand the law, Your Honor, you only get one shot with each witness.

THE COURT: Okay.

MR. DEUTSCH: And if a defendant has a choice to make at the beginning of the case --

THE COURT: It seems to me there was something that came up, though, where I may have made a comment from the bench, well -- in response to an objection -- I'm just recalling. In response to an objection by the defendant, I may have said something, "Well, you're -- you can call -- you'll be able to call so-and-so in your case in chief; right?" or something

like that?

MS. FRESCH: Yes.

MR. DEUTSCH: I don't remember that, Your Honor.

MS. FRESCH: I do.

MR. DEUTSCH: Well --

MS. FRESCH: That's because their --

MR. DEUTSCH: Your Honor, why -- why are they entitled -- the defendants have a choice.

THE COURT: Again, we're talking about a search for the truth; right? We established that --

MR. DEUTSCH: We are.

THE COURT: -- at the beginning; right?

MR. DEUTSCH: So that brings me to my next argument, again, Your Honor: a search for the truth. We're at this point because of, obviously, scheduling issues. We intend to bring Tara Anderson in on rebuttal -- on our rebuttal case. We haven't talked about it yet, but, obviously, we need to -- to -- to fly her in here from Washington, so we need a couple of days' notice. We can't just -- or not a couple of days' notice but at least one-day notice. We are prepared to bring her tomorrow to court. So we're seeking to do that because, as Your Honor just said, this is a search for the truth and the jury should hear

all the evidence.

And -- and because it's a rebuttal case, they're not entitled to a deposition because it's a rebuttal witness. So we're just going to put her on the stand.

THE COURT: Anything else?

Is the jury here, Bob?

THE MARSHAL: Yes, Your Honor.

MR. DEUTSCH: And one more thing, Your Honor.

THE COURT: Okay.

MR. DEUTSCH: The only other thing is we were going to call Officer Janson on our case in chief. We had a discussion with Mr. Popovich where there was an understanding that we weren't going to call him because he had informed us that he was calling him. We relied on that representation, and Mr. Popovich then decided not to.

I've spoken with Mr. Popovich. He agreed that that was the representation he made, and he is okay now with us reopening our case to put on Mr. Janson, because he was under subpoena, and the only reason we didn't do it was in an attempt to try to move things along more quickly. And he told us he was bringing him. And we had had that agreement.

So we relied on that representation, and

Mr. Popovich has agreed to let us bring Mr. Janson at this point. It shouldn't take more than --

THE COURT: Is that the first, then, today?

MR. DEUTSCH: No, it's not, but it shouldn't take -- I don't know how quickly we can get him here, but it shouldn't take more than -- it's, like, 25 questions. I mean, it's a handful of questions.

THE COURT: So reopening the plaintiffs' case; right?

MR. POPOVICH: The only thing I will disagree with Mr. Deutsch on is we didn't have an agreement. But there is no question that, before the close of plaintiffs' case, they asked me if I was calling Janson. At that time, my thought process was yes.

Actually, Mr. Strassburg got the portion of Mr. Janson's report in evidence that I wanted. I did change my mind after plaintiffs rested. They approached me about reopening. I said if you had him under subpoena in your case and you're telling me you relied on my statement, I will not object. I'm not objecting to them reopening for that limited purpose.

THE COURT: We got somebody else standing up here.

Mr. Roberts?

MR. ROBERTS: I would object to them

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reopening their case for the purpose of putting on Mr. Janson. I've made no representations to anyone. And it seems to me that what Mr. Deutsch just said is I agreed that I would be okay with getting out what I wanted to get out with Mr. Janson after I closed my case in your case.

Therefore, I have no objection to them calling Mr. Janson as part of their rebuttal case. I won't make any beyond the scope. But we filed Rule 50 motions. They've rested their case. They knew Mr. Janson was coming in after they rested their case in chief. And we would object to reopening the case to allow them to --

MR. DEUTSCH: I have no problem with that, Your Honor.

THE COURT: Rebuttal?

MR. DEUTSCH: We can call him on rebuttal. It's no problem, because his testimony does not necessarily -- is not needed for us to meet our burden from that perspective. So I have no problem with that.

MR. CALL: Because I'm in agreement with Mr. Roberts.

THE COURT: Very good. You can call him in rebuttal, then.

MR. POPOVICH: That's your proof of service.

MR. DEUTSCH: So the only thing I would ask, Your Honor, is if we could have a ruling about Ms. Anderson so we could start these arrangements.

THE COURT: Well, I better hear argument on it, then, if there is any. Any argument?

MS. FRESCH: Well, I don't even understand what the purpose of bringing in -- what is the point of Ms. whatever her name is -- Anderson -- coming in? Because, originally, when you ruled on this, Your Honor, it's my understanding that you said, "Well, we'll see if there's a need."

What does another person basically talk about, like cumulative testimony? I don't know who this person is. I don't have any information about her. What is she adding and what is she presenting that would be necessary under the rebuttal?

And I did not know we were going to talk about this right now because I'm not -- you know, I spoke to Mr. Deutsch this morning. And I go, "You're just talking about Dr. Yang this morning; right?" And then he gave us a litany, a laundry list of things to talk about today. And I just feel like, if he was going to bring this up, he should have told me yesterday and said, "Elaine, I'm going to be bringing up this issue about opening my case for rebuttal

witnesses of Ms. Anderson, or whomever," and then I could be properly prepared to talk about this right now.

Again, this is like everything. They just --

THE COURT: Let me just hear, what's the rebuttal?

MR. DEUTSCH: Well, Your Honor --

MS. FRESCH: And -- wait, Your Honor. I'm not going to call any other witnesses. And one of the big things was when -- and -- was that -- when, originally, this was discussed, was that, well, let's see what happens with the defense case in terms of what -- who they call.

I'm not calling anyone but Mrs. Cox. I'm not calling anyone else. I'm not calling any other witnesses. If we're going to get into more witnesses, then I am going to have to start arranging to call in way more witnesses. And then we can go back and forth, and we could be here until 2019.

MR. DEUTSCH: Your Honor, that's -- that's -- Ms. Fresch is not calling any more witnesses. The fact is, is that we had always been working in this case with the understanding that we were telling each other about things beforehand. You know, if we're going to bring something up tomorrow, we'll discuss it with each

other.

That all went out the window when Mr. Roberts decided to stand up in front of the jury and ask for a jury view without ever running it by us for the purposes of grandstanding in front of this jury, letting them know that they wanted it and the possibility that we may object, with no warning.

So we had been going along that route the whole time until that happened. I'm under no obligation to raise issues with Ms. Fresch ahead of time. And the fact is is that we have raised this issue. We've talked about Tara Anderson for a week and a half now. And we've provided them with all the information. We provided them with her name. We provided them with her phone number. We provided them with a date of the accident. We provided them with all of the information that they need. We provided them with -- what was the other thing? The signed photograph?

The signed photograph, yeah. The signed photograph that Mr. Copperfield provided, I think --

MR. FALLICK: Yeah, that's hers.

MR. DEUTSCH: -- that we've marked as Exhibit 103. So we have given them all the information. They've had a week and a half to do it.

We wanted to bring her on on our direct case because of a search for the truth. It's rebuttal again for their -- Mr. Copperfield's continued testimony that nobody's ever gotten hurt that he knows of and Mr. Habersack's testimony that there were no accident reports that he knows about at MGM.

So if it's a search for the truth and this cumulative thing is not an issue because people can call multiple witnesses about the same issue, Ms. Anderson should be allowed to testify. She's yet another person who got hurt. She testified -- she will testify that she filled out an accident report with MGM specifically about this accident. She will testify that she spoke to Copperfield and that he was aware of her injuries at the time.

So it's all rebuttal for those things. And it's not cumulative because it's a separate incident. And if it's a search for the truth, the jury should know all of these different people that have gotten hurt and the fact that MGM knew about it and Copperfield knew about it. And -- and there's absolutely no reason why she shouldn't -- not be allowed to testify.

THE COURT: Mr. Roberts --

MR. DEUTSCH: And I understand it's going on

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for a long time, Your Honor, but, if it's a search for the truth, then that shouldn't play a part in it.

THE COURT: Mr. Roberts?

MR. ROBERTS: Yes. The Court actually ruled that they couldn't put on Anderson as part of their case in chief.

THE COURT: And I did say possibly in rebuttal; right?

MR. ROBERTS: And you said that you would reconsider in rebuttal based on what the defendants put on. At least as to Backstage, because of that ruling, as you know, we had identified several people through social media. We were prepared to identify them and bring them in to contradict the opinion of Ms. Lawrence that there was chaos, that it was too dark, that it was too fast. We were prepared to bring in these new witnesses as rebuttal to Ms. Lawrence.

I also was prepared to talk to Dr. Baker yesterday about his observations of the -- of the runaround and that it was not unduly rushed, that it was not chaotic, that people were not out of breath or confused. As a human factors expert, he agree -- he had actually watched several runarounds.

But I didn't go into any of that -- and I won't go into any of that -- because I didn't want to

open the door to any further rebuttal.

So, at least as to Backstage, we're not putting on any witnesses who've testified as to what happens in the runaround. We haven't put on any witnesses as to knowledge of industry -- injury by Backstage. So, as to Backstage, there's absolutely nothing to rebut, Your Honor.

MR. DEUTSCH: Your Honor, I would agree.

Ms. -- Ms. Anderson does not have any knowledge and will not testify that she knew that Backstage was the -- she doesn't know who Backstage is. So it only goes against the fact that she specifically knows she filed a report with MGM and she specifically knows she spoke with Copperfield. She has no knowledge about whether Backstage was there or involved or anything.

THE COURT: Ms. Fresch?

MS. FRESCH: Your Honor, I mean, I reiterate what Mr. Roberts said because it really applies to me too.

I purposely chose not to bring anyone in so that there wouldn't be a rebuttal. They already asked their question of Mr. Copperfield and said, "Do you know" -- because, if you recall, Mr. Morelli said to Mr. Copperfield -- he showed him the 8-by-10 glossy,

that Mr. Copperfield says, "Yeah, that goes out to -- probably goes out to everyone when my dad was in charge of stuff. I don't even know."

And then the other thing, they specifically said, "Do you know a person named Tara Anderson?" Mr. Copperfield consistently, as he has always said, "I don't recall." He has never made these claims that they're trying to say. He said, "I don't recall that woman's name."

Now, where is this under the rules of rebuttal testimony to what -- they have to rebut what I put in my case in chief. They don't just get to reopen their case. That's essentially what they want to do.

THE COURT: It's part of what you put on in your case in chief. It has to do --

MS. FRESCH: I haven't even done my case.

THE COURT: No, I know, but, I mean, part of the examination of witnesses had to do with the understanding that was reached initially that you could go beyond the scope of --

MR. DEUTSCH: Absolutely. That's part of the case.

MS. FRESCH: Right. And they brought in -- you allowed them to bring in two witnesses: a Ms. Esack and Ms. Lawrence. All right? But,

essentially, you then ruled that only Ms. Anderson would potentially come in on rebuttal -- I understood it -- as to the defense, to the -- our case in chief of what else we would add in. I did not elicit anything --

THE COURT: Here's what I'm going to do. I'm going to wait until the defense case in chief is over before I determine whether or not Ms. Anderson can testify. How's that?

MR. DEUTSCH: Well, the problem is, Your Honor, that then they rest. I then need 24 hours to get her here.

THE COURT: Well, I'm not sure when the defense is going to rest. We know we're not going to be in session --

MR. DEUTSCH: Well, then, I'll just bring her here -- I'll bring her here and I'll be prepared to put her on the stand. I'll do it that way, Your Honor.

THE COURT: Not sure when the defense is going to rest. We're already Wednesday and --

MR. DEUTSCH: I'm going to bring her here, and she'll be here. But I just want to note with respect to Ms. Fresch's comment, every time that they go outside the scope of the cross-examination, that constitutes their case in chief, even though

technically the plaintiffs haven't rested. So --

THE COURT: That's what I was just alluding to.

MR. DEUTSCH: And I agree with Your Honor in that completely.

THE COURT: Well, should we take -- should we have the jury brought in now, or do you need to take a recess before we start, or what?

MS. FRESCH: Can we just take a two-minute.

MR. DEUTSCH: I don't even know who's going first.

MR. POPOVICH: When we get back in front of the jury, MGM will rest.

MR. DEUTSCH: So -- so, in light of that, Your Honor, I would make my application with respect to Ms. Anderson with respect to MGM in light of --

THE COURT: You can wait till all the defense rests.

MR. DEUTSCH: Okay.

MS. FRESCH: Then I would be next with Mrs. Cox.

MR. DEUTSCH: And, again, my only request would be to make sure that it's something that wasn't covered already. And I don't think she should be allowed to do it at all, but I think, if she's going to

be allowed, it's got to be something different. And I would ask for an offer of proof --

THE COURT: Well, let's wait to see what the questions are. And if you object, then so be it.

MR. DEUTSCH: Okay.

MR. CALL: And then we're going to have Mr. Voiss, who's waiting outside.

THE COURT: Do you want a five-minute recess?

MR. STRASSBURG: Backstage has --

MS. FRESCH: Yeah, we have Mr. Cox.

MR. ROBERTS: We just had Mr. Cox, Your Honor, and also to argue the motion on the judicial notice of the CDC statistics. Since they have actual live witnesses, we're happy to defer and allow the live witnesses to go before us.

THE COURT: Okay. So let's take a five-minute recess. Want to do that? Somebody said two minutes; how about five?

MR. POPOVICH: Five works.

THE COURT: And the jury's outside. So you may want to take -- make sure you take that into account. I think they're outside. They're supposed to be outside at 9:30.

(Whereupon a short recess was taken.)

THE MARSHAL: Remain in order. The

department is again in session.

THE COURT: We are back on the record on the -- we are again in session. Bob is going to bring the jury in.

MR. POPOVICH: I have one ministerial thing to do, but I can do it in front of the jury. Then I rest. And I already have agreements, so no big deal.

THE COURT: All right. So you want to do it before the jury comes in?

MR. POPOVICH: Oh, yeah. I thought Bob was already out getting them. So, fine.

Yes. Exhibit 402, Your Honor, is the surveillance video from the night of the accident. And I have had predesignated clips which I've called 1 through 11. And what I'm asking is that those be independently marked as 402-1, 402-2, all the way up to 402-11. And I don't believe there's any objection to that.

THE COURT: So 4 --

THE CLERK: The whole exhibit is already in.

MR. POPOVICH: Correct. The whole exhibit is already in. What I'm asking is these discrete clips could be separately marked for ease of use, like in closing or something.

THE COURT: So that's 40?

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MR. POPOVICH: 402-1 through 402-11.
THE COURT: Be separately marked?
MR. DEUTSCH: No objection, Your Honor.
THE COURT: You understand that?
THE CLERK: It's 402-8? I'll ask him.
THE COURT: Each is going to be separately marked, then?
MR. POPOVICH: That's my request, as basically a subexhibit to the 402.
THE COURT RECORDER: Just 1 through 11.
THE COURT: All right. Make sure --
MR. POPOVICH: Is there -- if -- if --
THE COURT: There's no objection, so --
MR. DEUTSCH: No objection.
THE COURT: So ordered, but --
MR. DEUTSCH: We'll figure out how to do it.
THE COURT: -- at a recess, talk with the clerk.
MR. POPOVICH: I mean, if the clerk indicates that it's easier to call them the next 11 in order, we can do that as well. I don't care; I just wanted them discretely marked.
THE CLERK: Well, 402, right now, currently the entire exhibit is in.
MR. POPOVICH: Yes.

THE CLERK: So if I were to pull the -- those pages out and make them a separate exhibit, is that what you're requesting?

MR. POPOVICH: It's video. They are clips that were taken from the video of the surveillance. So it's not a document.

THE CLERK: Okay. Okay. We can do it as 402A. You want to call it 402A?

MR. POPOVICH: A through whatever the 11th letter of the alphabet is?

THE CLERK: We'll make all 11 clips 402A.

THE COURT: No, he wants each one separately. So it would be 402A, 402B; right?

MS. FRESCH: Although we've been calling them numerical clips.

MR. RUSSELL: In front of the jury, right.

THE CLERK: Whichever you prefer.

THE COURT: So 402-1, -2 --

MR. DEUTSCH: Yeah, 402-1, 402-2, that's fine.

MR. POPOVICH: That's okay.

THE COURT: All right.

MR. POPOVICH: Thank you, Your Honor.

MS. FRESCH: And, Your Honor, just before we -- we go, it is my intention to call Mrs. Cox.

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There's a few exhibits I have to work out if it's -- I would like to be able to just -- so we can move along, just rest with the reservations to work out a few exhibits. I just have to -- 'cause I don't want to hold everyone up.

(Discussion was held off the record.)

THE COURT: Okay. That's fine.

MS. FRESCH: Okay.

THE COURT: And we have to recess at noon because of court --

MR. POPOVICH: Maybe even 11:59.

MS. FRESCH: Well, we kind of don't want her to leave ever. So maybe we should never let her go to lunch.

MR. DEUTSCH: Come to New York.

THE COURT: All right. Ready for the jury?

MR. POPOVICH: Yes. Thank you, Your Honor.

THE COURT: Okay.

Bob?

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

IN UNISON: Good morning, Judge.

THE COURT: All right. The jury has now been seated.

Do counsel stipulate that the jury is present?

MR. DEUTSCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MR. CALL: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

THE COURT: All right.

MR. POPOVICH: Thank you, Your Honor. On behalf of MGM Grand Hotel, we rest our case in chief. Thank you.

THE COURT: Very well. Thank you.

MS. FRESCH: Okay. Your Honor, we would like to call Mrs. Cox.

THE COURT: Very well.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Minh-Hanh Cox, M-i-n-h, hyphen, H-a-n-h, C-o-x.

DIRECT EXAMINATION

BY MS. FRESCH:

Q. Okay. Good morning, Mrs. Cox.

A. Good morning.

Q. So -- all right. I just want to go over a few things. The -- and, just to refresh, last time you were here, you mentioned that you were -- you and your husband, when you were at the David Copperfield show on the night of November 12th, 2013, that you were at a table that was adjacent to the stage. In fact, you could touch the stage; is that correct?

A. Yeah, my table was in front of the stage, if that's adjacent. So if this is my table, I could touch the stage like this (witness indicating).

Q. Okay. And you were about in the middle or slightly left to the middle?

A. Yes, I think so. We -- we -- I can tell you we weren't on the far sides. I couldn't say it was dead center, but it was -- it was good seats. So I would say, yes, I think, to -- no, because that's right and that's left. So I would have been this side of the theater, so the right.

Q. Okay. In your -- let me just refresh. In your deposition, at page 25, line 25, to page 26, line

6, question --

MS. FRESCH: I'm sorry. Do you have that?

MR. DEUTSCH: I'm sorry. Say that again.

MS. FRESCH: Deposition page 25, line 25.

MR. DEUTSCH: Deposition page 25, line 25.

MS. FRESCH: To page 6 -- or excuse me -- line 6.

MR. DEUTSCH: All right.

I have an objection, Your Honor. It's not inconsistent at all. It's exactly what she said.

THE COURT: She's a party.

MR. DEUTSCH: Okay. No problem.

BY MS. FRESCH:

Q. All right.

"QUESTION: Okay. When you -- when you got to the show, where were your seats in relation to the theater?

"ANSWER: Right in front of the stage, literally so I could touch the stage.

"QUESTION: Okay. First row, huh? Were you in the middle, left, or right, or --

"ANSWER: Slightly to the middle."

So based on what you're saying, you're in the middle. And you're saying slightly -- sorry -- just one table off from the dead center middle?

A. I couldn't say. I couldn't tell you one table, Ms. Fresch. We're going back five years. All I can tell you for sure is our table was so close, right in the front, I could touch the stage, which is what I think I said last week.

Now, whether it's a couple of feet this way or a couple of feet that way, but I can tell you for sure I could touch the stage.

Q. All right.

A. That's 100 percent.

Distance either side, all I can say is I wasn't over to the far left, I wasn't over to the far right. I was -- as far as I was concerned, I was quite center, and I could touch the stage.

Q. Okay. And how tall are you, Mrs. Cox?

A. I'm very tall at 5-foot-3.

Q. All right. And you recall the theater -- that theater is terraced. So when you're sitting in the front row, when you came into the theater, you walked downstairs to get to the front row?

A. If I'm totally honest, I don't remember. All I remember is going into the theater. There's lots of people going in. And we were just -- it's quite crowded and the tables are very small. So all I can tell you is that we went in. I couldn't tell you if I

went downstairs, whether it was a slanted path. I really don't know. I can't remember.

Q. Okay. All right. Pardon me. All right. I'd like to actually put on the ELMO and read some more deposition testimony.

This is page 29, line 10 -- for completeness, actually -- to page 31, line 12. It's kind of a lengthy answer. Okay?

MR. DEUTSCH: I'm not looking, so go ahead.

BY MS. FRESCH:

Q. All right.

Boy, that's hard to see.

THE COURT RECORDER: Zoom in and zoom out. There's a plus and a minus.

BY MS. FRESCH:

Q. All right.

"QUESTION: Where did he go after the illusion was over? They were at the back of the theater, then what happened at that point?

"ANSWER: They were" --

MR. DEUTSCH: Judge, I'm going to just object to this in light of the fact that this was already covered the first time.

THE COURT: Let's see what the question is going to be. Okay?

BY MS. FRESCH:

Q. -- "they were led off. I couldn't tell you where they went because I wasn't there, but they were just led off. The show had finished. As they were being led off, everyone got up, including myself, to leave the theater.

"QUESTION: And continue on with what happened after that.

"ANSWER: So then -- they had been led off. I was one of the first to leave the theater. I quickly went to the restroom. I came back, people were still filing out. As the crowd were lessening, I went to go back into the theater, and I was stopped. And a lady, the usher or whatever you want to call her, said, 'You can't go back in there.'

"And I said, 'Well, my husband was a participant in the show, and I have to find him.' And she said, 'He's gone home.' And I said 'Well, that's just ridiculous.' So I left it, waited and waited and waited, then went to go back in again.

"Again I was stopped from going in. And I said, 'Look, my husband is a participant. He's not here. Where is he?' Again, I was

told he was gone, he had gone home. And, again, I said, 'Well, that's ridiculous, because we're tourists. We're British. How could he possibly go home?'

"So then, at this point, there was no more -- there were no more people coming out, and I was waiting and waiting. And, initially, I thought it was a joke, because, at the end of the show, Copperfield says, 'We made them all disappear. And if you wait, we'll put a list up as to where the next show is, and perhaps you might find him then.'

"So it was all a bit of banter. And it was my husband's birthday. And I thought, well, you know, maybe this was part of his joke. So I just -- you know, I let it be because I thought he's probably sitting at a table enjoying me getting really pissed off because I'm waiting. And I waited. And then I knew something wasn't right because the wait -- I meant -- it felt -- it must have been over an hour. And this lady approaches me and says, 'Are you Mrs. Cox?' And I said to her" --

A. Sorry. I don't have this, what you're saying.

THE COURT: It should be on the screen there.

JUROR NO. 8: It's cut off. You got to move it, Counselor, move the paper.

MS. FRESCH: Oh, sorry.

Thank you.

Wait. I didn't do the arrows.

THE COURT RECORDER: Bottom left.

MR. DEUTSCH: I figured it out. There you go.

BY MS. FRESCH:

Q. I'm going to pick it up at line 20.

"And then I knew something wasn't right because the wait. I meant -- it felt -- it must have been over an hour. And this lady approaches me and says, 'Are you Mrs. Cox?' And I said to her -- she said, "Are you Mrs. Cox? Come with me.' I said, 'Is this a joke?' And she said, 'Do I look as if I'm joking?'

"So then a security guard came up to me. And he said, "Are you Mrs. Cox?" I said yes. He said, "You need to follow me." He was leading me down a very dark corridor. And I stopped him. There were no lights. And he -- I stopped midway, and I said, 'I'm sorry.' I said, 'I don't know who you are, and I'm not going down there.' I said, 'You could be anybody. You

could be a murderer. You could be a rapist. I'm sorry. I'm not going down.'

"And, on that point, he turned around and said, 'You have to come. Your husband has been hurt.' And as he finished the sentence, the door opened, and I saw my husband being put into an ambulance. I went outside."

Okay. So, Mrs. Cox, at the beginning of that lengthy answer, you said you were basically one of the first people out of the theater.

Sitting in the front row, how were you able to be one of the first people out of the theater with all the other people exiting the theater at the same time?

A. Well, I suppose it's because I move faster than other people.

Q. Okay.

A. When you need to go to the loo, you need to go. And I needed to go to the bathroom.

Q. So you see that your husband is up there where the people reappear. You used the adjectives, I believe, of "something was wrong, he's miserable, something was wrong, he looked sick, something's not right."

You see all this problem with your husband

when you're looking at him, and then you're in the front row, he's in the back of the theater, and you run past him to get to the bathroom?

A. Okay. First of all, I didn't --

Q. Is that true?

A. No.

Q. The question is did you run past him to get to the bathroom?

A. No, I did not.

Q. Okay. So wait. Now, there's been testimony in this case that the people who -- when they reappear, they go down the same aisleway that you have to take to get to the bathroom. So he would be coming down that same aisleway. Even if you had sprinted out of your seat after seeing your husband look so sick, you would have had to sprint out of your seat and you would have ran into the participants. As Ms. Weall explained, they walk down the same group of steps that you would have to sprint up to get up to the bathroom. And you're saying you did not see your husband; is that correct?

MR. DEUTSCH: Objection, Your Honor, to the form.

THE WITNESS: Would you --

MR. DEUTSCH: Argumentative. And the

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relevance of this.

THE COURT: Overruled.

THE WITNESS: Could you repeat that, please.

BY MS. FRESCH:

Q. Sure.

(Record read by the reporter.)

THE WITNESS: Okay. First of all, I don't understand your reference to the sprint. There certainly wasn't any sprinting.

Secondly --

BY MS. FRESCH:

Q. Okay. But wait --

MR. DEUTSCH: Can she finish her answer?

THE COURT: Let her finish her answer.

THE WITNESS: Secondly, my husband wasn't at the very, very back; he was somewhere in the middle.

And, thirdly, he had already been led off. They were leading them off. As I said to you, my recollection was, was that, when they were there, they were then led off. And it was only until they were led off. That's -- people don't get up before they've been led off because they don't know that the show's finished.

So it's only when they've exited can people then move. They won't allow people to start moving

while they're still on the -- on the -- in the theater. He had already gone when I went to go to the loo. If I had the opportunity to go to my husband with him being right there, you don't think I wouldn't have approached him?

That's just ridiculous, Ms. Fresch. Absolutely ridiculous. So I don't understand what you're saying about me sprinting down there or -- I don't know what you're trying to say. It's -- I'm sorry. It doesn't make sense to me. Certainly no sprinting off the path and the people -- me being in front -- I really don't understand what you're trying to say.

BY MS. FRESCH:

Q. Well, Mrs. Cox, you just said you were the first one out of the theater.

A. One of the first.

Q. Okay. So -- and, you agree, there's a lot of people in that theater?

A. Yes.

Q. It's not, like, just you and your husband at that show; correct?

A. But with the greatest respect, what difference does it make whether I'm the first or the second or the third? I told you I went to the loo.

And I told you that I thought there was something wrong with my husband, but I didn't know what was wrong.

He looked sick. He looked off. He was very happy. He was very excited and bubbly. And, the next minute, he didn't look right. It doesn't mean to say that I knew what was wrong. I didn't know what was wrong. And I popped to the loo. And I wasn't gone that long because the crowd was still dispersing.

So this thing about me going to the loo and then coming back or me not being concerned about my husband, I knew something was wrong, but I did not know the extent of what was wrong. And that's what I said to you last week. It's what I said in my deposition.

So I don't quite understand why you're coming back at me. I'm just completely confused why I'm up here and we're going through this. It's so simple.

Q. Let me -- I would like to read some testimony from the trial of Pomai Weall at page 177, line 22, through line 24 on 178.

MR. DEUTSCH: Hold on. Say that again. Sorry. Pomai?

MS. FRESCH: 177, line 22, through 178, line 24.

And then I'm going to read the other portion of Ms. Weall at 228, line 6 through 14. And line 6 is

where the question starts.

MR. DEUTSCH: So you're starting on 177?

MS. FRESCH: Yes.

BY MS. FRESCH:

Q. Okay.

"QUESTION: Describe where you take them. Do you take them inside the theater a ways, or do you immediately take them back out the doors they've just reappeared through?

"ANSWER: So they're actually -- we're in the theater for the first part of it. It's actually the same opposite side of where we sort of bring them down for questioning. So I think, earlier, we sort of -- if the questioning happened on -- looking at the stage on the left wall of the theater, we'd actually walk them backstage down the right wall of the theater. And then there are mirroring double doors that lead backstage. So we then walk them. Once they get down to the first row where the stage stairs are, there's actually double doors that lead backstage there. And that's that -- that hallway. So I --

"QUESTION: So I get it. So, just so I'm clear, you walk them down that kind of terraced

theater area along the right side wall; correct?

"ANSWER: Yes.

"QUESTION: Would people leaving the show be going the opposite direction?

"ANSWER: No, because we -- they're actually not moving at that point. So they're sort of watching us go back down the stage or back down backstage. They're not exiting against us, if that makes sense.

"QUESTION: They haven't started leaving yet?

"ANSWER: No."

And then I'll move on to 228.

Okay. First question here, "From the point of reappearance to the debriefing room, are there any stairs the participants must walk up -- excuse me -- walk down or up?

"THE WITNESS: Yes. There are stairs they have to walk down. So when they reappear in the back of the theater, they're sort of at the top of the stairs, if you will. And then, as they make their way down to stage level, they're actually descending stairs."

All right. Now, you said that you popped out

to the bathroom. You leave first, along with people. Did you notice there were other people leaving with you as you were heading up the way to get out of the theater?

A. Everybody was leaving.

Q. Okay. So -- but you were able to maneuver your way to get out and be one of the first out of the theater --

A. Well, obviously --

Q. -- even though everyone got off --

A. -- because I left. I just -- I really am quite confused, because I told you I got up and I left the theater and I went to the loo. I don't know what's so -- why you're so confused about that.

Q. Well, I'm not confused at all. I'm a little baffled, but I'm not confused.

A. Well, what are you baffled about? because I'm even more baffled because I've told you what happened. I got up and I went to the loo. I'm -- listen, I'm not going to take on board what this person's doing, this person is doing, is this person faster, is this -- I'm just going to the loo, Ms. Fresch. What could I possibly take in other than wanting to go to the bathroom?

Q. Okay. But you don't see your husband -- as

Ms. Weall explains, you don't see your husband as he walks down the same stairs you're about to walk up. You don't bother to watch your husband walk down those stairs since you were --

A. With the greatest respect --

Q. Excuse me. Let me finish my question, please. And I'll try not to interrupt you, and I know I did that once before.

So the participants go down the stairs. When you call it "led off," did they go down the stairs from the back of the stage -- excuse me -- back of the theater down to the first row? You don't see your husband walking down those stairs if you're so concerned that there's something wrong? You did not make any observations of your husband walking down the side of the theater; is that correct?

A. I wasn't even aware of any stairs, Ms. Fresch. I don't even know what stairs you're talking about. Pomai whatever her name is, she's been in and out of that theater a thousand times. I've been in there once. I cannot --

Q. If you --

A. Sorry. Please let me finish.

This is five years ago. I've been in that theater -- I've never been in that theater since. So

if you're telling me there were stairs here, there's this there, there's that there, I don't have a clue.

What I can say to you is I needed to go to the loo. I did not notice my husband going down any stairs. All I said to you was he was being led off. If he popped down some stairs, maybe he did. I don't recall those stairs. But, at the end of the day, it really doesn't matter because, at the end of the day, you asked me what did I do when I left the theater.

And I simply said I got up, I left, and I went to the restroom. Now, nobody asked me about stairs in 2015. I don't recall any stairs. If there are stairs, there are stairs. But it shouldn't make any difference as to whether I went to the loo or not.

Q. Okay. But regardless -- let's pretend like there's no stairs. But still you're -- from the time your husband went from the back of the stage -- excuse me -- I'm saying stage -- back of the theater --

A. He wasn't at the back.

Q. Okay. You never saw -- you didn't pay attention to when your husband was from the back of the theater down to the first row to observe him at all during this time --

A. What do you mean?

Q. -- because you were concerned about getting

up and going to the restroom?

A. What do you mean?

Q. Is that correct? Is that correct or not?

A. I don't understand, Ms. Fresch.

Q. Don't understand the question?

A. I don't understand what your babbling -- I just don't understand. I'm sorry. Because you keep saying about a tier, so I don't understand what that tier is.

You've mentioned about stairs. I've told you that I've never been in that theater apart from one time. So I really don't know whether there's ramp or stairs. I don't have any recollection of even myself going up and down stairs. All I remember is going to the theater, being sat at the table. And when it ended, then I left the theater and I went to the loo. It's as simple as that.

Now, regarding my husband, I've told you -- and I'll tell you again -- please let me finish -- I knew something was wrong with my husband, but I did not know what was wrong.

And, at the end of the day, if you're trying to say that my husband was seriously hurt, why didn't they come and get me? If you're saying that he was so close or he came downstairs, why didn't they come and

get me? Pomai or whatever her name is and the security chap, they said my husband was hurt. They had every opportunity to come and get me. And they didn't come and get me.

So your questioning me, oh, if your husband is so hurt, why didn't you go to him? I didn't know the extent of how -- how he was hurt or what was wrong. I knew something was wrong, but I did not know what was wrong.

MS. FRESCH: Move to strike the last portion as nonresponsive.

MR. DEUTSCH: I think it was responsive, Your Honor.

THE COURT: Motion is denied.

BY MS. FRESCH:

Q. So one other point, though.

Okay. So you didn't see your husband as he was led with the other participants to the front of the theater and the debriefing room. Let's go back to the --

A. I'm sorry. He wasn't led to the front.

Q. Hold on. Hold on. Hold on. I haven't asked a question. Okay? You have to wait for me to ask a question.

All right. Now, you were here last Friday

when Mr. Navas testified -- correct? -- the security guard for MGM?

A. Yes, of course.

Q. Now, he described exactly where the two bathrooms were. Did that refresh your recollection at all as to --

A. Absolutely not, Ms. Fresch. We're going back five years. I've been there once.

Q. Okay. Just listen my question and answer my question.

That didn't refresh your recollection. Fine.

All right. But, now, when you left to go to the bathroom, did you ask someone where to go to the bathroom or did you --

MR. DEUTSCH: Objection, Your Honor, to the relevance of this.

MS. FRESCH: No.

THE COURT: Overruled.

THE WITNESS: I have no idea. We're going back five years. I've only been there the one time. I don't know who I spoke to or whether I asked.

All I can tell you is I needed to go to the loo. I came out of the theater. I went to the loo. The -- at the time that I went to the loo, obviously, it was a short time. So it couldn't have been miles

away, the loo. because the crowd was still dispersing. The crowd was still filing out. So, clearly, the loo wasn't that far away. Otherwise, everybody would have gone if it was miles away. And all the crowd was still coming out. So I was able to pop to the restroom, come back, and wait.

And that's exactly what I said to you.

BY MS. FRESCH:

Q. Okay. And you don't recall maneuvering through the casino, maneuvering through the people who were in the casino to get to the restroom; right?

A. Well, I couldn't tell you --

Q. You just went straight?

A. -- I couldn't tell you -- no, I didn't say I went straight. I said I left the theater and I popped to the loo. I don't know whether I went straight, 45 degrees angles that way or that way. I simply said to you I needed to go to the restroom. I came out of the theater. I popped to the loo and I came back again. I couldn't tell you where the distance was or whether there was this obstacle or that obstacle. It's ridiculous, Ms. Fresch. I simply went to the restroom.

Q. Okay. I'd like to read Mr. Navas's testimony from Friday at line 12 on page 41, to page 43, line 9.

"QUESTION: Okay. No worries. All right.

Now, with respect to the layout of the theater in relation to the casino, where -- for theatergoers, are you aware of what -- where restrooms are that theatergoers would head to if they came out of the theater?

"ANSWER: The restrooms would be across in the casino. There's no restrooms inside the casino -- inside the theater for them.

"QUESTION: Okay. So when you say 'inside the casino,' could you describe where, inside the casino, the restrooms are?

"ANSWER: There will be restrooms about 100 to 500 feet to the right on Whiskey Down, around the curve. The next set of restrooms would be in the left-hand side right past the Jabbawockeez theater, about 500, 600 feet to the left across the other side of the wall.

"QUESTION: Okay. So if I'm -- walk out the theater doors and I'm basically in that little foyer right at the casino.

"ANSWER: Uh-huh.

"QUESTION: When you say past Jabbawockeez, that's going straight somewhat and dodging through the casino?

"ANSWER: Correct.

"QUESTION: And the ones by Whiskey Down would be through the casino but going towards the right?

"ANSWER: Correct.

"QUESTION: All right. And the ones past -- going past Whiskey Down, that's, like, heading -- you have to pass slots and -- well, the ones going straight past Jabbawockeez, you have to go through an area of slots as well as gaming tables; correct?

"ANSWER: Correct. You would go across towards the opposing wall and keep going past the Jabbawockeez on the -- keeping the casino wall to the right, and just keep going. And then you would hit the restrooms.

"QUESTION: And Jabbawockeez was -- that used to be something else?

"ANSWER: Correct.

"QUESTION: What was that?

"ANSWER: That used to be -- I can't remember what it was -- used to be at the time --

"QUESTION: Okay. Madhouse sound -- Beacher's?

"ANSWER: Yes, correct, Beacher's

Madhouse.

"QUESTION: Okay. And the ones -- the bathrooms going where you go past Whiskey Down, that requires going through the casino and slots, heading that way as well?

"ANSWER: Correct, to the right."

All right. So one final question, Mrs. Cox.

When you realized that the bathrooms weren't close by, did you think to hesitate and go, "You know what? I should go after and make sure my husband's okay" --

A. Sorry. Can you repeat --

Q. -- when you went to the bathroom?

A. Can you repeat the first part of that.

Q. Sure.

When you realized that the bathrooms actually, either option, by Jabbawockeez or Whiskey Down --

A. I didn't realize that. I had no idea where the bathroom was.

Q. Mrs. Cox, please let me finish my whole question. Okay? I will stop and I'll say "I'm done with my question," so then you can answer it. Okay?

So once you realized that, as you headed towards either one of those two bathrooms, which are

the only two bathroom options you would have had, and you realized they weren't close to the theater at all, you didn't hesitate and turn around and go, "I better go look after my husband because something's wrong?" You chose to go to the restroom; correct?

A. First of all --

Q. Correct? Yes or no.

A. No, it's not correct, Ms. Fresch. It's not correct.

Q. All right.

A. Okay? At the end of the day, first of all, I had no idea where the bathroom was. And I simply said that. I popped out to the loo. I went to the loo, or the restroom, and I came back. I couldn't tell you what the distance was or where it was or where I had to go or what was there. That's ridiculous, Ms. Fresch, absolutely ridiculous. I simply do not know. And you're trying to say -- what did she say in the beginning? That I --

Q. Doesn't matter.

A. No, no. Could you please read it back.

Q. You know what, Mrs. Cox --

A. Could you please read that back where she says --

MR. DEUTSCH: I think she answered the

question, Judge.

MS. FRESCH: Your Honor.

THE WITNESS: -- something about I should know.

MS. FRESCH: I don't --

THE WITNESS: Nobody knows.

MS. FRESCH: -- have any more questions pending.

THE COURT: Okay.

MR. DEUTSCH: Anyone else?

MR. POPOVICH: Yeah.

DIRECT EXAMINATION

BY MR. POPOVICH:

Q. Mrs. Cox, there was one answer where you asked the question, "Why didn't they come and get me?" And I'd like to follow up on that if I could.

After you saw your husband at the back -- we've heard the testimony this morning -- you went off to the bathroom and came back.

Did you walk in any kind of a rush to get to the bathroom?

A. Yes, of course, because that's why I said I -- as soon as it finished, I rushed out to the bathroom. I needed to go to the loo; that was the main

reason. But, also, I knew that at some point my husband would be coming back. So then if I was very quick, I wouldn't miss him and I would be there.

Q. So you rushed both ways?

A. Yes. I -- I literally went to the loo, as I said, and then I came back. And I knew, Mr. Popovich, that I hadn't been very long because they were -- the mass of crowds were still coming out. That's how I knew that I hadn't been very long, because they were still coming out. And it couldn't have been that far, then, either, the loo.

Q. At least took a few minutes to go to and from?

A. I would say so. That's reasonable, yes.

Q. Okay. And then, if you had to wait another 15 minutes before someone came and got you, are you saying that that was an unreasonable amount of time for someone to come get you to lead you to your husband?

A. All I can say to you is that when I came back from the loo and I was waiting for my husband, okay, to me, the wait seemed ages. Okay? That's just what it seemed to me because I knew that there was something wrong. As I said, my husband was so excited, and then he was no longer excited. So I knew something was wrong, but I didn't know what was wrong.

So this thing about your staff or their staff could have come -- could have come and -- and got me or told me was simply a reflection of what Ms. Fresch said about, "Well, wouldn't you have gone rushing to your husband?" et cetera, et cetera.

So all I'm saying is, well, you know, you're trying to say if my husband was -- was -- there was so -- something wrong with him, you should have run up there and you should have got him. And I'm simply saying, well, if it was that serious, then surely the -- you would have come to get me. That's all I'm saying.

Q. Do you feel like an additional 15 minutes after you returned from your visit to the restroom was an unreasonably long period of time for you to be -- come and gone?

A. Well, I'm not quite sure what you mean about the 15 minutes, Mr. Popovich, because, for me, it was just waiting. I don't know 15 minutes, 20 minutes. Are you saying to me that it was 15 minutes before they came to get me? If you're saying it's only 15 minutes, then, yes, I would think that was reasonable.

But I don't know what the time scale was. All I'm saying is that I went to the loo, I came back, the crowd was still dispersing, and I waited. And then

the crowd were no longer. And I started to get nervous because the new crowd had started to queue for the next show, and still I was waiting.

So, at that point, I was thinking, you know, is there something wrong? Is it just a joke? You know, is he purposefully making me wait? Is it still part of the show? And I only started to really panic was when they came to get me and when they said, "Your husband's been hurt."

Q. Okay. And just so we can firm up the time -- I don't want anybody to just rely on me -- let's go to Exhibit 402, Clip 10.

MR. POPOVICH: Clip 10 first, please. Oh, that's 10? I'm sorry, then. I meant 8. My apology. My mistake.

(Whereupon video was played.)

MR. POPOVICH: And stop there, please.

BY MR. POPOVICH:

Q. So, based on what you've seen in the trial, Mrs. Cox, you know that's essentially what we understand is when your husband fell during the runaround?

A. I don't know. Is -- I -- there's clips, and there's been a tree and some lights, but ...

Q. Okay. Anyway, for the record, we're at 20

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hours, 35 minutes, 20 seconds, so 8:35 p.m. and 29 seconds -- sorry.

Now, if we can go to Exhibit 402, Clip 11. And I'll put on my glasses.

(Whereupon video was played.)

MR. POPOVICH: And stop, please.

BY MR. POPOVICH:

Q. So if -- and I'm going to ask you to assume that that first clip at least shows us the time of when your husband had fallen. And we're now at 20:53 and 48 seconds, so roughly 18 minutes after the fall.

Would you agree that, after going -- falling outside, your husband went back inside through the rest of the route as he's described? You understand that?

A. Uh-huh.

Q. And that would have taken some time?

A. Yes.

Q. Some time, seconds to maybe a minute?

A. Sorry. I -- sorry. What was that?

Q. After he fell, getting to the back of the theater for the reappearance would have taken some amount of time?

A. I think that's reasonable.

Q. Okay. And then there was the period of the show being over, you going to the bathroom and back.

And at least 18 minutes after he fell, according to the time stamps on these videos, you were by your husband's side; correct?

A. If that's what the video shows, yes.

Q. Okay. So my point was if it took a few minutes to go to the bathroom and back, essentially, you may have been waiting as many as 15 minutes before you were at your husband's side. That doesn't seem unreasonable?

A. No, not at all.

MR. POPOVICH: Thank you very much.

MR. DEUTSCH: Nothing.

MR. ROBERTS: Nothing, Your Honor.

MR. DEUTSCH: Roger?

Okay. I'm going to offer this in evidence. Does anyone have an objection, a seating chart from the theater?

MS. FRESCH: No.

MR. DEUTSCH: No objection?

No objection?

No objection?

All right. I don't know what number we're up to.

THE CLERK: 104.

THE COURT: Has it been admitted?

THE CLERK: No, this will be marked as 104.
MR. DEUTSCH: I'm offering this, Your Honor, into evidence.
THE COURT: Hearing no objection, so it's admitted.
(Whereupon, Plaintiffs' Exhibit 104 was admitted into evidence.)
MR. DEUTSCH: No objections; right? It's in evidence?
THE COURT: It's admitted.
MR. STRASSBURG: What's the number?
THE CLERK: 104.
MR. DEUTSCH: Before I show you that, I'm going to offer what's already stipulated into evidence, I believe, 406 -- D406. I think it was stipulated or it's not?
THE CLERK: It shows stipulated.
MR. DEUTSCH: It's stipulated, but we -- I'm going to offer it.
MR. RUSSELL: That's stipulated.
MR. DEUTSCH: Any objections?
THE COURT: Which item is this?
THE CLERK: This is Exhibit 406.
MS. FRESCH: Can I just see if --
MR. DEUTSCH: Here's the original, but you

guys have the photographs on your exhibits.

MR. STRASSBURG: Do we have the original?

MR. DEUTSCH: Any objection?

Any objection?

MR. RUSSELL: No.

MR. DEUTSCH: No objection. Okay.

THE COURT: 406 is admitted.

(Whereupon, Defendant's Exhibit 406 was admitted into evidence.)

CROSS-EXAMINATION

BY MR. DEUTSCH:

Q. I want to show you first what is Exhibit D406. That is a copy of the ticket that -- from the night you guys went to the show; is that right, Minh?

A. Yes.

Q. And it shows on there the section and the row and the seat, I guess, that you were in, Section 1, Row 6A, Seat 1. Do you see that?

A. Yes.

Q. Okay. And it's November 12th, 2013, 7:00?

A. Yes.

Q. Okay. Now let me show you what we've just admitted as Defendants' -- Plaintiffs' 104, which is the seating chart from that night. And let's see if we

could zoom in here.

We see the stage down here. And there's Section 1, 6A, which is where you were. And then there would have been two seats on either side of that, 1 and 2; right?

A. Yes.

Q. And that matches up with exactly what you just told us about where you guys were sitting that night?

A. Yes.

MR. DEUTSCH: Okay. I have nothing further, Your Honor.

MS. FRESCH: I don't have anything.

MR. POPOVICH: Nothing.

THE COURT: Okay. You may stand down. Thank you.

THE WITNESS: Thank you.

MR. DEUTSCH: Lee, as I understand it, we need to skip over and then call Voiss now because he's here?

Sorry.

MS. FRESCH: Sorry. Your Honor, on behalf of my clients, we rest pending that reservation about a few exhibits that we'll do on a recess if that's possible.

THE COURT: All right. Very well.

The Copperfield defendants have rested. All right.

All right.

MR. ROBERTS: Your Honor, Backstage has agreed to allow Team to go out of order since they have live witnesses here who are ready to -- to go up on the stand. If you'd still like to do that, then you can go forward.

MR. STRASSBURG: Thank you, sir.

Do you mind? Sure, that would be great.

Judge, at this time, Team would call its project superintendent, David Voiss. That's V-o-i-s-s.

THE MARSHAL: Go up the stairs. Remain standing, raise your right hand, face the clerk, please.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and spell it for the record, please.

THE WITNESS: David Voiss, D-a-v-i-d; last name, V-o-i-s-s.

DIRECT EXAMINATION

BY MR. STRASSBURG:

Q. Thank you to Mr. Roberts for allowing us to take you out of order.

You're the superintendent for the Beacher's project for Team?

A. Yes, I was.

Q. Okay. How old a man are you, sir?

A. 71.

Q. And what do you do for a living?

A. Well, a week ago was my last day at work. So I guess I'm retired.

MR. DEUTSCH: Congratulations.

BY MR. STRASSBURG:

Q. And what did you retire from?

A. I was in construction for 50 years.

Q. All right. And can you give us just kind of a flavor for your experience as a superintendent in construction just -- just generally.

A. Most of my time in that time was in commercial construction, all kinds of different things, some works in clinics, hospitals, hotels, just regular retail work. And also there was some in residential, but usually it was custom homes for residential. Most

of my years, though, were in commercial.

Q. All right. And the reason we took you out of order is because you're having to leave town; is that true?

A. That is correct.

Q. And what is the nature of that?

A. Just to -- basically, I'm getting -- a girlfriend and I are getting out of here for four months. At my age, it's time to do it and I wanted to do it. So we're hopping in our fifth wheel and taking off for next week.

Q. All right. Good for you. And I'm glad we could schedule you at this time.

Now, where are you from originally?

A. Originally, I'm from Grand Forks, North Dakota.

Q. And you grew up there?

A. I grew up there, yes.

Q. How did you get into construction?

A. When I was in college, I needed to work. So I -- my uncle had a construction company, a small one. So I started working with him.

Q. Go ahead.

A. And you --

Q. I just want to make sure you got -- do you

have water?

A. Yeah.

Q. Okay. There's some in the cup.

A. Yeah. That's fine.

Q. Okay. So you started out in South Dakota?

A. North Dakota.

Q. North Dakota. Sorry.

A. North Dakota. Let's get that straight.

Q. My late mother is from Fargo, so believe me --

A. Okay.

Q. -- I feel that already.

A. So, from there, yeah, I just stayed in it part-time while I was in school and -- after I got out of three years of college. And I stayed full-time in construction from that time on.

Q. Okay. And what brought you to Vegas?

A. In 1997 in Grand Forks, we had a flood. So we pretty much lost everything we had. And my wife's, at the time, sons lived here. So we moved here.

Q. And what line of work did you pursue once you relocated to the Valley?

A. Construction, commercial construction, yep.

Q. All right. And what type of projects? I believe you said commercial. What kind of projects did

you work at here in Las Vegas that the jury might be familiar with?

A. Over my first few years, I was working at what's called McCarran Center over at 215 and Warm Springs area. A lot of different businesses are in there. There's a bunch of buildings that we built -- built the buildings and also did work -- the interior work in a lot of them.

At the time, Aristocrat Gaming was in there. Caesars is in that complex. And all kinds of different places are in there.

Q. And do you recollect approximately when you joined Team?

A. I think it was in -- let's see -- the fall of 2011 when I started with Team.

Q. All right. And what did you hire on as?

A. Hired on as superintendent.

Q. All right. And what is the difference between the role of a superintendent on Team's projects and the role of a project manager like Paul King?

A. Okay. The project manager is somebody that's basically in the office taking care of all the paperwork and doing all that kind of stuff.

And the superintendent is the person that's in charge out in the field of what goes on out in the

field, does the scheduling of all the subcontractors, of getting the work in, of having -- getting the inspections that you need -- whether it's third party or county, whatever entity you're in -- getting all that. And then the project manager is in charge of all the other stuff, but he's basically in the office, does come out on the jobsite.

Q. All right. And let's talk Beacher's. Are you familiar with that job?

A. Yes, I am.

Q. And how did you gain that familiarity?

A. I was the superintendent on that job.

Q. All right. From the beginning, or did you join midstream?

A. No, from the beginning.

Q. As superintendent on the Beacher's project, did you have any responsibility for time cards?

A. Yes, I did.

Q. Would you describe for us what your job entailed as to time cards?

A. It was my responsibility to fill out my time card plus the time card -- keep the time for the people for Noble Specialties that worked on the job. It was my responsibility to fill theirs out too.

Q. And how did you go about completing time

cards? Was it pen and paper, or was it electronic or something else?

A. It was on the computer. It was a daily thing filled out on the computer.

Q. And who did the filling out on the computer? You or did you delegate that to someone?

A. No, it was done by me.

Q. Okay. And what was your practice on the Beacher's project as to when did you complete the time cards for each day?

A. It is -- it would be done by the end of the day, the -- their time for each of the individuals that was working there for Noble Specialties at the time. It was a daily thing at the end -- toward the end of the day.

Q. And what time of the day did you knock off at Beacher's?

A. We usually worked -- most of the time, we worked 6:00 to 2:30, 6:00 a.m. to 2:30 p.m.

Q. And so when would you have been completing the time cards for a particular day?

A. Around 2:30 or -- 2:00, 2:30, you know -- by 2:00 you know what everybody's doing and finishing up. So around that time.

Q. Now, where did you get the information that

you recorded in the time card entry? Did you just remember it and put it down all at once, or did you take notes during the day, or some other way?

A. No, I -- I would remember and put it down at once.

Q. All right. And after you put down -- filled out these time cards on your computer, what -- what did you do with that information?

A. It would be turned in to the office, I believe, weekly.

Q. Okay. And who did that? You or someone else?

A. I turned it in.

Q. All right. Let's -- let me show you -- you know, I was going to ask you. Any experience working on MGM jobs before the Beacher's one?

A. Before that, yeah, I worked several projects, I guess, before that.

First one that I worked when I got hired by Team was we went through 700-and-some rooms and took care of -- called NOVs, notice of violations, that work had been done in those rooms that wasn't up to what the county wanted. So we went through and redid all that.

I did Brad Garrett's Comedy Club. We did, in the lower level, I think, like, a convenience store

remodel down there. I don't recall. At the time we were doing some -- we put in another emergency exit in the area, the hallway that goes to their conference center.

Q. Now, on the -- as a project superintendent, who had responsibility for cleaning up at the end of the day? Was it you or was it someone else?

A. Well, we had laborers that would clean up. But it was also my responsibility to check and -- and make sure that things were cleaned up.

Q. All right. Now, how -- would you characterize for us, what was MGM like as to housekeeping? How tolerant were they of sloppy housekeeping?

A. Well, I guess I never did find out, but, I mean, their requirements were to keep the place clean, broom clean exterior, keep it clean inside. If we're in the casino area where the public is all the time, keep that clean. And that was their requirements.

Q. Now, you mentioned that you understood the requirement was broom clean. Do you remember saying that?

A. Yes.

Q. And how did you go about keeping the exterior broom clean?

A. We would, at the end of our -- toward the end of the day, we would go out there and make sure everything was clean. We'd sweep it up. If we had stuff out there or any -- you know, any dust or anything from anything that we might have hauled out there that day, if we were doing any demo or if we were just doing -- just hauling out trash, whatever, make sure everything is cleaned up, swept up, picked up.

Q. Okay. Well, how did you know that guys did their job?

A. I would check on them.

Q. All right. And whose responsibility was it to direct the labor forces to sweep up at the end of the day on the Beacher's project?

A. Well, ultimately, it was my responsibility. We had laborers that would do it. And, you know, they would be directed. Actually, they were pretty good people. And I really didn't have to direct them. They just knew also. But it was ultimately my responsibility.

Q. Now, do you have -- I mean, are you able to recollect exactly what kind of work was done on November 12th, 2013, which is the date of the accident that brings us here?

I mean, if you -- if you can't, it's all

right. I mean, we have --

A. I believe we were doing some work inside in the space. You know, in there where our space was. I think it was some metal stud work, some drywall work. I think there was some taping going on, you know, the drywall work on the walls of the Sheetrock that had been put on and different things. And I believe there was ironworkers there working, electricians were there working, plumbers were there working.

Q. All right. Let me show you what's been marked as Defense 557.

MR. STRASSBURG: Where is the remote?

I don't think this is part of the ones that was --

MR. DEUTSCH: Which is the one that you showed the other day?

MR. RUSSELL: 557 is admitted.

MR. DEUTSCH: Which was the number that we showed with Mr. King?

MR. RUSSELL: 556. It was his time card.

MR. DEUTSCH: It was 556-2.

BY MR. STRASSBURG:

Q. Okay. 557, is that on the screen in front of you?

THE COURT: It's not in evidence.

BY MR. STRASSBURG:

Q. That's not in evidence. All right.

Can you identify what I'm showing you as Exhibit 557, please. Tell us what that is.

MR. DEUTSCH: I have no objection to this one.

MR. STRASSBURG: All right. I move 557 into evidence.

MR. POPOVICH: No objection.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 557 was admitted into evidence.)

BY MR. STRASSBURG:

Q. Thank you.

A. That was my daily log.

Q. Hold on. Hold on, please. Let me -- I want to show it to the jury, if I can get the -- yeah. Yeah.

Okay. All right. And whose time card is this?

A. This is my time card.

Q. All right. And for what day?

A. Tuesday, November 12th, 2013.

Q. All right. And who filled this out?

A. I filled it out.

Q. All right. And it shows you did eight hours of supervision.

A. Yes.

Q. All right. Now, down here in the section where it says "work performed," do you see that?

A. Yes.

Q. Can you -- these are -- these are your notes; right? I mean, you wrote this?

A. I wrote them, yep.

Q. Can you tell us what you meant when you were -- by writing this note.

A. I was putting down just general things of what was being done that day. Noble Specialties had six men there that day. They were framing, which is probably -- it would have been metal stud framing.

Q. Can you describe for us what metal stud framing amounts to?

A. Well, it's just basically the same as wood framing only using metal studs or whatever. It's when you're framing a wall that's framed out of metal studs.

Q. All right. And the stud is the upright --

A. The upright, yes.

Q. -- thing; right?

And then the Sheetrock goes on either side that creates the wall?

A. Correct.

Q. Okay. And would you describe whether that framing operation is productive of dust.

A. The framing part, no. No, there wouldn't be much dust -- any dust from that. It's all metal and screwed together.

Q. All right. And how does the framing come into the job?

A. It would come in in bundles that we would carry in, haul in with a cart.

Q. And what's the point of access?

A. The point of access is that entrance that we were able to use where -- our entrance going out for where our dumpster was, same entrance.

Q. Now, when you reported for work on the day, on any particular day at the Beacher's job, how did you gain access to the space?

A. Well, we -- the access to the space, we -- we had to park in the parking garage, all of us. Then we'd come down through the lower level of the MGM up the escalator through the casino over to the -- where the Beacher's project was going on. It's how we entered every day.

Q. They didn't give you a key to the doors by the dumpster?

A. No, there was no keys by the dumpster. It was an exit only. I'm not sure if there was any -- they were locked all the time.

Q. Well, when Team needed to access the dumpster, how did you -- how did you get there?

A. We would have to go to security, have them open the doors from the inside, and then -- so we could get out.

Q. And could the doors be propped opened and just left that way without security there, or could you guys watch it?

A. No, I think security was supposed to be around there all the time if we had the doors open.

Q. All right. Now, the construction site was inside the casino on this job, was it?

A. Yes, it was.

Q. And was there any construction work done in the vicinity outside around the dumpster?

A. No, there was not. That was strictly our dumpster area for hauling our material or debris out. So there was no construction out there.

Q. All right. Now, let's return to the 12th, where it says, "six men, plywood" --

A. Right.

Q. -- "on platforms and stage."

Do you see that?

A. Yep. Yes, I do.

Q. Can you describe what you would have meant by that?

A. We had different levels that went in there that had a plat -- had basically a platform where there -- little people were going to be dancing and walking back and forth on these platforms and different things. So plywood -- we had to put metal down on them first, and then we put plywood on them on the platforms. And the stage, we had to add to the depth of the stage to the front. So we were covering that also with plywood.

Q. Anything about that operation that was productive of dust?

A. Well, we would be cutting the plywood inside our space there.

Q. Would -- with what? Electrical saws and that stuff?

A. Yeah, electric -- SKILSAW, correct.

Q. Well, did you ever put sawhorses out by the dumpster and cut the stuff out there?

A. No. No, it wouldn't be feasible. I mean, you're doing all your fitting, your measurements and everything, inside the space. So you would have the

full sheets inside and take your measurements and then have your full sheet there so you could cut -- cut it there.

Q. All right. Now, there's also -- we come to the part where it says "general jobsite cleanup in ext." And do you mind if we just sort of, like, skip that part and go down to "Morse Electric, six men, rough-in." Can you describe what you would have meant by that?

A. After the walls are put in, set up, built, and before the Sheetrock goes on, then the electricians have to go in there and the plumbers and put in their boxes for outlets, light switches, whatever it is, low voltage, all of that, and put all that in there and all the conduit and things inside the wall space before we could Sheetrock.

Same with the plumbers. They would have to put all their stuff in the walls -- inside the walls before we could move on with Sheetrock.

Q. Okay. And that's Bombard Plumbing; correct?

A. Yes.

Q. And then it says "redo plumbing in service bar area." You see that?

A. Yes.

Q. What would that have entailed? Did they

flunk an inspection or something or what?

A. No, obviously, there was a change.

Q. Oh, a change order?

A. A change order or something, right, that had -- then we had to redo something. I don't recall what it was now, but redo would mean that there was a change.

Q. Anything about those operations with Morse and Bombard that was productive of dust?

A. No, not those two items.

Q. Now, the next task that you described, "Lally Steel, seven men, structural steel for stanchions. Start on a trapeze." Can you describe for us what you were referring to there?

A. There was -- part of the project was going to be a railing -- three railing systems, basically, in there, where there -- little people would come flying out. And I believe they were going to bring their drinks around to the different tables by this railing system.

In order to put it in, they had --

Q. Wait, wait, wait. Railing. You mean, like, train tracks or overhead --

A. No, they're going to be flying overhead. They're going to be flying around.

Q. On a rail?

A. On a railing system, yes.

Q. Okay. All right.

A. So in order to get it in, the -- Lally Steel, the ironworkers, had to put quite a massive amount of steel up to the structure. And that's what they were working on there. Stanchions would be the places where the rail would hook to and that stuff. And starting on a trapeze basically is the same.

Q. Anything about that operation that would have been productive of dust?

A. The only thing, if they were cutting steel inside the space, there might be some. But it would be done inside.

Q. Well, wait a minute. Don't the steelworkers have to affix the -- I don't know, the -- the connections that hold the rails up to the structural steel of the building?

MR. DEUTSCH: Objection, Your Honor, to the leading nature of all these questions.

THE COURT: Sustained.

MR. STRASSBURG: Just trying to --

MR. DEUTSCH: Leading the witness.

BY MR. STRASSBURG:

Q. Can you explain to us how the railing system

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is attached to the structure of the building?

A. Okay. They would -- they would attach to the structural steel in the building. And, in order to do it, the structural steel in the building was covered with a fireproofing material called Monokote.

And they would have to remove that Monokote and -- and clean it up so that they could weld their steel to the structural steel on the -- of the building or the next floor up above. And so that's what they would do, then, that -- to weld their structural steel would come down, you know, in different -- at 40 -- different angles or whatever to hold what was going to be that railing system.

Q. Is the removal of that Monokote productive of dust?

A. Yeah, that can produce some dust.

Q. All right. And how would you clean that up?

A. It would be swept up.

Q. Okay. And then the next one is "Statewide Fire, one man."

Do you see that?

A. Yes. Yep.

Q. Could you describe for us what that operation entailed?

A. What we had to do was -- that was -- that

space was a -- a different show that was in there, "La Femme" or something. I can't remember how it's pronounced. But that was that area before. And, obviously, the fire sprinkler system in there was not separated from the rest of the space in there. And they wanted -- they wanted that space separated on the fire system from the rest of the casino.

So they were starting -- I think they just started that day to -- hanging pipe so they could start separating that area.

Q. Anything productive of dust in that operation?

A. No.

Q. Now, let's turn to your -- where you write right there -- let me direct your attention to the language that says "general jobsite cleanup int/ext."

What did you mean by that?

A. General jobsite cleanup was -- and the int/ext was interior/exterior.

Q. I'm sorry. It's -- it's i-n-t, slash, e-x-t, period. Sorry about that.

A. So I didn't have to type so much. I'm sorry.

But, anyway, it was just general cleanup that we did. And interior and exterior is what it means.

We would be, interior, sweeping up. We could

be in the casino area vacuuming any tracks that we had out there on the carpet or whatever. And that was something that would happen if we were tracking any dust out or anything, footprints, out basically, that that would be cleaned up multiple times during the day.

The exterior was just cleanup on the exterior, making sure everything was cleaned up before we left for the day.

Q. Now, we've heard some testimony about plastic mask. Are you familiar with that term?

A. Yes, carpet mask.

Q. What -- state your understanding, please.

A. It is -- it would come in rolls. It is sticky on the one side. And we would put it down on the floor, on the carpet. We would put it down on the carpet if we were going to be taking -- you know, rolling things outside to the dumpster or bringing things in. And, that way, it would protect the carpet.

Q. And --

A. It's sticky on the one side. So it -- basically, you put it down. It sticks to the carpet. We'd probably put a -- side by side, a couple -- you know, side by side so we would -- whether our Georgia buggies, our carts we use for the garbage, would stay on that -- on that area.

Q. And my partner just brought out this -- what do you call this? What do you call this contraption?

A. It's just a contraption for putting down our carpet mask.

Q. So this is what you used?

A. Yes.

Q. Okay. And this was to protect in the casino?

A. In the casino, yes.

Q. Bear with me one moment, please.

Now, there's another card, Exhibit D556, which I believe has been admitted.

MR. POPOVICH: Pages 1 and 2 have.

MR. STRASSBURG: Okay.

BY MR. STRASSBURG:

Q. So let me show you page 1. And can you identify this, 556, page 2, please.

A. This would be the time card for the fellows from Noble Specialties that I would fill out at the -- for every day, the number of hours they worked on the different things in there. Drywall would include --

Q. Hold on. Let me --

A. Okay.

Q. Just to be fair, let me show -- let's turn to drywall. And I'll show you the drywall operation. And can you describe for us what you're indicating here as

to drywall.

A. Well, looking back, drywall, 9250, the phase there, would take in metal stud framing. Could be that. It could be Sheetrocking, putting it on the -- Sheetrock on the walls. And it could be the taping. After the Sheetrock was on, coming along and starting to tape walls, the Sheetrock.

Q. Okay.

A. That's what that one is. So it would be -- basically, that would amount to one of those items that they were working on.

Q. All right. And let's -- let's go to the next one on --

MR. DEUTSCH: Roger, is this -- I'm sorry. Is this 556-2?

MR. STRASSBURG: Yeah, for the 12th.

MR. DEUTSCH: I got you. Thank you.

MR. STRASSBURG: Yes, sir, the 12th.

BY MR. STRASSBURG:

Q. Let me show you this one. "Carpentry," can you describe for us what's going on there?

A. The carpentry would be for the plywood. It would be with the woodwork or whatever. So it would be for the plywood that was being installed on the stage and on the platforms, be working on that.

Q. Now, are you familiar with what use Team makes of the information you put on these time cards?

A. Well, they're going to keep -- they're going to keep track of it to -- you know, basically keep track of the expenses that they've bid on the project to verify, you know, are we in line with what was bid.

Q. Well, as part of your job, are you supposed to put these numbers down accurately, or didn't it matter?

A. Well, it matters. If they want accurate reporting, it does matter. So, yeah, it was -- it was -- it would be fairly accurate. I wouldn't say it was down to the 15 minutes or anything like that, but it would be pretty accurate.

Q. How about payroll? Did this information have any use for payroll?

A. It certainly did, yeah.

Q. Describe that, please.

A. The guys would be paid off the hours that were for this job anyway. There's some times they worked on this job or they might go to some other job during the week. But they would take the hours that were filled out on these sheets to fill out the -- give -- for their pay -- pay for that week. So, yeah, it was important to the guys to be accurate.

Q. All right. Let me direct your attention now to this other section that relates to concrete. Do you see that?

A. Yes, I do.

Q. And the language that you've written here, let me direct your attention to where it says "drill for rebar at elephant footings and pour back area by them."

Do you see that?

A. Yes.

Q. Does that relate to the four hours of concrete work?

A. Yes, it does.

Q. And that's -- how many guys for -- on that? Just one?

A. One person.

Q. Okay. Do you -- do you have any idea what you're talking about there? Elephant feet? I mean --

A. They were -- we had to pour footings for this oversized elephant that was going to be built in there. And so we -- we had to dig -- you know, it didn't happen now; it happened before this, where the concrete floor in that area had to be cut out, then, where the footings were to go, where the -- basically, the steel legs were going to be attached to these.

So he was drilling rebar for those footings. And then he was -- and then some concrete got poured back next to them, not the footings themselves, but some section of floor right next to it got poured back.

Q. Well, how big was this elephant?

A. How big was the elephant? You had to have a ladder to get up in it. Because there are -- small people actually were going to come flying out of the elephant with -- to -- around on these rail systems.

Q. Okay. So this is a life-size elephant; right?

A. Yeah. It's at least life-sized, yes.

Q. And what function do the footings perform?

A. The steel that was going to be the framework for the elephant was going to sit on the four legs -- basically, the four legs of the steel and will sit on these footing pads, footings.

Q. And do you recollect how big these footing pads were?

A. They were somewhere around 2 foot by 2 foot wide.

Q. How high?

A. That, I don't recall, but they stuck out of the floor, obviously, you know, above the floor.

Q. Well, are we talking 10 feet or 1 feet?

A. No, we're talking more like 1 foot or 2 foot above the floor.

Q. And how many of them?

A. Four.

Q. All right. And how was this concrete brought into the Beacher's construction site?

A. Well, look at this here. For four hours, it would have been brought -- it would have been brought in as bags and mixed inside the space. It wouldn't -- would not -- for something this small, we would not have ordered a truck -- a concrete truck to come and pour that in.

Q. So why don't you explain what you mean by concrete truck and pouring it.

A. Well, we would bring in -- you can go to Home Depot and buy bags of concrete mix. So that's what we would have got, and brought them in to the space and --

Q. And what's --

A. -- in bags. And then, in the space, we would have mixed them with water or whatever and then poured it in there.

Now, if we were going to pour more concrete, we would get an actual concrete truck to deliver the concrete there and bring it in that way, by wheelbarrows or Georgia buggies or whatever, depending

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife,	)	Supreme Court No. 76422
Appellants,	)	District Court No. A-14-705164-C
vs.	)	
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC,	)	
Respondents.	)	

JOINT APPENDIX - VOLUME 18

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Summons - Backstage Employment and Referral, Inc. w/Affidavit of Service	09.02.14	Eglet Law Firm	JA 000021 - JA 000024	1
Summons - David Copperfield's Disappearing, Inc. w/Affidavit of Service	08.14.14	Eglet Law Firm	JA 000012- JA 000014	1

Summons - David Copperfield aka David S. Kotkin w/Affidavit of Service	09.14.14	Eglet Law Firm	JA 000025 - JA 000028	1
Summons - MGM Grand Hotel, LLC w/Affidavit of Service	08.14.14	Eglet Law Firm	JA 000015- JA 000017	1
Summons - Team Construction Management, Inc. w/Affidavit of Service	08.14.14	Eglet Law Firm	JA 000018 - JA 000020	1
Supplemental Request for Transcript of Proceedings	01.15.19	Morelli Law Firm	JA 006590 - JA 006594	28
Team Construction Management, Inc.'s Answer to Cross Claimants David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Cross Claim	03.22.16	Resnick & Louis	JA 000072 - JA 000077	1
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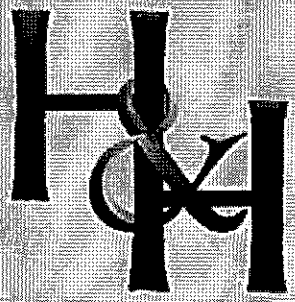
Team Construction Management, Inc. And Beachers LV, LLC's Joinder to Backstage Employment & Referral's Reply in Support of the Motion to Bifurcate Trial	01.18.17	Resnick & Louis	JA 000235 - JA 000238	1
Defendants Team Construction Management, Inc. And Beacher LV's Opposition to Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively for a New Trial	07.20.18	Resnick & Louis	JA 006327 - JA 006352	27

Verdict (Phase 1)	05.29.18	Court	JA 005920 - JA 005923	25

PLTFS' PROPOSED EXHIBIT
NO. 93 000020



HARRIS & HARRIS
INJURY LAWYERS

TWEETS FROM AND REGARDING CHRIS KENNER AND THE JURY VIEW

"EXHIBIT 3"

Chris Kenner
@ChrisKenner

I have so much stuff to do before Tuesday night I think my mind might explode... Fuck that... bring it on. I am drinking coffee because, Coffee is for closers.

5/5/18, 5:27 AM from Nevada, USA

11 Likes

Alexander May @AlexanderMay_1 · 2h
Replying to @ChrisKenner

Just let them watch the show while they're there ;)

5/5/18, 5:27 AM from Nevada, USA

11 Likes

Alexander May @AlexanderMay_1 · 2h

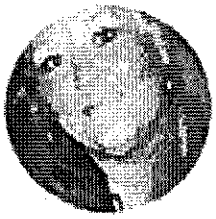
Replying to @ChrisKenner

Just let them watch the show while they're there ;)

pesci @pesci4td · 5h

Replying to @ChrisKenner

Field Trip!



Jill Sturdivant @jthac21 · 12h

Replying to @ChrisKenner

I'll get it done👍👍

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GAVIN COX; AND MIHN-HAHN COX,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; AND TEAM CONSTRUCTION MANAGEMENT, INC.,
Real Parties in Interest.

No. 75762

FILED

MAY 07 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This emergency original petition for a writ of mandamus challenges a district court ruling allowing the jury to view the location where the subject incident occurred.

Having considered this petition and the appendix, we are not satisfied that this court's intervention by way of extraordinary relief is warranted. *See* NRAP 21(b); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). In particular, trial is underway and petitioners have an adequate and speedy legal remedy in the form of an appeal from any adverse final judgment, precluding writ relief. NRS 34.170; NRS 34.330; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004); *see also Archon Corp. v. Eighth Judicial Dist. Court*,

133 Nev., Adv. Op. 101, 407 P.3d 702, 706 (2017) (recognizing that "[a] writ of mandamus is not a substitute for an appeal," but rather, the writ should be used sparingly, "for extraordinary causes"). Accordingly, we

ORDER the petition DENIED.[1]

_____, J.
Tao

_____, J.
Gibbons

SILVER, J., dissenting:

I respectfully dissent. Just because during trial, through juror questioning, a juror(s) requested a jury view, it does not mean that the district court should grant such a request. Here, petitioners have already rested their case-in-chief. This isn't a situation in which one side or the other requested, prior to trial, through a motion in limine, for a jury view—whereby the pros and cons could be argued thoughtfully to the district court. Here, both sides have prepared for trial based on the photographs, video, and discovery conducted during the years of pretrial litigation. Many years have passed, the area is substantially different from when petitioner fell, and viewing the area in the daylight are all factors that contribute, in my

[1]We note that petitioners' certificate of service does not establish that this petition has been served on the respondent district judge, as required. NRAP 21(a)(1).

view, to the irreparable harm petitioners may face with regard to this unfair procedure after resting their case. Therefore, I respectfully dissent and I would grant a writ prohibiting the jurors from viewing the scene at this late juncture of the trial as being untimely and unfair.

Silver, J.
Silver

cc: Hon. Mark R. Denton, District Judge
Morelli Law Firm PLLC
Harris & Harris
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
Selman Breitman, LLP/Las Vegas
Resnick & Louis, P.C.
Eighth District Court Clerk

Electronically Filed
1/16/2018 11:42 AM
Steven D. Grierson
CLERK OF THE COURT

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, MAY 8, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

JA004071

Case Number: A-14-705164-C

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* * * * * * *

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
John Baker, Ph.D.	50, 110 146, 151 160,	174 258		

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
93-107		92	
93-5		105	
93-143		113	
93-144		116	
93-89		119	
93-20		147	
93-88		147	
93-22		147	
93-99		147	
93-100		147	
93-17		151	
93-106		253	
84-23		254	

LAS VEGAS, NEVADA, TUESDAY, MAY 8, 2018;

8:40 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise. Come to order. Department is now in session, the Honorable Mark Denton presiding.

THE COURT: Good morning. Please be seated.

MR. MORELLI: Good morning.

MR. POPOVICH: Good morning.

THE COURT: We're reconvening outside the presence of the jury in Cox v. MGM Grand Hotel, LLC, et al. Please state appearances of counsel, identify parties and party representatives who are present.

MR. DEUTSCH: Good morning, Your Honor. Adam Deutsch for the plaintiffs. Mr. Cox and Mrs. Cox are here as well.

MR. FALLICK: Good morning, Your Honor. Perry Fallick, also for the plaintiff.

MR. POPOVICH: Good morning. Jerry Popovich for defendant MGM Grand Hotel, with Mr. Habersack for the client.

MS. FRESCH: Good morning, Your Honor.

Elaine Fresch for David Copperfield, David Copperfield Disappearing, Inc.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts and Howard Russell for Backstage Employment.

MR. STRASSBURG: May it please the Court, Roger Strassburg, assisted by my partner Gary Call, talking for defendant Team Construction Management. Good morning, Judge.

THE COURT: Good morning.

All right. We're outside the presence of the jury. We are here to discuss the jury view. Let me say this: I'm in the process of -- I'm reconsidering my decision on the jury view.

MR. DEUTSCH: Your Honor, if I may just say one thing before we start. I just wanted to apologize for Mr. Morelli. Unfortunately, his mother-in-law passed away yesterday, so he will not be with us until tomorrow. And he just wanted me to share that with the Court. And, potentially, at some point today if the Court -- he had asked if the Court could maybe just say to the jury that Mr. Morelli had an emergency and can't be here so they don't think anything of his absence today.

THE COURT: I'm sorry to hear that, and please express my condolences from the Court.

MR. DEUTSCH: Thank you.

THE COURT: So as I indicated, I've been thinking about this jury view situation since I made the ruling that I would permit the view. And I'm -- I'm reconsidering it. I think that -- you know, in reconsidering it -- I mean, I'll hear further argument on it, but I don't know if plaintiffs -- have plaintiffs changed their position on the subject?

MR. DEUTSCH: Your Honor, actually our position has been strengthened on this. As Your Honor is aware, on Saturday we -- we became aware of a tweet on Twitter by Chris Kenner that stated, and I -- I could put it up for the Court. It has some foul language -- I apologize -- but this was a tweet by Chris Kenner this weekend.

THE COURT: I think that was something that was attached to the writ.

MR. DEUTSCH: It was, Your Honor. And -- and, as a result of that tweet, we started to think, you know, what could they possibly need to do in terms of trying to fix or alter or change the location. And, obviously, that was part of the basis that we went to the supreme court and the court of appeals.

It just so happens -- obviously, that was just sort of a hunch that something was going on based

on a tweet, and nothing more than sort of our suspicions. It just so happens, though, Your Honor, that last evening, Mr. Fallick and I had a flight that arrived back here in Las Vegas about 7:00 or so last night, maybe a little later. We rented our car.

And on the drive back to the hotel from the airport, we decided to turn down Tropicana Avenue just to kind of see if there was a dumpster there or just kind of see if anything was there or whatever. And, to our amazement, Your Honor -- and I'd like to sort of play this video for the Court. This was what was going on when we just happened to -- to drive by yesterday at about 8:00 or 8:30, maybe a little later last night.

So -- and this was just happenstance, Your Honor.

(Whereupon video was played.)

MR. DEUTSCH: As you can see, they have a full crew of power washers power washing the entire walkway. They have people with mops and brooms and -- and -- what are those things called? -- floor buffers buffing the floors, power washing the entire area. You'll see, as the video continues, Your Honor, that they are literally power washing both the inside, the outside of the exact area, making sure that this area looked as spotless as possible for the jurors.

And that's despite the fact that they claim that, you know, bringing them there is not to try to show them anything. And this is the most interesting part of the video, Your Honor. If you look into the doorway right here, look who is there while this was going on: Ms. Fresch, Mr. Popovich, Mr. Russell, Mr. Roberts, and Mr. Freeman were all there walking through the area while this was going on, knowing that they were improving this --

THE COURT: Well, let me stop you there.

MR. DEUTSCH: -- area.

THE COURT: My reconsideration has not taken -- I didn't -- knew nothing about this.

MR. DEUTSCH: I understand that.

THE COURT: I'm coming out and saying -- I don't know that you really need to go into that.

MR. DEUTSCH: Okay. I just thought the Court should be aware that this was going on.

THE COURT: My reconsideration has to do with, basically, the contentions that were made by the defendants at the time after plaintiffs had rested as to the weight of the evidence when they made their Rule 50 motions.

The posture of the case at that time, plaintiffs having rested their case at that time, the

substantial changes that had been made to the -- to the premises. And two things then come to mind for -- or a couple of things come to mind, I should say. Of course, the substantial differences at the scene that would likely -- or could likely ring a bell that could not be unrung.

I consider that -- and, of course, the -- setting up the view and everything else. In other words, I take -- I take, then, a look at the order denying the petition for writ of *mandamus*. And I think the order was right. I think it's something that was within my discretion to permit a view. All right? So I think that both of the judges on the court of appeals were -- were correct in denying the petition for a writ of mandamus, but I also consider that Judge Silver made some observations about this that come to my mind. And I quote from her dissent.

"This isn't a situation in which one side or the other requested, prior to trial through a motion in limine, for a jury view whereby the pros and cons could be argued thoughtfully to the district court. Here, both sides have prepared for trial based on the photographs, video, and discovery conducted during the years of pretrial litigation. Many years have passed, the area is substantially different from when

petitioner fell, and viewing the area in the daylight are all factors that contribute, in my view, to the irreparable harm petitioners may face with regard to this unfair procedure after resting their case."

Now, I think she's under the misimpression that this was going to be done in the daylight. Okay? But that's not the main point. The point is that this is something that I think should have been framed before trial or going into trial so that everybody would be on notice of what was going to be happening.

And, all things considered, I'm inclined to reconsider my ruling that permits a jury view. I'll permit others to speak if you wish to make a record or whatever.

This is --

MR. ROBERTS: Your Honor, since this --

THE COURT: This was an oral motion.

MR. ROBERTS: It was my motion, Your Honor. And -- and I -- I understand the Court's rethinking its decision in light of the dissent, but the dissent was issued without us having an opportunity to brief or argue.

THE COURT: I understand.

MR. ROBERTS: And she even thought that it would be more fair to have it at nighttime when the

conditions were similar --

THE COURT: Okay.

MR. ROBERTS: -- which she misunderstood because we never got to brief.

THE COURT: Okay. Well, the subject came up when we were discussing whether the expert should be allowed to testify regarding the light. And I think you said something then about that -- about the point -- in the alternative, how about a view --

MR. ROBERTS: Right. Because one of the arguments being made at the time by Mr. Deutsch was that there's no special expertise. You can be a human factors expert, but viewing how dark it is doesn't require any type of advanced degree or experience.

Well, the problem was -- is the jury wasn't able to see how dark it was, which is why we need an expert to talk about how dark it is.

It's better for the jury to see it and to have these changes explained to them. And if we -- we look at the -- Eikelberger case, I believe it was, that I cited to the Court last week. In that case, there had been substantial changes -- buildings had been torn down, structures removed, half of the trailers in the park where the land was being assessed had been removed. But the court said it doesn't matter if there

are changes as long as the changes can be explained to the jury.

And, in this case, there are no changes to the distance of the path. There are no changes to the Strip and the buildings across the street. The fundamental nature of the path is still materially the same and any changes that they want to talk about can easily be explained to the jury. The -- I think that the issue that Judge Silver had, which was -- which we didn't brief is --

THE COURT: In quoting her dissent, I'm not saying that she was right in the standpoint of contending that the Court should have issued a writ of -- that the Court should issue a writ of mandamus to me; I'm just saying that the points she makes, I think, have -- have significance.

MR. ROBERTS: But where is the requirement in the rules that a jury view be requested at the motion in limine stage? We requested at --

THE COURT: I'm not saying that there's such --

MR. ROBERTS: -- the very first opportunity we had in our case. They could have requested a jury view in their case. The very first thing we did when we got to our case, in light of the jury's request to

see the site --

THE COURT: You consider a jury view to be evidence?

MR. ROBERTS: There are actually several Nevada Supreme Court cases, the first one back from 1885, which says that a view of the premises is not evidence --

THE COURT: Right.

MR. ROBERTS: -- but is there to assist the jury in interpreting the evidence.

Well, if it's not evidence, it doesn't have to be put on the witness -- on an exhibit list. If it's not evidence, there has -- doesn't have to be a motion in limine because it is not evidence.

THE COURT: In my nearly -- I've said this before. I've been 20 years on this bench. I've had two views, jury views, that I can recall. Maybe I've had more -- the ones that come to mind, I had one that involved -- neither one involved a personal injury case. One had to do with air space, eminent domain. All right? And the other one had to do with the operation of a business, a restaurant. Okay?

MR. ROBERTS: Yes.

THE COURT: Okay. So -- so that had to do with showing the jury what the -- what the premises

looked like -- okay? -- for purposes of the issues in that case that were not anything related to a personal injury case. This is a totally different kind of case. This would be -- this would be the third one if I did it.

MR. ROBERTS: It is. And I understand -- and the whole idea -- the whole idea of the view came out of the condemnation proceedings. And I know that's where the original cases were from.

But now there's a statutory basis for doing it. And -- and although we -- we didn't get to brief this response, there are cases in other jurisdictions that specifically --

THE COURT: Well, they didn't get to brief your motion.

MR. ROBERTS: No, they did not, Your Honor.

THE COURT: Okay.

MR. ROBERTS: So maybe the Court could take some further briefing on it and we could try to schedule it later this week. But the -- the whole idea here is that it's not evidence. But there is substantial dispute about how -- how the sight lines are, what the distances are, how dark it is outside at night in Las Vegas on Tropicana Boulevard.

And these are all things which, although they

are not evidence, would help the jury in interpreting the conflicting evidence that they've heard in this court. And we think that -- that the fact that they have asked to see it does weigh heavily in -- in favor of allowing them to see it.

I -- I also --

THE COURT: Now, when you say "they have asked to see it," as I recall --

MR. ROBERTS: The jury --

THE COURT: -- there was one --

MR. DEUTSCH: One.

THE COURT: -- one question from one juror as to whether or not "will we have the opportunity to see the" -- whatever.

MR. DEUTSCH: And he's an alternate, Your Honor.

MR. ROBERTS: Your Honor, you may not want to do this, but we were all here in the room when the Court announced the jury view. Everyone in the box was excited. Everyone in the box wanted to see it. And I would bet Mr. Deutsch 20 bucks that we get everybody on the jury to raise their hand if they're asked if they would like to see the site.

The final comment is this idea that, here, "both sides have prepared for trial based on the

photographs, video, and discovery conducted during years of pretrial litigation."

So one of the factors she's considering is that they didn't know there was going to be a jury view. Well, Judge, we didn't know there were going to be two, three surprise witnesses that come in after opening. And -- and to use this as a factor in light of the fact that we've had to deal with new witnesses after we've given opening statement, I think, is highly inappropriate.

THE COURT: But you had an opportunity to prepare for -- for that in --

MR. ROBERTS: We -- we had overnight to prepare to depose them.

THE COURT: No, but I'm saying prepare your defense case in light of that, while the plaintiffs, in this situation, the view didn't come up until after they'd rested their case.

MR. ROBERTS: In our case.

What -- so they -- so they're the only ones who get the right to do a view? We tell them we have witnesses. They put on all our witnesses in their case. We're entitled to put on our case, and we don't have to let them put on all of our evidence. And we don't have to let them be the ones to ask for the view.

THE COURT: Mr. Popovich, you had something?

MR. ROBERTS: Thank you, Your Honor.

MR. POPOVICH: Referencing this idea of the plaintiffs having rested -- and I understand that that seems to be an indication that, well, they need an opportunity to call witnesses to deal with anything the jury might see in the view. But isn't that same opportunity existing in the rebuttal case that they have?

This -- this is something that's going to happen in the defense case. If -- if it had happened at the outset, and let's say early on in the case, they did it, they could put on witnesses to talk about what had changed and those sorts of things. Nobody's saying here that, if they're given an opportunity to see the -- the premises now, that plaintiffs wouldn't be able to call a rebuttal witness. It would seem absolutely appropriate to deal with it because it's something that came up in the defense case.

They have the opportunity to call witnesses and explain the significance of a lack of a tree or -- or whatever they want to talk about that's changed, the change of the concrete for some of the -- the access route back into the casino. To the extent that it had to be before the plaintiffs put on their

case seems not persuasive to me. It seems that they have an opportunity to call witnesses and deal with it to the extent they have to.

MR. DEUTSCH: Your Honor, it sure seems to me --

Oh, sorry. Sorry.

THE COURT: Ms. Fresch?

MS. FRESCH: I just want to add -- I'm not going to repeat anything they said. I just want to emphasize that, you know, we're now in week six of this trial. For the first five weeks prior -- which was all plaintiff on their case, their emphasis was not just what you would consider in a typical trip-and-fall type of case that would be over in a week; they have placed great emphasis on from the moment that they get off of the prop, the dragon, and the whole thing.

And this is one of the reasons this is come up, beyond the jury -- at least one jury member requesting what I felt -- Mr. Roberts is right. They all were -- the fact that they all changed their schedule so quickly and said "we're here for Tuesday night" is indicative of that they all want to do this jury view.

But, also, the entire case now, there has been such an immense focus on from the moment they get

out of the dragon, not at the one little location where Mr. Cox fell and to what caused that fall. Plaintiffs have emphasized and emphasized this whole thing about the beginning of the runaround and through those hallways. And the only way to really -- for anyone to discern that, no photograph can really, truly, accurately depict that. It's just impossible.

So I -- I really feel the jury view -- without a jury view, I think that creates irreparable harm for all the parties.

MR. STRASSBURG: Judge?

THE COURT: Yes.

MR. STRASSBURG: As far as Team goes, just a couple of comments. One of the aspects of the jury view that's most relevant to Team is the distance from the construction site, which is where Beacher's was built, to the security doors because that distance is how Team utilizes this sticky plastic mastic to strip the dust from the workers' shoes who travel on that path.

We are concerned that jurors unfamiliar with construction may not fully comprehend that the actual construction site is located inside the casino almost a football field away from the dumpster. And it is separated from that dumpster by many prophylactic

measures put in place by Team to control the dust.

Secondly, Judge, it appears to me that the plaintiffs have utilized photographs to create a misleading, and dare I say deceptive, impression that it's very dark in these -- in this situation. The -- the witness Kenner testified that flash photos taken at night tend to underexpose the background.

We believe that witnesses to come will testify that flash photos taken at night tend to overexpose the foreground. That's very important to us because it tends to -- that phenomenon tends to make something that isn't dusty look like it's covered in some sort of white substance.

Judge, the only way to provide the corrective context to correct, or at least level the playing field to adjust for the misleading light levels shown in the photographs, is to provide the context of a jury view.

THE COURT: All right. But one -- those pictures were all known to be exhibits in the case at the outset; right?

MR. DEUTSCH: The pictures also, Your Honor --

MR. STRASSBURG: That's true, Judge.

THE COURT: I mean, everybody knew going into this that those pictures were going to be utilized;

right?

MR. STRASSBURG: That's true, Judge.

THE COURT: And there was no request for a view made before trial started.

MR. STRASSBURG: That's also true, Judge. But I might say that, if this Court is intent upon doing justice and making sure that the jury has an accurate perception of the facts on the ground, whether --

THE COURT: I'm concerned about that.

MR. STRASSBURG: Well, Judge, if you're concerned about that, they have a misleading perception based solely on the photographs. The jury view would be necessary to give them some context to assess those photographs to see whether they think those photographs have left them with a misleading sense of -- that the distances are much farther than they really are, that the demands placed on the participants are much greater than in actual fact they really were, that the need for the "run, run, run" and the haste and all that stuff is as great -- see, Judge, these go to the difficult questions of degree. Not is it -- is there, you know, light or not light. That's easy. But how much and what effect. And that's why the context is so important, Judge, just to level the playing field.

And -- and so that this jury can -- can make a decision based upon an accurate assessment of the evidence, not just a one-sided presentation. Judge, thanks for -- and I might say that, as to changes in circumstances, the tree, I don't regard that as significant because there's no light source between the camera and the ground. I mean, the tree isn't in the way of any light source.

As to the dumpster, we're delivering the same kind of dumpster that was there at that time. As to everything else, it seems to me that you were right on Friday when you said that your assessment of Deutsch as a lawyer left you with the belief that he has what it takes to explain the differences and make, you know, whatever -- I mean, Judge, I -- we seek no unfair advantage. And we think that Deutsch is more than capable of pointing out the differences. We just want the full context so that the photographs can be seen in -- in a balanced light so that justice can be done.

THE COURT: All right. Thank you.

MR. DEUTSCH: May I respond, Your Honor?

THE COURT: Yes.

MR. DEUTSCH: I'll start real quickly with Mr. Strassburg. All of the photographs that were utilized in this case were taken by either the

defendants themselves or the defendants' experts or the defendants' security camera. We didn't take any of those photos.

MR. STRASSBURG: They weren't by me.

MR. RUSSELL: Ayres, you used some of Ayres photos.

MR. DEUTSCH: One or two were taken by our expert; the rest were taken by them. And -- and to suggest that -- you know, it sounded to me, from all of their arguments, that what they want is the jury view to be evidence. They want to say the picture looks like one thing but the jury should look at what the light looks like and make their determination on what the light looks like there. That's -- that's evidence, Judge. That's what evidence is, and that's not what the jury view is for.

And if we're talking about -- if none of those things matter, what it looks like and it's all changes, then what was the need for all of this yesterday, Your Honor?

Power washing the sidewalks, buffing the floors, who knows what was done inside to the prop and the stage and the -- who knows? So what was the purpose -- if we're only going there just to look at distance, because the jury is not going to be affected,

as Mr. Roberts says, by anything that they see, they're going to be able to easily take out of their mind anything that's different. If that was the case, then there wouldn't have been six lawyers at the MGM Grand at 9:00 last night with power washers and buffers and -- physically changing the scene from what it had already been changed to to make sure that it was spotless.

If there's a travesty of justice, it's that they would do that, Your Honor. I mean, it's -- it's -- they're saying that the jury won't be affected by it, yet they have people out there for hours power washing everything? I mean, really? Really?

THE COURT: All right. Let me say this. The -- the motion came up unexpectedly. It was an oral motion. The Court heard argument. The Court made its ruling based upon that.

But, on reconsideration, applying the principles that the Court believes to be applicable, the Court was -- is going to, on reconsideration, deny the motion for a jury view. Okay?

MS. FRESCH: Your Honor, before --

THE COURT: So you can tell everybody that's getting ready for it to stand down. And we don't have to take the dumpster there. The -- the -- the buses

don't have to go, all that.

MS. FRESCH: Your Honor, before you make a final ruling to reconsider and deny the motion for jury view, may I suggest that maybe Your Honor should come and do a jury view and make your own analysis of it.

I mean, I'm sorry, because I'm going back to this petition they made. And the justices did not require us to even brief this. Unlike in the typical situation, they usually give the other side a chance to brief. And --

THE COURT: No, but they're --

MS. FRESCH: -- I feel like the fact that they did this so quickly without even requesting us to brief --

THE COURT: What did they do? What did they --

MS. FRESCH: They denied it right away.

THE COURT: Right.

MS. FRESCH: They didn't even need our briefing on this. So they -- they were all for this, but I feel --

THE COURT: Yes. But here's the basis of the ruling on the petition for a writ of -- denying the petition for a writ of mandamus. Having considered this petition and the appendix, we are not satisfied

that this Court's intervention by way of extraordinary relief is warranted. In particular, trial is underway and petitioners have an adequate and speedy legal remedy in the form of an appeal from an adverse final judgment.

That was -- they just applied the law on -- on -- on writs -- petitions for writ of mandamus. They didn't say that I was right to permit the view. They just said they shouldn't interfere with this extraordinary writ.

MS. FRESCH: Right. And there's a lot of technical reasons also based on the way that they presented their papers that that would be denied. But the fact that -- beyond that, they could have said, you know, "We want to see briefing of each side" and then -- Justice Silver is the one who gave a big dissent, and I feel like this is played into mind as to what has led Your Honor to reconsider. But I think --

THE COURT: No, I don't think so. What I'm looking -- well, the -- the fact she dissented, I mean, I -- I -- I don't think -- I don't agree that -- that the -- that the judges who denied the petition were wrong in denying it. I'm just saying I think she's got some good reasons in her dissent that go to whether a view should be permitted.

MS. FRESCH: Again, I respectfully disagree because I don't think she has any understanding because she only had plaintiffs' papers. She did not have anything on our side. And I don't see how, all of a sudden, her -- her -- what she put in last night, that somehow that seems to be persuasive.

And I still think we get back to the same place we were last Friday when even Your Honor said, "I'd like to see this." The fact that you, from your own observations of five weeks of this trial, felt that you wanted to see it, you felt the jury wanted to see it, you -- we already had one juror request.

I would at least request that we take a poll of the jury, and then I do feel that I -- if -- if there's any doubt about the whole concept of whether this jury view is appropriate at this time, that's why I'm suggesting, well, maybe Your Honor should go and do -- just like an in camera review of anything -- I mean, it's not evidence -- but go. And then -- for your own assessment.

And then -- so -- because this has been a long trial. We want to ensure all the proper evidence, all the proper information comes out so the jury is making an informed decision based on the evidence that is presented in this trial. And a jury view is a

normal process that happens in trials all the time.

And you cannot say that it is evidence, as Mr. Deutsch has tried to say. We know it's not. But, yes, a jury view is a jury view. There's no way around what a jury view is.

THE COURT: I think Mr. Roberts said it is; right?

MS. FRESCH: No, it's not. No. No, he said opposite.

THE COURT: I thought you -- what was the case you referred to?

MR. DEUTSCH: It's not evidence.

MR. ROBERTS: In -- for -- for which point? The Eikelberger case was the one that said that, if there are substantial changes to the property, it's still okay to do a jury view as long as the witness explains what the changes are. But there are several other cases that find that a jury view is not evidence, and I can get the citations for those for the Court, if you -- you're interested.

THE COURT: All right. Because I know there's -- in the -- in the law in the United States, there are -- there's a divergence of opinion as to whether a jury view is evidence or not. I know some jurisdictions it is; some it isn't.

MR. ROBERTS: In Nevada, it's pretty clear, going back to the 1800s, that it's not.

MS. FRESCH: So I still go back to the fact that, based on where -- really nothing has changed since Friday from our viewpoint. And from our lengthy -- I think it was an hour-and-a-half argument over whether we should have a jury view.

And Your Honor's inclination and Your Honor's ruling at that time was to have the jury view. Nothing has changed since Friday about that. And I -- I -- I just feel that we're -- this is -- this is highly prejudicial.

The defense requested it in our case, as we were allowed to. And I feel like it's going back a little bit that we should have done it --

THE COURT: I don't think it's prejudicial.

MS. FRESCH: -- at the beginning. And I don't feel that that was necessary.

And I do think, as the progress of plaintiffs' case and how they presented the case and what evidence they have put in led us all, as a group, to request it when the defense first had the opportunity, as Mr. Roberts said.

But I would hearten to say that I think, if Your Honor is -- has wavered like this, that we go back

and have Your Honor go out there, look for yourself. And I think that would make -- I think that would be the only way to make a final determination about the jury view.

THE COURT: All right.

MR. STRASSBURG: Judge, may I just chime in?

THE COURT: Okay.

MR. STRASSBURG: I just want to say that, if you're entertaining the idea of Ms. Fresch that we have a dumpster of the identical type as the one that was there on the night of the accident, it's there now, and so it has been delivered.

So if you were to do that, you would see it with the dumpster in place. And it will stay there. We were going to take it up tomorrow, in any event.

MR. ROBERTS: For the Court's reference, Your Honor, Eikelberger v. State, 429 P.2d 555 (1967), the view is not evidence but may enable the jury to more fully appreciate the evidence received during trial, citing Love v. Mt. Oddie United Mining Company, 181 P.133 from 1919.

THE COURT: All defendants, at the close of plaintiffs' case, made Rule 50 motions; correct? I think everyone did.

MR. DEUTSCH: Yes.

THE COURT: And the emphasis of those motions was all on the weight of the plaintiffs' evidence as adduced; right? Basically that --

MR. DEUTSCH: Yes.

MR. POPOVICH: Failed to meet their -- the absence of any evidence as to why he fell.

THE COURT: Right. Okay. So to use the term "context" in that context, as I said before, the -- I'm concerned about being able to unring the bell, so to speak, that a view would, all things considered, bring into play.

And then, accordingly, I'm going to stand by the decision I've just made to deny the motion for a view. Okay? So that's -- leave it at that.

So now we go into the next witness, which I believe is the expert that's going to be called by MGM; is that right?

MR. POPOVICH: Yes. He's -- he's an expert for several defendants, but I'm the one putting him on initially since I'm the first one in order.

THE COURT: And I think there was some things to discuss concerning the parameters of his testimony; right?

MR. DEUTSCH: There were, Your Honor.

MR. POPOVICH: I thought we had finished. I

guess --

MR. DEUTSCH: Well, I think Your Honor -- I'm not going to rehash what we spoke about on Friday because Your Honor did suggest that, with respect to certain opinions, we should make the objections sort of as we go.

One opinion in particular, though, that I do want to raise is this issue with the lighting, Your Honor. The basis for my objection for Dr. Baker's testimony was not quite what Mr. Roberts said. The objection was that anybody can look at lights and say if it's dark or light. What the expert would need to do to add some help to the jury on that subject is to bring sort of a light meter and do some sort of measurements that he could then explain to the jury.

Mr. Baker -- or Dr. Baker did not -- it doesn't matter. Dr. Baker did not do that in his report. He did not measure it with a light meter at all.

However, it just so happens that, when I was standing outside of the MGM last night with -- taking the pictures of the power washing, guess who strolled up next to me? Dr. Baker. And he said, "Hey, you're Mr. Deutsch."

I said, "Nice to meet you, Dr. Baker."

And he then proceeded to take his light meter and start to measure the light with the light meter. So he would have a basis for the opinion, since he didn't do it in his report.

So at this time, Your Honor, I would move to preclude that opinion in light of the fact that it wasn't done in his report. He didn't do it until after we objected to the fact that he didn't do it and then showed up last night while they're power washing to take the measurements.

THE COURT: Well, I don't think I'd allow him to testify as to measurements he took last night that weren't disclosed. But anything that has been disclosed --

MR. DEUTSCH: Well, that was my point, Your Honor. I -- I agree. But once he's not allowed to testify about the measurements, then any testimony about his opinions about whether something is too light or too dark to be dangerous is no longer the basis of expert opinion.

THE COURT: I don't know. Maybe he's got a basis for that.

MR. ROBERTS: Okay. His basis of the measurements taken by their expert. Their expert did measurements. He filed a rebuttal to their expert.

Their expert measured it 0.1-foot candles. And, interestingly enough, their own expert said this is sufficient for safe navigation and that the only reason that it's inappropriate is because people are hurried and distracted.

So he has a sufficient basis for his opinion, Your Honor.

MR. DEUTSCH: Except that we didn't call our expert. And, therefore, any rebuttal opinions to my expert are irrelevant at this point. We didn't call the expert, so they don't get to put on a rebuttal case for a witness that wasn't called.

THE COURT: So he can still testify as to his expertise and --

MR. DEUTSCH: Right. But he won't -- just so we're clear, Your Honor. Their expert is not going to be able to testify rebutting an opinion of Dr. Ayres, who we chose not to call, because then the jury would wonder why we didn't call him.

So he can't mention anything about Dr. Ayres in any of his testimony and neither can Dr. Yang because those would be rebuttal. It would be unfair to us because the jury would then question why we didn't call an expert.

MR. ROBERTS: Experts reasonably rely on

things done by other experts all the time.

MR. DEUTSCH: Right, but -- I agree with that. But when it's specifically a rebuttal opinion --

THE COURT: So, in other words, you're saying that you can allude to this without identifying him -- that he's relying on something that wasn't plaintiffs' expert; right?

MR. ROBERTS: Yes.

THE COURT: You don't have to disclose --

MR. ROBERTS: I don't know that there would be a prohibition, but I can certainly do it without disclosing that it's their expert.

THE COURT: Okay.

MR. STRASSBURG: Judge, if -- if I could comment. Another function of expert testimony from the defense is to rebut lay opinion testimony by the plaintiff, and that's the case here.

THE COURT: All right. Any other aspects of the -- this witness's testimony that need to be addressed now? Because the jury is not going to be here now till 10:00, so ...

MR. DEUTSCH: I mean, I think we spoke about most of them, Your Honor. You know, they were -- obviously, I -- I will, unfortunately, have a number of objections during his testimony. And -- and we could

maybe try to deal with some of them now because I think some of them, like I mentioned the other day, don't necessarily need his testimony for Your Honor to rule.

And one in particular is this issue with respect to his view of a later runaround and an opinion by him that people weren't -- didn't seem pressured or weren't out of breath. I don't understand what qualifications he has to give an opinion. There's no expert --

THE COURT: Well, let him endeavor to lay a foundation. If necessary, we'll have the jury taken out and I'll hear --

MR. DEUTSCH: Okay. So then other what we've discussed then, Your Honor, there's nothing else at this time.

THE COURT: All right. And what's the -- the duration of this witness's testimony likely to be?

MR. POPOVICH: Questions --

THE COURT: The duration of this witnesses's testimony?

MR. POPOVICH: On my direct, best estimate, hour and a half, give or take maybe 15 minutes.

THE COURT: Okay.

MR. DEUTSCH: How long?

MR. POPOVICH: Hour and a half, give or take

15 minutes, for my direct.

MR. DEUTSCH: And my understanding, Your Honor -- and I may be wrong -- is that, because this expert is being shared by all three of -- of these defendants, not Team Construction, that the follow-up questions will -- by the other attorneys will only be allowed to be about different areas and they must be done in a direct fashion. But if they're sharing the experts, they -- they don't get to repeat the same opinions two or three times.

THE COURT: Well, make the objections as they occur to you.

MR. DEUTSCH: Okay.

THE COURT: I'm going to -- all right? Very well.

I think some parties have submitted proposed jury instructions; right?

MR. RUSSELL: Yes, Your Honor. I'm compiling the -- the defense instructions, so we should have you a consolidated defense today.

MR. DEUTSCH: And we're working on it as well. We'll have them to you ASAP.

THE COURT: How about proposed jury verdicts? I think we're contemplating special verdicts in this case; correct?

MR. DEUTSCH: Yes.

MR. RUSSELL: Yes.

THE COURT: I think that would be very important.

MR. DEUTSCH: Yes.

THE COURT: You know, but -- okay.

MR. DEUTSCH: One more thing, Your Honor. The defendants filed late last night -- I believe it was Backstage -- something about --

THE COURT: A trial brief regarding requests for judicial notice of CDC statistics?

MR. DEUTSCH: Correct. And, obviously, Your Honor, we would have an objection to that on the fact that, while -- while I'm not necessarily disputing the fact that the Court can take judicial notice of something and maybe even that, I haven't even seen what that data is. It hasn't been provided to me, and I think that that would be evidence and, therefore, that would be something that they would have had to share with me before -- you know, less than 24 hours before they intend to use it with an expert.

I haven't had the time to look at it. I haven't had a time to see if it applies. I haven't had a time for someone else to take a look at it to see why or why it doesn't apply. We've been given no notice of

this whatsoever, and they intend to use it with an expert that's going to be on the stand this morning.

This is evidence in the case. It should have been disclosed prior to the trial. That's my understanding of the rules, and I'm sure Mr. Roberts is well aware of those rules.

THE COURT: Well, I'm sure you'll confirm that.

MR. ROBERTS: And, Your Honor, we don't intend to use this with Mr. Baker. He didn't rely on it or disclose. I wanted to have this in the record so I could argue it at the end of the case.

We've attached the data to the motion. So he has it. He can research it. He can respond to it. But the authority that we cited in the brief state that it's proper for the court to take judicial notice at any time prior to the case going to the jury.

MR. DEUTSCH: I'm not disputing that, Your Honor. The point is that, if there was data here that is going to deal with people falling, maybe it's something that I would have liked to cross-examine Dr. Baker about. And -- and I have no opportunity to now do that.

MR. ROBERTS: No objection, Your Honor.

THE COURT: Okay. Thank you. We'll be in

recess until the jury is present.

MR. DEUTSCH: Thank you.

(Whereupon a short recess was taken.)

THE MARSHAL: All rise. Come to order.

THE COURT: Please be seated. We're back on the record. Note the same appearances. We're outside the presence of the jury.

I understand there's something to address.

MR. DEUTSCH: Yes, Your Honor. I just -- in the time that we had in the last 25 minutes or so, I had an opportunity to go through Dr. Baker's file material that he brought with him this morning. And I was shown by Mr. Popovich the -- these -- some of these diagrams. And I just had raised an objection to some of them.

Specifically, I think the one that is up on the screen right now, which I believe -- I don't know -- up on the screen -- I'm sorry -- up on the -- the notepad, which is No. 4 and then also --

MR. POPOVICH: Number 9.

MR. DEUTSCH: -- No. 9 in that. For the same reason that I objected to the -- the stuff about the lighting measurements last night, these measurements were taken on May 1st, according to his file material. And they weren't included in his reports.

These measurements have to do with measurements of the inside of the premises, and nothing in his -- in either of his reports or the areas of testimony that Mr. Popovich told me when we discussed that he was going to be calling him for has anything to do with the inside of the route.

So these measurements were not in either of his reports. According to his file material, they were done on May 1st, so just a couple of days ago.

And he doesn't offer any opinions about the -- the runaround of any kind. His opinions, as I understand it from both his report and from what I was told by Mr. Popovich, was the location of his fall, you know, where he fell outside in relation to where Mr. Cox believed he fell, and the fact that it was a trip and not a slip. Those were the only two areas that Mr. Popovich indicated he was going to call him for.

Mr. Roberts then added the additional issue of the lighting conditions as an additional opinion that he was going to seek from Dr. Baker. But there is no opinion in any of his reports at all about the inside, the runaround, the distances between anything, the measurements that he took, or any analysis that he's going to do about those measurements was not

included in any of the reports. So, therefore, I think it's late.

And I did also just want to mention, Your Honor, and renew my objection about the slip-versus-trip opinion because that, as I mentioned the other day, was also a late disclosure. On March, I think, 18th, was the second report, just like two or three days before trial -- or a week or two -- a week before trial.

So -- so those are my objections that just arose this morning as well as the one that we brought up the other day about late disclosure.

MR. POPOVICH: So this sheet, Your Honor, Dr. Baker, in 2014, for the initial inspection, will testify -- this is my offer of proof -- that he measured essentially the entire runaround and came up with a single number of feet. It is true that, in looking at his original report, I do not see that number in there. But it's more background than anything else because it does focus on the external portion of the runaround.

And -- so he went back on May 1st and broke the same measurements he had already done in 2014 into increments. And these little yellow -- orange things here are supposedly cones; he measured between the two

cones. So he had measured it before. It was for background for his opinions. It is not technically a basis for his opinions, but it does show the extent of his investigation so that the jury understands that he was thorough.

MR. DEUTSCH: I don't -- I guess what my concern is, is the actual measurements are the measurements. And I'm not going to suggest that somehow Dr. Baker is -- is not telling the truth about how he measured from cone to cone. If there's -- I'm sure that Dr. Baker's capable of doing that after all these years.

My bigger concern is that it doesn't -- this information, if being used, would be used to formulate some sort of opinion. And, again, the only opinions that he gives is that, outside of the premises, it was a trip and not a slip and that he fell at this location instead of at this location.

So I don't see -- if he's not going to offer any opinions about the runaround or -- or anything like that --

THE COURT: Well, let's wait and see --

MR. DEUTSCH: -- then I --

THE COURT: -- see it in context.

MR. POPOVICH: Okay.

MR. DEUTSCH: Okay. And how about the late disclosure of the trip-versus-slip issue?

THE COURT: What about that, the late disclosure?

MR. DEUTSCH: It was March 18th -- 19th. Sorry.

MR. POPOVICH: A March report. It's now May. They never deposed him after the first report. There was no indication or request for a deposition after the second report. Had they wanted it, it would have been produced, of course.

He -- his -- it is true that his assignment -- and that would be the first part of his substantive testimony -- is that, over time -- he was initially retained to just determine location -- but, as he read testimony and saw evidence, then his -- it raised the question of how Mr. Cox fell as well. And that is certainly an important part of this defense.

MR. DEUTSCH: Well, I understand that it's an important part of your defense, but the fact is, is that, if you look at his reports, he does not base this new opinion that suddenly appeared a week before trial on any new material. He bases it on the same material that he did in the initial report. So his first report was dated May 16th, 2016.

There was no reason for us to depose him at that point because he doesn't give any opinions that really mattered as far as we were concerned. He then gives us a report a week before trial giving a new opinion out of the blue, despite the fact that he specifically didn't -- commented on in his first report. And then, a week before jury selection, we suddenly get served with a supplemental report.

The rules specifically at that point require that that report be -- I think it's Rule 16.1(a)(3).

MR. FALLICK: 30 days before trial.

MR. DEUTSCH: 30 days before trial.

So the rule on its face says that it's too late at that point to give new expert opinions about things. So I don't think he should be allowed to testify about it unless there's some good cause shown as to why it took over two years and a week before trial to come up with this new defense.

THE COURT: Let's see what he says.

MR. DEUTSCH: Thank you.

THE COURT: I will be telling the jury that we're not having the view. I'll say it's been determined by the Court --

MR. DEUTSCH: Yes.

THE COURT: -- that -- that the view will not

take place. And, secondly, I'll tell the jury that Mr. Morelli had a personal -- urgent --

MR. DEUTSCH: A family personnel matter, something like that. I mean, I don't know if anybody has an objection.

THE COURT: Okay. We all set, then?

MR. POPOVICH: Yes.

THE COURT: Okay. Let's have the jury brought in.

THE MARSHAL: All rise.

MR. POPOVICH: Your Honor, is there a better place to put that, the flip stuff, where you can see it? Otherwise, that -- the well was kind of where I was headed.

THE COURT: Wherever. I can't see it from here. So --

MR. POPOVICH: So that's no better? Okay.

THE COURT: Well, unless it's going to be on one of these.

MR. DEUTSCH: Unfortunately not, Your Honor.

MR. POPOVICH: There will be plenty on the screens, Your Honor, but not those. There's nine sheets.

MS. FRESCH: Maybe you can just alternate, at least so the judge sees it. I mean, show it, then --

THE COURT: Yeah, you can do that.

MS. FRESCH: Just so you can have an idea.

MR. DEUTSCH: I could get it up on my thing in 15 seconds.

MR. POPOVICH: I don't want you toggling back.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

Do counsel stipulate that the jury is now present?

MR. DEUTSCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MS. FRESCH: Yes, Your Honor.

MR. STRASSBURG: Yes.

MR. ROBERTS: Yes.

THE COURT: Ladies and gentlemen, before we begin, just a couple of things.

First of all, the Court has determined that we will not be having the jury view of the premises. So that's been canceled. All right? It's going to be -- what was scheduled for this evening has been canceled. The Court has determined that this is not conducive -- this case is not conducive to that.

And, secondly, Mr. Morelli has had a family matter come up, and so he's not going to be here today. I believe he may be returning tomorrow.

MR. DEUTSCH: Thursday.

THE COURT: Thursday. I'm sorry. Thursday. He won't be here today or tomorrow. Okay?

So at this time --

MR. POPOVICH: Thank you, Your Honor.

THE COURT: -- call your next witness.

MR. POPOVICH: Yes. MGM Grand Hotel would call John Baker, PhD.

JUROR NO. 8: Darn.

MR. POPOVICH: Can you see any of that? You can?

THE COURT: I can still see it. I can still see it.

MR. POPOVICH: I'll try to find that sweet spot.

MR. STRASSBURG: Yeah, me too.

MR. POPOVICH: It will be a while before ...

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Please state your name and spell it for the record, please.

THE WITNESS: John Edward Baker, B-a-k-e-r.

MR. POPOVICH: May I begin, Your Honor?

THE COURT: Yes.

MR. POPOVICH: Thank you.

Good morning.

IN UNISON: Good morning.

DIRECT EXAMINATION

BY MR. POPOVICH:

Q. Good morning, Dr. Baker.

A. Good morning.

Q. Are you employed?

A. Yes, I am.

Q. What do you do for a living?

A. I'm a forensic engineer.

Q. What does that mean?

A. A forensic engineer does technical analyses for use in public debate. So this meeting today is essentially a form of a public debate.

Q. Do you have areas of specialization as a forensic engineer?

A. I do.

Q. And what are those areas?

A. Actually, I have one specialization with three parts. It's accident reconstruction, injury reconstruction, and human factors.

The accident reconstruction deals with how and why accidents occurred. Injury reconstruction deals with the mechanism of injury in these accidents, if any. And then the third is human factors, which is the behavioral and biological principles that are attached to the humans in accidents and injuries. So that's the three.

Q. As a forensic engineer, do you tend to get involved in cases involving accidents of some sort?

A. All of them are accidents.

Q. Can you break down in any way how it -- your practice splits up between the types of accidents?

A. Yes.

Q. And how is that?

A. I would say 60 percent are motor vehicle-related, about 40 percent are premises-related -- I'm sorry -- maybe 30 to 40 percent, and then there's a few at the bottom, like product, recreation, industrial.

Q. Have you been asked as an expert to provide information today related to Mr. Cox's accident?

A. Yes, I have.

Q. And where does that fit? Not an auto accident, obviously. What kind -- in which category does that fit for your work?

A. It is a premises accident.

Q. In this case, have you been retained by various defendants?

A. My understanding is yes.

Q. Okay. And who have you been retained by?

A. Okay. The list is MGM Grand Hotel; David Copperfield; David Copperfield Disappearing, Inc.; and Backstage Employment, Inc.

Q. Thank you. Now, within those areas of accident reconstruction, injury reconstruction, and human factors, what we're talking about here today falls in which category for the most part?

A. This is primarily accident reconstruction. It may touch upon injury reconstruction, depending on how far we get with that. I don't know. But I'd say the bulk of this is going to be accident reconstruction.

Q. What area do you live in?

A. I live in Las Vegas, Pecos and Warm Springs.

Q. For how long?

A. Right at 20 years.

Q. All right. So let's -- well, as a result of

your work in this case, have you arrived at some opinions that may assist this jury in understanding where Mr. Cox had his accident?

A. Where, yes.

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

BY MR. POPOVICH:

Q. And how?

A. And how. Where, and later came up and how.

Q. All right. So let's go into your background. Starting with college, what education do you have?

A. I started with a BS in mechanical engineering from Loyola University in Los Angeles, went to San Jose State for a master's degree in human factors, and a PhD in human factors with a emphasis in biomechanics at NC State.

Q. Now, you've indicated you're a forensic engineer. Are you a professional engineer?

A. Yes.

Q. And what does it mean to be a professional engineer?

A. That's a registration with the state. It sort of resembles a CPA of accounting. It's a registration to provide professional services.

Q. Now, are you a registered professional

engineer in the state of Nevada?

A. No.

Q. Why not?

A. They do not -- excuse me. They do not have my discipline here in the nature that I do it. So I'm registered in California.

Q. Okay. How long have you been a registered professional engineer?

A. Since 1976.

Q. Now, have you ever taught at the university level within your field of expertise?

A. I did, yes.

Q. Did, meaning past tense?

A. Past tense.

Q. Okay.

A. Right.

Q. When did you stop teaching at the university level?

A. What year?

Q. Yes.

A. It was in the '80s.

Q. Where have you taught at the university level?

A. I was a lecturer at San Jose State University, and then I went to University of Southern

California as an assistant professor.

Q. What's the difference between a lecturer and an assistant professor or any other ranking?

A. For me, the -- the job was about the same. And I think it was really the pay grade that was different. And, as an assistant professor, you're expected to go up the rank and, within five years, approach tenure.

Q. So when you were a lecturer at San Jose State, what topics did you teach, which classes?

A. Human factors.

Q. And USC, same question.

A. Same.

Q. How long have you been providing forensic evaluations in -- well, let's back up.

Forensic, you've indicated for debate. But, for our purposes, that's courtroom-type discussions and -- and expertise?

A. Yeah. Like most Americans with a television set, I grew up thinking forensic meant blood and fingerprints. It actually means prepared for public debate, and my analyses will be debated.

Q. Is most of your forensic work related to litigated cases in courts?

A. Yes.

Q. So how long have you been doing forensic evaluations?

A. Full-time? Since '91.

Q. How long part-time before that?

A. A few years. A few cases here and there.

Q. So with regard to your providing forensic evaluations, approximately how many cases have you evaluated?

A. Yeah, I'm averaging about 200 cases a year, most of which are not as long-term as this one, but about 200 cases a year. So I figure I've had 4 to 5,000 cases over the years.

Q. Okay. Now, when you are working on court-related cases, are you typically hired by lawyers?

A. Yes.

Q. Almost always?

A. Virtually always.

Q. Are you sometimes -- well, on this case, which side of the debate have you been hired by?

A. I was hired by the defense side.

Q. Okay. Have you ever worked for plaintiffs' counsel in injury cases?

MR. DEUTSCH: Objection to the form. He means me specifically?

MR. POPOVICH: No.

MR. DEUTSCH: Oh.

MR. POPOVICH: Any -- any plaintiffs.

MR. DEUTSCH: Okay.

THE WITNESS: Yeah. Over the years, I've tried to keep it 50-50. Now, it just depends on who's calling me in a given year as to which cases I take.

BY MR. POPOVICH:

Q. How far does it fluctuate between plaintiffs and defendants?

A. I'd say the most it would go one way or the other is 55-45 in a given year, but I really can't control that.

Q. So of those 4 to 5,000 cases you're talking about, have roughly half been for the plaintiff's side when you're talking about civil cases?

A. Yes.

Q. Now, outside of forensic work, court-related work, have you provided consulting services in industry?

A. Yes. After graduation and college, I -- I didn't really take a full-time job; I started consulting in aerospace, automotive, and petroleum companies.

Q. Doing what kind of work?

A. Human factors.

Q. Was there any accident reconstruction in that work for industry as well?

A. Not at that point, no. This was more safety, which is before the accident.

Q. Okay. Now, do you have -- well, we've already talked about your professional engineering license. Do you have any other licenses?

A. I have one other license. I am licensed with the Nevada State Athletic Commission. I judge professional Muay Thai.

Q. What is Muay Thai?

A. Muay Thai is Thailand-style kickboxing, which is something I've been involved with for 20 years.

Q. Does judging Muay Thai have anything to do with accident reconstruction?

A. It has a lot to do with injury reconstruction --

Q. Okay. But --

A. -- because -- the injury reconstruction part actually goes part and parcel with my day job in that I'm consistently looking for sharp-force trauma, blunt-force trauma, who hurt who in a given confrontation.

Q. Have you -- I'm not sure that -- what is a

deposition? Let's start there.

A. A deposition?

Q. Yes.

A. That's a sworn set of statements under oath, typically in an office room.

Q. And how does information get elicited in a deposition?

A. With a court reporter.

Q. Somebody asks you questions?

A. Yes.

Q. Who?

A. The opposing attorney, typically.

Q. Okay. Were you deposed in this case?

A. No.

Q. About how many times have you given depositions?

A. Probably about 250.

Q. Now, have you testified in -- in a courtroom before?

A. Yes.

Q. Have you testified in state courts before?

A. Yes.

Q. Have you testified in federal courts before?

A. Yes.

Q. With regard to state courts, where have you

testified as an expert other than Nevada?

A. Chicago, Illinois; Texas; Montana, California; Arizona.

Q. Now, have you testified ever in a criminal case as an expert?

A. Yes.

Q. Is that something that's common for you?

A. No. In fact, I should add Florida. The large criminal case I had was in Florida.

Q. Most of the time, it's civil cases like this one?

A. Correct.

Q. Have you ever testified in an international court as an expert?

A. Not live. I testified essentially by -- by video in Istanbul, Turkey.

Q. So was a deposition taken by video and then used?

A. No. It was entirely different. They just called me and asked me to -- to speak under oath.

Q. Over the telephone?

A. Well, Skype.

Q. Okay. So you telecommuted your testimony?

A. I did.

Q. Okay. Did you qualify to give your opinions

in the international court?

A. I must have because they took it.

Q. All right. And have you qualified to testify and give expert opinions in the federal courts?

A. Yes.

Q. Have you ever failed to qualify as an expert in any of the courts where you've been asked to give testimony?

A. No.

Q. Have you done technical writings in your field of expertise?

A. I have. Up until maybe -- maybe ten years ago, I was kind of active writing; but, lately, writing is out of the question for me. I just --

Q. Why is it out of the question?

A. I -- I think I'm exceeding 24 hours a day as it is. And I cannot write any more. So --

Q. Does that mean you're busy?

A. Yes.

Q. I see. Okay.

A. Yes.

Q. So approximately how many technical writings have you done in your fields of expertise?

A. Up until I stopped the technical writings, about 35.

Q. Did you do any technical writings in the field of accident reconstruction?

A. Yes.

Q. Also injury reconstruction?

A. No, they're primarily human factors and safety leading to an elimination of accidents.

Q. In your field, do you have to undergo any type of continuing education? Well, let me back up and ask a better question.

In your field, have you taken continuing education?

A. Yes.

Q. Do you have to, or is it something you've chosen to do?

A. Personally, I think you have to.

Q. Okay.

A. Because, like at the mechanical engineering level at Loyola, they didn't get into the specifics of accident reconstruction. They -- they had a good physics background, superb engineering background, but this is a very distinct application.

Q. So you have undergone accident -- excuse me -- continuing education in the field of accident reconstruction?

A. Correct. And injury reconstruction.

Q. Can you approximate how many hours of continuing education you've had in accident reconstruction over the last five years?

A. In the last five years, zero.

Q. Okay.

A. Before that, maybe 100.

Q. Okay. Have you ever been asked to teach continuing education?

A. Yes.

Q. In the field of accident reconstruction or the other fields?

A. Well, when you say "teach," I was teaching a seminar for litigation support and expert witness testimony; that is, I would go through the roles, responsibilities, and ethics of a forensic expert. So I've done that. I'm not sure that answers your question.

Q. I think it did.

How many times have you taught things like that, seminars like that?

A. There were, I think, five or six seminars. I was thinking of ramping it up again if I could ever get the time.

Q. Have you ever had any security clearances with the U.S. government?

A. Yes.

Q. How many?

A. I had two: one with the DOE, and the other is the DOD, the Department of Defense.

Q. Everything in the government's initials. So let's -- DOD is Department of Defense.

What's DOE?

A. Department of Energy.

Q. Do you still have those?

A. No. They're not active.

Q. Were you in any way disciplined to lose them or did you allow them to lapse?

A. No. They have a certain time limit on them. You have to renew them. They were definitely not disciplined.

Q. Are you involved with any professional affiliations?

A. Yeah. The primary one is the Human Factors and Ergonomics Society, the Society of Automotive Engineers.

Q. Any others?

A. And then I'm involved in an accident reconstruction -- actually, it's a journal that comes from an organization. I get the journal. So I'm not too active with the organization, but I get the AR

journal.

Q. So Society of Automotive Engineers, is that SAE?

A. That's correct.

Q. Sometimes we see that if we buy a quart of oil and it has "SAE approved," something like that?

A. Correct. There's hundreds of subsets within the SAE. That's one of them.

Q. Okay. Do you charge for your work?

A. I do.

Q. And what are your current rates these days for your workup of a case?

A. Analytical work will be 300 per hour.

Q. Do you have a cost that you charge for deposition time?

A. Yes. That's 400 per hour.

Q. And then do you charge for trial testimony?

A. That would be the same.

Q. Okay. About how many hours have you put into this case before coming to testify today?

A. Well, this is my fifth calendar year on this case. I got -- it happened in '13. I got it in '14. So I got '14, '15, '16, '17, '18. It's my fifth calendar year. I've put in about 60 clock hours on the case.

Q. So 6-0?
A. 6-0.
Q. Okay. Until your -- well, you were actually here last week for trial, but we never got to you?
A. Twice.
Q. Okay. And you'll charge for your time?
A. It's waiting.
Q. You'll charge for your time today?
A. Yes.
Q. Before that, the rest of the 60 hours you're talking about, would that be at your evaluation rate?
A. Yes.
Q. That $300 an hour you said?
A. Yes.
Q. All right. Did you use a particular method to perform your work as an accident reconstructionist in this case?
A. I did.
Q. What's the method?
A. Again, going into the case, as a forensic engineer, you have to be fair to both sides. What I looked for was information and data that all fit together to tell one story regardless who saw it. So I found three pieces of information that fit that criteria.

Q. Okay. That was a little teaser.

We're going to go through first an understanding of what information you went through in order to get to those pieces of information.

So were you provided with documents for review?

A. Yes, I was.

Q. What categories of documents were you provided?

A. There were -- let me get out the list. There's quite a few.

Q. Doctor, if you -- oh, you already have a copy.

Did you see the water up there?

A. I did, yes. Thanks.

Q. All right.

A. Things got moved around. Well, I can tell you from memory. I'm looking for the file. But it's quite a bit of discovery information on the case.

Q. So let's talk about what discovery is, first of all.

What is your understanding of what discovery means in terms of litigation context?

A. Well, in the context of litigation, the attorneys will go back and forth with communications

that are filed with the court. I typically get copies of them. I read them. They become part of my file, permanent file.

Q. Is one type something called interrogatories?

A. That's correct.

Q. What are interrogatories?

A. That's where one side asks the other side a question and is asked to respond in writing back to the asking side.

Q. Is there such thing as a request for production of documents?

A. Yes.

Q. What's that?

A. Just that, where one side asks the other for documents and the other side has to produce those documents.

Q. So when you're talking about getting discovery, have you received interrogatories and requests for production of documents going both directions, from plaintiff to defense and defense to plaintiffs?

A. Yes.

Q. And I think you said there was a long list.

A. Yeah. I finally found the list here, yes.

Q. How many pages is the list for -- for just

the interrogatories and requests for production?

A. Not including depositions; correct?

Q. Not including at this point, yes.

A. It's exceeding 1,500 pages.

Q. Of total documents, you're talking?

A. Total documents, yeah.

Q. I meant how many pages on your list there are -- are -- is the list?

A. Oh, okay. If -- is it possible I can get out the list the way I have it here? Otherwise, I'll never get the math right.

Q. Never mind. It's okay.

Have you reviewed --

A. I'm sorry. Court documents, 685 pages. 685.

Q. All right. Have you looked at depositions in this case?

A. Yes, sir.

Q. You've already described what those are.

In this phase, for the -- this first phase of trial that we're here to ask you about today, whose depositions did you see?

A. Yes, I received the depositions of Gavin Cox, Minh-Hahn Cox, Dennis Funes-Navas, Lars Reinhart, Pomai Weall, Ryan Carvalho, and Thomas Ayres. Those are the depositions I've reviewed. That was 758 pages plus 163

pages of exhibits.

Q. Had you performed inspections at the MGM Grand in the area of the accident?

A. I have.

Q. Were any of those at night?

A. Yes.

Q. Were any of those in the day?

A. Yes.

Q. Did any of those include seeing the backstage area for the Copperfield theater?

MR. DEUTSCH: Objection, Your Honor. Leading.

THE COURT: I'll allow it.

THE WITNESS: Yes.

MR. DEUTSCH: Your Honor, may we just approach for one second? I hate to interrupt, but may we approach for one second?

(A discussion was held at the bench, not reported.)

MR. DEUTSCH: Okay. Thank you.

BY MR. POPOVICH:

Q. During a nighttime inspection, did you ever observe, from the outside, participants in the Thirteen Illusion?

MR. DEUTSCH: Objection, Your Honor. There

was a motion in limine made by the defendants about these exact issues. I raised it before.

MR. POPOVICH: I thought we resolved this.

MR. DEUTSCH: I didn't think we did.

THE COURT: All right. Overruled.

BY MR. POPOVICH:

Q. This is a yes-or-no, Doctor. It's nothing more than just yes or no.

Did you observe participants in a Thirteen Illusion while standing outside essentially towards the Tropicana away from the MGM building?

A. At night?

Q. At night.

A. I did twice.

Q. In some of the things you've brought for us here today, did you go to any texts or anything to obtain demonstrative anything? Photos, information?

A. I did go to one text, which I brought with me today. Its coauthor is one of my classmates from North Carolina State who went into the field specifically of slip/trip/missteps and their consequences. This is Dr. Cohen. He's number two on the author list. I went to classes with him for several years at NC State.

Q. Before this case, did you ever use that book before for your professional work?

MR. DEUTSCH: Your Honor, just note my objection. It's not included in his report that he relied on it at all.

THE COURT: All right. He can ask the question.

BY MR. POPOVICH:

Q. Sir, had you ever used that book for any other case?

A. Well, it's a well-known book, sure. We use -- there's demonstratives in it that we're going to use today.

Q. Okay. Are you familiar with a Dr. Yang, an expert for another party in this case?

A. Yes.

Q. Have you reviewed any of his materials?

A. I did.

Q. Is it your understanding that he was retained by Team Construction in the case?

A. Yes.

Q. Okay. All right. You talked about looking for evidence that fits; is that right?

A. Correct. Fits with each other, and each is a check and balance on each other so that they tell one story, irrefutable; no matter who sees it, it's the same.

Q. Sometimes is that called objective evidence?
A. Yes, it is.
MR. DEUTSCH: Objection to the form.
THE COURT: I'll -- sustained.
Just rephrase that question.
BY MR. POPOVICH:
Q. Sure. Is there such things as objective or subjective evidence?
A. Very definitely.
Q. What's the difference?
A. Well, objective is what I just described is that I want this to be something that I could rely on as hard physical evidence that's not open to interpretation. It's not open to spin; it's not open to any difference of opinion. It just is what it is. And that's what I look for.
Subjective is someone's view on -- on evidence.
Q. Okay.
A. And that could -- that could be variable for any number of reasons.
Q. So how many pieces of this objective evidence did you find in this case which helped form your opinions?
A. Essentially, there were four. However, in

this particular section of the trial, there are three that fit together, they're irrefutable, and they are what they are.

Q. All right. And so what are the three?

A. The three are -- the first is surveillance video. That's fixed. We've seen it. It can't be changed. It hasn't been altered. It's fixed.

Q. Meaning the surveillance video from when?

A. From November 12th of 2013, 8:30 p.m., the subject "fall."

Q. Okay. And the next objective fact after the surveillance video?

A. Yes, would be the measurement of the physical environment. Those are fixed. Unless your ruler is wrong, there's no variability in that measurement in the three-dimensional environment.

Q. And then what's the third piece of objective evidence?

A. The third is a piece of evidence submitted by Plaintiff Cox which shows his clothing and his shoes. That's the third piece. It's a picture; it is what it is.

Q. Do you have an illustration that you like to use with juries to show what you're talking about as far as this inner relationship?

A. I do. I'm not sure it's to be used with juries. It's used in my mind, but we have it in front of us. It's the logo --

MR. DEUTSCH: May I just step around to where -- to where Mr. Strassburg is?

THE COURT: Yes. Yes.

MR. STRASSBURG: Bring a chair.

MR. DEUTSCH: May I bring a chair, Judge?

THE COURT: Yes.

MR. STRASSBURG: Now you're on my side.

MR. DEUTSCH: We'll see about that.

MR. POPOVICH: Your Honor, I may ask at some point to separate those two if they can't be quiet.

MR. STRASSBURG: I won't look at his notes. I promise.

BY MR. POPOVICH:

Q. Tell us how this illustrates what you're talking about, please.

A. Yeah. I have this box of software from years ago. It's Microsoft Office 2000. If you see, it's in color. It's quite nice. It has three -- four different colors, four intersecting puzzle pieces. It's to tell you that all of their software interacts with every other one, they all fit together nicely, and they work together.

That's the way I saw myself approaching a forensic analysis.

I think I have this in color somewhere. Yeah, here it is. I got -- looks like this.

Again, I thought this -- this is -- we have to give credit to Bill Gates and Microsoft here for this. But this is an excellent logo, and it entirely represents the way I try to think in terms of doing a forensic analysis.

Those three pieces of information are the ones we have: the video, the measurements, and the photo. They fit together. They are what they are.

Q. We talked at the beginning of your -- your examination about opinions regarding where and how Mr. Cox fell.

Are all three of these pieces of information important for both where and how?

A. Yes, sir.

Q. Are there -- okay. So let's start with your initial assignment.

What was your initial assignment on the case after you'd been hired by these defendants?

A. About three days before the first night inspection, I was called by an Attorney Freeman to attend a David Copperfield show and to watch what

happens outside and inside.

So in doing that, I watched the show, then ultimately went outside for the second show to see the Thirteen traverse that path. So I actually saw inside and I saw outside.

While I was outside --

Q. No, no. Let me ask you another question.

A. Please.

Q. Please -- with regard to initial assignment -- and I -- I asked a poor question.

I'm looking for what were you asked to analyze initially, not -- not what you learned as part of the assignment.

A. Actually, I was going to get there. Where? In other words, where did this happen? That was the question put to me.

Because, at the inspection, it was indicated a certain place. My client asked me, "Is that possible?"

I said, "I don't know. Let me look into it."

So the first question was where did this happen?

Q. All right. When you were there in 2014, was there an attorney there for Mr. and Mrs. Cox?

A. Yes.

Q. What was that attorney's name?
A. If I pronounce his name right -- it's a hard spelling. S-h-p-i-r-t. So it's Paul Shpirt.
Q. Did Mr. Shpirt relay information to you about where Mr. Cox fell?
MR. DEUTSCH: Objection, Your Honor. Hearsay.
THE WITNESS: Yeah.
THE COURT: It's just a yes or no.
MR. DEUTSCH: Okay.
BY MR. POPOVICH:
Q. Yes?
A. May I hear it again, please.
Q. Sure. Did he relay information about where Mr. Cox fell?
A. Yes, he did.
MR. POPOVICH: And I'm going to ask the next question about what he said, Your Honor, but I would argue that it's not hearsay; it was based --
THE COURT: Go ahead and pose the question.
BY MR. POPOVICH:
Q. Okay. What did he say about where it happened?
MR. DEUTSCH: Objection, Your Honor. Hearsay.

THE COURT: Overruled.

MR. POPOVICH: Thank you.

THE WITNESS: Mr. Shpirt told me that Mr. Cox fell -- that is, slipped and fell -- while rounding the corner to head towards the building. That's what he told me. He said, when he was going around the corner, his feet slipped out and he fell.

BY MR. POPOVICH:

Q. As part of your work, did you eventually review the deposition testimony of Mr. Cox?

A. I did.

Q. What did Mr. Cox have to say about where he fell?

A. He answered literally the same thing. I can read the excerpt if you like, or we can just say, yes, he said the same thing.

Q. As he turned that corner to head back to the casino?

A. Yes.

Q. All right.

A. He says:

"ANSWER: I had seen the door as I went around the corner. And at that point, that's when I fell and slipped. I was in the middle of making the turn, aiming for the door, and

that's when I fell. I hadn't taken -- I hadn't gone around the corner and made another few steps.

"QUESTION: You had not completed the turn?

"ANSWER: No."

Q. So was it your understanding, through Mr. Cox and Mr. Shpirt, that plaintiffs were contending a particular location of where the accident happened?

MR. DEUTSCH: Objection to the form, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. POPOVICH:

Q. Did you evaluate ultimately whether that was accurate?

A. I did.

Q. Is the surveillance video part of your analysis in determining whether that location is correct?

MR. DEUTSCH: Objection to the leading nature of the questions, Your Honor.

THE COURT: I'll sustain.

MR. POPOVICH: Yeah. I did a bad one.

/////

BY MR. POPOVICH:

Q. What initially assisted you in evaluating whether that location, as coming from the plaintiffs' side, was accurate or not?

A. Well, primarily, at the outset, it was the surveillance video.

Q. Okay. So we have another sheet, No. 2, here. What is this sheet? Why did you prepare it?

A. I prepared that because, when we look at our three pieces of objective evidence, this is No. 1, the surveillance video. And these are the items that you can glean from it. You can actually see these things in that video.

Q. And we're going to pull up on the screen Exhibit 402, the surveillance video. And we're going to go hopefully to 2035 and 10 seconds.

(Whereupon video deposition was played.)

MR. POPOVICH: Marshal Bob, would you like one of your assistants to flip the lights for you?

MR. STRASSBURG: Sure. I'll do it.

MS. FRESCH: Nope, Roger.

MR. STRASSBURG: No, I won't.

THE MARSHAL: Hang on there, tiger.

MR. POPOVICH: Your Honor, may I approach to give Dr. Baker a pointer?

THE COURT: Yes.

BY MR. POPOVICH:

Q. Since the laser doesn't work on a screen, we've got a fancy pointer --

A. Yes, sir.

Q. -- with a soft tip. So --

A. May I step down?

Q. -- the first item on your sheet is location of target doors.

Your Honor, may he stand to reach the screen?

THE COURT: Yes.

MR. POPOVICH: Thank you.

BY MR. POPOVICH:

Q. What does that mean? What are we talking about?

A. We're looking at the target doors here, which is a little easier to see on one of the subsequent diagrams. But this is the bottom part of the target door where the Thirteen are headed. It's open. It's lit. The reason it looks like a third of a door is because there's an overhang, a decorative overhang which you'll see in one of my photos, that comes down -- you only see part of it -- here from the camera.

I think it is important to know where the

camera is. The camera is up and -- say, with regard to this open door, the camera is up 42 feet from the point at which Mr. Cox fell.

Q. Now, this screen grab from the video that we're looking at -- and I'll just say for the record there we're at 20:35:10.2 seconds.

A. Correct.

Q. Okay. Now, the other items on your sheet, does this particular screen grab tell you anything about Mr. Cox yet?

A. No. This is the environment.

Q. Item F there, location of attendant with flood light, does this screen grab tell you anything about that?

A. It does, and it's quite significant. We may get into that now or maybe soon, but this is quite significant.

There's an attendant down here, and you see a light open on the ground. As this goes back and forth, you see the light gets larger and smaller. But there is definitely an attendant here. And this, my opinion, is at the corner that we're describing.

Q. So the location of that light forms that importance for you because it -- tell us why it's important.

A. Well, we're going to get into in a moment into where the point of impact is, which I call POI. You'll probably hear me say "POI" quite a bit.

The point of impact is where the center of mass strikes the ground. So with that stated, the POI is going to be -- and I'm just going to give you a general area here. You're going to see it in a moment, but it's in this area.

This is the area where Mr. Cox said he -- he fell. All right? We're going to see in the video that it's in this area, and that will be seen in detail.

Q. So to protect the record, when you say this is the area where Mr. Cox says he fell, where were you pointing?

A. I was pointing to an area which is approximately 20 feet from the door --

Q. No, Doctor. Sorry. Where Mr. Cox --

MR. DEUTSCH: Objection, Your Honor. Can the doctor answer the question? He's answering the question, and he cuts him off.

THE COURT: Let him finish the question.

THE WITNESS: May I have the question again, please?

MR. POPOVICH: May I have it reread, Your Honor?

THE COURT: Yeah.

MR. POPOVICH: Thank you.

(Record read by the reporter.)

THE WITNESS: Right. And I was saying "this," and that doesn't come across on the record. I understand that, so I will indicate.

There's a point kind of midway between the corner and the doors. It's not exactly midway, but it's approximately midway between these two locations. The POI is going to be in this area that I'm pointing to, midway between the door and the corner.

BY MR. POPOVICH:

Q. May I ask it this way: Where does Mr. Cox say he fell, in his deposition, based on the information in this screenshot?

MR. DEUTSCH: Objection, Your Honor. Asked and answered. Same question.

THE COURT: Overruled.

THE WITNESS: Mr. Cox said he fell -- and I read the excerpt -- while rounding the corner. Now, at this point, we don't know that this is the corner; we think it is. We'll show you why that is later.

But Mr. Cox says he's rounding the corner, and that's when centrifugal force takes his feet outward and he slips outward from the corner. And,

again, the curb -- if I may, the curb runs essentially this way, then this way. So Mr. Cox is coming around in that direction.

BY MR. POPOVICH:

Q. I'd like to move to a different screen grab. And it's the same exhibit, 402, but at 20:35 and 20 seconds. And we stopped at 20.27 seconds.

Thank you, Ms. Bonney.

Now, is this second screen grab a few seconds later important for your analysis?

A. Yes, if it's -- again, I don't have these numbers memorized per se. I think I have them written.

But it's in this particular area where you're going to see Mr. Cox's back as he's rising upward. The problem is there's -- there's a series of leaves in the way between the camera and -- and all the images. So that's what makes this difficult. It also takes some of the light away.

MR. POPOVICH: Ms. Bonney, if you can try to finesse it to 20.43 instead of 20.27. Can you try that?

BY MR. POPOVICH:

Q. Okay. We stopped at 20.72. And, Doctor, does that help show anything more about Mr. Cox?

A. You know, in the angle I'm on, I'm not seeing

it that well. I might be able to go back to my notes. But there's a point at which you'll see Mr. Cox rises in what I would refer to as extension. He rises this way (witness indicating) as opposed to in a sit-up. He doesn't rise his back coming forward; he rises in extension upward.

You will see that if this were done in real time, if you could run this back and forth across that area, it might be able to see.

Q. When you were analyzing the surveillance videotape, did you do just that?

A. Hundreds and hundreds of times, yes.

Q. So if the question is how can you see anything because there's a tree between the camera and Mr. Cox, what's your response?

A. Well, I mean I -- you know, I don't -- in my office, where I have a -- not a screen this large, but I have a large screen -- I don't have a light overhead. It's dark.

MR. DEUTSCH: Roger, can you turn off the lights, please.

THE MARSHAL: All the way?

MR. POPOVICH: Is that acceptable, Your Honor?

THE COURT: Yes.

THE MARSHAL: I can give that a shot.

THE WITNESS: That's better.

And do we have stills here available, or is it only -- do we have video?

BY MR. POPOVICH:

Q. We have video.

A. Video might help.

Q. The stills -- stills are even worse.

So, Ms. Bonney, if you could back it up a few seconds and then play.

(Whereupon video was played.)

THE WITNESS: Okay. You saw Mr. Cox rise. You saw his back. If you could just back that up a little bit and run that little section in a loop.

BY MR. POPOVICH:

Q. I don't think we're quite loopy ready.

A. Mr. Cox rose clearly -- all right. So if we look at where his center of mass struck the surface, it's going to be about where I'm pointing. Okay. And I did a more precise job in the surveillance center. And I think we're going to get to that analysis in a minute.

Q. Did your analysis of this video provide you any information regarding Mr. Cox's path of movement?

A. Yes, it did.

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Q. And what did you learn?

A. Well, in looking at this particular --

MR. DEUTSCH: Objection, Your Honor. Outside the scope of his report. Nothing about his path of movement -- oh, actually withdrawn.

THE COURT: Okay.

THE WITNESS: We know -- we know the corner is in this general area. And, again, we'll describe why in a moment. But the corner is in this general area. The door is not in a straight line parallel to the side of the building; it's on an angle. All right. So his path has to be to come around this corner and to pursue this door. That's the path.

BY MR. POPOVICH:

Q. Ultimately, did your analysis of the video identify where Mr. Cox came to rest on the ground?

A. Yes.

Q. And you're calling that point of impact?

A. Yes. I -- I abbreviate that POI for --

Q. Why do you call it that?

A. -- point of impact.

Q. Impact with what?

A. The surface, the ground surface.

Q. Okay. And, again, you've gestured one other time, but when you're talking about center mass of a

person, what area are we talking about?

A. Yeah, if you think in terms of -- depends on the individual, but if you think in terms of about where your navel is, that's near the center of mass, a difference between men and women, but the center of mass is near the navel. So you have an equal amount of weight above and below. And that's about where the weight of the body can be considered to be concentrated in an analysis like this.

Q. Okay. I think we can have the lights back. And, Doctor, you can have a seat.

A. Thanks.

MR. DEUTSCH: Thank you, Bob.

MR. POPOVICH: May I approach the witness with the proposed exhibit, Your Honor?

THE COURT: Yes.

MR. POPOVICH: 93-107. It is not in evidence, but I will endeavor to lay a foundation.

MR. DEUTSCH: Give me a second.

93?

MR. POPOVICH: Dash 107.

MR. DEUTSCH: 107. This one?

MR. POPOVICH: Yes.

BY MR. POPOVICH:

Q. You recognize that picture, Doctor?

A. Yeah, I do.
Q. Is it -- who took it, if you know?
A. Well, I know I took quite a few.
Q. Well, don't show the jury yet. It's not admitted. It's not admitted. I'm going to try --
A. Sorry.
I know I took quite a few photos like this. This may be one of mine. They would look the same. I may well have taken this.
Q. Were you back out at the site daytime?
A. Yes, I was.
Q. When did that happen?
A. Give you the date. That was on July 17th, 2015, went out in the daytime. The previous two were at night.
Q. What is that? What is the focus of that picture? What's it looking at?
A. The center, this photo, was about where the surveillance camera sits with respect to the building.
Q. Does that photograph accurately depict where the surveillance camera sits at the time you inspected it?
A. That's my understanding, yes.
MR. POPOVICH: Your Honor, I would move in Exhibit 93-107.

MR. DEUTSCH: Your Honor, if it's solely being admitted for the location of the surveillance camera and there's an understanding that all the trees are gone, I have no objection.

MR. POPOVICH: Let me -- I'll clarify that, but --

THE COURT: It's admitted.

MR. POPOVICH: Thank you.

(Whereupon, Defendant's Exhibit 93-107 was admitted into evidence.)

BY MR. POPOVICH:

Q. When you went there in 2015, was -- let me back up to 2014.

2014, when we look even earlier at 2013, we know there was a tree between the camera and some of the area involved in this accident; right?

A. That's correct.

Q. When you went back there in 2015, was the tree still there?

A. No.

Q. In 2015 when you went back there, was the concrete portion of the accessway back into the casino exactly the way you had seen it in 2014?

A. No.

Q. Construction changes had been made?

A. Yes.

Q. Okay.

So I would like for us to be able to display now 93-107.

MR. DEUTSCH: I think those arrows were because I touched the screen, and I don't know how to get them away.

THE COURT RECORDER: The bottom left corner.

MR. DEUTSCH: The bottom left corner.

THE COURT RECORDER: Just tap it.

MR. DEUTSCH: Ah. Okay. I didn't know we had those capabilities.

MR. POPOVICH: New toys.

BY MR. POPOVICH:

Q. So the positioning of the camera was, as you described earlier, higher and towards Tropicana compared to the target doors for Mr. Cox?

A. That's correct.

Q. All right. Did you in 2015 use the camera in order to help you identify where Mr. Cox fell?

A. I did.

May I step down and say something about this? I think it will help.

Q. What is the significance of this photo?

May he step down, Your Honor?

THE COURT: Yes.

THE WITNESS: It is important to note that the path comes around this part of the building and heads along the side of the building. I think that's important to note, not just seeing the camera, but where the path is. The path of the Thirteen comes around and goes this way towards the target doors.

BY MR. POPOVICH:

Q. All right.

A. Thanks.

Q. Now, on that day, did you do some investigation using the camera system?

A. I did.

Q. I would like you to take a look at what I will bring to you --

Your Honor, I'll be going back and forth. Should I ask permission each time?

THE COURT: No, you don't need it.

MR. POPOVICH: Okay. Thank you.

THE WITNESS: Yes. Thanks.

BY MR. POPOVICH:

Q. In general, what does that photograph depict?

THE COURT: What's the designation on that?

MR. POPOVICH: 93-5.

THE WITNESS: Show the jury?

BY MR. POPOVICH:

Q. No, not yet. Just tell us in general what it depicts.

A. This is a photograph of a series of displays in the MGM security room. This is four displays. There are probably 50 such displays in this room. These are four together. I used two of them, and then one.

So that's how I did my analysis pinpointing the point of impact into the surface.

Q. Does that photograph, Exhibit 93-5, accurately depict the bank of monitors that you used in part for the purposes of identifying where Mr. Cox came to rest?

A. Yes, in part.

Q. Okay.

Your Honor, I would move 93-5 into evidence.

MR. DEUTSCH: No objection.

THE COURT: Admitted.

(Whereupon, Defendant's Exhibit 93-5 was admitted into evidence.)

MR. POPOVICH: Can we display it, please?

BY MR. POPOVICH:

Q. Which of the two monitors there did you use?

A. Well, the one on the right -- I just put an

arrow there accidentally.

Q. Apparently, bottom left will make it disappear.

A. This is highly sensitive.

This particular lower right was the one I used part of the time, and then I used the one on the left. Now, what you're seeing on the screen is not what I used in the way of the displays. Those are the monitors.

But what I did was I had a live feed on one with a person outside. And then I had the surveillance video on the other one. What I wanted to do is match up the two locations with the person outside, who had a cone -- I thought I brought one today; I guess I didn't. You know what a big orange cone looks like -- put an orange cone down on the place where Mr. Cox's center of mass struck the surface.

So I did it a couple of different ways. One was using two screens. And then the other way was putting a yellow sticky on -- with the same resolution, putting a yellow sticky on the screen, pointing to that location in the surveillance video, and then directing by telephone the person with the cone outside to hit that spot. And that's the way I did it.

Q. So you would actually call the person outside

and give what?

A. Well, we're on the phone, back and forth.

Q. So what are you saying to get the cone where you want it?

A. Tell her, "Wait a minute. Go forward a little bit. Now go back. Come back 6 inches. Move to the right. Move to the left."

Finally, after about 30 minutes, I got it where I wanted it. And that's what it took, just seeing this going back and forth, looking at it many different ways. We placed the cone where Mr. Cox's POI was.

Q. Once you had that POI, did you perform measurements?

A. Yes.

Q. Okay. And I believe we have another sheet, No. 3 here, talking about measurements of fall area. Sorry.

So when we're talking about Cox's POI cone location, is that what you just described?

A. Right. This is getting into -- getting away from the surveillance video and more into the measurements of the site. So once we put the cone down, then I wanted to measure the whole side around it.

Q. How does the location of the attendant with floodlight get measured? What's that got to do?

A. Well, then we go back to the video with scale, and recognize from -- I'm not sure if I can display this yet or not.

Your Honor, may I -- may I show that?

Q. Is that your measurements?

A. I'm sorry?

Q. Is that your outdoor measurements?

A. It is.

Q. I don't believe there was any objection. We have a sheet on that.

MR. DEUTSCH: No, no objection.

MR. POPOVICH: Okay. This is not --

MR. DEUTSCH: Just the outdoor one.

MR. POPOVICH: Just the outdoor.

You want to come see it first?

MR. DEUTSCH: No.

BY MR. POPOVICH:

Q. Is this now -- are we looking, on Sheet 5, a copy of what you've got there?

A. Yes, sir.

Q. Okay. And are these outside measurements of that concrete accessway that we've been talking about?

A. They are.

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Q. So did you do this before or after you had the cone where you wanted it?

A. The cone was put down, then I went outside. What you see there took about 90 minutes to get every measurement correct. So we've got the cone placed. This -- this is my actual sheet. This is the sheet I used. We got the cone placed, and then I took measurements in every different direction on it at that date.

Q. Did you choose a nominal path for where Mr. Cox had been moving?

MR. DEUTSCH: Objection to the form, Your Honor.

THE COURT: Sustained.

BY MR. POPOVICH:

Q. On Sheet No. 5 in your notes, there's something written, "Cox path." What does that mean?

A. It's just that. That's a reasonable path not walking on the curb and not walking in the street -- or moving in the street, moving near the corner, coming around, and then headed towards the lighted doors. So that's the reasonable path as I -- as I saw it.

Q. Is it fair to say that could be off a foot in either direction or 2 feet?

A. I don't know about 2 feet. I think it could

be off a foot, a few inches. I don't think it's off 2 feet.

Q. I mean, is there any video surveillance that shows you exactly where he was moving as he was moving west?

A. No.

Q. When you took a measurement from Cox path to the POI, the cone --

A. Yes.

Q. -- what was the distance?

A. From that path to the cone is 22 feet 7 inches.

Q. And you've got that here?

A. And you've got that. From there to the cone is 22 feet 7 inches. From the curb line, which is a little closer --

May I step --

THE COURT: Yes.

BY MR. POPOVICH:

Q. When you're talking about curb line, what is that?

A. If we recall, there was an exit door on this side of the building the individuals came out and around the corner. This was the original red curb. I have a number of pictures of that if you want to see

that.

But this is the red curb. This is a concrete curb going in this direction (witness indicating). If you came around that, this is a reasonable dimension. But this is -- this is the hard curb. Inside is planter and the tree.

MR. DEUTSCH: Your Honor, note my objection. Move to strike. It's speculation. It's under the tree. You can't see him. I don't understand how we're getting these -- these -- his route around the corner.

THE COURT: Well, you'll be able to cross-examine him.

MR. DEUTSCH: Sure.

BY MR. POPOVICH:

Q. Is the curb line a fixed point?

A. At this time, it is.

Q. Okay. Obviously, it got changed later; right?

A. It got changed.

Q. Correct. But did you see that curb line before the construction changes?

A. Yes, I did.

Q. All right. So that curb line, how far -- if you were to dotted out an extension of that curb line, how far is it to the cone that you determined?

A. That's the dimension you see here, 20 feet 5 inches to the cone, to the POI.

Q. Okay. If Mr. Cox -- I want you to assume that Mr. Cox in his testimony indicated that, as he was coming around the corner, he slipped and fell. And I want you to assume that he fell essentially even with that curb line.

MR. DEUTSCH: Objection, Your Honor. Misstates the testimony.

MR. POPOVICH: It's an assumption.

THE COURT: Overruled.

BY MR. POPOVICH:

Q. If you assume that, how far away is he, then, from POI, point of impact, that you have determined?

A. If -- if I'm hearing you correctly, he's coming around the red curb. He's going to make a turn. And if he falls in this outward direction, he would be 20 -- right over the curb -- he'd be 20 feet 5 inches from the actual POI.

Q. All right. Can you interpret this for me? What does that say?

A. That says "the original plank."

Q. What does plank mean?

A. Concrete plank. In other words, they had original concrete, and they changed some of it out.

This is an original plank.

Q. I see. So when you have a measurement of 10 feet 7 inches, what is that dimension for? What is that telling us?

A. There is a curb line along the building. Again, this is the edge of the building. The building is this way as I'm directing. There was a curb that runs -- in fact, as I'm describing, this would be 10 feet 7 inches inward from that curb; that is, to the west of that curb to the cone.

Q. Did you measure the distance from the cone to the entry doors?

A. Yes, I did.

Q. What was that dimension?

A. The first measurement I had was about 20 feet 2, something like that. And then I decided, no, I wanted to go to the center. At one point, I had the outside. But it's 19 feet 10 inches from the center of the two doors to the cone.

Q. Are there more than --

A. 19, 10.

Q. Sorry. Is there more than one set of doors that enter towards the casino?

A. Correct. There are.

Q. How many sets?

A. There's four sets.
Q. Which set did you measure to?
A. This is the second set in from the west. So that line that they're approaching here, the Thirteen, is 9 feet 10 inches, the center line, from the corner of this access area.
Q. I think we can have you sit down.
A. Okay.
Q. In 2014, when you did your initial inspection, did you observe the concrete slabs in the area that eventually you determined to be your POI?
A. Yes.
Q. When you went back in 2015 and did what you've told the jury to determine your POI, do you know whether that -- that area of the concrete had changed as part of the other construction changes?
A. My understanding is that it had changed.
Q. Where your POI is?
A. Not the POI.
Q. Okay. That's -- that's the question.
A. The planks had changed. The slopes had changed. But the POI is the fixed with respect to the building. The building hasn't moved.
Q. When -- where you determined your POI, did you determine the slope at that point?

A. At which point? For '14 or '15?
Q. Anytime.
A. You're talking about '15? Yes, '15 is when we put the cone down. Yes, I did.
Q. Okay. I'm going to show you Exhibit 93, page 16. And do not publish this yet to the jury.
A. Yes, sir.
Q. Who took that photo?
A. I took that.
MR. POPOVICH: 93-16.
BY MR. POPOVICH:
Q. What is depicted in it?
A. It shows the cone, and in the back is a little utility cover cap.
Q. Any other piece of equipment there?
A. Yes, my leveling -- digital leveling device. It tells me slope.
Q. Okay. Was it your understanding that the piece of concrete where you have your leveling device was as it was at the time of the accident as far as the concrete slope itself?
A. That particular location is the same. South of that, the planks had changed.
Q. I -- and I understand that.
Does that photograph accurately depict the

tools you were using at that time?

A. Yes, it does.

MR. POPOVICH: Your Honor, I'd like to publish 93 -- first have it admitted, please.

MR. DEUTSCH: Your Honor, may I have a voir dire on this photograph, because I do not believe it's the same location, and it has changed. So may I voir dire him about this?

THE COURT: You may.

MR. DEUTSCH: Thank you.

Give me one second.

Excuse me, Jerry.

VOIR DIRE EXAMINATION

BY MR. DEUTSCH:

Q. So you mentioned a drain in that photograph; is that right, Dr. Baker?

A. Well, it's a utility --

Q. Okay.

A. -- cover.

Q. A utility cover. You mentioned a utility cover.

And I want to show you what's been marked in evidence already as -- and you -- you mentioned, I think -- to -- to see if that was -- that portion of

the concrete was the same as it was on the night of the accident, you would want to see in photos taken on the night of the accident if that utility cover was there. Is that fair?

A. If it's visible.

Q. If it's visible, right. Okay. So let's take a look at the area from -- this is 403-8, which is in evidence. And if I want to take a look at this.

And this is the same area that depicts where your cone was. Is that fair?

A. I don't know.

Q. Well, let's -- let's match it up. Take a look at the one in front of you and, if you could see the -- this expansion joint, and see if that gives you any idea about the -- the drain.

A. And the date on this photo is what, sir?

Q. This was taken on the night of the incident by the -- one of the MGM security personnel.

A. Okay.

Q. Okay. And do you see the drain on this photograph?

A. I don't see it, no.

Q. Okay. That doesn't mean it wasn't there; right? It just means --

A. Correct.

Q. -- it might be covered in something?
A. Yeah. It's a cover; it's not a drain.
Q. I'm sorry. A cover. The cover.
A. Right.
Q. So you don't see the cover in this photograph?
A. I don't.
Q. Okay. So the question is one of two things, either it has been changed and you were wrong about that. Is that true?
A. I don't know. It's -- it's pretty clear that you have a utility cover because there's utilities down below. That doesn't change because you change concrete planks.
Q. Okay.
A. Utilities are utilities.
Q. So let me ask you, if you take a look at this right here. See that part that I just blew up.
This right here, you think that might be the utility cover?
A. I don't know the point of reference, sir.
Q. Okay. Well, sorry. I'll do it again so you can follow. I'm going to highlight -- well, I'm not going to highlight it, but I'm going to call it out from right here. You can see where I'm doing it. See?

See where I'm doing it?

That would be about the same location, comparing it to your photograph. Is that fair?

A. You know, I'd have to -- I'd have to make sure that you are on the right latitude here because there's -- there's lines on the building, you know, and I'm going to have to be able to see that you are far back enough that this is even in this photo.

Q. Fair enough. So -- so here's my only question: If the concrete in the location has not changed, then that means that the cover in this photograph is covered in something and you can't see it. Is that fair?

A. If it's in the photo.

Q. Then that means it's covered with something you can't see?

A. Yeah. I'm just not sure of the orientation. I'd have to count those lines on the building --

Q. Okay. Well, why don't you do it?

A. -- and go back to my photos.

Q. Why don't you take a look at your photos --

A. Well, I'm going to have to pull out my photos, which will be my computer.

Q. Go ahead. Well, you don't have hard copies of all your photos?

A. Not all of them, no.

MR. POPOVICH: Your Honor, I would argue that we've gone way beyond --

THE COURT: I agree.

MR. POPOVICH: -- foundation for --

MR. DEUTSCH: Your Honor, at this point, I have an objection to the photograph.

THE COURT: It's admitted, but you can cross-examine.

MR. DEUTSCH: Okay.

MR. POPOVICH: May we publish it? I forget even now what the number is.

MR. STRASSBURG: 93-16.

MR. POPOVICH: Thank you.

DIRECT EXAMINATION (Continued)

BY MR. POPOVICH:

Q. So we're looking at that photograph with you now, Doctor.

Is there, in the upper right of that photo, concrete of a different color?

A. On the other -- on the south side of the seam.

Q. Okay.

A. Yes.

Q. And that's -- is that depicted in the upper

right of Exhibit 93-16? Same -- same one.

A. Yes.

Q. What does the difference in color tell you, if anything?

A. Well, it can be any number of things, but they were installed at different times and they've -- they've aged differently.

Q. Just looking at the concrete to the left of the seam, where you've got your cone and your tool, does that appear to be concrete poured in the last year or two?

MR. DEUTSCH: Objection, Your Honor. No expertise for that.

THE COURT: He can state what it appears to him to be.

THE WITNESS: I don't know that I can give you a time on -- on concrete aging. It's clear that the slope is different. But insofar as what it looks like over time, I don't think I could opine on that.

BY MR. POPOVICH:

Q. Well, when you're saying the slope is different, where is the slope different?

A. The slope, before the remodel -- and may I bring out a couple of photographs that might help this?

Q. If you can just describe it in words using

93-16.

Are we talking about where your tools are? Is that where the slope is different?

A. No. What it amounts to is, before the remodel, the slope that we have at the cone, which is 1 degree up, 1 degree, extended further south before the remodel.

Q. Okay.

A. After the remodel, then it changed to 2 1/2 degrees up, and it got closer to the POI.

Does that make sense?

Q. Yes, and we're going to talk more about it.

A. All right.

Q. Is it your belief that where that level is had not changed from the time of the accident as far as the slope of the concrete?

A. Can you restate, please.

Q. Where you have your tool, is it your understanding that the concrete that you're measuring the slope of had changed since the time of the accident?

A. No. That's the same.

Q. All right.

A. The difference is that -- that incline had extended further south.

Q. Well, then, let's -- let's -- let's deal with that.

MR. DEUTSCH: Just note my objection, Your Honor. Outside the scope of his report.

THE COURT: Let's see where it's going.

BY MR. POPOVICH:

Q. I'm going to show you Exhibit 93-143.

And don't publish this to the jury yet.

A. Yes, sir.

Q. I have some work to do.

In general, what does that depict?

A. That shows the corner we've been talking about with the red curb and the inclined plank.

MR. DEUTSCH: No objection, Jerry.

MR. POPOVICH: We would move to admit 93-143.

THE COURT: I heard no objection.

MR. DEUTSCH: No objection.

THE COURT: Admitted.

(Whereupon, Defendant's Exhibit 93-143 was admitted into evidence.)

MR. POPOVICH: And if we could publish that, please. Thank you.

BY MR. POPOVICH:

Q. All right. Is this -- is it your understanding that this is in the condition it was at

the time of the accident?

A. That's my understanding, yes.

Q. So when you're talking about a plank with an incline, can you tell us where you're talking about?

A. Yes. And I can --

Q. Yes.

A. -- show this. At the time of the first inspection, September 2014, I had laid this particular rule down from the red curb to the first seam. And that distance is 60 -- 6-0 -- inches.

Q. What happened at that seam with regard to the slope of that -- of that concrete?

A. What happened?

Q. To the left of that seam.

MR. DEUTSCH: Objection, Your Honor. Outside the scope of his report.

THE COURT: Well, overruled.

THE WITNESS: Okay.

MR. DEUTSCH: May we approach, Your Honor?

THE COURT: Okay.

(A discussion was held at the bench, not reported.)

BY MR. POPOVICH:

Q. So, Doctor, to the left of that seam in this photo, does the slope of the concrete change as

compared to the slope on the right of the seam?

A. Yes, it does.

Q. How did it change?

A. It's steeper in the first 60 inches, and then it flattens out immediately for the next 15 feet to the cone, to the point of impact.

Q. Based on your work in 2014, before the area was remodeled, was the slope to the left of the seam shown in Exhibit 93-143 similar -- excuse me -- the same as it was to your POI slope?

A. Yes.

Q. Okay. Now, you had told us 1 degree up. Explain 1 degree up.

A. Yes.

Q. What -- does that mean it's getting higher as you go toward the doors or is it getting lower?

A. Correct. It's 1 degree, not percent, 1 degree up.

Q. As you're -- as you're going towards the doors?

A. Yes. So in a 36-inch stride, it's a rise of about .6 of an inch.

Q. Okay. Going to show you Exhibit 93-144.

A. Yes, sir.

Q. Who took that photo?

A. I did.
Q. Is that a closer-up area of what we're looking at in 93-143?
A. Yes, it is. It's at the seam.
Q. Okay. Does that accurately depict the conditions as they were on the night of your inspection?
A. Yes, it does.
MR. POPOVICH: I would move 93-144 into evidence, Your Honor.
MR. DEUTSCH: No objection.
THE COURT: Admitted.
(Whereupon, Defendant's Exhibit 93-144 was admitted into evidence.)
BY MR. POPOVICH:
Q. From the bottom of the photograph, is that the seam we've been talking about in the prior photo?
A. Yes, it is.
Q. And you've also -- is that the same tape measure you already showed us?
A. Yes. This one.
Q. And what's the measurement from the corner of the curb on the right to that seam?
A. 60 inches, 6-0, 5 feet.
Q. And at the very upper left of that photo,

what is that material there?

A. The triangle?

Q. Even higher. All the way up to the very top, what are we looking at?

A. Well, there's a curb.

Q. And even higher than that, what's this?

A. It's the edge of the building.

Q. Okay. So that seam -- is it fair to say the seam marks the change in the slope from steeper to shallower?

A. Yes, it does.

Q. That change in slope happens even before the building is reached?

A. That's correct.

Q. All right. If the slope changes 5 feet above the curb line, how far is it from the slope change to your POI?

A. That would be 15 feet 8 inches.

Q. From that seam to the -- on Exhibit 93-144, to your point of impact?

A. Correct. From that seam to the cone of the point of impact is 20 feet 8 inches minus the 5. So it's 15 feet 8 inches at 1 degree.

MR. POPOVICH: Were we going straight through, Your Honor, I take it?

THE COURT: Well, we'll recess at noon.

MR. POPOVICH: Okay. But no morning break? It just dawned on me we didn't take one, but that's fine.

THE COURT: Well, if we take a break, we'd be ...

MR. POPOVICH: We'd be done.

THE COURT: Coming back at 5 to 12:00 and then --

Want to approach, Counsel?

MR. POPOVICH: Yes.

(A discussion was held at the bench, not reported.)

THE COURT: Is everybody okay until noon?

IN UNISON: Yes.

BY MR. POPOVICH:

Q. Going to show you Exhibit 93-89.

A. Yes.

Q. Who took the photo?

A. That is my photo.

Q. When was that taken?

A. That would have been in 2015 at the third site inspection, which was during the daytime. Do you want the exact date?

Q. No. Is that the one where you worked in the

camera room to determine your POI?

A. That's correct, and I went outside.

Q. Okay. So does that accurately depict, from a different angle, the area of your POI?

A. Yes, it does.

MR. POPOVICH: I would move that into evidence, Your Honor.

MR. DEUTSCH: That's 89?

MR. POPOVICH: I believe so, yes.

MR. DEUTSCH: No -- again, for the purposes of where the cone is, I have no objection.

But the changes made to the area, it is not being admitted with that understanding, then. If it's just for the purpose of where the cone is, no objection.

THE COURT: All right. It's admitted.

(Whereupon, Defendant's Exhibit 93-89 was admitted into evidence.)

BY MR. POPOVICH:

Q. Does this view show the new construction that was done between the time of the accident and your inspection in 2015?

A. Yes, it does.

Q. And as far as changes, can you point out what you observed the changes to be?

A. I can.

Q. And if you want to take the pointer and step up to the big screen, we can request that.

A. If I may. I'm going to have to take some notes with me.

Q. I think that's okay.

A. All right. It's going to take a moment. I believe the question was you were looking for the changes that had been made; correct?

Q. Between your 2014 evaluations and photos versus the 2015.

A. Correct. Okay. Before the remodel -- let me say what didn't change. That'll orient us.

The corner of the building is the same. The old curb line where we showed the red curb, that ends out in this direction on the curve. Another photo would show this better. But the old curb is to the south of the corner of the building. So that didn't -- that didn't change, the corner of the building.

This slope before the remodel is, as we said, 1 degree for 15 feet to the south.

Now, this is a matter of -- I think it was something in the area of -- let me check my notes -- about 4 feet, because this slope has changed -- from the south point to the seam has changed to 2 1/2

degrees. The cone area of the slope is the same.

Q. All right.

A. I have one photo that shows the remodel pretty well. I don't know if that's been admitted.

Q. All right. When -- based on your analysis of the distance from where Mr. Cox had testified to falling in his deposition to your opinion of the point of impact -- the place where he fell, came to rest -- did you determine the distance between what Mr. Cox indicated and what you evaluated?

MR. DEUTSCH: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: From the curb -- we saw that photo earlier on where they had a red curb. From that curb to the cone that we pinpointed is 20 feet 5 inches.

BY MR. POPOVICH:

Q. Does that correlate with the distance from what you saw in the surveillance video from the night of the accident to that light beam from the person working at that corner to your point of impact?

A. If you're saying to pinpoint where the person with the light is, if Mr. Cox is correct in his assessment of sliding out, going around the corner,

that puts the light somewhere on the other side of this planter.

MR. DEUTSCH: Objection, Your Honor. Calls for speculation.

THE WITNESS: It doesn't --

THE COURT: He's stating --

MR. DEUTSCH: No foundation.

THE COURT: Overruled.

BY MR. POPOVICH:

Q. If I understand your answer, if Mr. Cox that we see in the videotape fell where he says he fell, coming around the corner --

A. Yes.

Q. -- that obviously moves his POI back from where we have the cone; correct?

A. Moves it back 20 feet 5 inches, at least.

Q. From the surveillance video, can you tell that there is distance between the person holding the light and where Mr. Cox arises?

MR. DEUTSCH: Objection, Your Honor. Calls for speculation. He can't -- no foundation for where the person holding the light was standing.

THE COURT: Overruled.

THE WITNESS: Yeah, I would disagree with the objection because we scaled off of the surveillance

video. So once we have all this measured out, once all these measurements become apparent, I can tell you how far that light is away.

We talked about that earlier, and I couldn't. I said we'll talk about that later. That came after all of the scaling from this measurement. Then we could tell where that light was in the video, and it's back at least 20 -- 21 feet. If we back that up from the curb, it puts you on his side of the planter.

BY MR. POPOVICH:

Q. In order to keep the distance between Mr. Cox and that light?

A. That's correct.

MR. POPOVICH: Your Honor, this is now a gear shift as far as the next topic. Maybe we can break early and come back early.

THE COURT: Okay. We'll resume at 1:20 instead of 1:30 -- how is that? -- since it's 10 to 12:00.

During the recess, ladies and gentlemen, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or

any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom a bit to the south at 1:20.

(The following proceedings were held outside the presence of the jury.)

(Whereupon a luncheon recess was taken.)

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good afternoon. Please be seated. We're back on the record.

Will counsel stipulate that the jury is present?

MR. DEUTSCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MS. FRESCH: Yes.

THE COURT: All right. You may resume, Mr. Popovich.

MR. POPOVICH: Thank you.

BY MR. POPOVICH:

Q. Dr. Baker, in your 2014 inspections, did you

do any measuring of the runaround distances?

A. The?

Q. Runaround from the back of the prop to the back of the theater.

A. I estimated it.

Q. Okay.

A. At that point.

Q. At some point, did you go back and actually measure --

MR. DEUTSCH: Objection, Your Honor. This is what we talked about May 1st.

MR. POPOVICH: That's true.

THE COURT: Response?

MR. POPOVICH: It's May 1st. It's relevant.

THE COURT: All right.

MR. POPOVICH: It's just a fact.

THE COURT: All right. Go ahead.

BY MR. POPOVICH:

Q. Did you go back and do some measurements?

A. Yes, I did.

Q. Did you go, in essence, from the center stage around to the back of the theater?

A. Yes, I did.

Q. Did you come up with a total distance?

A. Yes.

Q. What was the total distance?

A. I have to go back to the notes. Total length was 338 feet 7 inches.

Q. To do that, did you do measurements in increments for the route?

A. I did, and we have a graphic on it.

Q. Okay. Which is Sheet No. 4?

A. Yes.

MR. DEUTSCH: Same objection, Judge.

THE COURT: I'll allow it.

BY MR. POPOVICH:

Q. What are the --

THE COURT: This is not an opinion; this is just a statement --

MR. POPOVICH: Yep.

THE COURT: -- of fact.

BY MR. POPOVICH:

Q. What are these orange spots?

A. Those are orange cones I put down at particular places. They were significant because they were maybe indicative of where a turn was going to be made. But those were eight cones I put down and photographed. And then I measured the increments -- excuse me -- between the cones.

Q. From 0 to 1 was from where to where

location-wise?

A. That was the back of the stage. I'm not sure what they call the -- the configuration. It was the dragon or whatever that's called. It was the absolute back of it to the first turn on the same floor. So that would be No. 1. That's 47 feet 9 inches.

Q. From 1 to 2, where was that?

A. Right. That's a left turn inside the same floor, but now you're going towards a -- a hallway, not at the hallway, but you're going toward it. So that was a 19-feet-7-inch left turn to Cone No. 3.

Q. 19-7 till you get to the right turn?

MR. DEUTSCH: Objection, Your Honor. Foundation for where he learned about all these turns from.

THE COURT: All right.

Want to lay a foundation?

MR. POPOVICH: Sure.

BY MR. POPOVICH:

Q. Did you review all those depositions of Mr. Carvalho and Ms. Weall?

A. Yes, I did.

Q. Did you read Mr. Cox's deposition?

A. I did.

Q. Did they inform you in any way as to the

route?

A. Yes, but the route was depicted in each of these inspections. I mean, we -- we're on the route that was -- 20 people were on that route in these inspections.

Q. The 20 people, was that the 2014 inspection?

A. Yes. And there were probably at least a dozen people with us on May 1st.

Q. Was Mr. Chris Kenner there pointing out the route at any time where photos were taken?

A. If he is the -- what? -- general manager or producer?

Q. Executive producer.

A. He was there, correct.

Q. And did that inform you of how the route ran?

A. Yes, it did.

Q. All right. So from 1 to 2, 19 feet?

MR. DEUTSCH: Objection, Your Honor. Move to strike all this based on hearsay, what he heard from Chris Kenner off the record, out of court.

THE COURT: Overruled. Overruled.

MR. POPOVICH: May we, with this tape measure, depict 19 feet 7 inches?

BY MR. POPOVICH:

Q. I'm going to give you the business end.

Your Honor, may we approach?

A. Got it.

Q. He may want to see this.

(A discussion was held at the bench, not reported.)

MR. POPOVICH: Mr. Deutsch, do you want to check the measurement?

BY MR. POPOVICH:

Q. Now, tell me when we're at 19 feet 7 inches, please.

MR. DEUTSCH: Stop.

THE WITNESS: Little more. Right -- right here. This is 7 right here, 19 feet 7.

BY MR. POPOVICH:

Q. So that would depict Cone 1 to Cone 2?

A. No, no. That's Cone 2 to Cone 3. Oh, I'm sorry. I'm sorry. I have -- I'm calling the bottom cone -- my mistake. The cone at the bottom is 0.

Q. Correct.

A. Right.

Q. So Cone 1 to Cone 2, 19-7?

A. You're correct. Yes.

Q. That distance.

A. This distance.

Q. Okay. So from Cone 2 to Cone 3, where was

that location-wise?

A. That was inside the building. And, at that point, at Cone No. 2, a right turn was made to approach a bright hallway. So if you see that first turn -- first right turn, 16 feet 9 inches from Cone 2 to Cone 3.

Q. So can you back this up until we get to 16-9?

A. Sure. That would be 16-9 --

Q. Okay.

A. -- right here.

Q. Okay. Cone 3 to Cone 4 is where in location?

A. Yeah. Okay. At this point, we're in a bright hallway at Cone 3. This is a door, went outside the door -- double doors to the outside, 3 to 4, 22 feet 4 inches.

Q. So can we show 22-4?

A. That far.

Q. All right. Once the route gets outside, from the right turn coming out of the doors to the next right turn, how far?

A. And that will be 30 feet 2 inches.

Q. Let's go to 30 feet 2 inches.

A. Okay. That's it.

JUROR NO. 8: 25-foot tape measure.

THE WITNESS: We got it. It's 30 feet

2 inches right here.
BY MR. POPOVICH:
Q. And then after that, is that toward the casino doors?
A. Yes. This is the right turn in question. And from that right turn in the path to the doors is -- excuse me -- is 42 feet 4 inches.
Q. And we're not going to do that with a 25-foot tape. So let's just roll it up.
A. Yep.
Q. Thank you.
During your work on this case, did you eventually see photographs of Mr. Cox's clothes taken from the night of the accident?
A. I did.
Q. Where did that -- where did that happen in relation to your work on this case? The beginning? Middle? End?
A. It was way past the middle. When I saw -- I'm not sure if I can display the photos just yet, but --
Q. No.
A. Denied? Okay.
But, yeah, that was past the middle. It was probably within the last year.

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MR. POPOVICH: Can we show Exhibit 83-4, which is already in evidence.

BY MR. POPOVICH:

Q. Is this one of the photos?

A. Yes.

Q. Is this an important photo for you?

A. Very.

Q. When you had talked about those three objective bits of evidence -- we've talked about the surveillance video, we've talked about measurement -- you had talked about photos. Is this one of them?

A. This is the key one.

Q. Why is it key?

A. The markings on the shoe indicate what happened in contact with the ground surface. In particular, the first thing we notice, it's a soft shoe. It's not, like, a hard leather shoe that, say, I have on. We're going to demonstrate some walking, I guess. But, notwithstanding, this is a soft shoe. It doesn't have the same resistance as a hard shoe. So it's going to buckle easier.

We do see a couple of marks on it that are interesting. Whether they're scuffs or just dust would be indicative of how much pressure was put at the surface. So the first one we see -- I'm not sure if I

can --

Q. Can we use the pointer and use the screen so the jury can see.

A. Sure.

The first mark we see is at the bottom edge of the toe. And we see a series of marks. Whether it's a scuff or dust, it's the same thing. It means there was contact made.

Now, to talk about walking, when we walk, we push off with our back foot, but then what we do -- it's something we haven't thought about since our early years -- is we pick up the toe and swing it forward. The toe must be brought up. Otherwise, you're going to get that (witness indicating). So without thinking --

Q. "That" being a toe drag?

A. -- we pick up the toe and drag -- and swing it forward. Yes.

Q. If you don't pick up the toe, what do you get?

A. But we do that without thinking.

So if I push off, I go to stride, I picked up my toe. Okay. If I don't, you get this (witness indicating). Now --

Q. Is that low -- is that lower mark on the toe of the shoe -- "lower" meaning closer to the sole;

correct?

A. Yes.

Q. Okay. Is that lower mark, to you, playing any role in your evaluation of how this accident happened?

A. That's indicative of the fact that the toe rolled up. I mean, there's a lot of toe contact here. That doesn't mean it went over yet, but at least this is indicative of more than just a push-off. When we push off, the bottom part of our shoe is still flat to the ground. The shoe arches.

All right. So you can see my shoe. It's still flat to the ground. To mark it here means the toe is pointed down. So there's a little more here than I would certainly expect.

Q. From normal wear and tear?

A. Well, from normal wear or tear or normal walking on this route.

Q. Is there a second mark that's important?

A. Yes, there is.

Q. What is it?

A. On the top, you see an area that we would never contact in normal walking. That is indicative of the fact this did roll over and contact the ground. Whether this is a scuff or just dust, it's indicative

of the fact that there was contact with the ground surface at the top of his shoe. So there is some dragging.

Now, the most interesting mark here to me is this one (witness indicating).

Q. Is that the third mark on the top of the shoe?

A. Right. And I see this in motor vehicle accidents all the time, where there will be an isolated mark. And how did it get there?

Okay. This would be indicative of the metatarsals in his foot really contacting. In other words, I would expect to see some -- some marks all the way to it, at least some dust or something. This is indicative of some pressure right there into the ground, just localized.

So we have a roll from the front to the top to a curl of his metatarsal into that surface.

Q. The meta -- where are the metatarsals?

A. Those are the bones on the top of the foot.

Q. Do they relate to the toes?

A. It's like your hand. You would curl it into the ground surface.

Q. The curling, is -- is it important -- well, how did the -- how does the curling relate to the

hardness or softness of the shoe leather?

A. The fact that this is a soft shoe, that would be hard to do with a hard shoe. With a soft shoe, this just curled on him. You can see the markings as they are. And this is indicative of pressure in that part of his foot and not here, not in the toes. All right. So this is indicative of a very substantial curl as his toe rolled over.

Q. Okay. When you saw this photo, did it raise any questions for you about how Mr. Cox fell in relation to his testimony?

A. Well, I wanted to look further from this. And, again, remember going back to our Microsoft logo, everything's got to fit together.

So what's indicative? Is this really a toe catch instead of a slip? So we look at some of the other photos of where his markings are with dust. Do you have those?

Q. We will get there. I have some preliminary questions first.

A. Yes, sir.

Q. Let's talk about, how do you define a slip?

A. Okay. There's a technical difference between a slip and a trip.

We -- we typically use them interchangeably.

If you follow boxing, they typically call anything where there's not a knockdown, the guy is down on -- he gets up, they call it a slip. No matter what happened, they -- the announcer will call it a slip. We use those interchangeably. Mechanically, they're quite different from each other. Do you want to go through the graphics on it?

Q. Tell me in words first, and then we'll go through the graphics.

What's a slip?

A. A slip would be a loss of traction between two surfaces. So if -- if the ground surface is where my right hand is and this is my foot, a slip would be losing traction with that ground surface.

Q. What's a trip?

A. And, on the other hand, a trip, entirely different mechanism. A trip is when the stride phase that we talked about, after the push-off and before the heel strike -- which, in a typical adult, is about 23 degrees -- all right? If, in any way, that stride becomes interrupted, the upper body continues forward -- okay? -- because what we're trying to do is get the lower body underneath the upper body. That's how we walk.

So, with that, if this gets interrupted, the

only thing we can do -- like, if there's a block of wood here, what you do is hop forward to the left side or somehow get out of that trip while keeping our center of mass vertical and our balance. The further the center of mass gets from the trip or the slip point, the more likely we are to fall.

Q. Okay. Now, did you provide some graphics to illustrate slips and trips?

A. I did. And this is what I mentioned earlier with the call to Dr. Cohen. This is from his book.

Q. Okay. We're looking at Sheet No. 7. And are these two different types of slips depicted?

A. Yes.

Q. What are the two different types of slips?

A. Well, there actually are more than two, but these are the two that apply here. There would be a -- a lead foot slip, wherein, as we're walking, we lose traction with the heel strike. And if we don't catch in 3.8 inches, per the research -- call it 4 inches -- it doesn't catch, I'm going to fall.

Q. In what direction would you fall?

A. And you fall rearward with respect to your center of mass. So you'd fall on the flank. That's a slip. And you can see that here with a lead foot forward.

Now, this is a particularly dangerous kind of fall because it gets the rear foot underneath you. And I know people have really gotten hurt with that rear foot getting caught under them when they fell.

So this is indicative of losing traction with the front foot, and down you go on the back side. That's a slip.

Q. The lower visual here, is that a different kind of slip mechanism?

A. Yes -- no, it's the same mechanism, but it's with both feet. So, in other words, in the upper, the rear foot just wasn't timed well enough to -- to get in to regain your balance.

And in -- both -- in this lower case, the rear foot slips as well, so neither one of which have traction with the earth. And you get a fall that looks like this. Similarly, feet forward, head back, both on the back side. That's a slip, loss of traction.

Q. If we can go to the next page, page 8, does this deal with a trip mechanism?

A. Right. This is a trip. We just defined that a minute ago. That's where the stride is interrupted.

There's several ways we can interrupt the stride, one of which is to kick something hard, boom. The upper body has mass times velocity. So it's going

to continue moving even though this leg is not going to get forward underneath it. The only way you can go is down. So that's what happens here. If that foot is interrupted and you can't recover from it and get that center of mass back in balance, you are going to go forward and down.

Q. This illustration seems to show a trip over some type of object; is that right?

A. That's correct.

Q. Can there be a trip without such an object?

A. Yes. You can similarly trip in any way -- anything that interrupts your stride phase, you can trip. So this is an interruption of the stride phase.

You can also interrupt the stride phase by dragging your foot. That does the same thing to your upper body. The upper body keeps going, and, as a result, the only way you can go -- unless you can get that foot out of there and in front of you or hop onto the front foot, you will fall.

Q. Okay.

A. So that's a trip; the other is a slip.

Q. Thank you.

Ms. Bonney, can we go to Exhibit 83. And it's the photo showing the right side of Mr. Cox. I forget what the page number is.

MR. DEUTSCH: 2.

MR. POPOVICH: 2. Thank you.

So 83-2, I think.

THE WITNESS: May I add one last comment to that that I left out entirely?

BY MR. POPOVICH:

Q. On the trip mechanism?

A. On the trip.

In the trip, the head is ahead of the feet. On the slip, the feet are ahead of the head. So in the slip, you fall rearward; on the trip, you go forward, so the head goes forward. And that's quite important.

Q. Exhibit 83-2, which is already in evidence, is up there. And have you seen this picture before?

A. I have.

Q. When do you understand this was taken?

A. Postincident that night, I understand, something to that effect.

Q. Is there -- what's important to you about this photo?

A. Well, in this photo -- and I've seen this photo in different settings, printed and otherwise -- some you can see better and some not -- there seemed to be a very clear line of where there's dust and where there's not.

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That clear line of dust, if you see on -- near his right pant seam, the vertical pant seam, the dust goes a little bit below it and stops. There was absolutely no dust -- I think we can see that on the -- on the large screen. We see the -- the dust stops where I'm pointing, and there's none down here on the flank.

Q. Given what you've told us about slips versus trips, is that dust pattern -- what does that tell you?

A. Well, so far, it doesn't look like a slip, but I believe there's an additional photo that shows dust on the front.

MR. POPOVICH: Ms. Bonney, can we find that, 83-1. Thank you.

BY MR. POPOVICH:

Q. Is this the photo -- the photo, Doctor?

A. Yes. And I believe there's actually one other one; but, yes, you see there is dust on his frontal plane. And we find there's dust on the front, there's not dust on the rear -- I'm looking at this -- to suggest it's a trip, not a slip.

Q. Why does just that location of dust indicate trip?

A. Well, again, it's all these pieces put together: the shoe, the lack of dust on the -- on

the flank, and the amount of dust on the frontal plane. The three together are telling us one versus the other.

Q. Okay.

Ms. Bonney, one more in 83. Is there one showing the shirt?

MR. STRASSBURG: That's 2.

MR. POPOVICH: Maybe?

Oh, it's not? All right.

BY MR. POPOVICH:

Q. Doctor, did you -- you mentioned there was another photograph taken the night of. What did it depict that you saw?

MR. DEUTSCH: Are we going to put it into evidence. What is it?

MR. POPOVICH: 83-3 is the one showing the front and the shirt?

MR. STRASSBURG: The shirt is in 2, 83-2.

MR. DEUTSCH: 3 is this one. I got no problem with it. I don't know if you want it.

MR. POPOVICH: Agreed. Doesn't show me a shirt. You know what?

THE WITNESS: I think we're suffice with --

BY MR. POPOVICH:

Q. With what you got?

A. This one is admitted. Okay. I think we're

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suffice with that. So there's -- there's dust on the front, not on the flank. And the shoe has certain evidence on it. All that fits together.

Q. Ultimately, reviewing the evidence that we've talked about, the evidence you've reviewed in the entire case, did you come to an opinion as to whether Mr. Cox tripped or slipped?

A. Yes. The evidence we just talked about would indicate a trip with head rearward, and not a slip -- I'm sorry -- a trip with head forward and not a slip with head rearward.

Q. Did the surveillance video from the night of the accident inform that opinion as well?

A. Yes. It shows him getting up from, as I mentioned, an extension as opposed to doing a sit-up in flexion. He's getting up in extension, so he's gone forward.

Q. In the surveillance video, what direction was his head pointing as he was getting up?

A. It did appear pointing forward.

Q. Toward the doors he was headed to?

A. Oh, you're talking about the orientation?

Q. Yes.

A. I know his head is ahead of the rest of his body. It does appear he's looking towards the doors

themselves, but that's hard to depict. I mean, there's a whole series of leaves and various things trying to get into the way at that point.

Q. Anything we haven't talked about which supports your opinion that he tripped rather than slipped?

A. I think we hit all the highlights here.

Q. Okay. So does dust of the type you see on Mr. Cox's clothes play a role in a trip?

A. And, again, a trip is about the interruption of the slide -- of the stride phase. Dust will not interrupt the stride phase.

Q. Does it take something more substantial to interrupt a stride phase?

A. It would.

Q. In your opinion, did dust of the type that was on Mr. Cox's clothes play a role in his trip-and-fall?

A. Did the dust?

Q. The dust.

A. No.

MR. POPOVICH: I think I'm done. Thank you, Your Honor.

THE WITNESS: Okay. Thank you.

MS. FRESCH: I have no questions.

JA004215

MR. ROBERTS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ROBERTS:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. I'd like to show you a few additional pictures that I would like to try to get into evidence.

A. Yeah.

Q. I'm going to show you proposed Exhibit 93-20, 93-88, 93-22, 93-99, and 93-100. And if you could just take a look at these and verify that these are photographs that you took at one of your inspections of the site.

A. Yes, sir. (Witness reviewing document.)

Yes, those are mine.

Q. Okay.

A. July 17th, 2015.

Q. Thank you.

Your Honor, I'd move to admit the previously listed exhibits.

MR. DEUTSCH: With the understanding, Your Honor, that they do not depict -- fairly and accurately depict the way it was on that evening of the accident. With that understanding, I have no objection.

JA004216

THE COURT: All right. They're admitted.

(Whereupon, Defendant's Exhibits 93-20, 93-88, 93-22, 93-99, and 93-100 were admitted into evidence.)

MR. ROBERTS: Thank you, Your Honor.

THE CLERK: Can you review the numbers?

MR. ROBERTS: Yes. All Exhibit 93-20, -88, -22, -99, and -100.

And, Audra, could you display 93-20 first for the jury.

BY MR. ROBERTS:

Q. You stated, Doctor, that these were taken in 2015?

A. Correct.

Q. In 2015, when you took these photos, was this before or after the changes to the concrete?

A. This is after --

Q. Okay.

A. -- the change.

Q. To clarify, did you do an inspection both before and after the changes to the concrete were made?

A. Yes. Two before, several after.

Q. Okay.

A. Right.

Q. So you have -- you're familiar with what was

changed and what wasn't --

A. Yes.

Q. -- based on your inspections?

A. Correct.

Q. And the cone in -- in this photograph, that is your point of impact; correct?

MR. DEUTSCH: Objection, Your Honor. Leading.

THE COURT: Sustained.

MR. DEUTSCH: It's his witness.

BY MR. ROBERTS:

Q. What -- what is the cone known to represent, if the jury hasn't figured it out yet?

A. That's the point of impact that we put down with -- with the help of the assistant on the telephone when I was in the control room.

Q. Very good.

A. We talked about that this morning.

MR. ROBERTS: Audra, could we next have Exhibit 93-88.

BY MR. ROBERTS:

Q. Okay. Could you explain to the jury what this photograph depicts.

A. That's another view, really, of the same thing. This one has got my elevation rule in it.

There's a digital rule out -- display on -- the rule tells you what the slope is at that location in degrees.

Q. Very good. And this may be a good time to ask you to take a look at 93-17, proposed Exhibit 93-17.

A. Okay. Thank you.

Q. Do you recognize that photo?

A. Yes, I do.

Q. Okay. And what does that depict?

A. That -- can I --

Q. No. You can't --

A. Not yet?

Q. -- show it to them yet.

A. Not yet.

That depicts the cone, and it shows my elevation tool which determines the angle of grade.

MR. ROBERTS: Okay. Move to admit 93-17.

MR. DEUTSCH: May I voir dire the witness, Your Honor?

THE COURT: Yes.

MR. DEUTSCH: Thank you.

MR. ROBERTS: You've already agreed to this.

MR. DEUTSCH: Not this one, no.

MR. ROBERTS: No. This is the one I handed

you.

MR. DEUTSCH: I missed this one. I didn't see it.

VOIR DIRE EXAMINATION

BY MR. DEUTSCH:

Q. Doctor, let me ask you a question. Your cone represents the point of impact.

That means that that's the spot where Mr. Cox landed; correct?

A. Center of mass.

Q. Here; right?

A. Yes.

Q. Not where his feet were when he either slipped or tripped; correct?

A. That's correct.

Q. So, therefore, the slope that you measured where he landed really has nothing to do with where he was at the time he either slipped or tripped; is that true?

A. Well, the trip point would be behind this cone.

Q. Correct. So then the measurement that that photo shows at the point of that cone doesn't have any -- doesn't play a role in whether he tripped or

slipped at that spot; true?

A. That's his contact with the earth.

MR. DEUTSCH: I object to the photograph, Your Honor.

THE COURT: Are you offering it?

MR. ROBERTS: I am offering it. It's just simply another view of the same cone and the same level which we already have eight pictures of.

THE COURT: It's admitted.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: That's 93-17; right?

MR. ROBERTS: That's correct, Your Honor.

(Whereupon, Defendant's Exhibit 93-17 was admitted into evidence.)

MR. ROBERTS: Audra, could we have 9317. Thank you.

DIRECT EXAMINATION (Continued)

BY MR. ROBERTS:

Q. Now, unlike the other photograph we have of the level, can you actually read the number in this photograph?

A. Yes, you can.

Q. Okay. What number is that?

A. It says 1.0.

Q. And explain to the jury what that is as far

as how steep is a 1.0-degree slope.

A. Right. It's 1 degree up. So in 36 inches, that would be a rise of about .62 of an inch.

Maybe I should lay that out.

If we had -- we had 3 feet, in that length, the rise in the level would go up about .62 of an inch. So it's at an angle.

Q. Thank you for that explanation, Doctor.

A. Sure.

MR. ROBERTS: Okay. Audra, could we get 93-99 up.

BY MR. ROBERTS:

Q. Can you explain to the jury what this photograph depicts.

A. This one?

Q. No. Just a second. We're going to have 93-99 up in just a second as soon as it loads. Okay.

A. Yeah. That's another photo of the -- the same scene. What's been added, I believe, at this point or what we see is there's a black cone, which means stay outside of it.

The original red curb that we talked about this morning, before the remodel -- let me just take my notes -- is right on this incline. So the red curb used to be where my pointer is, the red curb. And

that, of course, is gone.

The corner of the building is the same. This is 5 feet 6 inches to where the red curb used to be. Now it's a little bit different.

Q. Here's what I would like you to do. You talked about concrete planks.

A. Yes, sir.

Q. How many concrete planks do you see visible in this photo, as you were defining that term?

A. Well, there's one prior at 2 1/2 degrees. This is after the remodel. So the first one is 2 1/2 degrees, flattens out to 1 degree up. So 2 1/2 up to 1 degree up after the remodel.

Q. So use your pointer to -- to delineate the planks just so we can understand.

A. So we have these two planks. Here's one. It's inclined upward at 2 1/2 degrees.

Q. Okay. And how do you tell where one plank ends and the next begins?

A. Well, there's a substantial seam between them, which is for heat and -- otherwise, they'd make it one piece.

Q. The expansion joint?

A. They have to expand. And as a result, we -- you know, we have the two pieces.

MR. ROBERTS: Okay. Your Honor, may I approach?

THE COURT: Yes.

BY MR. ROBERTS:

Q. Here's copy of this exhibit. Could you outline and crosshatch for me the portions of the planks which, based on your before-and-after examination, were the same at the time of your first inspection and your second inspection.

Do you understand what I'm saying?

A. Yeah. Well, I'm going to be able to indicate the slope, which I think is what's important.

Q. Right. But this is what I'd like for you to be able to do --

MR. DEUTSCH: Your Honor --

BY MR. ROBERTS:

Q. -- is I would like you to draw on there crosshatching of the area of the concrete which was the same slope when you first came and inspected as when you did your second inspection in 2015.

A. Okay.

Q. The portion that did not change at the remodel.

A. (Witness complies.) That's the one I was interested in.

Q. Thank you.

I'd ask to mark this is a our next exhibit in line.

THE CLERK: 570.

THE COURT: 570.

MR. ROBERTS: Thank you, Judge.

BY MR. ROBERTS:

Q. So you've just crosshatched this plank right here. Now, you've just described, before I asked you to do that, that there was an elevation change from this plank to the plank that stayed the same --

A. Yes, sir.

Q. -- in 2015.

A. Correct.

Q. Did that change in elevation exist in 2014 when you did your inspection before the remodeling?

A. It was different. Do you want me to explain how?

Q. Yes.

A. In 2014, there is a 6-foot steeper area, and then it runs 15 feet to the -- to the cone at 1 degree. So there's a steeper area right at the red curb, you'll recall from this morning. That has all been since flattened out to go further at 2 1/2.

So if I may, before the remodel, it was

steeper right here (witness indicating), and then it flattened out to this level, the 1 degree, all the way to right about where I'm drawing, which is 6 inches the other side of the corner of the building. So in this direction here, this was steeper. And then this whole area was flatter. What they obviously did was they --

MR. DEUTSCH: Objection.

THE COURT: Sustained.

MR. DEUTSCH: Calls for speculation.

THE COURT: Sustained.

THE WITNESS: Yes, sir.

BY MR. ROBERTS:

Q. Well, did you actually observe it before the change?

A. Well, I observed the slopes. I mean, I didn't see the construction. I saw the slopes.

Q. Okay. Fair enough.

In the condition that this concrete was in prior to the remodel, was there a change in elevation at this expansion joint right before the cone -- I believe that's to the south of the cone -- which could have caused the trip?

A. Was there, like, a mismatch in planks?

Q. Yes.

A. Not that I saw, no.

Q. Mr. Deutsch pointed out that the cone marks the center of mass of Mr. Cox when he fell to the ground; correct?

A. Correct.

Q. Is it true that the --

MR. DEUTSCH: Objection. Leading.

THE COURT: Sustained.

Rephrase.

BY MR. ROBERTS:

A. This is -- I know you've said it about ten times.

Q. What is the cone mark? What position on Mr. Cox's body?

A. This center of mass area.

Q. Okay.

A. And you can visualize your navel. It varies between the individuals, but that's sort of the center of mass.

Q. Is it true that the center of mass in Mr. Cox's resting point has absolutely nothing to do with the place that he tripped?

A. Well, it has something to do with his point of rest. His trip point would have been antecedent to that several feet.

Q. Several feet.

And based on your inspection, was the place where, more likely than not, he tripped sloped or relatively flat?

MR. DEUTSCH: Objection.

THE COURT: It's -- what's the objection?

MR. DEUTSCH: Leading.

THE COURT: Sustained.

MR. ROBERTS: Sloped or relatively flat?

THE COURT: Just rephrase.

BY MR. ROBERTS:

Q. Tell the jury what, more likely than not, was the degree of slope at the place where Mr. Cox tripped.

A. It would have been -- since it headed back so many feet to the 15 feet, it would have been 1 degree --

Q. Thank you, sir.

A. -- at the trip point.

Q. The opinions that you've given to the jury today, did you use your expertise, background training, and experience as a mechanical engineer in formulating those opinions?

A. A combination of that, as a human factors engineer, yes.

Q. And what about your biomechanical?

A. In places, yes.

Q. Okay.

A. We haven't gotten, I think, into the major parts of that, but yes.

Q. And were all of the opinions that you expressed to the jury with me and with Mr. Popovich expressed to a reasonable degree of scientific probability?

A. Meaning that?

Q. All of them are, more likely than not, within the -- within your field of expertise?

A. Yes.

Q. Thank you so much. Appreciate it, Doctor.

A. Thank you.

MR. POPOVICH: Mr. Strassburg, would you like me to move this board so you can see the witness?

MR. ROBERTS: Your Honor, while we're transitioning, I'd like to ask to have the chart demonstratives shown to Dr. Baker marked as an exhibit so that we can use them in closing.

THE COURT: In other words, as a demonstrative?

MR. ROBERTS: Marked as a demonstrative, yes, Your Honor.

THE COURT: So it will be.

MR. ROBERTS: Thank you.

MR. STRASSBURG: Okay. Sorry. Thanks for bearing with me.

I want to use this as an illustration.

MR. DEUTSCH: Okay.

MR. STRASSBURG: Okay.

MR. DEUTSCH: Is it the Yankees?

MR. STRASSBURG: Twins.

MR. DEUTSCH: No, can't use it.

DIRECT EXAMINATION

BY MR. STRASSBURG:

Q. Dr. Baker, you've given some testimony --

Can you guys see this?

IN UNISON: Uh-huh.

BY MR. STRASSBURG:

Q. Can you see this? Do you mind coming down here and just standing, like, right about here.

And I'll -- I want to show you -- now, you -- you mentioned the -- there was a difference between a trip and a slip that was important for the opinions that you raised in this case and offered that dust didn't have anything to do with this accident; right? Do you recall?

MR. DEUTSCH: Objection. Leading.

THE COURT: Sustained.

MR. STRASSBURG: Judge, he's -- I didn't hire him.

MR. DEUTSCH: Your Honor, may we approach?

MR. STRASSBURG: Yeah. I mean, we're not --

THE COURT: Yes.

MR. STRASSBURG: We're not --

(A discussion was held at the bench, not reported.)

THE COURT: Go ahead.

BY MR. STRASSBURG:

Q. Okay. Now, let me show you this. And let me see if I can blow this up so it's -- okay.

And -- and I'll represent to you that this is a major league game between the Twins and the, I guess, White Sox. Okay? And I want to advance the tape to this place here. Let me just run it through. Okay?

And this is Logan Schafer rounding first, ball's caught. All right. Now, let me just back this up to here. Right here.

Now, if you see the position of the foot -- now, you gave us some explanation that a trip involves -- I'm sorry, slip -- a slip involves a loss of traction. Recall that?

A. Yeah, I do. Yes.

Q. Now, would you agree that this part of the

JA004231

video shows a -- a situation that, if the traction between the shoe and the base isn't enough to counteract the other forces, that a slip will ensue?

A. Well, a couple of things could happen here. I haven't seen this. A couple of things could happen. He could slip here.

Q. Hold on.

Let me hold on to the rail, Judge.

Go ahead.

A. He could slip here or he could misstep. If he happens to hit the edge of that, he could have an ankle turn. You could misstep. So a number of things could happen. I'm not sure what's going to happen.

Q. All right.

Now, let's advance a little more. Now, let's go back.

And I guess I have to make this somewhat -- now, do you see this -- this action with the left foot?

A. Sure.

Q. All right. With the kickup of dirt, do you see that?

A. Sure.

Q. Now, can you please tell us is that kind of an illustration of what you've been talking about in connection with a toe catch and a trip?

A. Absolutely.

Q. Explain how the foot rolls over, and when does the fall begin?

A. Well, given that -- again, as we indicated, this is something we haven't thought about our whole lives. When we push off, the first thing that has to happen is we pick up our toe. All right. And we don't think about that; we just do it. You know, we pick up so it doesn't hit the ground on the way through. If it does, we've interrupted our stride phase; the upper body goes forward.

We see this. He's got a toe catch here. This should be this way. He should be striding out so that he hits that on a 23-degree angle. And, instead, he's got his toe straight down. So he's going to dig. His upper body is going to continue forward with this block like he kicked a tree down here or something, and he should go forward.

Q. All right. Let me show you the rest. All right. I'll show the whole thing normal speed.

Now, do you regard it as probable that, if a major league ballplayer in peak physical condition, even though he plays for the Twins, can sustain this kind of accident, that it's certainly reasonable that, under the same circumstances, a regular Joe like you or

me or Mr. Cox could too?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: Anything's possible.

BY MR. STRASSBURG:

Q. Is it probable?

A. Is it probable?

Q. Under the circumstances as you've found them to be, that, to a reasonable degree of scientific probability, Mr. Cox sustained the same kind of toe catch and fall as this major league ballplayer.

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled. You can answer.

THE WITNESS: Sir. There's one little difference here. And I'll just -- there's several differences, but there's one major one. He's got some things on the bottom of his shoes that are trying to dig the earth. You know, he has cleats underneath.

But aside from that, he has not picked up his toe. He dragged it. It should have been up. It was down. He dragged it. It went forward.

Your question is, can anybody do this? Imagine so.

BY MR. STRASSBURG:

Q. Okay. Thank you, sir.

JA004234

A. Thank you.

Q. You can sit back down.

Now, you were also shown this Defense 403-8, I believe. Hold on. Let me -- that's got to come back. Bear with me a sec while it rolls over.

A. Sure.

Q. All right. And this, then, is the Photo 403-8. You recall talking about this; right?

A. Yes, I do.

Q. And --

A. Sorry.

Q. Where's -- oh, okay.

Thanks, whoever did that.

MR. DEUTSCH: You're welcome.

MR. STRASSBURG: Thanks.

MR. DEUTSCH: I learned my lesson.

BY MR. STRASSBURG:

Q. Now, we've heard testimony in this case from Mr. King of the contracting company. He testified to this jury that he believes that these marks on the pavement, these -- these curb marks here and here, he called them rubber transfer marks. You with me?

A. Tire friction marks?

Q. Yeah. Do you agree?

A. I don't know.

Q. All right. And -- well, that's the testimony, that these were from power buggies. Are you familiar with what those are?

A. Somewhat, yes.

Q. And you can identify this thing as what we're talking about? Just so -- this is Exhibit 558. That's a power buggy; right?

A. Well, I -- I couldn't testify that that's what they call that, but I have seen these. I'm familiar with the idea.

Q. Fair enough. And would you agree with Mr. King that you would not expect cleanup sweeping of the -- the broom-finish concrete area by the dumpster to erase the rubber transfer marks if they were made by a --

MR. DEUTSCH: Objection.

BY MR. STRASSBURG:

Q. -- contraption such as this?

MR. DEUTSCH: Sorry. Foundation.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. Are you able to tell us, whether you can agree or disagree based upon your experience, all your cases, whether you would expect that sweeping of this surface would erase these rubber transfer marks?

JA004236

MR. DEUTSCH: Same objection, Your Honor.

THE COURT: Sustained.

MR. STRASSBURG: Well, I can ask him.

BY MR. STRASSBURG:

Q. Do you have any experience relevant to this question?

A. I do.

Q. And what would that be?

A. If you're talking about tire friction marks -- and -- and we are, may I assume?

If we are, I see them in virtually every accident reconstruction of a motor vehicle case that I do. So if you're talking about tire friction marks, yes, I'm familiar with them.

Q. And the motor vehicle cases that you work in that involve -- I guess, skid marks; right?

A. Yes.

Q. And are those accident scenes ever swept up afterwards when the investigation has been completed?

A. Typically, they don't go erase the skid marks. What they do is they clean up the debris, because there's always debris from shatter in the motor vehicle.

Q. And do they ever sweep up the broken glass?

A. All the time.

JA004237

Q. Have you ever noticed whether that sweeping erases the rubber of the skid mark?

MR. DEUTSCH: Objection, Your Honor. Are we talking about in this case? generally?

Foundation. Speculation.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. In specific cases that you've handled where the skid marks were involved, did you have occasion to observe the cleanup of the accident scene after the investigation was done?

MR. DEUTSCH: Objection.

THE WITNESS: No.

BY MR. STRASSBURG:

Q. Okay. That's fair.

A. I get hired two years after the collision or more.

Q. All right.

A. So the investigation, the cleanup, that's done at the scene. I'm there two years later when people are disagreeing.

Q. Okay. Look, I mean, if you don't have the foundation, it wouldn't be fair to ask you the questions.

Now, you were shown -- yeah, I think you were

shown Exhibit 93-16.

93-16, I'm showing it as admitted.

MR. FALLICK: He wasn't shown it.

MR. DEUTSCH: He was not shown it.

THE COURT: What's that?

It's in evidence.

MR. FALLICK: Yeah, it was earlier.

BY MR. STRASSBURG:

Q. So I can show this to you.

MR. DEUTSCH: Yeah.

BY MR. STRASSBURG:

Q. So showing you Defense Exhibit 93-16, I believe you testified that this is your cone and level and this is the place where he fell; right?

A. Yes.

Q. And then you were asked --

MR. DEUTSCH: Objection, Your Honor. Misstates the testimony. He said that's the place he landed.

THE COURT: Okay. Well, he can say so.

MR. STRASSBURG: Well, that's important.

BY MR. STRASSBURG:

Q. Does this cone signify the place he landed or the place that the trip occurred?

A. No. Again, this is where his center of mass

touched the ground. All right? The trip point is behind this, antecedent to it. This is where his frontal plane -- and, specifically, his center of mass -- per my evaluation of the surveillance video, that's where it touched the ground.

Q. All right. And you see -- just so we're clear, and you see here this -- what I've highlighted in red, this is the expansion joint on the pavement --

A. Yes.

Q. -- right?

A. Yes.

Q. Okay. And the new pavement is the gray stuff to the right; yes?

A. Yes, sir.

Q. And the other pavement is what's shown on the -- to the left of that red line?

A. Correct.

Q. And that you believe to be and testified that that's original?

A. Did appear to me, yes.

Q. And --

A. Same slope.

Q. Right. So the pavement to the left would have been the -- I mean, you know that there's a -- there's an argument in this case about whether Team

swept up; right?

A. I -- I'm getting glimpses of it, yes.

Q. So the pavement that Team would have been sweeping, that's the pavement to the left of that red line; true?

MR. DEUTSCH: Objection. Foundation, Your Honor.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. The pavement to the left of that line is the original pavement that was there on November 12th, 2013; true?

A. That would be my understanding. That's what I thought. But, again, I measured the slope. Insofar as what the contractors did, that's outside my scope. I'm looking at the slope that was there at the time of my inspections.

Q. Okay. Appreciate that. Thank you.

Let me direct your attention now -- and I'll just blow up this utility cover that Deutsch asked you about. Remember that?

A. Yes, sir.

Q. Okay. And can you confirm for us that this cover appears to be recessed in the concrete?

A. Not appreciably. It may be slightly, but it

is for sure crosshatched. So I took a lot of photos of this. I guess they're not here. But you can see there is a tic-tac-toe on this extensively in that surface. You can't see it in this photo because it's a bit of a distance.

Q. Now, what I've circled here in red, do you see that along the edge of the metal disk that we're calling the utility cover?

A. Yes.

Q. And that's concrete; right?

MR. DEUTSCH: Just note my objection, Your Honor. These photos were taken two years after the accident, so I'm not sure --

MR. STRASSBURG: Well, that's true, Judge.

MR. DEUTSCH: -- this is relevant in terms of the way it decayed over two years.

MR. STRASSBURG: And had he not opened this door, I would not be walking through it.

MR. DEUTSCH: Well, Your Honor, the door that I opened has nothing to do with whether the concrete is broken up around the side in a ditch.

MR. STRASSBURG: But sometimes we open doors we don't realize we're opening.

MR. DEUTSCH: Oh, I'm going to walk right through it, Roger.

BY MR. STRASSBURG:

Q. Would you agree with me that --

MR. DEUTSCH: Objection, Your Honor. I still have an objection.

THE COURT: I overruled the objection.

MR. DEUTSCH: Okay. Sorry.

BY MR. STRASSBURG:

Q. Would you agree with me that what is circled here is the raised edge of the concrete surrounding the metal cover?

A. From this picture, I can't tell. It's too far away. Now, I can pull out my own that are crystal clear and give you an answer. So you choose.

Q. Fair. Sure. Have at it.

A. This will take a minute.

MR. DEUTSCH: Can we approach, Judge?

THE COURT: Sure.

(A discussion was held at the bench, not reported.)

BY MR. STRASSBURG:

Q. In the interest of time, I'll just withdraw the question and pass you to the next lawyer. Thank you for your time.

A. Yes, sir.

MS. FRESCH: Well, wait.

MR. DEUTSCH: Okay. I -- I could get started.

You threw us all for a loop there, Roger.

THE COURT: Does anybody need a break before we get started with the witness?

JUROR NO. 8: I'm good.

JUROR NO. 12: You good, Gerald?

JUROR NO. 8: I'm good.

MR. DEUTSCH: Whenever you need a break, just stop me and I'll --

JUROR NO. 10: We'll do the signal.

MR. FALLICK: I'll look.

MR. DEUTSCH: Perfect.

I'm younger than him, so I hear you better.

CROSS-EXAMINATION

BY MR. DEUTSCH:

Q. Dr. Baker, good afternoon.

A. Good afternoon.

Q. As long as we were on that subject of -- of this drain, let's stay there to start.

MR. POPOVICH: Objection.

MR. STRASSBURG: Objection.

MR. DEUTSCH: Or the cover -- I apologize. Utility cover.

MR. STRASSBURG: That's what he said.

MR. DEUTSCH: You're right. I apologize.

BY MR. DEUTSCH:

Q. Let's stay on the subject of the utility cover for a second.

A. Sure.

Q. And when I -- when I got up here before and asked you a couple questions about it, you were sort of unable to identify where it was on the two photos. You wanted to see some of the other -- some of your other photos in order to sort of identify where it was.

Do you recall that?

A. Yes.

Q. Okay. Let me show you one that I think --

MR. POPOVICH: 93-99.

BY MR. DEUTSCH:

Q. All right. 93 is pretty good. Is that in evidence already?

MR. FALLICK: Which 90?

MR. POPOVICH: 93-99 is the one that shows it in relation to the wall.

MR. DEUTSCH: Oh, perfect. That's what I was -- oh, yeah. There we go.

Okay. 93-99. That was the one that Mr. Roberts just put into evidence; correct?

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MR. POPOVICH: Yeah.

BY MR. DEUTSCH:

Q. Okay. So let's put this one up. And if I'm correct, you could see the utility cover in this photograph; is that right?

A. Yes, sir.

Q. And it's right here behind the cone. Am I pointing to the right spot?

That's it.

A. I got to come out.

Q. Here. I'll use the little red pointy thing right here. You can't do it. Is --

Get rid of that, Perry.

Come on down, Doctor. Is this it right here?

A. Yes.

Q. That's it?

Okay. And, from this, we could see where it is in relation to the building on this photograph; is that fair?

A. We can.

Q. And you could count -- there's sort of these lines for these panels on the wall; right?

A. Exactly.

Q. And we can see that there's one, two, three. And right at that -- about at that third line is that

expansion joint; correct?

A. Correct.

Q. And then there's one more. And then it's right after that next one; is that right?

A. I agree.

Q. And I think you said that from the cone to this line was how far?

A. It was -- I don't recall. I'd have to get my notes. But it's 3 to 4 feet.

Q. Okay. So now let's take a look at Exhibit 403-8, 403-8. And this photograph, we could count the expansion joints here. One, two, three; correct? And there's the -- the third one, which is in line with that; correct?

A. Right.

Q. And that would place the -- that's -- that's the cover right there, isn't it? Take a look.

A. That should be about right.

Q. Right there; right?

A. Should be, if this is -- excuse me -- one, two, three, four.

Yeah, should be about right.

Q. That's right there. And you can't really see that utility cover very well, if at all, in that photograph; true?

A. Correct.

Q. Okay. So that means there's only two options; true?

Well, I'll give them to you.

Option one is that that entire ground that you marked off -- do you have the one with the crosshatches?

Do you have that one with the crosshatches, Mr. Roberts?

This one. Thank you.

So option one is -- the part that you matched in Exhibit 570, that you crosshatched, is -- that actually was changed and that utility cover was removed; right? That's option one.

A. Removed?

Q. Well, let me start over because maybe I'm not being clear.

You can't see the utility cover in this photograph; true?

A. And this date is?

Q. The date of the accident.

A. Okay.

Q. And you just told us you don't see that utility cover where it should be?

A. You see something.

Q. Okay. So do you think that the utility cover is there but just maybe it's covered in dust?

A. I don't know. There is something there, but the resolution is not good.

Q. Okay. So is it your testimony to this jury that you can't see it because of the resolution, or are you telling the jury that you can't see it because it's covered in something?

A. I don't know the -- I don't know. I can't tell. It's not a good picture.

Q. Can't tell? Okay. Well, why don't we look at the hard copy. Maybe it's better.

A. Okay.

Q. Maybe not. Can you see the utility cover in that version of that photograph?

A. My concern earlier was that --

Q. I just asked if you could see.

A. I don't know that I can see it, no, because of the number of lines on the building.

Q. Oh, so now you no longer think that it would be there; now you're -- you're saying that it's -- it wouldn't be shown in this photograph?

A. That was my concern this morning.

Q. Right. Right. But two minutes ago you changed that concern and you said, no, I think it would

be shown there. And now you're going back on that?

A. Well, I don't know. I can't see. There is -- there is a dark area there.

Q. Okay. But you can't see that utility cover in that photograph?

A. Not clearly, no.

Q. Well, can you see it at all?

A. I'm not sure. It's not a good photo.

Q. Okay. How about if I zoom in. Let's see. Did that help?

A. Possibly.

Q. Well, take a look. Does this area right here -- I'll circle it for you. Does that appear -- oh. Does that appear to be --

A. If I may here --

Q. -- the cover?

A. It's in the right general location. And if we're looking at one, two, three, so fourth here, latitude about right, it should be about correct.

Q. Okay. In that picture, does it appear -- now, you testified that -- that Gavin's clothing in the pictures, you saw, had dust on them; true?

A. Yes.

Q. And you agree that the dust is -- on the clothing is at least the same color as what the floor

in this photograph looks like; true?

A. Does appear to be the same.

Q. Okay. Do you think that the reason that we can't see the drain in this photo -- or that you could only see it a little bit in this photo -- is because it's covered in dust?

A. Could be.

Q. It didn't just get up and disappear, did it?

A. I would doubt that, no.

Q. Now, I'm going to jump around a little bit. In the video that Mr. Strassburg showed you of the baseball player, that gentleman had what you called a toe catch. Is that true?

A. Yes. Yes.

Q. And unlike the guy in your little diagram that you showed, there was nothing -- there was nothing there that he tripped -- you know, that -- that he caught his toe on -- correct? -- other than dirt?

A. Well, there's two different mechanisms for the trip.

Q. I understand.

A. Both interrupt the stride phase.

Q. My question -- my question is, when you describe what a trip was before, you showed a diagram. I don't know where it disappeared to.

MR. POPOVICH: Do you want me to get it back?
BY MR. DEUTSCH:
Q. You showed this diagram. Let's take a look at it.
You showed this diagram; right?
A. You're correct.
Q. Okay. And you talked about this little thing that you colored orange here as the item that the person caught their toe on; correct?
A. Interrupted the stride phase.
Q. Interrupted the stride phase. So in this picture, there was something that came up above the level of the ground to interrupt the stride phase?
A. That's one method, correct.
Q. Correct. And you agree with me that in the one of the baseball player, there was nothing to interrupt the stride phase above the level ground?
A. Agreed.
Q. Now, when you saw the picture of the baseball player, and he was rounding the base, he had his foot on the base. Do you recall that?
A. Yes.
Q. Okay. And Mr. Strassburg asked you, at that point in time, if that person were to slip at that point in time, if his foot slipped off the base as he

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turned that corner -- he wasn't wearing cleats?

A. Which one, the right or the left?

Q. Well, I don't have the video --

A. Right. Go ahead.

Q. -- but I think he had his left foot on the base -- his left foot on the base as he was rounding first base; is that right?

A. I believe so.

Q. And he was running at that point in time; correct?

A. Correct.

Q. He was leaning forward; correct?

A. Yes.

Q. Okay. And if he had slipped at that point, he would not have fallen -- if he wasn't wearing cleats and his foot slipped off that base as he rounded it, he would not have fallen backwards; correct? He would have fallen forwards?

A. No, that's a little bit different mechanism now.

Q. Well, I'm just asking you. If that person who was running around first base, the baseball player, when he slipped, would he have fallen forward? Yes or no?

A. Straight down.

Q. Straight down.

A. Straight down. That's a push-off slip.

Q. Okay. But let me ask you a question. Have you ever said anywhere that -- well, let me -- let me try this again.

Would you agree with me that slipping and falling on a horizontal surface usually occurs when the fractional force of the rear heel of the sandal in the forward heel-strike phase, or the toe of the sandal in the push-off phase, and the surface is not sufficient to restrain forward momentum?

A. Right. We talked about both of those.

Q. Would you agree with that?

A. Yeah. One is a front foot slip, right.

Q. Right.

A. Then you described a rear foot push-off slip --

Q. Okay.

A. -- which rarely results in a fall.

Q. Okay. Well, did you ever write anywhere that slipping and falling on horizontal surfaces usually occurs in one of those two scenarios?

A. That would be true. Whether I wrote it or not, that would be true.

Q. Okay. And would you agree with me that -- or

did you ever write anywhere that, during this complex process, there may be numerous muscle adjustments anywhere from the toe to the head? Have you ever written that anywhere?

A. Sounds very familiar. But, yes, that's definitely true.

Q. Okay. And have you ever written anywhere that an interruption of this highly complex process can result in an individual's losing balance and falling backward, forward, or to the side? Have you ever written that anywhere?

A. Yeah, it can. Yes, the answer is yes.

Q. So the fact is that a person can slip on a toe slip or a heel slip and can fall forward, backwards, to the side, or in any other direction. True?

A. Entirely depends on the body mechanics and the environment he's in.

Q. Correct.

A. That's a very general statement.

Q. I agree with you. It depends on the body mechanics and the environment the person's in.

And with respect to Mr. Cox, would you agree with me that, up until the point of impact, you can't see any of Mr. Cox's body mechanics of any kind? True?

A. I would agree.
Q. Okay.
A. You see him getting up --
Q. Correct.
A. -- from that spot.
Q. And you can't see the environment in terms of which way he's moving specifically under that tree; true?
A. Correct.
Q. Okay. So, therefore, Mr. Cox could have slipped with either a toe slip or a heel slip or some other slip and fallen forwards just like he does in that video, because that can happen; true?
A. Not true.
Q. Well, have you not said before in reports in other cases -- do you remember a case of Murphy v. Rally's where you were retained as an expert in?
A. Do you have a year on that?
Q. That one's 2005.
A. Murphy. Okay. Go ahead.
Q. Do you remember that case?
A. No.
Q. Do you remember saying in that case that you could have a toe slip on the push-off phase that could lead a person to lose their balance and fall either

backwards, forwards, or to the side? Did you say that in that case?

A. I may have. That's -- if you're reading it, 2005.

Q. Now, Doctor, did I hear you right that -- that at this point you've billed the defendants approximately $19,000 for your work in this case?

A. I think it's about that in the five years, yes.

Q. $19,000?

A. I think so.

Q. And that doesn't include your testimony here today; correct?

A. That's correct.

Q. And that's going to be another, like, $3,000. Is that about right?

A. No. But it's going to be something.

Q. 2,500 for the full day?

A. Yeah, for a full day.

Q. Okay. And looks like you're going to probably be here for the full day at this point.

A. Yes, sir.

Q. Okay. So that's 2,500 for today.

And you sat around last week for a full day as well; correct?

A. Yeah. That was waiting time, though, yes.
Q. Okay. You don't charge for the full day --
A. It'll be something minimal.
Q. Okay. You don't charge your hourly rate for sitting outside?
A. No.
Q. You don't charge your $2,500 a day for testimony?
A. No.
Q. Okay. So at the end of this case, you also did -- between your last bill that you submitted, we know you've been back to the site a number of times; correct?
A. Correct.
Q. And you -- we talked about the May 1st visit, correct, where you did all those measurements; right?
A. The which?
Q. May 1st.
A. May 1st, yes.
Q. How many hours did you spend there?
A. You talking about 2014?
Q. No. This year.
A. Oh.
Q. May 1st, like 2018, like, a couple days ago.
A. It was a couple -- two hours that night.

Q. Couple hours?
A. Probably two hours.
Q. Two hours?
A. Probably.
Q. Okay. That's another 800 bucks right there, huh?
A. You got the rate wrong.
Q. Well, you said $400 an hour, I thought.
A. To sit in the seat.
Q. Oh, $300 an hour to do that kind of work?
A. That's correct.
Q. Okay. So that was 600.
And you were there last night for a couple of hours, weren't you?
A. No. I was there for about 20 minutes.
Q. 20 minutes last night. Okay.
Do you bill for a whole hour, or do you only bill for 20 minutes?
A. 20 minutes.
Q. Okay. So would it be fair for me to say, at the end of the day, that you approximately are going to get paid by the defendants about $25,000 for the opinions you gave in court today? Is that fair?
MR. ROBERTS: Objection. Form, Your Honor.
THE WITNESS: I think you're drawing a

relationship.

THE COURT: Hold on a second. There's an objection.

MR. ROBERTS: He asked him if he got paid for his opinions rather than his testimony.

THE COURT: Sustained.

MR. DEUTSCH: I'll rephrase the question.

BY MR. DEUTSCH:

Q. The defendants in this case paid you approximately, when all said and done, $25,000 for your testimony here in court. Is that fair?

A. That's not true.

Q. Well --

A. No one's paid me for testimony.

Q. They paid you for your analysis?

A. No. They paid me for my time.

Q. Your time. Okay.

So you've gotten paid 25 -- at the end of the day, you will be paid approximately $25,000 for your time involving this case. Is that fair?

A. That's about right for five years.

Q. And the fact is, Doctor, that working for lawyers in cases like this is all you do; is that true?

A. That's correct.

Q. And you've been doing that since -- you told

the jury 1990. But the fact is you've been consulting on cases since as far as back as 1980 or '81; is that true?

A. That's true.

Q. So when you told the jury 1990, that wasn't accurate?

A. No, it was, full-time. '91, full-time. Before that, few cases.

Q. Few cases?

A. Few cases.

Q. And how many hours would you say you spend on an average case?

A. Typically, about a day. Maybe 8 hours, maybe 10, 12. But hardly ever 60 or 70, hardly ever.

Q. Okay. So -- so approximately, on an average case, you bill the client about 1,000 bucks. Is that fair?

A. No. It would be more than that.

Q. More than that.

How much do you think you bill a client on an average case?

A. 2,500, I think, is --

Q. $2,500 --

A. Yeah.

Q. -- average.

And it goes up to 25,000 like this?

A. Well, this is over five years, Counselor.

Q. I understand that, but my question is does it go up to $25,000 or does it go more than $25,000?

A. I had one substantially higher several years ago.

Q. So would it be fair for me to say that, in the 5,000 cases that you've done for lawyers, that you've made millions of dollars in time testifying for lawyers in cases? Is that true?

A. In time? Since you mentioned time, yes.

Q. Yeah. But your time involves helping lawyers with cases. True? That's what you do with your time; you're not playing golf.

A. That too.

Q. You're helping lawyers with cases?

A. But I figure out the mechanics of the accident and the mechanism of injury.

Q. And you've made millions of dollars giving opinions in court. True?

A. I think that's a bit of a stretch, but I -- I see your point.

Q. Okay.

A. All right.

Q. And, in fact --

A. So it's -- it's in that area. It's in that area.

Q. Okay. And, in fact, you told this jury, when Mr. Popovich asked you, that you like to keep it at 50 percent plaintiffs work and 50 percent defendants work.

Did I hear you say that correctly?

A. Like it in the middle, yes.

Q. Okay. And there's a reason you like it in the middle; true?

A. Yes.

Q. And the reason is because, when people like me get up to cross-examine you, if you did 99 percent defendants work, your credibility might not be as good; is that true?

A. Precisely.

Q. So that's why you know, after all your years of experience, that keeping it 50-50 makes you look like you're more credible; is that true?

A. The idea is you have to be unbiased, and you just hit upon it.

Q. I understand that, but that wasn't my question.

My question was -- was that the reason that you like to keep it 50-50, because that keeps you in

business; true?

A. What keeps me in business --

Q. It's a yes-or-no question.

A. -- is being --

Q. It's a yes-or-no question.

A. No, I can't answer that with a yes or no.

Q. Okay.

A. What keeps me in business is being fair to both sides.

Q. Let's go back to your report.

A. Okay. Just a moment. I'll pull it out.

Q. You had -- you talked a little bit -- I'm going to -- again, I'm going to keep jumping around. I apologize. So if you lose me, let me know. Okay?

THE COURT: Before the next question --

MR. DEUTSCH: This is a good time for a break. You got a time-out? Yeah. Perfect.

THE COURT: Okay.

MR. DEUTSCH: Thank you.

THE COURT: We'll take a recess. Let's see. What time is it? Let's recess until 5 after 3:00.

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial

or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom just 5 after 3:00.

MR. MORELLI: Thank you.

MR. POPOVICH: Thank you, Your Honor.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

THE MARSHAL: All rise. Come to order.

THE COURT: Please be seated. We're back on the record outside the presence of the jury.

MR. ROBERTS: Thank you, Your Honor. And this is for redirect. But as long as we're outside the presence, I thought it would be easier to raise it now.

I know that they've withdrawn their expert, Dr. Ayres, who was their human factors expert. And at this point, without mentioning his name, I think that Mr. Deutsch has opened the door wide to me asking this witness -- he reviewed Dr. Ayres' CV and fee schedule. He knows Dr. Ayres was billing 360 an hour. He's

implied that 300 an hour is outrageous, it's ridiculous, and it's so high because you're selling your testimony to the highest bidder.

BY MR. DEUTSCH: I'm entitled to open -- to just bring out that he reviewed their human factors expert fee schedule and the plaintiffs were paying someone more than we're paying him.

MR. DEUTSCH: I've never heard, Your Honor, of someone attacking the collateral of someone who's not here.

They chose to put a witness on the stand. I'm entitled to go talk to him about those things. I chose not to call a witness for a reason. I chose not to call Dr. Ayres for a reason. And I don't want to say it in front of Dr. Baker, but I chose not to call him.

They're not entitled to collateral -- collaterally attack a witness who I never called to the stand. That's standard attack, collateral attack. It's standard.

MR. ROBERTS: I'm not attacking Dr. Ayres. I'm establishing the amount he's being paid is reasonable, customary, and not evidence that he's selling his time.

MR. DEUTSCH: How about this? I'll ask him

the question, and we'll clear it up. I'll ask him the question. I'll ask him the question, if people in your field it's reasonable and customary.

THE COURT: Okay. Then I'll reserve ruling on whether or not the question is beyond what he's going to ask would be appropriate.

MR. ROBERTS: Thank you, Your Honor.

THE CLERK: Mr. Roberts, did you want to move your --

MR. ROBERTS: Oh, and, Your Honor, I believe I misspoke. When I meant to admit Exhibit 570, I only said I'd asked to mark 570 as an exhibit. I may not have formally moved for the admission.

MR. DEUTSCH: Was that the one with the crosshatch?

THE COURT: I didn't have it shown as being admitted here.

MR. ROBERTS: So I would like to have that admitted into evidence, Your Honor.

THE COURT: Now, that has a lot of Post-it on it or something, right? I'm sorry. Yeah, I saw a Post-it on there.

MR. ROBERTS: The Post-it is not part of the exhibit.

MR. DEUTSCH: I thought it was admitted, but

in light of the fact that I now used it, I guess there's no objection.

THE COURT: Okay. It will be admitted.

(Whereupon, Defendant's Exhibit 570 was marked for identification.)

MR. ROBERTS: All right. Thank you, Judge.

THE COURT: Are we ready for the jury now?

MR. DEUTSCH: Yeah.

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: All right. Welcome back, ladies and gentlemen. You may be seated.

Do the counsel stipulate that the jury is present?

MR. DEUTSCH: Yes, Your Honor.

MR. RUSSELL: Yes, Your Honor.

MS. FRESCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MR. DEUTSCH: All right. Thank you. May I, Your Honor?

THE COURT: Yes.

BY MR. DEUTSCH:

Q. Before we move on, Dr. Baker, the fees that you charge in these cases, would you agree that those

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are the same kind of numbers that everyone in your business charges?

A. No.

Q. You charge less?

A. Yes.

Q. Okay. I'm not going to ask you why.

A. I can give you a reason.

Q. It's okay.

A. Okay.

Q. Now, as I said before we took a break, we're going to jump around a little bit.

You mentioned in the video, which is up there, Exhibit 403 -- you pointed at one point to -- and I'm just going to kind of fast-forward. You can see it on your screen -- to that -- ah. Oh.

MR. STRASSBURG: Excuse me. The video is 402.

MR. DEUTSCH: I'm sorry. 402. Sorry. 402.

BY MR. DEUTSCH:

Q. And you had pointed about the light -- the guy in the corner there with the light that's moving around. Do you see that?

A. Yes, I do.

Q. Okay. And you -- you -- you see that -- and I can play it again if you want.

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But the light -- the guy that's shining that light, you can't exactly identify where that person is from this video. True?

A. Correct. You can see the light shining down.

Q. Right. You can see the light shining down, but you can't see the person -- where that person is; true?

A. Well, you have a pretty good idea because it's bright in one particular location.

Q. Okay. So -- but you don't know if he's 5 feet or 6 feet or 8 feet? You can't tell?

A. 2 feet.

Q. 2 feet. You think he's 2 feet.

2 feet outside of the edge of that screen?

A. No. 2 feet one way or the other in -- in this scene.

Q. Well, but you can't see him in the video. Is that true?

A. Correct.

Q. Okay. And -- and you agree that that light is moving around in the video?

A. It is.

Q. And you said -- at some point in your testimony earlier this morning, you mentioned that you thought that that light was important in some way.

Remember that?

A. It is.

Q. Okay. Now, would you agree with me that, when someone shines a beam of light, that it sort of acts like a visual target that people can see? Do you agree with that?

A. It depends if it's, you know, illuminating the area.

Q. Yeah. Then it would be a visual target; right?

A. Well, it's -- it's intended to illuminate the area.

Q. Right. Well, have you ever heard the term "visual target" before?

A. It's a very common human factors term.

Q. Ah, okay. So would you agree with me that that would be considered a visual target?

A. Not necessarily, no.

Q. Okay. Have you ever talked about the fact that movement of visual targets can cause immediate attention to be focused on the visual targets?

A. Movement can.

Q. Okay.

A. That attracts the eye.

Q. So do you think that -- that the person there

who's waving the flashlight back and forth, that can catch the eye of the participants as they run around that corner; true?

A. It catches his attention --

Q. His attention?

A. -- because it's moving.

Q. All right. Okay.

A. If it's stationary, it's not as attention-getting.

Q. Right. So -- so because the light is moving, people running around that corner, attention would be drawn to that moving light; true?

A. They're drawn to that location.

Q. That location.

And when someone's attention gets drawn to a particular location away from the direction of travel, that could be a factor in why someone falls. True?

A. It can be. I don't know if --

Q. That's all I asked.

A. -- that's the case here.

Q. That's all I asked, if it can be; right?

A. I imagine, yes.

Q. Okay. And you've said that in cases before, that moving visual targets can draw someone's attention and that can be a contributing factor to a fall. True?

A. It can be.
Q. You didn't make any opinions about that in this case; is that fair?
A. That's correct.
Q. Now, you did -- you were initially retained in this case by Eric Freeman; is that true?
A. Eric Freeman, correct.
Q. Okay. And when you -- when Mr. Freeman called you about this case, that was sometime back in -- in when?
A. September 2014.
Q. Okay. It was not the first time that you had worked with Mr. Freeman; is that true?
A. Correct.
Q. You worked with him before?
A. Couple of cases, yes.
Q. Couple of times.
And then other than Mr. Freeman, you've worked with his firm, Selman Breitman, a number of times as well also?
A. Other attorneys.
Q. Other attorneys at his firm; correct?
A. Yes.
Q. How many times total do you think you've worked with their firm?

A. Six.

Q. Okay. And is it -- you know, you told us, when I was talking to you about what you were making money for -- and you were very careful about saying that you were getting money for your time and -- and -- and for your analysis; is that fair?

A. No. For the time.

Q. Right. For the time.

So would it be fair of me to say that, when an attorney calls you up about a case, that attorney doesn't tell you, "This is what I think." He just tells you, "This is what I'm dealing with. You do your analysis." Is that fair?

A. It's typically in the form of a question like it was here.

Q. Okay. And, in this case, you were asked -- the question that you were asked by Mr. Freeman initially is you were asked to inspect and evaluate the exterior location of the reported slip-and-fall and injury and incident occurring on November 12th, 2013? Is that fair?

A. Yes.

Q. That was the initial thing you were asked to do; true?

And you reviewed a number of documents at

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that point in time, one of which was the surveillance video; correct?

A. Correct.

Q. And you wrote a report dated May 16, 2016; is that right?

A. That's correct.

Q. And, in that report, you talked about the fact that you spent -- did your 90 minutes analyzing that surveillance video; is that true?

A. I did.

Q. Frame by frame; correct?

A. Yes, sir.

Q. Back and forth hundreds of times.

A. It was a lot, yes.

Q. And you then gave some opinions about that analysis; is that fair?

A. I did.

Q. And you said -- after going through that analysis, you gave this opinion: "After rounding the corner, it is not clear why Gavin Cox slipped in this particular near-flat location well past the point where he had turned the corner and was proceeding in a straight line on near-level grade towards open doors."

Is that the opinion you gave in your initial report?

A. I did.

Q. Okay. So, in your initial report, you did not say anything about a trip; is that true?

A. That's correct.

Q. So -- and the opinion you gave based on looking at that analysis of that surveillance video for an hour and a half was that you couldn't identify why he slipped?

A. Actually, it wasn't an issue. I was asked where.

Q. I understand that. But the opinion that you gave is "it is not clear why Gavin Cox slipped in this particular location."

A. Yes.

Q. That's the opinion you gave; true?

A. It's not clear, correct.

Q. Okay. Well, if you're analyzing a case that comes to you as a slip-and-fall and you can't identify why someone slipped, do you say, "Hey, I didn't think he slipped; I think he tripped"?

Would that be something that you would say?

A. That came after the additional information.

Q. But the first time that you ever gave an opinion in this case about whether he tripped instead of slipped was in March -- March 19th, 2018. That's

the first time that you ever gave an opinion in this case that Mr. Cox tripped and not slipped; isn't that true?

A. That's correct.

Q. And that was, like, a week before these nice people came here to start jury selection; true?

A. I don't know the date.

Q. Okay. So when you did the first report, you couldn't figure out why Mr. Cox slipped; true?

A. Correct.

Q. Now, you were aware, were you not, that there was an allegation in this case that there was dust on the ground; correct?

A. Not until all of that material became available to me, and that includes the photographs of Mr. Cox with dust on the front.

Q. Well, you had read Mr. Cox's deposition at the time of your first report --

A. That's correct.

Q. -- true?

A. Absolutely.

Q. And you're aware at the deposition that Mr. Cox testified that he slipped on dust; true?

A. Absolutely.

Q. So -- and you read other depositions in the

case at that point in time that talked about dust; true?

A. Right.

Q. Okay. So at the time you wrote your first report, you knew Team Construction was in the case; true?

A. Not so much.

Q. Well, you reviewed all the pleadings in the case, the complaint, the answer?

A. I've seen it all. It's just that the litigants are the litigants.

Q. Well -- so let's see where we are. You -- you -- at the point in time that you did your first report, when you were asked to evaluate -- evaluate -- evaluate the subject exterior location and you said "it's not clear why Gavin Cox slipped," is it fair of me to say that you don't mention dust anywhere in your first report? Is that fair?

A. I think that's fair, yes.

Q. Okay. So here you have a case that you're told is a slip-and-fall; true?

A. Yes.

Q. Okay. And it was reported as a slip-and-fall; correct?

A. Correct.

Q. And the records that you reviewed said it was a slip-and-fall; correct?

A. Yes.

Q. And the person who slipped and fell -- or says they slipped and fell identified in their deposition a potential reason for slipping and falling; true?

A. Correct.

Q. And you would agree with me that dust on the ground could be a reason that someone could slip and fall; true?

A. It could be.

Q. Especially if they're running over it; correct?

A. It could be.

Q. Okay. And if they were running over the dust in the dark, you agree with me that that would be more of a potential to slip and fall?

A. Possibly, yes.

Q. Okay. And you then did a report, knowing that it was alleged to be a slip-and-fall, knowing that there was an allegation of dust, and you didn't mention the word "dust" one time in your report; isn't that true?

A. The dust is not in here because the point of

impact is different than Mr. Cox had indicated.

Q. But whether he said --

A. That's why I said it was unclear to me.

Q. Okay. Fair enough. But let me take that answer for a second. Whether he slipped and fell here or slipped and fell here, if there's dust on the ground, does it make a difference which spot it is?

A. It makes a difference if he slipped back at the back wall.

Q. But we're talking --

A. That's the difference.

Q. -- about what he slipped on, not where he slipped. We're talking about the fact that there's dust in his deposition. There's dust talked about in other depositions. There's dust talked about in the pleadings that you reviewed. There's dust all over the place. And the opinion you gave is we have no idea why Mr. Cox slipped; true?

A. That's correct.

Q. So you just basically ignored --

A. He's 20 feet 5 inches away.

Q. But what does that have to do with where the dust is? Is it possible that the dust was 20.5 inches away?

A. 20 feet 5 inches?

Q. Yeah, 20 feet 5 inches away. Could that be where the dust was?

A. Possible.

Q. And, therefore, he could have slipped on that dust and that's why he fell?

A. And he went forward. And then we see the rest of the information.

Q. But we talked about that already. We talked about that already. We already talked about the fact that someone could slip in a toe push or a heel slip or any other thing you want to call it and, because of all the fancy mechanics, they could fall forwards or sideways or backwards. You already agreed with that, Doctor; true?

A. That's true. Then you have to look at the rest of the evidence that fits with it.

Q. Agreed. And the only --

A. Don't forget that part.

Q. Right. And the only evidence that you have -- sorry -- the only other evidence that you said was relevant to you was his photos; true?

A. Photo is very relevant to me.

Q. Very relevant. And it's relevant because it shows dust -- where the dust was on his body; true?

A. Very much so.

Q. And where the dust was on his shoe?
A. In the front, not on the flank.
Q. And where it was on his shoe?
A. Very much so.
Q. Right. But if someone could fall -- which is what you already agreed with -- sideways or backwards or forwards or any direction, then what does it matter where the dust is on his body? It doesn't.
A. It matters a tremendous amount.
Q. Okay. Well, let me ask you this question --
A. All the information has to fit together.
Q. Right. But if someone could slip and fall backwards, then if the person had dust in their back, that doesn't rule out that the person slipped; true?
A. On his back?
Q. You just --
A. That would likely be a slip.
Q. Okay. And if someone could slip and fall on their side, then the fact that they have dust on their side doesn't rule out that it's a slip; true?
A. If it's down their side, could be a slip.
Q. And if someone can slip and fall forward, then the fact that they have dust on their front doesn't rule out a slip; true?
A. It can be a rear-foot slip if he has dust on

the front.

Q. Okay.

A. But we don't have that here. We don't have injuries consistent with that.

Q. Well --

A. So, again, it has to be a merging of all the pieces of information.

Q. We're not going to talk about injuries because that's not part of the opinion you gave here today.

A. Well --

Q. So let's -- let's talk honestly here. That's not one of the opinions you gave here today; true?

A. Well, we were saving that piece, I understand.

Q. Right. Okay. But you told the jury today, based upon the things you saw -- just based on the things you saw, the fact that he had dust on the front of his clothing -- you list them. Let me see if I can get it right, because I don't want to misstate you.

You listed three pieces of evidence that you used -- you called them the objective pieces of evidence -- the surveillance video, the measurements, and the clothing and the shoes. Those are the three things that you said; true?

A. The photograph.

Q. The photograph is clothing.

A. That's No. 3.

Q. The photograph of his clothing. I wrote it down as clothes and shoes.

Let me ask you a question. You found it was very important about the dust on the front of his shoe; correct?

A. Yes, sir.

Q. Do you know -- does your degree allow you to tell whether -- now, first -- withdrawn.

You're aware that Mr. Cox testified that that wasn't a scuff mark; correct?

A. I heard that, yes.

Q. Okay. And that he said it was just dust that he was able to wipe clean.

A. Okay.

Q. Did you hear that?

A. I did.

Q. Okay. You can't tell, can you, whether that dust got on his shoe when he was tripping, as you say, or maybe when he was laying on the ground and his foot was on the floor like this and he was getting up like this? You can't tell where the dust came from, can you?

A. You have to put it all together, all --
Q. I'm asking you --
A. -- these pieces.
Q. -- if you could tell where the dust on his shoe came from. Can you tell -- one possibility is that it happened like you say, which is that he dragged his toe and dust got on the top of his shoe. That's what you thought; true?
A. That makes sense with the rest of the information.
Q. Well, at one point, Mr. Cox was laying on the ground, which is how he got dust all over him. You can't analyze from this video which way his foot and shoe moved when he was on the ground, can you?
Can you?
A. On the ground?
Q. When he's on the ground, you can't see from this video what his shoe is doing with respect to rubbing in the dust, can you?
A. Now, did you notice --
Q. Can you?
A. -- the shape --
Q. Can you answer my question?
Do you know from this video what Mr. Cox was doing with relation to the dust on the ground based on

this video?

A. From the video, no.

Q. Okay.

A. That's one piece of information.

Q. Okay. Can you -- can you -- is it possible that the dust got on his shoe while Mr. Cox was on the ground?

A. Not the shape it is, no.

Q. So you're able to tell this jury for $25,000 that the shape of the dust on his shoe can only be caused by one thing?

MR. ROBERTS: Objection to form.

THE COURT: Sustained.

Rephrase.

THE WITNESS: Let's look at it again.

BY MR. DEUTSCH:

Q. Did you -- it's your opinion to this jury -- I just want to make sure I'm clear -- that the shape of the dust on his shoe can only come from that motion?

A. Because of the intensity and the shapes of the markings --

Q. Do you know if his shoe bumped into anything on the way -- when he was getting on the gurney that could have maybe rubbed the dirt at all?

A. No.

Q. No idea; right?
A. No, no information.
Q. So the fact is that that dust on his shoe could have changed when he was getting on the gurney or something else. You don't know; right?
A. No, I do know.
Q. You know --
A. It's put together with the rest of the information.
Q. I'm talking about one thing. I'm talking about the dust on his shoe and the fact that you have absolutely no idea how the dust got on his shoe. That's what I'm talking about. Is that a true statement or not?
A. That's not true.
Q. Well, I agree with you. It's not a true statement because we know where the dust came from. The dust came from the ground that he was running on; true?
A. When he dragged his toe.
Q. Well, that's the part that we're going to get to. My first question is you agree that the dust came from the ground that he was running on.
A. Apparently, yes.
Q. And you're telling us that when Mr. Cox was

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on the ground -- do you know how Mr. Cox got up, like what he did with his feet when he got up? Could you tell by looking at the video? Yes or no?

A. He does get up in extension.

Q. Do you know what he did with his feet as he got up? Can you tell from the video?

A. No, you can't see it on the video.

Q. Okay. So when he got up, could he have had his feet -- can you see me?

A. Yeah.

Q. Could he have had his feet this way?

A. No.

Q. Not possible?

A. No.

Q. Impossible.

A. No. Take a look --

Q. Okay. When he's on the ground like this laying down, could he have his feet this way? Totally impossible.

How about this way?

A. No. That interim mark on the metatarsals is an indicator of the pressurization of the shoe into the ground surface.

Q. Okay.

A. All right? So that doesn't happen just

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laying there with what you just did.

Q. Okay. Okay.

A. With a soft shoe.

Q. But, despite that, you never, in that first report, told anyone that you thought it was a trip; true?

A. Correct.

Q. Now, did you contact -- I know. It's either that or a paper clip or something.

Did -- now, at some point later, obviously, you did this supplemental report a week before trial; true?

A. Actually, I did it before that. It looks like it got published about three weeks later; but, yeah, I did -- I did it, I believe, March 1st.

Q. Okay. But it was dated March --

A. March 19th.

Q. -- 19th?

A. Correct.

Q. And you, at that point, didn't reach out to Mr. Freeman and say, "Hey, you know, I was looking at that Cox case again and I realized I think this was a trip, not a slip"? That's not how it went down?

A. Exactly. You're right.

Q. Correct. Instead, Mr. Freeman called you,

and he gave you some information; correct?

A. He gave me new information. He said, "What do you think?"

Q. Right.

A. I said, "Well, let me look at it."

Q. But the fact is you mentioned in your first report that you did, in fact, review a postincident photograph of Gavin Cox. Do you see that?

A. Yes.

Q. Do you know which photo that was?

A. It was one photo. I don't know. But it wasn't the one that we've shown today.

Q. Well, you got your whole file with you, so why don't you show us --

A. Yeah, but it's one, I think, that has not been admitted.

Q. Well, you can show it to me, then.

A. I will.

Q. Okay. So, just so I'm clear that -- that -- the photo that you just showed me for the record is exhibit -- is exhibit -- what are the dust photos, what number?

MR. POPOVICH: 84 dash --

MR. DEUTSCH: So that was, then, 84 dash --

MR. POPOVICH: 3, maybe.

MR. DEUTSCH: 3.

Your Honor, at this time --

MR. POPOVICH: I'm not positive.

MR. FALLICK: 83.

MR. POPOVICH: Oh, is that it?

Sorry, Adam.

MR. FALLICK: If we're talking about the same photo.

BY MR. DEUTSCH:

Q. 83-3, in that photograph, was that something that you utilized in forming your opinions?

A. Not really. It wasn't -- it wasn't that conclusive to me.

MR. POPOVICH: For the record, 83-3 just got published.

MR. DEUTSCH: I apologize. That was really unintentional.

BY MR. DEUTSCH:

Q. Is that something that you utilized to formulate your opinions?

A. No.

Q. Did that photograph show any dust on Mr. Cox?

A. I can't tell. It does look a little dusty in his front, but I just can't tell from this one. It's when the others surfaced, that's when I got interested.

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Q. So one of the photographs that you looked at in your initial report did appear a little dusty?

A. It does. It's not clear. It could be dust.

Q. Okay.

A. It's just not a good photo. I discarded it.

Q. So that's another thing that you had before your first report other than the depositions and the pleadings and those things that -- that shows dust and that you just disregarded?

A. Well, we just said I'm not sure what it is on his front here.

Q. Okay. Now, when you spoke to Mr. Freeman before your 2018 report, did he at that point tell you, "Hey, any chance that this could be a trip, not a slip?"

A. He asked me about that. He said we had these other photos.

Q. Okay. So you're telling me that Mr. Freeman was the one who said, "Look at the shoe pattern dust. Can that tell us what -- what -- that it was a trip?"

A. Not exactly. He said, "Do we know if this is a slip or a trip? There's an allegation about dust." That was in the meeting. And I said "Let me look into it."

Q. Well --

A. And that's what I did.

Q. Well, there was an allegation about dust before your first report as well, wasn't there?

A. I don't know.

Q. Well, you read the complaint and the pleadings.

A. The complaint says slip.

Q. Okay. Does the complaint say anything about dust?

A. I'd have to get it back out, but I don't recall.

Q. Okay. Let me ask you a question. You know, you said before that you're not really that familiar with the pleadings and stuff, you don't really look into them.

The fact is, Doctor, that you are very familiar with the legal process; is that true?

A. Reasonably familiar.

Q. Reasonably familiar. In fact, you do more than just give opinions like this -- or testimony like this today in court even with respect to this case; is that true?

A. Can you explain?

MR. POPOVICH: Objection. Vague.

THE COURT: Rephrase it.

BY MR. DEUTSCH:

Q. Sure. Well, I had an opportunity to look through your file before you came today; true?

A. Yes.

Q. Right. That's -- as my right, I'm allowed to see what you brought with you; right?

A. You bet.

Q. And you have -- you have everything laid out very organized in there, very impressive.

A. Thank you.

Q. And one of the folders was "voir dire"; correct?

A. Yes.

Q. And -- and, in fact, not only did you give testimony and do these reports in this case, but you wrote out specific questions for lawyers to ask while the jury was being selected in this case; isn't that true?

A. I wrote that ten years ago.

Q. And you provided them to the attorneys in this case to use in helping select this jury?

A. No, those were for me. Oh, no, you're misunderstanding entirely. The voir dire is to question me on my credentials, not the jurors. When you see this file that says -- take a look at it again.

Q. Maybe I'm wrong.
A. Yeah, I think you're wrong.
Q. Let's take a look. If I'm wrong --
A. Let me find it. Give me a second.
Q. -- I'm the first one to admit it.
A. I know you will be, because I know you are.
Q. Fair enough.
A. Oh, you know what? I already put it down.
Q. There was a manila folder.
A. This is me.
Q. Okay. Let's see. Oh, I see that. This is the questions for you to be asked. I got you.

So you actually wrote out questions -- I was wrong; I'll admit it. I misread.

So instead of asking -- writing out questions for the lawyers to ask during jury selection, you wrote out the questions ten years ago that the lawyers should ask you during their examination?

A. Yeah, I don't know anything about asking the jurors.
Q. I didn't expect you to, so I was surprised.
A. I can imagine.
Q. But -- but -- but instead of letting the lawyers write out their own questions, included in your fee is that you write out their direct examination

questions for them, at least with respect to your background?

A. There's no fee for providing a list of things I've done, and here's a question for it.

Q. Okay.

A. There's no fee for that.

Q. Now, in your second report, you wrote this statement, "Either a slip or trip can cause a loss of balance and fall."

Do you agree with that?

A. Yes, I do.

Q. And that, after a loss of balance, there are numerous factors that affect whether there will actually be recovery of balance or a fall downward?

A. Also correct.

Q. And do those factors include the speed that the person is moving in?

A. Yes.

Q. Do they include the direction that the person is moving in?

A. Yes.

Q. Do they include the ability of the person doing the moving?

A. Very much so.

Q. Now -- now, when you were doing your -- your

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measurements in terms of where Mr. Cox fell, you said at one point, I think, that you had -- you put a little sticky on the one surveillance video and then had someone go out there live on the next surveillance video?

A. That's partially correct. I actually did it two different ways.

Q. Okay. Once I think you said a sticky and had someone go out there live with a cell phone?

A. That's when I did it with a single monitor.

Q. And the other one was you just --

A. Had two.

Q. Two monitors next to each other?

A. Right. And just --

Q. Now, are you aware that the surveillance video camera that is up that took that surveillance video, that it moves?

A. I would imagine it does, yes.

Q. Okay. And that it could swivel around?

A. Likely, yes.

Q. And -- and, therefore, if the camera wasn't in the exact same position when you did your measurements versus when the surveillance was taken, that could affect the measurements of where the person was?

A. Yes. Good point.
Q. Okay.
A. Had to line up the fixed points. Building -- where the doors are, that had to line up.
Q. Okay. I understand that, but -- but my question is there's no mention anywhere in your report that you did any such calibration; is that fair?
A. I don't know. Do you want to see that in the report?
Q. It's not in there.
A. Okay.
Q. So is -- is that a fair statement that it's not in there?
A. I think it's not in there.
Q. Okay.
A. But I did evaluate this very carefully with fixed positions.
Q. Okay. Now, you don't know what route Mr. Cox took around that corner; is that fair?
A. I was not there that night; correct.
Q. Right. And based on the objective evidence, the surveillance footage that you saw and you said you relied on, you can't see what route he took either; true?
A. Up to that point, correct.

Q. Right. All you could see is the location he landed. That's all you could see?

A. Correct.

Q. Right. Because the rest of it is obscured by the tree?

A. Correct.

Q. And let me read you a piece of Mr. Cox's testimony from the trial.

Did you read his trial testimony?

A. In this trial?

Q. Yeah.

A. No.

Q. Well, do you think that would be relevant?

A. I don't see how I would have gotten it.

Q. Meet Kristy.

A. I'm just meeting her today.

Q. I know. But your attorneys get daily copies sent to them every day. They could have sent it to you.

A. No.

Q. No?

A. That didn't happen, no.

Q. It didn't happen.

Do you ever find it may be relevant to review trial testimony before you give your -- your testimony?

A. I can't say I ever have. Occasionally, an attorney will say somebody said something. That's as much as I usually get.

Q. Do you think it would be relevant to do so? Helpful?

A. It might help, sure.

Q. Okay. So let's take a look at what Mr. Cox said in this case.

Page -- this is on 5/1. 5/1. And it starts on page 34 at the bottom.

"QUESTION: And the best you can tell us, you turn the corner, you're running quickly -- first of all, how did you turn the corner? What do you remember?"

A. May I interrupt? Who's reading -- who's saying this now?

Q. This is Mr. Cox.

A. Is saying this?

Q. Well, the question, I think, was -- is that direct or --

MR. FALLICK: I think it was direct.

BY MR. DEUTSCH:

Q. Okay. I think that was Mr. Morelli. He's not with us today.

A. Okay.

JA004300

Q. Well, he's with us. He's just not here in the courtroom.

A. I got it.

Could you move this back maybe, just the one page, just for a moment --

Q. Sure.

A. -- so I see where this came from.

Q. The question is, "And the best you can tell us, you turn the corner, you're running quickly -- first of all, how did you turn the corner? What do you remember?

"ANSWER: I -- I -- I -- I remember because I saw -- as I turned the corner, I saw the lit door. So it was almost like a beacon in the darkness to me. And as I turned the corner as fast as I could, I started to run towards it.

"And then it felt like an elevator suddenly moving upwards. And I'm taking the corner as fast as I could, and I feel my feet just slip from underneath me. And I almost feel like for a second all of me is in midair. That's what it felt like.

"There's a speed of turning, seeing the sharpness of the turn and the weight of my

body going around. And then I just feel my feet slip straight from under me."

Okay. That's what Mr. Cox testified in this -- in -- in this trial. Okay?

A. Okay.

Q. And I want to ask you about a couple of pieces in there. First, the first sentence says, "As I turned the corner as fast as I could, I started to run towards it."

Do you see that, end of that first paragraph?

A. I got it.

Q. Okay. Now, would that -- do you agree with me that, when someone is describing a route that they're taking around a corner, that that would be, as you say, subjective?

A. Describing his route?

Q. Yeah, to how he describes it is subjective?

A. I would think so, yes.

Q. Right?

A. Yeah.

Q. So how he described coming around the corner might be different as you're coming around the corner; fair enough?

A. I guess so.

Q. Different than my coming around the corner or

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife,	)	Supreme Court No. 76422
Appellants,	)	District Court No. A-14-705164-C
vs.	)	
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC,	)	
Respondents.	)	

JOINT APPENDIX - VOLUME 17

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Grand Hotel would like to join Backstage's motion on the causation ground.

THE COURT: Okay.

MS. FRESCH: And so would DCDI and David Copperfield.

THE COURT: Very well.

MR. MORELLI: Oh, why not?

MR. STRASSBURG: So would Team, Judge.

THE COURT: All right.

MR. DEUTSCH: Your Honor, on -- on a first note, these cases and this whole idea are completely distinguishable from this situation. This is not a situation where someone's just walking down a sidewalk. Mr. Cox was very clear that there was a confluence of events that caused this accident: the running in the dark, not knowing where he was going, up an incline, around the corner, and the dust, all of those things together. It was not just someone walking down a sidewalk who might have encountered one or two or more of those things.

He was put in this position because of the trick that they developed, they didn't tell him about, they made him do, and that includes MGM, Copperfield, DCDI, and Backstage, all of them.

So all of these cases, just on their face,

are distinguishable for that purpose. Mr. Cox has made clear, he's given testimony, that it was all of those things that everyone knows. There's no dispute that he was running -- or maybe there is -- but there's -- he testified that he was running. So, for this purpose, we have to assume he was.

He testified that it was dark, as did other witnesses. So, for this purpose, we have to assume it was.

He testified there was dust. So, for this purpose, we have to assume there was.

He testified that the incline had something to do with it. So, for this purpose, we have to assume that it does.

He testified that he didn't know where he was going and it was confusing and chaotic and pandemonium. So, for this purpose, we have to assume it was.

So when you put all of -- and we have evidence that Ms. Lawrence fell in the identical place without the dust. So that is further proof that, even if you take the dust out of the case, the trick itself is dangerous.

So there's more than enough evidence, Your Honor, to suggest what caused his fall and --

MR. MORELLI: For the jury to decide.

JA003826

MR. DEUTSCH: -- the jury should get to decide. If the jury finds that all of those things were -- were dangerous and that's what caused --

THE COURT: So you're saying everything caused it?

MR. DEUTSCH: We believe that it's all of those things together caused those. It was a mix. That was what Mr. Cox testified to. He used the word "mix." He said when you're running in the dark with the -- not knowing where you're going and an incline and the dust, all of those -- around a corner, it was a mix. And I think his term was something like it doesn't take a rocket scientist to say that that's not a good mix.

So it's our position in this case, Your Honor, it was all of those factors created a dangerous condition that led to Mr. Cox's fall. And we know that because we have someone who did the exact same thing and fell just a couple months later in the same place when there was no dust.

MR. MORELLI: A few months before.

MR. DEUTSCH: A few months before. Excuse me. When there was no dust.

THE COURT: All right.

Mr. Roberts, last word on that one?

JA003827

MR. ROBERTS: Yes. Thank you.

THE COURT: Okay.

MR. ROBERTS: Your Honor, under --

MR. DEUTSCH: Ten after 5:00.

MR. ROBERTS: A plaintiff has to produce at least some evidence independent of their own self-serving testimony to support their theory of causation. And, in this case, they have done nothing.

And, in fact, Mr. Cox doesn't even have the foundation to speculate about why he fell based on his after-the-fact opinions trying to put this together.

I'd just point the Court to one more thing. And that's page 94, again on May 1st.

"QUESTION: Do you know why you fell?

"ANSWER: No. Well, apart from running as fast as I can, I didn't -- there wasn't -- I realized after the fact what caused it, but not at the time."

So the only --

MR. DEUTSCH: That's his deposition testimony.

MR. ROBERTS: -- reason he thought he -- that's in the record. I'm reading from the court transcript.

The only reason he thought at the time was he

fell because he was running. And if someone falls because they're running, that's not sufficient to find liability. And now he's come up with these confluence of factors and dust on his clothes, but that's just his own self-serving testimony. There's no evidence as to why he fell. And the jury is just going to be asked to speculate.

Thank you, Your Honor.

THE COURT: The jury will be properly instructed on the law at the time. I'm going to deny that motion and the joinders as well for the same reasons --

MR. CALL: Well, Your Honor --

THE COURT: -- I indicated.

MR. CALL: -- before you go ahead and -- and deny that, as we had -- Team had the same -- same type of -- of motion.

THE COURT: I saw.

MR. CALL: And unlike Backstage's motion, it's only specific to Team.

If you look at Rickard, they were talking about proved facts. You have a duty here as the -- the Court has a duty to make sure that -- that there's, I guess, facts -- that you could infer facts, reasonably infer facts. And that's what the jury's supposed to be

able to do, reasonably infer facts from proved evidence.

What did we -- what has plaintiff proved here? They haven't proved the origin of the dust. They haven't said where the dust came from, whether it was, you know, the planters or it had -- you know, from the atmosphere, you know, dust here in Las Vegas, or they just -- they're just essentially speculating -- why.

THE COURT: So you're arguing your motion now; right?

MR. CALL: Right.

They're just essentially speculating what the -- you know, the dust, you know, came from the dumpster. They're -- they're guessing at it. And that's what you're going to ask the jury to do when you give them the -- this plaintiffs' case, is they're going to have to speculate where the dust came from because plaintiffs have not proved that.

In addition, the jury is going to have to speculate and figure out if this actual concrete was slippery with dust on it or with no dust. In fact, there's no evidence on that whatsoever. Plaintiffs withdrew their expert -- their causation expert. They don't have an expert to -- to testify to that.

The only thing we have is speculation and conjecture. They don't have one iota of evidence in this case that has been, you know, admitted that would allow them to say definitely dust is the cause of this accident -- of this accident, no direct evidence against Team in regard to that.

In fact, they don't even have any circumstantial evidence that they can make -- that a jury can make inferences that dust came, you know, from Team's dumpster. It's all speculation. And I think you should grant the motion.

THE COURT: Now, you have two written motions; right? Is that both of them?

MR. CALL: Yes, Mr. -- Mr. Strassburg will argue the next one.

MR. STRASSBURG: I have a couple, Judge. Is it my turn?

THE COURT: Yep.

MR. STRASSBURG: Thank you, Judge. Actually, I --

THE COURT: Then I will let counsel for plaintiff address both of them, and then you'll both have the last word on your motions.

MR. STRASSBURG: That's fair, Judge. You know, there was one other motion that I wanted to make,

and they were kind enough to print it off for me. And I thought I'd tender it to -- to the -- to the parties and to you now. And then I'll just do that one last to give a chance to look at it. It's pretty simple.

MR. DEUTSCH: I don't even understand the title.

MR. STRASSBURG: The motion that I wanted to argue first is the standard of care. We have given you the law in the papers that a licensed professional in Nevada has a right to have his conduct or her conduct judged on a standard of care as to what is customary in the profession.

Doctors have a right to have their conduct judged based on the standard of care for a doctor, same for lawyers, same for accountants. It should be also the same for licensed contractors doing this kind of work.

The difference, Judge, between a professional standard of care -- and we cite you to a California jury instruction that makes this pretty clear that the standard of care for a professional is custom. And it's a factual matter that has to be established by testimony of a properly qualified expert.

Judge, the only expert in the case in the prima facie case was Paul King, who was the project

manager and had ten years building TI on the Strip. And his testimony, which I quote in the paper, is that they satisfied the standard of care. He describes the content of the standard, that it involves broom-clean housekeeping, it involves performing the contract to its terms, and it involves punching out with the owner to the owner's satisfaction.

There's no evidence that this -- that there's even an issue of fact that this standard of care that is in evidence was not complied with. The plaintiff does not have an expert in construction standards of care. It's fundamentally unfair, Judge, to apply the default reasonable person hypothetical standard of care in this instance where you have a specialized professional doing a specialized construction under a license issued by the State of Nevada who was subject to discipline and the complaint and enforcement procedures of the State of Nevada.

So on that basis, Judge, for failure to make a prima facie case as to the content of the standard of care that's applicable and its breach, you should dismiss the plaintiffs' claims against Team.

THE COURT: All right. We're going to address the other one too or you're going to do that separately?

JA003833

MR. DEUTSCH: Can I do it one at a time?

THE COURT: Foreseeability or whatever?

MR. DEUTSCH: Your Honor, may I just do one at a time so I keep my head straight?

THE COURT: Okay.

MR. DEUTSCH: Thank you.

Your Honor, I think that -- that there's no law about the -- in Nevada -- Nevada -- sorry -- Nevada --

THE COURT: New York City.

MR. DEUTSCH: I got it right the other day.

-- that -- that suggests that someone who's broom -- cleaning up dust has some enhanced standard of care. There's lots of people out there. Taxi drivers have licenses to drive a taxi. They're not held to a different standard of care if they hit someone while they're driving; they're held to the same standard of care of every other driver.

The reason it's different when you're -- the reason you're dealing with it in a medical case and you need experts in those cases is because the standard of that care in those kinds of cases is not known to the ordinary juror. In cases such as this where every juror knows what -- if the jury finds that the dust on the ground is slippery, you don't need any science

to -- that's -- that's stuff that's in the purview of your everyday juror, that if there's something on the ground, it's slippery.

Same thing with whether or not it was cleaned up properly. That doesn't take any expert evidence. That's why we withdrew our expert because there's no need for it, because everyone knows did it clean up properly or didn't? If they believe they left too much dust on the ground, then that means they didn't clean up properly.

There's no cases that suggest that a -- just because they have a license, that this company is held to any other standard of care than a reasonable person who's doing sweeping-up activity on the ground. That's it. Because the fact -- this broom-clean standard, Your Honor, is a contractual standard set out in their contract.

If this accident happened because they had a contract with a building to do construction work on the sidewalk, and I'm a pedestrian and they leave a bunch of dust on the sidewalk and I slip on this -- on the dust that they left on the sidewalk or the oil -- whatever it is they left on the sidewalk, they don't get to come in and say, "Hey, Judge, there was some stuff on the sidewalk, but it was broom clean and the

owner that hired me only required me to keep it broom clean."

I didn't sign the contract with them. Their duty to me is just like anybody else, to make sure that the work area that they do is in a reasonably safe condition. This broom-clean standard has nothing to do with the other people. The broom-clean standard is a standard that's -- that was set out pursuant to contract with the owner.

It had nothing to do with their duty is to everybody else. So they're trying to conflate what their contract required. MGM required them to keep it broom clean. And when they fight out their cross-claims against each other, maybe whether or not it was broom clean or not might be something that's relevant.

But in terms of their duty to everybody else who's walking through their construction site, that's a reasonable person's standard. And that's all we have to meet, Your Honor.

THE COURT: Okay. Thank you.

I have a question, Mr. Strassburg, looking at your brief here on the standard of care for professional negligence claims against a licensed Nevada professional contractor. That's the motion I'm

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talking about now.

MR. STRASSBURG: Yes, sir.

THE COURT: And I'm going to quote from it a bit. Okay? Page 7, starting at line 20, it says, "Team would also note that Nevada has passed several laws barring negligence actions against licensed professionals unless expert affidavits and reports are filed to establish the applicable professional standard of care." And it says, "See example NRS Section 41A.071, medical professionals; NRS Section 11.258, design professional, engineer, architect, landscaper, and nonresidential construction project."

"The legislative intent behind such laws is to discourage and prevent the jury from being left on their own to determine whether a licensed professional defendant met their applicable legal professional standard which is specific to the laws, customs, and practices of that professional trade." And then it says, "See Borger v. Eighth Judicial District Court," citation.

And then in quotes to a reference to that case, it says, "This section's NRS Section 41A.071 clear mandate of dismissal without leave to amend for complete failure to attach an expert affidavit to the complaint is consistent with the underlying purpose of

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the measure, which is to ensure that malpractice actions be brought in good faith based upon competent expert opinion. And in this, the statute clearly works against frivolous lawsuits."

Then it goes on -- that's -- that was a quote. Then it goes on -- the brief goes on to say, "The fact that Nevada requires an expert affidavit at the outset of a case so that regularly sued professionals can be spared the cost of a defense if no expert can testify that they violated the relevant standard of care signifies the importance of such expert testimony that such cases cannot go to the jury unless such expert testimony as to the standard of care and its breach is offered."

Then you refer to a California jury instruction that's utilized in professional negligence types of cases.

You're not saying here, are you, that an affidavit was required to be attached to the plaintiffs' complaint and that the category that your client is in is such that it -- there's a statute that provides for the standard of care?

MR. STRASSBURG: No.

THE COURT: Okay. So I'm trying to make sure I understand.

JA003838

MR. STRASSBURG: You know, Judge --

THE COURT: Your motion is by analogy, right, basically?

MR. STRASSBURG: It is, sir. And the analogy is this: That some professionals have been notoriously the subject of litigation, some of it frivolous; some of it not.

To address the problem of the commencement of cases against certain professionals that have good lobbies at the legislature, these affidavit statutes have been enacted to, at the threshold, make sure that there's at least some professional critical of the defendant's work. That is the point of those statutes.

THE COURT: But we know there's no such statute that pertains to Team Construction?

MR. STRASSBURG: I don't know of one, Judge. And I think you're right there.

What I'm saying is, is that, even in those cases where there is a statute, the -- the law is the same as in cases where there isn't one. At the end of the case, when you get to the jury, you still have to prove the applicable standard of care for the professional.

Now, as to Mr. Deutsch's comment that the only reason for that is one of, you know, what the

jury's can be expected to know. They know how a cabdriver should operate a vehicle; right? But, you know, they don't know what papers the cabdriver must file and with what state agency to keep his license in good standing so that he can accept fees and -- and drive.

Now, that is the standard of care of a professional which is not in the jury's ken. And you know something, Judge? In this case, nobody knew about the contract between Beacher's and Team requiring only broom-clean cleanup. Mr. Deutsch is wrong. That provision was not in the contract of MGM and Beacher's; that provision was in the contract between Beacher's and Team.

And the issue here is -- and the testimony has been -- that under the standard of care of what duty is owed by a contractor customarily to the public is that it's deemed that the contractor has satisfied the standard of care when he's performed the terms of the contract, punched out to the owner's satisfaction. And, here, that is the only evidence in front of you as to the content of the applicable standard of care.

So, in that regard, Judge, it is, by analogy to the doctors, the lawyers, the accountants, the engineers, and everyone else, that a contractor,

particularly one like this, who has a multijurisdictional license from the Nevada Contractor's Board, who is subject to discipline by that board, who operates under workmanship standards from that board, in these conditions, plaintiffs who want to sue these contractors should be put to the burden of having to show what the customary standard of care is for this kind of construction work, which is every bit as technical as an architect.

Thank you, Judge.

THE COURT: Okay. Thank you.

You had one more motion?

MR. STRASSBURG: Well, yes, I -- I do, and that's on notice.

You know, it's hornbook law that, for a negligence case, there has to be foreseeability of injury, that it has to be foreseeable to the defendant that injuries of the class claimed by the plaintiff have occurred.

Now, Mr. Deutsch says that everybody knows. But, in this case, it's clear that there was one person who didn't know, and that was Team. Team did not know the use to which Copperfield was putting the accessway by the dumpster at night after Team went home, where Copperfield was running participants in his tricks that

Team had no reason to know would be there.

Nobody told us. We didn't know that -- I mean, there's this -- what is -- the plaintiffs' theory on causation is the confluence of events that this was caused by: running in the dark, not knowing where you're going, up the incline, around the corner, and dust.

Well, there's no evidence that Team knew of any of this; rather, all the evidence is, from King, that the custom and practice of Team was to sweep up before they went home. And it's certainly inferrable that the custom and practice was followed on the day of this accident. And there's no reason, there's no evidence, but -- that Team knew or should have known that there would be audience participants who might have been drinking, might have been, as they say, having a sense of urgency; the run, run, run; the incline; the planters; the -- all this stuff. Team didn't know about any of that.

So it is not, as a matter of law, foreseeable to Team that if they didn't sweep up that night, somebody who they didn't know was going to be there would slip and fall.

THE COURT: All right. Thank you.

MR. DEUTSCH: Your Honor, it just has to be

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foreseeable that, if they don't sweep up properly, that someone could slip and fall. That's all. They don't have to -- it doesn't have to be foreseeable about all that other stuff.

We believe that it is foreseeable under the evidence that, if someone went over that area and they didn't clean up properly and there was dust on the ground, that someone could slip and fall. That is foreseeable. That's what we needed to prove. And that's what we have proven via the circumstantial evidence.

THE COURT: Anything else on that one?

MR. STRASSBURG: They had no reason to know that those people --

THE COURT: Is it reasonably to be expected that they would want to know what happens between the time they leave and when they get there at the next day or whatever? I don't know.

MR. DEUTSCH: That's an egress and exit door, Your Honor, so they have to --

MR. STRASSBURG: Were you asking him that question or me?

THE COURT: I was asking you.

MR. STRASSBURG: Okay. Because he was talking.

THE COURT: You're saying that they didn't know; they had no reason to know.

MR. STRASSBURG: Well, Copperfield, he didn't tell them. And he said he didn't direct anybody to tell them. Kenner admitted he didn't tell them. And Paul King said they didn't know. So if you don't know --

THE COURT: Should they know? is the question. The question I'm asking is should they know?

MR. STRASSBURG: Well --

THE COURT: Should they know what happens at that site after they leave until they get back? I don't know.

MR. STRASSBURG: To know that a line of 13 people twice a night are going to run up that walkway? Being shown -- being -- being told to run, run, run, in a trick that they don't know is being conducted with a back office operation that they don't know is there?

Judge, it's not -- that's why we have proximate cause. It's because people should be held to protect against foreseeable injuries. And this kind of extreme utilization of an accessway by groups of people -- 26 people a night, plus all the stagehands and everybody else running up this thing. And, you know, all -- for all those confluence of events, it's

not just people walking. It's this people under the influence of this confluence of events, which -- when they come to try to tattoo everybody else, it's this big confluence. When it's Team, it's like, oh, they're just walking along and there's dust and everybody knows.

But that's not what they're arguing here. Their claim -- this is an unusual condition that Team would have no reason to think was being there.

THE COURT: Okay. Thank you very much. I'll deny those motions as well. Again, I'm not judging the facts. You make excellent arguments about the facts. But I'm not judging the facts; I'm just applying the standard that's applicable under Rule 50.

And, accordingly, I'm denying the motions, again without prejudice to renewal. Okay?

MR. POPOVICH: Thank you, Your Honor.

MR. DEUTSCH: Thank you, Your Honor. Have a nice evening.

THE COURT: You too. See you tomorrow at 9:00.

(Thereupon, the proceedings concluded at 5:33 p.m.)

JA003845

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Kristy L. Clark

KRISTY L. CLARK, CCR #708

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CLERK OF THE COURT

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, MAY 4, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

JA003847

Case Number: A-14-705164-C

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* * * * * * *

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Dennis Funes-Navas	9, 40 46, 47	56	75, 78,79	76

LAS VEGAS, NEVADA, FRIDAY, MAY 4, 2018;

9:18 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, everybody.

IN UNISON: Good morning.

THE COURT: You may be seated.

JUROR NO. 4: We're missing just one. She's in the bathroom.

THE COURT: Oh, we're missing ...

MR. POPOVICH: No stipulation.

MR. MORELLI: I'm not getting fooled this time. I'm not stipulating that the jury is here.

THE COURT: Could counsel approach while we're ...

(A discussion was held at the bench, not reported.)

THE COURT: All right. Do counsel now stipulate that the jury is present?

MR. MORELLI: Yes, the jury is present.

MR. POPOVICH: Yes.

MR. STRASSBURG: Yes, Your Honor.

MS. FRESCH: Yes.

THE COURT: Very well. All right. Plaintiffs having rested, the defense may proceed.

MR. MORELLI: You want us to give our appearances?

THE COURT: Your what?

MR. MORELLI: Appearances.

THE COURT: I'm sorry. State your appearances, yes.

MR. MORELLI: Benedict P. Morelli for the plaintiffs Gavin and Minh Cox.

MR. DEUTSCH: Adam Deutsch, Your Honor. Good morning.

Good morning, everybody.

MR. FALLICK: Perry Fallick for the plaintiffs. Good morning, Your Honor.

THE COURT: And also identify any parties and party representatives.

MR. DEUTSCH: The Coxes are here as well, Your Honor.

MR. POPOVICH: Good morning, Your Honor.

Good morning, jury.

Jerry Popovich for the defendant MGM Grand

Hotel; Mr. Habersack is here, but stepped out; and counsel Mike Infuso.

MS. FRESCH: Good morning, Your Honor.

Good morning, everyone.

Elaine Fresch for David Copperfield, David Copperfield Disappearing, Inc.

MR. ROBERTS: Good morning, everyone.

Your Honor, Lee Roberts for Backstage Employment and Referral.

MR. RUSSELL: Good morning, ladies and gentlemen.

Good morning, Your Honor. Howard Russell for Backstage Employment and Referral.

MR. FREEMAN: Good morning. Eric Freeman for David Copperfield and David Copperfield Disappearing, Inc.

MS. FRESCH: I'll stipulate I didn't have enough coffee.

MR. STRASSBURG: May it please the Court and the jury, Roger Strassburg, assisted by my partner Gary Call, for defendant Team Construction Management.

THE COURT: All right. Very well. Thank you. Plaintiffs having rested, defendants may proceed with their respective cases.

MR. ROBERTS: Thank you. And, Your Honor,

before Mr. Popovich proceeds with MGM's case -- because this may take a few days -- the defendants would move for a jury view of all relevant portions of the MGM premises pursuant to NRS 16.100. And we would request that the jury view, if it can be accommodated by the jury, take place at least 30 minutes after sunset.

THE COURT: All right. The motion has been made, and I'll consider that outside the presence of the jury. There are some things that will have to be discussed and addressed in connection with that.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Okay.

MR. POPOVICH: Thank you, Your Honor. So then MGM Grand Hotel would call its first witness, Dennis Funes-Navas.

THE MARSHAL: Remain standing and raise your right hand and face the clerk.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and spell it for the record, please.

THE WITNESS: My name is Dennis Funes-Navas,

D-e-n-n-i-s, F-u-n-e-s, N-a-v-a-s.

THE CLERK: Thank you.

MR. POPOVICH: You can have a seat, Mr. Funes-Navas. And to your left there, if you want water, there's a little carafe, and help yourself.

DIRECT EXAMINATION

BY MR. POPOVICH:

Q. Ready?

A. Yes.

Q. Are you employed?

A. Yes.

Q. And not that that's not a beautiful shirt, but who are you employed by?

A. MGM.

Q. All right. The Grand Hotel or Resorts?

A. MGM Grand International.

Q. And what do you do?

A. I work in security.

Q. What is your title?

A. Security officer.

Q. How long have you worked for MGM Grand Hotel in any capacity?

A. About 22, going on 23 years.

Q. Has all that time been as a security officer?

A. Yes, sir.

Q. Are there levels of security officer at MGM Grand Hotel?

A. There are different positions.

Q. Okay. Currently, what is your position?

A. Still security officers.

Q. In November of 2013, did you have a different position, or was it the same?

A. I worked as a security officer in -- in the Hollywood theater, which is now Copperfield theater.

Q. In 2013 -- you mentioned the theater. Was that your usual assignment?

A. Yes, sir.

Q. What would you do in general relating to the Copperfield theater?

A. I would basically work the theater specifically. I would patrol the theater; take care of the theater; go in/out the theater; manage the theater in the house, back of the house, front of the house.

Q. So we've heard, I think, front of the house. Is that usually where the audience sits?

A. Yes.

Q. Where is back of the house?

A. That would be the backstage area. That would be basically the stage and the back of the stage, also

the parking area and that.

Q. Now, did it also come about that you played a role in certain illusions during the Copperfield show in 2013?

A. Yes, sir.

Q. And what kind of role would you have?

A. I would open the doors. They call them the 402 doors, emergency doors.

Q. Okay. And we'll get to a picture in a few minutes to make sure we're talking about the same doors, but I wanted some general things there.

So do you recall, when you first worked as a security guard at MGM Grand, where there was a Copperfield show? Just ballpark time frame.

A. What do you mean? Explain it.

Q. When did you work the Hollywood theater when there was a Copperfield show for the first time?

A. You're talking about time frame?

Q. Yes. Sorry.

A. There's several times. He wasn't permanent till the last -- end of the last couple of years that you say, 2013. He started being permanent for the last -- end of the four years that he started being there. Previous to that, he was off and on. There were previous shows.

Q. When it was off and on, do you remember the -- the year range of when that happened?

A. Not particularly. There was different times.

Q. Was it a long time ago?

A. Yes.

Q. In the '90s maybe?

A. Yes.

Q. Okay. Eventually, he comes to the MGM Grand on a permanent basis?

A. Yes, sir, he did.

Q. And then you were working -- your assignment was to the Hollywood theater when that -- when he started being there permanently?

A. Yes, I was still assigned to the theater.

Q. During times when he was not permanent, if other acts came to the theater, were you assigned to the theater?

A. Yes, sir.

Q. So is it correct that -- well, when you were assigned to the theater, you would work with whatever acts came through?

A. That's correct, sir.

Q. When you worked with acts other than Copperfield, would you sometime have assignments like opening doors and things like that to assist with the

performances?

A. If they required it.

Q. Sure. Okay. When the Copperfield show was there, going back to the days when he was not permanent, did you have assignments with regard to opening doors?

A. Most of the other shows didn't really require opening doors.

Q. Okay. This -- for this question, just assume we're talking about Copperfield.

A. Yes, sir.

Q. When he first started coming to the MGM, even before he was permanent, would you have responsibility for opening those 402 doors you talked about?

A. Yes, sir.

Q. Way back as far as you can recall, did Mr. Copperfield do the Thirteen Illusion at the MGM Grand?

A. Yes, sir.

Q. Is that one occasion where there was the need for you to open certain doors?

A. Yes, sir.

Q. How did you know when to open the doors?

A. They had a show list, which is a list of when each particular illusion was being done. And when that

particular illusion was done, I was needed to either open the door. So when this particular illusion was being done, I went to open that door if it was needed.

Q. So if this -- did this list indicate which illusions were going to be performed?

A. Yes, sir.

Q. Did that list change daily, or how often did it change, if ever?

A. It didn't change unless something happened, if the illusion was not being done.

Q. Okay. And if they were going to change out an illusion, you would get a new list?

A. The list wouldn't really change. They would either advise me that the -- that the -- a particular illusion was not being done, so they would either tell me that the illusion wasn't going to be done and they would just skip to the next act.

Q. And that would allow you to adjust timing to make sure doors are open for certain illusions?

A. Correct.

Q. Okay. So let's talk about once Copperfield was at MGM Grand permanently. Is it -- how many shows a week did he perform when was performing?

A. Usually during the week, there was two shows. On the weekends, there was three shows.

Q. So a weeknight would be two shows?
A. Correct.
Q. And there would be a matinee on the weekend?
A. Correct. And unless it was a holiday or something special, then he would be performing three shows that particular entire holiday or weekend.
Q. In the time leading up to November of 2013, what shift were you on?
A. I was working the swing shifts at that particular time still.
Q. How many hours is a swing shift in that --
A. It's eight hours, sir.
Q. What -- what -- when would you start, when would you finish for a swing shift?
A. Swing shift was usually around 4:00. And it would end around 12:00 -- 12:30. That would be the swing shift.
Q. With a break for a meal?
A. Yes, correct.
Q. How many days a week would you work in 2013?
A. My schedule would be -- trying to remember. It was such a long time ago.
I think it was Monday through Friday, I believe. That was my schedule.
Q. So Monday through Friday, you would be

assigned to the Hollywood theater?

A. Correct.

Q. And some other security officer would take the weekends?

A. That's correct, sir.

Q. If the list of illusions wasn't changing over time, did you essentially memorize what was happening?

A. That's correct, sir.

Q. Did you become familiar with each illusion?

A. That's correct, sir.

Q. Were there times when you would be outside of the theater doing your security duties even though a Copperfield show was going on?

A. Yes. Sometimes there would be issues with ticketing that I would have to go out to the front. They would need me where they would have problems with a guest. And there would be problems in the house that I would have to go take care of and I would not be in the back. So they would always have me -- they would have contact with me one way or another so I would be in that particular area.

So, in one way or another, they would have contact with me. So I would not always be in the back of the house, but I would always be in that area.

Q. So if you were called out to deal with

something and then turned your -- your focus back to the show so you made sure doors were open at proper times, how would you figure out where they were?

A. Since I was in the show for a long period of time, I would know while the show was going on where the show was at and know when to go to open the doors.

Q. Did you ever have to go peek inside the theater just to see and make sure where you were?

A. Yes, I would.

Q. Okay. On November 12, 2013, did you become aware of someone possibly being injured around the Hollywood theater?

A. Yes, sir.

Q. And did you respond?

A. That's correct.

Q. Were you already at the theater when you got the call?

A. Yes, sir.

Q. We should identify how you get a call. Do you have radios? phones? What do you use?

A. Radios. We do have a radio.

Q. So in November 2013, would you have, like, an earwig?

A. Yes, sir.

Q. And did you have the ability to broadcast as

well?

A. Yes, sir.

Q. Where do your broadcasts go?

A. They go to our dispatchers.

Q. So when you got a call about a potential injury around the Hollywood theater on November 12th, '13, how did you receive that information?

A. You are referring to Mr. Cox?

Q. Yes.

A. At that particular incident, I did not receive it through the radio; it was told by one of the stagehands that we had an injury in the back of the house.

Q. Did you go -- how did you -- well, let me ask a better question.

Did you respond after you got that information?

A. Yes, sir.

Q. How long did it take you to respond?

A. I don't know how long. I just got to the back of the house as soon as I could.

Q. Okay. When you got the information, you went?

A. That's correct.

Q. Did the stagehand take you back?

A. I just tried to get back as soon as I could.
Q. Okay. Ultimately, did you meet Mr. Cox?
A. That's correct.
Q. Where did you meet?
A. I met him in-house -- in the back of the stage. I believe it was house left in the meet-and-greet area.
MR. POPOVICH: May I go forward to grab a board, Your Honor?
BY MR. POPOVICH:
Q. Mr. Funes-Navas, I'm going to show you what we've designated Copperfield Demonstrative No. 1. And does this generally look like the outside area of -- on the Tropicana side of the MGM Grand?
A. Yes, sir.
Q. Thank you.
Do you see in here the area where there would be a door called the theater door?
A. Yes, sir.
Q. Is that the area where there's green dotted lines going to it?
A. Yes, sir.
Q. Okay.
Your Honor, I'm going to point to it and let's just see if I'm right.

Is that generally where the --

A. That's correct.

Q. Okay. Now, the doors you're calling 402 -- you can stand up, if you would.

A. Yes.

Q. Can you point to the doors that you're calling the 402?

A. They would be right over here (witness indicating).

Q. All right. And is that where the participants in the Thirteen Illusion go back into the building?

A. That's correct.

Q. And is the theater door where they come out?

A. They come out from this direction.

Q. Okay.

A. And they do this walk-around here.

Q. All right. Is the meet-and-greet area where you met Mr. Cox indicated on here?

A. That would be right over here (witness indicating).

Q. In that hallway?

A. Yes, sir.

Q. All right. Thank you.

When you met Mr. Cox, what did you see?

A. I saw the gentleman standing up.

Q. What race?

A. He was a Caucasian male.

Q. Okay. Did you have conversation with him?

A. I just asked him what happened, what was going on. He informed me that he -- he was -- he needed medical attention. I asked him what did he need. And he said he fell. I asked him if he needed paramedics. He said yes.

So at that moment I asked -- I called my dispatcher on the radio and informed them that we needed paramedics. And they said okay. And then I informed the information that we have a -- a male. I believe I said the age, that we needed them back of the area of the Hollywood theater. And that was about it.

Q. Okay. So this communication you had with him, how long did it take?

A. Not too long.

Q. Did you do -- you indicated he was standing at that time. Did he stay standing the entire time?

A. Just for a little while. I tried to get one of the stagehands to get a seat and got him to sit down, tried to get him comfortable.

Q. When you asked him questions, was he able to provide you with information?

A. Yes, sir.

Q. Now, let's talk for a second about how you were dressed back then. Did you wear this gorgeous greenish-yellow shirt back then?

A. No, sir. At that moment we had a coat. It was a grayish -- we had a black T-shirt with a slack, grayish slack.

Q. Gray slack and gray coat?

A. Yeah.

Q. At that time, did you wear a name tag?

A. Yes, sir.

Q. Where was the name tag placed?

A. Similar -- same side, same gray -- gold name tag, name.

Q. Okay. And you're indicating on your right breast?

A. Yes, sir.

Q. Was it on the coat itself?

A. Yes, sir.

Q. What did it say at that time?

A. It just said "Navas."

MR. POPOVICH: If we could pull up an exhibit already in evidence, Photograph 84-14, please.

BY MR. POPOVICH:

Q. So, Mr. Navas, on your screen there this

photograph's going to come up; or if that's not clear enough, you can look at the big screen to your right there, either way.

Is that a photograph from the outside of the MGM looking at the 402 doors?

A. That's correct.

Q. And are those the doors during a Copperfield -- well, during a Copperfield show, are the doors you told us you opened shown in that photograph?

A. That's correct.

Q. Which doors would you typically open during the Copperfield show?

A. Those are the doors that I would typically open.

Q. But there's a whole bunch of doors there; right?

A. That's correct.

Q. There's one open there now. Is that the one you would open or some other one?

A. Those are the ones that I would usually open.

Q. Without getting into any details, because there's some privacy regarding the illusions, how many times would you open and close the doors over the course of one Copperfield show?

A. Approximately three.

Q. Okay. And we're going to go through some clips taken from -- we're going to go through some clips taken from the surveillance video of the general area, Exhibit 402. And after each clip, I'll have some questions for you.

Your Honor, can we get the lights dimmed for --

THE COURT: Yes.

MR. DEUTSCH: Your Honor, at this time, I just -- I haven't objected thus far about the leading nature of the questions, but, going forward, I -- I will. So I'm just going to note that.

THE COURT: All right.

BY MR. POPOVICH:

Q. So, again, Mr. Navas, you can either watch the clips on the small Screen or you can turn and watch them on the big screen.

If we can play Clip 402, and it's Clip 1. And it starts at hour 19, minutes 59, and 36 seconds.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Did anybody go through the door that you saw?

A. Yes, sir. Yes, sir.

Q. How many people?

A. Four, five if you include me.

Q. So you did see yourself on there?
A. Yes, sir.
Q. Which one were you?
A. The last one closing the door.
Q. We're going to see, I believe, you several times in these videos. And sorry to be personal, but have you lost weight since November of 2013?
A. Yes, sir.
Q. Substantial?
A. Yes, sir.
Q. All right.
MR. STRASSBURG: Could you tell us how?
BY MR. POPOVICH:
Q. I don't think you want to.
Do you recall who those four people were that went through before you shut the door?
A. They're -- I don't remember their names. Don't recall.
Q. Are they in any way related to the Copperfield show?
A. Yes.
MR. DEUTSCH: Objection to the form, Your Honor.
THE COURT: Sustained.
Just rephrase.

BY MR. POPOVICH:

Q. Do you know why they were going through the door?

A. Yes.

Q. Why?

A. They were part of one of the illusions.

Q. Did any of those four people that night say anything about the walking surface they had just come through to get to those doors?

A. No.

Q. Let's go to Clip No. 2 from Exhibit 402. It's about 20 minutes later, at hour 20, 20 minutes, 1 second.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. What did you see happen?

A. It looks like I came out the door, opened the door and came out.

Q. Where did you go?

A. Outside.

Q. Do you know how far you continued that walk?

A. Probably out to the edge.

Q. Edge of what?

A. Of the curve.

Q. Were you --

MR. DEUTSCH: Note my objection, Your Honor. Is that an assumption?

THE COURT: He stated -- he stated his answer.

Next question.

BY MR. POPOVICH:

Q. Did you have responsibility for the security of that open door?

A. Yes, sir.

Q. In November 2013, would you venture outside of that open door during the evening when a Copperfield show was going on?

MR. DEUTSCH: Objection to the form, Your Honor.

THE COURT: Sustained.

Rephrase.

BY MR. POPOVICH:

Q. Did you have to keep your eyes on that door --

MR. DEUTSCH: Objection --

BY MR. POPOVICH:

Q. -- when it's open?

MR. DEUTSCH: -- to the form, Your Honor.

THE COURT: I'll allow that.

/////

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BY MR. POPOVICH:

Q. That means you can answer. Sorry.

A. Yes, sir.

Q. Did you walk -- well, when you walked out of that door, was that anywhere near the path that the participants take to go back into the building?

A. Yes, sir.

Q. Did you notice any hazards in the area that you just walked through on this clip?

A. No, sir.

Q. Now, tell me, what's your responsibility as a security guard if you see some kind of hazard on a walking surface?

A. To advise our dispatchers or call EVS to have it cleared out just to make sure the area is safe.

Q. If it's something simple, would you even clean it up, like maybe picking up a cup or something?

A. Yes, sir.

Q. On November 12th, 2013, the night you met with Mr. Cox, do you recall, before meeting with Mr. Cox, having to call in EVS for any concerns about the area you just walked through in that clip?

A. No, sir.

Q. Let's move on to Clip No. 3, Exhibit 402, starting at 20, 20 minutes, 35 seconds.

JA003874

(Whereupon video was played.)

BY MR. POPOVICH:

Q. What did you see?

A. Could you play that back?

Q. Sure. It's short.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Can you tell us what you saw there?

A. Somebody coming in. I can't -- I can't really tell.

Q. Can't tell who?

A. Yes.

Q. Was it you?

MR. DEUTSCH: Objection, Your Honor. He just said he can't tell.

THE COURT: Well, he can estimate if it was him.

Go ahead.

BY MR. POPOVICH:

Q. Was it you?

A. I can't tell. Could you play it again?

(Whereupon video was played.)

THE WITNESS: Can it be slowed down a little?

BY MR. POPOVICH:

Q. I'm not sure we can do that here.

MR. DEUTSCH: We're not that far along.

MR. POPOVICH: It can be paused.

Thank you, Ms. Bonney.

THE WITNESS: Go ahead and play it.

(Whereupon video was played.)

MR. POPOVICH: Pause again.

BY MR. POPOVICH:

Q. Does that help at all?

A. Don't look like it's -- don't look like I have a jacket on.

Q. Does that mean you don't think that's you.

A. I don't think it's me.

Q. All right. But doesn't sound like you have any idea who it is.

A. Correct.

Q. All right.

Let's go to Clip No. 4, at 20, 24 minutes, and 22 seconds.

This one is short too, so watch fast.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Want to see it again?

A. That's not me.

Q. Or you had gotten a purse in the meantime?

A. Definitely.

MR. DEUTSCH: Can you just play that? Can you replay it again?

MR. POPOVICH: It's so short, yes, we can. Let's watch it again.

MR. DEUTSCH: I looked away for one second.

MR. POPOVICH: It's, like, three seconds long.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. So we've established that isn't you. Do you know who it is?

A. No.

Q. Any idea if that's in relation to the Copperfield show?

A. It might be. Could be one of his assistants.

Q. Do you recall any Copperfield illusion that was being done in the 2013 time frame where a -- where a lone female went through at a brisk pace?

A. No, sir.

Q. All right.

Let's go to Clip No. 5.

MS. FRESCH: Mr. Popovich, that's the clip that --

MR. POPOVICH: Oh.

I think this is a clip about another

illusion, Your Honor, but I -- I can skip this and then come back to it when it's a convenient time.

THE COURT: All right. Whichever.

MR. POPOVICH: Let's do that.

MS. FRESCH: Thank you.

MR. POPOVICH: And thank you for the reminder.

Let's go to Clip 6, then, Ms. Bonney, which starts at 20 hours, 25 minutes, and 56 seconds.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. What did you see?

A. That was me.

Q. And what did you do?

A. I came back in, closed the door.

Q. Came back in from what direction?

A. From the outside.

Q. From what direction on -- on the video?

A. From the street.

Q. Street direction?

A. Yes. Correct.

Q. Similar question to what you asked -- been asked before. Is -- in that walk through that area to the door, if you had seen something, are you supposed to deal with it as far as any type of hazard?

MR. DEUTSCH: Objection to the form, Your Honor.

THE COURT: I'll allow it.

Go ahead.

THE WITNESS: No, sir. There's nothing that I saw. Otherwise, I probably would have stopped and taken care of it.

MR. POPOVICH: Let's go to Clip 7, at 20, 31 minutes, 59 seconds.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Okay. What did you see on this clip?

A. I saw myself propping the door open, going back inside.

Q. Any reason you didn't go out towards Tropicana that time?

A. Probably I went back inside to hold the door inside open. I presume that this is the Thirteen.

Q. Thirteen's coming up, that's correct.

A. If that's --

Q. So when you're talking about propping another door open, what door are you talking about?

A. The inner casino doors.

Q. Okay. We've heard some testimony that there's an area between two sets of doors. We're

looking at the street side in these clips right?

A. Correct.

Q. There's some distance?

A. Yes, sir.

Q. And then another set of doors?

A. That's correct, sir.

Q. We've been trying to find a good name to call that area between the doors. What did you call it?

A. They're just the inner casino doors. That's what we just call them, the casino doors, the inside doors.

Q. Yeah, but that area between the sets of doors, did you have a name for that?

A. Not really.

Q. Us either.

A. There's no real name for it. They're just inner doors, in-between doors. There's -- everybody calls them different things.

Q. The doors that we see, are they directly opposite the doors of the casino?

A. That's correct.

Q. What's on the sides?

A. Just a wall.

Q. What was the walking surface in there?

A. It's just a cement floor.

Q. And we can see light, but there were lights between the doors?

A. That's correct. Yes, there's lights.

Q. Okay.

Let's go to Clip 8 at hour 20, minute 35, and 3 seconds.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Did that look like the Thirteen Illusion?

A. Yes, sir.

Q. During the Thirteen Illusion before November 12th, 2013, had you ever seen what we've been calling the runaround of the participants when you were outside?

A. No, sir, because I'm usually atop the inner doors.

Q. Why are you there?

A. Trying to keep anybody from peeking or coming out or from bumping in from the people that are coming into the casino or the 13 people that are coming in.

Q. Explain to me what you meant by the bump -- keeping people from bumping into the Thirteen people. What does that mean?

A. It means that sometimes you get casino patrons that may get wandering to the -- that area.

"What's going on?" 'cause they see people going in. And they wander into that area and they kind of like pass by and they want to go out. So kind of keep people from that area.

Q. And why would you keep people from that area when the Thirteen Illusion people are going through?

A. They might want to just join them.

Q. Okay. Did you witness Mr. Cox fall --

A. No.

Q. -- the night of November 12, 2013?

A. No, sir.

Q. To your knowledge, did you see him before you were called to assist?

A. No, sir.

Q. How long did it take for the ambulance to arrive?

A. It didn't take that long.

Q. Where did the ambulances come to?

A. Just outside the door.

Q. Which door?

A. That outside emergency door or exit door.

Q. These doors?

A. Yes.

No, no, just the -- right outside the doors -- the meet-and-greet doors.

Q. The one we called the Copperfield theater doors?

A. Yes.

Q. Is that the door where the Thirteen participants come out of the building?

A. Yes, sir.

Q. Before they go back in here?

A. Yes, sir.

Q. At some point, did you learn that Mr. Copperfield had a wife that had attended the show?

MR. DEUTSCH: Mr. Cox.

MR. POPOVICH: Cox. Thank you.

BY MR. POPOVICH:

Q. Did you learn that Mr. Cox had a spouse that had attended the show?

A. Yes, sir.

Q. Did you do anything to try to locate her?

A. Yes, sir.

Q. What did you do?

A. When Mr. Cox informed me that his wife was there, I went to try to bring her in, went out to the house and tried to inform her that his -- that her husband was in the back. And tried to let her know to come to the back of the house so that he can join her -- so that she can join him.

Q. Did you ever contact Mrs. Cox?
A. I made contact with her and tried to --
Q. Let me just ask the next question.
Where did you make contact with her?
A. In the house.
Q. "The house," does that mean --
A. That's the theater, inside the theater.
Q. -- the theater?
Okay. Then did you inform her about her husband?
A. I let her know that her husband was in the back.
Q. Did you ask her to follow?
A. Yes.
Q. Did she?
A. No.
Q. What did she do?
A. She just left the house -- or the inside of the theater.
Q. Did you have interaction directly with her again after that?
A. No.
Q. Did Mrs. Cox ever say anything about murderer or rape when you interacted with her?
A. No.

Q. After your attempt to contact and bring Ms. Cox back, did you have any more interaction with anybody to do with dealing with Mr. Cox?

A. No, not really. I just let him know -- well, I just came back and let him know that she didn't want to come back. And that was the end of my conversation with him.

Q. When you went to find Mrs. Cox, was there anybody else there from MGM with Mr. Cox?

A. We had a report writer.

Q. So you didn't leave him alone is what I'm asking, I guess.

A. That's correct.

Q. All right. Thank you, Mr. Funes-Navas.

No further questions from me, but there will be more.

THE COURT: All right. The order in which we'll proceed?

MR. DEUTSCH: We didn't discuss it, Your Honor, so I don't know. Is it my turn?

MR. POPOVICH: I had thought about it. I didn't discuss it with anybody, but it seems to make sense to have the defendants go and then have plaintiff cross.

MR. DEUTSCH: That's no problem.

THE COURT: Next?

MS. FRESCH: Okay.

DIRECT EXAMINATION

BY MS. FRESCH:

Q. Good morning.

A. Good morning.

Q. I'm Elaine Fresch, and I represent David Copperfield and David Copperfield Disappearing, Inc.

How you doing?

A. Doing all right.

Q. All right. It's a little overwhelming at times.

A. Yes.

Q. Yeah. I just have a few questions.

Earlier, when Mr. Popovich was speaking to you about there could be a change in the illusion and you said they would advise you of the change, do you recall talking about that?

A. Yes.

Q. Okay. When you say "they," who -- who are you referring to?

A. That could be anybody. It could be one of the stagehands, the stage manager, one of the -- his assistants. It could just be anybody that comes by and lets me know. Sometimes it would be nobody.

Q. Okay. And when you say "the stagehands," are you aware of what entity those stagehands work for?

A. What do you mean?

Q. I mean who do the -- do you know who the stagehands work for?

A. Again, what do you -- what -- what do you mean by who the stagehands are?

Q. Well, do they work for MGM? Do they work for somebody else? Do you have any information about that? Or you just think of them as stagehands?

A. I think of them as stagehands.

Q. Okay. No worries.

All right. Now, with respect to the layout of the theater in relation to the casino, where -- for theatergoers, are you aware of what -- where restrooms are that theatergoers would head to if they came out of the theater?

A. The restrooms would be across, in the casino. There's no restrooms inside the casino -- inside the theater for them.

Q. Okay. So when you say "inside the casino," could you describe where inside the casino the restrooms are.

A. There will be restrooms about 100 -- 500 feet to the right on Whiskey Down, around the curve. The

next set of restrooms would be in the left-hand side right past the Jabbawockeez theater, about 500, 600 feet to the left across the other side of the wall.

Q. Okay. So if I'm -- walk out the theater doors and I'm basically in that little foyer right at the casino.

A. Uh-huh.

Q. When you say past Jabbawockeez, that's going straight somewhat and dodging through the casinos?

A. Correct.

Q. And the ones by Whiskey Down would be through the casino but going towards the right?

A. Correct.

Q. All right. And the ones past -- going past Whiskey Down, that's, like, heading -- you have to pass slots and -- well, the ones going straight past Jabbawockeez, you have to go through an area of slots as well as gaming tables; correct?

A. Correct. You would go across towards the opposing wall and keep going past the Jabbawockeez on the -- keeping the casino wall to the right and just keep going. And then you would hit the restrooms.

Q. And Jabbawockeez, was -- that used to be something else?

A. Correct.

Q. What was that?

A. That used to be -- I can't remember what it was -- used to be at the time.

Q. Okay. Madhouse sound -- Beacher's?

A. Yes. Correct. Beacher's Madhouse.

Q. Okay. And the ones -- the bathrooms going -- where you'd go past Whiskey Down, that requires going through the casino and slots, heading that way as well?

A. Correct, to the right.

Q. Okay. Going to the night of November 12th, 2013, the night of Mr. Cox's injury, when you first came up to him in that meet-and-greet area that you described, what was your observations of him in terms of how he looked physically?

A. He was just standing.

MR. DEUTSCH: Objection, Your Honor.

THE COURT: What's the objection?

MR. DEUTSCH: I thought the case was bifurcated.

THE COURT: Beg your pardon?

MR. DEUTSCH: I thought the case was bifurcated.

MR. MORELLI: Otherwise, I would have asked those questions.

MR. DEUTSCH: Of a lot of people.

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THE COURT: Okay.

Rephrase. Pose another question.

MS. FRESCH: Can I approach the bench for a moment just to clarify or could we --

(A discussion was held at the bench, not reported.)

BY MS. FRESCH:

Q. I'll reask my question -- or do you remember it, or would you like me to reask it?

A. Please reask it.

Q. Okay. When you came up to Mr. Cox that night in that meet-and-greet area that you described, what observations, if any, did you have of him in terms of how he looked physically?

A. We was just standing there talking to me.

Q. Okay. Any other observations of what -- how he looked?

A. He was just standing there, didn't look like he -- didn't look like he was hurt or anything, just standing there, just talking to me.

Q. Okay. All right. That's good.

You mentioned you went out and looked for Mrs. Cox and spoke to her; correct?

A. Correct.

Q. Okay. And just -- was that in the actual

theater, or was that -- well, let me put it this way: Where exactly was Mrs. Cox? just because -- you had said "the house" and I wanted to clarify where in the house.

A. I don't recall exactly where. Again, this was so -- such a long time ago. I just seemed -- I remember that it was somewhere in the house.

Q. Does the house -- when you -- your -- what does the house include? Does that include anything beyond theater -- inside the theater?

A. It's just -- I -- I call the house, just anywhere around the theater, maybe any -- anything that is from the seating area to the entrance area, anywhere in that area there.

Q. And when you say "entrance area," are you referring outside?

A. It could be in that area there.

Q. Okay. All right. And you don't have a recollection exactly where you located Mrs. Cox; correct?

A. Not really, no.

Q. All right. And when you spoke to Mrs. Cox, when you asked her to come with you because -- to take her to her husband, did she speak to you and say anything to you that you recall?

A. She was just not really wanting to listen to anything. She was just -- all I can remember is just she was just screaming, just didn't want to listen to anything, and couldn't just -- I was just trying to let her know that her husband was in the back. I really didn't want to say too much. And I just wanted to try to get her to know that her husband was in the back. And I just couldn't get her to understand anything.

Q. Okay. All right. Thank you so much.

THE COURT: Uh-huh.

DIRECT EXAMINATION

BY MR. RUSSELL:

Q. Good morning, Mr. Navas. My name is Howard Russell. I represent Backstage Employment and Referral. Just a couple of questions for you.

When you were -- when you're working as part of the Copperfield performances, part of your job obligations is to make sure that those outside doors are open and that the participants can go through that area without any hindrance; is that correct?

A. Correct.

Q. And part of your job obligations is to make sure that there's access through those doors and that everything looks okay. Fair to say?

A. Correct.

Q. Okay. And if there's anything out of place, you take it upon yourself to make sure that that problem is remedied, if there is any problem. Fair to say?

A. Correct.

MR. RUSSELL: Okay. Thank you, Mr. Navas. I appreciate your time.

DIRECT EXAMINATION

BY MR. CALL:

Q. Good morning, Mr. Navas.

A. Good morning, sir.

Q. My name is Gary Call. I'm one of the attorneys for Team Construction in this matter. And pardon me while I hook up my computer.

Now, you were testifying that the exit doors are called the 402 doors; isn't that correct?

A. That's correct, sir.

Q. Okay. And those doors are only accessible by an individual from the inside?

A. Correct.

Q. Okay. If you were accessing those doors from the outside, you would need a key to get in; correct?

A. That's correct, sir.

Q. And wouldn't you agree with me, the reason for that is because the area is a high-security area; isn't that correct?

A. That's correct, sir.

Q. All right. And that's because the cage -- in other words, the bank for the MGM -- was located in that area?

A. That's correct, sir.

Q. All right. During your time with the MGM -- well, you're still with the MGM --

A. Hopefully.

Q. -- had you noticed any trucks that would access the -- the ramp where the runaround was conducted?

A. At that time, I still worked swing, so I -- not -- now I know that Brinks during the day does use it.

Q. Okay. But isn't it a fact that you knew Brinks trucks used the area during that time period that you were there in November of 2013?

A. Again, at that time, I worked swing. I did not know that.

Q. Okay. And isn't it true that the lights in that area were on 24/7?

A. During that time, swing, the lights are

slightly dim.

Q. Okay. Well, swing starts from 4:00 to -- 4:00 to midnight; correct?

A. Yes.

Q. And when you say that the lights are dim, are they -- is the illumination -- the brightness of those lights -- do they increase as -- when the sun goes down?

A. I don't understand what you mean.

Q. Okay. When it gets dark, are they brighter, the lights?

A. Again, I'm not understanding.

Q. Is there lights all along -- isn't it true there's lights all along that walkway?

A. There are some lights there, yes.

Q. Okay. And if you went out there in the evening, isn't it true that you didn't even need additional illumination to see the walkway?

A. No, correct.

Q. Okay. All right. And, as you understand it, isn't it -- and you would agree with me that there's house rules that if you notice -- what I mean by "house rules," I mean, anything -- the rules -- MGM's rules -- that you would -- you were required, as a security guard for MGM, to notify someone if there was a hazard

along, you know, the area of that walkway?

A. Correct.

Q. Okay. Let me -- you were testifying and -- which was kind of interesting, is that when you came on during your shift between 4:00 to midnight, you were located in the theater; isn't that correct?

A. Yes, sir.

Q. Okay. And you would come out of the theater at different occasions; isn't that correct also?

A. Come out where, sir?

Q. Come out -- well, you tell me. Isn't it true that you would come out of the theater, you would open the doors; isn't that correct?

A. Yes, sir.

Q. Okay. And you would go to the ticket area too; isn't that correct?

A. Yes, sir.

Q. Okay. Where is the ticket area located?

A. At that time, it's outside to the left.

Q. Okay. Outside to the left. So it's on the casino floor, wouldn't you agree?

A. Yes, sir.

Q. Okay. And would there be any other areas that you would go to?

A. Outside in the backstage area, there's a

vehicle parking area in that area.

Q. Would you also -- you would also spend time within the theater itself where the patrons sit too; isn't that correct?

A. Yes, sir.

Q. And during that time inside the theater, there's carpet down on the theater floor; isn't that correct?

A. Yes, sir.

Q. Okay. And that's where the patrons walk?

A. Yes, sir.

Q. All right. And that's where you walked also?

A. That's correct.

Q. Okay. And it's a dark-colored carpet; isn't that correct?

A. Yes, sir.

Q. All right. And outside near the ticket area, there's a dark -- it's carpeted too; isn't that correct?

A. Yes, sir.

Q. And it's a dark carpet; isn't that correct?

A. It's varicolored.

Q. So it's varicolored, but it has dark patches to it; isn't that correct?

A. Yes, sir.

Q. Now, wouldn't you agree with me that, if people were tracking in dust or dirt from the outside in, that it would show on that carpet outside the ticket area?

A. Yes.

Q. And it would show tracking within the theater itself; isn't that correct?

A. Yes, sir.

Q. Okay. You never saw any tracking of dirt or dust in the theater in November of 2013, did you?

A. I do not remember, sir.

Q. Okay. No, that's fair enough.

I want to kind of give the jury an idea of this runaround, exactly where it's located. It's located -- you would agree with me it's located on the Tropicana side of the MGM; isn't that right?

A. Correct.

Q. All right. And on the Tropicana side of the MGM, if you look across the street, you actually see the Tropicana; correct?

A. Correct, sir.

Q. All right. So, essentially, it's an open area. Would you agree?

A. Yes, sir.

Q. All right. And it's open to the elements --

I mean, the weather -- wouldn't you agree?

A. Correct, sir.

Q. Okay. So if it rained, it would rain on top of this runaround area, this concrete area that goes back into the -- into the MGM; isn't that correct?

A. Correct, sir.

Q. Okay. And if it was windy, it would -- the wind would blow against the MGM from the Tropicana side, wouldn't you agree?

A. Correct, sir.

Q. And you've seen that too, haven't you?

A. Yes, sir.

Q. Okay. And if it was breezy -- the wind -- the breeze would carry, you know, environmental elements such as dust up onto the walkway?

MR. DEUTSCH: Objection, Your Honor. Calls for speculation.

THE COURT: Sustained.

BY MR. CALL:

Q. Have you ever been in that area where -- when it was windy?

A. Yes, sir.

Q. Okay. And you -- and have you ever seen anything blowing into that area when it's windy?

A. Yes, sir.

Q. Okay. And that includes dust; correct?
A. Correct.
Q. Okay. Where were you located at the time that you received the call that Mr. Cox had been injured?
A. I believe I was on the inside of the casino.
MR. DEUTSCH: Just note my objection, Your Honor. He didn't receive a call --
THE COURT: You want to rephrase --
MR. DEUTSCH: -- about Mr. Cox being injured, so it misstates the testimony.
MR. CALL: Let's see.
MR. DEUTSCH: One of the stagehands called.
BY MR. CALL:
Q. You were told about Mr. Cox's injury; correct?
A. Yes, sir.
Q. Okay. And you were told by a stagehand; isn't that correct?
A. Yes, sir.
Q. Okay. And just to clear up that for Mr. Deutsch. I want to make sure that we're absolutely clear on that little --
MR. DEUTSCH: Howard said words matter.
/////

BY MR. CALL:

Q. -- on that little fact. Okay?

Where were you located in the theater at that time?

A. I was -- I -- I don't necessarily recall, but I was on the inside -- upper inside of the doors. Like we were trying to clarify, the inside doors of the casino, the second set of doors in that area.

Q. Okay. And that's inside on the carpeted area; correct?

A. Yes, sir.

Q. Okay. And that's inside the carpeted area where everybody's been running through that Mr. Popovich had shown you; correct?

A. That's correct.

Q. Okay. Wouldn't you agree with me, if a large truck, on November 12th 2013, had parked there on the -- on the access ramp, that if there was a -- a large amount of dust, that it would have shown track-out?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: I'll allow it.

THE WITNESS: Yes, sir.

BY MR. CALL:

Q. Okay. I think that might be all I have.

Thank you.

THE COURT: All right.

MR. POPOVICH: So, Your Honor, after Mr. Deutsch, then I would be allowed to ask him questions with a cleared court?

THE COURT: Yes.

MR. POPOVICH: Thank you.

CROSS-EXAMINATION

BY MR. DEUTSCH:

Q. Mr. Navas, good morning.

A. Good morning, sir.

Q. Good. We've never met before. My name is Adam Deutsch. Nice to meet you.

A. Same here.

Q. Now, you've been working for a long time for MGM. Is that fair?

A. That's correct, sir.

Q. Over 20 years; right?

A. That's correct, sir.

Q. And how many of those years were spent doing something with respect to the Copperfield show?

A. Probably six or seven years, something like that.

Q. And I'm assuming that you -- you participated

in the Thirteen Illusion a number of times; is that true? Meaning opened the doors for that illusion a number of times; fair?

A. Yes, sir.

Q. Okay. Two shows a night, five, maybe more, days a week. Is that fair?

A. Yes, sir.

Q. So would it be fair to say that over the course of the time you've worked with MGM, you've worked at hundreds of different shows?

A. Yes, sir.

Q. And this same show, every time you -- you open the doors just like that; is that right?

A. Yes, sir.

Q. Okay. And you told the jury a couple times -- and it was almost one of your first answers -- that this night was a long time ago. Fair enough?

A. What do you mean, sir?

Q. Well, you told the jury when -- when -- I think Mr. Popovich asked you one of your very first questions about something, you said, you know, "I don't remember. It's been a long time." Do you recall that?

A. Correct.

Q. Okay. And one of the things that Mr. Popovich asked you about today was that you went

out and spoke to Mrs. Cox at some point after you were -- had spoken to her husband. Do you remember that?

A. Correct.

Q. Okay. And you told Mr. Popovich -- let's put it up on the screen so we can see exactly what you said.

Zoom this in a little bit. See if I can do it this way. There we go.

"QUESTION: So did you ever contact Mrs. Cox?

"ANSWER: I made contact with her and tried to --

"QUESTION: Let me just ask the next question. Where did you make contact with her?

"ANSWER: In the house.

"QUESTION: "The house," does that mean --

"ANSWER: That's the theater -- inside the theater.

"QUESTION: The theater? Okay. Then did you inform her about her husband?

"ANSWER: I let her know her husband was in the back.

"QUESTION: Did you ask her to follow?

"ANSWER: Yes.

"QUESTION: Did she?

"ANSWER: No.

"QUESTION: What did she do?

"ANSWER: She just left the house -- or the inside of the theater."

Do you remember telling the jury that today?

A. Yes, sir.

Q. Okay, because that's what you remember today; right?

A. Yes, sir.

Q. Okay. Well, you gave some deposition testimony in this case a couple years ago. Do you remember that?

A. Yes, sir.

Q. And you were asked questions at your deposition about the same -- the same area, about going to see Mrs. Cox. Do you remember that?

A. Okay.

Q. I'm just asking if you remember it or not.

A. No.

Q. Okay. Let me see if you remember being asked this question and giving this answer back during your deposition, which, for the record was on --

You know the date of it, Jerry?

January 14, 2016.

Thank you, Jerry.

January 14th, 2016.

MR. MORELLI: What page?

MR. DEUTSCH: Page 34, line --

MR. POPOVICH: Yeah, I'd object to publishing this until I've been told what we're talking about. This is not part --

THE COURT: Take it off the screen.

MR. DEUTSCH: Sorry. It's the same exact question that I just asked him.

MR. POPOVICH: Where?

MR. DEUTSCH: 34, line 7 -- line 9 through 11.

MR. POPOVICH: No objection.

THE COURT: Okay.

BY MR. DEUTSCH:

Q. All right. So this is the question and answer that you gave at your deposition.

"QUESTION: Okay. After they took Mr. Cox away in the ambulance, what did you do?

"ANSWER: I believe I just got his wife and brought her back, and then she had words with the paramedics, supervisors, report writers, and that was it."

Do you recall being asked that question and

giving that answer at your deposition?

A. No, sir.

Q. Okay. So let's just see if we can clear it up.

At your deposition, your memory was that, when you went to speak to Mrs. Cox, that you, in fact, were the one who brought her back to see the people in the ambulance. That's what you recalled at your deposition; true?

A. Okay.

Q. Am I right about that?

A. I don't remember, sir.

Q. Well, you agree with me that that was your testimony?

A. Okay.

Q. Well, do you agree with me that that was your testimony?

A. Yes, sir.

Q. Okay. And, therefore, at your deposition in 2016, your memory of this evening was that you brought Ms. Cox back to speak to the paramedics; true? That was your memory back then?

A. Okay.

Q. Am I right about that?

A. Apparently, that's what I did.

Q. Okay. And today your memory is different about what Mrs. Cox did. Is that fair?

A. That's fair, sir.

Q. Okay. So would it be fair of me to say that this event happened a long time ago and your memory about it isn't really that good? Is that fair?

A. That's fair, sir.

Q. And, therefore, when Mr. Popovich and Ms. Fresch and Mr. Russell and Mr. Call asked you questions about what you saw that night, where you were standing that night, your memory about those things was probably not that good either. Is that fair?

MR. RUSSELL: Objection, Your Honor. I didn't ask him anything about that night in general.

BY MR. DEUTSCH:

Q. Okay. I'll take Mr. Russell out of the question.

Is that fair? You don't really remember because it was just another night for you. Is that fair?

I'm waiting for it.

A. That would be fair.

Q. Did you speak with anyone -- other than an attorney, did you speak with anyone from MGM about your testimony here today?

A. No, sir.
Q. Did you ever speak to Mr. Habersack?
A. Yes, sir.
Q. Okay. Did -- Mr. Habersack, was he the one who asked you to come down here today, that you would be needed?
A. Yes, sir.
Q. Okay. And did you discuss with him what you were going to be needed for?
A. Yes, sir.
Q. Okay. And did he tell you what had been going on in the case thus far?
A. No, sir, other than that I was needed to be here.
Q. Okay.
MR. MORELLI: Your Honor, may we approach?
THE COURT: Sure.
(A discussion was held at the bench, not reported.)
THE COURT: So -- okay. How about 15 minutes? Will that work?
Okay. Let's take a 15-minute break.
Ladies and gentlemen, during the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without

limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom just around 15 minutes to 11:00. Okay?

THE MARSHAL: All rise.

(Whereupon a short recess was taken.).

THE MARSHAL: Anything outside the presence? No?

All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Please be seated. We're back on the record.

Before you proceed, Counsel, yesterday, I informed counsel and the parties and the jury that we would not be in session next Friday morning the 11th. It appears that what was on my calendar may be coming off for that morning. So it may very well be that we can be in session Friday morning the 11th and not just

the afternoon.

However, since I told you that, has anybody -- would anybody be unable to be in session Friday morning?

Okay. So I think that's going to happen. So if it doesn't -- what's that?

THE CLERK: 9:00 a.m.

JUROR NO. 8: 9:00 a.m., Judge?

THE COURT: 9:00 a.m., right. Giving you a heads-up basically that it's likely we will be in session.

All right. You may proceed.

MR. DEUTSCH: Thank you, Your Honor.

THE COURT: And, Counsel, you do stipulate that the jury is present?

MR. MORELLI: Yes, the jury is present.

MR. POPOVICH: Yes, Your Honor.

THE COURT: Very well.

MR. FALLICK: Adam. Adam.

BY MR. DEUTSCH:

Q. Mr. Funes-Navas, in -- you've been a security guard now for over 20 years at MGM; right?

A. Correct.

Q. And, as part of being a security guard, as you've told us here, you sometimes are the first person

that's called, if there's been an accident, to go over and assist the person. Is that fair?

A. If there's -- in the theater?

Q. No, I -- well, I'm just talking generally now. Security guards in general like yourself are sometimes the people who, if something happens out of the ordinary -- like an accident or an incident or something else -- they go get you and you go over to see what happened. Is that fair?

A. If the call is in and I'm in that area, yes.

Q. And sometimes you would be, like, the first responder, the first person from MGM that's on a particular scene. Is that fair?

A. If I'm in that area, yes.

Q. Okay. And despite that fact, isn't it true that you have never been trained by MGM how to do any type of investigation? Isn't that true?

A. I am just a first -- just a -- I would call a first responder, just basic first aid.

Q. Right. So -- so my question, though, then, is correct, you've never been trained how to do any type of investigation. Is that true?

A. I'm just a first responder, first aid. That's what I do.

Q. So, again, I'll try a third time.

Am I correct that you have never been trained in investigation? Is that true?

A. I'm not a report writer.

Q. Okay. Let's try it one more time.

Have you -- am I correct that you have never been trained in how to do investigation?

A. Correct.

Q. And you mentioned just now that you're not a report writer. Is that fair?

A. Correct.

Q. And there are certain people that have additional training of some sort about how to go about writing reports on behalf of the MGM?

A. Correct.

Q. And because you're not a report writer, that's why, when you mentioned before, that -- that it's not your duty to give any information to the people that you're assisting. Is that fair?

A. Explain that, sir.

Q. Sure. Well, you mentioned before at one point that -- at some point you said something about "I didn't want to say too much." Is it fair of me to say that, once you go over to a person, you check to make sure they need medical attention; correct?

A. Correct.

Q. And then if they do, you then dispatch that to -- call in to your dispatcher; correct?

A. Correct.

Q. And, at some point, a report writer will come to the location. Is that fair?

A. Depending the situation, sir.

Q. Depending on the situation. But, in the case of an injury, a report writer would come over?

A. Depends on the situation, sir.

Q. Okay. If it's a situation where a report writer would be coming, is it fair to say that you wouldn't have any further discussions with the person; you would just leave it to the report writer? Is that fair?

A. Again, I do not understand the question.

Q. Okay. Well, let me try it a different way.

Are you aware that a report writer did come to this location?

A. Yes, sir.

Q. And -- and that was a person by the name of Kevin Janson?

A. That's correct, sir.

Q. And you were the person -- you were the first MGM employee at the scene; correct?

A. Correct, sir.

Q. You were the first one that one of the stagehands -- well, actually, let me take that back.

There are stagehands that work for Backstage and MGM. Is that fair?

A. That's correct, sir.

Q. And do you remember if it was a Backstage or an MGM stagehand that came over to tell you that Mr. Cox was hurt?

A. I do not recall.

Q. So you might have actually been the second person from MGM to know about this. Is that fair?

A. I do not recall, sir. I was just told that it was an emergency backstage.

Q. Okay. And, at some point, Mr. Janson -- you were the first -- other than the stagehands, you were the first security person over to this emergency; correct?

A. Correct, sir.

Q. And, at some point, Mr. Janson came; is that right?

A. That's correct, sir.

Q. And it would seem reasonable to think that -- withdrawn.

Mr. Janson is also in the security department at MGM?

A. That's correct, sir.
Q. Okay. And he -- he has this additional function of being a report writer; correct?
A. That's correct, sir.
Q. And you, in your position, despite being there all those years, you're specifically instructed that you're not supposed to write reports; right? You're not trained to do that. Is that fair?
A. I never applied for that position.
Q. Okay. So MGM says to the security guards, "We have a special position just for people to write reports." Is that fair?
A. I never applied for that position, sir.
Q. Right, but you've been at MGM for 20 years. So I'm assuming that you know that there's a special position that MGM has that says "we only want these certain people writing reports." Is that true?
A. Yes, sir.
Q. Okay. And it would seem to me that when Mr. Janson, the guy who's the report writer, came to the scene, that he would have wanted to speak to the MGM security guard who was the first one at the scene. Is that a fair assumption?
A. I can't speak for Mr. Janson, sir.
Q. Okay. Well, in fact, you never spoke to

Mr. Janson that night. Is that true?

A. I can't speak for Mr. Janson, sir.

Q. No, no. I asked you isn't it true that you never spoke to Mr. Janson that night or you have no recollection of speaking to Mr. Janson one way or the other. Is that fair?

A. I do not remember, sir.

Q. Okay. Well, you were asked a question in 2016, and you were asked this question.

MR. MORELLI: What page?

MR. FALLICK: 32.

MR. DEUTSCH: 32, line 11.

"QUESTION: When Mr. Janson would have arrived, would he have had a conversation with you about what you knew?

"ANSWER: Again, all my concern was just trying to make sure he was okay, Mr. Cox. I didn't have any contact with Officer Janson. And that was basically my main priority, was to make sure that he was okay. When medical came in, the paramedics took over. And that was the extent of my contact."

BY MR. DEUTSCH:

Q. Do you recall being asked that question and giving that answer?

A. I don't remember, sir.
Q. Okay. And -- and, sitting here today, as you just told us before, you don't remember one way or the other if that happened or not; true?
A. Correct.
Q. And there was an incident report that was -- was done in this case. Are you aware of that?
A. Yes.
Q. Okay. Did you become aware of that recently in preparation for coming in to testify today, or did you become aware of that sometime before your deposition or some other time?
A. Incident reports are always made when something happens.
Q. Okay. Now, have you actually seen the incident report in this case?
A. No, sir.
Q. You've never seen it?
A. No, sir.
Q. Okay. And sometimes when an incident happens, you -- even though you're not a report writer, you fill out a personal statement of some sort? I don't know exactly what it's called, but is that fair?
A. Voluntary.
Q. A voluntary statement. Thank you.

Sometimes you do that; correct?

A. Correct.

Q. But, in this instance, despite the fact that you were the first person over there, you didn't fill out a voluntary. Is that fair?

A. That's correct, sir.

Q. And you don't remember that specifically, but, having seen the report, we know that there isn't one from you attached to the report; true?

MR. POPOVICH: Objection. Too many questions. Compound.

THE COURT: Sustained.

BY MR. DEUTSCH:

Q. Well, you don't have a specific recollection of filling out a voluntary. Is that fair?

A. That's correct, sir.

Q. Okay. But we have the report, and we know that there isn't a voluntary from you attached to that report; true?

MR. POPOVICH: Objection. He said he's never seen the report. Lacks foundation. Speculation.

THE COURT: Sustained.

BY MR. DEUTSCH:

Q. I have a feeling we'll get to talk to Mr. Janson about that. So I'll leave that alone for

now.

MR. POPOVICH: Your Honor, can I be seen at sidebar over that little comment right there?

THE COURT: Yes.

(A discussion was held at the bench, not reported.)

THE COURT: All right. Go ahead.

BY MR. DEUTSCH:

Q. Just one more question. We saw some of those clips -- actually, maybe a couple -- but we saw some of the clips of the video of you propping open the doors.

A. Yes, sir.

Q. What did you use to prop open the doors?

And this is not that specific night; this is just generally.

A. Anything I can find. Sometimes it was a little plastic rubber thing that -- to prop the doors or a rock or anything I can find. Something that was nothing, so ...

Q. Okay. I have nothing further. Thanks so much.

A. Uh-huh.

THE COURT: So, at this point, cross-examination will be within the ambit of --

MR. POPOVICH: It's redirect, but, yes, for

an open court.

THE COURT: I'm sorry. Redirect will be within the ambit of what's in the open courtroom. And then, after that's completed, we'll do the other.

MR. POPOVICH: Correct.

REDIRECT EXAMINATION

BY MR. POPOVICH:

Q. Even though it's been years ago, do you have a recollection of this event, meeting Mr. Cox, meeting Mrs. Cox?

A. A little bit.

Q. What's the thing you remember most?

A. Ms. Cox yelling and screaming.

Q. Thank you.

MR. POPOVICH: Nothing further.

MS. FRESCH: Nothing, Your Honor.

MR. RUSSELL: Nothing further, Your Honor. Thank you.

THE COURT: All right.

MR. DEUTSCH: I just have one question about that, Judge.

THE COURT: Oh, okay.

MR. DEUTSCH: Sorry.

/////

RECROSS-EXAMINATION

BY MR. DEUTSCH:

Q. So -- well, first of all -- give me one second here.

So we talked a little bit about -- we've already established that -- that your memory of these whole events is not crystal clear, but Mr. Popovich just asked you one thing that you do claim to remember, and that was that Mrs. Cox was yelling; true?

A. Yes.

Q. Okay. And, therefore, when Mr. Popovich asked you the first time about your interaction with Mrs. Cox, since that was one thing that you did remember so clearly, it would seem to me that that would have been something that you would have told the jury right when Mr. Popovich got up. Is that fair?

MR. POPOVICH: Objection. Calls for speculation as to what I would do.

THE COURT: Sustained.

BY MR. DEUTSCH:

Q. Well, it seems to me that if you remember that one thing, that when Mr. Popovich asked a question about what Ms. Cox did that night, that that would have been the first thing that you told the jury; true?

A. True.

Q. But yet when Mr. Popovich asked you the question this morning on his direct examination, this is what you were asked and this is what you said.

"QUESTION: The theater. Then did you inform her about her husband?

"ANSWER: I let her know that her husband was in the back.

"QUESTION: Did you ask her to follow?

"ANSWER: Yes.

"QUESTION: Did she?

"ANSWER: No.

"QUESTION: What did she do?

"ANSWER: She just left the house -- or the inside of the theater."

You did not -- when asked what she did, you didn't say she yelled and screamed. You said all she did was leave the house or the inside of the theater. That's what you told the jury this morning; isn't that true, Mr. Funes-Navas?

A. Correct.

Q. Okay.

MR. DEUTSCH: I have nothing further, Judge.

THE WITNESS: Did you want me to answer why?

MR. DEUTSCH: I have nothing further, Judge.

THE COURT: All right.

THE WITNESS: Judge, can I answer why?

FURTHER REDIRECT EXAMINATION

BY MR. POPOVICH:

Q. Mr. Funes-Navas, why?

A. Because I wanted to be respectful since we are in a court of law. I did not want to disrespect Mrs. Popovich [sic]. I did not want to show disrespect since she is here, to the judge, to the jury that is here, and to the rest of the people that are here.

MR. POPOVICH: Nothing further for the open court.

MS. FRESCH: Nothing further.

MR. RUSSELL: Nothing, Your Honor.

THE COURT: At this time, the courtroom will be closed --

MR. DEUTSCH: Nothing further, Judge.

THE COURT: -- for some questions. All persons who are not parties, counsel, jurors, or court personnel are directed to leave the courtroom. Any nonofficial cameras and recordings or other electronic media are to be inactivated.

(Whereupon media left the courtroom.)

THE COURT: All right. You may examine the witness on the subject that --

MR. POPOVICH: Thank you. And I appreciate

the closing of the court, Your Honor.

REDIRECT EXAMINATION

BY MR. POPOVICH:

Q. So this is Clip 5 of Exhibit 402, hour 20, minute 24, 46 seconds. And you may play.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. What did you see there, Mr. Funes-Navas.

A. It was Mr. Copperfield going through the -- through the doors.

Q. Is that in relation to the Thirteen Illusion?

A. It's just previous to that.

Q. The clock on the -- on the video indicates it's about 11 minutes before the participants went through for Thirteen. To your knowledge, when was the Copperfield run-through -- that's a bad question.

The Copperfield run-through that we just saw, how far it -- as far as illusions, is that in front of Thirteen?

A. It's previous to that.

Q. The one before?

A. Yeah.

Q. Okay. Now, we've looked at the whole string of videos I had for you going back to the earlier

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morning. Did anybody complain about that approach area on the concrete to those 402 doors that night?

A. No, sir.

Q. Do you still do the Copperfield show?

A. No, sir.

Q. Are you on a different shift?

A. Yes, sir, I'm on the day shift now.

Q. When did you stop doing the theater assignment?

A. About two years ago or something like that.

Q. Over the years, did you get acquainted with Mr. Copperfield?

A. Yes, sir. I talked to him several times.

Q. Have you ever overheard him giving directions for issues he saw to be dealt with?

A. Yes, sir.

MR. DEUTSCH: Objection, Your Honor. Outside the scope.

MR. POPOVICH: Well, it went with --

MR. DEUTSCH: Oh, you're right. I apologize. Sorry. I forgot this was still the first -- I got you. Sorry.

BY MR. POPOVICH:

Q. Have you observed that?

A. Yes, sir.

Q. Has he ever made comments to you about something?

A. Yes. He's very clear. He's very specific. If something is out of place or needs to be fixed, he wants to be -- he wants it to be --

MR. DEUTSCH: Objection, Your Honor. Hearsay.

THE COURT: Overruled.

BY MR. POPOVICH:

Q. You can finish.

A. If there's something out of place or there's something that needs to be fixed, he wants it to be fixed immediately.

Q. And gives instructions?

A. Gives instructions that it needs to be done as soon as possible.

MR. POPOVICH: Your Honor, can we approach?

THE COURT: Yes.

(A discussion was held at the bench, not reported.)

MR. POPOVICH: No further questions in closed, Your Honor.

THE COURT: Is there any cross on the subject?

MR. POPOVICH: Your Honor, it's still

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happening.

THE COURT: Okay. Let's be careful -- let's please be careful in terms of things that are stated.

MR. DEUTSCH: Yeah, yeah. Are there any other questions from that side of the room?

Are there any other questions from them?

Then it's up to me, I guess; right?

MR. POPOVICH: Correct.

MS. FRESCH: No questions, Your Honor.

MR. RUSSELL: None. Thank you.

THE COURT: Mr. Deutsch?

MR. DEUTSCH: No questions, Judge.

THE COURT: Okay. That conclude the witness's testimony, then?

MR. MORELLI: No.

MR. DEUTSCH: The jury might have some questions.

THE COURT: I don't see any pieces of paper being held high.

MR. DEUTSCH: No questions?

THE COURT: You may -- you may stand down, sir. Thank you.

MR. DEUTSCH: Your Honor, may we approach?

THE COURT: Yes.

(A discussion was held at the bench,

not reported.)

THE COURT: All right. Ladies and gentlemen, at this time, the Court and counsel have something that we need to take up outside your presence. Okay?

And, therefore, as far as you're concerned, we'll be in recess for about 20 minutes. We'll reconvene at 25 to 12:00 or as close to that as we can.

And, as always, during the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom about 25 to 12:00. Okay?

And Counsel will remain and I'll hear what's to be brought before me.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

THE COURT: All right. You may be seated.

Okay. Pursuant to the bench conference, my understanding is there's an issue to be addressed pertaining to defendant MGM's next witness; is that correct?

MR. POPOVICH: That's my understanding, Your Honor.

MR. DEUTSCH: Your Honor, we have -- we have a couple of -- of problems with respect to Dr. Baker, the first being that Dr. Baker had submitted a report in this case way back in 2016, and he gave some opinions in that report.

Then, less than 30 days before trial, on March 18th -- so, like, two weeks before trial -- he submitted a supplemental report that had additional -- that was after all the motion in limine issues, et cetera, were done before that, he submitted a supplemental report.

So under Rule 26(e), we think that Dr. Baker should be precluded with respect to that second report for late notice. That's the first issue.

The second issue is -- is with respect -- if Your Honor is inclined to let him testify, there are certain opinions in his -- both reports that we don't think he should be entitled to testify about because of

a number of things, including foundational items. He based his opinion in part on things that the defendants moved to preclude for not being relevant in this case.

So there's a number of items. I believe some of them, we have discussed and been able to work out. If Your Honor can maybe just give us five minutes right now, we can maybe narrow the scope of this argument down to just the things that we don't agree upon.

THE COURT: Okay. Bob will come get me when you're ready.

MR. POPOVICH: Thank you, Your Honor.

(Whereupon a short recess was taken.)

THE MARSHAL: All rise. Come to order.

THE COURT: All right. We're back in session outside the presence of the jury.

MR. DEUTSCH: So, Your Honor, I -- I had made a mistake, I guess. I was under the impression that this was Mr. Popovich's expert. I guess I had forgotten that he was cross-designated by Backstage. And while Mr. Popovich had agreed that a lot of these opinions -- well, he didn't agree that they were not proper; he just agreed he wasn't going to go into them.

I thought it was much shorter. Unfortunately, Mr. Roberts intends to go into all the things that Mr. Popovich didn't. So we're going to

have to speak about each one individually and why I think they're inappropriate. So --

THE COURT: Okay.

MR. DEUTSCH: So Mr. Baker did two reports. The first report he did was on May 16, 2016.

And, in that report, he lists his observations and opinions into different sections. The second section -- well, most of his opinions, I should start by saying, are basically just opinions rebutting opinions given by a Thomas Ayres, who was an expert that the plaintiffs had retained who we agreed we weren't going to call.

So all -- most of his opinions are just rebutting what Dr. Ayres said. Opinion in No. 2 he gives is Dr. Ayres, when -- I guess when Dr. Ayers did his report, he went out and actually measured using one of those devices, the foot-candle light, outside during the runaround. And he gave a number based on his measurements.

Dr. Baker's response to that was, "The surveillance has demonstrated that Gavin Cox had his own flashlight in his hand at the instant slip-and-fall, and the combination of the flashlight and spotlights held by MGM provided adequate illumination of the pedestrian travel area. The level

of ambient illumination overhead, mounted lights, was not a factor in the slip-and-fall."

But Dr. -- whether or not the lighting outside was adequate or not is the jury's decision. If Dr. Baker had gone and actually measured it and said "Scientifically, I measured it, it went to this level, and therefore, you know, that level is below what the requirement's standards are," or something like that, he could testify. But having done no scientific tests, if you could call measuring something, I guess, a scientific test, all he's doing is looking at the surveillance tape.

The jury doesn't need this guy to come in and say, "In my opinion, the lighting was okay." That's what they're going to have to decide. So having done no scientific measurements of any kind, he shouldn't be entitled to give an opinion about whether the lighting was adequate or not based upon the same thing that the jury -- you know, there's nothing that that would assist the jury in making that decision.

They could -- they've watched the surveillance. They could determine whether they think the lighting is adequate or not. I don't understand -- this guy doesn't add anything to that. So I think that that opinion should not be permitted.

THE COURT: Any response?

MR. ROBERTS: Yes, Your Honor. Dr. Baker is a human factors expert with a specialty in lighting. This is what he does, is observe lighting and determine if it's sufficient or unsafe. And he was there. He observed the level of lighting. He noted on the video that there were flashlights being used to illuminate the path and, therefore, opined that the level of lighting was not a factor in the accident. I think that's just the type of thing that human factors people do.

I -- I will say that I made a proposal to Mr. Deutsch which he rejected, but, if the Court is going to allow a jury view, then the jury is going to be able to make their own assessment of the amount of ambient lighting even without flashlights. And I don't think it would be necessary for me to have this witness get into it.

But if the Court is considering denying our request for a jury view, then I do believe it's appropriate to have a lighting human factors expert opine as to whether the level of light outside on the exterior area of the runaround was sufficient for safety.

THE COURT: I think one of the points that

counsel made was that he hadn't done any actual testing or --

MR. DEUTSCH: Well, two things that he said --

MR. ROBERTS: And that's not even --

MR. DEUTSCH: Two things that Mr. Roberts said were incorrect.

THE COURT: Wait a minute. Let's just go on my question.

MR. DEUTSCH: He didn't do any testing.

THE COURT: Okay. But he did rely, didn't he, on Mr. Ayres? Am I missing something? Did he rely on Mr. Ayres' testimony?

MR. DEUTSCH: Are -- well, Mr. Ayres testified that he did testing and that his testing showed that it was .1 foot-candles.

MR. MORELLI: And he disagreed.

MR. DEUTSCH: A specific measurement. And he doesn't even disagree with that. He doesn't even say that that's wrong. He doesn't even say it's not .1 foot-candles; he just says that -- and he doesn't say in this opinion that he based it on his visit to the site. His opinion in this --

THE COURT: The report doesn't come into evidence anyway.

MR. DEUTSCH: I understand that. But the opinion in his report is just based on the surveillance only, he comes to this opinion.

THE COURT: What's everybody else's position on this jury view situation?

MR. DEUTSCH: Well, we obviously feel strongly against it, Your Honor, and --

MR. POPOVICH: Support.

MS. FRESCH: We all -- no, we --

MR. POPOVICH: That was a joint defense --

MS. FRESCH: That was a joint defense -- we all talked, and Mr. Roberts just did it on behalf of all the defense. And then of course --

MR. POPOVICH: Because he knew the rule number.

MS. FRESCH: And, obviously, the jury had -- if you recall, the jury had requested it as well in one of their questions.

THE COURT: Yeah, as I recall, one of their --

MS. FRESCH: Yes, in the first -- I believe after --

THE COURT: I think it was a statement or --

MR. DEUTSCH: It was.

THE COURT: -- "are we going to be able to,"

whatever.

MR. DEUTSCH: Here's the problem, Your Honor, is that the site is not at all the same anymore. The entire runaround area has been redone. The incline is not there anymore. The curbs have been changed. The concrete on that whole area has been changed. The tree's gone. All of that stuff has been changed.

So -- and that goes into some of the arguments about Dr. Baker's later reports and also Mr. Yang -- or Dr. Yang's opinions as well, which we can talk about later.

But the whole area has been changed. We don't know whether it was a full moon on the night of his accident versus not a full moon. Those things all matter. So to bring them there on a random night to see a site that is not at all the same is -- and they've seen pictures of it. They've seen 100 pictures of it.

MR. MORELLI: They have a video.

MR. DEUTSCH: They have a video of it. Going there does not add anything other than confusion because they're going to be seeing this incline that's not there. They're going to be seeing a new curb area, no tree. None of it is the same anymore, none of it. And if you notice, there's going to be no foundation

about it being the same. We have pictures. I can show Your Honor the pictures. I can put them up on the screen.

THE COURT: Okay. What's the response to what --

MR. POPOVICH: The response is Mr. Deutsch is -- and this is where we have a basic disagreement is, there have been some changes, no question. The area where Mr. Cox lands has not been changed. That concrete has not been changed.

MR. DEUTSCH: We disagree with that.

MR. POPOVICH: And that's why I prefaced it with we have a disagreement.

Another thing that has not changed and is -- and I can't -- as -- I'm basically now testifying as a semiwitness, but the reality is that the photos do not give you the sense of --

MR. DEUTSCH: Can I stop you for a second.

Mr. Habersack --

MR. STRASSBURG: Wait a minute. That's not -- let him talk. I'm tired of all this rudeness.

MR. DEUTSCH: Mr. Habersack may be a witness in this case.

MR. STRASSBURG: He sits there and lets you talk; you should give him the same courtesy.

MR. DEUTSCH: Mr. Habersack may be a witness.

MR. STRASSBURG: I said you should stop and let him talk.

MR. DEUTSCH: Are you done, Roger? Would you ask Mr. Habersack since he may be testifying in this case.

(Discussion was held off the record.)

MR. MORELLI: That's why, Roger. You see? That's the reason. That's --

MR. DEUTSCH: You want to apologize now, Roger? You want to apologize now?

THE MARSHAL: Counsel.

MR. DEUTSCH: Do you want to apologize now?

MR. STRASSBURG: I apologize for that incident, but you do it all the time. And, for that, I'm still critical.

THE COURT: Okay, let's -- c'mon, let's settle down now.

MR. DEUTSCH: Thank you, Judge.

MR. POPOVICH: The photographs do not give the correct perspective of distances. Those have not changed, the distances of the interior halls from the back of the stage into the hallways, the outside. And I even paced off 30 paces. But until you're there, you do not have a true sense of these distances to the

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point where he has the accident. So that is, I believe, a strong reason to do this.

As we've already done with some photographs, in photographs that were taken after changes were made -- for instance, the tree is out -- we've been able to explain that --

THE COURT: Certainly, differences can be pointed out.

MR. DEUTSCH: Well, let me show Your Honor the differences, because the main issue in this case is --

MR. STRASSBURG: Judge.

MS. FRESCH: Your Honor, could we finish making all our points about --

MR. STRASSBURG: Could we possibly have a turn?

THE COURT: Everyone is talking at the same time, so I'm sure that the record is going to be --

MR. STRASSBURG: I know. Isn't she tired of it?

THE COURT: I think Ms. Fresch started to talk before you did.

MS. FRESCH: Yes. I just wanted to inform Your Honor that, with respect, the platform is still there. The -- the dragon can be brought in. It's

not -- it's not stored there at this moment, but I've already verified that can be brought in.

The stage area and the entire interior hallways, nothing of that -- until when they get out to the theater door, none of that has changed. That is all exactly the same. I verified that. I mean, if we had to have someone say.

But there are a few changes, as Mr. Popovich just mentioned. Otherwise, on the route, even going back into the theater, nothing has changed. There's one -- apparently, one little change in the kitchen area, which is really not even germane. So that -- that -- that -- you know, it's very much all the same except for what Mr. Popovich said.

So I strongly would request for that view.

THE COURT: Now -- okay. Go ahead, Mr. Roberts.

MR. ROBERTS: Thank you, Your Honor. With regard to this issue of change, I direct the Court to Eikelberger v. State, 83 Nev. 306; 429 P.2nd 555.

And, in that case, the -- the court allowed a jury view over the objection of the property owner. The owner contended that the condemned property had drastically changed by the removal of structures and buildings which were there when the suit started and

that there was some other differences. The court pointed out that witnesses had fully explained the changes in the appearance of the surrounding area, so the court said the fact that you've got changes isn't important as long as the changes are explained to the jury.

As Mr. Popovich pointed out, there's still very significant unchanged things that are important for the jury to be able to have to view the testimony in context, mainly the distances involved and the general appearance outside.

Thank you, Your Honor.

MR. DEUTSCH: Your Honor --

THE COURT: Now I think Mr. Strassburg has something to say.

MR. DEUTSCH: Oh, yeah. I forgot.

MR. STRASSBURG: And, Judge, I'd like to include you in the scope of my apology. I don't usually lose my temper.

MR. DEUTSCH: Second time in two weeks.

MR. STRASSBURG: Team wants a jury view of the distance from the location of the jobsite. The 241 feet across the expensive carpet to the doors, that hasn't changed. That distance is important. We also want a jury view of the area called the airlock between

the two security -- the security doors and the location where the dumpster rested.

THE COURT: Okay.

MR. DEUTSCH: Your Honor, our -- our position is that they already put in a diagram for a demonstrative showing 17 feet, 25 feet, 32 feet. I don't think that we need to waste everyone's time, the court's money, to explain 17 feet or 20 feet. We're not talking about numbers that everyone doesn't understand.

THE COURT: I'm not sure if it's the court's money. I think it might be the parties' money.

MR. DEUTSCH: Well, obviously, our -- my client's money, then, for sure.

But -- but the -- to show distances that -- that we all, like -- we're not talking about anything that's crazy. They've already put in evidence that this hallway is 17 feet long and this one's 22 feet long and this one is 30 feet long. So to suggest that someone needs to see what something is for -- to identify 17 feet is ridiculous.

But the more important part --

THE COURT: I don't think it's ridiculous.

MR. DEUTSCH: Well, can I just show something, Your Honor?

THE COURT: Sure.

MR. DEUTSCH: I think it's unnecessary. "Ridiculous" might be the wrong word.

So this is what the area looked like on the night of the accident. Okay?

THE COURT: What do you see? You see a little -- you don't see the whole thing; you just see.

MR. DEUTSCH: Well, no, no, no. I mean, we have a zillion pictures that are in evidence, Your Honor, that I could show you.

MR. CALL: What exhibit is that?

MR. DEUTSCH: This is --

THE COURT: I'll tell you. I'd sure like to see it.

MR. DEUTSCH: This is 93.

Well, I just want to show your Honor these photos, and then -- this is 93. These are the hallways that we're going to go out there at night to see, these pictures. Okay?

So there's plenty of pictures of all these interior hallways that the jury's already seen that he runs through. These are all in evidence already. So there's nothing about these hallways that the jury's going to see that matters.

What -- what's relevant and why the jury

could potentially be prejudiced by this, Your Honor, is that the conditions -- while the conditions inside may be very much the same, inside is really only a tiny piece of this case. The relevant piece of this case is outside. And there's two things about outside that, on the night we go, we can't explain away to the jury, one of which is the lighting conditions outside. We don't know if there was a cloud over -- we don't know any of those things about how dark it was.

THE COURT: So you're saying a view should never have been done or what?

MR. DEUTSCH: I'm saying, in a case where an issue is the lighting conditions and the area has changed, a view should not be done.

THE COURT: But don't you think you can point that out to the jury?

MR. DEUTSCH: No, I don't think so, Your Honor, because I think if we go there and we say to the jury, "You're here to look at this area outside, but you're not allowed to take into account the darkness or lightness of it, and you're not allowed to take -- whether it's light or dark out here, you can't take that into account."

THE COURT: Okay.

MR. DEUTSCH: And that would be -- Your

Honor, if -- if -- do you believe that a jury would be able to go out there and wipe from their mind the condition -- the lighting conditions out there at that moment? They wouldn't be able to. They wouldn't.

And we know that the lighting conditions are different because it's a different night. And this is what the area looks like now. This is what the area looks like now. The area now outside looks like -- so that's what it looked like on the day of the accident. This picture is in evidence. So the jury has gotten to see this. And not only have they gotten to see this, but they --

MR. ROBERTS: That's ten months after the accident happened.

MR. DEUTSCH: Yeah, but it's the same -- but the site is the same exact as it was on the night of the accident. They've already measured for the jury and explained the distance from here to here. That's already been measured. They're going to have an expert who's going to come in in a half hour and tell the jury what the measurement is from here to here because he measured that. That's a big part of his testimony. So this picture shows them everything they need to know about that.

Now, let's look what it looks like now.

MR. STRASSBURG: So, Judge, they just want to --

MR. DEUTSCH: I'm not done, Roger. Roger, I'm not done.

MR. STRASSBURG: If you can't beat them, join them.

MR. DEUTSCH: So this is what --

MR. STRASSBURG: You're right.

THE COURT: That right there tells me --

MR. DEUTSCH: Was that -- well, that one wasn't in evidence, thankfully. Let's see.

Just trying to find the best one. This is what it looks like now. The whole corner of that whole incline, all of this curb -- all of this curb has been redone. This has been redone. All of this here has been redone. Everything about this -- and all -- this area right here --

MR. MORELLI: And the tree is gone.

MR. DEUTSCH: -- the conditions of the lighting on this night, which -- the fact that there was a huge tree hanging over the area could have affected the amount of light that people were getting in this area. And this whole area, even where Mr. Cox says he fell -- which is somewhere over here -- or where their expert is going to come in and say he fell,

which is where this cone is -- that whole thing was covered by a tree. We know that because of the security video. We know that the tree extended from the end all the way up to the point -- because you can barely see Mr. Cox's head. So that whole area is covered by a tree.

So the lighting conditions at that area, regardless of the moon and the ambient light, are totally different because of that tree. The entire curb and incline is totally different. So there's nothing gained by going that the jury doesn't already know. The only possibility is that they'll be prejudiced against the plaintiffs because they're going to see what lighting conditions are like on a night that wasn't the same without the tree. And they're going to see that this entire area was done over again.

And that is -- there is a potential for prejudice there when there's nothing gained by the defendants by going there. Letting the jury see what 17 feet is instead of 30 feet, we could go out into the hallway, Your Honor, with Ms. Bonney's measuring tape and measure 30 feet if that's what they're concerned about. We've been told that Ms. Bonney brings the measuring tape everywhere she goes.

THE COURT: How about the place where the

fall occurred?

MR. DEUTSCH: The place where the?

THE COURT: The fall occurred.

MR. DEUTSCH: Well, the place where the fall occurred is -- is -- is this right here. And the place the fall occurred is -- depending on whose side of this you want to believe. Mr. Cox believes -- his recollection was -- is that he was turning the corner, and therefore it was somewhere over here. The defendants are going to bring in an expert to say, "No, Mr. Cox is a liar. He doesn't know. He fell where the cone is."

So under either version of the events, he fell somewhere between this cone and this corner. Everything from this spot to that cone is different, including the lighting conditions because of the tree, and it's a different night, and because that entire concrete area -- the incline, the curb -- has all been changed.

So the three things that really are relevant in this case -- what the lighting conditions were at the point, what the incline -- the condition of the ground was at this point -- all of those things have changed.

The distances between 10 feet and 15 feet,

it's irrelevant. Nobody needs to get on a bus to go see how far 12 feet is. But the prejudice to us by having them speculate, well, the lighting must have been kind of the same as it was that night and, like, this doesn't look so bad, that -- even if you tell them, you won't be able to shake them --

MR. MORELLI: The pictures --

MR. DEUTSCH: Right. You won't -- you shape their memory. And, you know, we tried to put in some pictures that happened after the accident. And Your Honor said that it's not relevant because it's different. This is very different. This is very different. And if there is any possibility that the jury could be confused or prejudiced, unless they could show some substantial reason why it's necessary to see it -- and the only reason they have given is to say that they need to explain to the jury what distance is?

If that's the only reason, let's walk into the hallway with a tape measure, and we'll show them what distance is. Distance is the only reason they've given, Your Honor, for why they need to go there.

MR. MORELLI: Why didn't the photos tell that?

MR. DEUTSCH: We'll go into the hallway and we'll measure distance. And they could see how far

30 feet is. We have a map that they drew, Your Honor, that shows this hallway. I don't know where it went. There was a pad that they used during opening statement.

MR. POPOVICH: No, it's not over there. It's back here. I didn't actually -- he's going to contradict a couple of them by a foot.

MR. DEUTSCH: Who cares? We'll stipulate that you missed it by a foot. I mean, it doesn't matter.

THE COURT: All right. Anything else?

MR. POPOVICH: Yes, couple things. Where -- can -- can you override it? Yes.

So we're going to show you --

MR. DEUTSCH: She's the boss.

MR. POPOVICH: -- Exhibit 93-89, Your Honor. And if you can see below the cone, there is an expansion joint running across.

MR. DEUTSCH: This one.

MR. POPOVICH: I'm not sure how well the color -- well, maybe I should put on my glasses.

MR. DEUTSCH: You can see it. You could see it.

MR. POPOVICH: So there is different coloration between the concrete that is below the

expansion joint -- and I say "below," meaning higher on the picture but lower in elevation -- as compared to the part where the cone is. It will be Dr. Baker's position that, where Mr. Cox came to rest on the ground, center mass, which is basically where his heart is, is where that cone is. And the position is, is that has not changed since the time of the accident.

Now, another factor is, no, we're not just asking for this for distances. That is an important part, but the lighting is an issue. And we have already talked amongst this group that, because there's the possibility the dumpster was casting a shadow into the area, we can -- with 24 hours' notice, we can get a same-size dumpster in the place where it was --

THE COURT: Okay.

MR. DEUTSCH: And plant a tree?

MR. MORELLI: And you could plant a tree?

MR. POPOVICH: I'll stand up with --

MR. DEUTSCH: No, that's my job, Jerry. Don't take my tree job.

MR. POPOVICH: You would do it better.

So we think we can explain the differences, and we think it's important.

MR. DEUTSCH: May I just comment one thing, Your Honor, about what he said about the change in the

sidewalk? Just one -- one piece.

So, if you notice, it's our position that the entire thing has been changed. If you notice, Your Honor, in this photograph, there's a drain that's been put into the sidewalk. Okay?

You can -- may I -- may you flip back, Ms. Bonney?

MR. ROBERTS: Actually, no. Because I'm still using this picture, and it's our turn.

MR. DEUTSCH: Oh, I'm sorry. Go ahead. I didn't know. I didn't know.

THE COURT: Go ahead.

MR. DEUTSCH: I didn't know you had something to say. Go ahead.

MR. ROBERTS: Your Honor, the -- the -- first of all, moon phase, it was a waxing -- a waning gibbous on November 12th, 2013.

MR. DEUTSCH: We've already talked about that.

THE COURT: Six months.

MR. ROBERTS: Tomorrow night is the same phase.

THE COURT: Six months difference in time between --

MR. ROBERTS: There -- there will be less

moonlight next week than there was on the day of the incident.

The point that Mr. --

THE COURT: How do you know that? I don't know.

MR. ROBERTS: Because there are moon phases that the government publishes that the Court can take judicial notice of. And we can also look at the moon when we're there.

But the -- the point that Mr. Deutsch has made is all of the changes can be adequately explained to the jury. The jury's entitled to see the distances in the context of the walk-around and in the context of the theater.

And the differences can be explained to the jury and argued to the jury. The picture -- and the reason I wanted it up, Your Honor, is Dr. Baker's going to testify this is a picture that he took. This is part of what he's going to show the jury.

So the jury will have already seen this picture of the changed conditions. And so what -- how -- what additional prejudice can arise from the fact that they're going to see the actual changed conditions instead of a picture of the changed condition?

The rule is not if there's any possibility of prejudice, you can't do it; the question is, is it more probative than prejudicial. And as the Court knows, back to 1885, the Nevada Supreme Court has found that a jury view is not evidence, but it does provide context for the jury to understand the evidence that they've heard in this courtroom.

And if we're going to start excluding everything that doesn't match, well, we've got witness testimony that the surveillance video is darker than the actual conditions. So does that get excluded?

We've got pictures --

MR. DEUTSCH: I would like --

MR. ROBERTS: -- taken with flash that Mr. Deutsch has put into evidence. Do those get excluded because they're lighter than it would be at night?

The jury can understand these things. The jury can understand them when they're explained to them as ably as Mr. Deutsch just did. And the probative value of having the jury view the scene at which all of these events occurred greatly outweigh any prejudice which can be easily and simply explained away.

MS. FRESCH: And, Your Honor, just one more point.

Beyond the outside -- I mean, there has been so much testimony about the platform and the portion of the runaround from the platform to the outside. And that is critical. And the only way you can really put that into context in this case is to see it in person, because otherwise it's too difficult.

And that is a critical point. They've spent a lot of time on that part. It's not like we just started out with Mr. Cox going out that door. So there's two portions to this that are very important. I just didn't want that to be overlooked.

MR. DEUTSCH: May I? Is everyone done, Roger?

MR. STRASSBURG: I'm good. I think that it -- the point has been adequately explained.

MR. DEUTSCH: So this is -- this is -- I don't agree with a couple of things that was said.

One -- Ms. Bonney, will you flip me back here. Oh, you did. Thank you.

Okay. So the first point is, I don't necessarily agree that this photo should come in with Dr. Baker. That's part of my additional motion with respect to Dr. Baker. Dr. Baker does this analysis. One of his opinions is that -- he does this analysis where he claims that he was able to go to the security

place, he put a sticky on the screen, and then he had someone go outside and stand where the sticky showed him in live video, and therefore he could measure where Mr. Cox is. He wants to testify about that, okay. I'll cross-examine him about it.

He also then gives some testimony, though, about -- that the place this cone, I believe from his report, represents that location where he claims Mr. Cox fell.

MR. POPOVICH: That's correct.

MR. DEUTSCH: I don't think it does, but I'll save that for cross-examination.

He also then says that there's -- he measures with a level and says that's 1 degree of -- you know, there's 1 degree of upslope, I guess, at that location.

The problem is -- and this is where our -- our fight -- our wager came in -- is that if you notice in this -- it's my belief that this entire thing -- and if you look at the pictures, you could tell that this entire curb has been changed. That's very clear from the pictures.

I believe the entire thing has been changed. And -- and the piece of evidence that I can show you that has been changed is that, in this photograph -- and this brought me to my "My Cousin, Vinny" reference

this morning. I asked -- when I was telling Mr. Popovich about this, does the defense case on this issue hold water, is that there is -- and I'll find the best picture -- there is a drain installed in the concrete right there.

Now, in order to get that drain in there, this whole thing would have had to have been taken out. If you look at the photographs from the night of the accident -- or from, you know, the old concrete area --

MR. STRASSBURG: There's a drain there in 403.

MR. DEUTSCH: Oh, you mean it's covered by dust? Okay. If that's what you're saying, then maybe we can go with that, Roger. Let's take a look. Did you have one in particular that you were referring to, Roger?

MR. STRASSBURG: 403.

MR. DEUTSCH: Let's look at these. So I think there might be one here. So here's the photographs -- I'm just trying to find the best one, Your Honor. I'm sorry. Oh, I think I might have --

MR. POPOVICH: There's only one.

MR. DEUTSCH: No, there's a couple. There's a couple that you can see.

So here's one from that area, the same exact

location. There's no drain identified in that picture. There's more, though. Let me continue along.

MR. CALL: Look at 181-93.

MR. DEUTSCH: 181?

Let's see 181. There you go, 181. There is no drain there at all anywhere. And if we look in the pictures --

THE COURT: What's that white thing there?

MR. DEUTSCH: Well, that white thing is just a piece of paper, Your Honor.

THE COURT: That's on the other side. Okay.

MR. DEUTSCH: There's no drain -- you're saying that this right here is a drain?

MR. ROBERTS: How did you know where I was talking about?

MR. DEUTSCH: Because I got -- because that's -- that's the area where the drain would be. But that ain't no drain. Okay?

And let's look at the pictures from the night of the accident. Let's look at the pictures from the night of the accident.

MR. RUSSELL: 403-8, you can see it.

MR. ROBERTS: Eight.

MR. DEUTSCH: This is 403. There ain't no drain.

MR. STRASSBURG: It's in the tire track.

MR. DEUTSCH: There is no -- okay. So if the defendants are taking the position that the drain was there but you can't see it in this photo because it's covered with dust, we'll let them put the picture in evidence.

MR. STRASSBURG: It's --

MR. RUSSELL: Hang on a second. Ms. Bonney is going to bring it up and highlight it.

MR. DEUTSCH: It's not there, Judge. It doesn't take a rocket scientist, as Mr. Cox said, to see that that drain is not there. It's not -- that's not even in the same place. It's not even close to the same area.

MR. RUSSELL: Yeah, it's right here.

MR. DEUTSCH: No, this is where you guys say he fell, over here between the two -- can you take that away for a second, Ms. Bonney?

You guys say that there's two whatever -- what did you call them, Jerry?

MR. POPOVICH: Expansion --

MR. DEUTSCH: Expansion joints. One here and one here. You say that it stopped at this expansion joint and everything above that expansion joint was left the same. If you look at the drain, the drain is

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between the two expansion joints. Now you're circling something over here, which is about a foot from the door.

MR. POPOVICH: Your Honor, can I address Mr. Deutsch's last comment?

Where the new expansion joint is is above both of the old expansion joints; meaning, yes, the concrete down by the curb line has changed all the way up through -- not to -- this expansion joint up into this area.

MR. DEUTSCH: But that's -- that area is not where their expert puts Mr. Cox.

MR. POPOVICH: Well --

MR. DEUTSCH: The drain is here. The drain is here.

MR. POPOVICH: No.

MS. FRESCH: No.

MR. DEUTSCH: Let's look again. I'm not -- look, we'll put it up on the screen and the judge can decide, but I think it's pretty --

MR. POPOVICH: Mr. Deutsch, count the panels. One, two, three, four, and --

MR. DEUTSCH: Let's do that.

MR. POPOVICH: -- and the drain is approximately around the fourth or fifth, depending on

your --

MR. DEUTSCH: Let's do that. And if I'm wrong, I'm wrong. But let's do that. Let's do that. Let's count the panels. Count the -- so --

MR. MORELLI: Wrong picture.

MR. DEUTSCH: I'm getting there.

MR. POPOVICH: Ultimately -- while Mr. Deutsch is looking for the pictures, ultimately, Your Honor, Dr. Baker was there and measured before the changes and measured after, and he can tell us the relative position.

MR. DEUTSCH: I have no problem. I said that. I have no problem with him testifying where he said --

MS. FRESCH: He never lets anyone finish.

MR. POPOVICH: But he can -- he can break the tie about whether the expansion joints and the -- after the new construction are in the same location as the old.

MR. DEUTSCH: Well, it's not about that. It's about the fact that -- look, there we go. That's a picture. One, two, three -- am I up on the screen?

MR. POPOVICH: Can't even see the drain.

MR. DEUTSCH: The drain is right here. Okay? One, two, three -- it looks like it's somewhere in line

with either the third or fourth expansion panel. I mean, third or fourth wall panel, as you put it, from here. One, two -- it's either here or here. It's kind of hard with the perspective, but somewhere in there. We agree with that?

MR. POPOVICH: Some -- I would say approximately the fourth, give or take.

MR. DEUTSCH: Okay. So third or fourth. So, now, let's go to those photographs, the one.

MR. POPOVICH: 403-8.

MR. DEUTSCH: 403 -- 403-8. One, two, three, four. Where -- where is the drain?

MR. POPOVICH: Right there.

MR. DEUTSCH: Where? Covered in dust?

MR. STRASSBURG: Blow it up.

MR. POPOVICH: I -- I've never denied dust, if you recall. Right there.

MR. DEUTSCH: I don't know.

MR. POPOVICH: About the fourth panel.

MR. DEUTSCH: Let me look on my screen. Let me powwow, but I don't think so.

MR. ROBERTS: While they're conferring, Judge, I think the Court should consider that a jury member asked for a view.

THE COURT: I remember.

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MR. ROBERTS: Just as juries are now allowed to ask questions, if the jury wants a view, I think that that ought to weigh in favor of it to the extent it --

THE COURT: Maybe I should poll the jury as to whether a view is --

MR. DEUTSCH: Your Honor, I don't think the jury should have any say --

THE COURT: I'm concerned about the time. You know? Because we're talking about a half hour after sunset, so I'm not sure --

MS. FRESCH: Your Honor.

MR. ROBERTS: That would be about 8:00, Your Honor.

MS. FRESCH: Your Honor, I can address that, that Mr. Copperfield is -- his shows are going forward next week, as they are right now. But I've already worked out that his show ends -- the 7:00 show ends right about 8:30. I've already talked about it that -- and the next show starts at 9:30.

THE COURT: I was talking about the juror times.

MS. FRESCH: Oh, I thought -- but we can do it right in between shows. We can get them in and out. It will be quite easily done. So in between the two

shows, all the logistics of that is quite easy to be done.

MR. DEUTSCH: Your Honor, your preliminary instructions in this case -- and every time you say to the jury -- leave -- don't go visit the scene because things might have changed.

THE COURT: But the jury view is a different concept.

MR. DEUTSCH: Your Honor --

THE COURT: It's part of the trial.

MR. DEUTSCH: Obviously, the jury's going to say we want to go because they're going to think it's exciting to go backstage at Copperfield.

THE COURT: Some people may have difficulty with the time.

MS. FRESCH: It's the time if they could do it, he's talking about.

THE COURT: These jurors have been here for quite a while. Okay? They have participated in this case. Some, if not all, have expressed an interest in having a view. I grant a view. Okay? We grant a view.

It has to be set up with court administration in the appropriate way. Plaintiffs' counsel are very able, I'm sure, to point out any differences in

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pictures or whatever. And --

MR. DEUTSCH: Can we go during the daytime, Your Honor, and that way the lighting is not at issue at all? If they're only going for the issue of the distances and things, we could take out the prejudice of -- with respect to the lighting conditions --

THE COURT: That makes sense.

MR. DEUTSCH: -- and go during the daytime.

THE COURT: What do you think?

MR. ROBERTS: Your Honor, Court's Exhibit No. 4, the juror who requested the view specifically requested to go after the sun goes down.

THE COURT: Well --

MR. ROBERTS: That's part of the question.

MR. DEUTSCH: But, Your Honor -- but, Your Honor, that means -- that actually is very telling. It means that he wants to go to see the lighting conditions, which means even if we tell him "ignore the lighting conditions because they're different," he's not going to. So if they wanted to go see the distance --

THE COURT: You can't say that.

MR. DEUTSCH: Your Honor, there was a tree there. There was a dumpster there. There was a tree covering the whole area. It was a different time of

year. There might have been clouds. There might have been -- we don't know.

So the lighting conditions are different. So if they want to go -- if they're being honest with the Court, which is they want to show it for distances and stuff, then they should have no objection to going during the day. If they're saying we want to go so the jury could see how dark or not dark it is outside, that's a different story.

But they've been up here for a half hour saying it has nothing to do -- we could tell the jury to disregard the darkness and we could tell the jury to disregard that because we just want to go there to see what the -- what the distances are. If that's why we're going, let's go during the day. It doesn't take up any of the jurors' extra time. We could go when it's light out. And there's no potential for prejudice with respect to lighting conditions.

THE COURT: And is it Dr. Baker, is that his name or --

MR. ROBERTS: Dr. Baker, yes.

THE COURT: He could then testify relative, then, to the lighting conditions.

MR. ROBERTS: He could. And he was there for a runaround. He did go to the scene, unlike

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Mr. Deutsch represented.

But, Your Honor, I specifically did request it after the sun went down because the scene looks differently at nighttime.

MR. DEUTSCH: That's my point.

MR. ROBERTS: And it is generally the same. Mr. Deutsch can talk about a tree, but there's nothing that he can show that would prove that the conditions today are materially different in any way than the conditions they were on the night of the runaround.

And the reason that they are so violently opposed to it is they've been misrepresenting to the jury throughout this whole trial about how dark it was out there. And he doesn't want the jury to see the truth.

MR. DEUTSCH: So it's amazing, Your Honor. Suddenly we now have gone from we could tell them that the lighting conditions are different, we're not going there for the lighting conditions, we're just going to show the distance. And now, suddenly, when we said, okay, let's go during the day, suddenly the only reason they want to go is because of the lighting conditions. It's incredible.

MR. ROBERTS: Actually, Your Honor, if you will recall, I said I'll withdraw my request to have

Dr. Baker testify to the lighting conditions if the jury can go see it in the dark themselves. I was completely honest with that up front, which is why we're talking about the jury view right now.

MR. DEUTSCH: But, Your Honor, it doesn't take away -- going in the light or dark doesn't take away from my argument that Dr. Baker is not able to give the jury scientific testimony about his opinion on the light conditions from an observation on a different night, when they moved to preclude us from putting in videos from a different night because they said they weren't similar.

THE COURT: Mr. Strassburg, you have something to say?

MR. STRASSBURG: Judge, we've looked at many photographs.

THE COURT: What's that?

MR. STRASSBURG: We've looked at many photographs purporting to show nighttime conditions. I remember examining a witness about pedestrians out on the sidewalk, photographs taken at night. We've heard testimony that flash photos can darken the background. They're -- we believe that flash photos also overexpose the foreground. There is a large amount of misleading light-level evidence in the case already. I think a

view at a roughly comparable time is necessary to level the playing field to give context to the evidentiary photographs.

THE COURT: What about the testimony of Dr. Baker, then, if a view is permitted? You said you would be willing to withdraw that proffer?

MR. ROBERTS: Yes. If the jury can view after the sun goes down, we'll withdraw that proffer.

MR. DEUTSCH: Your Honor, think about what we're doing. We're about to let the jury go look at a site. Now Your Honor is suggesting that we're *not* going to explain to them even that the lighting conditions are different and the purpose of going there is so they could actually see how dark or light it is.

THE COURT: When did I say you couldn't explain the lighting conditions?

MR. DEUTSCH: Well, if we're going to tell the jury that the lighting --

THE COURT: Do you want Dr. Baker to testify?

MR. MORELLI: We don't really care.

MR. DEUTSCH: If Dr. Baker wants to give his opinion about how light or dark it is, and that's the issue --

THE COURT: No, I was talking about allowing the view but not Dr. Baker's testimony on the lighting.

MR. MORELLI: No view.

MR. DEUTSCH: We'd rather no view; let Dr. Baker testify.

THE COURT: There's going to be a view. Okay? Let's leave it at that.

MR. DEUTSCH: Can we go during the day, then, Your Honor.

THE COURT: No, we'll do it in the evening, a half hour after sunset. Okay?

MR. DEUTSCH: Your Honor --

THE COURT: You're very able -- you've demonstrated to me that you're very able to point out these differences.

MR. DEUTSCH: So we are going to be able to say to the jury that they should disregard the lighting conditions on that night, or Your Honor letting them use the lighting conditions on that night --

THE COURT: That wasn't the question.

MR. DEUTSCH: -- as direct evidence? We're not going there with Dr. Baker.

THE COURT: I know. But, I mean, you can question witnesses about --

MR. DEUTSCH: No, no, no, no. Your Honor, we're going there, and you're saying that the jury is going to be allowed to look at the way it is on that

day and use that lighting condition as direct evidence of what the lighting condition was on the night of the accident? Is that what you're suggesting?

THE COURT: I don't think that's what I said; I said I'm going to let them go through and look at it in context.

(Unreportable crosstalk.)

THE COURT: You can point out the discrepancies or whatever --

MR. DEUTSCH: But isn't the point of that to allow the jury to use that as evidence, Your Honor, in the case?

THE COURT: You've got all kind of pictures and everything else that you can point out all kinds of --

MR. DEUTSCH: So I'd like to use the pictures, then, that I have from a week later and two weeks later that your Honor left out.

THE COURT: I don't know. We'll see. Okay?

MR. MORELLI: Well, we have to know.

THE COURT: So --

MR. ROBERTS: Thank you, Your Honor.

THE COURT: All right. So -- but Dr. Baker will not be allowed to testify on lighting conditions.

MR. DEUTSCH: And, Your Honor, we're not

going to agree to pay for any of this.

THE COURT: It's going to be -- yeah, I was going to say that. This is -- the moving parties are going to be paying for this view.

MR. ROBERTS: We've agreed to share the costs. And Mr. Freeman actually represents a bus company who's going to lease us a bus.

THE COURT: Well, you got to work with court administration. Okay? Because there are all kinds of details that have to be worked out.

MR. POPOVICH: Based on the Court's ruling, does the Court -- and maybe even better question -- do the plaintiffs want a dumpster there?

MR. DEUTSCH: I think we'd like the dumpster there, Your Honor. I think we'd like the dust there that they conceded was there. So I think Mr. Strassburg has plenty of concrete. I think we should bring that. I think we should fill the dust, and I think we should plant the tree again.

MR. POPOVICH: So the dumpster --

MR. STRASSBURG: You won't believe what we can put in concrete.

THE COURT: The same size dumpster needs to be there.

MR. POPOVICH: Yes, sir. We've already

investigated. We can do that.

MS. FRESCH: Your Honor, because I know we want to probably try to get the jury back in here --

MR. MORELLI: What about the tree?

THE COURT: They have to leave.

MR. DEUTSCH: How about the tree, Your Honor? Are we going to put that back too?

MS. FRESCH: Your Honor --

THE COURT: Do you have a fake tree or something you can put up?

MR. DEUTSCH: It's got to be a tree that covers up above the roof of the building to cover the security camera in the same way.

MR. MORELLI: And the light.

MR. DEUTSCH: And the light.

MS. FRESCH: Your Honor, I'm just asking just quickly, who would we start coordinating with that so we can -- who would be the person to -- to --

MR. POPOVICH: We can ask the court staff that.

(Unreportable crosstalk.)

MR. DEUTSCH: And if someone trips and falls, Your Honor, while on MGM property, is MGM agreeing to cover any costs or damages that those people sustain?

MR. POPOVICH: No.

MR. FREEMAN: You can hand out cards.

MR. DEUTSCH: I just want to know. We're going to go walk around backstage where there's an obstacle course of cables and stuff. So I want to make sure that the jury's safe, that if they're stepping over cables and going through tight spaces and having to jostle in and out of things, if MGM and Copperfield are going to agree to cover those injuries.

MR. MORELLI: I think you should ask the jury whether they're still interested.

MR. DEUTSCH: Yeah, let's ask the jury if they're still interested.

THE COURT: I've made my ruling. Let's move on here. Okay?

MR. POPOVICH: Thank you.

THE COURT: Come on. What's the next thing?

MR. POPOVICH: So the lighting is dealt with. What's number two?

MR. DEUTSCH: So he is going to be able to testify about lighting?

MR. POPOVICH: No, he's not.

MR. DEUTSCH: All right. He's not going to be able to testify about lighting. All right. So that one's out.

Next, Dr. Baker --

THE COURT: I don't think he's going to be testifying today, is he? It's 10 after 12:00.

MR. POPOVICH: At most, I can maybe start his -- his qualifications. But, at this point --

THE COURT: Okay. Well, let's go.

MR. DEUTSCH: So Dr. Baker --

MR. POPOVICH: If we're not, we should let the jury go.

THE COURT: Well, let's see. We can start with the qualifications after we resolve these issues. We can get -- have him sworn and then get started.

MR. POPOVICH: I don't have confidence we're going to be through with these issues.

MR. DEUTSCH: Dr. Baker testified -- or testified -- excuse me -- in his report, Opinion No. 3, that, at a later date, he went to the scene and watched the -- stood outside when he watched the people come around in the runaround, and then gives some opinions.

The first problem with that is that we were going to produce some videos of people doing the runaround, and the defendants made a motion in limine to keep those out, arguing that a runaround on another night like that is irrelevant and therefore we shouldn't be allowed to show those videos. Your Honor granted that motion in limine and didn't let that come

in because it was a different night runaround. So -- so -- so he shouldn't be allowed to testify about his observations in light of that.

Notwithstanding that, he doesn't give any scientific opinions of any kind. What he says is that "I noted that, on that night, none was running fast." Okay. Pomai Weall testified some nights they run fast and some nights they don't. So that's not a scientific -- you don't need a degree in human factors to say if someone's running fast or not. They have the video of this night. They can make their own opinion on what happened on this night.

Two, "They didn't seem hurried." I don't know how exactly he formulated this scientific opinion about that.

"None seemed stressed." I'm not sure how -- any scientific basis --

THE COURT: Is this within what a human factors engineer does, though?

MR. DEUTSCH: To see if people seemed stressed when they were running?

THE COURT: Like opinions like that?

MR. DEUTSCH: I don't think so.

THE COURT: I mean, a foundation has to be laid.

MR. DEUTSCH: "None seemed pressured, none seemed out of breath." You know, you can have --

THE COURT: I'm not a human factors engineer, so I don't know what they consider --

(Unreportable crosstalk.)

THE COURT: Go ahead and talk.

MR. DEUTSCH: Sorry.

Your Honor, you could have all the fancy degrees in the world, and none of those degrees help you to determine whether or not someone is out of breath or not. That is something within --

THE COURT: How do you know? Are you a scientist? I don't know. You know? I mean, the evidence doesn't come in unless a foundation is laid for it.

MR. DEUTSCH: Okay. So that was No. 3.

No. 4 is an opinion that -- No. 4 opinion that he gives is that Minh Cox is lying because the video shows that the ambulance was there in 20 minutes and she testified that it was an hour.

Well, now we've been in court and she testified, "It seemed like an hour to me. Maybe I was wrong." So I'm not sure how a human factors expert, no matter what his qualifications are, can be permitted to say, "I viewed the -- the accident tape and it showed

the ambulance was there in 20 minutes, so when Minh testified that it was an hour, she's not telling the truth. She's not credible."

I don't see how that could possibly fall within a scope of any expert, let alone a human factors expert. So -- so --

MR. POPOVICH: Should I be --

THE COURT: So you'll be objecting to a question if it comes up; right? Yeah, that's -- you're giving me sort of a preview of objections you're going to have --

MR. DEUTSCH: No, I was making a motion in limine in light of the fact that we got these reports two weeks --

(Unreportable crosstalk.)

THE COURT: Let's go back to the one about the other videos that the Court excluded or whatever. I want to make sure I understand what you were referring to there.

MR. DEUTSCH: There were videos -- there were videos that were taken by different experts, including our expert, of a runaround after the fact.

And in a motion in limine dated January19th, 2017 -- I'm sorry, December 16th, 2016, there was a motion in limine to exclude photos and videos allegedly

taken by plaintiffs. And what they wrote was, "We believe plaintiffs will attempt to introduce the video and photos that are irrelevant and prejudicial in this case. It's improper because the photos and videos have not been authenticated and no foundation has been laid. They unfairly prejudice and they will mislead the jurors and confuse the issues. The videos and photographs show the area where the incident occurred in a completely different condition than when the incident actually occurred."

MR. MORELLI: Imagine.

MR. DEUTSCH: "The remaining photographs show that plaintiff in the emergency room" -- we can skip that. "The videos are not relevant and could inflame the jury." So here they are making a motion to this Court that showing pictures from a different time could inflame the jury. The video and photographs should be excluded.

They go on to say, "The four-minute video that was produced by plaintiff was taken at a night sometime following the date of the incident. Plaintiffs, by their own admissions, did not know when the video was taken or who took the video."

MR. MORELLI: That doesn't matter.

THE COURT: Well, authentication is an issue

different from, you know, whether --

MR. DEUTSCH: No -- well, there's more. It's also -- I'm going to get to the irrelevant part because it's a different night irrespective, because I could have laid a foundation for that. And when we argued the motion in limine, Your Honor, I said I think it's premature to exclude these because I haven't been given an opportunity to lay a foundation.

THE COURT: Okay.

MR. DEUTSCH: But Your Honor didn't exclude them based on that ground; Your Honor excluded them based on the next ground, which is the issue of "The probative value of these photographs is significantly outweighed by the danger of unfair prejudice for the admission of the video or photos in evidence."

They point to the fact that Mr. Cox testified that the photos were not an accurate representation of the area where he fell at the time of the incident, that some of the items depicted were not actually even there on the night of the accident, they point out.

And NRS 52.0151 states that "the requirement of identification is the condition precedent to the admissibility." It's an improper foundation because he says that they weren't the same as the night of.

THE COURT: But you're saying the same thing

about what you're saying the defense is saying?

MR. DEUTSCH: That's right. I'm saying that here --

THE COURT: So, in other words, the door might be open if they show that; right? Is that what you're saying?

MR. DEUTSCH: The door could be opened. But I just find it -- I just find it interesting that they could in one -- on one hand argue -- I mean, obviously, look, we're always allowed to argue in the alternative. We are. I give them that.

But, on one hand, they come in with a motion in limine after we've rested saying that any photographs taken at a different time are irrelevant because it's different, because it could inflame the jury. You can't show videos because it's different. And now, suddenly, none of those things matter anymore, Your Honor, when they want to do a site inspection.

THE COURT: I'm not sure what you mean when you say now they come in with a motion in limine after the fact.

MR. DEUTSCH: No, no, no. I'm saying now they're coming in and asking to do a site inspection, and all of the reasons that they said we shouldn't be allowed to use these videos -- that they're different,

you can't authenticate them, it's different, it's not similar, it could inflame the jury -- all of those things suddenly are just no big deal anymore, I guess. So --

MR. MORELLI: Those photos.

MR. ROBERTS: And I think Mr. Deutsch may have misunderstood what I said I wanted to -- to have Dr. Baker do, which was to testify that he personally observed performance of an illusion and "this is what I observed." We aren't going to offer the video or still photos into evidence. We just want him to talk about what he observed.

And -- and, Your Honor, we did take the position that other nights of a runaround should not come in. And, over our objection, you allowed Ms. Lawrence to talk about what happened in the runaround on a completely different evening, not just the fact of injury, but the fact she felt rushed and hurried and her total impression of the experience.

And so now this is just another runaround, just like the different runaround that Ms. Lawrence talked about. And he just wants to talk about what he observed, just like Ms. Lawrence talked about what she observed.

THE COURT: Okay, but it may very well be

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that the door could be open to permit --

MR. DEUTSCH: At this time, Your Honor, we would offer these two photographs into evidence. We -- we -- we've laid a --

MR. STRASSBURG: Objection. Objection.

(Unreportable crosstalk.)

MR. DEUTSCH: We could have laid a foundation, Your Honor, by Ms. Cox. Mr. King testified that every day at 2:30, he left with the site perfectly clean. Ms. Cox is prepared to testify -- and was prepared to testify -- that she took these photographs after 2:30 in the afternoon. And, therefore, the fact that they were taken later, if that -- if the door's open to what happens after the fact.

THE COURT: Let's --

MR. ROBERTS: Can I ask the Court's guidance on a question, though?

We now have another new witness. And the Court indicated that whether you allowed this third new witness to testify would depend upon whether there's a need to rebut something that we put on.

THE COURT: Right.

MR. ROBERTS: And, frankly, if having him talk about another runaround and what he observed opens the door to that, I'd rather have neither.

THE COURT: You'd rather what?

MR. ROBERTS: I'd rather have neither one. I'd rather sit on my case and have --

THE COURT: I always have to look at the context involved before I can determine whether or not something's appropriate, so I don't know.

MR. ROBERTS: Thank you, Your Honor.

MR. POPOVICH: On this issue, I had told Mr. Deutsch that the only thing I intended to do with Dr. Baker as to his observing runaround is for him to say that, during an inspection at night, he observed the exterior portion of a runaround, period.

MR. DEUTSCH: That, he could do.

MR. POPOVICH: I -- I guess I'm asking, is that going to open a door? Because that's all I want. I'm not going to ask him what he saw at all. I just want to strengthen the fact --

MR. DEUTSCH: That sounds reasonable. I have no problem with that. And we had come to an agreement. It was -- my objection, Your Honor, was him being able to say that somehow he has some knowledge to say these people didn't looked stressed to him.

THE COURT: Okay. Well, I understand that. I didn't say that that's going to come in; I just said I can't exclude it at this time until I see what kind

of foundation is being set.

MR. DEUTSCH: Except, Your Honor, that he's bound by --

THE COURT: If we need to take something up outside the presence of the jury, we will.

MR. DEUTSCH: Okay. Except that he's bound by what's in his report. And that's an opinion he gave in his report. And --

THE COURT: You're saying that this is in the supplement that wasn't --

MR. DEUTSCH: It's in both of the reports.

THE COURT: Okay. So --

MR. DEUTSCH: Actually, the opinions about being stressed is in the first report.

THE COURT: Okay. So it's argument? Okay. So you're not saying it's newly disclosed; you're saying it's there but it shouldn't come in; right?

MR. DEUTSCH: Correct.

(Unreportable crosstalk.)

MR. DEUTSCH: Your Honor, the point of motions in limine sometimes, I think, are so we don't have to object to everything --

THE COURT: No, I understand.

MR. DEUTSCH: -- in front of the jury.

THE COURT: I understand. And one thing that

I -- I don't let evidence in unless a foundation has been set forth. And often what I do is have the jury taken outside while --

MR. DEUTSCH: Understood, Your Honor.

THE COURT: -- I hear foundation. I permit voir dire of the witness on the point and everything else. So if it comes to that, that's what we'll do. But, in any event, are there any more issues regarding this witness?

MR. POPOVICH: Well, I don't know about my codefense counsel, but as to the Mrs. Cox issue, I had no intention of touching that.

THE COURT: That was -- that was on the part about the, quote, lying?

MR. POPOVICH: I have no intention of --

MR. DEUTSCH: What?

MR. POPOVICH: The issue you've raised about Baker having an opinion about Mrs. Cox's time testimony, I have no intention of touching it.

MR. DEUTSCH: Mr. Roberts, are you going to touch that?

MR. ROBERTS: Not with this witness.

THE COURT: I think the thing we need to do now is have the jury brought in and we'll have the witness called. You'll lay your -- you'll introduce

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the witness and do some evidence regarding his background or whatever, you know. And then I think we'll adjourn after that.

MR. DEUTSCH: Should we ask the jury -- if Your Honor is prepared to do the site inspection, maybe we should spend a couple of minutes asking the jury about what their availability is for 8:00 at night --

THE COURT: Makes sense.

MR. DEUTSCH: -- sometime next week and just leave the witness -- I mean, we have to break early because someone has to go to a funeral.

MR. POPOVICH: You know, Your Honor --

THE COURT: Does that make sense?

MR. POPOVICH: -- I don't even think I can complete qualifications now. And I really -- I -- I think that's a great idea.

THE COURT: All right. Very well. That's what we'll do.

MS. FRESCH: Your Honor, also, just before we start talking with the jury on their availability, I know we're dark on Monday during the day because of Your Honor's schedule, but I think we could see --

MR. DEUTSCH: We're not here. We already got plane tickets coming back.

MR. MORELLI: We won't be here.

MS. FRESCH: Oh, I'm sorry. Okay. I forgot about that part. Never mind.

THE COURT: Seems to me we have basically Tuesday through Friday; right?

MS. FRESCH: Yes. Yeah.

THE COURT: Next week.

MS. FRESCH: Yes.

THE COURT: Okay.

MR. MORELLI: Instead of calling witnesses.

MR. POPOVICH: No, it will be at night.

MR. MORELLI: Yeah, and what do we do? We spend time over there instead of preparing the case?

THE COURT: Let's get an idea from the jury, and then what we can do is have a bench conference. And, you know, I'm --

MR. POPOVICH: If there's -- I'm sorry. Go ahead, Your Honor.

THE COURT: Well, I'm just trying to -- you know, sometimes you -- you -- you do the view before you do, obviously, subsequent questioning or whatever before you put a witness on. I don't know what counsel have --

MR. POPOVICH: I would think Tuesday or Wednesday should be the targets if we have any chance of getting to arguments next week. We certainly don't

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want to be doing a site view Friday night. Tuesday or Wednesday, in my view, should be the target.

MR. ROBERTS: Join, Your Honor.

THE COURT: Okay.

MR. DEUTSCH: Your Honor, we would just have one more request. We believe that, if they were going to request a site inspection, it should have been done at the beginning of the case, not wait until now, especially in light of the fact that the question was raised.

So we would request that, if Your Honor is going to permit a site inspection that was requested after three weeks of trial when we've rested, that we be permitted to reopen our case for whatever any issues that we find may be relevant to this.

MR. ROBERTS: Your Honor --

THE COURT: I'm not going to grant that request or permission now, but you can certainly -- at the time you think it's appropriate, you can -- you can seek to do so.

MR. DEUTSCH: Thank you, Your Honor.

THE COURT: I will consider it at that point.

I don't -- one concern I've got, I don't want to get into a situation where we're arguing this case on Friday --

MR. MORELLI: That's for sure.

THE COURT: -- because we're not going to be here the following week. In other words, I assume counsel want to have all their arguments adjacent to each other; correct?

MR. POPOVICH: Certainly not separated by a week.

MR. MORELLI: Thursday, at the latest.

THE COURT: And we have to handle the jury instructions and everything else. So I just don't want to have this case be argued and submitted to the jury on Friday evening or late afternoon and then --

MR. POPOVICH: The defense is aware of that, Your Honor. I thought -- I thought I had definitively told plaintiffs last night that I wasn't calling a witness, but I did produce one witness that I, yesterday, thought I was going to call. So --

THE COURT: Well, let me backtrack a little bit. And that is the fact that I'm -- you know, with my schedule, I may be able to be here on the 14th. I'm not sure about that but -- but I'm not positive about that at this point. But I'm concerned about the case going to the jury right on the eve of me not being here. And we've already told them we're not going to be in session the following week anyway.

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MR. MORELLI: Right.

MR. DEUTSCH: My guess is we're not going to even be ready for summations by Friday.

THE COURT: I think that's a pretty good guess.

MR. DEUTSCH: Unfortunately.

MR. POPOVICH: Past performance predicts future --

MS. FRESCH: I was optimistic.

MR. DEUTSCH: Is that in your advertising somewhere?

MS. FRESCH: I was thinking Wednesday.

THE COURT: We still have to do jury instructions and everything else. So all right. Well, let me --

MR. DEUTSCH: Do we only have two more witnesses?

MR. POPOVICH: Baker for me, and I'm done.

MR. DEUTSCH: And then who else? I might be wrong. Is there -- is there -- there's -- there's Baker, and then he's done. And then there's no other witnesses other than Dr. Yang, who we're going to have a motion based on cumulative since he gives the same opinion as Dr. Baker. So if we only have two more witnesses --

MR. STRASSBURG: And Voiss.

MR. DEUTSCH: And Voiss, but we don't know until they say their testimony whether it's cumulative or not. So Voiss -- so we really do only have -- we might be able to finish next week.

THE COURT: Possibly, then. Okay.

MR. DEUTSCH: Tuesday and Wednesday and Thursday.

THE COURT: Okay. Well, let me --

MR. DEUTSCH: Oh, yeah. We might have rebuttal witnesses.

THE COURT: Let me take a quick break and talk to my JEA and see what she has found about the jury view situation -- we've been coordinating with the chief judge and court administration -- and see what we've found out.

MR. POPOVICH: Is it safe to let Dr. Baker go, Your Honor?

THE COURT: I think so.

MR. POPOVICH: Thank you.

(Whereupon a short recess was taken.)

THE COURT: No problem. We haven't received anything specific yet from court administration relative to the arrangements to be made. But I think what we'll focus on is -- are Tuesday and Wednesday. I

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guess I could throw out other days -- days as well if --

MR. POPOVICH: My preference would be to ask Tuesday and Wednesday. If we can't get them all, then we bring up other days.

THE COURT: I think that's the way we proceed.

MR. POPOVICH: I don't want to give away the possibility of -- of maybe closing by Thursday.

THE COURT: Okay.

MR. DEUTSCH: May I ask one question, Your Honor?

THE COURT: Yeah.

MR. DEUTSCH: In terms of -- of an instruction to the jury, I'm assuming there is a regular one that --

THE COURT: Yeah.

MR. DEUTSCH: -- that's there, but are we permitted to offer our own suggestion in terms of identifying to them specifically what is different about the site now?

THE COURT: During the view or --

MR. DEUTSCH: Well, I mean, I'm happy to chat with the jury during the view, but I --

THE COURT: No, I was going to say, no, not

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during the view. There's no communication during the view.

MR. DEUTSCH: Absolutely. So are we -- I'm assuming we are entitled to offer something that Your Honor could read before we go that says that this is different and this is different and the tree's not there and this is different. I mean --

THE COURT: Maybe it would be better to say that after they've seen it, point out the things that they've seen.

MR. DEUTSCH: Well, I think I would rather say it beforehand, so when they go, they can --

THE COURT: Well -- okay. I'll consider that. I mean, I'll consider that and see where everybody is on that. Okay?

So let's have the jury come in and we'll question the jury about availability and --

THE MARSHAL: All rise.

MR. DEUTSCH: We could have saved so much time if we had done this before we started.

THE COURT: It does happen that views come up during the course of trial as being something that we consider.

(The following proceedings were held in the presence of the jury.)

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MR. DEUTSCH: Your Honor, we're going to --

THE COURT: Please be seated, ladies and gentlemen.

Counsel stipulate that the jury is now present?

MR. DEUTSCH: Yes, Your Honor.

MR. CALL: Yes, Your Honor.

MS. FRESCH: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

THE COURT: All right. Let's see. What time is it supposed to be? It's 12:30. So we're going to adjourn, you know, in a few minutes.

We haven't been playing around; we've been in here attending to various things, one of which has to do with a jury view of the premises. Okay? That kind of thing requires certain logistics and arrangements and the like to be -- to be set up. And there are certain complications that are involved.

In this case, it's been determined that a view would take place about a half hour after sunset. Okay? And it would be done next week. And we were focusing on -- and I still have to make arrangements with court administration to set it up and everything, but we're focusing on Tuesday or Wednesday of next week for a view that would be approximately 8:00 or

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thereabouts, as I understand it.

That doesn't mean that you would leave for the view to go there at that time. We could leave earlier than that -- okay? -- to get there to conduct the view at approximately that time on one of those two days. Is that going to cause a problem for anybody?

JUROR NO. 8: Wednesday would be better.

THE COURT: Wednesday would be better? Anybody disagree with that or want Tuesday instead?

JUROR NO. 8: Tuesday is game seven.

MR. DEUTSCH: I agree with that.

MR. POPOVICH: Tuesday is game seven.

THE COURT: So Wednesday -- the focus should be on endeavoring to get it set up for Wednesday?

MR. DEUTSCH: I think Mr. Paredes might have said Wednesday is not good?

JUROR NO. 6: Yeah. Yeah, no.

THE COURT: Wednesday is not good?

JUROR NO. 6: No, not for me.

THE COURT: So I heard that Wednesday is preferable, but I didn't hear that Tuesday was no good; right?

JUROR NO. 8: Tuesday is fine.

THE COURT: So Tuesday could work; right?

Okay. And that's unanimous among the jurors.

All right. Well, very well. We will endeavor to do the best we can.

MR. DEUTSCH: Your Honor, I think there's still one juror who might have a problem with Tuesday, Mr. Paredes.

No? Oh, sorry. No, no problem.

THE COURT: Okay. Let's see here. All right. Here's what we'll do, then, now, ladies and gentlemen. Since it's ten minutes before we were going to adjourn anyway, we're just going to go ahead and adjourn. We're not going to have another witness take the stand. We're going to reconvene, as you know, on Tuesday. And then we'll set up the view for Tuesday night. Okay? Evening, I should say. Won't be in the night, evening. All right?

And so at this time, you are admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the case by any medium of information, including, without limitation, newspapers, television, the internet, and radio.

You're further admonished not to form or

express any opinion on any subject connected with the trial until the case is finally submitted to you.

You're directed to return to the outside of the courtroom just a bit to the south on -- let's see -- that's Tuesday -- what is it? -- May 8th, 2018, no later than 8:50 a.m. for reassumption here at 9:00 a.m. All right? That was the right date and time; correct?

All right. Everybody have a great weekend, and --

IN UNISON: You too.

THE COURT: See you on Tuesday. Anything to come before the Court before adjournment?

MR. ROBERTS: No, Your Honor.

MR. POPOVICH: No, Your Honor.

THE COURT: All right. Very well. Thank you.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

MR. DEUTSCH: One question, Your Honor. Are they planning on setting up the entire thing with the lights? Like, are they planning on setting up the stage with the prop on it and everything, or are we just going to look at the area -- just the stage and

JA003999

the area?

MS. FRESCH: Your Honor, we have the platform there. So we had intended to put it down because that shows where it was on the stage, so in proportion.

I have not inquired about -- I wasn't thinking that there would be anything in the front of the stage because we do have a little bit of limitations on the time. So it was put the platform down, there's a door that they can come in, go right past, and then do the walk.

MR. DEUTSCH: We have a request, though, Your Honor. If we're going, we would like to show the obstacle course as well as long as we're going there. So we think that they should have to set it up just as it was that evening.

MS. FRESCH: Your Honor, I just have to clarify that, because, obviously, there's --

MR. RUSSELL: You mean during the walk-around --

MR. DEUTSCH: The walk-around, the prop with the lights and everything, so we could see what the obstacle course looks like.

MS. FRESCH: Your Honor, I have to just clarify, because, obviously, the show has changed a lot since 2013. I just -- well, no, I'm talking about the

illusion. So the dynamics, because there's two shows that night, that -- I'd just have to clarify --

MR. DEUTSCH: You know, we could go during the day, Your Honor. They asked for it. Now we should get the complete picture.

MR. CALL: Could you let her finish, please?

MS. FRESCH: Can I provide information to the Court. I will provide information to the -- I just have to talk to them. I just can't do that off the top of my head, because that's not my -- lighting's not my specialty.

THE COURT: All right. That's something we'll address Tuesday morning.

MS. FRESCH: Thank you, Your Honor.

MR. MORELLI: Your Honor, are we going to recreate the scene? In other words -- because we didn't clarify. Is the dumpster going to be there? Are we planting a tree?

THE COURT: I said the dumpster. I don't know that they're going to plant tree.

MR. MORELLI: Well, I don't think that's pretty funny, actually. I think the tree is a very important issue in this case. And the tree is blocking the camera and blocking a lot of light. And that's the reason why this is so prejudicial to the plaintiff,

having a site inspection that's been so changed.

And -- and I think that if we're going to do it, we should do it.

THE COURT: Okay. Thank you.

MR. POPOVICH: Thank you, Your Honor.

(Thereupon, the proceedings concluded at 12:38 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Kristy Clark

KRISTY L. CLARK, CCR #708

Electronically Filed
5/7/2018 11:37 AM
Steven D. Grierson
CLERK OF THE COURT

NOTC
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DISTRICT COURT

CLARK COUNTY, NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife, Plaintiffs, vs. MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20; Defendants.	Case No. A-14-705164-C Dept. No. 13

NOTICE OF FILING EMERGENCY PETITION FOR WRIT OF MANDAMUS

Case Number: A-14-705164-C

NOTICE IS HEREBY GIVEN that Plaintiffs GAVIN COX AND MINH-HAHN COX, by and through their counsel of record, have filed an Emergency Petition for Writ of Mandamus pursuant to NRAP 27(E) to the Supreme Court of Nevada in relation to the Eighth Judicial District Court's May 4, 2018, oral Order granting a jury view.

DATED this 1st day of May, 2018.

HARRIS & HARRIS

By: _____

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HARRIS & HARRIS
INJURY LAWYERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of May, 2018, I served a true and correct copy of the foregoing **NOTICE OF FILING EMERGENCY PETITION FOR WRIT OF MANDAMUS,** addressed to the following counsel of record at the following address(es):

____ **VIA U.S. MAIL**: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ **VIA FACSIMILE**: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

X **VIA ELECTRONIC: FILE ONLY / FILE AND SERVE / SERVICE ONLY** by causing a true copy thereof to be electronically submitted through WIZNET, the Eighth Judicial District Court efiling program.

____ **VIA PERSONAL DELIVERY:** by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

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. . . .

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IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

GAVIN COX; AND MIHN-HAHN COX,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; AND TEAM CONSTRUCTION MANAGEMENT, INC.,
Real Parties in Interest.

Supreme Court No. 75762
District Court Case No. A705164

NOTICE OF TRANSFER TO COURT OF APPEALS

TO: Hon. Mark R. Denton, District Judge
Harris & Harris \ Christian N. Griffin, Brian K. Harris, Heather E. Harris
Resnick & Louis, P.C. \ Gary W. Call, Roger W. Strassburg
Selman Breitman, LLP/Las Vegas \ Eric O. Freeman, Elaine K. Fresch
Morelli Law Firm PLLC \ Adam E. Deutsch, Benedict P. Morelli
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC \ D. Lee Roberts, Jr., Howard J. Russell
Steven D. Grierson, Eighth District Court Clerk

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: May 07, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

Notification List

Electronic

Harris & Harris \ Brian K. Harris
Harris & Harris \ Christian N. Griffin
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC \ D. Lee Roberts, Jr.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC \ Howard J. Russell
Selman Breitman, LLP/Las Vegas \ Elaine K. Fresch
Selman Breitman, LLP/Las Vegas \ Eric O. Freeman
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Paper

Hon. Mark R. Denton, District Judge
Harris & Harris \ Heather E. Harris
Morelli Law Firm PLLC \ Benedict P. Morelli
Morelli Law Firm PLLC \ Adam E. Deutsch
Resnick & Louis, P.C. \ Roger W. Strassburg
Steven D. Grierson, Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPREME COURT CASE NO.

Electronically Filed
May 07 2018 02:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GAVIN AND MIHN-HAHN COX,

Petitioners,

V.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

MGM GRAND HOTEL, LLC, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD, BACKSTAGE EMPLOYMENT AND REFERRAL, INC. and TEAM CONSTRUCTION MANAGEMENT, INC.

Real Parties In Interest.

From the Eighth Judicial District Court, Clark County, Nevada
Case No. A-14-705164-C

GAVIN AND MIHN-HAHN COX'S APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E)

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Docket 75762 Document 2018-17261

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Document Description	Exhibit
Reporter's Transcript of Jury Trial, May 4, 2018	1
Photographic Exhibits of MGM Premises	2
Tweets from and regarding Chris Kenner and the Jury View	3

CERTIFICATE OF SERVICE

The undersigned certifies that on this 7 day of May, 2018, service of the foregoing **GAVIN AND MIHN-HAHN COX'S APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E),** was served by electronic service as follows:

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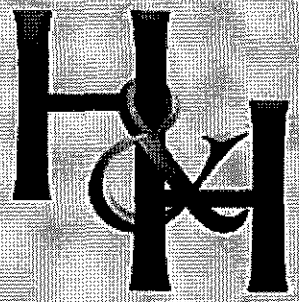

HARRIS & HARRIS
INJURY LAWYERS

REPORTER'S TRANSCRIPT OF JURY TRIAL, MAY 4, 2018

"EXHIBIT 1"

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, MAY 4, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

APPEARANCES:

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* * * * * * *

INDEX

Witness:	Direct:	Cross:	Redirect:	Recross:
Dennis Funes-Navas	9, 40 46, 47	56	75, 78,79	76

LAS VEGAS, NEVADA, FRIDAY, MAY 4, 2018;

9:18 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, everybody.

IN UNISON: Good morning.

THE COURT: You may be seated.

JUROR NO. 4: We're missing just one. She's in the bathroom.

THE COURT: Oh, we're missing ...

MR. POPOVICH: No stipulation.

MR. MORELLI: I'm not getting fooled this time. I'm not stipulating that the jury is here.

THE COURT: Could counsel approach while we're ...

(A discussion was held at the bench, not reported.)

THE COURT: All right. Do counsel now stipulate that the jury is present?

MR. MORELLI: Yes, the jury is present.

Hotel; Mr. Habersack is here, but stepped out; and counsel Mike Infuso.

MS. FRESCH: Good morning, Your Honor.

Good morning, everyone.

Elaine Fresch for David Copperfield, David Copperfield Disappearing, Inc.

MR. ROBERTS: Good morning, everyone.

Your Honor, Lee Roberts for Backstage Employment and Referral.

MR. RUSSELL: Good morning, ladies and gentlemen.

Good morning, Your Honor. Howard Russell for Backstage Employment and Referral.

MR. FREEMAN: Good morning. Eric Freeman for David Copperfield and David Copperfield Disappearing, Inc.

MS. FRESCH: I'll stipulate I didn't have enough coffee.

MR. STRASSBURG: May it please the Court and the jury, Roger Strassburg, assisted by my partner Gary Call, for defendant Team Construction Management.

THE COURT: All right. Very well. Thank you. Plaintiffs having rested, defendants may proceed with their respective cases.

MR. ROBERTS: Thank you. And, Your Honor,

before Mr. Popovich proceeds with MGM's case -- because this may take a few days -- the defendants would move for a jury view of all relevant portions of the MGM premises pursuant to NRS 16.100. And we would request that the jury view, if it can be accommodated by the jury, take place at least 30 minutes after sunset.

THE COURT: All right. The motion has been made, and I'll consider that outside the presence of the jury. There are some things that will have to be discussed and addressed in connection with that.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Okay.

MR. POPOVICH: Thank you, Your Honor. So then MGM Grand Hotel would call its first witness, Dennis Funes-Navas.

THE MARSHAL: Remain standing and raise your right hand and face the clerk.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and spell it for the record, please.

THE WITNESS: My name is Dennis Funes-Navas,

THE COURT: Any response?

MR. ROBERTS: Yes, Your Honor. Dr. Baker is a human factors expert with a specialty in lighting. This is what he does, is observe lighting and determine if it's sufficient or unsafe. And he was there. He observed the level of lighting. He noted on the video that there were flashlights being used to illuminate the path and, therefore, opined that the level of lighting was not a factor in the accident. I think that's just the type of thing that human factors people do.

I -- I will say that I made a proposal to Mr. Deutsch which he rejected, but, if the Court is going to allow a jury view, then the jury is going to be able to make their own assessment of the amount of ambient lighting even without flashlights. And I don't think it would be necessary for me to have this witness get into it.

But if the Court is considering denying our request for a jury view, then I do believe it's appropriate to have a lighting human factors expert opine as to whether the level of light outside on the exterior area of the runaround was sufficient for safety.

THE COURT: I think one of the points that

counsel made was that he hadn't done any actual testing or --

MR. DEUTSCH: Well, two things that he said --

MR. ROBERTS: And that's not even --

MR. DEUTSCH: Two things that Mr. Roberts said were incorrect.

THE COURT: Wait a minute. Let's just go on my question.

MR. DEUTSCH: He didn't do any testing.

THE COURT: Okay. But he did rely, didn't he, on Mr. Ayres? Am I missing something? Did he rely on Mr. Ayres' testimony?

MR. DEUTSCH: Are -- well, Mr. Ayres testified that he did testing and that his testing showed that it was .1 foot-candles.

MR. MORELLI: And he disagreed.

MR. DEUTSCH: A specific measurement. And he doesn't even disagree with that. He doesn't even say that that's wrong. He doesn't even say it's not .1 foot-candles; he just says that -- and he doesn't say in this opinion that he based it on his visit to the site. His opinion in this --

THE COURT: The report doesn't come into evidence anyway.

MR. DEUTSCH: I understand that. But the opinion in his report is just based on the surveillance only, he comes to this opinion.

THE COURT: What's everybody else's position on this jury view situation?

MR. DEUTSCH: Well, we obviously feel strongly against it, Your Honor, and --

MR. POPOVICH: Support.

MS. FRESCH: We all -- no, we --

MR. POPOVICH: That was a joint defense --

MS. FRESCH: That was a joint defense -- we all talked, and Mr. Roberts just did it on behalf of all the defense. And then of course --

MR. POPOVICH: Because he knew the rule number.

MS. FRESCH: And, obviously, the jury had -- if you recall, the jury had requested it as well in one of their questions.

THE COURT: Yeah, as I recall, one of their --

MS. FRESCH: Yes, in the first -- I believe after --

THE COURT: I think it was a statement or --

MR. DEUTSCH: It was.

THE COURT: -- "are we going to be able to,"

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THE COURT: Yeah, as I recall, one of their --

MS. FRESCH: Yes, in the first -- I believe after --

THE COURT: I think it was a statement or --

MR. DEUTSCH: It was.

THE COURT: -- "are we going to be able to,"

whatever.

MR. DEUTSCH: Here's the problem, Your Honor, is that the site is not at all the same anymore. The entire runaround area has been redone. The incline is not there anymore. The curbs have been changed. The concrete on that whole area has been changed. The tree's gone. All of that stuff has been changed.

So -- and that goes into some of the arguments about Dr. Baker's later reports and also Mr. Yang -- or Dr. Yang's opinions as well, which we can talk about later.

But the whole area has been changed. We don't know whether it was a full moon on the night of his accident versus not a full moon. Those things all matter. So to bring them there on a random night to see a site that is not at all the same is -- and they've seen pictures of it. They've seen 100 pictures of it.

MR. MORELLI: They have a video.

MR. DEUTSCH: They have a video of it. Going there does not add anything other than confusion because they're going to be seeing this incline that's not there. They're going to be seeing a new curb area, no tree. None of it is the same anymore, none of it. And if you notice, there's going to be no foundation

about it being the same. We have pictures. I can show Your Honor the pictures. I can put them up on the screen.

THE COURT: Okay. What's the response to what --

MR. POPOVICH: The response is Mr. Deutsch is -- and this is where we have a basic disagreement is, there have been some changes, no question. The area where Mr. Cox lands has not been changed. That concrete has not been changed.

MR. DEUTSCH: We disagree with that.

MR. POPOVICH: And that's why I prefaced it with we have a disagreement.

Another thing that has not changed and is -- and I can't -- as -- I'm basically now testifying as a semiwitness, but the reality is that the photos do not give you the sense of --

MR. DEUTSCH: Can I stop you for a second.

Mr. Habersack --

MR. STRASSBURG: Wait a minute. That's not -- let him talk. I'm tired of all this rudeness.

MR. DEUTSCH: Mr. Habersack may be a witness in this case.

MR. STRASSBURG: He sits there and lets you talk; you should give him the same courtesy.

MR. DEUTSCH: Mr. Habersack may be a witness.

MR. STRASSBURG: I said you should stop and let him talk.

MR. DEUTSCH: Are you done, Roger? Would you ask Mr. Habersack since he may be testifying in this case.

(Discussion was held off the record.)

MR. MORELLI: That's why, Roger. You see? That's the reason. That's --

MR. DEUTSCH: You want to apologize now, Roger? You want to apologize now?

THE MARSHAL: Counsel.

MR. DEUTSCH: Do you want to apologize now?

MR. STRASSBURG: I apologize for that incident, but you do it all the time. And, for that, I'm still critical.

THE COURT: Okay, let's -- c'mon, let's settle down now.

MR. DEUTSCH: Thank you, Judge.

MR. POPOVICH: The photographs do not give the correct perspective of distances. Those have not changed, the distances of the interior halls from the back of the stage into the hallways, the outside. And I even paced off 30 paces. But until you're there, you do not have a true sense of these distances to the

point where he has the accident. So that is, I believe, a strong reason to do this.

As we've already done with some photographs, in photographs that were taken after changes were made -- for instance, the tree is out -- we've been able to explain that --

THE COURT: Certainly, differences can be pointed out.

MR. DEUTSCH: Well, let me show Your Honor the differences, because the main issue in this case is --

MR. STRASSBURG: Judge.

MS. FRESCH: Your Honor, could we finish making all our points about --

MR. STRASSBURG: Could we possibly have a turn?

THE COURT: Everyone is talking at the same time, so I'm sure that the record is going to be --

MR. STRASSBURG: I know. Isn't she tired of it?

THE COURT: I think Ms. Fresch started to talk before you did.

MS. FRESCH: Yes. I just wanted to inform Your Honor that, with respect, the platform is still there. The -- the dragon can be brought in. It's

not -- it's not stored there at this moment, but I've already verified that can be brought in.

The stage area and the entire interior hallways, nothing of that -- until when they get out to the theater door, none of that has changed. That is all exactly the same. I verified that. I mean, if we had to have someone say.

But there are a few changes, as Mr. Popovich just mentioned. Otherwise, on the route, even going back into the theater, nothing has changed. There's one -- apparently, one little change in the kitchen area, which is really not even germane. So that -- that -- that -- you know, it's very much all the same except for what Mr. Popovich said.

So I strongly would request for that view.

THE COURT: Now -- okay. Go ahead, Mr. Roberts.

MR. ROBERTS: Thank you, Your Honor. With regard to this issue of change, I direct the Court to Eikelberger v. State, 83 Nev. 306; 429 P.2nd 555.

And, in that case, the -- the court allowed a jury view over the objection of the property owner. The owner contended that the condemned property had drastically changed by the removal of structures and buildings which were there when the suit started and

that there was some other differences. The court pointed out that witnesses had fully explained the changes in the appearance of the surrounding area, so the court said the fact that you've got changes isn't important as long as the changes are explained to the jury.

As Mr. Popovich pointed out, there's still very significant unchanged things that are important for the jury to be able to have to view the testimony in context, mainly the distances involved and the general appearance outside.

Thank you, Your Honor.

MR. DEUTSCH: Your Honor --

THE COURT: Now I think Mr. Strassburg has something to say.

MR. DEUTSCH: Oh, yeah. I forgot.

MR. STRASSBURG: And, Judge, I'd like to include you in the scope of my apology. I don't usually lose my temper.

MR. DEUTSCH: Second time in two weeks.

MR. STRASSBURG: Team wants a jury view of the distance from the location of the jobsite. The 241 feet across the expensive carpet to the doors, that hasn't changed. That distance is important. We also want a jury view of the area called the airlock between

the two security -- the security doors and the location where the dumpster rested.

THE COURT: Okay.

MR. DEUTSCH: Your Honor, our -- our position is that they already put in a diagram for a demonstrative showing 17 feet, 25 feet, 32 feet. I don't think that we need to waste everyone's time, the court's money, to explain 17 feet or 20 feet. We're not talking about numbers that everyone doesn't understand.

THE COURT: I'm not sure if it's the court's money. I think it might be the parties' money.

MR. DEUTSCH: Well, obviously, our -- my client's money, then, for sure.

But -- but the -- to show distances that -- that we all, like -- we're not talking about anything that's crazy. They've already put in evidence that this hallway is 17 feet long and this one's 22 feet long and this one is 30 feet long. So to suggest that someone needs to see what something is for -- to identify 17 feet is ridiculous.

But the more important part --

THE COURT: I don't think it's ridiculous.

MR. DEUTSCH: Well, can I just show something, Your Honor?

THE COURT: Sure.

MR. DEUTSCH: I think it's unnecessary. "Ridiculous" might be the wrong word.

So this is what the area looked like on the night of the accident. Okay?

THE COURT: What do you see? You see a little -- you don't see the whole thing; you just see.

MR. DEUTSCH: Well, no, no, no. I mean, we have a zillion pictures that are in evidence, Your Honor, that I could show you.

MR. CALL: What exhibit is that?

MR. DEUTSCH: This is --

THE COURT: I'll tell you. I'd sure like to see it.

MR. DEUTSCH: This is 93.

Well, I just want to show your Honor these photos, and then -- this is 93. These are the hallways that we're going to go out there at night to see, these pictures. Okay?

So there's plenty of pictures of all these interior hallways that the jury's already seen that he runs through. These are all in evidence already. So there's nothing about these hallways that the jury's going to see that matters.

What -- what's relevant and why the jury

could potentially be prejudiced by this, Your Honor, is that the conditions -- while the conditions inside may be very much the same, inside is really only a tiny piece of this case. The relevant piece of this case is outside. And there's two things about outside that, on the night we go, we can't explain away to the jury, one of which is the lighting conditions outside. We don't know if there was a cloud over -- we don't know any of those things about how dark it was.

THE COURT: So you're saying a view should never have been done or what?

MR. DEUTSCH: I'm saying, in a case where an issue is the lighting conditions and the area has changed, a view should not be done.

THE COURT: But don't you think you can point that out to the jury?

MR. DEUTSCH: No, I don't think so, Your Honor, because I think if we go there and we say to the jury, "You're here to look at this area outside, but you're not allowed to take into account the darkness or lightness of it, and you're not allowed to take -- whether it's light or dark out here, you can't take that into account."

THE COURT: Okay.

MR. DEUTSCH: And that would be -- Your

Honor, if -- if -- do you believe that a jury would be able to go out there and wipe from their mind the condition -- the lighting conditions out there at that moment? They wouldn't be able to. They wouldn't.

And we know that the lighting conditions are different because it's a different night. And this is what the area looks like now. This is what the area looks like now. The area now outside looks like -- so that's what it looked like on the day of the accident. This picture is in evidence. So the jury has gotten to see this. And not only have they gotten to see this, but they --

MR. ROBERTS: That's ten months after the accident happened.

MR. DEUTSCH: Yeah, but it's the same -- but the site is the same exact as it was on the night of the accident. They've already measured for the jury and explained the distance from here to here. That's already been measured. They're going to have an expert who's going to come in in a half hour and tell the jury what the measurement is from here to here because he measured that. That's a big part of his testimony. So this picture shows them everything they need to know about that.

Now, let's look what it looks like now.

MR. STRASSBURG: So, Judge, they just want to --

MR. DEUTSCH: I'm not done, Roger. Roger, I'm not done.

MR. STRASSBURG: If you can't beat them, join them.

MR. DEUTSCH: So this is what --

MR. STRASSBURG: You're right.

THE COURT: That right there tells me --

MR. DEUTSCH: Was that -- well, that one wasn't in evidence, thankfully. Let's see.

Just trying to find the best one. This is what it looks like now. The whole corner of that whole incline, all of this curb -- all of this curb has been redone. This has been redone. All of this here has been redone. Everything about this -- and all -- this area right here --

MR. MORELLI: And the tree is gone.

MR. DEUTSCH: -- the conditions of the lighting on this night, which -- the fact that there was a huge tree hanging over the area could have affected the amount of light that people were getting in this area. And this whole area, even where Mr. Cox says he fell -- which is somewhere over here -- or where their expert is going to come in and say he fell,

which is where this cone is -- that whole thing was covered by a tree. We know that because of the security video. We know that the tree extended from the end all the way up to the point -- because you can barely see Mr. Cox's head. So that whole area is covered by a tree.

So the lighting conditions at that area, regardless of the moon and the ambient light, are totally different because of that tree. The entire curb and incline is totally different. So there's nothing gained by going that the jury doesn't already know. The only possibility is that they'll be prejudiced against the plaintiffs because they're going to see what lighting conditions are like on a night that wasn't the same without the tree. And they're going to see that this entire area was done over again.

And that is -- there is a potential for prejudice there when there's nothing gained by the defendants by going there. Letting the jury see what 17 feet is instead of 30 feet, we could go out into the hallway, Your Honor, with Ms. Bonney's measuring tape and measure 30 feet if that's what they're concerned about. We've been told that Ms. Bonney brings the measuring tape everywhere she goes.

THE COURT: How about the place where the

fall occurred?

MR. DEUTSCH: The place where the?

THE COURT: The fall occurred.

MR. DEUTSCH: Well, the place where the fall occurred is -- is -- is this right here. And the place the fall occurred is -- depending on whose side of this you want to believe. Mr. Cox believes -- his recollection was -- is that he was turning the corner, and therefore it was somewhere over here. The defendants are going to bring in an expert to say, "No, Mr. Cox is a liar. He doesn't know. He fell where the cone is."

So under either version of the events, he fell somewhere between this cone and this corner. Everything from this spot to that cone is different, including the lighting conditions because of the tree, and it's a different night, and because that entire concrete area -- the incline, the curb -- has all been changed.

So the three things that really are relevant in this case -- what the lighting conditions were at the point, what the incline -- the condition of the ground was at this point -- all of those things have changed.

The distances between 10 feet and 15 feet,

it's irrelevant. Nobody needs to get on a bus to go see how far 12 feet is. But the prejudice to us by having them speculate, well, the lighting must have been kind of the same as it was that night and, like, this doesn't look so bad, that -- even if you tell them, you won't be able to shake them --

MR. MORELLI: The pictures --

MR. DEUTSCH: Right. You won't -- you shape their memory. And, you know, we tried to put in some pictures that happened after the accident. And Your Honor said that it's not relevant because it's different. This is very different. This is very different. And if there is any possibility that the jury could be confused or prejudiced, unless they could show some substantial reason why it's necessary to see it -- and the only reason they have given is to say that they need to explain to the jury what distance is?

If that's the only reason, let's walk into the hallway with a tape measure, and we'll show them what distance is. Distance is the only reason they've given, Your Honor, for why they need to go there.

MR. MORELLI: Why didn't the photos tell that?

MR. DEUTSCH: We'll go into the hallway and we'll measure distance. And they could see how far

30 feet is. We have a map that they drew, Your Honor, that shows this hallway. I don't know where it went. There was a pad that they used during opening statement.

MR. POPOVICH: No, it's not over there. It's back here. I didn't actually -- he's going to contradict a couple of them by a foot.

MR. DEUTSCH: Who cares? We'll stipulate that you missed it by a foot. I mean, it doesn't matter.

THE COURT: All right. Anything else?

MR. POPOVICH: Yes, couple things. Where -- can -- can you override it? Yes.

So we're going to show you --

MR. DEUTSCH: She's the boss.

MR. POPOVICH: -- Exhibit 93-89, Your Honor. And if you can see below the cone, there is an expansion joint running across.

MR. DEUTSCH: This one.

MR. POPOVICH: I'm not sure how well the color -- well, maybe I should put on my glasses.

MR. DEUTSCH: You can see it. You could see it.

MR. POPOVICH: So there is different coloration between the concrete that is below the

expansion joint -- and I say "below," meaning higher on the picture but lower in elevation -- as compared to the part where the cone is. It will be Dr. Baker's position that, where Mr. Cox came to rest on the ground, center mass, which is basically where his heart is, is where that cone is. And the position is, is that has not changed since the time of the accident.

Now, another factor is, no, we're not just asking for this for distances. That is an important part, but the lighting is an issue. And we have already talked amongst this group that, because there's the possibility the dumpster was casting a shadow into the area, we can -- with 24 hours' notice, we can get a same-size dumpster in the place where it was --

THE COURT: Okay.

MR. DEUTSCH: And plant a tree?

MR. MORELLI: And you could plant a tree?

MR. POPOVICH: I'll stand up with --

MR. DEUTSCH: No, that's my job, Jerry. Don't take my tree job.

MR. POPOVICH: You would do it better.

So we think we can explain the differences, and we think it's important.

MR. DEUTSCH: May I just comment one thing, Your Honor, about what he said about the change in the

sidewalk? Just one -- one piece.

So, if you notice, it's our position that the entire thing has been changed. If you notice, Your Honor, in this photograph, there's a drain that's been put into the sidewalk. Okay?

You can -- may I -- may you flip back, Ms. Bonney?

MR. ROBERTS: Actually, no. Because I'm still using this picture, and it's our turn.

MR. DEUTSCH: Oh, I'm sorry. Go ahead. I didn't know. I didn't know.

THE COURT: Go ahead.

MR. DEUTSCH: I didn't know you had something to say. Go ahead.

MR. ROBERTS: Your Honor, the -- the -- first of all, moon phase, it was a waxing -- a waning gibbous on November 12th, 2013.

MR. DEUTSCH: We've already talked about that.

THE COURT: Six months.

MR. ROBERTS: Tomorrow night is the same phase.

THE COURT: Six months difference in time between --

MR. ROBERTS: There -- there will be less

moonlight next week than there was on the day of the incident.

The point that Mr. --

THE COURT: How do you know that? I don't know.

MR. ROBERTS: Because there are moon phases that the government publishes that the Court can take judicial notice of. And we can also look at the moon when we're there.

But the -- the point that Mr. Deutsch has made is all of the changes can be adequately explained to the jury. The jury's entitled to see the distances in the context of the walk-around and in the context of the theater.

And the differences can be explained to the jury and argued to the jury. The picture -- and the reason I wanted it up, Your Honor, is Dr. Baker's going to testify this is a picture that he took. This is part of what he's going to show the jury.

So the jury will have already seen this picture of the changed conditions. And so what -- how -- what additional prejudice can arise from the fact that they're going to see the actual changed conditions instead of a picture of the changed condition?

The rule is not if there's any possibility of prejudice, you can't do it; the question is, is it more probative than prejudicial. And as the Court knows, back to 1885, the Nevada Supreme Court has found that a jury view is not evidence, but it does provide context for the jury to understand the evidence that they've heard in this courtroom.

And if we're going to start excluding everything that doesn't match, well, we've got witness testimony that the surveillance video is darker than the actual conditions. So does that get excluded?

We've got pictures --

MR. DEUTSCH: I would like --

MR. ROBERTS: -- taken with flash that Mr. Deutsch has put into evidence. Do those get excluded because they're lighter than it would be at night?

The jury can understand these things. The jury can understand them when they're explained to them as ably as Mr. Deutsch just did. And the probative value of having the jury view the scene at which all of these events occurred greatly outweigh any prejudice which can be easily and simply explained away.

MS. FRESCH: And, Your Honor, just one more point.

Beyond the outside -- I mean, there has been so much testimony about the platform and the portion of the runaround from the platform to the outside. And that is critical. And the only way you can really put that into context in this case is to see it in person, because otherwise it's too difficult.

And that is a critical point. They've spent a lot of time on that part. It's not like we just started out with Mr. Cox going out that door. So there's two portions to this that are very important. I just didn't want that to be overlooked.

MR. DEUTSCH: May I? Is everyone done, Roger?

MR. STRASSBURG: I'm good. I think that it -- the point has been adequately explained.

MR. DEUTSCH: So this is -- this is -- I don't agree with a couple of things that was said.

One -- Ms. Bonney, will you flip me back here. Oh, you did. Thank you.

Okay. So the first point is, I don't necessarily agree that this photo should come in with Dr. Baker. That's part of my additional motion with respect to Dr. Baker. Dr. Baker does this analysis. One of his opinions is that -- he does this analysis where he claims that he was able to go to the security

place, he put a sticky on the screen, and then he had someone go outside and stand where the sticky showed him in live video, and therefore he could measure where Mr. Cox is. He wants to testify about that, okay. I'll cross-examine him about it.

He also then gives some testimony, though, about -- that the place this cone, I believe from his report, represents that location where he claims Mr. Cox fell.

MR. POPOVICH: That's correct.

MR. DEUTSCH: I don't think it does, but I'll save that for cross-examination.

He also then says that there's -- he measures with a level and says that's 1 degree of -- you know, there's 1 degree of upslope, I guess, at that location.

The problem is -- and this is where our -- our fight -- our wager came in -- is that if you notice in this -- it's my belief that this entire thing -- and if you look at the pictures, you could tell that this entire curb has been changed. That's very clear from the pictures.

I believe the entire thing has been changed. And -- and the piece of evidence that I can show you that has been changed is that, in this photograph -- and this brought me to my "My Cousin, Vinny" reference

this morning. I asked -- when I was telling Mr. Popovich about this, does the defense case on this issue hold water, is that there is -- and I'll find the best picture -- there is a drain installed in the concrete right there.

Now, in order to get that drain in there, this whole thing would have had to have been taken out. If you look at the photographs from the night of the accident -- or from, you know, the old concrete area --

MR. STRASSBURG: There's a drain there in 403.

MR. DEUTSCH: Oh, you mean it's covered by dust? Okay. If that's what you're saying, then maybe we can go with that, Roger. Let's take a look. Did you have one in particular that you were referring to, Roger?

MR. STRASSBURG: 403.

MR. DEUTSCH: Let's look at these. So I think there might be one here. So here's the photographs -- I'm just trying to find the best one, Your Honor. I'm sorry. Oh, I think I might have --

MR. POPOVICH: There's only one.

MR. DEUTSCH: No, there's a couple. There's a couple that you can see.

So here's one from that area, the same exact

location. There's no drain identified in that picture. There's more, though. Let me continue along.

MR. CALL: Look at 181-93.

MR. DEUTSCH: 181?

Let's see 181. There you go, 181. There is no drain there at all anywhere. And if we look in the pictures --

THE COURT: What's that white thing there?

MR. DEUTSCH: Well, that white thing is just a piece of paper, Your Honor.

THE COURT: That's on the other side. Okay.

MR. DEUTSCH: There's no drain -- you're saying that this right here is a drain?

MR. ROBERTS: How did you know where I was talking about?

MR. DEUTSCH: Because I got -- because that's -- that's the area where the drain would be. But that ain't no drain. Okay?

And let's look at the pictures from the night of the accident. Let's look at the pictures from the night of the accident.

MR. RUSSELL: 403-8, you can see it.

MR. ROBERTS: Eight.

MR. DEUTSCH: This is 403. There ain't no drain.

MR. STRASSBURG: It's in the tire track.

MR. DEUTSCH: There is no -- okay. So if the defendants are taking the position that the drain was there but you can't see it in this photo because it's covered with dust, we'll let them put the picture in evidence.

MR. STRASSBURG: It's --

MR. RUSSELL: Hang on a second. Ms. Bonney is going to bring it up and highlight it.

MR. DEUTSCH: It's not there, Judge. It doesn't take a rocket scientist, as Mr. Cox said, to see that that drain is not there. It's not -- that's not even in the same place. It's not even close to the same area.

MR. RUSSELL: Yeah, it's right here.

MR. DEUTSCH: No, this is where you guys say he fell, over here between the two -- can you take that away for a second, Ms. Bonney?

You guys say that there's two whatever -- what did you call them, Jerry?

MR. POPOVICH: Expansion --

MR. DEUTSCH: Expansion joints. One here and one here. You say that it stopped at this expansion joint and everything above that expansion joint was left the same. If you look at the drain, the drain is

between the two expansion joints. Now you're circling something over here, which is about a foot from the door.

MR. POPOVICH: Your Honor, can I address Mr. Deutsch's last comment?

Where the new expansion joint is is above both of the old expansion joints; meaning, yes, the concrete down by the curb line has changed all the way up through -- not to -- this expansion joint up into this area.

MR. DEUTSCH: But that's -- that area is not where their expert puts Mr. Cox.

MR. POPOVICH: Well --

MR. DEUTSCH: The drain is here. The drain is here.

MR. POPOVICH: No.

MS. FRESCH: No.

MR. DEUTSCH: Let's look again. I'm not -- look, we'll put it up on the screen and the judge can decide, but I think it's pretty --

MR. POPOVICH: Mr. Deutsch, count the panels. One, two, three, four, and --

MR. DEUTSCH: Let's do that.

MR. POPOVICH: -- and the drain is approximately around the fourth or fifth, depending on

your --

MR. DEUTSCH: Let's do that. And if I'm wrong, I'm wrong. But let's do that. Let's do that. Let's count the panels. Count the -- so --

MR. MORELLI: Wrong picture.

MR. DEUTSCH: I'm getting there.

MR. POPOVICH: Ultimately -- while Mr. Deutsch is looking for the pictures, ultimately, Your Honor, Dr. Baker was there and measured before the changes and measured after, and he can tell us the relative position.

MR. DEUTSCH: I have no problem. I said that. I have no problem with him testifying where he said --

MS. FRESCH: He never lets anyone finish.

MR. POPOVICH: But he can -- he can break the tie about whether the expansion joints and the -- after the new construction are in the same location as the old.

MR. DEUTSCH: Well, it's not about that. It's about the fact that -- look, there we go. That's a picture. One, two, three -- am I up on the screen?

MR. POPOVICH: Can't even see the drain.

MR. DEUTSCH: The drain is right here. Okay? One, two, three -- it looks like it's somewhere in line

with either the third or fourth expansion panel. I mean, third or fourth wall panel, as you put it, from here. One, two -- it's either here or here. It's kind of hard with the perspective, but somewhere in there. We agree with that?

MR. POPOVICH: Some -- I would say approximately the fourth, give or take.

MR. DEUTSCH: Okay. So third or fourth. So, now, let's go to those photographs, the one.

MR. POPOVICH: 403-8.

MR. DEUTSCH: 403 -- 403-8. One, two, three, four. Where -- where is the drain?

MR. POPOVICH: Right there.

MR. DEUTSCH: Where? Covered in dust?

MR. STRASSBURG: Blow it up.

MR. POPOVICH: I -- I've never denied dust, if you recall. Right there.

MR. DEUTSCH: I don't know.

MR. POPOVICH: About the fourth panel.

MR. DEUTSCH: Let me look on my screen. Let me powwow, but I don't think so.

MR. ROBERTS: While they're conferring, Judge, I think the Court should consider that a jury member asked for a view.

THE COURT: I remember.

MR. ROBERTS: Just as juries are now allowed to ask questions, if the jury wants a view, I think that that ought to weigh in favor of it to the extent it --

THE COURT: Maybe I should poll the jury as to whether a view is --

MR. DEUTSCH: Your Honor, I don't think the jury should have any say --

THE COURT: I'm concerned about the time. You know? Because we're talking about a half hour after sunset, so I'm not sure --

MS. FRESCH: Your Honor.

MR. ROBERTS: That would be about 8:00, Your Honor.

MS. FRESCH: Your Honor, I can address that, that Mr. Copperfield is -- his shows are going forward next week, as they are right now. But I've already worked out that his show ends -- the 7:00 show ends right about 8:30. I've already talked about it that -- and the next show starts at 9:30.

THE COURT: I was talking about the juror times.

MS. FRESCH: Oh, I thought -- but we can do it right in between shows. We can get them in and out. It will be quite easily done. So in between the two

shows, all the logistics of that is quite easy to be done.

MR. DEUTSCH: Your Honor, your preliminary instructions in this case -- and every time you say to the jury -- leave -- don't go visit the scene because things might have changed.

THE COURT: But the jury view is a different concept.

MR. DEUTSCH: Your Honor --

THE COURT: It's part of the trial.

MR. DEUTSCH: Obviously, the jury's going to say we want to go because they're going to think it's exciting to go backstage at Copperfield.

THE COURT: Some people may have difficulty with the time.

MS. FRESCH: It's the time if they could do it, he's talking about.

THE COURT: These jurors have been here for quite a while. Okay? They have participated in this case. Some, if not all, have expressed an interest in having a view. I grant a view. Okay? We grant a view.

It has to be set up with court administration in the appropriate way. Plaintiffs' counsel are very able, I'm sure, to point out any differences in

pictures or whatever. And --

MR. DEUTSCH: Can we go during the daytime, Your Honor, and that way the lighting is not at issue at all? If they're only going for the issue of the distances and things, we could take out the prejudice of -- with respect to the lighting conditions --

THE COURT: That makes sense.

MR. DEUTSCH: -- and go during the daytime.

THE COURT: What do you think?

MR. ROBERTS: Your Honor, Court's Exhibit No. 4, the juror who requested the view specifically requested to go after the sun goes down.

THE COURT: Well --

MR. ROBERTS: That's part of the question.

MR. DEUTSCH: But, Your Honor -- but, Your Honor, that means -- that actually is very telling. It means that he wants to go to see the lighting conditions, which means even if we tell him "ignore the lighting conditions because they're different," he's not going to. So if they wanted to go see the distance --

THE COURT: You can't say that.

MR. DEUTSCH: Your Honor, there was a tree there. There was a dumpster there. There was a tree covering the whole area. It was a different time of

year. There might have been clouds. There might have been -- we don't know.

So the lighting conditions are different. So if they want to go -- if they're being honest with the Court, which is they want to show it for distances and stuff, then they should have no objection to going during the day. If they're saying we want to go so the jury could see how dark or not dark it is outside, that's a different story.

But they've been up here for a half hour saying it has nothing to do -- we could tell the jury to disregard the darkness and we could tell the jury to disregard that because we just want to go there to see what the -- what the distances are. If that's why we're going, let's go during the day. It doesn't take up any of the jurors' extra time. We could go when it's light out. And there's no potential for prejudice with respect to lighting conditions.

THE COURT: And is it Dr. Baker, is that his name or --

MR. ROBERTS: Dr. Baker, yes.

THE COURT: He could then testify relative, then, to the lighting conditions.

MR. ROBERTS: He could. And he was there for a runaround. He did go to the scene, unlike

Mr. Deutsch represented.

But, Your Honor, I specifically did request it after the sun went down because the scene looks differently at nighttime.

MR. DEUTSCH: That's my point.

MR. ROBERTS: And it is generally the same. Mr. Deutsch can talk about a tree, but there's nothing that he can show that would prove that the conditions today are materially different in any way than the conditions they were on the night of the runaround.

And the reason that they are so violently opposed to it is they've been misrepresenting to the jury throughout this whole trial about how dark it was out there. And he doesn't want the jury to see the truth.

MR. DEUTSCH: So it's amazing, Your Honor. Suddenly we now have gone from we could tell them that the lighting conditions are different, we're not going there for the lighting conditions, we're just going to show the distance. And now, suddenly, when we said, okay, let's go during the day, suddenly the only reason they want to go is because of the lighting conditions. It's incredible.

MR. ROBERTS: Actually, Your Honor, if you will recall, I said I'll withdraw my request to have

Dr. Baker testify to the lighting conditions if the jury can go see it in the dark themselves. I was completely honest with that up front, which is why we're talking about the jury view right now.

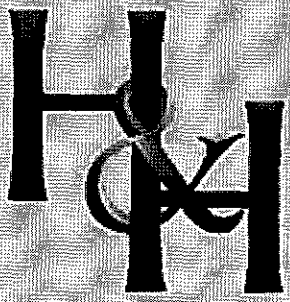
MR. DEUTSCH: But, Your Honor, it doesn't take away -- going in the light or dark doesn't take away from my argument that Dr. Baker is not able to give the jury scientific testimony about his opinion on the light conditions from an observation on a different night, when they moved to preclude us from putting in videos from a different night because they said they weren't similar.

THE COURT: Mr. Strassburg, you have something to say?

MR. STRASSBURG: Judge, we've looked at many photographs.

THE COURT: What's that?

MR. STRASSBURG: We've looked at many photographs purporting to show nighttime conditions. I remember examining a witness about pedestrians out on the sidewalk, photographs taken at night. We've heard testimony that flash photos can darken the background. They're -- we believe that flash photos also overexpose the foreground. There is a large amount of misleading light-level evidence in the case already. I think a



HARRIS & HARRIS

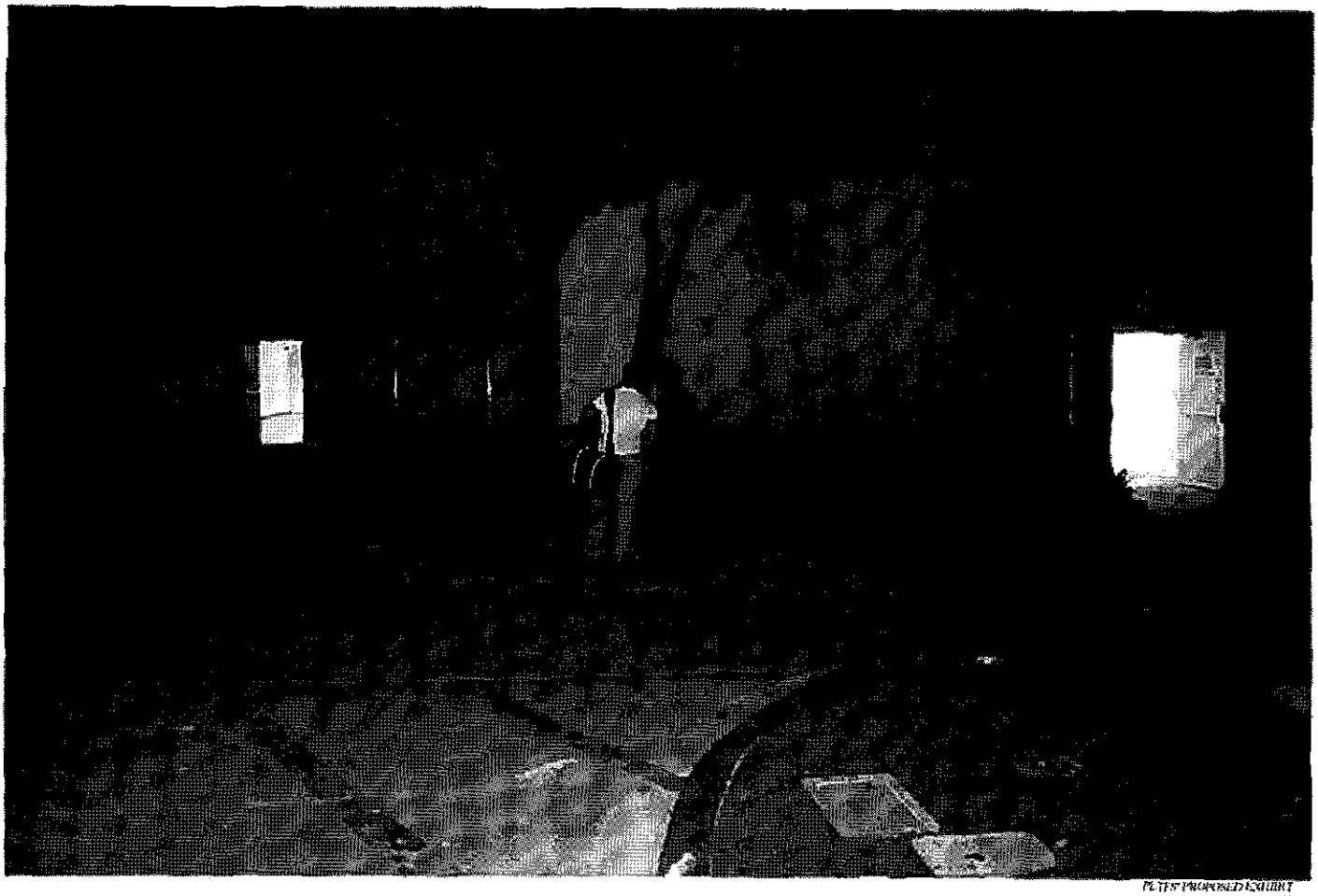
INJURY LAWYERS

PHOTOGRAPHIC EXHIBITS OF MGM PREMISES

"EXHIBIT 2"

PLTFS' PROPOSED EXHIBIT
NO 84 0000328

PLTFS' PROPOSED EXHIBIT
NO. 93.000030



PLTFF PROPOSED EXHIBIT
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PLTFS' PROPOSED EXHIBIT
NO. 93 000033

PLTFS PROPOSED EXHIBIT
NO 94-000023

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife,	)	Supreme Court No. 76422
Appellants,	)	District Court No. A-14-705164-C
vs.	)	
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC,	)	
Respondents.	)	

JOINT APPENDIX - VOLUME 16

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THE COURT: Subsection 1 says, "When the jury has been sworn, the trial must proceed in the following manner -- order, unless the judge, for special reasons or otherwise directs:

"1. The pleadings may be read by counsel for the respective parties as they may prefer or, if not so read, counsel for the respective parties may state the issue during their opening statements. If the pleadings are not read before jury voir dire, the Court or either counsel, as the Court directs, may state the nature of the case to the jury and advise the jurors of the witnesses who each side proposes to call. After the jury has been selected and sworn, counsel for the plaintiff and defendant shall make opening statements if they desire."

Okay. That says what it says, but it doesn't say if they're not read, they can't be read later on. It doesn't say that, so that's what I'm --

MR. POPOVICH: But it -- it authorizes when they can be read, and it doesn't say "at any time later."

MR. DEUTSCH: It doesn't. It just says "the order in which the trial is to proceed." It doesn't suggest that at any time they're not allowed to be read later if a counsel wants to.

JA003586

THE COURT: Well --

MR. POPOVICH: It doesn't authorize the reading of them later.

MR. STRASSBURG: Judge, you had called for briefing on this.

THE COURT: I did.

MR. STRASSBURG: Perhaps that's the best course.

THE COURT: So I'm interested in seeing --

MR. DEUTSCH: I was just trying to alleviate the need --

THE COURT: So if we start from the premise that pleadings can be read -- okay?

MR. POPOVICH: At a specific -- at a specified -- I'm sorry. I interrupted.

THE COURT: It says "pleadings may be read by counsel, unless the judge, for special reasons, otherwise directs." So they can be read --

MR. DEUTSCH: That was NRCP 16 -- the one you just read from, Your Honor?

THE COURT: Let me just finish.

MR. DEUTSCH: Sorry. Sorry. Sorry.

THE COURT: Okay?

So we've got that premise that pleadings can be read, but the statute also references the time at

JA003587

which they can be read. All right? So there are those considerations. All right?

And the plaintiffs' complaint alleges facts. Okay? That's what the defendant was seeking to show, the facts -- the factual premise of the plaintiffs' complaint.

MR. DEUTSCH: They're still contentions, though.

THE COURT: But they're factual allegations too. Okay? And then a cross-claim, generally it's if I'm liable, then whatever. And so I bet you there aren't many allegations of fact contained within the cross-claims.

MR. DEUTSCH: There are, Your Honor. And I can read it to you.

THE COURT: Okay. Let's see what it says.

MR. DEUTSCH: It says that --

THE COURT: You're talking about which cross-claim now?

MR. DEUTSCH: This is in the first and the second. So the first --

THE COURT: Of whom?

MR. DEUTSCH: This is MGM and Copperfield's -- let me just read you the exact title. "Defendant, David Copperfield Disappearing, Inc.; David

Copperfield a.k.a. David Kotkin; and MGM Grand Hotels, LLC, amended answer to plaintiffs' complaint and cross-claims against Team Construction Management."

And in paragraph 5 of the first one, there's two cross-claims. One is for indemnity, which is obviously a contractual thing in nature. But the first one is contribution, so it's based in -- in common law. And it says that --

MR. STRASSBURG: It's by statute, Judge.

MR. DEUTSCH: Paragraph 10, "That cross-defendants are liable to cross-claimants," meaning -- cross-defendants being Team Construction and cross-claimants being Copperfield, MGM -- "for any judgment rendered against it in this action as alleged -- as the damages alleged in the claims made by plaintiff against cross-claimant are the result of" -- and now it says -- "are the result of the acts and omissions of the cross-defendants."

So the fact that they chose not to go into the specific acts or omissions is irrelevant. The fact that they claim that there were acts and omissions that Team Construction did that caused them to have to be at fault and -- and contributed to them is a fact just like any other contention in the complaint, Your Honor.

These are all contentions. I don't think

JA003589

Mr. -- you know, Mr. Strassburg pointed out that whatever we say in our complaint becomes fact. Well, if that's the case, then we should have a pretty easy time proving this. The fact is --

MR. STRASSBURG: I never said --

MR. DEUTSCH: He said that because --

MR. STRASSBURG: That's false.

MR. DEUTSCH: -- they're in the complaint.

MR. STRASSBURG: You have lied about what I say in this room more than once. And I'm tired of it. You need to stop that or support what you're actually saying.

MR. DEUTSCH: Okay. Unfortunately, I turned off the computer, but I'll bring it tomorrow.

Mr. Strassburg said --

MR. STRASSBURG: If you're going to attribute it to me, you better quote it.

MR. DEUTSCH: I will, tomorrow morning.

He said because they were in the thing, they are facts.

THE COURT: One said trip and one said --

MR. DEUTSCH: And he said those are facts. That's --

THE COURT: They're alleged facts.

MR. DEUTSCH: I understand that.

MR. STRASSBURG: They're statements of facts.

MR. DEUTSCH: Right. But he tried to differentiate between what I just read to you and what was in the plaintiffs' complaint by saying that one are facts and one are contentions. What I'm trying to say to the Court is everything in a complaint is a contention. It's what is alleged in a case. We allege one thing.

THE COURT: Here's my -- what I'm interested in. You start from the premise that the statute permits pleadings to be read, which would indicate to me that, according to the legislature in the statute, it's appropriate that pleadings be read.

MR. DEUTSCH: So I don't need a witness.

THE COURT: The question comes down to whether or not they have to be read at that point or not at all.

Now, defendant did read a portion of a pleading. So that would indicate that you considered it to be appropriate to have a portion of a pleading read; right? Under certain circumstances, what's alleged in a pleading can be deemed an admission. Okay?

MR. DEUTSCH: Absolutely.

THE COURT: But it really takes -- I'll use

the word again -- a context. It really depends on what's being stated. If you have something that's basically a legal type of contention, that's different from a factual contention.

MR. DEUTSCH: I'll make it very clear, Your Honor.

THE COURT: I understand what you're saying about the facts --

MR. DEUTSCH: No, no, no, but not even that. The point is I don't even think -- and I'll research that rule that I need a witness on the stand. I think I could just get up here tomorrow before we rest and read 30 things from the complaint, just like I could read additional pieces of evidence from any of the documents that are in evidence. We could just read from them without a witness on the stand once they're in evidence before we rest.

This -- the bottom line is -- Your Honor, is that this jury is entitled to know what all the claims are in this case. And they're entitled to know that one defendant is suing another defendant. They're entitled to know that. It's that simple.

And -- and the only way that the jury can know that, as I see that, is if I read the portion of the complaint that says that they're suing them.

Because they have taken this entire trial claiming that they have a common interest and that they're all on one side and that they're all the same. And it's all five of them allowed to cross-examine all the witnesses, despite the fact they were all on the same side. Your Honor said common interest. I think the jury is entitled to know that they're all suing each other. It's relevant.

MR. POPOVICH: I would love to hear -- I would love to hear the --

MR. DEUTSCH: Not Backstage.

MR. POPOVICH: -- the authority plaintiff has that the jury is entitled to know all claims in litigation. They're --

MR. DEUTSCH: NRCP.

MR. POPOVICH: There are --

MR. DEUTSCH: He just cited it.

THE COURT: I just referenced the statute that says the pleadings can be read.

MR. POPOVICH: The pleadings at issue in the trial, I would believe would be the assumption.

THE COURT: Keep in mind, bifurcation was over objection of the plaintiffs.

MR. POPOVICH: Well, this has nothing to do with the bifurcation.

THE COURT: I thought one of the contentions was, in this liability phase, all the stuff's been put to the side until everything is resolved; right? Is that right or --

MR. POPOVICH: Well, the -- the issues in the trial, liability and damages, have been brought up before the jury. In voir dire, damages were discussed at length.

But the issues that plaintiffs are now wanting to read pleadings about are not before this jury in this trial. It will never be in front of this jury.

MR. DEUTSCH: But --

MR. STRASSBURG: The rules of evidence still apply, Judge.

MR. DEUTSCH: Your Honor --

MR. STRASSBURG: It still has to be relevant. The rules of evidence still apply. Even if something can be read, it has to be relevant and balancing, not unduly prejudicial. This is neither.

MR. DEUTSCH: Your Honor --

THE COURT: I don't think that any of the defendants is admitting anything wrong in making claims against the other. What they're saying is that if -- if they're found to be liable, then --

MR. DEUTSCH: It's their fault. It's their fault because of what -- their acts and omissions. So the jury is entitled to know that. The rule says that you're entitled to read pleadings to the jury. I'll go research it tonight, and we'll -- we'll get to the bottom of this.

MR. STRASSBURG: But, Judge, he's attributing a meaning to this action of a claim over that it doesn't have. This is a routine practice in construction litigation. It has nothing to do with any of the innuendo that he is assigning to it.

MR. DEUTSCH: It's a fact.

MR. STRASSBURG: It's prejudicial and --

MR. DEUTSCH: Your Honor, there is no getting around the fact that MGM and Copperfield sued Team Construction. That is a fact.

THE COURT: Because they were sued.

MR. DEUTSCH: Okay.

THE COURT: Okay.

MR. DEUTSCH: And they say it's not our fault; it's your fault. They're going to have to prove that in the court at some point.

MR. STRASSBURG: No, they don't say that.

MR. DEUTSCH: They're going to have to prove that in the court at some point.

MS. FRESCH: Well, not at some point.

THE COURT: I'll think about it. Any briefing, give it to me.

MR. DEUTSCH: We'll do that.

MR. POPOVICH: First thing. Thank you.

THE MARSHAL: All rise.

(Thereupon, the proceedings concluded at 5:21 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Kristy Clark

KRISTY L. CLARK, CCR #708

Electronically Filed
1/16/2019 11:42 AM
Steven D. Grierson
CLERK OF THE COURT

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

THURSDAY, MAY 3, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

JA003597

Case Number: A-14-705164-C

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
David Copperfield			14	108, 149 168

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
103		23	
568		115	
566		124	
567		124	
562		149	

LAS VEGAS, NEVADA, THURSDAY, MAY 3, 2018;

10:05 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise. Eighth Judicial District Court, Department 13, is now in session, the Honorable Mark Denton presiding.

THE COURT: Good morning. Please be seated. So we're reconvening for a jury trial outside the presence of the jury in Cox v. MGM Grand Hotel, LLC. Please state appearances of counsel, identify parties and party representatives who are present today.

MR. MORELLI: Benedict P. Morelli for the plaintiff, Gavin and Minh Cox, who are in the courtroom.

MR. DEUTSCH: Good morning, Your Honor. Adam Deutsch.

MR. FALLICK: Good morning, Your Honor. Perry Fallick for the plaintiffs.

MR. POPOVICH: Good morning. Jerry Popovich for MGM Grand Hotel. On behalf of MGM, Mr. Habersack, and counsel Mark Infuso.

MS. FRESCH: Good morning, Your Honor.

Elaine Fresch for David Copperfield; David Copperfield Disappearing, Inc. And with me is my client David Copperfield and my associate Eric Freeman.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts and Howard Russell for Backstage Employment and Referral.

THE COURT: All right. And --

MR. STRASSBURG: May it please the Court.

THE COURT: Go ahead.

MR. STRASSBURG: I'm over it, Judge.

May it please the Court, Roger Strassburg, assisted by my partner Gary Call, for Team Construction Management.

THE COURT: I was told there's something I need to take up.

MR. DEUTSCH: No surprise, Your Honor. It's me.

We received last night some new discovery from Ms. Fresch that was concerning to us because we believe it shows yet another willful withholding of relevant information in this case over the last four years.

We were provided last night videotapes sort of like the one we've seen in court from the front of the audience of the day of Mrs. Esack's accident back

in 2002, the one that she was in and that you could see her in the video, and the video of Ms. Lawrence's accident in June of 2013.

And what's amazing to us is that we've never, despite requests, in four years of this litigation and now a month of trial, the day before we're resting, have ever been provided the video of the night of Mr. Cox's accident.

And, obviously, if they were able to go back and pull the video from 2002, a particular show in Seattle, and pull a particular show in June at the MGM Grand, they clearly have the one of Mr. Cox's accident also. And we had put that in the demand for discovery, all relevant videos. It was never provided for years of litigation.

About a month before trial start, I reached out to Mr. Freeman again on that issue because I found it hard to believe that there were no videos from the front of the audience. And I specifically at that time talked to him about we want to see the front of the audience. And I was told, "Well, all we have is a generic one from another night." And that's when they provided us the one that we've been showing as the demonstrative during this trial.

So they specifically told me at that point

that they couldn't give me the one from the night of the accident, so they were just going to give me one from some random night. I said, "Okay. I guess it's better than nothing." And now it's clear that they have the one from Mr. Cox's accident. And the day that we planned on resting, they still haven't give it to us.

I think it's sanctionable, Your Honor. I think it warrants a striking of their answer at this point. I don't see -- I don't see how they can continue to get away with not providing the discovery.

THE COURT: All right.

Response?

MS. FRESCH: Yes, Your Honor. First of all, let's clarify that the videos that I produced yesterday to counsel was for rebuttal because of the new witnesses. So the 2002 videos that I will be presenting are VHS tapes. I even produced the -- the picture that shows the VHS tapes because, back in 2002, 16 years ago, it was all VHS.

All right. Let's fast-forward. We've never located Mr. Cox's -- that tape for the night of 11/12/13. We now have -- everything is on DVD. As I understand it, because my client -- and, actually, Backstage as well -- have searched and scoured to see

if we could find the 11/12/13. It is not there. But what happens now, because of the DVD technology, they're actually -- unlike VHS, it is actually less reliable in terms of burning to the disc. Sometimes a lot of malfunctions occur. I -- I don't have all the technical skills to explain all of it.

We have not located it. We have always told them we would like to present that too. We cannot locate that. By happenstance, yes, we do have lots of videos. And they asked for that night. We didn't -- we found another one from November within that same two-week period. And we were able to locate Ms. Lawrence, the night of that. So we do have that.

All I can say is we were able to locate those. That's in response to new witnesses that were thrown on me last week. I mean, by the grace God, I found those -- or my client has found those. But we cannot find -- and we provided verified responses to that. I -- there's nothing else to say.

And they could have -- I mean, there's nothing else to say. We don't have them. So I -- I can't produce them. We've looked. We've looked. I've asked a million times over the course of the years, "Have you looked there? What about" -- we just can't find it.

And, again, because of the technology, this happens all the time. They have a lot of different random shows that don't -- that aren't actually videoed. Because if you notice, the tapes are not really high-quality tapes; they're really for purposes for improving things in the show versus to be shown to a jury.

MR. DEUTSCH: Your Honor, I -- I -- I think that it's -- it's suspect that they were able to find one from 2002 on a VHS. The one from June of 2013 was also on a DVD. We've been provided no affidavit or anything of what kind of search was completed, that it was missing, anything of the sort.

To now allow them to come in and use these two other ones and say, "Yeah, we just can't find the one of the night of the accident," I think deserves at least some sort of missing evidence charge in terms of where it is, or they shouldn't be allowed to use the old ones.

THE COURT: All right. Motion's denied.

Let's -- we ready for the jury?

Okay. Let's have the jury come in.

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. You may be seated.

IN UNISON: Good morning.

THE COURT: Do counsel stipulate that the jury is present?

MR. POPOVICH: Yes, Your Honor.

MR. MORELLI: The jury is present.

MS. FRESCH: Yes, Your Honor.

MR. DEUTSCH: Yes, Your Honor.

MR. RUSSELL: Yes, Your Honor.

THE COURT: All right. You may proceed.

All right. The witness, Mr. Copperfield, has retaken the stand.

You realize you're still under oath, sir?

THE WITNESS: Thank you, sir.

THE COURT: You may proceed.

MR. STRASSBURG: Thank you, Judge.

CROSS-EXAMINATION

BY MR. STRASSBURG:

Q. Mr. Copperfield, thank you for returning and good morning to you.

A. Thank you.

Q. Couple of things I just want to confirm. Are you -- is your -- do you have water or can you talk?

A. I'm -- I'm fine.
Q. You're okay?
A. Thank you so much.
Q. Okay. Could you keep your voice up. You're a tad soft-spoken.
A. I know. I'm not used to performing in public, so ...
Q. Well, that's probably a good thing there, so -- at least not in this venue.
A. Thank God for that.
MR. STRASSBURG: Did I -- is it on?
THE COURT RECORDER: It's on -- yes, there's a button that turns green.
THE WITNESS: I can help you with that.
BY MR. STRASSBURG:
Q. Would you?
Turns out to be distressingly simple.
Just to confirm, you did not tell anybody at Team Construction the use to which you were putting that accessway outside during your show times; true?
A. I don't understand your question, please. One more time.
Q. You -- let -- let's just back up.
You testified before that you think you probably noticed the dumpster at some point; right?

A. It's -- it's possible in my peripheral, yes, certainly on the video.

Q. Right. And the dumpster, it wasn't in your way?

A. No.

Q. You were able to run your people alongside of it with no problems?

A. Correct. It was not in the path.

Q. Okay. And so you had no occasion to tell anybody at Team Construction about the dumpster or the use that you were putting that stretch of pavement; true?

A. Never talked to them.

Q. Okay. And you never had any occasion to direct any of your people to do that either; true?

A. That's true.

Q. Okay. I think that's all I have. Thank you.

Wait a while. I think some other lawyers may want to talk to you.

A. Okay.

MR. MORELLI: Wired for sound.

Good morning.

IN UNISON: Good morning.

/////

REDIRECT EXAMINATION

BY MR. MORELLI:

Q. Good morning.

A. Good morning to you.

Q. So, Mr. Copperfield, we're going to discuss certain topics today with the same understanding that, if you don't understand my question, just tell me and I'll try to rephrase it.

Fair enough?

A. Fair enough.

Q. The -- the first thing I want to talk to you about is the walk-around, you know, when the show starts for the Thirteen Illusion. Okay?

A. Yes.

MR. MORELLI: Adam, can you bring up a photo of that?

MR. DEUTSCH: I can.

This is a still shot from exhibit --

MR. POPOVICH: The exemplar?

MR. DEUTSCH: The exhibit -- yeah, that, 402.

MR. POPOVICH: I think it's 94.

MR. DEUTSCH: The video. 94? Okay.

So this is just a still from that video.

BY MR. MORELLI:

Q. Can you see that on your screen?

JA003610

A. I can.

Q. Okay. Good. Whatever way is easier for you. If you need -- if you want to look at this, you want to look at that, it's fine.

A. Okay.

Q. Okay?

Now, my -- my -- I want to just ask you a couple of preliminary questions about this. With reference to the walk-around, am I correct that you considered that one of the screening processes? Is that fair?

A. It's absolutely fair.

Q. Okay.

A. This picture is way after the walk-around; right? That platform would be on the ground.

Q. No, no. I understand. It would be lower?

A. Right.

Q. We -- we chose this particular photo for a reason.

A. Okay.

Q. Okay?

So when -- when you said that the screening process included the walk-around, one of the things that you told us -- and correct me if I'm wrong -- is that it's an extreme process to see whether or not the

participants are capable of doing the rest of the illusion. Is that fair?

A. It's certain tests to make sure they can walk over things, being able to navigate kind of some twists and turns. I can show you where they are if you like. Yes.

Q. Okay. So is it -- is it also true that you also say -- and -- and I think you stated in your testimony -- that this -- and I think you tell the audience this -- that it's clear 20 feet all around; is that correct? There's nothing. There's no hiding. There's -- there's nothing going on. You could see 20 feet all around. Nothing going on. Is that also true?

A. That is a theatrical expression. I never really measured the 20 feet behind.

Q. I'm not going to prove to you that it's 18 or 22.

A. Okay. So what's your question?

Q. Yeah, that's -- that's -- am I correct that you say that?

A. Say what again?

Q. That it's clear 20 feet all around and there's -- there's nothing here. In other words, telling the audience --

A. I see.
Q. -- that you're not hiding anything?
A. Right. It's --
Q. That's all I'm saying. The 20 feet is --
A. I wouldn't say "clear"; there's 20 feet to the back curtain. The idea is 20 feet to the back, showing the space around it.
Q. So here's the thing. I'm --
MR. DEUTSCH: Morelli, why don't I play it?
MR. MORELLI: Huh?
MR. DEUTSCH: Why don't I play it?
MR. MORELLI: Okay.
MR. DEUTSCH: We'll just --
MR. MORELLI: You have to bring it --
MR. DEUTSCH: I've got it at the exact spot.
MS. FRESCH: Should we turn the lights down?
MR. DEUTSCH: No, it's okay. I need just a volume thing so we can hear what he says.
MS. FRESCH: Should we just say that it's -- now you're playing it.
MR. DEUTSCH: Now I'm playing the same exhibit.
MS. FRESCH: Okay.
MR. DEUTSCH: Just so we can hear what he says. I hope I got the spot right. I got to go back

and I need some volume.

Jennifer, do I need to do something to get some volume?

THE COURT RECORDER: You just have to plug in the audio cable.

MR. DEUTSCH: I did do that. I'm not getting any sound.

THE COURT RECORDER: Bob is on his way to help.

MR. DEUTSCH: Oh, that needs to be plugged in. There you go, Bob. Thank you. Always have to plug in both sides, I guess, huh? Still not getting --

MR. MORELLI: So far silent movie.

MR. DEUTSCH: No sound.

THE COURT RECORDER: Is the sound on the television?

THE WITNESS: It's the Buster Keaton version of the illusion.

JUROR NO. 8: How about the sound on the TV?

MR. DEUTSCH: There we go. What was that?

(Whereupon video was played.)

MR. DEUTSCH: There it was.

BY MR. MORELLI:

Q. Okay. Now, you do say, do you not, "20 feet in every direction"; correct? Okay?

A. Yes.
Q. You heard it yourself?
A. I did.
Q. And you have nothing -- nothing to hide, just saying that there is nothing around there, nothing to hide, nothing to worry about; true? I mean, that's what you said. So --
A. It's referring to something different, yes.
Q. Okay. And you're saying that it's not really true that it's 20 feet all around, that it's a theatrical expression?
A. I'm saying --
Q. Just yes or no. I know you --
A. Not a yes-or-no question. Sorry.
Q. Okay. But it's a theatrical expression, or is it true that there's nothing --
A. It's referring to the curtains and the boundaries, not referring to the stuff they have to navigate around. I'm referring to the space up to the boundaries.
Q. So, now, we look at this.
So Adam --
MR. DEUTSCH: Do you want me to play it or --
MR. MORELLI: Might as well play it at this point.

Well, give me the still shot.

MR. DEUTSCH: There's the still shot.

MR. MORELLI: Okay. But I want to see the --

MR. DEUTSCH: The path that they take.

MR. MORELLI: Yeah.

MR. DEUTSCH: They go like this, and then they go that way.

Is that right?

BY MR. MORELLI:

Q. The path?

A. Are you both asking me questions? I don't know.

Q. No, no, no. I'm asking you the question.

Is this the path that they take?

A. So far. Can I stand up?

Q. Sure. You show us the path.

A. Well, can you play it, because I'm not sure which way they go, to be honest.

MR. DEUTSCH: We'll play it.

MR. MORELLI: Play it.

BY MR. MORELLI:

Q. And you can show us in the meantime.

(Whereupon video was played.)

BY MR. MORELLI:

Q. What you say is not that important right now;

it's just really for video. Okay?

A. I agree.

Play it.

MR. DEUTSCH: Sorry.

THE WITNESS: So we're going around this light here, some small lights on the floor, some cables this way. They're stepping over cables here. There's a black thing here, some dark objects there that they're going around. And over here is a very tight squeeze right there around that pole. And there's a light over here on the flooring.

BY MR. MORELLI:

Q. While we're watching these people walking, it doesn't look like they're tight squeezing or anything; it looks like they're just walking regularly.

A. They're doing pretty good.

Q. Yeah, none of them really had a problem on this particular night. Do you sometimes have problems with people walking around and they're tripping?

A. Well, sometimes we see people --

Q. Just yes or no. Do you sometimes see people walking around there and they're tripping? That's my only question.

A. I haven't seen tripping. I've seen navigating.

Q. Okay. Okay.

Now, we need a -- we need a number for ID.

MR. DEUTSCH: I don't know what number we're up to. What number are we up to?

THE CLERK: You're on 103.

MR. DEUTSCH: 103.

MR. MORELLI: 103 for ID? Okay.

May I show the witness, Your Honor?

MS. FRESCH: Wait. Can you show them to us?

MR. MORELLI: Oh.

MS. FRESCH: Thanks.

BY MR. MORELLI:

Q. I'm just showing you 103 for ID. Okay?

A. Yes.

Q. Now, is that a -- a photocopy -- well, you look at it, and why don't you tell us what that is.

A. A picture of me, 8-by-10.

Q. Okay. And is -- that picture of you, is it signed by you?

A. Looks like it.

Q. Okay. And is that the picture or the photo that you give out at the end of the Thirteen Illusion to the participants?

A. It could have been. We've had a few different kinds. So --

Q. Okay. It's one of them?
A. It's one -- could have been. I'm not sure.
Q. Are the photos different now?
A. They are now. I got older.
Q. You don't -- you don't keep giving out the young photos?
A. It's still a little young, but it's not quite as young as this.
Q. Okay. Within reason?
A. It's within reason.
Q. Within reason. I know the feeling.
Anyway, so that particular photo, let me just ask you a couple of questions.
MR. MORELLI: I'm going to move the photo into evidence, Your Honor, if I can.
MR. POPOVICH: No objection from me.
MS. FRESCH: No objection.
THE COURT: It's admitted.
(Whereupon, Plaintiff's Exhibit 103 was admitted into evidence.)
MR. DEUTSCH: Put it up on the ELMO.
MR. MORELLI: Yeah.
MR. DEUTSCH: Any idea --
MR. MORELLI: This thing does a lot of searching -- a lot of searching going on.

MR. POPOVICH: We all do.

MR. DEUTSCH: May I publish it, Your Honor?

THE COURT: Yes.

MR. MORELLI: Yeah, give it to me. You might as well just pass it instead --

MR. DEUTSCH: That makes sense.

MR. MORELLI: -- instead of walking.

THE WITNESS: It's good lighting. A little Photoshop.

MR. MORELLI: Thank you.

BY MR. MORELLI:

Q. Now, did you -- did you ever hear the name Tara Lynn Anderson?

A. Not that I --

Q. Does that name ring a bell to you?

A. Not that I recall.

Q. Do you recall someone falling and getting injured at the MGM Grand in 2004? Her name was Tara. Do you remember that?

A. No. I don't recall that happening.

Q. Okay. Now, let me ask you this, and please correct me if I'm getting this wrong. Okay?

Am I correct that your testimony in this case so far has been that you don't recall anyone ever falling during the illusion?

Now, I'm making this clear that I'm talking about two different things now. Okay? I'm talking about falling, and then I'm going to talk about falling and getting injured. Fair enough? So that I'm not trying to surprise you with anything. Okay?

Am I correct that your testimony in this case so far has been that you don't recall or you don't know -- which I think are two different things, but all right -- anyone ever falling during the illusion? Is that a correct statement?

A. My testimony's been that I don't recall anyone getting injured.

Q. Okay. Now, can we have --

MR. MORELLI: Shoot me.

MR. DEUTSCH: I got it.

THE WITNESS: Except for a year later finding out Mr. Cox got injured, obviously.

MR. MORELLI: I'm not talking about Mr. Cox.

MR. DEUTSCH: This is page 40.

MR. MORELLI: I'm not trying to trick you.

THE WITNESS: Okay.

MR. MORELLI: No pun intended.

MR. DEUTSCH: Now suddenly I got sound. This is page 40, the trial transcript April 24th, 2018, page 40.

BY MR. MORELLI:

Q. So let's start at the top:

"Has anyone ever fallen" that was my question to you -- "at any location at all -- at all -- during the part of the illusion which is called the runaround? Yes or no."

"To my knowledge, I have no recollection of anyone ever being injured."

"QUESTION: I didn't ask you that, so I'm -- let me ask you the question again so that you and I are on the same page.

"ANSWER: Thank you.

"QUESTION: In any location at all that the illusion had been performed, any location, to your knowledge -- right, 'cause that's all I can ask you --

"ANSWER: Yep.

"QUESTION: -- has anyone ever fallen during the runaround?

"ANSWER: Not to my knowledge --"

THE WITNESS: Right.

BY MR. MORELLI:

Q. Now, you did say that, did you not?

A. I did, but I meant to.

Q. And that was on the witness stand the last

time I had an opportunity to speak with you, and that was a week ago?

A. I'm -- you're not trying to trick me because it's the same thing. It's about my -- it's about my recollection.

Q. I understand that. And that's what I'm asking you about is your recollection. I'm not asking you about anything else. And I'm going to be very clear -- and you notice I'm not going fast, not going staccato, just asking you directly. Whatever your answer is, it is. Okay?

Now, am I correct that today when I asked you that question, you said, "My recollection is no one's ever been injured"? Okay? So let's follow up on that.

Does that mean that today, as opposed to last week, you know that people have fallen? Is that your recollection now? If it is, it is. If it isn't, it isn't.

A. Well, I saw you on TV.

Q. You saw me on TV?

A. Recently, yes. You look really good. Very good.

Q. Taller? I look tall?

A. You're very tall.

Q. Okay.

A. And so I'm aware of what you said.

Q. Okay. But I'm not even talking about that. You know, I'm talking about other than what you have heard from me in this case.

A. Right.

Q. I'm -- I'm just talking about your recollection, having nothing to do with what I've said in this case. All right?

A. Right.

Q. Is your recollection, independent of what I've said in the case, that no one has ever fallen during the Thirteen Illusion? Yes? No?

A. Not that I recall.

Q. Okay. So that would also include, would it not, that you have no recollection of anyone ever falling and being injured? Because if you have no recollection of anyone ever falling, then you don't have any recollection of them falling and being injured. Fair enough?

A. You are correct.

Q. Now, you haven't been in the court for the last week, but you did become aware, did you not, that the jury saw two different witnesses by videotape? Did you become aware of that?

A. Not clear how many.

Q. Okay. But you became aware that there were -- there was at least one, if not more?

A. Correct.

Q. Okay. And when you heard about that, did that refresh your recollection of the fact that there were people who had fallen and been injured? Did that refresh your recollection?

A. It did not. It did not.

Q. So you still said, "I don't remember any of that," correct?

A. I did not recall.

Q. So, now, if a woman named Tara Lynn Anderson said that not only did she fall and get injured, but it was brought out to you and you spoke to her about it, that wouldn't refresh your recollection?

MR. POPOVICH: Objection. Facts not in evidence.

MS. FRESCH: Objection.

MR. RUSSELL: Join.

THE COURT: Sustained.

MR. POPOVICH: Ask the Court to inform the jury to disregard any implications from the question.

MS. FRESCH: Join.

THE COURT: So ordered. Jury will disregard.

/////

BY MR. MORELLI:

Q. Now --

A. Don't try to trick me.

Q. I'm not trying to trick you at all. That was a pretty direct question and sooner or later we're going to get to the bottom of it.

MS. FRESCH: Objection, Your Honor, to comments of Counsel.

THE COURT: Sustained. Jury will disregard.

BY MR. MORELLI:

Q. Now, am I correct, Mr. Copperfield, that you've made these statements under oath in court?

A. 100 percent.

Q. "We're just trying to get the truth out." Did you make that statement?

A. I don't know if those are the exact words.

Q. Okay. Second statement: "I'm trying to get the truth to the jury." Did you make that statement?

A. I really feel that way. Yes.

Q. Okay. "I'm just trying to tell the truth." Did you make that statement?

A. I stand by that for sure.

Q. Okay. "Trying to just give you the truth. It's the truth." Did you make that statement?

A. 100 percent.

Q. Okay. So let's look at the statements that you made. And --

A. We're still searching.

Q. While we're -- while we're searching for this --

MR. DEUTSCH: What do you want?

MR. MORELLI: I just want the statements.

MR. DEUTSCH: The ones you just read?

MR. MORELLI: Yeah.

MR. DEUTSCH: Page 39.

MR. MORELLI: First one is 39, 14.

MS. FRESCH: Adam, this is April 24th; correct?

MR. DEUTSCH: Yep.

BY MR. MORELLI:

Q. So you see my question.

"Okay. The -- you -- you do understand, Mr. Copperfield, that the defendants in this case, not only you, but the other defendants are defending this case strenuously. You do know that; right?"

And your answer was not yes or no.

"We're just trying to get the truth out."

And the "we're" was all of the defendants, not only you; correct? That's what you meant by that?

A. I'm not sure what I meant by that, but I meant the -- what I meant was this is during the time where I was being --

Q. Wait. Let me read it to you again so -- before you --

A. It's about like this kind of thing.

Q. -- give us a speech.

"QUESTION: You do understand, Mr. Copperfield, that the defendants in this case, not only you, but the other defendants are defending this case strenuously? You do know that; right?"

"We're just trying to get the truth out."

A. Correct.

Q. And what you are saying, is you're not sure right now whether you meant the defendants in general, you might have meant something else. Fair enough?

A. I meant -- not a speech. I meant that I wasn't able to answer questions fully. When I said, "I'm trying to get the truth out" is because I was being asked yes-or-no questions that would be misleading to what they should know.

Q. Okay.

A. That's what I --

Q. And I -- and I'm glad that you cleared out --

A. Thank you.

Q. -- cleared up something that I know you told us before.

The "we're," I'm asking you about the "we're." I'm not asking you about, you know, yourself; the "we're." What did you mean by the "we're"? Did you mean that all of the defendants, including yourself --

A. I'm not -- quite frankly, I think it was a figure of speech.

Q. Okay.

A. General question --

Q. Fair enough.

Now, but in the meantime, am I correct, sir, that -- do you believe that, because you personally have no recollection of anyone ever falling during the illusion, that that means no one ever has? Just because you don't -- you don't have any recollection, does that mean it's never happened?

A. That doesn't make sense, does it? I mean, things can happen that I'm unaware of. I would like to be told things. I want to be -- know what's happening so I can improve things, but if somebody doesn't tell me or if I don't know it, I can't sit here and say that, you know.

Q. Well, let me -- let's -- let's investigate that. Okay? Let's assume for a moment that not only did someone tell you, but actually one of the women who fell and was injured spoke to you about it and you spoke to her and still you have no recollection. Okay? So why don't we -- let's see, I want a piece of the video from the beginning.

MR. DEUTSCH: Jennifer.

(Whereupon video deposition was played.)

BY MS. FRESCH:

Q. Do you remember any of the gal -- of which she said, if anything, while Mr. Copperfield was --

A. She took my name, my telephone number --

(Whereupon video deposition was paused.)

(Whereupon video deposition was resumed.)

BY MR. DEUTSCH:

Q. Okay. And then what happened?

A. And then David came out.

Q. When you say David, who -- who's David?

A. Mr. Copperfield came out and he talked to me for a few minutes. And I don't remember what he said, but I remember saying to him that I was hoping that I hadn't messed up the illusion. And then the ambulances took me directly to the trauma center for the

northwest.

Q. Okay. So let me just see if I'm clear. Were you still sitting outside the theater when Mr. Copperfield came over to you?

A. Yes. I was right outside on the street.

Q. Okay. And -- and was he there at the time that the ambulances arrived? Do you know?

A. I honestly -- the ambulances were there. I don't -- so I guess the question -- the --

Q. You don't remember?

A. -- answer to that question is I don't remember.

Q. You don't remember. Okay.

A. I don't know if they was there when he arrived, but they -- they were there when he was there.

Q. And did you -- you were taken to the hospital?

A. I was taken to the trauma center.

Q. The trauma center. Okay. And -- and what -- was there a diagnosis made in terms of -- of your injury?

A. Yes.

Q. And what was that?

A. I don't remember the fancy diagnosis. You'd have to look on the nifty sheet.

Q. You can give us the -- the --

A. They -- my wrist was shattered. And I have a plate and six screws in my wrist. They -- it -- it's essentially -- I'm considered disabled.

Q. Okay. Is it -- is it -- do you still have the plate and screws in your wrist now?

A. Yes. They can't be taken out.

Q. Okay. After --

A. My wrist would fall apart if they did.

Q. Okay. After that day of the show, did Mr. Copperfield ever reach out to you at any point after that?

A. Yes. He --

Q. Can you tell us when that was?

A. He reached out the next day.

Q. Okay.

A. He called the next day.

Q. Where did he call?

A. He called my home.

Q. Okay.

MR. MORELLI: Just stop it right there a second.

(Whereupon video deposition was stopped.)

/////

BY MR. MORELLI:

Q. Now, do you remember this woman?

A. No, I don't.

Q. She says that you were standing there when she was leaning against the building with a shattered arm, her wrist shattered -- and you'll hear later how it looked -- and you spoke to her, and yet you don't remember that?

A. I don't remember.

Q. Okay. And then she says that the next day she reached out -- that you reached out and called her home. And yet you don't remember that?

A. I do not remember that at all.

Q. Okay.

A. No.

Q. Okay. Now, the --

A. How many years ago was this?

Q. This was in -- what year was it?

MR. DEUTSCH: 2002.

BY MR. MORELLI:

Q. -- 2002.

A. So that's 16 years ago.

Q. Okay.

A. Okay.

Q. And so you don't have any recollection of 16

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years ago; right? Okay. That's your answer. All right.

But you would agree with me, Mr. Copperfield, if, in fact, what we have been talking about in this case, which is no one -- no one has ever been injured during this Thirteen Illusion -- nobody, no one. That's the whole point of why it's so safe -- that if, in fact, there was a person who you spoke to, who you called her home, that wouldn't be something that a normal person would forget, would it be? I mean, is that something that somebody would forget something so unusual?

A. Well, I would say this. I would have -- as she describes it and the things that I've read that she describes about the injury, about what happened to her, what I would have seen, I would have remembered it.

Q. Okay.

A. There's a loss of facts.

Q. So let me -- let me just ask you something about that, seeing that you -- you just said you would have remembered it. So -- and I understand that, you know, you're trying to be very charming, but I'm trying to really just get your answers on the record.

MS. FRESCH: Objection, Your Honor.

THE COURT: Sustained. Jury will

disregard --
BY MR. MORELLI:
Q. And your answers --
THE COURT: -- the statement.
BY MR. MORELLI:
Q. -- are very important to this case. Okay?
So what you just said, do I -- can I translate that to mean that she's lying? That's what I want to know. You just said if that really happened like that, I would remember it. Does that mean she's not credible; she's lying?
MS. FRESCH: Objection, Your Honor, to the form.
MR. MORELLI: That's what he said.
THE COURT: I will allow it.
BY MR. MORELLI:
Q. Does that mean she's lying? Just tell me yes or no.
A. That's not a yes-or-no question. Sorry.
Q. Nothing is yes or no. But I want to know -- you just said you would have remembered that, so you meant something by that. Did you mean that she's not credible?
A. All --
Q. Just tell me whether you think she's credible

or not.

A. I think --

MS. FRESCH: Objection, Your Honor, to the form.

THE WITNESS: -- her recollection --

THE COURT: I will allow it. Overruled. You can answer the question.

THE WITNESS: Sorry.

BY MR. MORELLI:

Q. Do you -- because you made a statement -- you made a statement that if, in fact, what she described happened, you would remember it, which means to me -- and I want to know what it means to you -- that she's not telling the truth. Just tell me yes or no.

A. Can't answer yes or no.

Q. Okay.

A. There's a lot more detail.

Q. Yeah. So, now, she was -- during the runaround, she gets injured. She's lying against the wall, and her wrist, her arm is -- is obviously very damaged, and she says you're talking to her. You don't remember that?

A. I don't.

Q. Okay.

MR. POPOVICH: Just for clarity of the

record, Your Honor, I'm not sure it's been mentioned. This is Ms. Vesack --

MS. FRESCH: Esack.

MR. POPOVICH: Esack. Thank you.

MR. MORELLI: Okay. Let's play the next clip again.

MR. FALLICK: You want to just continue?

MR. MORELLI: Please.

(Whereupon video deposition was played.)

THE WITNESS: My mother had heard him on the news earlier that morning. And on the -- he had been talking about how no one had ever been hurt in any of his shows earlier that morning, so she was a little bit angry with him. And being an 80-year-old woman, she has a tendency of lecturing. So she decided to lecture him and then hang up on him, which I wasn't exactly thrilled about --

(Whereupon video deposition was stopped.)

BY MR. MORELLI:

Q. Okay. Now, there's another piece of information. She says that you called her house. Her mother lives with her. You spoke with her mom. Her mom was obviously, in -- in Ms. Esack's opinion, rude to you -- okay? -- and hung up on you. Do you remember

that?

A. Absolutely not.

Q. Okay.

A. And she also said about a morning show, which I didn't do a morning show.

Q. Okay. You're going to have an opportunity, when Ms. Fresch gets up here -- I'm sure we're going to hear all about it, that you were never on a morning show. And fine.

Now, the -- the important thing for us to understand is your recollection. Now, you would agree with me, would you not, that if someone had fallen during the illusion and was injured, both of those things, that that would be an important thing for you to know; yes?

A. I would want to know that, yes.

Q. You would want to -- to know that?

A. I would want to be told that, sure.

Q. And if, in fact, someone was -- had fallen during the illusion and was injured and you spoke to her, if, in fact, that happened, that would be important for you to recollect. Would you agree with that? Would it be important for you to recollect? Is this a difficult question?

A. Ask it again, please.

Q. Sure. If, in fact, someone fell during the Thirteen Illusion and they were injured and you spoke with her, wouldn't that be important for you to recollect?

A. I would remember it. I would remember it.

Q. Yeah, you would remember it. So the reason that you're not remembering it is because she's not telling the truth? This is my question. It's not complicated. Is she not telling the truth?

A. Well, I don't recall what she said.

Q. Okay. Okay. So if you don't recall, do we then follow that line of thinking that if you don't recall it, it didn't happen? Is that a fair statement? If you don't recall it, it didn't happen? That's what I want to know.

A. I did -- if someone was injured like that and I spoke to them and it -- I'm very squeamish -- and I saw that, I would remember it. I don't remember. And I would want to be told it --

Q. Right.

A. And --

Q. And so if you don't remember it, at least in your opinion, which is important to us, it probably didn't happen? Right? I mean, am I -- am I correct? I mean, you just told the jury just a couple of minutes

ago -- maybe not even a couple of minutes -- I was not on a morning show that day. You remember the show that you're on?

A. Because I looked at documents.

Q. Okay. But you -- but did they show you this video?

A. No.

Q. No? The document that refreshed your recollection that you were never on a morning show?

A. It didn't.

Q. This video that I'm showing you doesn't refresh your recollection that this woman was injured and you spoke to her.

A. It's just facts. The document shows what I actually did that morning -- the next morning.

Q. You recall -- you're going to have a chance to talk about it. Believe me. I'm probably going to have to sit through it. So it's fine.

MS. FRESCH: Objection, Your Honor.

THE COURT: Sustained.

MR. MORELLI: Now let's go to the next clip.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. At some point, if you know, was a claim or some sort of notification sent to Mr. Copperfield with

respect to the fact that you had been in this accident?

A. Oh, absolutely.

(Whereupon video deposition was stopped.)

BY MR. MORELLI:

Q. You don't remember that either?

A. (Witness shakes head.)

Q. Okay. So --

A. Sixteen years ago; right?

Q. Sixteen years ago. Sixteen years ago, yes.

Now, here's my next question: You, in fact, stated when you were here last that you always find the participants to be very excited after they participated. Fair statement?

A. I think, generally speaking, yes.

Q. Yeah. And that they really enjoyed themselves; correct?

A. Majority, I think.

Q. Yeah. And I think you also said -- and correct me if I'm wrong, but we can look at the testimony -- that if, in fact, you had gotten feedback from the participants that they didn't enjoy it, they weren't excited, and/or they felt uncomfortable doing it, that you would stop doing the illusion; is that correct?

MS. FRESCH: Objection.

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BY MR. MORELLI:

Q. Did you say that?

MS. FRESCH: May misstate his prior testimony.

MR. MORELLI: Give me the testimony.

MR. DEUTSCH: Goes onto the next page.

MR. MORELLI: Okay.

MS. FRESCH: Which day is this?

MR. DEUTSCH: The 24th.

MR. MORELLI: It's page 127.

BY MR. MORELLI:

Q. Question on line 18. You could -- you could see it there, I think.

A. Thank you.

Q. "Okay. During the time that you've gone into that back room and -- and talked with them" -- meaning the participants -- "which we've already talked about in general, that you speak to them -- have -- do you recall any instances where any of the volunteers complained to you about their participation in the illusion?"

This isn't my question to you, by the way.

"ANSWER: No. No one has said 'he made me run' or 'I'm too fast' or 'that was a bad experience.' I wouldn't have continued doing

the illusion if I got anything but excitement and positive feedback from them."

Did you say that?

A. Yeah.

Q. Okay. That's not misstated; right? That's exactly what you said from the record?

MR. RUSSELL: Objection, Your Honor.

MR. MORELLI: I didn't finish my question.

MR. RUSSELL: You didn't finish the answer that was on the screen either.

MR. DEUTSCH: Of course he did.

THE COURT: Let him finish the answer, then pose the question.

MR. MORELLI: I'll show him the whole thing.

BY MR. MORELLI:

Q. Okay. "In that room," is your answer.

You want to go further?

MR. RUSSELL: No, that was it. Thank you, Mr. Morelli.

MR. MORELLI: Okay.

BY MR. MORELLI:

Q. Okay. Now --

A. I didn't get to answer the question.

Q. My question to you was you had said in the past -- as I just showed you -- that if, in fact, you

didn't get positive feedback that people were excited, that they enjoyed themselves, that you would stop doing the illusion. That's what you said.

A. The meaning was I would modify it. I would change it. I would improve it. I would stop the illusion as is.

Q. Wait. Wait.

A. I would stop the illusion as we did it.

Q. Okay. You would -- let's -- let's go with your answer -- your answer today. Okay? That you wouldn't stop the illusion; you would modify it.

Okay. What part would you modify? Would you modify the runaround where people are running outside? Would you modify that? Just yes or no. I want to get --

A. Not a yes or no.

Q. -- the bottom of what you would modify. Okay? Would you modify the runaround? Yes or no?

A. Not a yes-or-no question.

MS. FRESCH: Incomplete hypothetical and lacks foundation.

THE COURT: Overruled.

THE WITNESS: I would -- whatever I learned from the critique, I would consider.

/////

BY MR. MORELLI:

Q. Mr. Copperfield, you said that you would modify it. And I'm trying to find out --

A. Explaining how.

Q. -- if someone had fallen during the runaround -- okay? -- and got injured, would that make you stop doing the illusion?

A. People fall on the way to church. People fall in marathons. People fall all the time.

Q. Okay. Is the answer, no, you wouldn't stop doing it because that's not an -- important enough; the excitement and the feedback is more important?

A. I think that's mischaracterizing what I mean, obviously.

Q. Well, I don't think so.

A. We're not in the business of hurting people here; we are in the business of -- of entertainment.

Q. I think your answer -- I think your answer was that you would stop doing the illusion if you didn't get positive feedback. That's what you said. Today you said "I would modify it."

And what I'm trying to find out is, if, in fact, someone said to you -- because you said that no one's ever said "I went too fast" or "I had to run" or anything like that. No one's ever said that. Let's

assume they did say that. They said, "Well, you know, I had to run too fast" or "You know, I -- I was confused" or anything like that.

Would you then modify the illusion --

A. No one's --

Q. -- if they told you that?

A. I'll modify things that need to be fixed for safety first.

Q. Mr. Copperfield, listen to me. I'm asking you specific questions. You're going to have a chance to give whatever statements you want within reason when your lawyer asks you questions.

Fair enough?

A. Ask the question again.

Q. Okay?

So all I want to know is, if, in fact, there was someone who did say to you "I had to run too fast" or "I -- you know, I was confused" or something like that, would that make you modify the Thirteen Illusion? Yes or no.

A. It would make me ask them a question. Why was it too fast? Why did you fall? Why did those things happen? And I would try to fix those things.

Q. Okay. But you would have to fix them by either modifying the illusion -- fair enough? -- or

stopping doing it. Those are the two choices that you have; right?

So now you ask them a question, why was it too fast? And they give you an answer, whatever the heck the answer is. Okay? "It was too fast because I thought I had to get there." And you would modify the illusion. Would you change the runaround? Yes or no.

MS. FRESCH: Incomplete hypothetical.

MR. POPOVICH: Join.

MR. MORELLI: I don't know what that means. One day you'll tell me. It's my question; I completed it.

THE COURT: Okay. I'll overrule it.

MR. MORELLI: Could I have it read back, please.

(Record read by the reporter.)

BY MR. MORELLI:

Q. Just yes or no, would you change the runaround?

A. I can't --

THE COURT: There's two questions there, Counsel. The first one -- the first one was "Right?" I think, and then you went onto another question.

MR. MORELLI: Okay.

/////

BY MR. MORELLI:

Q. I'm going to ask you one question very simply. A participant in the back room complains to you that the runaround portion of the illusion was too confusing. Would you modify the illusion, that part? Yes or no. Would you modify it?

A. I would consider it.

Q. Okay.

A. I would consider it.

Q. Okay.

A. I want people to be happy and healthy here.

Q. Okay. You would consider modifying it. Now, last week you said that if they -- if you didn't get positive feedback, you would stop doing it; right? You would stop doing it. That's what you said.

A. Stop doing it like that.

Q. Okay. So that's a modification; right? If you stop doing something one way, you're modifying it and doing it a different way. So what I'm saying is let's assume for a moment that you did recollect somebody falling and being injured. Let's assume you did.

And this is as complete as my hypothetical is ever going to be. Okay?

Let's assume that you did recollect someone

being injured during the Thirteen Illusion, whether it's 2002, 2004, 2013, 2010, whatever date it is, doesn't matter.

Would you -- would that make you modify the illusion? Yes or no.

MS. FRESCH: Objection. Incomplete hypothetical as to what caused the person to fall. There's not enough facts to respond to that question of falling.

THE COURT: The objection is noted and overruled.

BY MR. MORELLI:

Q. Do you need the question read back, Mr. Copperfield?

A. It's not a yes or no. There's more to it. I have to answer it -- sorry. Do your thing. Sorry.

Q. That's okay. Do you want the question read back? was my question.

A. I -- my answer is it's not a yes or no.

Q. No. Okay. But do you remember the question?

A. Enough to answer it's not a yes or no.

Q. Okay. So -- so now that you answered it's not a yes or no, I want to hear your answer right now. Tell it to me.

A. If there was -- if I knew of somebody getting

hurt, I would find out why it happened, explore how to make it never, ever, ever happen again. Sometimes people fall and get hurt and it's not our fault. You know? Sometimes --

Q. Has that happened in the past that people have fallen and gotten hurt and you decided it wasn't your fault?

A. Which -- which I've answered that many times. I have no recollection of anybody getting injured during this illusion. And --

Q. Okay. So here's my next question now that you've cleared it up.

If, in fact, someone fell and got injured and you did an investigation -- okay? -- you asked questions, you found out, and you determined, in your opinion -- just yours -- that it wasn't your fault, you would continue to do the illusion the same way; right? I mean, once you determine it's not your fault, you don't think you have to make any changes. Fair enough?

MR. RUSSELL: Objection. Compound.

MS. FRESCH: Compound, he said.

MR. MORELLI: My question's too long, Judge.

THE COURT: Okay. Rephrase.

MR. MORELLI: So I got to shorten it up a little.

BY MR. MORELLI:

Q. If you found out that someone had fallen and been injured and you did whatever personal investigation you did --

A. Yes.

Q. -- and you came to a determination that it wasn't your fault, you would not change anything. Is that fair enough?

A. It's not fair because it doesn't matter if it's my fault or not. If I had a marathon and people were running the marathon and somebody fell --

Q. Mr. Copperfield, let's not get into marathons. Okay?

THE COURT: Let him finish his answer. Okay? Let him finish the answer.

MR. MORELLI: I think this is cross-examination, Your Honor.

THE COURT: Well, he's providing an answer and you've interrupted it. Just let him finish the answer and ask the next question after that.

Go ahead.

BY MR. MORELLI:

Q. Marathon.

A. If I was the head of a marathon and people fell during the marathon, I would investigate if there

was obstacles in the way, any problems. Whether it was my fault or not, the marathon would still go on as long there was nothing we could make better happen.

You know, people are going to have accidents. And that's -- that -- sorry. That sucks. You know, it really -- it sucks. But the show will go on if this -- we've tried to improve every possible thing that could cause another problem.

That's my answer.

Q. If you determined that it wasn't your fault, would you then determine whether or not it was someone else's fault? Is that what you are saying? Would you try to figure out if it was someone else's fault?

A. If it was --

Q. Just yes or no, would you try to determine --

A. Not a yes or no.

Q. -- if it was someone else's fault?

A. I apologize. Not a yes or no.

Q. Is anything a yes or no? Just -- let me -- let me just ask you this -- because this is --

A. I like you, yes. I like you.

Q. -- this is a yes or no. Is anything a yes or no? That's a yes or no too.

MR. RUSSELL: Objection. Argumentative.

MR. MORELLI: I'm not arguing; I'm just

asking.

THE COURT: Sustained. Just ask a question.

BY MR. MORELLI:

Q. Is anything a yes or no?

A. Sometimes.

Q. Yeah.

A. Sometimes, yeah.

Q. Okay. So my question is that you -- you would determine whether or not it was your fault, and then you would go further and determine if it was anyone else's fault?

A. The cause in general.

Q. The cause?

A. A cause.

Q. The cause in general.

A. To fix the cause.

Q. Now, do you have -- in your mind, there are times, am I correct, that accidents just happen? They just happen --

A. Unfortunately.

Q. -- and it's no one's fault. Is that -- is that one of your opinions?

A. We all make mistakes, and we all trip, and we all fall, yes.

Q. Okay.

A. Unfortunately.

Q. So let me ask you this, then. It could be possible, in your opinion, that this woman who I've been showing you on the videotape, it was her fault. Is that one of your explanations today?

A. I wouldn't put it that way.

Q. I know you wouldn't --

A. I don't know the details.

Q. -- but I am. I am putting it that way. And it's my question.

A. What's your question?

Q. You see?

My question is whether or not you believe that this particular woman who had a wrist going backwards, that it was her fault, and therefore that could exonerate you even if you remembered it.

A. I don't have the facts. I don't know what happened.

Q. Okay. But it's possible that it could be her fault, in your mind?

A. It's possible.

MR. RUSSELL: Objection. Asked and answered.

MS. FRESCH: Join.

THE COURT: Overruled.

THE WITNESS: It could have been -- we don't

know the cause of this.
BY MR. MORELLI:
Q. Okay.
A. I don't know.
Q. So you're saying is that it could be her fault? And that's my only question.
A. I didn't say that it could be her fault; I said we don't know.
Q. Well, you said you don't know the cause. Is that one of the possibilities, that it's her fault?
A. There's many, many possibilities.
Q. Is that one of them?
A. One of them and --
Q. Yes.
A. -- many crazy possibilities.
Q. So that's a yes, that's one of the possibilities, that it's her fault?
A. I wouldn't -- I would never say that about somebody.
Q. I know you don't want to say it, but I'm asking you the question. And I want to know whether or not, in your mind, one of the possibilities for that woman falling during the runaround and getting injured and going to the trauma center is it might have been her fault. Might have been?

A. I have no idea.
Q. You don't have an idea --
A. I don't want to say that about -- she's a very nice lady.
Q. -- because you have no recollection of it.
But is it possible, in your mind, that it's her fault? And I want an answer to this question, Mr. Copperfield.
A. I know you do.
Q. I know. And I'm going to keep asking it.
A. Beautiful lady, went to my show, you know, seems to be speaking from her heart; right?
Q. Okay. That's all good.
A. I don't -- you know, some of her recollection, we'll talk about later, but -- but, you know, from my standpoint, I don't want to say a word about her. She seems really nice.
Q. I understand. But, in your mind, she's so nice, she's speaking from her heart, but she could have caused her own accident. Is that what you're saying? Why don't we just say it?
A. I see what you're trying to do and --
Q. I'm not trying to do anything.
A. She's a nice lady. This lady got --
Q. I'm trying to get an answer from you. Do you

think it's possible that it's her fault? That's all I want to know.

A. Anything -- I'll give you what you want. Anything's possible.

Q. Okay. Good. So it's possible that it's her fault, in your mind?

A. Anything's possible, a million other possibilities.

Q. Now -- now ...

A. Sixteen years ago is a long time.

Q. Are you talking to me? Hmm? Were you talking to me? is my question.

A. No.

That's a good De Niro impression, by the way.

Q. Sorry?

A. Nothing.

Q. Do you know who Amy Lawrence is?

A. No.

Q. Okay. Did you know that Amy Lawrence testified by videotape in this courtroom that she was injured during the Thirteen Illusion in June of 2013?

A. I think I saw you on TV talk about it. I've never seen her or the testimony.

Q. Okay. I don't think I've ever spoken about Amy Lawrence on television. And if I did, I would

never have mentioned the name.

A. Okay.

Q. Okay?

But you don't know who she is?

A. I don't recall her.

Q. Okay. You don't recall her. Now, when you -- were you told -- when you weren't in the courtroom, when you finally came back or spoke to your attorneys, were you told that she had testified?

MS. FRESCH: Well, objection. Kind of goes -- starts going into privilege.

THE COURT: Sustained.

BY MR. MORELLI:

Q. Did you learn in any way at all, whether on television, through the newspapers, whatever it was, that there was another woman who testified that she was injured in the Thirteen Illusion in June of 2013?

A. I don't know any details, but I've heard you talk about a second person on TV.

Q. Okay. Now, did -- did that at all, you know, refresh your recollection of someone being injured during the Thirteen Illusion?

A. It did not.

Q. Okay.

A. And my understanding is she didn't alert --

no one alerted me about that one.

Q. Okay. Okay. But your understanding is that the first person I showed you, she did alert you about it and, actually, you were there and then you called her house; correct?

A. That's what she said.

Q. Yeah, that's what she said, but she --

A. I certainly don't recall.

Q. But it could be that she's not telling the truth; isn't that true?

A. You keep doing this to me, and I don't want to --

Q. I just want to know what your opinions are. I'm entitled to know what you are thinking. Okay? And what you're thinking is that she could be lying. Is that one of the choices? She could be lying?

A. I will not call her a liar.

Q. Okay. She could be not telling the truth. That's a nicer way to say someone's lying.

A. I wouldn't say that either. I think her recollection might be different.

Q. Her recollection --

A. It's 16 years ago.

Q. Right. So she could have a recollection -- so that we understand each other, she could have a

recollection that she was in the illusion. Okay? That she was -- during the runaround that she got injured. Her recollection of going to the trauma center is probably fuzzy. And she had surgeries. She has a plate in her arm. She spoke to you. You called her house. And her recollection is faulty.

Do you think that's possible with all of those things, that those -- all of those things, she has a faulty recollection about?

MR. RUSSELL: Objection to asking him to testify to the credibility of another witness. Improper opinion.

MR. MORELLI: Show me the next slide.

THE COURT: Sustained.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Just to follow up on that. If Mr. Copperfield came into this Court and told the jury that, in the history of this trick from 1998 forward, nobody had been injured, would that be true?

A. No, because I was injured in 2002.

(Whereupon video deposition was stopped.)

MR. MORELLI: Go further. I want to --

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Now, at the time that that -- I just want to go back for a second. At the time that you were -- after you had fallen and you were outside the theater, did you remain on the ground the whole time until the ambulance came or something else?

A. Yes, I did.

Q. And were -- were you in pain during that period of time?

A. Oh, absolutely. I was going into shock.

Q. Okay. And was -- was -- did you have any deformity at all in your wrist?

A. Absolutely.

Q. Can you describe that for us?

A. You wouldn't recognize my arm as an arm at that point in time.

Q. Okay. So -- so it was noticeable just by looking without the need of, like, an x-ray or anything --

A. Totally noticeable.

Q. -- that there was something wrong?

A. Well, it was -- it was -- my hand was back here (witness indicating).

Q. Okay. So indicating that your -- your hand was literally facing in the wrong direction?

A. The hand was in the wrong direction. It was -- I mean, it looked like -- it looked like some kind of weird Halloween thing.

Q. Were you crying at all?

A. I wasn't crying, but I was, like, cringing more than anything else. I was -- I was trying -- I was trying desperately not to throw up.

Q. Okay. And -- and when you were in that position, sitting on the ground with your wrist facing the opposite direction in that shock, was that when Mr. Copperfield came over to you the first time?

A. Yes.

Q. Okay. So he would have been there to see the condition of your wrist and the condition of you?

A. Yes.

(Whereupon video deposition was stopped.)

BY MR. MORELLI:

Q. Does that help at all refresh your recollection?

A. It helps one thing. I am so squeamish about stuff, if I saw that in reality, I would be really affected by it.

Q. Okay. I understand that. And let's --

A. This is a beautiful, beautiful lady.

Q. Let's take --

A. She's intelligent. She's -- you know, she's speaking from her heart. I don't recall this at all.

Q. Okay. All right. So -- so she was -- there's only a couple of choices here. Okay? And let's take them. She's a beautiful lady. She's speaking from her heart. You don't want to call her a liar. You think her memory might be faulty. Okay?

A. On certain facts.

Q. On certain facts.

A. Which we'll get to.

Q. That are faulty. And is it true that you believe that it didn't happen?

A. No. I'm not saying that at all.

Q. Okay. You're saying that it happened but she never spoke to you; is that fair?

A. I'm saying that I don't recall something to be very, very shocking to me.

Q. I know.

A. Very, very moving to me.

Q. I understand. So --

A. I don't recall that at all. And I think I have no reason to doubt this part of what she's saying at all. This is, you know -- but I also don't know the cause of this. What caused this?

Q. Okay. So we already investigated that, you and I, we talked about it, that one of your possible opinions is that she caused her own accident --

A. I didn't say that.

Q. -- and she's at fault?

A. Mischaracterized.

Q. Well, that's what you just said.

A. I did not say that.

MR. MORELLI: Could you read back his last answer to me? Your Honor, could I do that?

THE COURT: Yep.

MR. MORELLI: Okay. Thank you. Let's hear the last answer so we understand what you're saying here.

(Record read by the reporter.)

BY MR. MORELLI:

Q. Now, obviously, you mentioned the word "cause" twice. It wasn't in response to anything that I said, so I want to know exactly what you meant. Now you got a chance to say whatever you want.

What did you mean by you don't know what the cause is? Let's hear it.

A. I don't --

Q. Let's hear it. It's not a yes or no. What did you mean?

A. I have no recollection of this.
Q. I believe that. You've said that.
A. Right. And I don't know what happened, so I can't really comment any further about that.
Q. Well, you said you don't know what the cause is. And all I'm asking now is for you -- it's not a yes or no. I want you to explain to this jury -- because you are the one that wants to get the truth out. I want you to explain to this jury what you just meant by saying "I don't know what the cause is." Tell them.
MS. FRESCH: Asked and answered. He just responded.
THE COURT: Well, I will allow it. Go ahead.
BY MR. MORELLI:
Q. Tell us.
A. What was my answer?
THE COURT: I think he was interrupted during his answer. So go ahead and give an answer.
THE WITNESS: Can I hear the answer that I gave, please?
(Record read by the reporter.)
THE WITNESS: That's my answer.
BY MR. MORELLI:
Q. And what my question is is what do you mean

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by "I don't know what the cause is"? That's what I want to understand, 'cause you said it, and please explain to the jury what you meant.

A. Same answer.

MS. FRESCH: Asked and answered.

THE WITNESS: Same answer now. I don't know. I don't know. I don't recall it.

BY MR. MORELLI:

Q. My specific question is not that you know anything about what happened, 'cause you have been pretty clear that you have no recollection no matter what. Okay?

My question is, you just said, "I don't know what the cause is," and I want to know what you meant by that statement of you don't know what the cause is. Tell the jury what you meant.

A. It's the same -- same answer. I don't have any knowledge of this. I don't know the background of it. I don't know anything about it. So I can't really respond to it.

Q. But when somebody uses the word "cause," it means to me that there's a number of possibilities. Is that fair? If someone says, "I don't know what the cause is," means that there's more than one possibility. Is that a fair statement?

MR. RUSSELL: Objection to this, Your Honor. The Court's prior ruling is that the causation of her accident was irrelevant because it not with substantial similarity.

MR. DEUTSCH: I would disagree.

THE COURT: He can ask what he meant by it, his answer to a question.

Go ahead.

THE WITNESS: When I said the word "cause," again, I'm not a lawyer, obviously, and I don't know this story, so I can't really comment on it.

BY MR. MORELLI:

Q. I'm not -- I'm not asking you to comment on what happened. I'm not asking you anymore because you -- I've asked you a number of times about whether or not you think she's a liar. Okay.

A. And I said --

Q. That's not my question. My question is you used the word "I don't know what the cause is." And all I want you to do is to tell this jury -- this is your opportunity to say in your own words -- it's not a yes or no -- what did you mean by what the cause is?

MS. FRESCH: Objection. Lacks foundation. Calls for speculation.

THE COURT: Overruled. He can state what he

meant by the use of the term.

THE WITNESS: I don't want to speculate. I don't know why I used that word, and I apologize for using that word.

MR. MORELLI: Okay. Now, you know that -- I don't know if the -- if the jury needs a break, Your Honor, so I don't want to keep going unless --

THE COURT: Well, we're going to recess at noon. Can we make it until noon?

MR. MORELLI: Yes, I can. I can.

THE COURT: Anybody want to recess?

MR. MORELLI: All right. We're good.

BY MR. MORELLI:

Q. So you know that Mr. Cox, who's in the courtroom, participated in the Thirteen Illusion in November 2013. You know that; correct?

A. Yeah, if that's the date.

Q. Yeah, it was in November 2013.

A. Okay.

Q. Not trying to trick you on anything, but you know that he was a participant.

A. Yeah.

Q. Okay.

A. Yes.

Q. And that he -- during the runaround portion,

as a participant, he fell and was injured. You know that; right?

A. That's what we're talking about here today.

Q. Yeah, so you know that. And the -- do you -- do you have an opinion as to whether or not Mr. Cox caused his own accident? That's what I want to know. What's your opinion about this? Let's get to the bottom of it.

A. I think accidents happen.

Q. I understand that you think that; we covered that. Just -- they just happen.

A. Unfortunately.

Q. No one's to blame.

A. Unfortunately.

Q. Yeah. Right. No one's to blame.

Did Mr. Cox, in your opinion -- I only care about what you think -- did he cause his own accident?

MR. RUSSELL: Objection. Foundation. Speculation. He didn't see the accident happen.

THE COURT: He can answer the question.

THE WITNESS: I -- accidents happen, you know, to everybody.

BY MR. MORELLI:

Q. You've said that. And I'm going to keep asking you the question. And I want to know whether or

not you believe that Mr. Cox caused his own accident.

A. Everyone trips. I've done it; you've done it.

Q. Is that a yes?

A. I've tripped. Everyone's tripped. It's not my fault that I tripped. We make -- we make mistakes.

Q. Mr. Copperfield, if, in fact, someone makes a mistake, it is their fault, as a matter of fact.

A. Well --

Q. Don't you think that?

A. I wouldn't -- I wouldn't categorize it as a fault.

Q. Okay.

A. I mean, it's always my fault when I -- when I trip. And I've tripped quite a bit in my life. You know, it's not my fault; it's just something that happens.

Q. Okay. It's just -- you know, it's just serendipitous; right?

So here's my question: Do you have an opinion that Mr. Cox caused his own accident? That's what I want to know.

MS. FRESCH: Objection. Asked and answered.

MR. MORELLI: I don't think so. But we could read it back and we could debate whether he answered

it.

THE COURT: Overruled.

MR. MORELLI: Could you read it back for the witness, please.

(Record read by the reporter.)

MS. FRESCH: Objection. Calls -- in the province of the jury.

THE COURT: He can state his understanding.

THE WITNESS: I hate the word "cause."

BY MR. MORELLI:

Q. Okay. So why don't you use a different word.

A. I think it just happened.

Q. Do you blame him?

A. Again, I hate the word "blame" too.

Q. Okay. Well, you don't like a lot of words that I use, it seems.

A. I don't.

Q. What I'm trying to find out is if you believe that Mr. Cox is responsible. Now, the last time I used that word, someone said it was a legal term, responsible. Never heard that. Okay.

So now I'm using "cause"; I'm using "blame." I'm trying my best to find out what your opinion is about the Cox case. Did he cause his own accident, in your opinion?

MR. RUSSELL: Objection. Improper opinion from a lay witness.

MS. FRESCH: Join.

THE COURT: You can rephrase by using the word "understanding."

BY MR. MORELLI:

Q. Okay. Mr. Copperfield, is it your understanding that Mr. Cox is at fault for his own accident?

A. I can't -- I don't want to use the word "fault." Accidents happen. People fall down every day.

Q. Okay. So it just happened?

A. I don't want to blame -- I'm not going to blame somebody.

Q. So it's not his fault --

A. No.

Q. -- correct?

A. I didn't say that; I said -- what I said was accidents happen.

Q. I want to know what your opinion is.

A. That's my opinion.

Q. Your opinion is that an accident just happened, and it isn't his fault and it isn't your fault. Am I correct?

MR. RUSSELL: Same objection and opinion.
BY MR. MORELLI:
Q. It isn't your fault?
THE COURT: I'll allow it.
BY MR. MORELLI:
Q. I'm asking you directly now. You could --
A. Is it my fault?
Q. I want to know whether, when Mr. Cox fell that night during the illusion, November 12, 2013, you said you're not going to blame him. Am I correct about that, by the way? You're not going to blame him?
A. I would say accidents happen.
Q. "Accidents happen." I keep hearing that. But I want to know, do you blame him at all for his accident? It was his fault?
A. I wasn't there.
Q. Okay.
A. I wasn't there.
Q. You weren't there. Okay. But you know about it now.
Okay. Now, after you found out about this accident and that Mr. Cox was injured, you found out -- you told us the last time you found out much later.
A. A year later.
Q. Much later. Much later. And that he went to

the hospital. Did you find that out too?

A. A year later.

Q. Okay. No -- I said "much later." You -- you -- you testified last week it was a year later. I have no dispute with that. You found out a year later.

Did you find out, when you found out a year later, that he had gone to the hospital?

A. I don't recall the details of what I found out.

Q. Okay. But you found out that he was injured during the illusion; is that correct?

A. Yes.

Q. Okay. Now, there came a time, did there not, that you stopped doing this Thirteen Illusion?

A. That's right.

Q. Isn't that correct?

A. Correct.

Q. And you stopped doing it, I believe -- and correct me if I'm wrong -- it was 2014?

A. I think it was two years afterwards, I believe.

Q. Okay.

Can you find that testimony when he stopped doing that, please.

Now, your -- your memory is it -- that it was

2014, that it was two years after? If it is, it is.

A. I don't -- as I said before, dates and names are not my strong suit.

Q. Okay. But --

A. You could find the facts out.

Q. It's a little difficult to be in a -- a lawsuit and not talk about dates and names. All right? So I apologize.

A. Check the calendars and you'll get the facts, I'm sure.

Q. I have to ask you about it.

A. No problem.

Q. Now, is it your testimony that you stopped doing the Thirteen Illusion a year after you found out that Mr. Cox was injured? Right? I mean, I'm just doing simple math.

A. I don't think that's right.

Q. Well, you stated that you stopped doing it two years later; correct? You stopped doing it two years later?

A. I'm not sure about it, honestly.

Q. Well, let's assume you're right. Okay?

A. I hate to assume.

Q. You stopped doing it two years later. You found out that Mr. Cox was injured one year later. So,

by deduction, you stopped doing it a year after you found out that Mr. Cox was injured?

A. I'm not sure. I don't recall.

Q. Okay.

A. But it -- but I will say that, when the lawsuit began, we continued to do the illusion --

Q. Oh, I know that.

A. -- after that.

Q. That's why I'm talking to you.

A. Okay. Perfect. Trying to be helpful.

Q. Okay. I understand.

And, as a matter of fact, you found out that he was injured during the illusion and you didn't make any modifications to it, did you?

MR. RUSSELL: Objection to postaccident conduct, Your Honor. Irrelevant.

THE COURT: Overruled.

MS. FRESCH: Join.

BY MR. MORELLI:

Q. You stated, did you not, that if you found out anything, like mistakes were made or there were any problems, that you would make a modification to the Thirteen Illusion; is that correct?

A. That is absolutely correct.

Q. And all I'm asking you is whether or not you

ever during the entire time of the Thirteen Illusion -- and I believe it started in 1998. Is that fair?

A. Check the calendar. You know, that's not my strong suit.

Q. Okay. Well, I think -- I think that the entire time -- let me ask you this question: Do you know that, the entire time during this trial, we've been talking about the fact -- not me personally, but there's been talk in this case that you've been doing this illusion for 20 years? Is that a fair statement?

A. I think it's less than 20 years. I'm not sure again.

Q. All right. I believe you started doing it in 1998, but it's possible that you started doing it in the year 2000? Is that what you're saying?

A. I don't know.

Q. Okay. But we've been hearing that you've been doing this illusion for a long time.

A. Yes.

Q. 15 to 20 years, let's say.

A. Yes.

Q. And no one's ever fallen and been injured. That's what we heard. You knew that; right? You knew that that was what was told to the jury in this case?

A. Well, I didn't say that. I said, to my best

recollection, to --

Q. I understand.

A. -- my knowledge.

Q. And so you would agree with me that, if your recollection is incorrect, then people may have fallen and been injured? If your recollection is incorrect, is that a possibility now?

A. I'm confused. Please ask it simpler.

Q. Okay. I'll rephrase it.

You would agree with me that just because you don't remember or recollect that something happened doesn't mean it didn't happen?

A. Trees can fall in the woods. If you don't hear them, they still fall. That's true. I mean --

Q. You're a philosopher.

So you're not saying to this jury that no one has ever fallen and been injured during your illusion; what you're saying is "I don't know of anyone"? Is that correct? Is that a correct statement?

A. That's the best I can do, is to express what I know. You know --

Q. So that is a correct statement, that you're not saying it's never happened; you're saying you don't know. Fair enough?

A. I wouldn't say it quite like that.

Q. Well, I know you wouldn't, but I did.
A. Then I can't agree with you.
Q. So my question is that you were making a statement to the jury about this illusion that you don't recall or you don't know of anyone who's ever fallen and been injured. Fair enough?
A. Back when we began this trial, at that moment in time, I knew of one person because of a lawsuit.
Q. And that was Mr. Cox?
A. Mr. Cox.
Q. I understand. And now you -- now you know of two others. And what my question is, is that you're not saying to the jury that no one has ever fallen and been injured during the illusion; what you're saying is you don't know if anyone has ever fallen?
A. I said I don't recall. I said I don't recall.
Q. Isn't that the same as not knowing?
A. Well, whenever I say "knowing," it's me recalling. And knowing is in the same category. I'm not a legal, you know --
Q. Right. And that's okay. This isn't a legal term, "recall" and "know"; it's what people say to each other.
So what I'm saying to you is you don't know;

right?

A. I don't --

Q. You don't know?

A. I would want to know. You know, as I sit here today, I would hope my staff would tell me if somebody fell because I'd want to see if I can improve it. You know? If it's anybody's -- if we can make it better, have it less of a chance that that could ever happen again.

And -- but, no, I don't -- I don't know. I don't recall.

Q. Okay. But there came a time, did there not, when you learned that Mr. Cox had fallen and been injured? No matter when it was, you did find that out, did you not?

A. I did.

Q. Yeah. And then did you do any investigation to find out why it happened? You personally, did you?

A. Yes.

Q. Okay.

A. At every show.

Q. Did you -- well, here's what I'm trying to find out. You found out that Mr. Cox was injured during the Thirteen Illusion --

A. Yes.

Q. -- November 12th, 2013. Okay? And you did an investigation after you found that out; is that true?

A. I will explain my investigation.

MS. FRESCH: Well --

THE WITNESS: I do it every show.

MS. FRESCH: Your Honor, we're -- we're spacing into attorney-client privilege because Mr. Copperfield did not find out until after the lawsuit was filed.

MR. MORELLI: Are we approaching the bench or are you giving speeches?

THE COURT: So what's the objection?

MS. FRESCH: Objection. Privilege.

THE COURT: As to what he personally did?

MS. FRESCH: Well, if it's -- I guess maybe we need to approach? I mean --

THE COURT: I'll overrule the objection as to what he personally --

MR. MORELLI: That's all I'm asking. I didn't ask him anything about lawyers or talking to them or --

THE COURT: Just ask the question.

MR. MORELLI: -- anything like that.

MS. FRESCH: Your Honor, may we approach,

please?

THE COURT: All right.

(A discussion was held at the bench, not reported.)

MR. MORELLI: Your Honor, I think I need the last question read back, if I may.

(Record read by the reporter.)

BY MR. MORELLI:

Q. Okay. What did you do?

THE COURT: Okay. I'd like you to rephrase the question, take out the word "investigation."

MR. MORELLI: Sure. Absolutely.

BY MR. MORELLI:

Q. I'm going to start a new question. And that question is you told us earlier that, if you found out something about the illusion that you thought should be modified -- correct? -- that you would do that. Fair enough?

A. Yeah.

Q. That you would do that?

A. Yes.

Q. Did you look into anything with reference to modifying the Thirteen Illusion after you found out that Mr. Cox had been injured? Did you look into it and modify anything?

A. Every show.

Q. I understand you keep saying every show. But I want to know whether or not, with reference to this, you looked into it and made any modification. You did? If you did, tell us what it is.

A. I looked into it.

Q. Okay.

A. I did.

Q. When did you look into it?

A. Every show.

Q. No, no. Listen. Listen. I want to know whether or not you did anything specifically because you learned that someone had been injured during the runaround. That's what I want to know. Did you do anything specifically due to that?

A. I personally --

Q. Yes or no. Did you?

A. It's not a yes-or-no question.

THE COURT: Let him answer the question, Counselor.

MR. MORELLI: I'm going to let him answer.

BY MR. MORELLI:

Q. Tell us.

A. When I heard about the lawsuit, I, during that show, as soon as the other illusion that I walk,

watch carefully. I walked and made sure there was absolutely no obstruction, lip in the concrete.

You know, when I was a kid, I broke my first -- two front teeth. I was in the mall. There was a concrete and there was a lip there. I fell. I didn't sue. But, anyway, you know, I broke my front teeth because there was a lip there.

I checked for lips, checked for obstructions. Was there a tree that fell down? Nothing. So I just looked more carefully than I do -- which, I look carefully anyway. I want to do -- first, I want to experience what the audience experiences before they have to do it themselves, like I do every night. That's what I did. I looked just even more carefully to see if there was anything there. And there wasn't, and there was no change.

THE COURT: All right. Let's recess for lunch now. We are going to recess until 1:15, as I recall, because of the -- we're going to be shorter today; right? So I think we said we'd resume at 1:15 instead of 1:30; right? That's my recollection.

MR. MORELLI: That's what you said, Your Honor.

THE COURT: All right.

During the recess, you're admonished not to

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talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or to read, watch, or listen to any report of or commentary on the trial or any person connected with the it by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom just before 1:15. Thank you.

THE MARSHAL: All rise.

MR. POPOVICH: Your Honor, we'll have a scheduling question.

THE COURT: Yeah, we're ...

(The following proceedings were held outside the presence of the jury.)

THE COURT: Okay. You may be seated. I have a question -- no, not you. You can step down. I'm talking about everyone.

I have a question from one of the jurors. It's Mr. Schaffner.

"Your Honor, can you please update the jury on next week's schedule?"

And I think that's what you're probably asking about too, Mr. Popovich.

MR. POPOVICH: No, I'm more immediate than that.

THE COURT: Okay.

MR. POPOVICH: As I understand it, Mr. Copperfield is plaintiffs' last witness. I have three witnesses teed up for this afternoon. If there's no chance that one or two or even three are going to get on, I -- I would like to let them be released until tomorrow.

So we still have Mr. Copperfield going on. And I know Ms. Fresch is going to have some redirect after Mr. Morelli finishes. When the plaintiffs do rest, I'm going to ask for a hearing outside the presence of the jury for a motion.

Anybody else have a motion?

MS. FRESCH: Me.

MR. POPOVICH: So there will be at least one or two motions. And I don't know whether Your Honor entertains them immediately or what, but I will have a paper motion to give. So that to be factored in.

I have one percipient witness that I was thinking about telling to come at, like, 3:00, but I don't -- I guess I'm looking for input from other folks

as to what makes sense.

THE COURT: That makes sense to seek that input.

So what are we thinking from the plaintiff?

MR. DEUTSCH: Well, in light of the time crunch and the fact the witnesses are here, I would think they could just reserve their motions until we have some time next week. I don't see the need to do the motions today. They could reserve those. We could put the witnesses on who are available and we could get the testimony done as long as the jury is here.

And I think that at least keep one -- I think Mr. Baker could go on.

THE COURT: Well, I think that the motions are made in light of evidence that's been presented to that point.

MR. DEUTSCH: I understand.

MR. POPOVICH: And I think there's a desire to avoid -- not that it would, Your Honor -- but there's always concern that the -- the judge making the decision could be somehow affected by later-heard evidence.

THE COURT: That's what I just said.

MR. POPOVICH: Okay.

MR. DEUTSCH: Okay.

THE COURT: You're entitled to make your motion at the conclusion of the plaintiffs' case, so --

MR. POPOVICH: Yes. And that is --

THE COURT: I guess we're still focusing now on time for plaintiffs' case this afternoon.

MR. POPOVICH: I heard one thing that's helpful. They know that I have two percipient witnesses -- security guards -- followed by an expert. And if I can release the expert -- he's not here, but I was going to have him be here after lunch. If I could tell him not to come until tomorrow, that helps me. So --

MR. DEUTSCH: He's -- he's going to be your third witness?

MR. POPOVICH: Correct.

MR. DEUTSCH: So then there's no shot we're going to get to him.

THE COURT: There's what?

MR. DEUTSCH: There's no shot we're going to get to three witnesses this afternoon. I mean, maybe one of the two security guards, maybe two security guards, but definitely not two security guards and Baker.

THE COURT: Keeping in mind that we're adjourning early.

MR. POPOVICH: At 4:45.

MR. DEUTSCH: Yes. That's another reason why.

THE COURT: Okay. So --

MR. POPOVICH: Thank you. Very helpful.

THE COURT: Okay.

MR. MORELLI: But we have the same period of time because we're starting at 1:15 to 4:45, so I don't know a difference. 1:30 to 5:00, same thing.

THE COURT: Keeping in mind too that we're in short session tomorrow.

MR. POPOVICH: Understood.

MR. MORELLI: We're very well aware of that. We have a plane. We're aware of it.

THE COURT: Okay.

MR. POPOVICH: Understood. Thank you. That's all I was looking for.

THE COURT: All right. And then I think what we're going to want to do today, this afternoon sometime, is I'll give the jury the days for next week. I'm not going to broach the subject today about the following week.

MR. MORELLI: Right. Thank you.

THE COURT: I'm going to take it one week at a time.

MR. DEUTSCH: Good idea, Judge.

MR. POPOVICH: So -- just so I understand what the Court would say. Tuesday, yes?

THE COURT: Yes.

MR. POPOVICH: All day.

THE COURT: It's Tuesday all day, Wednesday all day, Thursday -- let me see here -- 10:00 in the morning until 5:00, and then Friday 1:30 to 5:00. Not in session on Monday.

MR. DEUTSCH: Right.

MR. MORELLI: So it's Friday afternoon.

THE COURT: Right. That's what I have now. Now, if that settlement conference -- I'm business court, so if that settlement conference comes off --

MR. MORELLI: Then it could be all day?

THE COURT: -- I can give you some time in the morning, but, right now, it's -- these things are scheduled far in advance. That's why.

MR. MORELLI: We understand, Your Honor.

MR. POPOVICH: No, we've monopolized you for a long time.

THE COURT: Okay. Well --

MR. POPOVICH: Thank you, Your Honor.

THE COURT: See you this afternoon. Thank you.

THE MARSHAL: All rise.

(Whereupon a luncheon recess was taken.)

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE MARSHAL: Department 13 is again in session.

THE COURT: Please be seated. We're back on the record.

Do counsel stipulate that the jury is present?

MR. POPOVICH: Yes, Your Honor, the jury is present.

MS. FRESCH: Yes, Your Honor.

MR. MORELLI: Yes, Your Honor.

MR. RUSSELL: Yes, Your Honor.

THE COURT: The witness has retaken the stand.

MR. POPOVICH: May I, Your Honor?

THE COURT: Go ahead.

MR. MORELLI: May I, Your Honor? Thank you.

THE COURT: Yes. Continue.

BY MR. MORELLI:

Q. Mr. Copperfield, just a few more things. Okay?

JA003691

The woman who was on the video, her name is Ms. Esack. Okay? And so I just wanted to ask you a couple of questions about her specifically, if I can.

A. Sure.

Q. And I just wanted to know -- and just breaking it down -- whether or not certain parts of what she said you find credible or not. Okay?

A. Okay.

Q. So the fact that she was in the trick. Do you think that that was credible? Do you believe that?

MR. RUSSELL: Objection. Same -- improper -- you know, credibility of another witness.

MR. POPOVICH: Objection. Speculation.

THE COURT: He can state his understanding of her.

BY MR. MORELLI:

Q. Just your understanding, what you say.

I'm not going to play it again, but, you know, you -- you saw her testifying. I'm only asking now about certain aspects of what she said. Do you -- do you -- do you feel that you believed that she was a participant in the illusion?

A. I believe she looked and acted really sincere. There's some details that don't track.

Q. I'm just talking about whether or not overall

you think that she was in the illusion, not whether or not she was right about everything she said.

A. Okay.

Q. Just -- just that.

MS. FRESCH: Excuse me.

Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I don't know. I -- I don't remember her, so I'm assuming that I --

BY MR. MORELLI:

Q. I know.

A. I want to believe her.

Q. Right. I showed you the video, and I'm only asking whether or not you -- you believe, based on what she said, that she was a participant in the illusion.

A. I believe that was.

Q. Okay.

And do you also believe that she fell? Do you think that?

A. That, I don't know.

Q. Okay. Do you -- do you think that she was misremembering that?

A. I don't know.

Q. Okay. Do you think that she was injured?

A. I believe she was injured.

Q. Okay. Do you believe -- and I know you don't remember. Okay? But do you believe that she spoke to you?

A. I don't think so.

Q. Okay.

A. I -- I don't recall speaking to her. Let me clear that up.

Q. I understand. But I'm only asking now whether -- whether or not you feel that she either misremembered that or --

A. I don't know. I really don't know.

Q. Okay. But -- but you don't -- you don't think that she spoke to you?

A. I like her, from what I see there. But I don't remember -- I don't remember speaking to her.

Q. Okay. So --

A. And I would have remembered this Halloween story. I would have remembered that, I think.

Q. Okay. Do you think that she misremembered that she sent you a claim, notified you with a claim? Do you think she misremembered that?

A. I don't know. I don't remember any details about it.

Q. Well, you do feel that certain parts of what she said, you feel today, are not accurate, or one part

or certain parts? And I'm just trying to find out what parts they are.

A. I think it's about remembering something 16 years ago.

Q. No, I understand. So -- so you -- you think -- do you think that she misremembered that she sent you a claim? That's my question.

A. I don't know.

Q. She -- she had stated -- and I'm not going to play any more videos and -- and beat a dead horse.

In her video later on she said that you sent her a Christmas card. Okay? She said that.

A. Did she?

Q. She said that you sent her a Christmas card.

I mean, it's on the video. It's --

A. It is?

Q. -- it's part of her testimony, but I'm just saying it. Back at that time, were you sending Christmas cards to participants who you knew?

A. There was a period of time where my father ran my fan club, and we collected signatures from various people in the audience. And they were part of --

Q. You mean their names?

A. Their names. What did I say?

Q. You said signatures --
A. Sorry. Sorry. Sorry.
Q. -- but you meant their names and addresses?
A. Yes. And --
Q. Okay.
A. And we would -- my father would have programs of doing nice things like that.
Q. Okay. So you don't -- you don't -- let me ask the question again so we don't get confused. Do you think that she misremembered that you sent her a Christmas card?
A. I think it's a very good possibility she could have received a Christmas card, because that's what we did --
Q. Back then?
A. -- back then.
Q. Was there a period of time that you stopped doing that?
A. There is. It's when my father passed away.
Q. And when was that?
A. I guess -- it's a bad memory for me.
Q. No one continued to do it after that?
A. No. I think they tried a bit and it -- they weren't as good as my dad.
Q. Okay. And do you think that -- that she

misremembered that you were on a morning show? Because she said that, that she saw you on the morning -- heard you on the morning show or something like that. She didn't know what show it was.

A. The next day; correct? She said the next day?

Q. I think she said it was the next day. I think she said she was in the hospital at the time when she saw it, didn't know what show it was. Do you think she misremembered that?

A. Well, I only know this because I looked at my schedule that was locked in, what shows I did. And I didn't do a morning show.

Q. Okay. So -- so that, you think that she misremembered? That's what I'm saying.

A. I believe her recollection is as bad as mine.

Q. With reference to that fact?

A. Yeah.

Q. Okay. Also, you -- she also testified where she was seated in the prop. And you -- did you have occasion to look at that video of that specific night?

A. I did.

Q. Okay. And do you think that she misremembered where she said she was seated?

A. I'm not clear about where she was seated.

She talked about a pink fluffy blouse. And we can't find a pink fluffy blouse on that video.

Q. So -- so you believe --

A. Sweater, I should say. It was a sweater.

Q. Yeah -- that she misremembered where she was seated in the prop?

A. Again, I don't recall that detail. It's what she was wearing that she made a big deal about.

Q. Okay. But you could understand, could you not, that something I think -- it's 16 years ago; right? I think something 16 years ago is -- a couple of points, someone could misremember -- right? -- especially when you say that you misremember a number of things; correct? So you would say that it's possible that she could; right?

A. Yes.

Q. Okay. Now, with reference to Ms. Lawrence -- Ms. Lawrence was the other woman who came forward and we saw her testimony by video.

A. Not today; right? I didn't see it today; right?

Q. No, we -- I didn't show it to you.

We -- she testified that -- that she was in the illusion at the MGM and that it was June of 2013, approximately five months before Mr. Cox. Okay?

And -- and she also testified, you know, where she was sitting and what happened to her and where she fell and -- and things of that nature.

So did you have occasion to look at that video because you found that video too, that particular video of that night of June 2013? Did you have occasion to look at it before you testified?

A. No.

Q. Okay. Now, do you also know that the -- these two videos were found after we brought the women in to testify but that we've never gotten a copy of the video of Mr. Cox's night and -- and the illusion that he was in? We've never gotten that.

A. That's correct.

Q. You know that; right?

A. Yes.

Q. But these other two videos from 2002, one of them, and five months before Mr. Cox's accident, those were found. Correct?

A. That's correct.

Q. Okay.

A. That's my understanding.

Q. Now, would I be correct that if, in fact, one of these women who came forward misremembered what seat they were sitting in, you wouldn't hold that against

them, would you?

A. Well, it's -- it's a cumulative thing. There's a lot that she misremembered, so --

Q. And when you say "she," who we talking about?

A. The --

Q. The one from the video?

A. The one that I saw.

Q. Yeah. That's Ms. Esack.

Okay. So you're saying that there's a lot. Not only one thing, but there's a number of things, in your opinion, that she misremembered?

A. Her recollection is very far off of what really happened.

Q. Okay. And -- and you would agree that your recollection of not remembering anything about her and anything about her accident and her being injured, that's pretty far off the mark; right?

A. Well --

Q. Your memory? Pretty far off the mark?

MR. POPOVICH: Objection. That assumes facts.

THE COURT: Want to clarify what you mean by "off the mark"?

MR. MORELLI: Yeah.

/////

BY MR. MORELLI:

Q. Well, that's a term you used. So -- so what I'm saying to you is that you don't recall either one of these women -- or certainly Ms. Esack who said she spoke to you; correct? And you don't recall anything about her at all, not even one fact; true?

A. No. No.

Q. Okay. Now, the -- do you have any idea, Mr. Copperfield, of where -- the video of Mr. Cox in the illusion on November 12th, 2013, where that video is? Do you have any idea?

A. I don't.

Q. Okay. Was it you who found the two videos that we heard about yesterday?

A. No.

Q. Okay. Do you know who it was?

A. I'm not sure. Somebody on my staff.

Q. Okay. Well, how many people are on your staff?

A. We covered this already. I mean, maybe 30.

Q. No, I'm talking about as of now, because I'm not talking back in 2013 --

A. Sure.

Q. -- I'm only talking about now.

A. I'm not sure. We have a bunch of people who

work in the warehouse that looked through the archives.

Q. Okay. So, now, just to -- to clarify, the -- these videos of your illusions going back 18 years, you -- you keep these videos in your archives; correct?

A. We try our best.

Q. Okay. And you also keep a record of when you're on television? Do you keep a record of that too? I mean, somebody keeps the record for you. I'm not saying you personally. But you have records because you just told us today that you checked. And you said "I wasn't on television that day."

So you keep records of that too; correct?

A. It's been kept. When you have a schedule of a bunch of television shows and a bunch of -- like, everybody has a schedule. When you do television appearances, radio appearances, it's on paper sometimes. It's not an official schedule, I don't think. I wish -- I wish it was a great, you know, archive of all those things. But we had -- they've searched and found, you know, the things related to that -- that date.

Q. Right. But you don't keep any records, do you, of anybody having an accident or being injured in any of your illusions, no records of those?

MR. POPOVICH: Objection. Assumes facts.

JA003702

THE COURT: Well, he's asking the question about whether they exist. Overruled.

MR. POPOVICH: Well --

MR. MORELLI: So --

MR. POPOVICH: He's assuming that they happen to exist, Your Honor.

THE COURT: Well, he's asking him whether they do, I think.

BY MR. MORELLI:

Q. Yeah. I want to know whether or not, you know, you keep any of those records. Do those exist? Records of people who have been participants in the illusion and who have been injured, do you keep records of that, or only records of the two things that you told us?

A. What's the two things I told you?

Q. About the television appearances and the videos going back 18 years.

A. Well, I mean, you've heard the protocol is, when something happens in a theater, the theater would be contacted.

Q. I'm only asking about what you do. I understand that.

A. And the MGM, same thing.

Q. Yeah, I'm just asking what you do.

A. No.

Q. Okay. Thanks.

MR. MORELLI: I have no more questions, Your Honor.

THE COURT: Any more?

MS. FRESCH: Yes.

MR. MORELLI: Elaine, I don't know if you want this.

MS. FRESCH: No, it's too bulky.

RECROSS-EXAMINATION

BY MS. FRESCH:

Q. Okay. All right. Mr. Copperfield, let's start off -- actually, what I'd like to do is -- which one is it? Sorry. Excuse me. Which number it is? Okay.

Ms. Bonney, could you -- do you have any objection what we've marked as ...

MR. DEUTSCH: If you could lay a foundation for it as a business of record of somebody, then I have no objection.

MS. FRESCH: Okay.

MR. DEUTSCH: But I don't believe it's his, though, so I don't know how you could do that.

She could try.

MS. FRESCH: All right. May I approach the

JA003704

witness?

THE COURT: Yes.

BY MS. FRESCH:

Q. Mr. Copperfield, I'm handing you a document called "Magic Arts and Entertainment." And it references David Copperfield --

MR. DEUTSCH: Objection, Your Honor. She has to ask him what it is.

MS. FRESCH: Sorry. Sorry, you guys.

BY MS. FRESCH:

Q. All right. Have you ever seen this document before?

A. I have seen documents similar to it.

Q. Okay. And what -- what -- what's the purpose of these documents?

A. Show schedule, dates and times of shows and showtimes.

Q. Okay. And is that something generated by either Backstage or a venue?

A. It is generated by the producers and the tour people that take the tour -- that set up the tour, book the hotels and book the theaters.

Q. Okay. And does that refresh your recollection at all as to what shows and times were performed in Seattle?

A. Yes.

MR. MORELLI: Objection, Your Honor. We haven't had any testimony that he needs his recollection refreshed. He doesn't say he doesn't have a recollection. This is a record that she's trying to get into evidence, and it's not his.

THE COURT: Response? Are you using it to refresh recollection?

MS. FRESCH: Well, I'm using it to lay a foundation about the -- but I guess I was trying to do -- refresh too because --

THE COURT: Okay. Go ahead.

BY MS. FRESCH:

Q. Mr. Copperfield, does this -- do you recall, without even looking at that document, all the shows that you did back in Seattle in 2002?

A. I do not recall.

Q. Okay. Does this document refresh your recollection as to the dates and times of your shows for the Seattle performances in 2002?

A. Yes, it does.

Q. Okay. Does that reflect an 8:00 p.m. show on November 17th, 2002?

A. It does not.

Q. Okay. What times were your shows on

November 17th, 2002?

A. 1:00 and 4:00.

MR. DEUTSCH: Objection, Your Honor. Is that a recollection or he is reading from the document?

THE COURT: I think now -- are you reading from the document?

THE WITNESS: I'm reading from the -- the proof is here. I'm reading from the proof.

MR. MORELLI: Elaine, if you want to offer it in evidence, I have no objection.

MS. FRESCH: Okay.

THE COURT: What's the number?

MS. FRESCH: 566? 566.

THE COURT: Any objection?

MR. DEUTSCH: No.

THE COURT: It's admitted.

MS. FRESCH: Okay.

BY MS. FRESCH:

Q. All right. Now, Mr. Copperfield, did you review -- all right. And so this is the document that you were looking at just now to refresh your recollection about the showtimes on -- in 2002 in November; is that correct?

A. Correct.

Q. All right. Now, the night before, you did do

an 8:00 p.m. show; is that correct?

A. That's right.

Q. And is there any particular reason, from looking at this, do you know why there was no 8:00 p.m. show on Sunday night?

A. I would imagine I had a show the next day in L.A. I had to get to a TV show I had to get to.

MR. MORELLI: Objection, Your Honor. Move to strike.

THE COURT: I'll sustain it. Want to --

BY MS. FRESCH:

Q. Do you have any recollection as to why you didn't have an 8:00 p.m. show that night?

A. Yes, because I had to get -- get -- move to another city.

Q. Okay. All right. We'll get to that.

So, actually, let's look at -- let me show you another document.

MS. FRESCH: This was premarked, Counsel, as 568.

MR. DEUTSCH: I don't know what -- is that the stuff that you sent yesterday?

MS. FRESCH: Yes.

MR. DEUTSCH: Can I see which one it is, because I don't know anything that we've marked.

MS. FRESCH: I thought Audra had sent this.

MR. DEUTSCH: We didn't get that last night.

MS. FRESCH: It's the press schedule.

MR. DEUTSCH: That was not sent to us.

MS. FRESCH: No, I verified.

MR. DEUTSCH: I was given a Dropbox with documents in it last night. That wasn't part of it.

MS. FRESCH: No, but that was part of the attachment. There was two documents that were part of the attachment with the Dropbox.

MR. DEUTSCH: I got it. I see it, yep. Yeah, I see it. Okay.

MS. FRESCH: Okay.

BY MS. FRESCH:

Q. Actually, I can ...

MR. RUSSELL: Elaine?

MS. FRESCH: Sorry. I just -- I forgot to bring two copies up.

BY MS. FRESCH:

Q. Okay.

A. Okay.

Q. Mr. Copperfield, have you ever seen this document before?

A. This is a standard schedule of press.

Q. And you earlier, in response to questions

from Mr. Morelli, referenced a schedule regarding your appearances; correct?

A. Correct.

Q. All right. And was it custom and practice back then for you or people affiliated with your shows to prepare press schedules to identify your appearances either on TV on radio or other special events?

A. Absolutely.

Q. Okay. And is this four-page document a document that was prepared in the normal course of business for you with respect to your appearances as an entertainer?

A. Yes.

MS. FRESCH: And, Your Honor, I'd like to move this into evidence.

MR. MORELLI: Objection, Your Honor. You want us to approach or do you want me to state my objection?

THE COURT: State the objection.

MR. MORELLI: Okay. He did not prepare this and he doesn't keep this record in -- in the ordinary course of business, he himself. So that doesn't meet the criteria.

THE COURT: Response?

MS. FRESCH: It does -- I believe he did say

it's a custom and practice for people --

THE COURT: It's admitted.

MS. FRESCH: Okay.

(Whereupon, Defendant's Exhibit 568 was admitted into evidence.)

BY MS. FRESCH:

Q. Okay.

Ms. Bonney, could you -- could you make that a little bit bigger? My eyesight is not that good even with contacts.

Okay. Mr. Copperfield, is this the schedule for the week of November 18th, 2002?

A. Yes.

Q. Okay. And does this refresh your recollection as to what appearances you had after your show performed in Seattle on November 17th, 2002?

A. It does.

Q. Okay. And what was the first appearance that you had on the day after November 17th, 2002?

A. It was a radio show with Ryan Seacrest.

Q. Okay. And does the document refresh -- indicates a 5:30 to 6:00 p.m. time. Is -- what does -- what's the significance of that time?

A. That's when it happened.

Q. Okay. Now, the next day --

A. That's radio, by the way. Ryan Seacrest is on the radio.

Q. Okay. All right. And the location of that radio was in Burbank, California?

A. Riverside/Burbank, yes.

Q. Oh, right. Okay. All right. And what were the topics -- does this refresh your recollection as to the topics you would be speaking about with Mr. Seacrest?

A. Yes. I was appearing at the Kodak Theatre, which is now where they do the Oscars. I think it's called the Dolby Theatre now. And I was promoting that. And it was about -- I have a program in hospitals where we use magic as therapy for people with disabilities. It's called Project Magic. And we were -- it was our 20th anniversary of this hospital program where magic is taught to patients to help them regain their dexterity and their coordination by learning sleight of hand.

We talked about that because of the anniversary of that. We talked about pieces at my museum. I have a secret museum. We brought that to the Kodak Theatre to do a big display there, the new illusions in the show, and get people to come out and see us.

Q. Okay. So let's go -- just looking to the next day, Tuesday, November 19th, 2002, at 8:00 to 9:00 a.m. in the morning, what does this identify you were doing that day?

A. It's a radio show. I don't really recall it, to be honest with you. But it was KOST and KBIG, on-air, in-studio, talking to the DJs, same subject matter.

Q. In your understanding -- in your recollection -- in your recollection is that an L.A. local radio station?

A. It is.

Q. Okay. And was the topic for that appearance the same about Project Magic and the Kodak shows?

A. Yes.

Q. Okay. All right. So let's -- if you look at the next page, please.

A. Yes. Got it.

Q. Okay. What's the next appearance that you were doing on November 19, 2002?

A. It was Midday Live, which is, you know, a midday show, like a noontime show.

Q. And was that a -- best of your recollection, a local TV show in L.A.?

A. Only local.

Q. Okay. KNBC?

A. Right. To promote the local, you know, show at the Kodak Theatre.

Q. Okay. All right. And then the next one says "NBC Studios, Tonight Show with Jay Leno."

A. Correct.

Q. Okay. Do you recall performing on Jay Leno?

A. I think so, yes.

Q. Okay. And at what -- what time would you be performing on "The Tonight Show with Jay Leno" back in 2002?

A. Repeat the question.

Q. Sure. What time of day would you be appearing -- well, let me withdraw that question because that was going to come out.

Back then in 2002, "The Tonight Show," what's your recollection as to when that show is aired?

A. The show goes live -- well, depending what coast you're on, I believe, at 4:30 to 5:30 is when it happens.

Q. Okay. That's when you appear on the show; correct?

A. That's when I would be recording it for one coast -- I'm not sure -- maybe recording it for both coasts. I'm not sure. But 4:30 -- I think it's

recorded for both coasts, now that I think about it. So 4:30 to 5:30 is when the taping is.

Q. Okay. And then it would be aired that night at 11:30?

A. That's right.

Q. Okay.

A. And I remember it because he didn't let me talk. I was -- yeah.

Q. All right. Now -- then, the next day, let's just cover it, just to be all-inclusive. On Wednesday, November 20th of 2002, what were you doing in the morning, then?

A. I did a morning show.

Q. Okay. And was that radio?

A. That is radio.

Q. Okay. And to -- to your recollection, is that a local Los Angeles radio show?

A. To my knowledge -- to my recollection, it was, Kevin & Bean.

Q. All right. And then the -- let's do one more.

A. Okay.

Q. On the third page, November 20, "The Wayne Brady Show"?

A. Right.

Q. All right. And that states "12 noon to 1:00 p.m. taping." What does that signify?

A. That means that you tape the show and -- to be broadcast at a later date --

Q. Okay.

A. -- to the best of my knowledge.

Q. All right. And do you recall when that show was aired?

A. I don't know. It would be after that, though.

Q. Okay. Sometime thereafter; correct?

A. Yes.

Q. All right. You were in Seattle on November 17th, 2002, as we've earlier discussed, for two shows that day; right?

A. A 1:00 and a 4:00, yeah.

Q. How do you travel when you're on the road? Back in 2002, how would you get from one place to the other?

A. On a tour bus predominantly, by tour bus.

Q. Okay. What time would you have left after your 4:00 p.m. show on Sunday, November 17th in order to get to Los Angeles?

MR. MORELLI: Objection, Your Honor. I -- I want to know whether or not this is something he

remembers or is he guessing because of the times. I think we're entitled to know if it's his recollection or not.

THE COURT: You'll have an opportunity to redirect.

THE WITNESS: Question again?

BY MS. FRESCH:

Q. Sure. Do you need the question again?

A. Please.

Q. Okay. Do you recall specifically what time you left that day on November 17th to head to L.A.?

A. I don't recall, but my pattern and practice, I can tell you what it would be.

Q. Okay.

A. If we had a morning show the next day, I try to leave the theater as early as possible to get there to get as much sleep as possible. So if I had a 4:00 show -- there's a good chance it was a 4:00 show because I had all that press the next day. That's the reason it was a 4:00 show because that whole list of press for the next few days afterwards.

To be rested and ready for that, I would have left at 6:00 that night. A two-hour show, hour and a half show and a shower, we would take -- take the bus and -- to get to the next city early. That would be

the pattern and practice.

Q. Okay. So sometime in the evening of the -- November 17th?

A. Correct. It would be 7:00 -- 6:00, 7:00 -- leaving Seattle.

Q. All right. On the bus?

A. On the bus.

Q. All right. All right. Mr. Copperfield, you already answered this, but you reviewed some videos of the 2002 performances up at the Paramount Theatre in Seattle; is that correct?

A. Correct.

Q. Okay. And those were videos that were located in your warehouse?

A. I suppose so.

Q. Okay. And when you looked at those videos, did those look like accurate depictions of your show at the Paramount Theatre?

A. That was my show.

MS. FRESCH: Okay. I'd like to show what I've premarked as -- or Ms. Bonney has helped me premark -- Exhibit 567, the November 17th, 2002, 4:00 p.m. show.

Any objection?

MR. POPOVICH: No objection.

MS. FRESCH: All right. All right. I'll just -- let's just play it and then we'll go back.

(Whereupon video was played.)

MS. FRESCH: Okay. Let me just transition for a moment before we go back to the video. I'd like to read some testimony from yesterday from Ms. Esack at page -- all right. Page 288, line 5.

MR. DEUTSCH: Hold on a second.

This is from the trial?

MS. FRESCH: Yes, yesterday.

MR. DEUTSCH: What page? Oh, yesterday. Hold on. That's the --

MS. FRESCH: You know, it's -- actually --

MR. DEUTSCH: The 1st?

MS. FRESCH: I'm sorry. The page is from the transcript we read from, but it's --

MR. DEUTSCH: I -- well -- with -- I don't know that, so hold on.

MS. FRESCH: Okay. No, no. I'm just letting you know that's my page number.

MR. DEUTSCH: It's from the transcript?

MS. FRESCH: Yeah.

MR. DEUTSCH: But that was -- the transcript is from the 18th?

MS. FRESCH: Yes.

MR. DEUTSCH: No, the 20 --
MS. FRESCH: The 25th of April.
MR. DEUTSCH: And what page on the --
MS. FRESCH: 288.
MR. DEUTSCH: Hold on. Some of that didn't -- okay. From where to where?
MS. FRESCH: This page, from question at line 5 to --
MR. DEUTSCH: Okay.
MS. FRESCH: -- 23. And then I'll give you another page in a moment.
THE COURT: Counsel, for the record, before you go to that, what was shown here is proposed 567; correct? The video?
MS. FRESCH: Yes.
THE COURT: And I believe I heard no objection to that. So it's admitted into evidence, just for the record.
(Whereupon, Defendant's Exhibit 566 was admitted into evidence.)
MS. FRESCH: Thank you, Your Honor.
THE COURT: You got that?
(Whereupon, Defendant's Exhibit 567 was admitted into evidence.)
/////

BY MS. FRESCH:

Q. So this is the testimony of Ms. Esack yesterday that was played before the -- or read to the jury.

"QUESTION: Okay. Did they say anything to you?

"ANSWER: Yes, they said 'Follow me.'

"QUESTION: Okay. Because you were holding the ball?

"ANSWER: Correct.

"QUESTION: Okay. And, at that point, you chose to go with this individual; correct?

"ANSWER: Yes.

"QUESTION: Okay. Was it a man or woman?

"ANSWER: A woman.

"QUESTION: Okay. And did she say anything to you except 'Follow me'?

"ANSWER: No.

"QUESTION: Okay. Where did you go exactly?

"ANSWER: We went up -- the stairs to go up to the top -- to the stage -- up top to -- up to the stage. We're almost directly in front of me, so we went up the stairs and then the platform for the trick was right in front

of that. So we just literally walked in the front of that and right to the first seat."

Okay. And then I'd like to read -- hold on -- at page 291, line 2, to 293 -- 292, line 6.

MR. DEUTSCH: 291 to where?

MS. FRESCH: To 292, line 6.

MR. DEUTSCH: That's not it.

MS. FRESCH: Yes, that was.

MR. DEUTSCH: All of it.

MS. FRESCH: Oh, I'm sorry. You're right.

MR. DEUTSCH: I know.

MS. FRESCH: To line 10. I'll skip, then line 19.

MR. DEUTSCH: No, that part was in. 11 through the rest of that was read in. It then stopped at 21. It stopped at -- I'm sorry -- 18, I think.

MS. FRESCH: No. 19 to 6 on the next line was --

MR. DEUTSCH: Oh, okay. And then it stopped at 6, you're saying?

MS. FRESCH: Yeah, on 292.

MR. DEUTSCH: Hold on. Yeah, yeah. Okay. Yep. Up to 6 on the next page.

MS. FRESCH: Okay.

And wait. Adam, just to make sure, we're in

agreement this actually was read, 11 through 18 on 291. I don't need to read that, but --

MR. DEUTSCH: Yeah, it was.

MS. FRESCH: Okay. I'll just read the whole thing for completeness.

BY MS. FRESCH:

Q. All right. And this is continuing to read from Ms. Esack's testimony.

A. Okay.

Q. Okay.

"QUESTION: Next to the platform?

"ANSWER: Next to the platform. So I go over to David, and he takes me and says -- makes all these comments about me being Mary Ann from Gilligan's Island, and then he literally takes my hand and puts me in the first chair.

"QUESTION: Does he walk into the platform with you?

"ANSWER: No. He just takes my hand, puts me in the first chair. It's literally right there.

"QUESTION: Okay. And --

"ANSWER: And then somebody hands me a flashlight.

"QUESTION: Okay. But not David?

"ANSWER: I don't think it was David.

"QUESTION: Okay. And then -- and did you keep hold of the flashlight until you left the platform?

"ANSWER: I kept hold of a flashlight until it got dark and somebody grabbed it away from me.

"QUESTION: The Mary Ann comment, besides saying, you know, something Mary Ann, was there more to it than just Mary Ann?

"ANSWER: Yeah. He had this big spiel about -- he was -- he was -- he made these big -- he had this long joke about -- and I can't remember the exact spiel, but he had this long joke about me being, you know, 'Oh, she looks just like Mary Ann from Gilligan's Island. Doesn't she look' -- you know, and he was going -- you know, talking to the audience, 'Doesn't she look like Mary Ann from Gilligan's Island, folks?' You know, 'Look at her in pink.' I had a pink fuzzy sweater and, you know, they made this big spiel."

Okay. All right.

Let's -- Ms. Bonney, can you just play

back -- go backwards a little to when everyone's lined up before they start -- before they start the walk-around. Okay. Maybe just stop there.

(Whereupon video was played.)

BY MS. FRESCH:

Q. Mr. Copperfield, you testified previously in this trial about the process of the participants going up on the stage and the process that goes into the screening, the walk-around. You talked about that a little today.

Watching this tape, do you -- was there any deviations that you noticed from that process that you've described with respect to what would have happened in any night, including in 2013 or in 2002?

MR. MORELLI: Objection to the form.

THE COURT: Want to -- state it in a different form.

BY MS. FRESCH:

Q. Okay. Have -- was there -- was the protocol, from your observations, the same that night that you've described?

A. Yeah. Unfortunately, you're going to see the same speech over and over again, so -- except for a little joke here or a joke there, I'm pretty much sticking to the same, as she called it, spiel.

Q. Not me.
A. Not you, yes. Yeah, pretty much the same.
Q. Okay.
A. I'm embarrassed to say, but --
Q. All right.
MS. FRESCH: Let's play it around the walk-around if you could.
(Whereupon video was played.)
BY MS. FRESCH:
Q. Okay. Earlier today, Mr. Morelli asked you some questions about the walk-around. Since we're watching this video, you mentioned there was a theatrical expression for what you were saying to the folks in the walk-around. And what's the -- what's -- from the illusion standpoint versus the screening process, what's the illusion -- from the illusion standpoint, why are you saying what you're saying?
A. Well, I'm trying to make it seem that you're not up against the back wall. I'm saying 20 feet behind, 20 feet in every direction, you can see underneath it, around it. I'm trying to show space so they don't think about what you now know the secret to be. I'm trying to just kind of emphasize the fact it's out in the open.
You can see in this thing all the lights

which is -- every camera shot looks different. You know, every single camera reacts differently to light. This shows all the glaring lights in their eyes, which shows part of that test when you walked around there. You could watch it as they go around.

Q. Okay. So there's two purposes for the walk-around?

A. Yes. Well -- well, there's one purpose. You're right, there's two purposes: one so they get a chance to see it's out in the open, and the second purpose, of course, is the safety screening thing, see how they react to the bright lights, stuff on the floor, the narrow spaces and all that stuff. Two reasons.

Q. All right. Let's watch them up to the point that they're all seated in the platform.

(Whereupon video was played.)

BY MS. FRESCH:

Q. Do you observe any pink sweaters?

A. There's no pink sweaters there.

Q. Okay. And watching that, there's a woman in a middle seat that was identified as Mary Ann?

A. Right.

Q. Would that be a first chair, from your perspective?

A. No.

Q. Okay. Do you recognize that woman, Mary Ann, as being Ms. Esack from the video you saw earlier?

A. Looks close, you know, from what I can see. Looks like a match to me in the black dress in the middle.

Q. Right.

A. The girl that went up the stairs.

Q. Okay. And speaking of the platform and the stairs, have you ever utilized the platform without the stairs to enter it?

A. Impossible to not have stairs because of the -- the way the illusion is designed, you would have to go up stairs.

Q. Okay.

A. It's also one of our tests, if you recall. She walks up those stairs to the platform. I get a good look at all of the male and female people, how they navigate those second set of stairs.

Q. All right. I would like to -- Mr. Copperfield, we also have a video from "The Tonight Show." Did you look at that?

A. No.

Q. You did not look at that? Okay. But let's look at it anyway for a moment.

A. I'm scared.

MS. FRESCH: We've marked this as 562.

MR. MORELLI: Your Honor, objection to the relevance of "The Tonight Show" video.

THE COURT: Overruled.

MR. MORELLI: I didn't hear you.

THE COURT: What's that?

MS. FRESCH: Overruled.

MR. POPOVICH: Overruled.

THE COURT: Let's -- let me have counsel approach the bench.

(A discussion was held at the bench, not reported.)

MS. FRESCH: Yes, Ms. Bonney.

(Whereupon video was played.)

BY MS. FRESCH:

Q. Mr. Leno did not interview you during that performance; correct?

A. He was supposed to; he didn't. I was not happy.

Q. And do you have any recollection of going on a morning national news show such as "Good Morning America" that week?

A. No. No.

Q. All right. Going back to the walk-around, I

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meant to ask you this. Earlier -- there was some discussion about it. Over the course of years with respect to the walk-around, have you ever observed anyone having difficulties making it around the walk-around as -- as far as the participants?

A. Yes.

Q. Okay. And what type of difficulties have you observed?

A. You know, when somebody had some cold medicine or some -- had a few margaritas, you know, you can tell, how they walk, and you want to not let them, you know, do the illusion.

Q. Okay. So any difficulties you observe, would that place them over into a chair?

A. 100 percent. Of course.

Q. Okay. Now, at some point, you stopped performing the Thirteen Illusion; is that correct?

A. That is.

Q. Okay. And I actually believe you -- you might have mentioned that a little bit earlier, a week or so ago. But since the questions came up today, why did you stop performing, on a regular basis, the Thirteen Illusion in your show here at the MGM Grand?

A. We developed an illusion with a dinosaur based on a childhood toy that I had. I had a dinosaur

when I was a kid named Frank. And I had a way of making it appear in the show. And we experimented for a few years with this Frank illusion, this big dinosaur appearing, and finally got to the place where we could do it proficiently and safely. And we put it in the show to replace the Thirteen Illusion.

Q. Okay. Okay. And is that the only reason the Thirteen Illusion stopped being your final illusion that you perform at your show?

A. Yes.

Q. Okay. Now, the video that was shown to you earlier with Ms. Esack wherein she described her injury that evening, you mentioned the word "squeamish" if you saw someone's hand turned completely around; is that correct?

A. Yeah.

Q. All right. And is it your best recollection -- well, let me withdraw that.

There's also been testimony in this case from Mr. Cox regarding his injury to the extent that he described his shoulder was almost in front of his chest. Do you have any recollection of ever observing a participant with an injury with their shoulder looking -- or their arm looking like it's in the middle of their chest?

A. I think in a roomful of people, everybody would have -- including me, would have noticed something like that. It would have really -- I would have -- first thing, I would have run and get an ambulance for somebody if I saw somebody in that condition, obviously.

I mean, we're all human beings. Somebody is in that severe of a contortion, you know, you're going to do something about it. I don't care who you are. And me especially, it would be very memorable. And, you know, it's human nature. You would have to help that person.

Q. And would that stick with you more because you -- you are squeamish?

A. Of course. It's --

MR. MORELLI: Your Honor, can -- I have an objection to the form of all of these questions. I don't want to object every second, but ...

THE COURT: All right. Well, you objected now.

So go to the next question.

MS. FRESCH: Okay.

BY MS. FRESCH:

Q. Now, with respect to -- there was investigation if anyone expressed dissatisfaction with

their participation in the Thirteen --

MR. MORELLI: Same objection.

THE COURT: Let's hear the question first.

BY MS. FRESCH:

Q. Who would be involved in any type of investigation about dissatisfaction?

A. I would talk to Chris. I would talk to Homer. I would -- if it was something that involved the MGM or safety, I would talk to Mr. Habersack. I'd say "Look. Here's the situation we have. How can we make it better? What can we do to improve it?"

Q. If you learned that someone had randomly tripped or missed a step, how -- how do you characterize that in your mind? How do you characterize a random trip or slip or misstep?

A. Well, that could happen to anybody, obviously. That's -- you know, it happens to everybody in this room. We've all slipped and tripped and -- and it's not anybody's fault. It is the fault of just -- you know, it's human nature. We just do that, and it's no one's fault.

Q. Now, your first day of testimony was on April 18th, 2018, on Wednesday. Have you given any interviews to the press since you testified that late afternoon?

A. None.

Q. Okay. There's some discussion about the video for the night of November 12th, 2013, the videos that -- I don't know -- the tape of the show is -- that's from the audience's perspective of watching the show?

A. A camera in the back of the house.

Q. All right. So there's no videos of what goes on backstage, from your perspective?

MR. MORELLI: Objection to the form.

THE COURT: Sustained.

BY MS. FRESCH:

Q. Okay. Besides the video such as the one we watched from November -- early November 2013, or even the one today of 2002, besides the video of what you're doing on stage, are there any other videos?

MR. MORELLI: Objection to the form.

THE COURT: I'll allow that.

THE WITNESS: No, no other videos.

BY MS. FRESCH:

Q. Okay.

THE COURT: Would this be a good time to break?

IN UNISON: Yes.

THE COURT: We'll take a 15-minute recess.

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom at quarter to 3:00.

THE MARSHAL: What time, Judge?

THE COURT: Quarter to 3:00.

THE MARSHAL: All rise.

(Whereupon a brief recess was held.)

(The following proceedings were held in the presence of the jury.)

THE MARSHAL: All rise.

THE COURT: All right. Please be seated.

Do counsel stipulate that the jury is present?

MR. MORELLI: Yes. So stipulated.

MR. POPOVICH: Yes.

MR. RUSSELL: Yes, Your Honor.

MS. FRESCH: Adam, I wanted to read another section of Ms. Esack.

MR. DEUTSCH: Okay.

MS. FRESCH: Page 270.

MR. DEUTSCH: What day is this?

MS. FRESCH: Yesterday.

MR. DEUTSCH: Oh, it's from the same --

MR. MORELLI: Yeah, it's all the same day.

MR. DEUTSCH: Sorry.

MR. MORELLI: There's only one day.

MS. FRESCH: Actually, you know what? Just for completeness, line 21 on page 278 to -- hold on -- 280 at line 11. Oh, actually, let me go to 22 of 280.

MR. DEUTSCH: Okay.

MS. FRESCH: Okay.

BY MS. FRESCH:

Q. Mr. Copperfield, I'm going to read another portion of Ms. Esack's testimony from yesterday.

A. Okay.

Q. Okay?

"QUESTION: All right. But that person helped your mom conference you in?

"ANSWER: That person conferenced me and then --

"QUESTION: Okay. But did your mom call

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Mr. Copperfield or was --

"ANSWER: No, she didn't have Copperfield -- she didn't have his number.

"QUESTION: So Mr. Copperfield called her?

"ANSWER: Uh-huh.

"QUESTION: And the person who was with her was able to conference you in even though they didn't initiate the phone call?

"ANSWER: Yes.

"QUESTION: Okay. And was that on a landline or a cell phone?

"ANSWER: It was on a landline.

"QUESTION: And what -- were you on a cell phone or a landline?

"ANSWER: It was on the hospital line.

"QUESTION: Okay. And what time of day was this phone call?

"ANSWER: It was in the morning. It was right after the -- the thing that set her off was she had also seen the television program. It was right after that, literally.

"QUESTION: Okay. So you're watching 'Good Morning America' or whatever that show was -- for sake of ease, I'm kind of call -- kind of call it that just to identify it. And

that would have been in the morning; right?

"ANSWER: Uh-huh.

"QUESTION: Okay. Is that a yes?

"ANSWER: Yes.

"QUESTION: Okay.

"ANSWER: I did it again. I'm sorry.

"QUESTION: All right. So you're in your hospital room. It's morning. You watch an interview with Mr. Copperfield. And how much time went after --

"ANSWER: I have no idea.

"QUESTION: -- you conferenced in? Okay. But it was the morning time?

"ANSWER: Yes.

"QUESTION: And how long was that phone call?

"ANSWER: Less than -- less than -- maybe less than three to five minutes.

"QUESTION: Okay.

"ANSWER: Very short.

"QUESTION: And did Mr. Copperfield say to you -- say anything to you?

"ANSWER: He -- the only thing I remember him getting out was that -- you know, that -- he basically got his name out and he was

trying -- he was actually trying to talk to my mother at that point in time, so --"

Okay. Mr. Copperfield, does that refresh your recollection that you had a conference call with Ms. Esack and her mother around -- on November 18th, 2002, in the morning time?

A. Well, I don't recall that it was even possible to make a conference call 16 years ago from a house phone. I don't think that's even possible.

Q. Okay. Well --

A. So the answer's no. I don't think that's possible. And I wasn't on a morning show. And she could have seen -- and -- and, you know, I heard about this. And I'm wracking my brains, how could this possibly be? And the only thing I can think of is that maybe somebody from the theater called and said "We're calling about the David Copperfield show." And the mother thought it was me and -- and somehow got the conference called in.

You know, that's the only thing I can think of. Maybe somebody else called on behalf of the show from the theater, and the mother misunderstood this with all of this stuff. Because I don't think it's possible to conference a call. I wasn't on the morning show. And -- and it wasn't me doing that. That would

have been nice for me to do. If I knew about it, that would have been something I would have done had I known about it.

MR. MORELLI: Your Honor, I'm going to move to strike the answer as nonresponsive to the question. But I let him finish.

THE COURT: Overruled.

BY MS. FRESCH:

Q. Mr. Copperfield, after we've reviewed your schedule and the fact that you left Seattle on a bus on November 17th after a 4:00 p.m. show, where would you have been on the morning of November 18th, 2002?

A. Either on the bus or in the studio -- the radio studio that -- that shows on this document.

Q. Okay. Do you recall how long it takes to drive in a bus from Seattle to Los Angeles?

A. Easy to look up. Again, not my wheelhouse. Sorry.

Q. All right. All right. When you -- do you have a recollection, when you testified on April 18th, which is the Wednesday, your first session of your testimony here in the late afternoon of testifying --

A. The first hour -- the first day before we waited for a week, my first time up here?

Q. Yes.

A. It was a short -- it was an hour about, I think.

Q. Do you have any recollection of testifying that no one had ever been injured in this particular illusion?

A. No. That happened a week later. We discussed that a week later.

Q. Okay. And that was your recollection of no one being injured; is that correct?

A. It was my recollection of not recalling anybody ever being injured, yes.

Q. Okay.

A. But that wasn't even discussed till a week later.

Q. All right.

MS. FRESCH: I would like to read, Adam, page 211, line 5 through 24, of Ms. Esack's testimony.

MR. DEUTSCH: 5 through what?

MS. FRESCH: 24.

MR. DEUTSCH: I have no objection.

MS. FRESCH: Okay.

BY MS. FRESCH:

Q. And, again, Mr. Copperfield, this is Ms. Esack's testimony.

"QUESTION: Good afternoon Ms. Esack. Can

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you tell us -- you're here in Las Vegas in a courtroom. Can you tell us what brought you here?

"ANSWER: I was sitting home Thursday night. And a friend of mine, Bobbie, called me. And she said that -- asked me if I had been watching television -- and I -- the television news. And I said not really. And she said that there was a lawsuit being brought against Mr. Copperfield because someone had been injured in one of his illusions.

"And I said, you know, Bobbie, it's been -- it's been a while and I'm kind of over that. And she -- 'No, no. You really need to go and google this particular situation.' So I did. And when I brought up the website, the first thing I saw was a clip of Mr. Copperfield saying that no one had ever been injured in this particular illusion. And when I saw which illusion it was, it was the same illusion that I had been injured in, and I got angry."

Okay. And, just for reference, that testimony was taken and recorded on Wednesday, April 25th, 2018. Okay.

A. So I didn't even say that.

Q. Does that refresh your recollection at all that, when you testified on Wednesday, August 18th, that you -- you testified --

MR. POPOVICH: April.

BY MS. FRESCH:

Q. -- that no one had ever been injured in this particular illusion?

A. So she was shocked by something I would say a week later?

Q. No, no, no. You misunderstood my question.

Mr. Copperfield, do -- does this refresh your recollection at all whether, on that first hour that you testified, April 18th, that you said no one's been injured -- injured in this particular illusion?

A. Not that I recall.

Q. Okay.

MS. FRESCH: I have -- just one more question.

BY MS. FRESCH:

Q. Going back to the video of the Thirteen Illusion, is it the custom -- is -- when that illusion was being performed, was there just video of that particular illusion or were other portions of illusions videoed?

A. From that front camera?

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Q. Yes.

A. Whole show.

Q. Okay. And, in your experience, had there been occasions when videos, for whatever reason, didn't tape the show?

A. Unfortunately, yes. Because I've said something funny in the show, I had a turn of phrase and the audience really reacted big. And one of the people -- purposes of that tape is to go look at that video and say how did I say that line? How did I say that phrase? So I could copy it again, do it again and improve it.

And sometimes, unfortunately -- I'm not an expert about this -- but the way the video has to burn onto the disc didn't take. So that information, that piece of gold that I had, was lost forever. And that's happened a few times with this -- the idea of home videotaping -- being transferred to a DVD is fairly new for home use. So it has kind of bit me in the butt -- let's put it that way -- when I needed something and it wasn't there. It happens sometimes.

And VHS, even though it was old school, seemed to be more consistent back in the day. And that's why we have those other ones from Seattle.

MS. FRESCH: Your Honor, I have one more

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thing. I'm done with questioning, but I need to move for Exhibit 562, which was the Jay Leno video, into evidence.

MR. POPOVICH: No objection.

MR. RUSSELL: No objection.

THE COURT: All right. It's admitted.

(Whereupon, Defendant's Exhibit 562 was admitted into evidence.)

MR. POPOVICH: May I, Your Honor?

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. POPOVICH:

Q. That question about the video for the Cox performance on November 12th, 2013 --

A. Yes.

Q. -- you talked about front of the house. Does that camera show anything about the runaround for the Thirteen Illusion participants?

A. No, it doesn't, obviously.

Q. So even if you had it, you wouldn't expect it to show where he fell?

A. No.

MR. POPOVICH: Thank you. Thank you.

THE COURT: Anybody else?

MR. RUSSELL: No, Your Honor.

THE COURT: No recross.

Any redirect?

MR. MORELLI: Jennifer, if I speak loudly, am I okay?

THE COURT RECORDER: Well, it's just -- you wander. Thanks.

MR. MORELLI: The answer is no, I guess.

FURTHER REDIRECT EXAMINATION

BY MR. MORELLI:

Q. My wife tells me I speak too loudly.

Mr. Copperfield, just a few things. Okay? With reference to looking at the video that your lawyer Ms. Fresch was showing you.

A. Which one? Sorry.

Q. She only showed you one video from the front. I'm talking about on her questions just before.

A. The Jay Leno video?

Q. No, the video about -- I'm talking about Ms. Esack.

A. Yes.

Q. Okay. You saw her in the video; right? You don't dispute that she was in the illusion, do you?

A. I believe so. It's -- to the best of my --

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what I can recognize there. She has short blonde hair. And I'm guessing -- also guessing.

Q. The entire thing wasn't played, but you did ask her her name, and she did say Patty at one point. You had watched that video before? That's what you testified to?

A. I don't recall that detail, honestly.

Q. Okay.

MR. DEUTSCH: Should we play it?

MR. MORELLI: Yeah.

(Whereupon video was played.)

THE WITNESS: Not at the beginning.

(Whereupon video was stopped.)

MR. MORELLI: Just skip to that.

MR. DEUTSCH: I'm trying. I'm trying. Oh, no, not that way.

(Whereupon video was played.)

BY MR. MORELLI:

Q. Okay.

A. Yep.

Q. Okay. Because you called her Patty at that point, so just to clear up that.

A. Yep.

Q. Now, with reference to -- you were not on television the day after she was in the illusion --

right? -- because it was -- I believe it was November 17th?

A. I was not on TV, correct.

Q. And you were not on television the 18th, which was the next day --

A. That's correct.

Q. -- correct? Now, you were on "Midday Live" on the 19th?

A. Correct.

Q. Okay. Which would have been two days later. Okay? Yeah.

A. "Midday Live," the local show, you mean.

Q. Yeah, I know. We're going to talk about it.

And it's -- and it states right here -- where are we?

MR. DEUTSCH: Right there.

BY MR. MORELLI:

Q. "Midday Live." Okay? So you were on that day. And you would agree with me, Mr. Copperfield, wouldn't you, that even -- even live shows that are local get picked up by other networks and could be played at other times. You would agree with that. Am I right?

MS. FRESCH: Objection. Lacks foundation. Calls for speculation.

THE COURT: He can ask him what he knows.
BY MR. MORELLI:
Q. Do you know that?
A. I know that on this it says I would arrive there at 11:20.
Q. No, no. I'm not talking about being played the day before; I'm talking about the fact that you said it was a local show.
A. Yeah.
Q. But even local shows can be picked up by national shows showing a little clip of something. Am I correct or not?
A. I don't think so, not back 16 years ago.
Q. You would agree with me -- I mean, you're a famous guy; right? I mean, let's face it. You're an internationally famous guy. I'm not as famous as you. Okay? But you're a famous guy. And so if you do something or -- or say something where you're talking about your illusions, it could get picked up by other networks and shown at other times. You would disagree with that?
A. This is "Midday Live," this is not the --
Q. It doesn't matter what it is.
A. 16 years ago, I doubt it. My answer is 16 years ago, I really doubt it.

Q. Okay. And, as a matter of fact, on that day, just to look at it for a moment, you -- look what the topic was, "Vanishing the 25,000th person." That's what you were talking about; correct?

A. About my whole career, not about this illusion.

Q. No, no, about a career of illusions, because this is back -- we're talking about '02. You might have only been doing the Thirteen for two years -- or four years at that time; right?

A. Okay.

Q. So it was --

A. It's --

Q. -- your whole career; correct?

A. That's right. Nothing to do with that specifically.

Q. Now --

A. And "Midday Live" was not a morning show. I arrived at 11:20, which means it would be an afternoon show.

Q. I don't think I was asking you a question.

A. Sorry. I apologize.

Q. It's okay.

A. Try to finish up the last one.

Q. That's all right.

So let me ask you this: Am I correct that, when you were questioned by Ms. Fresch, that you said you remember certain people having trouble on the walk-around 'cause they might have had too many margaritas? Do you remember that?

A. Yeah.

Q. Do you remember that?

A. Yes.

Q. So you have a memory of people walking around, after all of these shows that you've done, and them, you know, not being able to negotiate this obstacle course that you say goes around there. You remember that? That's my only question.

A. It happens sometimes. It's not a specific memory of -- of an incident. It's that, when it happens, this is how we deal with it.

Q. Right. So -- but you remember that?

A. I didn't say that.

Q. Okay. Now, you stated that -- and I want to understand what you meant -- that had Mr. Cox had such a bad shoulder injury that it was so apparent, that you would have remembered that; correct?

A. I would think so, yeah.

Q. Okay. So, now -- and I -- I just want to understand what you meant by that. Did you mean by

that that you don't believe that he had that shoulder injury and that it was obvious? Is that what you meant by that?

MR. POPOVICH: Objection. Compound.

THE COURT: Want to rephrase, Counsel?

BY MR. MORELLI:

Q. Did you mean, by making that statement, that you don't believe it was true that he had a shoulder injury like that?

A. I -- I don't want to be negative about a person who's had an injury. He obviously --

Q. No, but say what you want. Say what you want.

A. If I had seen a person with that kind of deformity, I would have been very, you know, taken aback from it. The whole group of people -- the whole jury of people in that room would have all, you know, really been affected by that. And I wouldn't have been able -- I wouldn't do my speech if it was to that degree. If I had known it was to that level of -- of --

Q. Right. So -- so are you saying that you didn't know or are you saying it wasn't true?

A. I'm saying I didn't observe anything like that in my time there. And I don't recall -- I don't

recall observing anything like that.

Q. Okay. I'm going to show you -- this is from --

MR. DEUTSCH: This is from the testimony on 4/25, Ryan Carvalho.

BY MR. MORELLI:

Q. This is Ryan Carvalho's testimony.

MR. DEUTSCH: Line 89, page 18.

BY MR. MORELLI:

Q. -- of April 25.

MS. FRESCH: Objection, Your Honor. Outside the scope of my redirect. There was no testimony about -- I did not elicit any questions about Mr. Carvalho.

THE COURT: But it's on the subject matter that was within, so I'll allow it.

MR. MORELLI: Right. Thank you.

BY MR. MORELLI:

Q. So here's the -- the questions and the answers. This is from Mr. Carvalho.

"QUESTION: And then Mr. Copperfield came in at the -- at that point and gave -- started to give his portion of the speech; correct?

"ANSWER: Right.

"QUESTION: And when Mr. Copperfield is

giving his speech that night, he did something that was out of the ordinary for him; true?

"ANSWER: What do you mean?

"QUESTION: Well, he -- he, in fact, stopped midway through his speech and -- because he saw what -- Mr. Cox and asked what happened; true?

"ANSWER: Yeah. He saw him -- saw somebody sitting down, which is not -- not common.

"QUESTION: And you actually felt that it was really unusual that Mr. Cox -- Mr. Copperfield would stop his speech in the middle like that because it's something that he doesn't ordinarily do?

"ANSWER: I didn't think it was weird, but you are right that it is not something he -- he doesn't usually do.

"QUESTION: And, at that point when he stopped, Mr. Copperfield asked, 'What happened?' True?

"ANSWER: I think that's what he said, yeah.

"QUESTION: And, at that point, I'm assuming you told him what happened?

"ANSWER: Right.

"QUESTION: Right?

"ANSWER: Right.

"QUESTION: You told him that Mr. Cox had fallen; correct?

"ANSWER: Something along those lines."

Okay? Do you -- is --

A. Keep going. I think there was more than that. It didn't end there.

MR. DEUTSCH: All right. We'll read the next question too. Why not? Let's keep reading the next question.

BY MR. MORELLI:

Q. We'll read the next questions, but do you remember --

MR. DEUTSCH: Read the next question, Morelli.

MR. MORELLI: Go ahead. Where is it?

MR. DEUTSCH: Keep going. The bottom, line 24.

BY MR. MORELLI:

Q. Okay.

"QUESTION: Okay. And that's something you told him personally? Or was it Pomai or both of you or something else?

"ANSWER: I'm not so sure if Pomai did, but I was right next to him, so yeah."

MR. DEUTSCH: Keep going.

BY MR. MORELLI:

Q. Okay.

"QUESTION: So on November 12th, 2013, while sitting in that little room, David Copperfield was aware that Mr. Cox had fallen while doing his illusion; true?

"ANSWER: I don't know if --

"QUESTION: Because you told him?

"ANSWER: I don't know if -- don't remember if I said that somebody had fallen or that somebody got hurt.

"QUESTION: Okay. So --

"ANSWER: So yeah.

"QUESTION: So let's take both of them, either Mr. Copperfield, on November 12th, 2013, knew that someone had fallen; true?

"ANSWER: Yes.

"QUESTION: Or he knew that someone had been injured doing the Thirteen -- doing the illusion, the Thirteen; true?

"ANSWER: True."

MR. MORELLI: Do you want me to go further?

MR. DEUTSCH: One more question.
BY MR. MORELLI:
Q. Okay.
"QUESTION: If Mr. Copperfield came in here today and told the jury" --
THE COURT: It says "yesterday," Counsel.
MR. MORELLI: Oh, I'm sorry, Judge. You're right.
BY MR. MORELLI:
Q. Okay.
"QUESTION: So if Mr. Copperfield came in here yesterday and told the jury that he didn't know about anyone falling or being injured until a year later, that wouldn't be consistent with what you're telling us today, would it?
"THE WITNESS: I agree."
A. What do you want to know?
Q. Do you remember Mr. Carvalho telling you about Mr. Cox being injured when Mr. Cox was in the room sitting on a chair?
A. I'll tell you one thing, I don't remember a shoulder here like this because it would have been a lot different than that story.
Q. And I heard you say that -- and you said it three times -- but I want my question answered --

A. It's an important point.

Q. -- if you would. Okay?

Does that refresh your memory?

A. It does not refresh my memory. I think in his other depositions, his deposition before that, he says that he told me that somebody had fallen. I said "Are you okay?" And Mr. Cox said yes. And if that happened, that's why everything was okay as far as -- the most important thing is I care if somebody is okay or not. And that's the most important thing.

Q. So -- so let me understand. You remember speaking to Mr. Cox that night? You now remember?

A. No.

Q. You don't remember? You think that that possibly --

A. In his deposition, he said that. That was in his deposition.

Q. You're talking about what Mr. Cox said in his deposition?

A. No, Mr. Carvalho said it.

Q. Mr. Carvalho. You read Mr. Carvalho's deposition?

A. I did.

Q. Did you read yours?

A. I -- I, as I said before, I read some of it.

Q. You read some of yours, not all of it, but you read Mr. Carvalho's in its entirety?

A. No, just the section about that.

MR. DEUTSCH: Let's put that up, then, that section, Mr. Morelli.

MR. MORELLI: What?

MR. DEUTSCH: The section from Mr. Carvalho's deposition.

MR. MORELLI: Let's go.

MR. DEUTSCH: Page 62 of Mr. Carvalho's deposition.

MR. RUSSELL: Objection. I don't believe this was published to the jury.

THE COURT: One second.

MR. DEUTSCH: May we approach, Your Honor?

THE COURT: Yes.

(A discussion was held at the bench, not reported.)

BY MR. MORELLI:

Q. Now, just -- just a couple more things.

Am I correct, Mr. Copperfield, that you have a lawyer Ted Blumberg, a Ted Blumberg?

A. Yes.

Q. Is he your entertainment lawyer?

A. General counsel.

Q. Okay. And you are aware that -- that Mr. Blumberg has made statements about this case and about -- I'm talking about before the case even started, like in 2016, he was putting out statements about the safety of the illusion; right? You're aware of that, are you not?

MS. FRESCH: Objection. Relevance as to 2016.

THE COURT: Overruled.

MR. DEUTSCH: We can explain the relevance, Your Honor, if you want.

THE COURT: I overruled the objection.

MR. DEUTSCH: Sorry. I didn't hear you.

MR. MORELLI: He just wants to argue.

MR. RUSSELL: Quit arguing. You won, Adam.

MR. DEUTSCH: I know. I know.

MR. MORELLI: You know what they say, when you win, shut up.

BY MR. MORELLI:

Q. Okay. The only question that I'm asking, Mr. Copperfield, is that your lawyer Ted Blumberg has put out statements. Am I correct?

A. I'm aware of one statement.

Q. About this illusion and about 100,000 people doing it; right? Those kind of statements?

A. Can you show me so I can confirm?

Q. Are you aware of it? Whether I show you or not is not the issue. I'm asking you if you are aware of him putting out statements on your behalf.

A. One statement.

Q. Yeah. And the statement was about the amount of people who have done the illusion; correct? Isn't that true?

A. I don't recall.

MR. DEUTSCH: Well, you want me to show him?

MR. MORELLI: Yeah.

MR. DEUTSCH: May I approach, Your Honor, to refresh his recollection?

THE COURT: Yes.

THE WITNESS: Okay.

MR. MORELLI: I only have one question.

MS. FRESCH: Yeah, I just want to see it.

MR. MORELLI: Yeah, you can see it.

MS. FRESCH: No, that's -- that's not --

MR. DEUTSCH: It's refreshing his recollection.

MS. FRESCH: Nowhere is -- that's not a quote.

MR. DEUTSCH: Do you want this one? I'll show you a different one.

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MS. FRESCH: No, that's some paraphrasing.

MR. DEUTSCH: Okay. I'll show you a different one. You tell me. There's a million. Pick which one you want. Here, how about this one that says -- how about this one? Let's see. Where is this one? Tell me if you like this one better. There we go. How about this one? Is that one better? I'll show him that one instead.

MS. FRESCH: It's technically hearsay. Hold on.

MR. MORELLI: We're just showing him something to refresh his recollection. That's all. I'm not putting it in evidence.

THE WITNESS: That quote is correct.

MR. DEUTSCH: Okay.

BY MR. MORELLI:

Q. Now, I'm just -- my only question was that he had put out a statement -- that he had put out a statement on your behalf. And we showed it to you. And you said that that quote is correct. And that was my only point.

A. Could you read it, please.

Q. I'm not talking about the content. I'm really not. I just said to you, was that he's put out statements --

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A. That one.

Q. -- on your behalf.

A. Only the one. Everything else, I think, was paraphrased.

Q. One statement on your behalf. Okay? All right. And it was before this case started?

A. I don't know.

Q. I'll let your lawyer ask you questions about it, if you want. Okay?

MR. MORELLI: I'm going to rest.

MR. POPOVICH: Well, there might be more questions.

MR. DEUTSCH: Morelli.

MR. MORELLI: Not by me.

MR. DEUTSCH: Morelli.

MS. FRESCH: Adam, did you send me --

MR. DEUTSCH: I'm doing it as we speak. I just didn't have your e-mail on here. Sorry.

MS. FRESCH: That's okay. I just want to see if I need to follow up on that.

In the meantime, I'd like to read from Mr. Carvalho's deposition, page -- hold on -- 61 at line 22, through 63, line 24.

MR. MORELLI: May we approach, Your Honor?

THE COURT: Sure.

(A discussion was held at the bench, not reported.)

MS. FRESCH: Okay.

BY MR. MORELLI:

Q. Mr. Copperfield, one question. Mr. Ted Blumberg, he owns Backstage; is that correct?

A. I think so.

Q. Okay. Thank you.

THE COURT: Okay. Now Ms. Fresch.

FURTHER RECROSS-EXAMINATION

BY MS. FRESCH:

Q. Okay. All right. Then now I'd like to read Mr. Copperfield's testimony from April 18th, 2018, line 24 on page 221, through 222 at line 7.

MR. DEUTSCH: I'm sorry. What page, Elaine? I apologize.

MS. FRESCH: I know.

MR. MORELLI: She said 221.

MS. FRESCH: Yes. Get me that e-mail right away.

MR. DEUTSCH: I just e-mailed it to you a second time. You can use my iPad if you want.

MR. MORELLI: Go ahead.

MS. FRESCH: Are you okay?

MR. DEUTSCH: What would you like? Yeah, I'm --

MS. FRESCH: Oh, it was 24 through line 7 on page 222.

MR. DEUTSCH: Okay.

BY MS. FRESCH:

Q. Okay. This is Mr. Copperfield's testimony.

"QUESTION: Did Mr. Carvalho tell you at any time when the participants were brought into the room for your speech and Mr. Carvalho's speech that Mr. Cox was injured?

"ANSWER: I don't recall.

"QUESTION: Okay. Is that possible?

"ANSWER: I've read a deposition -- deposition testimony of him that he told me that Mr. Cox tripped and that I asked him if he was okay and he said he was."

Okay.

MS. FRESCH: Let me see. I guess --

MR. DEUTSCH: I sent it to you twice.

MS. FRESCH: I know. It's not -- I keep getting --

MR. DEUTSCH: It's mine. Sorry. Sorry. It's probably -- this is, like, an office iPad. So it probably just had not my e-mail address. Sorry.

Needles is our document management program, not a random nickname because I'm tall and skinny.

MR. MORELLI: No, but it's a thought.

MS. FRESCH: Wait. Sorry. I'm getting a call now. Hold on.

MR. ROBERTS: It fits a number of ways, Adam.

MR. DEUTSCH: Wow.

MS. FRESCH: I'm sorry, Your Honor. I just have to read what he quoted from before.

MR. DEUTSCH: Elaine, here.

MR. MORELLI: Just take this.

MS. FRESCH: Okay. It's just hard.

MR. DEUTSCH: Nice and big and colorful.

BY MS. FRESCH:

Q. Mr. Copperfield, Mr. Morelli -- or I guess Mr. Deutsch is the one who showed you a quote from -- I don't know what publication this is.

MR. DEUTSCH: I think it's the New York Post, page 6.

BY MS. FRESCH:

Q. Page 6 of the New York Post with a statement by Mr. Blumberg. And did that refresh your recollection of what Mr. Blumberg had said?

A. It was one statement that was put out, yeah.

Q. Okay. That the performance, quote, has been

performed successfully for over 15 years with over 100,000 audience participants. The history of the show speaks for itself, quote.

A. Correct.

Q. Is that the one statement --

A. I'm aware of.

Q. -- that you recall?

A. Yes.

Q. Okay.

MR. DEUTSCH: What's the date of that article, Elaine?

MS. FRESCH: This article is March 12th, 2017, entitled "Tourist: Copperfield's illusion injured me. Now I want to expose his tricks."

I'll skip Mr. Morelli's quotes. All right. That's all I have.

MR. POPOVICH: Nothing further.

MS. FRESCH: Sorry. I turned on your Siri.

MR. RUSSELL: No questions.

THE COURT: Does that conclude --

MR. STRASSBURG: No questions.

MR. CALL: No questions.

THE COURT: All right.

MR. MORELLI: No questions, Your Honor.

THE COURT: Sir, you may stand down.

THE WITNESS: Thank you very much.

MR. MORELLI: No. Nope. Nope. The jury has questions. It's only been a month.

THE COURT: Very good. Very good.

MR. DEUTSCH: The jury is like Rodney Dangerfield. You get no respect.

(A discussion was held at the bench, not reported.)

THE COURT: All right, sir. I'll pose some questions to you that have been propounded by some of the jurors.

THE WITNESS: Perfect.

THE COURT: Okay? I'll pose the questions, and then I'll allow counsel to follow up.

THE WITNESS: Okay.

THE COURT: First one is, "Did you do your regular meet-and-greet after your 7:30 p.m. show on 11/12/13?"

THE WITNESS: That's the date -- one more time. Did I do a normal meet-and-greet?

THE COURT: "Did you do your normal meet-and-greet after your 7:30 p.m. show on 11/12/13?"

THE WITNESS: I would think I did. I believe I did. I don't recall exactly, but I believe I did.

THE COURT: All right. Any follow-up on that

response?

MR. MORELLI: No follow-up.

MR. POPOVICH: No follow-up.

MR. RUSSELL: Nothing.

THE COURT: Okay. The next question: "You testified that, back in 2002, around the time of Patricia Esack's accident, you did not appear in a morning show. Did you appear on any television shows while you were in Seattle?"

THE WITNESS: I don't recall. It's not in the notes that I looked at, and that would have -- that would have already aired by the time I left. It wouldn't have been on TV after I was there.

Whenever we do local television, like the L.A. things, all that, "Midday Live" and all that stuff, we always do it -- we push it together right before an appearance to try to sell tickets to let people know I'm in town. So if I did do a morning show or any show in Seattle, which I don't believe we did, it would have aired prior to that performance -- those performances.

THE COURT: Follow-up?

MR. MORELLI: Nothing, Your Honor.

MR. POPOVICH: Nothing.

MS. FRESCH: Nothing.

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MR. RUSSELL: No.

MR. STRASSBURG: No.

THE COURT: All right. That series of questions has some other -- some other items, but they're not going to be -- there's one question that's been stricken and there's other -- another question for the judge that will not be posed to the witness.

All right. That's the next court exhibit in order.

Next question: "If there were a handful of injuries and/or accidents over the span of 20 years, it might be difficult to remember certain accidents/injuries; but if there was/were only three, you would remember; correct?"

THE WITNESS: Ask the question again, please.

THE COURT: Okay. "If there were a handful of injuries and/or accidents over the span of 20 years, it might be difficult to remember certain accidents/injuries; but if there was/were only three, you would remember; correct?"

THE WITNESS: I -- I'm going to remember something that I could make better or change, something impactful that I could -- would have to modify the show. If somebody got hurt, then I'd have to change something we did wrong.

None of those injuries that we've talked about or discussed here were the fault of myself or my crew, in my opinion. And so that would be, you know, less memorable. If somebody said they were okay, I'm not going to remember that, obviously. We do so many shows.

But every single person is important to us. Every single person is meaningful to us. And we take every single comment extremely seriously.

THE COURT: Any follow-up?

MR. MORELLI: No, Your Honor. No.

MR. RUSSELL: Nothing.

EXAMINATION

BY MS. FRESCH:

Q. Mr. Copperfield, in the reference of the three that have been discussed today, one was Ms. Esack. And we've talked about that. The other one, do you have any recollection of anyone informing you of an injury of any sort in June of 2013?

A. Absolutely not.

Q. Do you have any recollection of anyone informing you of someone scraping their knee in -- in 2013 or at any time?

A. No. I heard about it.

Q. Without -- beyond this lawsuit --
A. Yes.
Q. -- do you recall?
A. No.
Q. Prior to this lawsuit?
A. No.
MS. FRESCH: Okay.

EXAMINATION

BY MR. POPOVICH:
Q. If Ms. Lawrence, one of the people who testified in court on videotape, said she did not talk to you about scraping her knee, might that explain why you don't know anything about it?
A. Yes.
Q. Thank you.
THE COURT: Is that it, then? No follow-up on that question?
MR. MORELLI: That's it.
THE COURT: Okay. Next court exhibit in order.
Next question: You seem to recall a lot about events dating back to 2002, i.e., times, travel. Are you sure you don't remember a woman seriously injured back in 2002?

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THE WITNESS: Well, with due respect, I don't remember the -- the press things. I only -- are using these -- these reminders of my press schedule. I would have no idea if I did Leno or -- I was kind of surprised that I did Ryan Seacrest. I actually forgot that I did that. But there it is, and it shows exactly what I did.

So I remember the press things purely because we're able to look up in our records and see what we've done before. And that's why I have a good recollection -- not a recollection -- I can read off the paper, basically. And that's -- that's what it is.

I mean, again, if somebody was -- if the Halloween event was in front of my face, I would not have -- I would have liked to have known it. I would like to have been told about that. But, in my recollection, I was not.

THE COURT: Any follow-up on that?

MR. MORELLI: No, Your Honor.

MR. POPOVICH: No, Your Honor.

EXAMINATION

BY MS. FRESCH:

Q. Just one follow-up, Mr. Copperfield. Prior -- when you first learned that there was

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testimony by an individual, Ms. Esack, regarding the Seattle show in 2002, prior -- did you have any specific recollection of Seattle prior to looking at documents to refresh your recollection?

A. No. And, you know, we are -- we live in a connected world now. Everybody knows everything. Right now, I'm live across the world right now. We've got Singapore calling us. If I really believed -- if I knew of Ms. Esack or I remembered those things, I would not have sat here in front of you. It would be really stupid for me to sit here in front of you and say I know nothing, because immediately it's going to come out.

So I really wouldn't have done that. It would have been, you know, ridiculous for me to do that because of the reach of the internet the public has now. So, from my heart, you know, my -- my recall of those things is for real and true because I wouldn't put myself in that situation.

THE COURT: Any follow-up?

MR. MORELLI: Just one -- one question.

EXAMINATION

BY MR. MORELLI:

Q. Just so I understand, the reason that you are

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telling the jury that you are telling the truth is because you're on live camera, not because you took an oath?

A. No. I'm saying that I would --

Q. Let's assume that there weren't any cameras here. Then what?

A. It's nothing to do with the camera.

Q. Well, that's what you said.

A. No, we're on live TV right now. It's one of the many ways that we contact the world right now.

If I ever recalled anything about anybody getting hurt, I would obviously not say what I said because it's too easy to disprove in today's world. I know that if I -- if I had that thing in my mind, I would have taken -- you know, I would have said there's only two people that I know of that know this out of 100,000 people. I wouldn't have said there's nobody unless I really believed that there was nobody. If I knew there was somebody out there, you know, so --

MR. MORELLI: Your Honor?

THE COURT: Yes?

MR. MORELLI: The same follow-up.

BY MR. MORELLI:

Q. Mr. Copperfield, it sounds right, but if you don't keep any documents of people being injured and

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you don't keep all the videos, especially the video of someone who was very injured --

A. We try.

Q. -- it's not that easy to disprove what you say, with all due respect?

A. I don't understand what you mean.

MS. FRESCH: Argumentative.

THE COURT: Sustained.

That wasn't a question. All right?

Okay. Here, that's the next court exhibit in order. Now, for the next question, I have to clear the courtroom. Okay? Anybody who's not a juror, a party, or counsel for a party is -- is directed to leave the courtroom. This will just be a couple of minutes.

(Whereupon the media exited courtroom.)

THE COURT: All right. The next question is -- this is the last question.

Have you ever slipped, fallen, or tripped during the trick prior to Thirteen on your walk-around?

THE WITNESS: I haven't. I have not. I have slipped on stage. It was on a TV special. And we left it in the TV special. I walked up the stairs and tripped down the stairs during the live TV show. And I said, "I can make the Statue of Liberty disappear, but I can't walk up a flight of steps." And everybody

laughed. And we kept it in the show. So it wasn't on purpose. It was -- I had an accident.

THE COURT: Any follow-up?

MR. MORELLI: No follow-up, Your Honor.

MR. POPOVICH: No, Your Honor.

MS. FRESCH: No, Your Honor.

MR. RUSSELL: No, Your Honor.

THE COURT: All right.

That's the next court exhibit in order.

All right. The courtroom can be reopened, Bob.

(Whereupon the media entered the courtroom.)

THE COURT: That concludes the testimony of the witness. You may stand down.

THE WITNESS: Again, thank you. Thank you all very much. Thank you. Appreciate it.

THE COURT: All right. Plaintiffs may call their next witness.

MR. MORELLI: I think we should approach, Your Honor, for -- for a moment, Your Honor, if we can.

(A discussion was held at the bench, not reported.)

MR. MORELLI: Do you want me to do it on the record, Your Honor?

THE COURT: Yes. The question was whether the --what I said is that the plaintiffs may call their next witness.

MR. MORELLI: Yes. At this time, Your Honor, the plaintiff rests its case. We're going to just look and see if we have any documents to -- to offer, but, other than that, we rest our case. No further witnesses on the case in chief.

THE COURT: All right. Very well.

MR. MORELLI: Thank you.

THE COURT: Plaintiffs have rested their case in chief. And, accordingly, the defendants may now present their cases in chief.

MR. POPOVICH: Your Honor, we would request an opportunity to be heard outside the presence of the jury before we call our first witness.

THE COURT: Okay. Very well. Let's see. I think the jury can take a recess for -- what? -- about 15 minutes or so? Do you think that's going to be enough time?

MR. MORELLI: Yes. Would that be enough time for you?

MR. POPOVICH: Well, there's two things to be heard.

MR. ROBERTS: Three.

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MR. STRASSBURG: Four.

MR. POPOVICH: I agree with that. I agree that we should probably let the jury go for the day and --

MR. MORELLI: Because we only have till 4:45 today in any event. And, for the record, Your Honor, because I didn't put it on the record, we -- we -- we rest, but obviously, with what Your Honor said, subject to rebuttal witnesses that we have. Okay?

THE COURT: Reserving your right. Okay.

Here's what we'll do, ladies and gentlemen. As far as you're concerned, we'll be adjourning for the day and we'll reconvene tomorrow. As you know, tomorrow's going to be a -- a short -- a shorter day, as I recall.

MR. MORELLI: Yes, until 12:45.

THE COURT: Right. So let me tell you what the schedule will be next week. I know there have been some inquiries made about that. And it's hard to -- it's always hard to be certain about how much time a trial is going to take. And -- but in any event, for next week, I can tell you what the days are going to be and what the times are going to be. Okay?

We won't be in session on Monday the 7th. All right? Tuesday the 8th, 9:00 to 5:00. Wednesday

the 9th, 9:00 to 5:00. Thursday the 10th, 10:00 to 5:00. Friday the 11th, 1:30 to 5:00. Okay?

JUROR NO. 7: Okay.

JUROR NO. 8: And the following week, Judge?

MR. MORELLI: Excuse me, Your Honor. Did you say Thursday, 10:00 to 5:00?

THE COURT: That's what I said.

MR. MORELLI: Okay. Thank you.

MR. POPOVICH: Friday, 1:30 to 5:00.

THE COURT: Okay. Just so you know, the following week the Court will not be in session. Okay? That's the week --

MR. MORELLI: That's the 14th.

THE COURT: The week of the 14th. So that will give you an opportunity to get caught up with some of your things or whatever.

MR. DEUTSCH: Life.

THE COURT: We're trying to get this done as quickly as we can, but, as you know, this is a somewhat complex case. And I can tell you this: In my almost 20 years on this bench, I've received more written questions from jurors than in any other case. So I think that should put it in context for you.

JUROR NO. 8: Is that a good thing or a bad thing, Judge?

THE COURT: No. And the Court and counsel very much appreciate the questions. Don't get me wrong. I'm just pointing that out as a factor in the duration of the case. And it doesn't add to the duration, but it demonstrates that -- that the case does have a duration that can go beyond what we may have originally expected, not due to the juror questions, but -- but because of the issues that are --

MR. DEUTSCH: I feel like you should stop.

THE COURT: I'm not discouraged at all from the juror questions. Thank you very much.

And so, in the meantime, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Once again, you're directed to return to the outside of the courtroom just to the south a bit tomorrow, Friday, May 4th, 2018, no later than

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8:50 a.m. so we can resume at 9:00 a.m.

Thank you.

Counsel will remain, and we'll continue on.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

THE COURT: All right. You may be seated.

MR. RUSSELL: Your Honor, before we go on with the various motions, one thing occurred to me while we were talking about the schedule. I'm thinking ahead to kind of, you know, how much we have left. In the event we close Wednesday or Thursday, closing arguments are given Wednesday or Thursday, even though Your Honor will in the MSC, would you -- would the jury still be allowed to deliberate while you're in your MSC, and if you need to be pulled out at times --

THE COURT: Oh, yeah. If it gets to that, but I'm questioning whether we're going to get to that.

MR. RUSSELL: No, I understand. I'm just asking out loud.

THE COURT: We still have to settle jury instructions and everything.

MR. RUSSELL: No, no. I'm just asking aloud. To the extent that that was possible --

THE COURT: No, no. If it gets to that

point, yeah. I mean, I'm -- you know, and conceivably I could be here on the 14th itself. But I don't think -- I don't think it's going to come to that.

But one thing, we have one of the jurors who indicated previously that he's got a commitment on the 14th.

MR. RUSSELL: Right.

THE COURT: Okay. Monday the 14th.

MR. RUSSELL: Right.

THE COURT: So, I mean, you're talking about Friday the 11th; right?

MR. RUSSELL: Right, right. I was just asking in terms of your MSC. That was all.

THE COURT: No, no, no. Sure, I mean, if it gets to that point and the jury has it by then, yeah. Okay.

MR. RUSSELL: Optimism is always eternal, Your Honor.

THE COURT: And, you know, one thing that I would -- that I would like counsel to just -- I'm not -- I'm not saying which way I'm going to go on this, but, you know, this -- I'm just throwing the issue out, giving you a heads-up on what could be an issue in the case. And that is this jury also being involved in -- in any -- in any damages phase.

You know, sometimes in bifurcated trials we have a different jury than in the liability phase. And I don't know -- we told this jury they'd be done by tomorrow. So --

MR. DEUTSCH: Thankfully, they're not complaining yet. They seem very happy.

THE COURT: Maybe.

MR. ROBERTS: But, Judge, that's -- that's the very purpose of the motions that we're making now, to try to help you keep that promise.

THE COURT: All right.

Does anybody need a recess before -- before we hear the motions? Do you want -- do you need a recess?

MR. DEUTSCH: Obviously, we were just handed at least two. I don't know if there's others coming.

MR. ROBERTS: I have an oral motion.

MS. FRESCH: And I have an oral motion for one of my clients. And I've written --

MR. POPOVICH: So why don't we take ten.

MR. DEUTSCH: Okay. That's not going to be enough time for me to read all --

MR. STRASSBURG: Judge, you know, really, in the interest of fairness, maybe we ought to give everybody a chance to read this stuff and do it -- come

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in maybe early tomorrow morning and do it?

MR. DEUTSCH: No, because we have Baker tomorrow. We have Baker tomorrow morning. And we need the whole day because we're finishing at 12:30. So maybe we could --

MR. STRASSBURG: Okay. Ten minutes. Have it your way.

THE COURT: Ten minutes. Go through it, and I'll be back at --

MR. DEUTSCH: I'll zip through.

THE COURT: Do I get a copy too?

MR. POPOVICH: I was waiting for a break in the action.

THE COURT: Okay. We'll resume at 4:15. How's that?

MR. POPOVICH: Thank you.

(Whereupon a short recess was taken.)

THE MARSHAL: All rise. Come to order.

THE COURT: Please be seated. We are back on the record outside the presence of the jury. And I understand several of the defendants have Rule 50 motions to make.

MR. POPOVICH: Correct, Your Honor. And since I'm standing, perhaps I'll be first.

THE COURT: Okay.

MR. POPOVICH: I'll try to cut to the chase, Your Honor.

There's several allegations and theories under which the plaintiffs appear to be proceeding on a negligence claim against MGM Grand Hotel. The first would be basic premises liability for essentially permanent conditions of the property.

We believe that the testimony has shown that there were no holes, no cracks, no uneven pavement, things like that which would be appropriately a basis for that kind of argument.

There has certainly been talk about the ramp issue, but there's been no evidence at all that a ramp in that location is inappropriate. They certainly have not offered any expert testimony. And there's certainly no testimony or evidence before the Court that that ramp was in any way improper or illegally built or anything like that.

There is then the question of a foreign substance, arguably dust. That is a little different analysis. The foreign substance would be a notice issue for defendant MGM Grand. I believe, actual notice, there's been zero evidence that MGM knew that there was dust in the area. And I'm assuming dust here, not because I agree with it, but because I think,

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for the purposes of this motion, we have to assume the evidence as in favor of -- best favor of the plaintiff.

So it gets down to constructive notice of dust. We have evidence in the photos of Mr. Cox's clothing and shoes, which is evidence of dust, as well as the testimony of Mr. and Mrs. Cox, that at the time he fell, at the place he fell there was dust. There's been no testimony as to how long that dust was there. And I believe there needs to be, for plaintiff to meet that burden, evidence of how long it was there or some evidence that would reflect how long it was there.

All right. There is an allegation against the MGM stagehands, for which MGM Grand Hotel would be vicariously liable if any of them acted negligently. And I would argue there's zero evidence before this Court that any of them were, for instance, not in their post during the runaround for where they're supposed to be stationed.

I asked Mr. Carvalho and Ms. Pomai, both -- Ms. Pomai Weall, both of them, those kinds of questions, as they were there that night. And no indication that there was anybody out of position; anybody didn't have their flashlight; anybody wasn't directing the way they were supposed to be directing. And I would argue that, on a respondeat superior

argument for the activities of the MGM stagehands, there is no evidence of negligence in that regard.

Let me see here. Those are the three main theories, as I understand them. If the Court agrees and were to grant this as to Mr. Cox, the loss of consortium claim of Mrs. Cox falls with it.

If the Court has any questions about evidence, I'm happy to answer. But, in essence, that's it. The law and the law citations are in our papers to support these arguments.

THE COURT: Okay.

MR. DEUTSCH: Thank you, Your Honor.

THE COURT: Well, hold on just a second. There's one point to make, and that has to do with the fact -- I want to make sure I understand your contention to the lease would be to -- Beacher's, is it?

MR. POPOVICH: Beacher's leases from us. Team contracted with Beacher's to do the buildout; correct.

THE COURT: Right. So Beacher's is -- is in control of the premises where the fall took place. Is that your contention?

MR. POPOVICH: No.

THE COURT: Okay. I wanted to make sure.

MR. POPOVICH: Where the fall took place is MGM property, and we have responsibility for that if there is a defective condition of the property that is permanent in nature or a foreign substance if we had notice.

I don't believe just because there was dust on Mr. Cox's clothes, that means there was dust at that moment. But where is the evidence of how long it existed? I don't believe there is any.

Now, in anticipation of an argument we may hear, plaintiffs are probably going to argue that this was construction dust. I don't think you can make that assumption based on the evidence record before this Court. We don't know that.

And I -- I even harken back to a question of Mr. Strassburg's during an examination of Mr. King, where he said if somehow wind caused dust to be billowing up out of the dumpster, and that painted a picture to me that maybe if the dust that was on the clothes was short-lived, MGM Grand wouldn't have had actual or constructive notice of its existence.

THE COURT: All right. What I was referring to here, I just wanted to make sure I -- this is on page 7 of your motion. Line 24, it starts.

"It is undisputed that the area where

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construction work was being performed adjacent to the area where Mr. Cox was injured was being leased by Beacher's LV, LLC, hereinafter "Beacher's" from MGM at the time of the incident. So I just wanted to make it clear where it fell wasn't on the Beacher's leased premises.

MR. POPOVICH: I agree with that.

THE COURT: Okay. I just wanted to make sure.

MR. POPOVICH: I think it's inartfully phrased. Beacher's had a lease, but that was the interior space. This space was MGM Grand space.

THE COURT: Okay. I'm going to take these -- I'll take these one at a time, I guess.

MR. POPOVICH: Yeah. Thank you, Your Honor.

MR. DEUTSCH: Your Honor, obviously, we feel that the evidence looked at in the light most favorable to the plaintiffs, which it has to be in this case, clearly, there's been a case made out against MGM.

First off, MGM approved this trick. They knew that the trick was happening. They approved this runaround. They approved the route. They knew that people were going to be running in the dark over that incline.

Mr. Popovich noted that the incline didn't

have to be -- wasn't illegal. I don't think we have any burden to prove that the incline was illegal. We have to prove that it was a dangerous condition under the circumstances of what was happening that evening, which is that they were having people turn a corner, run over it, when they didn't know about it.

With respect to the construction with the dust, Your Honor, I think we proved circumstantially that the dust was there. There is evidence that MGM security guards that were put in by a number of people, that there are a ton of MGM employees around within minutes of this accident that should have, under constructive notice, seen the dust on the ground. There were pictures taken by MGM at the time -- or the night of the accident that show the dust on the ground, we believe.

MGM approved the route. MGM approved putting the construction dumpster in the middle of the route, knowing people were going to go by there, despite that it went against their own guidelines to not put construction dumpsters in the way of egress or exit doors.

You know, so all -- all of those -- Mr. Habersack himself -- thank you. Mr. Habersack himself agreed that a reasonable -- a prudent person

would warn someone of that incline if they were running around in the evening. And it's been clear that MGM, who was the person standing at that corner, didn't warn Mr. Cox about the incline as he was coming around that corner, and that there were no warnings made to Mr. Cox about that incline. And even the defendants concede that a warning -- the MGM Grand concedes that a warning should have been given.

So for all of those factors, Your Honor, we believe that a reasonable jury could find negligence against MGM.

THE COURT: One of the aspects of the motion here is on page 9. And the rubric on it says, "Plaintiffs claim against MGM for negligently hiring, retaining, or supervising also must fail." What's -- what's -- I'm going -- I'm asking counsel.

MR. DEUTSCH: Your Honor, I thought that one had been with -- already decided. I thought that that claim was already either withdrawn or part of a motion.

MR. CALL: That was my understanding.

MR. RUSSELL: That was part of the summary judgment.

MR. DEUTSCH: Yeah, it was part of the summary judgment motion.

THE COURT: So the plaintiffs -- so that

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claim no longer exists?

MR. DEUTSCH: Correct.

MR. MORELLI: I don't think it does.

THE COURT: Okay.

MR. DEUTSCH: For negligent hiring of the stagehands or anything like that.

THE COURT: Or the supervision or --

MR. DEUTSCH: Correct. Correct.

THE COURT: Okay.

MR. DEUTSCH: Yes, Your Honor.

THE COURT: So I don't need to grant the motion in part on that because it's not before the Court anymore; right?

MR. DEUTSCH: Correct.

THE COURT: Okay. Go ahead.

MR. POPOVICH: Mr. Deutsch references the ramp, as I knew he was going to. But the reality is, is all the evidence until Mr. Cox took the stand in this courtroom was that his slip as he started to turn had no interaction with the ramp at all.

So I believe the Court has the discretion to consider whether the new version of the incident, where Mr. Cox testified in trial that he began to feel like the -- like an elevator was coming up under him -- is, I think, the way he described it. That is brand-new

testimony. He was shown on deposition explaining it much differently. I think the ramp is a nonissue for this, Your Honor.

It's really about dust in his claim of area at essentially where he starts his turn. So I believe the ramp should be -- just set aside and not considered for this.

Pictures showing this. There's the one picture the plaintiffs have shown everybody. Not one witness has said "That looks like dust to me." The best testimony plaintiffs have gotten was "I can't tell." I mean, I guess the Court can look at the picture itself and --

THE COURT: And so can the jurors. Okay?

MR. POPOVICH: The dumpsters didn't block egress. Mr. Habersack very clearly said in his deposition -- and he explained it on the stand -- that he thought they should either warn or vet the -- the participants in a way that they could handle it. After being -- seeing opening statements, seeing the evidence, Mr. Habersack said in his testimony that he believed that they had been vetted in a way that satisfied him, as he had given the answer in his deposition. That's not evidence to support this.

The MGM stagehands standing at the corner, we

know from the Exhibit 402 videotape that the person was there and was illuminating the area with the light because you can see that on the bottom left corner of the surveillance videotape.

I don't think that is an -- an indication of an MGM stagehand acting negligently by doing their job the way they were supposed to do it. I mean, unless the Court has -- and we've already dealt with the negligent hiring.

So, Your Honor, if you have questions, I'm happy to answer them.

THE COURT: No, I don't. Under Rule 50, you can make this motion at the close of the plaintiffs' case -- or at the close of all the evidence, and you can also renew the motion. At this point, I'm going to deny the motion.

I believe that there are a lot of nuances and things involved in construing the testimony and the evidence, that the plaintiff should have an opportunity to present -- or to -- the evidence has been presented, but to, at this point in the event, keep the case intact.

MR. POPOVICH: Can I just inquire, is that on the premises side, on the MGM employee side, or all of it?

THE COURT: The entirety.

MR. POPOVICH: Okay. Thank you.

THE COURT: Okay?

MR. CALL: Your Honor, I'm --

THE COURT: You're going next?

MR. ROBERTS: I do, but ...

MS. FRESCH: We do.

MR. DEUTSCH: Everyone does.

THE COURT: David Copperfield, I think Backstage is joined. You didn't file a paper, did you?

THE CLERK: Yeah, they did.

THE COURT: Mr. Roberts, did he?

No, I was just asking if you submitted a motion.

MR. ROBERTS: No, Your Honor, I -- I just wanted to make an oral motion.

THE COURT: Right. I was going to allow Ms. Fresch to go first. I just --

MR. ROBERTS: Good.

THE COURT: -- was asking if you had submitted a motion.

MR. ROBERTS: I had not, Your Honor.

MR. DEUTSCH: It was equally surprising to me, Your Honor.

MR. RUSSELL: We like to keep you on your

toes, Adam.

MS. FRESCH: So I split the baby because I did one written motion for Mr. Copperfield as an individual; I'm doing an oral motion for DCDI, the corporation. So --

MR. DEUTSCH: Can you do one at a time, Elaine?

MS. FRESCH: Yeah. I was going to tackle the written one first.

MR. DEUTSCH: Okay.

MS. FRESCH: So plaintiff has -- as my papers state, plaintiff has sued Mr. Copperfield in his individual capacity. Mr. Copperfield is an employee and an officer of DCDI. The mere fact that Mr. Copperfield -- it's almost like if -- if he wasn't, quote/unquote, a celebrity, I truly doubt that they would have even sued Mr. Copperfield as an individual, because, technically, DCDI has a contract with MGM, DCDI hires -- or Backstage -- so Mr. Copperfield is acting in his capacity as an employee and/or an officer of DCDI.

He is not here as an individual. He did not work outside of the course and scope of his employment because the course and scope of his employment as an employee of DCDI that contracts with the MGM to put on

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the David Copperfield show, everything is within the guise of that. There's nothing here -- none of the evidence presented by plaintiff indicates that Mr. Copperfield did anything in his individual capacity.

The corporate law on -- with respect to officers and employees of corporations is quite clear. And I won't cite all of it in my -- which -- because I -- I briefed it in my papers -- deals with the fact that there's -- there has to be something more to show -- just the mere fact that someone's an employee of a corporation, that does not mean that they have individual liability because --

THE COURT: Well, doesn't it depend on what the nature of the employment is or agency or whatever?

MS. FRESCH: Well, but -- what did Mr. Copperfield -- Mr. Copperfield --

THE COURT: He's the one that designed this entire thing; right?

MR. DEUTSCH: Yeah.

MS. FRESCH: Well, he's not the only one that designed it, but he designed it as DCDI.

THE COURT: But he's the personality -- he's the personality in this entire thing; right?

MS. FRESCH: Well, he's the personality, yes.

He's the creative force. But does that mean anybody who's a creative force in a corporation should have individual liability?

THE COURT: It depends on what the nature of the business is, I would think. You know, this is -- this is -- Mr. Copperfield, according to the evidence -- okay? -- designed this entire illusion; right? And structured it, its format and everything else; right? So you're saying he can't have responsibility in the capacity as an employee for that?

MS. FRESCH: Well, what is it about the design of the illusion? Because you -- there's two aspects of the illusion. There's --

THE COURT: He designed the configuration and the running of the illusion. When I say "running," I'm talking about operation of the illusion.

MS. FRESCH: Correct. Well, that's not just him alone. And there's nothing to show that just because -- again, I think we go, well, yes, he's employed by DCDI, he creates an illusion. He works with other people to develop that illusion and everything about it, which would include the runaround portion of the Thirteen.

But, again, he's under DCDI. So it would be like saying I'm an inventor of something and I would

have individual liability because I invented something for Microsoft?

THE COURT: What if you're a truck driver working for a company? You can't be held liable for an accident that you might cause or whatever?

MS. FRESCH: Well, you can, but, Your Honor, I cited the thing -- it's possible, but I don't think here that the evidence shows that. And I cite the case of -- excuse me. Hold on. Let me -- the Griffin case, and to say with regard to personal fault, "Personal liability cannot be imposed upon an employee simply because of his general administrative responsibility for performance of some function of the employment."

And that's to create new illusions. That's to put on the David Copperfield show. But there's nothing here. Mr. Copperfield's in the front of this illusion; Mr. Copperfield is not in the back on the runaround. Mr. Copperfield is out on stage the entire time.

So -- and if there's -- all the testimony was about all the protocols that are put into place, about all the screening processes, about how the illusion is supposed to be run, how it's supposed to be run in the back, and he's out front. On the night of Mr. Cox's fall, he's not back there accompanying Mr. Cox as he

went on the runaround; he's out front.

There's nothing to show that he would have individual liability. Again, he's a corporate officer and he's a corporate employee. There's nothing to show that he, separate and apart from that capacity, would have individual liability here.

If he was out in the back pushing Mr. Cox from behind, Mr. Copperfield pushing him along, something like that, that would be the same thing as the truck driver, the truck driver doing something individually directly to, like -- to ram into somebody's car, for instance.

Okay. That's not this case. Mr. Copperfield is over here; Mr. Cox is way over there. There's no -- just because of the fact of the creation of the illusion itself, there's nothing to show that there was individual negligence on his part.

THE COURT: And I'm not saying that there was negligence; I'm just speaking conceptually. Okay? What about designing something that's dangerous, I mean, and then operating it?

MS. FRESCH: Well, I don't believe there was any evidence to show that there was a -- a --

THE COURT: Well, the plaintiffs' contention is that it is in the way that it's configured and

operated and everything else. Okay?

MS. FRESCH: Right. But I don't believe the evidence that has been presented this -- at this level, at this time, by plaintiff in their case in chief establishes that there was any kind of, quote/unquote, dangerous design overall with respect to how it was to operate.

Now, if plaintiff is -- I don't -- I dispute there was anything wrong done that night completely.

THE COURT: And I'm not saying that there was anything wrong. I'm just applying the rule and the standard applicable under the rule.

MS. FRESCH: Right. But I think there -- it's kind of apples and oranges. You can talk about Mr. Copperfield and going, oh, yeah, he was the -- the magician. He's the creative force on the design and it includes the way it does overall scheme. But then you have to get past that and go, okay, on that night in question, is there something that Mr. Copperfield did as an employee, as an officer of DCDI, that particular night that created something that caused Mr. Cox to fall?

I -- that's not here, because, otherwise, if -- we might as well then wipe out corporate law and we might as well -- because --

THE COURT: I'm looking at your cases that you cite. And, now, I think you've quoted from one already, and it's Booty v. Shoney's, Inc., which is a Louisiana case.

It says, "With regard to personal fault, personal liability cannot be imposed upon an employee simply because of his general administrative responsibility for performance of some function of his employment. He must have a personal duty towards the injured plaintiff, breach of which specifically has caused the plaintiff's damages." Okay?

And, of course, that's a Louisiana case, but the word "simply" jumps out because I think that the contention by the plaintiffs is -- right? I think they're contending that it's not just simply. Okay. It goes beyond simply in this -- in what's involved in this case. At least that's my understanding.

MS. FRESCH: Right. But I think it's --

THE COURT: And then the other case you cited is that one, Griffin v. Dolgen, which is the one that you've been referencing, and that talks about a saddle store manager. That's a Mississippi case. And I'll quote from your brief here.

It says, "To saddle" -- oh, I'm sorry. It's not a saddle store manager; it's "to saddle a store

manager." Okay. I -- I was thinking of the Rowel. There used to be a store here called the Rowel, and it was a -- saddles and all kinds of western stuff.

MS. FRESCH: I was thinking that somehow we were so clever that we got, like, equestrian about it.

THE COURT: Okay. I'm sorry. I misread it. Okay?

It says, "To saddle a store manager with personal liability in a case such as this where there is no evidence that the slippery substance on the floor is attributable to an act of the manager would essentially make the store manager the personal guarantor of each customer's safety. This Court is of the opinion that liability, if any, more properly belongs to the store owner, who is in a better position, through protection such as insurance, to bear the cost of such suits."

Okay. I'm sorry about the saddle.

MS. FRESCH: No, no, no.

THE COURT: Maybe it was a grocery store. I don't know.

MS. FRESCH: Your Honor, I also think it is similar to knowledge about anyone who develops a product. The fact that later someone sues about the product having some kind of defective design, you don't

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sue the employee who helped design that product. You sue --

THE COURT: Well, it's not really a product here. It's --

MS. FRESCH: Well, but it's a similar -- but when we're talking about --

THE COURT: Operation.

MS. FRESCH: But we're talking here -- again, I think for an employee -- these cases support the fact that if you're going to be an employee, you have to do something, you yourself, that created or caused that person to suffer an injury directly. It's not here.

Again, Mr. Copperfield's out in the front. Mr. Copperfield -- if something went askew -- and I don't, by any stretch of the imagination, concede -- because I don't believe anything went askew that night. But let's just say something went askew. It's not Mr. Copperfield. He's not back there. He is out front performing in front of people.

So, yes, he created -- he partly created the illusion. He is the main talent. I'm not going to -- like, we know it's Mr. Copperfield. But that does not put individual personal liability on him for someone who suffers an injury at any time while they're an audience -- in the audience watching the show or

participating in an illusion.

There has to be something more, that somehow Mr. Copperfield that night did something, told everyone, "Go run, run tonight. Break protocol. Go run," or yelled at Mr. Cox. Nothing -- nothing like that happened. There's nothing to attribute that Mr. Copperfield, that night, in his capacity as an employee of DCDI, did anything that led to the -- to the injury of plaintiff here.

And I believe that's necessary, because, otherwise, every employee of a company technically -- and any officer of a company -- would automatically have liability for anyone that's injured. You know, that would be like the guy who's an owner of -- the president of Kmart would be personally responsible every time someone slipped and fell at their -- at the Kmart, if Kmart even existed anymore.

MR. STRASSBURG: Actually, it does.

MS. FRESCH: Does it?

So -- but that would be -- it would be the same thing. It's like, yeah, they know the way the store was put together, they know, okay, here's all the aisles. They know what they are. But that -- you don't go and sue the president of Kmart just because someone slipped and fell at the Kmart. You would sue

Kmart; you do not sue the president because you would have to show that the president was there or the employee actually did something, saw water on the ground and went "Oh, too bad," and watched someone slip.

That's not the case here. He's -- he should not be in this case as an individual.

THE COURT: What's the evidence, from your standpoint, as to his awareness of the route and walking the route?

MS. FRESCH: Are you referring in terms of just, in general, for the Thirteen Illusion?

THE COURT: Right.

MS. FRESCH: Well, I mean he's aware of the route, yes. Yes, he's aware of the route. He's -- his testimony is that, from his -- what he does is he's part of the screening process. And all evidence by Mr. Cox, because Mr. Cox said he could run, Mr. Cox was happy to be participating, Mr. Cox even said he was enjoying himself, even though he was -- he claims he was running on the route before -- sorry. That was very sudden.

THE COURT: Say the last part, what you were saying again. The route.

MS. FRESCH: For the route, Mr. -- the

testimony by Mr. Cox himself is that he said he could run. He did not have any trouble running on the route. He does claim that he was told to run, yes. But, again, that would be -- Mr. Copperfield says there's no requirement that anyone run.

THE COURT: You were talking about Mr. Copperfield's walking the route ahead of the show.

MS. FRESCH: Oh, oh, I'm sorry. I thought you meant the earlier illusion that he walks. Well, what's the evidence? He walked the route. He -- no one has refuted his testimony that he -- for the earlier illusion -- I'm just making sure there's no cameras. Sorry.

That he did -- we saw it on the video ten minutes before. There's nothing to show, even from that video, that there was anything on the ground. He testified he didn't see anything on the ground. If he had seen something on the ground and been put on notice of any type of situation, he walked it himself, he didn't slip that night.

So -- so there's nothing to show that he, on his -- that did anything that would have led to Mr. Cox falling, because he walked it, he did his inspection, he did his part, if you will. There's nothing -- no evidence that -- excuse me -- there's no evidence that

Mr. Copperfield, by that, missed something and didn't see something, like, you know, "Oh, here, let me dump some dust on the ground."

There's nothing that -- and we even have part of the tape showing that he's basically moving quite quickly through there to get through the door. And he does that, and he's looking at the ground. So I don't see how that implicates him because there's no evidence from that that somehow he was aware.

Now, if he saw something, and he goes, "Yeah, I did see a whole bunch of dust on the ground and I didn't do anything about it," yeah, then he would, as an employee, potentially have --

THE COURT: It's not just saw; it's either he saw it or should have seen it. Right? I mean, isn't that --

MS. FRESCH: But -- but what would he -- he said he didn't see anything. There's nothing to refute that he did see something that he -- so there -- it's like this hypothetical, well, we think there was dust on there, so we think you should have saw it. Well, he didn't see it. I don't know what else to say. You can look -- I don't see how you -- I don't think there was dust on the ground beyond the normal dust that -- I don't know, like, there's dust on this ground here in

front of us.

MR. DEUTSCH: That's because Roger poured it on the floor.

THE COURT: Okay. All right. Thank you.

Counsel?

MR. DEUTSCH: Your Honor, I think that it's -- the -- the exact same arguments with respect to Mr. Copperfield were made on summary judgment. All of the evidence that was proffered that was going to be submitted for -- in the summary judgment motion has now been brought forth in court. Your Honor referenced most of it.

He designed the trick. He was personally part of the people who designed the trick. He personally did an assessment of these people personally. So if he did not do a good assessment, that could be on him personally. He personally went -- did the runaround. He personally knew the route. He's the one who put them in the situation to go do this thing. Nobody came to see a DCDI show; they went to see a David Copperfield show.

And it is clear from all of the evidence, Mr. Copperfield had the right to hire and fire. Mr. Copperfield used the Backstage employees for his personal use other than anything having to do with

DCDI. He designed the trick. He owns the trick himself. He changed the trick to make it his own. He's the one who developed all of this.

So, clearly, there is plenty of evidence to suggest that David Copperfield is on the hook personally. He -- he personally inspected the route earlier that night.

Okay. So, based on all of that, Your Honor, I think it's clear that Mr. Copperfield is -- is personally on the hook here.

THE COURT: All right. Last word on that.

MS. FRESCH: Okay. Just going to the personally inspected the route. Again, an employee who's obligated -- personally inspects the route, there would have to be evidence that he did something -- that he missed on the route.

There's been no evidence to establish that Mr. Copperfield saw something on his route in the earlier illusion that would lead to go beyond just an employee within the course and scope of their -- their obligation. Again, it goes back to simple corporate law and employees. It does not go beyond.

Again, the fact that Mr. Copperfield is Mr. Copperfield, it's still DCDI is the contracting party with MGM to put on, quote/unquote, a show called

David Copperfield. It can't just be because he is a celebrity, because then every celebrity out there, regardless of who's the contracting party, whether it's Oprah Winfrey with Harpo or any of those things, you -- you don't just say because they're a celebrity that they're not -- the corporate law of this state -- or, actually, of the nation -- would somehow not be relevant because they're a celebrity. That's not just how the law works.

And, again, the personal inspection, there's no evidence that they presented -- and Mr. Cox was quite capable. There's no evidence to say that he wasn't able to run. It's not like he said, "I didn't -- nobody asked me to run." They -- no one asked him if he could run, I should say. There's nothing to show he had physical limitations. And anything that Mr. Copperfield did on the -- in terms of the screening process because Mr. Cox said "I was okay running." So he was -- he met the -- the standard of who could go on this illusion. Thank you.

THE COURT: All right. Thank you very much. You make some excellent points. But I'm not the trier of fact here. And in applying the appropriate standard under -- standard under Rule 50, I'm going to deny the motion. And, again, that's without prejudice to

renewal of it after the close of all the evidence.

But you've made your record on it. I believe, under the standard that's applicable, that the motion should be denied. Okay.

MS. FRESCH: Okay. So, now, popping up again. Sorry.

I'll just -- because I was going to make an oral motion as well under Rule 50 for DCDI, that I -- I don't believe that there was any -- plaintiffs haven't established that DCDI, who is the contracting party with MGM, that there's anything -- and it goes again for what -- that evening, there's no evidence -- I mean, it really is similar to the arguments that Mr. Popovich made already with respect to just the allegations and the complaint. I don't want to burden the Court by going through all of them over again.

THE COURT: No, that's fine. I understand. I appreciate it. And, again, that's denied as well for the same reasons. Okay?

So, now, Mr. Roberts, I think Backstage.

MR. ROBERTS: Yes. Thank you, Your Honor.

THE COURT: You're making an oral motion. You haven't filed a written motion; right?

MR. ROBERTS: I have not filed a written motion, Your Honor. I'm just going to make this

orally. And may I approach, Your Honor?

THE COURT: Sure.

MR. ROBERTS: What I've got is I've just got two cases for the Court. And although we would like to move for judgment as a matter of law based on the failure to meet all elements of the prima facie case, what I'd like to focus on right now is the failure to meet their burden of proximate causation or failure to prove that any of these alleged conditions caused Mr. Cox's fall.

And the two cases I provided the Court are older, but they are remarkably similar and support this Court taking the case from the jury now that they've rested their case without proving causation.

The first case I would like to discuss is Rickard v. City of Reno, 288 P.2d 209. It's a 1955 Nevada Supreme Court case.

And, in this case, there was a fall on a sidewalk. And the theory of causation is that there was a depression in the sidewalk. And, due to recent cleaning operations, there was a material which had settled into this depression which was black and slimy. So the plaintiffs' theory was that the depression caused her fall and she slipped -- and it was made slippery by the material at the bottom of the

depression. The combination of the incline and the slippery material caused her to fall. Sounds very familiar; right, Judge?

Here, there's a claim that slippery floor caused by dust combined with an incline in a sidewalk, very, very similar. And, in this case, it's also on point as to how the plaintiff thought the material was there because what she said -- and, Your Honor, this is right at the bottom of page 269, which is at page 2 of the Westlaw printout.

"How did you know the sidewalk was dirty?"

She replied, "When I got up from the fall, I had a black substance on my coat and I also had something on the inside of my right shoe."

So she's relying on the material on her clothes just like Mr. Cox. The plaintiff stated that she fell forward, "My feet went out from under me, and I fell flat on my nose. I had a sensation of shock."

So, Your Honor, if you could then turn to page 3, where the court talks about the law and --

THE COURT: I see it cites City of Paducah v. --

MR. ROBERTS: Correct. "A dangerous or unsafe condition will not be presumed from the accident alone."

THE COURT: I see the Paducah v. McManus. My mom's from Paducah.

MR. ROBERTS: So the --

THE COURT: It's the first time I've seen Paducah cited in a case.

MR. ROBERTS: So the Court is familiar with the holding. The mere fact that you slip doesn't give you a case. It doesn't prove your case by proving that you slipped and fell. There has to be proof of not only the defect. In this case, there's a depression, and the court never has to reach whether that's a defect at the depression because there was no evidence the sidewalk was slippery at the point that she fell. None of the witnesses testified that the sidewalk was made more slippery by this substance.

In this case, what we've got is Mr. Cox saying "I think there was construction dust on the floor. I didn't realize it at the time, but then I believe the construction dust made me fall because I had dust on my clothes. So the dust must have been on the floor, and that must have made the floor slippery. And that's how I realized that I must have fallen because I slipped on the dust."

The dust was not preserved. There is no testimony by anyone, including Mr. Cox, that that dust

on the floor made the broom-finished concrete outside more slippery. There's a complete absence of evidence that the dust made the floor more slippery. In fact, Your Honor, there's a complete absence of evidence as to why Mr. Cox fell other than sheer speculation of Mr. Cox.

So he talks about "I'm in a hurry," so he's running on a sidewalk. There's nothing negligent or a breach of the standard of care about running on a sidewalk.

He says that it was dark outside, but he testified that he never looked at the ground, and therefore he can't say if he could have seen the ground.

At page 63 on May 1st of 2018, "Yes. At any point once you were outside, was it too dark to see the ground?"

"ANSWER: I don't remember looking at the ground.

"QUESTION: So as you sit here today, you don't remember or don't know if it was too dark to see the ground?

"ANSWER: I didn't have -- I didn't think -- I knew the ground was there, but I didn't specifically think if it was too dark to

see the ground."

Okay. So he says it's dark, but yet he says he never looked at the ground. So that can't be the cause. He couldn't even testify it was too dark to see the ground if he'd looked. So it's not running, because that's not a breach of the standard of care. It can't be it's too dark. There simply is no proof of why he fell other than his testimony in court. They've got no --

THE COURT: Was there testimony adduced that dust can be a dangerous condition?

MR. ROBERTS: Yes. There was testimony of that, and it was by Mr. King.

THE COURT: And Mr. Cox testified that he slipped right on dust -- right? -- or words to that effect?

MR. ROBERTS: No, he only said he slipped. He slipped and, at the time, he didn't know why, but then when he saw his dust on the clothes, he realized he must have slipped on the dust.

THE COURT: Circumstantial; right?

MR. ROBERTS: Well, yes. But there is another case from the Nevada Supreme Court that --

THE COURT: Well, let me ask you a question first before you get to this other case. I'm looking

at the one, Rickard v. City of Reno, that cites the Paducah case.

All right. The language is interesting. It says, "Assuming, then, an unsafe sidewalk condition and plaintiff's forward fall at the place of such unsafe condition as proved facts" -- okay? -- assuming an unsafe condition.

MR. ROBERTS: Yes.

THE COURT: -- "it is appellant's contention that the jury would have the right to draw the inference that such unsafe condition was the proximate cause of her fall."

Then it goes on to say, "A dangerous -- in City of Dayton v. Fox" -- another -- I guess this is still quoting -- this is another Kentucky case, I guess -- "a dangerous or unsafe condition will not be presumed from the accident alone, and the mere fact that a pedestrian slipped and fell upon the sidewalk is insufficient to warrant a recovery unless it is shown that the condition of the sidewalk at the place was necessarily dangerous or unsafe for pedestrians when in the exercise of ordinary care for their own safety and that the unsafe condition was the proximate cause of the injury."

So that language is somewhat confusing

because, apparently, they're starting off -- the Court is starting off with the assumption there's an unsafe sidewalk condition and that plaintiff's forward fall of such unsafe condition as proved fact. They're assuming that as proved facts.

MR. ROBERTS: And that's why I said that that -- the Court never really reached the issue of whether it was a dangerous condition because they said, "Even assuming it's a dangerous condition, there's no proof the dangerous condition caused her fall." The mere fact that she says "I fell, and I happened to have the dirt on my clothes," doesn't mean that the depression in the dirt caused her fall.

THE COURT: Did she describe in this case -- I haven't read the case -- you just gave it to me -- I haven't read the entire case. Did she describe what happened?

MR. ROBERTS: Yes. Here --

THE COURT: Or did she just say she fell?

MR. ROBERTS: She basically just says she fell.

THE COURT: Well, Mr. Cox is saying, isn't he, that he felt a certain type of movement or whatever caused him to go to the left or whatever?

MR. ROBERTS: He -- the plaintiff in this

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case simply said, "My feet slipped out from under me and I fell."

Mr. Cox says, "My feet slipped out from under me and I fell, that my feet went in the air off the ground, they slipped out from under me, and I fell."

THE COURT: Okay.

MR. ROBERTS: But there is no evidence of why he fell. Why did he do that? He doesn't know. He didn't testify to that. There's no expert looking at the mechanism of the fall. There's no testing of the concrete dust to see if it's more slippery than a sidewalk or less slippery with the dust on it.

And that's where the other case comes in that I've handed Your Honor. And that's the -- the Asmussen -- I don't know if I said that correctly, Asmussen.

MR. DEUTSCH: Is that your name, Lee? Lee, is that your nickname?

MR. ROBERTS: It is now.

392 P.2d 49. And, in this case, they -- they took this away from the jury too, Your Honor. And it goes to the issue of the dust.

In this case, there was an invited guest in the lobby of a hotel. Her foot slipped from under her, she fell to the floor and was injured. While on the

floor, she saw that the linoleum was very heavily waxed. The wax was lying on top rather than being buffed in. And what the Court said --

THE COURT: It says -- then it goes on to say "no wax rubbed off on her clothes."

MR. ROBERTS: Correct. But I don't think that's relevant to the holding, because the holding is over here in the next column on page 2 of the printout in the last paragraph.

And the Court says, "We are asked to infer a basis of liability from the mere observation of the plaintiff that the floor was heavily waxed and not buffed in. It would be manifestly wrong to allow a jury to infer that an improper wax was used when the record is silent on that point. For the same reason, the fact-finder should not be permitted to speculate that the wax used should have been buffed, rubbed, or polished. We do not know whether buffing, rubbing, or polishing increases slipperiness or lessens it, whether it is for beautification or safety, nor would jurors be expected to have such knowledge. We therefore conclude that it is impermissible to infer that an unbuffed waxed floor is dangerously slippery. To do so" --

THE COURT: So you don't think that that language, "no wax rubbed off on her clothes," makes any

difference --

MR. ROBERTS: It --

THE COURT: -- to what they -- how they saw it?

MR. ROBERTS: It does not because what they said is it's beyond the province of a jury to know whether or not the fact the floor was unbuffed made it more slippery or dangerously slippery.

THE COURT: But they do emphasize -- or I -- I shouldn't say "emphasize" -- they do point out no wax rubbed off on her clothes, as if wax had rubbed off on her clothes, maybe that would have made a difference.

MR. ROBERTS: They do point it out, but how could that have made a difference to the holding, because the holding is there's no evidence in the record that the wax made the floor slippery. And jurors can't speculate on that.

Here, there's no evidence in the record that the dust on the concrete would have made the concrete slippery. We -- we've got Mr. King, who's the only person on this issue. And he's got a job meeting safety minutes which says anything on a floor can be a slip hazard.

Well, we all know that -- you know, glue on a floor -- I don't know, Your Honor. It's a very

overbroad statement which can't be extrapolated to this dust. If it comes to this dust, he says even a thin layer of dust can make some surfaces slippery. And he defined those surfaces as polished stone. And he specifically said that this broom-finished concrete with a rough surface outside that's porous was not the kind of surface, in his opinion, that a thin coat of concrete dust would make slippery.

THE COURT: All right.

MR. ROBERTS: So -- so the jury -- there's -- they haven't proven causation, Your Honor. And -- and that's why the Court has to take this away from the jury.

THE COURT: Okay. Thank you.

MR. DEUTSCH: Your Honor --

MR. ROBERTS: And -- and then one final point, page 89, "Do you know which part of your foot slipped? Was it the toes? Was it the heels?"

"ANSWER: I don't know. Sorry."

So he -- he doesn't even know the mechanism of injury. The jury would just have to speculate, Your Honor. And that's impermissible.

Thank you.

MR. POPOVICH: Before Mr. Deutsch argues again, Your Honor, with the Court's permission, MGM

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife,	) Supreme Court No. 76422
Appellants,	) District Court No. A-14-705164-C
vs.	)
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC,	)
Respondents.	)

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THE COURT: Beg your pardon?

THE CLERK: 413 is already in.

MR. STRASSBURG: Yeah. But 413 is big; right? I just thought I'd pull this out and make one, if that's all right.

THE COURT: So it would be -- this will be identified as what now?

MR. STRASSBURG: 559.

MR. POPOVICH: No objection.

MR. ROBERTS: No objection.

MR. DEUTSCH: No objection, Judge.

THE CLERK: What Bates stamp number?

THE COURT: It's Exhibit 559; right?

MR. STRASSBURG: Correct, Judge.

THE CLERK: Okay.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 559 was admitted into evidence.)

MR. STRASSBURG: Do you have the dust? I'm almost done.

THE WITNESS: However much time you need.

BY MR. STRASSBURG:

Q. Now, are you familiar with the term "track out"?

A. Yes.

Q. And -- and what is that?

A. For the tracking out of the materials from the jobsite, dust, debris. So ...

Q. And how is dust and debris tracked out?

A. You walk through it, you push equipment through it. On large jobsites outdoors, you'll usually see trucks get it all over the road like down by the stadium right now. And they just sit there constantly with street sweepers and try to clean it out. And that's track-out.

Q. And is one of the functions of this plastic mastic to deal with it?

A. Yes.

Q. How?

A. It prevents track-out from getting on the carpet.

Q. Okay. So, for example, if there was dust --

MR. POPOVICH: Your Honor, can we have a representation of what this -- what's going to happen here before it does.

THE COURT: Yeah, show it to counsel.

MR. STRASSBURG: You don't like surprises.

MR. POPOVICH: I don't. I really don't.

MR. STRASSBURG: It's --

MR. MORELLI: Except on your birthday?

MR. STRASSBURG: It's not obvious?

MR. MORELLI: It's like the old vacuum cleaner ads.

BY MR. STRASSBURG:

Q. So can you identify what I'm holding here as dust?

A. Okay. Yes.

MR. DEUTSCH: Taste it.

THE WITNESS: I don't want to taste it.

BY MR. STRASSBURG:

Q. All right. And so when there's dust --

MR. MORELLI: Your Honor, the jury wants to see, but they're too far back.

MR. STRASSBURG: I wonder if they wouldn't mind standing up.

JUROR NO. 8: It's the wall.

MR. STRASSBURG: Could I move for a jury view, that they come down here?

THE COURT: Yes.

MR. STRASSBURG: I'll protect them from me with this.

What? I'm not done yet. I'm just saying. All right? All right.

BY MR. STRASSBURG:

Q. So the way track-out works, isn't it, is that

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when dust adheres to a worker's shoe -- right?

A. Yes.

Q. -- it tracks out, right, as he walks?

A. Correct.

Q. And the function is to protect against that; right?

A. That's correct.

MR. STRASSBURG: Gary, can I -- can you grab one of the boards?

BY MR. STRASSBURG:

Q. So would it be your expectation -- remember when you gave that testimony about excessive dust?

A. Yes.

Q. Would it be your expectation that dust, as you put it, excessive enough to be a slip hazard, would leave track-out?

A. Yes.

Q. And the track-out looks like (indicating). So that's what we are talking about here. That is the track-out; correct?

A. Yes.

MR. DEUTSCH: Your Honor, I would just object that this track-out on this sticky Saran wrap does not represent the same as it would if someone was walking on concrete through that walkway or on some other

surface.

THE COURT: You're going to have an opportunity to redirect.

MR. DEUTSCH: Okay. Sure.

MR. STRASSBURG: We'll just take a quick picture. You can all sit down.

JUROR NO. 8: Counselor, break.

MR. STRASSBURG: I have a jury request for a break.

THE COURT: Okay. Are you about --

MR. STRASSBURG: I'm done.

THE COURT: You're done? Well, let's make the record on that.

MR. STRASSBURG: Yes, sir.

Can you help me there, Gary? Can you help me?

MR. DEUTSCH: Can you leave it there, actually?

MR. STRASSBURG: Whoa. Whoa. Roll it up.

THE WITNESS: Do you want me to help them?

MR. DEUTSCH: You know, you can take it out. Don't worry about it.

MR. STRASSBURG: I can do it again.

MR. DEUTSCH: That would be great.

THE WITNESS: Watch the dust.

MR. DEUTSCH: Oh, you're spilling. You're spilling.

MR. STRASSBURG: We'll pick this up during the break. I promise, Judge.

THE WITNESS: That's what we deal with.

THE COURT: Do you have any further questions?

MR. STRASSBURG: No.

THE COURT: You pass the witness, then? Okay. We'll take a break now, reconvene in -- what? -- 15 minutes. Let's make it 10 to 11:00. Okay?

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom at 10 to 11:00. Okay?

(Whereupon a short recess was taken.)

THE MARSHAL: Come to order. Department 13 is back in session.

(The following proceedings were held outside the presence of the jury.)

THE COURT: All right. We're back on the record outside the presence of the jury.

Mr. Roberts, I understand you have something to address?

MR. ROBERTS: Yes, Your Honor. Thank you. Thought it would be easier to address it now than at the bench conference because I did confirm that Mr. Deutsch would object again.

It deals with the witness's prior testimony. And the Court sustained an objection, but I thought it may have been in the way the question was worded.

In his direct with Mr. Deutsch, page 209 in the transcript.

"QUESTION: Okay. And that anything left lying around on the ground can become a slipping or tripping hazard. Would you agree with that?

"ANSWER: Yes.

"QUESTION: And that's even if it's a very thin layer of dust could also be a slipping hazard; true?

"ANSWER: True.

"MR. POPOVICH: Objection. Speculation. May call for expert testimony.

"MR. CALL: Joined.

"THE COURT: He can state his understanding.

"QUESTION: Would you agree with that?

"ANSWER: Yes, on excessive dust.

"QUESTION: Okay. Well, forgetting about excessive dust, if you have even a thin layer of dust on the ground, would you agree that that can become a slipping hazard?

"MR. STRASSBURG: Objection. Asked and answered.

"MR. CALL: Objection. Foundation.

"THE COURT: Overruled.

"THE WITNESS: Depending on the flooring, yes."

So the witness was allowed during direct to state --

MR. DEUTSCH: Hold on. You should ask the witness to step outside.

Fair enough?

MR. ROBERTS: Fair enough.

But now he's not going to know the answer, Judge.

THE COURT: Okay.

MR. ROBERTS: So --

MR. MORELLI: That's true, but ...

MR. ROBERTS: So the witness was allowed to state his understanding that even a thin layer of dust on the ground could be a slipping hazard depending on the flooring. So what I would like to ask him is, "Okay. You said it's your understanding a thin layer of dust can be a slipping hazard depending on the flooring. Are you familiar with the concrete where the -- outside that door where the dumpster was? Are you familiar with the type of surface that is? Is that the type of surface you were referring to, where even a thin coating of dust" -- and just ask him his understanding.

THE COURT: Okay.

MR. ROBERTS: Thank you, Judge.

MR. DEUTSCH: I don't think that that's an improper question.

THE COURT: Okay. Let's have the witness brought back in and let's have the jury brought back.

Anything else?

Anything else?

MR. POPOVICH: Well, I think Mr. Strassburg wants to reopen and continue questioning.

THE COURT: Okay. Anything else, though, before the jury comes in?

MR. POPOVICH: No.

MS. FRESCH: No.

THE COURT: Okay. All right. Let's have the jury brought in.

(The following proceedings were held in the presence of the jury.)

THE COURT: You may be seated.

Do counsel stipulate that the jury is now present?

MR. MORELLI: So stipulated.

MS. FRESCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

THE COURT: All right. The witness has retaken the stand.

And I understand, Mr. Strassburg, you have some more questions to ask.

MR. STRASSBURG: Judge, my partner reminded me of some things I messed up and left out. So let me -- let me do what I should have done other than mess up the dumpsters.

BY MR. STRASSBURG:

Q. Now, the plastic mastic that we used -- or at

least I tried to use -- that's why you don't let lawyers on jobsites; right?

A. If you ever want a job.

Q. Huh?

A. If you ever need a job.

Q. Well, I don't know. I think I'll keep my day job, this one.

Can you touch this and tell me, is this the level of stickiness that the mastic would have on a jobsite?

A. Yes.

Q. Okay.

MR. STRASSBURG: Judge, I'd request permission to let the jury touch the mastic.

THE COURT: You may.

MR. STRASSBURG: If they want to.

JUROR NO. 8: Sure. Why not.

MR. STRASSBURG: Oh, don't be shy.

Anyone else? Anybody want seconds?

BY MR. STRASSBURG:

Q. All right. Now, in preventing track-out, does the stickiness of the mastic have a function?

A. It keeps the plastic to the carpet.

Q. So it sticks the plastic to the floor; right?

A. Yes.

MR. DEUTSCH: Objection.

THE COURT: Sustained. Leading.

MR. STRASSBURG: I thought it was summary, but okay.

BY MR. STRASSBURG:

Q. And the stickiness that's on the top of the plastic -- not the part that sticks it to the floor, but the stickiness on the top -- does that perform a function when people with dirt on their shoes walk across it?

MR. DEUTSCH: Objection. Foundation, Your Honor.

THE COURT: I'll allow it.

MR. DEUTSCH: I don't know if there's stickiness on the top.

THE COURT: Okay. I agree.

BY MR. STRASSBURG:

Q. Is there stickiness on both sides?

A. I -- we only use it to stick down to the carpet to prevent foot tracks on the carpet.

Q. All right. And when people walk on it, does the surface they walk on of the plastic pull the dust off their shoes?

A. It tracks out as if it was a material like carpet or any other material that would take the dust

off of your shoe as you walk.

Q. Yeah. And that's the function of the stickiness -- right? -- to pull the track-out off the shoes?

MR. DEUTSCH: Objection, Your Honor. That's not what he said.

THE COURT: I'll sustain the objection.

Pose it in a nonleading --

MR. STRASSBURG: Sure.

BY MR. STRASSBURG:

Q. Explain the function of the stickiness on the top, then.

MR. DEUTSCH: Asked and answered, Your Honor. He said it was to stick it to the carpet.

THE COURT: Overruled.

THE WITNESS: We always use it to stick to the carpet. We never intend it to be -- that material, that roll, to be used as a -- something to absorb the dirt --

BY MR. STRASSBURG:

Q. Have you ever --

A. -- on top.

Q. Have you observed that the stickiness on the top tends to pull the dirt off people's -- the soles of people's shoes?

MR. DEUTSCH: Objection. Leading.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. What have you observed as the function of the stickiness on the top when people walk out of the construction site with dust on the soles of their shoes?

MR. DEUTSCH: Objection, Your Honor. Foundation. He said it wasn't --

THE COURT: Sustained.

Foundation relative to stickiness on the top.

BY MR. STRASSBURG:

Q. Have you observed people walking out of the construction site across the mastic?

A. Yes.

Q. Okay. And have you observed the formation of track-out on the mastic?

A. Yeah, it occurred in here.

Q. Yeah. Right. And does the -- the characteristic of the surface of the mastic on the top have any function in creating that track-out?

MR. DEUTSCH: Objection.

THE WITNESS: I can't answer that question.

BY MR. STRASSBURG:

Q. You don't know?

A. I don't know how it was designed.
Q. Fair enough.
Now, my boo-boo here; right? Does Team have any protective equipment to deal with spills like that?
A. Yes. We use --
Q. And what are they?
A. We use vacuums.
Q. What kind of vacuums?
A. We call them backpack vacs. They're literally vacuums that you wear as a backpack.
Q. All right. And how would you characterize their power? Are they strong, weak, or otherwise?
A. They're commercial-grade vacuums.
Q. What do you mean by that?
A. They're usually stronger than one you'd buy for, you know, $150 at Walmart. They have filters in them.
Q. And the utilization of those commercial vacuums on the project, what cost code is that in?
A. That would go under 1420.
Q. Okay. Now, showing you what we previously marked as Defense Exhibit 403-9, I think. Can you identify this -- what's depicted here?
A. Yes.
Q. What is it?

A. So the picture on the left is inside the casino going to the first set of doors. Then you have the -- the back bar, essentially. That's that little walkway to the left.

Q. All right?

A. And then on the right, the larger picture is the picture that was shown yesterday with the dumpster and then the outside area.

Q. Just so. And the carpet shown in the picture there, does that accurately depict the carpet at MGM during the Beacher's project?

MR. DEUTSCH: Objection, Your Honor. During what time frame?

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. Does that accurately depict the color of the carpet inside the casino --

A. The pattern --

Q. -- on the date it was taken?

MR. DEUTSCH: Well -- I'll stipulate, Your Honor, that that's the carpet in Beacher's and that it was -- that's the carpet.

MR. STRASSBURG: But it's not; it's the carpet --

MR. DEUTSCH: I mean -- I'm sorry -- the

carpet at MGM at the location of this photograph.

THE COURT: Okay.

BY MR. STRASSBURG:

Q. Okay. And is that the carpet that Team's trying to protect?

A. Yes.

Q. Now, if you had an idiot on the project who couldn't manage to roll up the mastic without spilling some gray dust on MGM's carpet, would you have an expectation that MGM would notice that?

MR. DEUTSCH: Objection, Your Honor. How does he know what MGM --

THE COURT: He can state what his expectation would be.

THE WITNESS: Yes. We would definitely -- I would definitely receive a phone call for that.

BY MR. STRASSBURG:

Q. Right. And they would -- would it be a happy phone call, "Hey, Paul, how you doing? How's the family?" Or would it be a different tone?

A. It would probably come after we were not there anymore, and I would have to get someone down there to clean it up -- or go down there and clean it up. Would not be a happy phone call.

Q. And your understanding of the contract, if --

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if MGM had to clean up your mess, did MGM have the right to back-charge you for that?

A. Yes.

Q. And explain to us how back charges worked on this project.

A. So if on -- between subcontractors, if -- let's say we had a contractor, say, create an excessive condition on the site and we had to bring someone else in to correct it or correct it ourselves, we would send them notice and say, "Hey, you have deficient work. You need to correct this. Give me a time frame."

Per their -- our subcontract agreement with them, if they hadn't done that, we'd go in and clean it up or fix their work. And then we would charge them back.

Q. And did MGM have the right to do that to you?

A. 100 percent.

Q. On the day -- now you know that this accident happened on November 12th of 2013, do you not?

A. Yes.

Q. Now, on November 13th, when Team came back on the job, did MGM have a complaint for you?

A. No.

Q. If -- based -- do you have kind of a working knowledge of the custom and practice of MGM during the

Beacher's project in raising to your attention MGM's concerns, problems with how you were conducting --

MR. DEUTSCH: Objection, Your Honor. Leading nature of the questions.

THE COURT: He just asked him whether he has knowledge. Overruled.

That was basically a yes or no.

MR. STRASSBURG: Yeah.

BY MR. STRASSBURG:

Q. Well, do you?

A. I do. So I know usually -- so the engineer --

Q. Let me ask you. Let me ask you the question.

Would you expect, based on your knowledge of MGM's custom and practice on the job, that if somebody got -- somebody fell, a guest fell, and -- and they thought it was resulting from --

MR. DEUTSCH: Objection, Your Honor.

BY MR. STRASSBURG:

Q. -- something that you should have done, would you --

MR. DEUTSCH: Objection, Your Honor. May we approach?

THE COURT: Okay.

/////

(A discussion was held at the bench, not reported.)

MR. STRASSBURG: Oh, hell. Let's not argue. I'm a reasonable man.

MR. DEUTSCH: I thought so.

MR. STRASSBURG: I told you I didn't want to fight.

BY MR. STRASSBURG:

Q. Now, you've mentioned Georgia buggies --

MR. DEUTSCH: Your Honor, just so I'm clear, the last question is being withdrawn?

MR. STRASSBURG: Oh, yeah. Oh, yeah. I'll withdraw it. Absolutely. Absolutely.

BY MR. STRASSBURG:

Q. So -- hmm. Let me -- now, you've given us testimony concerning the nature of the rubber transfer marks on the project in Exhibit 403. And these were those -- can you see me over here? These were these marks down here; right?

A. Yes.

Q. These are the rubber transfer marks. You testified you wouldn't expect sweeping to erase them; right?

A. Correct.

Q. Correct. And we talked about exhibit -- I

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think it's 559 -- where sometime between October 31st of 2013 and when you signed off on their invoice November 6th of 2013, that Flippins was utilizing these powered Georgia buggies to bring heavy material in -- through up the accessway, through the two sets of security doors, across the 241 feet of carpet to the actual jobsite. Remember that?

A. That's correct.

Q. All right. Now, would it be your expectation that these marks were deposited on the accessway sometime between these two dates, the October 31st and the November 6th?

A. Yes.

Q. And would it similarly be your expectation that if, after they're deposited, these rubber transfer marks, that dust billowed out of the dumpster and fell, depositing on the accessway, that the dust would have covered up those rubber transfer marks?

A. Yes.

Q. Now, you mentioned Georgia buggies that have power. And are there Georgia buggies that don't have power?

A. Yes.

Q. Let me direct your attention to this illustration. And can you describe this to me?

A. That's a -- what we call a Georgia buggy.

Q. Okay. And how does it work?

A. It's just a giant container that has wheels, and we push it in and out.

Q. All right. And is this an accurate depiction of the Georgia buggies that were utilized on the job -- sorry -- on the day of the accident?

A. Yes.

Q. And how are they -- how are they operated? Can you just describe what use a workman makes out of this?

A. So you'll stand behind it on this side and you'll push the Georgia buggy like you're pushing a cart. And then you'll load it into the dumpster, and then you'll literally just dump the Georgia buggy in the dumpster.

Q. Now, explain to us, how do you get this thing in the dumpster?

A. We just use a piece of wood as a ramp.

Q. And then you just push it up? Is that how --

A. Just push it up and you dump it.

Q. All right. Now, I'm kind of concerned here. I may have made a mistake. I mentioned the booties in opening statement. Do you see one there?

A. No.

Q. How about this?
A. That's in -- yeah, inside the buggy.
Q. Is that a bootie?
A. That's a bootie.
Q. Okay. Now, let me ask you this just to clear this up because I feel bad about this.
Do you remember whether Team was utilizing these booties during the Beacher's project in November of 2013?
A. No, we didn't start using those until a couple years later.
Q. Okay. So I was wrong, and I apologize.
Could you tell -- in lieu of the -- of these booties, did you observe how Team went about protecting the site from track-out from these wheels on the Georgia buggies?
A. Yeah, so, a lot of times, you're putting things in these that you're bringing out throughout the day. And you can just wipe the wheels off with a wet rag when you come out, and that's sufficient to avoid track-out.
Q. And let me show you this illustration. You mentioned shovels.
Does this accurately depict the type of shovel and broom that's utilized -- that was utilized

on the Beacher's project in November of 2013?

A. Yeah, a straight broom and then a snow shovel.

Q. And what -- and the function of the shovel, just so we're clear?

A. It's essentially our dustpan.

Q. And let me direct your -- to this illustration. You mentioned vacuums. Can you tell me what this is.

A. Yeah. That's a backpack vacuum.

Q. Okay. And explain to us how that works.

A. So you'll have the -- it's hard to see in this photo. But you have your waistband here, and it has essentially backpack straps. You put it on, and then you have a wand. And you can sit there and vacuum -- vacuum up with it.

Q. And how big is that blue unit?

A. It's about this big (witness indicating).

Q. You're indicating about, what, 2 1/2 feet? Is that what you mean?

A. Yeah, roughly 2 feet.

Q. And how big around is it?

A. It's about 14 inches in diameter.

Q. And how heavy?

A. That weighs 20 to 25 pounds.

Q. All right. And is this what you had in mind when you talked about using the vacuum to clean up spills of dust, like this one here, by the nonunion laborer on this project?

A. In here, yeah, we would use one of those.

Q. And what would be the degree of effectiveness of one of those for something like this here?

A. It would suck everything up.

MR. STRASSBURG: We're good. All right. Thank you. Wait a minute. Some of the other lawyers may have questions for you. All right?

THE WITNESS: Okay.

MR. STRASSBURG: Thank you, sir.

CROSS-EXAMINATION

BY MR. POPOVICH:

Q. Good morning, Mr. King.

A. Good morning.

Q. We haven't met before. I'm Jerry Popovich, representing MGM Grand Hotel. You understand that?

A. Yes.

Q. Okay. I want to understand something. When sawing of lumber took place for the Beacher's project, would that take place at the Beacher's area where the construction was going on?

A. Yes.
Q. There would be no sawing of lumber out on the concrete next to the dumpster?
A. Not that I'm aware of, no.
Q. When drywall -- now, that's not usually like sawed with a big old saw; that's cut?
A. It's cut with a utility knife.
Q. Drywall's essentially two sides of paper with --
A. Gypsum.
Q. -- crushed gypsum in between?
A. Correct.
Q. So you can cut it with a knife?
A. Uh-huh. And you snap it, and then you back-score it to let it break apart.
Q. Okay. That would be done in the Beacher's area?
A. That's done on the jobsite, yes.
Q. Not out by the dumpster on the concrete?
A. Correct.
Q. For -- was any tile on the Beacher's job?
A. Yes.
Q. Would that also be cut?
A. On the jobsite in Beacher's.
Q. And tile cutting actually is a wet process

usually?

A. Yeah, we use a wet saw for that.

Q. Otherwise, they get too hot?

A. Otherwise, it creates a lot of dust.

Q. Okay. For dust control?

A. Correct.

Q. But that was done at Beacher's?

A. Correct.

Q. Shifting topics. Team's contract to do the Beacher's work with -- was with Beacher's?

A. That is correct.

Q. And we looked at Exhibit 408, page 76, briefly. And I just want to make clear, there was a reference in that contract between Team and Beacher's to owner.

Was that Beacher's or was "owner" in that contract MGM?

A. That contract defined "owner" as Beacher's.

Q. All right. For the work Team did at Beacher's, there was no direct contract between Team and MGM Grand Hotel; is that true?

A. Correct.

Q. But because it's MGM's property, as you've talked about quite a bit, MGM has a say in some things; correct?

A. Correct.

Q. And it's certainly not your desire to give the impression that it is MGM's job to clean up after Team?

A. Correct.

Q. They -- they may have something to say if something's not cleaned up well enough, as you already described; right?

A. That is correct.

Q. But you don't expect them to be sweeping out there on a daily basis behind the Team construction workers or their subcontractors?

A. No.

Q. All right. I'm confused about lay-down area, so can we talk about that for a little bit.

A. Absolutely.

Q. You're indicating that the lay-down area for the Beacher's project for Team was in the area -- same area where the dumpster is; is that right?

A. That is correct.

Q. What does "lay-down area" mean?

A. So in most tenant improvements that we do, a lay-down area is where you receive materials off of a truck to bring them in. We don't -- 99 percent of the time, we don't get a place to actually leave materials

outside of our jobsite.

Q. And that was true for the Beacher's project.

You couldn't leave those materials overnight, could you?

A. No, we couldn't.

Q. So a truck would come into the area and offload, let's say, drywall?

A. Correct.

Q. And that would be on a pallet?

A. The drywall comes on a pallet (witness indicating).

Q. And then, by the end of Team's shift at 2:30, ballpark time, those would have to be moved out of the area and into where? The construction area?

A. The jobsite inside of the construction area.

Q. So if we were to say, by the time dark falls on any given construction workday at that site, new materials would have been moved inside the building?

A. Correct. That's our goal.

Q. All right.

A. Yep.

Q. And then if any debris was left from those materials, that should have been cleaned up by Noble for Team?

A. Correct.

Q. On November 12th, 2013, the date of this accident, did you have any personal knowledge that any other contractor was using the dumpster that was there for Team's use on the Beacher project?

A. I don't.

Q. One more little clarification on the dumpster.

You indicate one end will open; correct?

A. Yes.

Q. Was that end positioned the same way every time when the dumpsters were dropped?

A. I can't answer that 100 percent accurately.

Q. Have you seen the dumpsters for the Beacher's project with the end doors open at any time during that project?

A. Yes.

Q. Were the doors open towards Tropicana or toward the building?

A. Towards the building.

Q. Is that because the trucks that drop those have -- keep those doors at the back end of their truck and, when they drop them, they just roll them down?

A. Correct. They're called roll-off dumpsters. So they roll off the truck, and then you obviously want to access them closer to wherever the door is so you

don't have to --

Q. Because you're coming out the door?

A. Right. So you don't have to walk around to then load material.

Q. So if I was pushing a nonmotorized Georgia buggy out those security doors, I could take it straight up one of those --

A. Just use the wood --

Q. -- wooden ramps?

A. Right.

Q. Just keep my momentum and straight up the -- the wooden ramp into the dumpster, dump it, ready for my next job?

A. Correct.

Q. So that's the way it would normally work?

A. That's the way that we try to make it work every time. It's production based.

Q. So there would be -- if the doors were at the MGM end -- MGM side rather than the Tropicana side, there would be no need to take a Georgia buggy with debris around to the Tropicana end of the dumpster?

A. Correct.

MR. POPOVICH: Thank you.

Thank you, Your Honor.

THE WITNESS: Uh-huh.

MR. FREEMAN: Good morning.

IN UNISON: Good morning.

CROSS-EXAMINATION

BY MR. FREEMAN:

Q. Good morning, Mr. King.

A. Good morning.

Q. My name's Eric Freeman, and I represent David Copperfield and David Copperfield Disappearing, Inc.

A. Okay.

Q. I just have a few questions. You've been asked a lot.

There's been a lot of talk about cleanup on jobsites, especially the importance of cleanup when you're doing jobs on the Strip; is that right?

A. That's correct.

Q. And you've talked about Team's standard of cleanup. And I think if I understand you, it's called broom-clean condition.

A. Correct.

Q. Okay. And that's the standard for, at the end of the day, the jobsites and all the areas that Team worked in is left in a broom-clean condition; is that correct?

A. That's correct.

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MR. FREEMAN: Okay. Audra, 553, please.
BY MR. FREEMAN:
Q. Now, we've talked about this blueprint, and the gray area is the -- the jobsite?
A. Yeah. It's labeled "project location."
Q. Okay.
A. That's where the project is.
Q. That's where all the work was being performed?
A. Correct.
Q. Okay. And at the end of the day, is that jobsite left in a broom-clean condition?
A. Yes.
Q. Okay. And the -- the red haul route, I believe it's called, at the end of the day, is that haul route left in a blue -- a broom-clean condition?
A. Yes.
Q. Okay. And then the teal area is the dumpster and lay-down area; correct?
A. Correct.
Q. Okay. And that's left in a broom-clean condition?
A. Correct.
Q. And in that -- that cleanup, leaving all those areas in broom-clean condition, is done based on

Team's standard; correct?

A. Correct.

Q. Okay. It's not based on what Team knows or thought the different areas would be used for once they were gone?

A. Correct.

Q. Okay. You testified yesterday that no one told Team that the David Copperfield show used that dumpster lay-down area for some of their illusions?

A. That's correct.

Q. Okay. Did -- did Team need to know that?

A. I can't answer that question. I mean, if --

Q. Well, did Team need to know that in order to perform their broom-clean condition cleanup?

A. No, it would be something we do every day.

Q. Regardless?

A. Correct. Yeah, that's --

Q. Okay. It doesn't matter what's going on in the area; correct?

A. That's correct.

Q. You don't know what MGM's going to be doing with the area or possibly another tenant; correct?

A. That's correct.

Q. Okay. And Team cleans up each day even if a tourist wanted to go through that area and run through

that area if they wanted?

MR. DEUTSCH: Objection to the form, Your Honor.

THE COURT: Sustained.

Rephrase.

BY MR. FREEMAN:

Q. Regardless of what's going on in any of those three areas, there's a broom -- a broom-clean condition is left at the end of the day?

A. Correct.

Q. Regardless of what a guest, a tenant, or MGM wanted to do?

A. So we have means to secure our project site, which is the gray area.

Q. Okay.

A. Where the dumpster is, we don't have means to secure that. So we know it's public area, like you see a dumpster on the sidewalk or down the street. You know, you don't want to make an unsafe condition around that. So -- and we know that. It's the same cleanliness no matter what.

Q. Only -- only place you could lock up and secure would be the gray jobsite?

A. That's our jobsite; correct.

Q. Okay. Thank you very much. Appreciate it.

A. Uh-huh.

CROSS-EXAMINATION

BY MR. ROBERTS:

Q. Hi, Mr. King.

A. Good morning.

Q. I'm Lee Roberts. I represent Backstage.

A. I like your tie.

Q. Thank you. Go Knights.

A. Go Knights.

Q. This tie is undefeated.

A. Better win tonight.

Q. We've never talked before; correct?

A. Correct.

Q. Okay. I have a few follow-up questions for you.

One thing that I -- I -- I heard you say that I wanted to follow up on was that your company used something called Kleen Sweep?

A. Correct.

Q. And that's with a K, a proprietary name?

A. Yeah, that pronunciation of it. There's many different manufacturers of it.

Q. So when you -- when your company cleans up a jobsite such as the MGM, at the end of the night, is it

the routine practice of your organization to use Kleen Sweep with a final broom clean?

A. Depending on the dust and what style dust it is inside the jobsite, we would. So gypsum dust is very fine. As soon as you sweep it, it becomes an airborne hazard. So you need to be able to contain that for your workers. That's when we would use it.

Q. And the Kleen Sweep keeps the dust from becoming airborne when you sweep it up; right?

A. Correct.

Q. Would you have used Kleen Sweep in an area like the dumpster lay-down area at the MGM if there were concrete or gypsum dust on the ground?

A. If it was excessive, absolutely.

Q. Would you say that your use of Kleen Sweep was often enough that it was a routine practice of your organization to use it whenever there was excessive dust?

A. Yes. We bought it in barrels.

Q. Okay.

MR. ROBERTS: Your Honor, could I display this for the witness, Court, and counsel, only a picture?

THE COURT: Yes.

MR. ROBERTS: Thank you.

BY MR. ROBERTS:

Q. I'm going to ask you to look at your screen, sir.

And, Audra, could you put up proposed Exhibit 559, a photo of Kleen Sweep.

MR. ROBERTS: Yes? We'll say 560. Is that next in line now? Okay. I marked this before I got it. Roger used up 559.

MR. STRASSBURG: My fault.

MR. ROBERTS: All right. Do you have it up there?

MR. DEUTSCH: No objection.

MR. ROBERTS: Thank you.

BY MR. ROBERTS:

Q. Do you recognize that as a photo of Kleen Sweep?

A. That's both of their styles, yes.

Q. Okay.

Your Honor, I move to admit Exhibit 560, a photo of Kleen Sweep.

MR. POPOVICH: No objection.

MR. DEUTSCH: No objection.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 560 was admitted into evidence.)

MR. ROBERTS: Thank you, Your Honor. All right. See if we can get this up. There it is.

Okay. Can you blow that up, Audra.

BY MR. ROBERTS:

Q. So Kleen Sweep comes in in bright colors; correct?

A. It's either green or red.

Q. Okay. Which do you use at the MGM?

A. We use green. We used to use red.

Q. Why does Kleen Sweep come in these bright colors?

A. I can't tell you that.

Q. Okay. Does it make it easier to see if you've gotten all the dust up if you haven't swept up everything after you --

MR. DEUTSCH: Objection, Your Honor. He just said he didn't know.

THE COURT: Sustained.

MR. ROBERTS: He doesn't know the reason. Now I'm asking if it makes it easier.

BY MR. ROBERTS:

Q. Do the bright colors make it easier to see if you've gotten up all the stuff off the floor?

A. The bright colors make it easier to identify the Kleen Sweep that we still need to sweep up.

Q. Okay. And --

Okay. May I approach, Your Honor?

THE COURT: Yes.

BY MR. ROBERTS:

Q. And is this a photo of what the green Kleen Sweep looks like when it's on the ground?

A. Without touching it and being there in person, I -- I can't tell you if that's Kleen Sweep or not.

Q. Okay. Mr. Deutsch asked you if a messy jobsite could pose a hazard. Do you remember those questions?

A. Yes.

MR. ROBERTS: Okay. Audra, could we have 403-8?

BY MR. ROBERTS:

Q. And this is one that Roger showed you a few times. This is a photograph that the MGM took the evening of this fall, 11/12/13. Okay.

Is that -- is that your area where your dumpster was that evening? Is that your dumpster over on the right side?

A. That's our dumpster.

Q. Okay. Assuming this is the condition you left this area in when you left the jobsite at 2:30

that day, do you consider this a messy jobsite?

A. No.

Q. Would you have considered this a hazard that you needed to keep your people out of till something was fixed?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. ROBERTS:

Q. Yesterday, Mr. Deutsch asked you whether even a very thin layer of dust could be a slipping hazard. Do you recall that?

A. Yes.

Q. And he asked you specifically:

"QUESTION: Okay. Well, forgetting about excessive dust, if you even have a thin layer of dust on the ground, would you agree that that can become a slipping hazard?"

And your answer was:

"ANSWER: Depending on the flooring it's on, yes."

Do you recall that?

A. I do.

Q. Okay. And that was based on your understanding; correct?

A. Correct.

Q. What is your understanding of the type of flooring where even a very thin layer of dust could be a slipping hazard?

A. So, in my experience -- and a lot of casinos have polished marble floors. It's a nice flooring finish -- unless you prepare those floors correctly, when those get thin layers of dust, they become slippery.

Q. Thank you.

Audra, could we have Exhibit 84-14.

Are you familiar, sir, with the concrete area out of those doors where the dumpster was located?

A. Yes.

Q. You're familiar with that surface?

A. Yes.

Q. How would you describe it?

A. It's called a broom finish, concrete.

Q. Okay. Why do they call it broom finish? Just so there's no confusion with broom-clean finish.

A. So when you finish concrete, you'll see guys out there screening it. And then they float it to bring what we call the cream to the top, to make it smooth. And then, typically, there's a standard that we have to do to provide a certain amount of traction

to concrete. So you take a broom and you literally run a broom over it.

MR. DEUTSCH: Just note my objection, Your Honor. I move to strike. He has no idea how this concrete walkway was built.

THE COURT: Well, lay a foundation that he knows.

MR. ROBERTS: Thank you.

BY MR. ROBERTS:

Q. How many projects have you been on where concrete was poured and then finished with a broom?

A. 40.

Q. Forty. Okay. And would you recognize concrete that had been broom-finished?

A. Yes.

Q. And was this concrete broom-finished?

A. Yes.

Q. How do you know?

A. You can run your hand over it and you can feel the broom finish.

Q. Makes it rough? Gives it a texture; right?

A. Correct. It gives it -- yeah, like running your hand over a broom.

Q. Based on your understanding, is this broom-finished concrete outside of those doors the type

of surface where even a thin layer of dust would cause it to become a slip hazard?

A. No.

MR. ROBERTS: That's all I have. Thank you, Your Honor.

THE COURT: Okay.

Redirect?

MR. DEUTSCH: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. DEUTSCH:

Q. Let's pick up, Mr. King, right at the same spot we left over -- off with Mr. Roberts.

You just talked to him about, in your opinion, that a thin layer of dust on that concrete surface would not be a slipping hazard. That's what you just told him; right?

A. Correct.

Q. Okay. And you told us you knew about that because when you run your hand over the concrete floor, you knew it was broom-finished. Did you run your hand over this?

A. I don't remember.

Q. Okay. So, therefore, you can't tell us whether this was broom-finished or not based on your

explanation of how you would know; true?

A. Correct.

Q. Okay. So that wasn't an accurate statement that you just gave him; is that right?

A. He asked me if I thought it was broom-finished --

Q. Right. And you told us the only way you would know it was broom-finished is if you ran your hand over it. And now you've told us that you never ran your hand over it, so therefore you can't know if it was broom-finished or not. And yet you felt comfortable telling Mr. Roberts that it was; true?

A. Yes.

Q. Now, when you talked to Mr. Roberts about the fact that you don't believe that a thin layer of dust on that type of concrete walkway would be a slipping hazard, were you talking about someone just walking over it in the light when they could see it? Is that what you were referring to?

A. Didn't think of different scenarios in that case. I'm sorry.

Q. Okay. Well, do you think different scenarios would change whether or not something could be a slipping hazard or not?

A. In general, yes.

Q. Okay. Well, do you think different scenarios of -- whether there's a thin layer of dust on a particular surface, do you think the scenario that the person is approaching that thin layer of dust on the particular surface has any relevance in determining whether it's a slipping hazard or not?

A. I don't understand the question.

Q. Sure.

A. I'm sorry.

Q. Well, he asked you a very general question, if you believe that a thin layer of dust on that concrete walkway would be a slipping hazard, and you said no; correct?

A. Correct.

Q. Okay. And -- but he didn't give you any idea of -- of what kind of person would be approaching that hazard in order to be able to determine whether it's a slipping hazard or not. Fair enough?

A. Correct.

Q. Okay. And you just agreed with me that whatever circumstance the person approaches that particular thin layer of dust would come into the equation as to whether something's a slipping hazard or not. Fair enough?

A. And we're referring to this?

Q. Yeah, this one.
A. Okay.
Q. Would you agree with that?
A. Correct.
Q. Okay. So, for example, if someone was walking over a thin layer of dust on that concrete walkway, may not be a slipping hazard. Fair enough?
A. Yes.
Q. Okay. If someone was walking over it when the lights were on out in the daytime when they could see it, may not be a slipping hazard; true?
A. Before we go down this --
Q. Well, you can just answer my question. If you don't understand the question, you let me know.
Do you understand my question?
A. I completely understand your question.
Q. Okay. So do you agree with me? Do you need it read back?
A. I need it read back.
MR. DEUTSCH: Sure.
(Record read by the reporter.)
THE WITNESS: True.
BY MR. DEUTSCH:
Q. Okay. Now, do you think that whether someone's running over that, do you think that changes

whether or not a thin layer of dust could be a slipping hazard? Yes or no?

A. I don't know how to answer that question. I haven't ran over that concrete.

Q. Okay. So, therefore -- well, we talked about yesterday that you don't like people running on jobsites; right?

A. Correct.

Q. And you agreed with me yesterday that the reason you don't want people running on jobsites is because it's more easy to slip or trip on things when you're running; true?

A. It's harder to identify hazards.

Q. So do you -- do you know one way or the other -- you can tell me. If you don't know, that's okay.

Do you know one way or another -- or do you have an opinion one way or the other -- as to whether a thin layer of concrete dust or cement dust or any kind of dust on that sidewalk would be a slipping hazard for someone running over it in the dark not knowing it was there? Do you have a feeling about that?

A. I don't think it would be.

Q. Okay. But you have no basis for that?

A. You said sidewalk. I run on sidewalks all

the time.

Q. Okay.

A. That's my basis.

Q. Okay. Is the -- is a sidewalk -- okay. Fair enough.

Do you think it matters if you're going straight or making quick turns? Do you think that affects your ability to slip?

A. Yes. Absolutely. It's momentum --

Q. Right.

A. -- inertia.

Q. So if you're coming around the turn quickly, you'd be more likely to slip than if you were just going straight; true?

A. If you had the opportunity to slip.

Q. Now, Mr. Popovich asked you -- let's switch to another topic here for a second.

Mr. Popovich asked you about a bunch of different areas of work that you were doing. Do you recall that? That's this guy right here.

A. Yes.

Q. And he asked you about one, two, three things. He asked you about sawdust and -- and cutting things that would create sawdust. Do you remember that?

A. Correct.

Q. And he asked you if you did that inside the project -- Beacher's project; correct?

A. Correct.

Q. And you said yes?

A. Correct.

Q. Okay. Then he asked you about cutting drywall; correct? And you said that that was something you also did inside the project; correct?

A. Correct.

Q. And then he asked you about tile. And you said that that was something you did inside the project; correct?

A. Correct.

Q. Okay. Now, when you were talking with Mr. Strassburg about those power buggies, do you remember that?

A. Correct.

Q. Okay. And -- and I want to just pull up your testimony real quick from this morning when you -- what you said about those power buggies. Let's talk about those for a second.

Okay. So here's what you said this morning about the power buggies on Mr. Strassburg's questions.

"QUESTION: Can you explain to us how a

power buggy functions -- what -- I mean, what is their function on the project?"

And you said, "Yeah, so we use them to transfer bulk goods or concrete. They're basically giant tubs that have two wheels on the front, guide wheels in the back, and you could ride on them. And you pour concrete in them. And then you bring them through the casino, and you'll dump the concrete out where you need it. And they have the propane with a scrubber."

Do you remember that question and answer?

A. Yes.

Q. Okay. So the fact is is that one of the things that you do outside of the project in that area where you claim there's those rubber marks on the ground is that's where you mix concrete; true?

A. No.

Q. Okay. Well, you don't mix the concrete in the jobsite, do you?

A. No.

Q. You mix the concrete outside; correct?

A. No, we -- when we use buggies, it's ready-mix. Like I explained in that -- asked the question what do we use that for.

Q. Well, actually, no. You told us that

sometimes this stuff -- let me see if I can get your exact word. You said that the smoke -- the smoke -- the dust billows out from those buggies sometimes. Do you recall that?

A. No.

Q. Okay. So is it your testimony that -- I think you maybe said that sometimes the stuff billows out from the -- actually, withdraw that question. I want to just go back and read it more.

Okay. So the concrete that the buggies are used for is -- is -- is ready-mix concrete?

A. It's ready-mix concrete.

Q. So they just pour it in from the truck?

A. Correct. Down the chute.

Q. Do you mix concrete at all on this jobsite? I think you said you did sometimes.

A. Inside the jobsite, we would mix bags of concrete.

Q. Okay. Fair enough.

Those power buggies, you then said you -- the power buggies that you said were -- were heavy enough and moved, that they'd leave rubber marks on the concrete?

A. Correct.

Q. When they're full; right?

A. Correct.

Q. And you would only bring them into the jobsite when they were full; right?

A. We'd bring them in and out, correct.

Q. And you'd drive those buggies that you claim can create rubber tire marks over that plastic stuff that you put on the floor?

A. We put down Corex along with the plastic.

Q. And then you drive them into the site?

A. Then we drive them through the site, uh-huh.

Q. Okay. Fair enough.

Let me ask you this question: Mr. Strassburg asked you if MGM got angry at you about anything having to do with this job; correct?

A. Did he ask if they ever got angry?

Q. Yeah, if there was something that you left over, that -- that -- would they get angry at you. Do you recall that?

A. I don't remember --

MR. STRASSBURG: Objection, Judge.

THE WITNESS: -- him saying angry.

MR. STRASSBURG: Misstates the testimony, as he well knows.

THE COURT: Rephrase.

MR. DEUTSCH: I don't think so.

BY MR. DEUTSCH:

Q. But let me ask you a question. Team Construction is responsible for cleanup of the lay-down area around the dumpster; is that true?

A. Yes.

Q. And you stated that -- that you believe that -- that you met whatever obligations you had on that night in terms of cleaning up the dumpster area?

A. When we left for the -- during the day, yeah.

Q. When you left at 2:30 that day; right?

A. Correct.

Q. And you told us, I think, that you didn't receive any complaints from MGM about the way you left it on that day as far as you recall. Is that fair?

A. That's correct.

Q. Okay. So in -- in your understanding, you don't believe that MGM was blaming Team for anything that Team Construction did that day. Is that fair?

MR. STRASSBURG: Objection. Lack of -- lack of foundation. He doesn't know what's going on in their head.

MR. DEUTSCH: He asked 100 questions about the same thing. I made the same objection, Your Honor, and Your Honor let him answer.

THE COURT: Go ahead.

THE WITNESS: When you say "blaming me," what would they be blaming me for at that time?

BY MR. DEUTSCH:

Q. Well, that's what I'm saying. They didn't -- in your understanding, there was nothing for them to blame you for because you left it the same way and they never called you with any complaints about how the condition was left; true?

A. Correct. We never got any phone calls or correspondence saying, "Hey, you're having dirt or dust or you're leaving things dirty."

Q. Now, did you know that in this case --

MR. POPOVICH: Objection. Exact same --

MR. STRASSBURG: This is on a line with --

MR. DEUTSCH: May we approach, Your Honor?

THE COURT: We had a bench conference --

MR. DEUTSCH: May we approach?

THE COURT: Step back. Step back. No. Step back. Next question.

MR. DEUTSCH: May I show him the complaint, Your Honor, like Mr. Strassburg did?

THE COURT: No. No.

MR. DEUTSCH: Okay.

I'd ask for some time to make a record, Your Honor.

JA003401

THE COURT: Yes. Sure.

MR. DEUTSCH: Thank you.

BY MR. DEUTSCH:

Q. Now, you had mentioned that -- that you spent more money than budgeted for -- for cleanup in this job than you anticipated?

A. Yes.

Q. Does that mean it was a -- it was a dirtier jobsite then you anticipated?

A. No.

Q. This dust that Mr. Strassburg brought in, this is concrete dust?

A. I don't know.

Q. Well, is that what you -- he asked you to assume it was?

A. No, he asked me if it was dust.

Q. Well, do you think this is concrete?

A. You want to mix some water with it, we can find out.

Q. Well --

MR. STRASSBURG: Judge, if it helps. I'll stipulate that it's concrete dust.

MR. DEUTSCH: I thought that's what we were talking about.

/////

BY MR. DEUTSCH:

Q. Okay. Would you agree with me that the -- we had talked yesterday about the color of the ground in that photograph and the color of the stuff that was on Mr. Cox's clothing.

A. Yeah, we talked about the colors.

Q. You agree it was the same color; correct?

A. Correct.

Q. And you agree that that's the same color as the stuff that Mr. Strassburg brought in here today as well?

A. Can we pull -- can you give me both the pictures and we'll hold them up.

Q. No problem.

A. We'll lay them down on the ground.

Q. We'll put them up on the screen.

A. Can we lay them next to the pile?

Q. If you would like to. But let's put them up on the screen and see if you can answer by looking at the screen. And then if you want to put them in a pile we'll get them out.

MR. STRASSBURG: Anticipating your question, I thoughtfully spread some on the carpet.

BY MR. DEUTSCH:

Q. So there's -- there's the one picture. And

my question is -- first question with this picture, is this what you claim here is these tire marks right here?

A. Correct.

Q. Is this area the same color as the stuff that's on the floor?

A. Again. Can we lay the picture next to that? Because you asked me if the pictures were the same colors.

Q. I'm asking you if what you -- what you see in that picture is the same color or not. If you don't think it is, you tell us you don't think it is.

MR. STRASSBURG: Objection, Judge. This is a different picture. This is not in evidence, as he knows.

MR. DEUTSCH: It's the same exact picture.

MR. STRASSBURG: It is not the same exact picture.

MR. DEUTSCH: Oh, this picture.

MR. STRASSBURG: Judge, this is deceptive.

THE COURT: What's a different picture?

MR. DEUTSCH: It's the same exact picture. It's a different --

MR. STRASSBURG: It is not the same picture.

MR. DEUTSCH: All right. There's a picture.

It's big. Same picture. You want to look at the hard copy that the jury is going to get? Why don't we do that?

MR. STRASSBURG: Judge, I would move for an instruction.

MR. DEUTSCH: We're going to use the hard file. It's the same picture we printed 32 times.

MR. STRASSBURG: It's the evidence, not what he wanted it to be.

THE COURT: Show the --

MR. DEUTSCH: This is the one that's in evidence. Let's show the one that's officially in evidence.

BY MR. DEUTSCH:

Q. There you go. Why don't you step down and we'll take a look.

The jury can come down, if they want, too. If they don't have to, they don't need to.

Do you think that this looks like the same thing?

Go ahead. Let's have everyone come down. We'll do it the Strassburg method.

A. So this is gray, and this area here is gray.

Q. I'm talking about this here, this area here. Do you think that's the same?

A. You're telling me those are the same color?
Q. I'm asking you if it's the same color.
A. No.
Q. No? Okay.
Okay. Have a seat.
Come on down again, Mr. King. Let me ask you this. I'm going to show you what's been marked as 83 -- in evidence -- 1 and 2.
Does -- if you were to take someone in jeans -- you're wearing jeans. And you were to lay down on that, do you think that it would -- your jeans would look like what is shown in this photograph?
A. Yeah, my entire full body were to lay down in a pile of that?
Q. Yes.
A. Sure.
Q. Yeah, if someone were to fall on top of that pile right there, this pile right there, would you -- do you think it would look like that?
A. No. It would look like where the pile was.
Q. Right. Okay. So if -- the more dust that was on the floor, the more would get all over his clothing.
A. Yes.
Q. Okay. And that's what this photograph looks

like; true? Looks like someone had landed on a pile of this dust?

MR. STRASSBURG: Let him finish his answer.

MR. DEUTSCH: Sit down, please, Roger.

MR. STRASSBURG: No. You're in his face. I want to be here. You're badgering the witness. Let him finish.

THE COURT: Are you going to be showing anything else on the floor?

MR. DEUTSCH: Your Honor, can you ask Mr. Strassburg to please sit down.

THE COURT: Are you going to be showing anything else on the floor?

MR. DEUTSCH: Nothing else on the floor, Judge.

THE COURT: He can take the witness stand.

BY MR. DEUTSCH:

Q. You were talk -- let's go back to the slippery floor is dependent on things. Your Team Construction toolbox talks doesn't identify the amount of stuff left on the ground; correct? It just says anything left on the ground could be a slipping hazard; true?

A. Yes.

Q. Okay. And it doesn't say that -- it doesn't

limit the type of floorings where things could be slipping hazard; right? It doesn't say anything left on the marble floor could be a slipping hazard, does it?

A. No.

Q. Now, in Exhibit 556, which is one of your time cards that Mr. Strassburg talked to you about, he showed you this, 556. You remember this one? See if I can zoom in on it.

Do you remember that?

A. Yes.

Q. Okay. And he highlighted a part of it for you. He highlighted that part right there, the Phase 1420; correct?

A. Correct.

Q. Okay. But he didn't talk to you about the whole document of -- he didn't talk to you about this part, did he?

A. He didn't ask me questions about that.

Q. Correct. And what this indicates is that there was in fact concrete work going on for at least four hours on the day of the accident; true?

A. Yes.

Q. And Mr. Strassburg has talked a bunch. He asked you, I think, about the weather conditions. Do

you remember that, whether it was windier that day? Do you remember that?

A. I don't remember.

Q. Okay. You -- were you here for his opening statement?

A. Yeah, but I was in the -- over there in the corner.

Q. Weren't really listening closely?

A. I couldn't see that much.

Q. Could you hear?

A. I could hear.

Q. Okay. So you heard him talking about, like, how it was windy and stuff could blow all over the place. You remember that?

A. I don't remember that.

Q. Have you heard him say that at other points throughout this trial?

A. I haven't paid -- I haven't been able to watch this trial.

Q. That's okay. That's okay.

And he then brought up the weather conditions again when he questioned you this morning. Do you remember that?

A. No.

Q. Okay. Well, we'll see if the jury remembers

it.

There's actually a space on these time cards where, if there's any abnormal weather conditions, you're supposed to put them down there; correct?

A. Correct.

Q. Okay. And let's take a look at the weather conditions that day.

There was really nothing out of the ordinary; is that true?

A. Again, without -- I don't know what the weather was on that day.

Q. Right.

A. I don't remember.

Q. But if it was like windy out of the ordinary or if it was like anything out of the ordinary --

A. Yeah.

Q. -- it would be noted there. True?

A. Correct.

Q. So this indicates that there was nothing out of the ordinary in terms of the weather that day?

A. Correct.

Q. So you'd think Mr. Strassburg would stop talking about the weather.

A. I can't answer for him.

MR. STRASSBURG: Objection. Judge, if he

wants me to be a witness and talk about what I know about this case, I'm happy to.

MR. MORELLI: You've already done that.

THE COURT: That wasn't a question, so it's sustained.

BY MR. DEUTSCH:

Q. Now, you mentioned, I think, that you guys are out of there at 2:30 every day?

A. That's when our shift is supposed to end, at 2:30.

Q. Okay. And you said that, after your shift is ending, that area was always left broom clean?

A. It was -- by our standard of care, it's supposed to be left broom clean.

Q. That's not what I asked. I asked -- and you claim -- regardless, you claim you did that; right?

You claim you did that?

A. You've already established that I wasn't out there that day, so ...

Q. Okay. So you don't know what was done that day; correct?

A. Correct.

Q. You don't know what work was done by you guys that day other than what you could see in the documents; correct?

A. I know what work was being done when I was out there that day.

Q. I thought you just said you weren't out there.

A. On the jobsite.

Q. I thought you just said you weren't on jobsites that day.

A. No.

Q. You were on the jobsite that day, but you weren't outside?

A. Correct.

Q. Got you. Understood.

If there are photographs that show the outside of that area after 2:30 not broom clean, would those photographs contradict your testimony?

A. That --

MR. STRASSBURG: Objection, Judge. That's calling for speculation.

THE COURT: I'll allow him to answer the question.

THE WITNESS: No, not necessarily.

BY MR. DEUTSCH:

Q. Okay. Well, if there were photographs taken after 2:30 in the afternoon that showed piles of -- of concrete and dust and rocks on the ground --

MR. STRASSBURG: Objection, Judge. This is --

BY MR. DEUTSCH:

Q. -- would that contradict --

MR. STRASSBURG: -- subject to your prior ruling.

THE COURT: Let him finish the question.

BY MR. DEUTSCH:

Q. Would that contradict your testimony that, after 2:30 every day, you left the area broom clean?

MR. STRASSBURG: Objection, Judge.

THE WITNESS: No.

MR. STRASSBURG: This is -- you've ruled on this before.

THE COURT: I don't know what he's referring to, so overruled. Let's see what he's talking about.

MR. STRASSBURG: Permission to approach, Judge?

MR. DEUTSCH: I'm not going any further, Judge.

THE COURT: Okay.

BY MR. DEUTSCH:

Q. You talked a little bit about how there have been times that -- you talked about, like, getting violations or something like that. True?

You mentioned that, if something was left there, you could get a violation?

A. I don't remember that.

Q. Okay. Well -- well --

A. Left --

Q. You mentioned that, if there -- if there was concrete left like this on the carpet or somewhere else, that MGM would complain to you about it or an owner in general could complain to you about the condition you left the site; is that true?

A. They would tell me, "Hey, you need to clean this up."

Q. Okay.

A. Correct.

Q. And that's happened before?

A. Yes.

Q. Okay. Because, even though you have protocols that you guys design and follow, times happen when things fall outside those protocols; is that fair?

A. No.

Q. Well, if it never falls outside the protocol, then no owner would ever have to call and you say, "Hey, come clean this up." And you just told us that has happened. True?

A. Yes.

Q. Okay. So you can't have it both ways. Either an owner's come and told you that there's a mess there that you left or -- withdrawn.

You told us that your protocols require it to be broom clean; right?

A. When we leave the jobsite.

Q. Right. And you say to this jury that you always do that; right?

A. When we leave the jobsite, correct.

Q. But you also tell this jury there have been times when owners call you and say you didn't do that.

A. When we're on a jobsite.

Q. So never in the history of Team Construction has any owner ever called and you said "you got a mess here" after you left?

MR. STRASSBURG: Objection. Foundation. Broad. Vague.

THE WITNESS: I don't recall if they have.

THE COURT: Overruled.

BY MR. DEUTSCH:

Q. Okay. So they may have?

A. Again, I work on specific projects.

Q. Is it your protocol and procedure that, while you're doing work, you're not supposed to leave any tripping or slipping or hazards or debris around in

the -- in the -- around the jobsite? Is that part of your protocol?

A. That's part of our -- our efforts to make a safe jobsite.

Q. Correct. And you try to make sure that, while the jobsite's going on, that that area where -- he called it the guest something. I don't remember what word he used -- but that area where the casino is, you try to keep that as clean as you can?

A. The front of house, yes.

Q. Front of house, you try to keep that as clean as you can?

A. Yes.

Q. And you have protocols that make sure that that's always done that way; right?

A. Correct.

Q. And there's times that, despite your protocols, it doesn't happen. True?

A. Yes.

MR. DEUTSCH: Two seconds. Judge, subject to just making a record and whatever follow-up questions we may have, I have nothing further.

THE COURT: All right. Thank you.

Will counsel approach?

/////

(A discussion was held at the bench, not reported.)

THE COURT: Okay. Thank you, Mr. Deutsch.

Any other questions of this witness by the defendants?

MR. ROBERTS: No follow-up, Your Honor.

MR. POPOVICH: No other questions, Your Honor.

THE COURT: Okay. Very well.

I've received some juror questions, so I'll ask counsel to approach again.

(A discussion was held at the bench, not reported.)

MR. MORELLI: Thanks, Your Honor.

THE COURT: All right. I received some juror questions. One of the questions is not actually a question to the witness; it's a question otherwise. So that would be the next court exhibit in order and will not be questions that will be posed at this time. Then I will allow counsel follow-up.

"Concrete can have different porosity, therefore even concrete can be as smooth as tile; correct?"

THE WITNESS: Correct.

THE COURT: Any follow-up?

MR. DEUTSCH: None, Your Honor.

MR. MORELLI: None.

THE COURT: Next, "Have you seen concrete finish that hard and smooth in an exterior setting?"

THE WITNESS: No.

MR. POPOVICH: Nothing further.

MR. ROBERTS: I have follow-up, Your Honor.

Audra, could you put up Exhibit 84-14 again.

And, Audra, could you -- could you blow up the concrete right at the corner.

EXAMINATION

BY MR. ROBERTS:

Q. And, sir, you recognize this as the area where the -- where the fall occurred; correct?

MR. DEUTSCH: Objection. Foundation.

BY MR. ROBERTS:

Q. Where your dumpster was?

A. Where the dumpster is, yes.

MR. DEUTSCH: Objection, Your Honor. Can we just see where this area is that he's --

MR. ROBERTS: Could you show Mr. Deutsch the whole exhibit.

MR. DEUTSCH: No, no, no. I just want to see -- you just said this is the area where the fall

occurred is blown up, so I want to see what that area is.

MR. ROBERTS: Okay. Let me rephrase my question, Your Honor.

Could we blow up the area where Mr. Cox testified that the fall occurred, the corner. And it doesn't really matter where you blow it up because the finish is all the same.

BY MR. ROBERTS:

Q. Okay. You want to come down and take a look at that or --

A. Sure.

Q. Okay.

A. What am I looking for?

Q. Okay. You talked before about broom-cleaned finish. And if you -- I mean, excuse me, a broom finish where you --

MR. DEUTSCH: Objection, Your Honor. This is not a follow-up to the question that was asked.

MR. ROBERTS: It is. It's about the smoothness of the concrete.

THE COURT: Let's see what the question is first.

BY MR. ROBERTS:

Q. So concrete can be smooth-finished; right?

A. Correct.
Q. Concrete can be rougher?
A. Correct.
Q. You told the jury before a broom finish, where you brush the broom while the concrete is still wet, creates a texture; right?
A. Correct.
Q. And that, if you get down on the ground and you feel it, you can feel that texture?
A. You could, correct.
Q. Do you need to touch it to tell if it's broom-finished or can you recognize that simply by looking at it?
A. I can recognize it by sweeping it or walking on it.
Q. Okay. Is -- is this sidewalk outside of those doors where your dumpster was located a broom-finished sidewalk?
A. Having walked on this sidewalk, it is broom-finished.
Q. Is it smooth?
A. No.
Q. Thank you, sir.
MR. DEUTSCH: Just one follow-up, Your Honor.
THE COURT: Yes.

MR. DEUTSCH: Or a couple. Sorry.

EXAMINATION

BY MR. DEUTSCH:

Q. You mentioned before -- and it kind of deals with the same thing. But you mentioned the term with Mr. Strassburg when you were talking about this about the coefficient of friction. Do you remember that?

A. Correct.

Q. And not to get into it too much, but you agree with me that, when you're looking at the coefficient of friction, if the surface changes, right, like if you're testing this floor and then we change this floor to something else, it would not be the same coefficient of friction. True?

A. Correct.

MR. DEUTSCH: All right. I have nothing further. Thanks, Judge.

THE COURT: All right. The question just posed would be the next court exhibit in order. Okay?

Additional questions?

"Approximately how far along was you, Team, into the construction phase on 11/12/13?"

THE WITNESS: Do you want me to give details, Your Honor, as to what we were doing in the space --

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THE COURT: I don't know --

THE WITNESS: -- or a percentage or --

THE COURT: You can go ahead and just answer the question in terms of what you think it meant.

THE WITNESS: So we were roughly two and a half months into the project, so August, September. In November, we had stanchions go in, which are ceiling-suspended things that he was going to have performers hang on. We were putting in an elephant footing during those couple of weeks for an actual elephant.

I don't know if anybody's ever been to Beacher's, but it's a really unique space. It's now Jabbawockeez.

We were framing walls. We were finishing back-of-house areas where the performers would be at. We were finishing the platforms in the front of house where the guests would sit behind like this. We were putting the wood on.

And that's where we were at. It was a lot of different activities of different stages throughout. It had bars. It had platforms. It had a stage, performance things from the ceiling, had a back of house. So it's not -- wasn't just one activity being done at a time.

MR. DEUTSCH: Just one follow-up, Judge.

EXAMINATION

BY MR. DEUTSCH:

Q. And part of that activity, as we showed you, on the daily time card also involved working with concrete that day as well; correct?

A. Yes.

MR. DEUTSCH: Thank you.

THE COURT: Any follow-up on that question?

MR. ROBERTS: No, Your Honor.

THE COURT: Next question is "Approximately how long had it been since the demo phase had finished?"

THE WITNESS: We call the demo phase, which is the majority of the demo, it would have taken anywhere from three to four weeks for that space.

It was ongoing, as we were obviously replacing the sanitary line that ran through the space. So -- and then there might have been some -- what we call carpenter demo where you had new walls tying into old walls. We call that selective demo or carpenter demo since it's done by a carpenter.

THE COURT: Follow-up?

MR. POPOVICH: Plaintiffs?

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MR. DEUTSCH: Nothing.

EXAMINATION

BY MR. POPOVICH:

Q. So the gross demo, the go in and take things apart initially, had been completed months before November 12th, 2013?

A. Yes.

Q. But you still had those isolated demo that you just described?

A. Yeah. You don't want to -- you can't demo out an entire space if you're reusing wall. You don't want to demo out the wall because then you have to build it back.

MR. POPOVICH: Understood. Thank you.

THE COURT: Any additional follow-up?

All right. The next question is "Was there another lay-down area? And, if so, what materials were staged there?"

THE WITNESS: We -- for that project, we -- we -- Team Construction did not have another lay-down area. That was the one we were given. The owner may have or Beacher's may have had other vendors that used different areas around the casino. I don't know.

But Team Construction used that area. We

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didn't store anything there. We brought it in, and we brought it in. You don't leave drywall sitting outside. You don't leave concrete bags -- I mean, this is a --

MR. DEUTSCH: Just move to strike, Your Honor, the portion nonresponsive to the question. The question was if there was another lay-down area.

THE COURT: Okay. I will grant the motion.

MR. DEUTSCH: I have one follow-up.

THE COURT: From the last statement?

MR. DEUTSCH: I have a follow-up.

EXAMINATION

BY MR. DEUTSCH:

Q. So if Mr. Strassburg spent a bunch of time the other day talking with Mr. Habersack about the fact that Team Construction's lay-down area was down by the poker room, that wouldn't be true based on what you just told us?

A. We did not have a lay-down area down there.

MR. DEUTSCH: Okay. Thank you. Nothing else.

THE COURT: Any additional follow-up?

MR. POPOVICH: No, Your Honor.

MR. FREEMAN: No, Your Honor.

MR. STRASSBURG: Yes, Judge.

THE COURT: Okay.

EXAMINATION

BY MR. STRASSBURG:

Q. The area by the poker room, was that considered as an alternative area or a dumpster site?

A. Initially, it was discussed prior to the project starting.

Q. And was it accepted or rejected?

A. We -- we didn't accept it. Neither did they.

Q. All right. How did you -- the lay-down function for the area around the dumpster, that accessway, how did you use it for the lay-down of materials? Did you --

MR. DEUTSCH: Objection.

BY MR. STRASSBURG:

Q. -- transport, store, or something else?

MR. DEUTSCH: Asked and answered, Your Honor.

THE COURT: Overruled.

MR. DEUTSCH: He objected.

MR. STRASSBURG: Sorry.

THE COURT: Go ahead.

MR. STRASSBURG: Go ahead.

THE WITNESS: So we would -- we would offload

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things, and then we would bring them into the space through the casino. That's -- when you refer to lay-down area in the casinos, that's what you do. It's very rare they'll give you real estate because they want their real estate.

THE COURT: Does that conclude the follow-up on that question?

MR. STRASSBURG: Yes, Judge.

THE COURT: Next question, "Did MGM back-charge Team for any necessary cleanup from 11/12/13?"

THE WITNESS: No, I'm not aware of any.

THE COURT: Any follow-up?

MR. POPOVICH: No, Your Honor.

THE COURT: Okay. That's the next court exhibit in order.

At this time, we'll -- Counsel, please approach to discuss the lunch.

(A discussion was held at the bench, not reported.)

THE COURT: All right. Ladies and gentlemen, we're going to recess for lunch now, and counsel will remain here for bit. We have things to take up outside the presence. You can go ahead and stand down, sir.

THE WITNESS: Thank you.

THE COURT: We'll recess until 1:45, since it's now a little past 12:15.

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Please be outside the courtroom just a bit to the south just before 1:45 so we can resume at that time.

And counsel remain.

(The following proceedings were held outside the presence of the jury.)

THE COURT: All right. You may be seated.

Mr. Deutsch, you may -- you wanted to make a record?

MR. DEUTSCH: Sure, Your Honor. While I understand that we had some discussions at the bench about the ability to discuss the fact that the

defendants have cross-claims in this case, I -- I -- and I understand that, that Mr. Strassburg sort of didn't move on from that point.

When I went back to counsel table, I thought about it. And I don't see how it's improper for us to raise the fact that there are cross-claims.

Mr. Strassburg put up a piece of the complaint to try to claim that the plaintiffs' counsel in this case who originally brought it said "trip" in one place and "slip" in one place. So I don't quite see why the jury is not entitled to know what the claims in this case are. And one of those claims is that MGM Grand is suing Team Construction claiming that, if something happened here, that it was Team Construction's fault.

And there's a specific paragraph in the complaint which I think we should be entitled to put up on the screen, just like Mr. Strassburg did, that says on page 10 of the complaint, "The cross-defendants" -- meaning Team Construction -- "are liable to cross-claimants" -- meaning MGM -- "for any judgment rendered against it in this action as the damages alleged in the claims made by plaintiff against cross-claimants" -- MGM -- "are the result of the acts or omissions of the cross-defendants."

THE COURT: I understand that, but my ruling had to do with the redirect examination based upon the context of the cross-examination at the bench conference, at which time Mr. Strassburg agreed that he was not going to pursue that. So at that point -- my ruling was simply based on the examination.

MR. DEUTSCH: So outside the scope of the direct and cross?

THE COURT: I'm not making a determination at this point. I'm not going to have that whole issue raised on cross-examination.

MR. DEUTSCH: Okay. So if I understand Your Honor's ruling, then, if the ruling is just based on the fact that it was outside the scope of redirect -- is that what I'm hearing?

THE COURT: What I'm saying is that he withdrew --

MR. DEUTSCH: I understood.

THE COURT: -- seeking to go in that subject matter. So, yes, it was beyond --

MR. DEUTSCH: Okay. So we call another --

THE COURT: He stepped away and said, "I'm not going to do" --

MR. DEUTSCH: So if we call the next witness in Team Construction and it's on my direct, I'll be

able to go into that at that point?

THE COURT: I'm not going to say whether you can or not. I have to hear from everybody before I make that determination.

MR. DEUTSCH: Okay. So we're going to have to bring Mr. Voiss in.

MR. STRASSBURG: We would -- there is a difference, at least in my mind, between an assertion of a fact --

THE COURT: Well, you know --

MR. STRASSBURG: -- and a statement of a claim.

THE COURT: Well, I understand that. And that was the reason why, in the bench conference, I said we're talking about what happened at the time of the incident, not what took place after claims were made.

MR. DEUTSCH: Your Honor, he put up --

(Multiple speakers)

MR. DEUTSCH: Your Honor, he put up the complaint to suggest that typo in the complaint --

(Multiple speakers)

THE COURT: I'm not going to make a determination at this point as to the propriety of getting into cross-claims and all that. Okay?

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MR. DEUTSCH: Well, Your Honor, I would ask --

THE COURT: All I did was make a ruling on whether or not it was appropriate for --

MR. DEUTSCH: I understand, Your Honor. In an effort to save some time -- I think I should have been able to do it with this witness. In an effort to save some time, if the basis for Your Honor's not allowing me to do it was the fact that it was not redirect -- because he didn't get into it and, therefore, it would have had to be on my direct -- if that is the basis for keeping it out, then what I would do is call the other Team Construction witness that I wasn't going to. I would rather, just to save time, Your Honor rule on whether you'll let me do that with that witness and then we --

THE COURT: I guess I'm sort of surprised that this has been brought up at this late stage.

MR. DEUTSCH: I just thought of it. I mean, that's -- that's -- that's honestly the truth, Your Honor. I just thought of it. And, thankfully, the trial isn't over yet, and I'm entitled to do it.

And, thankfully, I have another Team Construction witness on deck, if need be. The only reason I would call that witness at this point is if

Your Honor's ruling was based on the fact that it was outside of --

THE COURT: Plaintiffs' counsel was not party to the stipulation that had to do --

MR. DEUTSCH: Correct.

THE COURT: -- with all of those items.

MR. MORELLI: Counterclaims and claims, cross-claims.

MR. POPOVICH: Well --

MR. STRASSBURG: Judge, if -- if he's allowed to say there's a cross-claim, then it seems to me that we would be allowed, under the rule of completeness, to say that we answered it and denied everything.

MR. POPOVICH: Hold on. Hold on.

MR. STRASSBURG: So we would be essentially violating the stay by litigating a claim that's not in the case.

THE COURT: Tell me what stay.

MR. STRASSBURG: Well, the agreed-upon stay that we weren't going to go forward with the cross-claims. I didn't agree to that.

THE COURT: He didn't agree to that.

MR. POPOVICH: Whoa. Time out.

MR. STRASSBURG: Yes, but, Judge, it's prejudicial to allow him to tell half the story and

deny me the right to say we categorically deny these claims.

MR. DEUTSCH: Okay. But he showed the complaint, Your Honor. He started it by showing the complaint.

MR. STRASSBURG: I showed words in the complaint.

MR. DEUTSCH: So I'll show --

(Multiple speakers)

THE COURT: Maybe I should have some briefing on this.

MR. STRASSBURG: That would be great, Judge.

MR. POPOVICH: Wait. I'm the only one that doesn't shout over everybody, so can I at least say something here.

First off, when Mr. Strassburg showed the complaint, plaintiffs didn't object. So to complain about it now, that's just whining.

MR. DEUTSCH: I didn't complain about it.

MR. POPOVICH: Number two is there are allegations in this case that are being tried to the jury. Those are in the complaint.

There are allegations of cross-claims and things and such which were stayed because those pleadings were between us, and this Court signed off on

the stay. Those things are not before the jury.

We're just talking about things that would just confuse them in order to -- for plaintiff to get out these sound bites they want to.

It would -- talk about -- I mean, this case keeps getting escalated, and this is not a way that would be fair -- that would be unfairly prejudicial. There was a reason we chose not to fight these things in this court in front of this jury. And to raise them now, unfairly prejudicial --

MR. DEUTSCH: Well, Your Honor --

MR. POPOVICH: -- completely.

MR. DEUTSCH: -- I think the key here, though, is that the reason they stipulated without asking us about any stipulation to -- to move these is because they don't want to know -- the jury to know, rightfully, that they're all pointing fingers at each other.

And they say, "Hey, if we just don't fight about it here, the jury won't know." But it gets back to the fundamental bottom line, which is that the jury should know the truth. The jury is entitled to know that they're suing them and they're suing them and they're suing them and they're all suing each other.

(Multiple speakers)

MR. ROBERTS: Your Honor, since we have video Mr. Deutsch incorrectly pointed at me. We're not suing anyone. There's no cross-claims.

MR. DEUTSCH: But there's nothing prejudicial about the jury knowing, especially in light of these questions about "Did they back-charge you? Did MGM blame you for anything?" Those are legitimate questions. One of the jurors specifically asked a question about that.

So that means they're thinking in their minds is anyone blaming anyone here for this. We know that they are. The complaint is always --

THE COURT: It seems to me that you can go into that without referencing actual claims that have been filed in the case. In other words, you can explore the fact that they're -- that --

MR. DEUTSCH: That's what I was going to ask.

THE COURT: Some parties believe others were the ones that were responsible.

MR. DEUTSCH: Well, I think, if he put up the complaint and that's fair game to put up the complaint, then I'm allowed to put up the complaint. He put up the complaint to make an argument that they said "trip" and "slip." And now there's a claim where MGM is legally saying Team Construction is responsible for

this accident.

MR. STRASSBURG: That's false, Judge. What MGM is saying is, if I am responsible, then you owe me.

MR. DEUTSCH: Agreed.

MR. STRASSBURG: It's conditional by contract.

MR. DEUTSCH: I agree with that.

MR. STRASSBURG: And it's a contract.

MR. DEUTSCH: No, that's not what it says. There's an indemnity claim for contract. There's a contribution claim based on common law.

MR. STRASSBURG: Final two points, Your Honor. When the Court signed the order approving the stay, no objections. I would argue waiver.

Part two is Nevada law allows for and actually even seems to suggest that the pleadings at issue in front of the jury be read to the jury at the outset of trial. Your Honor asked us. We all waived. And now they're trying to go back.

MR. DEUTSCH: Well, because he brought it up. He started the whole thing with showing the complaint to people. So now I'm entitled to show --

MR. STRASSBURG: You showed the whole complaint.

THE COURT: I think's it's legitimate to ask

whether or not the respective parties blame the other.

MR. DEUTSCH: Can I ask him if --

THE COURT: Not getting into actual claims that have been filed in the case.

MR. DEUTSCH: Okay. But if I ask a witness "Are you aware that MGM, in this case, is blaming Team Construction?" and he says no, aren't I allowed to show him a copy of the complaint to say "Does this change your recollection?" That's my only impeachment tool at that point.

THE COURT: You can show it to him but not show it to the jury.

MR. DEUTSCH: Fair enough.

MR. STRASSBURG: But that would be a deceptive question because MGM is not blaming anybody. They're saying, if I'm liable, I make a claim over against you.

MR. DEUTSCH: Because you --

MR. STRASSBURG: It's a routine standard practice of risk transfer in the construction industry. It's not an admission or a signification of anything about the merits.

MR. DEUTSCH: Well, I find that hard to believe.

MR. POPOVICH: This needs some briefing, Your

Honor. We'll get some to you by tomorrow.

THE COURT: Okay. That's fine.

MR. DEUTSCH: Sure. That's fine.

THE COURT: Thank you.

MR. MORELLI: The reason why you're trying this case for so long is because of these agreements that you made to begin with.

THE COURT: 1:45.

(Whereupon a luncheon recess was taken.)

THE MARSHAL: All rise. Come to order. Department 13 is back in session.

THE COURT: Good afternoon.

IN UNISON: Good afternoon.

THE COURT: Please be seated. We are back on the record outside the presence of the jury.

Ms. Fresch, I understand you have something to take up.

MS. FRESCH: Yes, Your Honor. I wanted to clarify just -- we have done specific objections that counsel -- we've traded back and forth -- or at least my objections. I don't think he has any objections to anything on the testimony.

But some of the testimony that Mr. Deutsch -- so he did not do what -- if you will recall with Ms. Esack, we had a whole bunch of testimony, we then

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had a sidebar where Your Honor ruled that there were only specific things of her testimony that would be permissible or relevant to this trial. And that was fact of injury, that there was an injury -- or the nature of the injury, and the interaction with Mr. Copperfield.

Some of the testimony that counsel has highlighted to show for the jury goes beyond just fact of injury -- and during the illusion. I'm sorry. I meant to say during illusion.

Some of that testimony goes beyond as to where she slipped and -- and those specifics. And I don't think -- because that leaves this little question mark about how it occurred in terms of the illusion versus all they need to know is "I was injured. I fractured my wrist and had surgery" -- or however it's phrased, and then the interaction with Mr. Copperfield.

THE COURT: Well, I don't think there needs to be a whole bunch of stuff on how it happened, but -- but what happened specifically, I think, is fair just so the jury has an understanding.

MR. DEUTSCH: That's our position.

MS. FRESCH: But, Your Honor, then -- there's issues, then, because at one point she says "slipped"; another point, she says -- I didn't get to question her

specifically on this because we said we wouldn't go into this. So we have an issue about how the injury occurred. And if you -- if he -- if he is allowed to put any testimony in on how it occurred -- and there's discrepancies even on how it occurred in the way she described it for the little bit of testimony there was -- that puts it out there.

And they might -- that is -- that's going to create prejudice to my client because they're going to start thinking that it occurred with -- under the realm of DCDI --

MR. DEUTSCH: It did.

MS. FRESCH: Excuse me.

THE COURT: Let her finish.

MS. FRESCH: -- versus -- something that was -- I don't know if it was something with a theater condition that -- my people didn't know anything about. We don't know because that -- that wasn't litigated, that never --

THE COURT: Well, I think to give context to the fact that she claimed to be injured, isn't it fair to at least have something about --

MR. DEUTSCH: Your Honor, I can --

THE COURT: -- how she fell down or --

MS. FRESCH: But, Your Honor, this is what's

interesting. Mr. Deutsch did not use -- and he explained to me -- because we did talk about this, and he said, well -- I felt the questions at the beginning that he asked way back at the beginning were fine, but he did not use that little set of questions. If you recall, I let him go back and ask Ms. Esack a whole line of questioning because he goes "I'm going to ask -- let me just shorten it up. I'm going to ask, you know, these ten simple questions."

Well, he isn't propounding for here those ten questions. He went back to what he originally started off way back in before any of Your Honor's rulings.

THE COURT: Let me ask you this: Was there any description in the -- in the interaction with Mr. Copperfield about what she -- did she tell him what happened?

MR. DEUTSCH: I think I have a solution to this, Judge. If Ms. Fresch -- for our purposes, obviously, we -- we -- we believe that Ms. Esack's testimony should have come in for the description of the run, whatever. Your Honor said no. We have our objections to that and we're going to go by it.

The testimony that I put in here -- that I designated left out anything to do with yelling or running or any of that stuff because that's what Your

Honor ruled. In fact, in one of the questions, in her answer when she said that "I took one step and fell," in between saying "I took one step and fell," she said "they were yelling 'faster, faster.'" I had them remove that piece.

THE COURT: So what's wrong with the one step and fell?

MR. DEUTSCH: So here's my question, Your Honor. If Ms. Fresch will stipulate that Ms. Esack's injury occurred during the runaround in the Thirteen Illusion, then maybe we can narrow it down.

THE COURT: That sounds reasonable to me.

MS. FRESCH: Well, wait. Okay. I brought that up way back in when Ms. Esack was here because I said if you just want to have -- again --

MR. DEUTSCH: Are you going to stipulate to the fact that she fell during the runaround at the Thirteen Illusion? If the answer to that is yes, if I have a couple of minutes, I might --

THE COURT: She claims she fell during --

MS. FRESCH: She claims she fell. Because, remember, I don't have any information except she claims she fell and just the fact --

THE COURT: Okay. At least that gives context to the jury.

MS. FRESCH: I will stipulate that she claimed she fell during her participation in the Thirteen Illusion.

THE COURT: All right. How's that?

MS. FRESCH: All right. In the runaround. I'm sorry.

MR. DEUTSCH: Well, now I need to see if that --

MR. MORELLI: She said yes.

MR. DEUTSCH: Okay. So now I just need to see real quickly if I can remove anything that I believe would be covered. I haven't heard any specific objections from this -- from Ms. Fresch.

MS. FRESCH: I'm sorry. It is in the illusion. That was her -- yeah.

MR. DEUTSCH: What?

MS. FRESCH: In the Thirteen Illusion.

THE COURT: She claims --

MR. DEUTSCH: During the runaround?

MS. FRESCH: No. It was -- Your Honor's original ruling was -- because we don't know exactly. We know she had an injury --

MR. DEUTSCH: Well, then, I need the testimony then.

MS. FRESCH: And Your Honor already ruled

that it was during the illusion. I just looked at the language of the order.

MR. DEUTSCH: Your Honor, if she's not going to stipulate it that it was during the runaround, then we need some context from her, without putting in anything about they were yelling at me to run or this or that. The jury needs to know, have context that this woman was involved in the Thirteen Illusion and not that the cage fell on her hand and broke her wrist. The whole purpose of this is that someone else got injured during the runaround.

THE COURT: I think that's fair. You don't have to go into a lot of detail.

MR. DEUTSCH: And I didn't. I removed that. And if she has a specific objection while we play it, she can make the specific objection. And if Your Honor feels that it goes -- we gave you a hard copy today, so there's no need --

MS. FRESCH: And I actually have a color-coded copy so you can see what we agree on, what we don't agree on.

MR. DEUTSCH: I haven't seen that because, according to what I saw, you didn't agree on anything. You objected to every line except two.

MS. FRESCH: No, there are -- what's my color

code here?

MR. DEUTSCH: We got four. We're up to four.

MS. FRESCH: I've got green in here, and that's where we both agree. Look, I even show green.

MR. DEUTSCH: So, I believe, Your Honor, that I abided by Your Honor's ruling and removed anything having to do with the specifics of how the trick was done other than things that show that she was injured, that she fell during -- moving from A to B, with no other details.

MS. FRESCH: Well, I think -- so I just go back, to make a record on this, initially, when we discussed this and --

MR. MORELLI: We're getting feedback.

MS. FRESCH: Okay. When your Honor -- it -- you did say during the illusion. You did not -- your -- earlier, your ruling was not during the runaround, because I know that's what she claims, that it was during the runaround part. Technically, I don't have any information to verify that she was injured during, quote/unquote, the runaround except her lawyers' contention.

MR. DEUTSCH: Your client. Ask your client.

MS. FRESCH: Again, we don't have any recollection of this. I can tell you this. So I'm

just saying -- and there was nothing -- there's no -- I don't have anything to verify that -- in fact, besides her testimony, that it occurred.

MR. MORELLI: But it is her testimony.

MS. FRESCH: I'm just saying --

MR. DEUTSCH: We don't have anything to verify their claims that 55,000 other people never got hurt.

THE COURT: Okay. Why --

MS. FRESCH: All right.

THE COURT: How about if it were during the course of the Thirteen Illusion? How about that?

MR. DEUTSCH: Well, Your Honor, I believe that nothing in her testimony is outside Your Honor's ruling. Why don't we play it. She can object every time she thinks there's an objection.

THE COURT: Yeah, but I don't want to backtrack on something I ruled. If I ruled --

MR. DEUTSCH: Well, if Your Honor would like to take a look -- if she would like to point to specific testimony right now, we could look at it.

THE COURT: I mean, she's --

MS. FRESCH: I've identified --

THE COURT: She's addressing a ruling that I made -- that she understood that I made. I wanted to

make sure that I don't backtrack on something --

MR. DEUTSCH: I understand.

My understanding of the ruling -- and she can correct me if I'm wrong. Anyone else can as well. But my understanding of the ruling was -- is that, obviously, there needs to be some context in terms of that she fell during the runaround. But the manner in which the trick was done, in terms of any testimony about they yelled at us to run, they told us to run, we had a certain amount of time, we had to go through passageways up and down and through staircases, none of that was to come in. That's what Your Honor's ruling was.

So I haven't seen one piece that Ms. Fresch is pointing to now that suggests that any of that was talked to. The only thing that was in an answer that dealt with that was on page 216, in line 21 through 25, when she's asked, "So now you get to the stage door."

So I skipped over how she got to the stage door or why she got to the stage door. I left all of that out. "At the stage door, somebody opens the door, we take one step, they're yelling 'faster'" -- I had them remove "they're yelling faster."

"So we take one step out of the stage door. I slip. And that's all they wrote, and I fell. And,

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at that point, I was down on the ground."

So -- and then it continues, Your Honor could see. But there's nothing there that has anything to do with how the trick was done other than to say that she got outside, she fell. It's a little bit of context. But there's nothing at all that is in any way prejudicial.

THE COURT: So you're talking about page 217, line 20?

MR. FREEMAN: Sorry. Judge, for clarification, 217 -- or two -- I'm sorry. What page was that now?

MR. POPOVICH: 216, starting at line 20.

MR. FREEMAN: I'm sorry. I thought you said 316.

MR. DEUTSCH: 216, line 21.

MS. FRESCH: Your Honor, the -- your -- your ruling is set forth initially on page 298, and then you kind of recap in 307. And you -- you reference on page 298, at lines 12 through 16, "The manner in which the injury took place is irrelevant except that it took place during the Illusion Thirteen and a claim was made as a result and that there was interaction between plaintiff -- the witness and Mr. Copperfield about the occurrence and how that interaction with him took

place."

And then, on 307, you say -- excuse me -- Your Honor. You -- you -- you stated, "The manner in which the Thirteen Illusion was being performed in Seattle in 2002 is not coming in. The fact of the Thirteen Illusion, okay, that there was a Thirteen Illusion; that this witness participated in it, okay; that she was injured during the course thereof, okay."

MR. MORELLI: "The course."

MS. FRESCH: Well, that could be --

MR. DEUTSCH: "The course."

THE COURT: I said without getting into a lot of detail --

MR. MORELLI: That's right.

MR. DEUTSCH: That's exactly what we did.

And, again, if she will stipulate that she fell during the runaround, which is the fact, then we might be able to remove things.

THE COURT: That seems to me to be fair.

MR. DEUTSCH: But she wants to make the jury think that maybe it was at another part in the illusion, which we know is not accurate.

THE COURT: Maybe something fell on her hand?

MR. DEUTSCH: Exactly. That's what she wants the jury to believe.

THE COURT: It seems to me that if you could stipulate to that -- and I'm not going to require you to stipulate. But if you don't, then what I would be inclined to do is permit, at page 217, line 20, where it says, "After that, someone finally decided it would be a good idea to move me. And it was somebody from the theater company. He said it was one of the -- of Paramount's that decided to move me, so I was leaning against" -- no, that's not it. That's not it. I'm thinking of something else.

MR. DEUTSCH: It's 216, line 21.

THE COURT: Let me see. 216, line 21. Okay.

216, line 21, says, "So now you get to the stage door. What happens next?"

"At the stage door, they" --

MR. DEUTSCH: And I took out the "faster" part.

THE COURT: I think, yeah, just that part that goes -- in that answer that goes down to line 2 on page 217 -- on 217. "And I fell"; right?

MR. DEUTSCH: But how about the next part in that answer, where she talks about "that arm was so badly shattered"? I mean, that was all part of this too, the injury. That's what I'm -- I'm saying this is all about the injury. There's no discussion about the

route. There's no discussion about how she got on the route.

THE COURT: Oh, I see what you're saying, is that that part goes to the injury.

MR. DEUTSCH: Correct.

THE COURT: Okay.

MR. DEUTSCH: All of this, Your Honor, was --

THE COURT: Okay. Then what that means, then, is you go down to -- what? -- line 14?

MR. DEUTSCH: Yeah, line 14. Then I skip over the next question. I didn't put in 15 through 18.

THE COURT: Okay.

MR. DEUTSCH: I skipped over that specifically because it said "runaround."

THE COURT: Okay. That's fine.

MR. DEUTSCH: Okay.

THE COURT: I'll allow that.

MR. DEUTSCH: So we're ready, Your Honor.

THE COURT: And that gives an understanding as to what was claimed and how it occurred, so -- okay?

MR. POPOVICH: I believe, when we were handling Ms. Lawrence, Your Honor, I provided you with a limiting instruction for Ms. Esack. If you don't have it up at the bench, I have another copy. And I believe we're only --

MR. DEUTSCH: No objection on this one, Your Honor.

THE COURT: I think I have it here.

MR. DEUTSCH: Actually, I take that back, no objection. There is no -- sorry, Judge.

THE COURT: Is that the one? "Whenever evidence has been admitted but limited to one or more parties" -- right?

MR. POPOVICH: Yeah, if it says "video deposition testimony of Patricia Esack."

THE COURT: Yes.

MR. DEUTSCH: Yes. And, Your Honor, we -- at this point, we have no objection. We did raise an objection that we thought this testimony should go against Team Construction. Your Honor ruled that it didn't. We take exception. But at this point, we have --

MR. POPOVICH: Backstage.

MR. DEUTSCH: I'm sorry. Backstage, I meant, not Team Construction -- sorry -- Backstage. We raised that objection at the time. I just want to reiterate that. But we understood Your Honor's ruling already, and we're okay at this point going forward.

THE COURT: Okay. That's it. You want to compare what you have with what I have?

MR. POPOVICH: No. I only printed it once.
THE COURT: The other one had to do with Ms. --
MR. POPOVICH: Lawrence. And you made changes. And this one is okay, good to go as written.
THE COURT: Are we ready for the jury now, then?
MR. DEUTSCH: Yes, we are, Judge.
MR. FREEMAN: Your Honor, I have the color copy for you if -- if --
MR. DEUTSCH: Do you have a color copy for me?
THE COURT: I don't have that. I don't think so. I have this big thing.
MR. FREEMAN: It's your designations.
MR. DEUTSCH: I just gave them the whole -- I didn't highlight anything; I just gave them the whole transcript.
MR. FREEMAN: Whichever one you want to use.
THE COURT: Do you want this back now?
MR. DEUTSCH: I don't --
THE COURT: Is what you've given me, Mr. Freeman, included within what you had given me, this --
MR. FREEMAN: It's everything that's been

designated by them, the ones we've agreed on, and the ones that we've designated.

MR. DEUTSCH: I don't know. Maybe you could keep it, Your Honor, and then -- unless you don't want it. I'll take it.

THE COURT: That's okay.

MR. POPOVICH: Don't want the bench to buckle under the weight.

THE COURT: For the record, the -- the clerk has brought to my attention the fact that we got the transcript. Okay? And she -- she asked me a moment ago whether it needs to be published. And this is not -- this is sort of a part deposition, part trial transcript; right? So, I mean, does it need to be published for the record, or is it -- do you consider it already to be in the trial transcript or what?

MS. FRESCH: I think -- Your Honor, I feel, like we did with Ms. Lawrence, it actually -- it's being recorded. So, to me, it becomes part of the official transcript of the trial --

THE COURT: Okay.

MS. FRESCH: -- so that the -- that the -- the portion that we all have in front of us to determine what will be actually heard by the jury, I don't think needs to be published.

THE COURT: Okay. But, for the record, it may be that there are objections to things that weren't allowed to be --

MS. FRESCH: Oh.

THE COURT: -- elicited.

MS. FRESCH: Yeah. Right. I don't -- now I don't recall what we did with Ms. Lawrence on that same issue, actually.

MR. POPOVICH: I don't know that anything was done, but there has been a chart with the objections noted. And -- and we could perhaps file those for the two witnesses to preserve the record.

THE COURT: Okay.

MR. FREEMAN: I believe they've both been filed.

MS. FRESCH: I'm not sure plaintiffs have, but we did plaintiffs' designation with our objections. So --

MR. DEUTSCH: Yeah, we didn't file ours; we just gave them to you.

MR. FREEMAN: We did it for you.

MR. DEUTSCH: Whatever you want. I don't care.

MS. FRESCH: I'm just letting you know that I think it covers the one document.

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MR. DEUTSCH: Yeah. The only -- I guess the only issue I would have with that, Your Honor -- and I really don't. I'd like to just get going -- is the fact that, while they filed some objections -- filed some objections to Ms. Lawrence's testimony, when we actually played the testimony in court, they didn't actually object to it. So I think --

THE COURT: I guess my concern is whether -- if and when this case goes up on appeal -- if -- the record would -- you need to have a record to make sure that everybody understood what was the subject.

MR. DEUTSCH: Right.

MS. FRESCH: Right.

MR. DEUTSCH: I think whatever -- the objections made today while it's playing should be the ones that are -- are the objections. Whatever -- we should play this testimony --

THE COURT: Just think about it. Let's not waste any more time on it. Let's just have the jury come in, and we will get started with the testimony.

MR. DEUTSCH: Are we ready, guys? We're ready?

MS. FRESCH: Yes, yes.

THE COURT: Bring the jury in.

THE MARSHAL: All rise.

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(The following proceedings were held in the presence of the jury.)

THE COURT: Good afternoon, ladies and gentlemen.

IN UNISON: Afternoon.

THE COURT: Please be seated.

Do counsel stipulate that the jury is now present?

MR. MORELLI: The jury is present.

MR. POPOVICH: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

MR. CALL: Yes.

THE COURT: All right. Plaintiffs may call their next witness.

MR. DEUTSCH: Your Honor, at this time, we call nonparty Patricia Esack, which is going to be played via videotape.

THE COURT: All right. Before that's played, I will read a limiting instruction to the jury.

Whenever evidence has been admitted but limited to one or more parties, you must not consider it as to any other party or parties. The video deposition testimony about to be played to you from witness Patricia Esack is sworn testimony taken in this case. This testimony is being offered by the Cox

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plaintiffs.

You may consider this testimony in deciding the liability claims relating to defendants David Copperfield and David Copperfield Disappearing, Inc., just as you would consider any other testimony given in this courtroom.

You must not consider this testimony in deciding the liability claims relating to defendants MGM Grand Hotel, LLC; Backstage Employment and Referral, Inc.; and Team Construction Management, Inc.

All right. You may proceed.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Good afternoon, Ms. Esack.

A. Good afternoon.

Q. I'm going to ask you a couple questions this morning. If at any time you don't understand any of my questions, please let me know and I'll be happy to rephrase them. Okay?

A. I will.

Q. Okay. Can you tell us --

THE COURT: You mean afternoon.

BY MR. DEUTSCH:

Q. Did I say morning? When you're having fun, time flies.

Good afternoon, Ms. Esack.

Can you tell us -- you're here in Las Vegas in a courtroom. Can you tell us what -- what brought you here?

MS. FRESCH: Objection.

THE COURT: Hold on. Stop.

(Whereupon video deposition was stopped.)

MS. FRESCH: Hearsay with respect to certain lines, specifically --

MR. DEUTSCH: Nothing's being offered for the truth, Your Honor.

THE COURT: Okay. I agree. I'll admit -- I'll allow it, not for proof of truth of the matter asserted but for what was said.

MR. DEUTSCH: Yes.

THE COURT: Okay.

(Whereupon video deposition was played.)

THE WITNESS: Sitting home Thursday night and a friend of mine, Bobbie, called me. And she said that -- asked me if I had been watching television. And I -- the television news. And I said not really. And she said that there was a lawsuit being brought against Mr. Copperfield because someone had been injured in one of his illusions.

And I said, "You know, Bobbie, it's been -- it's been a while. And I'm kind of over that." And she said, "No, no. You really need to go and google this particular situation." So I did.

And when I brought up the website, the first thing I saw was a clip of Mr. Copperfield saying that no one had been ever injured in this particular illusion. And when I saw which illusion it was, it was the same illusion that I had been injured in. And I got angry.

BY MR. DEUTSCH:

Q. Okay. And can you tell us what you did at that point?

A. At that point, I looked to see which -- who the lawyer who was representing it -- him. And -- and I called your law firm. And I said very simply that I had been injured and I'd had my wrist broken, and if you were interested, here was my name and number and you could call me. And then I hung up.

Q. And when was that that you reached out to our office?

A. That was about 8:00 Thursday night.

Q. This past Thursday night?

A. This past Thursday night.

Q. Okay. And what particular illusion or trick

was it that -- that you participated in?

A. It was the one with the cage. I believe they refer to it as the Thirteen.

Q. Okay. And when was it that -- that you participated in that illusion?

A. It was in 2002 in -- at the Paramount in Seattle, Washington.

Q. Okay. And, at the time, were you living there?

A. Yes.

Q. Where do you live now?

A. I live in Connecticut, just outside of Hartford.

Q. And can you tell us, what do you do in Connecticut?

A. I work for a major engine manufacturing company.

Q. Okay. And, at the time that you were in Seattle, were you living in Seattle?

A. Yes.

Q. And what were you doing out there?

A. I was working for Microsoft as an IT manager.

Q. Okay. So now you get to the stage door. What happens next?

A. At the stage door, they -- somebody opens the

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stage door. We take one step -- and we take one step out of the stage door, I slip. And that was all she wrote, and I fell.

MS. FRESCH: Objection.

THE COURT: Hold on a minute.

(Whereupon video deposition was stopped.)

MS. FRESCH: It's --

MR. DEUTSCH: This is what we just talked about, Your Honor.

MS. FRESCH: It's the next part. Sorry, your Honor.

MR. DEUTSCH: We just spoke about this, Your Honor.

MS. FRESCH: No, no, no. Can I just, for the record, state it's a different objection?

THE COURT: Yes.

MS. FRESCH: It would be on 217, specifically lines 3 through 6, that it's speculation and it has no foundation.

MR. DEUTSCH: It's not speculation, Your Honor; it's what she recalls from that evening.

MS. FRESCH: It's referencing specifically the lines on line 4 through 6, really.

THE COURT: I'll sustain the objection from

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lines 3 down to the word "out" on line 6.

MR. DEUTSCH: What's the basis of the sustaining of the objection, Your Honor? That it's speculation? It's her recollection?

THE COURT: It refers to people who decided. I'm not sure what that means.

MR. DEUTSCH: Okay. It was as every other witness, Your Honor, in this court has been able to testify about what their own understanding of the situation was. This is no different. But okay. We'll remove it.

THE COURT: Wait a second.

Okay. I am -- I'll retract what I said. It seems to me that it's necessary to give meaning to the other part that I was going to allow in.

MS. FRESCH: I'll just reiterate that I believe it's speculation and it's -- it's a -- assumes facts not in evidence and --

THE COURT: Well, it's --

MS. FRESCH: -- it lacks foundation.

THE COURT: It's being proffered as evidence. So --

MS. FRESCH: Well --

THE COURT: All right?

MR. DEUTSCH: Okay. You could play it.

Thank you.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Okay. And what happened after that?

A. After that, someone finally decided it would be a good idea to remove me --

(Whereupon video deposition was stopped.)

MR. DEUTSCH: No, no. We skipped over a piece. Hold on. You got to go back to the last one. You just skipped over it. It was 19. Yeah, there. Yeah, yeah.

MR. MORELLI: You're on 3.

MR. DEUTSCH: We got it. No. I'm sorry. Not 217; 216, line 21.

THE COURT: I think you're going to page 217, line 3; right?

MR. DEUTSCH: Yeah, but I think it was a whole clip. So I think when it stopped it, we got to start that clip from the beginning of that question --

THE COURT: Okay.

MR. DEUTSCH: -- over again. So ...

MR. MORELLI: 216, 21.

MR. DEUTSCH: Do you want me to just read this one? Want me to read this one?

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MR. MORELLI: No. Have them play the whole thing.

MR. DEUTSCH: Go ahead and do it. Yeah, reclip it.

MR. MORELLI: We can get some popcorn.

MR. DEUTSCH: When Brendan did it, he didn't have to reclip it.

(Whereupon video deposition was played.)

THE WITNESS: And we take one step out of the stage door, I slip. And that was all she wrote, and I fell.

At that point, I was down on the ground. They -- the person who was behind me decided that they needed to grab the object that had been in my hand and get the people that were behind me out. So they took those people around me. And when they tried to grab the thing out of my hand, my arm was so badly shattered that it caused an enormous amount of pain trying to get that object out of my hand. They did grab that object out of my hand and they proceeded to head down toward -- down the -- down the -- the -- the sidewalk towards the front of the theater. I have no idea where they went.

(Whereupon video deposition was stopped.)

MR. DEUTSCH: 217, line 19.

(Whereupon video deposition was played.)

THE WITNESS: And we take one step out of the stage door --

(Whereupon video deposition was stopped.)

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Okay. And what happened after that?

A. After that, someone finally decided it would be a good idea to move me. And it was somebody from the -- from the theater company -- from the -- that -- from the -- he said he was one of the -- the -- not -- from the Paramount staff decided to move me, so I was leaning against the building. And they called two ambulances.

Q. Okay. And then what happened?

A. And then David came out.

Q. When you say "David," who is David?

A. Mr. Copperfield came out, and he talked to me for a few minutes. And I don't remember what he said, but I remember saying to him that I was hoping that I hadn't messed up the illusion. And then the ambulances took me directly to the trauma center for the northwest.

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Q. Okay. So -- so let me just see if I'm clear. Were you still sitting outside the theater when Mr. Copperfield came over to you?

A. Yes, I was right outside on the street.

Q. And was he there at the time that the ambulances arrived? Do you know?

A. I honestly -- the ambulances were there. I don't -- so I guess the answer -- the answer to that question is I don't remember.

Q. Okay.

A. I don't know if they were there a while, but they were there when he was there.

Q. And -- and did you -- you were taken to the hospital?

A. I was taken to the trauma center.

Q. The trauma center. And what -- was there a diagnosis made in terms of your injury?

A. Yes.

Q. What was that?

A. I don't remember the fancy diagnosis. You would have to look on the entry sheet.

Q. You can give us the --

A. My wrist was shattered. And I have a plate and six screws in my wrist. They -- it -- it's -- essentially, I'm considered disabled.

Q. Okay. Is it -- is it -- do you still have the plate and the screws in your wrist now?

A. Yes, they can't be taken out.

Q. Okay.

A. Up --

Q. After --

A. My wrist would fall apart if they did.

Q. After that day of the show, did Mr. Copperfield ever reach out to you at any point after that?

A. Yes, he did.

Q. Can you tell us when that was?

A. He reached out the next day.

Q. Okay.

A. He called the next day.

Q. Where did he call?

A. He called my home.

Q. Okay.

A. And my mother had heard him on the news earlier that morning. And, on the news, he had been talking about how no one had ever been hurt on any of his shows earlier that morning. So she was a little bit angry with him. And, being an 80-year-old woman, she has a tendency of lecturing. So she decided to lecture him and then hang up on him, which I wasn't

exactly thrilled about because it would have been a little bit more helpful if she'd gotten some information from him rather than hanging up on him.

Q. Do you recognize --

(Whereupon video deposition was stopped.)

MS. FRESCH: Your Honor, objection. Objection.

THE COURT: Hold on. There's an objection. Where?

MS. FRESCH: Sorry. I would object to lines -- the next set that -- the relevance of the photographs.

MR. DEUTSCH: You're talking 22, 9 through 13.

MS. FRESCH: And the sealing, the Court order.

MR. DEUTSCH: If fits squarely within the Court order, Your Honor.

MR. MORELLI: What page?

THE COURT: 222, line 9.

MR. DEUTSCH: It fits squarely within the order, Your Honor.

THE COURT: I agree with plaintiff. I'll allow it.

MR. DEUTSCH: Okay. You could play it.

MS. FRESCH: Wait, Adam. Is the next part -- I have an objection to line 22, so should I just deal with that now?

MR. DEUTSCH: Yeah, why don't you do that right now?

MS. FRESCH: Okay.

Your Honor, I would have line -- 222, lines 20 through 25, and then lines 1 through 2 on the next page. I actually would need a sidebar to tell you my precise objection.

THE COURT: Okay.

(A discussion was held at the bench, not reported.)

MR. DEUTSCH: So give me just one second, Elaine, while we clip that.

MR. MORELLI: Okay. Yeah, that's fine. Picks it up on line 20.

MR. DEUTSCH: Do 9 and then skip over.

MR. MORELLI: 20. Got it.

MR. DEUTSCH: She's got to just reclip it now to take out the stuff. It's not that easy. That's why we're not doing it and she is.

MR. MORELLI: Exactly.

MR. DEUTSCH: All right. We good? All

right. We're good.

MR. MORELLI: Action.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Can you tell us, you know, after --

(Whereupon video deposition was stopped.)

MR. DEUTSCH: No.

THE COURT: I think we're going to page 222, line 9; right?

MR. MORELLI: Exactly.

MR. DEUTSCH: That's where we're trying to go.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Do you recognize what's depicted in those?

A. Unfortunately. I hate these pictures.

Q. Okay. And what are those pictures of?

A. These pictures are of me in -- the day I was released from the hospital.

Q. And, at some point, if you know, was a claim or some sort of notification sent to Mr. Copperfield with respect to the fact that you had been in this accident?

A. Oh, absolutely.

Q. Okay. Do you recognize what's depicted in those?

A. Unfortunately.

(Whereupon video deposition was stopped.)

MR. MORELLI: We are at 223.

MR. DEUTSCH: Line 13.

MR. MORELLI: What happened to 1 and 2?

MR. DEUTSCH: 223, line 13.

MR. MORELLI: Adam.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. You know, after you -- you reached out to -- to our law firm --

(Whereupon video deposition was stopped.)

MR. DEUTSCH: That's not right.

MR. MORELLI: That's not right either.

MR. DEUTSCH: Yes, it is. Actually, it is. Right. Sorry. It is. It's okay.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Can you tell us, you know, after -- you -- you reached out to -- to our law firm, did we ask you if you would be willing to come here to Las Vegas to testify?

A. Yes, you did.

Q. Okay. And -- and can you tell us why it was that you agreed to come and testify here in this case?

A. Because I would really like David Copperfield not to be saying that no one's ever been injured in any of his illusions once and for all, because I've heard it now three times and I'm getting tired of hearing it.

(Whereupon video deposition was stopped.)

MS. FRESCH: Your -- objection to the next --

THE COURT: What?

MS. FRESCH: The next question misstates testimony.

MR. DEUTSCH: It doesn't, Your Honor, and --

MS. FRESCH: Yes.

MR. DEUTSCH: -- it's the jury's recollection of the testimony anyway.

THE COURT: Well, in any event, it's -- if -- okay. So I'll allow it if it says "if."

MS. FRESCH: It's not his testimony.

THE COURT: Okay.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. Just to follow up on that, if Mr. Copperfield came into this court and told the jury that, in the history of this trick from 1998 forward, nobody had

been injured, would that be true?

A. No, because I was injured in 2002.

Q. Now, at the time that -- that -- I just want to go back for a second.

At the time that you were -- after you had fallen and you were outside the theater, did you remain on the ground the whole time until the ambulance came or something else?

A. Yes, I did.

(Whereupon video deposition was stopped.)

MS. FRESCH: Objection.

THE COURT: One second.

MS. FRESCH: Again, this next part exceeds Your Honor's earlier order.

MR. DEUTSCH: It does not, Your Honor. It goes directly to Your Honor's order. It details the injury and the knowledge of the injury.

MS. FRESCH: Well, Your Honor, I think that exceeds your Court's order, as we discussed.

THE COURT: I don't believe it does. So I'll allow it.

(Whereupon video deposition was played.)

BY MR. DEUTSCH:

Q. You -- were you in pain during that period of time?

A. Oh, absolutely. I was going into shock.

Q. And was -- did you have any deformity at all in your wrist?

A. Absolutely.

Q. Can you describe that for us.

A. You wouldn't recognize my arm as an arm at that point in time.

Q. Okay. So it was noticeable just by looking without the need of, like, an x-ray or anything? It was noticeable that there was something wrong?

A. It was noticeable. It was -- my hand was back here (witness indicating).

Q. Okay. So indicating that your hand was literally facing in the wrong direction?

A. The hand was in the wrong direction. It was -- I mean, it looked like -- it looked like some kind of weird Halloween thing.

Q. Were you crying at all?

A. I wasn't crying, but I was, like, cringing more than anything else. I was -- I was trying -- I was trying desperately not to throw up.

Q. Okay. And -- and when you were in that position sitting on the ground with your wrist facing the opposite direction in that shock, is that when Mr. Copperfield came over to you the first time?

A. Yes.

Q. Okay. So he would have been there to see the condition of your wrist and the condition of you?

(Whereupon video deposition was stopped.)

MS. FRESCH: Objection. Oh, never mind.

MR. DEUTSCH: Keep going.

MS. FRESCH: Actually, Your Honor --

THE COURT: Do we go now to page 230, line 24?

MR. DEUTSCH: I think the next one we go to is 256, Your Honor.

MS. FRESCH: Well, Your Honor, so your -- Mr. Deutsch, so we have testimony that we want to --

THE COURT: No, I understand.

MS. FRESCH: Yeah, so should --

THE COURT: I'm understanding Mr. Deutsch to be saying he wants to play his first, then you play yours second. Is that --

MR. DEUTSCH: That makes sense.

MS. FRESCH: No, that's fine. I just wanted to clarify how we were doing it.

THE COURT: Right.

So now which page?

MR. DEUTSCH: 256, line 19.

MS. FRESCH: Hold on. Let me get there

quickly.

MR. MORELLI: It's questions by Ms. Fresch.

MR. DEUTSCH: Just for the record, Your Honor, at this point we're picking up with questions from Ms. Fresch.

MS. FRESCH: Well, I think that will be obvious.

THE COURT: Okay.

MR. DEUTSCH: Fair enough.

MR. MORELLI: He's not a good impersonator.

MR. DEUTSCH: You can't see my heels in that.

MR. MORELLI: That's an old one already. Give it up.

You can play it.

(Whereupon video deposition was played.)

BY MS. FRESCH:

Q. When you -- you said, if I understood you correctly -- and I -- I was taking notes, but I have a really bad memory, so bear with me.

You left a message at the Morelli law firm last week; is that correct? On Thursday?

A. Yes.

Q. And --

A. At 8:00, I think.

Q. Okay. 8:00 at night Connecticut time?

A. Uh-huh.
Q. Okay. Yes?
A. Yes.
Q. You --
A. Sorry.
Q. No, that's okay. Everyone does it.
And when did you receive a call back from anyone from Mr. Morelli's office?
A. Probably five minutes later.
Q. Okay. And who did you speak to?
A. Adam.
(Whereupon video deposition was stopped.)
MR. DEUTSCH: That's me.
MS. FRESCH: Objection to the next portion.
THE COURT: Does that begin at 258, line 2?
MR. DEUTSCH: I --
MS. FRESCH: Well --
MR. DEUTSCH: I -- I -- for some reason, Your Honor, I had the rest of this page all the way through 258, but I noticed that it wasn't on my sheet. I -- I -- so I don't see -- so what I thought was next was just a continuation of the rest of page 257 all the way down to the end -- through the end of 258 and then through the end of 259.
MS. FRESCH: Well, Your Honor, similar to

our --

THE COURT: I -- I agree that the -- let's see.

MR. DEUTSCH: Oh, I understand. So two -- so line 23, Your Honor.

THE COURT: Okay. I would omit --

MR. DEUTSCH: Line 23.

MS. FRESCH: Wait.

MR. DEUTSCH: 257, line 23 through 25.

THE COURT: Right.

MR. DEUTSCH: And 258 through -- through 5?

MS. FRESCH: Wait. Hold on.

MR. MORELLI: Through 5.

THE COURT: No, I would go down to --

MR. DEUTSCH: Yeah, all of that. I got you.

THE COURT: I guess.

MR. DEUTSCH: To line 16?

THE COURT: Line 16; right?

MR. MORELLI: Through line 16.

MR. DEUTSCH: Yes. Okay.

THE COURT: All right.

MR. DEUTSCH: All right. Give us a second.

MR. MORELLI: You know where to start now?

MS. FRESCH: So we're starting at line 17?

MR. MORELLI: I think we ought to start at

15.

MS. FRESCH: 15.

MR. MORELLI: What page we on?

MR. DEUTSCH: 258, line 7.

THE COURT: Line 15, page 257, through --

MR. DEUTSCH: 257, up to 22?

MS. FRESCH: Right.

MR. DEUTSCH: And then picking up on 258 at line 17?

THE COURT: Okay.

MS. FRESCH: Right.

THE COURT: All right.

MR. MORELLI: Starts at 15.

MS. FRESCH: I thought we agreed.

(Whereupon video deposition was played.)

BY MS. FRESCH:

Q. And did Adam suggest to you that he would want you to fly out here this week?

A. That was later in the week.

Q. Okay. What day was -- how many conversations did you have with anyone from Mr. Morelli's office between the first phone call a few minutes after --

A. Could you repeat the question one more time.

Q. Sure. Sure.

You had the initial phone call -- you left a

message on Thursday evening; correct?

A. Uh-huh.

Q. Okay. So from that phone call that I believe -- about a ten-minute phone call to the time you hopped on your plane yesterday -- and I don't remember what time you said you hopped on your plane yesterday, so bear with me. So between that time of Thursday evening and -- what was yesterday? -- Tuesday -- yesterday, Tuesday -- how many times did you speak to anyone at the Morelli office?

A. Do you want me to include them --

Q. Let's skip anyone who just called you to say "we've got a plane ticket for you," something about travel arrangements, someone who was an attorney or a paralegal to talk to you about what happened and -- and flying out here.

A. Excluding travel stuff, probably -- maybe not very many because I was actually kind of concerned about that. So it was maybe twice.

Q. And who were -- who were those two phone calls with?

A. Adam.

Q. Okay. All Adam?

A. Yes.

Q. Did you speak to anyone -- other than maybe

some of the flight arrangements, with anyone other than Adam?

A. No. I never spoke to anybody other than Adam until yesterday.

Q. Okay. Well, who did you speak to yesterday?

A. That -- I finally met Mr. Morelli.

Q. Okay. So you had about a ten-minute phone call with Mr. Deutsch on Thursday. When was the next phone call?

A. The next phone call of any length, I believe, was -- I think there was another maybe ten-minute phone call on either Friday or Saturday.

(Whereupon video deposition was stopped.)

MS. FRESCH: Objection to --

THE COURT: Hold on a second.

MS. FRESCH: Just for the editing purposes --

MR. DEUTSCH: I'll make that clear, Elaine. There was one piece that was clipped out. The question was above, "Well, who did you speak to yesterday?"

And the answer was, "I finally met Mr. Morelli yesterday."

And I think on the video the Mr. Morelli part might have gotten cut out.

Was that your issue, Elaine?

MS. FRESCH: No. I was actually just looking ahead to make sure to get the objection in on page 261, lines 4 through 9.

MR. DEUTSCH: Yeah. Okay.

THE COURT: Uh-huh.

MR. DEUTSCH: Instead of --

MS. FRESCH: I don't know if -- really, the relevance of lines 2 through 4, actually.

THE COURT: I think I'll permit through line 3 on page 261.

MR. MORELLI: Through line 3.

MR. DEUTSCH: I will just read those five lines. Would that be easier? And then jump over to the next clip.

I'm just going to read these to -- to -- a little bit. It's just three questions.

"QUESTION: So you had a ten-minute phone call with Mr. Deutsch on Thursday. When was the next phone call?

"ANSWER: The next phone call of any length, I believe, was -- I think there was another maybe ten-minute phone call on either Friday or Saturday.

"QUESTION: Okay.

"ANSWER: Actually, it was Saturday, now

that I think about it.

"QUESTION: Okay. And what time of the day on Saturday?

"ANSWER: It was, I think, in the morning."

MR. DEUTSCH: Okay.

MS. FRESCH: And then can -- prior to you starting again, Your Honor, at 264 --

MR. DEUTSCH: Hold on. I think I understand, Elaine. Give me a second.

MS. FRESCH: Okay. You understand what I'm talking about.

MR. DEUTSCH: Yeah.

MS. FRESCH: It's kind of throughout that lines 10 through 25.

MR. DEUTSCH: No problem. I'll take out all of that.

MS. FRESCH: It actually goes onto the next page, Mr. Deutsch.

MR. DEUTSCH: No, I think it should start again at 264, line 24, Elaine.

MS. FRESCH: Okay. Hold on. Hold on.

MR. MORELLI: It's the last question on the page.

MS. FRESCH: Okay. Line 24, 25 okay, but --

MR. DEUTSCH: Up to --

MS. FRESCH: No, because 1 and 2 is the issue.

MR. DEUTSCH: 1 and 2 is fine.

MS. FRESCH: No.

MR. DEUTSCH: No, it's not. It's referring to Eric.

MS. FRESCH: No, it's not.

MR. DEUTSCH: 264, line 24, 25 --

MR. MORELLI: No, it's talking --

MR. DEUTSCH: Into 1 and 2.

MS. FRESCH: Okay.

THE COURT: Yeah, I think that's --

MS. FRESCH: I'm sorry.

MR. DEUTSCH: And then it goes all the way down --

MS. FRESCH: Sorry.

MR. DEUTSCH: -- to 16.

MS. FRESCH: Yeah. I'm sorry. I misunderstood. I mean --

THE COURT: Yes.

MR. DEUTSCH: The next clip should be 264, line 24, to 265, line 16.

(Whereupon video deposition was played.)

/////

BY MS. FRESCH:

Q. Anything else about what happened to you in 2002 in that phone call?

A. Well, I really didn't -- actually, I probably talked longer to your lawyer than I did to him.

Q. Okay. And did you talk to my lawyer, Mr. Freeman?

A. I'm sorry. I didn't remember his name.

Q. That's okay. That's okay. Just was identifying his name. It was easier.

When did you speak to Mr. Freeman in relationship to your phone call with Mr. Deutsch?

A. Right after it.

Q. Okay.

A. Within -- within a half an hour.

Q. Okay. And then you talked to Mr. Deutsch again, correct, after the Saturday phone call?

A. I didn't actually speak to him until I got here.

Q. Okay. Now, let's go back because I -- I tried to take good notes, but -- so you got a call from someone named -- a friend, Bobbie; is that correct?

A. Yes, Bobbie.

Q. And is Bobbie a girl or --

A. It's actually Barbara.

Q. Barbara. Okay. And what's Bobbie's last name?

A. Ruggiero.

Q. And where does Bobbie live?

A. Tennessee.

Q. And how long has she been friends with you?

A. 20-plus years.

Q. Okay. So she called you -- on what day did she call you?

A. Thursday.

Q. Okay. And you -- and told you that -- what did she say again to you?

A. She told -- asked me if I had been watching the news and told me -- when I told her that I had not been really watching the news, she said that, you know, David -- Mr. Copperfield was being sued for injuring somebody in an illusion. And she thought it was the same one I had been injured in and that I needed to look at the -- look at -- you know, google it.

And I said to her that, you know, it had been -- you know, I was pretty much over this. And she said, "No, Patty, you really need to do this." So I looked. And that was when I came up with the -- you know, the little clip from the trial.

Q. Okay. Now, what -- when you googled, what

did you google exactly?

A. "David Copperfield trial."

Q. Okay. And what clip -- what news station was the clip from?

A. I have no idea.

Q. Well, you could, like, randomly -- maybe -- this is how I google, but that's my own googling.

So the first clip you pulled up, you don't recall which news station that was?

A. No.

Q. Okay. And how long was that clip?

A. I didn't even watch the whole thing. So -- because once I saw -- once I heard him say that no one had ever been injured in one of his -- in that particular illusion, I was kind of mad because it was the same thing I'd heard him say the day -- literally the day after I was injured back in 2002. It was like deja vu all over again. So I just stopped listening to the rest of the clip.

Q. Okay. And were -- now, your mother -- you described your mother had a phone call with Mr. Copperfield; is that correct?

A. Correct.

Q. And the day of the accident, how long after was --

A. That was the next day.

Q. So you were on the phone with your mother and anybody else besides Mr. Copperfield?

A. No, not that I know of anyway.

Q. And what did your mother say?

A. My mother was -- my mother was quite a character at 80. So she was sort of reprimanding him -- Mr. Copperfield like he was sort of like her six-year-old child and was yelling at him about hurting her little girl. And -- and how it -- you know, she -- he shouldn't have done that and yada yada yada yada.

Q. And then walked straight in --

A. No, she tells me to go up to the -- just to the edge of -- okay. So here's the -- here's the platform. So coming up the -- coming up the stairs, and David's standing right here.

So she tells me to go over to David. And this is the seat he's going to put me in.

Q. Okay.

A. So then he makes these comments about me being Mary Ann from Gilligan's Island. And then he sits me in this chair. And somebody -- I don't remember who -- hands me a flashlight.

Q. Okay. While you were interacting with Mr. Copperfield, were the ambulance there at all?

A. They were -- like I said, they were just arriving. So they hadn't actually gotten out of the ambulance when -- when Mr. Copperfield was there.

Q. Okay. All right. And what did Mr. Copperfield say to you when he came up with you -- with the gal standing with you?

A. I don't remember what he said because I was -- that guy was -- I think I was busy interrupting him because I was very worried that I had ruined his trick -- his illusion. So I was busy apologizing for ruining his illusion.

Q. Do you remember anything of the gal -- what she said, if anything, while Mr. Copperfield was --

A. She took my name, my telephone number, and my address. And now that I think about it, I did hear from him -- or I heard from -- I didn't really hear from him, but I got one more thing from -- from somebody on his staff. That year, I got a Christmas card in the mail, which I thought was odd. It was a cute Christmas card, though.

Q. Anything else about what --

(Whereupon video deposition was stopped.)

MR. DEUTSCH: That's it.

I think that's all for ours, Your Honor.

THE COURT: All right.

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MR. DEUTSCH: Thank you. Sorry to delay everyone. It's not easy.

MS. FRESCH: And --

MR. DEUTSCH: Thank you. Thank you. No pressure.

THE COURT: You start at page 230, line 24.

MS. FRESCH: Yes. Your Honor, we're going to do it like we did Ms. Lawrence, where Mr. Freeman -- this will probably go faster. Mr. Freeman will be reading the questions and I will once again playact.

THE COURT: All right. She will be sworn.

MR. MORELLI: I don't have the designations.

MR. DEUTSCH: Do you have a copy of your designations?

MS. FRESCH: Yeah.

MR. FREEMAN: Yeah.

THE COURT: So -- okay. She'll be sworn. You'll be --

MS. FRESCH: Yes.

THE CLERK: Please raise your right hand.

You do solemnly swear that you will well and truly read the answers of the deponent as set forth in the deposition in response to the questions therein asked by counsel, so help you God?

THE WITNESS: I will.

THE CLERK: Thank you. Please state and spell your first and last name for the record.

THE WITNESS: Elaine K. Fresch, F-r-e-s-c-h.

THE CLERK: Thank you.

MR. DEUTSCH: Just -- before you start, I have some objections on the next page, 231, line 1 through 3 -- line -- line 1 through 3.

MS. FRESCH: That puts --

THE COURT: Hold on just a second. I'll allow it.

MR. DEUTSCH: Your Honor --

THE COURT: I'm referencing back what I allowed on page 222, lines 20 through 23.

MR. DEUTSCH: To --

THE COURT: I think it's within --

MR. DEUTSCH: Oh, I understand. I understand.

THE COURT: It's within the ambit of that.

MS. FRESCH: All right. Is that -- hold on.

MR. FREEMAN: 230 -- starting on 230, 24 and 25.

MS. FRESCH: All right. Ready.

BY MR. FREEMAN:

Q. You can forget things over 13 years; right?

MS. FRESCH: Wait. Oh, yes. I'm sorry.

THE WITNESS: Yes, you can.

BY MR. FREEMAN:

Q. You forgot that you made a claim against the theater; right?

A. Yes.

Q. And Mr. Copperfield could have forgotten that you'd been hurt that night; right?

A. I can't make any assumptions as to what Mr. Copperfield knows or doesn't know.

Q. Right. So if -- if what Mr. Copperfield told the jury is that he didn't recollect anyone else getting hurt in this illusion, you can't say whether that's wrong or not, can you? You don't know what he recollects and what he doesn't?

A. I know what he would know the day after the injury.

Q. As far as in this --

MR. DEUTSCH: Hold on. Hold on.

MS. FRESCH: Wait.

MR. DEUTSCH: Okay.

THE COURT: Go to page 231, line 22; right?

MR. DEUTSCH: 231, line 22. I had already objected to that, but I got my ruling. So nothing now.

THE COURT: Okay. Go ahead.

/////

JA003494

BY MR. FREEMAN:

Q. As far as in this trial this week, you don't know what Mr. Copperfield recollects and doesn't recollect about your case?

A. I don't know what Mr. Copperfield knows or doesn't know.

Q. You said that you did --

MR. FREEMAN: Excuse me, Elaine. Start over.

BY MR. FREEMAN:

Q. You said that you did look at something from which you observed Mr. Copperfield giving certain statements in connection with this case; correct?

A. Correct.

Q. Okay. What was the extent of what you heard?

A. I literally watched one -- I literally watched the one clip of -- of Mr. Copperfield saying that he had never injured anyone in his illusion.

MS. FRESCH: Oh, the next, we're going to delete.

THE COURT: You go down to line 20, I think.

MS. FRESCH: Yeah, but we will not be.

THE COURT: Okay. You're right.

MS. FRESCH: Bear with us one moment, Your Honor. I think it would be -- we would skip to --

MR. FREEMAN: 255?

MS. FRESCH: Yes.

MR. DEUTSCH: Give me one second. Thank you. 250, line 5?

MR. FREEMAN: 5 through 18.

MR. DEUTSCH: Yep.

MR. FREEMAN: Good.

MR. DEUTSCH: No problem.

MR. FREEMAN: Okay.

BY MR. FREEMAN:

Q. Did you pay for your own airline ticket to Las Vegas?

A. No, I did not.

Q. Who's paying for your airline fare?

MR. FREEMAN: Mr. Morelli, do you want to take this one?

MR. DEUTSCH: Mr. Morelli is my name.

MR. MORELLI: Unfortunately.

MR. FREEMAN: You're playing Mr. Morelli.

MR. MORELLI: I'm not paying for yours, though.

THE WITNESS: Mr. Morelli is paying for the airplane.

MR. FREEMAN: All right. Now I'm lost. Just a second.

MR. DEUTSCH: 255,13.

JA003496

MR. FREEMAN: There we go.

BY MR. FREEMAN:

Q. Is Mr. Morelli paying for your hotel?

A. Yes, he is.

Q. Is he paying for your meals?

A. He's paying for some of my meals.

Q. Anything else that he's paying for?

A. No.

Q. Okay. Where are you staying? What hotel?

A. The Wynn.

MR. FREEMAN: All right. 257 was part of the video.

MR. DEUTSCH: Yeah, we played that already.

MS. FRESCH: Okay.

MR. DEUTSCH: 268 was also played.

MR. FREEMAN: 268.

MS. FRESCH: Right. I think we're at 271.

MR. FREEMAN: 270 -- 271. Give you a second.

MR. DEUTSCH: 271, line 14.

MR. FREEMAN: 14 to 25 and then going to the next page to line 13.

MR. MORELLI: Yeah.

MR. DEUTSCH: Yep.

MR. FREEMAN: Okay.

MR. MORELLI: 14.

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BY MR. FREEMAN:

Q. Now, let's step back in time for a moment. So --

MR. FREEMAN: I'm sorry. This is in red and it's really hard to see. Let me do that one over.

BY MR. FREEMAN:

Q. Now, let's -- let's step back in time for a moment. So it was the day after your injury you saw Mr. Copperfield on the news.

A. Yeah, I was in the hospital. I was literally in Harborview.

Q. Okay. So -- and was that the morning news or the -- what time of day was this news program on?

A. I believe it was morning news.

Q. Okay. And what -- do you recall what station you were watching?

A. No, because they -- actually, the person next to me had the television -- had control of the television.

Q. Did you recognize the newscasters?

A. I wasn't paying -- I don't watch the news that much, so the answer to that question is no.

Q. And how long was the -- it was -- was it a news station or, like, an entertainment station?

A. It was an entertainment station. My -- my

feeling was -- excuse me -- my feeling back then was that it was "Good Morning America," but I'm not 100 percent sure. So I can't -- I can't say that for absolute positively sure.

Q. So -- and you don't recognize -- or you don't recall who was doing an interview with Mr. Copperfield?

A. No.

Q. Was it -- were you watching "Good Morning America" or whatever show this was for a while prior to Mr. Copperfield coming on?

A. We were, yes. She had it on for quite a while.

Q. Okay. And did you watch the entire interview with Mr. Copperfield?

A. Yes.

Q. Okay. And what -- what -- what did he -- what did he talk about in that interview?

A. He was talking about some new illusions that he was planning.

Q. Okay. And do you remember the name of any of those illusions?

A. No, I don't.

Q. Had you had any surgery yet?

MR. DEUTSCH: Wait a minute. There's the rest of that answer.

MS. FRESCH: Oh, sorry. Sorry.

MR. DEUTSCH: So can you start at line 9 again.

MR. FREEMAN: Yeah, we'll start back at line 9.

BY MR. FREEMAN:

Q. Okay. And do you remember the name of any of those illusions?

A. No, I don't. I was -- at that point in time, I was on a -- on a lot -- I was in a lot of pain.

Q. Had you had any surgery yet?

A. No. That was -- I was just about to. That was the morning that I was going into surgery.

MR. FREEMAN: 274.

MR. DEUTSCH: 274 what? Line 4?

MR. FREEMAN: No, 274 --

MS. FRESCH: 21. Excuse me.

MR. DEUTSCH: Yep.

MR. FREEMAN: Through the next --

MR. DEUTSCH: It's okay.

MR. FREEMAN: -- page and a half.

MR. DEUTSCH: Keep going.

BY MR. FREEMAN:

Q. Okay. So you're watching what might have been "Good Morning America." Mr. Copperfield is

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talking about other new illusions.

A. Uh-huh.

Q. And what -- what was the rest of -- of you -- your -- excuse me. What's the rest of your recall of that interview?

A. They were, you know, talking to him about, you know, how things -- how things were going. And then, at one point in the conversation, they -- you know, asked him. And I thought it was very bizarre. At one point in the -- in the conversation, you know, he -- he mentioned that -- and it seemed like it was out of place, but he mentioned that he had never had any injuries during any of his shows. And I was really taken aback because I had been injured the night before.

Q. Okay.

A. And then I tuned out. Then I really, really tuned out of the -- of pretty much the rest of the conversation because I was kind of upset. I wasn't mad at that point; I was just upset.

Q. So no one asked the question of him; he just, from your perspective --

A. Well, they asked him a question, but it didn't seem -- it didn't -- to me, it didn't seem like that was totally relevant.

Q. So, like, he just volunteered and just blurted out, "Oh, and no one's ever been injured in my show," like that?

A. He was talking about the -- at that point, he was talking about -- they were talking about, you know, magic. And, you know, how, you know, some of the new -- the new tricks and how complicated they were. And he -- you know, he -- at that point when they were talking about how they -- they -- complicated they were. And he said, "Well, no one's been -- I've never had anybody injured in any of my shows."

And I thought, that's a very odd comment. But part of my brain said that, but the -- most of my brain said I'm very -- I said -- I said, "What am I? Chicken liver?" And I got very upset.

Q. Okay. And when was -- when was that phone call with your mom?

A. That --

MS. FRESCH: Maybe we should just do the next two lines for context.

MR. FREEMAN: Yeah.

MR. DEUTSCH: Where are you up to?

MR. FREEMAN: This is --

MR. DEUTSCH: 276.

MS. FRESCH: 277, but we're just going to

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read --

MR. FREEMAN: In context, you want to start at 21?

THE COURT: On page 276?

MR. FREEMAN: It would be a repeat, but --

MR. DEUTSCH: Yeah. Okay. 276, 21?

MR. FREEMAN: Yeah.

MS. FRESCH: Yes. You're right.

BY MR. FREEMAN:

Q. Okay. And were -- now, your mother, you described your mother had a phone call with Mr. Copperfield; is that correct?

A. Correct.

Q. Okay. And when was that phone call with your mom?

A. That --

Q. From the day of the accident, how long after was that?

A. That was the next day.

Q. So you weren't present for that phone call?

A. They -- the person who was there with my mother tried to conference call me in at the hospital, but my mother was ranting so much there was no getting a word in edgewise.

Q. Okay. And how old was she approximately

when --

A. She was -- she was exactly 80.

Q. Okay. How did you learn that this -- how did you learn about this phone call?

A. They had conference-called me in.

Q. Oh. They did conference-call you in?

A. Uh-huh.

MR. FREEMAN: Down to the next part, which is what?

MS. FRESCH: 278.

MR. FREEMAN: 278 and 279 and 280 and 281, through the middle of 282.

MR. DEUTSCH: Well, for context --

MR. MORELLI: You showed this.

MR. DEUTSCH: For context, I think you should just -- why don't you just keep reading from where you left off.

MR. MORELLI: You showed 271.

MR. DEUTSCH: Yeah.

MR. MORELLI: We've done that already.

MR. FREEMAN: And it would just be repeating quite a bit.

MR. DEUTSCH: Yeah, we already played that part. Okay. Yeah, you're right. Okay.

MR. FREEMAN: Okay. So 278 starting at 21?

MS. FRESCH: Yes.

BY MR. FREEMAN:

Q. All right. But this person helped your mom conference you in?

A. That person conferenced me in, and then --

Q. Okay. But did your mom call Mr. Copperfield or was --

A. No, she didn't have Copperfield -- she didn't have his number.

Q. So Mr. Copperfield called her?

A. Uh-huh.

Q. And the person who was with her was able to conference you in even though they didn't initiate the phone call?

A. Yes.

Q. Okay. And was that on a landline or a cell phone?

A. It was on a landline.

Q. And what -- were you on a cell phone or a landline?

A. It was on the hospital line.

Q. Okay. And what time of day was this phone call?

A. It was in the morning. It was right after the -- the thing that set her off was she also --

she -- excuse me -- the thing that set her off was she had also seen the television program. It was right after that, literally.

Q. Okay. You're watching "Good Morning America" or whatever that show was -- for sake of ease, I'm -- kind of call it that just to identify it. And that would have been in the morning; right?

A. Uh-huh.

Q. Okay. Is that a yes?

A. Yes.

Q. Okay.

A. I did it again. I'm sorry.

Q. All right. So you're in -- so you're in your hospital room now. It's morning. You watch an interview with Mr. Copperfield. And how much time went after --

A. I have no idea.

Q. -- you conferenced in?

Okay. But it was the morning time?

A. Yes.

Q. And how long was that phone call?

A. Less than -- less than -- maybe less than three to five minutes.

Q. Okay.

A. Oh, very short. Sorry.

Q. And did Mr. Copperfield say to you -- say anything to you?

A. He -- the only thing I remember him getting out was that -- you know, that -- he basically got his name out and he was trying -- he was actually trying to talk to my mother at that point in time, so ...

Q. Okay.

A. He did not say anything to me on that telephone call.

Q. Do you -- did -- at any time, do you -- did you live with your mother?

MR. DEUTSCH: It said "do you -- did -- at that time," not "did at that time."

MR. FREEMAN: All right.

MS. FRESCH: Yep.

MR. FREEMAN: I'll leave it at that. Otherwise, you're going to get me really confused.

MS. FRESCH: Maybe just read it again.

BY MR. FREEMAN:

Q. Do you -- did -- at that time, did you live with your mother?

A. My mother lived with me.

Q. Okay. And when -- okay. So that was the morning, then. That's the same day you had surgery; right?

A. Correct.

Q. How long after the phone call did you have surgery?

A. Maybe an hour or two.

Q. So, in that phone call, who -- so the person who was with your mother, who was that person?

A. It was a friend of mine.

Q. Okay. And was she staying with your mom because you weren't there?

A. Correct.

Q. Okay. And she called you and said, "I have your mom and David Copperfield on the line"?

A. Yes. She says, "Your mom is talking to David Copperfield," and I was like, "Oh, crap."

Q. And she -- and she said, "I'm going to" --

A. Because I knew there was going to be trouble.

Q. And you -- she said, "I'm going to conference you in"?

A. Yes.

Q. How long -- did Mr. Copperfield talk to your mom prior to the conferencing in?

A. I'm assuming he did.

Q. Okay. But did you ever ask your mom, like, "Hey, mom, what did you and Mr. Copperfield talk about before I got on the line?"

A. My mother was not exactly rational. So it was not easy to get an answer to that kind of question.

Q. Okay. You mean, always not rational or just not rational about Mr. Copperfield?

A. Unbeknownst to me, she was getting dementia at that time.

MR. FREEMAN: Okay. 283. You on there?

BY MR. FREEMAN:

Q. All right. So let's go. What -- what time was the show that you went to for David Copperfield?

A. It was at night.

Q. Okay. Was it --

A. So it would have been at least 8:00.

Q. Okay. And it was the Paramount Theatre? And where is that?

A. It's in downtown Seattle.

MR. FREEMAN: All right. 287, line 19.

BY MR. FREEMAN:

Q. So -- so you didn't -- so a crew member walked up to you while you're still seated with a ball in your hand?

A. Yep.

Q. And you -- and you were seated?

A. Yep.

Q. Okay. So you were seated. You're holding

the ball, and a person came up to you physically?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Okay. And did they say anything to you?

A. Yes. They said "Follow me."

Q. Okay. Because you were holding the ball?

A. Correct.

Q. Okay. And, at that point, you chose to go with this individual; correct?

A. Yes.

Q. Okay. Was it a man or woman?

A. A woman.

Q. Okay. And did she say anything to you except "Follow me"?

A. No.

Q. Okay. Where did you go exactly?

A. We went up the stairs to go up to the top to -- up to the stage were almost directly in front of me. So we went up the stairs. And then the platform for the trick was right in front of that. So we just literally walked in front of that and right to the first seat.

Q. Okay. So you -- and were other people already seated in the platform?

A. Yes.
Q. Okay.
A. I was, like, the last person.
Q. So you walked up -- upstairs onto the stage --
A. Uh-huh.
Q. -- with the ball in hand?
A. Yes.
Q. And then did some -- did you take -- did you take the ball into the platform?
A. No, she took the ball away from me.
Q. The same girl --
A. Yeah.
Q. -- or woman?
A. Woman. Girl, woman, whatever.
Q. And did you -- did you walk up to the ball -- walk up to the ball -- did you walk up the stairs with your ball in hand?
A. No, she took the ball.
Q. Before you walked up the stairs?
A. Yes.
Q. Okay. So you -- she takes the ball from you, you walk up the stairs yourself?
A. Uh-huh.
Q. 290. Okay. So you -- did you have to walk

up stairs and get on the platform?

A. No, not that I remember.

Q. You don't recall any stairs there?

A. No.

Q. So you walk straight --

A. It was at the same level.

Q. The platform is the same level. So you literally walk up the stairs onto the stage?

A. Yep.

Q. And who -- how do you know to go straight into the platform?

A. I don't go straight into the platform. Let's try this again.

So I come up the stairs, and she says, "Go over to David." David's standing right here.

Q. Next to the platform?

A. Next to the platform. So I go over to David, and he takes me and says -- makes all these comments about me being Mary Ann from Gilligan's Island, and then he literally takes my hand and he puts me in the first chair.

Q. Does he walk into the platform with you?

A. No, he just takes my hand, puts me in the first chair. It's literally right there.

Q. The Mary Ann comment, besides --

MR. DEUTSCH: What page did you jump to?

MR. FREEMAN: Just down to 19.

MR. DEUTSCH: Okay.

BY MR. FREEMAN:

Q. The Mary Ann comment, besides --

MR. DEUTSCH: I would ask that you read the part in between there for context.

MS. FRESCH: Wait. Hold on. Just -- wait. Let me read this.

MR. DEUTSCH: You stopped at 291/10, and now you're skipping over 11, 12, 13, 14, 15, 16, 17, 18, and going down to 19. So for context, I think you should read the whole thing.

MR. FREEMAN: I thought that had been already gone over.

MR. DEUTSCH: No, it wasn't.

MS. FRESCH: There's that one context.

MR. DEUTSCH: It's part of the context for this thing, Elaine.

MS. FRESCH: No. Let me finish, Mr. Deutsch?

It references the part that we typically do not -- it goes in a little to --

MR. DEUTSCH: It does not.

MR. FREEMAN: Especially 15 to 18.

MR. DEUTSCH: It does not go into anything

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that hasn't been discussed in front of the cameras and everything millions of times.

THE COURT: I think it gives context to the word "object" that was --

MR. DEUTSCH: I think so too.

THE COURT: -- in the prior --

MS. FRESCH: Okay.

MR. DEUTSCH: So start on --

MS. FRESCH: Go ahead.

MR. FREEMAN: Okay.

BY MR. FREEMAN:

Q. Okay. And --

MR. FREEMAN: See that?

MS. FRESCH: Oh, sorry. Sorry.

THE WITNESS: And then somebody hands me a flashlight.

BY MR. FREEMAN:

Q. Okay. But not David?

A. I don't think it was David.

Q. Okay. And then -- and did you keep hold of the flashlight until you left the platform?

A. I kept hold of the flashlight until it got dark and someone -- somebody grabbed it away from me.

Q. The Mary Ann comment, besides saying, you know, something Mary Ann, was there more to it than

just Mary Ann?

A. Yeah. He had this big spiel about -- he was -- he was -- he made these big -- he had this long joke about -- and I can't remember the exact spiel, but he had this long joke about me being -- you know oh, she looks just like Mary Ann from Gilligan's Island. Doesn't she look -- and -- you know, he was going -- talking to the audience, "doesn't she look like Mary Ann from Gilligan's Island, folks? You know, look at her in pink." I had a pink fuzzy sweater and they made -- they made this big spiel.

MR. FREEMAN: Okay. Going down to 22.

MR. DEUTSCH: I think you should continue reading for context.

MS. FRESCH: Hold on.

THE COURT: I would just go down -- skip to line 22.

MR. DEUTSCH: We could approach after.

MR. FREEMAN: Okay.

MR. DEUTSCH: We'll approach after.

MR. FREEMAN: This goes into your order, so --

MR. DEUTSCH: Well, I think -- may we approach now, Your Honor, actually?

THE COURT: Yep.

(A discussion was held at the bench, not reported.)

MR. FREEMAN: 292, down to 22?

MS. FRESCH: Yes.

BY MR. FREEMAN:

Q. Okay. And did you stay in that same seat until you left the platform? Did you always remain in that -- that seat which, if you were facing the audience, would be on the left side of the platform?

A. Correct, the far left.

Q. Okay. And --

A. Far left, front row.

Q. Okay. And how many rows were there?

A. I have no idea. Didn't count.

Q. Okay. And did it seem like more than one row?

A. Yeah.

Q. Okay.

A. There were people behind me.

Q. Okay. Was there two rows behind you?

A. I didn't look.

MR. DEUTSCH: I would ask for the context, Your Honor, 293, line 18.

THE COURT: Say that again.

MR. DEUTSCH: 293. The next two questions,

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Your Honor.

THE COURT: Hold on a second.

MR. DEUTSCH: Down to 223.

THE COURT: 293, line?

MR. DEUTSCH: 18 to 23 for context.

MS. FRESCH: I'm okay.

MR. FREEMAN: Yeah.

THE COURT: Okay.

BY MR. FREEMAN:

Q. Okay. So you don't know how it got dark, but it got dark?

A. Yeah.

Q. And -- and do you remember anything else about the platform?

A. Nope.

MR. FREEMAN: Okay. All right. 323.

MS. FRESCH: Wait. I think -- oh, 323. Sorry. Hold on.

MR. FREEMAN: No rush.

MS. FRESCH: Okay.

MR. FREEMAN: Starting at 12.

MR. DEUTSCH: What page?

MS. FRESCH: 323.

MR. FREEMAN: 323, starting at 12.

/////

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BY MR. FREEMAN:

Q. Okay. And you said that the gal who came over and was involved in your conversation with Mr. Copperfield, that gal left you and then came back with Mr. Copperfield?

A. Yeah. And she's actually the one who took my telephone number down.

Q. Okay. And --

A. So I assume she had something to do with Mr. Copperfield.

Q. Okay. But you don't know that; correct?

A. No.

MR. FREEMAN: Next page, line 19 -- or 18. I'm sorry.

BY MR. FREEMAN:

Q. Okay. And why do you think you ruined his illusion?

A. Because I had, you know, not been able to -- you know, I had not -- you know, I had fallen and not finished -- you know, the illusion hadn't been able to complete 'cause what I'd heard -- and I don't know if it was true -- but I had heard that he not even been able to finish the illusion that night. I don't know if that was true. Somebody -- some random person on the street told me that. Then -- then I felt, like,

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really, really bad.

Q. And the random person told you that before Mr. Copperfield came up to you?

A. Yeah.

Q. Okay. And so you interrupted Mr. -- did Mr. Copperfield say anything that you recall, like any words out of his mouth? because I understand you said you were interrupting him. But do you recall any words out of his mouth?

A. I remember him asking me who I was, and I remember him asking me how I was, but I don't remember anything else.

Q. Okay. But you also were telling him --

MR. DEUTSCH: Hold on. How about the next line in context.

THE COURT: I agree.

MR. FREEMAN: Okay. 15.

MR. DEUTSCH: Yeah.

MR. FREEMAN: Okay. Do you see that?

MS. FRESCH: Yeah. I'm ready. I'm ready.

MR. FREEMAN: Okay.

BY MR. FREEMAN:

Q. And what was your response to how you were?

A. You know, I told him that my arm really, really hurt. And, at that point in time, I was -- I

was really worried. I was really worried because I started to feel really sick.

Q. And you -- you expressed that?

A. Yeah.

Q. That you felt sick?

A. Yeah.

Q. Okay. But you also were talking -- or you were also telling him hope you didn't ruin the illusion?

A. Yeah. I was really worried about that.

Q. And was there a response from him when you said "I was worried I ruined your illusion"?

A. He said, "Don't worry about that."

Q. Okay. So you -- you remember him asking your name, how you were, and "don't worry about that"?

A. Yep.

Q. Anything else?

A. That's what I remember.

MR. FREEMAN: 327, line 19.

BY MR. FREEMAN:

Q. Okay. Now, I just had a clarifying question with you which I meant to ask earlier. The next day, you say you -- you have already talked about it, that you were watching a morning show in your hotel -- I'm sorry -- in your hospital that the other -- your

roommate, for lack of a better word, had on the TV; right?

A. Yep.

Q. Was it -- and you thought it might be "Good Morning America"; correct?

A. Yeah. But like --

MR. FREEMAN: Oh, sorry. I was going to take over both roles.

THE WITNESS: Yeah. But, like I said, I'm not 100 percent sure.

BY MR. FREEMAN:

Q. Okay. Did you -- was it on one of the national stations, like an ABC, CBS, NBC?

A. Like I said, it looked like one of them, but, I mean, it was one of those talk show kind of news programs kind of things.

Q. And do you recall if it was a man or a woman interviewing him?

A. I don't remember. I wasn't paying that close -- you know, that really wasn't important to me. I was focused on him. I wasn't really focused on who was interviewing him.

Q. Okay. And, now, you say your mom was watching that show too with you?

A. No, no. My mother was home and she just

happened to see the same thing.

MS. FRESCH: And that's finis.

MR. FREEMAN: Oh, all right.

MR. DEUTSCH: Your Honor, I just have a request to read a couple things. So may we approach?

THE COURT: Yes.

MS. FRESCH: Oh, sorry.

(A discussion was held at the bench, not reported.)

THE COURT: All right. We're going to take a break now -- or back to the bench, please.

MS. FRESCH: I'm just trying to get my stuff. Oh, back to the --

THE COURT: All right. We're going to take a 15-minute recess, ladies and gentlemen, have you back here at 5 to 4:00.

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion

on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom, just to the south of it, at 5 to 4:00.

Counsel remain.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

THE COURT: All right. You can be seated, please.

First, the clerk has informed me that she needs copies of the newly admitted exhibits that were discussed today. 558A, is it? Is that it? 559 and 560.

MR. DEUTSCH: Those are you, Roger, I think.

THE COURT: So it's -- we'll get with the clerk on that. Okay.

Now, Mr. Deutsch --

MR. DEUTSCH: Yes, Your Honor. So I'm a little confused -- I wasn't, but now I am -- about Your Honor's ruling with respect to the limitation of Ms. Esack's testimony.

Our understanding was that Your Honor had ruled that Ms. Esack was not allowed to testify about anything having to do with how the trick occurred.

THE COURT: Okay.

MR. DEUTSCH: How the trick occurred, meaning anything having to do with the specifics of the trick.

THE COURT: Setting the stage for the trick is different from how the trick occurs.

MR. DEUTSCH: As I understand Your Honor's rationale, Your Honor would not allow -- and I agree. I understand that Ms. Esack, when she testified about the runaround, she testified that she had to go up and down stairs and through a bunch of places. And I recognize that that route that she took was very different than the route that Mr. Cox took. And, therefore, to allow her to testify about that route, Your Honor felt it was not substantial similarity, and she shouldn't be allowed to testify about the route.

However, the things that were similar, such as the things that Ms. Fresch and Mr. Freeman just went over, including how they got up on stage --

THE COURT: That has nothing to do with how the trick is performed.

MR. DEUTSCH: Well, I disagree, Your Honor. It does have to do --

THE COURT: I agree with myself.

MR. DEUTSCH: I -- it does have to do with how the trick is performed. And the reason Your Honor

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felt that it was okay for them to talk about those things is because those things were the same as it was when Mr. Cox performed -- when Mr. Cox was a participant in the trick. Those things were the same.

Well, if those things are the same, then the fact that someone says "run, run, run" is also the same, irrelevant of how someone runs or where they run --

THE COURT: Part of what we're dealing with -- a different place and a different time, a far distant time. Okay? I allowed, over vehement objection, the plaintiff to put this video depo on for certain purposes. I have allowed you to do it. And I think I've done it properly. Okay?

MR. DEUTSCH: Okay. Fair enough. No problem.

THE COURT: That's the way I see it.

MS. FRESCH: Thank you, Your Honor.

MR. RUSSELL: Your Honor, can we have one more quick discussion at the bench before we take our quick break.

THE COURT: One more what?

MR. RUSSELL: Just one quick discussion.

THE COURT: Oh, a bench conference?

MR. RUSSELL: Yeah.

(Whereupon a short recess was taken.)

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: All right. You may be seated.

Do counsel stipulate that the jury is present now?

MR. POPOVICH: Yes, Your Honor.

MR. CALL: Yes.

MS. FRESCH: Yes, Your Honor.

MR. DEUTSCH: Yes.

THE COURT: All right. Plaintiffs may call their next witness.

MR. DEUTSCH: Yes, Your Honor. At this time the plaintiff calls Minh Cox.

THE MARSHAL: Raise your right hand.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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

THE WITNESS: Minh-Hahn Cox. M-i-n-h,

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hyphen, H-a-h-n, Cox, C-o-x.

THE CLERK: Thank you.

MR. DEUTSCH: Thank you.

DIRECT EXAMINATION

BY MR. DEUTSCH:

Q. Good afternoon, Ms. Cox. How are you?

A. Fine. Thank you.

Q. Tell us what your relationship is with Gavin.

A. He's my husband.

Q. And --

A. 31 years.

Q. How many years?

A. 31.

Q. Okay. And Mr. Morelli was nervous about asking your husband this question, but I have a feeling you'll know the answer to this question.

When were you guys married?

A. March 21st, '92.

Q. It always seems to be the woman that gets that one right.

A. Of course.

Q. And you and Mr. Cox have some children together?

A. Three.

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Q. And what are their names and ages?
A. Oliver, 27; Cameron, 25; and Harry's 13.
Q. Okay. And were you with your husband when you came to Las Vegas for his 53rd birthday in 2012?
A. Yes.
Q. And do you remember exactly when you arrived in Las Vegas?
A. I believe it was November the 10th.
Q. Okay. And did there come a point in time when you were in Las Vegas that you decided to go see the David Copperfield show? Or maybe I should rephrase that.

Did there come a point in time where your husband decided he wanted to see the David Copperfield show?
A. Yes. He -- when he found out that it was showing, he was just so excited, really excited. And he -- it was his birthday, and he wanted to go, and I said, "Okay. Let's go."
Q. And what were your feelings about it?
A. I'd rather not.
Q. And -- but because it was his birthday, he went out and he got some tickets?
A. Yes -- well, he ordered the tickets. I think it was possibly that night or that day, because it

wasn't something that was planned in advance. And then I was the one that collected them later.

Q. Okay. And -- and you eventually went to the show; is that right?

A. Yes.

Q. And what night was that?

A. I believe it was a Tuesday -- Tuesday.

Q. And do you remember the date of it?

A. 11/12/13.

Q. Okay. And you went and you saw the show. And we'll fast-forward. At some point, the Thirteen Illusion that we've been talking about started; is that right?

A. Yes.

Q. And -- and was that at the beginning of the show or the end of the show?

A. It was towards the end because it was the last thing.

Q. Okay. And, at some point, was your husband -- did he go up on stage to be a part of the illusion?

A. Yes.

Q. Okay. Now, we've talked -- and I think the jury's heard at length -- about that whole process. So I want to kind of skip over that so we don't have to go

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through it all again.

From your perspective, at some point, your husband was up in the -- in the prop?

A. Yes.

Q. And, from your perspective, what happened at that moment?

A. When he was in the prop?

Q. Yeah.

A. Oh, the curtain -- cloth thing just fell down. There was a bit of light shining from within. I think Copperfield did his spiel, whatever. And then the curtain was pulled back and they were gone.

Q. Okay. And, at that point, did it appear to you, sitting in the audience, that they had disappeared?

A. Yes. They were gone.

Q. Okay. And, at some point, did you see your husband again?

A. Yes.

Q. And where was he the next time you saw him?

A. Towards the back of the theater.

Q. Okay. And did you, at that point, have any idea at all how he got from when you saw him in the box to when you saw him in the back of the theater?

A. Well, actually, when they disappeared, there

was a -- a short amount of time, and everybody started cheering. And I was looking at the box, thinking, well, what did I miss? Why are they cheering?

And it was only until I turned round, that's when I knew that my husband had reappeared at the back.

Q. But, at that time, you didn't know how he had gotten from --

A. No, no, of course not. No. It was just he was there and then gone. And -- no, of course. No, had no idea.

Q. Okay. So why don't you tell us what happened. At that point when you saw him in the back, what was the next thing that happened?

A. He -- there was something wrong.

Q. Okay.

A. He -- he just didn't look right. Straightaway, I knew something was wrong. I thought, hang on, he's gone from really happy, so excited, and something's wrong. What is wrong? He looks sick. Just what happened?

Q. Okay. And what happened next?

A. They were let off. And the show ended, and I exited the theater.

Q. Okay. And -- and what happened after that?

A. When I exited the theater, I quickly popped

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to the restroom. I came back and I waited for my husband.

Q. Okay. And -- and did your husband -- where did you wait?

A. In the foyer where you line up to go into the theater.

Q. Okay. And -- and what happened after that?

MR. POPOVICH: Objection. Relevance to this phase.

THE WITNESS: Well --

THE COURT: Well --

MR. RUSSELL: Join.

MR. DEUTSCH: Well, Your Honor, they -- would you like me to approach and explain the relevance or would you like me to just tell you? I don't think it really makes a difference.

THE COURT: Go ahead.

BY MR. DEUTSCH:

Q. Go ahead.

A. So I was waiting for my husband. He hadn't come out yet. And I was waiting. The crowd were dispersing. And I was still waiting there, and waiting, and still he hadn't come out. And, as the crowd was dispersing, I tried to reenter the theater and I was stopped.

Q. Okay. And what did you do at that point after you were stopped to try to get into the theater?

A. Well, I said to the lady, "My husband's been a participant and I need to get to my husband." And she said, "He's gone home."

Q. Okay. And what happened next?

A. So I just waited. I was left in the foyer. And I was still waiting. And the crowd had not only dispersed, but the -- the new people for the next show had started to queue, and still I was waiting for my husband.

Q. And -- and did anyone else come over to talk to you at that point in time?

A. Well, a second lady came. As I again tried to reenter the theater, they said he had gone home, which I said, "That's ridiculous. We're British tourists."

Then I was approached by a gentleman. And he said, "Are you Mrs. Cox?" Or she may have said, "Are you Mrs. Cox?" And I said yes. And he said, "Come with me."

Q. Okay. And -- and did you ask him at that point in time, you know, "Why should I go with you?" or anything like that? I mean, what did you say to him, what did he say to you?

A. What happened was he said "Come with me." And when the lady came to me -- I don't know who she was -- and said "Come with me," and I said "Is this a joke?" And she said no. Then the man said, "Please come with me." And I automatically -- I immediately followed him.

And, as we were going down the area where he wanted me to follow him, I faltered and I said to him, "I don't know who you are." And he said, "You have to come. Your husband's been hurt."

And then, of course, I had to come. And as he opened the door, I saw the ambulance. And they were literally putting my husband into the ambulance. He was already on the gurney.

Q. And I think we -- you were shown some video of that -- or you weren't, but I think -- I don't remember. I think maybe Mr. Strassburg put up some video the other day of a clip of your husband getting on the -- the stretcher. Do you recall that?

A. Yes.

Q. And did there come a point in time when you -- you saw your husband there on the stretcher?

A. Yes.

Q. Okay. And were there any people that were -- either worked for MGM or Copperfield, his production

company or anything, there at the time?

A. There was several people there.

Q. Okay. And, at that point, did you have any conversations with them?

A. I did.

Q. And what -- what -- what kind -- what -- what did you say to them, what did they say to you?

MR. RUSSELL: Objection. Hearsay.

THE COURT: Overruled.

THE WITNESS: I said to them, "What happened? What happened to my husband? Please tell me what happened." And nobody would tell me a thing, not a name, not what happened.

And, you know, I -- I just want to make this point, that Ryan Carvalho said he saw my husband on the trolley -- on the gurney, yet he didn't want to come to me and tell me what happened to my husband? I begged them to tell me what happened. Just even so I could tell the doctors. "Please tell me what happened to my husband." Nothing. Absolutely nothing.

BY MR. DEUTSCH:

Q. Did they give you a piece of paper or something?

A. I got a little -- I had -- I was given a little card and I was told "Call the MGM."

Q. Okay. Did there come a point in time after that -- we'll skip over -- at some point, your husband was taken to the hospital?

A. Yes.

Q. Okay. And did you go with him in the ambulance?

A. Yes.

Q. Okay. We'll skip over that for now. Did there come a point in time when you and your husband went back to the MGM?

A. Yes.

Q. And I think you were here for your husband's testimony yesterday. He said that someone from the MGM actually called you guys and asked to come in?

A. Yes. Approximately two days later, the MGM called our hotel and they asked us to come in. We didn't go there voluntarily; they asked us, "Will you come in?"

Q. Okay. And there's been some talk about the timing of when you guys got -- retained a lawyer --

A. Yes.

Q. -- in this case. Can you tell the jury what the time -- how that went down and why you got a lawyer?

A. My husband and I, we're guests here. We're

tourists. We're in a foreign country. I asked for help. I asked them to help me. Nobody would help me. So what was I supposed to do? I didn't have any choice. I had to call a lawyer because nobody would help me. They wouldn't give me any answers. I didn't have any choice. That's why I had to call a lawyer.

Q. Did there come a point in time, I think, when you and your husband and your lawyer went back to the MGM. Is that right?

A. Yes.

Q. And that was, I think, about two days later?

A. Yes.

Q. And do you recall, when you went back two days later, do you remember what time of day it was that you went back?

A. It was definitely in the afternoon, late afternoon.

Q. Okay. And why do you remember that?

A. Because my husband is in his -- was in extreme pain. He had had his shoulder ripped out. He was on heavy-duty pain medication. And he wasn't able to sleep. He was exhausted.

MR. RUSSELL: Objection.

BY MR. DEUTSCH:

Q. Let me stop you there. And when you went

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back -- I think you -- at that point in time, you met with someone from the MGM; is that right?

A. Yes.

Q. And --

A. That's right.

Q. And that's when -- when your husband had dictated the accident report, when your lawyer wrote it down; is that right?

A. Yes. My husband had to have the report dictated because his arm --

Q. Okay.

A. -- was in a sling.

Q. Let's not get into the injuries at this point.

A. So, yes, he had the report. Michael Kane wrote the report on my husband's dictation.

Q. And, at some point during that late-afternoon visit, you also went outside; is that right?

A. Yes.

Q. And, at that point, you took some photographs. Is that right?

A. Mr. Kane did, not my husband or I.

Q. Let me show you these two, which I think were marked at some point for identification, but, unfortunately, I'm not sure what number.

MR. CALL: I'm going to object, Your Honor.
MR. STRASSBURG: Objection.
I'm sorry. Go ahead.
MR. CALL: Can we approach?
THE COURT: Sure.
(A discussion was held at the bench, not reported.)
BY MR. DEUTSCH:
Q. You did take some photographs -- is that right? -- the next -- two days later?
A. Mr. Kane took some photographs.
Q. Okay. Do you recall what the condition of the area was when you went back?
MR. STRASSBURG: Object. Objection, Judge. This is the same photo in drag.
THE COURT: Well, he's not putting in a photo.
BY MR. DEUTSCH:
Q. Do you remember exactly what you saw?
MR. STRASSBURG: Judge, objection. Relevance. He has to lay a foundation that it's substantially similar.
THE COURT: Sustained.
MR. DEUTSCH: Thank you, ma'am. Nothing else. No, don't move. They get to ask you questions

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now. You should know that by now.

THE COURT: Cross?

MR. STRASSBURG: I don't care. Whatever you want to do.

MR. DEUTSCH: Just let me know when I need to roll out the plastic again, if Roger is going --

CROSS-EXAMINATION

BY MR. POPOVICH:

Q. Ms. Cox, this trip to Las Vegas in -- in 2013 had been planned for at least several months for your husband's birthday?

A. I believe so.

Q. This trip wasn't specific to come to Las Vegas so that he could go see the Copperfield show?

A. No, it wasn't planned.

Q. It was planned after arrival and determination --

A. It was literally decided on that day or maybe the evening before.

Q. Okay. So any indication that this trip was planned so that he could see his idol, Mr. Copperfield, perform, that's wrong?

A. Correct.

Q. Thank you. Now, in this trip, you spent

approximately a week in Las Vegas, then on a weekend visit --

MR. DEUTSCH: Objection, Your Honor, to the relevance of where they went afterwards. It's totally irrelevant at this point.

THE COURT: What's the relevance?

MR. POPOVICH: To show that they completed their trip.

THE COURT: Go ahead.

BY MR. POPOVICH:

Q. Approximately a week in Las Vegas, a week in --

MR. DEUTSCH: Objection, Your Honor. May we approach?

(A discussion was held at the bench, not reported.)

BY MR. POPOVICH:

Q. If we could see Exhibit 83-4, please, which is already in evidence.

And, Ms. Cox, it will be on the screen to your left there, if that's easier to see.

Is this a photograph you took?

A. Yes.

Q. Took the night of the accident, obviously, because he's still on the gurney?

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A. Yes.

Q. As far as you knew, nothing had changed about the condition of his shoes from the time of his accident to the time of the photograph?

A. No.

Q. I asked a bad question. Let me try it again.

Did anything change in the condition of the shoes from the time of the accident to the time you took the photo, as far as you know?

A. No.

THE COURT: Can I call for a bench conference.

(A discussion was held at the bench, not reported.)

BY MR. POPOVICH:

Q. After the accident, when you had come to your husband outside where he was on the gurney, your indication was that they were already in the process of moving him into the ambulance?

A. They were literally by the -- when he was on the gurney, they were literally putting him in.

Q. And so did they continue to do that when you arrived, or did they leave him for a while?

A. Of course not. They were doing whatever they -- strapping him in and putting him in.

Q. Okay. And you had testified in your deposition that you had to wait about an hour to be taken to where your husband was?

A. That's what I believe it felt like. An hour, yes.

Q. When -- you're indicating that after you're out with your husband, you asked for them to tell you what happened, did none of these people out there engage you in any conversation at all?

A. The conversation that I had was I was asking them what happened. And all I got back was, "Here's a number. Call the MGM."

Q. Did anybody indicate they didn't know what happened to your husband?

A. Well, if they didn't know what happened to my husband, then they would have told me they didn't know. And they didn't want to talk to me, nobody, nothing.

Q. So there was no --

A. Nothing.

Q. I understand. So other than "Here's this paper with a number," you had no conversation with anybody that was out there by the ambulance?

A. There were conversations going on, but not to me. I begged them, Mr. Popovich. I begged them to help me, to tell me what happened to my husband. And

none of your clients, none of them, wanted to help me or say anything to me.

MR. RUSSELL: Objection. Move to strike.

MS. FRESCH: Join.

THE COURT: What was that?

MR. POPOVICH: I didn't object. It was them.

THE COURT: Okay. All right.

Just answer the question.

Motion is granted. The jury will disregard.

BY MR. POPOVICH:

Q. Were you wearing a -- a sweater or a blouse with a horizontal stripe that night?

A. I have no idea.

Q. You indicated no one out there of the workers that were around would even tell you their names?

A. Nope.

Q. And not one of them was wearing a name tag?

A. They may have had a tag that said "security" or "staff," but there was not a single name. And the reason why I can tell you that was because I would have noted it. And I don't have any names.

Q. Okay.

From Exhibit 402, the surveillance video, I would like Clip 11, which runs from hour 20, minute 53, seconds 40 to hour 20, minutes 57, and seconds 3.

And before we run -- can we get the lights, Your Honor?

THE COURT: Yes.

MR. POPOVICH: All right. And if we can proceed, please.

(Whereupon video was played.)

MR. POPOVICH: And if we can stop.

May I approach, Your Honor, to point?

THE COURT: Yes.

BY MR. POPOVICH:

Q. Is -- this person wearing stripes, is that you, if you can tell?

A. Yes, that's definitely me.

Q. Okay. At -- and we stopped it there at hour 20, minute 53, and 55 seconds.

Okay. If we can go ahead, please.

(Whereupon video was played.)

MR. POPOVICH: And if we can stop there for a moment. And I stopped it at hour 20, minute 54, and 10 seconds.

BY MR. POPOVICH:

Q. Mrs. Cox, is the man to your right speaking to you there?

A. I have no idea. This -- this is all, like, blurred.

Q. Well, there's -- there's, as always in this case, trees in the way.

A. Absolutely. There's always trees when it comes to videos. The point is -- is there were lots of people there talking, but they were not necessarily talking to me. I begged them for help, and nobody would help me.

So just because they're having a conversation there does not mean they're having a conversation with me. And the only thing they said was, "Here's a card. Call the MGM."

Because if they'd had a conversation with me, I would be able to tell you what that conversation was. I would have been able to get the help that I needed for my husband. But nobody wanted to help me.

Q. The gentleman to your right, did he not just gesture showing that your husband was injured in a runaround?

A. Why would he say that?

Q. Okay.

A. If he doesn't -- Mr. Popovich, if he doesn't want to talk to me, why on earth would he gesture -- gesture to me?

Q. And we're back at 20:53:54.

Please go ahead.

JA003546

(Whereupon video was played.)

MR. POPOVICH: If we can stop right there.

BY MR. POPOVICH:

Q. While you were standing there, did you recall your husband having a conversation with the man in black who was --

A. Possibly, possibly.

Q. Okay. Don't recall what was said or what the discussion was?

A. No.

MR. POPOVICH: Proceed, please.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. And that ends the video at 20:57:03.

Fair, Mrs. Cox, in seeing that, that at least several minutes pass after you arrive before your husband was put in an ambulance?

A. Sorry?

Q. Several minutes of time pass --

A. Yes.

Q. -- after your arrival before your husband was put in an ambulance?

A. Yes.

Q. Thank you. And thank you, Your Honor.

CROSS-EXAMINATION

BY MS. FRESCH:

Q. Mrs. Cox, where you were sitting in the theater, you and your husband, on the night of attending the show?

A. Right in the front in the center, close enough to touch the stage.

Q. So you were in the tables that were literally adjacent to the stage?

A. Uh-huh.

Q. Is that a yes?

A. Yes, it is. Yes.

Q. All right. Now, you indicated in your testimony that you were still facing the stage and seeing that people had disappeared and you heard cheering; correct?

A. Yes.

Q. All right. And then you determined -- or something made you decide "I should turn around" --

A. Yes.

Q. -- correct?

A. Yes.

Q. All right. And you -- were the lights in the theater off at that point?

A. No.

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Q. They were completely on at full tilt so --

A. Well, I wouldn't know what full tilt is to dull to dim; they were just on.

Q. Well, when your husband went up on the stage for the illusion, how would you describe the lighting in the theater?

A. Bright for those that weren't up on the stage.

Q. Bright on the stage?

A. Uh-huh.

Q. And --

A. Yes.

Q. Yes?

And -- but you in the audience, what was the lighting for the people in the audience?

MR. DEUTSCH: Objection to the relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: Well -- sorry. Could you ask that question again.

BY MS. FRESCH:

Q. Sure. Sure.

With respect to you as an audience member and everyone in the audience portion of the theater, what is the lighting in that portion of the theater?

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MR. DEUTSCH: Objection, Your Honor. At what point in time?

THE WITNESS: Well --

BY MS. FRESCH:

Q. At the same point of time of when your husband went on the stage, as I said.

MR. DEUTSCH: When he went up on stage? Okay.

THE WITNESS: Well, I can't speak for other audience members, but, as far as I was concerned, it was bright.

BY MS. FRESCH:

Q. Okay. And when you first turned around to look at the back of the theater after your husband and the other people had disappeared, what was the lighting in the back of the theater?

A. A lot less bright.

Q. Okay. And you observed people with flashlights waving; correct?

A. I believe there were some.

Q. Okay. And how far away was the distance between where you were sitting and where your husband and the other people were when they reappeared?

A. I'm -- I have no idea regarding distance. I mean, if I said this was where I was sitting, possibly

where the -- Bob is at the back, possibly, distance-wise. I couldn't tell you how far away they were.

Q. Okay. So your best recollection and estimate at this moment is it's somewhat between either the -- let's just say the back of the courtroom to where you're sitting?

A. That's fair, possibly.

Q. Okay. Now -- and you said you saw that your husband's expression, he looked -- something was wrong; correct?

A. Yes.

Q. Okay. And did you make any effort to go towards to where he was at that point?

A. No. Because I didn't know what -- I knew something was wrong, but I didn't know what was wrong, so no. I couldn't. It was -- the -- the trick was still -- the audience -- it hadn't finished. I couldn't just get up and interrupt and interfere.

Q. All right. And, at some point, was the audience clapping?

A. Yes.

Q. Okay. So everyone waved their flashlights and people were clapping and going --

A. Yes, I don't --

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Q. -- "yay"?

A. I don't know if it was everybody waving their flashlights, but, yes, there was applause.

Q. Okay. And then what happens next in the sequence? I just wanted to get this --

A. So when they're lining up at wherever they were at the back, and some may have been flashing their lights, then that's it. And, as they're led off, everybody gets up to go.

Q. And where did you observe them being led off to?

A. Okay. So if I'm literally looking at my husband now, they're led off to the left.

Q. So --

A. It would be --

Q. -- to your left?

A. -- to your right.

Q. Okay. All right. So if I'm in the perspective --

A. So if you're my husband, you're going that way.

Q. Okay. And did they not go right down the stairs of the theater toward the --

A. No.

Q. -- the stage?

A. No. I just said to you, if you're my husband, they were led to the side.

Q. Okay. And the side, where did they go?

A. I have no idea.

Q. Okay. And did you -- now, you said you went to the restroom?

A. Yes.

Q. You popped into the restroom, I believe you said.

A. Yes.

Q. Where was that restroom?

A. I have no idea. I mean, when -- when you say "where was it," all I can tell you it was quite near to the foyer.

Q. Okay. It was outside the theater?

A. No -- yes, outside the David Copperfield theater but still within the hotel. So it was literally next to the -- next to the theater.

Q. Okay. So you didn't walk through the casino to get to the restroom?

A. No. Not at all.

Q. Okay. All right. So you chose, though, to go to the restroom even though you thought your husband looked -- something was wrong and you were getting concerned about him; right?

A. Well, I knew something was wrong, but I didn't know what was wrong. It didn't mean I was going to burst my bladder in the process. I needed to go to the loo.

Q. Okay. Okay. All right.

Now, you've been to Vegas before that 2013 trip; correct?

A. Yes.

Q. And I believe your husband testified you guys had come here for his 50th in 2010?

A. Yes.

Q. Okay. And how long -- your husband said that his best recollection was you guys were here about eight days or maybe even two weeks. Is that about correct?

A. In 2013?

Q. No, '10.

A. I have no -- I have no idea how long we were here for in 2010.

Q. Okay. That's all right. And did you attempt to buy your husband David Copperfield theater -- tickets in 2010?

A. No.

Q. Okay. Thank you.

CROSS-EXAMINATION

BY MR. RUSSELL:

Q. Good afternoon, Ms. Cox.

When you were out back of the MGM in the video that Mr. Popovich showed you, did any of the emergency medical personnel talk to you?

A. No, they didn't.

Q. Did they refuse to talk to you?

A. They spoke to me when we were inside the ambulance.

Q. And the -- the woman that you saw -- excuse me -- the woman that you spoke to outside the theater before you went in to find where your husband was, she was wearing some sort of black suit; is that correct?

A. I believe, yes, she had some type of black uniform on.

Q. And the -- the gentleman that came out and asked you to come with him, he also was wearing a suit of some sort; correct?

A. I believe so, yes.

Q. And in the back of the MGM, other than the medical personnel, the only people you spoke to also were wearing some sort of suit; correct?

A. Yes.

Q. And you were here in court when Mr. Carvalho

testified that, even though your husband had said he was okay, Mr. Carvalho noticed something was off, that he asked somebody to get him a chair?

A. That's what he said, yes.

Q. Did you speak to Mr. Carvalho on the night of the accident?

A. Didn't even know who Mr. Carvalho was.

Q. Did you see him that night?

A. No, because I didn't know who he was.

Q. All right. So you -- I just wanted to make sure you're not testifying that you saw Mr. Carvalho on the night --

A. No, no, no. I'm just simply stating that Mr. Carvalho said he saw my husband being put onto the trolley, which meant that he must have seen me, yet at no time did he say, "Mrs. Cox, I saw your husband," et cetera, et cetera. He had an opportunity to come and tell me, and I got nothing.

Q. If you recall, Mrs. Cox, Mr. Carvalho's testimony was that he saw your husband sitting on the gurney, but he couldn't remember if he had been strapped down. Do you remember that testimony?

A. I do.

Q. And do you -- were you -- when you arrived with your husband, was he already on the gurney?

A. Yes.

Q. So you can't testify as to whether you were already outside when Mr. Carvalho saw your husband on the gurney; correct?

A. Well, as far as I was concerned, Mr. Carvalho said that he saw my husband being put onto the trolley. So, therefore, if he saw my husband being put onto the trolley or the gurney, then he would have seen me, because I was right there. The video sees it. Everybody was there, and nobody wanted to help me.

MR. RUSSELL: Your Honor, move to strike.

BY MR. RUSSELL:

Q. My question is, do you have any knowledge, Mrs. Cox, that Ryan Carvalho saw you outside at the same time he saw your husband on the gurney?

A. Only what the video that was shown to the jury and what he said.

MR. RUSSELL: Your Honor, move to strike.

BY MR. RUSSELL:

Q. I ask you again, Mrs. Cox --

MR. DEUTSCH: It's an answer, Your Honor.

MR. RUSSELL: It is not an answer.

THE COURT: Well, you make a motion, but then you go on. So --

/////

BY MR. RUSSELL:

Q. Do you see Mr. Carvalho on that video?

A. I don't know who Mr. Carvalho was in that video.

Q. No, I didn't ask you that. Do you see Mr. -- did you see Mr. Carvalho in that video?

A. No, I didn't, because I don't know who Mr. Carvalho was.

MR. RUSSELL: Thank you.

No further questions, Your Honor.

MR. STRASSBURG: Maybe I have fewer questions than I thought. How do I get this thing?

MR. RUSSELL: Adam, you may want to get your --

MR. DEUTSCH: Yeah, those things seem to walk away, at least in New York. Maybe not here in Nevada, maybe not in Nevada.

CROSS-EXAMINATION

BY MR. STRASSBURG:

Q. Mrs. Cox?

A. Hello.

Q. Hi. I'm Roger Strassburg, and I talk for the contracting company, Team Construction.

Just a couple of questions. And, ma'am, I

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want to be totally fair to you and -- in my questions. So if I ask you a question that you don't understand or it's not clear or, for whatever reason, gives you a concern, you can wait for your lawyers to object, but just tell me.

MR. DEUTSCH: No need. I'll just take care of it on my own, Roger.

BY MR. STRASSBURG:

Q. And I'll try to get a question that is acceptable. Is that fair?

A. Of course.

Q. Now, you and your husband arrived at MGM at -- well, do you remember when you arrived?

A. In 2013.

Q. Well, you went to the MGM to see Copperfield?

A. Oh, yes.

Q. Okay. November 12th, 2013?

A. Yes.

Q. Right? With me?

A. Yes.

Q. When did you arrive that night?

A. At the MGM -- at the MGM?

Q. Yes, ma'am.

A. I think the show was 7:30, so perhaps around 6:30.

Q. And before the time of your arrival, when had you last eaten?

A. I'm not -- I think we had an early supper.

Q. Do you remember when?

A. No. Well, if we were there at 6:30, then it would have been maybe an hour and a half, two hours before, but I can't be sure.

Q. And -- and is supper your evening meal or --

A. Yes.

Q. -- is that your lunch?

A. Well, early supper, so dinner. You call dinner -- food.

Q. Okay. And do you recall whether, from the time of your arrival to the time of the show, you had anything to drink?

A. I very rarely drink.

Q. And when you do drink, what do you drink?

A. Champagne.

Q. Okay. Good for you.

Did you have any champagne that night?

A. No.

Q. During the show, did you have food?

A. No.

Q. And, during the show, did you have anything to drink?

MR. DEUTSCH: Objection to the relevance, Your Honor.

THE COURT: Overruled.

BY MR. STRASSBURG:

Q. During the show, your husband was sitting right -- was it right next to you or across the table or how --

A. Definitely -- I mean, the tables were really -- and you were packed in like sardines. So he was definitely there next to me.

Q. All right. And did you see whether your husband had anything to drink --

A. He didn't.

Q. -- during the show?

A. No, he didn't -- we didn't order any drinks.

Q. Now, during the show, when they were throwing the balls around, you decided not to participate; right?

A. Yes.

Q. And how did you indicate your desire not to participate?

A. Because I was sitting down.

Q. Okay. And you did that intentionally; right?

A. Well, lots of people were sitting down. I don't know the other reasons for them sitting down, but

I was just -- I didn't get up.

Q. Okay. And did you see your husband get up?

A. Yes. Mr. -- David Copperfield said "Everybody get up." He commanded everybody to get up. But I didn't want to get up, so I didn't get up.

Q. But your husband got up?

A. Yes.

Q. And can you describe how he got up. Was it quickly? reluctantly? Did he have to think about it or was he gung-ho to get up there?

A. No, he just got up like everybody else because Mr. Copperfield says, "Okay. Everybody stand up." It's not like, "Come on. Come on. Everyone stand up." He just said, "Okay. Everyone stand up." So he stood up. Everyone stood up. Some didn't; I didn't.

Q. Now, did you see your husband catch the ball?

A. Yes.

Q. All right. And did you see how long he thought about what he was going to do with it, whether to throw it on or to go up on the stage?

A. No. No.

Q. Did it -- did it seem to you that he went up on the stage quickly after he caught the ball?

A. No. It was just -- for me, it was all rather

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dull. So, to be honest, I just -- I'm really -- I'm sorry. I just wasn't really paying any attention to getting up, getting on the stage. I just wasn't interested.

Q. And what were you paying attention to?

A. Nothing.

Q. Okay. When your husband stood up and had the ball, when did it dawn on you that he was going to go up on that stage?

A. I suppose when he walked off.

Q. And did he have to, like, squeeze by you to get up on the stage the way --

A. No.

Q. Did you try to stop him, "Hey, hey, what are you doing, honey?"

A. Why would I do that?

Q. I don't know.

A. No.

Q. Did you have any concerns about his ability to participate in --

A. No.

Q. -- in the activity?

A. No.

Q. Okay. So when he went up there, you -- were you interested in watching him do that?

A. Not really. He was just up there, and they were just lining up. And that was it. It was just, like I said, all rather dull. Magic is just not my thing.

Q. Well, but your husband's your thing, isn't he?

A. But magic is not.

Q. But sharing him sharing magic, is that your thing?

A. No.

Q. Now, at the reveal in the back, if I could ask you, when you first laid eyes on your husband when he was in the back at the -- like, the finale reveal, what went through your mind?

A. I saw him, and I was concerned. He did not look right.

Q. Okay. Now, do you remember giving your deposition?

A. Of course.

Q. And do you remember that you said --

MR. DEUTSCH: What page and line?

MR. STRASSBURG: 27, line 5.

MR. DEUTSCH: Hold on. Okay. No problem. You going to read the whole -- I'd ask that you read the whole question and answer and not just a piece of

JA003564

it, which I think the rule requires.

MR. STRASSBURG: No, I -- I don't think the rule requires that.

MR. DEUTSCH: I -- Judge, I think we discussed that. It does if it's requested.

THE COURT: If it's part of the same question and answer, read the full thing.

MR. STRASSBURG: Okay.

BY MR. STRASSBURG:

Q. Okay. Okay. I tried to warn you.

"QUESTION: Okay. I want to talk about the incident. And if you would, could you tell me in your own words just how it got started. I understand the illusion starts with balls being thrown out into the audience?

"ANSWER: No, no, no. The illusion starts with general pitter-patter of whatever he wants to say and a few jokes and things like that. Then, when it came to the trick, balls were thrown out. I wasn't participating."

You want me to keep going?

MR. DEUTSCH: Yeah. That's why I asked you to read the whole answer.

MR. STRASSBURG: All right.

"I didn't even want to stand up, but that's

by the by. My husband caught a ball, and they said, "If you have caught a ball, then you are invited up onto the stage." So he went up on the stage. They were all in a row. And then there was some kind of chatter going on and they were filed into a cage.

"And then this thing -- this sheet comes down. And you see as if they're shining something. So you can see that there's lights so that they're in this cage. It illuminates to show that they are inside this cage. Then the cover comes up and they're disappeared -- they disappear.

"So everyone is waiting and I'm looking. And all of a sudden there's cheers goes up because -- I'm sorry -- cheers goes up and I'm looking at the stage thinking, what have I missed, because I'm looking at the stage and nothing is happening.

"So then finally I turn around and I see my husband and the rest of the group at the back of the stage."

BY MR. STRASSBURG:

Q. Okay?

A. Yes.

Q. And you said, "And I see my husband. And I'm thinking, you miserable bastard, what's the matter? You were so excited, you were so happy. What's wrong?

Something's wrong. He just looked very strange. And I couldn't understand why he looked like that, just really upset and miserable. Then the show ended."

Do you remember giving that testimony?

A. He did look a miserable bastard, absolutely, yes. There was something wrong, terribly wrong.

He's my husband of 31 years. You don't think I'm not going to know when something's wrong?

Q. I'm implying nothing, ma'am. I'm just trying to find out what went through your head.

A. Absolutely. And what was going through my head was something was desperately wrong with my husband.

Q. Now, do you recollect that the show ended, and you were one of the first people to leave; right?

A. Yes.

Q. And you made a beeline for the restroom; right?

A. Yes.

Q. And then you came back --

A. Yes.

Q. -- right? And you tried to find him; yes?

A. Yes.

Q. And you -- you waited -- and, actually, you waited until pretty much everyone had left?

A. Yes.

Q. And you thought that this might be part of his joke?

A. I tried to enter the theater twice to look for my husband. And twice I was told my husband had gone home, which was just ridiculous. So I waited. And I thought, well, maybe it's part of the magic thing because I believe that Copperfield had said something. "They've disappeared and if you want to know where they are, there might be a notice or something."

So just at that point I thought maybe this is just a big joke, and my husband's torturing me by me waiting and waiting because he knows I'm going to kill him. And nothing, nothing. My husband, just nothing.

Q. So when you were waiting, you were, as you said, pissed off?

A. I was worried. I didn't know what had happened. And after being told by whoever "Your husband's gone home," which is just totally and utterly ridiculous because we're British tourists, then I'm beginning to think, what -- something's wrong.

Q. Now, somebody came to you and asked you to come with them?

A. They did.

Q. And you went with them a little way; right?

A. Yes.

Q. And then, at some point, you stopped going with them and you said that you weren't going to go down there. And you said that the individual could be a murderer or a rapist?

A. Absolutely. They wanted me to go to an area that was completely unlit, pitch black. And when we're in that area and he went to move forward, I believe it was through a set of doors, and then it was pitch black, I stopped. And I said, "I'm sorry. You won't tell me who you are. I don't know who you are. You could be a murderer and a rapist, and I am not going down there."

And only until he opened the door and there was the flashing lights of the ambulance, he said, "You have to come. Your husband's been hurt." And of course I saw the lights, and I immediately followed.

Q. And did he say it like that, pointing his finger at you, "You have to come with me"?

A. Yes. He said -- he -- he -- I was behind him, and he said, "You have to come. Your husband's been hurt." That's exactly what he did.

Q. After you told him that he could be a murderer or rapist?

A. He opened the door, I saw the lights. If he

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hadn't opened that door and said to me, "You have to come. Your husband's been hurt," I was still not going down there. I would have gone to find security or police. There was no way. And I don't understand why -- why would he take me somewhere that was unlit? Why would anybody do that?

Q. Uh-huh. Can you describe this individual?

A. No. Suit, a dark suit of some sort, a man. And that's all.

Q. So a suit. Would it be with a tie, open shirt, what? Do you remember?

A. No, I believe he -- he was quite smart, formal-looking, so I believe he would have had a tie on.

Q. All right. And when -- when -- in your culture, when you say a formal-type, kind of tie look, do you mean a necktie like this or a bow tie --

A. Yes.

MR. DEUTSCH: Objection, Your Honor. This is irrelevant to this point.

THE WITNESS: No, like Mr. Morelli or Mr. Deutsch.

THE COURT: Overruled. Let's --

MR. DEUTSCH: It's --

/////

JA003570

BY MR. STRASSBURG:

Q. Oh, so the individual dressed like Morelli?

A. A suit. He had a formal suit on.

Q. Well, no wonder you were worried.

I withdraw that.

A. That's all right.

Q. I withdraw that.

A. We know you're a comedian.

Q. Now, tell me, the photo -- let me show you Defense 403.

MR. DEUTSCH: Give me a second.

MR. STRASSBURG: I think it's 403.

MR. DEUTSCH: 5.

MR. STRASSBURG: 5.

MR. DEUTSCH: I don't think this one's been admitted.

MR. STRASSBURG: Do you have a problem?

MR. DEUTSCH: I -- I may have a problem.

THE CLERK: 403 has been admitted.

THE COURT: Entirely?

THE CLERK: It has been admitted.

THE COURT: The entirety of 403 has been admitted.

MR. DEUTSCH: I think so. So, yeah, I -- it's in evidence.

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BY MR. STRASSBURG:

Q. Do you remember how many ambulances were there?

A. I -- I just saw the one.

Q. Okay. And can you describe it? I mean, colors?

A. Flashing lights.

Q. Flashing lights?

A. White with a bit of red, perhaps. I don't know. It was very dark.

MR. DEUTSCH: Objection to the relevance, Your Honor.

BY MR. STRASSBURG:

Q. Let me show you 403.

THE COURT: It's what the scene -- I'll allow it.

MR. STRASSBURG: Exactly so, Judge. Exactly so.

BY MR. STRASSBURG:

Q. Do you see that in front of you?

A. Yes, I see it.

Q. Okay. Now, does this look like the ambulance that you have in mind?

A. With the greatest respect, the part of the ambulance I saw was the end part --

JA003572

Q. The other end?

A. -- where they were putting my husband into the ambulance.

Q. All right. When you were standing outside that night on the street, did you see any dust?

A. I wasn't standing on the street.

Q. Uh-huh. Well, in the video that was shown, you were standing next to your husband's -- you call it a trolley?

A. Yes.

Q. And did you notice any dust in the vicinity where you were standing?

A. No, I was concentrating on my husband.

Q. Of course. Exactly so.

You were shown this photograph. It's 83-4. Remember that?

A. Yes.

Q. All right. And this was one of four photographs that you took?

A. Yes.

Q. So -- and I'm thinking you took it on your phone?

A. Yes.

Q. And do you recollect how long you had been at the -- the ER when you took this photo?

A. Yes.

Q. How long?

A. I took it as soon as we -- as soon as we came into the light and I could see what had happened to my husband, I noted he was completely covered in dust. And that's when I took the photographs.

Q. Okay. So you had only been at the ER -- I don't know -- minutes when you took this photograph?

A. Perhaps a little bit longer. Once they had got him in there, yes.

Q. And you took this photo for a purpose; right?

A. Yes.

Q. And the purpose was to create a record of the condition of his shoes? Do you see that?

A. It was actually the condition of my husband being totally covered in dust.

Q. Okay. But you -- you took the shoes specifically; right?

A. Not specifically. It was part of a series of photographs that I took.

Q. Oh, I see. So there was nothing in particular about the shoes that attracted your attention and prompted you to take this photograph?

A. Yes, they were covered in dust.

Q. I see. And does that photograph accurately

show what you mean when you say the shoes were covered with dust?

A. Well, they're covered in dust.

Q. So I guess the answer's yes?

A. Oh, then yes.

Q. And the shoes, they -- they were clean when he left that night; right?

A. Absolutely.

Q. Okay.

MR. DEUTSCH: What do you mean "when he left"? Before the show, you mean, not when he went to the hospital?

MR. STRASSBURG: Before the show. Good point. Thank you. Thank you for the clarification.

MR. DEUTSCH: Thank you, Roger.

BY MR. STRASSBURG:

Q. So before the show, the shoes were clean?

A. Absolutely.

MR. STRASSBURG: Permission to approach, Judge?

THE COURT: Yes.

(A discussion was held at the bench, not reported.)

MR. STRASSBURG: And thank you for the approach, Judge.

THE COURT: Well, maybe I need another approach.

MR. STRASSBURG: Well, I don't have any more questions, Judge, so --

THE COURT: I understand.

(A discussion was held at the bench, not reported.)

MR. STRASSBURG: Ma'am, you can step down.

THE WITNESS: Thank you very much.

THE COURT: All right. Mr. Strassburg, you're finished with your cross-examination; correct?

MR. STRASSBURG: Yes, sir.

THE COURT: Was there any redirect, Mr. Deutsch?

Mr. Deutsch?

MR. DEUTSCH: Nothing, Your Honor, no.

MR. POPOVICH: Thank you, Your Honor.

THE COURT: That will conclude the proceedings.

MR. DEUTSCH: Do we have any questions from the jury?

No? Okay. Good.

THE COURT: Okay.

MR. DEUTSCH: It's 5:00.

THE COURT: All right.

MR. DEUTSCH: But we forgot them again, Your Honor.

THE COURT: All right. So we'll conclude and adjourn now for this day, and we'll reconvene tomorrow morning at 10:00, as I previously indicated.

In the meantime, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio.

You're further admonished not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Once again, return to the outside of the courtroom just a bit to the south tomorrow, Thursday, May 3, 2018, no later than 9:50 a.m., 10 to 10:00, so we can resume here at 10:00 with the next witness.

Have a nice night, ladies and gentlemen.

(The following proceedings were held outside the presence of the jury.)

THE COURT: Anything before the Court?

MR. DEUTSCH: Your Honor, one thing.

THE COURT: Yes, there is. Okay.

All right. You may be seated.

MR. DEUTSCH: It's anticipated either tomorrow or Friday, I guess -- probably more like Friday, but that one of the defendants' experts, Dr. Baker, is coming in. We had raised some issues with Dr. Baker's testimony, informed the Court at the beginning that we were going to have some objections to his testimony.

In light of some of the testimony that's come out in the case already, and that -- we have some objections to him -- to the testimony that he's going to give. So at some point before he testifies, we'd like to make that record.

We might -- he might need to be here for some of it. They might try to qualify him, and we have some objection to that. But we just want to raise at this point that we do have some objections to his testimony.

THE COURT: Are you going to be informing counsel what --

MR. DEUTSCH: I did inform -- well, I'll inform them of the specifics.

THE COURT: What the nature of objections --

MR. DEUTSCH: I'm happy to do that.

THE COURT: All right. So --

MR. DEUTSCH: So, at some point, my understanding was that Mr. Copperfield is going to be the first witness, followed by the security guards. And then Mr. Baker is going -- or Dr. Baker -- if he's a doctor -- I don't know -- but he's going to be after that. So I don't know what -- when we want to do that.

MR. CALL: So you resting tomorrow?

MR. DEUTSCH: After Copperfield, we're resting -- well, actually, most likely. I might have to talk to you about calling Mr. -- Mr. Voiss.

MR. CALL: Well, let me know.

MR. DEUTSCH: I will let you know.

THE COURT: Keep in mind -- keep in mind we're adjourning earlier tomorrow because of the one juror.

MR. MORELLI: 4:45.

THE COURT: And also in the -- on Friday, we're going to adjourn quite early.

MR. MORELLI: Quarter to 1:00. We know.

MR. DEUTSCH: Your Honor, we might be able to make the decision of whether we're calling Mr. Voiss. The only reason that we would call Mr. Voiss is to ask him about what we believe is proper with respect to the fact that there's these cross-claims.

JA003579

If Your Honor's going to permit that because it is proper and it's not redirect and therefore it's direct, then we intend to call Mr. Voiss. If -- if it's anticipated that we will ask those questions of him, the defendants will jump up and object, and your Honor's going to rule that we're not allowed to, then we're not going to call him. But -- so maybe we could just make those objections now, and Your Honor can rule, and then we can figure it out.

MR. STRASSBURG: Judge, Voiss is my superintendent. So he's one level below the guy that was just here.

THE COURT: I know.

MR. MORELLI: But he's the guy who was there every day.

MR. STRASSBURG: So he's between the foreman and the super.

MR. DEUTSCH: Doesn't matter. He's the guy that was there every day.

MR. MORELLI: He's the guy that was there every day.

MR. STRASSBURG: He doesn't know anything about the cross-claim.

MR. DEUTSCH: Okay. So he can tell me he doesn't know. I don't know that. I don't know if this

JA003580

guy would have known anything about the cross-claims either.

Our position is, Your Honor, is that it's relevant for the jury to know that these people are -- these defendants are all suing each other. I think it's relevant.

THE COURT: They're all seeking indemnity and things like that, but this portion of the case has to do with plaintiff proving --

MR. DEUTSCH: Right. But Your Honor allowed -- we argued this already. Your Honor allowed Mr. Strassburg to point to the complaint. If they're allowed to point to the complaint and put it up on the screen, then we're allowed to point to the answer.

THE COURT: It's alleging claims against all of the defendants; right?

MR. DEUTSCH: Right. And the jury is allowed to --

THE COURT: The plaintiffs' claims against the defendants.

MR. DEUTSCH: The jury is allowed to know that MGM is blaming --

THE COURT: Are we going to get into the whole concept of indemnity and contribution?

MR. DEUTSCH: Your Honor, we think it's

JA003581

relevant. We're going to find some case law and brief it. If Your Honor is going to rule that we can't bring them, then unless I could find some very strong case law on it tonight, we won't bring it.

THE COURT: If you have something factual having to do with --

MR. DEUTSCH: I have something --

THE COURT: -- somebody said it was their fault or something like that.

MR. DEUTSCH: I have something exactly like he put up on the screen. He put up an allegation in a complaint that it was a trip and a slip versus a fall.

I have an allegation in the complaint that says if we're found to have done something wrong, then the only reason we did anything wrong is because of your acts or omissions. It's the exact same thing.

MR. CALL: I thought we discussed that this morning.

THE COURT: I thought that was with respect to whether or not it opened the door for redirect.

MR. DEUTSCH: It's putting on a piece of the complaint that says we believe that, if we're found responsible in this case, that the only reason we're responsible would be because you, Team Construction, did or didn't do something you were supposed to do.

JA003582

That's a claim in this case.

And the jury is entitled to know it. The jury is entitled to know that MGM blames Team for this. They're entitled to know it. And there's no prejudice. It's the facts. The fact that these things were pushed to a later date doesn't change the fact that they made those claims. It just means that proving those claims one way or the other was left for a later date.

It doesn't change the fact that there's an answer put in by a party that has those allegations. If he's allowed to put up a complaint that points to our allegations, then we're allowed to put in the answer that says their allegations. What's good for the goose is good for the gander. And that's the rule.

MR. POPOVICH: The goose-gander rule may be -- exist among attorneys, but I don't think it's been published yet.

MR. DEUTSCH: Ask Lee.

MR. STRASSBURG: These are different meals.

MR. POPOVICH: There -- it is true that there are such allegations in the case, but there are no such allegations in this trial at this time because of an order that the Court signed. I mean, I'm rehearsing everything the Court's already heard.

THE COURT: The order that the Court signed

JA003583

was on a stipulation between the defendants, to which the plaintiff was --

MR. DEUTSCH: Not a party.

MR. POPOVICH: And which they didn't object to.

MR. DEUTSCH: No, but it has nothing to do with us objecting. That just says that the claims that you're making against them and the proof you need to support or defend them --

MR. POPOVICH: Argue to the Court. I've heard you.

MR. DEUTSCH: All the stipulation said, Your Honor, was that the proof that they're going to put forward to prove the claims they've made are -- is going to be put in in a later time. It doesn't just do away with the claims as if they just disappear into thin air. The claims are there. The proof about those claims is going to come up at a later date, but the claims being made are there.

If they put in cross-claims, Your Honor, they got to live by those cross-claims. They can't pretend they just don't exist because it's inconvenient for them.

MR. STRASSBURG: Judge, can I just say one other thing. The -- there is a difference between a

JA003584

statement of fact and a contention about a claim, particularly a conditional one. Here, what we showed is that the plaintiff agent -- authorized agent has chosen to characterize this accident as a trip and a slip.

MR. DEUTSCH: That's ridiculous.

MR. STRASSBURG: Those are statements of fact. What Mr. Deutsch wants to put in are contentions. And, in this case, they are conditional contentions, where one party says "If -- if I'm liable, then I want to lay off all of that liability on you per the contract."

MR. DEUTSCH: That's not accurate.

MR. STRASSBURG: That's totally different. That is a contention to which --

THE COURT: But we do know -- we do know, under NRS 16.090, pleadings can be read --

MR. DEUTSCH: Absolutely.

THE COURT: -- to the jury; right?

MR. STRASSBURG: And that was waived, Judge.

MR. POPOVICH: It was waived.

THE COURT: This actually doesn't say it's waived if it's not. It doesn't say "waiver."

MR. STRASSBURG: They waived the reading of the complaint.

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX, Husband and Wife, Appellants, vs. MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; and BEACHERS LV, LLC, Respondents.	)	Supreme Court No. 76422 District Court No. A-14-705164-C

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Clerk of Supreme Court

JOINT APPENDIX - VOLUME 14

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12 through 21.

(Whereupon video deposition was played.)

BY MR. FREEMAN:

Q. Do you recall looking at the place -- at the area where you thought you fell?

A. Only in terms of wanting to make sure that he knew exactly where I fell.

Q. Do you recall what it looked like? Did you note what --

A. I -- I knew where it was because it was a corner because it was a embedded in my mind. When you -- when you have something like that, you don't -- you just don't forget it. It's like a photograph in your head.

(Whereupon video deposition was stopped.)

MR. DEUTSCH: Your Honor, just for context, those questions involved the time that Mr. Cox went back to the place at a later date and were not about his recollection from that evening.

MR. ROBERTS: That's fine, Your Honor. I agree to that.

MR. POPOVICH: So stipulated.

MR. DEUTSCH: Just so it's clear.

/////

BY MR. ROBERTS:

Q. And when you went back -- your testimony was you fell right at the corner. And when you went back, you were certain, it was embedded in your mind, that it was right on the corner; right?

A. It was on that corner where the ramp was, on the ramp.

Q. So, at the time of your deposition, you testified that you slipped on concrete dust; right?

A. If I said that, then that's what I said.

Q. And you said that you didn't realize it at the time you fell, but you realized it later, that's what caused it?

MR. CALL: I'm going to object. It misstates the testimony.

THE COURT: It if it does, he can say so.

MR. ROBERTS: Audra, is it --

BY MR. ROBERTS:

Q. The judge is going to let you answer that question. Is that true?

A. I'm sorry. Can you repeat the question.

Q. Yes. You didn't realize why you fell at the time you fell, but then you realized later what had caused it.

A. I would say --

MR. MORELLI: Objection, Your Honor. Could we just read the question and his answer?

MR. ROBERTS: Do you have Clip 5C, as in Charlie?

MR. DEUTSCH: What page?

MR. ROBERTS: I'm on page 93 now, lines 18 through 21.

MR. DEUTSCH: Hold on. Give me a second.

Hold on just a second. Fire away.

MR. CALL: No, I'm not.

MR. DEUTSCH: You're going to go all the way to 93, line 3?

MR. ROBERTS: I can continue this clip onto the next page.

MR. DEUTSCH: I would ask that you go through to 94 at line 3, which is the complete answer.

BY MR. ROBERTS:

Q. Okay. Let's look at this one first, Mr. Cox. Do you know why you fell?

(Whereupon video deposition was played.)

BY MR. FREEMAN:

Q. Do you know why you fell?

A. No. Well, apart from running as fast as I can, I didn't -- there wasn't -- I -- I realized after the fact what caused it, but not at the time.

(Whereupon video deposition was stopped.)

MR. DEUTSCH: I'd ask you to read the next question.

BY MR. ROBERTS:

Q. So you realized after the fact --

MR. DEUTSCH: Whoa. Whoa.

MR. ROBERTS: I'm going to get to it.

MR. DEUTSCH: Your Honor, I'd ask that he reads it now in conjunction with that. That's what Mr. Roberts said the rule was.

MR. ROBERTS: Your Honor, unless Mr. Deutsch is going to take redirect, I'd request that he make no further objections during this witness.

MR. DEUTSCH: Your Honor, I'm just reading the deposition transcript.

MR. ROBERTS: No, he isn't. He's making objections, Your Honor, which is against the rules.

MR. DEUTSCH: I didn't object there.

THE COURT: Are you going to read the part that he's --

MR. ROBERTS: I am.

MR. DEUTSCH: It's the very next question and answer, Your Honor. So before he goes on, I think it's only fair to read the very next question and answer.

THE COURT: Read the next one.

MR. DEUTSCH: Thank you. Page --

MR. ROBERTS: I'm not allowed to comment on what he just said, pausing the testimony?

THE COURT: Just read the next one. Just play the next one. Okay?

MR. DEUTSCH: I'll read it, Your Honor.

MR. ROBERTS: All right. Clip 5D, please, Audra, D as in Delta.

(Whereupon video deposition was played.)

BY MR. FREEMAN:

Q. So what -- after the fact, why did you fall? Why do you think you fell?

A. Well, because all my clothes were covered in dust. So one would think, combined with the speed and the concrete and it's covered in this dust, it doesn't take -- I don't mean to be facetious -- rocket science to know that it's not a good mix. I didn't see it. And I don't mean this rudely either. I didn't see -- feel an old banana peel on my jeans or anything like that.

Q. Now, just before you fell, what were you looking at?

A. I was looking ahead at the door and the light and making sure I was going as fast as I could to get

where I was meant to go.

Q. Okay. And do you recall standing up?

A. No.

(Whereupon video deposition was stopped.)

BY MR. ROBERTS:

Q. So to follow up, you didn't know what caused you to fall at the time, but you figured it out later?

A. I figured it out later.

Q. And you just said in your deposition that the floor was covered in dust where you fell; right?

A. That's correct.

Q. But you don't remember ever seeing dust on the floor, do you?

A. No.

Q. You only think the floor was covered in dust because there was dust on your clothes; right?

A. It makes sense.

Q. And it's your understanding that whatever that dust was that was on the floor is what made you fall?

A. I think it was one of the contributors to what made me fall.

MR. ROBERTS: Audra, could we have Clip 8 again. 124, lines 16 to 18.

MR. DEUTSCH: 124?

MR. ROBERTS: Yes.

(Whereupon video deposition was played.)

THE WITNESS: It's my understanding that whatever was on the floor made me slip and fall.

BY MR. GIL:

Q. Fair enough.

(Whereupon video deposition was stopped.)

MR. DEUTSCH: What line was that?

MR. MORELLI: 124, 16.

MR. DEUTSCH: Hold on. You can't read an answer without a question, Your Honor, I don't believe. So I would like to read at least the question that went to that answer.

THE COURT: I agree.

MR. DEUTSCH: I'll read it, 124, line 13.

"QUESTION: Is it your understanding that Team Construction Management owed that duty to you to clear away debris and dust?

"ANSWER: It's my understanding that whatever was on the floor made me slip and fall."

BY MR. ROBERTS:

Q. But whatever was on the floor, you're only

supposing it was there because of the dust all over your clothes?

A. That's correct.

Q. Do you know how thick the dust was on the floor?

A. No.

Q. Do you know if you could have seen it had you looked at the floor?

A. I don't believe I could have seen it in the light because it was dark.

Q. But you -- you're not saying there was any debris? There were no, like, rocks or gravel or big pieces, only a very fine dust; right?

A. I didn't see any rocks or gravel or big pieces, no.

Q. Just this very fine dust?

A. I didn't see the fine dust.

Q. You saw it on your clothes; right?

A. At the hospital.

Q. Okay. So you never saw it on the floor where you fell; you saw it on your clothes at the hospital?

A. That's correct.

Q. And you don't know how thick that dust would have to be in order to transfer onto your clothes, do you?

A. No.

Q. Do you know if that dust would have been slippery, more slippery than concrete?

A. I'm sorry. Can you repeat the question, please.

Q. How do you know that whatever fine dust was on your clothes was slippery when it was on the ground?

MR. MORELLI: Objection, Your Honor. Calls for speculation.

He gave him his answer.

THE COURT: Overruled.

THE WITNESS: Sorry. Can you repeat the question, please, Counsel.

BY MR. ROBERTS:

Q. How do you know the dust was slippery?

A. I didn't know it was slippery. I just assumed, if it was on the concrete and I was running around as fast as I could in the dark and I took a corner and I was running up a ramp, that that was one of the factors that caused me to fall and slip.

Q. Was the concrete outside where you fell more slippery with dust or without dust?

A. I wouldn't know.

Q. No. No, I don't think the jury would know either.

Did you ever have it tested? Did you have this dust on your clothes tested, or did you throw it in the washing machine?

A. I never had the dust tested.

Q. And if, in fact, you fell after you'd passed the corner and after you had gone up the ramp and fallen, then maybe your assumption about the dust making you fall at the corner is incorrect; right?

A. I'm sorry. Can you please repeat the question.

Q. Is it possible that you rounded that corner just fine, you didn't have your feet go out from under you at the corner, you ran up the ramp, and then you fell on perfectly flat, level ground?

A. No. No.

Q. Have you looked at the videotape?

A. I've looked at the videotape.

Q. Okay. And do you think that it shows you on the ground at that corner?

A. That videotape does not show me on that corner at all. I see a tree.

Q. And as far as what you saw that evening where you fell, you didn't say that you saw a ramp where you fell, did you?

A. That evening, I didn't see a ramp where I

fell.

Q. Correct. What you saw is perfectly flat concrete where you fell?

A. I'm sorry. I misstate -- I -- I messed up. Can you -- can you go back to your original question again. I think I --

Q. I'm not positive I can, but I'll get close.

Isn't it true that you didn't see a ramp that evening where you fell?

A. When I was running and I took the corner, I didn't see a ramp.

Q. And you didn't even understand that a ramp was there -- right? -- at the place you fell?

A. All I know is I felt the ground lift up towards me when I was running around that corner.

Q. And when you came out the door where you fell, the only thing you recall is there was a flat cement sidewalk; correct?

A. When I came out of the first door into the night -- sorry, Counsel. Can you repeat the question, please.

Q. Isn't it true that what you remember seeing at the time you fell was flat cement, concrete?

A. I don't remember what I saw when -- I remember falling and hitting the ground and blacking

out. I don't remember, after I fell, seeing anything.

Q. Is it possible -- you went back out there a couple days later with your attorney; right?

A. Correct.

Q. And that's the first time you ever remember seeing that there was an incline at that area leading up to the doors; right?

A. That's correct.

Q. And it was a short incline. There was a seam in the concrete. And then it was relatively flat; right?

A. It wasn't a short incline.

Q. Okay. How many feet long was it?

A. I don't know. I didn't -- I didn't -- I don't -- I didn't -- you know, it wasn't measured. It wasn't a factual get the tape out. It was a -- it was -- I -- I -- if I say now, I'm doing it from a bad memory. So I can't say how long the ramp was. I can tell you that it was steeper on the corner than it was in the middle.

Q. All right. It was steeper on the corner.

A. Yes. From -- from knowing what I saw when I went with my attorney.

Q. And if, hypothetically, you had not taken a really sharp turn but you had taken a rounder turn, it

was much less steep; right?

A. It was still a ramp.

Q. And if you had fallen past that seam, there would have been maybe a 1-degree incline, just enough for the water to run off? Does that sound about right?

A. No.

Q. No?

THE COURT: All right, Counsel. We'll -- in accordance with what I said earlier, I have to recess now.

MR. ROBERTS: Thank you, Your Honor. This is fine.

THE COURT: And we'll reconvene at 1:30.

During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses, on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom to the south just

before 1:30. Thank you.

THE MARSHAL: All rise.

(Whereupon a luncheon short recess was taken.)

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good afternoon, ladies and gentlemen. You may be seated.

Do counsel stipulate that the jury --

MR. MORELLI: Your Honor, before we answer the question, we're going to count. All right.

JUROR NO. 7: I'm here.

MR. MORELLI: All good.

MR. POPOVICH: So stipulated.

MR. MORELLI: So stipulated.

MR. CALL: Yes, Your Honor.

THE COURT: All right. The witness has retaken the stand.

You may resume.

MR. ROBERTS: Your Honor, I have looked at my notes and I think I got everything I need, so I'm going to turn the witness over to Mr. Popovich.

THE COURT: All right.

MR. POPOVICH: Well, okay.

MR. ROBERTS: Sorry to surprise you there, Jerry.

CROSS-EXAMINATION

BY MR. POPOVICH:

Q. Good afternoon.

A. Good afternoon.

MR. POPOVICH: And good afternoon.

IN UNISON: Good afternoon.

MR. DEUTSCH: We didn't stipulate all the lawyers were present.

BY MR. POPOVICH:

Q. Mr. Cox, when you came out of what's been called the box or the prop, where you were seated, was Pomai Weall there with a hand outstretched and a flashlight on the walking surface?

A. I don't recall her.

Q. Do you recall seeing anybody with -- offering their hand and with flashlight showing where to walk in that darkest of areas?

A. No.

Q. You got down to the bottom of the stairs from the dragon, and that's when you began to run?

A. Yes.

Q. And the first turn, was it a turn hard to the

left?

A. I can't remember. I'm sorry.

Q. Was there someone pointing out the first turn?

A. If there was a turn, there would have been somebody there.

Q. Okay. That shortcuts it. So every turn in the route had somebody positioned to direct the participants which way to turn?

A. If there was a choice. If there was a left and a right, there would be somebody stopping you going left and pointing you to the right. If there was just a right, I don't recall if there would be somebody saying "go right" because there's nowhere else to go.

Q. Understood. The first turn, did it feel like -- or did you perceive that that took you off of the stage area into a hallway?

A. Sorry. Can you repeat the question, please.

Q. Sure. The first turn you took after you started running, did that take you off of the stage into a hallway?

A. Off the steps forwards, and that -- to me, that was already a hallway, as I remember.

Q. Okay. After you made your first turn, was that also a hallway?

A. I just remember running -- I don't remember specific, just running down corridors and hallways.

Q. You've indicated that, while you were inside the theater before going outside, you were able to maintain a fast-as-you-can run during that time.

A. I ran as fast as I could within wherever I was. Sometimes it would have been faster because it was longer so I had more chance to speed up. But even in a small turnaround, I was just running, running, running.

Q. Did you ever bump into any walls while you turned?

A. No.

Q. Did you ever bump into any of those people there directing the turn?

A. They were off to the side.

Q. Okay. Have you seen American baseball on television or in person?

A. Yes.

Q. And you see the bases and how they're laid out?

A. Yes.

Q. Have you seen -- ever seen one of those athletes hit what we call a double, where they go to second base, or a triple, where they go to third base?

A. I have no idea. I'm sorry.
Q. That's all right.
When you were doing the route, the turns would have been 90-degree turns inside the theater?
A. I -- I -- I don't remember.
Q. Did you have to slow down to roughly even half your speed to make turns?
A. All I can remember is running.
Q. When you've got -- when you went outside, the first turn was a right as you came out of the door?
A. Yes.
Q. And it was a 90-degree turn to the right?
A. (Witness indicating).
Q. Yes?
A. Yeah.
Q. Okay. You've just indicated what I would call a 90-degree turn.
A. Sorry. Yes.
Q. It's okay. Basically, this corner would be 90 degrees.
A. Yes.
Q. So you made a 90-degree turn?
A. Yes.
Q. And then when you went from the door, you came out along the building with the building on your

right. Right at the point you started to make another right turn to head back into the building, you said you made, I believe you said, sharp turn.

A. Yes.

Q. Does that mean a 90-degree turn there as well?

A. As best I could.

Q. So the intent was to reach the corner of the building, make a -- make a sharp right and keep along the corner of the side of the building?

A. As best I could, yes.

Q. All right. And that distance from where you made the right turn coming out of the door to where you made the right turn to head back toward that door with the golden light, was that about 30 feet?

A. I was about here.

Q. Where you're sitting?

A. Probably to the front of Bob's desk.

MR. POPOVICH: Your Honor, may I pace that off?

THE COURT: Yes.

MR. POPOVICH: One, two, three, four, five, six, seven, eight, nine, ten, 11-ish of my strides.

Thank you.

/////

BY MR. POPOVICH:

Q. And you indicated that, because that was a little bit longer distance for you to run, you actually got up higher speed?

A. To my memory.

Q. Okay. I want to go back to coming to Las Vegas for your 53rd birthday.

Had this trip been planned for months?

A. Maybe about four months.

Q. Had you bought air -- airfare in advance?

A. Yes, I bought airfare in advance.

Q. And did you reserve a -- the Encore hotel in advance?

A. Yes.

Q. You did not buy the tickets to the David Copperfield show until the day of the show; correct?

A. That's correct.

Q. Is -- and that, you had already been in Las Vegas two days before the date of the show?

A. I'm not sure about dates because my memory is, like, not as great now because of what damage occurred. But I think -- you know because you can see it because it's written down. So if -- if that's what it says, that's what it says.

Q. Let me ask you this way: You had not thought

about going to the Copperfield show until you arrived in Las Vegas --

A. No.

Q. -- and found out he was in town?

A. I hadn't thought about going to the Copperfield show until after we had arrived and I found out he was playing.

Q. Okay. You said something earlier this morning about when you had your 50th birthday. When you turned 50, did you also come to Las Vegas?

A. That's correct.

Q. And, at that time, it was your belief that Mr. Copperfield's show was not happening at that time; he was taking a break?

A. I was already here for my 50th. I hadn't come for the Copperfield show. And when I saw he was playing, I inquired. And he wasn't there for my 50th. But I had -- I had already planned to come anyway.

Q. Your 50th would have been November 9, 2010?

A. That's my birthday.

Q. And the time -- that trip to Las Vegas, you were there both before and after your birthday, a few days on either side at least?

A. Yes, I think so.

Q. If Mr. Copperfield's show was going

November 10 and 11, any reason you didn't go at that time?

Of 2010?

A. No. I think -- I cannot think why we would or we wouldn't have gone at that time. I was coming to celebrate my 50th.

Q. Well, you'd actually been to Las Vegas about six times before 2013?

A. That's an approximation, right.

Q. And, during those six occasions, you had not gone to see the Copperfield show on any of those occasions?

A. We -- we'd never gone to -- I think we went to one show. We always said we never get to see a show. So we hadn't seen any shows pretty much up on those previous occasions.

Q. That wasn't something you usually did, was to go to at least one show during --

A. No. I think we went to one show on my birthday, and that was it.

Q. On your 50th?

A. Yeah. They're not magic fans.

Q. Say that again.

A. They -- people are not magic fans.

Q. What do you mean by that?

A. Well, my wife's not a magic fan like I am. I think we've met some friends and they're not magic fans. It's -- I'm the magic fan.

Q. So that affected your decision on whether or not to go to a Copperfield show on one of the earlier trips?

A. Well, it's expensive, and I don't want to go just -- it's for me.

Q. All right. You had seen Mr. Copperfield perform the Thirteen Illusion on television before going to the show in November of 2013.

A. I think it was on an advertisement or his -- you know, when -- when you -- when you -- when you come into Vegas, there's like a "come to see David Copperfield." And there's a little, like, a -- like a film of him doing it -- film of -- a little film of him doing -- taking the cloth away.

Q. So, on that clip, you wouldn't have seen how the people from the audience catch the balls and come forward?

A. I don't remember. I just remember seeing the cage. And that -- I don't -- I can't remember exactly the advert, but parts of it is you see the curtain being pulled away.

MR. POPOVICH: So, Your Honor, I would like

to play a clip of Mr. Cox's deposition, page 65, line 11, through 66, line 15. And this is JP No. 2.

MR. DEUTSCH: Give me one second.

MR. POPOVICH: Sure.

MR. FALLICK: Your line, Jerry?

MR. POPOVICH: 65/11 to 66/15.

MR. DEUTSCH: 66/15; right?

MR. POPOVICH: Yes.

MR. DEUTSCH: No objection.

(Whereupon video deposition was played.)

BY MR. FREEMAN:

Q. Explain how that illusion got started.

A. When I was there?

Q. Yes.

A. Okay. I know how the illusion -- I know what happens in -- I know how you get volunteered for the illusion because I've seen it on television. He throws out these silver balls. And I thought I've no chance of catching one -- you know, what -- anyway. Sorry.

So he's -- the music starts, and he throws out these silver balls into the audience. And I think he asks you to stand up. I think people were standing up. And if you -- and I caught the ball just as the music stopped. And he said, "Everybody who's caught a ball, come to the stage and come up here. Come up."

I went with my ball to the steps up to the stage. And a girl in black said, "Can you run? Are you a magician? Are you a member of the press?" And I said no. And then I walked up the stairs and I stood in front of the magic box chairs thing. Then --

Q. Let me stop you there.

When you said no, did you say no to all three of those questions?

A. Yes.

Q. Okay. So you said you cannot run, you're not a magician?

A. No, no. Sorry. No. Sorry. She said "Can you run?" and I said yes. She said -- sorry. Okay. Thank you for that.

She said "Can you run?" I said yes.

"Are you a member of the press?" I said no.

"Are you a magician?" I said no.

(Whereupon video deposition was stopped.)

THE COURT RECORDER: Are there any phones or anything on the tables?

MR. DEUTSCH: Not mine for once.

BY MR. POPOVICH:

Q. So, Mr. Cox, in -- in the beginning of that illusion, you indicated that you knew how people got

volunteered for the illusion. So was it your understanding that the people standing in the audience could catch a ball if they wanted to?

A. I think I was describing what happened that night.

Q. Right. And when you were there November 12th, 2013, you knew that if you caught a ball, that that would include you in the illusion?

A. That was -- that's what Mr. Copperfield explained that night.

Q. Did he tell people that didn't want to be part of the illusion they could sit down?

A. I wasn't interested in that. I wanted to catch it.

Q. Did your wife sit down?

A. I don't remember that.

Q. Did you know that she absolutely did not want to participate in that illusion?

A. It's something that she wouldn't have wanted to do.

Q. That night, November 12th, 2013, you had no physical limitations?

A. No.

Q. When you were in the box and that person in black showed up, what he said was follow him to leave

the prop; correct?

A. I don't remember his exact words. I'm sure you'll say what I said at my deposition. So I don't remember his exact words. I was more in -- now, in my memory, I remember I was just surprised this jack-in-the-box sprang up behind me and -- and -- that had his arm out, maybe not to pull, and said something. But it was just a surprise. I was just sat there. And I didn't expect anything -- I didn't -- you know, it was -- it was just a surprise.

Q. I guess my point is he didn't shout "run, run, run" while you were in the box; correct?

A. You couldn't run in the box.

Q. Fair enough.

You described, after getting down the steps from the dragon, that you were pushed in the back. And would you describe that as a fairly aggressive push?

A. I was shoved.

Q. Shoved. Okay. Was it an aggressive shove?

A. Well, I don't know what an aggressive shove is. It's -- the shove is a shove.

Q. Did it knock you forward, it was hard enough?

A. I just -- once again, I just felt a shove, a push.

Q. Didn't take you off your feet at all?

A. Made me run faster.

Q. You were already running when you got that shove?

A. Yeah. I started to run, and that was more or less the second stride of my run.

MR. POPOVICH: Ms. Bonney, let's go to Clip JP3. It's page 77, line 21, through page 78, line 5.

(Whereupon video deposition was played.)

BY MR. FREEMAN:

Q. Besides the whole just -- I guess you seemed like -- there was some urgency, you thought?

A. It wasn't -- all right. There is instilled into us an absolutely necessity, you've got to go as fast as you can. And it's like I -- I would -- well, no. I just -- it was just a necessity to get -- move as fast as you could. It was like -- it was like if you were being chased by a rhinoceros and you're running away to get away from it, and there's people there trying to get you to -- you know, "Get the hell out of here quick. Go, go."

(Whereupon video deposition was stopped.)

BY MR. POPOVICH:

Q. Before lunch, Mr. Roberts took --

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MR. DEUTSCH: Your Honor, can we just get the last sentence read there that just got cut out. I don't know if it was very clear.

MR. POPOVICH: "She said 'Can you run?'"

THE COURT: Okay.

MR. DEUTSCH: No, no, the very last sentence of his answer that just got cut off in the video on page -- line 5 at page 78.

It says, "They were trying to get you -- you know, "Get the hell out of here. Quick, go, go, go."

That part was cut off of the video.

BY MR. POPOVICH:

Q. Before lunch, you talked about your sense of urgency was like somebody said the building's going to -- a bomb's going to go off in the building in 30 seconds. And then we just heard where you felt like you were being chased like a rhinoceros.

So did you feel like your life was in danger from the moment they told you to run after you came down from the dragon?

A. No, I didn't feel my life was in danger.

Q. Did you feel that, for the illusion to work, you had to run as fast as you could? Is that what you're trying to convey?

A. Yes.

Q. Did you ever feel like you could just say, "You know what? No. I'm stopping"?

A. No.

Q. You didn't think that was an option?

A. No.

Q. When -- I'm going now to the -- to the time when you fell.

When you fell, did you feel the toes on your right foot stubbing?

A. No.

MR. POPOVICH: Ms. Bonney, if you could put up Exhibit 83-4, the photo of the shoes, which is already in evidence.

BY MR. POPOVICH:

Q. Are those your legs and shoes?

A. Yes.

Q. Still strapped to the gurney?

A. Yes.

Q. Your wife took these -- this photo?

A. I believe so.

Q. And these were shoes you were wearing the night of the accident?

A. That's correct.

Q. The mark on the top of the shoe appears lighter than the color of the shoe. I think we're

about to get it outlined here.

Was that mark there before you participated in the Thirteen Illusion?

A. No, it wasn't.

Q. Looking at the toe on the right shoe at the top where the stitching is, is that mark there something that was on the shoe before the Thirteen Illusion participation?

A. I don't believe so.

Q. And same question, then, for the lower portion of the toe on the right shoe going down to where it meets the sole. Was that mark there --

Actually, it's -- it's on the toe, Audra.

BY MR. POPOVICH:

Q. I'll show you up here, if I can.

Mr. Cox, can you see this spot here?

A. Yeah.

Q. This lower -- the lower one?

A. Uh-huh.

Q. Was that mark on those shoes the night of the accident before the accident happened?

A. I -- I -- I don't know about that.

Q. Okay. Now, to your knowledge, those marks, are they scuff marks? dust? something else?

A. They would be dust.

Q. Did you ever have to clean those shoes after the accident?

A. Yes.

Q. And did those marks buff out?

A. They didn't. It's just a wet cloth.

Q. Just a wet cloth. Okay. You -- when you described your slip this morning, you were coming around a right turn; correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Thank you. And you indicated your feet going out from under you to your left side, toward your left side. Is that fair?

A. Right.

Q. And then you fell heavily onto your right side?

A. Yes. Correct.

Q. Okay. So that when you came to rest, were you on your right side?

A. I don't remember that because I passed out -- or I blacked out.

Q. You don't remember?

A. I don't remember.

Q. Fair enough.

Is it fair to say that there is no dust on the right side of this shoe below the stitching between the side and the top of the shoe?

A. Can you point out where you're talking about.

Q. Yes, sir.

A. Please.

Q. Happy to.

What I'm asking is below the stitching here, there's no dust along the right side of that shoe?

A. There doesn't appear to be.

MS. FRESCH: Jerry?

MR. POPOVICH: Yes. Thank you.

BY MR. POPOVICH:

Q. I think you -- you've already indicated you cleaned those shoes up. You've worn them since?

A. Yes.

Q. And they have a rubber sole; correct?

A. Yes, I believe so.

Q. All right. Thank you.

Ms. Bonney, I did not give you a heads-up, but in the same exhibit, the photo of his right hip and jeans.

83-2, that's the one.

BY MR. POPOVICH:

Q. Is this you still on -- maybe a hospital bed,

it looks like, that night?

A. Yes.

Q. And those were the jeans you were wearing that night?

A. Yes.

Q. And they've got dust certainly from the seam in the jeans towards your front; correct? The seam in the jeans toward the front, is that dust?

A. On the side -- on the side -- on the hip, it has dust, yes.

Q. And that dust does not extend to the pocket of your jeans; correct?

MR. DEUTSCH: The rear pocket?

MR. POPOVICH: Rear pocket. Thank you, Counsel.

THE WITNESS: It doesn't look like it.

BY MR. POPOVICH:

Q. And -- thank you.

You still have no memory of getting up after falling?

A. No.

Q. So you don't know, obviously, how you got up; correct?

A. I have no memory.

Q. You did talk, when Mr. Morelli was asking you

questions, about feeling immediate pain, when you landed, in your right shoulder.

A. I had -- I did tell Mr. Morelli I felt searing pain as soon as I landed. And, literally, within a fraction of a second, that's all I remember, not how I fell, as in what position; just landing, pain, out.

Q. You had described it earlier today as being the worst pain you had ever felt. Is that still your testimony?

A. Oh, yeah.

Q. Had you an injury to your right upper arm and shoulder before this night?

A. Yes.

MR. MORELLI: Objection, Your Honor.

THE COURT: Overruled.

MR. MORELLI: Going into damages.

THE COURT: It goes to pain.

Overruled.

BY MR. POPOVICH:

Q. You had fallen from a tree when playing with your kids?

A. Yes.

Q. And had a fracture in your shoulder?

A. Yes.

Q. And ultimately required surgery and plates and screws?

A. Yes.

Q. And your testimony is that pain this night was worse than that fracture?

A. It ripped the whole of my arm out of its socket, and it ripped all the tendons out of the socket, and my elbow and my arm ended up in the middle of my body. It had been ripped out and all the tendons had been ripped out.

Q. So that was a yes?

A. So that was a yes.

Q. All right. Do you remember being on the gurney still at the MGM before being put in the ambulance?

A. I remember being on the gurney. Sorry. Can you say -- can you repeat.

Q. Sure. Do you have memory of being on a gurney at MGM before being put in the ambulance?

A. Yes.

Q. Did you have discussions with men either in suits or security clothing?

A. With my wife.

Q. With your wife also, but do you remember having a conversation with anybody else?

A. All I remember is my wife coming up to me, and I had a few words with her.

Q. Don't remember anybody -- so the answer is the only person you remember talking to is your wife?

A. The only person I remember talking to on the gurney was my wife.

MR. POPOVICH: Exhibit 402, Clip 10.

You know what? Can we pause?

Your Honor, would it be okay if we turn off the lights for this one, or down?

THE COURT: Yes.

MR. POPOVICH: And this clip starts at about 20 hours, 53 minutes, 5 seconds.

THE MARSHAL: Can you see it?

MR. POPOVICH: Thank you, Marshal.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Do you have -- did that refresh your recollection at all, Mr. Cox, about people being around you and -- and working with you?

MR. MORELLI: Objection, Your Honor. That mischaracterizes the question. He asked who he spoke to, not people around him.

So are you asking that question, does it refresh his recollection of speaking to someone? I

have no problem with that question.

MR. POPOVICH: Sure.

THE COURT: Rephrase.

BY MR. POPOVICH:

Q. Do you remember -- does this refresh your recollection of people being around you speaking to you?

A. No.

Q. And I believe the end of that video was 20:53 and 37.

The night of the accident, do you recall having any conversation with anybody that was from MGM security?

A. Yes. I don't know if it was security. It was MGM/Backstage, Backstage staff, MGM staff, security, one of those. I don't know which one it was.

Q. Was that when you were in the room where Mr. Copperfield came?

A. Yes.

Q. Okay.

MR. POPOVICH: That's it for the lights, if you would ...

BY MR. POPOVICH:

Q. When you went back to the MGM Grand Hotel two days later with your attorney -- which you've already

discussed -- did you find the general area where the accident happened?

A. Yes.

Q. You looked at it?

A. Yes.

Q. And you found no holes in the concrete in the general area where you fell?

A. I don't think so.

Q. You didn't see any damaged concrete in the area where you fell?

A. Not that I can recall.

Q. You didn't see any uneven concrete where there were different levels in the general area where you fell?

A. Just the slope that -- whatever you call that.

Q. You've called it a ramp.

A. The ramp.

Q. Sure. While you were there, your attorney didn't measure anything?

A. I don't recall if he did or he didn't.

Q. Do you recall him doing anything that seemed like he was investigating the area of the accident?

A. I'm not sure. He might have taken photographs. I can't remember exactly.

Q. All right. Thank you, Mr. Cox.

MR. POPOVICH: Nothing further, Your Honor.

CROSS-EXAMINATION

BY MS. FRESCH:

Q. Good afternoon, Mr. Cox. I'm Elaine Fresch, as you probably recall, and I represent David Copperfield and David Copperfield Disappearing, Inc.

How are you doing?

A. Fine. Thank you.

Q. Okay. So let me go back. You had answered some questions with Mr. Popovich about seeing the Thirteen Illusion on TV. Do you recall talking about that?

A. Yes.

Q. Okay. And I wasn't -- you saw it on TV; correct?

A. I saw it somewhere; TV, I believe. I'm not sure what.

Q. And you saw the entire illusion; correct?

A. No.

Q. Okay. So it -- was it when you were in England that you saw this clip of the Thirteen Illusion?

A. It's possible. Because of my memory, I can't tell you when I first saw it. I've seen it -- I've

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seen it since, but I can't quantify when I saw the whole thing. If it was after, probably.

Q. Okay. So you said you were a fan of David Copperfield; correct?

A. Correct.

Q. Okay. And prior to seeing his show in Las Vegas and possibly a clip of the Thirteen Illusion, you had never watched him perform before?

A. No.

Q. Okay. How -- how were you a fan if you'd never seen him perform?

A. Because he's on television.

Q. Well, if he's on television, you saw him on television?

A. Yes, I saw him on television.

Q. Well, more than that one little clip of him --

A. No, I thought you were talking about Thirteen. Excuse me.

Q. Okay.

A. I've seen David Copperfield on television extensively doing magic.

Q. Okay. Prior to going to Las Vegas in 2013?

A. Yes.

Q. Okay. But you'd never had the opportunity --

you -- it's your recollection you never saw the Thirteen Illusion start to finish from what an audience sees prior to seeing the show?

A. It's possible I did, but I don't remember. Because I've seen it so many times now because of all of this, I don't remember in what stage I saw it, whether it was before or after the trick.

Q. Okay. But you knew before seeing Mr. Copperfield in person in Las Vegas in 2013 that you had the concept that the -- there was an illusion where there was a cage and people disappear; correct?

A. I said I think it's an -- I think it's an advertisement for his show.

Q. Okay. And in that advertisement, do you recall how you see the people up in the air in the cage? Do you recall that, that they're up in -- they're up in the air and the curtains drop and they're gone. Do you recall that part of the advertisement?

A. Yeah, I think that's part of it.

Q. Okay. So you did see that before you went to the Copperfield show in November of 2013; right?

A. I think that -- yeah.

Q. Okay. So you had the concept when you stood up to potentially grab a ball that you were going to disappear?

A. Yeah.

Q. Okay. And you knew that the cage lifts up when the audience finds out that the people are disappearing?

A. No, I didn't take notice of it lifting up.

Q. Okay. Before you volunteered to be part of that illusion, did you have a concept of how you thought Mr. Copperfield might make the participants disappear?

A. No, it never bothered me how.

Q. Okay. So I'm not -- maybe I shouldn't admit this.

I'm not a huge magic aficionado, so let me ask you this: You're a fan of magic; correct?

A. Correct.

Q. Okay. So what's -- do you -- isn't part of being a fan of magic the whole, like, mystery and desire to find out how illusions are performed?

A. No. I don't -- I don't -- I haven't gone out of my way to expose his trick. It's not -- that was never my reason. I didn't -- I don't want to spoil anything for anybody.

Q. No, no, Mr. Cox, that wasn't the question. And let me ask you again.

The question was, as a fan of magic, not that

you're going off to reveal anything, but isn't it a curiosity of the amazement of, like, wow, how in the world did they make that tiger disappear or that person disappear? Isn't that part of the -- the allure of magic, to know -- to wonder how it's done?

A. That's the magic. It's the wonderment.

Q. Okay. And -- but before you went up there, did you have any thought about "I wonder how he's going to make me disappear?"

A. Before I got on the stage?

Q. Yeah.

A. Yes, of course.

Q. Okay. And when you saw that little advertisement, did you wonder how did he make those people disappear?

A. Yes, of course.

Q. And did you think you were going to be magically disappeared when you went up to the stage that night on November 12th, 2013?

A. I thought when I was on the stage -- or I thought maybe -- I didn't expect to move. I expected something like you're in an elevator and that whole cage inside goes down through the floor of the stage. To my mind, yes, you disappeared. And I thought it was a very simple process. However he magically

disappeared you, it was very straightforward.

Q. Okay. Now, with respect to your trips, I was just a little confused. Going back to the 2010 50th birthday trip, that one to Vegas, how many days were you in Las Vegas on that trip?

A. I don't remember.

Q. Okay. Was it more than a week?

A. I'm sure you know. And if you know, that would be how long it was.

Q. Well, actually I don't know.

A. Okay. I honestly -- I don't remember -- I'm sorry -- how many days it was.

Q. Okay.

A. I remember it was my 50th and I came out to celebrate my 50th. And that's pretty much what we did. I don't remember how many days it was. It was probably more than a week, maybe two weeks, maybe eight days, maybe 12 days.

Q. Okay. 'Cause you come from a far distance. You're coming from England. Takes a while to get over here. So you -- best estimate, you would have stayed for at least a week?

A. Well, yeah, not -- not less than a week.

Q. Okay. Okay. And you stayed in Vegas that whole trip, as far as you recall?

A. Yeah.

Q. Okay. And then, with respect to the trip to Las Vegas in 2013, in that trip, did you come directly to Las Vegas on that trip?

A. Yes.

Q. Okay. And had you planned to go anywhere else on that trip?

A. Yeah. We had arranged to see some friends in Chicago in the middle of it.

Q. Okay. So Vegas-Chicago-Vegas?

A. Yes.

Q. Okay. Sorry. Did -- did you ever talk to any of the -- while you were -- after you had volunteered on the night of November 12th and once you got to the stage up until the time of -- of your fall, did you talk to any of the participants?

A. No.

Q. Okay. Do you recall any of them yelling out, "I'm panicked. I'm panicked"?

A. No.

Q. Do you recall anyone yelling, like, "I'm confused. I don't know what I'm doing"?

A. No.

Q. Okay. Do you recall anyone screaming and that it was pandemonium?

A. No, they were too busy running.

Q. Okay. Well, that's your assumption as to why no one said anything; correct?

A. I said that they didn't say what you said, and that would be my assumption, that they were too busy running.

Q. Right. And you -- at no point did you express to anyone who appeared to be working there, "I don't want to run this fast"?

A. I -- I was happy to run as fast as I could. I wasn't -- I wasn't having a bad time up until I got injured.

Q. Okay. Okay. So you were actually enjoying yourself up to that point?

A. Well, I was enjoying the fact that I was in his illusion and I was taking part in it, and I was running.

Q. Okay. And, now, on your running, I was a little -- just confused, just to make sure I understood. Because you said you were running as fast as you could; right? Remember that?

A. Correct.

Q. And when -- after you got out of the dragon and were on the -- on the floor of the stage, from that point until you went outside, were you at the same pace

that entire time from -- from that point to the time when you turned right when you went outside?

A. I was running as fast as I could.

Q. Okay. So the whole time?

A. I was running as fast as I could till --

Q. Same pace of running as fast as you can?

A. I was running as fast as I could within the distances that the twist and turns were.

Q. So you were running as fast as you can down each of those hallways?

A. Yes.

Q. Okay. And when you went outside, you said it was -- like, it was a longer distance; is that correct?

A. I said I thought it was the longest distance in the area that we had to run.

Q. And did you start running faster than you could?

A. Excuse me?

Q. Did you start running faster -- I think you said you started to run faster; right?

A. Well, because there's more time to catch more speed, I was running faster.

Q. Okay. So you were running even faster than you were inside?

A. Because it was a longer stretch.

Q. Okay. Now -- then you said that you did kind of a sharp -- or what I would call, like, maybe a hard right. You did a sharp turn to the right, and you could see the door?

A. The light.

Q. The light in the door, kind of like "see the light"; right? You could see the light of the door?

A. Correct.

Q. Okay. And am I correct, you -- if I understood you right, you were -- you -- you're running as fast as you can and then you see -- as you turn, you see the light of the door, and you think I'm going there; right?

A. I was directed to turn right. I was running as fast as I could along the straight concrete path --

Q. And looking at the light of the door?

A. As I came around the corner, as I was being directed right, I saw the light in the door.

Q. Okay. And you were like "That's where we're heading next"?

A. Correct.

Q. And could you see people in front of you at that point?

A. No, not to my memory.

Q. Okay. But you saw the light of the door?

A. Correct.

Q. Okay. And so when you saw the light, did you aim towards that light?

A. I remember turning right, hard right, and where I fell --

Q. No, Mr. Cox. Just so I understand -- I'm just trying to find out about this light at the door.

So you see the light of the door, you know that that's where you're headed; right?

A. Uh-huh.

Q. Correct?

Sorry. You have to be audible for Ms. Clark.

A. Uh-huh. Yes.

Q. So you see the light, kind of like that light above the screen, and you look at it and go "I'm heading towards the light"; right?

A. Literally, as I was headed around the corner, I saw the light. I took a hard right and I went toward the door.

Q. Okay. So you took the hard right and went towards the light in the door?

A. Correct.

Q. Okay. Now, you mentioned someone shoving you; correct?

A. Correct.

Q. All right. And was that a man or a woman?
A. It was a man.
Q. And when you felt the shove, that was on the back of your back; right?
A. It was on my left shoulder.
Q. But from --
A. On my left --
Q. Right. So --
A. -- back.
Q. -- a hand --
A. Left -- left -- sorry. On my shoulder blade, left.
Q. Okay. All right. So you felt a hand at your shoulder blade on the back of -- on your back, your shoulder blade -- shove you; is that correct?
A. Push me, shove, correct.
Q. Okay. And you believe that was a man?
A. Yes.
Q. Okay. How did you determine it was a man?
A. Because I went past him.
Q. So -- so you assume, because you passed that man, he had to have been the one to have shoved or pushed you?
A. That's -- that's what made sense to me at the time.

Q. But you never looked behind you and went, "Hey, buddy, what you shoving me for?"

A. No. No.

Q. Okay. Did you look back at all and say, "Holy moley, who's shoving me?"

A. No.

Q. Okay. Did you see that same man, before you passed him, shoving other people?

A. No.

Q. Okay. Before you volunteered to participate -- excuse me -- participate in the illusion, did you feel you were in good health?

A. Yes.

Q. Okay. Do you recall Mr. Copperfield, at the start of that illusion that night, walk around and say things to the audience members like yourself, such as "Are you in good" -- you know, if you want to participate, if you're in good health? Do you remember that?

A. No.

Q. You don't remember that?

A. No.

Q. Do you remember that from watching the show video here?

A. Yes.

Q. Okay. Do you remember him that night saying you need to be over the age of 18?

A. No.

Q. Do you remember him saying you had to speak English?

A. No.

Q. Okay. So you don't remember any of that part of the illusion?

A. No.

Q. Okay. How many illusions did Mr. Copperfield perform that night prior to the Thirteen?

A. I would be guessing. Maybe eight, six.

Q. Did any of the other illusions have audience participants?

A. This is where my mind possibly could be right or wrong. But I think he had a car -- or this one, I might have seen on television. So it's kind of -- some things get mixed up, but I think he had a car -- or I might have seen it on television -- and he -- two audience members go in the car and then it disappears. But I don't know if that's TV and I've seen it or it was his show. Things sometimes get mixed.

Q. No, and yeah, we --

A. Sorry. What was the question again?

Q. No, I was asking if you could recall if any

of the other illusions had audience participation.

A. Yes. One that night was there's lots of pieces of paper on ribbons dangling down. And I can't -- a lady has to go around and she picks one of the bits of paper on -- from the -- with the ribbons and pulls it down.

And another one, I think somebody has to write something on a board. There was a few illusions like that.

Q. Is there any other magicians that you like other than Mr. Copperfield?

A. Penn & Teller.

Q. Okay. And what's it about Mr. Copperfield's illusions or his show that you like versus another magician like -- I don't know -- David Blaine or Criss Angel or -- I'm running out of the names of magicians that I know.

What's it about his -- his magic that you like, that you would watch him on TV?

A. He was a good magician. And I -- I'd always thought that he had come up with some good tricks. And he was a -- what's the word? He was a legend in my mind in the magic industry.

Q. And what's it about Penn & Teller that you liked?

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A. The humor.

Q. Okay. And let's see. I just wanted to go back.

When you stepped off of the stairs of what we call the dragon and -- at the time, you didn't know the name was the dragon; right?

A. No.

Q. Okay. That's something you've learned because of this --

A. Yes.

Q. -- lawsuit and trial; correct?

A. Correct.

Q. Okay. So when you stepped off, prior to stepping off, no one had said "Run, run, run"? Remember, you said you weren't told that yet; correct?

A. No. I was just told -- I heard the noise. The man came out of the rabbit hole. That's what I heard. And then he said something like "Get up. This way, quick." That was it.

Q. Okay. And when you got onto the ground, was it a man or woman who said --

A. No, it was a man.

Q. Another -- okay. Was it the same man that you think pushed you?

A. I have no idea.

Q. Okay. And you don't recall seeing a woman at all?

A. No.

Q. Okay.

A. Only at the beginning when I handed her my balloon.

Q. Right. Okay. And then the man at the bottom, what were -- what -- do you recall specifically what he said to you and to all the participants?

A. "Run, run."

Q. Just "run"?

A. "Run, run," loudly.

Q. I'm sorry. I couldn't hear?

A. He said "Run, run, run."

Q. And so did -- the person in front of you, did you see people running in front of you?

A. Yes.

Q. Okay.

A. At points; and other points, no.

Q. And when you could see them, how many feet in front of you -- excuse me -- in front of -- yes.

Let me start that over. I jumbled my words.

When you could see the people in front of you, how far in front of you were those people? That still came out awkward, but I'll go with it.

A. Far enough that I wasn't worried about running into them.

Q. Okay. So even though you were running as fast as you can, you were like, "Well, I don't have to worry. I'm not going to, like, slam into that guy"?

A. No, I was worrying about running fast enough to keep up with everybody.

Q. Okay. Did anyone pass you?

A. No.

Q. Okay. Did anyone -- could you hear people behind you like, "You're going too slow. I'm going to pass you"?

A. No.

Q. And you mentioned earlier in your testimony today that you said we -- we felt an urgency. But you didn't talk to any other participants to find out how they were feeling; isn't that correct?

A. Before the trick?

Q. After. Any time. Did you ever talk to a participant and say, "Hey, how did I -- how did you feel?"

A. No.

Q. Okay. So you don't really know how anyone else felt?

A. No.

Q. Okay.

A. I know -- can I carry on from that question?

Q. I think I just wanted to know if you talked to anyone.

A. Okay. Well, I -- okay.

Q. Now, switching forward. When you were in the room at the -- in the -- what I kind of refer to as "the breakout room" or at the very end after the -- the audience has reappeared, do you know -- do you know where I'm talking about?

A. Where Mr. Copperfield was.

Q. Yeah, where he comes in; correct?

A. Yeah.

Q. Okay. Besides Mr. Copperfield, do you recall speaking to anyone else in that room --

A. Yes.

Q. -- having a conversation?

A. Yes.

Q. Okay. How many different people?

A. Nonspecific. I remember specifically only to the -- the tall gentleman in front of me who said to Mr. Copperfield, "This man's been hurt."

Q. So who -- the tall gentleman in front of you, was that a tall gentleman in front of you while you were running as fast as you can on the route?

A. No. He just appeared tall because I was -- maybe 'cause I was sitting down.

Q. Okay.

A. It just -- I just remember him looking tall.

Q. But -- all right. So who talked to you that looked like they were from -- let's -- do you recall talking to anyone who was in black?

A. Yes.

Q. Okay. How many different people?

A. Maybe one or two. I don't remember exactly.

Q. And was that prior to Mr. Copperfield coming into the room or after?

A. I think afterwards.

Q. Okay. So you don't recall talking to anyone in black prior to Mr. Copperfield coming in the room?

A. I didn't recall. That doesn't mean I didn't; it just means I didn't recall.

Q. No, we're just asking for your recollection.

A. And apart from that tall gentleman, who I said -- you know, obviously, my -- I was in pain.

Q. Okay. So did you initiate that conversation with the tall gentleman?

A. I don't remember. I just know that he must have known because -- I was in pain because he said that to Mr. Copperfield.

Q. Well, what about -- were there chairs in that room when you walked in?

A. I don't remember.

Q. Okay. And -- but you were sitting down at some point; correct?

A. Yes.

Q. Okay. And the two people that you -- people in black that you spoke to, were they men or women?

A. I don't remember.

Q. All right. Thank you, Mr. Cox.

A. Thank you.

MR. STRASSBURG: Yes, Judge. Thank you. Bear with me a second. I got to get this up there.

CROSS-EXAMINATION

BY MR. STRASSBURG:

Q. How do you do, sir? I'm Roger Strassburg. I will be talking for Team Construction Management so you can see on your screen.

How are you holding up? It's kind of been a long day. Are you good to go?

A. Sure.

Q. Do you have enough water?

A. I'm fine. Thank you.

Q. All right. Well, I'm sorry we have to meet

under these circumstances. I do have to ask you a couple of questions. It's just part of my job.

So can you tell me, are you -- are you currently taking any kind of medication that -- that makes it difficult for you to remember or talk to us?

A. No.

Q. Thank you.

Now, it sounds to me -- would it be fair to say that -- that you made an assumption that cement dust on the accessway caused you to slip because you couldn't see any other way that it could have happened? Is that fair?

A. No. I said it was one of the things that possibly caused my slip-and-fall.

Q. All right. And possibly as a -- a factor that you don't feel you can rule out, but there's other ones; right?

A. I said it's -- it's one of the factors that I believe caused my slip-and-fall.

Q. All right. Now, with respect to the dust, you made an assumption about its role that occurred to you first when you were in the ER with your wife. Is that true?

A. I'm sorry. Could you please repeat the question.

Q. All right. All right. It first dawned on you that you -- you would assume that dust played a role in the -- in your fall.

A. That's correct.

Q. And that first occurred to you in the ER, the hospital; right?

A. That's correct.

Q. And in the company of your wife; right?

A. That's correct.

Q. And did you discuss with your wife what happened in the ER that night?

A. Yes.

Q. And after you had had -- I imagine she was concerned about what had happened; yes?

A. Very.

Q. And you tried as best you could to explain to her what you remembered. Is that true too?

A. That's correct.

Q. And did she have questions for you about your explanation?

A. I think she was more concerned about my --

Q. Your --

A. -- pain.

Q. -- your well-being?

A. My well-being.

Q. Sure. Sure.

Do you recollect how long you had been in the ER before the pictures were taken -- the -- of the shoes and the jeans?

A. I'm sorry. No.

Q. Can you estimate whether it was minutes, hours, anything like that?

A. I was -- I was attended to fairly quickly.

Q. Uh-huh. And were the pictures taken before you were attended to?

A. That's -- you better question my wife about that because she took the pictures.

Q. Okay. You just don't remember; right?

A. Not exactly. That's why I'm saying I'm trying to help you --

Q. I get it. Thank you.

Now, you testified in your deposition that you presumed that both of your feet slipped out from under you?

A. Correct.

Q. All right. Now, were you making -- were you using that word to -- to mean you were making an assumption that your feet slipped out from under you, or did you mean something else by that?

A. I knew I'd slipped. I knew my feet slipped

from under me.

Q. And you were assuming that both of your feet slipped and they slipped to the left; right?

A. It felt for a fraction of a second like I was in midair, so that meant that both my feet, at some point, must have been off the ground.

Q. Now, you've testified that you went back to the location where you fell two days later?

A. Correct.

Q. That would have been November 14th, 2013? And I'll represent to you that -- that the --

A. Just -- is that the date?

Q. Uh-huh.

A. Is that the date? Do you know that's the date?

Q. Yeah. The accident was the 12th. And you went back two days later -- I don't know how you count them in England, but two days or one day, and that would have been the 14th?

A. Yes, if that's what's logged, that's the day I went back.

Q. Right. And that's when the accident report was filled out; right?

A. Yes.

Q. Your wife did some of it, the lawyer took

your dictation and you read it and adopted it; right?

A. Can you repeat. Sorry. I --

Q. I get it. No problem. No problem.

A. Can you repeat that, please.

Q. That's when the accident report was created, when you went back two days afterwards?

A. MGM rang us at the hotel and called us in to fill out a report for them. We went out at their request to the security, and I dictated what happened. My lawyer wrote it, and I signed it.

Q. Okay. Yep.

Now, at the same visit, you and your lawyer, I believe you -- the evidence is, is that you went out to the location of the fall outside the building; right?

A. That's correct.

Q. And that was because you wanted to show your lawyer exactly where it happened?

A. Or he asked where it happened.

Q. Yeah.

A. Yeah.

Q. And you wanted to show him; right?

A. Yeah.

Q. Did your wife go too?

A. Yes.

Q. Anyone else?
A. No.
Q. Okay. So the three of you went outside and you walked back to that accessway going into the security doors; right?
A. We went to the ramp.
Q. Okay. You went to the ramp.
And, at that time, you saw that the -- the area was clean, or at least cleaner than you remember it from the night of the fall; true?
MR. DEUTSCH: Your Honor, may we approach? Objection. May we approach?
THE COURT: Yes.
(A discussion was held at the bench, not reported.)
BY MR. STRASSBURG:
Q. And you testified that you -- you saw the surface of the pavement as clean because you weren't leaving footprints when you walked on it; true?
A. Is that when we went back to look at it?
Q. Yes, sir.
A. And you're saying that I said the surface was clean because I couldn't see my footprints?
Q. Well, here. I -- I see that -- let me show you this page from your deposition, 163.

MR. DEUTSCH: Give me a second.

165?

MR. MORELLI: 163.

MR. STRASSBURG: Bear with me a second.

MR. DEUTSCH: Give me a second, Roger.

MR. MORELLI: Okay.

MR. DEUTSCH: Hold on. Hold on.

MR. STRASSBURG: Okay. Why don't we go to the preceding page and -- and do the whole section.

MR. DEUTSCH: That makes sense.

MR. STRASSBURG: Wouldn't that be fair? We good?

MR. DEUTSCH: Yeah.

BY MR. STRASSBURG:

Q. Okay. Let me show you this interchange that you had during your deposition. And you were asked, when you went back on the 14th, "Do you recall any construction debris or dirt?"

You said, "Yeah. I said there was construction going on there. There was lots of construction people walking by."

"QUESTION: At the time you were there with your attorney?

"ANSWER: Yes.

"QUESTION: Okay."

And then you said, "But it was a lot -- it was a lot cleaner. And it looked -- it just looked -- there wasn't -- it was -- it wasn't covered in the dust that I had on my, you know -- you know, when you're walking, it wasn't leaving, like, footprints. It was just clean. It just looked a lot cleaner than when I was there."

All right? Do you remember giving that testimony?

A. I remember my deposition.

Q. Okay. And this statement in your deposition, that's true, isn't it?

A. Yes.

Q. All right. So the -- the reason, just to summarize, that it seemed to you that the surface was clean was because it didn't leave footprints --

MR. DEUTSCH: Your Honor.

BY MR. STRASSBURG:

Q. -- when you walked across it, true?

MR. DEUTSCH: He can answer the question. Let me just have one more line to read for completeness that was cut out.

MR. MORELLI: 16.

MR. STRASSBURG: You mean 12 and 14? Is that what you want?

MR. MORELLI: Yeah, 13 and 14.

MR. DEUTSCH: Yeah, 13, 14, 15.

MR. STRASSBURG: Okay. Sure. Hold on. I'll finish out the -- and then there was a question, "Okay."

And then the answer was, "Or when I had fallen and slipped on that pavement."

All right? Are we good?

MR. MORELLI: Yeah.

BY MR. STRASSBURG:

Q. Now, I just wanted to ask, were you under the belief that on the -- the day of the fall two days earlier, at the time of the fall, in the location of the fall on that accessway, were you under the impression that there were ongoing construction operations at the time that you had your fall, or did you think that they were done for the day?

A. I --

Q. You don't know?

A. I -- I didn't make any assumption --

Q. I'm just asking.

A. -- of -- of building works when I was falling.

Q. Sure. Sure.

At any rate, when you rounded the corner and

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started for the security doors before you fell, you didn't see any construction people doing work --

A. No.

Q. -- true?

A. No, no. I didn't see any.

Q. True?

A. True.

Q. Thank you, sir.

Now, I wasn't quite sure, but it sounded like you had been in Vegas -- I don't know -- a day or two before your accident?

A. What was the date of the accident?

Q. Well, you had your fall on the 12th. Your birthday was the 9th?

A. It was maybe -- I wasn't here on my birthday, 9th of November. It might have been the -- the 10th or the 11th that we arrived.

Q. And had you had a chance to -- I don't know -- like when a lot of people come, they just kind of go up and down the strip just to see what's new or going on, or had you gone right directly to the Encore?

A. Oh, no. We got chauffeured to the Encore straightaway to the tower suites.

Q. And when you came from the Encore to MGM, did you come down Las Vegas Boulevard?

I know it was a long time ago.

A. I'm sorry. I don't recall.

Q. That's fair. I just wanted to know if you can remember, from that trip, the time you were there in November of 2013, whether there were other construction projects ongoing right near the MGM?

A. I'm sorry. I wouldn't -- I don't recall. And I wouldn't -- I didn't recall.

Q. Okay. MGM or the park area between -- I'm sorry. Let me take that back.

New York-New York, that park area between the two, the Monte Carlo front, do you remember any of that work being done?

A. I was probably just too busy and excited looking at the lights and being in Vegas. I wouldn't -- it wouldn't occur to me to -- to take into account building works.

Q. Okay. Are you able to remember talking to the EMTs at the MGM before they loaded you onto the gurney and took you to the hospital?

A. What is an EMT?

Q. Oh, I'm sorry. The emergency medical techs, the ambulance people. I don't know what the English equivalent is.

A. No.

Q. Let me show you this, see if I can refresh your recollection.

MR. STRASSBURG: Adam, I'm contemplating showing him a redacted page to refresh his recollection.

MR. DEUTSCH: What is this from?

MR. STRASSBURG: It's from the EMT records.

Okay. No problem? We good?

MR. DEUTSCH: We're good.

MR. STRASSBURG: All right.

BY MR. STRASSBURG:

Q. Let me show you a redacted page from plaintiffs' exhibit --

MR. DEUTSCH: Well ...

MR. STRASSBURG: Sorry? What?

MR. DEUTSCH: It's still there. But it's okay.

MR. STRASSBURG: I'm sorry. Here. Hold on.

MR. DEUTSCH: Doesn't matter. Seems to be a common problem here, Roger. It's okay. Don't worry about it. Put it up there. It doesn't matter.

MR. STRASSBURG: Okay. Is it gone?

MR. DEUTSCH: It doesn't matter.

BY MR. STRASSBURG:

Q. All right. Can you see that on your screen,

sir, or would this be better?

A. I don't know. If you show me, because that's what I got on my screen.

Q. Got it. All right.

All right. Do you remember saying to the emergency techs that you slipped on the concrete and landed -- well, on -- and then that was taken out. Do you remember telling them you slipped on the concrete?

A. No, I don't remember telling them that.

Q. Okay.

A. I could have, but I don't remember telling them that.

Q. Fair enough. You never mentioned dust or at least it's not recorded in their records. Do you recollect --

MR. DEUTSCH: Objection, Your Honor. It's for a purpose of refreshing his recollection. That record is not coming into evidence at this point in time.

THE COURT: All right.

MR. DEUTSCH: It didn't refresh his recollection.

MR. STRASSBURG: Well, it's in evidence. And it's past recollection recorded at this point.

MR. DEUTSCH: It's not in evidence.

MR. STRASSBURG: I seem to remember.

MR. MORELLI: And it actually --

MR. STRASSBURG: It is. It's stipulated to.

MR. DEUTSCH: What exhibit is it?

MR. STRASSBURG: 4 -- 1, PX1.

MR. DEUTSCH: Okay.

THE COURT: Go ahead.

MR. DEUTSCH: That's not the purpose it was offered, Your Honor. So what Mr. Strassburg -- when Mr. Strassburg tells me the purpose he's using an exhibit that he's going to put up on the screen, I would just appreciate that he tells me the real purpose.

But we have no objection.

THE COURT: All right. Go ahead.

BY MR. STRASSBURG:

Q. Okay. So you -- when you conversed with the emergency techs, you never mentioned dust to them when they asked you what happened; true?

A. I just said that I don't recall speaking with them. If I did, I don't recall it.

Q. And this doesn't refresh your memory?

A. No.

Q. Fair enough.

Do you recall speaking with the MGM security

officers before you were loaded into the --

MR. DEUTSCH: Roger, are you still refreshing his recollection with that?

MR. STRASSBURG: Do you want me to take it down?

MR. DEUTSCH: That's usually the process when you refresh someone's recollection.

MR. STRASSBURG: Okay?

MR. DEUTSCH: It was okay either way. I was just trying to do things the way they were supposed to be done.

MR. STRASSBURG: Right. Okay.

BY MR. STRASSBURG:

Q. Where were we? Security officers at MGM.

Do you remember talking to any of them before you left in the ambulance?

A. The only time I spoke to anybody was in that room where Mr. Copperfield was. And I don't know if there was security, Backstage, MGM staff --

Q. That's fair.

A. -- whoever, but that's the only time I remember speaking to anybody.

Q. Do you remember what you told them?

A. Yeah. "I want my wife." And they said she's gone home.

Q. Anything else?

A. "I want my wife" and "she's gone home." I said it again. And then I said, "Don't be so stupid. Why would she go home? We're on holiday."

Q. Do you remember saying anything about how and where you fell?

A. I don't remember talking to them about it. If I did indeed do it, I don't remember doing it.

Q. All right. Let me, in an effort to refresh your recollection, show you this.

MR. STRASSBURG: Do you want to see this one?

MR. DEUTSCH: From the accident report?

MR. STRASSBURG: Yeah, it's Defense 401. It's 5.

MR. DEUTSCH: Page 1?

MR. STRASSBURG: 5.

MR. FALLICK: No, 5, he said.

THE CLERK: It's in.

MR. DEUTSCH: I think it's already in.

THE CLERK: It's already in.

MR. POPOVICH: Part of it is but not that part. Page 5, redacted.

MR. DEUTSCH: I have no objection.

MR. STRASSBURG: So it's in evidence.

MR. DEUTSCH: It's not, that part.

BY MR. STRASSBURG:

Q. Let me direct your attention to -- it's page 5 of 401. Is that in front of you yet?

A. No, sir.

MR. POPOVICH: Now it is.

THE WITNESS: Now it is.

BY MR. STRASSBURG:

Q. You got it?

All right. And directing your attention to the part -- your conversation with the reporting officer --

MR. MORELLI: It's not in evidence.

THE COURT: This is not in evidence.

MR. STRASSBURG: I guess -- I guess not.

THE COURT: Take it off, then, till it's clarified.

MR. POPOVICH: The jury's not seeing it, Your Honor.

MR. STRASSBURG: I'm just showing it to him.

THE COURT: All right. Go ahead.

MR. STRASSBURG: All right.

MR. MORELLI: Just don't describe it.

BY MR. STRASSBURG:

Q. All right. Do you see the language in front of you?

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A. Yes.

Q. Does that refresh your recollection of what you told the security officer?

A. I'm sorry. Can you tell me the question again, please.

Q. Now that you've read that -- the language I've shown you in the report, does that refresh your recollection as to what you told the security officer about how and where it happened?

A. It's not accurate, and I didn't -- I don't recall speaking to him and saying that. And it's not accurate if that's what he said I said.

Q. Okay. Now, do you remember being represented by a Las Vegas lawyer by the name of Bob Eglet?

A. Yes.

Q. And he filed the original complaint in this case; right?

A. I believe so.

Q. Did you have occasion to review that complaint before it was filed or afterwards?

A. I would have thought I would have done.

Q. Uh-huh. And in that complaint, your attorney, did he prepare that complaint after talking with you?

Don't tell me what you said. I just want to

know if you consulted and conferred with your attorney, Attorney Eglet, to -- before he wrote the complaint.

A. Are you asking me did I see the complaint?

Q. No.

MR. MORELLI: Objection, Your Honor.

BY MR. STRASSBURG:

Q. No, I'm just asking you --

MR. MORELLI: Excuse me.

Objection, Your Honor. I believe that this is --

MR. STRASSBURG: I'll withdraw the question, ask a better one.

BY MR. STRASSBURG:

Q. What I'm trying to find out is, to make sure, is that you put your lawyer in the know of what you think happened --

MR. MORELLI: Objection, Your Honor.

BY MR. STRASSBURG:

Q. -- before he read -- before he --

MR. MORELLI: This is in anticipation of litigation.

MR. STRASSBURG: Don't I get to finish the question?

THE COURT: Let him finish the question.

MR. STRASSBURG: I get it. I'm not from

New York, but --

BY MR. STRASSBURG:

Q. Did you explain to your lawyer what you thought happened that night before he wrote the complaint?

MR. MORELLI: Now he's finished.

Objection.

MR. DEUTSCH: Privileged.

THE COURT: Overruled.

The question is not what was elicited from the conversation --

MR. STRASSBURG: I don't want to know what --

THE COURT: -- just whether he spoke to him.

MR. STRASSBURG: -- I just want to know that.

THE COURT: Go ahead.

THE WITNESS: Which?

BY MR. STRASSBURG:

Q. Did you talk to your lawyer before he wrote the complaint?

A. I didn't speak -- I -- I've never spoken to Robert Eglet.

Q. Okay. Did you talk to anyone at his office --

A. Yes.

Q. -- about what happened?

A. Yes.

Q. All right. And in the complaint, isn't it true that Eglet said this was a trip-and-fall and then in another location in the complaint, he also said it was a slip-and-fall? Is that true? Does that square with your recollection?

A. No.

MR. DEUTSCH: Objection, Your Honor. Foundation that he ever saw the complaint.

BY MR. STRASSBURG:

Q. All right. Let me show you page 26 from the complaint. Do you have that in front of you?

A. Yes.

Q. And that alleges a trip-and-fall; right?

A. That's what it says.

Q. And let me show you a redacted section of page 12 -- I'm sorry -- paragraph 12 of the complaint. And that alleges slip-and-fall; right?

A. That's what it says.

Q. Now, you've sat through almost 14 days of -- of this trial and heard the evidence offered by witnesses including Ms. Lawrence; right?

A. Who is Ms. Lawrence?

Q. She was the lady that was involved in the Copperfield illusion in June of 2013.

A. Yeah.
Q. Remember her?
A. Yeah.
Q. She testified by tape. Remember that?
A. Yeah.
Q. Okay. Are you good? Are -- do you want to take a break?
A. No.
Q. I don't know. Okay.
JUROR: Some of the jurors do.
MR. STRASSBURG: The jury wants a break? Gee, I don't know why. Maybe this would be a good time, Judge.
THE WITNESS: Not taking you into account.
THE COURT: Want the break now?
MR. STRASSBURG: Yeah.
THE COURT: All right. Let's recess until 25 after 3:00.
During the recess, you're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including,

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without limitation, newspapers, television, the internet, and radio, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Be outside the courtroom just before 25 after 3:00.

THE MARSHAL: All rise.

(Whereupon a short recess was taken.)

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Please be seated. We're back on the record.

Do counsel stipulate that the jury is present?

MR. DEUTSCH: Yes, Your Honor.

MR. POPOVICH: Yes, Your Honor.

MR. ROBERTS: Yes.

MS. FRESCH: Yes.

THE COURT: All right.

You may resume.

MR. MORELLI: So stipulated.

MR. STRASSBURG: All set? Okay.

BY MR. STRASSBURG:

Q. Do you remember talking about running up an

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incline just before the fall?

A. Yes. I was falling as I was running up the incline.

Q. Okay. You said the ground came up to meet you?

A. Yes. That's what it felt like.

Q. At any time, did you moderate your gait or change your gait to adapt to that condition?

A. It happened so fast --

Q. You didn't have a chance to?

A. No.

Q. Did you see the incline before you were on it?

A. No.

Q. But it was there to be seen; right? You realize that, don't you?

A. What do you mean? I'm sorry. I don't understand.

Q. I mean the incline was -- had you looked, you -- it was able to be seen by you; right?

A. No, it was dark.

Q. Too dark for that?

A. Yes.

Q. Any flashlights or spotlights in the vicinity?

A. Not that I saw.

Q. Did you run by any people standing in the vicinity of that corner with a spotlight in their hands?

A. I didn't see lights -- spotlight in his hand.

Q. Okay. But you saw him?

A. Yes, apparently.

Q. So you could see him with no spotlight but not the incline in front of you. Is that true?

A. The incline was to my right on the corner.

Q. I see. All right. Thank you.

We've got a part of the building that we've been calling the airlock. It's the space -- it's the corridor between the outside security doors and the inside security doors. Do you know what I'm talking about?

A. Yes.

Q. And it has a concrete floor, do you recollect?

A. I didn't recollect because I had lost consciousness at that point.

Q. Okay. But you -- you were able to get up and walk through the outside security doors; right?

A. I told you, when I hit the ground, I lost consciousness.

Q. And you don't remember anything after that?
A. I remember being at the back of -- or the middle of the audience.
Q. All right. Thank you, sir.
The clothes you were wearing that night were laundered; true?
A. True.
Q. And how long after you consulted with an attorney did you have the clothes laundered?
A. I don't recall. I don't recall when they were laundered.
Q. Sorry?
A. I don't recall when they were laundered.
Q. Got it.
All right. So, just before you fell, you didn't notice anything on the ground in the area that you were negotiating at the time; true?
A. I didn't, no.
Q. That is true?
A. I didn't see anything.
Q. Thank you.
When you landed on the ground, you didn't land on anything besides pavement; true?
A. It was so quick when I blacked out that I didn't have a chance to look or feel or look at my

surroundings. I was out, blacked out.

Q. Directing your attention to your deposition. This is page 93, line 11 to 14. I will get it up here.

MR. DEUTSCH: I would like to ask that you go back to page 4 for context. I mean line 4. Sorry. Line 4. You need 90 pages before that for context. Line 4? Wait. What page you on?

MR. MORELLI: 93.

MS. FRESCH: That doesn't make sense. That's an answer.

MR. DEUTSCH: Oh, I'm sorry. I was on the wrong page. You're on line 11. Sorry. I apologize.

BY MR. STRASSBURG:

Q. Page 93, line 11:

"QUESTION: Did you hit anything besides the ground?

Your answer, "Like a tricycle or a big rock?"

"QUESTION: Yeah. Is there anything else besides ground there?"

And your answer was, "No."

MR. DEUTSCH: I'd ask you read the next --

THE COURT: Yeah.

MR. DEUTSCH: -- questions for context down to 94, page -- line 3.

MR. STRASSBURG: You know, Judge, I think he

can read it when it's his turn.

THE COURT: I think that, under the rules, I've referenced it -- it puts things in context with respect to what you have shown, and it's adjacent to it.

MR. DEUTSCH: It is adjacent to it.

MR. STRASSBURG: Judge, you're kind of letting him drive.

THE COURT: No. I'll read the rule. Okay? I'll read the rule.

NRCP 32(a)(4) states "If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts."

So he's within his right to ask that you show the part that's adjacent to it.

MR. STRASSBURG: But right now?

THE COURT: Yes.

MR. STRASSBURG: Okay.

MR. DEUTSCH: So I will read it.

MR. STRASSBURG: I'll read it.

MR. DEUTSCH: Okay.

MR. STRASSBURG: I mean, I want to do a

little bit here.

THE COURT: Okay.

MR. STRASSBURG: All right.

MR. DEUTSCH: So this comes right after the "no," the next question.

MR. STRASSBURG:

"QUESTION: Now, when -- when your body came to rest, do you know which way you were facing?

"ANSWER: I blacked out. After the pain, I blacked out."

MR. DEUTSCH: No, it's the next question and answer, the next two questions and answers.

MR. MORELLI: It's over to 94.

MR. DEUTSCH: Yeah.

"Do you know why you fell?"

"ANSWER: No. Well, apart from running as fast as I could, I didn't -- there wasn't -- I realized after the fact what caused it but not at the time.

"QUESTION: Okay. What" --

MR. STRASSBURG: Stop. Now, I object. This is baloney. I put in this stuff about he didn't land on anything.

THE COURT: You can show him the other

part --

MR. STRASSBURG: And now he's putting in his closing --

THE COURT: -- you can --

MR. STRASSBURG: -- statement. Now, Judge --

THE COURT: -- put in --

MR. STRASSBURG: -- that's not fair. Even in New York, that's not fair.

THE COURT: Don't speak when I'm speaking. Okay?

You can put in the other part later. Go ahead.

MR. DEUTSCH: Okay.

Just answered that question.

MR. STRASSBURG: And, Judge, I apologize.

THE COURT: Fine.

MR. STRASSBURG: I mean, just so you know.

BY MR. STRASSBURG:

Q. You didn't recall anything outside the security doors that could have caused debris; true?

A. I didn't see that far.

Q. So --

A. I saw the light. I didn't see anything else apart from the light.

Q. All right. And the lit part, you didn't see

any debris; true?

A. Not in front of that one single door.

Q. So that would be true?

A. I said I didn't see anything in the light in front of that one single door.

Q. Okay. Now, you were -- were you worried that, if you didn't run as fast as you could, you might let David down?

A. I were to put it a different way.

Q. Okay.

A. Would you like me to say that way?

Q. Sure. Yeah. Just tell me what you --

A. In general, I didn't -- I wanted to do the best and keep up with everybody else to finish the trick.

Q. So -- so you wanted to do the best that you were capable of; true?

A. Yes.

Q. And do you consider yourself a bit of a perfectionist?

A. Yes.

Q. And do you acknowledge that your anxiety comes from your perfectionism?

A. Yes.

Q. And that anxiety leads to worrying?

MR. POPOVICH: Objection. Relevance for -- for this phase.

MR. MORELLI: Objection.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. In your job, you wanted to be the best; true?

MR. MORELLI: Objection, Your Honor. This is irrelevant.

THE COURT: Is this a premise for a question that's relevant?

MR. STRASSBURG: Yes.

THE COURT: Okay. So I'll allow it subject to a motion to strike. Let's see what the next question is.

MR. STRASSBURG: All right. That's fair. That's all I can ask, Judge. Thank you.

BY MR. STRASSBURG:

Q. Do you think that your concern that you not let David down and you do the best you could was a product of your anxiety?

MR. MORELLI: Same objection. That's not a preamble to anything.

MR. DEUTSCH: Move to strike.

MR. MORELLI: Move to strike it.

THE COURT: I'll allow it.

Go ahead.

THE WITNESS: Can you ask the question again, please.

BY MR. STRASSBURG:

Q. Do you think that your concern that you do the very best you could for David in participating in the trick, do you think that was the product of your preexisting anxiety?

A. I think --

MR. MORELLI: Your Honor, I'm going to -- I'm going to move to strike the question. Are we -- may we approach, Your Honor?

THE COURT: You can rephrase without reference to any condition. Okay?

BY MR. STRASSBURG:

Q. Have you ever received any treatment for the condition of anxiety?

MR. MORELLI: Objection, Your Honor.

THE COURT: Sustained.

MR. DEUTSCH: Move to strike.

THE COURT: Motion is granted.

MR. MORELLI: Move to strike the question.

BY MR. STRASSBURG:

Q. Now, when you -- when you caught the ball, you were thrilled; right?

A. Correct.

Q. And you experienced an emotional condition that you called cock-a --

MR. MORELLI: Could we approach the bench, Your Honor, please?

THE COURT: Yes. Okay.

(A discussion was held at the bench, not reported.)

BY MR. STRASSBURG:

Q. You were beaming, you were so excited about being selected; true?

A. Correct.

Q. All right.

A. Correct.

Q. And did you look over at your wife and see she was beaming too that you had been selected?

A. I didn't look at her.

Q. Who did you look at? David?

A. No, not particularly.

Q. And you had no concerns that you weren't physically up to it?

A. I had no concerns.

Q. Okay. No physical limitations that you couldn't participate fully and do the very best you were capable of?

A. I had no concerns about being put in a box and being vanished.

Q. I think one question, and then I'll sit down.

Do you recollect whether there was any wind that night outside?

A. I don't recollect either way. It could have been, or there could not have been. I don't remember.

Q. All right. Fair enough. Thank you very much for your patience in answering my questions.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. MORELLI: Your Honor, I have no questions of the witness. I have no redirect. I'm just going to show a portion of his deposition.

MR. DEUTSCH: For completion.

MR. MORELLI: For completion. That's all.

THE COURT: All right.

MR. MORELLI: Okay? Can the witness step down now at this point?

MR. ROBERTS: Your Honor --

MR. POPOVICH: There might be other questions.

THE COURT: Yes, there may be. Remain there on the --

THE WITNESS: Yes, Your Honor.

MR. MORELLI: Okay. We're not reading any questions, your Honor.

THE COURT: All right, sir.

MR. ROBERTS: Your Honor, I had a follow-up to an answer he gave to Ms. Fresch.

MR. MORELLI: Well, I didn't do any redirect, so how does that bring him or anyone back up under the rules?

THE COURT: How does it?

MR. ROBERTS: Well, after I sat down, he gave an answer to Ms. Fresch. I should have an ability to follow up on an answer that was given prior to me sitting down -- after I sat down.

But up to the Court. It's not -- it's not a big deal, Your Honor.

MR. DEUTSCH: Your Honor, it's not --

THE COURT: Right. All right. Now, want to approach?

(A discussion was held at the bench, not reported.)

THE COURT: All right. You may stand down, sir.

MR. MORELLI: You can come with me.

MR. DEUTSCH: Oh, wait. The jury. Wait. We always forget about Mr. Schaffner.

(A discussion was held at the bench, not reported.)

THE COURT: Okay. Hold on just a minute.

All right. I have several questions that I received from jurors that I'm going to pose. There are couple that will not be posed at this time. All right? With respect to the two that are not going to be posed at this time, they will be marked the next court exhibits in order. Okay?

And let me read to you something that I read to you previously regarding juror questions. After consulting with counsel, I will determine if your question is legally proper. If I determine that your question may properly be asked, I will ask it. No adverse inference should be drawn if the Court does not allow a particular question. All right?

So four of the questions, the Court is -- four of the six questions that the Court has received, the Court is going to pose.

Are you left- or right-handed?

THE WITNESS: I'm right-handed.

THE COURT: Any follow-up?

MR. POPOVICH: No, Your Honor.

MS. FRESCH: No, Your Honor.

MR. ROBERTS: No, Your Honor.

THE COURT: Okay. Next court exhibit in order.

Were you carrying the flashlight during your fall?

THE WITNESS: Oh, yes, I was.

THE COURT: If so, did you use it during the reappearance?

THE WITNESS: I -- I'm sorry. I don't recall.

THE COURT: Any follow-up?

EXAMINATION

BY MR. MORELLI:

Q. Mr. Cox, you said that you -- when you got the flashlight originally, it didn't work. Did it work after that?

A. It never worked.

Q. Okay.

THE COURT: Anybody else?

MR. POPOVICH: No.

MS. FRESCH: No.

MR. POPOVICH: Thank you.

THE COURT: Okay. That's the next court exhibit in order.

MR. ROBERTS: One follow-up to that.

EXAMINATION

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BY MR. ROBERTS:

Q. Mr. Cox, is it fair to say you don't know if it worked after the -- after you got back in the theater because you don't recall?

A. Up till the fall, it didn't work.

Q. Sir, isn't it true that you had to give the original flashlight back to the stagehands while you were in the prop, and you got a new flashlight --

A. That's incorrect.

Q. -- later?

A. That's incorrect. I never exchanged flashlights.

THE COURT: Okay. The next questions -- couple of questions here -- series of questions, I should say.

Did you ever play any sports, like rugby, soccer, tennis, golf?

THE WITNESS: I played rugby. Just those four -- just those four, Your Honor.

THE COURT: Those are the ones that are listed in the question: rugby, soccer, tennis, golf?

THE WITNESS: Just rugby at school many, many years before this accident, like 35 years before the accident at school, not after I left school at 16, and this accident happened when I was 53.

THE COURT: If so, did you ever injure your knee or ankle?

THE WITNESS: No, I never injured my knee or ankle.

THE COURT: So the follow-up. If yes, which one?

THE WITNESS: No.

THE COURT: Okay.

Ever in an accident, like a car accident, boat accident, fall from a ladder, et cetera, that injured a knee or ankle?

THE WITNESS: No. I was never in an accident that injured my knee or ankle.

THE COURT: So the "if yes, which one" is --

THE WITNESS: No.

THE COURT: All right. Follow-up to any of those?

MR. POPOVICH: No, Your Honor.

MR. MORELLI: No follow-up, Your Honor.

MR. ROBERTS: No, Your Honor.

THE COURT: Next court exhibit in order.

And the final question here is did you still have your flashlight after the fall?

THE WITNESS: I -- I don't believe so. I don't believe I had a flashlight in my hand when I

appeared at the back of the audience because it would be this -- this -- this is the shoulder that was ripped out, and this was my usable hand. And I didn't have a flashlight in it.

If that answers that question, Your Honor.

THE COURT: Okay. So the following question is, if the answer is yes, what hand was it in? But you're saying --

THE WITNESS: I don't believe I had one in my left hand, Your Honor.

THE COURT: All right.

The final question is, were you waving the flashlight during the reappearance?

THE WITNESS: I -- I didn't wave my flashlight 'cause I didn't have one in my left hand at the reappearance.

THE COURT: Okay. Follow-up?

MR. MORELLI: No follow-up, Your Honor.

MR. POPOVICH: Yes, Your Honor. We're going to look at Exhibit 402, which is the video --

THE COURT: All right.

MR. POPOVICH: -- and Clip 8.

And, yes, can we get lights dimmed, please, Your Honor?

THE COURT: Yes.

MR. POPOVICH: What was that?

MR. ROBERTS: Left law.

THE COURT RECORDER: Got it.

(Whereupon video was played.)

MR. POPOVICH: So before we start -- oh, it's already playing, so hold on.

(Whereupon video was paused.)

EXAMINATION

BY MR. POPOVICH:

Q. Before we start playing, Mr. Cox, this is the clip of the participants in the Thirteen illusion moving through. Have you been able to see this before during the trial?

A. I have.

Q. Okay.

So let's begin running it.

(Whereupon video was played.)

MR. POPOVICH: Stop.

BY MR. POPOVICH:

Q. Where I've stopped it, do you see someone bend over in kind of a yellowish-goldy-colored shirt there near the dumpster?

A. I see something.

Q. And, as we follow through, my question is going to be, did this person return the flashlight to

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you, if it refreshes your memory at all?

Go ahead and play it.

(Whereupon video was played.)

BY MR. POPOVICH:

Q. Does that refresh your recollection in any way as to whether anybody returned the flashlight to you?

A. As I said, I blacked out when I fell. So, with due respect, I couldn't tell you if it's refreshed my memory because I have no memory apart from when I returned to the back of the audience.

And, as I've said, to my recollection, I didn't have a flashlight in my left hand at the back of the audience.

Q. So your -- your memory stops with you on the ground?

A. That's correct.

Q. Thank you.

MR. POPOVICH: Nothing further.

THE COURT: Any further follow-up?

MR. ROBERTS: Yes.

EXAMINATION

BY MR. ROBERTS:

Q. Mr. Cox, did you recognize yourself in that video?

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A. No.
Q. So you don't know which person was you watching that --
A. I'm sorry. Excuse me.
Q. You -- you don't know which person was you in the video you just watched?
A. I didn't recognize myself in that video.
Q. So you can't say whether you -- the video shows you getting back up and walking on your own into the building without assistance?
A. That is correct.
Q. Thank you, sir.
MR. ROBERTS: Nothing else, Your Honor.
THE COURT: Does that conclude the follow-up? Okay.
MR. MORELLI: Nothing, Your Honor.
MR. POPOVICH: No, thank you.
THE COURT: You may stand down, sir. Thank you.
THE WITNESS: Thank you, Your Honor.
THE COURT: All right. Plaintiffs may call their next witness.
MR. DEUTSCH: At this time, we call Mr. King, Team Construction.
THE MARSHAL: Go up the stairs. Stand there

and raise your right hand and face the clerk, please.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and spell it for the record, please.

THE WITNESS: Paul King, P-a-u-l, K-i-n-g.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DEUTSCH:

Q. Mr. King, how are you today?

A. Good. How are you?

Q. Good. We've never met before. My name is Adam Deutsch. I represent the Coxes. I just have a couple of questions for you. I don't think too many, hopefully.

You're employed by Team Construction?

A. I am.

Q. And what is your job with Team Construction?

A. I'm a project manager.

Q. Okay. How long have you been with them for?

A. Five years.

Q. Okay. Were you there in November of 2013?
A. Yes.
Q. And what is your -- what are your responsibilities as a project manager?
A. I plan, assess, execute, make sure the clients are happy, make sure our subcontractors are happy --
Q. Okay.
A. -- support our superintendents.
Q. Okay. What's the difference between a project manager and a superintendent?
A. A project manager deals mainly with the paperwork aspect, procuring the materials, assisting the superintendents with their needs.
Q. Okay. So would you be responsible for dealing with the contracts between the different entities, the owner and you and the subcontractors?
A. Yes.
Q. Okay. And -- and you're aware -- were you personally involved in the project that Team Construction did at the MGM in or around October, November of 2013?
A. Yes.
Q. Okay. Were you the project manager for that project?

A. Yes.
Q. Okay. And were you there on a daily basis?
A. No.
Q. Okay. How often would you be at the job site?
A. Three to four times a week.
Q. Three to four times a week. And was there someone -- who was the highest person sort of in the hierarchy of command that was there on a daily basis?
A. David Voiss.
Q. And Mr. Voiss would be the superintendent?
A. That is correct.
Q. Okay. Now, as -- at the time you -- we know already that you guys were building out -- "you guys" meaning Team Construction -- were building out a nightclub called -- or some sort of show venue called Beacher's Madhouse; is that right?
A. That's correct.
Q. And you were retained by Beacher's to do that work. Is that fair?
A. That's correct.
Q. And as part of your work -- and I think we talked about this before -- there were some plans drawn up -- is that true? -- at some point?
A. That's correct.

Q. Okay. And, at some point, the plans identified a number of different things, but two of those things included where you had to put your dumpster. Is that true?

A. Yes.

Q. Okay.

A. Not by the architectural plans, but yes.

Q. Well, there were some plans -- at some point it had to be discussed with MGM where that dumpster was going to go. Is that fair?

A. That's correct.

Q. Okay. And you told -- you -- and when I say "you," I'm referring to Team Construction. Fair enough?

A. Oh. Understand.

Q. Okay. So when Team Construction -- at some point, you recognized that, in order to do your work, that you needed to have a construction dumpster. Is that fair?

A. That is correct.

Q. And you told MGM that you needed a construction dumpster; correct?

A. That is correct.

Q. And, at that point, you selected an area or did MGM select the area where you should put the

construction dumpster?

A. We suggested, and it was mutually agreed upon.

Q. Okay. So you said -- you went and looked around and said this looks like a good place for the construction dumpster?

A. We looked at a number of possible areas, and that was what we came up with.

Q. Okay. And at the location -- let me just show you what's in evidence as Exhibit 553 -- put that up. Just so we're clear what we're looking at here, this is a -- this is a -- sort of a -- a schematic. Is that the right word, "schematic"?

A. A drawing.

Q. Drawing.

A. Yeah.

Q. Okay. A drawing of the entire sort of MGM property; is that right?

A. That is correct.

Q. Okay. And it -- it identifies sort of right here, that's where you guys were doing your work?

A. That is correct.

Q. Okay. And if you know, this right here, that's the Hollywood Theater?

A. Yes, that is correct.

Q. Let me see if I can make this a little bit -- get that part. There we go.

And -- there we go.

And it's identified here by a little key. We talked about it a little bit the other day -- two different things: your trash haul route; is that correct?

A. That's correct.

Q. I think trash might be spelled wrong, but it says "track haul route. Is that supposed to be "trash haul"?

A. Yes.

Q. Okay. And that's the -- the sort of magenta-purplish line that goes from the darkened area, which is where your work site area was, out the doors; is that right?

A. That's correct.

Q. And the other -- and -- and the next piece identified on this is the dumpster and lay-down area; is that right?

A. That's correct.

Q. Okay. And the dumpster and lay-down area is identified by that sort of teal --

A. The blue color.

Q. -- rectangle?

A. Yes, that's correct.

Q. And this is the location of those items that were determined by you and then approved by MGM; is that correct?

A. That was the determined location for our dumpster and lay-down and our haul-in and haul-out route.

Q. Okay. And --

A. That's what we agreed on.

Q. Okay. And I'm assuming that you wouldn't -- once agreed with MGM, we've heard some evidence that -- that MGM is -- was particular with you guys about certain rules and regulations they had. Is that fair?

A. Every property on the strip is very particular.

Q. Okay. So once you had an agreement about the location of a particular item like that and they approved it, you wouldn't go and do it somewhere else; fair?

A. No. Correct.

Q. You stick with what they agree on?

A. Correct. And the only exception to that is any large items. So anything that doesn't fit through those doors per se, we would have to bring in someplace else.

Q. Okay. But other than that, that area identified by that aqua little square, that was your dumpster and lay-down area. Is that fair?

A. That is correct.

Q. And, as you understand it based on this case, that aqua square identified in the plans is the area that is right outside of a set of sort of double doors; is that right?

A. It -- multiple sets, yes.

Q. Multiple sets of double doors?

A. Yeah. We call them egress doors.

Q. Egress doors?

A. Correct.

Q. Okay. So, as I understand it, those -- an egress door is a door where people can come and go -- is that right? -- in case of, like, an emergency or something?

A. In case of an emergency.

Q. Okay. And the doors that -- that that aqua square covers -- see if I can find a quick picture of them. It's already in evidence, just so we're on the same page here.

Well, let me show you this. This is 403-8. It might be in evidence as something else, but it's the same photo that's been in evidence.

MR. POPOVICH: It's in evidence.

MR. DEUTSCH: It's in; right?

BY MR. DEUTSCH:

Q. Okay. So let me show you this picture.

Do you recognize this picture to be the area that we just identified with that aqua rectangle?

A. Yes, I do.

Q. And in this picture on the right-hand side, that's a dumpster; correct?

A. That is correct.

Q. And that was the dumpster that Team Construction was utilizing; correct?

A. Yes.

Q. And that was the area that Team Construction was utilizing as their lay-down area; correct?

A. That is correct.

Q. And that was the end of the trash haul route; correct?

A. The dumpster is.

Q. Right. So you would haul it out and then bring it right into the dumpster?

A. Correct. So we would go through the doors on the right-hand side.

Q. Well, is it fair of me to say that on different days the dumpster would move; it wouldn't

always be on that right-hand side? Is that fair?

A. Yes, that would be an accurate statement.

Q. So sometimes it might be on the left-hand side, and then the next day it might move to the right-hand side or something like that; correct?

A. Yes.

Q. Now, you mentioned -- give me one second.

Now, you mentioned that those are the egress doors. Did you have any discussion with MGM when deciding to put the dumpster there about the fact that that was an egress door?

A. Yes.

Q. Okay. And did anyone say that you shouldn't have a dumpster in a location of an egress door?

A. Well, no, we -- we looked at it and determined if we didn't use so many doors, it would be fine. And that was the discussion we had.

Q. And that was the discussion you had between Team Construction and MGM?

A. And our MGM representative.

Q. Do you know who that was?

A. I believe it was Victor Davis.

Q. Victor Davis. Okay.

So as long as the dumpster only blocked certain doors, it wasn't a problem?

A. Correct.

Q. Okay. Was there any concern about any debris or anything being left next to the dumpster in light of that being an egress door?

A. Yeah, we didn't leave anything within that pathway. That was the requirement.

Q. Was there ever a time when any debris, whether it was during your construction day or after your -- at any time during the day when there was construction debris left in that area?

A. There would have been -- yeah, during our shift, there would have been materials that we hauled in and hauled out.

Q. Okay. Would you have someone standing out there at the time?

A. Yes.

Q. Someone would be standing there?

A. Uh-huh. Either loading a buggy or cleaning it up when they were done.

Q. Would you ever just have, like, piles of debris laying around?

A. If it was a load-out situation, yes.

Q. Okay. I want to show you two photographs that we can mark now as -- what are we up? 90?

THE CLERK: Your next one in order is 101.

MR. DEUTSCH: 101 and 102.

MR. CALL: May we approach, Your Honor?

MR. STRASSBURG: Objection, Judge.

(A discussion was held at the bench, not reported.)

BY MR. DEUTSCH:

Q. In or around November 12th, 2013, part of your project involved moving pieces of -- of -- of concrete or rock or cement out into that loading area. Is that true?

Do you remember? Do you remember if -- if, in or around that time, you were using pieces of concrete and piling them in that area?

A. Not during that week, I don't.

Q. Okay.

MR. DEUTSCH: Well, may I show these to him, Your Honor, and see if they refresh his recollection?

THE COURT: If it's for that purpose Only.

MR. DEUTSCH: Yes. These are Exhibits 101 and 102.

BY MR. DEUTSCH:

Q. First of all, don't tell us what it is, but do you recognize what's depicted in that photograph?

A. Yes.

Q. Okay. Does that refresh your recollection

if, in or around the time of this accident on November 12th, 2013, you guys were working with piles of -- of concrete that were left in that area?

A. No.

Q. It doesn't refresh your recollection?

A. No.

Q. Okay. Thank you.

You guys had -- Team Construction, as Mr. Strassburg has told us, was -- was big into safety. Is that fair?

A. Yes.

Q. Okay. And you guys had a big safety sort of manuals -- a toolbox talks, I think you called them. Is that fair?

A. We have a safety manual. And, within them, we have toolbox talks.

Q. Okay. Well, let's talk about the toolbox talks. As I understand it, the toolbox talks, they're sort of a one-page toolbox talk that deals with a bunch of different subjects. Is that fair?

A. It's usually one toolbox talk per week.

Q. One toolbox talk per week?

A. Yeah, one subject per week.

Q. Okay. But in terms of sort of your -- you have written materials that go along with those toolbox

talks; is that right?

A. That's correct.

Q. Okay. And -- and on each page is one sort of topic?

A. That's correct.

Q. And let's talk about -- would you agree with me that many injuries can occur as a result of poor housekeeping? Would you agree with that?

A. Yes.

Q. Okay. And that anything left lying around on the ground can be become a slipping or tripping hazard. Would you agree with that?

A. Yes.

Q. And that's even if it's a very thin layer of dust could also be a slipping hazard; true?

A. True.

MR. POPOVICH: Objection. Speculation. May call for expert testimony.

MR. CALL: Join.

THE COURT: He can state his understanding.

BY MR. DEUTSCH:

Q. Would you agree with that?

A. Yes, on excessive dust.

Q. Okay. Well, forgetting about excessive dust, if you have even a thin layer of dust on the ground,

would you agree that that can become a slipping hazard?

MR. STRASSBURG: Objection. Asked and answered.

MR. CALL: Objection. Foundation.

THE COURT: Overruled.

THE WITNESS: Depending on the flooring it's on, yes.

BY MR. DEUTSCH:

Q. Okay. Well, would you agree with me that, if someone was running over that dust, there would be more of a slipping hazard than if someone was walking over it?

MR. POPOVICH: Objection. Calls for expert opinion.

MR. CALL: Join. Foundation.

BY MR. DEUTSCH:

Q. Well, let me ask you this question.

A. I don't have a lot of guys running on a job site --

THE COURT: Hold on a second.

MR. DEUTSCH: That was my question. He answered my next question.

THE COURT REPORTER: I didn't get it.

BY MR. DEUTSCH:

Q. My next question was, do you have people

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running around on job sites?

A. No, not usually.

Q. Okay.

A. If they are, it's a bad thing.

Q. That was my next question. You're good. You're getting ahead -- a step ahead of me.

It's a bad thing to have them run, because, when you're running, you're more likely to trip or slip on something that may be on the ground in the construction site; true?

A. Yes.

Q. Okay. And that's why you don't have people run on construction sites; true?

A. We don't ask them to run, we don't --

Q. But if you saw someone running, you would tell them, "Hey, slow down. No running"?

A. I mean, I'm not a runner, so --

Q. Okay. Well, I -- I understand that. But my point is is that it's bad practice to run around construction sites.

A. Absolutely.

Q. And the reason is is because, when you're running, you're more likely to trip or slip or something like that?

A. It's harder to identify the safety hazards

which you need to identify because you're on a construction site.

Q. Fair enough.

And most of your construction sites, are they bright and light or are they dark?

A. They're as bright as we need them to be for safety reasons.

Q. Same reason that you just told us; right? That if it's brighter --

A. You have to be able to identify hazards.

Q. And when it's dark and you're running, it's hard to identify any hazards; true?

A. Yeah.

Q. Okay. Simple question.

Now, this is -- I'm going to show you what's been marked as 409-51.

I believe it's in evidence. It's a toolbox talk about preventing falls. So let me show that to you.

MR. DEUTSCH: It's already been stipulated to.

MR. RUSSELL: Only page 34 is in, though.

MR. DEUTSCH: Oh. But I thought the whole thing was stipulated.

MR. RUSSELL: It is.

MR. DEUTSCH: Okay.

So I would move in, Your Honor, page 51.

THE COURT: Admitted? It's been admitted.

MR. DEUTSCH: The whole thing has been admitted. I thought so.

BY MR. DEUTSCH:

Q. So this is a Team Construction toolbox talk --

A. Is this the same thing?

Q. -- about preventing falls; is that right?

A. That's correct.

Q. Okay. And one of the things that this is -- identifies -- and I want to see if you agree with this -- is that falls on the same level can also be severe. Do you agree with that fact?

A. Yeah, that's an OSHA statement.

Q. Okay. Well, did you -- is that something you agree with?

A. Yes.

Q. Okay. And because of that -- what just happened?

And because of that, it's important to keep work and work -- walk and work areas free of debris; correct?

A. Correct.

Q. And if there's a slipping or stumbling hazard that you can't correct, report it immediately; true?

A. True.

Q. So the fact that, in this case, Mr. Cox fell on the same level -- meaning he didn't fall off a height or a ladder or something -- in your understanding, as someone who works in the construction arena, that doesn't mean that it's not severe or it is severe; true?

MR. POPOVICH: Objection. Relevance. Phase 1.

MR. STRASSBURG: Objection.

THE COURT: Overruled.

BY MR. DEUTSCH:

Q. You can answer.

A. I don't -- can you repeat the question.

Q. Sure. The fact that Mr. Cox fell, it involved a ground-level fall.

A. Okay.

Q. It could still be severe even though it's a ground-level fall? That's what your document says; true?

A. True.

Q. Okay. And, in fact, you -- you also have -- I'm going to show you what's Exhibit 409-53.

Would you agree that it's not a guarantee that all clean workplaces are safe, but it is safe to say that few messy workplaces are safe? Do you agree with that?

A. Yes.

Q. And would you agree with me that a neat and orderly workplace can help reduce injuries?

A. Yes.

Q. That it could help reduce -- that good housekeeping can help prevent injury resulting from a trip-and-fall?

A. Yes.

Q. How about injury resulting from a slip-and-fall?

A. Yes.

Q. You agree with me that, when you're working with -- with concrete or drywall, that -- that, oftentimes, in order to properly clean up, that you need to use some sort of wet material, water or something like that, in order to clean up the area that you're working. Is that fair?

MR. POPOVICH: Objection. Overbroad.

THE WITNESS: We use --

THE COURT: Overruled.

THE WITNESS: We use Kleen Sweep.

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BY MR. DEUTSCH:

Q. Okay. What's that?

A. It's a -- a chemical pellet that is almost waxy-like. And we spread that out and then we sweep it up.

Q. Okay. Do you do that -- what -- what flooring materials do you use that Kleen Sweep on?

A. Everything. Anything that has dust on it.

Q. Okay. You use it on concrete?

A. Yes.

Q. You use it outside?

A. Yes.

Q. Do you know if, on November 12th, 2013 -- were you there that day at the MGM Grand? Do you remember?

A. I don't remember.

Q. Okay. So you don't know if that was used at all in that outside walkway on that evening. Is that fair?

A. That's a fair assessment.

Q. Okay. Let me show you what's been marked in evidence already -- which we've seen a bunch of times already -- 403-8.

I'm actually going to grab the hard copy of that.

Actually, that's okay.

Do you -- do you see that photograph? That's the one I just showed you before.

A. I do.

Q. And by looking at this photograph, can you tell -- in your opinion, do you see any -- anything on the ground in that photograph other than just the concrete?

A. Rubber transfer marks.

Q. You can see rubber transfer marks?

A. Yeah, the circular ones.

Q. Okay. And what are those from, in your understanding?

A. Buggies, power buggies.

Q. Power buggies?

A. Uh-huh.

Q. Did -- is it your understanding -- your opinion is that this photograph doesn't show any dust on the ground at all?

A. I couldn't tell you unless I put my hand out there.

Q. Okay. So you're not saying that this photo does show dust or doesn't show dust?

A. I can't tell from this photo.

Q. Okay. Let me see if I can get you a hard

copy. Maybe it'll help.

Take a look at that.

A. (Witness reviewing document.)

Q. Do you see some dust on the ground in that one?

A. I couldn't -- I can't say yes or no. I mean, it's hard to see dust from a photo.

Q. Okay.

A. I --

Q. Well, let me show you another picture.

Do you know what exhibit this -- do you know what exhibit this is?

MR. POPOVICH: Yeah, I think it's 84.

MR. DEUTSCH: I think you're right.

MR. POPOVICH: But I don't know which picture in 84.

MR. DEUTSCH: It's okay. I'll find it. I got it, 84-1.

MR. POPOVICH: 83.

MR. FALLICK: 83.

MR. DEUTSCH: 83. Okay. Yeah.

BY MR. DEUTSCH:

Q. Let me show you what's been previously marked as 83-1. Have you ever seen this photograph before?

A. Yes.

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Q. Oh, you have? When did you see this photograph for the first time?

A. A few months ago.

Q. Okay. And what circumstance was it that you saw that photograph?

A. When Mr. Strassburg came to tell us about the lawsuit.

Q. Okay. And -- and you -- you know, do you not, that, during the -- were you here for opening statements in this case?

A. In the afternoon.

Q. Okay. Did you see Mr. Strassburg's opening statement?

A. I did.

Q. Did you see his PowerPoint presentation?

A. I did.

Q. Okay. And you saw that he put up this photograph in his PowerPoint presentation, and I believe that photograph in his PowerPoint presentation. Do you recall that?

A. I don't remember.

Q. Okay. And -- well, do you recall that, in his PowerPoint presentation when he put up those presentations, that he had a little red sort of arrow pointing to the stuff on the clothes and it said

"dust"?

A. I -- I don't remember seeing that.

Q. Okay. Well, would you agree with me that there's dust on his clothing in those photographs?

A. Again, how am I supposed to know that's dust?

Q. Well, I'm asking you to take a look at the picture and see from looking at the picture if it appears to be some sort of dust on his clothing. If you can't tell by looking at the picture, that's okay.

A. I -- I can't tell. I mean, dust is ...

Q. Fair enough.

How about this photograph? Can you tell by looking at this photograph -- and Mr. Popovich pointed it out for the jury earlier today. But there appears to be sort of a line right here where you can see, where it looks like this top half of his jeans and the lower part of his jeans are different.

A. Like the pocket outline.

Q. No. Let me draw it on here for you. So --

MR. POPOVICH: This one is 83-2.

BY MR. DEUTSCH:

Q. -- there appears to be a line sort of right there, where everything above that is sort of one color and everything below that is another color. You see that?

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And if you don't see it, you could just tell me you don't see it. It's okay.

A. There is a shading difference there.

Q. Okay. Can you tell if or not those photographs -- let me show you hard copies of those and see if -- sometimes, you know, the screen is not -- is not as good in terms of clarity.

Take a look at those. Looking at the hard copies of those photographs, does that appear to be dust? I'm not asking you what kind of dust; I'm just asking if it appears to be dust on his clothing looking at those photographs.

A. (Witness reviewing document.)

Again, I couldn't tell.

Q. Okay.

A. And the one -- the shading on the bottom, I mean, I've been in construction a long time and I've dealt with a lot of lighting. It looks like shadowing --

Q. Okay. Okay.

A. -- just from the light being overhead in the hospital.

Q. Okay. So when Mr. Strassburg, your attorney, told the jury during opening statement that he believed this was dust, you think you should have stopped him

and said "I don't agree with you"?

A. I -- I'm just telling you what you're asking me, whether I can say -- can say that's dust or not.

Q. Okay. Well, do you think that what's on his clothing in this photograph -- which I think is 83 -- 83-1 -- looks like -- let's see if I can do it here. Can't seem to do two at once.

Does it appear to you -- and, again, if you don't know, you don't know.

Does it appear to you that the stuff that's on his pants in this photograph appears to be the same color as what's here in the ground in this photograph? Yes or no?

A. Those two colors do look alike, yes.

Q. Okay. What's this little red thing? Do you know what that is?

A. I couldn't tell you.

Q. Does it look like some piece of something -- some piece of garbage or debris of some sort?

A. I don't know what it is.

Q. Now, this is another picture that was in evidence, I believe. It's 403-6.

MS. FRESCH: It's not showing up.

MR. DEUTSCH: I didn't put it up yet.

MR. FALLICK: Adam, it's all stipulated.

MR. DEUTSCH: It's all stipulated?

BY MR. DEUTSCH:

Q. It's another piece of the runaround, the route that we've been calling the runaround. Do you know what that is in the bottom right-hand corner?

A. No.

Q. Okay.

A. Unless you're referring to the plants.

Q. No, I wasn't referring to the plants.

Now, you don't know, sitting here, exactly what was done that day, do you, at the job site?

A. No. All I have to go off of is from going through the daily reports, the timecards.

Q. And it's your understanding that -- that the people from Team Construction had left at about 2:30?

A. Correct.

Q. Okay. Did Team Construction know that Mr. Copperfield was running people through this route to use for his trick?

A. No.

Q. Did anyone ever tell you that?

A. No.

Q. Now, you can't tell this jury, can you, whether or not that area was -- was sprayed down or the water pellets were used on that day; is that true?

A. They're not water pellets, but ...
Q. Or whatever those pellets are called.
A. No, I can't.
Q. So you don't know if it was done that day or not?
A. No, I do not. I was not out there.
Q. Okay. Now, Team Construction also has, you said, a safety manual; is that right?
A. That is true.
Q. And, in that safety manual, there's some stuff in there about investigating of accidents; is that true?
A. That is true.
Q. And the importance of doing a complete investigation when an accident occurs.
A. Yes.
Q. And would you agree that, when investigating an accident, it's important to identify all witnesses?
A. Yes.
Q. Okay. And that you need to take down information from all the witnesses that you can identify; correct?
A. That are available, yes.
Q. That are available; right?
Because you want to find out as much

information as possible about what happened. Is that fair?

A. Yes.

Q. And you agree that it's -- that it's -- at least in Team Construction's understanding, that it's important to start the investigation immediately after the occurrence. Is that fair?

A. Yes.

Q. That makes sense; right? Because that's when the witnesses are there. The people involved are all there at that time, so you can get all their names and information and stuff like that; right?

A. Yes.

Q. Okay. You got to take pictures of the site; right?

A. We take pictures, yep.

Q. That's what you guys consider good practice of investigation of accidents; true?

A. Yeah, that's --

Q. Okay.

A. -- our policy.

Q. Other than dumpsters, did Team Construction have any other type of barricades or anything that they used outside at any point in time?

A. No.

Q. Did they ever -- you know, if you guys were using some -- had to, you know, put stuff in that lay-down area, was there a way that you would sort of rope it off or block it off?

A. We would have used cones.

Q. Okay.

A. That's our policy. I can't tell you if we did that on this project.

Q. Okay. Now, are you familiar with the area outside of those double doors from being there?

A. Yes.

Q. I mean, did you go out there on a regular basis when you were at the job site?

A. Yes.

Q. Okay. And how often would you go out there?

A. Once a week.

Q. What was the purpose that you would go out there?

A. Just to make sure that everything was tidy.

Q. Okay. Do you remember -- was there a particular day of the week that you would go or would it vary?

A. It was random.

Q. Did Team Construction do their own -- did their own employees do the cleanup?

A. No.
Q. Okay. So Team Construction employees hired a subcontractor to do cleanup?
A. Correct.
Q. Laborers?
A. They're laborers.
Q. Okay. But, under the agreement with MGM, Team Construction would still be responsible for the work that those subcontractors did; is that right?
A. That is correct.
Q. But they wouldn't actually be Team Construction employees?
A. That is correct.
Q. So they wouldn't necessarily have the same training that the Team Construction employees had. Is that true?
A. No.
Q. It's not true?
A. It's not true.
Q. They would have the same training?
A. Correct. They're laborers. I mean --
Q. Okay. But these are laborers that may have worked for Team Construction before; they may not have worked for Team Construction before. Is that fair?
A. Team Construction didn't have any -- doesn't

have any -- at that time, union laborer.

Q. Did not have any union laborer?

A. No, we were a general contractor.

Q. Okay. Right. So the people that were doing the cleanup, who you were responsible for, were people from other companies?

A. People from our sister company.

Q. Noble?

A. Noble Specialties.

Q. Okay. And they were laborers that were responsible for cleanup?

A. Correct.

Q. But, for the purposes of this lawsuit, you agree that Team Construction was responsible for those -- the actions of those people. Is that fair?

A. That's correct.

Q. Now, sitting here today, is it fair of me to say that you don't know specifically what was brought out to the dumpster on November 12th, 2013? Is that fair?

A. That's fair.

Q. Are you aware that stuff was brought out to the dumpster on that day?

A. I'm not aware of it.

Q. Is there someone who would be aware of what

materials were brought out to that dumpster that day?

A. People that brought them out there.

Q. Do you know who that would be?

A. I couldn't tell you exactly who that would be.

Q. So, sitting here today in court a number of years later, the person who's here for Team Construction can't tell us who would know what was brought out of that -- into the dumpster that day. Is that a fair statement?

A. That is correct.

Q. Would the superintendent know?

A. You'd have to ask him.

Q. Well, are you aware? I mean, is that something that you would think he would know?

A. You'd have to ask him. Again, that was a long time ago, so you'd have to ask him.

Q. Okay. Would -- would the -- would the superintendent -- who was the superintendent?

A. David Voiss.

Q. I asked you that. I'm sorry.

And was he there every day at the job site?

A. Yes.

Q. And would part of his job description be to know what was being brought out? I mean, would that be

something he would be responsible for?

A. Yes. Have a general idea.

Q. I'm sorry?

A. He would have a general idea.

Q. General idea. Okay.

Do you know how many men Team Construction -- or Team Construction and its subcontractors had at this job site on November 12th, 2013?

A. Not exactly.

Q. Do you know approximately?

A. Probably around 20.

Q. And at the time were they doing demolition still or were they starting construction? Do you know what stage of the project it was at?

A. We were starting construction. I mean, we were in construction.

Q. You had already done demolition?

A. We had done a lot of the demolition.

Q. Was there still demolition going on?

A. Can't be 100 percent certain.

Q. Okay. Okay. Thank you. Mr. King, I have nothing further.

THE WITNESS: Is this evidence? Does this go back?

MR. FALLICK: Adam, the photo. He's --

MR. MORELLI: He's got the photos up there.

MR. DEUTSCH: Thanks.

CROSS-EXAMINATION

BY MR. STRASSBURG:

Q. Mr. King, are you familiar with Team's project meeting minutes?

A. Yes.

Q. And what are those?

A. They're weekly meetings we have with our clients and representatives from where we're working.

Q. Were there such meetings on the Beacher's project?

A. Yes.

Q. Where were those meetings held?

A. The MGM engineering conference room.

Q. And where is that in relationship to the Beacher's project?

A. It's downstairs in the basement level.

Q. All right. And do you recollect when the project meeting was held that was the closest in time to November 12th, 2013?

A. They're Tuesdays, Tuesday mornings.

Q. All right. The project meeting minutes, who prepares those?

A. I do.

Q. And are they prepared close in time to the events recorded therein?

A. Yes.

Q. And do you have a -- is it part of your job to prepare those minutes accurately?

A. Yes.

Q. I'd like to direct your attention to Defense Exhibit 554, and --

But, first, I'd like to move it into evidence.

MR. POPOVICH: Lacks foundation at this point.

MR. STRASSBURG: It's a business record, Judge.

THE COURT: Who made that statement?

MR. POPOVICH: He asked him general questions before he even identified the document.

THE COURT: Yeah, you need to identify the item.

MR. STRASSBURG: Fair enough.

MR. DEUTSCH: Yeah.

554, you said?

MR. STRASSBURG: Yeah, 554.

/////

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BY MR. STRASSBURG:

Q. Showing you now -- just give me a sec -- Defense Exhibit 554. Is that on your screen?

A. No.

Q. It's coming.

How about now?

A. Yes.

Q. All right. Can you identify -- here. I'll show you the whole page, although it's kind of hard to -- could you identify this document as meeting minutes No. 7 --

A. Yes.

Q. -- for the Team Construction meeting of November 12, 2013?

A. Yes.

Q. And you prepared these?

A. I did.

Q. Did you attend the meeting?

A. Yes.

Q. Do you recollect who else attended the meeting?

A. Victor Davis, Jeff Beacher.

Q. Okay. Who's Victor Davis?

A. He was our engineering contact.

Q. And who's Jeff Beacher?

A. He was the client that we were working for.
Q. And are they shown as attendees on this document?
A. Yes.
Q. All right. Now, there are discussion topics shown on the document. Do you see that as well?
A. Yes.
Q. And there appear to be -- the last one is Topic 21, entitled "field walk comments." Do you see that?
A. I can't see it.
Q. How about now?
A. Yes.
Q. All right. And what does that pertain to, field walk comments?
A. When we walk the job site, as issues arise, topics arise, they go in that box --
Q. All right.
A. -- to be discussed.
Q. And on November 12th, 2013, how long did the project meeting last?
A. Approximately an hour.
Q. And when did it start?
A. I want to say in the morning.
Q. Okay. All right. And did -- when you

attended the project meeting on November 12th, 2013, were there any concerns, questions, discussions that you can recall concerning the dumpster?

A. No.

Q. The haul-out route?

A. No.

Q. Housekeeping on the job?

A. No.

Q. Did MGM express any concerns regarding Team's housekeeping on the job?

A. No.

Q. Would you expect MGM, as the owner of the casino in which the job was being constructed, to immediately express to you those concerns if they had any?

MR. DEUTSCH: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. STRASSBURG:

Q. All right. And, on occasion from time to time, did MGM criticize housekeeping on the project?

A. Yes.

Q. And what would you do in response to those criticisms?

A. Address them.

Q. Any of the criticisms pertain to the housekeeping of the dumpster area outside?

A. I can't -- I don't clearly recall.

Q. Okay. And are you generally familiar with the -- the amount of money that was spent on various line items on the Beacher project?

A. Yes.

Q. And how did you gain that familiarity?

A. I'm in charge of the budget.

Q. All right. And do you know how much was budgeted for cleanup?

A. Roughly?

Q. Yes.

A. 23,000.

Q. All right. And do you know roughly how much was -- actually ended up having to be spent for cleanup on the project?

A. I want to say around 40.

Q. All right. And can you account for us, explain to us, why you doubled the budget in cleanup costs on this project before it was done?

A. Just we have to keep it clean. We have expectations to the property so that we can continue to work down there.

Q. And those expectations are in the -- those

are MGM's expectations, Beacher's, or someone else's?

A. We have -- in our contract, I mean, we have requirements, but we -- we keep a tidy work space because it's the Strip. And if you don't, you don't work on the Strip that long.

Q. And are you generally familiar with your -- with your construction contract?

A. Yes.

Q. And how is it that you have that familiarity?

A. I assisted in preparing it.

Q. All right.

Judge, at this time, I'd like to move into evidence Exhibit 554.

MR. POPOVICH: No objection.

MS. FRESCH: No objection.

MR. ROBERTS: No objection.

MR. DEUTSCH: None, Your Honor.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 554 was admitted into evidence.)

BY MR. STRASSBURG:

Q. Directing your attention to what we're going to mark as Defense Exhibit 555, I guess the first thing I should ask is can you see it? Is it on your screen?

A. There's -- yeah, there's something on my

screen.

Q. All right. Let me blow it up for you.

Can you see it now?

A. Yes.

Q. All right. And can you identify it for us, please?

A. It's a time card.

Q. Whose?

A. Mine.

Q. For when?

A. The week ending November 17th.

(Clarification by the reporter.)

BY MR. STRASSBURG:

Q. What project?

A. There's MGM Sports Book restroom, Beacher's, Baymont Inn, Cosmo, Beacher's, SS line, conference center walkway, Autograph Lounge, Bond bar. And then we have overhead and marketing on the bottom.

Q. And who prepares this document? Is it you or your office or someone else?

A. I do.

Q. All right. And when do you prepare this document?

A. The week ending and throughout the week.

Q. All right. Is there an entry for the

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Beacher's project on your time card?

A. Yes.

Q. And what does it say?

A. The job name and the project number.

Q. All right. And then there is a date here?

A. There's hours.

Q. For hours -- do you see that for Tuesday, Monday, Wednesday? And there's hours put in. Who fills those in?

A. I do.

Q. And what does the -- what are the numbers signifying?

A. The hours I spent on that project.

Q. All right. So let me just jump back quickly to the document that's already in evidence, showing the jury Exhibit Defense 554, which you previously testified is the project meeting minutes.

Sorry. Bear with me a sec while we boot this thing up.

All right. Do you see in front of you, this is the first page of the project meeting minutes for the date of 11/12/2013?

A. Yes.

Q. Do you know what I'm talking about?

MR. MORELLI: 554.

MR. STRASSBURG: 554, yes.

BY MR. STRASSBURG:

Q. Do you see that?

A. Yes.

Q. On your screen?

A. Yes, I can.

Q. You've indicated that you figure this meeting lasted about an hour?

A. Correct.

Q. It's showing that you're an attendee; correct?

A. That's correct.

Q. All right. And it's showing that MGM is represented as well; yes?

A. Yes.

Q. And that would be by Mr. Davis. And you also logged in that Jeff Beacher is there as well; right?

A. Correct.

Q. Together with Jeff Pollack, another person at Beacher's; right?

A. Yes.

Q. And then there's a gentleman, Kevin Browning, from MGM Resorts. You see that? What was his role?

A. He was the IT project manager.

MR. STRASSBURG: All right. We would move

into evidence Exhibit 555.

MR. POPOVICH: No objection.

MS. FRESCH: No objection.

MR. DEUTSCH: No objection.

MR. ROBERTS: No objection.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit 555 was admitted into evidence.)

BY MR. STRASSBURG:

Q. All right. Showing you now Exhibit 555. And that shows the -- the hours that -- that you logged in for the Beacher's project on the day of Mr. Cox's accident. Do you see that?

A. Uh-huh.

Q. It says you had four hours that day.

A. On the 12th?

Q. Yeah.

A. Correct.

Q. All right. And so if one of the hours -- the hour that you spent in the project management meeting, is that one of those four?

A. That is one of those four.

Q. All right. And the other three hours, what would you have been doing? Would you have been -- would you have been working in the conference room

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downstairs at MGM, or would you have been working on the actual job site on the casino floor?

A. So I would have walked with my superintendent -- or our superintendent after that meeting. That's what those field walk notes are for.

And then I would have gone back to the office to work in the office to prepare the paperwork to address everything that was brought up in the meeting.

Q. Where is your office?

A. At that time, it was on Arville.

Q. Back at the shop?

A. Yeah.

Q. Okay. Okay. And Voiss, is -- is he over -- was he over any other job than Beacher's?

A. I -- I think he was on the SS line, the sanitary sewer line which was in the bar in front of Beacher's.

Q. All right. But working on the -- in the Beacher's area as superintendent, was he considered by you a full-time or part-time or something else?

A. Full-time.

Q. Okay. And full-time, is that 8 hours? 10 hours? 12? what?

A. It's -- as a -- as a superintendent, sometimes they have to work a lot of hours.

Q. So it's whatever it takes; right?
A. Yeah.
Q. Now, the field walks that you do with Voiss --
And that's, Kristin, V-o-i-s-s.
Now, the field walks, does housekeeping matters ever get dealt with in those?
A. If it comes up while we're on the walk, yes.
Q. Well, if you see a mess on the field walk, is that something that you would pass on by or do you take action?
A. No, we take action.
Q. Like what?
A. We'll get a laborer out there with a vacuum in front of the doors to vacuum up the carpet.
Q. Now, do you have any -- any familiarity with the -- the time cards that are created by Noble Specialties?
A. Yes.
Q. And what is the -- you said that Noble Specialties is a sister corporation of Team?
A. We have the same owner.
Q. Okay. And so they're under the same control?
A. Correct.
Q. And who is the owner?

A. David Noble.

Q. All right. And you said that -- that the union laborers, that's in the Noble part of the -- the business? And then the -- the management designers, that's in the -- the Team part?

A. Yeah, so Team is management. It's called Team Construction Management. And then, at that time, Noble Specialties was signatory with the unions.

Q. Let me show you -- let me show you what's been previously marked as 556. Do you have that on your screen now?

A. I have.

THE COURT: What's that?

MR. STRASSBURG: Five --

THE COURT: It's not shown to have been admitted.

MR. STRASSBURG: I'm just showing it to the witness but not to the jury, Judge. I learned my lesson.

THE COURT: Okay.

BY MR. STRASSBURG:

Q. All right. Do you see that, Noble Specialties time cards?

A. Yes.

Q. And you can identify this as a -- the card

for the Beacher's project?

A. Yes.

Q. All right. And, to your knowledge, whose job is it to fill out these time cards?

A. David Voiss.

Q. All right. And can you describe for us how those time cards are filled out? By that I mean does he wait -- is he allowed to wait till the end of the month and just kind of make it all up or does he have to do it day by day?

MR. DEUTSCH: Your Honor, just note my objection. If he's going to offer them into evidence, that's one thing. But if they're just going to be put up on the screen, he's not even supposed to be identifying them.

THE COURT: I think he's laying a foundation for it. I'll allow it.

Go ahead.

MR. STRASSBURG: Thought so.

THE WITNESS: Daily.

BY MR. STRASSBURG:

Q. Sorry?

A. Daily.

Q. Daily?

A. Correct.

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Q. And how does he go about, as a superintendent, preparing these daily time cards? Does he do it electronically, in paper, or a combination? How is that accomplished?

A. He does it electronically.

Q. All right. And -- and how -- how does he do it electronically? On a phone, a laptop, or some other computer?

A. A laptop in Excel.

Q. And the -- the time for -- for example, like, the time for, let's say, that -- the 12th -- November 12th, when is it supposed to be documented? Is it, like, at the beginning of the day for the scheduled time to be worked, or is it the end of the day for the time already put in?

A. The end of the day.

Q. And is the time -- what -- what does he do? After he fills out the time card at the end of the day, what happens to it? Does it just get saved on his computer, or is it transmitted somewhere?

A. It gets saved on his computer.

Q. And how is it submitted to headquarters?

A. It's printed out or sent at the end of the week.

Q. And whose job is that?

A. That's David's.

Q. Let me direct your attention to the second page of --

Judge, I --

MR. MORELLI: Your Honor?

MR. STRASSBURG: I could stop here, if it's --

MR. MORELLI: It's 5:00.

MR. STRASSBURG: -- 5:00.

THE COURT: All right. Counsel approach, please.

(A discussion was held at the bench, not reported.)

THE COURT: All right. Ladies and gentlemen, at this time we're going to adjourn and reconvene tomorrow morning at 9:00.

You're admonished not to talk or converse among yourselves or with anyone else, including, without limitation, the lawyers, parties, and witnesses on any subject connected with the trial or read, watch, or listen to any report of or commentary on the trial or any person connected with this case by any medium of information, including, without limitation, newspapers, television, the internet, and radio.

You're further admonished not to form or

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express any opinion on any subject connected with the trial until the case is finally submitted to you.

Once again, return to the outside of the courtroom to the south a little bit -- tomorrow, Wednesday, May 2nd, 2018, no later than 8:50 a.m. so we can reconvene here at 9:00 a.m.

Have a nice night, ladies and gentlemen.

THE MARSHAL: All rise.

(The following proceedings were held outside the presence of the jury.)

THE COURT: Anything else come before the Court outside the presence?

MR. DEUTSCH: There's one thing, Your Honor.

THE WITNESS: You all done?

MR. STRASSBURG: Thank you, sir. See you tomorrow at 9:00.

THE COURT: Tomorrow at 9:00.

THE WITNESS: Tomorrow at 9:00. Thank you.

(Discussion was held off the record.)

THE COURT: Okay.

MR. DEUTSCH: I handed him a subpoena, and I said "Consider yourself served." I've always wanted to say that. He said, "Do people really say that?" I said, "I don't know, but it always sounded cool."

Oh, we're on the record. Sorry. It's okay.

The only thing we wanted to raise, Your Honor, was, you know, we were hoping to play the videotape of Ms. Esack tomorrow. And, in an effort to make it go a little bit more smoothly, I should say, than Ms. Lawrence's, I was hoping that we could figure out just some of the objections so we can get the video person/editor to -- you know, to make it smoother so we don't have to do all the objections.

Because my -- I feel -- it's only Ms. Fresch that offered anything because it doesn't apply to anybody else. But I believe every single question and answer that we proposed was objected to except two.

Thank you. Except two.

So we need -- at some point, we'd like some time to discuss that. We were hoping to play that video tomorrow. And, you know, we need some time to cut it in whatever. So that's the only thing that we would like to raise. So --

THE COURT: Okay. Well, we know that Mr. Strassburg has indicated that the witness on the stand now is expecting to last an hour and a half.

MR. DEUTSCH: It is surprising, but the issue is, at that point after that --

THE COURT: We could do it after that, it seems to me.

MR. DEUTSCH: The problem is, though, if we -- we can do that after that, yeah. And I just need some time, once we do that -- maybe if we do it before lunch, then the video person could spend lunchtime editing and whatever. And, that way, we could have it ready for the after lunch.

MS. FRESCH: So we had talked about having Mr. Copperfield back. It was supposed to be today, but because of the differences and the way things worked, we didn't have today. So I have Mr. Copperfield lined up for morning. Obviously, we have to wait for Mr. King to be done, who we didn't know about, by the way. We weren't told about Mr. King. Not a big deal for me, but I'm just saying I had no notice 24 hours ahead of time about Mr. King. Because we had Mr. Cox, then we were supposed to do Ms. Esack, and then Mrs. Cox.

MR. STRASSBURG: I'm sorry. I thought we were told to keep him on deck.

MR. DEUTSCH: Yeah. I filed --

MS. FRESCH: So maybe I misunderstood, but that's who we talked about yesterday. And I told Mr. Copperfield potentially the end of today, if we moved quickly, or tomorrow morning.

MR. DEUTSCH: Okay. But, if not, it would be

tomorrow morning, because we want to play the video before Mr. Copperfield. So --

MS. FRESCH: But Mr. Copperfield was supposed to go way --

MR. DEUTSCH: Mr. Copperfield went on vacation for a week. He could have been done.

THE COURT: No. Mr. Copperfield was called in the midst of the plaintiffs' case; correct?

MR. DEUTSCH: Correct.

THE COURT: He was called as a plaintiffs' witness. And then he was interrupted because of his plans, but, I mean, he's --

MR. DEUTSCH: We're going to finish with his testimony.

THE COURT: Is he still in the --

MR. DEUTSCH: Yes, he is still on our case, because I don't even think Mr. Strassburg had finished his questioning on cross -- Mr. Strassburg was still crossing -- whatever you want to call it.

MS. FRESCH: Mr. Strassburg hadn't started -- if you'll recall, this is where, when we were ending for the day, we learned that Mr. Strassburg had over 45 minutes, Mr. Morelli said he had 15 minutes, and then, assuming follow-ups and potentially -- now I'm thinking questions from the jury, so that's what we have left

with Mr. Copperfield. But --

MR. MORELLI: But we also -- if you remember, we interrupted and we took people out of order because of the secrecy issue. Remember, we -- we did something differently with reference to that.

But I think Mr. Strassburg was on questions at the time.

MS. FRESCH: Yeah.

MR. CALL: That's right.

MR. STRASSBURG: That's my recollection.

MS. FRESCH: I'm not sure he really started.

MR. FALLICK: No, he didn't.

MS. FRESCH: So --

MR. MORELLI: Barely.

MS. FRESCH: -- I'm just trying to figure out the schedule. I mean, to me, a videotape can be done anytime. I'm just trying to accommodate all the live witnesses.

MR. DEUTSCH: Well, I think Mr. Morelli made clear yesterday that we are entitled as the plaintiffs to put on witnesses in the order that we're going to put them on.

MR. RUSSELL: Except when I go to New York, he's going to let me do it the way I want to do it. He promised me.

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MR. DEUTSCH: So, at this point, in light of the fact that Mr. Copperfield would have been done with already had he not needed to take a vacation --

MS. FRESCH: No, I really oppose that because we know the way this trial went way longer than anyone --

MR. DEUTSCH: But he chose to go on vacation. He's allowed to take a vacation.

MR. MORELLI: He agreed to it.

MS. FRESCH: But -- yeah, but you -- no, but it wasn't just vacation; it was -- it was a lot of other things. I just don't want that on the record like it sounded like some frivolous, you know, time off. And he did delay doing everything he needed to do for two days so he could testify for an entire day Tuesday. So he testified Wednesday before. We had two days off. And then he testified for an entire day. So he's been on the stand for a day and approximately an hour. So I'm not sure.

THE COURT: So you want the video to be played after he testifies?

MS. FRESCH: I'm just trying to, like -- I told Mr. Copperfield to be on deck for potentially today. Then it looked like -- I go, "It's not going to happen today, I think, but don't, you know, panic."

And then I said, "For sure, tomorrow morning." I never dreamed -- because I wasn't aware of Mr. King.

MR. DEUTSCH: He's a party to the case, Your Honor. And --

MS. FRESCH: Okay. I just --

MR. DEUTSCH: -- he's under subpoena. So, as far as I'm concerned, while I understand this trial is disruptive of his couple of weeks while we're on trial, this trial has also been -- has been disruptive of my client's life for the last five years. So I think that -- I think -- and -- and for the rest of their lives.

So I think that the fact that Mr. Copperfield is inconvenienced because of when he has to be here is not really of our concern. He's here under subpoena. He was supposed to finish his testimony. We were nice enough to give him the courtesy of letting him break his testimony.

MS. FRESCH: No. Excuse me. The -- His Honor ruled that. That was not you conceding something. That was His Honor making a ruling.

MR. MORELLI: Actually, that's not true. I actually agreed. I actually agreed.

MS. FRESCH: All right. You know what? I don't want to argue. I'm just trying to figure out so

I can tell my client how to plan, so I can plan. I'm --

THE COURT: How much time do you think Mr. Copperfield is going to require?

MR. POPOVICH: He had said 45 minutes; he had said 15 minutes.

THE COURT: Mr. Copperfield?

MR. POPOVICH: With Mr. Copperfield, but --

MR. MORELLI: I could change my mind.

MR. POPOVICH: You know that's going to change.

THE COURT: Well, let's talk about time a little bit.

MR. MORELLI: I don't know the time.

THE COURT: Tomorrow is a full day. No, I'm talking about the time we need for this case.

Tomorrow is a full day.

MR. MORELLI: Yes.

THE COURT: Thursday, as we know, is going to be -- we start at 10:00 in the morning and go till about 4:45.

MR. MORELLI: That's almost a full day.

THE COURT: Friday --

MR. MORELLI: Is a partial day.

THE COURT: A partial day.

MR. MORELLI: That's true.

THE COURT: Monday, not in session.

MR. MORELLI: No, I -- I know. I'm getting you.

THE COURT: Tuesday --

MR. MORELLI: I'm understanding.

THE COURT: -- in session.

MR. MORELLI: Right.

THE COURT: Wednesday, in session. Thursday in session. But Friday, I think there's a settlement conference scheduled for -- that's been long scheduled. So I think I'm going to have to do something about that.

MR. RUSSELL: That's May 11th.

MR. MORELLI: That's May 11th.

THE COURT: I'm not sure -- we're so far behind in this case that I think we're going to have to sit down with this jury sometime and -- and -- and sort of figure out, because we're not going to be in session the following week.

MR. MORELLI: No, that, I know.

THE COURT: And we know we have one juror -- I think who is the alternate, one of the alternates -- who has indicated that he's leaving town on the 14th. Okay?

MR. MORELLI: That's -- that's the day that you leave or the next day?

THE COURT: Yeah, that week, essentially. So if he's leaving on the 14th --

MR. MORELLI: That's okay.

THE COURT: So we're --

MR. DEUTSCH: We are cutting it close, but we'll get there.

THE COURT: So let's talk a little bit about the -- Mr. Copperfield was on the stand as part of plaintiffs' order of proof, having been called; right?

MR. MORELLI: That's true.

THE COURT: And we had to interrupt him because of the time. Okay? Well, actually, because of his schedule or whatever.

MR. MORELLI: Because of his schedule. And it was okay.

THE COURT: But the fact is --

MR. MORELLI: I agreed to it.

THE COURT: But the fact is why -- why -- if you're talking about the right to do your order of proof, he's already been called in your order of proof; right?

MR. MORELLI: Yes, but he was interrupted because of him, not because of me. I would have been

done, so --

MR. DEUTSCH: It falls to his own peril what has happened now in between when he left.

MR. MORELLI: I agreed that -- that I would accommodate him, but that doesn't mean to my peril. You know --

MR. DEUTSCH: I mean, the fact that he volunteered to leave, Your Honor, we feel that, at this point, other things have happened in the trial that is now -- we could question him about.

MR. MORELLI: We want to play the video, and then we want to --

THE COURT: So he'll get to see the video before he testifies?

MS. FRESCH: Well --

MR. MORELLI: Yeah. Yes.

THE COURT: Okay.

MR. MORELLI: That's true. That's important to us.

MR. DEUTSCH: I would think that Ms. Fresch would want that as well.

MR. MORELLI: I think it's important. That's the only reason.

THE COURT: Does anybody else have anything to say about the order?

MR. POPOVICH: Not the order.

THE COURT: The order of proof, whether the video goes first or --

MR. POPOVICH: I have something to say about something else.

THE COURT: Okay. I'll allow the video to be shown. Okay? But you better get it set up so we don't have to spend a whole lot of time.

MR. DEUTSCH: So we've been given --

MR. MORELLI: Yes.

MR. DEUTSCH: Ms. Fresch submitted her page and line designations. We could forward those to the video editing guy and add those.

THE COURT: Can you have it done by noon tomorrow?

MR. DEUTSCH: Absolutely.

THE COURT: Can you have that video shown by noon tomorrow?

MR. DEUTSCH: I believe we can. But the only issue is are -- should we -- would Your Honor like to see ahead of time -- I mean, the objections is the only concern. Is that she objected to literally every question except two.

So every time a question is played, there's going to be an objection and she's going to pause it

unless Your Honor has an opportunity to review it all beforehand and rule ahead of time. That's my only concern.

THE COURT: I'll just rule on the objections as they're made.

MR. DEUTSCH: Okay. So we'll just pause every question. Okay. That's fine. So I'll have --

THE COURT: Now, if counsel wants to withdraw any of the objections, I mean, you can.

MS. FRESCH: Well, I mean, you know, it's one of those things, I'd preserve all my objections. It also depends on how -- some of your objections are what you've ruled as to whether I would make objections to others. Plus there could be where I would say I don't need this testimony if this is how you rule on something. I mean, it's always a little bit fluid. I mean, I overdesignated, if anything.

MR. MORELLI: Do you want to look at it and maybe a few of those, you could --

MS. FRESCH: But it was -- I mean, I actually thought Ms. Lawrence's testimony went fairly succinctly.

MR. DEUTSCH: Under the circumstances, it wasn't bad.

MS. FRESCH: I thought it was -- I

actually --

MR. MORELLI: It wasn't terrible.

MS. FRESCH: No, I thought it went fairly easily. And then, as you go, you kind of like -- I don't know. I thought it worked out fine.

MR. DEUTSCH: Would you like Brendan to put all of your page and line designations --

MS. FRESCH: I'm okay with just -- I'm fine with just me doing the -- the read like we did. I'm okay with that.

MR. DEUTSCH: Okay.

THE COURT: The read like we did?

MR. DEUTSCH: Instead of.

MS. FRESCH: With Ms. Lawrence.

MR. DEUTSCH: Instead of putting -- Ms. Fresch is providing the page and line designations that she wants read. I think I have very few objections to those, is my guess.

THE COURT: In other words, you will do a reading as opposed to showing --

MS. FRESCH: Yes, yes. It goes faster.

MR. DEUTSCH: I guess that's her prerogative.

So then my guy will be ready tomorrow with the video and we'll play it and do the same thing that she did with Ms. Lawrence.

THE COURT: Okay. And how much more time will Mr. Copperfield be on the stand, do you think?

MR. DEUTSCH: How much more time?

MS. FRESCH: I'm sorry, Your Honor.

THE COURT: How much more time do you think Mr. Copperfield will be on the stand?

MR. DEUTSCH: Well, Roger, you're up. How much time do you have with Copperfield?

MR. STRASSBURG: I thought I said 45 minutes.

MR. MORELLI: He said 45 minutes.

I don't think that I will be more than a half an hour, if that.

MR. DEUTSCH: And then the question is, anybody else have more with Copperfield? No?

MS. FRESCH: I would only -- you know, I have to see what the questions are.

THE COURT: What time should we tell Mr. Copperfield? How about 2:00 or something, 2:30?

MS. FRESCH: Yeah.

THE COURT: 1:30? You think we can get it done by then?

MR. DEUTSCH: Get the video in the morning, you mean?

THE COURT: Yeah. Finish with Mr. King plus the video.

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MR. DEUTSCH: I think once we finish Team Construction -- I'm sure Mr. Strassburg can go home tonight and tighten up his exam of his Team Construction witness to get it done sooner than an hour.

THE COURT: Well, I'm not going to make you do it sooner.

MR. DEUTSCH: I'm not making him, but I think he can.

MS. FRESCH: Okay. So we're doing Mr. King, Ms. Esack, Mr. -- Mr. Copperfield -- I almost forgot -- and then who are we doing?

MR. MORELLI: Then we're going to do Minh Cox.

MS. FRESCH: Okay. And that would be it?

MR. DEUTSCH: Yeah.

MS. FRESCH: Okay.

MR. MORELLI: We're getting tired.

MS. FRESCH: No, I'm just -- I'm trying to make sure I understand for tomorrow.

MR. STRASSBURG: It's going to be a furious finish, isn't it?

THE COURT: We're saying 1:30 for Mr. Copperfield, then?

MS. FRESCH: Yeah. I'm just going to tell

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him 1:30. I'm not going to risk 2:00.

THE COURT: And Mr. Popovich has a --

MR. POPOVICH: So it sounds fairly safe for MGM not to have its first witness here tomorrow because that sounds like a very full day.

Gentlemen? Is it safe to say that MGM will probably not be in a position to call its first witness tomorrow afternoon?

MR. DEUTSCH: Yes.

MR. MORELLI: Oh, that's more than safe.

MR. POPOVICH: Okay. So the second thing is I'll -- I'll put on the record, Your Honor, is at 5:00 p.m. I was handed a subpoena to MGM for production of any and all accidents, incidents, reports involving the Thirteen Illusion at MGM from all time up to the date of Mr. Cox's accident. And they're to be produced --

MR. DEUTSCH: Well, no, that's not -- that's not what -- read the full thing. It specifically --

MR. POPOVICH: "Including, but not limited to, any accident or incident involving Tara Lynn Anderson in or around April of 2004."

The -- the deadline is 23 hours from the time it was handed to me. It was 4:00 tomorrow.

Now, this was a 2004 accident. I've been

very open with Mr. Deutsch today because he's asked me three times.

MR. DEUTSCH: He has.

MR. POPOVICH: We have looked electronically. My understanding is our software program to keep track of these was -- was changed in 2005. If there is an incident report for this woman from 2004, my understanding is, so far, that it would be in paper in storage at Iron Mountain. Nothing has been done to try to find out what box that might be in.

MR. MORELLI: You got to give him more time.

MR. DEUTSCH: Yeah, if it's a question, Your Honor, of the timing of it -- it -- I have no time -- I have no problem with giving him more than the 23 hours that was in that subpoena. I have no problem with that, with the understanding, Your Honor, that, if it does come back and they find this accident report of this woman, that we may have -- you know, ask to put it on in rebuttal or sometime thereafter, this woman.

MR. POPOVICH: So if it was every incident report ever, I'd probably object at this point to late discovery and overbroad.

If we're narrowing it to just Ms. Anderson, 2004, we're going to do everything we can to find out if there is such a thing in existence. So I -- I

think --

MR. DEUTSCH: So I think we're willing at this point to limit it to Ms. Anderson.

THE COURT: All right. So ordered.

MR. POPOVICH: Thank you.

MR. MORELLI: Before we change our minds. That's funny.

THE COURT: Okay.

MR. MORELLI: Okay. You said it, boom. We'll do that, Your Honor. Otherwise, we'll be here forever.

THE COURT: Okay. Thank you. Have a nice evening and night, ladies and gentlemen.

(Thereupon, the proceedings concluded at 5:19 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Kristy L. Clark

KRISTY L. CLARK, CCR #708

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CLERK OF THE COURT

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

GAVIN COX and MINH-HAHN COX, husband and wife,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka DAVIS S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

vs.

BEACHER'S LV, LLC, and DOES 1 through 20, inclusive,

Third-Party Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY, MAY 2, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

JA003283

Case Number: A-14-705164-C

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* * * * * * *

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Paul King		14, 89 96, 100	108	
Minh-Hahn Cox	245	258, 266 273, 276		

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
556-1		28	
556-2		28	
559		65	
560		102	

LAS VEGAS, NEVADA, WEDNESDAY, MAY 2, 2018;

9:09 A.M.

P R O C E E D I N G S

* * * * * * *

THE MARSHAL: All rise. Eighth Judicial District Court, Department 13, now in session. The Honorable Mark Denton presiding.

THE COURT: Good morning. Please be seated. We're reconvening the jury trial outside the presence of the jury in Cox v. MGM Grand Hotel, LLC.

Please state appearances of counsel and identify the parties and party representatives who are present today.

MR. MORELLI: Yes. Benedict P. Morelli for the plaintiffs, Gavin and Minh Cox, who are in the courtroom.

MR. DEUTSCH: Good morning, Your Honor. Adam Deutsch, also for the plaintiff.

MR. FALLICK: Good morning, Your Honor. Perry Fallick for the plaintiff.

MR. POPOVICH: Good morning. Jerry Popovich for defendant MGM Grand Hotel, with Mr. Habersack. And I don't see any other of my cohorts today.

MR. FREEMAN: Good morning. Eric Freeman on behalf of David Copperfield and David Copperfield Disappearing, Inc.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts on behalf of Backstage Employment and Referral.

MR. RUSSELL: Good morning, Your Honor. Howard Russell, also on behalf of Backstage.

MR. STRASSBURG: May it please the Court. Roger Strassburg, assisted by my partner Gary Call, for defendant Team Construction Management.

THE COURT: All right. As I stated, we're outside the presence of the jury.

MR. STRASSBURG: Judge, the witness is present. Do you want me to excuse him while we do whatever we're doing or --

MR. MORELLI: Maybe.

THE MARSHAL: Yeah.

THE COURT: All right. Yes. Why don't you stand down and just -- remain just outside the door right there.

MR. MORELLI: Wrong door.

THE COURT: All right.

MR. MORELLI: Yes. Your Honor, last night we had occasion to speak to the witness that we spoke -- spoke about yesterday, Tara Anderson.

And we exchanged the information last night with all of the defendants by e-mail. And she's willing to -- to come in. And her accident was at the MGM Grand in 2004, and it sounds almost exactly like what we've heard already.

And we'd like the opportunity to be able to bring her in, and we're -- we're asking the Court when we could do that. Because I think we should be able to do that either tomorrow, Friday, or Tuesday. And it won't be very long, but -- but this is someone who filled out an accident report. This is someone who was injured. And we've vetted her, and we have proof already that we've sent to the defense that she was actually there, that she actually did participate.

And we -- we think, at this particular time, we should have the opportunity to be able to bring her in because we're -- we're going through this case and we're -- we're hamstrung with this defense that it's never happened before. And now we know of three other people, and the jury should be allowed to know that this so-called defense is just untrue.

And I don't believe that -- that the defendants should be given an opportunity to be doing discovery now when, in fact, they control all of the information. And the only reason that we were able to

come across these witnesses -- because we have not been traveling around the country looking for witnesses. The reason that we're able to find these witnesses is because Your Honor used his discretion and opened the courtroom to cameras, and these people have been watching and listening.

And when they hear the untruth about, you know, no one's ever been injured before, no one's ever fallen before during the Thirteen Illusion, they get upset about it.

And so we're -- we're asking for an opportunity to bring in this witness without spending another day doing depositions. I think the defense has had ample opportunity, and Your Honor knows at this particular time that this is just an untrue defense.

It's an untrue defense, and I think we should be -- we should be allowed now to get to the truth in this case and not keep allowing the defendants to promulgate this untruth. It's just unfair to the plaintiffs. We've been going through this almost five years already, and -- and -- and that's -- and that's our request at this time.

THE COURT: Response?

MR. POPOVICH: Well, Your Honor, we would incorporate prior briefs on these issues with the prior

witnesses. At some point, it would seem that a cumulative objection would be appropriate.

We're talking about something 14 years ago. So the distance in time also raises the issue of relevance and undue prejudice.

Your Honor knows that I was served with a subpoena yesterday afternoon at 5:00 by Mr. Deutsch. Mr. Habersack actually worked into the evening last night trying to track down an electronic trace of this woman's report that they're indicating was filed.

So far, we have not had any luck. I've asked Mr. Deutsch this morning to let us know whether she was using a different name at the time, whether it was a married name or a divorced name or a maiden name, whatever, so that we can continue this search. But, so far, we -- you know, they're indicating all of the information is in the possession of the defendants. Well, I wish that were true because then I'd have more information to respond to Your Honor. So ...

THE COURT: All right.

MR. RUSSELL: Again, following up on what Mr. Popovich just said about prior -- you know, prior briefing. As the Court knows, the request that was made during discovery was for seven years, seven years.

The request for 30(b)(6) deposition was for

five years. That's what Mr. Kenner prepared himself for.

There was no additional request for prior incidents beyond that. So we're already outside that time frame. So that's number one.

Number two, I keep hearing the same thing that, well, the defendants keep saying that no one's ever fallen. We've not said that. Mr. Kenner was asked by Mr. Morelli on the stand, "Do you know people have fallen?" He said yes. Then he asked the follow-up question about injury.

Ms. Weall got up and testified about people knowing of falling. I said it during my opening. So I'm tired of hearing that they said no one's fallen, because we haven't said that.

As far as the injuries go, even Ms. Lawrence's testimony didn't contradict anything Mr. Kenner said because there's no evidence at all that that was ever reported to Mr. Kenner. So that's the problem with the way they keep changing the story about, well, they -- they talk about falling and injury.

No, they asked for a certain amount of discovery. We responded that we didn't have any record of injuries within that seven-year period. That's not

been rebutted.

Ms. Anderson -- I apologize. I think her name is, the new one, Tara -- she doesn't change that, because that's 2004.

I also have a problem with the notion that, well, we couldn't have found these people. Even though the Court only recently opened the courtroom, Mr. Morelli and his firm are not shy about pretrial publicity. And they were putting out press releases in 2016 about this, and they were giving interviews back in 2016 about this.

If they had put this publicity out there then, who knows what they would have found out then. At this point, as far as -- and, finally, as far as Backstage is concerned, this is cumulative because now plaintiffs can go to the jury and say, "Well, you heard from Ms. Lawrence. She fell. She scraped her knee. She had blood coming down her knee. Backstage must have known about it."

They can make that argument. They have the evidence to make that argument now. So now bringing in another witness who would have been involved with different people, because this is -- again, this is nine years before Mr. Cox's injury. We don't know the people at Backstage who were running it. We don't know

anything about the circumstances of her accident. And so it would just be cumulative at this point and prejudicial and a waste of time.

Your Honor, we've gone too far. I mean this -- we got to get moving on this case. Thank you.

MR. FREEMAN: I would join Mr. Russell's comments. I don't think anything more needs to be said as far as David Copperfield and DCDI are concerned while we're in the same boat with Backstage.

THE COURT: All right. I'm not going to permit her to testify in plaintiff's case in chief. I'll reserve ruling on the rebuttal.

You're addressing the defense. Let's see what the defense is. Okay?

MR. MORELLI: Well, Your Honor, let me just respond to a couple of things. First of all, the notice to admit is forever. It's not for seven years. That's the first thing.

THE COURT: Fine.

MR. MORELLI: The second thing is, when they came into this Court, they fashioned this new defense, which is no one has ever been injured during this illusion.

THE COURT: But they haven't gotten into their defense yet. We're still on the plaintiffs' case

in chief.

MR. MORELLI: All their witnesses were put on by us. They keep saying the same thing.

THE COURT: I understand. I've made my ruling.

So what we're going to do is we won't permit the testimony in the case in chief, but I will consider it in rebuttal okay. So we can get this case moving on.

Ready for the jury?

Bring the witness in.

THE MARSHAL: All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. You may be seated.

IN UNISON: Good morning, Judge.

THE COURT: Will counsel stipulate that the jury is present?

MR. POPOVICH: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

MR. MORELLI: So stipulated.

THE COURT: Very well. The witness has retaken the stand.

You realize you're still under oath, sir?

THE WITNESS: I do.

THE COURT: Okay. You may proceed.

MR. STRASSBURG: All right. Are we good, Judge?

THE COURT: You may proceed.

MR. STRASSBURG: Ready.

CROSS-EXAMINATION

BY MR. STRASSBURG:

Q. Mr. King, thank you for returning.

Draw your attention to your testimony yesterday.

You were shown this photo that I have up, and you identified this feature as a rubber transfer?

A. That is correct.

Q. And you identified that it came from a power buggy?

A. Correct.

Q. Okay. Can you explain to us how power buggies function, what -- I mean, what is their function on the project?

A. Yeah. So we use them in transporting bulk goods or concrete. They're basically giant tubs that have two wheels on the front, guide wheels in the back, and we can ride on them.

And you pour concrete in them, and then you'll bring them through the casino. And you'll dump the concrete out where you need it. And they have -- they're propane with a scrubber.

Q. And how large are they?

A. They come up to about mid-waist, and they're the size of a Georgia buggy plus the motor on the back; so they're about 4 1/2 feet long.

Q. How much do they hold?

A. About a yard of concrete.

Q. Okay. And how is it that they leave rubber transfer marks on pavement?

A. Because they have rubber tires. When you load them up, they're heavy.

Q. Do they steer?

A. Yes.

Q. Do all the wheels steer or just some of them?

A. The back wheels.

Q. Okay. And are you aware of any illustrations of these kind of buggies?

A. Yes.

MR. STRASSBURG: I'd like to show him an illustration.

Do you have a problem with that?

MR. DEUTSCH: No. I've got no problem with

that at all.

MR. POPOVICH: No objection.

BY MR. STRASSBURG:

Q. Let me direct your attention to this image. Can you identify that for us, please.

A. That's a power buggy.

Q. All right. And could you come down here and just show us how a -- how you go about operating this at the -- the job location. I mean, the -- the accessway where the dumpster is, how would these -- this equipment be used at that place?

A. So this would be facing the concrete truck, which would have backed up so that we can load the chute into the hopper. Then we would have turned these around to drive them into the casino to the jobsite, and then this dumps the concrete wherever we're putting it.

Q. And you said the "chute." What is that?

A. The -- the chute on the concrete truck is a chute. It's just a chute that comes -- allows the concrete to come out to whatever level you need it at.

Q. And the concrete that came to the -- to the Beacher's site, did it come in bags that have to be mixed or did it come premixed or in some other form?

A. Both. So we -- we order ready-mix concrete,

which is from the concrete trucks, for larger pours. Small things, like pouring a little piece of concrete, we would have used bagged mix if it was nonstructural.

Q. Uh-huh. And for larger jobs, you would use the ready-mix?

A. Correct. Yeah, anything larger or structural, you want to use ready-mix.

Q. All right. And how is it that you think these tires would have left marks on the pavement?

MR. DEUTSCH: Objection, Your Honor.

BY MR. STRASSBURG:

Q. Well, have you seen --

I'll withdraw it.

Have you seen these vehicles leave tire marks on pavement before?

A. Yes.

Q. Okay. How is it that they do that?

A. When they get loaded up with concrete, they're very heavy. And these rear wheels right here turn, and it's just -- it transfers the marks onto the pavement.

Q. Okay. So which is forward? Do they go --

A. This is forward.

Q. -- this way or that way?

A. No. This is forward. And the operator will

stand on this and drive the machine.

Q. Okay. So you steer with the back wheels?

A. Correct.

Q. And the front wheels don't steer?

A. The front wheels take most of the load.

Q. Okay.

A. They don't steer.

Q. And which set of wheels do you think made those marks? The front or the back?

MR. DEUTSCH: Objection. Calls for speculation, Your Honor.

BY MR. STRASSBURG:

Q. Have you seen in prior jobsites which set of wheels leaves marks on the pavement?

A. They all do.

Q. Okay. Thank you, sir.

Would you expect that the sweeping operation that the team performs as part of cleanup, when they sweep out around the dumpster, would that operation remove rubber transfer marks or would you expect those marks to stick tight enough that they would not be removed?

MR. DEUTSCH: Objection, Your Honor. Lacks foundation. The witness testifies that he has no recollection of any sweeping of any kind going on

outside that day. This witness said that, so ...

MR. STRASSBURG: I'll withdraw it.

BY MR. STRASSBURG:

Q. Have you ever seen the sweeping operation conducted on pavement at any of your jobs?

A. Yes.

Q. And have you ever seen the sweeping operation conducted on jobs where there was rubber transfer marks from the buggies on the pavement?

A. Yes.

Q. And does the sweeping remove those marks?

A. No.

MR. POPOVICH: Your Honor, can we get an exhibit number for this buggy illustration?

MR. DEUTSCH: What is this thing called?

MR. POPOVICH: Power buggy.

MR. DEUTSCH: Power buggy.

MR. STRASSBURG: I guess the last exhibit that I have shown is 557. I suppose we can make it 558, if that's agreeable.

MR. POPOVICH: Fine by me.

THE COURT: Any objection?

MR. DEUTSCH: It's just coming in as a demonstrative; right?

MR. STRASSBURG: Yeah, I'm not offering it.

I'm just -- but he just wants it marked for identification, and that's fine.

MR. DEUTSCH: Yeah. Yeah.

THE COURT: So ordered.

MR. STRASSBURG: All right. So just for the record, we're marking as D558 this image as a -- a power buggy.

BY MR. STRASSBURG:

Q. Now, you remember testifying yesterday about dust, and you were asked whether there are circumstances under which dust can be a slip hazard.

A. Yes.

Q. And you said, yes, if extreme. Remember that? Or "excessive," I think, was your word.

A. Excessive.

Q. All right. And you said that it depends upon the floor?

A. Correct.

Q. All right. Would you explain your answer.

What about the floor determines, in your view, whether dust is excessive and presents a slip hazard?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

MR. STRASSBURG: He opened the door, Judge.

THE COURT: Go ahead.

THE WITNESS: The type of flooring surface. Usually, if it's like polished marble, when you put -- when dust gets on polished marble, it gets more slippery. It depends on the flooring and the -- what we call it is the coefficient of friction, which most of the time is -- in our industry is required to be at .05.

MR. DEUTSCH: Objection, Your Honor. Move to strike. Requires expert testimony in which he has no foundation to give at all.

THE COURT: I'll sustain the objection.

Pose another question.

BY MR. STRASSBURG:

Q. How is it that, as a project manager, you know what the customary target coefficient of friction is in construction?

A. It's written in our specifications for projects on flooring types and the flooring surface.

Q. And, to your recollection, does the porosity of the surface have any -- is that a factor in whether or not dust is a slip hazard?

MR. DEUTSCH: Objection, Your Honor. Calls for opinion that he's not qualified to give.

THE COURT: I think you need to clarify what

the term "porosity" means.

MR. STRASSBURG: Yes. Yes.

BY MR. STRASSBURG:

Q. You understand the term "porosity"?

A. Yes.

Q. Okay. And have you -- do you have experience, as part of your work, with surfaces -- flooring surfaces of differing degrees of porosity?

A. Yes.

Q. And do you have experience with the degree of porosity of surfaces like the concrete accessway where the dumpster was?

A. Yes.

Q. And how would you characterize the porosity of that surface?

MR. DEUTSCH: Objection. Your Honor.

THE COURT: Overruled.

THE WITNESS: I mean, concrete is porous. So depending on what finish you put on it, usually it's porous. It soaks up water. That's why we put vapor barriers down underneath it, so -- we put crack isolation on top and waterproofing on top of it. It's just a porous material, no matter what kind of finish you apply to it.

/////

BY MR. STRASSBURG:

Q. If -- if -- by a porous material, would it be your expectation that you'd see under a microscope that those pores would reveal themselves that -- even if they weren't visible to the naked eye?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. Do you have any experience in construction with consulting micrographs of various surfaces utilized on your projects?

A. No.

Q. Okay. Fair enough. Are you able to recall the date that work began on the Beacher's project?

A. Approximately.

Q. And what would you say approximately?

A. Early August.

Q. Let me direct your attention to a time card that is in the time card folder. I'll represent in exhibit -- Defense Exhibit 413. It's in time cards.

MR. DEUTSCH: Whatever you want.

BY MR. STRASSBURG:

Q. Do you see that on the screen?

A. Yes.

Q. And can you identify that, please?

A. That is a time card for David Voiss.

THE COURT: What's that exhibit number?

MR. STRASSBURG: It's Exhibit 413 in the time cards folder.

BY MR. STRASSBURG:

Q. And let me show you this portion of it and ask you -- I guess I should -- on a project like Beacher's where you're -- you're putting in tenant improvements to move a new tenant into a former tenant's space -- you with me on that?

A. Yeah.

Q. -- what -- what's typically the first construction operation? What type?

A. Mobilization and then demo.

Q. Okay. All right. Let's zoom in on this part of the time card.

Do you see where it says "start demo"?

A. Yes.

Q. All right. And can we look at the -- the date here of the card.

A. It's Monday.

Q. August 12?

A. August 12th.

Q. Do you see that? All right.

Does that help refresh your recollection

that -- that the project at Beacher's started on August 12th, 2013?

A. The -- yes.

Q. And as you testified to some -- the project started with demolition on August 12th, 2013; right?

A. Yes.

Q. Now, when -- when last we were talking yesterday, I think we were talking about Defense Exhibit 555, which would have been your -- your time card.

And I -- my records are showing that we admitted it. Yes? 555?

MR. MORELLI: I know 553 and --

THE COURT: 555 was admitted.

MR. STRASSBURG: It was admitted. I thought so.

MR. MORELLI: It's in?

MR. FALLICK: Yeah.

MR. MORELLI: It's in. It's in.

BY MR. STRASSBURG:

Q. All right. So 555, your time card here.

And we discussed the -- the part here about the Beacher's project. Do you see that?

A. Yes.

Q. Okay. Now, it -- it looks as though that

your time card has a number of different projects on it.

A. That is correct.

Q. Okay. Can you tell us whether any of those other projects were also in the MGM Grand or were they all elsewhere?

A. I can -- yeah, there were the MGM Sports Book restrooms, the Beacher's SS line.

Q. Anything --

A. That's it.

Q. Anything else?

A. The conference center walkway. And that's all.

Q. Thank you, sir. And were any of those projects ever ongoing during the Beacher's project in November of 2013?

A. I can't answer that.

Q. Don't remember?

A. I don't remember.

Q. Can you describe what the Beacher's SS line entailed?

A. I can. That is the sanitary sewer removal of the -- the old sanitary sewer system that Beacher's tied into. So there's a bar out front of Beacher's. So all of that sanitary sewer line was replaced as a

part of the -- integral to the Beacher's project, as we had to tie into 50-year-old sanitary sewer line which had degraded so bad it couldn't be used.

Q. Okay. And would that project have used the same or a different dumpster as the project that brings us together today?

A. Would have used the same dumpster.

Q. Let me direct your attention to Exhibit 556. Now, this one, I'm not showing as admitted.

THE COURT: I don't see it as having been admitted.

MR. DEUTSCH: Which one is this?

MR. STRASSBURG: Do you want me to go through the whole process?

MR. DEUTSCH: Just tell me what it is. What is it?

MR. STRASSBURG: It's 556.

MR. DEUTSCH: 556.

MR. POPOVICH: Do you want all of it or just --

MR. STRASSBURG: Just that one time card.

MR. POPOVICH: So 556-2.

MR. STRASSBURG: Yeah, 556-2. Oh, and maybe 1.

MR. POPOVICH: Nothing on it.

No objection from me.

MR. DEUTSCH: No objection from me.

MR. ROBERTS: No objection, Your Honor.

MR. STRASSBURG: All right. We move into evidence 556-1 and 2.

THE COURT: Admitted.

(Whereupon, Defendant's Exhibit 556-1 was admitted into evidence.)

(Whereupon, Defendant's Exhibit 556-2 was admitted into evidence.)

BY MR. STRASSBURG:

Q. Now, 556-1, can you identify this card as the Noble card -- and let me show you the date -- from November 11th?

A. Yes.

Q. And can you -- it appears to show that nobody was working that day except maybe supervision.

Do you remember why?

A. It's Veteran's Day.

Q. And the preceding Sunday, were you on the job then?

A. I -- I don't believe I was. The Sunday before Monday?

Q. I mean, was Team -- the Sunday before Veteran's Day, was Team working?

A. No. We're union.
Q. And the Saturday you weren't working either?
A. No.
Q. So the last workday prior to the day of this accident on November 12th would have been that preceding Friday; right?
A. Correct.
Q. Now, let me show you the entry for the 12th.
Can you identify this as the Noble Specialties time card for the day of the accident, November 12th, 2013?
A. Yes.
Q. All right. And this would have been the Noble Specialties part of the business, so this would have been the union labor on the project?
A. That's correct.
Q. And you've previously testified that it was the job of the superintendent, David Voiss, to create these documents each day before he knocked off; right?
A. That's correct.
Q. All right. And when did Team and Noble knock off on a job day at the Beacher's project?
A. Our shift ended at 2:30.
Q. And after 2:30, did everyone go home?
A. Yes.

Q. Now, can you interpret for us the highlighted parts. Where it says "Phase 1420," can you tell us what that relates to.

A. On certain projects, we have different phases. So if they're larger projects, we have a Phase Area 1 and/or Phase Area 2, depending on how we're approaching that project schedule-wise.

The numbers below that are the cost codes. So 1420 is our cost code for cleanup. And then there's a written description below it on what the cost code is.

Q. Okay. And I wanted to ask you, the written description appears to say cleanup; is that right?

A. That's correct.

Q. And what does that entail, the cleanup?

A. It's our daily labor. We call it daily labor cleanup. So it's our laborers cleaning up. We try to do our best to -- to have the trades pick up after themselves. There's a standard that we have to maintain on the Strip, and that's why we have those laborers.

Q. So it sounds -- are those the guys with the brooms?

A. Correct.

Q. All right. And the -- the area of the

dumpster on the accessway, would sweeping that area up, would that be part of the 1420 cost code or some other code?

MR. DEUTSCH: Objection, Your Honor. Leading.

THE COURT: Sustained.

BY MR. STRASSBURG:

Q. Where would the sweeping of the dumpster be coded on the time card?

A. Under 1420, cleanup.

Q. Now, where it says -- there's an 8.0 and 7.0. Do you see that?

A. I do.

Q. And what are the units associated with those numbers?

A. Those are hours.

Q. So would it be a fair summary of your testimony on this document that, on November 12th, 2013, the records of Noble Specialties indicate that 15 person-hours were expended on the cost code of cleanup, which would have included the area around the dumpster?

A. Yes.

Q. Now, I take it, then, that it's not just the area around the dumpster, I mean, in all fairness;

right?

A. No. It's --

Q. What else is involved?

A. It's our haul-in, haul-out route through the casino, inside the jobsite, anywhere where we're interacting, essentially.

Q. And, now, the haul-in, haul-out route inside the casino that you mentioned, what's involved in this cleanup function for that location?

A. Throughout the day, we'll have to have guys out there with vacuums so that the guests don't experience dusty footprints throughout the casino.

Q. Are there any, to your knowledge, protective pieces of equipment that are utilized to keep the haul-out route clean?

A. Yeah. We use what we call carpet mask, which is what you see sometimes in homes for sale where they lay down plastic on the carpet. It just -- you roll it out and it sticks down, and it protects the carpet from being hurt or --

Q. Now --

A. -- dirty.

Q. -- there's been shown to the jury Exhibit 553, which is this document.

And you're familiar -- are you familiar with

this document as well?

A. Yes.

Q. All right. And -- and what is it?

A. That is our haul route and dumpster lay-down area.

Q. All right. And is this document a -- it looks like it comes from a blueprint, but it's not --

MR. DEUTSCH: Objection, Your Honor, to the characterization. He already testified yesterday it came from a blueprint.

MR. STRASSBURG: I'll withdraw it. We don't need a speech, Adam. I'll withdraw it.

BY MR. STRASSBURG:

Q. Can you tell us what your understanding of the source of this document is?

A. It comes from the architect of record for the Beacher's project.

Q. All right. And does Team mean -- when they -- how does Team make use of this document in its own construction documents?

A. This is essentially what we referenced to put together in this case that item there, the haul-in and haul-out route.

Q. All right. So is it -- is it meant to be a complete depiction of everything around the dumpster or

just the route itself?

A. It's meant to be a site plan overall.

Q. Okay. Now, we also have seen this where it says -- do you see where it says "track haul route"?

A. Yes.

Q. So you guys can't spell; right?

A. I cannot spell that well. That is true.

Q. I get it.

A. And my wife is an English teacher.

Q. She is? You poor man.

A. I know.

JUROR NO. 8: Sorry for her.

THE WITNESS: Yes.

MR. STRASSBURG: Yeah, poor her. We all marry our better half.

THE WITNESS: I'm good at math.

BY MR. STRASSBURG:

Q. So where it says "241 feet," do you see that?

A. Yes.

Q. What does that indicate?

A. The lineal footage of our haul route --

Q. Okay.

A. -- from jobsite to dumpster lay-down area.

Q. All right. So if we look at this, then, the area in gray, can you tell us what that is?

A. That is the project site.

Q. Okay. And when you say "project site," what do you mean?

A. That's where the tenant improvement happens. So that's where we're demoing and building out the Beacher's facility.

Q. So it sounds like the actual construction work that Beacher's hired you to do is done in this gray area here; right?

A. Correct.

Q. And the area here in turquoise, is there any constructing of things done here?

A. No.

Q. And what is the only function that's performed here in the -- this area?

A. It's where we offload materials to bring in and where our dumpster goes, since we can't, obviously, bring a dumpster into the casino.

Q. Okay. And the -- the 241 feet, then, that's the distance from the jobsite here in gray where you actually do the work through the -- well, what is all this here?

A. The -- in general terms, I mean, that's the casino, so ...

Q. So these would be tables?

A. You have slot machines, table games. And the configuration has changed a little bit since then. I -- I couldn't tell you what exactly they are, craps or blackjack.

Q. And this thing over here, this area, what's that?

A. That is the Copperfield Theater.

Q. Okay. And -- and so these here, what are -- these are supposed to be what? Tables and stuff?

A. So the tables are in the center. Those are the table games.

Q. Here?

A. Yes.

Q. All right. And so all of this is guest country; right?

A. Yeah.

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Sustained. You want to rephrase?

BY MR. STRASSBURG:

Q. How would you characterize all of this area here?

A. Front of the house.

Q. Front of the house?

A. Correct. That's what we call it, front of the house.

Q. Okay. And who typically frequents -- what kind of people typically frequent front of the house?

A. Patrons, guests.

Q. Okay. So would it be a fair characterization that this is guest country here?

A. Yes.

Q. All right. So your haul-out route goes from -- it starts here in the gray area, which is the construction site; right?

A. Yes.

Q. Through the front of the house where the guests are, through a -- these are the first set of security doors; right?

Do you want to come down here?

A. Yes, those are the first set.

Q. All right. And then the second set --

A. Yes.

Q. -- of security doors?

And then the dumpsters out here?

A. Correct.

Q. All right. Now, can you show us how Team protects the carpet?

A. Yeah. I've never done it in front of a lot of people.

Q. Oh. You have stagefright?

A. I have a little bit of stagefright, yes.

Q. All right. I'll talk you through it. Pretend they're not there.

I would offer to help, but you'd probably be better off without me.

MR. POPOVICH: So stipulated.

BY MR. STRASSBURG:

Q. Why don't you lay down a track right here.

A. (Witness complies.)

You have scissors?

MR. STRASSBURG: Can we borrow scissors?

THE WITNESS: I don't want to knife it.

BY MR. STRASSBURG:

Q. You're doing fine. Doing fine. All right. You got it. Okay?

And, Judge, this does come up, so don't worry. And we'll take it out when we're finished.

THE WITNESS: I got it. You want another roll?

BY MR. STRASSBURG:

Q. No. That will do it.

A. All right.

Q. That will do it.

Can you all see?

JUROR NO. 12: Yes.

BY MR. STRASSBURG:

Q. Thank you, sir.

A. You want me to cut this before -- can I cut this?

Q. I know. A trip hazard; right? Hold on.

A. Show you an easier way.

Q. Okay. All right. And so now that we've -- Just for the record, we've rolled out this -- What do you call this mask?

A. It's carpet mask.

Q. Carpet mask?

A. Mask. Yeah.

Q. With a m-a-s-c -- m-a-s-k?

A. M-a-s-k.

Q. And is this something that people can walk on or --

A. Yes.

Q. So -- and what is the function of this carpet mask?

A. To protect the carpet.

Q. From what?

A. Our haul-out equipment, from damaging the carpet, from making it dirty.

Q. Okay. So the mask is to protect this 241 feet of carpet from everything that goes on in this

construction space that's located right in the middle of MGM's expensive casino; right?

A. Correct.

MR. DEUTSCH: Your Honor --

BY MR. STRASSBURG:

Q. Full of guest --

MR. DEUTSCH: At this point, I would object. Considering that Mr. Strassburg just noted that this is only going on the 241 feet of concrete, this accident happened outside.

MR. STRASSBURG: Carpet.

MR. DEUTSCH: I don't see the relevancy anymore of this.

MR. STRASSBURG: Oh, but where did the dust come from?

THE COURT: Go ahead.

MR. DEUTSCH: Your Honor, I'd move to strike his comments as well. I'd ask you to tell the jury to disregard his comments, Your Honor.

THE COURT: Disregard the comments.

MR. STRASSBURG: Disregard the comment.

BY MR. STRASSBURG:

Q. Would it be fair to say that the function of this carpet mask here is to keep dust that may be created from the demolition you talked about in the

construction site from getting onto the carpet and out of the casino in anywhere other than where it's supposed to go?

MR. DEUTSCH: Objection, Your Honor. Leading.

THE COURT: It is leading.

Rephrase.

MR. STRASSBURG: Probably is. Sorry about that, Judge.

BY MR. STRASSBURG:

Q. Describe, would you please, the function of the carpet mask in the area that we've been talking about here that's shown in --

MR. DEUTSCH: Objection, Your Honor. Asked and answered.

THE COURT: Overruled. He's rephrasing the question you objected to.

THE WITNESS: So it's designed to prevent damage to the carpet and footprints on the carpet destroying the carpet. It also gives us a path of travel to follow so that we maintain our haul-out route.

BY MR. STRASSBURG:

Q. Okay. Now, you mentioned footprints.

And where do the footprints -- what -- how

are the footprints that you protect from with this plastic?

A. So instead of walking on the carpet, you're walking on the plastic. And if any footprints do occur, they occur on the plastic.

Q. And where would -- where would be the source of the material that would leave the footprints?

A. Inside the jobsite.

Q. And what would that source be?

A. When you demo drywall, you get drywall dust. When you demo concrete, you obviously get concrete dust, debris, and aggregate. When you cut plywood, you get sawdust.

Q. All right. And what techniques does Team use, other than the plastic, to keep that dust in the -- in the construction site from getting out?

A. We use pieces of carpet that we'll wet down. Every once in a while, we'll use what we call sticky mats. The wet carpet actually works the best. So we take scraps of carpet and wet it down, and people step on that as they walk out. It's like a track-out solution. It seems to work better than anything else. Then we use Kleen Sweep when we sweep inside the jobsite.

Q. Anything else?

A. We have used airless sprayers in the past. I'm not sure if we used them on this during demo, which are airless paint sprayers. I don't know if we used them on this one or not.

Q. All right. And what techniques does Team utilize in cleanup around the dumpster which is outside?

MR. DEUTSCH: Objection, Your Honor. Foundation. The witness said he didn't recall any going on that day. That's all that's relevant.

THE COURT: Sustained.

Lay a foundation.

BY MR. STRASSBURG:

Q. Are you familiar, from your own personal observation, with the customary cleanup techniques that Team -- well, that you, as project manager, wanted to be employed around the dumpster?

A. Yes. And that's --

Q. All right.

A. We call it broom clean. So everything is swept up around the dumpster.

Q. All right. Now, you said "broom clean"?

A. Correct.

Q. Are you familiar with Team's contract with its customer Beacher's?

A. Yes.

Q. And how is it that you had to become familiar?

A. I helped develop it.

Q. Okay. And when the contract -- to your knowledge, what is the significance of the contract?

A. It controls what we do with the client. It tells us how to do it. It tells us what to do. It defines our scope. It defines our limitations.

Q. All right. Let me -- 408 -- Defense 408. Let me show you --

MR. DEUTSCH: Is it in evidence already?

I have no objection.

MR. STRASSBURG: No objection?

MR. POPOVICH: It's already in evidence.

MR. DEUTSCH: Well, I thought only a certain piece was in evidence, only that one -- I thought only that one section, but it doesn't matter to me.

MR. STRASSBURG: All I want is the first page in that one section.

MR. DEUTSCH: You can do whatever you want.

BY MR. STRASSBURG:

Q. Okay. Let me show you the first page here. I'm showing you the first page of Defense 408. Can you identify that for me.

A. Yes.

Q. What is it?

A. It's the first page of the prime contract between Team Construction and Beacher's.

Q. All right. And is that the contract that you were talking about when you said it sets your scope and your duties?

A. Correct.

Q. All right. Let me show you. It's TCM000076 of Defense Exhibit 408.

Do you have that in front of you?

A. Yes.

Q. All right. Now, in your understanding of your -- the contract that guides your work, is this the relevant section or is there some other one?

A. This is some of the relevant section. All of it's relevant.

Q. All right. I direct your attention to Article 6.1, where it says, "All work shall be in accordance to the provisions of the plans and specifications approved by the architect of record by way of separate construction administration contract with the owner. All systems shall be in good working order."

Do you see that?

A. Yes.

Q. What's your understanding of what that entails?

A. So we're constructing the facility or the venue in accordance with the AOR, the architect of record, that's been hired by the owner.

Q. All right.

A. We're doing it in conjunction with what they're providing in terms of plans and specifications.

Q. All right. And do you have an understanding that -- once your work has been done to the plans and specifications approved, do you have an understanding as to whether you're finished with your work and you've completed your contract or whether there's more to do?

MR. DEUTSCH: Objection, Your Honor, to the relevance. Whether or not they contracted to keep it clean is irrelevant. What's relevant is if they kept it clean or not.

THE COURT: Overruled.

THE WITNESS: So, no. To answer your question, usually at the end of a project, we have a punch list. And it's usually where the owner will do their walk-through whenever you have some construction done. There might be minor corrections or modifications. We find things that work on paper that

don't work so great on the plans. So the job's not over until everyone is satisfied.

BY MR. STRASSBURG:

Q. And that's when the punch list is completed?

A. That's when the punch list is completed.

Q. All right. So after you perform your contract, the punch list is completed, has Team done its job?

A. Yes.

Q. Okay. Now, are you familiar with the standard of care under which tenant improvement contractors such as Team conduct themselves in the Las Vegas market?

MR. DEUTSCH: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. STRASSBURG:

Q. And how did you gain that familiarity?

A. I have worked on the Strip for ten years.

Q. Tell me about that work you've done on the Strip. What other projects have you been involved in?

A. City Center, Encore. We do a lot of work at the Wynn. We do a lot of work at most of the casinos, MGM Grand. Done work at the Linq. Done work at the

Mirage. I've done work at Excalibur. I've worked at most casinos in town.

Q. Okay. Is Team -- what is the focus of Team's business? Is it the Strip? Is it Vegas as a city? Is it the state of Nevada? Or something else?

A. We do almost all of our work on the Strip.

Q. And are you able to estimate about what percentage of your work is on MGM projects?

A. On MGM projects, it's probably 50 percent.

Q. Now, what specific projects can you recall working on before Beacher's?

MR. DEUTSCH: Objection to the relevance, Your Honor.

THE COURT: Overruled. I'll allow it.

THE WITNESS: Actually, it was my -- one of my first projects with Team Construction. It was the -- called Pub 1842 at the MGM Grand. It's in the shops on the walkway out to the pool.

MR. STRASSBURG: And, well, I -- I'd like to show him a picture of what we're talking about, if that's all right.

MR. DEUTSCH: I don't see any relevance, but if you'd like to show it to him, you can.

BY MR. STRASSBURG:

Q. Is this the project you were talking about?

A. Yes, it is.
Q. And what was your role on that project?
A. I was the project manager.
Q. Okay. Any other projects you can remember?
A. Prior to Beacher's?
Q. Yes.
A. There might have been some small ones in between. I -- I don't remember what they are.
Q. All right. Now, the -- your familiarity, then, with the customary standard of care for a tenant improvement contractor such as yourself, from your personal observations after ten years in the business, when is the standard of care for Team -- when, under the customs and practices of the industry, is it deemed to have been satisfied?
MR. DEUTSCH: Objection to the form, Your Honor. Calls for a legal conclusion.
THE COURT: I'll allow him to state his understanding.
THE WITNESS: When the client's satisfied, when we don't impact the client's operations, or we complete our projects on time and on budget.
BY MR. STRASSBURG:
Q. Okay. And based on your involvement as project manager with the Beacher's project, did Team

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meet and satisfy the customary standard of care for work of that type?

MR. DEUTSCH: Objection, Your Honor.

THE WITNESS: Yes.

THE COURT: Overruled.

THE WITNESS: Yes.

MR. STRASSBURG: Your answer was?

THE WITNESS: Yes.

BY MR. STRASSBURG:

Q. Thank you, sir.

A. It was a very unique project.

Q. Can I ask you -- you know, we've been talking to you now for a while, but we don't really know much about you.

Can you tell us where you're from originally.

A. I was born in St. Louis.

Q. All right.

A. Moved here in '93. Saw the Dunes implode. That was pretty cool.

Q. I'm sorry?

A. I saw the Dunes implode.

Q. Oh, really?

A. Yeah, when I was a kid.

Q. Okay.

A. I grew up here, went to UNLV, and been doing

construction for the past 11 years.

Q. Where'd you go to high school?

A. Centennial High School.

Q. And do you have any college or --

A. I went -- I have a degree from UNLV from the college of engineering.

Q. And what's your degree in?

A. Construction management.

Q. All right. And is that a two-year degree, four-year degree, or graduate degree?

A. It's a four-year degree.

Q. When did you get it?

A. 2008, 2009.

Q. These are the easy ones?

A. Yeah, that's -- I don't remember exactly what year, but it was 2009 or 2008.

Q. When did you join Team?

A. When my daughter was born. So 2013, January.

Q. How -- uh-huh. And how many kids do you have?

A. Two.

Q. Okay. And let's see. How did -- I mean, where'd you hire in at at Team?

A. As a project manager.

Q. Okay. What can you tell us about Team? Can

you describe the nature of Team's business?

A. I mean, we -- we -- I've never worked at a company where you strive for client satisfaction. Most people have probably never heard of us. We do quite a bit of work on the Strip.

Everybody's probably been to the Shake Shack, for instance, on the Strip. That was us. But you've probably never heard of us. So we pride ourselves on -- it's word of mouth with our clients.

I mean, there's four or five major operators on the Strip. And if you don't do well on their properties, you don't work on the Strip. And if we don't work on the Strip, we don't work.

Q. Could you tell us what attracted you to Team? When you joined the company, why did you want to work there?

A. It was a good environment. The owners put in a lot of resources to the company. They allowed you to be creative and implement ideas, and -- and it was just a developing company at the time that I started. And it has some really good people. Some great people.

Q. And is there anything about the type of construction that Team typically does that especially attracted you, or is construction pretty much construction?

A. It's the high end. I mean, when you deal with tenant improvements in hotels, it's the high-end aspect of it. There's a quality factor there. I've done work off Strip, and it's -- it's hard to get quality. When you see baseboards that zig and zag, I mean, it's -- it's hard to get that quality that you have on the Strip in a lot of places.

Q. And on your project, who is the final word on the zig and zag of the baseboards? Is that the superintendent, the foreman, the project manager, or someone else?

A. So it starts with our super to recognize what we call deficient work or bad work. And then if it somehow manages to get past the Team staff, the architect will call it up on the punch list. And then we'll correct it.

Q. Can you estimate for us the number of employees at Team?

A. At that time?

Q. Yes.

A. I want to say around 11.

Q. Now, you -- we mentioned -- oh, first of all, does Team have a license?

A. Yes, we have a Nevada contractor's license and a Clark County business license. It's called a

multijurisdictional license.

Q. Now, let me direct -- you mentioned broom clean, and I don't think we ever discussed that. So let me go back to Defense Exhibit 408, Article 6.5. Do you see that?

A. Yes.

Q. And this is the provision -- and I'll just read it into the record. "A contractor" --

MR. DEUTSCH: Your Honor, note my objection again.

May we approach?

THE COURT: Yes.

(A discussion was held at the bench, not reported.)

BY MR. STRASSBURG:

Q. Never mind. I'll start over. Let me read this to you, Article 6.5.

It says in the contract with Beacher's, "Contractor shall remove all construction debris and leave the project in a broom-clean condition."

Do you see that?

A. Yes.

Q. As part of your job, did you have to understand that standard?

A. Yes.

Q. And what's your understanding of the standards set by your contract with Beacher's?

A. Broom clean. So you sweep it, and you take what you sweep. It's like sweeping your house. You sweep the floors, and then you dispose of whatever you swept up. And that's broom clean.

Q. And what does Beacher's use -- I'm sorry. What does Team use the shovels for in that?

A. Shovels are a dustpan. So we use, like, snow shovels or coal shovels as dustpans. Dustpans don't seem to hold up very well usually in that environment. So we use shovels.

So one guy will sweep into the shovel, and then you dump it into a buggy or you put it in the dumpster.

Q. And what is your understanding -- how would you answer the question as to whether, with respect to housekeeping, Team has satisfied its obligations under its contract --

MR. DEUTSCH: Objection, Your Honor.

BY MR. STRASSBURG:

Q. -- if it left --

Do I ever get to finish a question?

THE COURT: Let him finish the question.

MR. STRASSBURG: That's kind of rude.

MR. DEUTSCH: I thought you were finished.

THE COURT: Just finish the question.

BY MR. STRASSBURG:

Q. What is your understanding of the standard of care, whether Team has satisfied it, if it leaves the project around the dumpster in a broom-clean condition?

MR. DEUTSCH: Objection, Your Honor. Invades the province of the jury if that's what his claim is.

THE COURT: Overruled. He can state his understanding.

THE WITNESS: That it's swept up around the dumpster, and whatever is swept up is disposed of. In that case, it's put in the dumpster.

BY MR. STRASSBURG:

Q. And how does that relate to customary standard of care, as you understand it? Does it satisfy it, not satisfy it, or something else?

A. It satisfies the standard of care.

Q. Thank you. Do you understand how Team personnel -- or I guess it's Noble personnel go about putting debris and swept-up dust into a dumpster of the variety that was on the job site at MGM?

A. Yes.

Q. Okay. Can you describe for us how those dumpsters are typically, that you've observed, loaded

up?

A. So there's a door on the back or on one side, on the end. You open it up, and you put your trash in it.

Q. Is it ever necessary to, like, heave the shovel over the top?

A. You don't want to do that because there may be someone in the dumpster dumping something. So it's frowned upon. You're not supposed to do that for that reason.

So you'll get an HVAC guy -- and we learned about it from larger projects like City Center. You'll get an HVAC guy throwing -- or a masonry guy -- a mason throwing bricks or something in the dumpster. There's another laborer in there dumping something. It results in an injury. So you don't do that.

Q. Sounds like it's an infraction?

A. It's something we certainly would talk to the employees about if we found them doing it, yes.

Q. Is it grounds for discipline?

A. Yes.

Q. What kind of discipline?

MR. DEUTSCH: Objection to the relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: You know, same with most workplaces. We'd have a discussion with them as the first infraction. And then usually, by the second time, we usually just end up laying them off for what we consider to be not safe.

BY MR. STRASSBURG:

Q. All right. Now, are you aware of any illustrations about the process of loading a dumpster like the one that was at the Beacher's project at MGM?

A. Yes.

MR. STRASSBURG: I'd like to show this illustration of that. Is that all right?

MR. DEUTSCH: Does it -- does it --

MR. STRASSBURG: This means -- no, this --

MR. DEUTSCH: Does it accurately reflect what it looked like on that day?

MR. STRASSBURG: Well, I'm going to ask him.

MR. DEUTSCH: Well, I'm asking you.

MR. STRASSBURG: Yeah, it does.

MR. DEUTSCH: Okay. Then you can put it up.

BY MR. STRASSBURG:

Q. All right. Let me show you this illustration and ask you does this illustration accurately represent the method of access for a dumpster like the one at MGM on the day of the accident?

A. Yeah. We wouldn't wear shorts, though, or tennis shoes. But that is exactly how you open them and load them.

Q. All right.

MR. DEUTSCH: Do you use Hefty garbage bags like that?

THE WITNESS: We do use contractor bags.

BY MR. STRASSBURG:

Q. What's a contractor bag -- or let me ask it this way.

How does a contractor bag differ from a Hefty bag?

A. It's thicker -- thicker mill, costs more.

Q. Uh-huh.

A. You can put stuff in it, heavy stuff.

Q. And where are the -- where were the contractor bags filled at the Beacher's project? Inside, outside, or somewhere else?

A. In the project site, inside.

Q. Now, I wanted to ask you, in November of 2013, were you aware of any other ongoing construction projects inside MGM along with the Beacher's job you were doing?

A. Yes.

Q. What were they?

A. We talked about them earlier. I think they were the ones that I was involved with as well. So the conference center walkway; the sanitary sewer line, which is obviously not a project for Beacher's, LLC, but for Property Direct; and then the restroom remodel that was going on at that time. There was one more on there, but those are the four that I remember.

Q. All right. Think back on your -- your memory.

Can you think of -- can you remember any construction projects in the vicinity that you weren't involved with?

A. Yes.

Q. And what do you remember?

A. It was outside. I don't know how to describe it, but it was on the south side of the building. So if our dumpster was here, there's what we call grease traps, which are things that exactly serve that function. They trap grease from the sewer line. They were replacing or fixing those grease traps within that concrete drive area.

Q. Now, based on your ten years of experience working on the Strip on projects like this, have you ever had occasion to observe contractors bird-dogging each other's dumpsters?

A. Yes.
Q. And what do we mean by that?
A. Don't usually call it bird-dogging. But when they use our dumpster or even vendors -- convention vendors, we'll find, will throw stuff in there. I found 1,500 lightbulbs in a dumpster once that a vendor that was changing out lightbulbs at the Tropicana decided just to throw in there. They're all HFL bulbs that we had to have remediated. So that does happen.
Q. Do you lock the dumpster before you go home at 2:30 or not?
A. No.
Q. Why not?
A. It -- it has an open top. If you wanted to get in it, you would climb over and get into it.
Q. Now, does Team own -- did Team own the dumpster at MGM, or did you rent it or -- or some other way?
A. We rent them.
Q. And where do you rent them?
A. At that time, it was Discount Dumpster.
Q. Okay.
A. That's who we used.
Q. And how long had you been renting dumpsters from Discount?

A. Since I started there in 2013. I don't know if they rented from Discount Dumpster before that.

Q. Now, I wanted to ask you about this document.

And this is that document I was telling you about, 415.

MR. DEUTSCH: No objection.

BY MR. STRASSBURG:

Q. Let me show you -- I guess I'd like to -- I'll show it to you. Bear with me a sec.

Do you have that document in front of you?

A. Yes.

Q. And I bet you can't read it; right?

A. I can read it.

Q. Okay. Can you identify it?

A. Yes.

Q. What is it?

A. It's a Flippins Trenching ticket, a time and material ticket.

Q. All right. And it's -- it says "Work Report 51433." What does that pertain to?

A. That's their ticket number. So when they turn these in, that's how they reference it.

Q. Okay. And do you see your signature on this anywhere?

A. Yes. Down at the bottom.

Q. Where is that?
A. Down at the bottom with the date.
Q. And the date is what?
A. November 6th, 2013.
Q. And what is the date of the -- of this work report for Flippins Trenching?
A. October 31st.
Q. Of what year?
A. 2013.
Q. All right. And if you just scan down the items that trench -- Flippins billed you for, can you describe for us the nature of the work that Flippins would have been doing at the Beacher's project?
A. Yeah. So on that day, we hired them to rent two Georgia buggies, bring in Type 2, which is the subbase that you compact that goes underneath concrete. We call it Type 2.

They had a skid steer that they would have loaded that subbase into the Georgia buggies with. Then we would have walked them through the casino. They're charging us for what's called a jumping jack, which is a compactor. It's the thing that goes like this (witness indicating) which compacts the Type 2. And they're charging us for labor, obviously, and then delivery and pickup.

Q. All right. And -- and I notice that they charged you for propane?

A. Yes.

Q. And do you know --

A. 50 bucks.

Q. -- what that was for?

A. That's for the power buggies.

Q. All right. So this invoice -- do they invoice you before they do the work or after?

A. So I sign this after they do the work.

Q. All right. So from that, would it be fair to say that, since you signed it on November 6th of 2013, that Flippins had done the work involving the propane power Georgia buggies before that day?

A. That's correct.

Q. And completed it; right?

A. That's correct.

MR. STRASSBURG: I'd like to move this into evidence, Your Honor.

THE COURT: What's the number?

MR. STRASSBURG: It is 413, and I'd like to refer to it, if that's all right, as Work Report 51-433. And it would be -- it would be Exhibit -- we would make it D559.

THE CLERK: 413 is already in.