

**IN THE SUPREME COURT STATE OF NEVADA**

GAVIN COX and MINH-HAHN COX,	)	Supreme Court No. 76422
Husband and Wife,	)	
	)	
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 26-C**

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### ALPHABETICAL JOINT APPENDIX INDEX

TITLE	DATE	FILER / PREPARER	PAGE NO.	VOLUME NO.
01.19.17 Transcript of Proceedings - Motions	01.19.17	Martha Szramek, Court Recorder	JA 000239 - JA 000346	2
09.18.17 Transcript of Proceedings - Plaintiffs' Omnibus Motion in Limine; Defendants' Motion in Limine; Team Construction Management, Inc., and Beacher's LV LLC's Joinder to Fourth Supplement to Defendant Backstage Employment & Referral, Inc.'s Designation of Expert Witnesses & Documents	09.18.17	Jennifer Gerold, Court Recorder	JA 000352 - JA 000390	2
03.29.18 - Transcript of Proceedings Re: Pretrial Conference	03.29.18	Jennifer Gerald, Court Recorder	JA 000391 - JA 000424	2
04.03.18 - Reporter's Transcript of Jury Trial	04.03.18	Kristy L. Clark, RPR	JA 000425 - JA 000568	2-3
04.11.18 - Reporter's Transcript of Jury Trial	04.11.18	Kristy L. Clark, RPR	JA 000574 - JA 000714	3
04.13.18 - Reporter's Transcript of Jury Trial	04.13.18	Kristy L. Clark, RPR	JA 000715 - JA 000892	3-4
04.17.18 - Reporter's Transcript of Jury Trial	04.17.18	Kristy L. Clark, RPR	JA 000893 - JA 001167	4-5
04.18.18 - Reporter's Transcript of Jury Trial	04.18.18	Kristy L. Clark, RPR	JA 001168 - JA 001415	5-6
04.24.18 - Reporter's Transcript of Jury Trial	04.24.18	Kristy L. Clark, RPR	JA 001416 - JA 001585	6-7
04.25.18 - Reporter's Transcript of Jury Trial	04.25.18	Kristy L. Clark, RPR	JA 001933 - JA 002269	9-10
04.26.18 - Reporter's Transcript of Jury Trial	04.26.18	Kristy L. Clark, RPR	JA 002270 - JA 002514	10-11

04.27.18 - Reporter's Transcript of Jury Trial	04.27.18	Kristy L. Clark, RPR	JA 002515 - JA 002904	11-13
04.30.18 - Reporter's Transcript of Jury Trial	04.30.18	Kristy L. Clark, RPR	JA 002905 - JA 003016	13
05.01.18 - Reporter's Transcript of Jury Trial	05.01.18	Kristy L. Clark, RPR	JA 003017 - JA 003282	13-14
05.02.18 - Reporter's Transcript of Jury Trial	05.02.18	Kristy L. Clark, RPR	JA 003283 - JA 003596	14-16
05.03.18 - Reporter's Transcript of Jury Trial	05.03.18	Kristy L. Clark, RPR	JA 003597 - JA 003846	16-17
05.04.18 - Reporter's Transcript of Jury Trial	05.04.18	Kristy L. Clark, RPR	JA 003847 - JA 004002	17
05.08.18 - Reporter's Transcript of Jury Trial	05.08.18	Kristy L. Clark, RPR	JA 004071 - JA 004402	18-19
05.09.18 - Reporter's Transcript of Jury Trial	05.09.18	Kristy L. Clark, RPR	JA 004435 - JA 004720	19-20
05.10.18 - Reporter's Transcript of Jury Trial	05.10.18	Kristy L. Clark, RPR	JA 004723 - JA 004988	20-21
05.11.18 - Reporter's Transcript of Jury Trial	05.11.18	Kristy L. Clark, RPR	JA 005005 - JA 005157	21-22
05.22.18 - Reporter's Transcript of Jury Trial	05.22.18	Kristy L. Clark, RPR	JA 005158 - JA 005232	22
05.23.18 - Reporter's Transcript of Jury Trial	05.23.18	Kristy L. Clark, RPR	JA 005233 - JA 005401	22-23
05.24.18 - Reporter's Transcript of Jury Trial	05.24.18	Kristy L. Clark, RPR	JA 005440 - JA 005613	23-24
05.25.18 - Reporter's Transcript of Jury Trial	05.25.18	Kristy L. Clark, RPR	JA 005614 - JA 005806	24-25
05.29.18 - Reporter's Transcript of Jury Trial	05.29.18	Kristy L. Clark, RPR	JA 005807 - JA 005919	25

08.23.18 - Recorder's Transcript of Hearing re: Plaintiffs' Motion for Judgment As A Matter of Law or, In The Alternative, for New Trial	08.23.18	Jennifer Gerold, Court Recorder	JA 006497 - JA006552	28
Backstage Employment and Referral, Inc.'s Brief Regarding New and Previously Undisclosed Witnesses	04.25.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 001874 - JA 001932	8-9
Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial (Filed Under Seal)	12.16.16	Weinberg Wheeler Hudgins Gunn & Dial	JA 000151 - JA 000158	1
Backstage Employment & Referral, Inc.'s Opposition to Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively for a New Trial	08.10.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 006353 - JA 006381	27
Backstage Employment and Referral, Inc.'s Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.08.19	Weinberg Wheeler Hudgins Gunn & Dial	JA 006614 - JA 006616	28
Backstage Employment & Referral, Inc.'s Reply in Support of Motion to Bifurcate Trial	01.11.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000177 - JA 000234	1
Beacher's LV, LLC's Answer to MGM Grand Hotel's Third Party Complaint	04.05.16	Morris Sullivan Lemkul & Pitegoff	JA 000078 - JA 000092	1
Beacher's LV, LLC's Amended Answer to MGM Grand Hotel's Third-Party Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	10.07.16	Morris Sullivan Lemkul & Pitegoff	JA 000128 - JA 000150	1
Beacher's Motion for Leave to File an Amended Answer to Third Party Plaintiff MGM Grand's Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	07.29.16	Morris Sullivan Lemkul & Pitegoff	JA 000093 - JA 000127	1
Case Appeal Statement	07.11.18	Harris & Harris	JA 006271 - JA 006294	27



Complaint and Demand for Jury Trial	08.06.14	Eglet Law Firm	JA 00001 - JA 00011	1
Court Minute Order Regarding Motion for Certification	04.25.19	Judge Mark Denton	JA 006623	28
Court Minutes - Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.02.17	Judge Mark Denton	JA 000347	2
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Answer to Plaintiff's Complaint	10.27.14	Selman Breitman	JA 000029 - JA 000038	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Brief Regarding Undisclosed Witnesses	04.25.18	Selman Breitman	JA 001835 - JA 001873	8
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Amended Answer to Plaintiffs' Complaint and Cross Claim Against Team Construction Management, Inc.	02.01.16	Selman Breitman	JA 000060 - JA 000071	1
David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin, and MGM Grand Hotel, LLC's Joinder to Co-Defendants' Motions in Limine and Motion to Bifurcate Trial	12.28.16	Selman Breitman	JA 000159 - JA 000161	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.10.19	Selman Breitman	JA 006617 - JA 006619	28

Decision Regarding Motion for Judgment as a Matter of Law	09.17.18	Judge Mark Denton	JA 006553 - JA 006559	28
Gavin and Mihn-Hahn Cox's Appendix in Support of Emergency Petition for Writ of Mandamus Under NRAP 27(E)	05.07.18	Harris & Harris	JA 004009 - JA 004067	17-18
Jury Instructions	05.23.18	Judge Mark Denton	JA 005402 - JA 005439	23
MGM Grand Hotel, LLC's Motion for Leave to File a Third Party Complaint	12.01.15	Selman Breitman	JA 000039 - JA 000057	1
MGM Grand Hotel, LLC, David Copperfield and David Copperfield's Disappearing, Inc.'s Trial Brief to Preclude Plaintiffs from Calling Improper Rebuttal Witnesses	05.10.18 Selman Breitman	JA 004989 - JA 005004		21
MGM Grand Hotel, LLC, David Copperfield aka David Kotkin and David Copperfield's Disappearing, Inc.'s Opposition to Plaintiffs' Motion for Judgment As A Matter of Law, or, Alternatively for New Trial	08.10.18	Selman Breitman	JA 006382 - JA 006466	27-28
Notice In Lieu of Remittitur	06.04.18	Supreme Court	JA 005924	25
Notice of Appeal (Supreme Court File-Stamp)	07.19.18	Harris & Harris	JA 006295 - JA 006326	27
Notice of Entry of Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.23.18	Resnick & Louis	JA 006562 - JA 006566	28
Notice of Filing Emergency Petition for Writ of Mandamus	05.07.18	Harris & Harris	JA 004003 - JA 004006	17
Notice of Hearing on Plaintiffs' Motion for Certification	03.29.19	EJDC - Department 13	JA 006612 - JA 006613	28
Notice of Transfer to Court of Appeals	05.07.18	Supreme Court	JA 004007 - JA 004008	17

NRAP 27(E) Certificate	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004427 - JA 004434	19
Order Denying Petition for Writ of Mandamus	05.07.18	Supreme Court	JA 004068 - JA 004070	18
Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.22.18	Resnick & Louis	JA 006560 - JA 006561	28
Order Denying Rehearing	05.10.18	Supreme Court	JA 004721 JA 004722	20
Order Granting Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.27.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000348 - JA 000351	2
Order Granting Defendants David Copperfield, David Copperfield's Disappearing, Inc. And MGM Grand Hotel, LLC's Motion for Leave to Amend Their Answer to File Cross Claim	01.28.16	Selman Breitman	JA 000058 - JA 000059	1
Order Granting Motion to Extend Time (Supreme Court)	03.28.19	Supreme Court	JA 006597 - JA 006598	28
Order on Plaintiffs' Motion for Certification of Judgment	05.08.19	Morelli Law Firm	JA 006624 - JA 006626	28
Plaintiff's Amended Case Appeal Statement	11.26.18	Harris & Harris	JA 006577 - JA 006585	28
Plaintiffs' Amended Notice of Appeal	11.26.18	Harris & Harris	JA 006567 - JA 006576	28
Plaintiffs' Motion for Certification of Judgment On Order Shortening Time	03.28.19	Harris & Harris	JA 006599 - JA 006611	28

Plaintiffs' Motion for Judgment As a Matter of Law, or, Alternatively, for a New Trial	07.05.18	Harris & Harris	JA 005925 - JA 006259	25-27
Plaintiffs' Notice of Appeal (EJDC File-Stamped)	07.11.18	Harris & Harris	JA 006260 - JA 006270	28
Plaintiffs' Opposition to Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	01.05.17	Harris & Harris	JA 000166 - JA 000176	1
Plaintiffs' Reply in Support of Motion for Judgment as a Matter of Law, Or, Alternatively for a New Trial	08.20.18	Harris & Harris	JA 006467 - JA 006496	28
Plaintiffs' Trial Brief to Exclude Cumulative Expert Testimony on Defendants' Proposed Expert Witnesses John E. Baker and Nicholas Yang	04.11.18	Harris & Harris	JA 000569 - JA 000573	3
Plaintiff's Trial Brief to Permit Testimony of Newly Discovered Fact Witnesses	04.25.18	Harris & Harris	JA 001586 - JA 001834	7-8
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	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004403 - JA 004426	19
Request for Transcript of Proceedings	12.21.18	Morelli Law Firm	JA 006586 - JA 006589	28
Stipulation	03.08.19	Morelli Law Firm	JA 006595 - JA 006596	28
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
Team Construction Management, Inc., and Beachers LV, LLC's Joinder to Defendants David Copperfield's Disappearing, Inc, David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion to Certification of Judgment on Order Shortening Time	04.15.19	Resnick & Louis	JA 006620 - JA 006622	28
Defendant Team Construction Management, Inc. And Beachers LV, LLC's Joinder to Backstage Employment and Referral's Motion to Bifurcate Trial	12.29.16	Resnick & Louis	JA 000162 - JA 000165	1
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

1           So they -- I remember thinking, well, clearly  
2 this is a very timed act. We need to be somewhere. So  
3 we're running to keep up to make sure we get to  
4 wherever we need to be in that amount of time.

5 BY MR. DEUTSCH:

6           Q. And the part while you were running, when you  
7 leave -- from the time that you leave the platform and  
8 you're going around, would you describe that as -- how  
9 would you describe it?

10           MS. FRESCH: Objection.

11           THE COURT: Hold on a second.

12           (Whereupon the video deposition was paused.)

13           THE COURT: Objection?

14           MS. FRESCH: The response is speculation  
15 as -- lines 9 through 13.

16           MR. DEUTSCH: Your Honor, I asked her --

17           THE COURT: She's describing what her  
18 perception was. Overruled.

19           (Whereupon video deposition was  
20 resumed.)

21           THE WITNESS: Windy. It was -- it was pretty  
22 chaotic. I would not send my middle-schoolers through  
23 that without a whole lot of instruction, because it  
24 was -- it would be an accident waiting to happen for  
25 them. They would have run into walls and whatever

1 else. It would -- no.

2 BY MR. DEUTSCH:

3 Q. If someone in this case described that  
4 runaround portion to the jury as calm and controlled,  
5 would you agree with that or disagree with that?

6 A. I would not call it -- what was it?

7 Q. Calm and controlled.

8 A. Calm and controlled? No. I teach middle  
9 school. It's not calm. And that was not calm and  
10 controlled.

11 Q. I want to show you a photograph that's in  
12 evidence already, Exhibit 84, No. 14.

13 Did the -- let me just ask you this: The  
14 people -- where were you -- you -- I think you said you  
15 were the last one out of the --

16 A. Yes, I was the last one out.

17 Q. And you said that along the route people were  
18 yelling at you, like, a time?

19 A. Yeah.

20 Q. Was that people that were along the route  
21 that were saying that or that was someone running with  
22 you or both or something else?

23 A. It was someone ahead of me, so I can't tell  
24 you if they were running with the people ahead of me or  
25 not, but there was no one behind me.



1 Q. Okay.

2 A. There was no one running behind me at any  
3 point.

4 Q. I want to show you what's in evidence in our  
5 case as 84-14. And take a look at that picture.

6 A. Yes.

7 Q. Do you -- do you recognize what's depicted in  
8 that photograph?

9 A. That appears to be the last corner I ran  
10 around. And that open door looks like the door that we  
11 ran back in.

12 Q. And -- and on this photograph maybe -- if you  
13 could just step down. And on this screen, can you just  
14 use this pen, kind of just point to --

15 A. If I can get this puppy off. Oh, there it  
16 is. Okay.

17 Q. Just trying to --

18 A. Sorry. So I -- I was -- I had just turned  
19 it, and I was at -- approximately at where that line is  
20 in the cement right there, between the two things of  
21 cement, because I was still a little ways away from the  
22 door, but I had already turned the corner. I was  
23 starting to go straight at that point.

24 Q. And you said that there was someone there  
25 that said "watch your step" or something.

1       A.    Yeah, as I was turning -- like, literally a  
2 half second before I fell, there was a gentleman who I  
3 believe worked for the production. And he said, "Don't  
4 trip."

5       Q.    And where was that person -- can you see  
6 where that person was standing?

7       A.    He was -- he wouldn't be in this photograph.  
8 He would have been, like, over there off -- just -- you  
9 know, so I ran between him and the --

10      Q.    Okay. You can have a seat again. Thank you.

11      A.    Yeah.

12      Q.    What -- what do you think happened in terms  
13 of why you fell that evening?

14           MR. RUSSELL: Objection, Your Honor.

15           (Whereupon the video deposition was paused.)

16           MR. RUSSELL: Irrelevant. No substantial  
17 similarity between the accidents.

18           THE COURT: Well, let's see what she thinks.  
19 Overruled.

20           (Whereupon the video deposition was resumed.)

21           THE WITNESS: I don't know. I mean, it's  
22 dark. It's pavement. I honestly just remember him  
23 saying "don't trip," and then I was on the ground. I  
24 didn't slip. I can tell you that much. I didn't trip  
25 over my own feet. I -- you know, I don't know if my

1 foot, you know, caught on something or something.

2 ~~Something just made me fall straight forward.~~

3 BY MR. DEUTSCH:

4 Q. After you fell, did anyone that appeared to  
5 you to work for the production, as you said, say  
6 anything to you or do anything for you at that point?

7 A. Not -- no one talked to me specifically about  
8 it until after the trick was completed.

9 Q. Did you hear anyone say anything after you  
10 fell?

11 A. The gentleman who had been standing there and  
12 said "don't trip," I honestly don't remember what he  
13 said, but he said something because the lady was the  
14 12th in line turned around and goes "Oh," and came  
15 back. And she grabbed my hand and kind of pulled me  
16 into the -- so that we could finish the trick.

17 Q. And -- and in terms of -- of, you know,  
18 physically what happened to you, can you tell us  
19 what -- what happened to you?

20 A. It was a pretty bad scraped knee.

21 MR. RUSSELL: Objection, Your Honor.

22 THE COURT: Hold on.

23 (Whereupon video deposition was paused.)

24 THE COURT: Objection?

25 MR. RUSSELL: Move to strike the remainder of

1 the page as the extent of injuries is irrelevant.

2 THE COURT: Overruled.

3 (Whereupon video deposition was  
4 resumed.)

5 THE WITNESS: It was not gushing, but it  
6 was -- it was, you know, a good size. It covered my  
7 whole knee. And it was -- it was drippy, so ...

8 BY MR. DEUTSCH:

9 Q. Dripping with blood?

10 A. Yes.

11 Q. It was dripping down your leg?

12 A. Yeah, it was -- at that point, it wasn't too  
13 bad. But I went a while with nothing on it. So, as  
14 time went on, it was more --

15 Q. And were you wearing -- were your -- did you  
16 have exposed knees?

17 A. I did. I was wearing a dress that was above  
18 the knee.

19 Q. Okay. Then at that point you got up and you  
20 went and continued on --

21 A. Uh-huh. Yes.

22 Q. -- into the trick?

23 A. Yes.

24 Q. What -- why was it that you continued on?

25 A. I don't know. I didn't really at that point

1 think that there was an option to not, I guess. I  
2 didn't even consider, like, stopping and evaluating my  
3 injury to see if it was -- I just got up and went and  
4 finished.

5 Q. Okay. And at some point did you -- did you  
6 have to reappear?

7 A. I did, yes.

8 Q. And tell us about that.

9 A. Well, when I reappeared, I didn't want the  
10 audience to see, you know, the blood dripping down my  
11 leg. So when I reappeared, I reappeared standing,  
12 like, with one leg in --

13 Q. Please stand up, and you can show us what you  
14 meant. Sorry you have to take your mic off again,  
15 but --

16 A. Okay. So I -- when I reappeared, I was  
17 standing like this.

18 Q. To cover the blood?

19 A. To cover the blood that was dripping from my  
20 left leg.

21 Q. Why were you -- why were you standing like  
22 that?

23 A. I just didn't want the audience to see that I  
24 was bleeding. It's kind of -- you know, from the time  
25 you're a little kid and you fall down, people laugh at

1 you. So it's kind of humiliating. I didn't want to be  
2 like, hey, I'm the girl who fell.

3 Q. Okay. And, at some point, did you -- after  
4 you reappeared, what was the next thing that you did?

5 A. After we finished the trick and, you know, we  
6 all waved our flashlights, they took us into a back  
7 room. Someone gave us a little spiel about, you know,  
8 please don't share the secrets of how this trick  
9 happened. If you share the secrets, then we won't be  
10 able to do the trick anymore, blah blah blah.

11 But, as I was walking into that room before  
12 the spiel, a lady who works for -- I don't know if it's  
13 MGM or Mr. Copperfield, you know, stopped me as we were  
14 walking in and said, "Hey, are you okay? And I'm like,  
15 "Yeah, it's a scrape. I'll be okay."

16 And so then they did their spiel.  
17 Mr. Copperfield came in. He talked, said thank you,  
18 whatever. And then, after he was done talking, another  
19 lady came up to me -- so a different one from before --  
20 and -- I think it was about three times -- she asked me  
21 if I was okay. "Are you okay? Are you sure you're  
22 okay?" To me, she felt more official than the first  
23 lady, but that was just my opinion.

24 Q. Okay. So a couple people -- what were those  
25 people wearing? Do you remember?

1 A. I -- one of them -- the second lady, I  
2 believe -- had on a headset of some sort, but I don't  
3 remember the first one.

4 Q. Did any of those -- the people that came over  
5 to you that -- that you believe worked at the show  
6 and -- did they know that you had fallen?

7 MR. RUSSELL: Objection. Foundation.

8 (Whereupon video deposition was paused.)

9 THE COURT: Sustained.

10 MR. DEUTSCH: Are you going to object to the  
11 next question as well, Howard?

12 MR. RUSSELL: No.

13 MR. DEUTSCH: Okay.

14 MR. RUSSELL: No. 23 -- yeah, starting at 23  
15 is fine.

16 MR. DEUTSCH: Your Honor, the first sentence  
17 in that answer doesn't -- is just her knowledge of what  
18 she believes.

19 THE COURT: I made the ruling. Just go to  
20 line 23 on page 26.

21 (Whereupon video deposition was  
22 resumed.)

23 BY MR. DEUTSCH:

24 Q. Okay. So those -- so those two women came  
25 into that room separate and apart from the people who

1 were giving the speech/spiel.

2 A. I don't know if they are normally part of  
3 that group or not because I've never been part of that  
4 group before, but I know I'm the only person they spoke  
5 to.

6 Q. They came straight over to you?

7 A. Yes.

8 Q. And did any of -- did -- either of those  
9 women or any of the people that worked there, did any  
10 of them ask you if you wanted to fill out any type of  
11 accident report or incident report of any kind? Was  
12 that offered to you in any way?

13 A. Nope, not even a Band-Aid. So I actually --

14 MR. RUSSELL: Objection.

15 THE COURT: Objection.

16 (Whereupon video deposition was paused.)

17 MR. RUSSELL: Move to strike the remainder of  
18 that page after the word "Band-Aid." That's after she  
19 left the show. There's no evidence that anyone had any  
20 knowledge of what she did at that point.

21 MS. FRESCH: Join.

22 THE COURT: Overruled.

23 (Whereupon video deposition was  
24 resumed.)

25 THE WITNESS: Once I was done and I walked



1 out and my husband saw it, I had to go get actually --  
2 and there's a bathroom right there when you walk out.  
3 I actually had to go into the bathroom to get some  
4 paper towel. And that is what I used to cover my -- my  
5 leg on the whole taxi ride home until I -- we spent a  
6 ton of money at Walgreens afterwards.

7 But my husband couldn't -- when I walked out  
8 after I got the paper towel and my husband -- he asked  
9 me, like, "Are you sure they didn't have you sign  
10 anything? You could sue. Why didn't they have you  
11 sign something?"

12 I'm like, "I don't know. Maybe it was  
13 because it was a scraped knee." I didn't know. But,  
14 at that point, I needed a bandage. It wasn't worth,  
15 you know, going back and checking and seeing if there  
16 was anything I should have -- else I should have done.

17 BY MR. DEUTSCH:

18 Q. Okay. I want to show you what's been marked  
19 as -- for identification as Lawrence 1.

20 (Whereupon video deposition was paused.)

21 MR. DEUTSCH: Your Honor, at this time, we  
22 would offer, I guess, Lawrence Exhibit 1 into evidence.

23 MR. RUSSELL: Go ahead.

24 MR. DEUTSCH: I'm going to -- we're going to  
25 offer Lawrence Exhibit 1, that was marked for

1 identification at her deposition, into evidence.

2 MR. RUSSELL: Objection. Hearsay. It's a  
3 Facebook posting.

4 MR. DEUTSCH: But it's hers.

5 May we approach?

6 THE COURT: Let's just -- say what you were  
7 going to say. It's what?

8 MR. DEUTSCH: It's her post. It's her post.  
9 So I don't know how it could be hearsay. She's the  
10 declarant.

11 MR. RUSSELL: It's an out-of-court statement.  
12 Doesn't matter if it's hers or not.

13 MR. DEUTSCH: But you had an opportunity to  
14 cross-examine her.

15 THE COURT: Right. I'll admit it.

16 (Whereupon, Plaintiffs' Exhibit Lawrence  
17 1 was admitted into evidence.)

18 (Whereupon video deposition was  
19 resumed.)

20 BY MR. DEUTSCH:

21 Q. Take a look at this. Can you tell us what  
22 that is?

23 A. That is -- after I got home -- or not home,  
24 to the hotel -- and after I had bandaged myself up, I  
25 decided, hey, I need to tell the world that I fell down

1 in a David Copperfield trick. So right after all of  
2 that, before I went to sleep that night, I -- I typed  
3 this up, "Participated in a David Copperfield  
4 disappearing act. Rough work. Skinned the hell out of  
5 my knee."

6 Q. And where did you write that?

7 A. I was sitting on the bed in my hotel room.

8 Q. Not that. Where did -- did you post that  
9 somewhere or publish --

10 A. I'm sorry. That's Facebook.

11 Q. Okay.

12 A. Sorry.

13 Q. And so that's a clip from your Facebook?

14 A. That's a clip from my Facebook account, yes.

15 Q. And, at some point -- let me show you what's  
16 been marked as identification --

17 MS. FRESCH: Objection. Objection.

18 THE COURT: Stop.

19 (Whereupon video deposition was paused.)

20 MR. DEUTSCH: Your Honor, same -- same -- at  
21 this time, Your Honor, we would offer in evidence what  
22 was marked at Ms. Lawrence's deposition as  
23 Plaintiffs' 2, I guess.

24 THE COURT: Did you show him?

25 MR. DEUTSCH: Sure.

1 MS. FRESCH: And I would object on relevance  
2 and a waste of time.

3 THE COURT: Counsel, this appears to relate  
4 to a separate trick, so I'm not sure I understand the  
5 relevance.

6 MR. DEUTSCH: May we approach, Your Honor?

7 THE COURT: Sure.

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

10 MR. DEUTSCH: Just -- Your Honor, for the  
11 record, pursuant to our -- our conversation at the  
12 bench, we have agreed not to show what -- Exhibit 2 at  
13 Ms. Lawrence's deposition with the understanding that  
14 we have a stipulation from the defendants that  
15 Ms. Lawrence was in fact a participant in the illusion  
16 at the MGM Grand on the night that she has testified  
17 about.

18 MR. POPOVICH: June 17, 2013?

19 MR. DEUTSCH: Correct.

20 MR. POPOVICH: So stipulated.

21 MS. FRESCH: So stipulated.

22 MR. RUSSELL: Agreed.

23 THE COURT: The record will so reflect.

24 MR. DEUTSCH: Your Honor, may I approach?

25 THE COURT: Yes.

1 MR. DEUTSCH: A hard copy of the deposition,  
2 unless you're enjoying the iPad.

3 THE COURT: It's a pretty nice one.

4 MR. DEUTSCH: He said it's a pretty nice one.

5 MR. MORELLI: It's mine.

6 MR. DEUTSCH: We're just taking off that one  
7 sentence, Your Honor.

8 THE COURT: Okay.

9 (Whereupon video deposition was  
10 resumed.)

11 BY MR. DEUTSCH:

12 Q. And if you -- there has been testimony in  
13 this case that nobody has ever fallen before --  
14 Mr. Cox's accident, I don't know if you know or not,  
15 occurred in November 12th, 2013, so only a couple  
16 months after yours. If there's been testimony in this  
17 case that Mr. Cox was the first person who has ever  
18 fallen doing the Thirteen, would you agree with that or  
19 disagree with that?

20 A. Well, I would completely disagree. And I can  
21 tell you for sure that at least three people associated  
22 with that show knew and had talked to me about falling.  
23 So, I mean, did I -- was it a major life-changing  
24 injury? No.

25 Q. Did anybody talk to you --



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 09***

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 \* \* \* \* \*

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

9 Plaintiffs, )

10 vs. )

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

17 Defendants. )

18 MGM GRAND HOTEL, LLC., )

19 Third-Party Plaintiff, )

20 vs. )

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

22 Third-Party Defendants. )

23

24

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY, MAY 9, 2018



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21 \* \* \* \* \*

1 MR. CALL: Well, why don't we address that  
2 now?

3 MR. DEUTSCH: Well, we can address the other  
4 one too.

5 Your Honor, Dr. Yang did three reports. Not  
6 surprisingly, just like Dr. Baker yesterday, his first  
7 report doesn't mention anything about a trip at all,  
8 nothing.

9 He then does a second report. And his second  
10 report, if you flip to the opinions in the back, the  
11 conclusions in the last page, he gives two opinions --  
12 two conclusions. He says, "Conclusion 1. The slip  
13 index of the subject concrete surface was above .7 and  
14 sufficient for a normal gait. Opinion 2, Mr. Cox  
15 likely experienced a trip-and-fall event rather than a  
16 slip-and-fall event." Okay?

17 So Mr. -- Dr. Baker did not testify about the  
18 coefficient of friction specifically because he didn't  
19 test it. So that opinion, if he wants to give it, I  
20 guess, is not cumulative; however, having another  
21 expert who's aligned with the defendants on this issue  
22 that he tripped instead of slipped is just bolstering  
23 Dr. Baker -- both of their testimony. And it's  
24 cumulative. And you can't offer the same opinion by  
25 two experts when everyone's aligned.

1           And they are aligned on this issue. It  
2 ~~doesn't matter that they say they're not. On this~~  
3 issue, they're aligned. And to have Dr. Baker say "I  
4 think it's a trip, and this is how I decided that," and  
5 then Dr. Yang come in and say, "I also think it's a  
6 trip, and maybe my analysis was a little different, but  
7 it's still a trip," it's the same opinion. And you  
8 can't get it twice.

9           And he then goes on and gives a third opinion  
10 in his last report, which is the location of the  
11 landing, which is Mr. Cox fell while traveling in a  
12 straight line 20 feet from the corner and 20 feet from  
13 the security -- 22 feet from the security doors.

14           And -- and then it goes -- so that's one --  
15 that's the same opinion that Dr. Baker gave, that his  
16 point of impact was -- they put it in basically the  
17 exact same place, they put the location of the fall.  
18 So we have two opinions that are identical to  
19 Dr. Baker's.

20           The second opinion he gives in his final  
21 report, again, is that it was a trip and not a slip.  
22 And the third is what I just moved to preclude with  
23 respect to Dr. Baker, which is Mr. Cox's account of the  
24 incident conflicts with the evidence.

25           So I think that, with respect to the

1 coefficient of friction, if he wants to testify about  
2 that, he's entitled to because that's not cumulative  
3 because Dr. Baker, while he touched on it a little bit,  
4 conceded that he didn't do testing; Dr. Yang did do  
5 testing. I think there's some problems with his  
6 testing, but I will concede that that goes to my  
7 cross-examination of him.

8 THE COURT: So you don't think that the fact  
9 that two experts agree with each other is something  
10 that the jury's entitled to hear?

11 MR. DEUTSCH: Absolutely not, Your Honor. I  
12 could go get 50 experts to testify about a particular  
13 issue. You're saying I get to call all 50 of them and  
14 say --

15 THE COURT: No, 50 is not the same as two.

16 MR. DEUTSCH: If I brought two experts in a  
17 med-mal case, Your Honor -- if I had a medical  
18 malpractice case, for example -- which I do a lot more  
19 of, I think, than they do out here -- and I found two  
20 experts to say that the doctor departed, is the Court  
21 going to allow me to bring two experts to say, "Hey,  
22 two is better than one"? Of course not.

23 THE COURT: It depends on what the context of  
24 the case is.

25 MR. DEUTSCH: If they're both giving the

1 opinion that a doctor departed from accepted standards  
2 of care, and I bring one guy to say it and then I say,  
3 "You know what? Let's add on top of that and let's  
4 bring another guy," there is no chance in any court  
5 anywhere in this world that that would be allowed.

6 That is no different than this. They could  
7 go find -- what happens if -- if -- if -- if -- if --

8 THE COURT: Well, you're speaking in terms of  
9 parties being entirely aligned; right? That's not  
10 necessarily the case in this --

11 MR. DEUTSCH: But on this issue --

12 THE COURT: -- in this situation; right?

13 MR. DEUTSCH: -- they are entirely aligned.  
14 I understand that they're suing each other because of  
15 contractual indemnity, which Your Honor has now ruled  
16 does not come into this case, despite the fact that we  
17 wanted to raise it.

18 But on this issue, whether he tripped or  
19 slipped, they are all aligned. There's no other reason  
20 to do it other than to say, "Look, we got two guys that  
21 say it. They both say it." It's -- it's totally  
22 prejudicial. You're not allowed to bolster a witness's  
23 testimony with other witnesses. You're not allowed to  
24 call two experts to say the same thing.

25 If -- if Mr. Popovich wanted to call a second

1 expert -- Dr. Baker -- and Mr. Popovich also went out  
2 and hired Dr. Yang and wanted to call him to give the  
3 same opinion, Your Honor wouldn't let him. You  
4 wouldn't even think twice about it.

5           So the fact that Team Construction's doing it  
6 doesn't change anything when the point is that both of  
7 them are trying to prove that he tripped instead of  
8 slipped. It's the same opinion. It doesn't matter  
9 which one of them calls it. If -- if Backstage went  
10 out and hired their expert, would you have let them --  
11 a third person testify about it?

12           You can't have more than one expert for one  
13 issue give an opinion per side unless they're saying  
14 something different. They're not saying anything  
15 different, nothing. The opinion is identical. "I  
16 think it was a trip and not a slip." You can't bolster  
17 one expert with another expert. Otherwise, every party  
18 in every case would go find two or three guys to  
19 testify about it, to say, "Hey, look, jury, I got three  
20 guys that will say it."

21           You can't do it. You're entitled one, one.  
22 On any issue, you're entitled one unless there's  
23 something different. And the only thing different  
24 about Dr. Yang is the fact that he tested the  
25 coefficient of friction. And while I think there's

1 problems the way -- with the way he did it, it goes to  
2 his creditability, and I'll attack it on  
3 cross-examination. And that's fine.

4 But in terms of the fact that he slipped --  
5 tripped and not slipped and the location of the  
6 accident, it is identical testimony. It's a waste of  
7 time, and it shouldn't be allowed under the law.

8 THE COURT: All right.

9 Mr. Call?

10 MR. CALL: Okay. I'll try to be a little  
11 more calm when I'm arguing here.

12 I think that the Court noted rightly that we  
13 have three different -- well, we have several different  
14 litigants involved in this case, that we're all, you  
15 know, essentially at cross -- cross-purposes here as  
16 far as how this accident happened to a certain extent.

17 Okay. I want to go -- and so that's one of  
18 the reasons, you know, that we have a different expert.  
19 And you can look at Wright v. Las Vegas Hacienda, Inc.,  
20 supreme court, and --

21 MR. DEUTSCH: Do you have a cite on that?

22 MR. CALL: 720 P.2d.

23 MR. DEUTSCH: Give me one second.

24 MR. CALL: And it's --

25 MR. DEUTSCH: What is it?

1 Thank you, Your Honor.

2 MR. DEUTSCH: First of all, Your Honor, it's  
3 not probative at all because the opinions are the  
4 opinions. I didn't need to depose these experts. I  
5 had their reports. Their reports told me what their  
6 opinions were. They list them. Dr. Yang lists them in  
7 a very nice paragraph at the end of each report. This  
8 is my opinion, 1, 2. So the opinions are identical.

9 The coefficient of friction thing is totally  
10 separate than the other opinions. He's allowed to  
11 testify that the coefficient of friction on this  
12 surface was above whatever it needed to be, and  
13 therefore it wasn't slippery. Great. He could testify  
14 about that.

15 The cases that Gary just cited, Wright v.  
16 Las Vegas Hacienda, have absolutely nothing to do at  
17 all with any of the discussion that we're talking about  
18 at all, not even -- like, even in the same ballpark.  
19 It talks about exclusion of a plaintiff expert was an  
20 abuse of discretion because of -- one expert testified  
21 about a cause of an accident. It's not -- it doesn't  
22 render plaintiff's expert testimony cumulative. But it  
23 doesn't even remotely stand for the proposition that  
24 two experts should be allowed to testify about the same  
25 thing.



1 Dr. Yang should be allowed to testify about  
2 ~~this coefficient of friction and nothing else.~~

3 THE COURT: All right. If you think it's  
4 going to be cumulative, make your objections at that  
5 time.

6 MR. DEUTSCH: Okay.

7 The only other two things, Your Honor, that  
8 I -- couple things I wanted to bring up. We were  
9 informed yesterday, or the other day, by Ms. Fresch and  
10 then last night by Mr. Russell that the defendants  
11 intend to call -- recall to the stand Mr. and Mrs. Cox  
12 on their case.

13 However, I'd like to refer Your Honor to  
14 page 7 of the transcript, the very first day, 4/17. We  
15 had a discussion about the scope of their examinations  
16 of Mr. and Mr.[sic] Cox at that time; and Mr. Roberts,  
17 when we were discussing it, said, "Your Honor, in the  
18 interest of judicial economy, will we be able to go  
19 beyond the scope of the direct during the case in  
20 cross-examination?"

21 The Court said, "As far as I'm concerned,  
22 that's acceptable."

23 And I said, "To avoid having to bring them  
24 back again at a later date, obviously?"

25 Mr. Roberts said, "Correct."

1 Q. I'm talking about the difference between the  
2 two and why you feel -- or you've said that the second  
3 testimony by Cox to be clarified, where he talks about  
4 how he's moving in a straight line, doesn't fit the  
5 facts that you saw.

6 A. If you slip while you're traveling in a  
7 straight line, your feet aren't going to go to the left  
8 or the right because there's no force or movement to  
9 the left or the right if you're traveling straight. If  
10 you slip, your feet are going to go either forward or  
11 they're going to go backwards.

12 Q. And how do you know that?

13 A. Based on what I know about human movement and  
14 studies of slips and trips in scientific literature.

15 Q. Are those objective sources of information or  
16 subjective?

17 A. They're from peer-reviewed scientific  
18 articles.

19 Q. Okay. Now, let me show you this -- you're  
20 familiar with this illustration?

21 A. Yes.

22 Q. All right. And could you explain to us --

23 MR. DEUTSCH: No objection, Your Honor.

24 BY MR. STRASSBURG:

25 Q. We've seen this before, but can you explain

1 to us the biomechanics of this motion.

2 A. So what this motion shows is a trip.

3 MR. DEUTSCH: Objection, Your Honor.

4 Cumulative. He asked these exact same questions of  
5 Dr. Baker, Mr. Strassburg did.

6 THE COURT: Overruled.

7 THE WITNESS: As this ballplayer, he rounds  
8 the base, and now he's traveling in essentially a  
9 straight line. And as he's traveling a straight line,  
10 if you notice -- if you pay attention to his right -- I  
11 can't see that -- his right -- sorry -- his left --

12 BY MR. STRASSBURG:

13 Q. Would it help if you go down by the screen to  
14 show?

15 A. Sure.

16 So if you pay attention to his feet here, you  
17 can see again, he's traveling in essentially a straight  
18 line. His left toe will catch the ground right there.  
19 And so what happens is his leg stops. It's not allowed  
20 to continue forward and become his base of support.  
21 But his center of mass gets ahead of his base of  
22 support. And there's nothing to stop it or slow it  
23 down. And because it's ahead of his base of support,  
24 because of gravity he's going to fall to the ground.  
25 And then you can see, because he's traveling in a

1 plaintiff is giving lay opinion testimony.

2 THE COURT: Right.

3 MR. STRASSBURG: And that is the point to be  
4 rebutted by --

5 THE COURT: In any event, I thought it was an  
6 interesting assessment of it and just wanted to point  
7 it out to you.

8 MR. STRASSBURG: Thank you, Judge.

9 THE COURT: Okay. And --

10 MR. DEUTSCH: Can we just deal with one other  
11 issue, Your Honor, to try to save some time in the  
12 morning?

13 THE COURT: Sure.

14 MR. DEUTSCH: Mr. Roberts had indicated to me  
15 last night -- or Mr. Russell, I think -- that they were  
16 going to recall -- wanted to recall Mr. Cox. And when  
17 I inquired this morning about the reason, they wanted  
18 to play some surveillance video that they had taken  
19 over the last couple days of Mr. Cox.

20 They've been following us, taking video of  
21 him talking to their attorneys, and they've been --  
22 they have video that they forwarded to us that includes  
23 conversations that we --

24 THE COURT: It's amazing. People have been  
25 going all over the place taking videos --

1 MR. DEUTSCH: It's unbelievable.

2 THE COURT: -- over at the MGM.

3 MR. DEUTSCH: It's incredible. That's what I  
4 said. I got great surveillance, Judge.

5 THE COURT: All kinds of stuff happening.

6 MR. DEUTSCH: Your Honor, you know what --

7 MR. ROBERTS: All the attorneys are under  
8 surveillance, Your Honor --

9 MR. DEUTSCH: You know what I said to my  
10 clients, "they sent me new surveillance." I said,  
11 "Don't worry. I got my own surveillance." It was  
12 incredible.

13 MR. CALL: Team wasn't there, though.

14 MR. DEUTSCH: Team was not there.

15 But the point is, Your Honor, that the  
16 surveillance shows Mr. Cox -- that they sent us that  
17 they intend to -- they want to produce here shows  
18 Mr. Cox walking without holding someone's hand.

19 Now, Mr. Cox was never asked at trial if he  
20 always holds someone's hand. So, therefore, it doesn't  
21 impeach his credibility in any way. And it's for  
22 damages. It goes to damages. They want to use it in  
23 this trial to attack his credibility. The problem is  
24 he was never asked the question whether or not he  
25 always holds someone's hand.

1 THE COURT: Well, I think -- isn't there some  
2 contention that the jurors -- I mean, that -- that  
3 he's -- viewed him in certain ways.

4 MR. DEUTSCH: I understand that, but he was  
5 never asked the question, "Do you hold the hands  
6 always -- everywhere?" So, therefore, it's not  
7 impeaching his credibility. If they want to put him on  
8 the stand and say, "Do you hold someone's hands  
9 always?" and he were to say, "Yes, I do," then they  
10 could put the video in to impeach his credibility. But  
11 if he says, "No, I don't" --

12 THE COURT: Well, people --

13 MR. DEUTSCH: -- then it's consistent.

14 THE COURT: I don't know. What's your -- are  
15 you talking to this point?

16 MR. ROBERTS: Our view --

17 MR. DEUTSCH: They're talking at this point.

18 THE COURT: You're talking about this point;  
19 right? You're addressing this point that was just  
20 made; right?

21 MR. ROBERTS: I am, Your Honor.

22 THE COURT: Okay.

23 MR. ROBERTS: And that is that the only thing  
24 that I need to have something to rebut is the fact  
25 that, on the way to the witness stand, he held onto the

1 marshal's arm. On his way back from the witness stand,  
2 he held onto Mr. Morelli.

3 That -- I am now allowed to show that, when  
4 he is not standing in front of the jury or in another  
5 place where the jury's likely to see him, he doesn't do  
6 that. And I don't need to -- I would prefer not to put  
7 him on the stand, but I'll put him on the stand to  
8 authenticate these are true and accurate videos of him,  
9 that that's him.

10 MR. DEUTSCH: I have no objection to that.

11 MR. ROBERTS: And so if he doesn't want me to  
12 put him on the stand, I'll just move the videos into  
13 evidence and use them in closing.

14 MR. DEUTSCH: Except that I then need to put  
15 him on the stand to ask him if you hold someone's hands  
16 always. And if not, why not?

17 MR. ROBERTS: And that's fine. He's got a  
18 rebuttal case.

19 MR. DEUTSCH: But I just don't think that --  
20 it's not proper impeachment at this point. He would  
21 have to -- those videos only come in to attack  
22 Mr. Cox's credibility. That's the only way. And in  
23 order for them to come in to attack his credibility --

24 MR. ROBERTS: Correct.

25 MR. DEUTSCH: -- they need to show that those

1 videos show something inconsistent that he testified  
2 about. He was never asked if he holds someone's hands  
3 outside the courtroom. And, therefore, it's not  
4 inconsistent with anything that Mr. Cox has said in  
5 this courtroom.

6           So if he wants to put Mr. Cox on the stand  
7 and ask him a question, "Do you always hold people's  
8 hands?" and he says, "No" -- or he says "Yes, I always  
9 hold someone's hands," then he can impeach him with it.

10           But when you're talking about the limited  
11 purpose of attacking someone's credibility, Your Honor,  
12 the only reason they could put this video in at this  
13 point is for credibility purposes, the same way you  
14 only allowed me to use the photograph of the witness  
15 today with respect to that stuff.

16           It's because he answered something and the  
17 photographs showed an inconsistency and I attacked his  
18 credibility. They're only using these videos for  
19 credibility purposes. They're not using them at this  
20 point to show the truth, that he can walk without  
21 holding someone's hand, because that would be  
22 inappropriate in a liability phase.

23           THE COURT: What did you say you were okay  
24 with?

25           MR. DEUTSCH: If he puts Mr. Cox on the stand



1 and asks Mr. Cox, "We saw you" --

2 THE COURT: I thought there was something  
3 about just putting the --

4 MR. DEUTSCH: No, no, no.

5 THE COURT: You wouldn't put him on the  
6 stand?

7 MR. DEUTSCH: No, I object to utilizing him  
8 completely. I -- what I'm saying is I don't object to  
9 the foundation. I'm not going to object to say that  
10 that's not Mr. Cox. I'm not going to make him call the  
11 surveillance guy in here to testify that on this day  
12 and that day I was shooting him and it was him. I'm  
13 not going to waste our time doing that. I agree that  
14 it shows Mr. Cox. I got no issue with the foundation.

15 What I have an issue with is the fact that  
16 it's inappropriate impeachment because it's not  
17 impeaching anyone. It doesn't impeach him. He hasn't  
18 said anything that's --

19 THE COURT: You're saying the only thing that  
20 could be used for impeachment is something that goes  
21 against testimony that's been given, not conduct?

22 MR. DEUTSCH: Well, they haven't seen him  
23 anywhere -- they haven't seen him except walking from  
24 this spot to that spot.

25 MR. ROBERTS: It impeaches his conduct, Your

1 Honor. That's exactly -- that's exactly what we're  
2 saying. It impeaches his conduct in front of the jury.

3 MR. DEUTSCH: But that goes to damages.

4 They're -- they were the ones who asked to -- to  
5 bifurcate this trial, Your Honor. And now they --

6 THE COURT: I don't think it just goes to  
7 damage. It goes to --

8 MR. DEUTSCH: But he hasn't said anything.

9 All right. Well, then I'll put him back on  
10 the stand and I'll ask him about the video and we'll  
11 have to do that in rebuttal, then. If Your Honor is  
12 going to rule -- I think it's inappropriate. It's not  
13 impeachment. I don't think you can impeach someone's  
14 conduct. I don't think that there's any allow -- to  
15 impeach conduct.

16 If the witness gives me a funny face on the  
17 stand, am I allowed to say, "Your Honor, I interpret  
18 that look as him not telling me the truth and I want to  
19 impeach him?" How is that any different?

20 If a witness answers a question and looks  
21 down instead of looking at me, can I say, "I think he's  
22 lying to me, Your Honor. I want to impeach him because  
23 of his conduct?" Of course not. You need testimony.

24 So the fact that he walked from there to here  
25 is no different than the witness's body language.

1 Where does the line end? "Your Honor, the witness  
2 didn't look straight at the jury when he answered. He  
3 was sweating when he answered. I think he's not  
4 telling me the truth. I'd like to impeach him."

5 It opens a Pandora's box, Your Honor.  
6 Impeachment is allowed based on testimony. If they --  
7 they forgot to ask the question. They forgot to ask  
8 the question. That's not my fault. If they want to  
9 put him on the stand and ask him the question, they're  
10 welcome to do that. But you can't impeach conduct.

11 MR. ROBERTS: Your Honor --

12 MR. DEUTSCH: You can impeach testimony. If  
13 a witness testifies "I can't do this, I can't do that,"  
14 you show surveillance video that shows that he can.  
15 That's the way it works.

16 THE COURT: I'll give it some thought. We're  
17 not making a determination right now. Okay? And I'll  
18 think about it.

19 MR. DEUTSCH: Okay. And we'll do some  
20 research.

21 MR. ROBERTS: And Ms. Bonney printed a copy  
22 of Mr. Deutsch's case, if you'd like a hard copy.

23 MR. DEUTSCH: Oh, the Eighth Judicial  
24 District one?

25 MR. ROBERTS: Yes.

1 MR. DEUTSCH: That's -- one more thing, Your  
2 Honor. Sorry. I'm sorry. One other thing, thanks to  
3 Mr. -- Mr. Fallick. This is the NRS 50.085.

4 MS. FRESCH: What is it?

5 MR. POPOVICH: 50 point --

6 MR. DEUTSCH: Hold on. I'm not sure it  
7 applies.

8 THE COURT: 50.085 is --

9 MR. DEUTSCH: No, no.

10 THE COURT: That's character and conduct of  
11 witness.

12 (Discussion was held off the record.)

13 MR. DEUTSCH: Right. "Specific instances of  
14 conduct of a witness for the purpose of attacking or  
15 supporting the witness's credibility may not be proved  
16 by extrinsic evidence."

17 So isn't that exactly what a video is? Isn't  
18 a video -- surveillance video extrinsic evidence?

19 THE COURT: I don't think so. So yeah --

20 MR. DEUTSCH: To attack credibility? You  
21 could use the surveillance evidence to try to prove  
22 something, but if the sole purpose is to attack his  
23 credibility, I don't think you could use it just for  
24 credibility purposes. I think you could use it to  
25 prove -- you can use surveillance, Your Honor, to prove

1 the facts of the surveillance; meaning, can the person  
2 do this or can't the person do this.

3           They're not using it for that purpose.  
4 They're using it solely in this part of the trial to  
5 attack his credibility, which you can't do. So it does  
6 apply exactly. In the -- in the damages phase of the  
7 trial, Your Honor, if they want to say Mr. Cox can walk  
8 with no assistance, they could use the surveillance to  
9 prove that. They can't use it just to attack his  
10 credibility, which is all they're offering it for.

11           THE COURT: I don't think they're using it to  
12 attack his -- to attack his character.

13           MR. DEUTSCH: His credibility. It says  
14 credibility, Your Honor.

15           MR. ROBERTS: Your Honor, under NRS 51.045,  
16 "Statement defined. A statement includes nonverbal  
17 conduct of a person."

18           So, therefore, we're rebutting his nonverbal  
19 conduct in the form of a statement. Thank you, Your  
20 Honor.

21           MS. FRESCH: Thank you, Your Honor.

22           THE COURT: See you tomorrow.

23           THE MARSHAL: All rise.

24           (Thereupon, the proceedings  
25           concluded at 5:13 p.m.)



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 10***

JA006170

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

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

9

Plaintiffs, )

10

vs. )

11

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

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

21

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

23

Third-Party Defendants. )

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

THURSDAY, MAY 24, 2018

1 APPEARANCES:

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14  
15 \* \* \* \* \*

1 is nothing that MGM did that caused Mr. Cox's fall.

2 Another jury instruction, No. 8, "You may  
3 consider the ability of each party to produce evidence.  
4 If a party provided weaker evidence when it could have  
5 provided stronger evidence, you may distrust the weaker  
6 evidence."

7 There's two topics I want to talk with you  
8 using this jury instruction. The first is the fact  
9 that the plaintiffs did not call an expert. If the  
10 plaintiffs disputed what the defense experts had to say  
11 about where the accident happened, they had the right  
12 to call an expert into this court and give a different  
13 opinion. They didn't do that.

14 So they're relying -- they could have brought  
15 in potentially stronger evidence if they could find an  
16 expert to say what -- what -- something consistent with  
17 what Mr. Cox said, but they chose not to. And they're  
18 relying on weaker evidence, which is the testimony of  
19 Mr. Cox himself.

20 So this says, because of that, you may  
21 distrust the weaker evidence. Again, it comes down to  
22 you really don't have much else to rely on about the  
23 where and the how other than the experts.

24 The other topic under this jury instruction  
25 is interesting. The Friday before the long break, you

1 all saw videotape of Mr. Cox. You saw him in this  
2 court -- again, with these cameras -- being helped up  
3 to the witness stand. You saw him being helped back  
4 down from the witness stand.

5           Based on my experience with jurors, I'm sure  
6 you have observed him for many weeks in this courtroom.  
7 When, during testimony, he needed to go outside for any  
8 reason, he was assisted by his son. When he stood for  
9 you to go in and out, he would often stand using some  
10 hard physical assistance, steadied by a hand, something  
11 like that.

12           Now, Mr. Cox, it is true, never gave verbal  
13 testimony that "I can walk without assistance." And he  
14 never gave verbal testimony that he couldn't stand  
15 without some physical assistance like leaning on  
16 anything. So the subsequent video you were shown of  
17 Mr. Cox walking in 2016 for exercise, 2017 for  
18 exercise, after or before court days here, during this  
19 trial when you could observe him here, and then you see  
20 him when you're -- when you, this jury, is not around,  
21 well, that is evidence that impacts Mr. Cox's  
22 credibility.

23           You can compare what you saw on the  
24 surveillance videotape to what you observed in this  
25 courtroom, and you can decide whether that looks

1 consistent or whether it looks very inconsistent.

2 Now, the part that plays into this jury  
3 instruction is the failure to produce stronger  
4 evidence. After those videos were played, plaintiffs  
5 were in their rebuttal case. And they had the  
6 opportunity to put Mr. Cox up here and tell us why he  
7 hasn't been deceiving this jury from day one, why he  
8 hasn't been manipulating this jury from day one right  
9 here, witness stand. Let's get some more truth.  
10 Snicker all they want; they're caught and they know it.  
11 Okay?

12 So they have the ability to produce stronger  
13 evidence. They just let it slide and hoped Mr. Morelli  
14 could smooth it out.

15 That evidence didn't come in related to  
16 injuries because that is a Phase 2 issue. That  
17 evidence came in to let you assess Mr. Cox's  
18 credibility. But does he have any left? I don't think  
19 so.

20 He's been manipulating this jury from day one  
21 with every move he made. You shouldn't believe a word  
22 that comes out of his mouth because the only reason to  
23 do that is the green box at the end. He just wants a  
24 payoff.

25 MR. MORELLI: Jesus.

1 MR. POPOVICH: Yeah, "Oh, Jesus." That's  
2 right, Mr. Morelli. You should be praying because this  
3 jury saw what they saw.

4 All right. Moving on. A poor investigation  
5 did not cause this accident. And I am sure that you  
6 can think critical things of how MGM went about  
7 investigating. Mr. Janson did what he was supposed to  
8 do as he went to the scene. He got what information he  
9 could get. He told you that he could not get a  
10 discussion or photos of shoes because Mr. Cox was  
11 already on the gurney.

12 I think this jury would probably think it  
13 incredibly insensitive of a man getting treatment from  
14 the EMS to interrupt their care and to say, "What  
15 really happened?"

16 At that time -- by the time the ambulances  
17 were there, it is almost a certainty, based on the  
18 evidence that you've heard, that the participants in  
19 the illusion, the other participants, had cleared.  
20 Because Mrs. Cox even said that by the time she went to  
21 the bathroom, back -- which was before she came to the  
22 ambulance -- the crowd had dispersed and she's waiting.  
23 So the participants, that's one thing.

24 The Backstage people, they were there for the  
25 next show. It continued on. It didn't happen.

1           So to blame it all on MGM, I don't think  
2 that's fair. But, again, it comes back to it didn't  
3 cause the accident. Let's focus on what really caused  
4 the accident.

5           Okay. Let's go to some clips of Pomai Weall.  
6 You can assess witnesses how you like. I think she was  
7 the best witness in the case. Love this woman, just  
8 because she didn't seem to really care if she spoke  
9 coherently. She answered questions.

10           And this first clip talks in terms -- and I  
11 love this too. Listen to the tone of her voice when  
12 she starts to demonstrate how she puts out her hand and  
13 lights the steps for people coming out of the dragon,  
14 which Mr. Cox remembered being incredibly dark and no  
15 one there to help. And this was her job, this was her  
16 assignment.

17           She -- she goes into a flat tone of voice.  
18 She just assumes the position, like a person that's  
19 done it thousands of times. And that's her. That was  
20 her job.

21           So go ahead and play it, please.

22                     (Whereupon video was played.)

23 BY MR. RUSSELL:

24       Q.   Let's go back to the point where you left the  
25 dragon, you stand at the bottom of the stairs. Is that

1 what you said?

2 A. Yes.

3 Q. What efforts do you make to assist  
4 participants down the stairs in the dragon?

5 A. So usually they're standing like this. So I  
6 extend my hand and I light the stairs. I just say  
7 "Take my hand. You're about to walk down stairs. Take  
8 my hand. You're about to walk down stairs." If they  
9 took my hand, they did; if not, they saw the stairs.

10 (Whereupon video was stopped.)

11 MR. POPOVICH: Just goes into flat. "Take my  
12 hand. Hold the stairs." That rings of truth; right?  
13 It does to me anyway.

14 Let's look at another one.

15 Yeah. Go ahead and play No. 2.

16 (Whereupon video was played.)

17 BY MR. RUSSELL:

18 Q. How much -- how much space is there if  
19 someone wanted to run up hallways backstage?

20 A. Backstage they really don't have space to  
21 run. If someone were to run, it would mostly be in the  
22 outside where the -- when they exit the building in  
23 that time before they reenter the building.

24 Q. And your experience and understanding, it's  
25 the back of the line, and they can see everyone. But,

1 MS. FRESCH: Thank you, Your Honor.

2 (Whereupon a lunch recess was taken.)

3 THE MARSHAL: All rise.

4 (The following proceedings were held  
5 outside the presence of the jury.)

6 Come to order.

7 THE COURT: Good afternoon. Please be  
8 seated. We're back on the record. We're outside the  
9 presence of the jury. Something we need to take up  
10 outside the presence, and then I have to take a brief  
11 break after that before the jury comes in because I  
12 have a scheduling matter I have to attend to.

13 MR. DEUTSCH: Sure, Your Honor. Just in  
14 continuation of some of the objections that we made,  
15 with respect to Mr. Popovich's closing argument, we had  
16 an opportunity to review the transcript over the break  
17 and wanted to bring up one further thing.

18 Obviously, the Court is aware of the Lioce  
19 case, which Mr. Roberts and the defendants have raised  
20 a number of times. We believe that the clearest  
21 violation of the rules in this case happened just now  
22 with Mr. Popovich's closing. I will quote. He started  
23 by talking about, from day one, that Mr. Cox has been  
24 manipulating the jury from day one right here.

25 When you take that into account with this



1 to give an admonition to the jury about those comments.

2 THE COURT: Response.

3 MR. POPOVICH: I haven't read the Lioce case.  
4 I'd be happy to get the cite and maybe we can revisit,  
5 because if the Court is considering giving a curative  
6 instruction, it can be done later as well as now.

7 THE COURT: That's right.

8 MR. POPOVICH: You know, I said what I said.  
9 I believed I was arguing the motivation for the actions  
10 that I was commenting on. And I don't believe that --  
11 I certainly did not intentionally violate any rules.  
12 If it's violated a rule --

13 THE COURT: All right. Thanks for the  
14 heads-up, Mr. Deutsch. I'll take a look at the case.  
15 I'm familiar with the case.

16 MR. MORELLI: That's fair enough.

17 MR. DEUTSCH: And I would also cite, Your  
18 Honor, Rules of Professional Conduct, Rule 3.4(e) as  
19 well.

20 THE COURT: Okay.

21 MR. DEUTSCH: And one thing that you can take  
22 a look at, Your Honor, is the brief that Ms. Fresch  
23 filed with respect to a mistrial because it contains  
24 all the case law that this clearly violated.

25 MR. MORELLI: We don't want a mistrial.

1 MR. DEUTSCH: And we're not asking for a  
2 mistrial. We're asking for an admonition.

3 MR. MORELLI: Let's be clear.

4 MS. FRESCH: I'm so happy to be able to help  
5 them with the research.

6 MR. MORELLI: We take all the help we can  
7 get.

8 THE COURT: We'll hold that in abeyance  
9 because that is an admonition that can be given at a  
10 later time, doesn't have to be given right now. I'll  
11 consider the case.

12 MR. DEUTSCH: Well, Your Honor, we would ask  
13 that -- that to -- to wait --

14 MR. MORELLI: It could be done today.

15 MR. DEUTSCH: Yeah. We understand. We would  
16 rather it be given sooner rather than later because --

17 THE COURT: I'm not -- you know, Lioce  
18 involved golden rules arguments and things like that,  
19 as I recall.

20 MR. DEUTSCH: Actually, there were a number  
21 of different arguments. One of them was the golden  
22 rule. The other one was commenting on what I just --  
23 what was referred --

24 THE COURT: In the reference to what the  
25 attorney's opinion was.

1 MR. DEUTSCH: -- as the justness of the  
2 personal injury litigants and the fact that -- the  
3 reason for being here was -- was that it was just a --  
4 you know, in that case he talked about it was just a  
5 waste of time or taxpayer money.

6 But in this case to comment that it's just a  
7 money-grab is -- is -- there couldn't be anything more  
8 inflammatory in a personal injury case.

9 One of the things that we heard throughout  
10 jury selection in this case, as Your Honor remembers  
11 over the two weeks, and numerous jurors -- I can't  
12 exactly remember how many -- but numerous jurors were  
13 excused because of that exact comment. The term  
14 money-grab or plaintiffs in personal injuries are just  
15 here for the money came up overwhelmingly.

16 THE COURT: Why don't you prepare a proposed  
17 instruction. Each side can prepare a proposed  
18 instruction, and I will consider the case.

19 MR. DEUTSCH: I will do that.

20 THE COURT: I have to take a brief break for  
21 scheduling.

22 MR. DEUTSCH: Yes.

23 (Whereupon a short recess was taken.)

24 THE MARSHAL: Remain in order.

25 THE COURT: All right. We're back on the

1 But it's also a method of screening. And  
2 contrary to everything Mr. Morelli said yesterday, the  
3 video is clear, but there's -- the testimony is clear.  
4 The only testimony that you have about the cables on  
5 the ground, the lights behind the platform, the big  
6 jumbotron screen that the volunteers have to maneuver  
7 around, the only testimony you heard about that, the  
8 only evidence, is the evidence of Mr. Copperfield as  
9 well as Mr. Kenner about what's there.

10 You guys are smart enough. You guys can see  
11 the video for yourself. You do not need me to  
12 interpret what they see -- what you see on the video of  
13 the walk-around. I'm just going to leave it at that.

14 Now, and then finally, the final point of the  
15 screening process is they walk up the stairs -- again,  
16 no rails -- into the platform, and they also have to  
17 maneuver into their seats because they jockey around  
18 there as you watch the video.

19 All right. All right. Next. So the  
20 volunteers exit the platform through the dragon. I'm  
21 only going to say stairs have lights and glow tape.

22 Pomai Weall, that you saw earlier today, I  
23 completely agree with Mr. Popovich's assessment of her.  
24 She was a great -- she was so natural doing that. And  
25 I still can't mimic that. But, again, Mr. Cox didn't

1 It's not what the charge said.

2 MR. STRASSBURG: It's custom.

3 THE COURT: Overruled.

4 MR. DEUTSCH: That's not what the charge  
5 said.

6 THE COURT: Go ahead.

7 MR. STRASSBURG: And I also asked him, "Was  
8 the standard of care satisfied on the Beacher's  
9 project, the customary standard of care?"

10 And King swore to you on oath, "Yeah, yeah."  
11 Nobody contradicted him; right? Nobody.

12 One of the things I also want to -- is the  
13 matter of -- we -- we just want to make sure -- I wish  
14 we could have had a jury view, but that didn't happen.  
15 But I just wanted to make sure that you guys see --  
16 that everybody sees the fact that the actual  
17 construction work that generates -- that could generate  
18 dust, and generates dusts, is done inside. The  
19 disposal is done outside on the accessway.

20 You know, we don't have guys out there with  
21 sawhorses and cutting plywood out by the dumpster. No.  
22 We don't do that. MGM would (descriptive sound);  
23 right? So we do that inside. And maybe this will help  
24 you. And, oh, by the way, my partner, Mr. Call, being  
25 a man of impeccable taste, disassociates himself from

1 illusion. He's an adult. He was a volunteer.

2 And we've already covered the no one was  
3 injured. Mr. -- David said specifically, "I don't  
4 recall," not that no one has ever been injured. That  
5 was his recollection, "I don't recall anyone being  
6 injured."

7 It's silly to talk about being -- failure to  
8 modify the Thirteen Illusion after Mr. Cox fell. What  
9 does that matter anyway? All that matters is what  
10 happened here, not what happened in 2014, 2015. But  
11 if -- why do you modify anything if you don't think  
12 there's anything wrong with it? We wouldn't be here  
13 today otherwise.

14 And the failure to warn does not make sense  
15 to me either. He was told he had to run potentially.  
16 You need to know. "Can you run? Are you in good  
17 health?" It's not a failure-to-warn case.

18 Just to make sure. All right. So last but  
19 not least, I want to show the videos.

20 (Whereupon video was played.)

21 MS. FRESCH: Okay. That's 2016.

22 Here's Mr. and Mrs. Cox in 2016 again walking  
23 with their dog.

24 Okay. Now we're in 2017, another walk with  
25 the dog, I think. Yep.

1                   Okay. Now we're April 24th of the trial.

2                   Okay. Thank you, Ms. Bonney.

3                   All right. And then the photo on the right,  
4 as you know, that's from the observations in the  
5 courtroom. Left is April 24th and right is May 1st of  
6 this trial.

7                   Okay. And just a little reminder of  
8 Mr. Cox's testimony.

9                   "QUESTION: Do you hold onto someone's arm  
10 when you're downstairs and the jury is not  
11 around?

12                   "ANSWER: Yes."

13                   All right. So Mr. Popovich has already  
14 explained the purpose of these videos and what we saw  
15 and the reason for them. It goes to the credibility.  
16 And it's your job. There's a jury instruction about  
17 this, about your job as the jury when you're  
18 deliberating to assess the credibility of witnesses.  
19 And I want you to recall those videos when you're doing  
20 that of Mr. Cox.

21                   So I'll just leave that with the final  
22 question. And I would like to thank you all for  
23 listening to me. I went a little bit longer than I  
24 meant to. So I apologize. And I know you all want a  
25 break now. And Mr. Copperfield appreciates you being a

1 else, including, without limitation, the lawyers,  
2 parties, and witnesses on any subject connected with  
3 the trial or read, watch, or listen to any report of or  
4 commentary on the trial or any person connected with  
5 the trial by any medium of information, including,  
6 without limitation, newspapers, television, the  
7 internet, and radio, or to form or express any opinion  
8 on any subject connected with the trial until the case  
9 is finally submitted to you.

10 Be outside the courtroom just a bit to the  
11 south at a quarter to 4:00. Thank you.

12 Counsel remain.

13 (The following proceedings were held  
14 outside the presence of the jury.)

15 THE MARSHAL: Come to order. This department  
16 is again in session.

17 THE COURT: Back on the record. You may be  
18 seated. All right.

19 MR. DEUTSCH: Thank you, Your Honor.

20 THE COURT: Mr. Deutsch.

21 MR. DEUTSCH: Pursuant to our discussion  
22 before, we found a case, Centeno-Alvarez v. Koh. It's  
23 a trial court decision. The Westlaw cite is 2008 WL  
24 8177830. It's a district court trial order from  
25 Judge Bixler from 2008.



1 And, in that case, Your Honor, Judge Bixler  
2 found that comments by counsel that the plaintiff  
3 brought this claim so he could have a, quote, big  
4 payday does in fact constitute improper conduct.

5 The judge has a long discussion about, under  
6 Lioce, there's a whole section that says "Defense  
7 counsel's characterization of plaintiff's case as being  
8 a big payday." And it goes on to say that "Defense  
9 counsel asked one of the witnesses if he knew the --  
10 the expression, quote, a pot of gold at the end of the  
11 rainbow."

12 The court found that referencing plaintiff's  
13 lawsuit as an attempt at a big payday or a search for a  
14 pot of gold at the end -- under the rainbow is, in  
15 fact, improper conduct.

16 Now, that court found that, while it does not  
17 rise to the level of a new trial under Lioce, we're not  
18 seeking at this point a mistrial based on that. It was  
19 a one-time thing, at least for this comment, and  
20 therefore it doesn't, but --

21 THE COURT: Was there an objection made at  
22 the time the comment was made?

23 MR. DEUTSCH: Your Honor, we made the  
24 objection as soon as his summation was over, because to  
25 do it at the time of his summation wouldn't have

1 changed anything.

2 THE COURT: Did you object in the presence of  
3 the jury is what I'm --

4 MR. DEUTSCH: Yes, I did. And, therefore, we  
5 believe that -- that the -- maybe an admonishment of  
6 Mr. Popovich is appropriate. And -- and what the case  
7 says is -- what the Gunderson case says -- as Your  
8 Honor is aware, Gunderson says that "When an attorney  
9 commits misconduct and an opposing party objects, the  
10 district court should sustain the objection and  
11 admonish the jury and counsel respectfully by advising  
12 the jury about the impropriety of counsel's conduct and  
13 reprimanding or cautioning counsel against such  
14 misconduct."

15 So based on the fact that -- that we believe  
16 that the comments that he made, specifically that --  
17 "the green box at the end," I think that's pretty  
18 analogous to "the pot at the end of the rainbow," as  
19 well as "he just wants a payoff." Clearly, that is  
20 improper conduct.

21 THE COURT: And what I'm looking at here is  
22 UNLV school of law summary of Lioce v. Cohen, 124 Nev.  
23 Adv. Op. No. 1. Okay? And, of course, that's -- this  
24 summary is -- goes back, I believe, to -- well, it  
25 would have been around the time that the case came out,

1 which was in 2008.

2 And the way -- the way the conduct was  
3 summarized there is as follows. And this is on the  
4 first page of the summary. It says "Mr. Emerson's  
5 closing arguments all contained similar arguments and  
6 statements reflecting his personal views on the cases  
7 and how the jury should decide the matters. In each  
8 proceeding, Mr. Emerson called the lawsuits frivolous  
9 and a waste of the taxpayers' money. He further stated  
10 that lawsuits of this vein give the legal profession  
11 and the American justice system a bad reputation.

12 "Mr. Emerson also gave his personal reasons  
13 for participating in cases such as these, which  
14 included his personal mission to improve the public's  
15 view of the legal profession and to fight those who  
16 bring frivolous personal injury lawsuits."

17 Okay.

18 MR. DEUTSCH: Your Honor, we're not -- I  
19 don't believe that Lioce is the -- Lioce doesn't  
20 codify --

21 THE COURT: No, I understand.

22 MR. DEUTSCH: -- all bad conduct; right? So  
23 Lioce just codifies what -- what is done if the bad  
24 conduct rises to a certain level.

25 THE COURT: No, I understand that. And I

1 haven't made my ruling yet. I'm just -- I think I have  
2 to distinguish between what you're saying constitutes  
3 something for which an admonishment should be given.

4 Okay?

5 MR. DEUTSCH: Right.

6 THE COURT: From Instruction No. 12, which is  
7 to the effect that the credibility or believability of  
8 a witness should be determined by his or her manner  
9 upon the stand, his or her relationship to the parties,  
10 his or her fears, motives, interests, or feelings, his  
11 or her opportunity to observe the matter, et cetera,  
12 et cetera. So "motives" is the word that stands out  
13 there. Okay.

14 MR. DEUTSCH: I understand that, Your Honor.

15 However, the way Judge Bixler analyzed the  
16 comments about big payday in relation to Lioce was that  
17 that constitutes jury nullification. That's the  
18 category that he put it in.

19 THE COURT: You're referring to another trial  
20 court. It's not --

21 MR. DEUTSCH: I am.

22 THE COURT: It's not anything of precedential  
23 value.

24 MR. DEUTSCH: I understand. Your Honor could  
25 take it into account, but, obviously, Your Honor is

1 entitled to make up your own mind.

2 THE COURT: Right.

3 MR. DEUTSCH: However, it is the identical,  
4 basically, comment that Mr. Popovich made. So I think  
5 that -- that -- I think that everyone could agree, I  
6 would assume -- well, I shouldn't say that.

7 But I think it's clear that suggesting that  
8 this case is being brought solely for the purposes of a  
9 big payday is not permissible comment.

10 THE COURT: Okay. Do you have a copy of your  
11 proposed -- I just want to take a look at it.

12 MR. DEUTSCH: I do. I just -- if I could --  
13 if I could -- oh, yeah. Unfortunately, I didn't have a  
14 printer, Your Honor. But I could read it or I could  
15 email it to Alice and Alice could maybe -- can you do  
16 that?

17 THE COURT: Because I'm not inclined to use  
18 the term "misconduct" or "impropriety" or anything like  
19 that.

20 MR. DEUTSCH: Well, this is what I had  
21 suggested, Your Honor. And this is based upon that  
22 case, which -- which found that -- from the Gunderson  
23 case, which talks about the -- you know, what's --  
24 what's appropriate. And, in Gunderson, when discussing  
25 what an admonishment is -- let me just find my note on

1 that.

2 In Gunderson, Gunderson says -- explains what  
3 the -- the language should be, basically. And it  
4 says -- again, as I said before, "When an attorney  
5 commits misconduct and opposing party objects, the  
6 district court should sustain the objection and  
7 admonish the jury and counsel respectively" -- and this  
8 is the key language -- "by advising the jury about the  
9 impropriety of counsel's conduct and cautioning counsel  
10 against such misconduct."

11 So based on the language from Gunderson,  
12 which is the case that deals with these types of  
13 issues, this is what I had drafted.

14 "Members of the jury, during Mr. Popovich's  
15 closing arguments, he stated that Gavin Cox is only  
16 here because of, quote, the green box at the end, and  
17 he, quote, just wants a payoff, end quote. Those  
18 comments were impermissible, and I admonish you to  
19 disregard those comments and dismiss them from your  
20 mind. You may not use those comments in coming to your  
21 decision in this case and must decide this case solely  
22 based on the evidence and the law."

23 I think that is a fair --

24 MR. MORELLI: That's pretty benign.

25 MR. DEUTSCH: -- and benign admonishment that

1 part.

2 MR. POPOVICH: We -- for -- for -- he's doing  
3 it for more money than he would be entitled for a  
4 separated shoulder. There's never been any dispute  
5 that he separated his shoulder. There's no dispute  
6 that he had an injury from this accident. That was not  
7 part of argument at all.

8 And, Your Honor, Lioce, I don't see that it  
9 even comes close to the one-off thing I did. And, by  
10 the way, I think I heard counsel say that they objected  
11 in the presence of the jury during my closing to this.  
12 There was -- there was no -- there was no objection.  
13 There were statements and banter between counsel, but  
14 there was no objection at that time.

15 THE COURT: All right. Here's what I have  
16 determined to do.

17 I will just read a part of Instruction  
18 No. 2 -- okay? -- which states as follows:  
19 "Statements, arguments, and opinions of counsel are not  
20 evidence in the case."

21 MR. DEUTSCH: Your Honor --

22 MR. POPOVICH: Thank you, Your Honor.

23 MR. DEUTSCH: -- we know that, but that does  
24 not solve the problem that was just caused by what  
25 we -- what the law says is improper conduct. The law

1 clearly says -- I mean, it -- the law -- at least one  
2 other judge as well as Lioce found that his comments  
3 constitute improper conduct.

4           They can read that that -- that -- reading  
5 that instruction again in no way solves the problem  
6 that has been caused by the impermissible conduct, in  
7 no way. There was an objection made right after he  
8 finished closing so as not to interrupt him. The  
9 objection is sustained. The conduct was impermissible  
10 under the law.

11           And the jury needs to know that they need to  
12 disregard it. They can't use those comments in  
13 deciding their decision because it is improper. And  
14 that instruction does nothing to let the jury know what  
15 comments were improper, why -- what they need to  
16 disregard, and -- and does not --

17           THE COURT: So the case you're --

18           MR. DEUTSCH: -- does not solve the problem.

19           THE COURT: The case you're relying on is a  
20 district judge's decision or opinion in another case;  
21 right?

22           MR. DEUTSCH: It is, Your Honor.

23           THE COURT: And you're saying that that's  
24 basically in line with Lioce?

25           MR. DEUTSCH: I'm saying that the same



1 comments that were made in this case basically, almost  
2 identical, "big payday, green box at the end of the  
3 rainbow, pot at the end of the rainbow," they're all  
4 the same comments.

5           In that case, the judge did an analysis of  
6 those conducts under Lioce and found, after going  
7 through that analysis -- he has an entire section in  
8 the -- in the decision. "Section 7, defense counsel's  
9 characterization of plaintiff's case as being a, quote,  
10 big payday."

11           And it goes through Lioce, "Jury  
12 nullification is one of the categories of attorney  
13 misconduct described in Lioce. The definition of jury  
14 nullification is the jury's knowing or deliberate  
15 rejections of the evidence or refusal to apply the  
16 law." It goes through the whole thing.

17           It then talks about Lioce. It talks about  
18 the comments made in Lioce and then analyzes the  
19 comments made in that case in light of those comments.  
20 And what the court found after doing that analysis was  
21 that inappropriate remarks -- so -- so the Court found  
22 "defense counsel made inappropriate remarks, such as  
23 suggesting to the jury that plaintiff brought this  
24 claim so he could have a big payday and suggesting that  
25 plaintiff's wife or attorney were deciding plaintiff's

1 course of treatment."

2 That's been done throughout this case too by  
3 the defendants, that everything has been done because  
4 of their attorneys and they got the attorneys. So,  
5 arguably, that's improper also, but forget that for  
6 now.

7 And then it just says, "The misconduct by  
8 defense counsel will be addressed in the section  
9 later." So that says that, under the analysis done in  
10 that case under Lioce, the big payday comments are  
11 improper conduct. They're improper. And if they're  
12 improper, the jury needs to know under Gunderson,  
13 because Gunderson is the case that talks about what to  
14 do if there's been improper conduct.

15 And the only thing to do is either -- if it  
16 occurs multiple times and it continues happening --

17 THE COURT: All right. What I'll do is --  
18 bring up your computer --

19 MR. DEUTSCH: I'm going to email it to Alice  
20 right now.

21 THE COURT: Go ahead and address it.

22 MR. POPOVICH: Yeah, I find I'm constantly at  
23 a disadvantage with Mr. Deutsch because he gets 1,000  
24 words to my one.

25 Here's my comments, Your Honor: He

1 stopped -- he stopped the discussion of what Lioce has  
2 to say about jury nullification right before the  
3 important part, which is "Jury nullification, as  
4 defined in Lioce, is the jury's knowing and deliberate  
5 rejection of the evidence or refusal to apply the law  
6 either because the jury wants to send a message about  
7 some social issue that is larger than the case itself  
8 or because the result dictated by law is contrary to  
9 the jurors' sense of justice, morality, or fairness."

10           And that absolutely applies to what  
11 Mr. Emerson was doing in the Lioce case because he was  
12 talking about bigger social issues, what's wrong with  
13 this country is because of these kinds of lawsuits,  
14 what -- the reason jurors do not -- the reason jurors  
15 do not respect lawyers is because of these kinds of  
16 lawsuits.

17           I was talking very specifically about Mr. Cox  
18 and his behavior. I did not indicate the reason for  
19 bringing a lawsuit; I indicate the reason for his  
20 behavior in this courtroom were for the reasons I  
21 stated. That -- and I'm very concerned about this term  
22 "misconduct," Your Honor, because I'm here on pro hac  
23 vice.

24           THE COURT: I'm not going to use the term  
25 "misconduct." I've already said that.

1 MR. POPOVICH: I understand. But I don't  
2 think -- I don't see anything that was improper in how  
3 I argued absolutely directly the logical inference and  
4 the reasons for and the motivations for the conduct  
5 that can be seen in those videos.

6 THE COURT: Now, here's a reference to the  
7 Nevada lawyer again. Okay? This is January 2017.  
8 This came up on the -- as you know, this issue came to  
9 me rather quickly, so I had to try to --

10 MR. DEUTSCH: Yeah, I understand, Your Honor.

11 THE COURT: -- deal with it quickly.  
12 Motions -- reptile motions in personal injury cases,  
13 sort of interesting. And it's a discussion -- it's a  
14 discussion of Lioce -- all right? -- interestingly  
15 enough. And here's how -- here's how Lioce is  
16 characterized in this -- in this article.

17 "In Lioce, the Nevada Supreme Court addressed  
18 golden rule arguments and jury nullification and found  
19 the following arguments to be improper." Okay?

20 "1. Stating at some point you must say  
21 enough is enough." Okay? That hasn't happened.

22 Then it goes on and gives some other examples  
23 of what was stated. "People must stop wasting taxpayer  
24 money," et cetera.

25 "Stating that a case was frivolous and was

1 responsible for the decline of the legal profession's  
2 reputation." Okay. We're not dealing with that here.

3 But then "stating this is a case where the  
4 plaintiffs are trying to get something for nothing."  
5 And I think that's synonymous -- that -- that -- I  
6 don't -- I don't know that I actually saw that  
7 statement in the Lioce decision, but that's how this  
8 has characterized it in summarizing it. But that was  
9 one of the statements that were made.

10 Now, I was in one of the Lioce cases. And,  
11 in fact, I sustained an objection but didn't admonish,  
12 and I got reversed for that. Okay? That happened in  
13 that case, and I was told that I had to make additional  
14 findings or whatever in reconsidering the motion for a  
15 new trial. Okay?

16 And I don't recall that that statement was  
17 made in my case. There were several cases that were  
18 consolidated in the Lioce case. Okay? But when I look  
19 at the term "this case" -- let's see -- "this is a case  
20 where the plaintiffs are trying to get something for  
21 nothing," that appears to me to be synonymous with what  
22 you say when you say "green box."

23 MR. POPOVICH: Your Honor, there was never,  
24 in my mind, the nothing part of that. The defense, I  
25 believe --

1 THE COURT: I understand.

2 MR. POPOVICH: -- as a group have always  
3 conceded he had an injury.

4 THE COURT: Okay. Let me see here. Just a  
5 second. Yeah, I think the way that the proposed  
6 instruction has been modified is appropriate. I'm not  
7 alluding to any misconduct; I'm alluding to an  
8 objection having been made and that I've sustained it.

9 MR. POPOVICH: May I see it, Your Honor?

10 THE COURT: Yes.

11 There's no allusion either to any  
12 professional -- violation of professional rules of --

13 MR. POPOVICH: If it saves us from getting  
14 reversed to have that, thank you.

15 THE COURT: So I'm not going to get into  
16 misconduct or violations of rules of professional  
17 responsibility or anything like that. I'm going to  
18 just allude to the fact that there was an objection,  
19 that I've sustained it, and telling them to disregard  
20 the comment. Okay?

21 It occurs to me also, with respect to the  
22 jury instructions being exposed and -- and discussed,  
23 I'm inclined to read the second paragraph of  
24 Instruction No. 1. I think this will take care of  
25 whatever objection you have got to that, Mr. Deutsch.

1 THE COURT: So you don't mind being  
2 interrupted?

3 MR. ROBERTS: I don't, Your Honor. I'm happy  
4 to get done what I can and quit at 5:00 and come back.

5 THE COURT: Appreciate that.

6 Very well. Let's have the jury brought in.

7 THE MARSHAL: All rise.

8 (The following proceedings were held in  
9 the presence of the jury.)

10 THE COURT: Please be seated. We're back on  
11 the record.

12 Do counsel stipulate that the jury is  
13 present?

14 MR. MORELLI: Jury is present.

15 MR. ROBERTS: Yes, Your Honor.

16 MR. POPOVICH: Yes, Your Honor.

17 THE COURT: All right. Before we get  
18 underway with Mr. Roberts' summation, just a couple of  
19 things I'm going to do here.

20 First of all, I'm going to read an  
21 admonishment to you which will be made.

22 JUROR NO. 2: Can't hear you. I'm sorry.

23 THE COURT: I'm going to read an admonishment  
24 here, and then that will be made part of the record.  
25 Okay.

1           Members of the jury, during Mr. Popovich's  
2 closing arguments, he stated that Gavin Cox is here  
3 because of the "green box at the end," and he "just  
4 wants a payoff."

5           Those comments were objected to and the Court  
6 has sustained the objection, and I admonish you to  
7 disregard those comments and to dismiss them from your  
8 mind. You may not use those comments in coming to your  
9 decision in this case and must decide this case solely  
10 based on the evidence and the law.

11           Okay? Now, one other thing I want to read to  
12 you quickly is there have been occasions during  
13 arguments when counsel have put up copies of the  
14 instructions that the Court has given for you to take a  
15 look at, and that's entirely proper.

16           But I want to clarify that you must not be  
17 concerned with the wisdom of any rule of law stated in  
18 these instructions. Regardless of any opinion you may  
19 have as to what the law ought to be, it would be a  
20 violation of your oath to base a verdict upon any other  
21 view of the law than that given in the instructions of  
22 the Court.

23           All right? So the purpose of that is to just  
24 let you know the instructions are what they are.  
25 Counsel can use them during argument, but the





PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 11***

JA006205

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8 GAVIN COX and MINH-HAHN COX, )  
9 husband and wife, )

10

Plaintiffs, )

11

vs. )

12

MGM GRAND HOTEL, LLC; DAVID )  
13 COPPERFIELD aka DAVIS S. )  
14 KOTKIN; BACKSTAGE EMPLOYMENT )  
15 AND REFERRAL, INC.; DAVID )  
16 COPPERFIELD'S DISAPPEARING, )  
17 INC.; TEAM CONSTRUCTION )  
18 MANAGEMENT, INC.; DOES 1 )  
19 through 20; DOE EMPLOYEES 1 )  
20 through 20; and ROE )  
21 CORPORATIONS 1 through 20, )

22

Defendants. )

23

MGM GRAND HOTEL, LLC., )

24

Third-Party Plaintiff, )

25

vs. )

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

28

Third-Party Defendants. )

29

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, MAY 25, 2018

30

31

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
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21 \* \* \* \* \*

1 It's a little bit different.

2 THE COURT: That brings me to read a note  
3 here from one of the jurors that was submitted  
4 yesterday. It's from Ms. Gomez. It says No. 710. It  
5 says -- wait. That's not the one.

6 All right. Okay. Yes, it is from -- from  
7 her. It's "Tuesday, May 29th, 2018, 8:00 to 12:00, I  
8 have my students' high school graduation ceremony."

9 Okay? That's Tuesday.

10 MR. MORELLI: And that's Ms. Gomez, you said.

11 THE COURT: And then she says, "May 30  
12 through June 4th, planned trip with my children to  
13 California. Hotel has been paid for."

14 MR. DEUTSCH: The problem, Your Honor, is  
15 that --

16 THE COURT: I'm telling everybody that.  
17 Okay. Because I have some other notes here that  
18 I'll --

19 MR. DEUTSCH: That just raises our concern  
20 even more about giving the case to the jury at -- late  
21 in the afternoon on Memorial Day weekend when one of  
22 the potential jurors knows that they might not be here  
23 next week. That just leads it more to the possibility  
24 that they'll just rush through it instead of taking the  
25 time that it needs, after seven weeks, in order to come

1 getting tossed out for some reason other than the  
2 merits of your case; right? "Throw him out of court."  
3 That's used when you don't reach the merits, a judgment  
4 on the facts after a trial.

5           No one wants you to throw them out of the  
6 court from the defense table. We -- we want you to  
7 make a judgment based on the facts and the law. And  
8 there's a difference between getting thrown out of  
9 court and losing your case because you didn't meet your  
10 burden. You know, it's not an aggressive thing. It's  
11 not a yelling thing. Just, you know, I'm sorry you got  
12 hurt but you didn't meet your burden. And that's what  
13 we're asking for.

14           And when he said that, he didn't just say  
15 throw the plaintiffs out of court; he said, "They want  
16 you to throw the Cox family out of court." Remember he  
17 said that? And -- and then the family's been here, the  
18 sons have been here. You know, I appreciate that, you  
19 know, a family sticking together. But, you know, it's  
20 not about the sons and -- and the family; it's about  
21 whether the plaintiffs have proven their case.

22           And if we're going to bring the family into  
23 it, then I got to revisit where I started. You know,  
24 the videos that we sort of started out here with you,  
25 we go to Mr. Cox's credibility, strolling down the

1 street without any help. And -- you know, and, most of  
2 those, his family is with him. It's either just his  
3 wife or it's among all his sons that are with him. And  
4 they're not helping him. They're not even looking at  
5 him, not like they did in this courtroom for weeks and  
6 weeks.

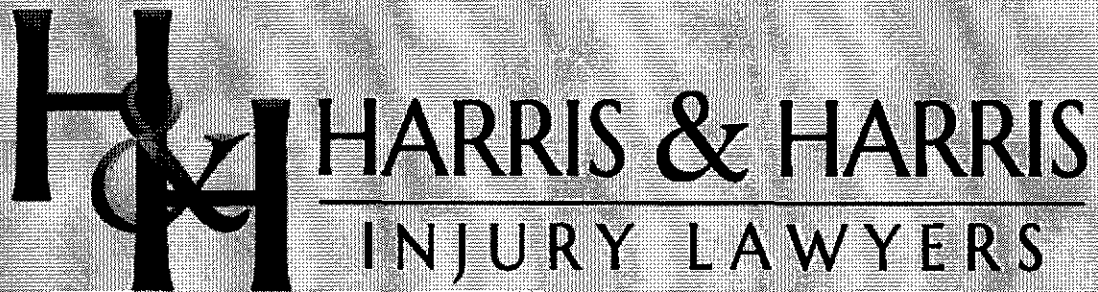
7           And it wasn't one day of magical recovery in  
8 the courtroom. You know, the videos we showed you were  
9 a year and a half ago and a few months later and then  
10 more in court. And to the extent he's asked you to do  
11 something for the Cox family, the Cox family was part  
12 of the deception that I talked about yesterday.

13           And I don't know how Mr. Morelli is going to  
14 explain this when he didn't put on any explanation that  
15 you can consider in the form of evidence after we  
16 showed you this, but the fact is those videos don't and  
17 can't lie.

18           It's very sad that someone was injured during  
19 this illusion. You know, Mr. Copperfield and  
20 Mr. Kenner -- you know, they've all testified, they  
21 don't want people to get hurt; they're about  
22 entertaining and having fun. And it's sad that someone  
23 got hurt, but it doesn't always have to be somebody's  
24 fault.

25           Accidents can happen. You know, that sucks.





PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 12***

JA006212



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8 GAVIN COX and MINH-HAHN COX, )  
9 husband and wife, )

10 Plaintiffs, )

11 vs. )

12 MGM GRAND HOTEL, LLC; DAVID )  
13 COPPERFIELD aka DAVIS S. )

14 KOTKIN; BACKSTAGE EMPLOYMENT )  
15 AND REFERRAL, INC.; DAVID )

16 COPPERFIELD'S DISAPPEARING, )  
17 INC.; TEAM CONSTRUCTION )

18 MANAGEMENT, INC.; DOES 1 )  
19 through 20; DOE EMPLOYEES 1 )

20 through 20; and ROE )  
21 CORPORATIONS 1 through 20, )

22 Defendants. )

23 MGM GRAND HOTEL, LLC., )

24 Third-Party Plaintiff, )

25 vs. )

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

28 Third-Party Defendants. )

29

30

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, MAY 4, 2018

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**IN THE SUPREME COURT STATE OF NEVADA**

GAVIN COX and MINH-HAHN COX, ) Supreme Court No. 76422  
Husband and Wife, )  
)  
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 26-B**

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# ALPHABETICAL JOINT APPENDIX INDEX

TITLE	DATE	FILER / PREPARER	PAGE NO.	VOLUME NO.
01.19.17 Transcript of Proceedings - Motions	01.19.17	Martha Szramek, Court Recorder	JA 000239 - JA 000346	2
09.18.17 Transcript of Proceedings - Plaintiffs' Omnibus Motion in Limine; Defendants' Motion in Limine; Team Construction Management, Inc., and Beacher's LV LLC's Joinder to Fourth Supplement to Defendant Backstage Employment & Referral, Inc.'s Designation of Expert Witnesses & Documents	09.18.17	Jennifer Gerold, Court Recorder	JA 000352 - JA 000390	2
03.29.18 - Transcript of Proceedings Re: Pretrial Conference	03.29.18	Jennifer Gerald, Court Recorder	JA 000391 - JA 000424	2
04.03.18 - Reporter's Transcript of Jury Trial	04.03.18	Kristy L. Clark, RPR	JA 000425 - JA 000568	2-3
04.11.18 - Reporter's Transcript of Jury Trial	04.11.18	Kristy L. Clark, RPR	JA 000574 - JA 000714	3
04.13.18 - Reporter's Transcript of Jury Trial	04.13.18	Kristy L. Clark, RPR	JA 000715 - JA 000892	3-4
04.17.18 - Reporter's Transcript of Jury Trial	04.17.18	Kristy L. Clark, RPR	JA 000893 - JA 001167	4-5
04.18.18 - Reporter's Transcript of Jury Trial	04.18.18	Kristy L. Clark, RPR	JA 001168 - JA 001415	5-6
04.24.18 - Reporter's Transcript of Jury Trial	04.24.18	Kristy L. Clark, RPR	JA 001416 - JA 001585	6-7
04.25.18 - Reporter's Transcript of Jury Trial	04.25.18	Kristy L. Clark, RPR	JA 001933 - JA 002269	9-10
04.26.18 - Reporter's Transcript of Jury Trial	04.26.18	Kristy L. Clark, RPR	JA 002270 - JA 002514	10-11

04.27.18 - Reporter's Transcript of Jury Trial	04.27.18	Kristy L. Clark, RPR	JA 002515 - JA 002904	11-13
04.30.18 - Reporter's Transcript of Jury Trial	04.30.18	Kristy L. Clark, RPR	JA 002905 - JA 003016	13
05.01.18 - Reporter's Transcript of Jury Trial	05.01.18	Kristy L. Clark, RPR	JA 003017 - JA 003282	13-14
05.02.18 - Reporter's Transcript of Jury Trial	05.02.18	Kristy L. Clark, RPR	JA 003283 - JA 003596	14-16
05.03.18 - Reporter's Transcript of Jury Trial	05.03.18	Kristy L. Clark, RPR	JA 003597 - JA 003846	16-17
05.04.18 - Reporter's Transcript of Jury Trial	05.04.18	Kristy L. Clark, RPR	JA 003847 - JA 004002	17
05.08.18 - Reporter's Transcript of Jury Trial	05.08.18	Kristy L. Clark, RPR	JA 004071 - JA 004402	18-19
05.09.18 - Reporter's Transcript of Jury Trial	05.09.18	Kristy L. Clark, RPR	JA 004435 - JA 004720	19-20
05.10.18 - Reporter's Transcript of Jury Trial	05.10.18	Kristy L. Clark, RPR	JA 004723 - JA 004988	20-21
05.11.18 - Reporter's Transcript of Jury Trial	05.11.18	Kristy L. Clark, RPR	JA 005005 - JA 005157	21-22
05.22.18 - Reporter's Transcript of Jury Trial	05.22.18	Kristy L. Clark, RPR	JA 005158 - JA 005232	22
05.23.18 - Reporter's Transcript of Jury Trial	05.23.18	Kristy L. Clark, RPR	JA 005233 - JA 005401	22-23
05.24.18 - Reporter's Transcript of Jury Trial	05.24.18	Kristy L. Clark, RPR	JA 005440 - JA 005613	23-24
05.25.18 - Reporter's Transcript of Jury Trial	05.25.18	Kristy L. Clark, RPR	JA 005614 - JA 005806	24-25
05.29.18 - Reporter's Transcript of Jury Trial	05.29.18	Kristy L. Clark, RPR	JA 005807 - JA 005919	25

08.23.18 - Recorder's Transcript of Hearing re: Plaintiffs' Motion for Judgment As A Matter of Law or, In The Alternative, for New Trial	08.23.18	Jennifer Gerold, Court Recorder	JA 006497 - JA006552	28
Backstage Employment and Referral, Inc.'s Brief Regarding New and Previously Undisclosed Witnesses	04.25.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 001874 - JA 001932	8-9
Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial (Filed Under Seal)	12.16.16	Weinberg Wheeler Hudgins Gunn & Dial	JA 000151 - JA 000158	1
Backstage Employment & Referral, Inc.'s Opposition to Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively for a New Trial	08.10.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 006353 - JA 006381	27
Backstage Employment and Referral, Inc.'s Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.08.19	Weinberg Wheeler Hudgins Gunn & Dial	JA 006614 - JA 006616	28
Backstage Employment & Referral, Inc.'s Reply in Support of Motion to Bifurcate Trial	01.11.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000177 - JA 000234	1
Beacher's LV, LLC's Answer to MGM Grand Hotel's Third Party Complaint	04.05.16	Morris Sullivan Lemkul & Pitegoff	JA 000078 - JA 000092	1
Beacher's LV, LLC's Amended Answer to MGM Grand Hotel's Third-Party Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	10.07.16	Morris Sullivan Lemkul & Pitegoff	JA 000128 - JA 000150	1
Beacher's Motion for Leave to File an Amended Answer to Third Party Plaintiff MGM Grand's Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	07.29.16	Morris Sullivan Lemkul & Pitegoff	JA 000093 - JA 000127	1
Case Appeal Statement	07.11.18	Harris & Harris	JA 006271 - JA 006294	27

Complaint and Demand for Jury Trial	08.06.14	Eglet Law Firm	JA 00001 - JA 00011	1
Court Minute Order Regarding Motion for Certification	04.25.19	Judge Mark Denton	JA 006623	28
Court Minutes - Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.02.17	Judge Mark Denton	JA 000347	2
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Answer to Plaintiff's Complaint	10.27.14	Selman Breitman	JA 000029 - JA 000038	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Brief Regarding Undisclosed Witnesses	04.25.18	Selman Breitman	JA 001835 - JA 001873	8
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Amended Answer to Plaintiffs' Complaint and Cross Claim Against Team Construction Management, Inc.	02.01.16	Selman Breitman	JA 000060 - JA 000071	1
David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin, and MGM Grand Hotel, LLC's Joinder to Co-Defendants' Motions in Limine and Motion to Bifurcate Trial	12.28.16	Selman Breitman	JA 000159 - JA 000161	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.10.19	Selman Breitman	JA 006617 - JA 006619	28

Decision Regarding Motion for Judgment as a Matter of Law	09.17.18	Judge Mark Denton	JA 006553 - JA 006559	28
Gavin and Mihn-Hahn Cox's Appendix in Support of Emergency Petition for Writ of Mandamus Under NRAP 27(E)	05.07.18	Harris & Harris	JA 004009 - JA 004067	17-18
Jury Instructions	05.23.18	Judge Mark Denton	JA 005402 - JA 005439	23
MGM Grand Hotel, LLC's Motion for Leave to File a Third Party Complaint	12.01.15	Selman Breitman	JA 000039 - JA 000057	1
MGM Grand Hotel, LLC, David Copperfield and David Copperfield's Disappearing, Inc.'s Trial Brief to Preclude Plaintiffs from Calling Improper Rebuttal Witnesses	05.10.18 Selman Breitman	JA 004989 - JA 005004		21
MGM Grand Hotel, LLC, David Copperfield aka David Kotkin and David Copperfield's Disappearing, Inc.'s Opposition to Plaintiffs' Motion for Judgment As A Matter of Law, or, Alternatively for New Trial	08.10.18	Selman Breitman	JA 006382 - JA 006466	27-28
Notice In Lieu of Remittitur	06.04.18	Supreme Court	JA 005924	25
Notice of Appeal (Supreme Court File-Stamp)	07.19.18	Harris & Harris	JA 006295 - JA 006326	27
Notice of Entry of Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.23.18	Resnick & Louis	JA 006562 - JA 006566	28
Notice of Filing Emergency Petition for Writ of Mandamus	05.07.18	Harris & Harris	JA 004003 - JA 004006	17
Notice of Hearing on Plaintiffs' Motion for Certification	03.29.19	EJDC - Department 13	JA 006612 - JA 006613	28
Notice of Transfer to Court of Appeals	05.07.18	Supreme Court	JA 004007 - JA 004008	17



NRAP 27(E) Certificate	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004427 - JA 004434	19
Order Denying Petition for Writ of Mandamus	05.07.18	Supreme Court	JA 004068 - JA 004070	18
Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.22.18	Resnick & Louis	JA 006560 - JA 006561	28
Order Denying Rehearing	05.10.18	Supreme Court	JA 004721 JA 004722	20
Order Granting Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.27.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000348 - JA 000351	2
Order Granting Defendants David Copperfield, David Copperfield's Disappearing, Inc. And MGM Grand Hotel, LLC's Motion for Leave to Amend Their Answer to File Cross Claim	01.28.16	Selman Breitman	JA 000058 - JA 000059	1
Order Granting Motion to Extend Time (Supreme Court)	03.28.19	Supreme Court	JA 006597 - JA 006598	28
Order on Plaintiffs' Motion for Certification of Judgment	05.08.19	Morelli Law Firm	JA 006624 - JA 006626	28
Plaintiff's Amended Case Appeal Statement	11.26.18	Harris & Harris	JA 006577 - JA 006585	28
Plaintiffs' Amended Notice of Appeal	11.26.18	Harris & Harris	JA 006567 - JA 006576	28
Plaintiffs' Motion for Certification of Judgment On Order Shortening Time	03.28.19	Harris & Harris	JA 006599 - JA 006611	28

Plaintiffs' Motion for Judgment As a Matter of Law, or, Alternatively, for a New Trial	07.05.18	Harris & Harris	JA 005925 - JA 006259	25-27
Plaintiffs' Notice of Appeal (EJDC File-Stamped)	07.11.18	Harris & Harris	JA 006260 - JA 006270	28
Plaintiffs' Opposition to Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	01.05.17	Harris & Harris	JA 000166 - JA 000176	1
Plaintiffs' Reply in Support of Motion for Judgment as a Matter of Law, Or, Alternatively for a New Trial	08.20.18	Harris & Harris	JA 006467 - JA 006496	28
Plaintiffs' Trial Brief to Exclude Cumulative Expert Testimony on Defendants' Proposed Expert Witnesses John E. Baker and Nicholas Yang	04.11.18	Harris & Harris	JA 000569 - JA 000573	3
Plaintiff's Trial Brief to Permit Testimony of Newly Discovered Fact Witnesses	04.25.18	Harris & Harris	JA 001586 - JA 001834	7-8
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	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004403 - JA 004426	19
Request for Transcript of Proceedings	12.21.18	Morelli Law Firm	JA 006586 - JA 006589	28
Stipulation	03.08.19	Morelli Law Firm	JA 006595 - JA 006596	28
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
Team Construction Management, Inc., and Beachers LV, LLC's Joinder to Defendants David Copperfield's Disappearing, Inc, David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion to Certification of Judgment on Order Shortening Time	04.15.19	Resnick & Louis	JA 006620 - JA 006622	28
Defendant Team Construction Management, Inc. And Beachers LV, LLC's Joinder to Backstage Employment and Referral's Motion to Bifurcate Trial	12.29.16	Resnick & Louis	JA 000162 - JA 000165	1
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



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 04***

JA006051

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

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

9

Plaintiffs, )

10

vs. )

11

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 )  
15 through 20; DOE EMPLOYEES 1 )  
through 20; and ROE )  
16 CORPORATIONS 1 through 20, )

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

21

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

22

Third-Party Defendants. )

23

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, MAY 8, 2018

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11 \* \* \* \* \*



1 MR. DEUTSCH: Thank you.

2 THE COURT: So as I indicated, I've been  
3 thinking about this jury view situation since I made  
4 the ruling that I would permit the view. And I'm --  
5 I'm reconsidering it. I think that -- you know, in  
6 reconsidering it -- I mean, I'll hear further argument  
7 on it, but I don't know if plaintiffs -- have  
8 plaintiffs changed their position on the subject?

9 MR. DEUTSCH: Your Honor, actually our  
10 position has been strengthened on this. As Your Honor  
11 is aware, on Saturday we -- we became aware of a tweet  
12 on Twitter by Chris Kenner that stated, and I -- I  
13 could put it up for the Court. It has some foul  
14 language -- I apologize -- but this was a tweet by  
15 Chris Kenner this weekend.

16 THE COURT: I think that was something that  
17 was attached to the writ.

18 MR. DEUTSCH: It was, Your Honor. And --  
19 and, as a result of that tweet, we started to think,  
20 you know, what could they possibly need to do in terms  
21 of trying to fix or alter or change the location. And,  
22 obviously, that was part of the basis that we went to  
23 the supreme court and the court of appeals.

24 It just so happens -- obviously, that was  
25 just sort of a hunch that something was going on based

1 on a tweet, and nothing more than sort of our  
2 suspicions. It just so happens, though, Your Honor,  
3 that last evening, Mr. Fallick and I had a flight that  
4 arrived back here in Las Vegas about 7:00 or so last  
5 night, maybe a little later. We rented our car.

6 And on the drive back to the hotel from the  
7 airport, we decided to turn down Tropicana Avenue just  
8 to kind of see if there was a dumpster there or just  
9 kind of see if anything was there or whatever. And, to  
10 our amazement, Your Honor -- and I'd like to sort of  
11 play this video for the Court. This was what was going  
12 on when we just happened to -- to drive by yesterday at  
13 about 8:00 or 8:30, maybe a little later last night.

14 So -- and this was just happenstance, Your  
15 Honor.

16 (Whereupon video was played.)

17 MR. DEUTSCH: As you can see, they have a  
18 full crew of power washers power washing the entire  
19 walkway. They have people with mops and brooms and --  
20 and -- what are those things called? -- floor buffers  
21 buffing the floors, power washing the entire area.  
22 You'll see, as the video continues, Your Honor, that  
23 they are literally power washing both the inside, the  
24 outside of the exact area, making sure that this area  
25 looked as spotless as possible for the jurors.

1 And that's despite the fact that they claim  
2 that, you know, bringing them there is not to try to  
3 show them anything. And this is the most interesting  
4 part of the video, Your Honor. If you look into the  
5 doorway right here, look who is there while this was  
6 going on: Ms. Fresch, Mr. Popovich, Mr. Russell,  
7 Mr. Roberts, and Mr. Freeman were all there walking  
8 through the area while this was going on, knowing that  
9 they were improving this --

10 THE COURT: Well, let me stop you there.

11 MR. DEUTSCH: -- area.

12 THE COURT: My reconsideration has not  
13 taken -- I didn't -- knew nothing about this.

14 MR. DEUTSCH: I understand that.

15 THE COURT: I'm coming out and saying -- I  
16 don't know that you really need to go into that.

17 MR. DEUTSCH: Okay. I just thought the Court  
18 should be aware that this was going on.

19 THE COURT: My reconsideration has to do  
20 with, basically, the contentions that were made by the  
21 defendants at the time after plaintiffs had rested as  
22 to the weight of the evidence when they made their  
23 Rule 50 motions.

24 The posture of the case at that time,  
25 plaintiffs having rested their case at that time, the

1 substantial changes that had been made to the -- to the  
2 premises. And two things then come to mind for -- or a  
3 couple of things come to mind, I should say. Of  
4 course, the substantial differences at the scene that  
5 would likely -- or could likely ring a bell that could  
6 not be unring.

7 I consider that -- and, of course, the --  
8 setting up the view and everything else. In other  
9 words, I take -- I take, then, a look at the order  
10 denying the petition for writ of mandamus. And I think  
11 the order was right. I think it's something that was  
12 within my discretion to permit a view. All right? So  
13 I think that both of the judges on the court of appeals  
14 were -- were correct in denying the petition for a writ  
15 of mandamus, but I also consider that Judge Silver made  
16 some observations about this that come to my mind. And  
17 I quote from her dissent.

18 "This isn't a situation in which one side or  
19 the other requested, prior to trial through a motion in  
20 limine, for a jury view whereby the pros and cons could  
21 be argued thoughtfully to the district court. Here,  
22 both sides have prepared for trial based on the  
23 photographs, video, and discovery conducted during the  
24 years of pretrial litigation. Many years have passed,  
25 the area is substantially different from when

1 petitioner fell, and viewing the area in the daylight  
2 are all factors that contribute, in my view, to the  
3 irreparable harm petitioners may face with regard to  
4 this unfair procedure after resting their case."

5           Now, I think she's under the misimpression  
6 that this was going to be done in the daylight. Okay?  
7 But that's not the main point. The point is that this  
8 is something that I think should have been framed  
9 before trial or going into trial so that everybody  
10 would be on notice of what was going to be happening.

11           And, all things considered, I'm inclined to  
12 reconsider my ruling that permits a jury view. I'll  
13 permit others to speak if you wish to make a record or  
14 whatever.

15           This is --

16           MR. ROBERTS: Your Honor, since this --

17           THE COURT: This was an oral motion.

18           MR. ROBERTS: It was my motion, Your Honor.

19 And -- and I -- I understand the Court's rethinking its  
20 decision in light of the dissent, but the dissent was  
21 issued without us having an opportunity to brief or  
22 argue.

23           THE COURT: I understand.

24           MR. ROBERTS: And she even thought that it  
25 would be more fair to have it at nighttime when the

1 are changes as long as the changes can be explained to  
2 the jury.

3           And, in this case, there are no changes to  
4 the distance of the path. There are no changes to  
5 the Strip and the buildings across the street. The  
6 fundamental nature of the path is still materially the  
7 same and any changes that they want to talk about can  
8 easily be explained to the jury. The -- I think that  
9 the issue that Judge Silver had, which was -- which we  
10 didn't brief is --

11           THE COURT: In quoting her dissent, I'm not  
12 saying that she was right in the standpoint of  
13 contending that the Court should have issued a writ  
14 of -- that the Court should issue a writ of mandamus to  
15 me; I'm just saying that the points she makes, I think,  
16 have -- have significance.

17           MR. ROBERTS: But where is the requirement in  
18 the rules that a jury view be requested at the motion  
19 in limine stage? We requested at --

20           THE COURT: I'm not saying that there's  
21 such --

22           MR. ROBERTS: -- the very first opportunity  
23 we had in our case. They could have requested a jury  
24 view in their case. The very first thing we did when  
25 we got to our case, in light of the jury's request to

1 as Mr. Roberts says, by anything that they see, they're  
2 going to be able to easily take out of their mind  
3 anything that's different. If that was the case, then  
4 there wouldn't have been six lawyers at the MGM Grand  
5 at 9:00 last night with power washers and buffers  
6 and -- physically changing the scene from what it had  
7 already been changed to to make sure that it was  
8 spotless.

9 If there's a travesty of justice, it's that  
10 they would do that, Your Honor. I mean, it's --  
11 it's -- they're saying that the jury won't be affected  
12 by it, yet they have people out there for hours power  
13 washing everything? I mean, really? Really?

14 THE COURT: All right. Let me say this.  
15 The -- the motion came up unexpectedly. It was an oral  
16 motion. The Court heard argument. The Court made its  
17 ruling based upon that.

18 But, on reconsideration, applying the  
19 principles that the Court believes to be applicable,  
20 the Court was -- is going to, on reconsideration, deny  
21 the motion for a jury view. Okay?

22 MS. FRESCH: Your Honor, before --

23 THE COURT: So you can tell everybody that's  
24 getting ready for it to stand down. And we don't have  
25 to take the dumpster there. The -- the -- the buses

1 that this Court's intervention by way of extraordinary  
2 relief is warranted. In particular, trial is underway  
3 and petitioners have an adequate and speedy legal  
4 remedy in the form of an appeal from an adverse final  
5 judgment.

6 That was -- they just applied the law on --  
7 on -- on writs -- petitions for writ of mandamus. They  
8 didn't say that I was right to permit the view. They  
9 just said they shouldn't interfere with this  
10 extraordinary writ.

11 MS. FRESCH: Right. And there's a lot of  
12 technical reasons also based on the way that they  
13 presented their papers that that would be denied. But  
14 the fact that -- beyond that, they could have said, you  
15 know, "We want to see briefing of each side" and  
16 then -- Justice Silver is the one who gave a big  
17 dissent, and I feel like this is played into mind as to  
18 what has led Your Honor to reconsider. But I think --

19 THE COURT: No, I don't think so. What I'm  
20 looking -- well, the -- the fact she dissented, I mean,  
21 I -- I -- I don't think -- I don't agree that -- that  
22 the -- that the judges who denied the petition were  
23 wrong in denying it. I'm just saying I think she's got  
24 some good reasons in her dissent that go to whether a  
25 view should be permitted.



1 THE COURT: And the emphasis of those motions  
2 was all on the weight of the plaintiffs' evidence as  
3 adduced; right? Basically that --  
4 MR. DEUTSCH: Yes.  
5 MR. POPOVICH: Failed to meet their -- the  
6 absence of any evidence as to why he fell.  
7 THE COURT: Right. Okay. So to use the term  
8 "context" in that context, as I said before, the -- I'm  
9 concerned about being able to unring the bell, so to  
10 speak, that a view would, all things considered, bring  
11 into play.  
12 And then, accordingly, I'm going to stand by  
13 the decision I've just made to deny the motion for a  
14 view. Okay? So that's -- leave it at that.  
15 So now we go into the next witness, which I  
16 believe is the expert that's going to be called by MGM;  
17 is that right?  
18 MR. POPOVICH: Yes. He's -- he's an expert  
19 for several defendants, but I'm the one putting him on  
20 initially since I'm the first one in order.  
21 THE COURT: And I think there was some things  
22 to discuss concerning the parameters of his testimony;  
23 right?  
24 MR. DEUTSCH: There were, Your Honor.  
25 MR. POPOVICH: I thought we had finished. I

1 THE COURT: Yeah, you can do that.

2 MS. FRESCH: Just so you can have an idea.

3 MR. DEUTSCH: I could get it up on my thing

4 in 15 seconds.

5 MR. POPOVICH: I don't want you toggling

6 back.

7 (The following proceedings were held in

8 the presence of the jury.)

9 THE COURT: Good morning, ladies and

10 gentlemen. Please be seated.

11 Do counsel stipulate that the jury is now

12 present?

13 MR. DEUTSCH: Yes, Your Honor.

14 MR. POPOVICH: Yes, Your Honor.

15 MS. FRESCH: Yes, Your Honor.

16 MR. STRASSBURG: Yes.

17 MR. ROBERTS: Yes.

18 THE COURT: Ladies and gentlemen, before we

19 begin, just a couple of things.

20 First of all, the Court has determined that

21 we will not be having the jury view of the premises.

22 So that's been canceled. All right? It's going to

23 be -- what was scheduled for this evening has been

24 canceled. The Court has determined that this is not

25 conducive -- this case is not conducive to that.

1 did you ever write anywhere that, during this complex  
2 process, there may be numerous muscle adjustments  
3 anywhere from the toe to the head? Have you ever  
4 written that anywhere?

5 A. Sounds very familiar. But, yes, that's  
6 definitely true.

7 Q. Okay. And have you ever written anywhere  
8 that an interruption of this highly complex process can  
9 result in an individual's losing balance and falling  
10 backward, forward, or to the side? Have you ever  
11 written that anywhere?

12 A. Yeah, it can. Yes, the answer is yes.

13 Q. So the fact is that a person can slip on a  
14 toe slip or a heel slip and can fall forward,  
15 backwards, to the side, or in any other direction.  
16 True?

17 A. Entirely depends on the body mechanics and  
18 the environment he's in.

19 Q. Correct.

20 A. That's a very general statement.

21 Q. I agree with you. It depends on the body  
22 mechanics and the environment the person's in.

23 And with respect to Mr. Cox, would you agree  
24 with me that, up until the point of impact, you can't  
25 see any of Mr. Cox's body mechanics of any kind? True?

1 A. I would agree.

2 Q. Okay.

3 A. You see him getting up --

4 Q. Correct.

5 A. -- from that spot.

6 Q. And you can't see the environment in terms of

7 which way he's moving specifically under that tree;

8 true?

9 A. Correct.

10 Q. Okay. So, therefore, Mr. Cox could have

11 slipped with either a toe slip or a heel slip or some

12 other slip and fallen forwards just like he does in

13 that video, because that can happen; true?

14 A. Not true.

15 Q. Well, have you not said before in reports in

16 other cases -- do you remember a case of Murphy v.

17 Rally's where you were retained as an expert in?

18 A. Do you have a year on that?

19 Q. That one's 2005.

20 A. Murphy. Okay. Go ahead.

21 Q. Do you remember that case?

22 A. No.

23 Q. Do you remember saying in that case that you

24 could have a toe slip on the push-off phase that could

25 lead a person to lose their balance and fall either

1 original or that was the new in this diagram?

2 A. Yeah, may I?

3 Q. Yeah, sure. It says "2.1 degrees up." Is

4 that referring to -- to the way it was on the night of

5 the accident?

6 A. No.

7 Q. That's the new one?

8 A. Yes.

9 Q. Did you take any measurements of the incline

10 that -- the way it was on the night of the accident?

11 A. Yes, I did.

12 Q. And I'm not talking about from the top of it

13 where the corner of the building is; I'm talking about

14 the incline itself.

15 A. Yes.

16 Q. And -- and what was the degrees of that

17 incline?

18 A. It was -- it exceeded --

19 Q. You have notes on it?

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

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

22 is.

23 A. Close. Ready.

24 Q. What was it?

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

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

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

4 A. Slightly, just slightly.

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

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

10 Q. You didn't mention it, though?

11 A. Well, it wasn't really relevant.

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

14 A. 76.

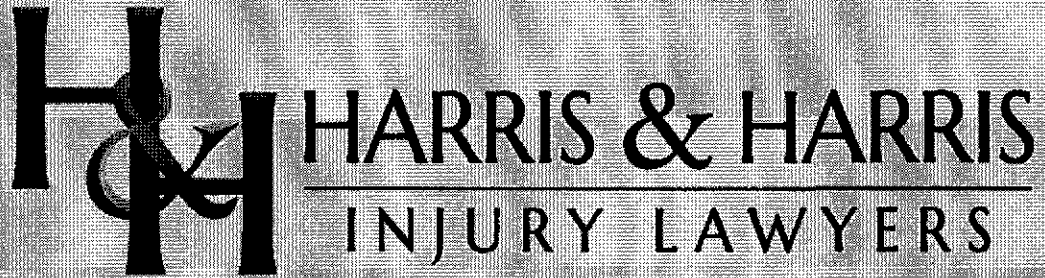
15 Q. -- 4.76 because it could be dangerous at  
16 anything more than that; true?

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

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

22 A. That is the idea, yes.

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



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 05***

IA006069



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 \* \* \* \* \*

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

9 Plaintiffs, )

10 vs. )

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

17 Defendants. )

18 MGM GRAND HOTEL, LLC., )

19 Third-Party Plaintiff, )

20 vs. )

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

23 Third-Party Defendants. )

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

THURSDAY, MAY 10, 2018

24  
25 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
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21 \* \* \* \* \*

1 simple.

2 Now, every time you talked about the  
3 different way people fell in slipping or tripping, you  
4 used the words "generally" or "usually" or "likely."  
5 And that's because it's not every time someone slips in  
6 this way that they fall in a particular way; is that  
7 true?

8 A. Correct.

9 Q. Right. So even if it's, like, nine people  
10 out of ten fall in one way, there's still one person  
11 who falls a different way; correct?

12 A. In your scenario, correct.

13 Q. Okay. And that goes for whether it's a trip  
14 or whether it's a slip; correct?

15 A. Nine out of ten?

16 Q. No. Whatever it is, the bottom line is, is  
17 that every time someone falls, you can't say for  
18 certainty how they're going to land; true?

19 A. Depending on what other evidence you have to  
20 evaluate the slip or the trip.

21 Q. You started your report in this case with the  
22 understanding that -- and let's see if you agree with  
23 this or disagree with this.

24 You agree that the video does not show  
25 Mr. Cox's fall; correct?

1 A. Correct.

2 Q. And that there is a tree obstructing the view  
3 of Mr. Cox; correct?

4 A. Correct.

5 Q. Now, in the video -- all right. So this is  
6 the video of the accident, Exhibit 402. And you see  
7 Mr. Cox for the first time right about there?

8 A. I can't --

9 MR. MORELLI: It's not on the screen.

10 MR. POPOVICH: Not really.

11 BY MR. DEUTSCH:

12 Q. You can't see anything, huh? There we go.  
13 Okay. I'm going to play it for a second. Now, it's  
14 clear --

15 MR. CALL: Do you want to turn the light  
16 down?

17 MR. DEUTSCH: Sure. We can turn the light  
18 down.

19 Can we turn the lights down, Bob?

20 "Turn the lights down low. Light a candle."

21 BY MR. DEUTSCH:

22 Q. All right. That's the spot -- that's  
23 probably good enough -- where you first see Mr. Cox.  
24 Right about here; correct?

25 A. Correct.

1 THE COURT: Well, I don't know.

2 MR. DEUTSCH: And I don't -- the only other  
3 witness potentially is the issue about whether Mr. Cox  
4 is going to be permitted -- if they're going to be  
5 permitted to put on the surveillance tape of Mr. Cox.  
6 If they do do that, if -- that's a joke that my wife --  
7 if they do that, then we're going to put Mr. Cox on the  
8 stand.

9 THE COURT: Is someone going to give me what  
10 you're proposing to show? Are you still proposing to  
11 show those things?

12 MR. ROBERTS: I am, Your Honor. We -- we are  
13 proposing to show the full clips. There's six clips,  
14 each under 30 seconds, and we've removed any -- any --  
15 where that they caught the plaintiffs conferring with  
16 their counsel. There's nothing like that. So there's  
17 just six representative clips, and we can provide those  
18 to the Court or show you those in the morning.

19 THE COURT: Okay.

20 MR. ROBERTS: Or I can have Audra pull them  
21 up right now if you would like to see them.

22 MR. DEUTSCH: Judge, for purposes of the  
23 discussion, they show Mr. Cox walking with his family  
24 without holding hands. They show one of him walking  
25 his dog. They show with oxygen on. They show one of

1 him -- I think there's maybe two with him walking with  
2 his wife, they're walking their dog. I think there's  
3 one when he's just walking back to his apartment from  
4 court and he's not holding hands with anyone.

5 I don't think that impeaches his credibility  
6 at all considering that today during court he got up by  
7 himself and went outside in the middle of the day to  
8 use the restroom.

9 MR. ROBERTS: After he found out we were  
10 going to play the surveillance.

11 MR. DEUTSCH: Well, he's been --

12 MR. ROBERTS: All of a sudden, for the very  
13 first time in the courthouse, he's walking around with  
14 no help.

15 MR. DEUTSCH: He's been walking around  
16 outside in front of the jury all week without it.

17 MS. FRESCH: No.

18 MR. DEUTSCH: The point is is that, if they  
19 put the videotape in, it doesn't impeach anything. If  
20 they put it on, we're going to call Mr. Cox in  
21 rebuttal, and we're going to ask him to explain. And  
22 in order for him to explain it, he's going to have to  
23 explain his injuries, and why sometimes he needs to  
24 hold on to people and sometimes he doesn't. And it's  
25 fair game if they do it, so we're just giving them a

1 not Your Honor lets them play that and we call back  
2 Gavin, that has nothing to do with respect to this Tara  
3 Anderson.

4 THE COURT: Okay. I need to know what is  
5 being provided by Tara Anderson. What came out during  
6 the defense case in chief that this is rebutting?

7 MR. DEUTSCH: So the defense case in chief,  
8 Your Honor, as you know, does not just encompass the  
9 witnesses that they called once we rested, because they  
10 chose to do part of their case in chief in  
11 cross-examination, or whatever you want to call it,  
12 when we called the witnesses.

13 So all of the questions that they asked of  
14 Mr. Copperfield, all of the questions that they asked  
15 of Mr. Habersack, those were all part of their case in  
16 chief because they chose to -- instead of bringing the  
17 witness back at another time, to do it at that point in  
18 time.

19 So the same things that the other witnesses  
20 rebutted, this witness rebuts, which is nobody's ever  
21 gotten hurt, the MGM didn't know any of the accidents.  
22 This woman said, unlike some of the other women, she  
23 fell at the MGM Grand. She fell at the exact same  
24 spot. She made an accident report with MGM. She  
25 talked specifically with Mr. Copperfield while she was



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 06***

JA006078



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

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

9

Plaintiffs, )

10

vs. )

11

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

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

21

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

22

Third-Party Defendants. )

23

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, APRIL 17, 2018

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21 \* \* \* \* \*

1 MR. MORELLI: Thank you, Your Honor.

2 BY MR. MORELLI:

3 Q. Now, Mr. Kenner, you and I have discussed  
4 already that you were deposed.

5 A. Correct.

6 Q. You had a deposition. And this deposition,  
7 it was back on January 26th, 2016. And you were asked  
8 this question, and I'm just asking you whether or not  
9 you remember being asked this question and giving this  
10 answer. Okay?

11 A. Okay.

12 Q.

13 "QUESTION: So it would have been David  
14 Copperfield that set up the pathway at the  
15 subject theater to determine the best and  
16 safest path to get the participants from the  
17 stage to the back of the theater."

18 "WITNESS" -- that's you -- "Yes."

19 Is that a correct statement?

20 A. Yes.

21 Q. Or is it the statement that you made today?  
22 Just which one?

23 A. It's the same statement. The same answer,  
24 yes.

25 Q. Okay. So the -- so the -- so it was --

1 Q. You can answer either one of those questions.  
2 It's okay with me. Can they?  
3 A. Can they?  
4 Q. Yeah. Can they be bumped into?  
5 A. They could fall right here. Anybody could  
6 fall.  
7 Q. You know the route; correct?  
8 A. Correct.  
9 Q. You designed it.  
10 A. Well, I helped.  
11 Q. Well, you designed it with Mr. Copperfield;  
12 right?  
13 A. Yes.  
14 Q. Okay.  
15 A. And Mr. Buttoner.  
16 Q. So the three of you designed it. And seeing  
17 that you're one of the bosses, you certainly had a lot  
18 of input, if not more than a lot; true?  
19 A. Yes.  
20 Q. And when you designed it, you wanted to  
21 determine that you kept the participants who were  
22 randomly selected -- that's what David Copperfield  
23 says -- you want to keep them safe.  
24 A. Correct.  
25 Q. Okay. And I don't want to beat this to

1 whole question: "Can you run?"

2 A. Yes.

3 Q. It's not like "Can you run 100 yards?"

4 Correct?

5 A. Correct.

6 Q. It's not "Can you run a certain route or

7 route?" Correct?

8 A. Correct.

9 Q. Because -- am I also correct, Mr. Kenner,

10 that the participants, even after they're selected, are

11 not told exactly what they're going to do? As a matter

12 of fact, they're not told anything?

13 A. Correct.

14 MR. MORELLI: So, Mr. Deutsch, can we --

15 okay. Let's --

16 MR. DEUTSCH: This is Exhibit 94, Your Honor.

17 BY MR. MORELLI:

18 Q. Mr. Kenner, can you see it from there?

19 A. Yeah, I think --

20 MR. DEUTSCH: Mr. Kenner, you have a monitor.

21 THE WITNESS: Yes. Thank you.

22 BY MR. MORELLI:

23 Q. You can watch it there.

24 MR. POPOVICH: Your Honor, can we clarify

25 that this is not the night of the accident?

1 MR. ROBERTS: -- and incomplete hypothetical.  
2 MS. FRESCH: Join.  
3 BY MR. MORELLI:  
4 Q. Am I correct, sir, that, when they were  
5 coming up to the stage, they were walking, the  
6 participants?  
7 A. Yes.  
8 Q. Correct?  
9 A. Yes.  
10 Q. When they followed Mr. Copperfield around the  
11 prop, they were walking?  
12 A. Yes.  
13 Q. Correct?  
14 A. Yes.  
15 Q. And during the runaround -- and we're going  
16 to watch the video -- okay? -- of that night -- they  
17 were running; is that correct?  
18 A. Yes.  
19 Q. Okay. Now, is it more dangerous when they  
20 were walking before the route or running the route?  
21 Which was more dangerous for them to fall?  
22 Which one?  
23 A. Trip over objects? Probably the walking.  
24 Q. Let's assume there's no objects, although you  
25 would like there to be.

1 Q. That's okay. What about this?

2 A. Yeah, that's carpet. So yeah.

3 Q. Okay. All right. So now we could go back to

4 the last photo.

5 So you went from carpet to Kentile, or

6 linoleum, to outside which is concrete; fair?

7 A. Correct.

8 Q. Okay. So now they made a right, and they're

9 running outside on what? Like a sidewalk?

10 A. Yes.

11 Q. Okay. And it doesn't matter, you know,

12 whether it's Tropicana Avenue or XYZ Street or

13 whatever, they're running on concrete that's like a

14 sidewalk. Fair enough?

15 A. Yes.

16 Q. Okay. And now they run along. And it's dark

17 out, is it not?

18 A. It's nighttime.

19 Q. Yeah. Is that a yes?

20 A. Well, I describe dark in Las Vegas. These

21 people live in Las Vegas and they've driven down

22 Tropicana. It's extremely bright.

23 Q. Yeah, but, you see, we've already been told

24 we're not on Tropicana Avenue. So --

25 A. All right. Well, it's literally from here to



1 BY MR. MORELLI:

2 Q. Yes or no.

3 A. What's dark? That's --

4 Q. Mr. Kenner --

5 A. -- just -- yes, then.

6 Q. Okay. Do you think that someone running in  
7 the dark up an incline makes it even more dangerous?

8 Yes or no.

9 A. Yes.

10 Q. And if that's true, don't you think that it  
11 would be prudent to warn people that that's what they  
12 were going to encounter? Yes or no.

13 Would it be prudent?

14 A. Yes.

15 Q. Okay. Now, do you know that -- do you know  
16 who Mr. Habersack is?

17 A. Yes.

18 Q. Okay. Why don't you tell the jury who he is.

19 A. I think he's head of safety at the MGM Grand.

20 Q. Okay.

21 A. Or I don't know if head is his title. It's  
22 something of safety.

23 Q. Yeah, I think he's the head of risk  
24 management.

25 A. Yeah, risk management.

1 THE WITNESS: I can say what I want?

2 THE COURT: You can say your thinking about  
3 it.

4 BY MR. MORELLI:

5 Q. I'm going to withdraw the question. Okay?

6 Here's my question: In your opinion, when  
7 you're thinking about this illusion, do you decide that  
8 there's a certain level of danger that's okay? Yes or  
9 no.

10 A. I'm not sure that -- the certain level of  
11 danger.

12 Q. You know --

13 A. Danger is such a -- like, what is that? Like  
14 a -- a T. rex coming at me? I mean, what's danger?

15 Q. I hope there's no T. rexes.

16 A. Oh, you haven't seen the show.

17 Q. Well, let's be more specific.

18 We already know that it's foreseeable that  
19 someone can fall. I mean, we already know that. We  
20 talked about it; correct?

21 A. Yes.

22 Q. Okay. If someone falls, can that be  
23 dangerous?

24 A. Sure.

25 Q. Sure. And the reason that it could be

1 dangerous is because they could get hurt; correct?

2 A. Yes.

3 Q. Okay. So you would agree with me that there  
4 are times that people can fall and not get hurt?

5 A. Sure.

6 Q. Right? And we could call that, let's say, in  
7 the accident category. Okay?

8 Fair enough?

9 A. Okay.

10 Q. You had an accident, but, thank God, you were  
11 okay.

12 And there are times when someone can fall and  
13 they do get hurt. And that's not okay; correct?

14 A. Yeah. You don't want anyone to get hurt.

15 Q. Right. So, now, there's been a lot of talk  
16 about how safe this trick is. Now, I want to try to  
17 understand this whole thing about 20 years and  
18 50,000 -- 49 -- you know, I was listening, and I heard  
19 100,000, 96,000, then it went down to 50,000. I don't  
20 know how all of that happened.

21 But the point of that is that it's safe. Is  
22 that -- is that the point of the numbers? Is the point  
23 of the numbers that it shows that the illusion is safe?  
24 Yes or no.

25 A. Yes.

1 Q. Don't give me Red Bull.

2 A. Okay. Just checking.

3 Q. One thing I don't need is Red Bull; I need

4 Red Lamb.

5 My point is that, if you're flipping a coin,

6 just because it came up either heads or tails a number

7 of times doesn't mean that there's a better probability

8 that it's going to come up again; correct?

9 A. I guess. I'm not -- again, when you do flip

10 it multiple, multiple times, I think the odds change.

11 Q. Okay. But --

12 A. So I'm -- seriously, if you -- it changes

13 over time.

14 Q. But you know -- you know that this particular

15 situation -- okay? -- that we're talking about, when

16 you're looking at this particular illusion or trick,

17 you're looking at it from a safety point of view;

18 correct?

19 A. Yes.

20 Q. Okay. Now, have you known that people have

21 fallen before? Fallen? I'm not talking about getting

22 hurt now, fallen?

23 A. Fallen? Have I known that someone has

24 fallen? Yes.

25 Q. Okay. Now, when this particular -- on this

1 particular night -- you were there that day? I think  
2 we spoke earlier about that; right?

3 A. Yes. Yes.

4 Q. Okay. And you -- is it -- is it your  
5 opinion -- well, not your opinion. Withdraw --  
6 withdraw that question.

7 Are you stating that, other than Mr. Cox,  
8 who's in the courtroom today, no one has ever fallen  
9 and gotten injured before from this illusion? Is that  
10 your statement? Yes or no.

11 A. Yes.

12 Q. Okay. And you're basing --

13 A. From this runaround? From the -- from  
14 this -- being a participant in the illusion?

15 Q. Yeah, it has to be this particular illusion.

16 A. Yes.

17 Q. Yeah.

18 A. Sorry. I just wanted to make sure I was  
19 clarifying --

20 Q. No, I should have made that clear. No, no,  
21 just from --

22 A. A participant in this illusion has ever  
23 fallen?

24 Q. In this illusion, yes.

25 A. Correct.

1 Q. Now, you're basing that on your own  
2 knowledge; is that correct?  
3 A. Yes.  
4 Q. Your knowledge?  
5 A. Yes.  
6 Q. Okay. And as we saw earlier, when we talked  
7 about certain things, you didn't know every single  
8 thing that went on. Is that fair enough?  
9 A. Yes.  
10 Q. Okay. But this, this particular thing, this  
11 no one's ever gotten injured with this illusion, that,  
12 you know?  
13 A. Yeah.  
14 Q. Without a doubt?  
15 A. Yes.  
16 Q. Right?  
17 A. Yes.  
18 Q. Okay. No one told you that; you know it.  
19 A. Yeah. I know through my experience this,  
20 yes.  
21 Q. You know it. Okay. Now, so -- so if, in  
22 fact, no one has ever gotten injured -- and you would  
23 agree with me that, if someone got injured and they  
24 were taken away in an ambulance, that would be  
25 something you would know. Correct?



PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 07***

JA006092

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

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

9

Plaintiffs, )

10

vs. )

11

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, )

16

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

21

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

22

Third-Party Defendants. )

23

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY, APRIL 18, 2018



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1 BY MR. ROBERTS:

2 Q. Okay. We're going to go back to  
3 Mr. Habersack --

4 A. Okay.

5 Q. -- and what he said. And to refresh your  
6 recollection, he was referring to that elevation change  
7 after you turn the point. There's an elevation change  
8 as you go up to the doors.

9 A. Correct.

10 Q. Okay. And this is what was read to you  
11 yesterday.

12 MR. ROBERTS: Could I have the ELMO?

13 THE COURT RECORDER: It's on.

14 MR. ROBERTS: It's on?

15 THE COURT RECORDER: I'm sorry. Now.

16 MR. ROBERTS: Very good.

17 BY MR. ROBERTS:

18 Q. There we go. Okay.

19 So the question is, "So with that in mind,  
20 would you expect that Mr. Copperfield would warn his  
21 participants of the elevation change as they're  
22 participating in the act?"

23 His answer: "Okay. I'm sorry. Anybody  
24 else want to chime in on this? I mean, any prudent  
25 person would, would be my answer. I would hope that

1 BY MR. POPOVICH:

2 Q. There was discussion about change in  
3 elevation when the participants make the right around  
4 this corner. Correct?

5 A. Yes.

6 Q. Is it a change or -- is the change in  
7 elevation from the corner all the way to that door?

8 A. No. I mean, you had mentioned there's -- the  
9 normal break of any building, there's the tiniest  
10 little bit so the water doesn't run into the building.  
11 So it's -- essentially it's flat, from -- you can see  
12 it. It's flat from here to there.

13 Q. Okay. Is there any way for us --

14 MR. POPOVICH: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. POPOVICH:

17 Q. Any way for us to describe in the photo --  
18 okay. Where you're pointing for the change to a more  
19 flattened area, does there appear to be a concrete  
20 expansion joint in that photo?

21 A. If that's what that's called, if that's  
22 what -- I think this is the exact same kind of thing,  
23 so I guess that's called the concrete expansion joint.

24 Q. So when the participants first round the  
25 corner, there is some change in elevation in that

1 they would explain to the customer, or through whatever  
2 vetting process that they have prior to the illusion,  
3 to make sure the participants are actually able to  
4 maneuver this and perform it."

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. And we established yesterday that you  
8 did not explain to the customer -- in this case,  
9 Mr. Cox -- that he would be encountering that elevation  
10 change; correct?

11 A. Correct.

12 Q. But Mr. Habersack says that you would either  
13 do that or, through whatever vetting process that they  
14 had prior to the illusion, make sure that the  
15 participants are able to perform it, to navigate that  
16 ramp, that elevation change.

17 Do you have an understanding of whether or  
18 not you did, through the vetting process, try to make a  
19 determination of whether someone would be physically  
20 able to navigate that mild elevation change?

21 A. Yes. I think we kind of covered that  
22 yesterday.

23 Q. So do you believe that, based upon what  
24 Mr. Habersack said, you satisfied his concerns through  
25 one of his alternatives?

1 can't -- I don't think he said this 100 percent  
2 happened; he said it's a possibility.

3 Q. Okay.

4 A. So let's -- maybe we could reread it to see  
5 that -- because when you're saying "that situation," I  
6 don't know if that's a real situation or not.

7 Q. Okay. So you think that he was just giving  
8 you a hypothetical of some old guy who got winded?

9 A. I -- I'm just saying if you could reread it.

10 Q. Possibly?

11 A. Possibly, yes.

12 Q. So, now, earlier, you were -- we were talking  
13 about -- not we, but you were talking about --

14 A. We, I guess.

15 Q. -- a dangerous situation with reference to  
16 the route, and you were being questioned about the  
17 incline. Remember that?

18 A. Yes.

19 Q. And you were asked certain questions about  
20 being warned?

21 A. Being?

22 Q. Warned.

23 A. Warned.

24 Q. Because you had said yesterday that, you  
25 know, you would think it would have been prudent to

1 warn someone of the elevation change. Remember saying  
2 that?

3 A. Yeah. But not necessary, yes.

4 Q. I'm sorry?

5 A. I said "but not necessary."

6 Q. You remember yesterday saying --

7 A. Yes, I remember.

8 Q. -- that it was prudent?

9 A. Yeah. You could, yeah.

10 Q. Okay. Now, then you likened it to here;  
11 right?

12 A. Yes.

13 Q. To the courtroom and the ramp.

14 A. Yes.

15 Q. Because there's a ramp over here. Now --

16 A. And here.

17 Q. -- would you agree with me that, when the  
18 jurors come into the courtroom, they walk in through  
19 the door, they don't have to go very far, and then they  
20 encounter this ramp; correct?

21 A. Correct.

22 Q. Okay. And when they come into the courtroom,  
23 the lights are on; correct?

24 A. Yes.

25 Q. It's not out -- it's not outside in the dark;

1 process of rehearsing the route done before the first  
2 time volunteers actually did it?

3 A. Oh, always, yeah.

4 Q. And -- and what's the process that was used  
5 for the route for the Thirteen prior to volunteers  
6 actually taking that route?

7 A. At the MGM?

8 Q. Yes.

9 A. Okay. So the very first time we ever  
10 performed at the MGM, our stage manager at the time,  
11 which would, I think, nine -- pretty sure it was Ben  
12 Butner, who was with us for so long. Ben would have  
13 looked for a route, picked the best route, walked that  
14 route first just to see if it could be done, checked  
15 with the venue that it was okay with the venue that we  
16 took that route.

17 That's another problem that we would have  
18 with venues, where they'd say, "No, you can't go  
19 through that hallway. We can't unlock that door. This  
20 takes a security person." So you have to make sure  
21 that it's possible from the building that we can do it.

22 So he would do that first. He would -- he  
23 would -- first he would walk it. And then he would  
24 take it and go exactly from the center of the stage  
25 where the thing was, where the dragon was, and, you



1 know, kind of pace himself through the thing to see how  
2 long it took him to get through there. And he kind of  
3 did it extremely slow so that we could kind of judge  
4 the time. He wouldn't run it to see what's the fastest  
5 we can get this done, because we knew our parameter for  
6 that was, you know, a minute to minute and a half,  
7 minute 40. We have extra loop music that we can put in  
8 if we need to in a venue.

9           So he would walk it, make sure that was all  
10 good, talk to myself or Mr. Liwag, Homer Liwag, who's  
11 also codirector and he's been with David for 25 years  
12 like myself. And we would go, "Okay. Let's show this  
13 to David." And we would show it to David. And David  
14 would walk it, look at it, make sure it was okay, check  
15 it out, perfect, and then we would perform it.

16           Q. In comparison with other venues, did you have  
17 that much time to plan out and prepare a route for the  
18 Thirteen Illusion?

19           A. In this venue versus other venues?

20           Q. Yes. In other venues, did you have as much  
21 time as you just described for the process to determine  
22 the route at the MGM?

23           A. It's usually about the same. But, in this  
24 particular case, he may have had more time because our  
25 first initial loading at the MGM was two days as

1 opposed to a single day, the very first time we loaded  
2 into this venue, just due to the fact that it was going  
3 to be a place we were going to sort of pick up a  
4 residency and stay for multiple, multiple weeks of the  
5 year. So the very first time we came in, it was an  
6 extra day of the load-in, which is not normal at all.

7 Q. Okay. Now, there was some testimony  
8 yesterday with respect about the protocols in place.  
9 And your testimony was that the protocols in place for  
10 the Thirteen Illusion with respect to safety were  
11 already in place by the time you reached the MGM as a  
12 venue. Do you recall that?

13 A. Yes.

14 Q. Okay. Just to set you up there, now -- and  
15 you mentioned just now about checking with the venue.  
16 Prior to starting the performances with the Thirteen  
17 Illusion at the MGM, what was the coordination in terms  
18 of the MGM to determine the route and the safety  
19 protocols for this route?

20 A. We went to the stage manager, which was Paul  
21 Shetter at the time, and would show him what we wanted  
22 to do, and then he had to say, "Okay. That looks  
23 fine."

24 And then that needs to be coordinated with  
25 security because security has to guarantee -- we have

1 to, like, be sure that they'll be there at the right  
2 time to open the doors and -- at first, we probably had  
3 a person that would remind Dennis -- or whoever --  
4 Dennis -- I'm saying Dennis, but the security guard in  
5 time to open the door. Probably, the first day we did  
6 it, you know. "Don't forget we need to open the doors  
7 at -- when this trick starts."

8 Q. So were there any modifications or additions  
9 to the safety protocols for this route for MGM versus  
10 all the different venues you had done prior to  
11 beginning with -- at the MGM in 2000?

12 A. You mean did we do it the same way?

13 Q. No, was anything added or evolved or changed  
14 with respect to being at the MGM versus other venues in  
15 terms of your safety protocols?

16 A. No. No.

17 Q. Okay. All right. Let's switch gears and go  
18 to how often this illusion has been performed. Okay?  
19 I believe you said it began approximately in 1998;  
20 correct?

21 A. Yes.

22 Q. Okay. And, on average, how many shows does  
23 the David Copperfield show perform per year?

24 A. Between 6 -- 600 and 660.

25 Q. Okay. And what's the average number of

1 out -- I think I mentioned it. If someone came out and  
2 was just like, "Hey, you know, hey, what's going on?"  
3 and start lollygagging to the next person, we'll stop  
4 them. "Hey, stand here." Then we put them in the  
5 place where David and Ryan speak to them about secrecy.

6 Q. So there are protocols in place to address  
7 someone who is going slower than to achieve the end  
8 portion of the illusion; correct?

9 A. Yes.

10 Q. Okay. All right. Hold on. Okay.

11 And just one final question. Yesterday you  
12 stated that Mr. Copperfield has the -- had or has --  
13 had, since we were talking about before November 12th,  
14 2013 -- had final approval of the route. And why does  
15 Mr. Copperfield have final approval of the route?

16 A. Well, he's -- well, he's going to run it;  
17 he's going to walk it; he's going to move it. We would  
18 always show him, you know, we would always -- it's a  
19 safety issue. It's David's effect. It's David's, you  
20 know. It's -- I don't know how to describe that answer  
21 because it's really the way we do it. It's our method  
22 of doing the route. We look at the route, stage  
23 manager looks at the route, we look at the route. We  
24 show it to David. He looks at the route, and he says  
25 yes. There's been times where he said, "Hey, is there

1 a quicker way or a different way?" And then we've  
2 looked for it and changed it.

3 Q. Okay. And is that still a consensus of what  
4 would be the best way to proceed?

5 A. The way we go now?

6 Q. With just what you said about when there's  
7 going to be changes.

8 A. Yes.

9 Q. Okay. Consensus of you and whoever else at  
10 Backstage is involved in design of illusions; correct?

11 A. Yeah, they would. Yeah.

12 MS. FRESCH: I believe I'm finished. Thank  
13 you, Mr. Kenner.

14 THE COURT: Counsel approach.

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

17 THE COURT: All right. Mr. Call.

18

19 CROSS-EXAMINATION

20 BY MR. CALL:

21 Q. Okay. Mr. Kenner, my name is Gary Call, and  
22 my partner is Roger Strassburg. You understand we  
23 represent Team Construction and Beacher's in this  
24 matter?

25 A. Yes.

1 Q. Okay.

2 A. But run has been a discussion over this  
3 entire case.

4 Q. Okay. Now -- okay. So I'm going to show you  
5 your testimony from yesterday.

6 MR. DEUTSCH: Page 194.

7 MR. MORELLI: One question. I'm going to  
8 show the jury also.

9 THE WITNESS: One more question, you said?  
10 BY MR. MORELLI:

11 Q. Huh?

12 A. You said one more question?

13 Q. No. It's one more question we're going to  
14 show you from yesterday.

15 A. I thought you said one more question.

16 Q. You know, hope springs eternal, but not that  
17 eternal.

18 It's not that clear, Mr. Deutsch.

19 Okay.

20 MR. POPOVICH: 194, Adam.

21 MR. DEUTSCH: Yeah. Line 15.

22 BY MR. MORELLI:

23 Q. "And during the runaround -- and we're going  
24 to watch the video -- okay? -- of that night -- they  
25 were running; is that correct?"

1                   What was your answer?

2           A.    "Yes."

3           Q.    Okay.  So do you agree with me that that was

4 your answer?  because that was true.  Right?

5           A.    Sure.

6           Q.    Okay.

7           A.    Yes.

8           Q.    So, now, the -- today, on certain questions,

9 you used the term "brisk walk."  Brisk walk.  Do you

10 remember using that term today?

11          A.    Yes.

12          Q.    You didn't use it yesterday, did you?

13          A.    No.

14          Q.    No?

15          A.    I don't think so, no.  No, I'm not sure.

16          Q.    Did you ever use that term before in your

17 life?  Did you ever use the term "brisk walk" in your

18 life?

19          A.    Sure.  In my life, I'm sure I have used the

20 term "brisk walk."

21          Q.    Okay.  How about in your deposition?  Did you

22 ever say that during this illusion there was a brisk

23 walk?

24          A.    I don't remember.  I don't recall that.

25          Q.    Well, I can tell you, you didn't.  Okay?

1 yesterday, but we had a problem today.

2 A. Well, you wouldn't let me explain anything  
3 yesterday.

4 Q. That's unfair. You don't want to hurt my  
5 feelings.

6 A. Okay.

7 Q. The -- the runaround is a term of art. Is  
8 that -- is that what it is? It's not really running;  
9 it's a term of art. You always use that term,  
10 "runaround," even when people aren't running. Yes or  
11 no?

12 A. Yes.

13 Q. Okay. So let's get it straight. Do  
14 participants run in the runaround? Because I asked you  
15 yesterday and you said yes. What's your answer today?  
16 Yes or no.

17 A. Yes. Yes.

18 Q. Okay. Now, we're talking about jokes. And  
19 you said that some parts of things are jokes and some  
20 parts are true; correct?

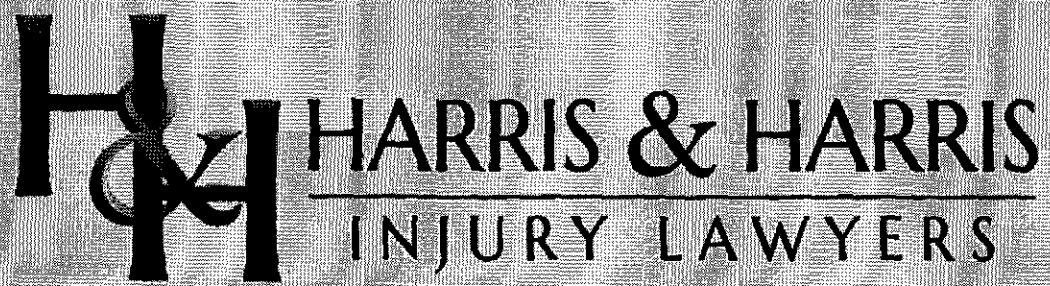
21 A. Sure.

22 Q. Okay. So they're running for their lives  
23 with crazy looks on their faces. Is that a joke too?

24 A. Yes.

25 Q. Okay. Totally? 100 percent a joke?





PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 08***

DA006111

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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

9

Plaintiffs, )

10

vs. )

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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, )

16

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

21

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

22

Third-Party Defendants. )

23

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

MONDAY, APRIL 30, 2018

1 APPEARANCES:

2 For the Plaintiff:

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13 Inc. and David Copperfield aka David S. Kotkin:

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21 \* \* \* \* \*

1 courtroom.

2           You must not consider this testimony in  
3 deciding whether defendant MGM Grand Hotel, LLC, had  
4 notice of injuries other than those allegedly sustained  
5 by Mr. Cox.

6           Also, you must not consider this testimony in  
7 deciding the liability claims against Team Construction  
8 Management, Inc., as Team Construction was not present  
9 on the site at the time of Ms. Lawrence's presence.

10           All right. You may proceed.

11           (Whereupon video deposition was played.)

12           DIRECT EXAMINATION

13 BY MR. DEUTSCH:

14           Q. Good morning, Ms. Lawrence. How are you?

15           A. I'm good. Thank you.

16           Q. Good. If I ask you any questions this  
17 morning that you do not understand, please let me know  
18 and I'll be happy to rephrase my question.

19           Have you ever testified before in a courtroom  
20 like this?

21           A. Not like this, just in a custody hearing  
22 once.

23           Q. I'm sorry?

24           A. Custody hearing.

25           Q. Got you. First, what do you do for a living?

1 A. I'm a seventh grade math teacher.

2 Q. Okay. And where do you live?

3 A. I live in Kalamazoo, Michigan. It's about  
4 directly halfway between Chicago and Detroit.

5 Q. And -- and how do you find yourself here in a  
6 courtroom in Las Vegas in this case?

7 MR. RUSSELL: Objection, Your Honor.

8 THE COURT: Hold on. Stop.

9 (Whereupon video deposition was paused.)

10 MR. RUSSELL: It's irrelevant and -- and the  
11 information is about to expose certain media and  
12 publicity accounts of the trial improperly before the  
13 jury. Also, the testimony contains hearsay.

14 MS. FRESCH: And, additionally, Your Honor, I  
15 join those as well as it goes into potentially Phase 2.  
16 And it assumes facts not in evidence and lacks  
17 foundation.

18 THE COURT: All right. I'll sustain the  
19 objection insofar as it relates to how she was -- how  
20 she knew about this -- okay? -- the media.

21 MR. RUSSELL: Do you have a -- Your Honor, I  
22 don't mean to interrupt. Do you have a copy of the  
23 transcript or do you need an additional copy, Your  
24 Honor?

25 THE COURT: So can you --

1 MR. DEUTSCH: Well, your Honor, do you have a  
2 copy of the transcript?

3 THE COURT: No.

4 MR. DEUTSCH: So it -- maybe if we gave Your  
5 Honor a copy of the transcript.

6 THE COURT: It would be helpful.

7 MR. DEUTSCH: It might be helpful and you can  
8 see that I don't believe there's anything  
9 objectionable.

10 THE COURT: It would be helpful.

11 MR. DEUTSCH: Sure. Why don't we do that.

12 MR. MORELLI: Just read ...

13 MR. DEUTSCH: I hope this is okay, Your  
14 Honor.

15 THE COURT: Is the battery charged?

16 MR. DEUTSCH: Yeah. One swipe that way and  
17 you'll follow along. The first question we were up to  
18 is right here. And there's the answer. I don't think  
19 there's anything objectionable.

20 MR. MORELLI: It's okay.

21 THE COURT: I think what you need to do is go  
22 to page 10, line 13. Resume there.

23 MR. DEUTSCH: May we approach, Your Honor?

24 MR. RUSSELL: It would be the same objection,  
25 Your Honor, on 13 -- page 10, line 13 to 14, talks

1 about media.

2 MR. DEUTSCH: Can we approach, Your Honor?

3 THE COURT: Well, I think that that's okay.  
4 I think there's a lot of stuff, though, that -- before  
5 that.

6 MR. DEUTSCH: May we approach, Your Honor?  
7 Because if there's certain lines in that, then I can  
8 read that piece minus the words that Your Honor takes  
9 out in that entire long answer and then play the video  
10 again starting on 13.

11 May we approach?

12 THE COURT: Yeah.

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

15 THE COURT: Counsel can state her objection  
16 once the question's been --

17 MR. DEUTSCH: Yes, so we're going to start,  
18 then, at page 10, line 13.

19 (Whereupon video deposition was  
20 resumed.)

21 BY MR. DEUTSCH:

22 Q. Was there something in particular that you  
23 heard that was what prompted you to come in in terms of  
24 anything you heard that -- that Mr. Copperfield said or  
25 anything like that?



1           A.    Oh --

2           MS. FRESCH:  Objection.

3           THE COURT:  Pause it.

4           MR. DEUTSCH:  Pause it.

5           (Whereupon video deposition was paused.)

6           MR. DEUTSCH:  We just dealt with that

7 objection.

8           MS. FRESCH:  I wanted to preserve my

9 objection.

10          THE COURT:  Right.

11          MS. FRESCH:  Okay.  I object, for lines 13

12 through 24, that it's hearsay, lacks foundation,

13 assumes facts not in evidence.  It's Phase 2 damages.

14 It's speculation, irrelevant, and prejudicial.

15          THE COURT:  Okay.  Overruled.

16          (Whereupon video deposition was resumed.)

17          THE WITNESS:  -- article that I had pulled

18 off that Wednesday that he had said -- or someone had

19 said -- I don't know who exactly, I guess -- that there

20 hadn't been injuries in that particular act before.

21 And I knew that to be false.  So that was -- that was

22 one of the things.  I wanted to be able to support him

23 in saying that, hey, people have been hurt.

24 BY MR. DEUTSCH:

25          Q.    Okay.  And -- and was there a time when you

1 were participating in one of Mr. Copperfield's  
2 illusions?

3 A. Yes. In --

4 Q. And when was that?

5 A. In June of 2008 -- or 2013.

6 Q. And at what location -- where was it that you  
7 went to see the David Copperfield show?

8 A. At the MGM.

9 Q. Here in Las Vegas?

10 A. Yes.

11 Q. And can you tell us which particular illusion  
12 was it that you participated in?

13 A. I participated in the final act where they  
14 disappear 13 audience members.

15 Q. Okay. Did -- have you ever heard it referred  
16 to as the Thirteen Illusion, or did you just know it as  
17 the --

18 A. I just knew it was the final -- final act,  
19 yeah.

20 Q. And can you tell us, how did that illusion  
21 start?

22 A. Well, he told us that -- Mr. Copperfield told  
23 us that people were going to be randomly selected. And  
24 he threw out 13, like, great big beach bally kind of  
25 things. And if you caught it, you could come up on

1 stage.

2 And everybody in our section kind of kept  
3 batting around the ball. It was the very last one.  
4 And so I'll admit I kind of wanted to be up there. So  
5 I grabbed it and I'm like, "Okay. We're not batting  
6 this around anymore." And I got up and took the ball  
7 up to the -- up to the stage.

8 Q. Okay. And tell us what happened when you got  
9 up on stage.

10 A. Well, I walked up a few stairs. And there's  
11 a lady standing at the top of the stairs, and she asked  
12 me three questions.

13 Q. What did she ask you?

14 A. The first two -- I don't remember what order  
15 she asked them in. One of the questions was, "Are you  
16 a magician?"

17 Q. Are you magician?

18 A. No.

19 Q. Okay.

20 A. Not even close.

21 And she also asked if I was a reporter, which  
22 also I am not. And then --

23 Q. She didn't ask if you were a math teacher?

24 A. She did not ask me that. No, not at all.

25 Q. What was the third question?

1       A.    She asked me if I was able to run. And my  
2 response, because I'm a little sarcastic, is, "Well,  
3 sure, as well as I can in these shoes."

4       Q.    And what kind of shoes were you wearing?

5       A.    I was wearing -- I was dressed up. I was  
6 wearing heels. They weren't huge. They were, you  
7 know, inch and a half, two inches at the absolute most.  
8 But they weren't huge, but they were, you know, summery  
9 kind of sandal shoes with a heel.

10      Q.    And -- and you -- when you made that comment  
11 to her that you could run as well as you could "in  
12 these shoes," did that person say anything to you?

13      A.    Oh, she just said "Okay" and pointed to where  
14 I was supposed to walk and get in line.

15      Q.    And what do you remember after that? What  
16 happened after that?

17      A.    Okay. So, after that, I was -- like I said,  
18 I was the very last person up there, so pretty much  
19 after I got in line they told us to walk around the  
20 platform, I guess you would call it. And so we walked  
21 around the platform.

22            And as we were walking around there, I  
23 noticed that there were other women in much higher  
24 heels than I was. So I'm like, oh, well, mine are only  
25 this big, so must not be doing too much, you know,

1 because people had great big 4-inch heels on.

2 So that kind of made me feel better after she

3 asked that question. And so then we came -- or after

4 we came around and walked around, they put us all up on

5 this platform.

6 Q. Let me just stop you there for a second.

7 A. Yes.

8 Q. The walk around the platform that you did --

9 A. Yes.

10 Q. -- how would you describe -- would you

11 describe it as an obstacle course?

12 A. Oh, no. It was just a circle right around

13 the platform. It was --

14 Q. Did you have to jostle in and out of anything

15 as you were walking around the platform?

16 A. I don't remember doing any of that, no.

17 Q. It was just a pretty simple walk-around?

18 A. Yeah.

19 Q. Do you remember having to step over things or

20 dodge things as you were moving around?

21 A. I don't remember that, no.

22 Q. Okay. All right. So, now, you're -- they've

23 put you up in the platform and you're seated?

24 A. Yep.

25 Q. And -- and at this point is the curtain open?

1 A. At this point, the curtain is open.

2 Q. Okay. And tell us what happened next.

3 A. So, at that point, that's when David --  
4 Mr. Copperfield is talking. And he's -- actually, it's  
5 funny. He was the -- he talks to the person on the  
6 edge right by him. And, in that particular show, the  
7 lady was from Germany and her name was Claudia. And he  
8 made a joke about it because of his own personal  
9 history with a German lady named Claudia.

10 And she was one of the ones with the great  
11 big, huge 4-inch heels on. So that's the only reason I  
12 remember her name was the joke. So he was doing his  
13 little spiel. And then, all of a sudden, you know, the  
14 curtains come down around us --

15 Q. What were you thinking at that moment?

16 MR. RUSSELL: Objection, Your Honor.

17 THE COURT: Hold on. Pause.

18 (Whereupon video deposition was paused.)

19 MR. RUSSELL: Objection. Irrelevant as to  
20 what she was thinking.

21 And then lines 17 through 25, move to strike  
22 as nonresponsive.

23 MS. FRESCH: Your Honor, I would join those  
24 objections.

25 And then I wanted to bring up there's a few

1 portions in the testimony coming up that -- may we  
2 actually approach just quickly?

3 THE COURT: Sure.

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

6 MR. DEUTSCH: Just one second, Your Honor, so  
7 we can figure it out.

8 MR. RUSSELL: So, just for the record, Your  
9 Honor, it was sustained for page 15, lines 17 through  
10 20; correct?

11 MR. DEUTSCH: Yes.

12 THE COURT: Yes. 17 through --

13 MR. RUSSELL: Partial 20.

14 THE COURT: -- the first word on line 20.

15 MR. DEUTSCH: Okay. Action.

16 (Whereupon video deposition was  
17 resumed.)

18 BY MR. DEUTSCH:

19 Q. And what were you thinking at that moment?

20 A. I am thinking -- I -- I honestly assumed that  
21 whole time that we were going to start moving down,  
22 that we were -- that that whole platform was going to  
23 go down, because how else were you going to move 13  
24 people? That was my assumption. And then, all of a  
25 sudden, I hear "run, run, run."

1           And so I'm like, okay. And I was the last  
2 person out. We went through the middle. They moved a  
3 couple of chairs so that the people could -- I was in  
4 the front row -- so that we could run back through.

5           Q. And what -- the moment that that someone  
6 started screaming out, what were you thinking?

7           A. I was thinking where am I going? is really  
8 what I was thinking. And so then I started -- I  
9 lost -- I watched where everybody else was running, and  
10 they were running off the back of the platform. And  
11 I'm like there wasn't anything there, like, a minute  
12 ago. Where am I running onto? And I couldn't see  
13 anything.

14          Q. Why couldn't you see anything?

15          A. It was pitch black at the edge of the  
16 platform. You couldn't see anything. And the only  
17 thing I was thinking was, well, no one else has  
18 screamed, so no one else has fallen. And they  
19 wouldn't, like, put us in a situation where we would  
20 get hurt. That would be stupid.

21                So I just trusted. And, again, it helped  
22 because I was the last person. I don't know what I  
23 would have done if I was the first one. But I just --  
24 I kept -- I kept running.

25          Q. And what happened at that point?



1 (Whereupon video deposition was paused.)

2 MR. RUSSELL: Object. Just move to strike  
3 lines 12 through 19 as nonresponsive as to why she  
4 couldn't see anything.

5 THE COURT: Sustained. Motion is granted.  
6 The jury will disregard.

7 (Whereupon video deposition was resumed.)

8 THE WITNESS: So it -- we go and I would -- I  
9 don't know. They had some sort of, like, platform that  
10 we must have run off of at the back of that platform.  
11 I don't know how that one got up there.

12 At some point, there was like, I believe, a  
13 couple of stairs to go down. We were winding through  
14 some hallway-like things. At one point I remember  
15 going into a kitcheny kind of area. And there were two  
16 ladies who must work there who were having great  
17 enjoyment watching us all run past. They were very  
18 giggly.

19 And then, shortly after that, at some point I  
20 got outside. And it was -- I don't know if it's a  
21 freight area or a garbagey area. It was just one of  
22 those kind of places that have the big, wide sidewalks  
23 so they can move stuff.

24 And I turned a corner. And this is where the  
25 funny part happens. So I turn the corner. I can see

1 the door we were supposed to run back in. And the  
2 gentleman who was standing at the corner says, "Don't  
3 trip."

4 And, immediately, I trip. And that's always  
5 been the funny part of the story, like someone tells me  
6 "don't trip," and I trip immediately.

7 MR. RUSSELL: Your Honor.

8 THE COURT: Hold on.

9 (Whereupon video deposition was paused.)

10 MR. RUSSELL: Move to strike the testimony  
11 about "don't trip" as hearsay. No foundation as to who  
12 said that.

13 THE COURT: Overruled. It's not being  
14 offered for the truth of the matter asserted as to  
15 "don't trip"; it's being offered to show that that  
16 statement was made.

17 (Whereupon video deposition was resumed.)

18 BY MR. DEUTSCH:

19 Q. If I can break that down. At some point, you  
20 went from the inside to the outside?

21 A. Yes.

22 Q. Okay. And, when you were outside, how would  
23 you describe the lighting conditions when you were  
24 outside?

25 A. It was -- it was -- I was at the late show,

1 so it was dark. It was, you know, dimly lit, like a  
2 parking lot is at night. So you could kind of see, but  
3 there was lots of shadows and --

4 Q. And did anyone -- at any point in time while  
5 you were sitting in the -- in the prop before you  
6 started to run, did -- did anyone ever tell you what  
7 you were going to be expecting to do?

8 A. No, not a little -- even a little, no.

9 Q. And -- and as you were getting from sort of  
10 each hallway to the next hallway and the next hallway,  
11 as you approached those hallways, did you know where  
12 you were going?

13 MS. FRESCH: Objection. Objection.

14 (Whereupon video deposition was paused.)

15 MS. FRESCH: Not to the entire part, but the  
16 end part, lines 22 to 25, as speculation and hearsay.

17 MR. RUSSELL: Join.

18 MS. FRESCH: And it would continue onto the  
19 next page as to foundation and speculation as to lines  
20 1 through 3.

21 MR. DEUTSCH: Your Honor, it's not hearsay  
22 because the exact reasoning that Your Honor said  
23 before.

24 THE COURT: Hold on a second.

25 MR. DEUTSCH: It's not being offered for the

1 truth.

2 MR. RUSSELL: I believe it is, Your Honor.

3 MR. DEUTSCH: I'm the one offering it.

4 MR. RUSSELL: Fair point, Mr. Deutsch.

5 THE COURT: I think that the first part --  
6 the first sentence and the answer at line -- starting  
7 at line 15 can be proffered --

8 MR. DEUTSCH: Your Honor, may we approach for  
9 a sec?

10 THE COURT: Just a minute. Let me --

11 MR. DEUTSCH: Okay. Sorry.

12 THE COURT: Okay. I'll -- having reviewed  
13 the -- I'll overrule the objection. Go ahead.

14 (Whereupon video deposition was  
15 resumed.)

16 THE WITNESS: -- in the right direction. And  
17 they -- as we were running, there was some people along  
18 the way -- kind of like detour signs when you're in a  
19 detour. You know, "Okay. Go this way." And they  
20 were, you know, "Hey, keep going. You got" -- and I'm  
21 totally making up this number because it was five years  
22 ago. I don't remember what they said. But at least  
23 twice they were like, "Hey, you got -- you got to be  
24 back there in 48 seconds" or "You got to be wherever  
25 you need to be in so many seconds. Keep going."

**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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Electronically Filed  
Jun 11, 2019 05:36 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX - VOLUME 26-A**

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### ALPHABETICAL JOINT APPENDIX INDEX

TITLE	DATE	FILER / PREPARER	PAGE NO.	VOLUME NO.
01.19.17 Transcript of Proceedings - Motions	01.19.17	Martha Szramek, Court Recorder	JA 000239 - JA 000346	2
09.18.17 Transcript of Proceedings - Plaintiffs' Omnibus Motion in Limine; Defendants' Motion in Limine; Team Construction Management, Inc., and Beacher's LV LLC's Joinder to Fourth Supplement to Defendant Backstage Employment & Referral, Inc.'s Designation of Expert Witnesses & Documents	09.18.17	Jennifer Gerold, Court Recorder	JA 000352 - JA 000390	2
03.29.18 - Transcript of Proceedings Re: Pretrial Conference	03.29.18	Jennifer Gerald, Court Recorder	JA 000391 - JA 000424	2
04.03.18 - Reporter's Transcript of Jury Trial	04.03.18	Kristy L. Clark, RPR	JA 000425 - JA 000568	2-3
04.11.18 - Reporter's Transcript of Jury Trial	04.11.18	Kristy L. Clark, RPR	JA 000574 - JA 000714	3
04.13.18 - Reporter's Transcript of Jury Trial	04.13.18	Kristy L. Clark, RPR	JA 000715 - JA 000892	3-4
04.17.18 - Reporter's Transcript of Jury Trial	04.17.18	Kristy L. Clark, RPR	JA 000893 - JA 001167	4-5
04.18.18 - Reporter's Transcript of Jury Trial	04.18.18	Kristy L. Clark, RPR	JA 001168 - JA 001415	5-6
04.24.18 - Reporter's Transcript of Jury Trial	04.24.18	Kristy L. Clark, RPR	JA 001416 - JA 001585	6-7
04.25.18 - Reporter's Transcript of Jury Trial	04.25.18	Kristy L. Clark, RPR	JA 001933 - JA 002269	9-10
04.26.18 - Reporter's Transcript of Jury Trial	04.26.18	Kristy L. Clark, RPR	JA 002270 - JA 002514	10-11

04.27.18 - Reporter's Transcript of Jury Trial	04.27.18	Kristy L. Clark, RPR	JA 002515 - JA 002904	11-13
04.30.18 - Reporter's Transcript of Jury Trial	04.30.18	Kristy L. Clark, RPR	JA 002905 - JA 003016	13
05.01.18 - Reporter's Transcript of Jury Trial	05.01.18	Kristy L. Clark, RPR	JA 003017 - JA 003282	13-14
05.02.18 - Reporter's Transcript of Jury Trial	05.02.18	Kristy L. Clark, RPR	JA 003283 - JA 003596	14-16
05.03.18 - Reporter's Transcript of Jury Trial	05.03.18	Kristy L. Clark, RPR	JA 003597 - JA 003846	16-17
05.04.18 - Reporter's Transcript of Jury Trial	05.04.18	Kristy L. Clark, RPR	JA 003847 - JA 004002	17
05.08.18 - Reporter's Transcript of Jury Trial	05.08.18	Kristy L. Clark, RPR	JA 004071 - JA 004402	18-19
05.09.18 - Reporter's Transcript of Jury Trial	05.09.18	Kristy L. Clark, RPR	JA 004435 - JA 004720	19-20
05.10.18 - Reporter's Transcript of Jury Trial	05.10.18	Kristy L. Clark, RPR	JA 004723 - JA 004988	20-21
05.11.18 - Reporter's Transcript of Jury Trial	05.11.18	Kristy L. Clark, RPR	JA 005005 - JA 005157	21-22
05.22.18 - Reporter's Transcript of Jury Trial	05.22.18	Kristy L. Clark, RPR	JA 005158 - JA 005232	22
05.23.18 - Reporter's Transcript of Jury Trial	05.23.18	Kristy L. Clark, RPR	JA 005233 - JA 005401	22-23
05.24.18 - Reporter's Transcript of Jury Trial	05.24.18	Kristy L. Clark, RPR	JA 005440 - JA 005613	23-24
05.25.18 - Reporter's Transcript of Jury Trial	05.25.18	Kristy L. Clark, RPR	JA 005614 - JA 005806	24-25
05.29.18 - Reporter's Transcript of Jury Trial	05.29.18	Kristy L. Clark, RPR	JA 005807 - JA 005919	25

08.23.18 - Recorder's Transcript of Hearing re: Plaintiffs' Motion for Judgment As A Matter of Law or, In The Alternative, for New Trial	08.23.18	Jennifer Gerold, Court Recorder	JA 006497 - JA006552	28
Backstage Employment and Referral, Inc.'s Brief Regarding New and Previously Undisclosed Witnesses	04.25.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 001874 - JA 001932	8-9
Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial (Filed Under Seal)	12.16.16	Weinberg Wheeler Hudgins Gunn & Dial	JA 000151 - JA 000158	1
Backstage Employment & Referral, Inc.'s Opposition to Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively for a New Trial	08.10.18	Weinberg Wheeler Hudgins Gunn & Dial	JA 006353 - JA 006381	27
Backstage Employment and Referral, Inc.'s Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.08.19	Weinberg Wheeler Hudgins Gunn & Dial	JA 006614 - JA 006616	28
Backstage Employment & Referral, Inc.'s Reply in Support of Motion to Bifurcate Trial	01.11.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000177 - JA 000234	1
Beacher's LV, LLC's Answer to MGM Grand Hotel's Third Party Complaint	04.05.16	Morris Sullivan Lemkul & Pitegoff	JA 000078 - JA 000092	1
Beacher's LV, LLC's Amended Answer to MGM Grand Hotel's Third-Party Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	10.07.16	Morris Sullivan Lemkul & Pitegoff	JA 000128 - JA 000150	1
Beacher's Motion for Leave to File an Amended Answer to Third Party Plaintiff MGM Grand's Complaint; Counterclaim by Beacher's LV, LLC; Third Party Complaint by Beacher's LV, LLC	07.29.16	Morris Sullivan Lemkul & Pitegoff	JA 000093 - JA 000127	1
Case Appeal Statement	07.11.18	Harris & Harris	JA 006271 - JA 006294	27



Complaint and Demand for Jury Trial	08.06.14	Eglet Law Firm	JA 00001 - JA 00011	1
Court Minute Order Regarding Motion for Certification	04.25.19	Judge Mark Denton	JA 006623	28
Court Minutes - Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.02.17	Judge Mark Denton	JA 000347	2
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Answer to Plaintiff's Complaint	10.27.14	Selman Breitman	JA 000029 - JA 000038	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Brief Regarding Undisclosed Witnesses	04.25.18	Selman Breitman	JA 001835 - JA 001873	8
David Copperfield's Disappearing, Inc., David Copperfield aka David Kotkin and MGM Grand Hotel, LLC's Amended Answer to Plaintiffs' Complaint and Cross Claim Against Team Construction Management, Inc.	02.01.16	Selman Breitman	JA 000060 - JA 000071	1
David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin, and MGM Grand Hotel, LLC's Joinder to Co-Defendants' Motions in Limine and Motion to Bifurcate Trial	12.28.16	Selman Breitman	JA 000159 - JA 000161	1
David Copperfield's Disappearing, Inc., David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion for Certification of Judgment on Order Shortening Time	04.10.19	Selman Breitman	JA 006617 - JA 006619	28

Decision Regarding Motion for Judgment as a Matter of Law	09.17.18	Judge Mark Denton	JA 006553 - JA 006559	28
Gavin and Mihn-Hahn Cox's Appendix in Support of Emergency Petition for Writ of Mandamus Under NRAP 27(E)	05.07.18	Harris & Harris	JA 004009 - JA 004067	17-18
Jury Instructions	05.23.18	Judge Mark Denton	JA 005402 - JA 005439	23
MGM Grand Hotel, LLC's Motion for Leave to File a Third Party Complaint	12.01.15	Selman Breitman	JA 000039 - JA 000057	1
MGM Grand Hotel, LLC, David Copperfield and David Copperfield's Disappearing, Inc.'s Trial Brief to Preclude Plaintiffs from Calling Improper Rebuttal Witnesses	05.10.18 Selman Breitman	JA 004989 - JA 005004		21
MGM Grand Hotel, LLC, David Copperfield aka David Kotkin and David Copperfield's Disappearing, Inc.'s Opposition to Plaintiffs' Motion for Judgment As A Matter of Law, or, Alternatively for New Trial	08.10.18	Selman Breitman	JA 006382 - JA 006466	27-28
Notice In Lieu of Remittitur	06.04.18	Supreme Court	JA 005924	25
Notice of Appeal (Supreme Court File-Stamp)	07.19.18	Harris & Harris	JA 006295 - JA 006326	27
Notice of Entry of Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.23.18	Resnick & Louis	JA 006562 - JA 006566	28
Notice of Filing Emergency Petition for Writ of Mandamus	05.07.18	Harris & Harris	JA 004003 - JA 004006	17
Notice of Hearing on Plaintiffs' Motion for Certification	03.29.19	EJDC - Department 13	JA 006612 - JA 006613	28
Notice of Transfer to Court of Appeals	05.07.18	Supreme Court	JA 004007 - JA 004008	17

NRAP 27(E) Certificate	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004427 - JA 004434	19
Order Denying Petition for Writ of Mandamus	05.07.18	Supreme Court	JA 004068 - JA 004070	18
Order Denying Plaintiffs' Motion for Judgment as a Matter of Law, or, Alternatively, for a New Trial	10.22.18	Resnick & Louis	JA 006560 - JA 006561	28
Order Denying Rehearing	05.10.18	Supreme Court	JA 004721 JA 004722	20
Order Granting Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	02.27.17	Weinberg Wheeler Hudgins Gunn & Dial	JA 000348 - JA 000351	2
Order Granting Defendants David Copperfield, David Copperfield's Disappearing, Inc. And MGM Grand Hotel, LLC's Motion for Leave to Amend Their Answer to File Cross Claim	01.28.16	Selman Breitman	JA 000058 - JA 000059	1
Order Granting Motion to Extend Time (Supreme Court)	03.28.19	Supreme Court	JA 006597 - JA 006598	28
Order on Plaintiffs' Motion for Certification of Judgment	05.08.19	Morelli Law Firm	JA 006624 - JA 006626	28
Plaintiff's Amended Case Appeal Statement	11.26.18	Harris & Harris	JA 006577 - JA 006585	28
Plaintiffs' Amended Notice of Appeal	11.26.18	Harris & Harris	JA 006567 - JA 006576	28
Plaintiffs' Motion for Certification of Judgment On Order Shortening Time	03.28.19	Harris & Harris	JA 006599 - JA 006611	28

Plaintiffs' Motion for Judgment As a Matter of Law, or, Alternatively, for a New Trial	07.05.18	Harris & Harris	JA 005925 - JA 006259	25-27
Plaintiffs' Notice of Appeal (EJDC File-Stamped)	07.11.18	Harris & Harris	JA 006260 - JA 006270	28
Plaintiffs' Opposition to Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial	01.05.17	Harris & Harris	JA 000166 - JA 000176	1
Plaintiffs' Reply in Support of Motion for Judgment as a Matter of Law, Or, Alternatively for a New Trial	08.20.18	Harris & Harris	JA 006467 - JA 006496	28
Plaintiffs' Trial Brief to Exclude Cumulative Expert Testimony on Defendants' Proposed Expert Witnesses John E. Baker and Nicholas Yang	04.11.18	Harris & Harris	JA 000569 - JA 000573	3
Plaintiff's Trial Brief to Permit Testimony of Newly Discovered Fact Witnesses	04.25.18	Harris & Harris	JA 001586 - JA 001834	7-8
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	05.09.18	Selman Breitman  Weinberg Wheeler Hudgins Gunn & Dial  Resnick & Louis	JA 004403 - JA 004426	19
Request for Transcript of Proceedings	12.21.18	Morelli Law Firm	JA 006586 - JA 006589	28
Stipulation	03.08.19	Morelli Law Firm	JA 006595 - JA 006596	28
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
Team Construction Management, Inc., and Beachers LV, LLC's Joinder to Defendants David Copperfield's Disappearing, Inc, David Copperfield and MGM Grand Hotel, LLC's Response to Plaintiffs' Motion to Certification of Judgment on Order Shortening Time	04.15.19	Resnick & Louis	JA 006620 - JA 006622	28
Defendant Team Construction Management, Inc. And Beachers LV, LLC's Joinder to Backstage Employment and Referral's Motion to Bifurcate Trial	12.29.16	Resnick & Louis	JA 000162 - JA 000165	1
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

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2 despite Ms. Lawrence's accident occurring at the MGM Grand just months prior to Mr.  
3 Cox's accident, with MGM Grand employees working along the route of the illusion, the  
4 Court ruled it would give a limiting instruction to the jury stating that they could *not*  
5 consider her testimony against MGM Grand. (Ex. 3, 105:17-106:25.)  
6

7 If the Defendants had disclosed these witnesses in a timely manner during discovery,  
8 their depositions would have been taken and there could have been no dispute that their  
9 testimony was relevant and admissible in its entirety. Instead, the Defendants failed to  
10 disclose any prior accidents or injuries and, in fact, proffered repeated trial testimony that no  
11 such injuries existed. As a result, Plaintiffs were required to take trial depositions of these  
12 witnesses and, ultimately, the Court limited their testimony. The jury was entitled to hear  
13 all of the facts and Plaintiffs should not have been prejudiced due to Defendants' failure to  
14 disclose relevant witnesses during the discovery process. There can be no dispute that the  
15 testimony of all three witnesses was highly relevant. The primary crux of Defendants'  
16 defense in this case was that the sheer number of participants in the 13 Illusion without  
17 injury somehow proved that the trick was safe. In fact, counsel for David Copperfield and  
18 DCDI opened to the jury by affirmatively stating that 96,000 people total, and 55,800  
19 people at MGM Grand, successfully participated in the 13 Illusion and that "[t]here were  
20 nor prior injuries, the evidence will show, prior to Mr. Cox tripping and falling that night."  
21 (Trial Tr., April 13, 2018, 100:2-24, 101:22-102:8, attached hereto as **Exhibit 14**). Chris  
22 Kenner, on behalf of defendant Backstage, then testified that the entire purpose of this  
23 "numbers defense" was to prove to the jury that the 13 Illusion was safe. (Ex. 6, 198:21-  
24 25.) Mr. Kenner further testified that "without a doubt," other than Mr. Cox, no one had  
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2 ever fallen and gotten injured before during the 13 Illusion. (Ex. 6, 202:7-11, 203:1-20.)

3 David Copperfield also testified that he did not recall anyone ever falling or being injured  
4 during the 13 Illusion. (Trial Tr., May 3, 2018, 28:10-20, attached hereto as **Exhibit 15**)

5 That "numbers defense," which was shared by all of the Defendants except Team  
6 Construction, was directly contradicted by the testimony of these three (3) newly discovered  
7 witnesses. Such testimony, if allowed in its entirety, would have completely called into  
8 question the safety of the 13 Illusion, Defendants knowledge of prior accidents and injuries,  
9 and as a result Defendants credibility. As just one example, Patricia Esack was prepared to  
10 testify to the jury that not only did she speak directly with David Copperfield immediately  
11 after her accident, but she later pursued a legal claim against David Copperfield and DCDI  
12 for her injuries which was settled out of court when she received a substantial monetary  
13 payment from DCDI and signed a release. (See Ex. 11, 8:5-10, 222:14-223:12.) However,  
14 the Court ruled that the jury was not allowed to hear or see this highly relevant evidence that  
15 went directly to the safety of the trick and the Defendants knowledge of prior accidents and  
16 injuries. In fact, David Copperfield subsequently testified that he had no recollection of  
17 Patricia Esack whatsoever, including that Ms. Esack filed a claim against him as a result of  
18 her accident. (Ex. 15, 37:2-13, 40:18-23, 44:24-45:6, 98:19-23, 99:5-8.) The Court's  
19 decision to limit Ms. Esack's testimony on this point is just one example where the jury was  
20 deprived of the opportunity to adequately assess a witnesses' credibility due to incomplete  
21 information and, as a result, severely prejudiced the Plaintiffs.  
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26 In the present matter, there was substantial justification for allowing the newly  
27 discovered witnesses to testify without any restrictions in order to preserve a trial on the  
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2 merits. Without the complete testimony of these three (3) witnesses, the jury was not  
3 permitted to hear the entire truth and the case was not tried on the merits. The Defendants  
4 opened the door by stating, beginning in opening statements, that nobody had *ever* gotten  
5 injured while participating in the 13 Illusion prior to Gavin Cox. By doing so, the  
6 Defendants made the entire trick, from its inception in 1998 to the time of Mr. Cox's  
7 accident relevant. Yet, by limiting the testimony of these three (3) witnesses, the District  
8 Court allowed the jury to deliberate and decide the case without all of the relevant  
9 information. Such a decision was extremely prejudicial to the Plaintiffs and should result in  
10 a new trial.  
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13 If it were not for the extensive media coverage of the trial, combined with the strong  
14 desire of these three witnesses for the truth to be heard, Plaintiffs would not have been able  
15 to obtain this highly relevant evidence by any other means. The Court should not have  
16 permitted the Defendants to benefit from their repeated attempts to conceal the truth.  
17 Limiting the testimony of these relevant witnesses was tantamount to an endorsement of  
18 Defendants' suppressing relevant evidence. As a result, the jury was forced to decide this  
19 case without all relevant evidence. Such a result was inconsistent with substantial justice,  
20 highly prejudicial to Plaintiffs, and prevented Plaintiffs from having a fair trial. Further, any  
21 alleged failure by Plaintiffs to timely disclose these witnesses was harmless. The  
22 Defendants controlled all of the information regarding these witnesses and, as such, any  
23 prejudice to the Defendants resulted solely from their unilateral choice to withhold the  
24 information regarding these witnesses.  
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**VII. THE DISTRICT COURT'S DECISION TO ALLOW  
THE CUMULATIVE EXPERT TESTIMONY OF  
DR. BAKER AND DR. YANG WAS A PREJUDICIAL ERROR.**

All of the Defendants, with the exception of Team Construction Management, Inc., identified John E. Baker as a proposed liability expert. Defendant Team Construction Management, Inc. separately identified Nicholas Yang as a proposed liability expert. Both Dr. Baker and Dr. Yang were designated to provide duplicative and cumulative opinions regarding the cause of Plaintiff's November 12, 2013 accident.

Dr. Yang provided expert reports dated September 1, 2016, April 14, 2017, and February 12, 2018. *See Defendants' Exhibit 533*. Dr. Yang's reports contain the following opinion, among others, regarding the cause of Plaintiff's accident: "Mr. Cox likely experienced a trip and fall event, rather than a slip and fall." *See Defendants' Exhibit 533 (0533-000019)*. Dr. Baker provided an expert report dated May 16, 2016 and a supplemental report dated March 16, 2018. *See Defendants' Exhibit 502*. Dr. Baker's supplemental report contains the following opinion, among others, regarding the cause of Plaintiff's accident: "it was apparent that the only possible precipitating mechanism for Cox's subject fall was a toe-catch trip." At the outset of his supplemental report, Dr. Baker states that he was asked to address "address the precipitating mechanism of the Gavin Cox' fall and injury" and specifically notes he reviewed the materials of proposed expert Nicholas Yang. Tellingly, at the conclusion of his supplemental report, Dr. Baker goes on to state that "Nicholas H. Yang, Ph.D., P.E. has arrived at virtually identical opinions to mine regarding Gavin Cox' precipitating fall event, the distant location of the point of impact, and

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2 Gavin Cox' fall mechanics." According to Dr. Baker himself, he and Dr. Yang's opinions  
3 regarding the cause of Plaintiff's accident are virtually identical.

4 At the conclusion of Dr. Baker's testimony, but prior to Dr. Yang taking the stand,  
5 Plaintiffs objected to the anticipated cumulative nature of Dr. Yang's testimony. (See Ex. 9,  
6 15:5-20:7, 24:2-25:2.) Plaintiffs noted that having another defense expert, who was  
7 completely aligned with all the other defendants testify that Mr. Cox tripped instead of  
8 slipped was nothing more than bolstering. (Ex. 9, 15:20-25.) The Court ruled that Plaintiffs  
9 needed to wait until Dr. Yang testified to see if his testimony was cumulative. Not  
10 surprisingly, during Dr. Yang's testimony, defense counsel proceeded to ask many identical  
11 questions of Dr. Yang that were asked of Dr. Baker, and Plaintiffs objected based on the  
12 cumulative nature of the testimony. (See e.g., Ex. 9, 231:25-232:6.) Regardless of the  
13 analysis each defense expert used, ultimately, they came to the exact same opinion – Mr.  
14 Cox slipped instead of tripped. Allowing such cumulative expert testimony was entirely  
15 prejudicial to the Plaintiffs and amounted nothing more than bolstering by the Defendants.  
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18 When a moving party shows that an error is prejudicial, the error is not harmless and  
19 reversal may be appropriate. Wyeth v. Rowatt, 126 Nev. 446, 465 (2010). The  
20 prerequisites of relevancy are set out in Nevada Revised Statute 48.035. Specifically, *NRS*  
21 *48.035(2)* provides that "[a]lthough relevant, evidence may be excluded if its probative  
22 value is substantially outweighed by considerations of undue delay, waste of time or  
23 needless presentation of cumulative evidence." In Townsend v. State, 103 Nev. 113, 117  
24 (1987), the Supreme Court noted that the threshold test for the admissibility of expert  
25 testimony turns on whether the expert's specialized knowledge will assist the trier of fact in  
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2 understanding the evidence or an issue in dispute. The Supreme Court further stated in  
3 *Townsend* that the admissibility of such evidence must also satisfy the prerequisites of all  
4 relevant evidence, *i.e.*, that its probative value is not substantially outweighed by its  
5 prejudicial effect.” Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 243 (1998)  
6 (citing Townsend v. State, 103 Nev. at 118, 734 P.2d at 708); see also Miller v. Pease, No.  
7 62571, 2014 WL 2527231, at \*1 (Nev. Sup. Ct., June 2, 2014) (district court did not abuse  
8 its discretion by excluding third witness’s testimony regarding condition of home as  
9 cumulative); McCennell v. Wal-Mart Stores, Inc., 995 F. Supp. 2d 1164, 1169 (D. Nev.  
10 2014) (even assuming proffered expert were qualified as an expert, his testimony  
11 concerning the general standard of care would be more confusing than helpful to jury in  
12 negligence action brought by customer who allegedly injured himself after slipping and  
13 falling in store); Holderer v. Aetna Cas. & Sur. Co., 114 Nev. 845, 852, 963 P.2d 459, 463  
14 (1998) (in automobile accident case, probative value of evidence pertaining to plaintiff’s  
15 alleged improper acquisition of prescription medication was substantially outweighed by the  
16 danger of unfair prejudice).

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20 Allowing both the opinions of Mr. Baker and Mr. Yang was a waste of time, was  
21 duplicative and cumulative, and should not have been allowed at trial. The Defendants  
22 identified two experts to render identical or substantially similar opinions regarding the  
23 cause of Plaintiff’s accident. Both experts opine that Gavin Cox experienced a trip and fall  
24 event, rather than a slip and fall during his November 12, 2013 accident. Permitting  
25 Defendants to present two expert witnesses to opine as to the same exact information had  
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2 absolutely no probative value and only led to undue delay, the needless presentation of  
3 cumulative evidence, and severe prejudice to the Plaintiffs.


4 In this case, Mr. Baker and Mr. Yang were both retained to render opinions as to the  
5 cause of Plaintiff's November 12, 2013 accident. Both experts were given the same task  
6 and reached the exact same conclusions. Given the substantial similarity of their opinions,  
7 permitting both experts to testify at trial was extremely prejudicial to Plaintiffs and resulted  
8 in cumulative testimony which only caused an unnecessary delay in the proceedings. In  
9 addition, every one of the Defendants were aligned on this issue, making such duplicative  
10 testimony even more unnecessary. Allowing the Defendants to tell the exact same thing to a  
11 jury twice is the very definition of cumulative evidence. Such duplicative opinions, even if  
12 arguably relevant, should have been excluded at trial under NRS 48.035.

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15 **VIII. CONCLUSION**

16 In light of the foregoing, Plaintiffs are entitled to Judgment as a Matter of Law or,  
17 alternatively, a new trial, pursuant to NRCP 50(b), 59(a), and 61 and in the interests of  
18 justice.

19 DATED this 5<sup>th</sup> day of July, 2018.

20  
21 **HARRIS & HARRIS**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5 day of July, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, FOR A NEW TRIAL**, 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 efilng 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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PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 01***

JA005985



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

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

9

Plaintiffs, )

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vs. )

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

17

Defendants. )

18

MGM GRAND HOTEL, LLC., )

19

Third-Party Plaintiff, )

20

vs. )

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

22

Third-Party Defendants. )

23

24

25

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

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, MAY 11, 2018

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21 \* \* \* \* \*

1 in -- or, somehow, we need to make sure that  
2 Mr. Deutsch's questions are basically "What day did you  
3 attend the show?" I could do your questions for you.  
4 "What day did you attend the show?"  
5 MR. MORELLI: If you allow us to do --  
6 MS. FRESCH: Maybe I'll give you the script.  
7 "What day did you attend the show?"  
8 MR. DEUTSCH: I'll make you a deal. I'll  
9 trade you the direct to do your closing. I'll do your  
10 closing, and you can do the direct of this witness.  
11 MS. FRESCH: Did you participate in the  
12 illusion? Did you have an injury? Where was the  
13 injury? Did you speak to Mr. Copperfield?  
14 That should be the extent of the questions,  
15 period.  
16 THE COURT: Let's -- I'll let Mr. Deutsch  
17 frame his questions, and I'll let you make your  
18 objections to any that you think are improper.  
19 MR. DEUTSCH: Your Honor, while the jury is  
20 out and they're working on this, one thing that I  
21 wanted to mention.  
22 Perry, do you have that?  
23 With respect to the issue that we spoke about  
24 yesterday about the admissibility of those video clips  
25 of Mr. Copperfield -- I'm sorry -- Mr. Cox, the ones --

1 the walking. Mr. Roberts cited a rule and --

2 THE COURT: Are we going to get into that now  
3 too?

4 MR. DEUTSCH: Well, I just want to make one  
5 point because the jury is out and I thought we could  
6 deal with it now.

7 This one point I want to make is that  
8 Mr. Roberts cited the Rule 51 -- NRS 51.045. And he --  
9 he proffered the rule to Your Honor to say that a  
10 statement includes nonverbal conduct of a person to try  
11 to suggest that -- you know, his nonverbal conduct of  
12 walking up, you know, to the stand.

13 The problem is that he stopped in the middle  
14 of the sentence of that rule and didn't read the rest  
15 of the rule where --

16 MR. ROBERTS: Which applies.

17 MR. DEUTSCH: Well, I don't think it does.

18 The rest -- the rest of the rule where he  
19 stopped at -- and I find it interesting that he decided  
20 to just read half of a sentence is -- it says, "The  
21 nonverbal conduct of a person is -- can be used for  
22 that purpose if it is intended as an assertion."

23 And there's no suggestion that there was any  
24 intention of an assertion because Bob offered to help  
25 him up to the stand. So I think it was a little

1 disingenuous that Mr. Roberts stopped midway through  
2 the sentence, but we can talk about that later.  
3 THE COURT: Let's talk about it later.  
4 MR. DEUTSCH: Thank you, Your Honor.  
5 MR. POPOVICH: This question actually relates  
6 to Ms. Anderson, who's about to take the stand. Given  
7 the Court's ruling and the limiting instruction as to  
8 MGM, I would argue or -- and potentially object that  
9 the exact location of her fall was not relevant and  
10 could be unfairly prejudicial.  
11 I would -- I would ask that the plaintiffs  
12 limit their questions to indicating that she fell  
13 during the runaround.  
14 THE COURT: I think that's fair.  
15 MR. DEUTSCH: Well --  
16 THE COURT: Again --  
17 MR. DEUTSCH: But if she told Mr. Copperfield  
18 where she fell in the runaround, then that could be  
19 relevant because that goes to notice. And --  
20 MR. MORELLI: He should have done something  
21 about it.  
22 MR. DEUTSCH: And he should have done  
23 something about it.  
24 MR. POPOVICH: I think I have to concede  
25 that, if she said that to Copperfield, it comes in, but

1 testimony in deciding the liability claims relating to  
2 defendants MGM Grand Hotel, LLC; Backstage Employment  
3 and Referral, Inc.; and Team Construction Management,  
4 Inc. Team was not present at the time.

5 MR. DEUTSCH: Thank you, Your Honor.

6  
7 DIRECT EXAMINATION

8 BY MR. DEUTSCH:

9 Q. Good morning, Ms. Anderson.

10 A. Good morning.

11 Q. Where you from?

12 A. Bremerton, Washington.

13 Q. Okay. Is that -- where is that exactly?

14 A. It's a ferry ride from Seattle.

15 Q. Okay. What do you do for work?

16 A. I work for the Underwater Warfare Center.

17 It's a torpedo -- we build torpedoes for the Navy.

18 Q. Okay. Do me a favor. Try to keep your voice  
19 up as loud as you can.

20 A. Sorry.

21 Q. It's okay.

22 Have you ever testified like this in a  
23 courtroom before?

24 A. Not with this much pressure. Sorry.

25 Q. Did -- did there come a point in time -- or

1 can you tell the jury what -- how you came to be here  
2 today?

3 A. In '04 -- I know it was a really long time  
4 ago -- I went on an anniversary trip with my ex-husband  
5 down here. My sister bought us tickets to the David  
6 Copperfield show and -- for our anniversary present.  
7 And I really wanted to get on stage. So my ex-husband  
8 actually kind of stole the ball, because they throw the  
9 balls around. And he grabbed it for me so I could get  
10 up on stage.

11 And then, in the act, I lost my -- my feet  
12 flew out from under me and I hurt myself. And I called  
13 you guys today -- or I saw on the news this was going  
14 on, and I wasn't paying attention. But then I saw  
15 David Copperfield had said nobody had ever gotten hurt.

16 And my mom was the one that actually told me  
17 that when I got home from work, and so I found his name  
18 and I called the New York office.

19 Q. Okay. So -- so you had -- you had seen  
20 something where Mr. Copperfield had said that nobody  
21 got hurt, and you felt that that was not accurate?

22 A. Yeah. It was -- yeah, my mom even said, "You  
23 fell, so ..."

24 Q. And then you reached out to us.

25 And when was the first time that you reached



1 out to us? Do you remember exactly?

2 A. Last Monday. Not this Monday this week but  
3 the Monday before.

4 Q. Okay. And so, at the time, you were --  
5 the -- the illusion or the trick that you were a  
6 participant in, do you know what it was called? Do you  
7 know if it had a name or anything?

8 A. At that time, when I was doing it, no, I  
9 didn't.

10 Q. Do you know now --

11 A. Yeah.

12 Q. -- what they call it? What do they call it?

13 A. The Thirteen.

14 Q. Okay. And was the illusion that you  
15 understand to be the Thirteen where people are put up  
16 into a box and then made to disappear and reappear?  
17 Was that the illusion that you were involved in?

18 A. Yes.

19 Q. Okay. And at some point during that  
20 illusion, did you have an accident?

21 A. Yes.

22 Q. And -- and just -- can you tell us, like, at  
23 what point -- where during the illusion that accident  
24 occurred.

25 A. When we went outside around the corner and

1 then heading back into the building.

2 Q. Okay. And -- and what happened at that point  
3 that -- that caused your accident? What -- what --  
4 what happened? What was your accident?

5 A. We were running. And it was around a corner,  
6 and my feet just flew out from under me.

7 Q. Okay. And were you injured as a result of  
8 that?

9 A. Yeah. I split my lip and my knee.

10 Q. Okay. Were you bleeding?

11 A. Yes.

12 Q. Okay. And after you -- you had the accident,  
13 what happened at that point?

14 A. I --

15 Q. I mean, did you finish -- did you finish the  
16 illusion or something else?

17 A. Yes. Yes, I did.

18 Q. Okay. And -- and -- and tell us sort of what  
19 happened from when you had the accident to the  
20 finishing of the illusion.

21 What did you have to do when you were  
22 finishing the illusion?

23 A. Well, when I fell, I really don't remember if  
24 somebody helped me up or not because it happened so  
25 quick. And I was embarrassed, so I jumped up as quick

1 as I could.

2 Then we ran inside. They gave me an ice  
3 pack. We watched the illusion that we'd just  
4 participated in. Oh, yeah, we stayed in back of the  
5 audience. And I was bleeding, so I was trying to cover  
6 it because I knew my ex-husband, if he had seen it, he  
7 would have freaked out because I had -- you know, I was  
8 bleeding. So I was trying to cover my lip and stand  
9 there with the light on us.

10 And then we went to the back. They showed us  
11 the trick. They gave me an ice pack. David  
12 Copperfield came in. He said, "Which one of you --  
13 which one of you got injured?" And the corner  
14 people -- there was only two people that they knew the  
15 names, Mike and Tara, me.

16 And my whole group turned and said, "Tara  
17 did." So then they went through the spiel, and we got  
18 the autograph and stuff.

19 Q. Okay. And did you have -- after  
20 Mr. Copperfield came in and said "Which one has been  
21 injured?" and the rest of the group said "Tara," did  
22 you have a conversation with Mr. Copperfield at that  
23 point?

24 A. It was a brief conversation. I don't  
25 remember what -- what words were exchanged.

1 Q. Okay. But at the time that you spoke to him,  
2 did you have the ice pack on your face?  
3 A. Yes.  
4 Q. Okay. And -- and were you bleeding at that  
5 point when you spoke to him?  
6 A. Yeah.  
7 MR. DEUTSCH: And what exhibit was this?  
8 MR. FALLICK: 104, I believe.  
9 BY MR. DEUTSCH:  
10 Q. I want to show you what has been previously  
11 marked as 104.  
12 I think it's in evidence.  
13 THE CLERK: It is in evidence, yes. It's  
14 103.  
15 MR. DEUTSCH: 103. Sorry.  
16 BY MR. DEUTSCH:  
17 Q. Ms. Anderson, let me show you that.  
18 Do you recognize what that is?  
19 A. Yes.  
20 Q. What is that?  
21 A. That's my autographed picture that I got that  
22 night.  
23 Q. Okay. And do you remember the date that this  
24 happened?  
25 A. Yeah. I knew it was in April around '04.

1 And I found a receipt for the Grand Canyon, because  
2 we'd gone to the Grand Canyon that day. So it was 4/7  
3 of '04.

4 Q. Did you go to the Grand Canyon earlier that  
5 day?

6 A. Yes.

7 Q. Okay. Let me show you --  
8 What -- what number are we up to?

9 THE CLERK: 108.

10 MR. DEUTSCH: 108.

11 BY MR. DEUTSCH:

12 Q. Let me show you what has been now marked as  
13 Plaintiffs' 108. Can you just take a look at that.

14 Do you recognize what that is?

15 A. Yeah. That's my receipt to the Grand Canyon.

16 Q. Okay. And did you go to the Grand Canyon  
17 earlier in the day that you went to the David  
18 Copperfield show?

19 A. Yes.

20 Q. And how do you know that?

21 A. Because my ex-husband got lost, so I was  
22 really angry with him. So we fought because we were  
23 late -- almost late to the show. Because we had to run  
24 to the show because he wouldn't stop for directions.

25 And I don't know why we decided to do both,

1 but it takes a lot longer to get there and get back  
2 than I thought it did. So we were running a bit  
3 behind.

4 MR. DEUTSCH: Your Honor, I would offer  
5 Plaintiffs' 108 in evidence.

6 MR. POPOVICH: No objection.

7 THE COURT: It's admitted.

8 MS. FRESCH: No --

9 THE COURT: Okay.

10 MS. FRESCH: No objection.

11 (Whereupon, Plaintiffs' Exhibit 108 was  
12 admitted into evidence.)

13 MR. DEUTSCH: All right. Thank you,  
14 Ms. Anderson. I have nothing further.

15 Thank you, Your Honor.

16 MR. POPOVICH: No questions.

17 THE WITNESS: Thank you.

18

19 CROSS-EXAMINATION

20 BY MS. FRESCH:

21 Q. Good morning, Ms. Anderson.

22 A. Good morning.

23 Q. I'm Elaine Fresch. I represent David  
24 Copperfield and David Copperfield Disappearing, Inc.

25 So I just have a few questions for you.

1 Now, you mentioned that -- I wasn't clear.

2 Did you see this on the news? Is that correct? This  
3 trial?

4 A. Yes.

5 Q. Okay. What station?

6 A. Honestly, I think it was not a station. I  
7 think it was on the Daily Mail that I saw it.

8 Q. The Daily Mail, like from the UK, Daily Mail?

9 A. Yeah. They have a U.S. site too. So I kind  
10 of pay attention to it.

11 Q. Okay. And so --

12 A. It's an app. I just use the app. Sorry.

13 Q. Okay. And have you had that app for a long  
14 time?

15 A. Probably six months, a year.

16 Q. Okay. And is there any reason you have the  
17 Daily Mail app since it's a UK --

18 A. Like I said --

19 Q. -- publication?

20 A. -- it's the U.S. site of the Daily Mail. And  
21 they have a lot of information when there's tragedies,  
22 like school shootings and stuff. Honestly, they have  
23 the most information available that I found.

24 Q. So you saw it on your app about the trial?

25 A. Yeah.

1 Q. All right. And have you been following the  
2 trial since day one?

3 A. No. I wasn't following it at all. I -- I  
4 just saw that he was being sued on the app. I didn't  
5 go in and read the articles, nothing like that.

6 Q. Right.

7 A. And, like I said, my mom -- I got home from  
8 work. My mom said -- she laughed and she said "David  
9 Copperfield said nobody's been hurt in his act." And I  
10 said, "That's not true." So then I called them.

11 Q. Okay. Well, did you do anything to verify  
12 whether in fact your mom was accurate when she said  
13 David Copperfield said no one has been hurt in the  
14 show?

15 A. Yeah. I googled his name. And then it  
16 brings up current news stories. And then it said  
17 something about it, but I honestly didn't read the  
18 article.

19 Q. So you didn't -- did you not think it was  
20 important to verify whether Mr. Copperfield actually  
21 said no one has been injured or if that was an  
22 inaccurate statement or not?

23 A. No, it was my mom. I wasn't -- like, you  
24 know, I wasn't -- my mom just said something like that,  
25 and I didn't feel like I needed to verify it.



1 Q. Well, so then -- I guess I'm slightly  
2 confused, and I'm just trying to understand.  
3 So your mom said that, from her watching it,  
4 sounded like David Copperfield said somewhere -- maybe  
5 testified -- I guess, testifying, because he hasn't  
6 been on the news.  
7 So that he was testifying and he said --  
8 MR. DEUTSCH: Objection, Your Honor.  
9 MS. FRESCH: Can I get my question out?  
10 THE COURT: Yes.  
11 Let her finish her question.  
12 BY MS. FRESCH:  
13 Q. All right.  
14 So it's my understanding that your mom said  
15 to you, "I heard David Copperfield say he's -- no one's  
16 ever been hurt in the show." You don't -- you didn't  
17 watch anything where you personally heard any testimony  
18 where he made such a statement; is that correct?  
19 A. Yeah.  
20 Q. Okay. So your -- as we sit here right now,  
21 you actually have no information that Mr. Copperfield  
22 ever said on the stand, because he hasn't, that --  
23 MR. DEUTSCH: Objection, Your Honor.  
24 THE COURT: I'll sustain the objection as to  
25 the statement.

1 BY MS. FRESCH:

2 Q. You -- you don't -- you didn't watch anything  
3 yourself to verify that Mr. Copperfield actually ever  
4 testified and said no one's ever been injured; is that  
5 correct?

6 A. Yes.

7 Q. Okay. So I -- I understand your mom said  
8 this, and nobody disputes their moms, but what brought  
9 you to feel you had to call the Morelli office?

10 A. Well, 'cause my mom said that, and it  
11 wasn't -- and it was -- and I know that David  
12 Copperfield's a bit bigger than I am, but, in my world,  
13 that trick was a big deal. And my whole family knew  
14 I'd fallen during it. So my mom kind of was laughing  
15 because she's like, "He said no" -- and, like I said, I  
16 didn't feel it was something I would need to verify,  
17 'cause I'm not --

18 Q. Well, if you learned now that Mr. Copperfield  
19 never testified that no one has ever been hurt in this  
20 illusion, would you feel differently about being here?

21 A. No, because it is what it is. I mean, I -- I  
22 just went by what my mom said. And I didn't mean for  
23 it to like -- what's going on -- like I -- I didn't --  
24 and then when I called Morelli and I talked to the  
25 lawyers and stuff, I didn't watch any of the news

1 articles and stuff because I didn't want their words to  
2 be my words, like I didn't want to use -- like,  
3 their -- whatever somebody else said to influence how I  
4 was thinking.

5           So, no, I probably wouldn't change it,  
6 because I didn't do any research. Once I figured I was  
7 coming here, I didn't want to be influenced by the  
8 news.

9           Q. Well, when you -- did you call Mr. Morelli's  
10 office because you wanted to come here and testify?

11          A. No, I didn't. In fact, I'm -- I get really  
12 nervous. And I don't -- I don't -- this isn't, like,  
13 something I've really wanted to do. And I actually  
14 honestly never expected it. I thought you could just  
15 do, like, a deposition. I could sign it and say,  
16 "Yeah, I was hurt." I didn't realize I was going to be  
17 here at all.

18           It's just -- like I said -- and David  
19 Copperfield is huge. I was in awe of the show. It was  
20 amazing. It really was an amazing show. But when you  
21 say nobody has gotten hurt -- and this is just my  
22 opinion. When I hear he says nobody's ever been hurt,  
23 and I was bleeding. And I know he doesn't remember me  
24 from anybody, but it was a big deal in my world. It  
25 was huge. And I even filled out an accident report and

1 everything.

2 Q. Well -- okay.

3 MR. POPOVICH: Objection. Move to strike the  
4 last phrase. Nonresponsive.

5 THE COURT: Motion granted.

6 The jury will disregard.

7 BY MS. FRESCH:

8 Q. Okay. So let me -- I'll go on. So you --  
9 after you checked on the Daily Mail --

10 A. I didn't check on it. I was just scrolling  
11 through. I didn't even click into the news. I just  
12 knew it was the same trick that I had done. There was  
13 really no interest on my part.

14 Q. So -- so you went on the Daily Mail at least  
15 to verify that --

16 A. No.

17 Q. Nothing?

18 A. Nothing.

19 Q. So you didn't -- and you didn't watch any  
20 news from the time your mom talked to you up until this  
21 moment?

22 A. No. I -- I would see the headline articles  
23 when he was testifying and stuff. And -- and I --  
24 honestly, I can't do verbatim what they said about  
25 people being injured during the trick. But I did hear

1 something about 20 years, to his knowledge, nobody had  
2 ever been injured.

3 And it was like a -- like a top -- you know,  
4 like a -- just a headline for the article. And it was  
5 something along those lines because I -- I -- and I,  
6 like I said, I don't remember what article. Because if  
7 I googled his name, all the articles came up on the  
8 little news, because, you know, it does the first --  
9 top things and then the blocks of just the headlines.  
10 And so you kind of scroll through on my phone. But I  
11 didn't click in or read the articles, I just -- I never  
12 did.

13 Q. So -- now, you've mentioned that -- you said,  
14 "I know David Copperfield doesn't remember me from" --  
15 I don't know if you said "from Adam" or -- it's the  
16 typical expression.

17 A. Yeah.

18 Q. But is -- how do you know that?

19 A. Well, I don't. I said he probably doesn't  
20 remember me from Adam. I don't know for a fact he does  
21 or not. But I would assume, 14 years ago, he probably  
22 doesn't remember me.

23 Q. And how -- did you come down here to testify  
24 with anyone? Did anyone come with you?

25 A. No. I really wanted -- I really wanted my

1 sister to come, but she couldn't get the time off. So

2 it was just me.

3 Q. Okay. And are you staying at the Wynn?

4 A. Yes.

5 Q. Okay. And is Mr. Morelli paying for that?

6 A. Yes.

7 Q. And did he pay for your air ticket?

8 A. Yes.

9 Q. Okay. How long are you staying here for?

10 A. One day.

11 Q. Okay. Now, you don't recall really --

12 besides Mr. Copperfield saying to you when he came into

13 the room where you guys watched the video, that -- that

14 you were -- you had been injured; is that correct?

15 A. Yeah, I don't remember any other

16 conversation.

17 Q. You don't remember anything else you talked

18 about?

19 A. For him and I? No -- well, I do remember he

20 went through the spiel about, like, "We've worked ten

21 years. Please don't reveal trade secrets." That's why

22 we get the autographed picture. Like, he did that.

23 And, like I said, after he found out it was me that was

24 injured, I know there were words said; I just don't

25 remember what they were.

1 Q. Okay. So you don't remember anything else  
2 except that he approached you because he had been  
3 alerted you had been injured?

4 A. Yes.

5 Q. Okay. Now, with respect to -- did you look  
6 back for -- you brought, and gave to Mr. Morelli's  
7 office, the photograph of David and a Grand Canyon  
8 ticket; right?

9 A. Yes.

10 Q. And is that all you had left from the  
11 memorabilia of that trip to Vegas?

12 A. No. I had -- we went to a show the night  
13 before at the Clint Holmes theater, because we did this  
14 thing. And then I had the tickets and then, you know,  
15 pictures. But on the -- on the ticket for David  
16 Copperfield, it said "no flash photography." So we had  
17 left our camera at home. And then I couldn't find the  
18 pictures that the MGM Grand took. They had, like, a  
19 little portfolio. You get a little thing and you could  
20 buy pictures from them. But we had gotten divorced, so  
21 I threw that away.

22 But I did keep -- I'm sorry. And then I  
23 didn't keep the David Copperfield ticket because I had  
24 the signed picture, but I kept all the other receipts.  
25 So I had -- but I was like, "Oh, I have the picture. I

1 don't need the ticket to remind me that I went,"

2 because that's -- I usually keep tickets.

3 Q. Okay. And you were personally handed that  
4 photograph?

5 A. Yes.

6 Q. And just -- is there any reason why you would  
7 keep the photograph of David after all these years?

8 A. Oh, yeah. It was -- it's -- he's -- he's  
9 famous. You know? And, like I said, I loved the show.  
10 I really did. It was a great, great show.

11 Q. Okay. I have no further questions.

12 MR. RUSSELL: No questions, Your Honor.

13 MR. CALL: No questions, Your Honor.

14 THE COURT: Any redirect?  
15

16 REDIRECT EXAMINATION

17 BY MR. DEUTSCH:

18 Q. Just one question.

19 Ms. Anderson, when we first spoke and you  
20 went and found the -- the -- the -- the receipt and the  
21 thing, was that because we had asked you if you could  
22 send us something to -- so we could verify that you  
23 were there?

24 A. No. Well, you said, "Is there any proof you  
25 have?" And I said, "I think I have this and this, and



1 I'll send you a picture." So yes.

2 Q. So that's how that came about?

3 A. Yes. Sorry.

4 Q. You were looking for that?

5 Okay. I have nothing further. Thank you.

6 MR. POPOVICH: No questions.

7 THE COURT: Is that it?

8 MR. DEUTSCH: Okay.

9 THE COURT: All right, ma'am. You may stand

10 down.

11 JUROR NO. 7: Wait. Hold on.

12 (A discussion was held at the bench,

13 not reported.)

14 THE COURT: The Court has received a series

15 of written questions. It's been determined that they

16 go beyond the scope of the examination that was

17 permitted by the Court. So, accordingly, these

18 questions will not be posed.

19 And this will be marked next court exhibit in

20 order.

21 Okay?

22 THE WITNESS: Done?

23 THE COURT: Yes.

24 THE WITNESS: Thank you. Thank you.

25 MR. DEUTSCH: May we approach, Your Honor?

1 And -- and, actually, if I could defer to Mr. Popovich,  
2 who agreed to take lead on this.

3 MR. POPOVICH: He subcontracted out the  
4 argument --

5 MR. ROBERTS: I did.

6 MR. DEUTSCH: Wait a second, Your Honor.  
7 Mr. Popovich, respectfully, has already rested his  
8 case. So --

9 THE COURT: I understand.

10 MR. ROBERTS: Well, he rested his case  
11 because the defense had agreed that I would put it on  
12 even though we all wanted to put it on because I was  
13 the one who elicited the -- the nonverbal conduct when  
14 he took the stand.

15 Thank you, Your Honor.

16 THE COURT: Go ahead.

17 MR. POPOVICH: I'll start with the general  
18 Nevada jury instruction, 1 GI 6, which talks in terms  
19 of "the credibility or believability of a witness  
20 should be determined by his or her manner upon the  
21 stand."

22 So it doesn't necessarily have to be  
23 contradiction of something verbally stated on the  
24 stand. The Court and the law anticipates the ability  
25 to impeach credibility through mannerisms. I would

1 argue it doesn't have to be just what happened on the  
2 stand; it could be the walk to the stand, the walk from  
3 the stand.

4           And, since we're talking about a party, the  
5 jury's observation of Mr. Cox in the courtroom because  
6 that complies with the rules, that they all see the  
7 same things in the courtroom. To the stand, from the  
8 stand, on the stand are all things that all the jurors  
9 have seen and can see. So we would argue that this  
10 potential impeachment evidence would be appropriate  
11 even as to Mr. Cox's behavior.

12           With regard to relevance, there's plenty of  
13 case law that talks in terms that credibility is always  
14 relevant. The jury instruction that I just read, in  
15 fact, refers us to a Ninth Circuit Court of Appeal  
16 federal case called the Young Ah Chor v. Dulles,  
17 270 F.2d 338. And that talks in terms of there's  
18 really nothing special about this kind of impeachment-,  
19 surveillance-type evidence. It's really a question of,  
20 is it relevant? And if it's relevant, is it unfairly  
21 prejudicial? The usual standard considerations for any  
22 evidence that the Court provides.

23           I couldn't find anything directly on point in  
24 Nevada case law, but I did find something of interest  
25 in California case law, Granville v. Parsons, 259

1 Cal.App.2d 298, a 1968 case, which gives some guidance  
2 to the trial court as to how these things should be  
3 considered.

4 And what's interesting is I think Your Honor  
5 has already been operating in this. One of the things  
6 it suggests that the Court do is see this proposed  
7 impeachment evidence. And Your Honor took a -- a thumb  
8 drive of it last night and has informed us at the bench  
9 that Your Honor has seen the evidence. And so if the  
10 Court determines that the evidence is sufficient to  
11 sustain a finding that witness credibility is affected  
12 by the evidence, then it should be admitted.

13 And it even goes on to say in this California  
14 case that it doesn't matter whether the Court's  
15 impression of the witness's credibility is actually  
16 affected; it's just a matter of whether the Court  
17 thinks that the jurors' or some jurors' belief about  
18 Mr. Cox's credibility could be affected. And I think,  
19 from what the Court has observed of Mr. Cox going to  
20 the stand, from the stand, around the courtroom during  
21 this trial, and comparing those to the video, the --  
22 the strength of stride and how he walks when he's not  
23 at the court compared to what we've seen here, makes it  
24 very relevant and fits that standard to where a juror  
25 could believe that the credibility of Mr. Cox is

1 affected.

2 THE COURT: All right.

3 MR. POPOVICH: The unfairly prejudicial, we  
4 don't believe is -- is in -- is a strong argument here  
5 at all. It's relevant. We don't believe it's unfairly  
6 prejudicial. We would ask that it be allowed.

7 THE COURT: All right.

8 Response?

9 MR. DEUTSCH: Your Honor, in light of the  
10 fact that it's solely being admitted for impeachment  
11 testimony, in order for there to be impeachment, Your  
12 Honor knows that there has to be an affirmative  
13 statement or an assertion based on actions  
14 affirmatively, according to what the definition of  
15 statement is in NRS 51.045, I think it is, that a  
16 statement -- in order for something to be impeached,  
17 there has to be a statement. That statement could  
18 either be verbal or it be an affirmative assertion by  
19 something.

20 We don't believe that there's ever been  
21 questioned -- Mr. Cox has never been questioned at all  
22 by any of the attorneys about what he does outside the  
23 courtroom in terms of -- in the places where the videos  
24 were taken. He was never asked "Do you hold people's  
25 hands at home? on the street?" He was never asked if

1 you hold people's hands when he was walking his dogs.

2 He was never asked any of those questions.

3           So there's no credibility issue with respect  
4 to the video clips. Had they asked Mr. Cox on direct,  
5 "When you walk your dog, do you hold someone's hand?"  
6 and he had said no, then there might be some legitimacy  
7 to this. If they asked him, "Do you hold someone's  
8 hand when you're walking from the car to your house?"  
9 then there might be some impeachment. But none of  
10 those questions were asked. So, therefore, there's  
11 nothing to impeach him about.

12           If I was going to impeach someone's  
13 testimony, which I tried to a number of times during  
14 this trial, and I didn't ask that first question, we  
15 received objections from the defendants on the exact  
16 same basis, which is that the witness didn't say that  
17 he didn't know that, or the witness didn't say anything  
18 that was contradictory to what the impeaching statement  
19 says.

20           And since there's no evidence that he said  
21 something contradictory to the stuff in the video, the  
22 videos are not impeaching anyone. And, therefore,  
23 they're only being put in for a prejudicial effect with  
24 respect to the damages.

25           Now, if Your Honor lets it in, then we

1 have -- believe we might have the right to call a  
2 doctor, as well as Mr. Cox, to explain why sometimes he  
3 holds someone's hands and sometimes he doesn't. And we  
4 believe that we would be entitled to rebut that  
5 evidence with such a showing because the jury's now  
6 going to think, wait a second, why is he doing it at  
7 some times and not others? Well, we have a medical  
8 reason for that that we can proffer to the Court, and  
9 we would be entitled to put that on.

10 But, irrespective of that, Your Honor, at a  
11 very fundamental level, you have to look at it based on  
12 impeachment. And if they asked him the question on the  
13 stand and he didn't answer it and then they tried to  
14 impeach him with prior testimony, Your Honor would  
15 sustain the objection, because one side would get up  
16 and say, "Your Honor, this is improper impeachment.  
17 The witness didn't say 'I don't do that,' or the  
18 witness wasn't asked the question."

19 So, therefore, for the same reason, this  
20 constitutes improper impeachment as well.

21 THE COURT: Okay. Thank you.

22 I considered that whatever has happened in  
23 open court is fair game. And, accordingly, I'll permit  
24 the video.

25 MR. DEUTSCH: And we then will be able for

1 rebuttal?

2 THE COURT: You can -- he can be called. He  
3 can be asked questions about it.

4 MR. DEUTSCH: And how about a medical doctor?

5 THE COURT: I'm not talking about doctors  
6 coming in or that kind of thing. We're not going to  
7 get into that. We've got to conclude this -- the  
8 evidence in this case. All right?

9 So we'll reconvene at 10:30.

10 MR. POPOVICH: Thank you, Your Honor.

11 MS. FRESCH: Thank you, Your Honor.

12 (Whereupon a short recess was taken.)

13 THE MARSHAL: All rise.

14 (The following proceedings were held in  
15 the presence of the jury.)

16 THE COURT: Please be seated. Do counsel  
17 stipulate that the jury is present?

18 MR. POPOVICH: Yes, Your Honor.

19 MR. ROBERTS: Yes, Your Honor.

20 THE COURT: All right. Mr. Roberts?

21 MR. ROBERTS: Thank you, Your Honor.

22 Your Honor, Backstage would like to show the  
23 jury a video of the plaintiff Gavin Cox taking the  
24 stand in this trial as recorded by our official  
25 recorder.



1 MS. FRESCH: Should we close the lights down?  
2 MR. MORELLI: No, you can see without it.  
3 MR. ROBERTS: We'll turn them down if we can.  
4 THE MARSHAL: You want the lights down?  
5 MR. ROBERTS: Let's see how bright it is. I  
6 think our recorder usually does a pretty good job.  
7 (Whereupon video was played.)  
8 MR. ROBERTS: And, Audra, if you have the  
9 official recording of Mr. Cox leaving the stand.  
10 (Whereupon video was played.)  
11 MR. ROBERTS: Okay.  
12 MR. DEUTSCH: It doesn't matter, though.  
13 MR. ROBERTS: Yes, it does.  
14 MR. DEUTSCH: Okay.  
15 MR. ROBERTS: Your Honor, at this time, I'd  
16 move to admit video surveillance of Mr. Cox taken  
17 outside of the courtroom setting, Exhibit 526,  
18 Clips 29, 31, 1, 19, 6, and 17.  
19 THE COURT: All right. Admitted.  
20 MR. ROBERTS: Thank you.  
21 Audra, Clip 29 -- Exhibit 526, Clip 29.  
22 (Whereupon video deposition was played.)  
23 MR. ROBERTS: 5:14 p.m. and Clip 31, Audra,  
24 from the same day.  
25 (Whereupon video deposition was played.)

1 MR. ROBERTS: Okay. Exhibit 526, Clip 1.  
2 (Whereupon video deposition was played.)  
3 MR. ROBERTS: 2:23 p.m. And Exhibit 526,  
4 Clip 19.  
5 (Whereupon video deposition was played.)  
6 MR. ROBERTS: 3:54, over an hour later.  
7 Okay. Clip 526, Clip 6, from after the start  
8 of this trial.  
9 (Whereupon video deposition was played.)  
10 MR. ROBERTS: And Exhibit 526, Clip 17.  
11 (Whereupon video deposition was played.)  
12 MR. ROBERTS: Thank you, Audra.  
13 Your Honor, with that, Backstage rests its  
14 case. Thank you.  
15 THE COURT: All right. I believe all the  
16 defendants have rested; right?  
17 Any additional arguments? Rebuttal?  
18 MR. MORELLI: Yes, Your Honor. The plaintiff  
19 would like to call to the stand Kevin Janson.  
20 THE MARSHAL: Make your way up the stairs,  
21 remain standing, raise your right hand, face the clerk.  
22 THE CLERK: You do solemnly swear the  
23 testimony you're about to give in this action shall be  
24 the truth, the whole truth, and nothing but the truth,  
25 so help you God?

1 MR. POPOVICH: Yeah, after lunch.

2 I don't know that we -- I'm okay with coming  
3 back on the 22nd too to finish it off. But I think if  
4 we meet, we will at least clearly understand the scope  
5 of what --

6 MR. DEUTSCH: I agree we should definitely  
7 meet.

8 MR. MORELLI: And maybe get it done by 5:00.

9 MS. FRESCH: Well, and then after we hear  
10 each other's side for the ones we don't agree on, we  
11 could have time to see if we can still work it out  
12 before the 22nd.

13 MR. DEUTSCH: And then come back on the 22nd.

14 THE COURT: So let's recess until 2:00 now --  
15 or you're going to make your motion first. Okay.

16 MR. DEUTSCH: Sure.

17 Your Honor, at this time, we would like to  
18 make a 50(a) judgment motion, judgment as a matter of  
19 law to dismiss the affirmative defense of comparative  
20 negligence. There has been no evidence proffered at  
21 all in this case that Mr. Cox was negligent in any way,  
22 just --

23 THE COURT: Well, affirmative defense is not  
24 a claim, so --

25 MR. DEUTSCH: Well -- so -- so -- but they

1 put in their jury instructions that the jury should be  
2 charged on the issue of comparative negligence.

3 THE COURT: But that comes up, doesn't it,  
4 when we're discussing what jury instructions --

5 MR. DEUTSCH: Well, there was an affirmative  
6 defense, so we would be moving to dismiss, I guess,  
7 their affirmative defense of comparative negligence.

8 That issue shouldn't go to the jury. And we  
9 can discuss it now or later. But they've taken the  
10 position from the beginning that this was either just  
11 an accident that happened or -- not their fault but  
12 just an accident that happened.

13 And if they're going to try to prove  
14 comparative negligence to the jury and want it on the  
15 verdict form and the jury sheet, they would need to  
16 proffer some evidence that he did something negligent.  
17 And the happening of an accident, as they have made  
18 clear this whole trial, is not evidence of negligence.

19 So Mr. Habersack testified that there's no  
20 evidence that he did anything negligent. And, in my  
21 understanding, you know, in a trip-and-fall case like  
22 this, the evidence that the defendants would have to  
23 proffer that someone was negligent would be all of the  
24 things that they claim he wasn't doing here, meaning  
25 that they claim he wasn't running. They claim -- so

1 all of those things that could arguably be argued to be  
2 comparative negligence are things they asked him to do.  
3 So we don't think that issue should go to the jury.

4 THE COURT: But I note that Rule 50(a)(1) is  
5 not limited to claims; it has to do with issues.

6 MR. DEUTSCH: Issues, correct.

7 THE COURT: So -- okay.

8 MR. DEUTSCH: So we think that the  
9 affirmative defense, the issue of comparative  
10 negligence, should be dismissed because they have  
11 proffered no evidence that he did anything  
12 unreasonable.

13 MR. MORELLI: They can't.

14 MR. DEUTSCH: The only things that they could  
15 suggest he did that were unreasonable was that he  
16 wasn't looking or he wasn't running or whatever. But  
17 they said he wasn't running. They admit that he didn't  
18 know where he was going, so they can't say that he was  
19 negligent for doing the route not knowing where he was  
20 going. They put him in that situation.

21 So there's no evidence in this case that he  
22 did anything negligent, and a jury could not find that  
23 he did anything negligent. A jury may find that they  
24 weren't negligent, but -- that they weren't negligent,  
25 the jury could find that, but they could not find that

1 Mr. Cox was negligent because their claim from the  
2 beginning is accidents just happen. And that's  
3 arguably true from their position, but not that Mr. Cox  
4 was negligent.

5 Even Mr. Habersack was asked, "Do you have  
6 any evidence that Mr. Cox did anything wrong?" He said  
7 no. So they haven't even put forth a case to  
8 suggest -- they didn't ask Mr. Cox questions about "you  
9 weren't looking" or "you were, you know, doing  
10 something you weren't supposed to be doing  
11 unreasonable." There's been no evidence that he did  
12 anything unreasonable.

13 And as Your Honor knows, the happening of an  
14 accident in and of itself is not evidence of any  
15 negligence.

16 THE COURT: And you're not contending res  
17 ipsa; correct.

18 MR. DEUTSCH: Correct. Correct.

19 MR. MORELLI: That would be a stretch, but  
20 good idea.

21 MR. DEUTSCH: So I don't think there's any  
22 evidence of comparative negligence. I don't think it  
23 should go to the jury, that issue. And we're moving to  
24 dismiss the affirmative defense and the issue and the  
25 whole thing.

1 Mr. Morelli eliciting the thing of my client, about,  
2 like, well, wasn't it their fault that they fell?  
3 Wasn't it their fault they fell?

4 So basically eliciting that my client  
5 should -- was -- should be conceding that, if they fell  
6 and it wasn't his fault, that it was their fault. So,  
7 to me, that's the same thing. That -- they have put  
8 into question whether it was Mr. Cox's own fault for  
9 this injury.

10 THE COURT: All right.

11 MR. DEUTSCH: May I respond, Your Honor?

12 Roger --

13 MS. FRESCH: Mr. Strassburg.

14 MR. STRASSBURG: Thank you.

15 The -- the testimony from the plaintiff was  
16 that he rounded the corner and he was looking at the  
17 doorway, which he described as a golden beacon ahead of  
18 him. So he knew he wasn't looking where he was going  
19 on the pavement. He -- he testified it was dark, but  
20 he knew it was dark. So he knew he wasn't looking at  
21 the pavement. He knew he couldn't see. And he  
22 proceeded anyway. That's certainly evidence of  
23 unreasonable conduct, given what he thought the facts  
24 were.

25 MR. DEUTSCH: Your Honor, he was doing what

1 he was told by the defendants in this case. They told  
2 him to do this. They told him to run in an area that  
3 he didn't know about, which their experts now conceded  
4 he was doing. They told him that -- they didn't tell  
5 him where he was going. Everyone admits that.

6           It's their burden to bring forward evidence  
7 that he did something unreasonable. They can't, in one  
8 instance, argue he's not running, he's going slowly,  
9 and he knows where he's going and there's nothing  
10 dangerous about this route and there's nothing  
11 dangerous on the ground and there's nothing dangerous  
12 for him and the trick is totally safe and everything we  
13 had him do is normal, and then, on the other hand,  
14 argue, but if he fell during it, then it's his fault  
15 because he was negligent. They can't have it both  
16 ways.

17           THE COURT: Thank you very much. Lots of  
18 things for the jury to consider, and comparative  
19 negligence is one of them.

20           So the motion is denied.

21           MS. FRESCH: Thank you, your Honor.

22           THE COURT: 2:00, be back here in the  
23 courtroom.

24           MR. POPOVICH: Thank you, Your Honor.

25           THE COURT: I have a question here. The





PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 02***

JA006026

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

4

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 \* \* \* \* \*

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

9 Plaintiffs, )

10 vs. )

11 MGM GRAND HOTEL, LLC; DAVID )

12 COPPERFIELD aka DAVIS S. )

13 KOTKIN; BACKSTAGE EMPLOYMENT )

14 AND REFERRAL, INC.; DAVID )

15 COPPERFIELD'S DISAPPEARING, )

16 INC.; TEAM CONSTRUCTION )

17 MANAGEMENT, INC.; DOES 1 )

18 through 20; DOE EMPLOYEES 1 )

19 through 20; and ROE )

20 CORPORATIONS 1 through 20, )

21 Defendants. )

22 MGM GRAND HOTEL, LLC., )

23 Third-Party Plaintiff, )

24 vs. )

25 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 23, 2018

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

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21 \* \* \* \* \*

1 Negligence is never presumed but must be established by  
2 a preponderance of the evidence.

3 22. Plaintiffs' claims are based on  
4 negligence. I will now instruct you on the law  
5 relating to this claim.

6 For their claim of negligence, plaintiffs  
7 have the burden to prove:

8 1. That one or more of the defendants were  
9 negligent, and

10 2. That such negligence was a proximate  
11 cause of Gavin Cox's accident.

12 Defendants claim that plaintiff's own  
13 negligence contributed to his accident. To succeed on  
14 this claim, the defendants must prove both the  
15 following:

16 1. That plaintiff was negligent;

17 2. That plaintiff's negligence was a  
18 proximate cause of Gavin Cox's accident.

19 The plaintiffs may not recover damages if  
20 Mr. Cox's comparative negligence is greater than the  
21 negligence of the combined negligence of all the  
22 defendants in this case. However, if Gavin Cox was  
23 negligent, the plaintiffs may still recover a reduced  
24 sum so long as his comparative negligence was not  
25 greater than the negligence of the combined negligence

1 of all the defendants.

2 If you determine that the plaintiffs are  
3 entitled to recover, you shall return a special verdict  
4 indicating the percentage of negligence attributable to  
5 each party.

6 23. When I use the word "negligence" in  
7 these instructions, I mean the failure to do something  
8 which a reasonably careful person would do or the doing  
9 of something which a reasonably careful person would  
10 not do to avoid injury to themselves or others under  
11 circumstances similar to those shown by the evidence.

12 It is the failure to use ordinary care.  
13 Ordinary or reasonable care is that care which persons  
14 of ordinary prudence would use in order to avoid injury  
15 to themselves or others under circumstances similar to  
16 those shown by the evidence.

17 The law does not say how a reasonably careful  
18 person would act under those circumstances; that's for  
19 you to decide. You will note that the person whose  
20 conduct we set up as a standard is not the  
21 extraordinarily cautious individual, nor the  
22 exceptionally skillful one, but a person of reasonable  
23 and ordinary prudence.

24 24. A proximate cause of an accident is a  
25 cause which, in foreseeable and continuous sequence,





PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL

***EXHIBIT 03***

IA006032

1 CASE NO. A705164  
2 DEPT. NO. 13  
3 DOCKET U  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6 \* \* \* \* \*  
7 GAVIN COX and MINH-HAHN COX, )  
8 husband and wife, )  
9 Plaintiffs, )  
10 vs. )  
11 MGM GRAND HOTEL, LLC; DAVID )  
12 COPPERFIELD aka DAVIS S. KOTKIN; )  
13 BACKSTAGE EMPLOYMENT AND REFERRAL, )  
14 INC.; DAVID COPPERFIELD'S )  
15 DISAPPEARING, INC.; TEAM )  
16 CONSTRUCTION MANAGEMENT, INC.; )  
17 DOES 1 through 20; DOE EMPLOYEES )  
18 1 through 20; and; )  
19 ROE CORPORATIONS 1 through 20, )  
20 Defendants. )  
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17 \* \* \* \* \*

1           **THE COURT:** I think that's relevant.

2           **MS. FRESCH:** Your Honor, I will reassert  
3 my objections to Ms. Esack's testimony in its  
4 entirety because I do think it's not relevant.  
5 It's too remote. And, you know, we're kind of in  
6 a quagmire because Ms. Esack, yeah, there was an  
7 injury, but I don't want -- maybe there has to be  
8 some type of instruction to the jury because she  
9 was injured, but I don't want to leave out there  
10 that somehow -- because there's no finding of why  
11 she fell or how --

12           **THE COURT:** No, I understand that.

13           **MS. FRESCH:** Because just saying she was  
14 injured and -- they'll contend that  
15 Mr. Copperfield actually spoke to her. We would  
16 refute that. But the fact that it just leaves  
17 this little question mark out, like, a little  
18 bubble over a character's head.

19           **THE COURT:** I think her testimony  
20 regarding the fact of injury during the course of  
21 the Thirteen Illusion is appropriate and will be  
22 permitted.

23           There was a discussion about an  
24 instruction that the Court would give that it's  
25 only applicable as to the Copperfield defendants.

1 ~~We could debate this for a long time.~~

2           With respect to Ms. Lawrence, at this  
3 point the testimony will be confined to the fact  
4 of injury. That's without prejudice to  
5 utilization of manner of injury or the "run, run,"  
6 whatever in rebuttal if it comes to that. So  
7 that's what I'm doing.

8           **MR. MORELLI:** Your Honor, I don't  
9 understand. What do you mean by "if it comes to  
10 that"? It's come to that.

11           **THE COURT:** I mean, I'm not sure what  
12 evidence the defense is going to put on, but the  
13 plaintiff has the right to rebut.

14           **MR. DEUTSCH:** They've already put on  
15 their evidence, Your Honor. The only witnesses  
16 that they're calling at this point, other than the  
17 ones that are already here, are two security  
18 guards who took the report who don't have any  
19 information about that and an expert who's going  
20 to say that Mr. Cox tripped instead of slipped.

21           So all of the witnesses that the  
22 defendants are going to put on in their case have  
23 already given their defendants' testimony in their  
24 cross-examinations when we did it.

25           So the bell has been rung by them.

1 especially because we thought we'd be done with  
2 this trial. So we went beyond cross-examination.

3 **THE COURT:** Right.

4 **MS. FRESCH:** But that does not mean, by  
5 the time plaintiff closes and the entire  
6 plaintiffs' case is presented, that I would not  
7 still elect to call someone to present more  
8 testimony in my -- in my client's defense. I'm  
9 not aware of a rule --

10 **MR. DEUTSCH:** I agree with her, Your  
11 Honor, other than the fact that she would be  
12 entitled to produce more testimony but not the  
13 same. And the area that we're talking about, the  
14 run versus walk versus that, has already been  
15 covered by her.

16 **MS. FRESCH:** Really? I --

17 **THE COURT:** And it is also the subject  
18 of further defense; right?

19 **MR. DEUTSCH:** Well, if it wasn't  
20 cumulative, I guess, and she could ask the same  
21 questions --

22 **THE COURT:** I guess if it's allowed,  
23 then she would be allowed to adduce evidence that  
24 addresses that; right?

25 Well, that being so, I'll allow the

1 "run, run, run" too.

2 MR. DEUTSCH: Okay.

3 THE COURT: All right.

4 MR. DEUTSCH: Thank you. Good.

5 THE COURT: In other words, not just the  
6 fact of injury, but how she claims it happened.  
7 Okay? Her involvement in the illusion as to how  
8 that took place.

9 MR. ROBERTS: I'm sorry, Your Honor. I  
10 don't understand how we just flipped.

11 THE COURT: The fact is the defense is  
12 going to hear this evidence and have an  
13 opportunity to prepare for it in presenting the  
14 defense case.

15 MR. ROBERTS: Your Honor, we're not  
16 putting on any more witnesses. Our witnesses have  
17 taken the stand and they've flown to New York.

18 THE COURT: Ms. Fresch just said --

19 MS. FRESCH: I'm reserving my right. I  
20 don't feel like I should be boxed into a corner  
21 today without hearing the rest of plaintiffs' --  
22 because basically what they're asking me to  
23 stipulate right now, I'm not going to call any  
24 witnesses. That's really what I hear them saying.

25 THE COURT: So that would mean that they

1 need -- her testimony is unnecessary. I guess I'm  
2 very confused because I thought we were talking  
3 that, if there was a ruling that she was coming in  
4 on a case in chief -- which, to me, is totally  
5 different than what you had talked about last week  
6 you were saying, well, maybe as a rebuttal  
7 witness. So if your ruling is she's only going to  
8 be permitted potentially as a rebuttal witness,  
9 then we're not fighting about Monday now.

10 **THE COURT:** What I had said is in the  
11 case in chief -- my original thought was in the  
12 case in chief she could testify about the injury,  
13 right, but not the course of -- the manner in  
14 which the injury took place, the fact of injury.  
15 Because I understood the plaintiffs' position  
16 basically to be impeachment on the occurrence  
17 of -- but as I heard further argument, it appeared  
18 to me that, in this situation regarding her, it's  
19 proximate in time, it's the same place, all right,  
20 and that the manner in which the illusion took  
21 place with respect to the "run, run, run,"  
22 et cetera was -- could be adduced at this time  
23 because it would be in effect not only case in  
24 chief but, in effect, rebuttal of what defense  
25 witnesses have testified about. Okay?

1 consent to a limiting instruction because Team was  
2 not doing work at the time of Ms. Lawrence's act.

3 **MR. MORELLI:** Neither one of those  
4 witnesses apply to that defendant, Team.

5 **MR. CALL:** Just so long as the jury  
6 understands.

7 **THE COURT:** Well, I have to have  
8 instructions given to me. Mr. Popovich has also  
9 said --

10 **MR. DEUTSCH:** So if you guys want to  
11 draft something for Ms. Esack for you?

12 **MR. CALL:** Oh, for the three of us?

13 **MR. DEUTSCH:** For the three of you for  
14 Ms. Esack, and if you guys want to draft something  
15 for that, we'll take a look at it. And we agree  
16 to that.

17 **THE COURT:** What is your position on  
18 Ms. Lawrence relative to MGM?

19 **MR. DEUTSCH:** We think that  
20 Ms. Lawrence's testimony should come in against  
21 MGM because it was at the MGM, the MGM security  
22 guards were there at the time participating in the  
23 actual workings of the illusion. Ms. Lawrence  
24 testified that certain people along the route,  
25 which we know are MGM employees, said specific



1 things to her as she was going along. So we think  
2 it should apply to MGM as well.

3 **MR. POPOVICH:** If it's a notice issue,  
4 you've heard today the way that has to happen is  
5 to get it to security. She did not identify ever  
6 divulging any information to security. That's my  
7 argument, and the Court can rule.

8 **MR. DEUTSCH:** I think security and the  
9 people that worked in the illusion are two  
10 different things. I think he's conflating issues.

11 **THE COURT:** How does it apply to  
12 Copperfield?

13 **MR. DEUTSCH:** Because it's his illusion.  
14 He's the guy who designed it. He's the guy who  
15 came up with the protocols with the runaround.  
16 The Backstage employees were working under the  
17 protocols that he developed for his trick.

18 **MR. MORELLI:** Your Honor, are the  
19 attorneys allowed to have a 10-minute break?

20 **MR. POPOVICH:** One way or another, I'd  
21 like to hear if I have a ruling on the limiting  
22 instruction. Do I get it or don't I?

23 **THE COURT:** I think you get the limiting  
24 instruction based on what the evidence was about  
25 the security. Okay?

1 time and Your Honor already ruled on that  
2 objection with Mr. Kenner on the stand.

3 **MS. FRESCH:** With Mr. Habersack's  
4 testimony?

5 **MR. DEUTSCH:** Yes.

6 **MS. FRESCH:** Okay. I apologize, Your  
7 Honor.

8 **THE COURT:** Go ahead.

9 **BY MR. MORELLI:**

10 Q. Let's try again. Okay. We'll start at  
11 the top. Line 2.

12 "QUESTION: So with that in mind, would  
13 you expect that Mr. Copperfield would warn  
14 his participants of the elevation change as  
15 they're participating in the act?"

16 "QUESTION: Now answer the question.

17 "ANSWER: Okay. I'm sorry. Anybody else  
18 want to chime in on this?"

19 I guess you were talking to the lawyers.

20 "I mean, any prudent person would,  
21 would be my answer. I would hope that they  
22 would explain to the customer or through  
23 whatever vetting process that they have prior  
24 to the illusion to make sure the participants  
25 are actually able to maneuver this and

1 perform it."

2 You remember those questions and  
3 answers?

4 A. Yes, sir, I do.

5 Q. Okay. Now, the question was relative to  
6 the elevation change, which is the area where this  
7 accident happened. You recognize that; right?

8 A. Yes, sir.

9 Q. Okay. And you were commenting on that,  
10 that any prudent person would -- and I just want  
11 to get your words right -- would be my answer,  
12 that they would warn.

13 Now, you also said, or through whatever  
14 vetting process that they have.

15 Okay. And what did you mean by that,  
16 Mr. Habersack? Just with specifically talking  
17 about whatever vetting process they may have, what  
18 did you mean by that?

19 A. I meant that, when they're bringing the  
20 people up to the stage to perform this illusion,  
21 what vetting process do they have? And as you've  
22 heard through testimony, which I won't get into  
23 because you don't want that answer, but there was  
24 apparently a vetting process, a seven-stage  
25 process, as well as people directing people

1 people are traversing it, it's okay?

2 A. It's not a public area at that time.

3 Q. It's not a public area. So let's go to  
4 the next thing.

5 Is it a service area?

6 A. Where the dumpster was located? That's  
7 not a service area.

8 Q. Okay. How about exit doors?

9 A. It's far enough away from the physical  
10 exit doors to comply with the rules and  
11 regulations of the fire department.

12 Q. Okay. So, generally, when you're making  
13 a decision -- let's assume you are making a  
14 decision. This is another one of those  
15 hypotheticals.

16 Let's assume you're making a decision.  
17 Do you only decide what the fire department wants  
18 you to do? I thought you were assessing risk and  
19 safety. Isn't that true? Don't you assess risk  
20 and safety?

21 A. I do assess risk and safety to make the  
22 area as reasonably safe as possible.

23 Q. Okay. So you just mentioned the fire  
24 department rules. And so I just want to  
25 understand. If the fire department says it's

1 okay, but you think that there might be a tripping  
2 hazard or something, you decide to disregard the  
3 safety issue if the fire department says it's  
4 okay?

5 A. You're producing a hypothetical. Based  
6 on my understanding where the dumpster was, there  
7 was no hazard in that area.

8 Q. What I'm saying to you is you brought up  
9 the fire department; I didn't. And I want to know  
10 why you did that. What does the fire department  
11 have to do with safety in this area to the  
12 participants who are running in the dark? That's  
13 what I want to know.

14 A. Because you're bringing up it's an exit  
15 door as an emergency exit. If that dumpster was  
16 pushed up and blocking that door from being  
17 accessible, then that would be an issue.

18 And, again, you were going all  
19 hypothetical, so I answered the best I could from  
20 a hypothetical example.

21 Q. Participants are running in that area in  
22 the dark a couple of times a night. Does that  
23 have anything to do with the fire department?

24 A. First off, it's not in the dark.  
25 There's spotlights and flashlights going on. So

1 objection --

2           **MR. DEUTSCH:** Do you want me to move it  
3 back down again, Your Honor, so you can read it?  
4 Sorry.

5           **THE COURT:** Overruled. He's being asked  
6 whether he has an understanding.

7           **MR. POPOVICH:** Then, Your Honor, I would  
8 ask that the reading start again at line 22. I  
9 think above that is the response to the objection.

10           **MR. DEUTSCH:** Oh, you're right. I'm  
11 sorry. I missed that piece. You're right.

12           **THE COURT:** All right.

13           **MR. DEUTSCH:** Sorry.

14 **BY MR. MORELLI:**

15           Q. Okay.

16           "ANSWER: My understanding and  
17 understanding of the actual illusion itself,  
18 since I know how it's done, there's a time  
19 element involved from getting them from where  
20 they're located back into the theater at  
21 another location. You only have so many  
22 seconds to do that."

23           Do you remember answering that question  
24 with that answer?

25           A. I did.

1 Q. Okay. Now, could you tell us who  
2 Ms. Brewer is?

3 A. I believe that's Stephanie Brewer, who  
4 was a claims examiner at the time of this incident  
5 in the risk management department.

6 Q. Okay. And so that was the person who  
7 was referenced there in that question; correct?

8 A. Correct, sir.

9 Q. Now, am I correct that the MGM Grand has  
10 no facts that Mr. Cox did anything wrong when he  
11 was a participant in the illusion? Is that true?

12 MR. POPOVICH: Objection. Gets into  
13 legal arguments that counsel have a say in as  
14 well.

15 THE COURT: I'll allow it.

16 BY MR. MORELLI:

17 Q. Do you want me to repeat the question?

18 A. Please do.

19 Q. Am I correct that the MGM Grand has no  
20 facts that Mr. Cox did anything wrong in  
21 performing the illusion?

22 A. I'm not aware of any.

23 Q. Okay. So that's a correct statement?  
24 That's what I'm saying.

25 A. That would be a correct statement. I'm

1 not aware of any.

2 Q. Okay. Now, also, am I correct that --

3 MR. MORELLI: Why don't you give me 91,  
4 3 through 7. Make it easier for me.

5 BY MR. MORELLI:

6 Q. I'm going to ask you to read this also,  
7 Mr. Habersack. Question on line 3:

8 "QUESTION: And nothing in the report  
9 indicates that Mr. Cox did anything wrong to  
10 contribute to his injuries; correct?

11 "ANSWER: There's nothing that's  
12 indicated in the report that he was acting  
13 carelessly or malice."

14 I guess that means maliciously; right?

15 A. Yes, sir.

16 Q. Yeah. And you said that under oath, did  
17 you not?

18 A. I did make that statement under oath.

19 Q. Thank you.

20 Now, Mr. Habersack, you and I have  
21 spoken about the investigation; right?

22 A. Yes, sir.

23 Q. In this case?

24 A. Yes.

25 Q. I don't want to rehash it. We've spoken



1 about the surveillance tape. Okay? And I didn't  
2 mean to say that there were no other surveillance  
3 tapes; I'm just saying that this is the one -- or  
4 the best one that captured what happened that  
5 night --

6 A. Yes, sir.

7 Q. -- that surveillance tape.

8 And you know, do you not, that MGM has  
9 said that they're going to bring in an expert to  
10 talk about how the accident happened. You know  
11 that, don't you?

12 A. I've been made aware of it, yes.

13 Q. Okay. And that expert is obviously an  
14 expert that's going to blame somebody for this  
15 accident -- correct? -- I mean, going to give  
16 certain opinions that somebody is at fault other  
17 than MGM? Is that a correct statement, that  
18 someone is at fault other than MGM?

19 A. I don't know what he's going to testify  
20 to or what the findings were.

21 Q. Okay. But you would agree with me,  
22 would you not, that MGM Grand is not retaining an  
23 expert to prove that they're responsible; right?  
24 They're not going to be doing that?

25 A. I don't have an answer. I'm not