

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3           THYSSENKRUPP ELEVATOR CORPORATION )

4                   Petitioners,                   )

5           v   )

6                   ,   )  
7           THE EIGHTH JUDICIAL DISTRICT COURT                   )  
8           OF THE STATE OF NEVADA IN AND FOR THE                   )  
9           COUNTY OF CLARK; AND THE HONORABLE                   )  
10          JOANNA KISHNER, DISTRICT JUDGE                   )

11                   Respondents,                   )

12          JOE N. BROWN, an individual, and his wife,                   )  
13          NETTIE J. BROWN, an individual                   )

14                   Real Parties in Interest                   )  
15                   \_\_\_\_\_ )

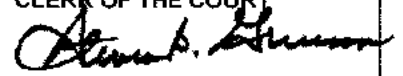
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Elizabeth A. Brown  
Clerk of Supreme Court

16                   **PETITIONERS' APPENDIX TO PETITION FOR WRIT OF MANDAMUS,**  
17                   **VOLUME 2**

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MANDAMUS**

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DECL  
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*Attorneys for Plaintiff Joe N. Brown and Nettie J. Brown*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, and his Wife,  
NETTIE J. BROWN, an individual

Plaintiffs,

vs.

LANDRY'S, INC., a foreign corporation;  
GOLDEN NUGGET, INC, a Nevada  
corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP.; DOE  
INDIVIDUALS 1-100; ROE BUSINESS  
ENTITIES 1-100,

Defendants.

AND ASSOCIATED CASES

Case No.: A-16-739887-C

Dept. No.: XXXI

**DECLARATION OF  
MOHAMED IQBAL  
IN SUPPORT OF  
PLAINTIFFS' MOTION FOR LEAVE TO  
FILE SECOND AMENDED COMPLAINT**

**Date:**

**Time:**

I, MOHAMED IQBAL, hereby declare as follows:

1. I am over the age of 18 and competent to testify. I am counsel of record for Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") in the above-captioned proceeding and make this declaration subject to penalty of perjury under the laws of the United States and the State of Nevada, in support of the Plaintiffs' Motion for Leave to File Second Amended Complaint.

///

**DECLARATION OF MOHAMED IQBAL IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

1       2. Defendants Landry's, Inc., Golden Nugget, Inc., and GNL, Corp. (collectively, the  
2       "Nugget Defendants") have, throughout this action, failed to disclose and hid several emails and  
3       documents relevant to this action and Plaintiffs' discovery requests and interrogatories.

4       3. In fact, the Nugget Defendants and third-party defendant Thyssenkrupp Elevator  
5       Corporation ("TKE") (collectively, "Defendants") have concealed evidence throughout the  
6       pendency of this matter, despite (a) limited, targeted, and reasonable requests for production and  
7       interrogatories from Plaintiffs; and (b) obligations and plenty of time to produce the same.

8       4. Attached as **Exhibit A** to this Declaration is a true and correct copy of an excerpt  
9       from the Transcript of the January 24, 2018 Deposition of Don Hartmann, an employee of the  
10      Nugget Defendants.

11      5. Attached as **Exhibit B** to this Declaration is a true and correct copy of the Account  
12      History from TKE's Second Supplemental Disclosure dated November 6, 2017 ("TKE 2<sup>nd</sup> Supp.  
13      Discl."). TKE has only produced an account summary for the Subject Escalator through  
14      December 2015. The TKE Account History submitted in discovery also is missing information  
15      from multiple years. Plaintiffs have demanded additional and up-to-date account records – and  
16      the logbook maintained at the Laughlin Nugget.

17      6. Attached as **Exhibit C** to this Declaration is a true and correct copy of an excerpt  
18      from the TKE 2<sup>nd</sup> Supp. Discl. consisting of Defendants' emails and repair orders from 2012.

19      7. Attached as **Exhibit D** to this Declaration is a true and correct copy of an excerpt  
20      from the Transcript of the May 14, 2018 Deposition of Christopher Dutcher, TKE's  
21      mechanic/engineer.

22      8. Attached as **Exhibit E** to this Declaration is a true and correct copy of an excerpt  
23      from the TKE 2<sup>nd</sup> Supp. Discl. consisting of Defendants' email correspondence from 2015.

24      9. Attached as **Exhibit F** to this Declaration is a true and correct copy of an excerpt  
25      from the Transcript of the March 15, 2018 Deposition of Richard Smith, an employee of the  
26      Nugget Defendants.

27      **DECLARATION OF MOHAMED IQBAL IN SUPPORT OF PLAINTIFFS' MOTION**  
28      **FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

1        10. Attached as **Exhibit G** to this Declaration is a true and correct copy of the Expert  
2 Reports of Sheila Swett (both the initial report and the rebuttal report).

3        11. Attached as **Exhibit H** to this Declaration is a true and correct copy of Plaintiffs'  
4 proposed Second Amended Complaint.

5        12. This Declaration is being executed outside of Clark County, Nevada, in  
6 Ramanathapuram, Tamil Nadu, India.

7        Dated this 5<sup>th</sup> day of July 2018.

8  
9 By: 

Mohamed Iqbal

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14 I LAW LV

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26  
27 **DECLARATION OF MOHAMED IQBAL IN SUPPORT OF PLAINTIFFS' MOTION**  
28 **FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

# EXHIBIT A

# EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, )  
and his Wife, NETTIE J. )  
BROWN, an individual, )  
Plaintiffs, )

vs.

CASE NO.: A-16-739887-C  
DEPT NO.: XXXI

LANDRY'S, INC., a foreign )  
corporation; GOLDEN NUGGET, )  
INC., a Nevada corporation, )  
d/b/a GOLDEN NUGGET LAUGHLIN; )  
GNL CORP.; DOE INDIVIDUALS )  
1-100; ROE BUSINESS ENTITIES )  
1-100, )

Defendants. )

AND ASSOCIATED CASES )

VIDEOTAPED DEPOSITION OF DON HARTMANN  
DIRECTOR OF FACILITIES  
GOLDEN NUGGET LAUGHLIN

VOLUME I - PAGES 1 THROUGH 259

Taken on Wednesday, January 24, 2018  
At 10:15 a.m.

At 2300 South Casino Drive, Gold Room  
Laughlin, Nevada

REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715

1 and ThyssenKrupp came out and replaced the steps.

2 Q. Okay.

3 A. All I'm making the point is, is if it was  
4 critical, shouldn't we have been told to shut that down?

5 Q. Now, who would have told you to shut that down?

6 A. Well, I would think that a State inspector --

7 Q. Okay.

8 A. -- not ThyssenKrupp, but a State inspector.

9 Q. Okay. If ThyssenKrupp told you hypothetically,  
10 This is a real --

11 A. No. No. No. I believe that it was critical.

12 Q. -- critical --

13 Right. Right.

14 A. I didn't disbelieve him. I'm just -- I'm making  
15 an opinion.

16 Q. No. And I appreciate that. But hypothetically,  
17 if ThyssenKrupp said, This escalator needs to be shut  
18 down, would you shut it down?

19 A. Yes.

20 Q. Okay. And hypothetically, if Thyssen said these  
21 steps are critical and need to be replaced ASAP, you  
22 would replace them ASAP?

23 A. Yes.

24 Q. Okay. In your mind, when someone says ASAP in  
25 an e-mail and it's regarding a down escalator that the



1 keep pushing this forward so we can get those steps  
2 replaced.

3 Q. Right. And that was in June. But then it took  
4 a follow-up e-mail before you --

5 A. Again, I don't have the authorization to spend  
6 \$89,000.

7 Q. Understood.

8 A. I have to wait for approval. Once that approval  
9 is received and I'm told to move forward, then I  
10 generate a requisition, we order the steps, the steps  
11 arrive, we installed them.

12 Q. Understood. Understood. But my question is --

13 A. That's the process.

14 Q. My question is this: Do you need to get  
15 approval before responding to Larry's e-mail?

16 MS. McLEOD: Objection; argumentative. Object  
17 to form.

18 BY MR. IQBAL:

19 Q. It's a yes-or-no question.

20 A. Yes.

21 Q. You need to get approval before you respond to  
22 Larry's e-mail?

23 A. Well, no. No. No. No.

24 Q. Okay. That was my only question there. So let  
25 me ask this: If the State has not shut down your

1     escalator, but ThyssenKrupp says there's a serious  
2     safety issue, you're going to give weight to what the  
3     State thinks?

4           A.     I'm going to give weight to what they both tell  
5     me, including my third-party inspector.

6           Q.     Okay.

7           A.     So, again, as Director of Facilities, I am going  
8     to take that information and I'm going to have  
9     conversations with my authority, which is my general  
10    manager, and discuss with our corporate office which  
11    direction we need to go and when this can be funded.

12          Q.     Okay.

13          A.     I cannot arbitrarily just go out and make that  
14    decision and make a call without authorization.

15          Q.     Right. Right. When the e-mail referenced to  
16    avoid any further damage and/or incidents, do you have  
17    an understanding to what that was referring to, damage  
18    and/or other incidents?

19          A.     I don't. I don't.

20          Q.     Okay. At the time you read the e-mail, did you  
21    have a reaction to that?

22          A.     No.

23          Q.     Okay. Now, here you get the e-mail from Larry  
24    on June 16th. He follows up with you again on  
25    August 5th. You respond right away. Between June 16th,

**EXHIBIT B**

**EXHIBIT B**

# Account History Report

Report Run Date: 30-OCT-2017 11:40:38 Branch: 108950 Branch Name: Start Date: 01-MAY-2010 End Date: 31-DEC-2015 Activity Status: PROCESSED SR Priority: Customer Acct#: Customer Name: Unit Serial#: US135386 Contract#: Building Name: Route#: SRT: Include PM: Yes Include Callbacks: Yes Include SI: Yes Include Repairs: Yes

thyscrktripp

**SLE NUGGET GOLDEN NUGGET HOTEL #2505 CASINO PRELAUGHIN 390201570**

## Annual Safety Test

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

### Assigned To

DUTCHER, CHRISTOPHER M

Incident Date Act Start Date Act End Date Travel Hrs Labor Hrs Total Hrs

Activity Code: SR #: 9164974 Task #: 5084793 Priority: P3 Standard Payroll Status: PROCESSED

Description: ANNUAL ESCALATOR TESTING GOLDEN NUGGET HOTEL #2 Down

Resolution: perform annual internal inspections with kathy c. and bill shaefer

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

CLENDENEN, KATHLEEN E

07/14/2014 07/14/2014 07/14/2014 0 hrs 0 2 hrs 0 2 hrs 0

Activity Code: SR #: 9164974 Task #: 5084792 Priority: P3 Standard Payroll Status: PROCESSED

Description: ANNUAL ESCALATOR TESTING GOLDEN NUGGET HOTEL #2 Down

Resolution: N/A

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

07/16/2013 07/16/2013 07/16/2013 0 hrs 0 2 hrs 0 2 hrs 0

Activity Code: SR #: 2813268 Task #: 1713304 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Annual SI

Resolution: Safety Test | Performed annual safety no load tests

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

GOLDEN NUGGET HOTEL - Annual Safety Test Subtotal

0 hrs 0 mins 6 hrs 0 mins 6 hrs 0 mins

# Site Name: GOLDEN WING HOTEL, 300 S. CASINO DRIVE, AUGUSTA, GA 30904-3520

## Callback

Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
DUTCHER, CHRISTOPHER M	08/02/2015	08/03/2015	08/03/2015	0 hrs 30	0 hrs 30	1 hrs 0
Activity Code: SR #: 15242816 Task #: 8295174 Priority: P2 Contractual Payroll Status: PROCESSED	01:24:00 PM	01:30:00 PM	02:30:00 PM	mins	mins	mins
Description: KEEPS TURNING OFF, NO INJURY, SVC MON AM Caller: WINDY HALL PH: 7022987111						
Resolution: down escalator, found lip gloss bottle stuck in lower left handrail intel causing unit to shutdown, also adjusted stepchain tension switches, observed operation and returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
DUTCHER, CHRISTOPHER M	05/25/2015	05/26/2015	05/26/2015	0 hrs 0	4 hrs 0	4 hrs 0
Activity Code: SR #: 14178064 Task #: 7727173 Priority: P2 Contractual Payroll Status: PROCESSED	08:11:00 PM	08:30:00 AM	12:00:00 PM	mins	mins	mins
Description: HAD ACCIDENT ON ESC; INJURED; PARAMEDICS TOOK CUST TO HOSPITAL, SVC TUE AM *PER PROTOCOL HAVE THE LOOK AT ESC* Caller: GEORGE PH: 7022987111						
Resolution: down escalator, filled out incident report, see report for information, reviewed security footage, performed visual inspection with state inspector (one travel unit returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
DUTCHER, CHRISTOPHER M	05/12/2015	05/12/2015	05/12/2015	0 hrs 15	0 hrs 30	0 hrs 45
Activity Code: SR #: 13999284 Task #: 7632101 Priority: P2 Contractual Payroll Status: PROCESSED	08:18:00 PM	07:45:00 PM	08:30:00 PM	mins	mins	mins
Description: PERSON FELL AND WAS HURT. UNOC, SVC OT/OK Caller: STANLEY VOSS PH: 7022987110						
Resolution: down escalator, accident guest went to hospital, unit down until state inspector has inspected unit						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
DUTCHER, CHRISTOPHER M	05/07/2015	05/07/2015	05/07/2015	0 hrs 0	3 hrs 0	3 hrs 0
Activity Code: SR #: 13937272 Task #: 7599203 Priority: P2 Contractual Payroll Status: PROCESSED	10:57:46 AM	12:00:00 PM	03:00:00 PM	mins	mins	mins
Description: #2 DWN ESC HANDRAIL SQUEAKING TOO MUCH Caller: DON PH: 702-604-7005						
Resolution: down escalator, acquired grease gun, proper grease and searched for new step rollers, greased all stepchain roller assemblies that take grease, observed operation and returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
DUTCHER, CHRISTOPHER M	04/24/2015	04/24/2015	04/24/2015	0 hrs 0	0 hrs 30	0 hrs 30
Activity Code: SR #: 13729600 Task #: 7488723 Priority: P2 Contractual Payroll Status: PROCESSED	09:34:46 AM	12:00:00 PM	12:30:00 PM	mins	mins	mins
Description: DOWN ESC NOT WORKING Caller: PEGGY PH: 702 298 7161						
Resolution: down escalator, unit reported not restarting, unit running on arrival						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

Site Name: GOVERNMENT LOT 14, 200 S CASINO DR LAUGHLIN 99020-1620

Callback

Assigned To

Incident Date Act Start Date Act End Date Travel Hrs Labor Hrs Total Hrs

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 10892656 Task #: 5977631 Priority: P2 Contractual Payroll Status: PROCESSED

Description: LOOSE STEPS ON ESC. NO ONJ SVC TUES AM. Caller: ALVIN DYKES PH: 7082987111

Resolution: down escalator, removed 2 steps, replaced both railwheel rollers on both steps, reinstalled steps, observed operation and returned to service  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 8363424 Task #: 4627749 Priority: P2 Contractual Payroll Status: PROCESSED

Description: NOISE ON TOP S/D NO INJURY SVC TODAY ASAP Caller: CHRISTY PH: 7022987111

Resolution: down escalator, found to have bad gearbox that needs replacement, unit shutdown  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 4814324 Task #: 2761568 Priority: P2 Contractual Payroll Status: PROCESSED

Description: Work Not Finished: BANG NOISE BOTTOM, NO INJURY SVC TODAY OT OK Caller: CRITINA TANNER PH: 7022987111

Resolution: down esc, acquired new stepguide track, fabricated material installed stepguide track and adj, replaced steps, replaced inner decking, returned to service  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 4814324 Task #: 2754711 Priority: P2 Contractual Payroll Status: PROCESSED

Description: BANG NOISE BOTTOM, NO INJURY SVC TODAY OT OK Caller: CRITINA TANNER PH: 7022987111

Resolution: down esc, steps hitting combs, found broken rh stepguide, removed bad stepguide, need to fabricate new stepguide to same specs, unit s/d  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 3656424 Task #: 2149958 Priority: P2 Contractual Payroll Status: PROCESSED

Description: SQUEAKING, SVC OT Caller: JEFF DARA PH: 7022987111

Resolution: down esc #2 lubricated skits  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

Site Name: GOLDEN NUGGET 10134-2500 S CASINO DR LAUGHLIN NV 89029-1520

Callback

Assigned To

Incident Date Act Start Date Act End Date Travel Hrs Labor Hrs Total Hrs

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 3332870 Task #: 1983377 Priority: P2 Contractual Payroll Status: PROCESSED	01/13/2013	01/13/2013	01/13/2013	0 hrs 30 mins	0 hrs 30 mins	1 hrs 0 mins
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Description: DOWN ESC KEEP SHUTTING DOWN IT RUNS FOR A WHILE THEN SHUT WHEN YOU RESTART. SVC ON O.T. ASAP. Caller: CHRISTIE PH: 7022987111

Resolution: ADJ LOWER RIGHT AND LEFT SKIRT SWITCHES. Visually observed operation

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 3332448 Task #: 1983162 Priority: P2 Contractual Payroll Status: PROCESSED	01/12/2013	01/12/2013	01/12/2013	0 hrs 30 mins	0 hrs 30 mins	1 hrs 0 mins
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Description: STOPPED WORKING INJ. OT OK Caller: CHRISTIE PH: 7022987111

Resolution: restarted unit, inspected handrail inlets, stop switches, deck plates, observed operation for 15 minutes

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 3200550 Task #: 1914680 Priority: P2 Contractual Payroll Status: PROCESSED	12/20/2012	12/21/2012	12/21/2012	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
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Description: Continues to shut off Caller: Kelly PH: 298-7111

Resolution: removed inner decking panel, adj skirt switch, ob, ds

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 3147006 Task #: 1886922 Priority: P2 Contractual Payroll Status: PROCESSED	12/14/2012	12/14/2012	12/14/2012	0 hrs 0 mins	3 hrs 0 mins	3 hrs 0 mins
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Description: SWITCH ON ESC IS BROKEN, SVC TODAY Caller: PEGGY RUIZ PH: 7022987161

Resolution: unit running on arrival, went to home depot for screws, replaced all missing screws on up unit handrail inlets, adjusted lower handrail inlets, replaced all missing screws on handrail inlets on up unit

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

MORAN, LEONARD J

Activity Code: SR #: 3109252 Task #: 1867245 Priority: P2 Contractual Payroll Status: PROCESSED	12/10/2012	12/10/2012	12/10/2012	0 hrs 0 mins	0 hrs 15 mins	0 hrs 15 mins
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Description: DOWN ESC KEEPS SHUTTING Caller: PEGGY PH: 298-7161

Resolution: Left unit shutdown. Ordered new stop switch.

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: ON FILE

Site Name: GOLDEN NUGGET HOTEL & CASINO, ORLAUGHER, 89025-1520

### Callback

### Assigned To

Incident Date Act Start Date Act End Date Travel Hrs Labor Hrs Total Hrs

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

MORAN, LEONARD J

Activity Code: SR #: 3098850 Task #: 1862272 Priority: P2 Contractual Payroll Status: PROCESSED

Description: KEEPS STOPPING, WONT RESET. ADV OF OT. SVC ASAP Caller: CHRISTY TANNER PH: 7022987111

Resolution: Tested operation for 30 mins at OK. Shut unit down and failed to restart. Adjusted acces safety switch on LH side. Found stop switch cover making contact with stop switch. Shimmed stop switch cover.

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

### On Site Repair

### Assigned To

GOLDEN NUGGET HOTEL - Callback Subtotal 3 hrs 45 mins 22 hrs 15 mins 26 hrs 0 mins

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

JOHNSTON, CAMERON D

Activity Code: SR #: 14225410 Task #: 7832292 Priority: P3 Standard Payroll Status: PROCESSED

Description: GOLDEN NUGGET HOTEL REPLACE BAD STEP CHAIN THIS WAS WRITTEN UP BY THE STATE. ESCALATOR: #2 DOWN

Resolution: N/A

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

WEBSTER, BRANDON P

Activity Code: SR #: 14225410 Task #: 7845161 Priority: P3 Standard Payroll Status: PROCESSED

Description: GOLDEN NUGGET HOTEL REPLACE BAD STEP CHAIN THIS WAS WRITTEN UP BY THE STATE. ESCALATOR: #2 DOWN

Resolution: replace step chain | replace step chain

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

CLENDENEN, KATHLEEN E

Activity Code: SR #: 8414662 Task #: 4745980 Priority: P3 Standard Payroll Status: PROCESSED

Description: GOLDEN NUGGET REMOVE AND INSTALL DAMAGED ESCALATOR GEAR BOX #2 DOWN

Resolution: N/A

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

05/23/2014 05/23/2014 05/23/2014 2 hrs 0 mins 10 hrs 0 mins 12 hrs 0 mins

06/08/2015 06/08/2015 06/11/2015 5 hrs 45 mins 24 hrs 0 mins 29 hrs 45 mins

06/08/2015 06/08/2015 06/12/2015 4 hrs 0 mins 36 hrs 45 mins 40 hrs 45 mins



Site Name: GOLDEN NUGGET HOTEL 300 S. SILVER DR. AUDLIN 8029-1920

On Site Repair

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

Assigned To MCEWEN, MONTE J

Activity Code: SR #: 8414662 Task #: 4662632 Priority: P3 Standard Payroll Status: PROCESSED

Description: GOLDEN NUGGETREMOVE AND INSTALL DAMAGED ESCALATOR GEAR BOX #2 DOWN

Resolution: N/A  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

Assigned To DUTCHER, CHRISTOPHER M

Activity Code: SR #: 8414662 Task #: 4662633 Priority: P3 Standard Payroll Status: PROCESSED

Description: GOLDEN NUGGETREMOVE AND INSTALL DAMAGED ESCALATOR GEAR BOX #2 DOWN

Resolution: N/A  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

Preventive Maintenance

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

Assigned To DUTCHER, CHRISTOPHER M

Activity Code: SR #: 17069364 Task #: 9266986 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: observed operation and code units  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

Assigned To DUTCHER, CHRISTOPHER M

Activity Code: SR #: 18930104 Task #: 9186358 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: down escalator, spoke with don hartman about proposals  
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N  
PO #: N/A

Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
05/14/2014	05/14/2014	05/24/2014	2 hrs 0 mins	20 hrs 15 mins	22 hrs 15 mins
06:00:00 AM	06:00:00 AM	02:00:00 AM			
05/14/2014	05/14/2014	05/23/2014	0 hrs 0 mins	12 hrs 0 mins	12 hrs 0 mins
07:00:00 AM	07:00:00 AM	12:00:00 PM			
12/01/2015	12/01/2015	12/01/2015	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
06:00:00 AM	06:00:00 AM	07:00:00 AM			
11/19/2015	11/19/2015	11/19/2015	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
06:00:00 AM	06:00:00 AM	07:00:00 AM			
GOLDEN NUGGET HOTEL - On Site Repair Subtotal			13 hrs 45 mins	103 hrs 0 mins	115 hrs 45 mins

# Site Name: GOLDEN MUGGET HOTEL 2500S CASINO DR LAUGHLIN NV 89029-1520

## Preventive Maintenance

	Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down							
Activity Code: SR #: 16465236 Task #: 8947603 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	10/19/2015	10/19/2015	10/19/2015	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A		09:00:00 AM	09:00:00 AM	10:00:00 AM			
Resolution: down escalator, customer relations with don hartman, as per dons request i checked steps/rollers							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down							
Activity Code: SR #: 16428998 Task #: 8828246 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	10/16/2015	10/16/2015	10/16/2015	0 hrs 0 mins	1 hrs 30 mins	1 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A		01:00:00 PM	01:00:00 PM	02:30:00 PM			
Resolution: assisted John rankin with measurements for modernization proposal							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down							
Activity Code: SR #: 16221324 Task #: 8817162 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	10/05/2015	10/05/2015	10/05/2015	0 hrs 0 mins	2 hrs 45 mins	2 hrs 45 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A		06:15:00 AM	06:15:00 AM	08:00:00 AM			
Resolution: observed operation of units, customer relations with don hartman about his escalator steps needing replaced							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down							
Activity Code: SR #: 15946926 Task #: 8671484 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	09/17/2015	09/17/2015	09/17/2015	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A		08:00:00 AM	08:00:00 AM	09:00:00 AM			
Resolution: observed operation of both units							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down							
Activity Code: SR #: 15580036 Task #: 8475314 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	08/24/2015	08/24/2015	08/24/2015	0 hrs 0 mins	0 hrs 45 mins	0 hrs 45 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A		06:15:00 AM	06:15:00 AM	07:00:00 AM			
Resolution: observed operation of both escalators, customer relations with don hartman, checked escalator roller assemblies that kone supplied to customer							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							

# Silverdome, COVINGTON, MISSISSIPPI, 38005 CASINO DR. AUGUSTA, GA 30929-1520

## Preventive Maintenance

### Assigned To

Incident Date Act Start Date Act End Date Travel Hrs Labor Hrs Total Hrs

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 15369888 Task #: 8363230 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: Preventive Maintenance | Performed Preventive Maintenance

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 15309236 Task #: 8330939 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: up and down escalator, visual inspection of unit's operation, went into golden nugget warehouse to examine escalator steps they had purchased, spoke with don hartman

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 14934394 Task #: 8130274 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: Preventive Maintenance | Performed Preventive Maintenance, oiled stepchains, removed inner decking, upper left and upper right to oil handrail drive chains, installed inner decking, returned to service

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 14874254 Task #: 8098491 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: observed operation of units, rode both units to check performance

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

SN: US135386 OEM SerNo: CE42505 Description: #2 Down

DUTCHER, CHRISTOPHER M

Activity Code: SR #: 14625636 Task #: 7965988 Priority: P3 Standard Payroll Status: PROCESSED

Description: TKE Preventive Maintenance Caller: N/A PH: N/A

Resolution: customer relations with don hartman

Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N

PO #: N/A

Site Name: GOLDEN MUGGER HOTEL 3800 S. CASINO DR. AUGLEN 18028-3520

Preventive Maintenance

Assigned To		Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
DUTCHER, CHRISTOPHER M		06/16/2015	06/16/2015	06/16/2015	0 hrs 0 mins	0 hrs 45 mins	0 hrs 45 mins
SN: US135386 OEM SerNo: CE42505	Description: #2 Down						
Activity Code: SR #: 14531602	Task #: 7915706 Priority: P3 Standard Payroll Status: PROCESSED						
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: assisted larry panaro							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
GASPER, JOSEPH T		06/12/2015	06/12/2015	06/12/2015	1 hrs 0 mins	8 hrs 0 mins	9 hrs 0 mins
SN: US135386 OEM SerNo: CE42505	Description: #2 Down						
Activity Code: SR #: 14531744	Task #: 7915782 Priority: P3 Standard Payroll Status: PROCESSED						
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: N/A							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: *							
PO #: N/A							
DUTCHER, CHRISTOPHER M		06/11/2015	06/11/2015	06/11/2015	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
SN: US135386 OEM SerNo: CE42505	Description: #2 Down						
Activity Code: SR #: 14466046	Task #: 7880793 Priority: P3 Standard Payroll Status: PROCESSED						
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: deliver tools/supplies to repair crew							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
DUTCHER, CHRISTOPHER M		06/09/2015	06/09/2015	06/09/2015	0 hrs 0 mins	5 hrs 0 mins	6 hrs 0 mins
SN: US135386 OEM SerNo: CE42505	Description: #2 Down						
Activity Code: SR #: 14420894	Task #: 7866742 Priority: P3 Standard Payroll Status: PROCESSED						
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: down escalator, fueled work vehicle, dropped off parts, camerons helper in escalator training and I filled in for the 2nd man in repair team, cleanup unit and prepare for stepchain replacement, assisted in disassembling chains							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
DUTCHER, CHRISTOPHER M		06/08/2015	06/08/2015	06/08/2015	0 hrs 0 mins	2 hrs 15 mins	2 hrs 15 mins
SN: US135386 OEM SerNo: CE42505	Description: #2 Down						
Activity Code: SR #: 14400938	Task #: 7946009 Priority: P3 Standard Payroll Status: PROCESSED						
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: assisted repair crew with barricades needed for repair, brought material to jobsite							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							

# Site Name: GOLDEN NUGGET HOTEL & CASINO, 3000 S. AUSTIN, 80026, 1530

## Preventive Maintenance

		Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down								
		DUTCHER, CHRISTOPHER M	06/03/2015	06/03/2015	06/03/2015	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 14329684 Task #: 7807916 Priority: P3 Standard Payroll Status: PROCESSED								
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: discussed concerns with scott olsen and jerry panaro								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down								
		DUTCHER, CHRISTOPHER M	05/28/2015	05/28/2015	05/28/2015	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 14243062 Task #: 7761948 Priority: P3 Standard Payroll Status: PROCESSED								
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: down escalator, customer relations with don hartman about cracked steps and worn stepchain								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down								
		DUTCHER, CHRISTOPHER M	05/27/2015	05/27/2015	05/27/2015	0 hrs 0 mins	7 hrs 0 mins	7 hrs 0 mins
Activity Code: SR #: 14216198 Task #: 7747560 Priority: P3 Standard Payroll Status: PROCESSED								
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: down escalator, acquired 2 quotes for part replacement, printed obsolescence and replacement policy statement/fabricated escalator steps with step body cracks, faxed in accident reports, barricaded unit and cleaned all faces of steps and inspected for cracks as layed out in kane bulletin, observed operation and returned to service								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down								
		DUTCHER, CHRISTOPHER M	05/13/2015	05/13/2015	05/13/2015	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 14024880 Task #: 7845676 Priority: P3 Standard Payroll Status: PROCESSED								
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: called state inspector for accident inspection, met with inspector steeve robertson and reviewed security video, visually inspected escalator observed unit in normal operating condition and returned to service								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down								
		DUTCHER, CHRISTOPHER M	04/10/2015	04/10/2015	04/10/2015	0 hrs 0 mins	6 hrs 0 mins	6 hrs 0 mins
Activity Code: SR #: 13506168 Task #: 7269573 Priority: P3 Standard Payroll Status: PROCESSED								
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: down escalator, customer reported noises, picked up parts from riverside, replace trailwheel rollers on 6 steps and tightened the stepreads								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								

SIGNATURE: GOLDEN MUGGER #1013-4005 CASINO DE LAUGHLIN 10/20/15

Preventive Maintenance

Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 13508170 Task #: 7369574 Priority: P3 Standard Payroll Status: PROCESSED	04/10/2015	04/10/2015	04/10/2015	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	01:00:00 PM	01:00:00 PM	01:30:00 PM			
Resolution: oiled stepchains						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 11661220 Task #: 6398281 Priority: P3 Standard Payroll Status: PROCESSED	12/16/2014	12/16/2014	12/16/2014	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	06:30:00 AM	06:30:00 AM	07:00:00 AM			
Resolution: Preventive Maintenance   Performed Preventive Maintenance						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 11420120 Task #: 6259445 Priority: P3 Standard Payroll Status: PROCESSED	12/02/2014	12/02/2014	12/02/2014	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	06:30:00 AM	06:30:00 AM	07:00:00 AM			
Resolution: visual inspection of units						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 11239198 Task #: 6162639 Priority: P3 Standard Payroll Status: PROCESSED	11/18/2014	11/18/2014	11/18/2014	0 hrs 0 mins	1 hrs 30 mins	1 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	08:30:00 AM	08:30:00 AM	10:00:00 AM			
Resolution: down escalator, cleaned upper and lower pils, replaced pit pads, removed 2 steps, checked gear oil, replaced 2 steps, added oil to dip bucket, tightened all connections in controller, sprayed skirts, observed operation and returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 10622226 Task #: 5832413 Priority: P3 Standard Payroll Status: PROCESSED	10/09/2014	10/09/2014	10/09/2014	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	07:00:00 AM	07:00:00 AM	09:00:00 AM			
Resolution: visual inspect both units, received paint from sherrin williams, customer relations						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Activity Code: SR #: 10622226 Task #: 5832413 Priority: P3 Standard Payroll Status: PROCESSED	10/09/2014	10/09/2014	10/09/2014	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A	07:00:00 AM	07:00:00 AM	09:00:00 AM			
Resolution: visual inspect both units, received paint from sherrin williams, customer relations						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						

# Site Name: GOLDEN HUGGINS HOTEL 2500 S CASINO DR LAS VEGAS NV 89029-1920

## Preventive Maintenance

		Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 10085204 Task #: 5545364 Priority: P3 Standard Payroll Status: PROCESSED			09/05/2014	09/05/2014	09/05/2014	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A			07:00:00 AM	07:00:00 AM	08:00:00 AM			
Resolution: Preventive Maintenance   Performed Preventive Maintenance								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 9535992 Task #: 5251871 Priority: P3 Standard Payroll Status: PROCESSED			08/01/2014	08/01/2014	09/01/2014	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A			01:00:00 PM	01:00:00 PM	02:00:00 PM			
Resolution: Preventive Maintenance   Performed Preventive Maintenance, visual inspection								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 9020446 Task #: 4976808 Priority: P3 Standard Payroll Status: PROCESSED			06/30/2014	06/30/2014	06/30/2014	0 hrs 0 mins	1 hrs 15 mins	1 hrs 15 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A			07:15:00 AM	07:15:00 AM	08:30:00 AM			
Resolution: visual inspection and observation of both units								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 8868330 Task #: 4907449 Priority: P3 Standard Payroll Status: PROCESSED			06/19/2014	06/19/2014	06/19/2014	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A			07:00:00 AM	07:00:00 AM	08:00:00 AM			
Resolution: visual inspection of up and down units								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 8407216 Task #: 4651065 Priority: P3 Standard Payroll Status: PROCESSED			05/13/2014	05/13/2014	05/13/2014	0 hrs 0 mins	4 hrs 0 mins	4 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A			09:00:00 AM	09:00:00 AM	01:00:00 PM			
Resolution: down escalator rounded up and moved material to jobsite for repair in am								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								

Platinum Commerce, Inc. 300 S. GILSON DR. AUBURN, CA 95602-1520

Preventive Maintenance

Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Assigned To: DUTCHER, CHRISTOPHER M	05/02/2014	05/02/2014	05/02/2014	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Activity Code: SR #: 8254908 Task #: 4570151 Priority: P3 Standard Payroll Status: PROCESSED	07:00:00 AM	07:00:00 AM	08:00:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A						
Resolution: visual inspection of both units						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Assigned To: DUTCHER, CHRISTOPHER M	02/03/2014	02/03/2014	02/03/2014	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Activity Code: SR #: 7046328 Task #: 3934326 Priority: P3 Standard Payroll Status: PROCESSED	07:15:00 AM	07:15:00 AM	08:15:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A						
Resolution: visually observed operation						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Assigned To: MINTUN, SHANA R	12/13/2013	12/13/2013	12/13/2013	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 6535272 Task #: 3664147 Priority: P3 Standard Payroll Status: PROCESSED	02:00:00 PM	02:00:00 PM	04:00:00 PM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A						
Resolution: assist chris						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Assigned To: DUTCHER, CHRISTOPHER M	12/13/2013	12/13/2013	12/13/2013	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 6462200 Task #: 3636101 Priority: P3 Standard Payroll Status: PROCESSED	07:00:00 AM	07:00:00 AM	09:00:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A						
Resolution: install barricades, locate noise in unit, adj in stepchain tension, observe operation, removed barricades, returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						
SN: US135386 OEM SerNo: CE42505 Description: #2 Down						
Assigned To: DUTCHER, CHRISTOPHER M	12/04/2013	12/04/2013	12/04/2013	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Activity Code: SR #: 6365206 Task #: 3574188 Priority: P3 Standard Payroll Status: PROCESSED	07:00:00 AM	07:00:00 AM	08:00:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A						
Resolution: replace all upper and lower combplate bolts, returned to service						
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N						
PO #: N/A						



STEFANIE GOLDEN MCGEE 3101 E. 13th St. #300 S. OASINO DR. AUGUST 10, 2013 02041520

Preventive Maintenance

		Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 6211786 Task #: 3483046 Priority: P3 Standard Payroll Status: PROCESSED			11/19/2013 12:00:00 PM	11/19/2013 12:00:00 PM	11/19/2013 03:00:00 PM	0 hrs 0 mins	3 hrs 0 mins	3 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: down esc clunking, found 4 bad step rollers, replace rollers, replaced lower h combplate, sprayed skirts, returned to service								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 5119746 Task #: 2915863 Priority: P3 Standard Payroll Status: PROCESSED			08/01/2013 07:00:00 AM	08/01/2013 07:00:00 AM	08/01/2013 08:00:00 AM	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: visual inspection								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 4781888 Task #: 2737769 Priority: P3 Standard Payroll Status: PROCESSED			06/26/2013 07:00:00 AM	06/26/2013 07:00:00 AM	06/26/2013 09:15:00 AM	0 hrs 0 mins	2 hrs 15 mins	2 hrs 15 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: down uni, cleaned upper and lower pits and turnarounds, cleaned motor and gearbox, checked all switches, oiled stepchains, returned to service								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		MORAN, LEONARD J						
Activity Code: SR #: 4779414 Task #: 2736475 Priority: P3 Standard Payroll Status: PROCESSED			06/26/2013 09:08:00 AM	06/26/2013 09:08:00 AM	06/26/2013 11:00:00 AM	0 hrs 0 mins	1 hrs 52 mins	1 hrs 52 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: E1 and E2, Prep for annual inspections, Routine service per check chart items.								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								
SN: US135386 OEM SerNo: CE42505 Description: #2 Down		DUTCHER, CHRISTOPHER M						
Activity Code: SR #: 4361102 Task #: 2517372 Priority: P3 Standard Payroll Status: PROCESSED			05/09/2013 01:30:00 PM	05/09/2013 01:30:00 PM	05/09/2013 02:00:00 PM	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
Description: TKE Preventive Maintenance Caller: N/A PH: N/A								
Resolution: visual inspection								
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N								
PO #: N/A								

# SHAWING GOLDEN NUGGET HOTEL 300 S CAMDEN DR SAUTTER, MN 55029-1520

## Preventive Maintenance

	Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	DUTCHER, CHRISTOPHER M	01/23/2013	01/23/2013	01/23/2013	0 hrs 0 mins	2 hrs 15 mins	2 hrs 15 mins
Activity Code: SR #: 3415225 Task #: 2026942 Priority: P3 Standard Payroll Status: PROCESSED		09:15:00 AM	09:15:00 AM	11:30:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: skirt testing with monte							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	MCEWEN, MONTE J	01/23/2013	01/23/2013	01/23/2013	0 hrs 0 mins	4 hrs 0 mins	4 hrs 0 mins
Activity Code: SR #: 3414162 Task #: 2026998 Priority: P3 Standard Payroll Status: PROCESSED		07:00:00 AM	07:00:00 AM	11:00:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: Finish skirt index tests as required by State.							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	DUTCHER, CHRISTOPHER M	01/14/2013	01/14/2013	01/14/2013	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 3343526 Task #: 1989913 Priority: P3 Standard Payroll Status: PROCESSED		02:00:00 PM	02:00:00 PM	04:00:00 PM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: unit left down overnight for repeated shutdowns, replaced reverse phase relay, replaced non reversing device, observed operation							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	MCEWEN, MONTE J	12/14/2012	12/14/2012	12/14/2012	0 hrs 0 mins	6 hrs 0 mins	6 hrs 0 mins
Activity Code: SR #: 3147666 Task #: 1887262 Priority: P3 Standard Payroll Status: PROCESSED		07:00:00 AM	07:00:00 AM	01:00:00 PM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: Escalators   Escalator Replace top stop switch, modify bracket to fit new style switch. Install & check operation. Watch unit run approx. 1hr no further problem noted at this time.							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: ON FILE							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	DUTCHER, CHRISTOPHER M	12/14/2012	12/14/2012	12/14/2012	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 3148284 Task #: 1887583 Priority: P3 Standard Payroll Status: PROCESSED		09:00:00 AM	09:00:00 AM	11:00:00 AM			
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: assisted monte with replacement and fabrication of new stop switch and bracket							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							

Site Name: GOLDEN MUGGS HOTEL 2005 W 35TH DR, LAWRENCE, KS 66044-1520

Preventive Maintenance

SN	US135386 OEM SerNo: CE42505 Description: #2 Down	Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
Activity Code	SR #: 3098926 Task #: 1861796 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	12/07/2012	12/07/2012	12/07/2012	0 hrs 0 mins	6 hrs 0 mins	6 hrs 0 mins
Description	TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution	replace steps,install skirt brushes,remove old steps and cardboard from job							
Coverage	PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #:	N/A							
SN	US135386 OEM SerNo: CE42505 Description: #2 Down	MINTUN, SHANA R	12/07/2012	12/07/2012	12/07/2012	2 hrs 0 mins	6 hrs 0 mins	8 hrs 0 mins
Activity Code	SR #: 3144218 Task #: 1985450 Priority: P3 Standard Payroll Status: PROCESSED		12/07/2012	12/07/2012	12/07/2012	2 hrs 0 mins	6 hrs 0 mins	8 hrs 0 mins
Description	TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution	N/A							
Coverage	PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: *							
PO #:	on file							
SN	US135386 OEM SerNo: CE42505 Description: #2 Down	MCEWEN, MONTE J	12/07/2012	12/07/2012	12/07/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Activity Code	SR #: 3112866 Task #: 1669143 Priority: P3 Standard Payroll Status: PROCESSED		12/07/2012	12/07/2012	12/07/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Description	TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution	Annual clean down on down escalator. Finish up state report. , Escalators   Performed annual Cleandown							
Coverage	PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #:	N/A							
SN	US135386 OEM SerNo: CE42505 Description: #2 Down	MINTUN, SHANA R	12/06/2012	12/06/2012	12/06/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Activity Code	SR #: 3077086 Task #: 1850423 Priority: P3 Standard Payroll Status: PROCESSED		12/06/2012	12/06/2012	12/06/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Description	TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution	N/A							
Coverage	PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: *							
PO #:	N/A							
SN	US135386 OEM SerNo: CE42505 Description: #2 Down	MCEWEN, MONTE J	12/06/2012	12/06/2012	12/06/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Activity Code	SR #: 3081156 Task #: 1852562 Priority: P3 Standard Payroll Status: PROCESSED		12/06/2012	12/06/2012	12/06/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
Description	TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution	Escalators   Performed annual Cleandown							
Coverage	PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #:	N/A							

Site Name: GOLDEN NUGGET HOTEL - 300 SEASIDE BLVD LAUGH LIN 8020-7520

Preventive Maintenance

		Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	Activity Code: SR #: 3076990 Task #: 1850375 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	12/05/2012	12/05/2012	12/05/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
	Description: TKE Preventive Maintenance Caller: N/A PH: N/A		07:00:00 AM	07:00:00 AM	03:00:00 PM			
	Resolution: cleardown unit, replacing steps							
	Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
	PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	Activity Code: SR #: 3067172 Task #: 1845281 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	12/04/2012	12/04/2012	12/04/2012	0 hrs 0 mins	4 hrs 0 mins	4 hrs 0 mins
	Description: TKE Preventive Maintenance Caller: N/A PH: N/A		12:00:00 PM	12:00:00 PM	04:00:00 PM			
	Resolution: performed cleardown							
	Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
	PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	Activity Code: SR #: 3051872 Task #: 1837353 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	12/03/2012	12/03/2012	12/03/2012	0 hrs 0 mins	7 hrs 0 mins	7 hrs 0 mins
	Description: TKE Preventive Maintenance Caller: N/A PH: N/A		08:00:00 AM	08:00:00 AM	03:00:00 PM			
	Resolution: cleardown unit							
	Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
	PO #: N/A							
SN: US135386 OEM SerNo: CE42505 Description: #2 Down	Activity Code: SR #: 3051870 Task #: 1837352 Priority: P3 Standard Payroll Status: PROCESSED	DUTCHER, CHRISTOPHER M	11/30/2012	11/30/2012	11/30/2012	0 hrs 0 mins	8 hrs 0 mins	8 hrs 0 mins
	Description: TKE Preventive Maintenance Caller: N/A PH: N/A		07:00:00 AM	07:00:00 AM	03:00:00 PM			
	Resolution: cleardown unit							
	Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
	PO #: N/A							

GOLDEN NUGGET HOTEL - Preventive Maintenance Subtotal 3 hrs 0 mins 162 hrs 7 mins 165 hrs 7 mins

**EXHIBIT C**

**EXHIBIT C**

# ThyssenKrupp Elevator



## Repair Order.

Date: September 12, 2012  
Attention: Golden Nugget Laughlin  
Attr: Don Hartmann  
Address: 2300 S. Casino Drive  
City: Laughlin, NV 89028  
Telephone: Phone: (702) 298-7160  
Fax: (702) 298-7281

Building: Golden Nugget Laughlin  
Address: same  
City: same  
Service contract #:

Purchaser authorizes ThyssenKrupp Elevator to perform the following described repair work on the subject elevator(s) in the above building:

### \*\*\*Safety Matter\*\*\*

Per the NOV dated 8-17-2012 & 8-18-2012 (Item #2), we inspected the escalator steps on two (2) escalators located at the Golden Nugget Laughlin. Per the attached document from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that over 30 steps have cracks. Therefore, because a significant amount of your steps already have cracks, and the others are prone to cracking, we are recommending replacement of all the steps (118 steps) on both escalators.

The total investment at the date of this quotation is:

Eighty-Nine Thousand Nine Hundred Sixteen and 00/100 Dollars.....\$89,916.00

Upon acceptance please sign and return one (1) copy of this document to our office. We will then order the materials and deliver the steps to your property.

All work will be done during normal working hours on normal working days (Mon.-Fri., 7:00am-4:00pm).

RETURN FAX: (866) 248-5612

Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

This Repair Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator.

Purchaser's acceptance of this Repair Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Repair Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Repair Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator manager.

Accepted:

GOLDEN NUGGET LAUGHLIN

By:

(Signature of Authorized Individual)

(Printed or Typed Name)

Title: \_\_\_\_\_ Date: \_\_\_\_\_

THYSSENKRUPP ELEVATOR CORPORATION

4145 West Ali Baba Lane, Suite A

Las Vegas, NV 89118

By:

(Signature of ThyssenKrupp Elevator Representative)

Larry Panaro

(702) 262-6775

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

Title: Branch Manager Date: \_\_\_\_\_

## Terms and conditions.

ThyssenKrupp Elevator assumes no responsibility for any part of the elevator equipment except that upon which work has been done under this agreement. No work, service, examination or liability on the part of us other than that specifically mentioned herein is included or intended. It is agreed that we do not assume possession or control of any part of the equipment and that such remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

Our performance of this contract is contingent upon your furnishing us with any necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this order or the manufacture, delivery or installation of the equipment.

We have made no examination of, and assume no responsibility for, any part of the elevator equipment except that necessary to do the work described in this proposal.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and we reserve the right to discontinue our work in the building whenever, in our sole opinion, this provision is being violated.

You agree that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or those of our subcontractors, the work place will be monitored, and prior to and during our presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event our employees, or those of our subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than our employees, or those of its subcontractors, you agree to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against us, or our employees resulting from such exposure. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is your responsibility.

Unless otherwise agreed, it is understood that the work will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at our usual rates for such work shall be added to the contract price.

In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree to indemnify, defend, save harmless, discharge, release and forever

acquit ThyssenKrupp Elevator, our officers, agents and employees from and against any and all claims, demands, suits, and proceedings brought against us or our employees of any nature whatsoever, including but not limited to loss, damage, injury or death that are alleged to have arisen from or alleged to be in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment, specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of ThyssenKrupp Elevator or our employees.

You expressly agree to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure us for those claims or losses referenced in the above paragraph. You hereby waive the right of subrogation.

We shall not be liable for any loss, damages or delay caused by acts of government, strikes, lockouts, fire, explosions, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any other cause beyond our control, and in no event shall we be liable for consequential damages.

Should loss of or damage to our material, tools or work occur at the erection site, you shall compensate us therefore, unless such loss or damage results from our own acts or omissions.

You agree that all existing equipment removed by ThyssenKrupp Elevator shall become the exclusive property of ThyssenKrupp Elevator.

We retain title to all equipment supplied by us under this contract, and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of this contract, including deferred payments and any extension is thereof, shall have been made. In the event of any default by you in the payment, under any other provision of this contract, we may take immediate possession of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at our request, you agree to join with us in executing any financing or continuation statements, which may be appropriate for us to file in public offices in order to perfect our security interest in such equipment.

Certificates of Workmen's Compensation, Bodily Injury and Property Damage Liability Insurance coverage will be furnished to you upon request. The premium for any bonds or insurance beyond our standard coverage and limits will be an addition to the contract price.

If any drawings, illustrations or descriptive matter are furnished with this proposal, they

are approximate and are submitted only to show the general style and arrangement of equipment being offered.

You shall bear all cost(s) for any reinspection of our work due to items outside the scope of this agreement or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator.

All applicable sales and use taxes, permit fees and licenses imposed upon us as of the date of this proposal, are included in the contract price. You agree to pay, as an addition to the contract price, the amount of any additional taxes, fees or other charges exacted from you or ThyssenKrupp Elevator on account thereof, by any law enacted after the date of this proposal.

A service charge of 1 1/2% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury and do further hereby consent that venue of any proceeding or lawsuit under this agreement shall be in Clark County, Nevada.

The rights of ThyssenKrupp Elevator under this agreement shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this agreement.

In the event your acceptance is in the form of a purchase order or other kind of document, the provisions, terms and conditions of this proposal shall govern in the event of conflict.

# ThyssenKrupp Elevator



## Repair Order.

Date: October 2, 2012 (OPTION #2)  
Attention: Golden Nugget Laughlin  
Attn: Don Hartmann or Clint Belka  
Address: 2300 S. Casino Drive  
City: Laughlin, NV 89028  
Telephone: Phone: (702) 298-7160  
Fax: (702) 298-7281

Building: Golden Nugget Laughlin  
Address: same  
City: same  
Service contract #:

Purchaser authorizes ThyssenKrupp Elevator to perform the following described repair work on the subject elevator(s) in the above building:

### \*\*\*Safety Matter\*\*\*

Per the NOV dated 8-17-2012 & 8-18-2012 (Item #2), we inspected the escalator steps on two (2) escalators located at the Golden Nugget Laughlin. Per the attached document from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that over 30 steps have cracks between the two escalators. Therefore, we are proposing as Option #2 the following: We shall replace all the steps (58 steps) on the "Down" escalator unit. We will salvage enough older un-cracked steps to be able to install these into the "Up" escalator unit where cracked steps have been identified. Additionally, as part of this proposal, we shall perform the step skirt indexing adjustments on both escalators in order to be compliance with the State NOV.

The total investment at the date of this quotation is:  
Sixty-Two Thousand Two Hundred Fourteen and 00/100 Dollars.....\$62,214.00

Upon acceptance please sign and return one (1) copy of this document to our office. We will then order the materials and deliver the steps to your property.

All work will be done during normal working hours on normal working days (Mon.-Fri., 7:00am-4:00pm).

RETURN FAX: (866) 248-5612

Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

This Repair Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator.

Purchaser's acceptance of this Repair Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Repair Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Repair Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator manager.

Accepted:

GOLDEN NUGGET LAUGHLIN

By: \_\_\_\_\_  
(Signature of Authorized Individual)

(Printed or Typed Name)

Title: \_\_\_\_\_ Date: \_\_\_\_\_

THYSSENKRUPP ELEVATOR CORPORATION  
4145 West Ali Baba Lane, Suite A  
Las Vegas, NV 89118

By: \_\_\_\_\_  
(Signature of ThyssenKrupp Elevator Representative)  
Larry Panaro  
(702) 262-6775

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

Title: Branch Manager Date: \_\_\_\_\_



**Terms and conditions.**

ThyssenKrupp Elevator assumes no responsibility for any part of the elevator equipment except that upon which work has been done under this agreement. No work, service, examination or liability on the part of us other than that specifically mentioned herein is included or intended. It is agreed that we do not assume possession or control of any part of the equipment and that such remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

Our performance of this contract is contingent upon your furnishing us with any necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this order or the manufacture, delivery or installation of the equipment.

We have made no examination of, and assume no responsibility for, any part of the elevator equipment except that necessary to do the work described in this proposal.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and we reserve the right to discontinue our work in the building whenever, in our sole opinion, this provision is being violated.

You agree that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or those of our subcontractors, the work place will be monitored, and prior to and during our presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event our employees, or those of our subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than our employees, or those of its subcontractors, you agree to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against us, or our employees resulting from such exposure. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is your responsibility.

Unless otherwise agreed, it is understood that the work will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at our usual rates for such work shall be added to the contract price.

In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree to indemnify, defend, save harmless, discharge, release and forever

acquit ThyssenKrupp Elevator, our officers, agents and employees from and against any and all claims, demands, suits, and proceedings brought against us or our employees of any nature whatsoever, including but not limited to loss, damage, injury or death that are alleged to have arisen from or alleged to be in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment, specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of ThyssenKrupp Elevator or our employees.

You expressly agree to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure us for those claims or losses referenced in the above paragraph. You hereby waive the right of subrogation.

We shall not be liable for any loss, damages or delay caused by acts of government, strikes, lockouts, fire, explosions, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any other cause beyond our control, and in no event shall we be liable for consequential damages.

Should loss of or damage to our material, tools or work occur at the erection site, you shall compensate us therefore, unless such loss or damage results from our own acts or omissions.

You agree that all existing equipment removed by ThyssenKrupp Elevator shall become the exclusive property of ThyssenKrupp Elevator.

We retain title to all equipment supplied by us under this contract, and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of this contract, including deferred payments and any extension is thereof, shall have been made. In the event of any default by you in the payment, under any other provision of this contract, we may take immediate possession of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at our request, you agree to join with us in executing any financing or continuation statements, which may be appropriate for us to file in public offices in order to perfect our security interest in such equipment.

Certificates of Workmen's Compensation, Bodily Injury and Property Damage Liability Insurance coverage will be furnished to you upon request. The premium for any bonds or insurance beyond our standard coverage and limits will be an addition to the contract price.

If any drawings, illustrations or descriptive matter are furnished with this proposal, they

are approximate and are submitted only to show the general style and arrangement of equipment being offered.

You shall bear all cost(s) for any reinspection of our work due to items outside the scope of this agreement or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator.

All applicable sales and use taxes, permit fees and licenses imposed upon us as of the date of this proposal, are included in the contract price. You agree to pay, as an addition to the contract price, the amount of any additional taxes, fees or other charges exacted from you or ThyssenKrupp Elevator on account thereof, by any law enacted after the date of this proposal.

A service charge of 1 1/2% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury and do further hereby consent that venue of any proceeding or lawsuit under this agreement shall be in Clark County, Nevada.

The rights of ThyssenKrupp Elevator under this agreement shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this agreement.

In the event your acceptance is in the form of a purchase order or other kind of document, the provisions, terms and conditions of this proposal shall govern in the event of conflict.

## Laura Fitzgerald

---

**From:** Panaro, Larry <Larry.Panaro@thyssenkrupp.com>  
**Sent:** Tuesday, October 31, 2017 11:43 AM  
**To:** Olsen, Scott  
**Subject:** FW: GN Laughlin - Escalators  
**Attachments:** GN Laughlin (Esc Steps - Option #2).pdf  
  
**Importance:** High

FYI...

Regards,  
Larry Panaro  
Sales Manager - Las Vegas  
ET-AMS/FLD

T: (702) 262-6775, M: (702) 591-9422, ShoreTel 4589, [larry.panaro@thyssenkrupp.com](mailto:larry.panaro@thyssenkrupp.com)

---

**From:** Panaro, Larry  
**Sent:** Tuesday, October 2, 2012 4:58 PM  
**To:** [cbelka@goldennugget.com](mailto:cbelka@goldennugget.com)  
**Cc:** Hartmann, Don; MacDavid, Jim; Hamrick, Paul  
**Subject:** GN Laughlin - Escalators  
**Importance:** High

Clint,

Per our conversations, attached is the proposal for Option #2 for the Golden Nugget Laughlin escalators. As I mentioned, I spoke with the manufacturer's representative and he recommended that if approximately 1/3 of the steps are cracked on a particular unit then all the steps should be replaced. He stated that if it were only 2 or 3 steps out of 58 steps that needed replacement, then it would probably be fine. But, if you needed to replace approximately 14 to 16 steps, or more, out of 58 then the recommendation was to replace all the steps. Therefore, our Option #2 scope includes the following:

1. Replace all the steps on the "Down" unit with new steps and perform the step skirt indexing adjustment work in order to be in compliance with the State.
2. Salvage enough old un-cracked steps out of the "Down" unit in order to use those as replacements for the cracked steps in the "Up" unit.
3. Remove the existing steps in the "Up" unit and perform the step skirt indexing adjustment work in order to be in compliance with the State.
4. Re-install the steps in the "Up" unit using the old un-cracked steps from both the "Up" and "Down" units.

This would also provide the Golden Nugget Laughlin with some spare old steps, which can then be utilized as future replacements on the "Up" unit, if necessary. The price for Option #2 is \$62,214.00, which is a savings of \$27,702.00 in comparison to the Option #1 pricing of \$89,916.00.

Please note that we performed the step skirt index testing at no charge to Golden Nugget Laughlin following the State NOV. This is a test that is not typically covered under our service agreement. The skirt index testing took approximately two days for our repair team to perform on the two Golden Nugget Laughlin escalators.

If you have any further questions or concerns pertaining to this matter, please do not hesitate to contact me. Again, thank you for your time today in speaking with me.

Sincerely,

Larry Panaro  
Account Manager  
Service, Repair and Modernization Sales

**ThyssenKrupp Elevator Americas**  
4145 W. Ali Baba, Suite A  
Las Vegas, NV 89118

Phone: (702) 262-6775  
Cell: (702) 591-9422  
Fax: (866) 248-5612  
<mailto:larry.panaro@thyssenkrupp.com>

[www.thyssenkruppelevator.com](http://www.thyssenkruppelevator.com)

As you are aware, messages sent by e-mail can be manipulated by third parties. For this reason our e-mail messages are generally not legally binding. This electronic message (including any attachments) contains confidential information and may be privileged or otherwise protected from disclosure. The information is intended to be for the use of the intended addressee only. Please be aware that any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this e-mail in error please notify me immediately by reply e-mail and delete this message and any attachments from your system. Thank you for your cooperation.

# ThyssenKrupp Elevator



## Repair Order.

Date: October 2, 2012 (OPTION #2)  
Attention: Golden Nugget Laughlin  
Attn: Don Hartmann or Clint Belka  
Address: 2300 S. Casino Drive  
City: Laughlin, NV 89028  
Telephone: Phone: (702) 298-7160  
Fax: (702) 298-7281  
Building: Golden Nugget Laughlin  
Address: same  
City: same  
Service contract #:

Purchaser authorizes ThyssenKrupp Elevator to perform the following described repair work on the subject elevator(s) in the above building:

### \*\*\*Safety Matter\*\*\*

Per the NOV dated 8-17-2012 & 8-18-2012 (Item #2), we inspected the escalator steps on two (2) escalators located at the Golden Nugget Laughlin. Per the attached document from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that over 30 steps have cracks between the two escalators. Therefore, we are proposing as Option #2 the following: We shall replace all the steps (58 steps) on the "Down" escalator unit. We will salvage enough older un-cracked steps to be able to install these into the "Up" escalator unit where cracked steps have been identified. Additionally, as part of this proposal, we shall perform the step skirt indexing adjustments on both escalators in order to be compliance with the State NOV.

The total investment at the date of this quotation is:  
Sixty-Two Thousand Two Hundred Fourteen and 00/100 Dollars.....\$62,214.00

Upon acceptance please sign and return one (1) copy of this document to our office. We will then order the materials and deliver the steps to your property.

All work will be done during normal working hours on normal working days (Mon.-Fri., 7:00am-4:00pm).

RETURN FAX: (866) 248-5612

Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

This Repair Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator.

Purchaser's acceptance of this Repair Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Repair Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Repair Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator manager.

Accepted:

GOLDEN NUGGET LAUGHLIN

By:

(Signature of Authorized Individual)

(Printed or Typed Name)

Title:

Date:

THYSSENKRUPP ELEVATOR CORPORATION  
4145 West Ali Baba Lane, Suite A  
Las Vegas, NV 89118

By:

(Signature of ThyssenKrupp Elevator Representative)

Larry Canaro

(702) 262-6775

Date:

Approved by:

Title: Branch Manager Date:

## Terms and conditions.

ThyssenKrupp Elevator assumes no responsibility for any part of the elevator equipment except that upon which work has been done under this agreement. No work, service, examination or liability on the part of us other than that specifically mentioned herein is included or intended. It is agreed that we do not assume possession or control of any part of the equipment and that such remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

Our performance of this contract is contingent upon your furnishing us with any necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this order or the manufacture, delivery or installation of the equipment.

We have made no examination of, and assume no responsibility for, any part of the elevator equipment except that necessary to do the work described in this proposal.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and we reserve the right to discontinue our work in the building whenever, in our sole opinion, this provision is being violated.

You agree that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or those of our subcontractors, the work place will be monitored, and prior to and during our presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event our employees, or those of our subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than our employees, or those of its subcontractors, you agree to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against us, or our employees resulting from such exposure. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is your responsibility.

Unless otherwise agreed, it is understood that the work will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at our usual rates for such work shall be added to the contract price.

In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree to indemnify, defend, save harmless, discharge, release and forever

acquit ThyssenKrupp Elevator, our officers, agents and employees from and against any and all claims, demands, suits, and proceedings brought against us or our employees of any nature whatsoever, including but not limited to loss, damage, injury or death that are alleged to have arisen from or alleged to be in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment, specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of ThyssenKrupp Elevator or our employees.

You expressly agree to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure us for those claims or losses referenced in the above paragraph. You hereby waive the right of subrogation.

We shall not be liable for any loss, damages or delay caused by acts of government, strikes, lockouts, fire, explosions, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any other cause beyond our control, and in no event shall we be liable for consequential damages.

Should loss of or damage to our material, tools or work occur at the erection site, you shall compensate us therefore, unless such loss or damage results from our own acts or omissions.

You agree that all existing equipment removed by ThyssenKrupp Elevator shall become the exclusive property of ThyssenKrupp Elevator.

We retain title to all equipment supplied by us under this contract, and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of this contract, including deferred payments and any extension is thereof, shall have been made. In the event of any default by you in the payment, under any other provision of this contract, we may take immediate possession of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at our request, you agree to join with us in executing any financing or continuation statements, which may be appropriate for us to file in public offices in order to perfect our security interest in such equipment.

Certificates of Workmen's Compensation, Bodily Injury and Property Damage Liability Insurance coverage will be furnished to you upon request. The premium for any bonds or insurance beyond our standard coverage and limits will be an addition to the contract price.

If any drawings, illustrations or descriptive matter are furnished with this proposal, they

are approximate and are submitted only to show the general style and arrangement of equipment being offered.

You shall bear all cost(s) for any reinspection of our work due to items outside the scope of this agreement or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator.

All applicable sales and use taxes, permit fees and licenses imposed upon us as of the date of this proposal, are included in the contract price. You agree to pay, as an addition to the contract price, the amount of any additional taxes, fees or other charges exacted from you or ThyssenKrupp Elevator on account thereof, by any law enacted after the date of this proposal.

A service charge of 1 1/2% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury and do further hereby consent that venue of any proceeding or lawsuit under this agreement shall be in Clark County, Nevada.

The rights of ThyssenKrupp Elevator under this agreement shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this agreement.

In the event your acceptance is in the form of a purchase order or other kind of document, the provisions, terms and conditions of this proposal shall govern in the event of conflict.

# ThyssenKrupp Elevator



## Repair Order.

Date: September 12, 2012  
Attention: Golden Nugget Laughlin  
Attn: Don Hartmann  
Address: 2300 S. Casino Drive  
City: Laughlin, NV 89028  
Telephone: Phone: (702) 298-7160  
Fax: (702) 298-7281

Building: Golden Nugget Laughlin  
Address: same  
City: same  
Service contract #:

# 222814

Purchaser authorizes ThyssenKrupp Elevator to perform the following described repair work on the subject elevator(s) in the above building:

### \*\*\*Safety Matter\*\*\*

Per the NOV dated 8-17-2012 & 8-18-2012 (Item #2), we inspected the escalator steps on two (2) escalators located at the Golden Nugget Laughlin. Per the attached document from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that over 30 steps have cracks. Therefore, because a significant amount of your steps already have cracks, and the others are prone to cracking, we are recommending replacement of all the steps (118 steps) on both escalators.

The total investment at the date of this quotation is:  
Eighty-Nine Thousand Nine Hundred Sixteen and 00/100 Dollars.....\$89,916.00

Upon acceptance please sign and return one (1) copy of this document to our office. We will then order the materials and deliver the steps to your property.

All work will be done during normal working hours on normal working days (Mon.-Fri., 7:00am-4:00pm).

RETURN FAX: (866) 248-5612

Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

This Repair Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator.

Purchaser's acceptance of this Repair Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Repair Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Repair Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator manager.

Accepted:

GOLDEN NUGGET LAUGHLIN

By: \_\_\_\_\_  
(Signature of Authorized Individual)

(Printed or Typed Name)

Title: \_\_\_\_\_ Date: \_\_\_\_\_

\* Please see attached  
R.O. #19266, dated  
9/12/12.

THYSSENKRUPP ELEVATOR CORPORATION  
4145 West Ali Baba Lane, Suite A  
Las Vegas, NV 89118

By: \_\_\_\_\_  
(Signature of ThyssenKrupp Elevator Representative)

Larry Panaro  
(702) 262-6775

Date: 9/12/12

Approved by: \_\_\_\_\_

Title: Branch Manager Date: 10/1/12

### Terms and conditions.

ThyssenKrupp Elevator assumes no responsibility for any part of the elevator equipment except that upon which work has been done under this agreement. No work, service, examination or liability on the part of us other than that specifically mentioned herein is included or intended. It is agreed that we do not assume possession or control of any part of the equipment and that such remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

Our performance of this contract is contingent upon your furnishing us with any necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this order or the manufacture, delivery or installation of the equipment.

We have made no examination of, and assume no responsibility for, any part of the elevator equipment except that necessary to do the work described in this proposal.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and we reserve the right to discontinue our work in the building whenever, in our sole opinion, this provision is being violated.

You agree that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or those of our subcontractors, the work place will be monitored, and prior to and during our presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event our employees, or those of our subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than our employees, or those of its subcontractors, you agree to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against us, or our employees resulting from such exposure. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is your responsibility.

Unless otherwise agreed, it is understood that the work will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at our usual rates for such work shall be added to the contract price.

In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree to indemnify, defend, save harmless, discharge, release and forever

acquit ThyssenKrupp Elevator, our officers, agents and employees from and against any and all claims, demands, suits, and proceedings brought against us or our employees of any nature whatsoever, including but not limited to loss, damage, injury or death that are alleged to have arisen from or alleged to be in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment, specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of ThyssenKrupp Elevator or our employees.

You expressly agree to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure us for those claims or losses referenced in the above paragraph. You hereby waive the right of subrogation.

We shall not be liable for any loss, damages or delay caused by acts of government, strikes, lockouts, fire, explosions, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any other cause beyond our control, and in no event shall we be liable for consequential damages.

Should loss of or damage to our material, tools or work occur at the erection site, you shall compensate us therefore, unless such loss or damage results from our own acts or omissions.

You agree that all existing equipment removed by ThyssenKrupp Elevator shall become the exclusive property of ThyssenKrupp Elevator.

We retain title to all equipment supplied by us under this contract, and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of this contract, including deferred payments and any extension is thereof, shall have been made. In the event of any default by you in the payment, under any other provision of this contract, we may take immediate possession of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at our request, you agree to join with us in executing any financing or continuation statements, which may be appropriate for us to file in public offices in order to perfect our security interest in such equipment.

Certificates of Workmen's Compensation, Bodily Injury and Property Damage Liability Insurance coverage will be furnished to you upon request. The premium for any bonds or insurance beyond our standard coverage and limits will be an addition to the contract price.

If any drawings, illustrations or descriptive matter are furnished with this proposal, they

are approximate and are submitted only to show the general style and arrangement of equipment being offered.

You shall bear all cost(s) for any reinspection of our work due to items outside the scope of this agreement or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator.

All applicable sales and use taxes, permit fees and licenses imposed upon us as of the date of this proposal, are included in the contract price. You agree to pay, as an addition to the contract price, the amount of any additional taxes, fees or other charges exacted from you or ThyssenKrupp Elevator on account thereof, by any law enacted after the date of this proposal.

A service charge of 1 1/2% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury and do further hereby consent that venue of any proceeding or lawsuit under this agreement shall be in Clark County, Nevada.

The rights of ThyssenKrupp Elevator under this agreement shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this agreement.

In the event your acceptance is in the form of a purchase order or other kind of document, the provisions, terms and conditions of this proposal shall govern in the event of conflict.

**EXHIBIT D**

**EXHIBIT D**



Chris Dutcher - 5/14/2018  
Joe N. Brown, et al. vs. Landry's, Inc., et al.

1 DISTRICT COURT  
CLARK COUNTY, NEVADA

2 -----x

3 JOE N. BROWN, an individual, and  
his Wife, NETTIE J. BROWN, an individual,

4 Plaintiffs,

5 -against-

Case No.: A-16-739887-C  
Dept. No.: XXXI

6 LANDRY'S, INC., a foreign corporation;  
7 GOLDEN NUGGET, INC., a Nevada  
corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP.; DOE INDIVIDUALS  
8 1-100; ROE BUSINESS ENTITIES 1-100,  
Defendants.

9 -----x

10 AND ASSOCIATED CASES

-----x

11 May 14, 2018

12 10:07 a.m.

13

14 Deposition of CHRIS DUTCHER, held at the offices of  
15 ThyssenKrupp, 519 8th Avenue, 6th Floor, New York, New York,  
16 pursuant to Notice, before Renate Reid, Registered Professional  
17 Reporter and Notary Public of the State of New York.

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1           A. They gave him a quote and a bid. And  
2           that's as far as it went, as far as I know.

3           Q. Okay. So --

4           A. Obviously, there are still old  
5           escalators.

6           Q. Right. Right. We saw the repair quote  
7           from September 12, 2012, where you recommended  
8           replacement of all 114 steps.

9           Do you remember that?

10          A. Yes.

11          Q. Okay. Did you, after that point in  
12          September 2012, ever recommend replacing all 114  
13          steps?

14          A. In what date, 2012?

15          Q. Yes, after 2012.

16                 In 2013, 2014, 2015, 2016, 2017, 2018 --  
17          after that date in September of 2012, did you ever  
18          recommend replacement of all 114 steps?

19          A. Yeah, replacement steps, yes.

20          Q. Okay. How many times did you recommend  
21          that?

22          A. Well, it states on the information here  
23          that every time I talked to Don about the  
24          proposals.

25          Q. Okay. So every time you talked to Don,

1           you recommended full replacement of all the steps?

2           A.   When it says about proposals, yes.

3           Q.   Okay.  And what happened to your  
4           recommendations?

5           A.   It was just a recommendation.

6           Q.   Okay.

7           A.   I don't know where it went from there.

8           Obviously, it -- maybe they followed up with it at  
9           one point.

10          Q.   But they didn't follow up with it while  
11          you worked there?

12          A.   They did, after the step chain got  
13          replaced.

14          Q.   Right.  But the step chain got replaced  
15          in June of 2015?

16          A.   In June.  Yes.

17          Q.   Right.  And the steps weren't replaced  
18          anytime in 2015, correct?

19          A.   According to the information, correct.

20          Q.   Okay.  So at least up until 2015, your  
21          recommendation that all 114 steps be replaced  
22          wasn't actually accepted, correct?

23          A.   Correct.

24          Q.   Do you recall when in 2016 the steps  
25          were replaced?

1 A. I don't remember.

2 Q. Okay. And it was only a portion,  
3 correct? All 114 steps have never been replaced,  
4 correct?

5 A. All of them, no. But it was all the  
6 ones that were the older steel-welded steps.

7 Q. Is that your recollection, or --

8 A. My recollection.

9 Q. Okay. Are you sure?

10 A. Yes.

11 Q. Okay. But from 2012, that  
12 September 12th recommendation from you to replace  
13 all 114 steps, all the way through 2018,  
14 Presidents' Day, your recommendation to replace  
15 all 114 steps -- that recommendation, in and of  
16 itself, was never taken up, correct?

17 A. Yes.

18 MR. IQBAL: I have no further questions at  
19 this point.

20 MS. MASTRANGELO: Alex?

21 MS. MCLEOD: I do have a few questions.

22 Do you need a break, or do you want to  
23 just go straight through?

24 MR. IQBAL: If you just have a few  
25 questions, then, let's take a break, and we'll

1                   A. I'm not an expert on safety. I can't  
2                   answer that.

3                   BY MR. IQBAL:

4                   Q. Right. But you just said that when you  
5                   get new steps, you also have new rollers, correct?

6                   A. Yes. So it would be safer, in turn.

7                   Q. Okay. So replacing all 118 steps would  
8                   be safer than just replacing 57, correct?

9                   A. Yes.

10                  Q. Okay. And the difference in the two  
11                  repair orders, if you take a look -- I don't -- I  
12                  want to make sure that my math is right -- is  
13                  89,900 versus 62,200, roughly.

14                  Did I read that right?

15                  A. Yes.

16                  Q. Okay. So it's a difference of \$27,700,  
17                  approximately?

18                  A. Yes.

19                  Q. Okay. And when you make  
20                  recommendations for replacement, you're doing that  
21                  for, as you said, ease of working on the machine  
22                  and also safety, correct?

23                  A. Yes.

24                  Q. And you wouldn't make any  
25                  recommendations just to inflate an invoice,

1 curve, he proceeded to fall down the unit.

2 Q. Did you agree with the inspector's  
3 assessment?

4 A. Yes.

5 Q. You've been asked already a lot of  
6 questions about the step replacements on the  
7 escalators between the 2012 recommendations and  
8 the 2015 recommendations.

9 My question is, assuming that the -- all  
10 of the steps on the down escalator were replaced  
11 in 2012, would it be usual or unusual for those  
12 steps to be cracked in 2015?

13 A. I'm unsure if they were all replaced in  
14 2012. I don't recall that happening.

15 Q. Assume, hypothetically, for purposes of  
16 my question, that they were.

17 A. Assume they were replaced in 2012?

18 Q. Correct.

19 A. In that short amount of time, they  
20 shouldn't crack.

21 MS. MCLEOD: Thank you, sir, for your time  
22 today. I appreciate it. I have no further  
23 questions.

24 MS. MASTRANGELO: I just have a couple of  
25 questions.

1 A. Annual escalator testing.

2 Q. Okay. And then, on the second page, at  
3 the top left, it says "Callback"?

4 A. Yes.

5 Q. And what is this, generally?

6 A. It's callbacks, is what it says.

7 Q. All right. And so outside of those  
8 times when you were rushing because you didn't  
9 have time, everything that you would have noted in  
10 the TK Smart would be in here?

11 A. Say it again.

12 Q. So you -- you testified that if you  
13 were -- if you didn't have time, you wouldn't put  
14 information into the TK Smart system, correct?

15 A. Yes.

16 Q. And -- and if you didn't have time, you  
17 also wouldn't put information into the machine  
18 logbook, correct?

19 A. Yes.

20 Q. Okay. So outside of those times when  
21 you -- you were -- you -- you -- you didn't have  
22 time, everything else would be in here?

23 A. All the stuff that I inputted would be  
24 in here.

25 Q. Okay. All right. Now, what percentage

1 of the time were you just jammed and didn't have  
2 an opportunity to either enter stuff into the  
3 TK Smart system or the logbook?

4 A. I don't know the exact number.

5 Q. Can you give a rough estimation?

6 A. I would say 60% of the time.

7 Q. 60% of the time, you were too busy?

8 A. Yes.

9 Q. Okay. When you say too busy, was that  
10 because you had several locations and jobs to go  
11 to?

12 A. Yes.

13 Q. Okay. So is it fair to say that this  
14 account history only represents roughly 40% of  
15 the -- the work that you did?

16 A. Yes.

17 Q. Okay. And the other 60% is not  
18 recorded anywhere?

19 A. Yes.

20 Q. How long does it take to put an entry  
21 into the TK Smart system?

22 A. Sometimes could be 15 minutes, and  
23 sometimes it could be an hour, depending on if the  
24 device is functioning properly.

25 Q. Okay. It would take an hour sometimes



1 Is that fair to say?

2 A. Say it again.

3 Q. So you would -- you -- let's -- let's  
4 say a repair ticket is generated for a service  
5 issue at Laughlin Nugget. You get the repair  
6 ticket on your phone.

7 And once you finish that specific service  
8 issue, you would put the details into that  
9 specific repair ticket, correct?

10 A. Yes.

11 Q. Okay. And then, after that point, when  
12 you finish the job, do you have anything to do  
13 with that specific repair ticket that you sent  
14 back?

15 A. Not afterwards.

16 Q. Okay. Okay. And at a point later,  
17 let's say a couple of months later, could you  
18 access those repair tickets?

19 A. For up to a year.

20 Q. For up to a year.

21 And at the same time that you filled out  
22 completion of a job on the repair ticket, you'd  
23 also note it in the machine-room log?

24 A. Yes.

25 Q. Okay. That machine-room log, for --

1           let's -- let's take Laughlin Nugget.

2                     That machine-room log, was that  
3           ThyssenKrupp property, or was that Golden Nugget  
4           property?

5                     A. I'm not sure whose property it is.

6                     Q. Okay. Did you always have access to  
7           that log whenever you needed it?

8                     A. Yes. We had the logs. We wrote the  
9           logs.

10                    Q. Okay.

11                    A. They said ThyssenKrupp on them. We  
12           left them in the machine.

13                    (Reporter asks for clarification.)

14                    THE WITNESS: They say ThyssenKrupp  
15           Elevator all over them, ThyssenKrupp Elevator  
16           escalator log number. We write the year, date,  
17           unit.

18                    BY MR. IQBAL:

19                    Q. Okay. So when you would -- you -- you  
20           mentioned, like, you know, fifteen -- ten minutes  
21           ago, sometimes buying a coffee and going and  
22           visually inspecting.

23                    When you would do a simple visual  
24           inspection like that, would you put that into the  
25           logbook?

1 A. No.

2 Q. Okay. When would you put things into  
3 the logbook?

4 A. When I did maintenance or repair.

5 Q. When you did inspections, would you put  
6 that into the logbook?

7 A. You mean yearly inspections?

8 Q. Yes.

9 A. Yes, with a state inspector.

10 Q. Was it required that yearly inspections  
11 have a state inspector along?

12 A. Yes. It was a third-party inspector  
13 that inspected the unit every year that I was  
14 there.

15 Q. Okay. And so that would go into the  
16 logbook?

17 A. Yes. And the inspector also had a  
18 sticker that he would put on the logbook  
19 stating -- verifying that he was there as well.

20 Q. Now, that logbook is for maintenance or  
21 repair and also the yearly inspections, correct?

22 A. Yes.

23 Q. Other types of service, would that go  
24 into the logbook?

25 A. Yes.

1 Q. Can you give me examples?

2 A. Other than just maintaining it? No.

3 Q. Okay. But when you would go for  
4 routine maintenance, that would go into the  
5 logbook?

6 A. Yes, if I filled it out.

7 Q. Okay. And -- and outside of, like, the  
8 simple buying a coffee and visually inspecting it,  
9 if you did any more than that with respect to the  
10 escalators, did you put that information into the  
11 logbook?

12 A. Sometimes I put the information in, but  
13 sometimes I didn't have enough time.

14 Q. Got it. Okay.

15 So the completeness of the logbook and  
16 different entries depended on how much time you  
17 had?

18 A. Yes.

19 Q. Okay. And so when you were pressed for  
20 time, entries didn't go into the logbook?

21 A. Correct.

22 Q. Okay. And when you were pressed for  
23 time, entries also didn't go into the TK Smart  
24 system, correct?

25 A. Yes.

1 Q. Okay. Would you then go back later and  
2 fill in that information into the logbook?

3 A. Yeah. I probably didn't even remember  
4 what it said.

5 Q. Okay. So that -- if you were pressed  
6 for time, then there was no record made on the  
7 TK Smart system, and there was no logbook entry.

8 There -- there would just be nothing,  
9 then?

10 A. Yes.

11 Q. Okay. And you -- you never went back  
12 and add -- filled in that information?

13 A. No.

14 Q. Okay. So the repair ticket gets filled  
15 out -- under normal circumstances, when you have  
16 time, the repair ticket gets filled out, and then  
17 you sign the logbook.

18 A. Um-hum.

19 Q. Is that the extent of the documentation  
20 with respect to any repair or --

21 A. Yes.

22 Q. -- servicing? Yes?

23 A. Yes.

24 Q. Okay. Would you send e-mails regarding  
25 what you saw or what you did?

1 MR. IQBAL: Okay.

2 A. But I can explain it?

3 BY MR. IQBAL:

4 Q. Sure. Please do.

5 A. On those-style steps, they were welded  
6 at the corners of the bottom, so there's no flex  
7 to the steps. So over time, they generate cracks,  
8 and they get cracks on the -- on the -- on the  
9 bottom on the base, they get a crack that runs  
10 down this way (indicating) that it can go a  
11 certain -- I think it's an inch -- inch or so,  
12 inch and a quarter, and you can drill a hole in it  
13 to stop the crack. And they say it could still  
14 run like that, KONE does.

15 And then -- but they also can generate  
16 cracks on the sides, because they have three bolts  
17 where they hook up under the side of the axles.  
18 And over time, if those crack, you have to throw  
19 the steps away immediately.

20 Q. Okay.

21 A. It's like A called type B step cracks.

22 Q. Okay. KONE says you can still run if  
23 you drill a hole?

24 A. If you drill a hole, and if -- if it's  
25 a certain measurement. If it's beyond the

1 measurement, you have to replace the steps.

2 Q. Do you agree with KONE?

3 A. I don't like looking at cracks in the  
4 steps myself.

5 Q. Okay.

6 A. It appears to be a resolution, as --  
7 there's a lot of steps out there under the same  
8 condition.

9 Q. Okay. But you would disagree with the  
10 KONE position that you can still use a step if you  
11 drill through it?

12 A. I would agree that you can use it as  
13 long as it stops the crack.

14 Q. Okay. But you personally don't like  
15 that approach?

16 A. Who wants a crack in anything?

17 Q. Okay. So your personal position is, if  
18 there are cracks in a step, then you would replace  
19 it?

20 A. I at least recommend it to the  
21 manufacturer -- or to the owner that we should  
22 replace it anytime; like, it -- it is safe, but it  
23 needs to be replaced in due time.

24 Q. Okay. If a crack is slightly larger,  
25 then, would you still say the step is safe?

1           A. If it's slightly larger than what's  
2           explained in the KONE information pamphlet, it  
3           needs to be replaced immediately.

4           Q. Okay. All right. So this -- this  
5           statement from -- from Larry, "I spoke with the  
6           manufacturer's representative" -- that would be  
7           KONE, because the steps on this specific down  
8           escalator were KONE steps, correct?

9           A. Yes.

10          Q. And, as you testified, they were the  
11          welded steps, correct?

12          A. Yes.

13          Q. And these welded steps have a known  
14          history of cracking, correct?

15          A. Yes.

16          Q. Okay.

17          A. The unit also did have several other  
18          steps that had -- did have the newer-style  
19          two-axle steps in the unit.

20          Q. Right. But it -- it -- it had -- it --  
21          it had --

22          A. Some. But mostly the welded units.

23          Q. Got it.

24                 So just to be clear, that at this time,  
25          most of the steps in the down escalator were the



1 Q. That would be KONE?

2 A. That appears to be, yes.

3 Q. Yes. And the -- the bulletin is the  
4 product bulletin?

5 A. From KONE.

6 Q. Okay. Got it.

7 And it says here, quote, Per the attached  
8 document from the OEM, this type of step is prone  
9 to develop cracks, which can cause a serious  
10 safety issue for the riding passengers, close  
11 quote.

12 Do you see that?

13 A. Yes.

14 Q. Do you agree with that assessment?

15 A. Yes.

16 Q. Okay. Did you communicate your  
17 concerns after the inspection to Scott Olsen or --  
18 and/or Larry?

19 A. Yes, and -- as well as Don Hartmann.

20 Q. You also told Don about this?

21 A. Yes.

22 Q. Okay. And you recommended that the --  
23 the steps be replaced immediately?

24 A. Not immediately, but I recommended they  
25 needed replacement, as it says here.

1 Q. Okay. So at the time that this repair  
2 order was generated in September 12th, you had  
3 just finished an inspection following a notice of  
4 violation, correct?

5 A. Yes.

6 Q. And in your inspection, you identified  
7 that more than 30 steps have cracks, correct?

8 A. Yes.

9 Q. And 30 out of 57 is -- I'm sorry -- 30  
10 out of 118 -- and he identifies that -- or whoever  
11 wrote the report -- the report identifies, quote,  
12 A significant amount of your steps already have  
13 cracks, close quote.

14 Do you see that?

15 A. Yes.

16 Q. Would you agree that the 30 out of the  
17 118 constitutes a significant amount?

18 A. Yes.

19 Q. Okay. And you also agree with the  
20 recommendation that all of the steps, all 118, be  
21 replaced?

22 A. Yes.

23 Q. And, in fact, you originally made the  
24 recommendation, and then that ended up in the  
25 report, because you did the inspection?

1 Q. Okay. So --

2 A. As well -- as well as a clean-down was  
3 done too.

4 Q. Right. Right. I'm just talking about  
5 the replacement of the steps.

6 A. Sure.

7 Q. So we have the repair order from  
8 September 12, 2012, recommending the replacement  
9 of 114 steps; we have the October 2nd repair order  
10 with an option for replacing 57 steps; and then we  
11 have the actual work being done in December of  
12 2005 with replacing a few steps, in your  
13 recollection?

14 A. Yes.

15 Q. Okay. So between September 12th, or  
16 whenever the issue first arose, and December 5,  
17 people were using that escalator with cracked  
18 steps?

19 A. Yes.

20 Q. And as is written, it -- that's --  
21 that's a safety issue, right?

22 A. Well, as outlined in Exhibit 3, KONE  
23 says it's okay.

24 Q. Right. No, that's not what I'm asking.  
25 But in your repair orders, that -- that's

1 a safety issue, right?

2 A. I believed it was.

3 Q. You did personally?

4 A. Yes.

5 Q. Okay.

6 MR. IQBAL: Should we take a break? Let's  
7 go off the record.

8 VIDEOGRAPHER: This marks the end of media  
9 number 2. We're going off the record at  
10 1:13 p.m.

11 (Recess taken.)

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1 A. I'm not an expert on safety. I can't  
2 answer that.

3 BY MR. IQBAL:

4 Q. Right. But you just said that when you  
5 get new steps, you also have new rollers, correct?

6 A. Yes. So it would be safer, in turn.

7 Q. Okay. So replacing all 118 steps would  
8 be safer than just replacing 57, correct?

9 A. Yes.

10 Q. Okay. And the difference in the two  
11 repair orders, if you take a look -- I don't -- I  
12 want to make sure that my math is right -- is  
13 89,900 versus 62,200, roughly.

14 Did I read that right?

15 A. Yes.

16 Q. Okay. So it's a difference of \$27,700,  
17 approximately?

18 A. Yes.

19 Q. Okay. And when you make  
20 recommendations for replacement, you're doing that  
21 for, as you said, ease of working on the machine  
22 and also safety, correct?

23 A. Yes.

24 Q. And you wouldn't make any  
25 recommendations just to inflate an invoice,

1 correct?

2 A. No. It doesn't help me at all.

3 Q. Right. So the only recommendations  
4 that you would make would be recommendations that  
5 you think are necessary, correct?

6 A. Necessary.

7 Q. Okay. Do you know, looking at the  
8 account history, what actually happened to this  
9 issue in 2012, if the steps were replaced?

10 A. All the steps? There were -- I know  
11 there was a few steps replaced, but --

12 Q. In 2012?

13 A. Yes. But not all of them.

14 Q. Was -- do you recall if all 57 in the  
15 down escalator were replaced?

16 A. No.

17 Q. You don't recall?

18 A. They weren't replaced.

19 Q. They were not replaced?

20 A. No.

21 Q. Okay. Do you know why they weren't  
22 replaced?

23 A. Not to my knowledge. I know they were  
24 offered from the salesmen. From that point, I  
25 don't know.

1 Q. So if they were offered from Thyssen,  
2 then it was probably Nugget who said no?

3 A. Yes. We usually like doing work for  
4 money.

5 Q. What's that?

6 A. We usually like doing work for money.

7 Q. Right. Right. So the folks saying no  
8 to the repair orders would have been Nugget,  
9 correct?

10 A. To my knowledge, yes.

11 Q. Okay. And they said no to even the  
12 second repair order, that recommended replacing  
13 the 58 steps, correct?

14 A. It doesn't appear to be signed, so,  
15 yes.

16 Q. They said no?

17 A. Yes, they said no.

18 Q. Okay. So they said no to replacing all  
19 118 steps in the first repair order, and they said  
20 no to replacing the 57 steps in this October 2nd  
21 repair order, correct?

22 A. Yes, at that time. Yes.

23 Q. Okay. Can you find for me on the  
24 account -- and -- and after this, we can take a  
25 break, because we need to do a media change. But

1 Q. Okay.

2 A. And if it's critical, they have to be  
3 replaced immediately.

4 Q. Immediately?

5 A. Yes.

6 Q. Okay. And it says "Safety matter."  
7 And with respect to this recommendation,  
8 you thought it was a safety matter at that point?

9 A. Yes.

10 Q. And you, stating the critical  
11 cracking -- any steps that show critical cracking,  
12 you would -- you would recommend that they be  
13 replaced immediately?

14 A. Yes.

15 Q. Other than your inspection and your  
16 recommendation, did you have any other role in  
17 creating this work order?

18 A. No.

19 Q. Okay. This work order came out of the  
20 ThyssenKrupp Las Vegas office, correct?

21 A. Yes.

22 Q. Okay. When would this inspection have  
23 occurred? And you can reference the account  
24 history if you'd like.

25 A. (No response.)



1 but I don't know about the critical steps.

2 Q. Okay. But we don't have any evidence  
3 that the critical steps were replaced between the  
4 work order --

5 A. We don't have any evidence in front of  
6 us, currently.

7 Q. Right. So I just wanted to finish the  
8 question. Sorry.

9 So we don't have any evidence that the  
10 critical steps were replaced between June 16,  
11 2015, when they were identified as critical, and  
12 this August 6th meeting, when you went and checked  
13 out the steps, correct?

14 A. Correct.

15 Q. And then, if you turn to 2019, two  
16 thousand -- JNB 2019, which is the page in front  
17 of that, in the middle, you have an October 5,  
18 2015, entry under Resolution. It says, "Observed  
19 operation of units, customer relations with Don  
20 Hartmann about his escalator steps needing  
21 replaced."

22 You see that?

23 A. Yes.

24 Q. So -- and -- and it has assigned to --  
25 to -- to your name.

1 the proposals that you spoke with Don Hartmann  
2 about were relating to the replacement of the  
3 steps, correct?

4 A. It says "Down escalator"; so, yes.

5 Q. Okay. This was the replacement issue  
6 relating to the June 16, 2015, repair order,  
7 correct?

8 A. Yes.

9 Q. The repair order with the -- the five  
10 critical steps showing cracking -- critical  
11 cracking?

12 A. That same repair order, yes.

13 Q. Okay. So the discussion continued in  
14 November of 2015.

15 Do you know when the steps were actually  
16 replaced?

17 A. Do we have a -- is there any entries in  
18 there in this? If there wasn't at that time, I --  
19 I don't know.

20 Q. It's safe to say that the repairs  
21 happened after November 2015, because that's --

22 A. Yes.

23 Q. -- you were still having discussions  
24 with Don Hartmann at that time?

25 A. Yes.

1 Q. Okay. And if this account history only  
2 goes to the end of 2015, is it safe to say that  
3 those steps were replaced after 2015?

4 A. Yes.

5 Q. Now, going back to 2022, at the top, it  
6 says, "Discuss concerns with Scott Olsen and Larry  
7 Panaro."

8 Do you see that?

9 A. Yes.

10 Q. Okay. And then, right below that, you  
11 have the May 28th entry, "Customer relations with  
12 Don Hartmann about cracked steps and worn step  
13 chain."

14 Do you see that?

15 A. Yes.

16 Q. Okay. So when you communicated your  
17 concerns to Scott and Larry, did they agree with  
18 your concerns?

19 A. Yes.

20 Q. And what did they do after you  
21 communicated your concerns to them?

22 A. I'm not sure.

23 Q. Okay. Did you follow up?

24 A. I followed up, but I'm sure that they  
25 relayed it to Don Hartmann.

1 discussions and June 16th, those steps were still  
2 part of the escalator, correct?

3 A. Yes.

4 Q. And you yourself -- you were the person  
5 who identified those five critical steps, right?

6 A. Yes.

7 Q. So this work order is from June 16,  
8 2015.

9 When were those five critical steps  
10 actually replaced?

11 A. I don't recall. But if it was that  
12 critical, I would have shut the unit down.

13 THE REPORTER: If it was that critical,  
14 what?

15 A. If it was that critical, I would have  
16 turned off the escalator.

17 BY MR. IQBAL:

18 Q. Okay. But on June 16th, it  
19 identifies --

20 A. It's just the proposal.

21 Q. What's that?

22 A. Yes, the proposal.

23 Q. Yes. Yes.

24 The proposal identifies five steps are  
25 showing critical cracking, yes?

1 So you went out there May 7, 2015,  
2 correct?

3 A. Yes.

4 Q. And you were just looking at the  
5 rollers?

6 A. Yes.

7 Q. Okay. And then, at the end of May, as  
8 we established, sometime around May 27th, you  
9 discussed the cracked steps with Don Hartmann,  
10 correct?

11 A. Yes.

12 Q. Okay. So is it your personal belief,  
13 based on the fact that for eight years you were  
14 the one inspecting and handling the down escalator  
15 and the up escalator at the Nugget for Thyssen --  
16 is it your belief that the cracks in the steps on  
17 the down escalator were formed sometime between  
18 May 7, 2015, and May 12, 2015?

19 A. No.

20 MS. MCLEOD: Same objection; also,  
21 argumentative.

22 THE REPORTER: Also what?

23 MR. IQBAL: Argumentative.

24 BY MR. IQBAL:

25 Q. You said no, right?

1 A. Right.

2 Q. So given your almost ten years of  
3 experience now, is it your belief that the cracks  
4 formed sometime before May 7, 2015?

5 A. Yes.

6 Q. Okay. The last entry on this page  
7 shows that you were called -- before we get to  
8 that -- I'm sorry -- let's go back to May 7th.  
9 The description says, "The down esc handrail  
10 squeaking too much." And it says, "Caller, Don."

11 Is it safe to assume that was Don  
12 Hartmann?

13 A. It was.

14 Q. Okay.

15 A. And he believed the handrail was making  
16 a squeaking sound.

17 Q. And when you got there, you disagreed  
18 with that assessment, correct?

19 A. Correct.

20 Q. And, in your belief, it was the step  
21 rollers, and they needed grease?

22 A. Yes.

23 Q. Okay. And you applied the grease?

24 A. I did.

25 Q. Okay. So just two weeks before that,

1 curve, he proceeded to fall down the unit.

2 Q. Did you agree with the inspector's  
3 assessment?

4 A. Yes.

5 Q. You've been asked already a lot of  
6 questions about the step replacements on the  
7 escalators between the 2012 recommendations and  
8 the 2015 recommendations.

9 My question is, assuming that the -- all  
10 of the steps on the down escalator were replaced  
11 in 2012, would it be usual or unusual for those  
12 steps to be cracked in 2015?

13 A. I'm unsure if they were all replaced in  
14 2012. I don't recall that happening.

15 Q. Assume, hypothetically, for purposes of  
16 my question, that they were.

17 A. Assume they were replaced in 2012?

18 Q. Correct.

19 A. In that short amount of time, they  
20 shouldn't crack.

21 MS. MCLEOD: Thank you, sir, for your time  
22 today. I appreciate it. I have no further  
23 questions.

24 MS. MASTRANGELO: I just have a couple of  
25 questions.

# EXHIBIT E

# EXHIBIT E



## Laura Fitzgerald

---

**From:** Panaro, Larry <Larry.Panaro@thyssenkrupp.com>  
**Sent:** Tuesday, October 31, 2017 11:45 AM  
**To:** Olsen, Scott  
**Subject:** FW: Damaged Escalator Steps (Down Unit)  
**Attachments:** GN Laughlin - 5 Esc Steps.pdf; GN Laughlin - 40 Esc Steps.pdf  
  
**Importance:** High

FYI...

Regards,  
Larry Panaro  
Sales Manager - Las Vegas  
ET-AMS/FLD

T: (702) 262-6775, M: (702) 591-9422, ShoreTel 4589, [larry.panaro@thyssenkrupp.com](mailto:larry.panaro@thyssenkrupp.com)

---

**From:** Panaro, Larry  
**Sent:** Thursday, June 25, 2015 3:11 PM  
**To:** Hartmann, Don  
**Cc:** Olsen, Scott  
**Subject:** FW: Damaged Escalator Steps (Down Unit)  
**Importance:** High

Hi Don,

I just wanted to follow up to see if a decision has been made on these escalator steps? In talking to your mechanic (Chris Dutcher) today, he stressed that this necessary repair work should be done very soon to avoid any further damage and/or incidents.

Please let us know if you have any additional questions.

Sincerely,

Larry Panaro  
Account Manager  
Service, Repair and Modernization Sales

**ThyssenKrupp Elevator Americas**  
5440 S. Procyon St., Ste. B  
Las Vegas, NV 89118

Phone: (702) 262-6775  
Cell: (702) 591-9422  
Fax: (866) 248-5612

<mailto:larry.panaro@thyssenkrupp.com>

Monthly Safety Message - Remember: Report all accidents in a timely manner!

---

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---

**From:** Panaro, Larry  
**Sent:** Tuesday, June 16, 2015 4:29 PM  
**To:** Hartmann, Don  
**Cc:** Olsen, Scott  
**Subject:** Damaged Escalator Steps (Down Unit)  
**Importance:** High

Good Afternoon Don,

It was great catching up with you last week. Per our conversation, and your conversations with Chris Dutcher (TKE Mechanic), attached are the proposals to replace the damaged/cracked escalator steps on the "Down" unit at the Golden Nugget Laughlin. As we discussed, this is a safety matter for the riding public. There are currently 40 steps showing signs of cracking, and 5 of the 40 are critical. At this time, we recommend replacing the 40 steps, however, the 5 steps need to be addressed asap.

As you will notice, the price per step is significantly less if all 40 can be replaced at once (versus doing only 5 steps)

Please call me with any further questions or concerns pertaining to this correspondence.

Sincerely,

Larry Panaro  
Account Manager  
Service, Repair and Modernization Sales

**ThyssenKrupp Elevator Americas**  
4145 W. Ali Baba, Suite A  
Las Vegas, NV 89118

Phone: (702) 262-6775

Cell: (702) 591-9422

Fax: (866) 248-5612

<mailto:larry.panaro@thyssenkrupp.com>

Monthly Safety Message - Remember: Report all accidents in a timely manner!

---

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**EXHIBIT F**

**EXHIBIT F**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 JOE N. BROWN, an individual, )  
4 and his Wife, NETTIE J. )  
5 BROWN, an individual, )  
6 Plaintiffs, )

7 vs. ) CASE NO.: A-16-739887-C  
8 ) DEPT NO.: XXXI  
9 )

10 LANDRY'S, INC., a foreign )  
11 corporation; GOLDEN NUGGET, )  
12 INC., a Nevada corporation, )  
13 d/b/a GOLDEN NUGGET LAUGHLIN; )  
14 GNL CORP.; DOE INDIVIDUALS )  
15 1-100; ROE BUSINESS ENTITIES )  
16 1-100, )  
17 Defendants. )

18 AND ASSOCIATED CASES )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

15 DEPOSITION OF RICHARD LOUIS SMITH  
16 RISK MANAGER FOR  
17 GOLDEN NUGGET HOTEL AND CASINO

18 Taken on Thursday, March 15, 2018  
19 At 9:37 a.m.

20 At 101 Convention Center Drive, Suite 1175  
21 Las Vegas, Nevada

22  
23  
24  
25 REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715

1           A.    Yeah.

2           Q.    Could you spell the last name?

3           A.    Fedkiw, F-e-d-k-i-w.

4           Q.    And same question as with the director of  
5 security. Is there a director of risk management for  
6 each of the Golden Nugget properties?

7           A.    At the time that there was a director, there was  
8 only the two. And I believe his relationship with  
9 Laughlin was essentially the as-needed type. They have  
10 risk managers now, rather than directors.

11          Q.    Got it. So you were one risk manager of how  
12 many?

13          A.    Well, I'm the one for Golden Nugget Las Vegas,  
14 and then I imagine there's one at the -- each  
15 jurisdiction would have one.

16          Q.    Got it. And you're --

17          A.    They may be called different stuff too. I mean,  
18 there's somebody that deals with them at the other  
19 properties.

20          Q.    Understood. But specifically for Laughlin,  
21 you're the risk manager for Laughlin?

22          A.    Yes.

23          Q.    So outside of Golden Nugget Laughlin and Golden  
24 Nugget Las Vegas, are you the risk manager for any other  
25 properties?

1           A.    No.

2           Q.    Now, you were a claims administrator/coordinator  
3           until about five or six years ago, and then what  
4           happened? Were you promoted?

5           A.    They changed my title. I guess that would be a  
6           promotion.

7           Q.    Okay.

8           A.    I mean, the job didn't change; just what they  
9           called me changed.

10          Q.    And it changed to risk manager?

11          A.    Yes.

12          Q.    Okay. Any training when you started as a claims  
13          administrator or coordinator?

14          A.    I read the books that you read to take the  
15          associate in claims qualification, but I never took the  
16          tests or anything. And then on-the-job training.

17          Q.    Associate in qualifications?

18          A.    In claims. Associate in claims.

19          Q.    Associate in claims. Was that a requirement  
20          that you start reading the books?

21          A.    No. They were just -- they were available, so I  
22          read them.

23          Q.    Okay. How many books?

24          A.    There's four. There's more than that, but  
25          there's a thing called a track, and so the particular

1       Nugget is Susan Stanton, to the degree that I have one.

2               So, you know, I don't know how you want to sort  
3       that out. It's -- you know, it just depends. I mean,  
4       if I screw up bad enough, there's probably any number of  
5       people all over the place that could, just by making a  
6       big enough stink, cause me to go down the road or force  
7       me to change stuff, but nobody ever does, so --

8       Q.    Gotcha. Do you read every e-mail from  
9       surveillance or security?

10       A.   Usually.

11       Q.   But not all the time?

12       A.   Yeah. I mean, there's stuff that I get, you  
13       know, that just doesn't -- doesn't pertain to me, you  
14       know.

15       Q.   And you can make that determination before  
16       actually reading the e-mail?

17       A.   I can usually make the determination from the  
18       subject line.

19       Q.   Okay. And so based on your review of the  
20       subject line, you may or may not read an e-mail from  
21       security or surveillance; correct?

22       A.   From either one, I'm typically going to get to  
23       them eventually, unless it's something that I know what  
24       it is and doesn't pertain to me.

25       Q.   Got it. And you make that determination based

1 on the subject line?

2 A. Usually, yeah.

3 Q. Okay. So there's some e-mails that you don't  
4 read at all, and there's some e-mails that you decide  
5 that you're going to read later, and then there's some  
6 e-mails you read on the spot?

7 A. Yes.

8 Q. Okay. When you decide that you're going to read  
9 an e-mail later, do you tell yourself when you're going  
10 to read it, or do you just shove it somewhere for later?

11 A. Usually I'll hit the "keep as" -- I don't  
12 actually recall what they call it in Outlook. It's,  
13 like, keep as unread, or mark unread. That's what it  
14 is, mark as unread. So I can go and just bring up the  
15 unread if it's something that's like that.

16 Q. How often do you go through your unread folder?

17 A. It's not a folder. It causes them to remain  
18 highlighted as though I haven't read them yet.

19 Q. Okay. So how long -- or how often do you go  
20 through your unread e-mails?

21 A. It just depends on how much -- I mean, if  
22 security sends me a thing that says, You're not going to  
23 be able to park in the Bridger lot for -- you know, from  
24 Wednesday until the following Monday, I'm probably never  
25 going to look at it because I don't park in the Bridger



1           A.    Yes.

2           Q.    -- with the three asterisks on each side?

3           A.    Yes.

4           Q.    Now, if you flip over to 2046 -- tell me when  
5           you're there.

6           A.    Okay.

7           Q.    At the top right under "ThyssenKrupp Elevator  
8           Americas," it says "Scheduling and Production Request  
9           for Payment," do you see that?

10          A.    Yes.

11          Q.    And then two pages beyond that, JNB\_002048, it  
12          looks like it's very similar to what was on 2040. But  
13          you see the work order and then June 16th, 2015? Do you  
14          see that date?

15          A.    Yes.

16          Q.    Okay. Were you aware of any of the work  
17          described in these orders?

18          A.    I don't believe so.

19          Q.    As you're sitting here today, do you have  
20          personal knowledge of ever reviewing this work order?

21          A.    I don't have any memory of it, if I do.

22          Q.    Is it a typical duty or part of your job to  
23          review stuff from ThyssenKrupp?

24          A.    No.

25          Q.    Okay. Whatever it is from ThyssenKrupp, whether

1 it's an e-mail or a document or a letter or a work  
2 order, if it's regarding a safety issue, do you  
3 typically review it at that point?

4 A. No.

5 Q. Okay. Who would review it?

6 A. Don Hartmann.

7 Q. Okay. And that's -- so that's his area?

8 A. Yes.

9 Q. Okay. When we look at 2048, for example, and it  
10 says "Safety Matter," in your personal opinion, does  
11 this fall under your scope of a risk manager?

12 A. No.

13 Q. Okay.

14 A. I mean, it could potentially, but it didn't.

15 Q. It didn't. Okay. How could it potentially be a  
16 part of your scope?

17 A. Well, if, you know, this was sent and then the  
18 next day, you know, it flew apart and stuff, then it  
19 could very easily be sent to me going, Yeah, no, we just  
20 got this, and the escalator just flew apart.

21 Q. I gotcha. So if something catastrophic happens  
22 with the escalator or if somebody got injured on it, it  
23 could be a risk manager issue but, until that happens,  
24 it's not?

25 A. Correct.

1 (Exhibit 5 was marked for identification.)

2 BY MR. IQBAL:

3 Q. Let me know when you've taken a look at both  
4 pages and you're ready to go.

5 A. Okay.

6 Q. At the second half of that first page, it's an  
7 e-mail from Larry Panaro. He's got a ThyssenKrupp  
8 domain name. It looks like it's an e-mail to Don, and  
9 he talks about -- on that second line he says -- at the  
10 end of that second line he says, "As we discussed, this  
11 is a safety matter for the riding public. There are  
12 currently 40 steps showing signs of cracking, and 5 of  
13 the 40 are critical. At this time, we recommend  
14 replacing the 40 steps, however, the five steps need to  
15 be replaced asap." Do you see that, sir?

16 A. Yes.

17 Q. Okay. Were you made aware of any of the  
18 concerns listed in this e-mail?

19 A. No.

20 Q. Do you have any recollection of hearing about  
21 the escalator steps?

22 A. No. I mean, when we were getting into, you  
23 know, production and that kind of stuff, at one point I  
24 was there digging through flooded boxes trying to find  
25 stuff. And I believe the person that was helping me do

1 when you were doing these Supplemental Responses, did  
2 you read the previous interrogatory at the time, or did  
3 you go off your memory?

4 A. I probably read them at the time.

5 Q. Okay.

6 A. I don't have any particular memory of it. But  
7 it's like, you know, go through, make sure we're not  
8 doing anything that isn't correct, so --

9 Q. Got it. How do you know that this answer is  
10 true?

11 A. I have no reason to believe it isn't, is  
12 probably the short answer.

13 Q. But I guess I'm saying, how do you know?

14 A. I don't. I'm taking -- I mean, basically I'm  
15 the name that's going on this, but it's a corporation  
16 and the information comes from all over and, in this  
17 particular case, it was staff counsel that provided me  
18 with the information.

19 Q. So you -- so this sentence was written by --  
20 when you say "staff counsel," you mean Landry's counsel?

21 A. I don't know specifically who it was written  
22 by --

23 Q. Right.

24 A. -- but it was given to me as being correct.

25 Q. So you didn't write this?

1           A.    No.

2           Q.    Okay.  So you have no independent knowledge that  
3   this is true?

4           A.    No.  It's not really my bailiwick, other than I  
5   have no reason to believe it isn't true.

6           Q.    And when you get something like this, you don't  
7   do any independent investigation?  You just assume  
8   whatever you're given is true?

9           A.    If it is something that is within my bailiwick,  
10   I typically am already going to know about the  
11   information before it goes to them.  If it's something  
12   out of my bailiwick, then I'm going to take the word of  
13   the people that are providing it.  I mean, unless  
14   there's something that comes up that says, Hey, you  
15   know, this may not be true, I have no reason to believe  
16   it isn't true.

17          Q.    If you turn to Page 4, I'm going to read  
18   basically Lines 21 and 22, and this is the Supplemental  
19   Response to Interrogatory No. 4.  "Responds as follows:  
20   GNL Corp. was in control (as defined in Plaintiff's  
21   February 8th, 2017, letter) of the escalator on the date  
22   of the incident."  Did I read that; right?

23          A.    It sounds right.

24          Q.    Okay.  Did you read plaintiff's February 8th,  
25   2017, letter?

1           A.    No.

2           Q.    Okay. Looking at Page 5, I'm going to be  
3 looking at -- asking you a question on the Supplemental  
4 Response to Interrogatory No. 9, and it says on page --  
5 on Line 11, it says, "Responds as follows: Upon  
6 information and belief, Defendant is unaware of anyone  
7 who observed the fall." Did I read that right?

8           A.    Yes.

9           Q.    Okay. And then it lists names of three -- well,  
10 one employee and two former employees -- Ray, and then  
11 Ashley and David. In your personal knowledge, is this  
12 statement true?

13          A.    Not in my personal knowledge.

14          Q.    You don't know?

15          A.    No.

16          Q.    Did you do anything to determine whether that  
17 statement was true?

18          A.    No.

19          Q.    So then going to Page 6, but -- Page 6 has the  
20 Supplemental Response to Interrogatory No. 16, if you  
21 look at Line 2. Do you see that, sir?

22          A.    Yes.

23          Q.    Okay. But then actually Page 5 has  
24 Interrogatory No. 16, and it's three or four lines --  
25 17, 18, 19, and 20. Do you see that?

1 Q. Yeah. I mean, we have --

2 A. Yeah. We looked at them, but that's --

3 Q. Yeah. And you have the exhibits.

4 A. Yeah. If that's correct --

5 Q. You can go to No. 2. Take a look at your  
6 verification page, which is the last page, and it should  
7 say March 3rd.

8 A. Okay.

9 Q. So basically a year ago?

10 A. Yeah.

11 Q. So before a year ago, before the Supplemental  
12 Interrogatory Responses, did you have any awareness of  
13 any safety issues that ThyssenKrupp had raised with  
14 respect to the escalator at Golden Nugget Laughlin?

15 A. Not that I recall.

16 Q. Okay. Who would have been aware of them?  
17 Facilities?

18 A. Yes.

19 Q. And after you were made aware and signed your  
20 Supplemental Interrogatory Responses, you signed the  
21 verification. After that, did you contact Don Hartmann  
22 and talk about the steps?

23 A. No.

24 Q. Okay. In your personal knowledge, has Don  
25 Hartmann ever called you or e-mailed you about the

**EXHIBIT G**

**EXHIBIT G**





**SWETT & ASSOCIATES**  
Elevator Consultants

May 4, 2018

Mr. Mohamed A. Iqbal, Jr.  
Iqbal Law PLLC  
101 Convention Center Drive, Suite 1175  
Las Vegas, NV 89109

RE: Joe Brown v. Landry's, Golden Nugget, GNL Corp. / TKE (3<sup>rd</sup> Party Defendant)

Dear Mr. Iqbal:

The intent of this report is to disclose my opinions and the general basis for those opinions that pertain to the 5-12-2015 escalator incident on the down escalator at the Golden Nugget Casino, Laughlin, NV.

In developing the opinions, I relied on visual inspection of the escalator equipment performed on 5-2-2018 as well as the review of depositions, exhibits, my education and my experience.

**ITEMS REVIEWED AND CONSIDERED:**

- ASME A17.1- 1978, thru 2013 Safety Code for Elevators and Escalators
- Site examination of down escalator at Golden Nugget Casino, Laughlin, NV.
- on 5-2-2018.
- Agreement for Dover Master Maintenance Service with Golden Nugget Hotel & Casino Laughlin, NV dated March 3, 1994.
- Security Video reviewed as recorded of the incident on 5-12-2015.
- DBI, DIR, Mechanical Compliance Section Incident report dated 5/13/15 by Steve Robertson
- DBI, DIR, Mechanical Compliance Section Incident report dated 5/25/15 by Steve Robertson
- TKE Account History Report inclusive of dates 11/30/2012 thru 8/03/2015
- Golden Nugget Incident Report
- Email document number JNB 002187-002191, JNB 002198-0022206, JNB 002208-002209, JNB 002245, JNB 002252-002253, JNB 002255-002256, JNB 002280-002287, JNB 002290
- DBI, DIR, Inspection report dated 1/27/11, 1/24/12, 7/18/12, 1/17/13, 7/16/13, 1/17/14, 7/14/14, 2/11/15, 9/13/16 Inspected by W. Schaefer
- DBI, DIR, Inspection report dated 1/26/17 by JB Underwood
- TKE Repair order dated 6-26-12 in the amount of \$9,308.00.
- TKE Repair order dated 6-26-12 in the amount of \$11,680.00.
- TKE Repair order dated 9-12-12 in the amount of \$89,916.00.
- TKE Repair order dated 6-26-12 in the amount of \$9,308.00

PO Box 7429 • Houston, TX 77248  
TOLL FREE: 888-878-6566 • FAX: 713-690-0004  
www.swetta.com



## **SWETT & ASSOCIATES**

Elevator Consultants

- Golden Nugget PO 19266 in the amount of \$89,916.00
- Golden Nugget PO 1008826 in the amount of \$89,916.00
- TKE Repair order dated 10-2-12 in the amount of \$62,214.00
- TKE Repair order dated 11-1-15 in the amount not to exceed \$11,500.00
- DBI, DIR, Notice of Violation dated 5/26/15
- E-Mail dated 10-31-17 Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Scott Olson
- E-Mail dated 8-10-15 Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Larry Panaro, Don Hartman, cc: Scott Olson, Alan Trantina, Tom MacDonald, Paul Hamrick, Jim MacDavid
- E-Mail dated 8-5-15 4:02pm Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman, cc: Scott Olson, Alan Trantina, Tom MacDonald
- E-Mail dated 8-5-15 3:59pm Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman, cc: Scott Olson, Alan Trantina, Tom MacDonald
- E-Mail dated 8-5-15 3:27pm Subject Damaged Escalator Steps (Down Unit) from Don Hartman to Larry Panaro, cc: Scott Olson, Alan Trantina, Tom MacDonald
- E-Mail dated 8-5-15 3:24pm Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman
- E-Mail dated 6-16-15 4:29pm Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman, cc: Scott Olson
- TKE Work Order dated 6/16/15 TKE Scheduling and Production Request for Payment Reference number ACIA-ZQUYOB pages 1-7
- TKE Work Order dated 6/16/15 TKE Scheduling and Production Request for Payment Reference number ACIA-ZQU21Z pages 1-7
- E-Mail dated 10-31-17 11:45am Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman, cc: Scott Olson
- E-Mail dated 6-17-15 8:45am Subject Damaged Escalator Steps (Down Unit) from Don Hartman to Larry Panaro cc: Scott Olson
- E-Mail dated 6-16-15 4:30pm Subject Damaged Escalator Steps (Down Unit) from Larry Panaro to Don Hartman
- Deposition of Don Hartmann, Director of Facilities, Golden Nugget Laughlin taken on 1-24-2018
- Deposition of Richard Louis Smith, Risk Manager for Golden Nugget Laughlin taken on 3-15-2018
- Report of Findings and Opinions in the matter of: Joe N. Brown an individual and his wife, Nettie J. Brown, an individual v Landry's Inc., Golden Nugget, Inc., GNL Corp, et al CASE NO.: A-167-739887-C, Prepared by: Davis L. Turner & Associates, LLC, December 03, 2017
- Nevada Administrative Code 455C
- Nevada Revised Statutes 455C

### **INTRODUCTION:**

PO Box 7429 • Houston, TX 77248  
TOLL FREE: 888-878-6566 • FAX: 713-690-0004  
[www.swetta.com](http://www.swetta.com)



## **SWETT & ASSOCIATES**

Elevator Consultants

Please note I have been in the vertical transportation industry well over 30 years. I worked as an engineer for 13 years with a major elevator manufacturing company and I have operated my own consulting company doing vertical transportation inspections, engineering, design and expert witnessing for the past 20 or so years.

### **EQUIPMENT BASICS:**

Passenger Escalator  
Montgomery HR  
24" wide  
90 fpm  
Installation 1980  
Manufacturer – Montgomery  
Maintenance Provider – ThyssenKrupp Elevator

### **INCIDENT SUMMARY:**

On May 12, 2015 Mr. Joe Brown and family were guests of Golden Nugget Hotel and Casino in Laughlin, Nevada. The Brown family went from the upper level casino floor to the lower level riverfront to enjoy dinner at a restaurant in the hotel/casino. Mr. Joe Brown entered the upper landing of the down escalator holding the handrail with his left hand and his cane in his right hand. Mr. Brown advised that the escalator step was shaky (unstable). This caused Mr. Brown to lose balance and fall from the upper portion of the escalator to the bottom of the escalator. Mr. Brown was severely injured transported to the local hospital, Western Arizona Regional Medical Center and then airlifted to Sunrise Hospital in Las Vegas with an initial diagnosis of unstable fracture at C1.

### **SITE REVIEW:**

A visual and partial physical inspection of the down escalator, located on the left side if standing on the lower floor looking up at the escalator group was performed. While the escalator was in operation I visually looked at steps, combplates, demarcation lights, caution signage. I rode the escalator applying pressure front to back and side to side on a few escalator steps. I made sure the escalator was adequately barricaded, top and bottom, and then it was removed from service by TKE via the top emergency stop switch. TKE removed the bottom access plates and opened the lower pit. Two steps were removed and the opening was bumped up slowly stopping along the way allowing the truss to be seen (interior of the escalator). After the interior was reviewed TKE closed the escalator and returned the escalator to service. We were escorted to the warehouse and looked at the old steps that were removed

### **CONCLUSIONS**

PO Box 7429 • Houston, TX 77248  
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[www.swetta.com](http://www.swetta.com)



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Elevator Consultants

Findings from depositions, site visit, and exhibits reviewed:

Site review of the existing escalator showed that most of the replacement steps have been installed however there are still some old design escalator steps in the assembly.

Site review of the escalator showed massive dirt is collected on the machine in the upper area of the elevator truss.

Site review showed that the new steps have stabilizing tabs as an integral part of the step to stabilize the step front to back.

The history report provided by TKE which was run on October 30, 2017 and covered from "start date" of 5-1-2010 through "end date" 12-31-2015 and showed:

Two escalator safety tests were performed by TKE in that 4 years and 7 month span. One on 7/14/14 and one on 7/16/13 in the presence of elevator inspector W. Schaefer. The remainder of the inspections were performed without the TKE elevator maintenance mechanics and therefore the escalator was not tested. There is no way to inspect an escalator in accordance with the guidelines of A17.1 without the assistance and testing by a trained maintenance mechanic.

The history revealed in the 4 years and 7 month span 257 1/8 hours of "work" was performed on the subject down escalator. Of that 257+ hours of work reflected in the history report less than 25 hours of maintenance of any kind was performed much less preventative maintenance.

24 1/2 hours was in response to callbacks (broken equipment). A call to fix a broken escalator is not maintenance.

116 1/2 hours was marked as repair. Repair is NOT maintenance and reflects a lack of maintenance.

50 hours were marked as maintenance hours however upon closer investigation they were repair hours.

About 25 hours listed as maintenance hours were possibly actual maintenance, oil, lubricate, adjust..... This reflects an average of 1/2 hour per month, well below industry norms and recommendations.

The remainder of the hours attributed to maintenance were "visual"s, "customer relations" (talking to customers), a general statement of "preventive maintenance" without tasks attached, and surveying for possible future modernization projects.

The history report revealed long periods of time passed with no maintenance whatsoever on the down escalator.

Four months passed from December (arguably from November) of 2014 to April of 2015 with absolutely no maintenance. The April visit which per the history document was a "call" but not listed as a callback started the stepchain, trail rollers, step problems that culminated in Mr. Brown's incident on 5-12-15 followed quickly by the 5-25-15 similar incident and finally resulted in the step chain violation and 90 plus man hours to replace the step chain.



## **SWETT & ASSOCIATES**

Elevator Consultants

No preventative maintenance was done between December of 2013 and May of 2014 which resulted in gearbox failure and a 50 man hour repair/replaced gearbox.

### **OPINIONS**

Escalator maintenance company, ThyssenKrupp Elevator, did not perform preventative maintenance on this escalator in accordance to elevator code and ThyssenKrupp's own maintenance control program (BEEP).

According to A17.1 requirement 8.6.1.2.1(e) *The specified scheduled maintenance intervals shall, as applicable, be based on*

- (1) equipment age, condition, and accumulated wear*
- (2) design and inherent quality of the equipment*
- (3) usage*
- (4) environmental conditions*
- (5) improved technology*
- (6) the manufacturer's recommendations and original equipment certification for any SIL rated devices or circuits (see 8.6.3.12 and 8.7.1.9)*
- (7) the manufacturer's recommendations based on any ASME A17.7/CSA B44.7 approved components or functions.*

This escalator is roughly 38 years old (was roughly 35 years old at time of the incident) and is well into the end of life for this piece of equipment. It resides in a facility that is open 24 hours a day and without proper clean downs runs in pure filth. The Montgomery Model HR has a known and dangerous defect which must be monitored (cracks around the rollers sockets due to design flaw). This flaw has been known since late 1980's and replacement steps are made to correct the issue.

Escalator maintenance company, ThyssenKrupp Elevator, failed to maintain the down escalator at Golden Nugget Casino & Hotel Laughlin, NV in a safe operating condition.

Escalator maintenance company, ThyssenKrupp Elevator, failed to watch over and do adequate preventive maintenance specifically on the step and roller assemblies having had prior knowledge of occurrences and replaced some of them in 2012. This placed the riding public in known danger.

Escalator maintenance company, ThyssenKrupp Elevator, failed to provide the technical knowledge required to service an escalator with such known defects in the step assembly.

Escalator maintenance company, ThyssenKrupp Elevator, failed to provide the supervision and/or oversight to recognize the inherent danger of this equipment and monitor/educate the mechanics.

Escalator maintenance company, ThyssenKrupp Elevator, failed to properly clean the escalator to enable visual inspection of damage to the escalator equipment and step assemblies.



**SWETT & ASSOCIATES**  
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Escalator maintenance company, ThyssenKrupp Elevator, failed to inspect and test the escalator in accordance with A17.1 code requirements.

Escalator owner, Golden Nugget Inc., did not properly oversee the maintenance contractor ThyssenKrupp Elevator and their required adherence to the maintenance contract.

Escalator owner, Golden Nugget Inc., did not properly train employees for escalator emergencies.

Escalator owner, Golden Nugget Inc., did not react/respond when advised of the extreme danger the escalator equipment exposed the unknowing riding public to when advised by their elevator.

Escalator owner, Golden Nugget Inc., did not respond in a reasonable time when ThyssenKrupp advised them of the dangerous cracks in the steps and the correction and cost required to safely return the escalator to service. Owner only approved the minimum work (stepchain replacement) as cited as a violation by the State of Nevada AHJ. Golden Nugget was advised in June of 2015 of the danger and did not replace steps until after end of 2015.

**CONCLUSION**

Based upon investigation and review as well as experience and education my opinion is ThyssenKrupp did not maintain the escalator equipment and could have prevented the 5-12-15 incident with proper preventative maintenance. There was signs of the roller and step issues prior to the event and ThyssenKrupp was unable to recognize the event and was unable to adequately maintain the escalator to make it safe for public use even though there was a similar repair in 2012.

Based on investigation and prior similar events occurring in 2012 I believe Golden Nugget Inc. should have recognized the risk to their customers and acted quickly to partner with ThyssenKrupp and have the equipment immediately repaired or removed from service until it was repaired.

I reserve the right to append, amend and/or change my opinion if additional information regarding the escalator in question is presented.

Respectfully Submitted,

Sheila N. Swett

**Rebuttal to the Rebuttal report from Mr. Davis Turner of the Expert Report of Sheila N. Swett dated May 28, 2018**

**In the matter of: Joe N. Brown an individual and his wife, Nettie J. Brown, an individual. V. Landry's Inc., Golden Nugget, Inc., GNL Corp, et al**  
**Case no: A-167-739887-C**

**Prepared by Swett & Associates, June 4, 2018**

**SCOPE:** This report is prepared on behalf of Mr. & Mrs. Joe N. Brown at the request of Mohamed A. Iqbal, Jr. Esq. as a response to the conclusions and opinion expressed in the Rebuttal to the Expert Report of Sheila N. Swett, and opinions to the deposition of Mr. Richard Louis Smith and Mr. Chris Dutcher.

**Response to Mr. Turner's Rebuttal "6.0" of the Expert Report of Sheila N. Swett.**

- 1) Mr. Turner expressed in his rebuttal in 6.0 to S & A report that it "failed to identify any condition of the escalator that directly caused Mr. Brown to lose his balance and (sic) May 12, 2015." In consideration that the cursory inspection was performed on the escalator equipment almost 3 years after the accident occurred and a little over two years since the majority of the steps were replaced I would volunteer that the escalator had been "repaired" and the culprit of the incident, steps, rollers and chains removed and replaced in kind with new code compliant parts.
- 2) Stretched chains exceeding the maximum code allowable 6mm as cited by State of Nevada Safety Specialist Mr. Travis on State of Nevada Notice of Violation form dated 5/26/15, the day after the second accident in two weeks would more likely indicate a more thorough examination due to the second accident. It takes more than the 13 days between the two accidents for a step chain to stretch beyond acceptable limits.
- 3) On June 16, 2015, immediately following the cleaning of the steps to "look for cracks in steps" as well as ready for replacing the stretched step chain to correct the 5/26/15 Notice of Violation TKE sent a work order for approval to replace the majority of the steps (40 had cracks and 5 of the 40 were critical). TKE advised on the work order **\*\*\*Safety Matter\*\*\*** and further included in the explanation that the cracks "can cause a serious safety issue for the riding passengers."
- 4) The Detroit Free press authored an article an article October 27 of 1995 warning owners to "be aware of potentially dangerous stair cracks during an escalator annual cleaning". The subject escalator did not have an annual cleandown in 2013, 2014 or 2015. Detecting cracks in the steps of a dirty escalator is impossible. "Cracks developing in an escalator's step support structure can cause the step to rock under a rider's weight.....an internal memo obtained by the Free Press, an escalator executive warned his company in 1989 that "these flaws represent a serious potential for injury or death" to the public." "People are playing the odds,"

said Hubert Hayes a well respected consultant and member of the escalator industry's national safety code committee. "It's a serious problem." According to Carl White, a consultant and member of escalator safety code committee "When it comes to a cracked step, there is very little riders can do to protect themselves." The article went on to name multiple buildings with cracked step issues, accidents, injuries, and lawsuits. The problem has been known in the industry since the early 1980s.

- 5) KONE Spares (the KONE parts distributor for KONE) advises in its Escalator Cast Step Replacement Program advertising brochure "Due to age, these steps may be nearing the end of their service life and may also develop Type B cracks, which will require the steps to be replaced." and "Steps that develop a Type B crack must be replaced immediately."

**Response to Mr. Turner's Rebuttal "6.1" of the Expert Report of Sheila N. Swett.**

Mr. Turner advised "the debris in the machinery space did not cause Mr. Brown to lose his balance." First Mr. Brown lost balance as a result of step rocking movement and, the condition of the machinery space was identical to the condition of the cracked steps stored in the storage area. The steps were filthy and they could not have been inspected for damage or cracks during 2013, 2014 or 2015 in that condition since no cleandown was performed.

**Response to Mr. Turner's Rebuttal "6.1.1" of the Expert Report of Sheila N. Swett**

Mr. Turner questioned why the escalator was not taken out of service due to the stretched step change and the greater than 6mm space between steps which is max allowable. First it was not stated how much more than 6mm the space was, second, I too question why it was not taken out of service. Removing a piece of equipment from service is very subjective. As an independent inspector I would have removed the escalator from service and advised whatever AHJ had jurisdiction of my decision. It would then be the AHJ's prerogative to return it to service. (AHJ's do not provide professional liability insurance.)

**Response to Mr. Turner's Rebuttal "6.1.2" of the Expert Report of Sheila N. Swett**

Answered in Rebuttal of "6.1" above.

**Response to Mr. Turner's Rebuttal "6.1.3" of the Expert Report of Sheila N. Swett**

- 1) Cleaning of the upper pit area is required in the "B.E.E.P – Maintenance Basic Elevator and Escalator Procedure" Section 4-3 clearly lists 14 tasks to perform in the "Clean and Lubricate Pit Area" tab.
- 2) Cleaning of the track system is required in the "B.E.E.P – Maintenance Basic Elevator and Escalator Procedure" Section 4-3 clearly lists 9 tasks to perform in the "Clean and Inspect Track System" tab.
- 3) Cleaning of the escalator, referred to as "Cleandown" is required in the "B.E.E.P – Maintenance Basic Elevator and Escalator Procedure" Section 4-4 clearly lists 4



pages of approximately 42 tasks to perform in the "Cleandown" Section which is to be done annually.

- 4) To perform annual escalator tests as required in the "B.E.E.P – Maintenance Basic Elevator and Escalator Procedure" Section 4-5
  - Machine Space (8.11.4.2.1) requires "Verify that machine space is clean, free of oil and combustibles, and clear of unauthorized items."
  - Controller and Wiring (8.11.4.2.3) requires "Visually inspect controller to verify that all components, such as fuses, switches, etc., are correctly rated for their application, are clean, in good condition, and have not been altered or defeated."
- 5) By definition in order to visually inspect equipment it must be clean. The maintenance tasks were not performed as the records show there was not enough time allocated to maintenance to perform the tasks. The task of visually inspecting the steps for cracks occurred directly AFTER the two incidents which first shows TKE did have experience in these issues and were aware the step cracks could be the culprit. Also 40 escalator steps with cracks, some being critical should have been monitored at least annually instead of waiting until accidents were detected. Maintenance occurs to prevent issues or catch issues prior to incidents.

**Response to Mr. Turner's Rebuttal "6.1.4" of the Expert Report of Sheila N. Swett**

The maintenance documents did not show mechanics were onsite during all the interior tests and inspections.

**Response to Mr. Turner's Rebuttal "7.0" of the Expert Report of Sheila N. Swett**

At no time did the S & A report mention the escalator stopped or jerked. The steps were unstable due to the step chain stretched. The distance between steps was over 6mm which is the code maximum limit. The step cracks on 40 steps were found after the accident and should have been found during normal maintenance prior to the accidents. Cracks in steps result in unstable steps and contributed to Mr. Brown's incident.

**Response to Mr. Turner's Rebuttal "8.0" of the Expert Report of Sheila N. Swett**

- 1) Unconditionally the combination of step chain stretch and cracked steps caused the unstable condition of the steps. This is evidenced by the second more thorough state inspection after the second accident occurred as well as the immediate notification via work order and multiple emails and conferences regarding the cracked steps where TKE advised on the work order **\*\*\*Safety Matter\*\*\*** and further included in the explanation that the cracks "can cause a serious safety issue for the riding passengers."
- 2) The seriousness of step cracks is known in the industry. An escalator that has had previous issues with step cracks should be inspected/maintained more often not less often.
- 3) It is the responsibility of the owner to oversee the contractual obligations of their elevator/escalator maintenance provider. TKE did not maintain the escalator and GNL did not properly oversee.

- 4) Additions to original report dated 5/4/18.

**OPINIONS**

The signage for the escalator was not code compliant. A list of rules written in English applied to the ballustrade is both difficult to read and comprehend in the seconds you get on the escalator. The code requires a pictograph warning since language barriers prevent many people from reading a straight list written in English. The pictograph warning sign has been in the elevator code for over 30 years. Also the only sign visible from the escalator to direct anyone to the elevator was hung from the ceiling far to the right of the escalator. It was certainly not in the path to the entrance of the escalator and stairs. During the May 2 2018 visual inspection it was noticed a new sign had been placed directly beside the down escalator at eye/handrail level. There was no sign at the entrance to the up escalator to direct to the nearest elevator. I believe that had a sign been obvious (like it is placed now) at the entrance to the down escalator on the day of the accident the choice of using an elevator would have prevented Mr. Brown's accident however a sign would not correct the deficiencies and condition of the escalator due to step chain stretch and step cracks.

**Mr. Dutcher (TKE mechanic) deposition.**

- 1) Mr. Dutcher (TKE mechanic) states in his deposition that 60 percent time he did not record the maintenance or tasks in the TKE maintenance system because he was too busy. The recording of the time and tasks is a code requirement and a TKE company requirement. If the load on Mr. Dutcher's TKE assigned maintenance route was more than could be recorded I believe it was also more than could be safely performed. Maintenance affects the safety of all vertical transportation equipment and therefore affects the safety of the riding public. An overloaded maintenance route affected the safety of the escalators and also contributed to Mr. Brown's incident.
- 2) Mr. Dutcher (TKE mechanic) also states that he knows about the step crack issues but then states he "doesn't like looking at cracks in the steps". After discovering the cracks and notifying TKE Mr. Dutcher repeatedly advised GNL of the importance of replacement of the cracked steps. Mr. Dutcher advised not only that the 40 cracked steps need to be replaced but it would be better, safer, to replace all the steps. Mr. Dutcher agrees that had all steps been replaced in 2012 steps would not have been cracked in 2015. I am in agreement with Mr. Dutcher the cracked steps should have been replaced immediately and it would have been a safer option to replace all the steps. I believe the cracked steps led to the unstable steps Mr. Brown may have encountered which led to his accident.
- 3) The opinion from my first report that proper maintenance was not performed on this escalator and that had proper maintenance been performed the escalator would have been in a safer working order. Lack of maintenance led to Mr. Brown's escalator accident at GNL.

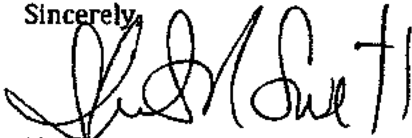
**Mr. Richard Smith (GNL Risk Manager) deposition**

Mr. Smith testified that he goes years without interacting with the Golden Nugget Laughlin staff. Mr. Smith advises he may or may not read emails sent to him from security and may or may not look at security footage sent to him. Mr. Smith believes that "safety matters" regarding escalators do not fall under his position as Risk Manager. Mr. Smith believes that he should get involved only "if something catastrophic happens" and not before. It is my

opinion that a fall down an escalator resulting in a broken neck is catastrophic since a broad definition of catastrophic involves causing sudden great damage or suffering. A second fall down the same escalator within 2 weeks would also be of major safety concern. As head of a department Mr. Smith's belief that safety is not a concern of a risk manager has led to attitudes of lower safety standards on GNL property leading to accidents and incidents such as Mr. Brown faced when riding on unsafe equipment owned and not properly supervised by Golden Nugget.

The writer of the report reserves the right to modify, change, amend, append or supplement the opinions and conclusions contained in this document should additional discovery or documentation be provide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sheila N. Swett', written over a horizontal line.

Sheila N. Swett

Attachment: Sheila N. Swett Resume, Expert Witness Log

4-2017

## RESUME

Sheila N. Swett  
1115 Nicholson Street  
Houston, TX 77008  
(713)-690-7705  
(713) 598-9819

I have been in the elevator business over 30 years working in vertical transportation layout, engineering, field operations, modernization and more recently (last 20 years) as an expert witness, consultant and inspector. I currently own Swett & Associates, an all inclusive elevator consulting and elevator engineering firm as well as Elevator Technical Services and Elevator Contracting Services in Houston, TX., a company that primarily does safety inspection and testing of elevators and escalators. My interests lie strongly in the modernization arena which utilize my experience as well as my commercial and industrial design strengths and analytical skills in both application engineering and construction.

## JOB EXPERIENCE – SUMMARY OF QUALIFICATIONS

Elevator Technical Services  
Elevator Contracting Services  
1201 Nicholson St.  
Houston, TX 77008  
July 1, 2005 – Present

President-ETS and ECS currently test and inspect over 3000 elevator units in the Houston and TX area.

Sheila N. Swett  
Dba Swett & Associates, Inc.  
Swett Consulting

1115 Nicholson  
Houston, TX 77008  
11/96 - Present

Owner - Elevator Modernization Consultant – Elevator/Escalator Inspector (18 years)- Licensed General Contractor (15 years)-Licensed Elevator Contractor (12 years)

QEI certified elevator inspector and in Alabama, Missouri, Texas and Mississippi state registered elevator inspector. Certified as an Elevator Consultant (CEC) by IAEC. I was past president of the International Association of Elevator Consultants from 2010 thru 2012 and am currently Executive Director. I am consultant to the elevator industry at manufacturing level, consulting level and company or installation and engineering level in the arena of elevator modernization. I provide expert witness services in all aspects of the vertical transportation field. I provide elevator/escalator inspections, consulting services, maintenance evaluations, specifications, project management, and contract evaluation to elevator owners and facility managers. I have worked with all major manufacturers in various projects as well as many independent elevator companies. I sit on the ASME code committees for "inspection" and "wind turbine elevators" and am diligently active with the processes of the ASME code committees.

### Buildings and facilities:

- Washington University School of Medicine (140 assorted vertical transportation units on-site) - (Inspector and Consultant) (past 17 years)
- University of Alabama (250 vertical transportation units on site) – (Inspector and Consultant last 10 years). Responsible for consulting and inspection of all university owned equipment as well as all new elevator escalator installations.
- University of Illinois (350 units on site – consulting and inspecting)

- Anheuser Busch, Inc. – St. Louis, MO (90 elevators on site) – (Consultant)
- Convention & Entertainment Facilities, Houston, TX George R. Brown Convention,(26 Escalators, 29 Elevators), Houston Center for Performing Arts, Tranquility Parking Garage (2 Elevators), Jones Hall (6 Elevators), Wortham Theater (12 Elevators, 2 Escalators) – (Inspector, Consultant, Expert Witness)
- Hyatt Headquarters - Chicago, IL (42 elevators) – (Elevator Engineer)
- Chicago Tribune Bldg - Chicago, IL (18 elevators) – (Elevator Engineer)
- Missouri Sewer District – St. Louis, MO (45 units) – (Elevator Inspector)
- Bay Area Transit Authority – San Francisco, CA (80+ elevators) (Court appointed Technical Advisor)
- UT Medical, Houston, TX (43 elevators)
- Texas Medical Center, Houston TX (65 elevators) (Elevator inspector and consultant)
- Jefferson County Birmingham, AL (40+ Elevators) (Inspector and Consultant)
- Kay Bailey Hutchison Convention Center, Dallas TX – (Consultant)

Expert Witness cases: See attached list

**Sheila Swett General Contractors**

1115 Nicholson

Houston, TX 77008

Present

General Contractor - Hold full general contractor license inclusive of industrial, commercial, and residential construction. Past projects include new design of light gage structural steel framing of residential properties. Second generation general contractor, fourth generation trade contractor.

**Dover Elevator Systems, Inc.**

Horn Lake, Mississippi

8/83 - 11/96

**Modernization Mechanical Engineer II**

*Responsibilities included:*

The field survey and factory design of modernization products and elevator systems.

Project Coordinator for all major modernization construction projects in the United States.

Responsible for providing training of field modernization engineers in the survey, design, and estimating phases of elevator modernization.

Responsible for prompt technical assistance regarding modernization problems to architects, consultants, and field organization both domestic and foreign.

Responsible for representing field installation procedures and feedback to factory for product improvement.

Responsible for building and maintaining technical manuals and bulletins for elevator modernization procedures.

Previous positions in the elevator industry included new equipment traction product line engineering and new equipment traction layout.

Previous positions in the elevator industry included new equipment escalator product line engineering and new equipment escalator layout.

## EDUCATION

**University College of Northampton**

Northampton, England

Post graduate work on - MSc - Lift Engineering – Currently enrolled

**University of Alabama**

Tuscaloosa, AL

Post graduate work on Master of Business

**University of Memphis**

Memphis, Tennessee

Enrolled intermittently from 1974 through 1995 in College of Business, GPA 3.7

Awards: Golden Key National Honor Society  
Who's Who in American Colleges

State Technical Institute in Memphis  
Memphis, Tennessee  
Degree: Associate of Engineering Technology  
Major: Mechanical Engineering Technology  
Date: September 11, 1983  
Awards: High Honors  
GPA: 3.813

#### **LICENSES**

"QEC" Qualified Elevator Consultant (one of only eight consultants in the world awarded this designation.)  
"MBE" Certification by Uniform Certification Agency City of Houston  
"DBE" Certification by Uniform Certification Agency City of Houston  
"M/WBE" Certification by NCTRCA for Dallas  
"HUB" Certification by State of Texas Certificate #1202823238200  
Licensed Elevator and Escalator Inspector QEI #1-179 (Currently Certified through National Association of Elevator Safety Authorities "NAESA") since February 1997  
State of Texas Elevator Contractor License  
Numerous individual state Elevator and Escalator Inspector Licenses  
General Contractor License State of Tennessee from 1995 to 2015

#### **PROFESSIONAL MEMBERSHIPS**

National Businesswomen's Leadership Association  
National Association of Women in Construction  
Member of National Association of Elevator Contractors (NAEC)  
International Association of Elevator Consultants (IAEC previously NAVTP) (Current Executive Director) 1995-present  
National Elevator Industry Inc. (NEII) Member serving on architectural committee  
Founding Member of Elevator U, an organization for large facilities solutions (Colleges and Universities)  
ASME Member of a number of subcommittees for various elevator code sections, Existing Elevator Committee, Wind Turbine Elevator Committee (Stand Alone code writer/author), Inspections Committee  
On Board of EESF (Elevator and Escalator Safety Foundation)

#### **COMMUNITY ACTIVITIES**

Volunteer for Elevator and Escalator Safety Foundation "Safe-T Rider Program"  
Active member of Lakewood Church  
Habitat for Humanity volunteer and former member of construction board

## **SUMMARY EXPERT CASES**

**Sheila Swett  
1114 Nicholson St.  
Houston, TX 77008**

(expert for plaintiff team)  
Cooney and Conway (Chicago)  
settled

Plaintiff vs Schindler (expert for plaintiff team)  
New Orleans, LA  
Settled

Plaintiff vs major manufacturer (believe Otis) (expert for the manufacturer)  
McAllen, TX  
OEM released from suit

Plaintiff vs. major manufacturer (believe Amtech which is owned by Otis) (expert  
for the manufacturer)  
Houston, TX  
OEM released from suit

Plaintiff vs. elevator valve manufacturer (expert for the manufacturer)  
Little Rock, Arkansas  
Settled

Amtech Elevator vs Building owner (expert for plaintiff team)  
Bingham, Mann, House, Veenstra (Houston, TX.)  
Settled

Residential Elevator owner vs Elevator contracting company (expert for plaintiff)  
Settled

Plaintiff vs. Otis and building management (expert for building management team)  
Ongoing

Plaintiff vs. Casino and elevator maintenance company (expert for plaintiff team)  
Joliet, Illinois  
Settled

**2012-2013**

**Adrian Rodriguez, individually and on behalf of the estate of cloria rodriguez,  
deceased, Timoteo Rodriguez, Jacinto Rodriguez, and Sara Ochoa, plaintiffs, vs. 1859  
Historic Hotels, Ltd, LHH Hospitality, LLC, GAL-TEX Hotel Corporation, and Otis  
Elevator Company, Defendants.  
Sico, White, Hoelscher & Braugh, LLP, James Hada Atty (Plaintiff) (TEXAS)**

2014

Maria Perez vs. Omni Hotel Management (expert for the owner team)  
Hoblitt Ferguson Darling, LLP, Rebecca M. Rabago (Texas)  
Current

Atkins vs. (expert for plaintiff team)

Bedford Rogers & Bowling, P.C. Jeff Bowling, (Alabama)  
current

Gus Carrales vs TRT Development Company-CCS (expert for the owner team)  
Hoblitt Ferguson Darling, LLP, Rebecca M. Rabago (Texas)  
Current

2015

Karen Carter vs. Metlife Group, Inc, Schindler Elevator Corp, ING Clarion Realty  
Services  
Williams Kherkher, Eloy Gaitan (Texas)

2014-15

Gamino vs Schindler (expert for plaintiff team)  
Buchanan Law Firm (Texas)  
(?)

2015

Gary E. "Chip" Thompson vs Otis Elevator  
BHV Law, Dan Broussard atty for Plaintiff  
(Current, Received pretrial notice 4-4-18)

2014-2015

Sara Berry vs. D.H. Ventures, LLC, Homewood Suites Management LLC, KONE Inc,  
Hilton Worldwide Inc, Homewood Suites by Hilton, John Doe I-X, Jane Doe I-X, White  
Corporations and or Sole Proprietorships  
Law Offices of Jack H. Hirsch (plaintiff attorney) (ARIZONA)  
(?)

2016-2018

Gary Schneider vs Kessler Hospitality LLC., dba Fairfield Inn & Suites and  
ThyssenKrupp Elevator Corporation  
Zehl & Associates – attorney Kevin C. Haynes, Esq. (Plaintiff)  
Settled

2017

Yuriko Robledo and Brandi Marie Oubre vs Hospital Corporation of America. Inc.,  
Houston Pediatric Specialty Group, Clear Lake Regional Medical Center, In., Lincoln  
Harris, LLC and Thyssenkrupp Elevators Corporation



Gonzalez Law Group (Texas)  
Current

2018  
Wayne Warnell and Tonya Warnell vs. Schumacher Elevator Company, Schumacher Elevator Company, Inc. (Iowa) – Brett Beattie on behalf of plaintiff  
Settled

2018  
Nicole Curtis vs Dallas Marriott City Center  
W. Brice Cottongame attorney for plaintiff (Texas)  
Current

2018  
Joe N. Brown, Nettie J. Brown vs Landry's Inc., Golden Nugget Inc, Golden Nugget Laughlin GNL Corp, Doe Individuals, Roe Business Entities  
Iqbal Law PLLC esq (Plaintiff)  
Current

2018  
Fantez Jones vs Starbucks Corporation and HG Galleria, LLC  
The Brown Law Firm, LLP (Plaintiff)  
Current

# EXHIBIT H

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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **JOE N. BROWN, an individual, and his Wife,**  
14 **NETTIE J. BROWN, an individual,**

15 **Plaintiffs,**

16 **vs.**

17 **LANDRY'S, INC., a foreign corporation;**  
18 **GOLDEN NUGGET, INC, a Nevada**  
19 **corporation, d/b/a GOLDEN NUGGET**  
20 **LAUGHLIN; GNL, CORP.;**  
21 **THYSSENKRUPP ELEVATOR CORP., a**  
22 **foreign corporation; DOE INDIVIDUALS 1-**  
23 **100; and ROE BUSINESS ENTITIES 1-100,**

24 **Defendants.**

Case No.: A-16-739887-C

Dept. No.: XXXI

25 **SECOND AMENDED COMPLAINT**

26 **(Amount in Controversy Exceeds \$50,000**  
27 **Arbitration Exemption Requested)**

28 **AND ASSOCIATED CASES**

COME NOW, Plaintiffs Joe N. Brown and Nettie J. Brown by and through their attorneys of record, Iqbal Law PLLC, file this Second Amended Complaint against Landry's, Inc., a foreign corporation; Golden Nugget, Inc., a Nevada corporation d/b/a Golden Nugget Laughlin; GNL, Corp., a Nevada corporation; Thyssenkrupp Elevator Corp., a foreign corporation; DOE Individuals 1-100 and ROE Business Entities 1-100; and allege as follows:

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**SECOND AMENDED COMPLAINT**

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I. THE PARTIES

1. Defendant Landry's, Inc. ("Landry's") is based in Houston, Texas. On information and belief, Landry's, acting directly or through subsidiaries and other related entities, owns and operates more than 500 restaurants, hotels, and casino properties throughout the United States.

2. Defendant Golden Nugget, Inc. ("Golden Nugget") is owned and controlled by Landry's.

3. Defendant GNL, Corp., ("GNL") is owned and controlled by Landry's.

4. Together, Defendants, Landry's, Golden Nugget, and GNL (collectively, "Nugget Defendants") own and operate a resort hotel called the Golden Nugget Laughlin ("Laughlin Nugget"), located in the city of Laughlin in Clark County, Nevada.

5. Defendant Thyssenkrupp Elevator Corporation ("TKE") is a foreign corporation doing business in Clark County and throughout the State of Nevada (the Nugget Defendants and TKE are referred to herein collectively as the "Defendants").

6. Plaintiff Joe N. Brown ("Joe Brown") is a Nevada native and U.S. Army veteran who honorably served his country in Vietnam before returning home to live in Las Vegas. Plaintiff Nettie J. Brown ("Nettie Brown") is his wife. Joe and Nettie Brown (collectively, "Plaintiffs") have been married for over 20 years, and both reside in Clark County, Nevada.

7. The true names and capacities of Defendants DOE Individuals 1 through 100 are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each Defendant designated as DOE Individuals 1 through 100 are legally responsible for the events referred to herein. This Second Amended Complaint will be amended to include them when their true names and capacities become known.

8. The true names and capacities of Defendants ROE Business Entities 1 through 100 are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each Defendant designated

1 as ROE Business Entities 1 through 100 are legally responsible for the events referred to herein.  
2 This Second Amended Complaint will be amended to include them when their true names and  
3 capacities become known.

4 **II. ALLEGATIONS COMMON TO ALL CLAIMS**

5 9. On or about May 11, 2015, Joe and Nettie Brown traveled, with members of their  
6 family, from their Las Vegas home to vacation in Laughlin, Nevada.

7 10. While there, Joe and Nettie Brown stayed nearby the Laughlin Nugget. Plaintiffs'  
8 daughter, Sholanda Marlette, and her husband Clay Marlette, also stayed with Joe and Nettie.

9 11. The evening of May 12, 2015, Joe and Nettie Brown, and Sholanda and Clay  
10 Marlette, went to dinner at one of the restaurants at the Laughlin Nugget. All four boarded the  
11 "down" escalator installed at the Laughlin Nugget.

12 12. Joe Brown, who suffered shrapnel wounds in his legs while serving overseas and  
13 uses a cane when he walks, boarded the Laughlin Nugget escalator last.

14 13. When Joe Brown stepped onto the Laughlin Nugget escalator, the stair he stood  
15 on was loose and unstable.

16 14. Because the Laughlin Nugget escalator stairwell was narrow, and the step was  
17 shaky, Joe Brown was unable to steady himself with his cane. He reached for the escalator  
18 handrail, but was blocked by a stationary metal railing running the length of the escalator and  
19 was unable to steady himself with the handrail.

20 15. As a result, Joe Brown lost his balance and fell down the Laughlin Nugget  
21 escalator.

22 16. As a result of the fall on the Laughlin Nugget escalator, Joe Brown suffered a  
23 broken neck, and numerous additional injuries.

24 17. As a result of his injuries, Joe Brown suffers severe and debilitating pain. He  
25 requires ongoing medical services to treat his injuries and will likely require such services for the  
26 rest of his life.



1 IV. VENUE

2 22. Venue in this action is proper in Clark County, Nevada pursuant to NRS 13.040,  
3 as Defendants conduct business in in this County and it is the place Plaintiffs have designated in  
4 this Second Amended Complaint.

5 23. Venue is further proper in Clark County, Nevada, because Defendants' acts  
6 described herein occurred in this County.

7 V. CAUSES OF ACTION

8 **First Cause of Action - Negligence**

9 24. Plaintiffs re-allege each and every allegation set forth in paragraphs 1-23 above.

10 25. As owners, keepers, and proprietors of the Laughlin Nugget, Defendants  
11 Landry's, Golden Nugget, and GNL owed Joe and Nettie Brown a duty of care, to wit: to design,  
12 install, operate, and maintain the premises in such a way as to keep the premises in a reasonably  
13 safe condition for use.

14 26. As owners, keepers, and proprietors of the escalators installed within the Laughlin  
15 Nugget, Defendants Landry's, Golden Nugget, and GNL owed Joe and Nettie Brown a duty of  
16 care, to wit: to install, operate, and maintain the escalators in such a way as to keep them in a  
17 reasonably safe condition for use.

18 27. As the entity responsible for the servicing and repair of the "down" escalator at  
19 the Laughlin Nugget, Defendant TKE owed Joe and Nettie Brown a duty of care, to wit: to  
20 service and maintain the escalator in such a way as to keep the escalator in a reasonably safe  
21 condition for use.

22 28. Defendants Landry's, Golden Nugget, and GNL breached their duties of care by  
23 negligently designing, installing, operating, and maintaining the stairs, railings, and/or escalators  
24 used to transport persons within the Laughlin Nugget.

25 29. Defendant TKE breached its duty of care by negligently servicing and failing to  
26 repair the escalator used to transport persons within the Laughlin Nugget.

1           30.     As a direct and proximate result of the negligence of Defendants Landry's, Golden  
2 Nugget, and GNL, and Defendant TKE, Joe Brown was injured as described above, and suffered  
3 damages including physical injury, pain and suffering, medical bills, and other damages in an  
4 amount to be proven at trial, which amount exceeds Fifty Thousand Dollars (\$50,000.00).

5           31.     The negligence of Defendants Landry's, Golden Nugget, and GNL, and Defendant  
6 TKE, was such that it constituted fraud, malice, and oppression entitling Plaintiffs to an award of  
7 punitive and exemplary damages.

8                               **Second Cause of Action – Loss of Consortium**

9           32.     Plaintiffs re-allege each and every allegation set forth in paragraphs 1-31 above.

10          33.     As a direct and proximate result of the negligence of Defendants Landry's, Golden  
11 Nugget, and GNL and the injuries to Joe Brown resulting therefrom, Nettie Brown was deprived  
12 of the support, love, companionship, affection, society, and solace of her husband, and suffered  
13 damages, including medical bills and other harms, in an amount to be proven at trial, which  
14 amount exceeds Fifty Thousand Dollars (\$50,000.00).

15          34.     The negligence of Defendants Landry's, Golden Nugget, and GNL, and Defendant  
16 TKE, was such that it constituted fraud, malice, and oppression entitling Plaintiffs to an award of  
17 punitive and exemplary damages.

18                               **VI. PRAYER FOR RELIEF**

19           WHEREFORE, Plaintiffs demand trial by jury and pray for relief as follows:

20           a.     For an award of compensatory damages in an amount in excess of Fifty Thousand  
21 Dollars (\$50,000.00), to be proven at trial;

22           b.     For an award of punitive and exemplary damages, in a fair and just amount in the  
23 discretion of the Court, for the sake of example and by way of punishing Defendants;

24           c.     For an award of costs and reasonable attorneys' fees; and

25           ///

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28                               **SECOND AMENDED COMPLAINT**

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Respectfully Submitted,

By: /s/ Mohamed Iqbal

Christopher Mathews (NSB #10674)

*Attorneys for Plaintiffs Joe N. Brown and  
Nettie J. Brown*

# I LAW IV



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11 THYSSENKRUPP ELEVATOR CORPORATION

7 DISTRICT COURT  
8  
9 CLARK COUNTY, NEVADA

10 JOE N. BROWN, an individual, and his wife,  
11 NETTIE J. BROWN, an individual,

12 Plaintiffs,

13 vs.

14 LANDRY'S INC., a foreign corporation;  
15 GOLDEN NUGGET, INC., a Nevada  
16 corporation d/b/a GOLDEN NUGGET  
17 LAUGHLIN; GNL, CORP., a Nevada  
18 corporation; DOE INDIVIDUALS 1-100,  
19 ROE BUSINESS ENTITIES 1-100,

20 Defendants.

21 GNL, CORP., a Nevada corporation;

22 Third-Party Plaintiff,

23 vs.

24 THYSSENKRUPP ELEVATOR CORPORATION  
25 a foreign corporation; DOES 1-75; ROE  
26 CORPORATIONS 1-75 and ROE  
27 CORPORATIONS 1-25,

28 Third-Party Defendants.

CASE NO. A-16-739887-C  
DEPT. NO. XXXI

DATE OF HEARING: 08/07/18  
TIME OF HEARING: 9:00 a.m.

26 **THIRD-PARTY DEFENDANT THYSSENKRUPP ELEVATOR**  
27 **CORPORATION'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE**  
28 **TO FILE SECOND AMENDED COMPLAINT**

Third-Party Defendant, Thyssenkrupp Elevator Corporation ("TKE"), by and through its

1 attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
2 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Opposition to Plaintiffs'  
3 Motion for Leave to File Second Amended Complaint.

4 This Opposition is based upon the pleadings and papers on file herein, the accompanying  
5 Memorandum of Points and Authorities and oral argument, if any, at the time of the hearing on this  
6 matter.

7 **POINTS AND AUTHORITIES**

8 **I.**

9 **INTRODUCTION AND RELIEF SOUGHT**

10 This case involves an incident which occurred on **May 11, 2015**, on the down escalator at  
11 the Golden Nugget Laughlin ("GNL"). Plaintiffs' First Amended Complaint filed on **September**  
12 **1, 2016** alleges as follows (Exhibit "A"):

- 13 11. Joe Brown, who suffered shrapnel wounds in his legs while serving overseas and  
14 uses a cane when he walks, boarded the Laughlin escalator last.
- 15 12. When Joe Brown stepped onto the Laughlin Nuggets Escalator, the stair he stood  
16 on was loose and unstable.
- 17 13. Because the Laughlin Nugget escalator stairwell was narrow, Joe Brown was  
18 unable to steady himself with his cane. He reached for the escalator handrail, but  
19 was blocked by a stationary metal railing running the length of the escalator and  
20 was unable to steady himself with the handrail.
- 21 14. As a result, Joe Brown lost his balance and fell down the Laughlin Nugget  
22 escalator.

23 See First Amended Complaint, attached hereto as Exhibit "A."

24 Plaintiffs' First Amended Complaint alleges that Defendants GNL, Golden Nugget and  
25 Landry's owed Plaintiff a duty of care, and negligently designed, installed, operated and  
26 maintained the stairs, railings and /or escalators, causing injuries and damages to Plaintiffs.  
27 Notably, although DOE Defendants are named in the First Amended Complaint, no specific  
28 allegations of negligence are alleged against them.

1 After Plaintiffs filed suit against GNL, GNL then filed a Third-Party Complaint against  
2 TKE alleging breach of contract, breach of express and implied warranties, and seeking  
3 apportionment and contribution as well as equitable indemnification against TKE. TKE filed its  
4 answer to the TPC on February 17, 2017, and, as Plaintiffs' motion fully admits, TKE has been  
5 involved in this matter "since nearly the beginning." (Motion at page 11).

6 Plaintiffs waited until July 4, 2018 at 12:01 a.m.<sup>1</sup> to file their Motion to Amend, which  
7 failed to include the applicable Nevada case authorities governing the standard for a motion to  
8 amend. Furthermore, Plaintiffs' Motion does not factually describe how the claims made against  
9 a new defendant are not barred by the running of the statute of limitations. All of Plaintiffs'  
10 claims are for personal injuries/wrongful death and are thus governed by the two-year statute of  
11 limitations codified in NRS 11.190(4)(e). The statute of limitations has clearly expired and  
12 Plaintiffs' Motion does not even inform the court of this fact let alone address long-standing  
13 Nevada case law precluding the relief Plaintiffs seek.

14 Defendant TKE therefore opposes Plaintiffs' untimely and frivolous motion, which does  
15 not contain the necessary discussion of the governing law or applicable facts, in violation of  
16 NRCP 11.<sup>2</sup>

## 17 II.

### 18 STANDARD OF REVIEW AND SUMMARY OF ARGUMENT

19 Plaintiffs' motion argues that leave to amend should be granted under NRCP 15 and  
20 *Forman v. Davis*, 371 U.S. 178 (1962). Plaintiffs' motion does not discuss any Nevada case law  
21 concerning the status of a Third-Party Defendant or a motion filed after the statute of limitations  
22

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23 <sup>1</sup> The deadline to file a motion to amend the pleadings was July 3, 2018. Thus, Plaintiffs waited until the  
24 expiration of the period to file the instant motion, or even if construed as timely filed, literally the last possible  
second before expiration of the time period.

25 <sup>2</sup> Plaintiffs' motion takes seven pages to factually describe alleged bad conduct by the Defendants, none of  
26 which is actually relevant to the standards for granting a motion to amend. Notably absent from this factual diatribe  
27 are any facts outlining why a motion to amend would be properly granted under NRCP 10. Plaintiffs' Motion also  
seeks leave to amend to add a prayer for punitive damages against Golden Nugget; however, their existing First  
Amended Complaint already contains that prayer. (Exhibit "A" at page 5 of 6.)

1 has expired. Plaintiffs do not address the standard for substituting a new defendant in place of a  
2 DOE or ROE fictitious defendant.

3 Plaintiffs' motion is not governed by NRCP 15, as TKE is only a Third-Party Defendant  
4 under NRCP 14, and was never joined to Plaintiffs' action prior to the running of the statute of  
5 limitations on May 11, 2017. See *Frankel v. Back*, 37 F.R.D. 545, 548-49 (E.D. Pa. 1965<sup>3</sup>)  
6 ("Rule 15 applies to those instances where the party seeking amendment has theretofore asserted  
7 a claim against another party to the action and is merely amending that pleading to assert a  
8 further claim against the same party, enlarge his original claim or to have the pleadings conform  
9 to the proofs adduced at the trial of the cause.") Instead, Plaintiffs' proposed Second Amended  
10 Complaint could only be proper under NRCP 10, which requires compliance with the factors  
11 outlined in *Nurenberger Hercules-Werke GMBH v. Virotek*, 107 Nev. 873, 881, 882 P.2d 1100  
12 (1991).

13 Plaintiffs' motion is without merit and must be denied, as:

- 14 1. The motion is governed by NRCP 10, not NRCP 15;
- 15 2. The statute of limitations has expired;
- 16 3. Plaintiffs' failure to amend prior to the running of the statute of limitations was a  
17 legal choice pursuant to *Reid v. Royal Ins. Co.*, 80 Nev. 137, 141, 390 P.2d 45, 47  
(1964);
- 18 4. Plaintiffs' pleading did not name specific DOE DEFENDANTS to comply with  
19 NRCP 10, but instead utilized them as a catch-all as a precaution in violation of  
20 *Nurenberger* and *Cruz v. Durbin*, 2014 WL 5449710, at \*3-4 (D. Nev. Oct. 17,  
21 2014); and
- 22 5. Plaintiffs did not exercise reasonable diligence in moving to amend.

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24 <sup>3</sup>Federal cases interpreting the analogous federal rules are strong persuasive authority as to the meaning of  
25 Nevada's Rules of Civil Procedure. *Ford v. Branch Banking & Tr. Co.*, 131 Nev. Adv. Op. 53, 353 P.3d 1200, 1202  
26 (2015); *Executive Mgmt., Ltd. v. Ticor Tile Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) ("Federal cases  
27 interpreting the Federal Rules of Civil Procedure "are strong persuasive authority, because the Nevada Rules of Civil  
28 Procedure are based in large part upon their federal counterparts.").

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III.

**LEGAL ARGUMENT**

A. **NRCP 15 does not apply to Plaintiffs' motion to amend.**

NRCP 15 applies to those cases where a party is seeking to amend a claim against a previously named direct defendant. See *Frankel v. Back*, 37 F.R.D. 545, 548–49 (E.D. Pa. 1965) (emphasis added):

The plaintiff finally contends that Rule 15(a) permits the amendment of a pleading at any time where justice so requires, citing *Copeland Motor Co. v. General Motors Corp.*, 199 F.2d 566 (5th Cir. 1952). The problem with this argument is that Rule 15 applies to those instances where the party seeking amendment has theretofore asserted a claim against another party to the action and is merely amending that pleading to assert a further claim against the same party, enlarge his original claim or to have the pleadings conform to the proofs adduced at the trial of the cause. In the instant case, plaintiff never filed a claim against the third party defendant so that the requested amendment would amount to an original claim against the third party defendant after the statute of limitations has run and not the amendment of a pleading already filed setting forth a claim against the third party defendant.

On the basis of the foregoing opinion, the plaintiff's motion to amend his complaint to assert a claim against the third party defendant directly should be denied.

TKE is not, and has never been, a direct Defendant, but a Third-Party Defendant under NRCP 14. And, as a Third-Party Defendant under NRCP 14, TKE is entitled to assert the expiration of the statute of limitations as to any direct claim against it by Plaintiffs. See e.g., *Bishop v. Atmos Energy Corp.*, 161 F.R.D. 339, 340–41 (W.D. Ky. 1995); citing Wright & Miller, *Federal Practice and Procedure*, § 1459, p. 450; 3 *Moore's Federal Practice* § 14.09; and *Frankel v. Back*, 37 F.R.D. 545, 547–48 (E.D.Pa.1965) (holding that a statute of limitation will bar untimely claims asserted by plaintiffs against third-party defendants). See also *Netherlands Ins. Co. v. MD Plumbing & Heating, LLC*, 2011 WL 832555, at \*2 (D. Conn. Mar. 3, 2011):

As this Court has previously had occasion to recognize, it is well established that under Rule 14(a)(3), "any claim existing between plaintiff and the third-party defendant is subject to the applicable statute of limitations; the statute is neither tolled nor waived upon the third-party defendant's entry into the action but continues to run until the plaintiff actually asserts the claim against the third-party defendant, or, if the time period runs before the action is commenced, serves as a bar to the claim at the outset." 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1459, at 526 (3d ed.2010); see *Gouveia v. Sig Simonazzi North America, Inc.*, No. 3:03cv597 (MRK), 2005 WL 293506, at \*2 (D.Conn. Jan. 11, 2005) (denying leave to

1 amend complaint to add direct claims against a third-party defendant where the statute of  
2 limitations on those claims had run).

3 See also *Fed. Ins. Co. v. Lighthouse Const., Inc.*, 230 F.R.D. 387, 390 (D. Del. 2005):

4 Courts interpreting Rule 14(a) have not permitted the rule to be used to add a claim which  
5 is barred by the applicable statute of limitations. See e.g. *Dysart v. Marriott Corp.*, 103  
6 F.R.D. 15, 18 (E.D.Pa.1984) (permitting plaintiff to file a claim against third-party  
7 defendant under Rule 14(a) "at any time before the statute of limitations has run");  
8 *Carroll v. USA*, 149 F.R.D. 524, 527 (W.D.La.1993) (holding that Rule 14(a) "does not  
9 envision the revival of an action barred by the statute of limitations"). In this case,  
10 Federal's claim arose from the partial roof collapse on February 17, 2003. The applicable  
11 statute of limitations for this action is two years as provided in 10 Del. C. § 8107.  
12 However, Federal did not file its Motion For Leave To File Rule 14(a) Claim Against  
13 East Coast until March 8, 2005, shortly after the expiration of the two-year limitations  
14 period. Federal has not made any argument that the statute of limitations should be tolled,  
15 and therefore, the Court concludes that Federal's claim against East Coast is barred by the  
16 statute of limitations.

17 As **admitted** by Plaintiffs in the motion, they were long aware of TKE, as TKE was  
18 involved in this action **prior** to the running of the statute of limitations. TKE answered the TPC  
19 on February 17, 2017 and the statute of limitations expired on **May 11, 2017**. Thus, Plaintiffs  
20 had an abundance of time within which to file a direct action against TKE, but decided not to do  
21 so. A plaintiff does not have to accept a third-party defendant into its case if it does not wish to  
22 do so. This decision by the Brown Plaintiffs was not a mistake, but a deliberate choice. See *Reid*  
23 *v. Royal Ins. Co.*, 80 Nev. 137, 141, 390 P.2d 45, 47 (1964):

24 However, if a new party is impleaded, it is optional with the plaintiff whether he will  
25 accept the third-party defendant as a defendant in his (the plaintiff's) case. The rule is  
26 clear in this respect. It states: "The plaintiff may assert any claim against the third-party  
27 defendant arising out of the transaction or occurrence that is the subject matter of the  
28 plaintiff's claim against the third-party plaintiff."

Because of these clearly defined principles, it is apparent, in the case before us, that the  
judgment for the plaintiffs against the third-party defendant (subcontractor) cannot stand.  
The plaintiffs never sought to impose a liability upon the subcontractor. Even after the  
subcontractor was impleaded by the named defendant (contractor) the plaintiffs did not  
choose to amend their complaint to accept the subcontractor as an additional defendant in  
their case. We can only conclude that they were satisfied with the validity of their case  
against the general contractor and were willing to win or lose on that claim for relief.

TKE could not have known whether Plaintiffs would also seek to hold it liable after the  
filing of the Third-Party Complaint, but TKE was clearly allowed to rely upon the absence of  
such allegations after the statute of limitations ran on **May 11, 2017**, more than a year prior to

1 Plaintiffs' Motion to Amend. See *Curry v. Johns-Manville Corp.*, 93 F.R.D. 623, 626–27 (E.D.  
2 Pa. 1982) (emphasis added):

3 Moreover, the more reasonable inference to draw from the circumstances of this case is  
4 that third-party defendants had no reason to know, prior to the filing of plaintiffs' motion  
5 for leave to amend, that plaintiffs wished to assert direct claims against them. Plaintiffs  
6 presumably made some determination prior to filing their complaint of who most likely  
7 sold the products to which Mr. Curry was exposed. Tactical considerations may have  
8 entered into plaintiffs' decision to sue only the original defendants, instead of launching a  
9 broader attack on the asbestos industry. Pacor's decision to bring additional parties into  
10 the suit may also have been based in part on tactical considerations. To the extent Pacor's  
11 joinder of additional asbestos sellers was based on better information than that hitherto  
12 available to plaintiffs, plaintiffs certainly knew the identities of these additional  
13 companies by June of 1981. At that point, plaintiffs had four months within which to  
14 move for leave to amend before October 17, 1981, when their cause of action would  
15 arguably become barred according to the allegations of their own complaint. However,  
16 plaintiffs made no attempt to assert direct claims against the third parties until November.  
17 Under these circumstances, third-party defendants may have inferred quite reasonably  
18 that plaintiffs' failure to take prompt action to assert direct claims against them was a  
19 matter of deliberate tactical choice, not error.

20 Plaintiffs knew, almost from the beginning of this litigation as admitted in their own  
21 Motion, that TKE was a potential party. Plaintiffs chose not to sue TKE before the statute ran,  
22 even knowing that TKE was made a Third-Party Defendant. Plaintiffs must live with the  
23 deliberate choice that they made. See *Netherlands Ins. Co. v. MD Plumbing & Heating, LLC*,  
24 2011 WL 832555, at \*3 (D. Conn. Mar. 3, 2011):

25 While Netherlands Insurance is surely correct that Allied Sprinkler and Central  
26 Connecticut Fire both had notice such that they would not be prejudiced in defending  
27 claims brought directly by Netherlands Insurance, see Fed.R.Civ.P. 15(c)(1)(C)(i), the  
28 Court concludes that Netherlands Insurance has not—and indeed cannot—make the  
required showing under Rule 15(c)(1)(C)(ii). Just like the plaintiff in *Gouveia*,  
Netherlands Insurance knew the identity of Allied Sprinkler and Central Connecticut Fire  
long before the statute of limitations ran on the claims it now seeks to bring against those  
third-party defendants. See 2005 WL 293506, at \*4.

Under that circumstance—that is, where a plaintiff knows the identity of the third-party  
defendant before the statute of limitations runs, but waits until after the statute of  
limitations has run to bring direct claims against the third-party defendant—the plaintiff's  
failure to name to proper defendant results from the plaintiff's own choice, and not from  
“a mistake concerning the proper party's identity.” Fed.R.Civ.P. 15(c)(1)(C)(ii); see  
*Gouveia*, 2005 WL 293506, at \*4 (citing, among others, *Rendell-Speranza v. Nassim*,  
107 F.3d 913, 918–19 (D.C.Cir.1997); *Lundy v. Adamar of New Jersey, Inc.*, 34 F.3d  
1173, 1183 (3d Cir.1994); *Cornwell v. Robinson*, 23 F.3d 694, 705 (2d Cir.1994)).  
Netherlands Insurance had ample time to assert timely direct claims, but it chose not to do



1 so. See Gouveia, 2005 WL 293506, at \*4.

2 For those reasons, Netherlands Insurance Co.'s Motion for Leave to File Claims Against  
3 Third-Party Defendants [doc. # 56] is DENIED.

4 Moreover, leave to amend under NRCP 15 would not be proper, as Plaintiffs were clearly  
5 untimely in seeking leave to amend. Even if the Motion is considered timely filed on July 4,  
6 2018, Plaintiffs waited for more than a year after TKE was added as a Third-Party Defendant to  
7 make the Motion. Plaintiffs unduly delayed seeking amendment under NRCP 15 and cannot  
8 claim reasonable diligence. To determine reasonable diligence, courts consider three factors.  
9 *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 295, 255 P.3d 238, 243 (2011):

- 10 1. whether the party unreasonably delayed amending the pleadings to reflect the true  
11 identity of a defendant once it became known,
- 12 2. whether the plaintiff utilized “ ‘judicial mechanisms such as discovery’ ” to  
13 inquire into a defendant's true identity, and
- 14 3. Whether a defendant concealed its identity or otherwise obstructed the plaintiff's  
15 investigation as to its identity.

16 Defendant TKE never concealed its identity or otherwise obstructed Plaintiffs'  
17 investigation of this incident. By Plaintiffs' own admission, they chose not to seek leave to  
18 amend until now, despite their knowledge of TKE. Plaintiffs waited more than a year to seek  
19 court approval for the second amendment of the Complaint. Thus, Plaintiffs cannot show  
20 reasonable diligence, because they failed to promptly move to amend.

21 **B. Plaintiffs' Complaint fails to comply with *Nurenberger*.**

22 In actuality, amendment of the complaint to add TKE as a direct Defendant must be  
23 determined under NRCP 10, and such a decision is controlled by *Nurenberger Hercules-Werke*  
24 *GMBH v. Virotek*, 107 Nev. 873, 881, 882 P.2d 1100 (1991). This decision which has been  
25 good law in the State of Nevada for 27 years, created a three-part test for whether an amended  
26 pleading, which adds a new party, relates back to an original pleading. The Supreme Court of  
27 Nevada therein held that the amended pleading will relate back only if the plaintiff (1) originally  
28 plead “fictitious or doe defendants in the caption of the complaint,” (2) originally plead “the

1 basis for naming defendants by other than their true identity, and clearly specifying the  
2 connection between the intended defendants and the conduct, activity, or omission upon which  
3 the cause of action is based” and (3) exercised “reasonable diligence in ascertaining the true  
4 identity of the intended defendants and promptly moving to amend the complaint in order to  
5 substitute the actual for the fictional.” *Id.*

6 While Plaintiffs’ initial Complaint contained DOE/ROE Defendants, the complaint did  
7 **not** plead the basis for naming such defendants by other than their true identity, nor did the  
8 complaint clearly specify the connection between the intended defendants and the conduct,  
9 activity, or omission. The DOE paragraph at issue in *Nurenberger* stated:

10 Fictitious Defendants DOES I-V, XYZ Partnerships I-V and ABC Corporations I-V are  
11 those parties whose identities currently are unknown to Plaintiff but who may have  
12 caused or contributed to the conduct and or omissions complained of by Plaintiff herein.  
When the true names of those fictitious Defendants are discovered, they will be  
substituted into this Complaint accordingly.

13 Very similarly, Plaintiffs’ DOE paragraph in the instant case states (emphasis added):

14 The true names and capacities of Defendants DOE Individuals 1 through 100, are  
15 presently unknown to Plaintiffs, who therefore sues said Defendants by such fictitious  
16 names. **Plaintiff is informed and believes, and thereupon alleges that each  
Defendant designated as DOE Individuals 1 through 100 are legally responsible for  
the events referred to herein. The First Amended Complaint will be amended to  
include them when their true names and capacities become known.**

17 (Exhibit “A” at paragraph 6.)

18 Plaintiffs’ vague DOE/ROE allegations do not indicate the basis for naming defendants  
19 by other than their true identity, and do not at all specify **any** connection between the intended  
20 defendants and the conduct or activity upon which the cause of action is based. Thus, Plaintiffs’  
21 originally plead DOE/ROE paragraph is insufficient to allow relation back of the amendment  
22 under NRCP 10. See *Cruz v. Durbin*, 2014 WL 5449710, at \*3–4 (D. Nev. Oct. 17, 2014):

23 Neither prong is satisfied. Regarding the second prong, Cruz’s original complaint named  
24 Roe Defendants that “are responsible in some manner” for the accident. (Compl. (# 1–3)  
25 at ¶ 5). This generalized allegation is what *Nurenberger* precludes: precautionary  
26 placeholders. To satisfy *Nurenberger*’s second prong, the original pleading must allege  
27 facts that point to an intended-but-presently-unidentified defendant. *Nurenberger* states  
that the original pleading must show who the “intended,” “target[ed],” or  
“contemplate[d]” defendant is, “notwithstanding the uncertainty of their true identit[y]”.  
*Nurenberger*, 107 Nev. at 880–81 (citations omitted).

1           Additionally, Plaintiffs' First Amended Complaint only asserts actual allegations against  
2 Defendants GNL and Landrys. There are no other specific allegations against any other  
3 Defendant, not even a DOE or ROE Defendant. Nevada case law clearly provides that DOE  
4 defendants are not allowed to be utilized simply as a precautionary measure to avoid the statute  
5 of limitations. *Nurenberger Hercules-Werke GMBH v. Virotek*, 107 Nev. 873, 881, 822 P.2d  
6 1100, 1105-06 (1991):

7           First, and most obvious, the rule we now provide is applicable only where a plaintiff has  
8 utilized the pleading latitude afforded by Rule 10(a). Second, it should be clear that  
9 fictitious defendants may not be properly included in a complaint merely as a  
10 precautionary measure in the event theories of liability other than those set forth in the  
11 complaint are later sought to be added by amendment. In other words, there must be a  
12 clear correlation between the fictitious defendants and the pleaded factual basis for  
13 liability. This element of the rule supplies the basis for recognizing the intended  
14 defendants who, in legal contemplation, are parties to the cause of action.

15           In Plaintiffs' First Amended Complaint allegations are only made against GNL and  
16 Landrys, not TKE nor even a DOE. Pursuant to *Nurenberger* and *Cruz*, such allegations are  
17 what these cases specifically prohibit, including DOE Defendants in a complaint listed merely as  
18 a precautionary measure. Plaintiffs' First Amended Complaint did not identify any DOE  
19 defendant as a potential defendant, with the intention to conduct discovery, and then substitute  
20 the true name for a DOE defendant as required by *Nurenberger Hercules-Werke GMBH v.*  
21 *Virotek*, 107 Nev. 873, 881, 822 P.2d 1100, 1105-06 (1991):

22           Third, and last, Rule 10(a) was not intended to reward indolence or lack of diligence by  
23 giving plaintiffs an automatic method of circumventing statutes of limitations. Plaintiffs  
24 utilizing the pleading latitude provided by Rule 10(a) must exercise reasonable diligence  
25 in pursuing discovery and other means of ascertaining the true identity of the intended  
26 defendants, and then promptly move to amend their complaints pursuant to Rule 10(a).

27           Plaintiffs never intended to utilize NRCP 10 as a method to substitute TKE for a DOE  
28 Defendant. Plaintiffs did not intend to exercise reasonable diligence in conducting discovery of  
the escalator maintenance company's name because they already knew TKE was involved, yet  
they did not sue TKE in the Complaint before or even after TKE became a Third-Party  
Defendant, nor before the statute of limitations ran. Plaintiffs did not fail to name TKE because

1 they lacked information to discover TKE's identity. They already knew it. This knowledge and  
2 intent precludes amendment under NRCP 10(a). See *Ocasio v. Perez*, 2017 WL 1097190, at \*6  
3 (D. Nev. Mar. 22, 2017), appeal dismissed sub nom. *Ocasio v. Gruner*, 17-15741, 2017 WL  
4 3124200 (9th Cir. June 15, 2017):

5 Rule 10(a) cannot avail Plaintiff here, however, because this is not a case where "despite  
6 reasonable diligence, the true identity of culpable parties is uncertain or unknown to  
7 plaintiff." *Nurenberger*, 822 P.2d at 1103. Indeed, Plaintiff admits that his original  
8 Complaint failed to name Tanner not because he lacked information to discover Tanner's  
9 identity, but because "Plaintiff did not have his notes with him at the time he drafted the  
10 complaint and was writing it off the top of his head." (Resp. 14:19-21).

11 Consequently, Plaintiff cannot invoke Rule 10(a) to avoid the statute of limitations as to  
12 Tanner, and the Court therefore DISMISSES Plaintiff's claims against Tanner with  
13 prejudice.

14 The allegations in Plaintiffs' Complaint, and the admission in the Motion as to Plaintiffs'  
15 knowledge are clearly opposed to any intention to properly plead and discover the true name of  
16 an unknown escalator maintenance company as a proper DOE Defendant. All of the actual  
17 evidence shows that Plaintiffs included DOE Defendants in the complaint as a mere precaution  
18 or as part of a cut and paste form, which is clearly insufficient under *Nurenberger*.

19 Finally, under NRCP 10(a), Plaintiffs must be proactive. Plaintiffs cannot wait for  
20 unknown defendants to be made known, but they must proactively seek to identify such  
21 defendants if they want the protections of NRCP 10(a). *Sparks v. Alpha Tau Omega Fraternity,*  
22 *Inc.*, 127 Nev. 287, 294, 255 P.3d 238, 243 (2011):

23 In *Nurenberger*, we recognized that plaintiffs must proactively seek to identify unknown  
24 defendants in order for an amendment made pursuant to NRCP 10(a) to relate back to the  
25 filing date of the original complaint, and we therefore included a reasonable diligence  
26 requirement as the third factor. 107 Nev. at 881, 822 P.2d at 1105. The reasonable  
27 diligence requirement is intended to guard against the abuse of Doe and Roe defendants  
28 as placeholders during the commencement of litigation and "was not intended to reward  
indolence or lack of diligence by giving plaintiffs an automatic method of circumventing  
statutes of limitations." *Id.*

## 25 V

### 26 CONCLUSION

27 These are the facts and they are undisputed: Plaintiffs failed to sue Thyssenkrupp

1 Elevator Corporation prior to the running of the statute of limitations; Plaintiffs were aware of  
2 TKE's identity long before the statute ran but they chose not to move to amend prior to the  
3 statute running; Plaintiffs' original Complaint failed to comply with the mandates of NRCP 10  
4 nor our high court's ruling in *Nurenberger, supra*; Plaintiffs' conduct after filing the Complaint  
5 and First Amended Complaint failed to comply with *Nurenberger, supra*. Under well  
6 established law in the state of Nevada, Plaintiffs are not entitled to amend their Complaint at this  
7 late date to add a cause of action against Thyssenkrupp Elevator Corporation.

8 Based upon the foregoing, Plaintiffs' Motion for Leave to Amend to file Second  
9 Amended Complaint must be denied.

10 DATED this 19<sup>th</sup> day of July, 2018.

11 ROGERS, MASTRANGELO, CARVALHO &  
12 MITCHELL

13 

14 Rebecca L. Mastrangelo, Esq.  
15 Nevada Bar No. 5417  
16 700 S. Third Street  
17 Las Vegas, Nevada 89101  
18 Attorney for Third-Party Defendant  
19 THYSSENKRUPP ELEVATOR CORPORATION  
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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 19 day of July, 2018, a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT THYSENKRUPP ELEVATOR CORPORATION'S OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** was served via electronic means with the Eighth Judicial District Court, addressed as follows, upon the following counsel of record:

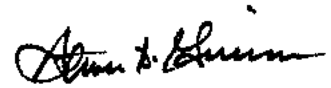
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Las Vegas, Nevada 89113  
Attorneys for Defendant/Third-Party Plaintiff



\_\_\_\_\_  
An employee of ROGERS, MASTRANGELO,  
CARVALHO & MITCHELL

## EXHIBIT A



CLERK OF THE COURT

ACOM

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Christopher Mathews (NSB #10674)

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*Attorneys for Plaintiff's Joe N. Brown and Nettie J. Brown*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, and his Wife,  
NETTIE J. BROWN, an individual,

Plaintiffs,

vs.

LANDRY'S, INC., a foreign corporation;  
GOLDEN NUGGET, INC, a Nevada  
corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP., a Nevada  
corporation; DOE INDIVIDUALS 1-100; and  
ROE BUSINESS ENTITIES 1-100,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**FIRST AMENDED COMPLAINT**

**(Amount in Controversy Exceeds \$50,000  
Arbitration Exemption Requested)**

COME NOW, Plaintiff's Joe N. Brown and Nettie J. Brown by and through their attorneys of record, Iqbal Law PLLC, file this First Amended Complaint against Landry's, Inc., a foreign corporation; Golden Nugget, Inc., a Nevada corporation d/b/a Golden Nugget Laughlin; GNL, Corp., a Nevada corporation; DOE Individuals 1-100 and ROE Business Entities 1-100; and allege as follows:

**FIRST AMENDED COMPLAINT**

1 of 6

**ILAWLV**



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I. THE PARTIES

1. Defendant Landry's, Inc. ("Landry's") is based in Houston, Texas. On information and belief, Landry's, acting directly or through subsidiaries and other related entities, owns and operates more than 500 restaurants, hotels, and casino properties throughout the United States.

2. Defendant Golden Nugget, Inc. ("Golden Nugget") is owned and controlled by Landry's.

3. Defendant GNL, Corp., ("GNL") is owned and controlled by Landry's.

4. Together, Defendants, Landry's, Golden Nugget, and GNL (collectively, "Defendants") own and operate a resort hotel called the Golden Nugget Laughlin ("Laughlin Nugget"), located in the city of Laughlin in Clark County, Nevada.

5. Plaintiff Joe N. Brown ("Joe Brown") is a Nevada native and U.S. Army veteran who honorably served his country in Vietnam before returning home to live in Las Vegas. Plaintiff Nettie J. Brown ("Nettie Brown") is his wife. Joe and Nettie Brown (collectively, "Plaintiffs") have been married for over 20 years, and both reside in Clark County, Nevada.

6. The true names and capacities of Defendants DOE Individuals 1 through 100 are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each Defendant designated as DOE Individuals 1 through 100 are legally responsible for the events referred to herein. This First Amended Complaint will be amended to include them when their true names and capacities become known.

7. The true names and capacities of Defendants ROE Business Entities 1 through 100 are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each Defendant designated as ROE Business Entities 1 through 100 are legally responsible for the events referred to herein. This First Amended Complaint will be amended to include them when their true names and capacities become known.

## II. ALLEGATIONS COMMON TO ALL CLAIMS

8. On or about May 11, 2015, Joe and Nettie Brown traveled from their Las Vegas home to vacation in Laughlin, Nevada.

9. While there, Joe and Nettie Brown stayed at the Laughlin Nugget. Plaintiffs' daughter, Sholanda Mariette, and her husband Clay Mariette, also stayed at the Laughlin Nugget.

10. The evening of May 12, 2015, Joe and Nettie Brown, and Sholanda and Clay Mariette, went to dinner at one of the restaurants at the Laughlin Nugget. All four boarded an escalator installed at the Laughlin Nugget.

11. Joe Brown, who suffered shrapnel wounds in his legs while serving overseas and uses a cane when he walks, boarded the Laughlin Nugget escalator last.

12. When Joe Brown stepped onto the Laughlin Nugget escalator, the stair he stood on was loose and unstable.

13. Because the Laughlin Nugget escalator stairwell was narrow, Joe Brown was unable to steady himself with his cane. He reached for the escalator handrail, but was blocked by a stationary metal railing running the length of the escalator and was unable to steady himself with the handrail.

14. As a result, Joe Brown lost his balance and fell down the Laughlin Nugget escalator.

15. As a result of the fall on the Laughlin Nugget escalator, Joe Brown suffered a broken neck, and numerous additional injuries.

16. As a result of his injuries, Joe Brown suffers severe and debilitating pain. He requires ongoing medical services to treat his injuries and will likely require such services for the rest of his life.

## III. JURISDICTION

17. The Court has jurisdiction of this matter pursuant to NRS 14.020 and NRS 14.065, as Defendant Landry's does business in the State of Nevada and has purposefully established minimum contacts in Nevada by conduct and connection such that it should

FIRST AMENDED COMPLAINT

3 of 6

1 reasonably anticipate being held into court here, and Defendants Golden Nugget and GNL are  
2 corporations organized under the laws of, and doing business in, this State. Further, the amount  
3 in controversy falls within the jurisdictional limit of this Court.

#### 4 IV. VENUE

5 18. Venue in this action is proper in Clark County, Nevada pursuant to NRS 13.040,  
6 as Defendants conduct business in in this County and it is the place Plaintiffs have designated in  
7 this First Amended Complaint.

8 19. Venue is further proper in Clark County, Nevada, because Defendants' acts  
9 described herein occurred in this County.

#### 10 V. CAUSES OF ACTION

##### 11 First Cause of Action - Negligence

12 20. Plaintiffs re-allege each and every allegation set forth in paragraphs 1-19 above.

13 21. As owners, keepers, and proprietors of the Laughlin Nugget, Defendants  
14 Landry's, Golden Nugget, and GNL owed Joe and Nettie Brown a duty of care, to wit: to design,  
15 install, operate, and maintain the premises in such a way as to keep the premises in a reasonably  
16 safe condition for use.

17 22. As owners, keepers, and proprietors of the escalators installed within the Laughlin  
18 Nugget, Defendants Landry's, Golden Nugget, and GNL owed Joe and Nettie Brown a duty of  
19 care, to wit: to install, operate, and maintain the escalators in such a way as to keep them in a  
20 reasonably safe condition for use.

21 23. Defendants Landry's, Golden Nugget, and GNL breached their duties of care by  
22 negligently designing, installing, operating, and maintaining the stairs, railings, and/or escalators  
23 used to transport persons within the Laughlin Nugget.

24 24. As a direct and proximate result of the negligence of Defendants Landry's, Golden  
25 Nugget, and GNL, Joe Brown was injured as described above, and suffered damages including  
26 physical injury, pain and suffering, medical bills, and other damages in an amount to be proven  
27 at trial, which amount exceeds Fifty Thousand Dollars (\$50,000.00).

28 FIRST AMENDED COMPLAINT

4 of 6

ILAW LV



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Iqbal Law PLLC, and that on this 1<sup>st</sup> day of September 2016, I caused to be served and true and correct copy of foregoing **FIRST AMENDED COMPLAINT** in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

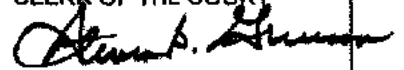
**Chiu & Associates**

<b>Contact</b>	<b>Email</b>
Diana Smith	<a href="mailto:diana.smith@aig.com">diana.smith@aig.com</a>
Lee Grant	<a href="mailto:lee.grant@aig.com">lee.grant@aig.com</a>
Shannon Jory	<a href="mailto:shannon.jory@aig.com">shannon.jory@aig.com</a>
Sydney Basham	<a href="mailto:sydney.basham@aig.com">sydney.basham@aig.com</a>

For those parties not registered pursuant to Administrative Order 14-2, service was made on the following manner:

**(UNITED STATES MAIL)** Pursuant to NRCP 5(b), by depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last known mailing address, on the date above written.

/s/ Julia M. Diaz  
An Employee of Iqbal Law PLLC



1 **OPPS**

2 **LEE J. GRANT II, ESQ.**

3 Nevada Bar No. 11808

4 Alexandra.M<sup>c</sup>Leod@aig.com

5 Nevada Bar No. 8185

6 **GRANT & ASSOCIATES**

7 7455 Arroyo Crossing Parkway, Suite 300

8 Las Vegas, Nevada 89113

9 Tel.: (702) 940-3529

10 Fax: (855) 429-3413

11 Alexandra.M<sup>c</sup>Leod@aig.com

12 Attorney for Defendants/Third-Party Plaintiffs,

13 **GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.**

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **JOE N. BROWN, an individual, and his Wife,**

17 **NETTIE J. BROWN, an individual,**  
18 **Plaintiffs,**

19 vs.

20 **LANDRY'S, INC., a foreign corporation;**  
21 **GOLDEN NUGGET, INC. a Nevada**  
22 **corporation, d/b/a GOLDEN NUGGET**  
23 **LAUGHLIN; GNL, CORP., a Nevada**  
24 **corporation; DOE INDIVIDUALS 1-100,**  
25 **ROE BUSINESS ENTITIES 1-100,**

26 **Defendants.**

27 **GNL, CORP., a Nevada corporation;**

28 **Third-Party Plaintiff,**

vs.

**THYSSENKRUPP ELEVATOR**  
**CORPORATION a foreign corporation; DOES**  
**1-75; ROE CORPORATION 1-75 and ROE**  
**CORPORATION 1-25,**

**Third-Party Defendants**

**Case No.: A-16-739887-C**

**Dept. No.: XXXI**

**DEFENDANTS', GNL, CORP.,**  
**LANDRY'S, INC. & GOLDEN**  
**NUGGET, INC., OPPOSITION TO**  
**PLAINTIFFS' MOTION FOR LEAVE**  
**TO FILE SECOND AMENDED**  
**COMPLAINT**

**Date of Hearing: Aug 7, 2018**

**Time of Hearing: 9:00 a.m.**

**COME NOW Defendants, GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET,**  
**INC. (collectively "Defendants" and/or "GNL"), by and through their counsel of record,**  
**ALEXANDRA B. M<sup>c</sup>LEOD, ESQ., of the law firm of GRANT & ASSOCIATES, and hereby**

1 submit the instant Opposition to Plaintiffs' Motion for Leave to File Second Amended  
2 Complaint in the above-entitled action, pursuant to Nevada Rule of Civil Procedure 15.

3 This Opposition is made and based upon all of the papers and pleadings on file herein,  
4 the Points and Authorities hereinafter to follow, and such oral argument and testimony as this  
5 Honorable Court may entertain at a hearing of the subject Motion, if so desired.

6 DATED this 23<sup>rd</sup> day of July, 2018.

7 GRANT & ASSOCIATES

8 

9 ALEXANDRA B. MCLEOD, ESQ.

10 Nevada Bar No. 8185

11 7455 Arroyo Crossing Parkway, Suite 300

12 Las Vegas, Nevada 89113

13 *Attorney for Defendants/Third-Party Plaintiffs,*

14 *GNL, CORP., LANDRY'S, INC. & GOLDEN*  
*NUGGET, INC.*

#### 14 POINTS & AUTHORITIES

#### 15 I. INTRODUCTION & STATEMENT OF RELEVANT FACTS

16 Plaintiff Joe Brown alleges a broken neck resulting from a fall on the down escalator at  
17 the Golden Nugget Hotel & Casino in Laughlin, Nevada on May 12, 2015 at 7:28 pm. *See*  
18 **EXHIBIT A.** Plaintiff's Complaint alleges the escalator was too loose, unstable, and narrow. To  
19 the contrary, State Inspector Steve Robertson determined that the incident occurred when  
20 Plaintiff stepped in between steps and lost his balance when the steps began to descend. Brown  
21 was using a cane as a walking aid at the time of his fall and admittedly had been drinking  
22 alcohol. He was transported from the casino to a hospital in Arizona and later flown to Sunrise  
23 Hospital in Las Vegas, where it was confirmed that he sustained an inoperable, acute fracture of  
24 the C1 anterior and posterior arch. Meanwhile, Plaintiff Nettie Brown's claims are limited to  
25 loss of consortium.

26 In regard to the repair and maintenance history of the subject down escalator at the  
27 Golden Nugget Laughlin, Plaintiffs' understanding and recitation of facts is inaccurate,  
28 argumentative, and libelous. In fact, the escalator steps were replaced in 2012 and the down

1 escalator received all new steps (salvaged steps were used on the neighboring up escalator). *See*  
2 **EXHIBIT B**. In the interim before Plaintiff Brown's accident, preventative maintenance and  
3 annual inspections were completed. Specifically, annual inspections were completed on or about  
4 February 13, 2015, just three months before the subject accident. *See EXHIBIT C*. The only  
5 violations noted were for hoist cables in one of the elevators; there was nothing out of order  
6 with the subject down escalator. *Id.* Furthermore, the day following Brown's accident, State  
7 Inspector Steve Robertson arrived on site to inspect the equipment, noted no violations,  
8 determined the accident to have been caused by user error rather than equipment failure, and  
9 placed the down escalator back in service. *See EXHIBIT D*. An issue with replacement steps also  
10 cracking was identified later in 2015, *after* Plaintiff's accident, and subsequently cured with 40  
11 additional replacement steps. *See EXHIBIT E*. Plaintiffs' incorrect statements are nothing more  
12 than an attempt to inflame the Court and to distract from the tardiness and substantive  
13 inadequacies of their motion to amend.

14 With that background information in mind, we turn to the Plaintiffs' present request to  
15 file a Second Amended Complaint. Plaintiffs' Complaint was filed on July 12, 2016, pleading  
16 only negligence and loss of consortium. That Complaint has already been amended once, on  
17 September 21, 2016, to add the proper entity GNL, Corp., but making no changes to the causes  
18 of action. Now, Plaintiffs seek leave to further amend their pleading, this time to add a direct  
19 cause against Third-party Defendant Thyssenkrupp and to add a prayer for punitive damages  
20 even though their causes of action remain negligence only and are insufficient to support an  
21 award of punitive damages.

22 **II. BECAUSE PLAINTIFFS' MOTION IS UNTIMELY, LEAVE TO AMEND**  
23 **SHOULD BE DENIED**

24 Pursuant to the Third Stipulation and Order to Extend Discovery in this case, filed  
25 March 15, 2018, Plaintiffs had only until July 3, 2018 to move to amend the pleadings. *See*  
26 **EXHIBIT F**. Yet they waited until July 4, 2018 to do so; because of the holiday their motion was  
27 effectively filed the next business day on July 5, 2018. The movant's "undue delay" in seeking  
28 to amend the complaint is specifically cited by the Nevada Supreme Court as cause to deny the



1 leave requested, *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 105-6, 507 P.2d 138, 139  
2 (1973) (citing *Forman v. Davis*, 371 U.S. 178, 83 S.Ct. 227 (1962)). Here, Plaintiffs have  
3 known the identity, proper name, and connection to this case of Thyssenkrupp for over 18  
4 months (Third-Party Complaint naming Thyssenkrupp filed January 23, 2017). Plaintiffs' delay  
5 in seeking leave to amend is prejudicial especially as they seek to use NRCP 15 as a vehicle to  
6 usurp the statute of limitations. Moreover, Plaintiffs seek not only to add a party to their existing  
7 cause of action for negligence, but also to amend their Complaint to include punitive damages  
8 as well.

9 Plaintiffs' errors here are two-fold; at this late date, they can no longer add a new party  
10 to their action, regardless of its involvement in a Third-Party Claim, nor may they assert  
11 additional bases for relief. "While an amendment may be made to correct a mistake in the name  
12 of party, a new party may not be brought into an action once the statute of limitations has run  
13 because such an amendment amounts to a new and independent cause of action." *Servatius v.*  
14 *United Resort Hotels*, 85 Nev. 371, 372-373, 455 P.2d 621, 622 (1969) (modified by  
15 *Nurenberger, supra* only as to its application to cases governed by NRCP 10[a]). On balance,  
16 allowing Plaintiffs to amend their Complaint is not required by justice.

17 **III. IF PLAINTIFFS' PROPOSED AMENDMENT IS FUTILE, LEAVE TO AMEND**  
18 **SHOULD BE DENIED**

19 NRCP 15(a) provides that leave to amend a complaint shall be "freely given when justice so  
20 requires." Nevertheless, the court may deny a motion to amend in a proper case; if the intent were  
21 otherwise, leave of the court would not be required. *See, e.g., Stephens, supra*, 89 Nev. at 105, 507  
22 P.2d at 139. It is important to note that the statute mandates the grant of leave to amend only when  
23 justice so requires, not merely if justice allows. Furthermore, leave to amend should not be granted  
24 if the proposed amendment would be futile. *See Halcrow, Inc. v. Eighth Judicial Dist. Court of the*  
25 *State*, 302 P.3d 1148, 129 Nev. Adv. Rep. 42 (2013); *Allum v. Valley Bank of Nev.*, 109 Nev. 280,  
26 287, 849 P.2d 297, 302 (1993). **A proposed amendment may be deemed futile if the plaintiff**  
27 **seeks to amend the complaint in order to plead an impermissible claim** or any other claim that  
28

would otherwise be subject to dismissal. *See Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993) (emphasis added).

**IV. BECAUSE TORT LIABILITY ALONE IS INSUFFICIENT TO SUPPORT AN AWARD OF PUNITIVE DAMAGES, THE PUNITIVE DAMAGES CLAIMS PLAINTIFFS PROPOSE WOULD BE FUTILE**

Nevada law has long recognized that “a plaintiff is never entitled to punitive damages as a matter of right.” *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985)). Tort liability alone is insufficient to support an award of punitive damages. *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 26 P.2d 727 (1993).

Plaintiffs’ only causes of action in the (Proposed) Second Amended Complaint are for general negligence and loss of consortium. Such negligence based claims, under Nevada law, are insufficient to support an award of punitive damages. Simply put, even if Plaintiffs could prove their claims for negligence or their contentions of malice or conscious disregard, they still would not be entitled to recover punitive damages because the punitive damages statutes in Nevada require conduct *exceeding* recklessness or gross negligence. *Wyeth v. Rowatt*, 244 P.3d 765, 126 Nev. Adv. Rep. 44 (2010); *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008). Because they cannot meet the bar of Nevada’s requirement to establish punitive damages, they instead direct this Honorable Court to federal standards and the alleged “reprehensibility of the defendant’s conduct” (Motion at 10:3-6). But established decisions of the Nevada Supreme Court cannot be supplanted by those of another court.

Plaintiff’s (Proposed) Second Amended Complaint attempts to impute punitive damages on GNL and all Defendants by alleging a delay in repairing the subject escalator, an allegation which has been disproven by the discovery in this case. Despite testimony and documentary evidence of the replacement of all steps on the subject down escalator, Plaintiffs’ continue to contend that, “The Nugget Defendants’ actions and inaction are the embodiment of conscious disregard...” (Motion at 12:17-18). Even so, the Nevada Supreme Court has made it clear that “conscious disregard” in the punitive damages statute, NRS 42.005, requires a “**culpable state of mind that must exceed mere recklessness or gross negligence.**” *Countrywide*, 124 Nev. at

1 725; *First Nat. Bank of Ely v. Progressive Cas. Ins. Co.*, 2012 WL 5944847 (D. Nev. Nov. 27,  
2 2012) (emphasis added). Plaintiffs have set forth absolutely no facts which illustrate that any  
3 employee of GNL acted with a conscious disregard for the rights or safety of others, and have  
4 not pled any allegations of culpability in excess of recklessness or gross negligence in the case  
5 at bar.

6 It is Plaintiffs' burden to establish that Defendants acted **intentionally, willfully, and**  
7 **deliberately knowing that such conduct would be harmful to Plaintiffs specifically.** Plaintiff  
8 asserts that GNL allowed a "risk to unsuspecting patrons" who would ride the escalator.  
9 (Motion at 12:17-21) Yet, Plaintiffs' Motion is silent to allegations or evidence that GNL  
10 intended to harm this Plaintiff, Mr. Joe Brown – and the Proposed Second Amended Complaint  
11 fails to allege any such facts. As used in the Nevada statute, "[m]alice, express or implied,  
12 means conduct which is *intended to injure* a person or despicable conduct which is engaged in  
13 with a conscious disregard of the rights or safety of others." NRS 42.001(3). Nevada courts  
14 have made clear "[t]he term malice as used in the statute means *malice in fact* and denotes *ill-*  
15 *will*, or a *desire to do harm* for the mere satisfaction of doing it." *Warmbrodt v. Blanchard*, 692  
16 P.2d 1282, 1286 (Nev. 1984) (emphases added).

17 Even if Plaintiffs' allegations in the (Proposed) Second Amend Complaint were true and  
18 Defendants were found negligent, this finding would still not support an evidentiary basis for  
19 concluding that GNL acted with malice. Plaintiff cannot establish fraud or express malice, as  
20 Defendant's alleged failure to repair the escalator steps, does not give rise to any reasonable  
21 inference that Defendant *intentionally* sought to injure Joe Brown. In fact, Plaintiff's (Proposed)  
22 Second Amended Complaint only alleges "a conscious disregard of the safety of the riding  
23 public" (*see* ¶19). While GNL vehemently denies this allegation, assuming arguendo that it  
24 were true, it is still insufficient to establish specific intent. Therefore, Plaintiffs cannot establish  
25 the requisite intent by GNL or its employees to support punitive damages and any such  
26 amendment to their pleadings would be futile.

27 ...

28 ...

1 **V. CONCLUSION**

2 WHEREFORE, Plaintiffs' Motion for Leave to Amend is untimely and their (Proposed)  
3 Second Amended Complaint fails to state any legal basis sufficient to support to punitive  
4 damages. There is no evidence in this matter that GNL formed intent, let alone a specific intent,  
5 to harm Plaintiff Joe Brown and a claim for punitive damages would immediately become  
6 subject to dismissal. Therefore, Plaintiff's leave to add a claim for punitive damages is futile  
7 and should be denied.

8 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July, 2018.

9 GRANT & ASSOCIATES

10 

11 ALEXANDRA B. MCLEOD, ESQ.

12 Nevada Bar No. 8185

13 7455 Arroyo Crossing Parkway, Suite 300

14 Las Vegas, Nevada 89113

15 *Attorney for Defendants/Third-Party Plaintiffs,*  
16 *GNL, CORP., LANDRY'S, INC. & GOLDEN*  
17 *NUGGET, INC.*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 23<sup>rd</sup> day of July, 2018 I caused a true and correct copy of the foregoing **DEFENDANTS', GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC., OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** to be served as follows:

- ☐ By placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☒ Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

*/s/ Denisse Girard-Rubio*

\_\_\_\_\_  
An Employee of GRANT & ASSOCIATES

EXHIBIT "A"

Case # :

2015-00200

Golden Nugget Hotel & Casino  
LAUGHLIN

Case Report

Reported By: RYAN KNUPP

Incident: LAUGHLIN : GUEST MEDICAL  
LAUGHLIN : GUEST ACCIDENT

Offender:

Incident Disposition:

Disposition: REPORT  
Method of Reporting: OFFICER OBSERVED

Incident Occurred Date: 05/12/2015 at 1928  
Incident Occurred End Date: 05/12/2015 at 1955  
Incident Discovered / Called In: 05/12/2015 at 1928

Location: LAUGHLIN : ESCALATOR  
Specific Location: DOWN ESCALATOR TO BUBBA GUMP'S RESTAURANT

Secondary Location:  
Related Event: None

Manager/Supervisor On Duty: RYAN KNUPP  
Manager/Supervisor Notified: YES

Report Synopsis/Overview:  
Unknown male African-American patron fell down the escalator to Bubba Gump's restaurant.

List of supplemental reports

Follow Up 2015-00200\_1

List of contacts in this report

UNKNOWN

INJURED PERSON

Contact # 1 (INJURED PERSON)

Full Name: UNKNOWN

UNKNOWN

Drivers License: UNKNOWN  
Drivers License State: UNKNOWN  
Email Address: UNKNOWN

UNKNOWN

Age: UNKNOWN  
Date of Birth: UNKNOWN  
Gender: M  
Race: BLACK

Height: 5'10"  
Weight: 175  
Hair Color: BLACK  
Eye Color: BLACK

Approx. Age: 60+  
Demeanor: UNKNOWN  
Build: MEDIUM  
Clothing: T-SHIRT AND BLUE JEANS

Notes: UNKNOWN

UNABLE TO GET HIS INFORMATION AT THE TIME.

Addresses

Prepared By:  
RYAN KNUPP(187707)

Submitted Date:  
05/12/2015 2057

Signature

Reviewed By/Date:  
DOWNS 05/14/2015 0927

Case # :

2015-00200

Address :

UNKNOWN

City :

UNKNOWN

State :

Zip :

Country :

Address Type :

Prepared By:

RYAN KNUPP(187707)

Submitted Date

05/12/2015 2057

Signature

Reviewed By/Date

DOWNNS 05/14/2015 0927



EXHIBIT "B"

Payment Overview (LDR) Golden Nugget (AU) AP - Entry			
Operating Unit		Gambling and Casinos	
Number	80369	Payee	
Currency	USD	Paid To Name	THYSSENKRUPP ELEVATOR
Amount	31,017.00	Taxpayer ID	62-1211267
Date	10/24/2012	Supplier Number	10787
Payment Process Request	WN GNL 102412	Site	ATL-PO BOX 90
Voucher		Address	PO BOX 933004
Status	Reconciled		ATLANTA, GA 91193-3004
Cleared Amount	31,017.00	United States	
Cleared Date	11/06/2012	Bank	
Void Date		Name	BANK OF AMERICA
Maturity Date		Account	Laughlin - AP
Acknowledged Status		Payment Document	
Invoices		Payment Method	Check
		Payment Process Profile	
Number	Amount Paid	GL Date	Description
Q22814DP	31,017.00	10/24/2012	
<div> <div>Invoice Overview</div> <div>Bank</div> <div>Supplier</div> <div>Payments</div> </div>			

Payment Overview (LDNY Golden Nugget (All AP Entry))			
<b>Operating Unit</b>		<b>Payee</b>	
Number	81809	Paid To Name	THYSSENKRUPP ELEVATOR
Currency	USD	Taxpayer ID	62-1211267
Amount	31,197.00	Supplier Number	10787
Date	02/01/2013	Site	ATL-PO BOX 9
Payment Process Request	WN GNL 20113	Address	PO BOX 933004
Voucher			ATLANTA, GA 91193-3004
Status	Reconciled		United States
Cleared Amount	31,197.00	<b>Bank</b>	
Cleared Date	02/11/2013	Name	BANK OF AMERICA
Void Date		Account	Laughlin - AP
Maturity Date		Payment Document	
Acknowledged Status		Payment Method	Check
		Payment Process Profile	
<b>Invoices</b>			
Number	Amount Paid	GL Date	Description
6000020161	31,197.00	02/01/2013	
<div> <div>Invoice Overview</div> <div>Bank</div> <div>Supplier</div> <div>Payments</div> </div>			

EXHIBIT “C”

ISSUANCE DATE  
INSPECTOR'S NEVADA ID#  
INSPECTOR'S QEI- ID#  
PAGE# 1 OF 1  
INSPECTION DATE:  
INSPECTION LOCATION

2	13	15
1748		
63250		

2/11/15 - 2/13/15  
2360 S. CASINO DR  
LAUGHTLIN, NV. 89029

The following items are found to be in violation. In the interest of safety, these items shall receive your prompt attention. Once corrected, IT IS IMPORTANT that you notify us immediately at 702-296-1092.

ITEM#	STANDARD, REGULATION OR SECTION OF THE ACT OF VIOLATION DESCRIPTION	CORRECTION DATE	PENALTY
	Inspection Done Following A17.1 (08) CODE		
①	RULE 8.11.2.1.3(cc)(3) REPLACE RUSTED, UNDERSIZE HOIST CABLES, ALLOWED .578 ACTUAL SIZE .564. USER # G2 STATE # 5038	3/13/15	
	NO OTHER DISCREPANCIES NOTED. ALL TESTING + MAINTENANCE UP TO DATE		
	OK TO ISSUE OPERATING PERMITS		
	THIS NOTICE ACTS AS PERMIT UNTIL RECEIVED.		

1. This notice of violation is issued in lieu of a citation and may not be contested. Before accepting this notice, you have the option to choose that a citation be issued, in which case normal appeals procedures will apply.
2. Acceptance of this Notice constitutes an agreement to correct the violations described. Failure to correct by the specified date may subject the owner or his agent to citations and penalties.
3. If any items are repetitive of violations previously found in the past two (2) years, this notice may be voided and a citation issued.
4. If you need additional time to correct any violation, or you feel the correction date is unreasonable, please contact us for consultation within five (5) days of issuance date.
5. I accept the above violation(s)
- Explained to and copy received by: W. Schaefer *2/10/2015* *C10*
6. Inspector's name and signature: W. Schaefer

Total item count this page /Total Item count this page 1

6. Inspector's name and signature:

W. Schaefer

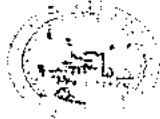
EXHIBIT "D"

BRIAN SANDOVAL  
Governor

STATE OF NEVADA

STEVE GEORGE  
Administrator

BRUCE BRESLOW  
Director



RANDY JEWETT  
Chief Administrative  
Officer

Phone: (702) 486-9054  
Fax: (702) 486-9176

DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
MECHANICAL COMPLIANCE SECTION  
1301 N. Green Valley Parkway, Suite 160  
Henderson, Nevada 89074

## Elevator Accident Report

Date / Time of Accident: <u>5-12-15 8:15 pm</u>		Date / Time Reported: <u>5-13-15 8:07 AM</u>				
Inspector Responding: <u>Steve Robertson</u>		Time & Date of Arrival: <u>5-13-15 11:00 AM</u>				
Location: <u>GOLDEN NUGGETT</u>		Stuck: Yes <input type="checkbox"/> No <input type="checkbox"/>				
Elevator:		Escalator: <u>DOWN</u>				
Moving Walk:						
Injured Party's Name:	Visible Injuries:		Injuries Claimed:		Medical Attention:	
	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Received <input checked="" type="checkbox"/> Refused <input type="checkbox"/>			
	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Received <input type="checkbox"/> Refused <input type="checkbox"/>			
	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Received <input type="checkbox"/> Refused <input type="checkbox"/>			
Video Footage Taken:		Photo's Taken:		Copies of Report Available:		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>		
Video Footage Denied:		Photo's Denied:		Copies of Report Denied:		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>		
Visible Injuries:						
Claimed Injuries:						
<u>CUT ON HEAD</u>						
Description of Accident: <u>got on ESCALATOR with CANE</u> <u>LOST BALANCE + FELL</u> (Use additional sheets if needed)						
Contributing Factors:						
<u>CANE</u>						
Condition of Equipment:						
<u>GOOD</u>						
Direct Cause of Accident:						
<u>LOSS OF BALANCE</u>						
Documents Included:						
<u>Report # 200</u>						

Revised 12/5/2014

EXHIBIT "E"



EXHIBIT “E”

[www.urban-hub.com](http://www.urban-hub.com)

---

**From:** Panaro, Larry  
**Sent:** Tuesday, June 16, 2015 4:29 PM  
**To:** Hartmann, Don  
**Cc:** Olsen, Scott  
**Subject:** Damaged Escalator Steps (Down Unit)  
**Importance:** High

Good Afternoon Don,

It was great catching up with you last week. Per our conversation, and your conversations with Chris Dutcher (TKE Mechanic), attached are the proposals to replace the damaged/cracked escalator steps on the "Down" unit at the Golden Nugget Laughlin. As we discussed, this is a safety matter for the riding public. There are currently 40 steps showing signs of cracking, and 5 of the 40 are critical. At this time, we recommend replacing the 40 steps, however, the 5 steps need to be addressed asap.

As you will notice, the price per step is significantly less if all 40 can be replaced at once (versus doing only 5 steps)

Please call me with any further questions or concerns pertaining to this correspondence.

Sincerely,

Larry Panaro  
Account Manager  
Service, Repair and Modernization Sales

**ThyssenKrupp Elevator Americas**  
4145 W. Ali Baba, Suite A  
Las Vegas, NV 89118

Phone: (702) 262-6775

Cell: (702) 591-9422

Fax: (866) 248-5612

<mailto:larry.panaro@thyssenkrupp.com>

Monthly Safety Message - Remember: Report all accidents in a timely manner!

---

[www.thyssenkruppelevator.com](http://www.thyssenkruppelevator.com)

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## ThyssenKrupp Elevator Americas



### WORK ORDER



Recommended by: Dutcher, Christopher

Date:	June 16, 2015	Purchaser	Golden Nugget
Building Name:	GOLDEN NUGGET HOTEL	Contact Name:	DON HARTMANN
Address:	2300 S CASINO DR	Title:	DIRECTOR OF FACILITIES
City/ST/ZIP:	LAUGHLIN, NV 89029-1520	Address:	
Contract #:		City/ST/ZIP:	.
		Phone:	+1 702 2987160

#### Scope of Work:

Purchaser authorizes ThyssenKrupp Elevator Corporation to perform the following described work on the following vertical transportation equipment in the above building:

#### Repairs Summary:

DOWN

ESCALATOR

ESCALATOR STEPS

STEP ROLLERS/ROLLER ASSEMBLIES

#### \*\*\*Safety Matter\*\*\*

As discussed, TKE has inspected the escalator steps on the "Down" unit located at the Golden Nugget Laughlin. As Chris Dutcher (TKE Mechanic) provided from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that forty (40) steps have developed cracks, however five (5) steps are showing critical cracking. Therefore, we are proposing as Option #1 the following: We shall replace the critical steps (5 steps) on the "Down" escalator unit.

The step replacement includes new roller/roller assemblies for each step.

Option #2 will be included in a subsequent proposal and will be to replace all forty (40) steps at this time.

**ThyssenKrupp Elevator Americas**



Purchaser agrees to pay the sum of: Six Thousand Nine Hundred Seventy Dollars (\$6,970.00) plus any applicable sales tax billed in addition to this contract price.  
Price includes shipping and delivery and sales/use tax imposed on TKEC but does not include sales or gross receipts tax that may be billed in addition to the contract price. No permits or inspections by others are included in this work, unless otherwise indicated herein.

## ThyssenKrupp Elevator Americas



### Terms and Conditions:

Unless stated otherwise elsewhere in this document, the price of this Work Order includes all applicable sales and use taxes, permit fees and licenses imposed upon ThyssenKrupp Elevator as of the date that ThyssenKrupp Elevator first offers this Work Order for Purchaser's acceptance. Purchaser agrees to pay any additional taxes, fees or other charges exacted from Purchaser or ThyssenKrupp Elevator on account thereof, by any law enacted after the date that ThyssenKrupp Elevator first offered this Work Order for Purchaser's acceptance. A service charge of 1½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts.

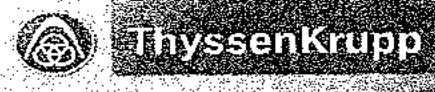
Purchaser's acceptance of this Work Order and its approval by an authorized manager of ThyssenKrupp Elevator will constitute exclusively and entirely the agreement between the parties for the goods and services herein described. All other prior representations or regarding this work, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Work Order will be recognized unless made in writing and properly executed by both parties as a change order. Should Purchaser's acceptance be in the form of a purchase order or other similar document, the provisions of this Work Order will exclusively govern the relationship of the parties with respect to this transaction. No agent or employee shall have the authority to waive or modify any of the terms of this Work Order without the prior written approval of an authorized ThyssenKrupp Elevator manager.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and ThyssenKrupp Elevator reserves the right to discontinue its work in the location above whenever, in its sole opinion, ThyssenKrupp Elevator believes that any aspect of the location is in any way unsafe.

Purchaser agrees that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or its subcontractors, the work place will be monitored, and prior to and during ThyssenKrupp Elevator's presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event ThyssenKrupp Elevator's employees, or those of its subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than ThyssenKrupp Elevator or its subcontractors, Purchaser agrees to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against ThyssenKrupp Elevator or its employees or subcontractors resulting from such exposure. Purchaser recognizes that its obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgements, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is solely Purchaser's responsibility.

ThyssenKrupp Elevator's performance of this Work Order is contingent upon Purchaser furnishing ThyssenKrupp Elevator with any necessary permission or priority required under the terms and conditions of any and all government regulations affecting the acceptance of this Work Order or the manufacture, delivery or installation of any equipment described in this Work Order. Purchaser shall bear all cost(s) for any re-inspection of ThyssenKrupp Elevator's work due to items outside the scope of this Work Order or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator. If any drawings, illustrations or other descriptive materials were furnished in conjunction with this Work Order, they were intended solely as approximations and to illustrate the general style and arrangement of equipment being offered and should, under no circumstances, be relied upon for their accuracy. Unless otherwise agreed, it is understood that the work described above will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at ThyssenKrupp Elevator's usual rates for such work shall be added to the price of this Work Order.

## ThyssenKrupp Elevator Americas



In consideration of ThyssenKrupp Elevator performing the services herein specified, Purchaser, to the fullest extent permitted by law, expressly agrees to indemnify, defend, save harmless, discharge, release and forever acquit ThyssenKrupp Elevator Corporation, ThyssenKrupp Elevator Manufacturing, Inc., their respective employees, officers, agents, affiliates, and subsidiaries from and against any and all claims, demands, suits, and proceedings for loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death that are alleged to have arisen out of the presence, use, misuse, maintenance, installation, removal, repair, replacement, modernization, manufacture, design, operation or condition of the equipment that is the subject matter of this Work Order or any equipment located underground, in the elevator car/cab, in the elevator machine room and/or in the hoistways of the project location. Purchaser's duty to indemnify does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death is determined to be caused by or resulting from the sole negligence of ThyssenKrupp Elevator and/or its employees. Purchaser recognizes that its obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims, demands, suits or proceedings.

Purchaser further expressly agrees to name ThyssenKrupp Elevator Corporation and ThyssenKrupp Elevator Manufacturing, Inc. along with their respective officers, agents, affiliates and subsidiaries as additional insureds in Purchaser's liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure the above-referenced additional insureds for those claims and/or losses referenced in the above paragraph, and for claims and/or losses arising from the additional insureds' sole negligence or responsibility. Such insurance must specify that its coverage is primary and non-contributory. Purchaser hereby waives its right of subrogation.

By executing this Work Order, Purchaser agrees that in no event shall ThyssenKrupp Elevator be liable for any consequential, indirect, incidental, exemplary, special or liquidated damages of any type or kind under any circumstances including any loss, damage, or delay caused by acts of government, labor troubles, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God or any cause beyond its control. ThyssenKrupp Elevator shall automatically receive an extension of time commensurate with any delay regarding the aforementioned. Should loss of or damage to ThyssenKrupp Elevator's material, tools or work occur at the location that is the subject of this Work Order, Purchaser shall compensate ThyssenKrupp Elevator therefore, unless such loss or damage results solely from ThyssenKrupp Elevator's own acts or omissions.

Purchaser agrees that all existing equipment removed by ThyssenKrupp Elevator in the performance of the work described above shall become the exclusive property of ThyssenKrupp Elevator. ThyssenKrupp Elevator retains title to all equipment supplied by ThyssenKrupp Elevator under this Work Order and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of both this Work Order and any mutually agreed to-change orders have been made. In the event Purchaser fails to meet any of its obligations under this Work Order, Purchaser authorizes ThyssenKrupp Elevator to take immediate possession of the equipment installed under this Work Order and enter upon the premises where it is located (without legal process) and remove such equipment or portions thereof irrespective of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at ThyssenKrupp Elevator's request, Purchaser agrees to join with ThyssenKrupp Elevator in executing any financial or continuation statements which may be appropriate for ThyssenKrupp Elevator to file in public offices in order to perfect its security interest in such equipment.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this Work Order or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees. Purchaser agrees that this Work Order shall be construed and enforced in accordance with the laws of the state where the vertical transportation equipment that is the subject of this Work Order is located and consents to jurisdiction of the courts, both state and Federal, of that as to all matters and disputes arising out

## ThyssenKrupp Elevator Americas



of this Work Order. Purchaser further agrees to waive trial by jury for all such matters and disputes.

The rights of ThyssenKrupp Elevator under this Work Order shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this Work Order. In the event any portion of this Work Order is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this Work Order. This Work Order shall be considered as having been drafted jointly by Purchaser and ThyssenKrupp Elevator and shall not be construed or interpreted against either Purchaser or ThyssenKrupp Elevator by reason of either Purchaser or ThyssenKrupp Elevator's role in drafting same.

ThyssenKrupp Elevator does not assume any responsibility for any part of the vertical transportation equipment other than the specific components that are described in this Work Order and then only to the extent ThyssenKrupp Elevator has performed the work described above. ThyssenKrupp Elevator has made no examination of, and assumes no responsibility for, any part of the elevator equipment except that necessary to do the work described above. It is agreed that possession and control of the vertical transportation equipment remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

ThyssenKrupp Elevator complies with provisions of Executive Orders 11246, 11375, 11758, Section 503 of the Rehabilitation Act of 1993, Vietnam Era Veteran's Readjustment Act of 1974, 38 U.S.C. 4212 and 41 CFR Chapter 60. ThyssenKrupp Elevator supports Equal Employment Opportunity and Affirmative Actions Compliance programs.

## ThyssenKrupp Elevator Americas




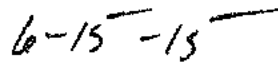
Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

To indicate acceptance of this work order, please sign and return one (1) original of this agreement to the address shown below. Upon receipt of your written authorization and required materials and/or supplies, we shall implement the work order.

This Work Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator Corporation.

Purchaser's acceptance of this Work Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Work Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Work Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator Corporation manager.

ThyssenKrupp Elevator Corporation	Golden Nugget	ThyssenKrupp Elevator Corporation Approval
By:  (Signature of ThyssenKrupp Elevator Representative)	By: _____ (Signature of Authorized Individual)	By: _____ (Signature of Authorized Individual)
Larry Panaro Sales Representative larry.panaro@thyssenkrupp.com +1 702 2626775   (Date Submitted)	_____ (Print or Type Name)  _____ (Print or Type Title)  _____ (Date of Approval)	_____ (Print or Type Name) Branch Manager  _____ (Date of Approval)



# ThyssenKrupp Elevator Americas



## SCHEDULING AND PRODUCTION REQUEST FOR PAYMENT

Contract Number:

Please Remit To: ThyssenKrupp Elevator Corporation  
PO BOX 933004  
Atlanta, GA 31193-3004

Attn: Mr. DON HARTMANN

Terms	Repair No.	Customer Reference No./PO	Date	Reference Number
Immediate	2015-2-117110		June 16, 2015	ACIA-ZQU21Z

Total Contract Price	\$6,970.00
Current Amount Due	\$3,485.00

We accept credit card payments. Please call 801-449-8221 and ask for the LAS VEGAS Branch Receivable Specialist.

Please detach the below section and provide along with payment.

### Remit To:

ThyssenKrupp Elevator Corporation  
PO BOX 933004  
Atlanta, GA 31193-3004

Payment Reference ID:	ACIA-ZQU21Z
Quote #:	2015-2-117110
Customer Number:	
Remittance Amount:	3485

Customer Name: Golden Nugget  
Site Location: GOLDEN NUGGET HOTEL

## ThyssenKrupp Elevator Americas



### WORK ORDER



Recommended by: Dutcher, Christopher

Date:	June 16, 2015	Purchaser	Golden Nugget
Building Name:	GOLDEN NUGGET HOTEL	Contact Name:	DON HARTMANN
Address:	2300 S CASINO DR	Title:	DIRECTOR OF FACILITIES
City/ST/ZIP:	LAUGHLIN, NV 89029-1520	Address:	
Contract #:		City/ST/ZIP:	
		Phone:	+1 702 2987160

#### Scope of Work:

Purchaser authorizes ThyssenKrupp Elevator Corporation to perform the following described work on the following vertical transportation equipment in the above building:

#### Repairs Summary:

DOWN

ESCALATOR

ESCALATOR STEPS

STEP ROLLERS/ROLLER ASSEMBLIES

#### \*\*\*Safety Matter\*\*\*

As discussed, TKE has inspected the escalator steps on the "Down" unit located at the Golden Nugget Laughlin. As Chris Dutcher (TKE Mechanic) provided from the OEM, this type of step is prone to develop cracks, which can cause a serious safety issue for the riding passengers. Furthermore the existing steps are obsolete, and a new thru-axel step is recommended as the replacement. During our inspection we identified that forty (40) steps have developed cracks, however five (5) steps are showing critical cracking. At this time, we do recommend replacing all identified cracked steps. Therefore, we are proposing as Option #2 the following: We shall replace all steps (40 steps) showing signs of cracking on the "Down" escalator unit.

The step replacement includes new roller/roller assemblies for each step.

**ThyssenKrupp Elevator Americas**



Purchaser agrees to pay the sum of: Forty Nine Thousand Eight Hundred Eighty Dollars (\$49,880.00) plus any applicable sales tax billed in addition to this contract price.  
Price includes shipping and delivery and sales/use tax imposed on TKEC but does not include sales or gross receipts tax that may be billed in addition to the contract price. No permits or inspections by others are included in this work, unless otherwise indicated herein.



**Terms and Conditions:**

Unless stated otherwise elsewhere in this document, the price of this Work Order includes all applicable sales and use taxes, permit fees and licenses imposed upon ThyssenKrupp Elevator as of the date that ThyssenKrupp Elevator first offers this Work Order for Purchaser's acceptance. Purchaser agrees to pay any additional taxes, fees or other charges exacted from Purchaser or ThyssenKrupp Elevator on account thereof, by any law enacted after the date that ThyssenKrupp Elevator first offered this Work Order for Purchaser's acceptance. A service charge of 1½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts.

Purchaser's acceptance of this Work Order and its approval by an authorized manager of ThyssenKrupp Elevator will constitute exclusively and entirely the agreement between the parties for the goods and services herein described. All other prior representations or regarding this work, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Work Order will be recognized unless made in writing and properly executed by both parties as a change order. Should Purchaser's acceptance be in the form of a purchase order or other similar document, the provisions of this Work Order will exclusively govern the relationship of the parties with respect to this transaction. No agent or employee shall have the authority to waive or modify any of the terms of this Work Order without the prior written approval of an authorized ThyssenKrupp Elevator manager.

It is agreed that ThyssenKrupp Elevator's personnel shall be given a safe place in which to work and ThyssenKrupp Elevator reserves the right to discontinue its work in the location above whenever, in its sole opinion, ThyssenKrupp Elevator believes that any aspect of the location is in any way unsafe.

Purchaser agrees that in the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the job site by parties other than employees of ThyssenKrupp Elevator or its subcontractors, the work place will be monitored, and prior to and during ThyssenKrupp Elevator's presence on the job, Purchaser will certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event ThyssenKrupp Elevator's employees, or those of its subcontractors, are exposed to an asbestos hazard, PCB's or other hazardous substances resulting from work of individuals other than ThyssenKrupp Elevator or its subcontractors, Purchaser agrees to indemnify, defend, and hold ThyssenKrupp Elevator harmless from any and all claims, demands, lawsuits, and proceedings brought against ThyssenKrupp Elevator or its employees or subcontractors resulting from such exposure. Purchaser recognizes that its obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgements, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits. Removal and disposal of asbestos containing material is solely Purchaser's responsibility.

ThyssenKrupp Elevator's performance of this Work Order is contingent upon Purchaser furnishing ThyssenKrupp Elevator with any necessary permission or priority required under the terms and conditions of any and all government regulations affecting the acceptance of this Work Order or the manufacture, delivery or installation of any equipment described in this Work Order. Purchaser shall bear all cost(s) for any re-inspection of ThyssenKrupp Elevator's work due to items outside the scope of this Work Order or for any inspection arising from the work of other trades requiring the assistance of ThyssenKrupp Elevator. If any drawings, illustrations or other descriptive materials were furnished in conjunction with this Work Order, they were intended solely as approximations and to illustrate the general style and arrangement of equipment being offered and should, under no circumstances, be relied upon for their accuracy. Unless otherwise agreed, it is understood that the work described above will be performed during regular working hours of the trades involved. If overtime is mutually agreed upon, an additional charge at ThyssenKrupp Elevator's usual rates for such work shall be added to the price of this Work Order.

## ThyssenKrupp Elevator Americas



**ThyssenKrupp**

In consideration of ThyssenKrupp Elevator performing the services herein specified, Purchaser, to the fullest extent permitted by law, expressly agrees to indemnify, defend, save harmless, discharge, release and forever acquit ThyssenKrupp Elevator Corporation, ThyssenKrupp Elevator Manufacturing, Inc., their respective employees, officers, agents, affiliates, and subsidiaries from and against any and all claims, demands, suits, and proceedings for loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death that are alleged to have arisen out of the presence, use, misuse, maintenance, installation, removal, repair, replacement, modernization, manufacture, design, operation or condition of the equipment that is the subject matter of this Work Order or any equipment located underground, in the elevator car/cab, in the elevator machine room and/or in the hoistways of the project location. Purchaser's duty to indemnify does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death is determined to be caused by or resulting from the sole negligence of ThyssenKrupp Elevator and/or its employees. Purchaser recognizes that its obligation to ThyssenKrupp Elevator under this clause includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims, demands, suits or proceedings.

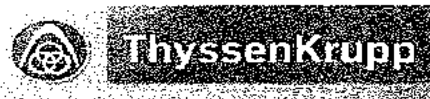
Purchaser further expressly agrees to name ThyssenKrupp Elevator Corporation and ThyssenKrupp Elevator Manufacturing, Inc. along with their respective officers, agents, affiliates and subsidiaries as additional insureds in Purchaser's liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure the above-referenced additional insureds for those claims and/or losses referenced in the above paragraph, and for claims and/or losses arising from the additional insureds' sole negligence or responsibility. Such insurance must specify that its coverage is primary and non-contributory. Purchaser hereby waives its right of subrogation.

By executing this Work Order, Purchaser agrees that in no event shall ThyssenKrupp Elevator be liable for any consequential, indirect, incidental, exemplary, special or liquidated damages of any type or kind under any circumstances including any loss, damage, or delay caused by acts of government, labor troubles, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God or any cause beyond its control. ThyssenKrupp Elevator shall automatically receive an extension of time commensurate with any delay regarding the aforementioned. Should loss of or damage to ThyssenKrupp Elevator's material, tools or work occur at the location that is the subject of this Work Order, Purchaser shall compensate ThyssenKrupp Elevator therefore, unless such loss or damage results solely from ThyssenKrupp Elevator's own acts or omissions.

Purchaser agrees that all existing equipment removed by ThyssenKrupp Elevator in the performance of the work described above shall become the exclusive property of ThyssenKrupp Elevator. ThyssenKrupp Elevator retains title to all equipment supplied by ThyssenKrupp Elevator under this Work Order and a security interest therein, (which, it is agreed, can be removed without material injury to the real property) until all payments under the terms of both this Work Order and any mutually agreed to-change orders have been made. In the event Purchaser fails to meet any of its obligations under this Work Order, Purchaser authorizes ThyssenKrupp Elevator to take immediate possession of the equipment installed under this Work Order and enter upon the premises where it is located (without legal process) and remove such equipment or portions thereof irrespective of the manner of its attachment to the real estate or the sale, mortgage, or lease of the real estate. Pursuant to the Uniform Commercial Code, at ThyssenKrupp Elevator's request, Purchaser agrees to join with ThyssenKrupp Elevator in executing any financial or continuation statements which may be appropriate for ThyssenKrupp Elevator to file in public offices in order to perfect its security interest in such equipment.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this Work Order or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees. Purchaser agrees that this Work Order shall be construed and enforced in accordance with the laws of the state where the vertical transportation equipment that is the subject of this Work Order is located and consents to jurisdiction of the courts, both state and Federal, of that as to all matters and disputes arising out

## ThyssenKrupp Elevator Americas



of this Work Order. Purchaser further agrees to waive trial by jury for all such matters and disputes.

The rights of ThyssenKrupp Elevator under this Work Order shall be cumulative and the failure on the part of the ThyssenKrupp Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by ThyssenKrupp Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this Work Order. In the event any portion of this Work Order is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this Work Order. This Work Order shall be considered as having been drafted jointly by Purchaser and ThyssenKrupp Elevator and shall not be construed or interpreted against either Purchaser or ThyssenKrupp Elevator by reason of either Purchaser or ThyssenKrupp Elevator's role in drafting same.

ThyssenKrupp Elevator does not assume any responsibility for any part of the vertical transportation equipment other than the specific components that are described in this Work Order and then only to the extent ThyssenKrupp Elevator has performed the work described above. ThyssenKrupp Elevator has made no examination of, and assumes no responsibility for, any part of the elevator equipment except that necessary to do the work described above. It is agreed that possession and control of the vertical transportation equipment remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

ThyssenKrupp Elevator complies with provisions of Executive Orders 11246, 11375, 11758, Section 503 of the Rehabilitation Act of 1993, Vietnam Era Veteran's Readjustment Act of 1974, 38 U.S.C. 4212 and 41 CFR Chapter 60. ThyssenKrupp Elevator supports Equal Employment Opportunity and Affirmative Actions Compliance programs.

# ThyssenKrupp Elevator Americas



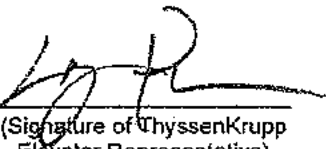
Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

To indicate acceptance of this work order, please sign and return one (1) original of this agreement to the address shown below. Upon receipt of your written authorization and required materials and/or supplies, we shall implement the work order.

This Work Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator Corporation.

Purchaser's acceptance of this Work Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. This Work Order specifically contemplates work outside the scope of any maintenance contract currently in effect between the parties; any such contract shall be unaffected by this Work Order.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator Corporation manager.

ThyssenKrupp Elevator Corporation	Golden Nugget	ThyssenKrupp Elevator Corporation Approval
By:  (Signature of ThyssenKrupp Elevator Representative)	By: _____ (Signature of Authorized Individual)	By: _____ (Signature of Authorized Individual)
Larry Panaro Sales Representative larry.panaro@thyssenkrupp.com +1 702 2626775  6-15-15 (Date Submitted)	_____ (Print or Type Name)  _____ (Print or Type Title)  _____ (Date of Approval)	_____ (Print or Type Name) Branch Manager  _____ (Date of Approval)

# ThyssenKrupp Elevator Americas



**ThyssenKrupp**

## SCHEDULING AND PRODUCTION REQUEST FOR PAYMENT

Contract Number:

Please Remit To: ThyssenKrupp Elevator Corporation

PO BOX 933004

Atlanta, GA 31193-3004

Attn: Mr. DON HARTMANN

Terms	Repair No.	Customer Reference No./PO	Date	Reference Number
Immediate	2015-2-117143		June 16, 2015	ACIA-ZQUY0B

Total Contract Price

\$49,880.00

Current Amount Due

\$24,940.00

We accept credit card payments. Please call 801-449-8221 and ask for the LAS VEGAS Branch Receivable Specialist.

Please detach the below section and provide along with payment.

### Remit To:

ThyssenKrupp Elevator Corporation  
PO BOX 933004  
Atlanta, GA 31193-3004

Payment Reference ID:	ACIA-ZQUY0B
Quote #:	2015-2-117143
Customer Number:	
Remittance Amount:	24940

Customer Name: Golden Nugget

Site Location: GOLDEN NUGGET HOTEL



PET 0362

-----Original Message-----

From: Panaro, Larry  
Sent: Wednesday, August 05, 2015 4:02 PM  
To: 'Hartmann, Don'  
Cc: Olsen, Scott; Alan Trantina; Tom MacDonald  
Subject: RE: Damaged Escalator Steps (Down Unit)

Don,

Can you please call me at your earliest convenience to discuss specifics of this work, (702) 591-9422.

Thank you,

Larry Panaro  
Account Manager  
Service, Repair and Modernization Sales

ThyssenKrupp Elevator Americas  
5440 S. Procyon St., Ste. B  
Las Vegas, NV 89118

Phone: (702) 262-6775  
Cell: (702) 591-9422  
Fax: (866) 248-5612  
<mailto:larry.panaro@thyssenkrupp.com>  
Monthly Safety Message - Remember: Report all accidents in a timely manner!

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Google+ · YouTube Subscribe to our e-newsletter [www.urban-hub.com](http://www.urban-hub.com)

-----Original Message-----

From: Hartmann, Don [<mailto:DHARTMANN@GoldenNugget.com>]  
Sent: Wednesday, August 05, 2015 3:59 PM  
To: Panaro, Larry  
Cc: Olsen, Scott; Alan Trantina; Tom MacDonald  
Subject: Re: Damaged Escalator Steps (Down Unit)

This is not covered on our Maintenance Contract??

Sent from my iPhone

> On Aug 5, 2015, at 3:31 PM, Panaro, Larry <[Larry.Panaro@thyssenkrupp.com](mailto:Larry.Panaro@thyssenkrupp.com)> wrote:  
>  
> Great Don, where were the steps purchased from?  
>  
> Would you just like me to revise my proposal for the labor only to install the steps?  
>  
> Thank you,  
>  
> Larry Panaro  
> Account Manager  
> Service, Repair and Modernization Sales  
>  
> ThyssenKrupp Elevator Americas  
> 5440 S. Procyon St., Ste. B  
> Las Vegas, NV 89118  
>

> Phone: (702) 262-6775  
> Cell: (702) 591-9422  
> Fax: (866) 248-5612  
> <mailto:larry.panaro@thyssenkrupp.com>  
> Monthly Safety Message - Remember: Report all accidents in a timely manner!

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> -----  
> www.thyssenkruppelevator.com Facebook · Blog · Twitter · LinkedIn ·  
> Google+ · YouTube Subscribe to our e-newsletter [www.urban-hub.com](http://www.urban-hub.com)

> -----Original Message-----  
> From: Hartmann, Don [<mailto:DHARTMANN@GoldenNugget.com>]  
> Sent: Wednesday, August 05, 2015 3:27 PM  
> To: Panaro, Larry  
> Cc: Olsen, Scott; Alan Trantina; Tom MacDonald  
> Subject: Re: Damaged Escalator Steps (Down Unit)

> We have the new steps in our Warehouse ready to be scheduled for install.

> Thank you

> Sent from my iPhone

>> On Aug 5, 2015, at 3:24 PM, Panaro, Larry <[Larry.Panaro@thyssenkrupp.com](mailto:Larry.Panaro@thyssenkrupp.com)> wrote:  
>> Hi Don,  
>> I hope all is well. I just wanted to reach out to you and follow up  
>> on the escalator step matter at Golden Nugget Laughlin. Has a  
>> decision been made on which direction the property wants to go on  
>> these step replacement proposals?  
>> Chris Dutcher (TKE Laughlin Mechanic) brought it up to me again last  
>> week as a safety concern of his, that is why I thought I would reach  
>> out to you.  
>> Please let me know at your earliest convenience.  
>> Sincerely,  
>> Larry Panaro  
>> Account Manager  
>> Service, Repair and Modernization Sales  
>> ThyssenKrupp Elevator Americas

>>  
>> 5440 S. Procyon St., Ste. B  
>>  
>> Las Vegas, NV 89118  
>>  
>>  
>> Phone: (702) 262-6775  
>>  
>> Cell: (702) 591-9422  
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>> Fax: (866) 248-5612  
>>  
>> <mailto:larry.panaro@thyssenkrupp.com>  
>>  
>> Monthly Safety Message - Remember: Report all accidents in a timely  
>> manner!  
>>  
>> -----  
>>  
>> www.thyssenkruppelevator.com <<http://www.thyssenkruppelevator.com/>>  
>>  
>> Facebook <<https://www.facebook.com/ThyssenKruppElevatorAmericas>> \*  
>> Blog <<http://blog.thyssenkruppelevator.com/>> \* Twitter  
>> <[https://twitter.com/#!/tke\\_americas](https://twitter.com/#!/tke_americas)> \* LinkedIn  
>> <<http://www.linkedin.com/company/thyssenkrupp-elevator>> \* Google+  
>> <<https://plus.google.com/u/0/b/101712657051078702814/101712657051078702814>>  
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>> e>  
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>> Subscribe to our e-newsletter  
>> <<http://thyssenkruppelevator.com/subscribe>>  
>>  
>> www.urban-hub.com <<http://www.urban-hub.com/>>  
>>  
>>  
>>  
>> From: Panaro, Larry  
>> Sent: Tuesday, June 16, 2015 4:29 PM  
>> To: 'Hartmann, Don'  
>> Cc: Olsen, Scott  
>> Subject: Damaged Escalator Steps (Down Unit)  
>> Importance: High  
>>  
>>  
>>  
>> Good Afternoon Don,  
>>  
>>  
>>  
>> It was great catching up with you last week. Per our conversation,  
>> and your conversations with Chris Dutcher (TKE Mechanic), attached  
>> are the proposals to replace the damaged/cracked escalator steps on the "Down"  
>> unit at the Golden Nugget Laughlin. As we discussed, this is a  
>> safety matter for the riding public. There are currently 40 steps  
>> showing signs of cracking, and 5 of the 40 are critical. At this  
>> time, we recommend replacing the 40 steps, however, the 5 steps need  
>> to be addressed asap.

>>  
>>  
>>  
>> As you will notice, the price per step is significantly less if all  
>> 40 can be replaced at once (versus doing only 5 steps).  
>>  
>>  
>>  
>> Please call me with any further questions or concerns pertaining to  
>> this correspondence.  
>>  
>>  
>>  
>> Sincerely,  
>>  
>>  
>>  
>> Larry Panaro  
>>  
>> Account Manager  
>>  
>> Service, Repair and Modernization Sales  
>>  
>>  
>>  
>> ThyssenKrupp Elevator Americas  
>>  
>> 4145 W. Ali Baba, Suite A  
>>  
>> Las Vegas, NV 89118  
>>  
>>  
>>  
>> Phone: (702) 262-6775  
>>  
>> Cell: (702) 591-9422  
>>  
>> Fax: (866) 248-5612  
>>  
>> <mailto:larry.panaro@thyssenkrupp.com>  
>>  
>> Monthly Safety Message - Remember: Report all accidents in a timely  
>> manner!  
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>> [www.thyssenkruppelevator.com](http://www.thyssenkruppelevator.com) <<http://www.thyssenkruppelevator.com/>>  
>>  
>> Facebook <<https://www.facebook.com/ThyssenKruppElevatorAmericas>> \*  
>> Blog <<http://blog.thyssenkruppelevator.com/>> \* Twitter  
>> <[https://twitter.com/#!/tke\\_americas](https://twitter.com/#!/tke_americas)> \* LinkedIn  
>> <<http://www.linkedin.com/company/thyssenkrupp-elevator>> \* Google+  
>> <<https://plus.google.com/u/0/b/101712657051078702814/1017126570510787>  
>> 028  
>> 14> \* YouTube  
>> <<http://www.youtube.com/channel/UCMIk2PG6wp5wjK-UAMqUXXQ?feature=guid>  
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>> Subscribe to our e-newsletter  
>> <<http://thyssenkruppelevator.com/subscribe>>

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>> www.urban-hub.com <<http://www.urban-hub.com/>>  
>>  
>>  
>>  
>> <GN Laughlin - 5 Esc Steps.pdf>  
>> <GN Laughlin - 40 Esc Steps.pdf>

**INVOICE**

Page: 1 of 1 KONE Spares



<b>Invoice number:</b> 1157033639		<b>Area Office:</b> KONE Inc. Federal KONE Spares 325 19TH STREET MOLINE, IL 61265 PH: 800-343-3344 FAX: 309-762-7475	
<b>Invoice Date:</b> 08/12/2015		<b>Customer Purchase Order No:</b> 1004752	
<b>KONE Order No:</b> 340514250		<b>Billing Type:</b> YF2	
<b>Salesperson:</b> Mr Daniel Whitcanack			
<b>Bill To:</b> GOLDEN NUGGET LAUGHLIN PO BOX 77111 LAUGHLIN NV 89028 USA		<b>Ship-To:</b> GOLDEN NUGGET LAUGHLIN 2300 S CASINO DR LAUGHLIN NV 89029 USA	
RECEIVED  AUG 17 2015  GNL			
<b>Payment Terms:</b> ZUSB Net 30		<b>Other Comments:</b>	

Req	Ship	Quantity	Item Number	Description	Unit Price	Amount
	Pre	Curr	BO			
40	0	40	0	USP29864 ROLLER, 4"DIA 7/8"WIDE	\$ 58.00	\$ 2,320.00
<b>Subtotal in USD</b>						\$ 2,320.00
<b>SHIPPING AND HANDLING</b>						\$ 71.89
<b>State Tax</b>						\$ 106.72
<b>County Tax</b>						\$ 81.20
<b>Total Invoice Amount in USD</b>						\$ 2,579.81

*Account 8/17. 00. 00. 070. 000. 00*  
*0872, 000.000 0700. 000.0000*

Invoices not paid within 30 days are subject to a service charge of 1.5% per month or the maximum permitted by law.

Please return this portion with your payment

**PAYMENT ADVICE**

We also accept VISA/Mastercard/American Express/Discover or ACH payment

<b>Payer:</b> GOLDEN NUGGET LAUGHLIN PO BOX 77111 LAUGHLIN NV 89028 USA		<b>Invoice number:</b> 1157033639 <b>Invoice Date:</b> 08/12/2015 <b>Customer Number:</b> 12649754 <b>KONE Order No:</b> 340514250 <b>Area Office No:</b> <b>Billing Type:</b> YF2	
<b>Remit to:</b> KONE Spares 4156 P O BOX 894156 LOS ANGELES, CA 90189-4156		<b>Amount paid if different than invoice amount:</b> \$ <b>INVOICE AMOUNT:</b> USD \$ 2,579.81	

Use this address for payments only.  
Direct calls and area correspondence to our area office above.

115703363900002579813



GOLDEN NUGGET HOTEL & CASINO  
Las Vegas, NV, 89184  
Office 702.386.8257 Fax: 702.387.4457

## PURCHASE ORDER

GOODS WILL NOT BE ACCEPTED UNLESS THIS PURCHASE ORDER NUMBER  
APPEARS ON ALL INVOICES, PACKAGES, PACKING SLIPS AND BILLS OF LADING

P.O. Number :	1008826
Type :	STANDARD
Order Date:	04-JAN-16
Due Date :	08-JAN-16
Entered by :	Garcia, Irais Rubi
Approved By :	Meyer, Robert
Buyer :	Irais, Garcia

VENDOR :  
THYSSENKRUPP ELEVATOR  
PO BOX 933004  
ATLANTA, GA 91193-3004 UNITED STATES

SHIP TO:  
0872 - GOLDEN NUGGET LAUGHLIN  
2300 SOUTH CASINO DR.  
LAUGHLIN, NV 89029 UNITED STATES

BILL TO :  
ACCOUNT'S PAYABLE  
P.O.BOX 77111  
LAUGHLIN, NV 89028 UNITED STATES

Notes :  
QUOTE# PROPOSAL DATED 11/1/15 BY LARRY PANARO  
PLEASE CONFIRM RECEIPT OF THIS PO TO:

IRAIS GARCIA  
P: 702-386-8192  
F: 702-387-4457  
igarcia@goldennugget.com

REQUESTOR: CODI GIBSON  
DEPT: ENGINEERING

THERE MAY BE FREIGHT

PLEASE EMAIL INVOICE TO: GNLVAP@GOLDENNUGGET.COM

Ordered By	Effective Date	Expiration Date	Ship Via	F.O.B	Terms
Irais, Garcia					IMMEDIATE
Remarks :	RFQ. 1010108 - ENGINEERING - CODI GIBSON				
Comments :	0872				



Line	Item Number	Description + Comment	UNIT	COST	Taxable	Quantity	Amount
1	3084016	40 escalator steps to be installed by ThyssenKrupp (LABOR ONLY)	Lot	11500.00	N	1	\$11500.00
Total Amount							\$ 11,500.00

EXHIBIT "F"

*Steven D. Grierson*

1 **SAO**  
2 **IQBAL LAW PLLC**  
3 Mohamed A. Iqbal, Jr. (NSB #10623)  
4 Christopher Mathews (NSB #10674)  
5 101 Convention Center Dr., Suite 1175  
6 Las Vegas, Nevada 89109  
7 1-(702) 750-2950 (Tel)  
8 1-(702) 825-2841 (V-Fax)  
9 [info@ilawlv.com](mailto:info@ilawlv.com)

10 *Attorneys for Plaintiff Joe N. Brown and Nettie J. Brown*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **JOE N. BROWN, an individual, and his Wife,**  
14 **NETTIE J. BROWN, an individual**

15 **Plaintiffs,**

16 **vs.**

17 **LANDRY'S, INC., a foreign corporation;**  
18 **GOLDEN NUGGET, INC, a Nevada**  
19 **corporation, d/b/a GOLDEN NUGGET**  
20 **LAUGHLIN; GNL, CORP.; DOE**  
21 **INDIVIDUALS 1-100; ROE BUSINESS**  
22 **ENTITIES 1-100,**

23 **Defendants.**

Case No.: A-16-739887-C

Dept. No.: XXXI

**STIPULATION AND ORDER TO  
EXTEND DISCOVERY DEADLINES AND  
CONTINUE TRIAL**

**(THIRD REQUEST)**

24 **AND ASSOCIATED CASES**

25 Pursuant to EDCR 2.35, it is hereby agreed and stipulated, by and between Plaintiffs JOE  
26 N. BROWN and NETTIE J. BROWN ("Plaintiffs"), by and through their counsel of record,  
27 Mohamed A. Iqbal, Jr., Esq., of the law firm of Iqbal Law PLLC; Defendants GNL, CORP.  
28 ("GNL"), LANDRY'S, INC. ("Landry's"), and GOLDEN NUGGET, INC. dba 'GOLDEN  
NUGGET LAUGHLIN ("GNI"), by and through its counsel of record, Alexandra McLeod, Esq.,  
of the law firm of Grant & Associates; and Third-Party Defendant, THYSSENKRUPP  
ELEVATOR CORPORATION ("TKE"), by and through its counsel of record Rebecca L.

**STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE  
TRIAL**

1 of 10

03-05-18 P04:01 IN

1 Mastrangelo, Esq., of the law firm Rogers, Mastrangelo, Carvalho & Mitchell, that the parties  
2 respectfully request the Court grant an order to extend all discovery deadlines and continue trial  
3 as follows:

4 **I. EDCR 2.35 STATEMENT**

5 **A. DISCOVERY COMPLETED [(B)(1)]**

6 Plaintiffs

7 November 22, 2016

Plaintiffs propounded their first set of requests for admission, requests for production of documents, and interrogatories to Defendant GNL.

9 November 29, 2016

Plaintiffs served their Initial Disclosures under NRCp 16.1.

11 March 3, 2017

Plaintiffs served their responses to Third-Party Defendant TKE's Demand for Prior Pleadings and Discovery.

13 April 7, 2017

Plaintiffs served their second set of disclosures of witnesses and documents.

15 April 7, 2017

Plaintiff Joe N. Brown served his responses to GNL's first set of requests for admissions, requests for production of documents, and interrogatories to Defendant GNL.

17 April 19, 2017

Plaintiffs propounded their first set of requests for production, requests for admissions, and interrogatories to Landry's and GNL.

19 June 19, 2017

Plaintiff Nettie J. Brown served her responses to GNL's first set of requests for admissions.

21 June 20, 2017

Plaintiff Nettie J. Brown served her responses to GNL's first set of interrogatories.

23 June 21, 2017

Plaintiff Nettie J. Brown served her responses to GNL's first set of requests for production of documents.

25 September 8, 2017

Plaintiffs propounded their second set of requests for production of documents to GNL.

27 **STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE**  
28 **TRIAL**

1	November 19, 2017	Plaintiffs served their Plaintiffs' Third Set of Witnesses and Documents.
2	December 11, 2017	Plaintiffs served their Fourth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1.
3	December 12, 2017	Plaintiffs served their Fifth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1.
4	December 12, 2017	Plaintiffs served their Supplemental NRCP 16.1(a)(1)(C) Computation of Damages.
5	January 4, 2018	Plaintiffs served their First Set of Requests for Production of Documents to Third-Party Defendant Thyssenkrupp Elevator Corporation.
6	January 23, 2018	Plaintiffs served their Notice of Taking Videotaped Deposition of Don Hartmann, Director of Facilities at the Laughlin Nugget.
7	January 24, 2018	Deposition of Don Hartmann.
8	<u>GNL</u>	
9	June 30, 2016	Defendant GNL, Corp. served its Initial List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
10	February 2, 2017	Defendant GNL, Corp. served its First Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
11	February 2, 2017	Defendant GNL, Corp propounded its first set of requests for production of documents, requests for admissions, and interrogatories to Plaintiff Joe N. Brown.
12	February 2, 2017	Defendant GNL, Corp. served its responses to Plaintiffs' first set of requests for production of documents, requests for admissions, and interrogatories.
13	March 3, 2017	Defendant GNL, Corp. served its Second Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
14	March 3, 2017	Defendant GNL, Corp. served its Supplemental Responses to Plaintiffs' first set of interrogatories and requests for production of documents.

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE TRIAL

1 May 8, 2017 Defendant GNL, Corp. propounded its first set of  
2 requests for production of documents, requests for  
3 admissions, and interrogatories to Plaintiff Nettie J.  
4 Brown.  
5 June 30, 2017 Defendant GNL, Corp. served its NRCP 7.1  
6 Disclosure Statement.  
7 July 10, 2017 Defendant/Third-Party Plaintiff GNL, Corp. served  
8 responses to Third-Party Defendant TKE's first set  
9 of requests for admission, requests for production of  
10 documents, and interrogatories.  
11 July 25, 2017 Defendant GNL, Corp. served its Third  
12 Supplemental List of Witnesses and Documents  
13 Pursuant to NRCP 16.1 Disclosure.  
14 July 25, 2017 Defendant GNL, Corp. served its Notice of Taking  
15 of Deposition of Plaintiff Nettie J. Brown.  
16 August 16, 2017 Deposition of Nettie J. Brown.  
17 August 29, 2017 Defendants GNL, Corp., GNI, and Landry's served  
18 a Fourth Supplemental List of Witnesses and  
19 Documents Pursuant to NRCP 16.1.  
20 August 31, 2017 Defendants GNL, Corp., GNI, and Landry's served  
21 a Fifth Supplemental List of Witnesses and  
22 Documents Pursuant to NRCP 16.1 Disclosure.  
23 September 6, 2017 Defendants GNL, Corp., GNI, and Landry's served  
24 a Sixth Supplemental List of Witnesses and  
25 Documents Pursuant to NRCP 16.1 Disclosure.  
26 September 19, 2017 Defendants GNL, Corp., GNI, and Landry's served  
27 a Seventh Supplemental List of Witnesses and  
28 Documents Pursuant to NRCP 16.1 Disclosure.  
September 21, 2017 Defendant/Third-Party Plaintiff GNL, Corp.  
propounded its first set of requests for admission,  
requests for production of documents, and  
interrogatories to Third-Party Defendant TKE.  
October 6, 2017 Defendants GNL, Corp., GNI, and Landry's served  
an Eighth Supplemental List of Witnesses and  
Documents Pursuant to NRCP 16.1 Disclosure.

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE  
TRIAL

1	October 20, 2017	Defendants GNL, Corp., GNI, and Landry's served a Ninth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
2		
3	October 20, 2017	Defendant GNL, Corp. served its response to Plaintiffs' second set of requests for production of documents.
4		
5	November 21, 2017	Defendants GNL, Corp., GNI, and Landry's served their Tenth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
6		
7	November 30, 2018	Defendants GNL, Corp., GNI, and Landry's served their Eleventh Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
8		
9	January 20, 2018	Defendants GNL, Corp., GNI, and Landry's served their Twelfth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
10		
11	January 20, 2018	Defendant GNL, Corp. served its Supplemental Response to Plaintiffs' Request for Production No. 16.
12		
13	February 1, 2018	Defendants GNL, Corp., GNI, and Landry's served their Thirteenth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1 Disclosure.
14		
15	February 1, 2018	Defendant GNL, Corp. served its Second Supplemental Response to Plaintiffs' Request for Production No. 16.
16		
17		
18	<u>Landry's</u>	
19	May 22, 2017	Defendant Landry's served its responses to Plaintiffs' first set of interrogatories, requests for production of documents, and requests for admissions.
20		
21	June 30, 2017	Defendant Landry's served its NRCP 7.1 Disclosure Statement.
22		
23	July 10, 2017	Defendant Landry's served its "corrected" responses to Plaintiffs' first set of interrogatories.
24		
25	November 21, 2017	Defendant Landry's served its Supplemental Responses to Plaintiffs' First Set of Requests for Production of Documents.
26		

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE TRIAL

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November 21, 2017

Defendant Landry's served its Supplemental Responses to Plaintiffs' First Set of Interrogatories.

GNI

May 22, 2017

Defendant GNI served its responses to Plaintiffs' first set of interrogatories, requests for production of documents, and requests for admissions.

June 30, 2017

Defendant GNI served its NRCP 7.1 Disclosure Statement.

July 10, 2017

Defendant GNI served its "corrected" responses to Plaintiffs' first set of interrogatories.

November 21, 2017

Defendant GNI served its Supplemental Responses to Plaintiffs' First Set of Requests for Production of Documents.

November 21, 2017

Defendant GNI served its Supplemental Responses to Plaintiffs' First Set of Interrogatories.

TKE

April 18, 2017

Third-Party Defendant TKE served its Early Case Conference List of Witnesses and Production of Documents.

May 24, 2017

Third-Party Defendant TKE propounded its requests for admission, requests for production of documents and interrogatories to Defendant/Third-Party Plaintiff GNL, Corp.

June 6, 2017

TKE served its Subpoena for Deposition of Steve Robertson from the Department of Business and Industry, Division of Industrial Relations, Mechanical Compliance Section scheduled on July 11, 2017.

July 10, 2017

TKE served its Notice to Vacate Deposition of Steve Robertson scheduled on July 11, 2017.

July 13, 2017

TKE served its Subpoena for Deposition of Steve Robertson from the Department of Business and Industry, Division of Industrial Relations, Mechanical Compliance Section scheduled on August 21, 2017.

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE TRIAL



1	August 21, 2017	Deposition of Steve Robertson.
2	October 24, 2017	Third-Party Defendant TKE served its responds to
3		Defendant/Third-Party Plaintiff GNL Corp.'s first
4	October 30, 2017	set of requests for admission.
5		Third-Party Defendant TKE's First Supplement to
6	November 3, 2017	Early Case Conference List of Witnesses and
7		Production of Documents.
8		Third-Party Defendant TKE responded to
9	November 11, 2017	Defendant/Third-Party Plaintiff's first set of
10		requests for production of documents and
11	November 17, 2017	interrogatories.
12		Third-Party Defendant TKE served its Second
13	November 17, 2017	Supplement to Early Case Conference List of
14		Witnesses and Production of Documents.
15	December 13, 2017	Third-Party Defendant TKE served its Third
16		Supplement to Early Case Conference List of
17	January 17, 2018	Witnesses and Production of Documents.
18	February 6, 2018	Third-Party Defendant TKE served its Notice of
19		Taking Videotaped Deposition of Joe N. Brown.
20		Third-Party Defendant TKE served its Amended
21		Notice of Taking Videotaped Deposition of Joe N.
22		Brown.
23		Deposition of Joe N. Brown.
24		Third-Party Defendant TKE served its Response to
25		Plaintiffs' First Set of Requests for Production of
26		Documents.

**B. DISCOVERY THAT REMAINS TO BE COMPLETED [(B)(2)]**

Additional written discovery to the extent necessary, and based in part on the resolution of the discovery disputes between Plaintiff and defendants GNL, Landry's, and GNI; and depositions of parties, witnesses, and experts, including but not limited to NRCP 30(b)(6) witnesses from GNL, Landry's, GNI, and TKE.

///

**STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE TRIAL**

1           **C. THE REASONS WHY THE REMAINING DISCOVERY REQUIRES MORE**  
2 **TIME [(B)(3)]**

3           The parties have made progress in discovery to date. However, certain motions have  
4 been heavily litigated and the extensive motion practice and disputes over the permissibility and  
5 scope of discovery have led to delays such that the parties believe changes to the existing  
6 deadlines are necessary to permit a full and fair adjudication of the case. In addition, recently-  
7 produced documents from the defendants and third-party defendant have indicated the need for  
8 additional follow-up discovery. Finally, Plaintiffs' expert Stephen Carr has recently experienced  
9 a health matter requiring his hospitalization and necessitating a continuance of the expert  
10 reporting deadlines.

11           **D. A PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING**  
12 **DISCOVERY [(b)(4)]**

13           Last day to amend pleadings or add parties: currently 3/5/18; requesting 7/3/18  
14           Initial expert disclosures: currently 3/5/18; requesting 5/4/18  
15           Rebuttal expert disclosures: currently 4/4/18; requesting 6/4/18  
16           Discovery cut off: currently 6/5/18; requesting 10/3/18  
17           Last day to file dispositive motions: currently 7/4/18; requesting 11/1/18

18           **E. THE CURRENT TRIAL DATE [(b)(5)]**

19           The current trial date is September 10, 2018. The parties request a brief continuance of  
20 the trial in accordance with the proposed discovery deadlines above.

21       ///

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27       **STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE**  
28       **TRIAL**

1  
2 **F. STATEMENT REGARDING EXTENSIONS [(b)(6)]**

3 This is the third requested extension. The prior requests were both made by stipulation.

4 IT IS SO STIPULATED.

5 DATED this 5<sup>th</sup> day of ~~February~~ 2018.

6 IQBAL LAW PLLC

DATED this    day of February 2018.

GRANT & ASSOCIATES

7  
8  
9 MOHAMED A. IQBAL, JR., ESQ.  
Nevada Bar No. 10623  
10 101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
11 *Attorneys for Plaintiffs,*  
12 JOE N. BROWN and NETTIE J. BROWN

ALEXANDRA MCLEOD, ESQ.  
Nevada Bar No. 8185  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
*Attorneys for Defendants, GNL, CORP.,  
LANDRY'S, INC., and GOLDEN NUGGET,  
INC.*

13 DATED this 5 day of ~~February~~ 2018.

14 ROGERS, MASTRANGELO, CARVALHO  
15 & MITCHELL

16  
17 Ca #14403 for  
REBECCA L. MASTRANGELO, ESQ.  
18 Nevada Bar No. 5417  
700 S. 3rd Street  
19 Las Vegas, NV 89101  
20 *Attorneys for Third-Party Defendants,*  
THYSSENKRUPP ELEVATOR CORPORATION

21  
22 **ORDER**

23 IT IS HERBY ORDERED that the discovery deadlines are extended as follows:

24 **DESCRIPTION**

**NEW DEADLINE**

25 Last day to amend pleadings or add parties:

7/3/18

26  
27 STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE  
28 TRIAL

1  
2 **F. STATEMENT REGARDING EXTENSIONS [(b)(6)]**

3 This is the third requested extension. The prior requests were both made by stipulation.

4 IT IS SO STIPULATED.


5 DATED this \_\_\_\_ day of February 2018.

DATED this 28 day of February 2018.

6 IQBAL LAW PLLC

GRANT & ASSOCIATES

7  
8  
9 MOHAMED A. IQBAL, JR., ESQ.  
Nevada Bar No. 10623  
10 101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
11 *Attorneys for Plaintiffs,*  
12 *JOE N. BROWN and NETTIE J. BROWN*

  
ALEXANDRA MCLEOD, ESQ.  
Nevada Bar No. 8185  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
*Attorneys for Defendants, GNL, CORP.,*  
*LANDRY'S, INC., and GOLDEN NUGGET,*  
*INC.*

13 DATED this \_\_\_\_ day of February 2018.

14 ROGERS, MASTRANGELO, CARVALHO  
15 & MITCHELL

16  
17 REBECCA L. MASTRANGELO, ESQ.  
18 Nevada Bar No. 5417  
700 S. 3rd Street  
19 Las Vegas, NV 89101  
20 *Attorneys for Third-Party Defendants,*  
*THYSSENKRUPP ELEVATOR CORPORATION*

21  
22 **ORDER**

23 IT IS HERBY ORDERED that the discovery deadlines are extended as follows:

24 **DESCRIPTION**

**NEW DEADLINE**

25 Last day to amend pleadings or add parties:

7/3/18

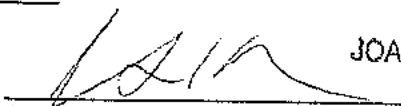
26  
27 STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE  
28 TRIAL

1 Initial expert disclosures: 5/4/18  
2 Rebuttal expert disclosures: 6/4/18  
3 Discovery cut off: 10/3/18  
4 Last day to file dispositive motions: 11/1/18

5 IT IS FURTHER ORDERED that an amended scheduling order will not be issued. This  
6 Stipulation and Order will take the place of the amended scheduling order.


7 IT IS FURTHER ORDERED that the September 10, 2018, trial date is hereby  
8 VACATED, and will be reset in accordance with the discovery deadlines outlined above.

9 DATED this 7<sup>th</sup> day of March 2017.

10  JOANNA S. KISHNER  
11 DISTRICT COURT JUDGE  
12

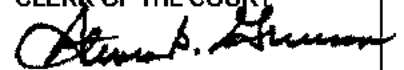
13  
14 Respectfully submitted by:

15 IQBAL LAW PLLC

16   
17 MOHAMED A. IQBAL, JR., ESQ.  
18 Nevada Bar No. 10623  
19 101 Convention Center Drive, Suite 1175  
20 Las Vegas, Nevada 89109  
21 Attorneys for Plaintiffs,  
22 JOE N. BROWN and NETTIE J. BROWN  
23  
24  
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13  
14 Trial continued until the 1/7/19 trial stack.  
15 An Amended Order Scheduling Trial will issue separately.

27 STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE  
28 TRIAL



**RPLY**  
IQBAL LAW PLLC  
Mohamed A. Iqbal, Jr. (NSB #10623)  
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[info@ilawlv.com](mailto:info@ilawlv.com)

*Attorneys for Plaintiffs Joe N. Brown and Nettie J. Brown*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual and his Wife,  
NETTIE J. BROWN, an individual,

Plaintiffs,

vs.

LANDRY'S, INC., a foreign corporation;  
GOLDEN NUGGETT, INC., a Nevada  
corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP.; DOE  
INDIVIDUALS 1-100; ROE BUSINESS  
ENTITIES 1-100,

Defendants.

AND ASSOCIATED CASES

Case No.: A-16-739887-C

Dept. No.: XXXI

**REPLY IN SUPPORT OF MOTION FOR  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT**

**Date of Hearing: August 7, 2018**

**Time of Hearing: 9:00 a.m.**

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby file the following Reply in Support of Motion for Leave to File Second Amended Complaint (the "Motion").

**I. INTRODUCTION.**

In their Motion, Plaintiffs proposed amending their existing pleadings to add further detail regarding Landry's Inc., Golden Nugget, Inc., and GNL, Corp. (collectively, the "Nugget Defendants"), and to name third-party defendant Thyssenkrupp Elevator Corporation ("TKE") as a direct defendant. The proposed amendments are based on knowledge by TKE and the Nugget Defendants of the defective and dangerous condition of the escalator at the Golden Nugget Laughlin hotel and casino; their awareness of the risk posed to the public by those defects and

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (1 of 12)**

1 dangers; and their failure to remedy the problems, which resulted in devastating injuries to  
2 Plaintiff Joe Brown in the form of a broken neck. (*See generally*, Motion 3:1-5:8, 6:8-8:16).

3 TKE and the Nugget Defendants have both filed opposition briefs (respectively, the  
4 “TKE Opp.” and “Nugget Opp.”) alleging that the Motion should be denied because it bears a  
5 file stamp literally one minute after the agreed-upon deadline.<sup>1</sup> Turning to the merits, TKE  
6 contends the Motion should be denied because a 27-year-old case – one overruled in pertinent  
7 part seven years ago – suggests the Motion should have been brought under Nevada Rule of  
8 Civil Procedure (“Rule”) 10 rather than Rule 15. The Nugget Defendants for their part rely on a  
9 case from 1984 to argue that punitive damages are not permitted in Nevada absent specific intent  
10 to harm a specific individual – even though no such specific intent was required at the time, and  
11 certainly was not required after the 1995 changes to the Nevada punitive damages statute.

12 The opposition briefs ignore the relevant facts as set forth in the Motion and misstate the  
13 law. They should be disregarded, and the Motion should be granted in accordance with Nevada  
14 law and its mandate that permission to amend “shall be freely given when justice so requires.”  
15 Rule 15(a).

## 16 **II. LAW AND ARGUMENT.**

### 17 **A. The Motion Was Timely Submitted, and Defendants Were Not Prejudiced by the** 18 **One Extra Minute Shown on its Time-Stamp.**

19 Both opposition briefs note that the stipulated date for filing motions to amend was July  
20 3, 2018, and complain the file stamp affixed to the Motion by the e-filing system reads 12:01 am  
21 on July 4, 2018. (TKE Opp. 3:6-16; Nugget Opp. 3:22-4:8). In fact, the Motion was uploaded  
22 for filing on July 3rd, in accordance with the parties’ agreement; however, the submission and  
23 file stamp were delayed. (*See* Declaration of Mohamed A. Iqbal, Jr. in Support of Reply in  
24 Support of Motion for Leave to File Second Amended Complaint (“Iqbal Reply Decl.,” filed

---

25  
26 <sup>1</sup> Regrettably, both opposition briefs were filed days after the deadline for oppositions passed.  
27 Even if the Motion was submitted a minute late (which as discussed below, it was not), the extra  
time defendants took to provide their responses is more than enough to address the issue.

herewith) at ¶ 2). Neither opposition offers any authority for the proposition that a motion submitted on the date they agreed to has been unduly delayed or is untimely.

There is in fact special irony in the defendants' positions, inasmuch as neither of them bothered to observe the court's deadline to file their opposition briefs. Per EDCR 2.20, such briefs must be filed within 10 days; counting judicial days from the time-stamp on the Motion, oppositions were due no later than July 18, 2018. TKE did not attempt to file until the following day – a filing which did not actually contain an opposition. TKE's opposition brief was not filed until July 20th – two days late under the rule. (TKE Opp. p. 1).<sup>2</sup> The Nugget Defendants filed their opposition even later, on July 23, 2018. Having generously granted themselves *multiple extra days* to respond, the defendants' complaint about *one extra minute* is particularly churlish.

Nevada, of course, has a long-standing policy of adjudicating issues on their merits. See e.g., *Nev. Power Co. v. Fluor Ill.*, 837 P.2d 1354, 1359 (Nev. 1992). Even had the instant Motion been a minute late, that would not justify the sanction of rejecting it outright – especially where, as here, *neither opposing party has even claimed they were prejudiced*. Indeed, even if the defendants claimed prejudice, it is difficult to see how it would not have been cured by their unilateral decisions to delay filing their opposition briefs. The Court should disregard the defendants' timeliness arguments and decide the Motion on the merits.

**B. TKE's Opposition Relies on Inapplicable and Obsolete Legal Standards and Cannot Stand Given TKE's Withholding of Evidence.**

*1. The Federal Rules Relied on by TKE Do Not Apply in Nevada.*

TKE begins its attack by arguing that "Plaintiffs' motion is not governed by NRCP 15." (TKE Opp. 4:3-5). Citing federal district court cases holding amendment after the running of a statute of limitations cannot be accomplished under the federal version of Rule 15, TKE contends the Motion "could only be proper under NRCP 10," because it seeks to add a party not

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<sup>2</sup> In fairness, Plaintiffs assume TKE attempted to file their opposition brief on July 19th (which would still have been late under the rule) but encountered technical difficulties that cost them an extra day.



1 specifically named in the previous complaint and because the relevant statute of limitation has  
2 run. (TKE Opp. 4:5-20).<sup>3</sup>

3 TKE is wrong to rely on federal cases rather than Nevada law. To the extent they explain  
4 their reasoning, the cases which hold that adding parties is improper under Rule 15 are grounded  
5 squarely in the federal version of Rule 15(c). *See e.g., Curry v. Johns-Manville Corp.*, 93 F.R.D.  
6 623, 627 (E.D. Pa. 1982) (cited at TKE Opp. 7:1-12) (denying leave to amend “pursuant to  
7 F.R.C.P. 15(c).”). Often, the cases pinpoint specific portions of the federal rule: the Connecticut  
8 decision cited at length by TKE, for example, denied a request for leave to amend by observing  
9 “the [Plaintiff] has not — and indeed cannot — make the required showing under **Rule**  
10 **15(c)(1)(C)(ii).**” *Neth. Ins. Co. v. MD Plumbing & Heating, LLC*, 2011 U.S. Dist. LEXIS 20999  
11 at \*8 (D. Conn. Mar. 3, 2011) (cited at TKE Opp. 5:21-27 and 7:18-8:3) (emphasis added).  
12 Other cases relied on by TKE look to different portions of the Rule: the Delaware case relied on  
13 by TKE, for example, held “[i]n this case ... [Plaintiff] has not satisfied the requirements of **Rule**  
14 **15(c)(3)** to add a claim against ... a party that was not previously named” in the original  
15 Complaint. *Fed. Ins. Co. v. Lighthouse Constr., Inc.*, 230 F.R.D. 387, 390 (D. Del., 2005) (cited  
16 at TKE Opp. 6:2-9) (emphasis added).

17 TKE’s reliance on these federal decisions is misplaced. In federal court, the question of  
18 whether an amendment relates back to the date of the original complaint such that it can be  
19 allowed after a statute of limitations has run “is a question of **federal procedure**,” not state law.  
20 *Bishop v. Atmos Energy Corp.*, 161 F.R.D. 339, 341 (W.D. Ky. 1995) (cited at TKE Opp. 5:15-  
21 18) (emphasis added). These procedures are not, however, automatically applicable in Nevada.  
22 TKE seeks to skirt this problem by observing in a footnote that in questions of Nevada civil  
23 procedure, our courts treat “Federal cases interpreting the analogous federal rules” as persuasive.  
24 (TKS Opp. p. 4 fn. 3).

---

25  
26 <sup>3</sup> TKE makes no effort to analyze the relation-back provisions of Rule 15, apparently in the  
27 mistaken belief that they do not apply.

1 But this rationale is incomplete, and here it is in error. Nevada courts rely on federal  
2 court procedure decisions when the Nevada rule “*mirrors* the federal rule,” *Executive Mgmt. Ltd.*  
3 *v. Ticor Title Ins. Co.*, 38 P.3d 872, 876 (Nev. 2002) (emphasis added); is “*modeled on*” the  
4 federal rule, *Ford v. Branch Banking and Trust Co.*, 353 P.3d 1200, 1202 (Nev. 2015); or where  
5 the federal rule “is *identical to*” the Nevada rule, *Las Vegas Novelty, Inc. v. Fernandez*, 787 P.2d  
6 772, 774 (Nev. 1990) (emphases added). Rule 15, however, is one of those in which the Nevada  
7 rule *does not* mirror the federal rule; in fact, they vary substantially. The federal Rule 15(c), on  
8 which TKE’s opposition is ultimately founded, consists of two major subparts, three sub-  
9 subparts, and two sub-sub-subparts; but the Nevada version of the same Rule consists of a single  
10 sentence. *Compare* Fed.R.Civ.P. 15(c) *with* Nev.R.Civ.P. 15(c). It is not possible to deny a  
11 Nevada amendment based on a subpart of Rule 15(c) because the Nevada rule *has* no subparts.

12 2. *The Nevada Rules Allow Amendment to Add Parties Under Rule 15(c).*

13 Because the federal cases cited by TKE rely on provisions that do not exist in Nevada,  
14 the question remains whether Nevada law allows amendments to add a party under Rule 15.  
15 TKE insists it does not, strenuously arguing that “amendment of the complaint to add TKE as a  
16 direct Defendant must be determined under NRCP 10.” (TKE Opp. 8:20-21). This result, TKE  
17 insists, is mandated by *Nurenberger Hercules-Werke GMBH v. Virotek*, 882 P.2d 1100 (Nev.  
18 1991), which TKE argues “has been good law in Nevada for 27 years.” (TKE Opp. 8:21-23)  
19 (emphasis in original). In fact, TKE once again is wrong. The portions of the *Nurenberger* case  
20 suggesting Rule 15 does not apply were overruled seven years ago.

21 In *Costello v. Casler*, 254 P.3d 631 (Nev. 2011), the court considered whether a party  
22 could be added under Rule 15 and if so, whether the pleading would relate back despite the  
23 running of the statute of limitations – the same issue presented in this case. The district court,  
24 relying on the same provisions of *Nurenberger* urged by TKE, concluded it would not; and it  
25 granted summary judgment for the defendant. The Nevada Supreme Court reversed. *Costello*,  
26 254 P.3d at 636. In so doing, the Supreme Court expressly disavowed what it called “dicta” in  
27 *Nurenberger* suggesting Rule 15 did not apply – and held that it did. *Id.* at 633 n. 2 and 634 n. 4.

1 TKE's erroneous arguments notwithstanding, "[t]he rules of civil procedure allow parties  
2 to amend their prior pleadings. NRCP 15(a). Amended pleadings arising out of the same  
3 transaction or occurrence may relate back to the date of the original filing. NRCP 15(c)." *Jackson v. Groenendyke*, 369 P.3d 362, 365 (Nev. 2016) (citations in original). The key issue in  
4 deciding whether to permit an amendment is whether the opposing party has been prejudiced by  
5 the passage of time. *Id.* at 366. "NRCP 15(c) *is to be liberally construed* to allow relation back  
6 of the amended pleading where the opposing party will be put to no disadvantage." *Costello*,  
7 254 P.3d at 634 (citations omitted). As before, TKE has not alleged any prejudice by allowing  
8 the proposed amendment; nor could it plausibly do so.

9  
10 The maintenance of the escalator that broke Joe Brown's neck was placed squarely in  
11 issue by the Plaintiffs in their operative complaint (*see* First Amended Complaint ("FAC"), ¶¶  
12 22-23). As the alleged maintainer of the escalator (*see* Third-Party Complaint, ¶ 6), TKE knew it  
13 would have to account for the diligence and efficacy of its maintenance. TKE has, by its own  
14 admission, "been involved in this matter since nearly the beginning" (TKE Opp. 3:3-5) and has  
15 had every opportunity to participate in discovery and other pre-trial practice. In fact, it has  
16 eagerly done so: TKE deposed Plaintiff Joe Brown, took the deposition of a state elevator  
17 inspector, insisted on being present at the examination of the escalator by Plaintiffs' expert, and  
18 attended every deposition to date. (Iqbal Reply Decl. at ¶ 3). Moreover, TKE's defense of the  
19 third-party complaint by the Nugget Defendants has been to attack the Plaintiffs' underlying  
20 claims; for example, with reports contending that Joe Brown's broken neck is his own fault, and  
21 that his injuries are not as severe or costly as he claims. *Id.*

22 3. *TKE Cannot Complain About Timing Because TKE Withheld Evidence.*

23 Plaintiffs did not initially know TKE's identity, and more importantly did not know that  
24 TKE was aware of the defects in the escalator and the risk those defects posed to the public.  
25 TKE made initial Rule 16 disclosures on April 18, 2017, that included several pages of  
26 maintenance history; but *TKE withheld multiple emails and repair orders* showing that *TKE's*  
27 *engineers knew, as early as 2012, that the escalator steps were "obsolete" and "prone to*

1 *develop cracks” that posed “a serious safety issue”* for the public and should all be replaced.  
2 (Declaration of Mohamed Iqbal in Support of Plaintiffs’ Motion for Leave to File Second  
3 Amended Complaint (“Iqbal Opening Decl.,” previously filed) at Ex. C; *see also* Iqbal Reply  
4 Decl. at ¶ 4). *TKE also withheld over a dozen additional pages of maintenance history*  
5 *showing that an inspection of the escalator mere days after Joe Brown’s injury showed the*  
6 *escalator steps were in fact cracked and had to be replaced.* (Iqbal Opening Decl., Exs. B and  
7 E). Despite their obvious relevance, *TKE kept these documents from its initial production and*  
8 *did not make them available until November 6, 2017* – roughly six months after the statute of  
9 limitations passed. (Iqbal Reply Decl. at ¶ 4). TKE cannot assert the statute under these  
10 circumstances, even under the Rule 10 standard erroneously relied on in its opposition: “[t]he  
11 right to amend and relate back should rarely be denied plaintiffs *irrespective of the extent of the*  
12 *delay* whenever *the intended defendant has sought in any way to mislead or deceive* the  
13 complaining party.” *Nurenberger*, 822 P.2d at 1105-06 (emphasis added).

14 TKE’s opposition is without merit. Rule 15 governs Plaintiffs’ Motion; its liberal  
15 mandate permits amendments to add parties; and, having neither asserted nor shown any  
16 prejudice from allowing the amendment, TKE cannot properly oppose it. Moreover, *having*  
17 *withheld evidence showing its own culpability until after the statute of limitations ran, TKE*  
18 *cannot now be heard to object* to the amendment.

19 **C. The Nugget Opposition Misstates Settled Nevada Law on Punitive Damages.**

20 The Nugget Defendants assert that the Motion should be denied because “tort liability  
21 alone is insufficient to support an award of punitive damages.” (Nugget Opp. 5:3-4). They  
22 contend instead that it is “Plaintiffs’ burden to establish that Defendants acted **intentionally,**  
23 **willfully, and deliberately knowing that such conduct would be harmful to Plaintiffs**  
24 **specifically.**” (*Id.* at 6:6-7) (emphasis in original). Arguing that “Defendant’s alleged failure to  
25 repair the escalator steps, does not give rise to any reasonable inference that Defendant  
26 *intentionally* sought to injure Joe Brown,” the Nugget Defendants contend “Plaintiffs cannot  
27

1 establish the requisite intent by GNL or its employees to support punitive damages and any such  
2 amendment to their pleadings would be futile.” (*Id.* at 6:19-26) (emphasis in original).

3 The Nugget Defendants have misstated the law. The Nevada statute on punitive damages  
4 provides that such damages are available when the defendant engages in “conduct which is  
5 intended to injure a person *or* despicable conduct which is engaged in with *a conscious*  
6 *disregard of the rights or safety of others.*” NRS 42.001(3) (emphasis added). The intent to  
7 injure a specific plaintiff is not required. The Nugget Defendants wrongly suggest otherwise by  
8 citing language from *Warmbrodt v. Blanchard*, 692 P.2d 1282, 1286 (Nev. 1984), a case which  
9 preceded Nevada’s punitive damages statute adopted in 1995; but even this citation is  
10 misleading, as the defendants’ brief omits *Warmbrodt*’s reference to an earlier case, *Bader v.*  
11 *Cerri*, 609 P.2d 314 (Nev. 1980). The *Bader* court correctly noted that “malice” as used in the  
12 context of exemplary or punitive damages “contemplates willful and intentional conduct done in  
13 reckless disregard of possible results.” *Id.* at 318-319.

14 In *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243 (Nev. 2008), the Nevada  
15 Supreme Court concluded that “evidence of multiple ignored warning signs suggesting that [the  
16 defendant] knew of a potential mix-up, as well as evidence indicating that [the defendant]  
17 continued to proceed ... despite knowing of the probable harmful consequences of doing so” was  
18 enough to support an award of punitive damages, even though the plaintiffs had not proven a  
19 specific intent to injure them. *Id.* at 255. No such specific intent is required, no matter how  
20 strenuously the Nugget Defendants contend that it is. On the contrary, behavior that exposes the  
21 public to serious risk of harm – in other words, the sort of behavior exhibited by the defendants  
22 (see Iqbal Opening Decl., Ex. C) – is sufficient.

23 In fact, the primary case relied on by the Nugget Defendants in their opposition, *Wyeth v.*  
24 *Rowatt*, 244 P.3d 765 (Nev. 2010) (cited at Nugget Opp. 5:15-16), featured plaintiffs who  
25 developed cancer after taking the defendants’ drugs. *Wyatt*, 244 P.3d at 770. In upholding the  
26 jury’s decision to impose punitive damages, the Nevada Supreme Court did not call for evidence  
27 of intent to harm anyone; instead, it held that when determining “whether a defendant’s conduct

1 is so reprehensible as to warrant the imposition of punitive damages” the trier of fact “may  
2 consider evidence ... that may show that the defendants’ conduct, which harmed the plaintiffs,  
3 may also present a substantial risk *to the general public*.” *Id.* at 783 n. 11 (emphasis added).

4 The application and amount of punitive damages are questions of fact entrusted to the  
5 trier in bifurcated proceedings under NRS 42.005(3). The Nugget Defendants already face such  
6 proceedings because the Plaintiffs have repeatedly asked for exemplary damages. (*See e.g.*  
7 FAC, ¶¶ 25 and 28; *see also id.*, Section VI.b.). The Nugget Defendants’ opposition thus is not  
8 based on any legal infirmity in Plaintiffs’ case for punitive damages, and they do not oppose the  
9 Motion because it exposes them to any additional liability. Instead, their opposition is based on  
10 the fear that Plaintiffs may be in a better position to obtain the exemplary damages requested.  
11 But that is not itself a sufficient basis for opposing the Motion.

12 **III. CONCLUSION.**

13 For all the foregoing reasons, the Motion should be granted.

14 IQBAL LAW PLLC

15 By: /s/ Mohamed A. Iqbal, Jr.  
16 Mohamed A. Iqbal, Jr. (NSB #10623)  
Christopher Mathews (NSB #10674)

17 *Attorneys for Plaintiffs Joe N. Brown and*  
18 *Nettie J. Brown*

1                   **DECLARATION OF MOHAMED A. IQBAL, JR. IN SUPPORT OF REPLY IN**  
2                   **SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

3                   I, MOHAMED A. IQBAL, JR. hereby declare as follows:

4                   1.       I am over the age of 18 and competent to testify. I am counsel of record for Plaintiffs Joe  
5                   N. Brown and Nettie J. Brown ("Plaintiffs") in the above-captioned proceeding and make this  
6                   declaration subject to penalty of perjury under the laws of the United States and the State of  
7                   Nevada, in support of the Plaintiffs' Reply in Support of Motion for Leave to File Second  
8                   Amended Complaint.

9                   2.       On July 3, 2018, the date stipulated for motions for leave to amend, we electronically  
10                  uploaded a copy of Plaintiffs' Motion for Leave to File Second Amended Complaint. The  
11                  upload of the Motion occurred before midnight, but the e-file server was slow and its electronic  
12                  acknowledgment of the submission was delayed, resulting in a file stamp which indicates the  
13                  upload was accepted by the server at 12:01 am on July 4th – which was, of course, a holiday.

14                 3.       Thyssenkrupp Elevator Corporation ("TKE") was not initially named in the Complaint  
15                 because Plaintiffs did not at that time have any evidence that TKE had been involved in, or bore  
16                 any responsibility for, the events that caused Mr. Brown's broken neck. TKE has, however,  
17                 participated in this case since nearly its inception, attending all the depositions taken by  
18                 Plaintiffs; TKE has also taken the deposition of Mr. Brown and a state elevator inspector and  
19                 insisted on being present at the examination of the escalator by Plaintiffs' expert. TKE's defense  
20                 of the third-party complaint filed in this case has been to attack the Plaintiffs' underlying claims  
21                 rather than those of the third-party plaintiffs. TKE's expert reports, for example, argue Mr.  
22                 Brown's broken neck is his own fault and that his injuries are not as severe or costly as he  
23                 claims.

24                 4.       Despite its *participation* in discovery, TKE was not timely *forthcoming* with critical  
25                 evidence of its own culpability. TKE's initial disclosures on April 18, 2017, included five pages  
26                 of maintenance logs covering 2014 and 2015; but those pages omitted critical entries showing,  
27                 for example, that an inspection of the escalator that broke Mr. Brown's neck conducted just days  
28                 after the accident showed the escalator steps were broken and had to be replaced. Also withheld

                  REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED  
                  COMPLAINT (10 of 12)

I LAW LV

1 from the initial disclosures were multiple emails and repair orders in which TKE's engineers  
2 stated, as early as 2012, that the escalator steps were "obsolete" and "prone to develop cracks"  
3 that posed "a serious safety issue" for the public, and that the steps should all be replaced. TKE  
4 kept those entries, emails, and repair orders to itself until November 6, 2017, six months after the  
5 statute of limitations would ordinarily have run. The other defendants in the case likewise did  
6 not produce copies of the documents -- until after TKE did so. Plaintiffs expeditiously sent meet  
7 and confer letters demanding to know why the documents had been withheld, took depositions to  
8 ascertain the extent of the information withheld, and conducted follow-up discovery. This  
9 process is still ongoing.

10 Dated this 2nd day of August 2018.

11 By:   
12 \_\_\_\_\_

13 Mohamed A. Iqbal, Jr.  
14

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**I LAW LV**



1  
2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this  
4 2nd day of August 2018, I caused to be served a true and correct copy of foregoing **REPLY IN**  
5 **SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** in  
6 the following manner:

7 **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-  
8 referenced document was electronically filed on the date hereof and served through the Notice of  
9 Electronic Filing automatically generated by the Court's facilities to those parties listed on the  
10 Court's Master Service List.  
11

12 **Grant & Associates**

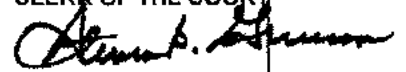
Contact	Email
Diana Smith	<a href="mailto:diana.smith@aig.com">diana.smith@aig.com</a>
Lee Grant	<a href="mailto:lee.grant@aig.com">lee.grant@aig.com</a>
Shannon Jory	<a href="mailto:Shannon.jory@aig.com">Shannon.jory@aig.com</a>
Sydney Basham	<a href="mailto:Sydney.basham@aig.com">Sydney.basham@aig.com</a>
Master Calendar	<a href="mailto:lvstaffcounsel@aig.com">lvstaffcounsel@aig.com</a>
Camie Devoge	<a href="mailto:camie.devoge@aig.com">camie.devoge@aig.com</a>
Alexandra Mcleod	<a href="mailto:Alexandra.mcleod@aig.com">Alexandra.mcleod@aig.com</a>

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18 **Rogers Mastrangelo Carvalho & Mitchell**

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19  
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22 /s/ Kevin Williams  
23 An employee of IQBAL LAW PLLC  
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28 **REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (12 of 12)**



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 JOE BROWN,

6 Plaintiff(s),

7 vs.

8 LANDRY'S INC.,

9 Defendant(s).

Case No. A-16-739887-C

DEPT. XXXI

10  
11  
12 BEFORE THE HONORABLE JOANNA S. KISHNER,  
13 DISTRICT COURT JUDGE

14  
15 TUESDAY, AUGUST 7, 2018

16  
17 **TRANSCRIPT OF PROCEEDINGS RE:**  
18 **PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED**  
19 **COMPLAINT**

20  
21 (Appearances on page 2.)

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25 RECORDED BY: SANDRA HARRELL, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):	MOHAMED A. IQBAL, ESQ.
For the Defendant(s), Golden Nugget, Inc. and Landry's Inc., and the Defendant(s) and Third Party Plaintiff(s), GNL Corp:	ALEXANDRA B. McLEOD, ESQ.
For the Third Party Defendant(s), Thyssenkrupp Elevator Corporation:	REBECCA L. MASTRANGELO

1                   **LAS VEGAS, NEVADA, TUESDAY, AUGUST 7, 2018**

2                   [Proceedings commenced at 9:31 a.m.]

3  
4                   THE COURT: Page 10, *Joe Brown vs. Landry's*, 739167.

5                   MS. MASTRANGELO: Good morning, Your Honor. Rebecca  
6                   Mastrangelo for Thyssenkrupp Elevator.

7                   MS. McLEOD: Good morning, Your Honor. Alexandra  
8                   McLeod from Grant & Associates, 8185, on behalf of the Golden Nugget  
9                   defendants.

10                  MR. IQBAL: Good morning, Your Honor. Mohammed Iqbal  
11                  on behalf of Plaintiffs, 10623.

12                  THE COURT: Okay. Motion for Leave to File Second  
13                  Amended Complaint. So I got oppositions to this one. I have two  
14                  different types of oppositions. I've got one opposition, untimely, under  
15                  the NRCP 15 standpoint, and I've got the other opposition that statute of  
16                  limitations has run, so you can't amend to add somebody who's not in  
17                  the first one.

18                  Go ahead, counsel.

19                  MR. IQBAL: Yes. Thank you, Your Honor.

20                  So Plaintiffs move to amend their existing pleadings to add  
21                  further detail regarding Gold -- the Golden Nugget entities, and then to  
22                  name third party Thyssenkrupp as a direct defendant.

23                  THE COURT: Okay.

24                  MR. IQBAL: Based on Thyssen's and Nugget's knowledge of  
25                  the dangerous and defective condition of the escalator and their

1 awareness of the risk posed to the public by those defects, and their  
2 failure to remedy the problems, which resulted in the devastating injuries  
3 to Plaintiff.

4 Now, Your Honor correctly stated the positions of -- of the  
5 oppositions. And going to 15(a), the 15(a) argument by Thyssen. So  
6 Thyssen relies on inapplicable federal law, citing federal district court  
7 cases, as we point out in the reply, based on Federal 15(c) parts and  
8 subparts.

9 Now, Nevada 15(c) is one sentence. They have a footnote  
10 about the accord and respect that Nevada law gives to federal, but  
11 only when the applicable rule mirrors the federal rule. Here, there's a  
12 substantial difference. Again, the federal 15(c) has two major subparts,  
13 has sub-subparts, and then sub-sub-subparts. Nevada has one  
14 sentence under 15(c).

15 So the reliance on the federal district court cases to push this  
16 to a 10 -- Rule 10 analysis is simply wrong. You -- you cannot deny a  
17 Nevada amendment based on a subpart of Rule 15(c) that doesn't exist  
18 in this state. Because Nevada's 15(c) has no subparts.

19 And so yeah, the Delaware case that they cite, it's based  
20 on 15(c)(3), the Connecticut case, 15(c)(1)(C)(ii). That's simply  
21 inapplicable.

22 So then we turn to the question of whether Nevada law allows  
23 amendments under 15(a). Thyssen argues no. And they cite  
24 *Nurenberger*. They cite *Nurenberger* and they say -- they argue:

25 "Has been good law in Nevada for 27 years."

1 Wrong again. The -- the critical parts of *Nurenberger* relevant  
2 to this analysis were overturned in *Costello*. The Supreme Court in  
3 *Costello* expressly disavowed what it called dicta in the *Nurenberger*  
4 decision, suggesting that 15 -- Rule 15 did not apply. The *Costello*  
5 court, the controlling opinion in Nevada today, said no, it -- it does apply.  
6 And *Costello's* a 2011 case.

7 So, ultimately, when we look at a 15(a) analysis, Your Honor,  
8 the key issue is permitting an amendment when there is a lack of  
9 prejudice. *Costello* allows relation back where the opposing party will  
10 not be put -- will be put at no disadvantage. There has been no  
11 prejudice -- viable prejudice alleged by allowing the proposed  
12 amendment to go forward, nor could they plausibly do so. Here's why.

13 The maintenance of the escalator that broke Plaintiff's neck  
14 was placed squarely at issue by Plaintiffs in the operative complaint, the  
15 first amended complaint. As the alleged maintainer of the escalator,  
16 Thyssen knew that it would have to account for the diligence of its  
17 maintenance. Thyssen admitted in its opposition that it's "been involved  
18 in this matter since nearly the beginning." Thyssen has had every  
19 opportunity to participate in discovery and has done so.

20 And moreover, Thyssen's defense against the third party  
21 complaint from Nugget hasn't been to go after Nugget. They have  
22 attacked Plaintiff's underlying bases. So where they -- if they were an  
23 official party, their -- their discovery efforts would not have been any  
24 different. There would be no prejudice with the amendment going  
25 forward.

1 THE COURT: Why didn't it come in earlier? Why didn't you  
2 seek to bring them in earlier?

3 MR. IQBAL: Your Honor, part of that was because there was  
4 a lot of evidence that was hidden. There was a lot of evidence hidden  
5 as -- as discussed in the reply until six months after that -- that statute of  
6 limitations ran. We -- we've been aggressive in discovery. The -- the  
7 evidence, the e-mails explicitly -- you're talking about the safety  
8 concerns for the riding public were -- were offered in a second  
9 supplemental from Thyssen November 6th, 2017. In less than a month,  
10 we -- we issued a -- a six-part, multi-part 2.34 discovery letter to -- to  
11 Nugget, we have continued those efforts and we've issued discovery to  
12 Thyssen. Those discovery efforts continue. Even as -- as recent as  
13 May 7th, we do a deposition in New York of Thyssen's engineer at that  
14 time. And he talks about e-mails that he has sent back and forth. We  
15 haven't gotten those e-mails.

16 After that May 7th deposition, in June, we -- we -- again, after  
17 getting the transcript, we again then issued discovery requests to  
18 Thyssen. So the diligence is there.

19 And -- and the difference between the MGM case that you had  
20 and this one, our -- our party, Plaintiff, an individual, did not have  
21 access. Thyssen had responsibilities under 16.1. Their April 15 --  
22 Rule 16 initial disclosures had some documents, some portions of the  
23 maintenance log. But not critical portions of the maintenance log  
24 showing that just a few -- just days after Plaintiff's injury, it was  
25 determined that the steps were cracked.

1 Now, what -- the difference again is the strength of the  
2 evidence that was hidden from Plaintiffs for six months after that statute  
3 of limitations passed with -- with Thyssen. And -- and Nugget  
4 separately, in February of '07 -- '17, in March of '17 stated we're not  
5 aware of any mechanical problems, this, that, and everything.

6 What do we get in November 6th? We get explicit e-mails that  
7 both parties hid -- both parties hid. I mean, I don't know if it gets any  
8 better than this.

9 "A serious safety issue for the riding passengers." The  
10 escalator steps are "obsolete, prone to cracking."

11 You know, there's a difference between that affidavit that was  
12 at issue in the earlier case and the strength of the evidence here, the  
13 posture of the parties, and the diligence that Plaintiffs have shown here.  
14 So it's -- Thyssen really can't complain about time when their second  
15 supplemental with all of those juicy e-mails that, by the way, back and  
16 forth between them and Golden Nugget, Nugget didn't share either with  
17 Plaintiffs, until that second supplemental came out. So you can't  
18 complain about time when you've -- when you've hidden evidence for six  
19 months.

20 And -- and so when you look at it, the Rule 15(c) analysis  
21 under the federal rules is -- is wrong. The *Nurenberger* analysis is also  
22 wrong, because they don't cite *Costello*, which is the actual controlling  
23 law. And then you have that additional third component of hiding these  
24 relevant e-mails and evidence.

25 Now, that -- that's with -- that's with Thyssen. So what -- what



1 you're left with then is 15(a), as justice requires. Liberally construed as  
2 justice requires. We've been in front of Your Honor on -- on Motions to  
3 Dismiss, summary judgment on the Nugget entities. This has been a --  
4 a very heavily litigated case. And -- and so there's no dilatory motive,  
5 there's no bad faith. This is -- this is simply preserving the -- the right --  
6 and again, we're not saying we're -- we're entitled to -- to a decision on  
7 punitive damages. That would be inappropriate. That's a jury decision.  
8 That's for the trier of fact. This is simply that this should go to the jury.

9 Now, switching to the Nugget entities and their opposition,  
10 their opposition -- here we go. They misstate the punitive damages  
11 standard. They're citing a 1984 case and they're saying:

12 "Plaintiff's burden to establish the defendants acted  
13 intentionally, willfully, and deliberately, knowing that such conduct  
14 would be harmful to Plaintiff specifically."

15 Page 6, lines 6 and 7 of their opposition.

16 That is wrong. Nevada's punitive damages rule, the statute,  
17 was changed in 1995, 11 years after the case cited by Golden Nugget.  
18 It's: Or despicable conduct which is engaged in with a conscious  
19 disregard of the rights or safety of others.

20 Now, let's go back to that case that Nevada --

21 THE COURT: Counsel. Counsel.

22 MR. IQBAL: I'm sorry.

23 THE COURT: I really appreciate you giving a seminar. When  
24 I have my 9:00s -- remember I said I was calling the ones I thought were  
25 going to be quicker so that we could get --

1 MR. IQBAL: Absolutely, Your Honor.

2 THE COURT: -- the other people, I've got to get them. And I  
3 appreciate it. If you think it's going to take long, what I can do is I can  
4 pause you right now, finish up my other 9:00s, get them in and out of  
5 here, and then circle back to you all. It -- because I didn't know that this  
6 was one that people would take more than just about five minutes on  
7 each side, because that's normally what we do for --

8 MR. IQBAL: I appreciate that, Your Honor.

9 THE COURT: -- I want to make sure everyone gets fully  
10 heard. Yeah.

11 MR. IQBAL: Absolutely.

12 THE COURT: So I want to make sure everyone gets fully  
13 heard. What --

14 MR. IQBAL: And I -- I can even stop right now and ask if the  
15 court has any questions for Plaintiffs, and then I can sit down.

16 THE COURT: Sure. That's fine. I didn't want to cut you off if  
17 you want more time. I just want to try and allocate for everybody else's  
18 schedules as well.

19 MR. IQBAL: Absolutely. I'll -- I'll just close by saying just like  
20 with Thyssen, Golden Nugget has the completely wrong standard for  
21 punitive damages and we're entitled to it.

22 THE COURT: Okay. Thank you so much.

23 So let's each respond briefly, he gets final word, and then the  
24 court will make a ruling.

25 Go ahead, counsel. Who's going first? Thyssen? Okay.

1 MS. MASTRANGELO: Five minutes, Your Honor.

2 None of counsel's arguments has addressed the issue we're  
3 here for today. Neither the motion nor the reply address the statute of  
4 limitations. Neither the motion nor the reply addressed his failure to  
5 properly identify Doe defendants and allegations against them. And  
6 neither the motion nor the reply address the mandates of *Nurenberger*,  
7 which is still good law. I've been to the Supreme Court more times on  
8 *Nurenberger* than any other issue, and it remains good law till today.

9 This motion, as far as Thyssenkrupp is concerned, is not even  
10 a close call. The whole purpose of naming Doe defendants in a  
11 complaint is when you don't know the identity of that defendant and later  
12 you find out who it is and you substitute. Here, he knew the identity well  
13 before the statute of limitations ran. He's always known the identity.  
14 Thyssenkrupp has been in this case before the statute of limitations ran,  
15 and even when Thyssenkrupp got in the case, he waited another year  
16 and a half to file this motion.

17 So even if you had everything else working, Judge, he still  
18 hasn't named any allegations against Doe Defendant Escalator  
19 Maintenance Company in either the first amended complaint or the  
20 original complaint. There is nothing in there that says maintenance  
21 company was negligent. Nothing in there at all. That does not satisfy  
22 *Nurenberger*, it does not satisfy his Doe defendant allegations.

23 It's just under any liberal -- under the most liberal  
24 interpretation of the law, this motion has to be denied.

25 THE COURT: What do we do about the -- do you agree on

1 the subsequent e-mails only more recently being disclosed, which  
2 showed tie-ins between --

3 MS. MASTRANGELO: No. I produced those e-mails in  
4 response to Golden Nugget's request for production long ago.

5 THE COURT: What would long ago be? Well, I -- they  
6 weren't 16.1 disclosures back at the beginning of this case in '16?

7 MS. MASTRANGELO: We produced our maintenance  
8 records in 16.1, we --

9 THE COURT: Complete?

10 MS. MASTRANGELO: Complete. There are some  
11 maintenance --

12 THE COURT: Or in -- because he -- he is -- because  
13 counsel --

14 MS. MASTRANGELO: -- records that don't exist because of  
15 the passage of time. We produced everything surrounding this incident,  
16 Judge. We produced the correspondence from KONE, the escalator  
17 manufacturer, directing their client, their customer, Golden Nugget's, as  
18 well as the maintenance company, to replace these steps. We produced  
19 all that long ago. And I don't have the exact date that they were  
20 produced. He says November of '17. I believe it was prior to that. But  
21 even November of '17, he waited another seven, eight months before  
22 filing this motion.

23 And again, it all goes back to the Doe defendants in the  
24 original complaint, Judge. That's what you have to base it on. When the  
25 statute of limitations ran, we have to -- the only way he can

1 Thyssenkrupp in is Doe and Roe allegations. He did not say one single  
2 Doe was an escalator maintenance company, he did not make a single  
3 allegation of negligence against a maintenance company.

4 THE COURT: Okay.

5 MS. MASTRANGELO: Those claims just can't be part of this  
6 case.

7 THE COURT: Okay. Appreciate it.

8 Your argument's different. Go ahead.

9 MS. McLEOD: The proposed changes to Plaintiff's complaint  
10 with respect to the Golden Nugget entities are less comprehensive than  
11 that of Thyssenkrupp. But the standard here is not that justice allows  
12 amendment, but requires amendment. And another topic that Plaintiff  
13 failed to address either in their motion or their reply, is the futility of the  
14 amendments that they're seeking and the fact that should the court allow  
15 the second amended complaint, think both defendants will have reasons  
16 to file motions on that complaint.

17 With regard to the allegations and punitive damages  
18 allegations, the standard, as far as I know and as I've argued  
19 successfully in other departments, is the *Countrywide* case, which was  
20 not addressed by Plaintiff in their motion. And when it was brought up in  
21 opposition, it was not brought up or addressed in their reply.

22 The -- even the proposed second amended complaint states a  
23 cause of action for negligence and loss of consortium. Those causes of  
24 action do not, under *Countrywide*, they're insufficient to support a claim  
25 of punitive damages. Plaintiff completely sidesteps that argument and

1 completely fails to address the precedent of the *Countrywide* case. We  
2 echo the sentiments of our -- our co-defendant and we believe that this  
3 proposed amendment should be disallowed as futile.

4 MR. IQBAL: Your Honor, very quickly.

5 THE COURT: Yeah, of course.

6 MR. IQBAL: Counsel just said that we ignored *Countrywide*.  
7 It's in our reply, page 8 of 12, lines 14 to 22.

8 THE COURT: Sure.

9 MR. IQBAL: And then going to Thyssenkrupp's argument that  
10 this was produced long ago, April 18, 2017, was their Rule 16. The  
11 second supplemental was November 6, 2017. We didn't sit on our  
12 hands after that, because we just got a few e-mails. We sent out  
13 exhaustive discovery, and based on those e-mails, started doing multiple  
14 depositions, which we've done. So there's been no diligence.

15 I just wanted to correct the record, Your Honor. Thank you.

16 THE COURT: Sure. All right. Got a couple of questions.  
17 With reference back to the first amended complaint. Okay.

18 MR. IQBAL: Yes.

19 THE COURT: Part of Thyssenkrupp's argument is on the  
20 Roes, right? So paragraph 7 is your Roes.

21 The true names and capacity of each defendant Roe business  
22 entities 1 through 100 are presently unknown to Plaintiffs, who  
23 therefore sue said defendants by such fictitious names. Defendants  
24 are informed and believed and therefore allege that each defendant  
25 designated Roe Business Entities 1 through 100 are legally

1 responsible for the events referred to herein. The first amended  
2 complaint will be amended to include them when their true names  
3 and capacities become known.

4 So would you argue that that is or is not sufficient to put --

5 MR. IQBAL: Your Honor, under -- under the standard, we --  
6 we knew of Thyssenkrupp, obviously, they were brought in. We did not  
7 know of their role in -- in the defects, we did not role -- know their role in  
8 the maintenance, we did not know that these e-mails were going back  
9 and forth and that they sat on their hands, Your Honor.

10 And so when you look at 15(a), when you look at *Costello*, you  
11 can relate back, you can relate back when the -- when there's no  
12 prejudice. And they've literally conducted discovery, which is still  
13 ongoing, as if they've been in this -- against Plaintiffs.

14 Separately, even under *Nurenberger*, which again, *Costello*, it  
15 clearly points out, is -- is dicta and overruled, even under *Nurenberger*,  
16 even under that flawed analysis that Thyssen has, you -- let me -- let me  
17 quote it and then I'll sit down.

18 THE COURT: Yeah, sure.

19 MR. IQBAL: *Nurenberger* holds the right to amend and relate  
20 back shall rarely be denied Plaintiffs irrespective of the extent of the  
21 delay whenever the intended defendant has sought in any way to  
22 mislead or deceive the complaining party.

23 That's *Nurenberger*, if they want to rely on that. And what did  
24 we do, Your Honor? We -- we added actual transcripts from the  
25 depositions of their own engineer and their own second supplemental,

1 which was e-served on November -- November 6th, 2017. And the  
2 evidence is -- is staring all of us in the face.

3 Thank you, Your Honor.

4 THE COURT: And the court agrees. The court's going to  
5 grant the Motion for Leave for the Second Amended Complaint in its  
6 entirety. While the court's appreciative of the excellent oral arguments in  
7 the pleadings of all the parties, since there's reference, I mean, each  
8 case is different. I have to look at the facts in each case. I have to look  
9 at the diligence in each case. I have to look at the information that's  
10 available in each case.

11 And in this case, when I look at the totality and look in the  
12 applicable case law, that would be what this court has to analyze, this  
13 court's going to find it's appropriate for the Motion for Leave the Second  
14 Amended Complaint. This is very different from the other case. I've got  
15 to get Thyssenkrupp in there. When I look at the Golden Nugget, it is --  
16 while it's excellently been drafted, it's still -- a plethora of Supreme Court  
17 and appellate court cases says that this court should grant the Motion for  
18 Leave the Second Amended Complaint. The court's going to grant.

19 Is that going to be filed 10 days from this entry of order? Or  
20 how much time do you need to file it? And if whatever time you say, I'm  
21 going to ask the other parties what they -- their viewpoint is.

22 MR. IQBAL: Your Honor, 10 days is -- is perfectly fine.

23 THE COURT: 10 days from notice of entry?

24 MR. IQBAL: 10 business days under the -- under the rule.

25 THE COURT: Yeah. Does that work for the other parties?



1 MS. MASTRANGELO: Doesn't make a difference to me,  
2 Judge.

3 MS. McLEOD: That's fine.

4 THE COURT: Okay. So then when you draft your order, put  
5 that the -- the second amendment's going to be filed within 10 business  
6 days after Notice of Entry of order. And you all might want to stay tuned  
7 on a lot of those NRCP changes coming down the pike.

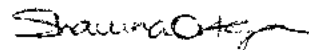
8 Have a great one. Thank you so very much.

9 MR. IQBAL: Thank you, Your Honor.

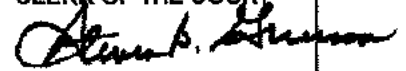
10 [Proceedings concluded at 9:53 a.m.]

11 / / /

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17  
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
19 audio/video proceedings in the above-entitled case to the best of my  
20 ability.

21 

22 Shawna Ortega, CET\*562



**ORDR**

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*Attorneys for Plaintiffs Joe N. Brown and Nettie J. Brown*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual and his Wife,  
NETTIE J. BROWN, an individual,

Plaintiffs,

vs.

LANDRY'S, INC., a foreign corporation;  
GOLDEN NUGGETT, INC., a Nevada  
corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP.; DOE  
INDIVIDUALS 1-100; ROE BUSINESS  
ENTITIES 1-100,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT**

AND ASSOCIATED CASES

On August 7, 2018, the Court considered the Motion for Leave to File Second Amended Complaint ("Motion") filed by Plaintiffs Joe N. Brown and Nettie J. Brown (collectively, "Plaintiffs"). Mohamed A. Iqbal, Jr., Esq., appeared on behalf of the Plaintiffs; Alexandra B. McLeod, Esq., appeared on behalf of Landry's Inc., Golden Nugget, Inc., and GNL, Corp. (collectively, the "Nugget Defendants"); and Rebecca L. Mastrangelo, Esq., appeared on behalf of Thyssenkrupp Elevator Corporation ("TKE").

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**ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (1 of 6)**

AUG 25 '18 PM 12:43\*



Having considered the Motion, the moving and opposition papers filed by the parties, and the evidence submitted in support thereof, and having heard the arguments of counsel, the Court enters the following essential:

## FINDINGS OF FACT

1. Plaintiffs propose amending their pleadings to add detail regarding the Nugget Defendants, and to name TKE as a direct defendant.

2. The proposed amendments are based on the alleged knowledge of TKE and the Nugget Defendants of dangerous defects and conditions involving escalators at the Golden Nugget hotel and casino in Laughlin, Nevada; awareness by TKE and the Nugget Defendants of the risk posed to the public by those alleged defects and conditions; and the alleged failure by TKE and the Nugget Defendants to remedy the danger, which Plaintiffs claim resulted in injuries to Plaintiff Joe N. Brown in the form of a broken neck, and to his wife, Plaintiff Nettie J. Brown, in the form of loss of consortium.

3. TKE and the Nugget Defendants both oppose the Motion, arguing it should be denied because it bears a file stamp of 12:01 am on July 4, 2018, one minute after the stipulated deadline for motions to amend. None of the defendants allege the timing of the Motion prejudiced the preparation of their responses.

4. Plaintiffs provided evidence the Motion was uploaded shortly before midnight on July 3, 2018, prior to the stipulated deadline. This evidence was not controverted by evidence from any of the defendants.

5. Plaintiffs substantially complied with the deadline for filing the instant Motion. There is no evidence that the defendants were prejudiced by any delay in the time stamp.

6. TKE for its part separately contends the Motion should be denied to the extent it seeks leave to make TKE a direct defendant because the statute of limitations expired prior to the

**ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (2 of 6)**

1 Motion's filing.<sup>1</sup> TKE did not allege it was prejudiced in preparing its defense by the running of  
2 the statute.

3 7. Plaintiffs' existing complaint alleges their injuries are attributable in part to  
4 negligent maintenance of the escalators at the Golden Nugget in Laughlin.

5 8. Plaintiffs provided evidence that they were unaware of TKE's role as maintainer of  
6 the escalators until after they filed their pleadings. This evidence was not controverted by evidence  
7 from any of the defendants.

8 9. Plaintiffs further provided evidence that TKE did not produce maintenance logs,  
9 emails, and repair orders showing that TKE's engineers knew the escalator steps were "obsolete"  
10 and "prone to develop cracks" that posed "a serious safety issue" for the public and should all be  
11 replaced, until several months after the statute of limitations expired. This evidence was not  
12 controverted by evidence from any of the defendants.<sup>2</sup>

13 10. Plaintiffs provided evidence that after learning of TKE's alleged role and  
14 knowledge, they expeditiously engaged in further discovery regarding the withheld information.  
15 This evidence was not controverted by evidence from any of the defendants.

16 11. Plaintiffs provided evidence that TKE's defense of the case to date has been to  
17 attack the Plaintiffs' underlying claims rather than those of the Nugget Defendants, who sued TKE  
18 prior to the running of the statute of limitations as third-party plaintiffs. This evidence was not  
19 controverted by evidence from any of the defendants.

20 12. The Nugget Defendants for their part contend the Motion should be denied to the  
21 extent it seeks leave to allege claims for punitive damages because such an amendment would be  
22

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23  
24 <sup>1</sup> The Nugget Defendants did not make parallel arguments nor join in TKE's opposition.

25 <sup>2</sup> Counsel for TKE noted at the hearing she believed the documents were produced earlier than the  
26 date alleged by Plaintiffs but did not provide evidence to that effect, nor contend the documents  
27 were produced prior to the running of the statute of limitations.

1 futile.<sup>3</sup> The current pleadings contain claims for punitive damages that are substantially similar  
2 to those in the proposed amendment.

3 13. The Nugget Defendants argue the Plaintiffs cannot show they acted with specific  
4 intent to harm the Plaintiffs. The Plaintiffs provided evidence they contend shows the defendants  
5 were aware of various deficiencies in the design and condition of the escalator that posed a  
6 substantial risk to the public and did not fully remedy those deficiencies. This evidence was not  
7 controverted by evidence from any of the defendants.

8 14. Any of the foregoing findings of fact which should more appropriately be  
9 denominated conclusions of law shall be so construed.

10 The Court therefore enters the following essential:

#### 11 CONCLUSIONS OF LAW

12 1. Nevada has a long-standing preference for adjudicating issues on their merits. *See*  
13 *e.g., Nev. Power Co. v. Fluor Ill.*, 837 P.2d 1354, 1359 (Nev. 1992); *see also* Nev. R. Civ. P.  
14 (“NRCP”) 1. Because the Motion was filed substantially in compliance with the parties’ stipulated  
15 deadline and the defendants have neither alleged nor demonstrated that they were prejudiced  
16 thereby, the court will decide the Motion on its merits.

17 2. Nevada courts considering civil procedure issues may look to federal court  
18 decisions on analogous federal rules for guidance if the Nevada rule is identical to or mirrors the  
19 federal rule. *Las Vegas Novelty, Inc. v. Fernandez*, 787 P.2d 772, 774 (Nev. 1990); *Executive*  
20 *Mgmt. Ltd. v. Ticor Title Ins. Co.*, 38 P.3d 872, 876 (Nev. 2002). However, the rules at issue here  
21 are neither identical nor mirror images, and the federal cases cited by TKE’s opposition brief are  
22 not to the extent they rely on such differing provisions controlling or persuasive.

23 3. Nevada civil procedure rules, in pertinent part, allow parties to amend their  
24 pleadings by leave of court which is freely given when justice so requires. NRCP 15(a). Whenever  
25

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26 <sup>3</sup> TKE did not make parallel arguments nor join in the Nugget Defendants’ opposition.  
27

28 **ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (4 of 6)**

1 the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or  
2 occurrence set forth or attempted to be set forth in the original pleading, the amendment relates  
3 back to the date of the original pleading. NRCP 15(c). This rule is liberally construed to allow  
4 relation back of the amended pleading where the opposing party will be put to no disadvantage.  
5 *Costello v. Casler*, 254 P.3d 631, 634 (Nev. 2011).

6 4. Maintenance of the escalators that allegedly caused Plaintiffs' injuries has always  
7 been an issue known to the parties in this case, including TKE as a third-party defendant. Because  
8 Plaintiffs and the Nugget defendants allege TKE bears responsibility for maintenance of the  
9 escalators, the interests of justice require TKE's inclusion as a direct defendant. Because TKE has  
10 not alleged or demonstrated it will be prejudiced in its defense, the amendment will relate back to  
11 the date of the original pleading. Further, TKE's failure to produce relevant, material evidence  
12 concerning its culpability until after the running of the statute is an additional basis for permitting  
13 the amendment and relation back. *Nurenberger Hercules-Werke GMBH v. Virotek*, 882 P.2d  
14 1100, 1105-06 (Nev. 1991).

15 5. The Nugget Defendants argue the Motion should be denied as futile, because an  
16 award of punitive damages requires proof of specific intent to harm the Plaintiffs. However,  
17 Nevada law also provides for such damages when a defendant engages in "despicable conduct  
18 which is engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(3).  
19 Punitive damages are available when the defendant acts willfully and intentionally and in reckless  
20 disregard of possible results. *Bader v. Cerri*, 609 P.2d 314, 318-19 (Nev. 1980). Conduct  
21 undertaken by a defendant despite knowledge of the probable consequences, including a  
22 substantial risk of harm to the public, may be sufficient to support an award of punitive damages.  
23 *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 255 (Nev. 2008); *Wyeth v. Rowatt*,  
24 244 P.3d 765, 783 n. 11 (Nev. 2010).

25 6. Evidence that the defendants knew of the defective and dangerous condition of the  
26 escalators and of the risk posed to the public by those alleged defects and dangers, but chose to  
27

28 **ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (5 of 6)**

1 leave the escalators in service, could support an award of punitive damages. Moreover, as the  
2 existing pleadings already contain prayers for punitive damages, denying the Motion would not  
3 change the scope of the Nugget Defendants' potential liability.

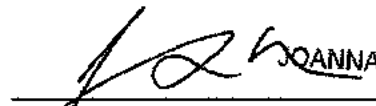
4 7. Any of the foregoing conclusions of law which should more appropriately be  
5 denominated findings of fact shall be so construed.

6 Now, therefore, good cause appearing,

7 **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED** that

8 Plaintiffs' Motion for Leave to File Second Amended Complaint is **GRANTED**. Plaintiffs  
9 shall file their amendment within ten days of notice of entry of this Order.

10 Dated this \_\_\_\_ day of August, 2018.

11  
12  JOANNA S. KISHNER  
13 *mc* Hon. Joanna S. Kishner  
14 District Court Judge, Department XXXI

I LAW LV

15 Respectfully submitted after circulation to all counsel  
16 appearing at the above-referenced hearing.

17 IQBAL LAW PLLC

18 By: /s/ Mohamed A. Iqbal, Jr.  
19 Mohamed A. Iqbal, Jr. (NSB #10623)  
Christopher Mathews (NSB #10674)

8/24/18  
M.A.I.

20 *Attorneys for Plaintiffs Joe N. Brown and Nettie J. Brown*

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28 **ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT (6 of 6)**