

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

SPECIAL ADMINISTRATOR  
SHALONDA MOLLETTE, AN  
INDIVIDUAL, IN PLACE AND STEAD  
OF JOE N. BROWN,

Appellant,

vs.

GNL, CORP., A NEVADA  
CORPORATION, AND  
THYSSENKRUPP ELEVATOR  
CORP.,  
A FOREIGN CORPORATION,

Respondents.

SPECIAL ADMINISTRATOR  
SHALONDA MOLLETTE, AN  
INDIVIDUAL, IN PLACE AND STEAD  
OF JOE N. BROWN,

Appellant,

vs.

GNL, CORP., A NEVADA  
CORPORATION, AND  
THYSSENKRUPP ELEVATOR  
CORP.,  
A FOREIGN CORPORATION,

Respondents.

No. 80581

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**APPENDIX TO APPELLANT'S OPENING BRIEF**  
**VOLUME 4**

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Dated June 10, 2022.

Respectfully submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.

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### **CERTIFICATE OF SERVICE**

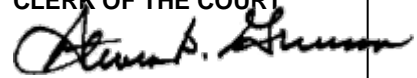
I certify that I am an employee of IQBAL LAW PLLC and that on June 10, 2022, I caused a true and correct copy of the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 4** to be served as follows:

\_\_\_ 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 NEFCR 9, to be sent via facsimile; and/or

X Pursuant to NEFCR 9, 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/ Marie-Claire Alsanjakli  
An Employee of **IQBAL LAW PLLC**



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2 LEE J. GRANT II, ESQ.

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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; THYSSENKRUPP ELEVATOR  
25 CORP., a foreign corporation; DOE  
26 INDIVIDUALS 1-100,  
27 ROE BUSINESS ENTITIES 1-100,

28 Defendants.

GNL, CORP., a Nevada corporation;

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' MOTION FOR  
SUMMARY JUDGMENT ON  
LIABILITY AND PUNITIVE  
DAMAGES**

**Date of hearing:**

**Time of hearing:**

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 move this Court for summary judgment in their favor and against Plaintiffs under the provisions  
2 of NRCP 56.

3 This Motion is made and based upon all of the papers and pleadings on file herein, the  
4 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 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2018.

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13 Attorney for Defendants GNL, LANDRY'S, & GNI

14 NOTICE OF MOTION

15 TO: ALL PARTIES HERETO; and

16 TO: COUNSEL OF RECORD FOR ALL PARTIES HERETO:

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
18 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND  
19 PUNITIVE DAMAGES on for hearing before the above-entitled Court on the 4 day of  
20 Dec., 2018, at the hour of 9:30 a.m./~~p.m.~~, in Department 31, or as soon thereafter as  
21 counsel may be heard.

22 DATED this 1<sup>st</sup> day of November, 2018.

23 GRANT & ASSOCIATES

24 

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Attorney for Defendants GNL, LANDRY'S, & GNI

**POINTS & AUTHORITIES****I. PROCEDURAL HISTORY**

Plaintiffs, Joe Brown and wife Nettie Brown, filed their Complaint on July 12, 2106 and subsequently filed their Second Amended Complaint on September 18, 2018. Plaintiffs pled just two causes of action, specifically negligence and loss of consortium. Under their first cause of action for negligence, Plaintiffs allege that “defendants acted with, among other things, malice, both express and implied – meaning conduct that is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.” (Second Amended Complaint at ¶18.) Plaintiffs also contend that:

(i) the “down” escalator at the Laughlin Nugget had cracked steps, posed substantial risks to the riding public over a period of several years, and was consistently and continuously experiencing safety and maintenance problems, which led to Plaintiffs’ injuries; (ii) defendants were on notice and knew of the escalator’s dangerous condition for years, failed to take the steps to make the escalator safe, and failed to shut down the escalator until it was safe; and (iii) defendants had a conscious disregard of the rights and safety of the riding public, and willfully and deliberately failed to act to make the escalator safe and avoid injuring the public, including Plaintiffs. (Second Amended Complaint at ¶19.)

Under their second cause of action for loss of consortium, Plaintiffs allege that, “The negligence of Defendants Landry’s, Golden Nugget, and GNL, and Defendant TKE, was such that it constituted fraud, malice, and oppression entitling Plaintiffs to an award of punitive and exemplary damages.” (Second Amended Complaint at ¶34.) Finally, Plaintiffs also pled punitive damages in their prayer for relief. (Second Amended Complaint at 6:22-23.)

**II. STATEMENT OF RELEVANT BACKGROUND FACTS**

Plaintiff Joe Brown alleges a broken neck resulting from a fall on the down escalator at the Golden Nugget Hotel & Casino in Laughlin, Nevada on May 12, 2015 at 7:28 pm.<sup>1</sup> Plaintiff’s Second Amended Complaint alleges the escalator was too loose, unstable, narrow, and shaky.<sup>2</sup> To the contrary, State Inspector Steve Robertson determined that the incident occurred when Plaintiff stepped in between steps and lost his balance when the steps began to

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<sup>1</sup> See EXHIBIT A, incident report, and EXHIBIT B, surveillance footage.

<sup>2</sup> See EXHIBIT C, Second Amended Complaint at ¶¶13-14.

descend.<sup>3</sup> ThyssenKrupp Elevator (hereinafter “TKE”) was the servicing company contracted to maintain and repair the down escalator at Golden Nugget Laughlin prior to and at the time of Plaintiff’s fall.<sup>4</sup>

Brown was using a cane as a walking aid at the time of his fall and admittedly had been drinking alcohol. He was transported from the casino to a hospital in Arizona and later flown to Sunrise Hospital in Las Vegas, where it was confirmed that he sustained an inoperable, acute fracture of the C1 anterior and posterior arch. Meanwhile, Plaintiff Nettie Brown’s claims are limited to loss of consortium.

### III. UNDISPUTED FACTS

NRCP 56(c) requires that motions for summary judgment include “a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleadings, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies.” In examining the undisputed facts of this matter, it is important to note the standard for what constitutes an issue of material fact. “A genuine issue of material fact is one where the evidence is such that a reasonable trier of fact could return a verdict for the non-moving party.” *Coker Equip. v. Great Western Capital Corp.*, 110 Nev. 1266, 1268 (1994); *Citing, Valley Bank v. Marble*, 105 Nev. 366, 367 (1989). The facts necessary for the adjudication of the instant Motion are all undisputed enumerated below:

	UNDISPUTED FACT	SUPPORTING EVIDENCE
1.	Plaintiff Joe Brown’s fall occurred on the “down” escalator at Golden Nugget Laughlin, leading from the casino floor to the lower restaurant level	EXHIBIT A, incident report EXHIBIT B, surveillance footage
2.	TKE (previously Dover Elevator Company) was the servicing company contracted to maintain and, as necessary, repair the subject “down” escalator at	EXHIBIT F, Agreement for Master Maintenance Service

<sup>3</sup> See EXHIBIT D, State of Nevada Elevator Accident Report, and EXHIBIT E, Deposition of Robertson taken August 21, 2017.

<sup>4</sup> See EXHIBIT F, Agreement for Master Maintenance Service.

	UNDISPUTED FACT	SUPPORTING EVIDENCE
	Golden Nugget Laughlin prior to and at the time of Plaintiff's fall	
3.	Cracked the escalator steps were replaced in 2012 and the "down" escalator received all new steps (salvaged steps were used on the neighboring "up" escalator)	<b>EXHIBIT G</b> , TKE 10-2-12 Repair Order, Cover email, and Golden Nugget Payment Overview
4.	Annual inspections and testing were completed on or about July 14, 2014 and, according to the checklist, the steps were specifically checked.	<b>EXHIBIT H</b> , Nevada Dept. of Business & Industry 2014 inspection records and permits for "down" escalator  <b>EXHIBIT I</b> , TKE record of Annual Safety Test
5.	As there were no violations noted and there was nothing out of order with the subject "down" escalator, a new permit was issued for the time period including Plaintiff's fall	<b>EXHIBIT H</b> , Nevada Dept. of Business & Industry 2014 inspection records and permits for "down" escalator
6.	When determining whether an escalator complies with applicable codes, inspectors generally do not consider issues past the last inspection unless there was a violation left uncorrected	<b>EXHIBIT E</b> , Robertson deposition at 78:1-18
7.	On May 12, 2015, Plaintiff Joe Brown chose to take the escalator rather than the elevator	<b>EXHIBIT B</b> , Surveillance Footage
8.	Plaintiff Joe Brown uses a cane when he walks	<b>EXHIBIT B</b> , Surveillance Footage  <b>EXHIBIT C</b> , Plaintiffs' Second Amended Complaint at ¶12
9.	Escalators are not intended for use by individuals with ambulatory difficulty or trouble maintaining balance	<b>EXHIBIT E</b> , Robertson deposition at 16:2-12
10.	Plaintiff Joe Brown was the last of his party to board the escalator and did so without assistance	<b>EXHIBIT B</b> , Surveillance Footage  <b>EXHIBIT C</b> , Plaintiffs' Second amended Complaint at ¶12
11.	Sadly, on May 12, 2015, Plaintiff Joe Brown missed a step and/or lost his balance and fell to the bottom of the "down" escalator	<b>EXHIBIT D</b> , State of Nevada Elevator Accident Report, see "Description of Accident"  <b>EXHIBIT J</b> , Medical records from Western Arizona Regional Medical Center

	UNDISPUTED FACT	SUPPORTING EVIDENCE
12.	Plaintiff Joe Brown had consumed alcohol on 5-12-15, including beer, vodka, and Crown Royal (whisky)	<b>EXHIBIT K</b> , Plaintiff Joe Brown deposition at 36:3-37:4  <b>EXHIBIT L</b> , Clayton Mollette deposition at 22:6-19; 54:2-55:1
13.	Plaintiff Joe Brown had consumed so much alcohol he smelled of it and was considered a fall risk by hospital personnel	<b>EXHIBIT J</b> , Medical records from Western Arizona Regional Medical Center
14.	State regulations mandate whenever an individual is injured on a piece of machinery and transported to the hospital for care that the equipment be taken out of service until inspection.	<b>EXHIBIT E</b> , Robertson deposition at 43:21-44:4
15.	The day following Brown's accident (May 13, 2015), State Inspector Steve Robertson arrived on site to investigate the occurrence and inspect the "down" escalator	<b>EXHIBIT D</b> , State of Nevada Elevator Accident Report  <b>EXHIBIT E</b> , Robertson deposition at 17:2-23; 74:7-16; 76:8-24
16.	Robertson specifically "checked the steps to make sure they were in good working order"	<b>EXHIBIT E</b> , Robertson deposition at 74:13-14
17.	As a result of his investigation, Inspector Robertson found no malfunctions or violations, and placed the down escalator back in service.	<b>EXHIBIT D</b> , State of Nevada Elevator Accident Report, "Condition of Equipment: Good"  <b>EXHIBIT E</b> , Robertson deposition at 18:19-24; 19:10-12; 20:18-23; 76:24
18.	Inspector Robertson determined the accident to have been caused by user error rather than equipment failure, and listed Brown's cane as a "contributing factor"	<b>EXHIBIT D</b> , State of Nevada Elevator Accident Report, "Direct Cause of Accident: Loss of Balance"  <b>EXHIBIT E</b> , Robertson deposition at 15:16-16:1; 17:24-18:2; 74:15-16
19.	Most accidents Robertson investigates are caused by human error on the part of the riders, not the machinery	<b>EXHIBIT E</b> , Robertson deposition at 50:9-10; 80:4-7
20.	No further issue with replacement escalator steps cracking was identified until later in 2015, <i>after</i> Plaintiff's accident (and was subsequently cured with 40 additional replacement steps)	<b>EXHIBIT M</b> , Repair orders and proof of payment for 2015 step replacement

1 **IV. SUMMARY JUDGMENT SHOULD NOT BE REGARDED AS A “DISFAVORED**  
2 **PROCEDURAL SHORTCUT” AND IS WARRANTED IN THE CASE AT BAR**

3 Summary judgment is proper “if the pleadings, depositions, answers to interrogatories,  
4 and admissions on file, together with the affidavits, if any, show that there is **no genuine issue**  
5 **as to any material fact** and that the moving party is entitled to a judgment as a matter of law.”  
6 Nev. R. Civ. P. 56(c) (emphasis added); *see also Dermody v. City of Reno*, 113 Nev. 207, 931  
7 P.2d 1354 (1997); *Bish v. Guaranty Nat’l Ins. Co.*, 109 Nev. 133, 848 P.2d 1057 (1993); *Butler*  
8 *v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985); and *Wiltzie v. Baby Grand*  
9 *Corp.*, 105 Nev. 291, 774 P.2d 432 (1989). Furthermore, since Nevada substantially has adopted  
10 the Federal Rules of Civil Procedure, federal case law interpreting the operation of those rules  
11 becomes persuasive. Here, the movant is the Defendant and, accordingly, the procedure set forth  
12 by NRCP 56 is as follows:

13 For defending party. A party against whom a claim, counterclaim, or cross-claim  
14 is asserted or a declaratory judgment is sought may, at any time move with or  
15 without supporting affidavits for a summary judgment in his favor upon all or any  
16 part thereof.

17 As the Nevada Supreme Court reminded us in *Wood v. Safeway, Inc.*, 121 Nev. 724, 121  
18 P.3d 1026 (2005), Rule 56 should not be regarded as a “disfavored procedural shortcut.” Most  
19 importantly, the Court dispelled the notion that even the “slightest doubt as to the operative  
20 facts” can preclude summary judgment by explicitly abrogating the slightest doubt standard  
21 from Nevada jurisprudence. *Id.* at 1031. “While the pleadings and other proof must be construed  
22 in a light most favorable to the nonmoving party, that party bears the burden to ‘do more than  
23 simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid  
24 summary judgment being entered in the moving party's favor.” *Id.* *Wood v. Safeway* is also  
25 instructive that “the substantive law controls which factual disputes are material and will  
26 preclude summary judgment; other factual disputes are irrelevant” *Id.* (quoting *Anderson v.*  
27 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 [1986]).

28 “To establish entitlement to judgment as a matter of law, defendant need only negate one  
element of plaintiff's case (*i.e.*, duty, breach, causation, or damages).” *Harrington v. Syufy*  
*Enters.*, 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997); *see also, Bulbman, Inc. v. Nevada*

1 Bell, 108 Nev. 105, 112 (1992); *Van Cleave v. Kietz–Mill Minit Mart*, 97 Nev. 414, 633 P.2d  
2 1220, 1222 (1981) (holding that if the movant can show that one of the elements is clearly  
3 lacking as a matter of law, summary judgment is proper). Once this initial responsibility has  
4 been satisfied, the burden shifts to the non-moving party to show – by affidavit or otherwise –  
5 specific facts that demonstrate the existence of a genuine issue for trial or have summary  
6 judgment entered against them. *Maine v. Stewart*, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993);  
7 *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 294 (1983). Furthermore, the evidence  
8 must be admissible and sufficient to overcome a NRCP 56(c)(2) objection; without such  
9 competent evidence, the non-moving party cannot establish a triable issue of fact and defeat  
10 summary judgment. *See Garvey v. Clark County*, 91 Nev. 127, 130, 532 P.2d 269, 271 (1975)  
11 (A party opposing summary judgment may not rely on his allegations to raise a material issue of  
12 fact where the moving party supports his motion with competent evidence).

13 Here, the pleadings, depositions, answers to interrogatories, and other papers on file,  
14 establish that there is no genuine issue as to any material fact and that Defendants are entitled to  
15 judgment in their favor as a matter of law. At a minimum, Plaintiffs’ prayer for punitive  
16 damages must be stricken.

17 **V. BECAUSE THE BROWNS CANNOT PROVE NEGLIGENT MAINTENANCE**  
18 **IN LIGHT OF THE UNDISPUTED FACTS, DEFENDANTS ARE ENTITLED**  
19 **TO SUMMARY JUDGMENT ON ALL OF PLAINTIFFS’ CLAIMS**

20 ***A. Defendants met the standard of care that an ordinary, prudent owner or***  
21 ***maintainer of escalators would exercise under the circumstances***

22 Defendants are entitled to summary judgment on Plaintiffs’ claim of negligent  
23 maintenance because they cannot prove the necessary elements. Plaintiffs’ complaint essentially  
24 is one of negligent maintenance against Defendant GNL, the property owner, and Defendant  
25 TKE, its maintenance company. In such a case the Plaintiffs have the burden of demonstrating  
26 the elements of duty, breach, actual and proximate causation, as well as damages by a  
27 preponderance of the evidence. *See Joynt v. California Hotel and Casino*, 108 Nev. 539, 835  
28 P.2d 799 (1992).

Specifically, Plaintiffs have the burden to prove that Defendants breached their duty to Joe Brown by not exercising that degree of care that an ordinary, prudent owner or maintainer of escalators would exercise under the same or similar conditions. *Otis Elevator Company v. Reid*, 101 Nev. 515, 786 P.2d 1378 (1985); *Davlan v. Otis Elevator Company*, 816 F.2d 247, 291 (7th Cir.). Plaintiffs cannot merely assert that Joe Brown was injured on an escalator owned or maintained by the Defendants and thereby raise an inference of negligence.

The owner or occupant of property is not an insurer of the safety of an invitee thereof; the mere fact there was an accident or other event and someone was injured is not of itself sufficient to predicate liability. Negligence is never presumed, but must be established by substantial evidence. *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 370 P.2d 682 (1962).

Thus, in order to demonstrate Defendants' breached their duties, Plaintiffs must show in this case:

- (1) Defendants had prior knowledge of a problem with the escalator and failed to take reasonable steps to correct the problem; or
- (2) Defendants did not use reasonable care in maintaining the escalator by failing to discover and correct the problem that caused it to malfunction.

*See Otis Elevator Company v. Reid*, 101 Nev. 515, 706 P.2d 1378 (1985); *M & R Investment Company v. Anzalotti*, 105 Nev. 224, 773 P.2d 729 (1989); *Davlan v. Otis Elevator Company*, 816 F.2d 287 (7th Cir. 1987).

Plaintiffs have offered no real evidence that, at the time of Brown's fall on May 12, 2015, Defendant GNL was aware of any current problem with the escalator and failed to correct it or did not adequately maintain the escalator. It is anticipated that Plaintiffs' will try to manufacture an issue of fact by pointing to the step replacement undertaken in 2012 and argue that it was not actually performed or completed, despite competent evidence to the contrary. In fact, between the time the problem with cracked steps was identified in 2012 and Brown's 2015 fall, the escalator in question was inspected more than once by the state inspectors (from Nevada Department of Business & Industry), most recently on July 14, 2014, and cleared of any defect or malfunctions. The Inspection Form indicated there were no code violations and certifies that all operations of the escalator were in perfect working order. *See EXHIBIT H* attached hereto. Further, Inspector Steve Robertson testified that his department will not



1 consider old violations that were already corrected prior to the most recent inspection. *See*  
2 **EXHIBIT E**, Robertson deposition at 78:1-18

3 State regulations mandate whenever an individual is injured on a piece of machinery and  
4 transported to the hospital for care that the equipment be taken out of service until the incident  
5 can be investigated and the machinery be inspected by State inspectors. *Id.* at 43:21-44:4. Such  
6 was the case following Mr. Brown's fall, and Robertson was assigned the investigation. The  
7 requirements for equipment shut off means that the subject "down" escalator, once turned back  
8 on, would have been in the same condition at the time of inspection as the time of Plaintiff's  
9 fall. *Id.* at 18:3-12. After completing his investigation, watching surveillance video, visually  
10 inspecting and riding the "down" escalator, Robertson concluded it was safe for public use and  
11 returned the unit to service. *Id.* at 18:19-24; 19:10-12; 20:18-23; 76:14-24. Thus, there is no  
12 evidence of any negligent maintenance on the part of Defendants. Plaintiffs cannot prove the  
13 necessary elements that Defendants breached their duty of maintenance or that the maintenance  
14 on the escalator was the proximate cause of any of Joe Brown's unfortunate injuries.

15 ***B. This is not a case where the doctrine of res ipsa loquitur is applicable***

16 *Res ipsa loquitur* is a balancing doctrine, and while the plaintiff need not show  
17 the exact cause of an injury, he must at least show that it is more probable than  
18 not that the injury resulted from the defendant's breach of duty. If that is shown,  
19 an inference of negligence on the part of defendant arises and it is then  
incumbent on the defendant to come forward with rebuttal evidence. *American*  
*Elevator Company v. Briscoe*, 93 Nev. 665, 572 P.2d 534, 537 (1977).

20 In order to establish the applicability of the *res ipsa loquitur* doctrine, a plaintiff carries the  
21 initial burden to introduce evidence eliminating that the malfunction occurred due to a cause  
22 other than defendant's negligence. The *Briscoe* case is instructive on this initial burden to  
23 eliminate other possible causes, for example, "Plaintiff has introduced no evidence which would  
24 indicate it is more probable the accident was caused by negligent servicing rather than by  
25 negligent manufacture installation." *Id.*, 572 P.2d at 537.

26 This view of the inapplicability of the *res ipsa loquitur* doctrine is supported in the case  
27 law of sister states, to wit:  
28

[T]he evidence in the instant case does not authorize the application of the doctrine... for the reason that mechanical devices, such as the one here involved, get out of working order, and sometimes become dangerous and cause injury without negligence on the part of anyone. Any other ruling would make the occupier of the premises an insurer. *See Ellis v. Sears Roebuck and Company*, 388 S.E.2d 920, 921 (Ga. App. 1989).

Another example is a Florida case where a plaintiff alleged to have suffered injuries due to the sudden stop of an escalator:

Nor did the plaintiffs offer any evidence as to the negligent maintenance of the escalator by Otis or Sears. No testimony suggested that Sears or Otis did or failed to do anything which could have caused the escalator to stop. In fact, the sum and substance of the evidence presented on behalf of the plaintiffs was that the Sears escalator came to a sudden stop while Mrs. Chambliss was "on board" and that as a result she fell and injured her elbow.... Defense witnesses testified that several factors, none of which implicated negligent maintenance, can cause the escalator to stop normal operations.

\* \* \* \* \*

The plaintiffs in the instant case totally failed to carry their initial burden of showing by appropriate evidence that negligence was the probable cause for the escalator's [malfunction].... This oversight alone precludes application of *res ipsa loquitur* and proves fatal to their case. *Otis Elevator Company v. Chambliss*, 511 So.2d 412, selected portions from pages 412-414 (1987).

Because of the nature of mechanical equipment and Plaintiffs' failure to eliminate other possible causes, they cannot utilize the *res ipsa loquitur* doctrine to bridge any of the gaps in their evidence to meet their burden of proof.

### ***C. Plaintiff's Comparative Negligence Disproves His Own Case***

One of the possible alternate causes that Plaintiffs cannot eliminate is Joe Brown's own comparative fault. Although the question of contributory negligence is generally one of fact reserved for the decision of a jury, it "becomes a question of law only when the evidence is of such a character that it will support no other legitimate inference." *Carter v. Fallon*, 54 Nev. 195, 201 (1932) (internal citations omitted). The Nevada Supreme Court found just such an instance in *Konig v. Nevada-California-Oregon Ry.*, 36 Nev. 181, 135 P. 141 (1913) and explained:

[W]here the testimony of the plaintiff shows circumstances of contributory negligence which absolutely defeat his right of action and ***disprove his own case***, the defendant is at liberty to take advantage of such testimony, though produced by the adversary. This principle... applies only to instances where the testimony produced on the part of the plaintiff is such as to absolutely defeat his right of action by showing conclusively either that the accident occurred through willful neglect or that he was so flagrantly guilty of negligence as to preclude the possibility of the defendant being liable. *Id.*, 36 Nev. at 207.

1 Therefore, when the inference of negligence on the part of the plaintiff is “so strong as to be  
2 unavoidable and conclusive,” the trial court is warranted in saying, as a matter of law, that the  
3 plaintiff has been so flagrantly guilty of contributory negligence as to defeat his action. *Id.*, 36  
4 Nev. at 206.

5 Inspector Robertson’s testimony that most (90 percent of) elevator and escalator  
6 accidents are due to rider error (*see* **EXHIBIT E**, Robertson deposition at 50:9-10; 80:4-7) is  
7 worthy of magnified consideration. Here, Plaintiff Joe Brown’s significant failure to exercise  
8 ordinary care in riding the escalator (1) while using a cane (instead of the nearby elevator), (2)  
9 without assistance, and (3) while intoxicated, warrants a finding of contributory negligence in  
10 excess of 50 percent as a matter of law, barring Plaintiffs’ recovery in the case at bar.

11  
12 **VI. BECAUSE TORT LIABILITY ALONE IS INSUFFICIENT TO SUPPORT AN**  
13 **AWARD OF PUNITIVE DAMAGES, PLAINTIFFS’ PRAYER FOR**  
14 **PUNITIVE DAMAGES MUST BE STRICKEN AS A MATTER OF LAW**

15 Nevada law has long recognized that “a plaintiff is never entitled to punitive damages as  
16 a matter of right.” *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887  
17 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985)). Tort liability  
18 alone is insufficient to support an award of punitive damages. *Wichinsky v. Mosa*, 109 Nev. 84,  
89, 847 26 P.2d 727 (1993).

19 Plaintiffs’ only causes of action in their Second Amended Complaint are for general  
20 negligence and loss of consortium. Such negligence based claims, under Nevada law, are  
21 insufficient to support an award of punitive damages. Simply put, even if Plaintiffs could prove  
22 their claims for negligence or their contentions of malice or conscious disregard, they still are  
23 not be entitled to recover punitive damages because the punitive damages statutes in Nevada  
24 require conduct *exceeding* recklessness or gross negligence. *Wyeth v. Rowatt*, 244 P.3d 765,  
25 126 Nev. Adv. Rep. 44 (2010); *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725,  
26 743, 192 P.3d 243, 255 (2008). Because they cannot meet the high bar of Nevada’s legal  
27 requirement to establish punitive damages, summary judgment is warranted as to Plaintiffs’  
28 prayer for punitive damages.

Plaintiff's 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 Defendants' acts and omissions constitute conscious disregard. (See Second Amended Complaint at ¶¶18-19). 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 725; *First Nat. Bank of Ely v. Progressive Cas. Ins. Co.*, 2012 WL 5944847 (D. Nev. Nov. 27, 2012) (emphasis added). Plaintiffs can prove no facts which illustrate that any employee of GNL acted with a conscious disregard for the rights or safety of others, and have not pled any allegations of culpability in excess of recklessness or gross negligence in the case at bar.

It is Plaintiffs' burden to establish that Defendants acted **intentionally, willfully, and deliberately knowing that such conduct would be harmful to Plaintiffs specifically**. Although Plaintiffs are free to include whether naked assertions they like in their Complaint, now they must come forward to support those contentions with evidence. Yet, the record is devoid of any evidence that GNL intended to harm this particular Plaintiff, Mr. Joe Brown – and the Proposed Second Amended Complaint fails even to allege any such facts. As used in the Nevada statute, "[m]alice, express or implied, means conduct which is *intended to injure* a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(3). Nevada courts have made clear "[t]he term malice as used in the statute means *malice in fact* and denotes *ill-will*, or a *desire to do harm* for the mere satisfaction of doing it." *Warmbrodt v. Blanchard*, 692 P.2d 1282, 1286 (Nev. 1984) (emphases added).

Even if Plaintiffs' allegations in the Second Amend Complaint were true (as must be assumed for purposes of this Motion) and Defendants were found negligent, this finding would still not support an evidentiary basis for concluding that GNL acted with malice. Plaintiffs cannot establish fraud or express malice, as GNL's alleged failure to repair the escalator steps,

1 does not give rise to any reasonable inference that Defendant *intentionally* sought to injure Joe  
2 Brown. In fact, Plaintiff's Second Amended Complaint only alleges "a conscious disregard of  
3 the safety of the riding public" (*see* ¶19). While GNL vehemently denies this allegation,  
4 assuming *arguendo* that it were true, it is still insufficient to establish specific intent. Therefore,  
5 Plaintiffs cannot establish the requisite intent by GNL or its employees to support punitive  
6 damages and summary judgment is warranted.

7 **VII. CONCLUSION**

8 Plaintiffs' Second Amended Complaint fails to state any legal basis sufficient to support  
9 to punitive damages. There is no evidence in this matter that GNL formed intent, let alone a  
10 specific intent, to harm Plaintiff Joe Brown and, therefore, Plaintiffs cannot support a claim for  
11 punitive damages at trial. Defendants request summary judgment in their favor on the issue of  
12 punitive damages and that the prayer for such relief be stricken from Plaintiffs' pleadings.

13 WHEREFORE, because Plaintiffs' cannot demonstrate the necessary elements of their  
14 claim, Defendants respectfully request that this Court grant summary judgment in their favor  
15 and dismiss all of Plaintiffs' claims.

16 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2018.

17 GRANT & ASSOCIATES

18 

19 ALEXANDRA B. MCLEOD, ESQ.

20 Nevada Bar No. 8185

21 7455 Arroyo Crossing Parkway, Suite 300

22 Las Vegas, Nevada 89113

23 Attorney for Defendants GNL, LANDRY'S, & GNI

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 1<sup>st</sup> day of November, 2018 I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND PUNITIVE DAMAGES** 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

  X   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/ Camie DeVoge*

\_\_\_\_\_  
An Employee of GRANT & ASSOCIATES

# EXHIBIT A

# EXHIBIT A

JNB00725

Case # :

2015-00200

Golden Nugget Hotel & Casino  
LAUGHLIN

Case Report

Reported By: RYAN KNUPP

Incident		Offender	Incident Disposition
LAUGHLIN : GUEST MEDICAL LAUGHLIN : GUEST ACCIDENT			
Disposition		Method of Reporting	
REPORT		OFFICER OBSERVED	
Incident Occurred Date	Incident Occurred End Date	Incident Discovered / Called In	
05/12/2015 at 1928	05/12/2015 at 1955	05/12/2015 at 1928	
Location		Specific Location	
LAUGHLIN : ESCALATOR		DOWN ESCALATOR TO BUBBA GUMP'S RESTAURANT	
Secondary Location		Related Event	
		None	
Manager/Supervisor On Duty		Manager/Supervisor Notified	
RYAN KNUPP		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

Drivers License

Drivers License State

Email Address

UNKNOWN

Age

Date of Birth

Gender

Race

M

BLACK

Height

Weight

Hair Color

Eye Color

5'10"

175

BLACK

BLACK

Approx. Age

Demeanor

Build

Clothing

60+

MEDIUM

T-SHIRT AND BLUE JEANS

Notes

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

State

Zip

Country

Address Type

UNKNOWN

**Prepared By:**

RYAN KNUPP(187707)

**Submitted Date**

05/12/2015 2057

**Signature**

**Reviewed By/Date**

DOWNS 05/14/2015 0927

# EXHIBIT B

# EXHIBIT B

JNB00728

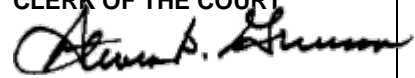
# DVD of Surveillance Video Footage

Will be delivered to  
Judge via hard copy of  
Motion. The same has  
been provided to  
counsel previously as  
GNL002025-002028

EXHIBIT C

EXHIBIT C

JNB00730



**ACOM**  
IQBAL LAW PLLC  
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*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 NUGGET, INC, a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP.; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1- 100; and ROE BUSINESS ENTITIES 1-100,  Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI  <b>SECOND AMENDED COMPLAINT</b>  <b>(Amount in Controversy Exceeds \$50,000 Arbitration Exemption Requested)</b>
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:

///

## 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

as ROE Business Entities 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.

## **II. ALLEGATIONS COMMON TO ALL CLAIMS**

9. On or about May 11, 2015, Joe and Nettie Brown traveled, with members of their family, from their Las Vegas home to vacation in Laughlin, Nevada.

10. While there, Joe and Nettie Brown stayed nearby the Laughlin Nugget. Plaintiffs' daughter, Sholanda Marlette, and her husband Clay Marlette, also stayed with Joe and Nettie.

11. The evening of May 12, 2015, Joe and Nettie Brown, and Sholanda and Clay Marlette, went to dinner at one of the restaurants at the Laughlin Nugget. All four boarded the "down" escalator installed at the Laughlin Nugget.

12. 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.

13. When Joe Brown stepped onto the Laughlin Nugget escalator, the stair he stood on was loose and unstable.

14. Because the Laughlin Nugget escalator stairwell was narrow, and the step was shaky, 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.

15. As a result, Joe Brown lost his balance and fell down the Laughlin Nugget escalator.

16. As a result of the fall on the Laughlin Nugget escalator, Joe Brown suffered a broken neck, and numerous additional injuries.

17. 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.

18. Pursuant to NRS 42.001 *et seq.*, a plaintiff may recover punitive damages in addition to compensatory damages for the sake of example and by way of punishing the defendant. Here, defendants acted with, among other things, malice, both express and implied – meaning conduct that is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others. Conscious disregard means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.

19. Evidence in this case has shown, among other things, that: (i) the “down” escalator at the Laughlin Nugget had cracked steps, posed substantial risks to the riding public over a period of several years, and was consistently and continuously experiencing safety and maintenance problems, which led to Plaintiffs’ injuries; (ii) defendants were on notice and knew of the escalator’s dangerous condition for years, failed to take the steps to make the escalator safe, and failed to shut down the escalator until it was safe; and (iii) defendants had a conscious disregard of the rights and safety of the riding public, and willfully and deliberately failed to act to make the escalator safe and avoid injuring the public, including Plaintiffs.

### III. JURISDICTION

20. The Court has jurisdiction of this matter pursuant to NRS 14.020 and NRS 14.065, as: (i) 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 reasonably anticipate being held into court here; (ii) Defendants Golden Nugget and GNL are corporations organized under the laws of, and doing business in, this State; and (iii) Defendant TKE does business in the State of Nevada and has purposefully established minimum contacts in Nevada by conduct and connection such that it should reasonably anticipate being held into court here.

21. Further, the amount in controversy falls within the jurisdictional limit of this Court.



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          ///


26          ///

27          ///

1 d. For such other and further relief as the Court deems just and proper.  
2 Dated this September 18, 2018.

3 Respectfully Submitted,

4 IQBAL LAW PLLC

5  
6 By:   
7 Mohamed A. Iqbal, Jr. (NSB# 10623)  
8 Christopher Mathews (NSB #10674)

9 *Attorneys for Plaintiffs Joe N. Brown and*  
10 *Nettie J. Brown*

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EXHIBIT D

EXHIBIT D

JNB00738



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 8:15pm</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"/>
	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:		(Use additional sheets if needed)	
<u>got on ESCALATOR with CANE</u> <u>LOST BALANCE + FELL</u>			
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

JNB00739

GNL 000029

# EXHIBIT E

# EXHIBIT E

JNB00740

**In the Matter Of:**  
**JOE N. BROWN vs**  
**LANDRY'S INC.**

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**JAMES ROBERTSON**

*August 21, 2017*

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702-805-4800  
scheduling@envision.legal

JNB00741

DISTRICT COURT

CLARK COUNTY, NEVADA

**CERTIFIED COPY**

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, ROE  
BUSINESS ENTITIES 1-100,

Defendants.

AND RELATED CROSS-ACTIONS.

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

DEPOSITION OF JAMES STEPHEN ROBERTSON  
LAS VEGAS, NEVADA  
MONDAY, AUGUST 21, 2017  
at 2:11 p.m.

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

JOB NO: 277





<p style="text-align: right;">Page 6</p> <p>1 to tell the truth as you would be in court of law, 2 which carries all the same penalties of perjury? 3 A. Yeah. 4 Q. We try not to talk over one another. I 5 don't think that we are going to have a problem 6 with that. You seem to be able to listen to my 7 questions and answer afterwards. 8 A. Yes. 9 Q. Great. We don't want to talk over each 10 other. 11 And if you don't understand any of my 12 questions today -- I'm bound to ask some confusing 13 ones or word them poorly. If you ask me to 14 reclarify or reask the question, I'm happy to do 15 it. 16 A. Okay. 17 Q. Thanks, Steve. 18 Have you ever testified in trial? 19 A. No. 20 Q. Roughly when were you deposed in those 21 other cases? 22 A. Let's see. It has been five or six 23 years. 24 Q. Were they pretty close to one another? 25 A. Yeah, within the one-year period.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. California. 2 Q. What part? 3 A. L.A. 4 Q. Okay. And then just kind of walk me 5 through to present day, briefly. I mean, did you 6 move up there, did you move companies, and how were 7 you involved in the elevator industry? 8 A. Okay. I started out there in '88, worked 9 out there for I think about four years; moved back 10 to Indiana, worked there for about three years; 11 moved back to California, worked another ten years, 12 and then went to Nevada. 13 Q. And about in 2005 you came to Nevada; is 14 that right? 15 The only reason I bring that up, you said 16 you were deposed in those cases about five or six 17 years ago in California? 18 A. Uh-huh. 19 Q. So you may have been in California for 20 longer than ten years; does that sound right? 21 A. Could be. 22 Q. Okay. 23 A. Because I moved back and forth, you know, 24 wherever the work was plentiful. 25 Q. Okay. Who did you work for in Indiana?</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. 2 A. And they were both in California. 3 Q. Do you service elevators in California 4 and escalators, or were you living out there at the 5 time? 6 A. I was living out there at the time. 7 Q. Were they elevators or escalators in 8 those cases? 9 A. One elevator and one escalator. 10 Q. Okay. 11 I just want to get into your background a 12 little bit. 13 When did you get into the elevator 14 industry? 15 A. '88. 16 Q. So some -- I mean, you were already an 17 adult when you got into the elevator industry then? 18 A. Oh, yeah. 19 Q. And what was your first job there? 20 A. Basically, cleaning, painting, sweeping. 21 Q. For what company was this? 22 A. I started off with Associates Elevator. 23 They have since been bought out and disposed of. 24 Q. Okay. And was this in California or 25 Nevada?</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Schindler Corporation, KONE Corporation, 2 Otis, and Mallar, which became Schindler. 3 Q. Were you a mechanic for them? Were you 4 doing the painting, cleaning, sweeping for them? 5 What did you do in Indiana? 6 A. I was a full mechanic, and I was doing 7 service and some modernizations. 8 Q. Modernizations? 9 A. Yeah. 10 Q. What about when you moved back to 11 California in 1995, who were you working for? 12 A. Otis. 13 Q. Also as a mechanic? 14 A. Yes. 15 Q. And then throughout that roughly ten 16 years that you were in California, did you keep 17 working with Otis or did you work with different 18 companies? 19 A. No. Basically, I worked for Otis the 20 whole time. There was a couple of jobs that Otis 21 did as they would sub it out to a second company. 22 Q. Sure. 23 A. But we actually did the work. So we got 24 paid through a second company. But basically, I 25 worked for Otis, you know, the whole time.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. And then once you came to Nevada, 2 did you keep working for Otis?</p> <p>3 A. No. I started working for Thyssen.</p> <p>4 Q. And you worked for them for roughly five 5 years before you retired?</p> <p>6 A. Yeah.</p> <p>7 Q. Then upon retirement, you started working 8 for the state?</p> <p>9 A. No, I played tourist, stayed at home, 10 watched television, went to movies, got bored when 11 everything, you know, was the same; said, "I got to 12 go back to work." So I went -- I applied at the 13 state and got a job as an inspector.</p> <p>14 Q. And how long have you been working for 15 the state now?</p> <p>16 A. Eight years.</p> <p>17 Q. Okay. What type of training and 18 education do you have?</p> <p>19 A. I got an associate's degree in 20 microprocessing. I've had four years of training 21 for elevators.</p> <p>22 Q. Is that like formal training?</p> <p>23 A. Yes.</p> <p>24 Q. Where is that?</p> <p>25 A. It went through the union.</p>	<p style="text-align: right;">Page 12</p> <p>1 Do you know who called your office to 2 have you dispatched?</p> <p>3 A. I believe it was senior watch security.</p> <p>4 Q. Okay. And I'll try not to interrupt you 5 with too many questions, but if you can just walk 6 me through from the time you were dispatched to 7 when you left the hotel. Just walk us through what 8 happened, what you did.</p> <p>9 A. Okay. Since it was in Laughlin, we were 10 dispatched -- it is like two-hour drive down there. 11 I got to the hotel, got ahold of security. They 12 took me back to surveillance. We looked at the 13 video to see what was -- what happened and 14 everything.</p> <p>15 Then we went from there to risk 16 management, I guess what they call it, to get the 17 information about the gentleman that fell and 18 they're, you know -- you know, explanation of what 19 happened and everything.</p> <p>20 Then we went down to the escalator 21 itself.</p> <p>22 Q. Whose explanation of what happened? Risk 23 management's explanation; is that what you're 24 saying?</p> <p>25 A. Security. The ones that actually was on</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Where did you get your associate's 2 degree?</p> <p>3 A. United Technologies, Incorporated, out of 4 Louisville, Kentucky.</p> <p>5 Q. Okay.</p> <p>6 A. And I had a half a year at Indiana State.</p> <p>7 Q. Roughly how many accidents have you 8 investigated?</p> <p>9 A. Probably 30 or 40.</p> <p>10 Q. Wow. Is that just in the past eight 11 years, then?</p> <p>12 A. Yes.</p> <p>13 Q. Are you talking about as an inspector?</p> <p>14 A. Yes.</p> <p>15 Q. Are you QEI certified?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have to recertify for that every 18 year?</p> <p>19 A. Yes.</p> <p>20 Q. When did you become certified?</p> <p>21 A. 2010, I believe it was.</p> <p>22 Q. Do you have a personal recollection of 23 the event we are here to talk about today?</p> <p>24 A. Yes. I also brought my report too.</p> <p>25 Q. Great.</p>	<p style="text-align: right;">Page 13</p> <p>1 site.</p> <p>2 Q. Okay. Got you.</p> <p>3 A. Then we went to the escalator, checked 4 the safety equipment, make sure everything was 5 working properly.</p> <p>6 And then I filled out my paperwork and 7 left. Went back to Vegas.</p> <p>8 Q. Do you know Chris Dutcher, the TKE 9 technician that showed up?</p> <p>10 A. I've met him several times, but I don't 11 know him, you know, socially.</p> <p>12 Q. Socially.</p> <p>13 Let's turn and look at your report for 14 just a second. It is copy of same one.</p> <p>15 I'm just curious. It says "time 16 reported." It looks like it says 8- or 9:07 a.m. 17 and then time of arrival 11:00 a.m.?</p> <p>18 A. Yes.</p> <p>19 Q. And it looks to me like you reported 20 before you arrived?</p> <p>21 I'm sure I am just misunderstanding the 22 report.</p> <p>23 A. No. It was -- the accident was on the 24 12th.</p> <p>25 Q. Right.</p>

<p style="text-align: right;">Page 14</p> <p>1 A. They reported it the next morning at  2 8:00 o'clock in the morning.  3 Q. Got it.  4 A. And then I didn't get there until 11:00.  5 Q. So that's when they reported it.  6 A. Yes.  7 Q. That makes sense.  8 A. They should have reported it on the 12th.  9 Q. Tell me about that.  10 A. Well, the accident was on the 12th. If  11 the guy was injured and transported, they have to  12 leave the escalator down until I get there.  13 So normally they call right away so they  14 can get it back up and running, you know. It's  15 basically in a casino. But for some reason, they  16 didn't call until the next morning.  17 Q. Okay. Do you know if it ran in the  18 meantime?  19 A. No. It was shut down.  20 Q. Okay. I notice that you checked the box  21 here for "video footage taken."  22 You are just referring to the security  23 footage; is that correct?  24 A. Yes.  25 Q. Or did you take video?</p>	<p style="text-align: right;">Page 16</p> <p>1 forward.  2 Q. Okay. Based on your experience,  3 should -- people that require a cane, should they  4 be riding escalators?  5 A. No.  6 Q. Why is that?  7 A. Because of the fact that they are using a  8 cane to equalize their balance and everything.  9 Now, if they are holding on the handrail  10 with the other hand, you know, it's more stable.  11 But when they are just walking on with a cane, they  12 can wobble back and forth and tumble.  13 Q. Understood.  14 Did you speak to anyone else while you  15 were there that we haven't talked about?  16 A. No, not that I know of.  17 Q. Let's go through your inspection of the  18 elevator.  19 MR. IQBAL: Escalator.  20 MR. MITCHELL: Yes. Thank you.  21 Escalator.  22 And we will attach this accident report  23 as Exhibit 1.  24 (Exhibit 1 was marked for  25 identification.)</p>
<p style="text-align: right;">Page 15</p> <p>1 A. No. That's their video.  2 Q. And the claimed injuries, where it says  3 "Cut on head," is that information that you got  4 from the security guard?  5 A. Yes.  6 Q. And since it was the next day, you didn't  7 have any conversations with the guy that fell or  8 any of his family; is that correct?  9 A. No.  10 Q. Did you have any conversations with the  11 security guards who were on scene?  12 A. No.  13 Q. So it was the guys that were there for  14 the shift the next day that you spoke to?  15 A. Yes.  16 Q. Where it says "Description of accident"  17 and you put "Lost balance and fell," is that you  18 looking at the video or just speaking to somebody,  19 or how did you come up with that?  20 A. That was from what I observed on the  21 video. He had a cane in his right hand and he got  22 on the escalator, and then about a quarter of the  23 way down, he reached like he was going to grab the  24 handrail, but he had this cane in his hand on that  25 hand that he was reaching with, and then fell</p>	<p style="text-align: right;">Page 17</p> <p>1 BY MR. MITCHELL:  2 Q. Now, in Mr. Dutcher's report, he says  3 that you-all did a visual inspection?  4 A. Correct.  5 Q. Can you walk us through what that  6 entails.  7 A. Okay. When we was looking at the video,  8 after he fell, the elevator was still operating,  9 you know, steps moving and everything.  10 So when we got down there, we checked for  11 blood, checked the handrail to make sure that it  12 was not slipping or improperly adjusted. And then  13 we let it run all the way around to make sure there  14 was no blood on the steps, and then we turned it  15 loose.  16 Q. Was there any blood?  17 A. Not when I got there. Of course, they  18 could have cleaned it up that night when the  19 accident happened.  20 Q. So visual inspection doesn't mean you  21 just looked at it. Sounds like you actually put  22 your hands on it, rode it?  23 A. Yes.  24 Q. Were the steps shaky?  25 A. No.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Was the handrail shaky?</p> <p>2 A. No.</p> <p>3 Q. If something were to happen that caused</p> <p>4 the handrail to be loose, is there any sort of a</p> <p>5 mechanism inside an escalator that can tighten it</p> <p>6 on its own without you getting in there and doing</p> <p>7 it?</p> <p>8 A. No.</p> <p>9 Q. In other words, if it was loose the night</p> <p>10 before, it would have still been loose when you got</p> <p>11 there?</p> <p>12 A. Yes.</p> <p>13 Q. Did do anything else to inspect the</p> <p>14 escalator that we haven't talked about?</p> <p>15 A. No.</p> <p>16 Q. Was the handrail moving at the same speed</p> <p>17 as the steps?</p> <p>18 A. Yes.</p> <p>19 Q. Did you see any code violations?</p> <p>20 A. No.</p> <p>21 Q. If you would have, they would have been</p> <p>22 noted in your report; correct?</p> <p>23 A. Oh, yes. And we would have wrote up a</p> <p>24 notice of violation.</p> <p>25 Q. And then what happens if there is a</p>	<p style="text-align: right;">Page 20</p> <p>1 (Exhibit 2 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. MITCHELL:</p> <p>4 Q. And then in your report at the bottom, it</p> <p>5 says "Documents included, Report No. 200"?</p> <p>6 A. Yeah. That's their filing number for the</p> <p>7 accident. So in case you have to go back to their</p> <p>8 stuff, it comes out as -- it will be report</p> <p>9 No. 200.</p> <p>10 Q. So this is the security officer's report,</p> <p>11 and I've circled the number 200. That's what</p> <p>12 you're referring to?</p> <p>13 A. Yes.</p> <p>14 Q. Correct.</p> <p>15 MR. MITCHELL: Go ahead and mark that.</p> <p>16 Sorry.</p> <p>17 BY MR. MITCHELL:</p> <p>18 Q. Mr. Dutcher's report also said that you</p> <p>19 instructed that the escalator could be returned to</p> <p>20 service.</p> <p>21 A. Yes.</p> <p>22 Q. Meaning that it's your call; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And then would there be any other reports</p> <p>25 that we should look for besides your report,</p>
<p style="text-align: right;">Page 19</p> <p>1 violation?</p> <p>2 A. We write up notice of violation, give it</p> <p>3 to them, they get 30 days to fix it. And then we</p> <p>4 go back and inspect it again and make sure they</p> <p>5 have corrected the problems, and if they don't,</p> <p>6 then they get a second notice of violation with</p> <p>7 intent to fine, and --</p> <p>8 Q. Who is "they"?</p> <p>9 A. The owner of the building.</p> <p>10 Q. Did you think the equipment was safe for</p> <p>11 public use?</p> <p>12 A. Yes.</p> <p>13 Q. I am just going to hand you Mr. Dutcher's</p> <p>14 report. If you can just read to yourself these two</p> <p>15 paragraphs. One is the description of the</p> <p>16 incident; the other is just general comments.</p> <p>17 Just read them to yourself and then let</p> <p>18 me know if there is anything that you disagree</p> <p>19 with.</p> <p>20 A. The only thing that is different in his</p> <p>21 statement than mine was the fact that he didn't</p> <p>22 state that when grabbing the left handrail that he</p> <p>23 had the cane in his hand.</p> <p>24 Q. Okay. Thank you.</p> <p>25 MR. MITCHELL: This is going be No. 2.</p>	<p style="text-align: right;">Page 21</p> <p>1 Mr. Dutcher's report, and the security officer's</p> <p>2 report that you are aware of?</p> <p>3 A. No.</p> <p>4 MR. MITCHELL: Okay. I don't have any</p> <p>5 more questions.</p> <p>6 MR. IQBAL: I will give Annalise the</p> <p>7 opportunity to ask questions before I ask.</p> <p>8 MS. GRANT: I don't have any questions.</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 BY MR. IQBAL:</p> <p>12 Q. Steve, thank you for coming in today. I</p> <p>13 appreciate it. I just wanted to ask you some</p> <p>14 further questions.</p> <p>15 Let's start with the reporting. You</p> <p>16 testified that, you know, the accident was on the</p> <p>17 12th of May, and it was reported on the 13th, and</p> <p>18 you said it should have been reported right away.</p> <p>19 Now, you've looked at 30 to 40 accidents.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Is that unusual for folks to wait the</p> <p>22 whole day?</p> <p>23 A. No, because lot of times it depends on</p> <p>24 their shift change. If that was in the middle of a</p> <p>25 shift change, they just turn it over to the next</p>

<p style="text-align: right;">Page 22</p> <p>1 guy. And then he goes through all of his 2 preliminaries and stuff, and then he goes back and 3 looks at what happened, and then he says, oh, okay, 4 we had an accident, you know, and will call it in. 5 Sometimes they try to call it in. They 6 call the wrong number. Because we have a specific 7 line for accidents, and if they call the office, 8 they don't get anything but a recording. And then 9 it is, you know followed up from that recording, 10 you know, the next day. 11 Q. Right, but it should have been reported 12 that day is your position; right? 13 A. Yes. Yes. 14 Q. And it wasn't? 15 A. I don't know. 16 Q. Okay. It looks like, from your report, 17 it was reported on the 13th; correct? 18 A. Yes. That's when I got the report or... 19 Q. Okay. Now, when you went and talked to 20 security and you saw the video, how long was the 21 video? 22 A. The part that I looked at was probably 23 five minutes. 24 Q. Five minutes? 25 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. 2 A. And then the other camera at the bottom 3 showed the ride down. 4 Q. Okay. So if you take an escalator ride 5 as, you know, from top to bottom, the Golden Nugget 6 has at least two cameras, one camera to cover 7 getting on the escalator -- 8 A. Uh-huh. 9 Q. -- and then one camera to cover folks 10 getting off the escalator? 11 A. Correct. 12 Q. And that five minutes that you saw was 13 from the top camera or from the bottom camera or a 14 combination? 15 A. From the top camera. 16 Q. From the top camera. 17 Did you see any video from the bottom 18 camera? 19 A. No. I didn't request it. 20 Q. Okay. Are you aware if the Golden Nugget 21 has the video from the bottom? 22 A. Yes. They should have it, because normal 23 operation, they record it, put on disk, and save 24 it. 25 Q. Okay. So that's -- is that a state law</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Okay. 2 A. Because what they do, they go a half hour 3 before, half hour after the incident, and then 4 rather than sit there and watch people get on and 5 off and everything, they narrow it down to where he 6 gets on the escalator, falls, and then afterwards, 7 you know, so we can see what the escalator was 8 doing after he had his accident. 9 Q. Okay. Okay. So you saw five minutes and 10 that five minutes you saw was continuous? 11 A. Yes. 12 Q. Okay. And what was the angle of the 13 video? 14 A. It was down and probably 30-degree angle 15 looking down and to the side. It wasn't exactly 16 straight down. It was kind of off to the side a 17 little bit. 18 Q. Right. 19 A. But it was looking down at the escalator. 20 Q. The escalator. So you could see folks 21 getting on. 22 And then with the angle of the video, 23 could you see the entire ride down and then them 24 getting off the escalator? 25 A. No. It only -- we only saw halfway down.</p>	<p style="text-align: right;">Page 25</p> <p>1 or just good practice that when you have an 2 accident, you should hold on to the video? 3 A. Good practice. 4 Q. Okay. And in your opinion, the Golden 5 Nugget and the other casinos in Clark County, they 6 hold on to all the videos? 7 A. Yeah, as far as I know. 8 Q. Now, of the 30 to 40 accidents that you 9 have inspected in Clark County, how many of them 10 occurred on Golden Nugget properties? 11 A. I think three or four. 12 Q. Three or four. Okay. 13 Involving escalators or elevators? 14 A. Escalators. 15 Q. Escalators. 16 A. Yes. 17 Q. Any at that specific property? 18 A. Yes. 19 Q. Okay. How many at that property? 20 A. The four. 21 Q. Oh, all four? 22 A. That's what I was talking about, the 23 Golden Nugget Laughlin. 24 Q. Okay. So four accidents that you have 25 inspected --</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. -- at the Laughlin Nugget.</p> <p>3 Now, that four includes this incident in</p> <p>4 2015?</p> <p>5 A. Yes.</p> <p>6 Q. And what were the years of the other</p> <p>7 incidents?</p> <p>8 A. Last year, year before, I don't know how</p> <p>9 far back, but I know at least the last two years.</p> <p>10 Q. So at least two accidents in the last two</p> <p>11 years?</p> <p>12 A. Yes.</p> <p>13 Q. So just -- and I know this is an</p> <p>14 approximation, that you're not a computer and I'm</p> <p>15 not either, so we are not going to, but 2016 and</p> <p>16 2017, any accidents this year?</p> <p>17 A. Just this one.</p> <p>18 Q. This one, just to point out, was from</p> <p>19 2015.</p> <p>20 A. No. I was thinking this was '17.</p> <p>21 Q. Okay. All right.</p> <p>22 Now -- and you are just one of four</p> <p>23 inspectors?</p> <p>24 A. Three that do accidents.</p> <p>25 Q. Okay. And did you talk to other</p>	<p style="text-align: right;">Page 28</p> <p>1 A. No.</p> <p>2 Q. Okay. Now, in your four accidents at the</p> <p>3 Laughlin Nugget, what was the nature of those</p> <p>4 accidents?</p> <p>5 A. Falls.</p> <p>6 Q. Falls. Okay.</p> <p>7 Falls similar to the fall we had here?</p> <p>8 A. See how I want to say this.</p> <p>9 Most of them involved not holding on to</p> <p>10 the handrail.</p> <p>11 Q. Okay.</p> <p>12 A. Loss of balance and falling forward or</p> <p>13 backwards, and their physical conditioning was</p> <p>14 questioned.</p> <p>15 Q. Okay. Are folks supposed to hold on to</p> <p>16 the handrail --</p> <p>17 A. Yes.</p> <p>18 Q. -- when they get on an escalator?</p> <p>19 A. Yes. And the escalators have signage</p> <p>20 saying hold handrail, face forward, hold children's</p> <p>21 hands, no wheeled vehicles.</p> <p>22 Q. Was there a sign like this in front of</p> <p>23 this escalator?</p> <p>24 A. Yes.</p> <p>25 Q. Has that sign always been there?</p>
<p style="text-align: right;">Page 27</p> <p>1 inspectors about other accidents that they have</p> <p>2 inspected at the Golden Nugget Laughlin?</p> <p>3 A. We discuss all the accidents, you know,</p> <p>4 when we get back to the office, you know, and let</p> <p>5 each other know what happened and what we found.</p> <p>6 Q. Okay. And are other inspectors aware of</p> <p>7 other accidents at the Golden Nugget Laughlin?</p> <p>8 A. I would assume so.</p> <p>9 Q. Okay.</p> <p>10 A. Because I know at least one or two of</p> <p>11 them have been down there before.</p> <p>12 Q. Okay. So we're talking of the three</p> <p>13 inspectors for Clark County --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- who inspect accidents, all of them</p> <p>16 have gone down to the Golden Nugget Laughlin?</p> <p>17 A. Yes, I believe so.</p> <p>18 Q. Okay. Do you know the nature of the</p> <p>19 accident that the other inspectors investigated?</p> <p>20 A. Most of them were accidents on the</p> <p>21 escalators, and I don't think there was any that</p> <p>22 had malfunctions of the escalator.</p> <p>23 Q. Okay. But you are not sure?</p> <p>24 A. No.</p> <p>25 Q. And you haven't reviewed those reports?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes.</p> <p>2 Q. Okay. When was the first time you</p> <p>3 inspected the Laughlin escalator?</p> <p>4 A. Couple of years ago, I think.</p> <p>5 Q. Okay. And going back, when was this</p> <p>6 escalator put into operation? When was it built?</p> <p>7 A. I believe this one was early '90s.</p> <p>8 Q. Early '90s.</p> <p>9 You are not sure, though?</p> <p>10 A. No.</p> <p>11 Q. Has it been modernized or refurbished</p> <p>12 since that time?</p> <p>13 A. No.</p> <p>14 Q. That's a bit unusual; correct?</p> <p>15 A. No.</p> <p>16 Q. No?</p> <p>17 A. Uh-huh.</p> <p>18 Q. So escalators don't require modernization</p> <p>19 or refurbishment every 10 to 20 years?</p> <p>20 A. Basically, if they are running, we</p> <p>21 inspect them for safety. But we can't tell them,</p> <p>22 you know, it needs to be refurbished or it needs to</p> <p>23 be updated or anything else.</p> <p>24 So it, you know, depends on the casino.</p> <p>25 Q. Operator?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. You know, the building owner.</p> <p>2 Q. Got it. Got it. In your experience of</p> <p>3 the 30 or 40 accidents that you've inspected, with</p> <p>4 the four happening at the Laughlin Nugget, is that</p> <p>5 the most of any casino?</p> <p>6 A. No.</p> <p>7 Q. What casino has had the most accidents?</p> <p>8 A. Usually it's Suncoast.</p> <p>9 MS. GRANT: I'm sorry. I have an</p> <p>10 objection. Calls for speculation.</p> <p>11 BY MR. IQBAL:</p> <p>12 Q. In your experience, if you would have to</p> <p>13 guess or make an approximation, it would be the</p> <p>14 Suncoast?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And then second?</p> <p>17 MS. GRANT: Same objection.</p> <p>18 THE WITNESS: I don't know. I would have</p> <p>19 to, you know, say the Riverside, maybe, down in</p> <p>20 Laughlin.</p> <p>21 BY MR. IQBAL:</p> <p>22 Q. Okay. Now, when you went down there, you</p> <p>23 were dispatched, you drove down, you met with</p> <p>24 security, and you saw the surveillance video.</p> <p>25 And you said that you watched about five</p>	<p style="text-align: right;">Page 32</p> <p>1 MS. GRANT: Calls for speculation.</p> <p>2 THE WITNESS: Other than somebody</p> <p>3 watching the video feeds, I have no idea.</p> <p>4 BY MR. IQBAL:</p> <p>5 Q. All right. And you went to risk</p> <p>6 management. How long was that meeting?</p> <p>7 A. Approximately five minutes.</p> <p>8 Q. Okay. And they're the ones who told you</p> <p>9 that the individual got a cut on his head?</p> <p>10 A. Yes. They give me his name, his</p> <p>11 injuries, and then I put that in my form.</p> <p>12 Q. Are you aware that Joe Brown, the</p> <p>13 plaintiff, broke his neck?</p> <p>14 A. No.</p> <p>15 Q. Okay. They didn't tell you that?</p> <p>16 A. No.</p> <p>17 Q. And so when you -- so walk me through</p> <p>18 this. During that five-minute meeting, you asked</p> <p>19 what happened and then they told you he cut his</p> <p>20 head?</p> <p>21 A. Yeah. I asked what kind of injuries he</p> <p>22 had, and they said he had a cut on his head.</p> <p>23 Q. Okay. And that's it?</p> <p>24 A. That's what I wrote down.</p> <p>25 Q. And they didn't say anything else?</p>
<p style="text-align: right;">Page 31</p> <p>1 minutes of the video?</p> <p>2 A. Uh-huh.</p> <p>3 Q. How long did you spend with the security</p> <p>4 folks before you went and talked to risk</p> <p>5 management?</p> <p>6 A. Probably ten minutes or better.</p> <p>7 Q. Okay. And now, you were talking to the</p> <p>8 security folks on shift during the 13th; correct?</p> <p>9 A. Yes.</p> <p>10 Q. You didn't talk to any of the security</p> <p>11 folks on shift on the 12th; correct?</p> <p>12 A. No.</p> <p>13 Q. So whatever they told you, they either</p> <p>14 got --</p> <p>15 A. From the report or from the other</p> <p>16 security officers.</p> <p>17 Q. Okay. And you don't know exactly how</p> <p>18 they got their information that they communicated</p> <p>19 to you; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. At any time did you talk to the</p> <p>22 security folks who were working on the 12th?</p> <p>23 A. No.</p> <p>24 Q. Were there any security folks on the 12th</p> <p>25 who actually saw the accident?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. No.</p> <p>2 Oh. They said he had a cut on his head</p> <p>3 and he was transported.</p> <p>4 Q. Okay. Did they tell you that he was put</p> <p>5 on a stretcher?</p> <p>6 A. They always put them on a stretcher when</p> <p>7 they transport.</p> <p>8 Q. All right. Did they tell you that he</p> <p>9 wasn't mobile and he had a broken neck?</p> <p>10 A. No.</p> <p>11 Q. So the risk management folks, do you</p> <p>12 remember the name of the person you talked to?</p> <p>13 A. No.</p> <p>14 Q. Are they different than regular security?</p> <p>15 A. I think it is a division of it or, you</p> <p>16 know, part of the security.</p> <p>17 Q. Okay. Do they wear --</p> <p>18 MS. GRANT: Again, calls for speculation.</p> <p>19 Mr. Robertson has no idea of the roles of the</p> <p>20 people at Golden Nugget because he doesn't work</p> <p>21 there.</p> <p>22 BY MR. IQBAL:</p> <p>23 Q. So you met with security and then you met</p> <p>24 with risk management, and did they wear different</p> <p>25 uniforms?</p>



<p style="text-align: right;">Page 34</p> <p>1 A. They were dressed in civilian clothes.</p> <p>2 Q. Okay. Including security?</p> <p>3 A. No. Security had blue uniforms with all</p> <p>4 the badges and everything.</p> <p>5 Q. So Golden Nugget security, they all wear</p> <p>6 sort of a blue uniform?</p> <p>7 A. Yes.</p> <p>8 Q. And so when you went to the risk</p> <p>9 management office, those folks weren't wearing blue</p> <p>10 uniforms?</p> <p>11 A. No.</p> <p>12 Q. They were wearing civilian clothes?</p> <p>13 A. Yes. And lot of management wears</p> <p>14 civilian clothes rather than any kind of uniform.</p> <p>15 Q. Got it.</p> <p>16 And so your conversation there was ten</p> <p>17 minutes?</p> <p>18 A. Five.</p> <p>19 Q. Five minutes?</p> <p>20 A. Yes.</p> <p>21 Q. And so security told you about the cut on</p> <p>22 the head, and then what did risk management tell</p> <p>23 you?</p> <p>24 A. Well, they were -- they told me about the</p> <p>25 cut on the head and that he was transported.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Did you measure the distance between the</p> <p>2 handrail and the stair railing?</p> <p>3 A. No.</p> <p>4 Q. Was it close?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you look at the maintenance</p> <p>7 records for this escalator prior to doing your</p> <p>8 report?</p> <p>9 A. No.</p> <p>10 Q. Did you look at any records for this</p> <p>11 escalator before doing your report?</p> <p>12 A. I just looked to see if there was any</p> <p>13 violations.</p> <p>14 Q. And where did you look?</p> <p>15 A. In the file.</p> <p>16 Q. In the file?</p> <p>17 A. At the State office.</p> <p>18 Q. At the State office.</p> <p>19 And where is the State office?</p> <p>20 A. We are at 1303 South or North Green</p> <p>21 Valley Parkway.</p> <p>22 Q. Okay. Does the State office have</p> <p>23 maintenance records for every escalator and</p> <p>24 elevator on casino property in Clark County?</p> <p>25 A. They have the inspection reports and the</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. What else did they tell you?</p> <p>2 A. That was it.</p> <p>3 Q. Okay. And then you went out and you</p> <p>4 inspected the escalator; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you did a visual inspection; correct?</p> <p>7 A. Yeah, what we call a visual inspection.</p> <p>8 We don't open it up, check switches and stuff. A</p> <p>9 visual inspection checks what's out in plain sight.</p> <p>10 Q. Got it. Got it.</p> <p>11 So you didn't open it up and check the</p> <p>12 drive gear?</p> <p>13 A. Yes.</p> <p>14 Q. You didn't?</p> <p>15 A. No, I did not check it.</p> <p>16 Q. Okay. You didn't check the electric</p> <p>17 motor?</p> <p>18 A. No.</p> <p>19 Q. You didn't open up the truss?</p> <p>20 A. No.</p> <p>21 Q. You didn't open up and check out the</p> <p>22 chain guide?</p> <p>23 A. No.</p> <p>24 Q. You didn't look at the return wheel?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 37</p> <p>1 violations that were ensued, all filed.</p> <p>2 Q. And inspection reports -- inspections are</p> <p>3 what, every six months?</p> <p>4 A. Every year.</p> <p>5 Q. Every year?</p> <p>6 A. Yes.</p> <p>7 Q. And that's when a State employee will go</p> <p>8 up and inspect an escalator?</p> <p>9 A. It used to be the state employees. Now</p> <p>10 it is third-party inspectors.</p> <p>11 Q. And the third-party inspectors, are they</p> <p>12 all part of one company?</p> <p>13 A. No. There's, I think, seven companies.</p> <p>14 Q. That would be a lot to handle for your</p> <p>15 office, right?</p> <p>16 A. Well, we get all the paperwork from them</p> <p>17 through our office anyway.</p> <p>18 Q. Okay. Got it. Okay.</p> <p>19 So you didn't look through the inspection</p> <p>20 reports; you just looked to see if there are any</p> <p>21 violations?</p> <p>22 A. Correct.</p> <p>23 Q. And were there any violations?</p> <p>24 A. Not that weren't corrected.</p> <p>25 Q. Okay. But there were violations?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. They -- what they do, they give us a 2 violation for any little thing, you know, that's on 3 there, you know. If it has got broken comb tooth, 4 they will write it up; if has gotten nicks in the 5 handrail, they will write it up, you know. Any 6 little thing like that, they write up. 7 Q. Okay. 8 A. Handrails, you know, they do break down 9 and have to be replaced. 10 Q. Okay. 11 A. But that's a standard thing. 12 Q. Okay. 13 A. Comb teeth, as long as there's not two 14 teeth together, it is, you know, acceptable to 15 leave them until -- you know, until the service 16 mechanic can get there on a regular basis. 17 Q. Right. 18 A. But the -- anything that's unsafe, they 19 write up: Notice of violations, you know, if a 20 switch isn't working or the handrail -- hand inlet 21 switches aren't working; if the -- what we call the 22 fat-lady switch, where there's too much weight on 23 the step, it trips, it stops the escalator; comb 24 impacts, that type stuff, those are major no-nos. 25 And a lot of times they will write those</p>	<p style="text-align: right;">Page 40</p> <p>1 no violations that weren't resolved; right? So 2 there were violations for this escalator? 3 A. Oh, yes. Almost every escalator has 4 violations. 5 Q. We're talking about this specific one. 6 A. Yes. 7 Q. Were there multiple violations that you 8 saw? 9 A. No, just a few small items. They had one 10 handrail that had to be replaced and it was 11 replaced. They had a couple of comb teeth that 12 needed to be replaced; they were replaced. But 13 nothing major. 14 Q. Okay. Do you remember the number of 15 violations that you reviewed? 16 A. I just looked at the one, the one year 17 for violations, and there wasn't any. So, you 18 know, that's when I went down and did my 19 investigation. 20 Q. Right. 21 There weren't any that weren't fixed; 22 right? 23 A. There weren't any written up for their 24 inspection. 25 Q. Okay. But presumably, if you had looked</p>
<p style="text-align: right;">Page 39</p> <p>1 up and then the State will come out and check them 2 after they give them the notice. Then we will go 3 back out and check and make sure it has been done. 4 Q. And you testified previously that they 5 get 30 days to fix those? 6 A. Yes. 7 Q. So there were violations with the Golden 8 Nugget Laughlin; they were just resolved? 9 A. Yes. 10 Q. How many violations were there? 11 MS. GRANT: Calls for speculation. 12 THE WITNESS: I have no idea, you know, 13 over the years. 14 BY MR. IQBAL: 15 Q. You looked at the file which contained 16 all the violations; correct? 17 A. Just the last inspection. 18 Q. Okay. You didn't -- when was the last 19 inspection before this accident on 2015? 20 A. It was -- I can't remember the exact 21 date, but it was in '15. 22 Q. Okay. And there were violations? 23 A. No, no violations for that year, for that 24 inspection. 25 Q. Okay. But you testified that there were</p>	<p style="text-align: right;">Page 41</p> <p>1 at years before 2015, you would have seen other 2 violations? 3 A. Yes. 4 Q. Okay. Since that time, have you had 5 chance to look at the prior years for violations of 6 the escalator? 7 A. No. 8 Q. So let's go through the process. Let's 9 say a casino that has an escalator gets written up 10 for a violation or is notified of a violation and 11 they have 30 days. 12 Are they given this notice in writing? 13 A. Correct. 14 Q. Okay. And it comes from your office? 15 A. It comes from the inspector that actually 16 did the inspection. 17 Q. Got it. And Clark County uses seven 18 different groups to do the inspections? 19 A. Correct. 20 Q. Is there one group that's assigned to the 21 Golden Nugget Laughlin? 22 A. I don't know what company they have doing 23 their inspections. 24 Q. Okay. Is that typical of these seven 25 companies? I am just asking in general. Do they</p>

<p style="text-align: right;">Page 42</p> <p>1 have different geographic areas they are  2 responsible for or different casinos, or they can  3 be sent all over the county?  4 A. They do contracts with the different  5 casinos and buildings and stuff.  6 Q. Okay. Okay.  7 A. They are independent companies.  8 Q. Got it.  9 So you used these independent companies  10 to do the actual inspections; you folks do the  11 accident inspections.  12 A. Correct.  13 Q. And these independent companies have  14 individual contracts with the Golden Nugget?  15 A. Yes.  16 Q. Okay. Now, typically when a casino  17 receives notice of a violation, in your experience,  18 having been there for eight years, do these casinos  19 take it seriously and do they remedy the violation  20 within the 30 days?  21 A. Some do; some don't.  22 Q. And you only inspect after accidents;  23 correct?  24 A. Correct.  25 Well, that's for accidents. We do first</p>	<p style="text-align: right;">Page 44</p> <p>1 service for the public. If somebody is  2 transported, they have to wait until the State gets  3 down there to do the investigation and determine  4 the safety of the appliance.  5 Q. Okay. All right. That makes sense.  6 Now, typically, when during those 30 days  7 the accident -- I'm sorry -- the quote/unquote  8 violation is resolved by the casino, do they send  9 some kind of written documentation back saying "We  10 resolved this?" Is that required?  11 A. Basically, the inspector goes back out  12 within 30 days, verifies that it has been done, and  13 then sends paperwork in saying that it has been  14 resolved.  15 Q. Okay. And if they don't do within that  16 30 days, is there like an automatic fine?  17 A. No. A second violation.  18 Q. Second violation.  19 And how long do they have then?  20 A. Another 30 days.  21 Q. Another 30 days. Okay.  22 And let's say they don't do it after the  23 second 30 days?  24 A. Then they get another violation with  25 intent to fine up to \$5,000 for the next 30 days.</p>
<p style="text-align: right;">Page 43</p> <p>1 inspections and modernization inspections.  2 Q. And so you have done modernization  3 inspections all over the county?  4 A. Yes.  5 Q. So lots of different casinos?  6 A. Yes.  7 Q. Okay. And you have never done a  8 modernization inspection of the Laughlin Nugget;  9 correct?  10 A. No.  11 Q. They haven't modernized their escalator,  12 in your experience, have they, or have they not  13 modernized?  14 A. Not that I know of.  15 Q. Okay. Since it was built?  16 A. Yes.  17 Q. Now, when you say "accident inspection,"  18 define "accident" for me. Does somebody have to be  19 hurt for that to qualify as a quote/unquote  20 accident?  21 A. The buildings or casinos, anytime  22 somebody is injured on an elevator or escalator,  23 they have to call the State and report it.  24 If they are not transported, the elevator  25 company can verify that it's safe to put back in</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Okay.  2 A. Then after that 30 days, they get a  3 second notice of violation or a third notice of  4 violation with an extent up to \$2,500 -- or what is  5 it? \$750 -- \$7,500 for the next 30 days.  6 If they don't get it done then, we can go  7 in there and shut it down.  8 Q. Got it. But you didn't look at the  9 inspection reports and the history of violations  10 with the Nugget, so you don't know whether there  11 were multiple infractions?  12 A. I just looked on that one escalator.  13 Q. Right. For that one year?  14 A. Yes.  15 Q. Okay.  16 A. Because that was the last time it was  17 inspected. The inspector said it was good and  18 everything was operating properly.  19 Q. Right. But you did find violations that  20 were later corrected; correct?  21 MS. GRANT: Asked and answered.  22 MR. MITCHELL: Objection; misstates --  23 sorry, Analisa. Misstates testimony.  24 THE WITNESS: That was, you know, from  25 years back through. But I didn't look at those,</p>

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1 but I know there have been other violations for the  
 2 Golden Nugget, both escalators and elevators.  
 3 And I didn't look to see, you know, which  
 4 escalators they were written up for or anything. I  
 5 just looked at that one particular escalator to see  
 6 if there was any violations that they had written  
 7 up.  
 8 BY MR. IQBAL:  
 9 Q. Got it. I just wanted to take the answer  
 10 that you just gave -- you said, "I know there have  
 11 been other violations."  
 12 How do you know?  
 13 A. Well, they all come through our office  
 14 from the third-party companies.  
 15 Q. Okay.  
 16 A. And we have to review them.  
 17 Q. Uh-huh.  
 18 A. And determine, you know, what the  
 19 violations entail, as to whether they're  
 20 certification blocking or just nuisance violations.  
 21 Because if it's got lightbulbs out and they write  
 22 them up, that doesn't stop them from getting a  
 23 certification.  
 24 Q. Got it.  
 25 So you just know from being in the office

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1 and getting this information from these third  
 2 parties?  
 3 A. Yes.  
 4 Q. And, of course, it is a small group of  
 5 accident inspectors that you work with at the  
 6 county and you folks talk; correct?  
 7 A. Yes. Yes.  
 8 Q. Okay. Just let me ask you, because you  
 9 have, what, when we add it all together, probably  
 10 20 years of experience with escalators?  
 11 A. About 30 years.  
 12 Q. 30 years. That's great.  
 13 How often, typically, does the drive gear  
 14 have to be maintained or changed or replaced?  
 15 A. In my 30 years, I have seen two replaced.  
 16 Q. Okay.  
 17 A. And those were -- one was in L.A. and one  
 18 was here.  
 19 Q. Okay.  
 20 A. And they were -- both drive gears had a  
 21 problem, a factory defect.  
 22 Q. Okay. Okay.  
 23 A. And they, you know, cracked, or the teeth  
 24 just wore down to nothing.  
 25 Q. Got it. Got it.

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1 Now, you talked about your State  
 2 inspections happening every year. In terms of good  
 3 practice or best practice, in your 30 years of  
 4 experience, how often should the casino or the  
 5 business that has the escalator -- how often should  
 6 they be inspecting their escalator either through  
 7 one of their technicians or through Thyssen or Otis  
 8 or some other party?  
 9 A. Well, usually the elevator company works  
 10 on a monthly basis, where they go out and do  
 11 maintenance on a monthly basis.  
 12 Q. Okay. So in your experience, on a  
 13 monthly basis there is maintenance on the drive  
 14 gear?  
 15 A. Usually not.  
 16 Q. When you say on a monthly basis  
 17 maintenance, what does that entail?  
 18 A. They check rollers, check switches.  
 19 Q. Okay.  
 20 A. Check, you know, handrails and comb  
 21 impact plates, usually stuff like that.  
 22 Q. Okay. So best practice or standard in  
 23 the industry, typically these businesses have  
 24 contracts with either Thyssen or Otis or any one of  
 25 these companies to come out and do monthly

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1 maintenance; correct?  
 2 A. Yes. Correct.  
 3 Q. Do you have personal knowledge of the  
 4 arrangement that Golden Nugget Laughlin had or has  
 5 with ThyssenKrupp?  
 6 A. No.  
 7 Q. Okay. Now, you noted in your testimony  
 8 previously that you have met that ThyssenKrupp  
 9 technician --  
 10 A. Yes.  
 11 Q. -- a couple of times?  
 12 A. Yes.  
 13 Q. Was that at different accidents at the  
 14 Nugget Laughlin, or was that socially, or where did  
 15 you meet him?  
 16 A. Different accidents at the different  
 17 casinos.  
 18 Q. Okay. And when these accidents happened,  
 19 typically -- I'm talking about you personally in  
 20 your 30 years of experience.  
 21 A. Uh-huh.  
 22 Q. Do you tend to put the responsibility on  
 23 the business or the maintenance company, whether  
 24 that's Thyssen or Otis?  
 25 A. Most --

<p style="text-align: right;">Page 50</p> <p>1 MR. MITCHELL: Objection; calls for a 2 legal conclusion. 3 MS. GRANT: My objection is calls for 4 speculation, calls for an expert opinion, and calls 5 for legal conclusion. 6 BY MR. IQBAL: 7 Q. You can go ahead and answer, in your 8 experience. 9 A. Most of the accidents I go to are human 10 error on the part of the riders, not the machinery. 11 Q. Right. Right. 12 If there is a machinery issue, just in 13 your personal experience -- 14 A. Uh-huh. 15 Q. -- in your 30 years in the industry, 16 typically -- if it's mechanical, not human error. 17 A. Yes. 18 Q. If it was mechanical, in your mind, in 19 your experience -- 20 A. Uh-huh. 21 Q. -- when you weigh responsibility, do you 22 tend to put it more on, say, Otis -- I am just 23 naming some, you know, maintenance company -- or 24 the casino or the business that actually has the 25 escalator?</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes. 2 Q. So outside of this eight years working 3 for the State -- you said 30 years experience -- 22 4 of those years have been with industry; correct? 5 A. Yes. 6 Q. Representing industry, whether it is Otis 7 or Schindler or Thyssen; correct? 8 A. Yes. Uh-huh. 9 Q. Now, are you familiar with the ASME 10 guidelines on escalators? 11 I believe that's the American Society of 12 Mechanical Engineers? 13 A. Yes. 14 Q. Are you familiar with the -- every three 15 years they issue new guidelines? 16 A. Yes. 17 Q. Okay. 18 A. We get a complete set of new books every 19 time they come out. 20 Q. Okay. Have they changed materially since 21 the early '90s? 22 A. A few things have, yes. 23 Q. What things have changed? 24 A. Different regulations for seismic. A few 25 things were taken out of the law, different</p>
<p style="text-align: right;">Page 51</p> <p>1 MS. GRANT: Same objections. 2 MR. MITCHELL: Join. 3 THE WITNESS: Yeah. I'm trying to think. 4 The only two incidents I saw that were 5 mechanical, one was a broken roller, and one was an 6 elevator that didn't quite level right and the lady 7 fell. But those two were -- I guess I would say 8 they were so isolated that a mechanic inspecting 9 the things could miss it or would miss it. 10 BY MR. IQBAL: 11 Q. Okay. Now, you've worked for Otis? 12 A. Yes. 13 Q. You've worked for Thyssen? 14 A. Yes. 15 Q. And you've worked for couple of other 16 manufacturers/servicers; correct? 17 A. Yes. 18 Q. And you've also worked for Schindler; 19 correct? 20 A. Yes. 21 Q. In the industry, which are the largest 22 companies that manufacture/service escalators and 23 elevators? 24 A. Otis, Thyssen, KONE, and Schindler. 25 Q. And you have worked for all four?</p>	<p style="text-align: right;">Page 53</p> <p>1 statements and stuff, and a few things were added 2 such as handrail, stall speed, indicators, speed 3 indicators. But this is basically pertaining to 4 new or modernized equipment. 5 Q. Right. And here we're talking about 6 equipment that in your personal experience hasn't 7 been modernized since it was installed in the early 8 '90s; correct? 9 A. Correct. 10 Q. In your personal opinion, with your 30 11 years of experience, would you say that the ASME 12 changes since the early '90s -- so let's say 25 13 years. In the last 25 years, have there been 14 important changes in the ASME? 15 A. Yeah. They basically tried to reword 16 things to where they're easier to define so that 17 you don't have the controversy of, oh, well, I 18 thought it meant this. And they find stuff that 19 they want to improve on to upgrade safety and they 20 will add that into the laws. 21 Q. Okay. And you testified just a minute 22 ago that they have added different regulations; 23 correct? 24 A. Yes. 25 Q. And they have added things on handrails,</p>

<p style="text-align: right;">Page 54</p> <p>1 the stall speed?</p> <p>2 A. Yeah.</p> <p>3 Q. You mentioned that.</p> <p>4 A. Uh-huh.</p> <p>5 Q. A couple of other things; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Any other things that you can recall?</p> <p>8 A. No, not without looking in the book.</p> <p>9 Q. Okay. Now, are you aware that the ASME</p> <p>10 recommends that escalators should be inspected</p> <p>11 every six months?</p> <p>12 A. Well, they -- the State of Nevada, they</p> <p>13 inspect an internal every year, where they tear</p> <p>14 steps out, check all the switches and everything</p> <p>15 else.</p> <p>16 And then the six-month inspection is</p> <p>17 basically an external, where they check handrails,</p> <p>18 steps, comb teeth, you know, stuff that's on the</p> <p>19 surface.</p> <p>20 Q. That's very helpful, sir.</p> <p>21 So the six-month let's call external</p> <p>22 inspection.</p> <p>23 A. Uh-huh.</p> <p>24 Q. And then the one-year internal</p> <p>25 inspection.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 Q. Do they look at the drive machine and the</p> <p>3 brake?</p> <p>4 A. Yes.</p> <p>5 Q. Do they look at the truss work for</p> <p>6 structural defects?</p> <p>7 A. Yes.</p> <p>8 Q. And do they look at the handrail safety</p> <p>9 systems?</p> <p>10 A. Yes.</p> <p>11 Q. And do they look at the step and skirt</p> <p>12 clearances?</p> <p>13 A. Yes.</p> <p>14 Q. These are all the important components of</p> <p>15 the internal, looking-at-the-guts inspection;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And during these internal inspections,</p> <p>19 what else do they check? Do they check the gears?</p> <p>20 A. They check chains, gears, drives. They</p> <p>21 check the comb impacts. They have to be at a</p> <p>22 certain level, both on the sides and in the middle,</p> <p>23 in an up direction, and on both top and bottom.</p> <p>24 Q. Okay.</p> <p>25 A. And they check all the electrical</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. These are all run by the seven</p> <p>3 third-party companies?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. Do they -- do these companies schedule</p> <p>6 these internal and external inspections, you know,</p> <p>7 automatically and go out, or does the building or</p> <p>8 casino have to reach out to them and schedule these</p> <p>9 inspections?</p> <p>10 A. I don't know how they do their</p> <p>11 scheduling.</p> <p>12 Q. Okay.</p> <p>13 A. They should, you know, have it in their</p> <p>14 system when it is due so they can schedule being</p> <p>15 out there at the proper time.</p> <p>16 Q. Got it.</p> <p>17 And you are not aware of the internal or</p> <p>18 external maintenance of this escalator because you</p> <p>19 didn't look into that?</p> <p>20 A. No.</p> <p>21 Q. And when you talked about the internal</p> <p>22 inspection, where they look at the guts --</p> <p>23 A. Yes.</p> <p>24 Q. -- do they look at the machine stop</p> <p>25 switches?</p>	<p style="text-align: right;">Page 57</p> <p>1 components, upthrusts, the slack step switch.</p> <p>2 Anything that has to do with the safety or stopping</p> <p>3 of the escalator, they check on an internal.</p> <p>4 Q. Seems like pretty thorough when you do</p> <p>5 the guts inspection, huh?</p> <p>6 A. Yes.</p> <p>7 Q. How long do those take?</p> <p>8 A. Anywhere from two to four hours.</p> <p>9 Q. And, of course, you're not aware of what</p> <p>10 happened with this escalator?</p> <p>11 A. No.</p> <p>12 Q. All right. And have you reviewed -- you</p> <p>13 haven't reviewed the contract between Thyssen and</p> <p>14 Golden Nugget Laughlin; correct?</p> <p>15 A. No. We don't get any of that.</p> <p>16 Q. Right.</p> <p>17 Have you looked at the qualifications for</p> <p>18 the Thyssen technician who came out, who you've met</p> <p>19 several times?</p> <p>20 A. Anytime we go for an inspection, we</p> <p>21 always ask for their State license. They have a</p> <p>22 number, and they are verified.</p> <p>23 Q. Okay. Got it.</p> <p>24 Okay. So you have in front of you your</p> <p>25 one-page report.</p>

<p style="text-align: right;">Page 58</p> <p>1 A. Uh-huh.</p> <p>2 Q. Do you have any background materials? Do</p> <p>3 you have any notes from your actual inspection on</p> <p>4 May 13th that are outside of that report?</p> <p>5 A. No.</p> <p>6 Q. So you go down, you take this one-page</p> <p>7 sheet of paper, you talk to everybody, and then you</p> <p>8 create this one-page report?</p> <p>9 A. Yes.</p> <p>10 Q. And your inspection that day, the visual</p> <p>11 inspection, it didn't involve any of the</p> <p>12 quote/unquote guts, internal inspection that we</p> <p>13 just talked about; correct?</p> <p>14 A. Correct.</p> <p>15 Q. So your visual inspection of the</p> <p>16 escalator, how long did that take?</p> <p>17 A. Probably ten minutes.</p> <p>18 Q. Ten minutes, okay.</p> <p>19 And was the ThyssenKrupp technician with</p> <p>20 you the whole time?</p> <p>21 A. Yes.</p> <p>22 Q. And did that technician have separate</p> <p>23 paperwork that he was filling out?</p> <p>24 A. Yes.</p> <p>25 Q. And you saw that in his hand?</p>	<p style="text-align: right;">Page 60</p> <p>1 them, right, every three years?</p> <p>2 A. Oh, yeah.</p> <p>3 Q. When they come out?</p> <p>4 A. We have to go through an eight-hour</p> <p>5 class.</p> <p>6 Q. Are you aware -- and this is just your</p> <p>7 personal knowledge; not asking for anything outside</p> <p>8 of your personal knowledge.</p> <p>9 Are you aware of Thyssen and Otis and</p> <p>10 other companies' technicians, do they also go</p> <p>11 through the ASME changes?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. When you worked at Thyssen and</p> <p>14 Otis and the other companies, like Schindler,</p> <p>15 during your 22 years, approximately, did you go</p> <p>16 through the ASME regulations, the new ones, when</p> <p>17 they come out?</p> <p>18 A. No.</p> <p>19 Q. So you've just done it as a State</p> <p>20 inspector?</p> <p>21 A. Correct.</p> <p>22 Q. Now, how thick is the book? I mean, is</p> <p>23 it -- do they get little pamphlets or do they just</p> <p>24 revise a bunch of stuff every three years?</p> <p>25 A. I have -- let's see. I have eight books</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I saw it, but I don't know what he was</p> <p>2 writing down.</p> <p>3 Q. Right.</p> <p>4 A. Because it had to do with their internal</p> <p>5 pay schedule and everything.</p> <p>6 Q. Absolutely. And you are worried about</p> <p>7 what's in front of right now, your report?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Typically -- and correct me if I</p> <p>10 am wrong -- do escalators go from, you know, in</p> <p>11 terms of speed, 90 feet per minute to 180 feet per</p> <p>12 minute?</p> <p>13 A. No. We usually run from 100 to 110, you</p> <p>14 know, 90 to 110.</p> <p>15 Q. When you say "we usually run," is that a</p> <p>16 Clark County requirement or is that best practice?</p> <p>17 A. That's best practice.</p> <p>18 Q. Okay. Do you know the speed of this</p> <p>19 escalator?</p> <p>20 A. No.</p> <p>21 Q. Okay. Did you check the speed of the</p> <p>22 escalator?</p> <p>23 A. No.</p> <p>24 Q. Now, the ASME guidelines we were talking</p> <p>25 about that they issue every three years, you review</p>	<p style="text-align: right;">Page 61</p> <p>1 that run from an inch and a half inch thick down to</p> <p>2 25 pages.</p> <p>3 Q. Got it.</p> <p>4 So it all depends?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay.</p> <p>7 A. VIII 17-1, which is the main guts of</p> <p>8 it --</p> <p>9 Q. Yeah.</p> <p>10 A. -- is the big one for new and existing</p> <p>11 appliances.</p> <p>12 Q. Right.</p> <p>13 A. And then 17-3 is for used stuff; 17-2 is</p> <p>14 a guideline; 17-4 is for suspensions; 17-5 is for</p> <p>15 hand -- lifts and dumbwaiters; 9-4 is for handicap;</p> <p>16 and then there's the QEI standards.</p> <p>17 Q. Got it. Now, 17-1, which big one --</p> <p>18 A. Yes.</p> <p>19 Q. -- is that the Bible? Is that best</p> <p>20 practice, or is that actually required Nevada law?</p> <p>21 A. It is in the Nevada law.</p> <p>22 Q. So Nevada law has sort of codified 17-1,</p> <p>23 so whatever is in the ASME, everybody who has got</p> <p>24 an escalator in Clark County or Elko or Reno or any</p> <p>25 part of Nevada should abide by those?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Including all changes?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So that's not a, "Hey, you should</p> <p>5 do this." It's more like a, "Hey, you need to do</p> <p>6 this"?</p> <p>7 A. Their changes basically are for elevators</p> <p>8 that are being put in, not existing elevators.</p> <p>9 Q. Okay.</p> <p>10 A. There's very -- I don't think there is</p> <p>11 any changes in the laws for existing.</p> <p>12 Q. Uh-huh.</p> <p>13 A. Because we have elevators that have no</p> <p>14 fire service because they didn't require it when it</p> <p>15 was built.</p> <p>16 Q. Right.</p> <p>17 A. And we have escalators that don't have</p> <p>18 seismic because it didn't require it when they were</p> <p>19 installed.</p> <p>20 Q. So the ASME doesn't speak to any existing</p> <p>21 equipment; it only speaks to new equipment?</p> <p>22 A. No. It speaks to existing equipment, but</p> <p>23 they don't have that many changes in there.</p> <p>24 Q. Got it.</p> <p>25 A. Because of the fact that when they were</p>	<p style="text-align: right;">Page 64</p> <p>1 Laughlin that says "Don't use a cane"?</p> <p>2 A. No.</p> <p>3 Q. Is there a sign at the Golden Nugget</p> <p>4 Laughlin that says "Don't use crutches"?</p> <p>5 A. I don't think so.</p> <p>6 Q. Is there a sign at the Golden Nugget</p> <p>7 Laughlin that says "Do not use walking boots"?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. They have a standard sign, basically,</p> <p>11 hold handrail, hold the children, and no wheeled</p> <p>12 stuff.</p> <p>13 Q. Don't be bringing your suitcase for your</p> <p>14 three-week vacation down the escalator; right?</p> <p>15 A. Or the hand walkers with wheels on them.</p> <p>16 Q. Right. Right.</p> <p>17 I appreciate your time here today. I am</p> <p>18 almost done, believe it or not.</p> <p>19 Now, you referenced Report No. 200?</p> <p>20 A. Yes.</p> <p>21 Q. The security officer report?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Is that the name of the form or is that</p> <p>24 just the 200th report?</p> <p>25 A. That's the number they assigned to that</p>
<p style="text-align: right;">Page 63</p> <p>1 installed, they were installed by the code at that</p> <p>2 particular time, and that's what they have to go by</p> <p>3 until it gets upgraded.</p> <p>4 When it gets upgraded, it has to come up</p> <p>5 to the new standards.</p> <p>6 Q. Got it. Got it.</p> <p>7 Does the ASME speak to how often an</p> <p>8 escalator or elevator should be upgraded?</p> <p>9 A. No.</p> <p>10 Q. No. Okay.</p> <p>11 Are you familiar with the Americans with</p> <p>12 Disabilities Act?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know when that came out?</p> <p>15 A. No.</p> <p>16 Q. And did that -- I will just call it the</p> <p>17 ADA -- did the ADA have requirements for, you know,</p> <p>18 doorways and steps and elevators and escalators?</p> <p>19 A. They have conditions for landings, steps,</p> <p>20 elevators. I don't think they have anything for</p> <p>21 escalators.</p> <p>22 Q. Okay. Do they have anything on the width</p> <p>23 an escalator should be?</p> <p>24 A. No.</p> <p>25 Q. Is there a sign at the Golden Nugget</p>	<p style="text-align: right;">Page 65</p> <p>1 accident.</p> <p>2 Q. To that accident?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you don't know why they</p> <p>5 assigned that number?</p> <p>6 A. No.</p> <p>7 Q. Okay. Who wrote or filled out that</p> <p>8 report?</p> <p>9 A. The security officer.</p> <p>10 Q. The security officer who responded to the</p> <p>11 incident or --</p> <p>12 A. I am assuming so.</p> <p>13 Q. That's the way it should be?</p> <p>14 MS. GRANT: Calls for speculation.</p> <p>15 THE WITNESS: Yeah. They fill out the</p> <p>16 report.</p> <p>17 BY MR. IQBAL:</p> <p>18 Q. Okay.</p> <p>19 A. I don't know if it is the actual guy that</p> <p>20 was right there or his superior or whatever. I</p> <p>21 just know that that is the official report for</p> <p>22 their facility.</p> <p>23 Q. Okay. Got it. Got it.</p> <p>24 So -- and you have done, what, 30, 40</p> <p>25 accident inspections --</p>



<p style="text-align: right;">Page 66</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- and typically, when you get a report</p> <p>3 from the casino, it's by a security officer?</p> <p>4 A. Correct.</p> <p>5 Q. And you assume it is the one that was</p> <p>6 there, but you are not sure?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And here you didn't -- you didn't</p> <p>9 ask if the individual who filled out this</p> <p>10 Report No. 200 was the actual responding security</p> <p>11 officer; correct?</p> <p>12 A. No.</p> <p>13 Q. Okay. Did you read that report?</p> <p>14 A. No.</p> <p>15 Q. No. Okay.</p> <p>16 You just talked to the folks in the</p> <p>17 office and did your visual inspection --</p> <p>18 A. Yes.</p> <p>19 Q. -- and then -- and then you did your</p> <p>20 one-page report?</p> <p>21 A. Correct.</p> <p>22 Q. So besides talking to the folks in the</p> <p>23 security office and the risk management office, and</p> <p>24 besides your inspection, you didn't -- you didn't</p> <p>25 look at anything else?</p>	<p style="text-align: right;">Page 68</p> <p>1 piles of paperwork and they didn't have anyplace to</p> <p>2 put it, so they said, "All we need is the report</p> <p>3 with a reference number back to the casinos or</p> <p>4 building."</p> <p>5 Q. So that changed last year, 2016. Then</p> <p>6 they would have all this information from 2015,</p> <p>7 right, because this accident was in 2015?</p> <p>8 A. Yeah. I don't know if they have it or</p> <p>9 not, because a lot of the reports and stuff from</p> <p>10 the casinos they did away with.</p> <p>11 Q. Last year?</p> <p>12 A. I don't know exactly when.</p> <p>13 Q. Right. Right.</p> <p>14 A. But they came out and said, you know,</p> <p>15 don't -- "You don't need the reports from them. We</p> <p>16 can just refer back through it by putting the</p> <p>17 number on our form."</p> <p>18 Q. Right. But you don't know if there are</p> <p>19 reports associated with this 2015 accident?</p> <p>20 A. No.</p> <p>21 Q. Okay. You didn't check?</p> <p>22 A. No.</p> <p>23 Q. Okay. What was the degree of incline of</p> <p>24 this escalator?</p> <p>25 A. It was standard, what, 35-, 45-degree</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Correct.</p> <p>2 Q. You didn't look at any of the documents</p> <p>3 or reports that Golden Nugget had available</p> <p>4 on-site?</p> <p>5 A. They weren't available at the time I was</p> <p>6 in there.</p> <p>7 Q. What wasn't available?</p> <p>8 A. The report.</p> <p>9 Q. Oh. So Report No. 200 wasn't available</p> <p>10 at that time?</p> <p>11 A. Correct.</p> <p>12 Q. Did they tell you it wasn't available or</p> <p>13 did you know that?</p> <p>14 A. I asked.</p> <p>15 Q. You asked.</p> <p>16 A. Because I had to ask who the guy was that</p> <p>17 fell and what his injuries were.</p> <p>18 Q. Okay. So you asked.</p> <p>19 A. They brought it up on the computer, but</p> <p>20 it wasn't in written form for me to look at.</p> <p>21 Q. Did you ask for the written form?</p> <p>22 A. No. The State's policy now is not to</p> <p>23 collect the written reports or the videos.</p> <p>24 Q. Okay. When did that policy change?</p> <p>25 A. Last year. They were getting piles and</p>	<p style="text-align: right;">Page 69</p> <p>1 angle. I'm not sure exactly what it is, but it's a</p> <p>2 standard escalator.</p> <p>3 Q. Okay. Correct me if I am wrong, but the</p> <p>4 standard degree of incline is 30 to 35 degrees;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. 30 degrees -- and 35 degrees only if</p> <p>8 there is a space issue or there is less of a load;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. So it shouldn't go more than 35 degrees?</p> <p>12 A. Shouldn't.</p> <p>13 Q. But in your personal experience, because</p> <p>14 you have gone down to the Laughlin Nugget multiple</p> <p>15 times, as you indicated, and you also visually</p> <p>16 inspected this escalator, was the incline greater</p> <p>17 than 35 degrees?</p> <p>18 A. No.</p> <p>19 Q. No.</p> <p>20 A. No. It was a standard escalator</p> <p>21 situation.</p> <p>22 Q. Okay. Where would that information be?</p> <p>23 Would that be with -- and I am just asking</p> <p>24 hypothetically. If someone wanted to know -- let's</p> <p>25 say I go to SLS, which used to be the old Sahara.</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Uh-huh.</p> <p>2 Q. And I see an escalator and I want to know</p> <p>3 what the incline of that escalator is.</p> <p>4 A. You have to go to the elevator company</p> <p>5 who put it in.</p> <p>6 Q. Have to go to the elevator company.</p> <p>7 Okay.</p> <p>8 Is that information publicly available?</p> <p>9 A. Not that I know of.</p> <p>10 Q. You just have to ask the elevator company</p> <p>11 and -- you know, and get it from them?</p> <p>12 A. Yes.</p> <p>13 Q. Or the casino, or you'd go to the</p> <p>14 elevator company?</p> <p>15 A. Elevator company. Because they have all</p> <p>16 of the specs on installation, power, everything.</p> <p>17 Q. Got it. Got it. Thank you. That's</p> <p>18 helpful.</p> <p>19 Now, you have been down there multiple</p> <p>20 times. Would you say that this escalator -- and</p> <p>21 you also saw the video for five minutes and you</p> <p>22 visually inspected it.</p> <p>23 Is this in a high-traffic area?</p> <p>24 A. Yes.</p> <p>25 MS. GRANT: Calls for speculation. Calls</p>	<p style="text-align: right;">Page 72</p> <p>1 people getting on and off of the escalator.</p> <p>2 And then when the accident happens, then</p> <p>3 it runs on, you know, for few minutes after that to</p> <p>4 verify that everything is still running after the</p> <p>5 accident.</p> <p>6 Q. Got it. Okay.</p> <p>7 What is the standard width of an</p> <p>8 escalator?</p> <p>9 A. Basically, they're -- they vary. I've</p> <p>10 seen them as short as 24 inches and as wide as</p> <p>11 36 inches.</p> <p>12 Q. Okay. What is -- so there is no -- in</p> <p>13 your experience, in your 30 years in the industry,</p> <p>14 there is no requirement or recommendation for</p> <p>15 the -- from the ASME?</p> <p>16 A. Not for the width, only the distance</p> <p>17 between the handrails, the distance from the floor</p> <p>18 up, the distance from the handrails to the walls or</p> <p>19 obstacles, and the distance underneath the grip so</p> <p>20 that nobody grabs hold of it and it takes their</p> <p>21 fingers off.</p> <p>22 Q. Got it.</p> <p>23 So you have seen escalators from 2 feet</p> <p>24 wide to 3 feet wide?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 for an expert opinion.</p> <p>2 BY MR. IQBAL:</p> <p>3 Q. In your personal opinion, having looked</p> <p>4 at probably lots and lots and lots of escalators in</p> <p>5 your 30 years in the industry, when you compare</p> <p>6 this escalator to the others that you have</p> <p>7 personally seen, would you say that this is in a</p> <p>8 high-traffic area?</p> <p>9 A. No.</p> <p>10 MS. GRANT: Same objections, plus vague</p> <p>11 as to the time of day.</p> <p>12 BY MR. IQBAL:</p> <p>13 Q. And why do you say "no"?</p> <p>14 A. Because I've never seen the escalator</p> <p>15 full of people.</p> <p>16 Q. Got it.</p> <p>17 A. I have seen escalators that every step</p> <p>18 had at least one or two people on each step all the</p> <p>19 way down for hours on end.</p> <p>20 Q. Got it.</p> <p>21 And when you do your accident</p> <p>22 inspections, you are seeing the escalator not --</p> <p>23 not in operation, but stopped; correct?</p> <p>24 A. No. When I look at the video, it is the</p> <p>25 actual operation of elevator, and it shows the</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Typically.</p> <p>2 A. Yes.</p> <p>3 Q. Do you see them wider than 3 feet?</p> <p>4 A. No.</p> <p>5 Q. Do you see them more narrow than 2 feet?</p> <p>6 A. No.</p> <p>7 Q. Would that be legal to say,</p> <p>8 hypothetically, have an escalator that is a foot</p> <p>9 wide?</p> <p>10 A. Yeah. Well, it would be impractical --</p> <p>11 Q. Okay.</p> <p>12 A. -- to have one that way, because most</p> <p>13 people are even wider than that at the hips.</p> <p>14 Q. Right. Right.</p> <p>15 So would a 2-foot-wide escalator -- in</p> <p>16 your personal knowledge and in your 30 years of</p> <p>17 experience, would a 2-foot-wide escalator comply</p> <p>18 with the ADA?</p> <p>19 MS. GRANT: Calls for speculation.</p> <p>20 THE WITNESS: I don't know. Because I</p> <p>21 don't know if there is a regulation for escalators</p> <p>22 with the ADA.</p> <p>23 BY MR. IQBAL:</p> <p>24 Q. Okay. Do you know how wide this</p> <p>25 escalator was?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. I believe it was a standard 30-inch.</p> <p>2 Q. 30-inch.</p> <p>3 But you are not sure?</p> <p>4 A. Not sure. I didn't measure it.</p> <p>5 Q. Okay. Did you take any measurements?</p> <p>6 A. No.</p> <p>7 Q. Your visual inspection, which lasted ten</p> <p>8 minutes, you didn't do any measurements, you just</p> <p>9 looked at the difference aspects that you testified</p> <p>10 to previously?</p> <p>11 A. Yeah. I checked handrails he was</p> <p>12 grabbing for to make sure it was moving at the</p> <p>13 right speed and wasn't slipping, and I checked the</p> <p>14 steps to make sure they were in good working order.</p> <p>15 And basically concluded that he lost his balance</p> <p>16 and fell.</p> <p>17 Q. Okay. Did you inspect the steps right</p> <p>18 next to the escalator?</p> <p>19 A. The -- you mean the regular steps?</p> <p>20 Q. Yep.</p> <p>21 A. No.</p> <p>22 Q. Did you inspect the handrail for the</p> <p>23 steps right next to the escalator?</p> <p>24 A. No. Just the one on the inside wall, the</p> <p>25 one that he is actually grabbing for.</p>	<p style="text-align: right;">Page 76</p> <p>1 deposition -- or the subpoena.</p> <p>2 Q. The notice?</p> <p>3 A. Yeah. Because I wanted to make sure I</p> <p>4 was thinking of the right incident. So I went back</p> <p>5 down and checked to make sure of what I saw and</p> <p>6 what I had on my report.</p> <p>7 Q. Okay. Thank you.</p> <p>8 Why didn't you open up the escalator and</p> <p>9 check it out? Why was there just the visual</p> <p>10 inspection?</p> <p>11 I understand we've established that you</p> <p>12 do touch it during the visual inspection, but why</p> <p>13 didn't you open it up?</p> <p>14 A. Because it was in operational standard</p> <p>15 well after the accident until somebody shut it off</p> <p>16 to get the gentleman off the escalator. The</p> <p>17 escalator did not stop because of his fall. So it</p> <p>18 didn't cause the accident, and it was actually</p> <p>19 doing what it was supposed to do, running down,</p> <p>20 afterwards.</p> <p>21 So then when I checked, I just rode it,</p> <p>22 made sure that all the steps were clean, everything</p> <p>23 looked good, checked the handrail, and determined</p> <p>24 that it was safe.</p> <p>25 Q. Okay. So in other words, in general, if</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay.</p> <p>2 A. That was the one that looked like it</p> <p>3 might have -- it would have been the problem if</p> <p>4 there was a problem.</p> <p>5 MR. IQBAL: Okay. Thank you, sir. I</p> <p>6 appreciate it. I have no further questions.</p> <p>7 MR. MITCHELL: I just have four</p> <p>8 follow-ups.</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MR. MITCHELL:</p> <p>11 Q. Do you need a break?</p> <p>12 A. No.</p> <p>13 Q. I forgot to ask you this at the</p> <p>14 beginning.</p> <p>15 Did you look at anything to prepare for</p> <p>16 your deposition today?</p> <p>17 A. Just this, and I went back down to</p> <p>18 Laughlin and reviewed the video again.</p> <p>19 Q. "This" being your report?</p> <p>20 A. Yes.</p> <p>21 Q. And you went to Laughlin to review the</p> <p>22 video?</p> <p>23 A. Yes.</p> <p>24 Q. When did you go to Laughlin?</p> <p>25 A. Let's see. Whenever I got the</p>	<p style="text-align: right;">Page 77</p> <p>1 there were a problem that necessitated you opening</p> <p>2 it up and looking for it, you would be able to feel</p> <p>3 that or hear that as you rode the escalator; is</p> <p>4 that correct?</p> <p>5 A. Yes.</p> <p>6 Q. What does modernization entail?</p> <p>7 A. Basically, anytime they upgrade any</p> <p>8 component on the escalator, you know, the motor,</p> <p>9 the brake, the steps, chains, anything like that.</p> <p>10 Handrails, basically we let the third party, you</p> <p>11 know, verify that they have been changed, but it is</p> <p>12 not a modernization. It is just repair.</p> <p>13 But anytime they change anything, you</p> <p>14 know, if they put a different brake on or they put</p> <p>15 a different motor on than is originally there, that</p> <p>16 is considered a modernization.</p> <p>17 Or if they change the step chains, you</p> <p>18 know. They have oilless step chains now, and they</p> <p>19 have escalators with no chains, you know, and all</p> <p>20 these different things, you know.</p> <p>21 If it's changed to change the operation,</p> <p>22 it is considered modernization.</p> <p>23 Q. So it's one of a million things.</p> <p>24 A. Oh, yeah.</p> <p>25 Q. And then this is my final question.</p>

<p style="text-align: right;">Page 78</p> <p>1 If you had looked at the inspection  2 history for, let's say, the last ten years, and  3 seen any one of 50 code violations, whether that's  4 two comb teeth that are in a row, right, however  5 many times that happens, would that have helped you  6 determine whether that escalator had code  7 violations on that particular day?  8 MR. IQBAL: Objection; calls for  9 speculation, leading.  10 THE WITNESS: Yeah. Basically, I  11 wouldn't attribute anything, you know, from that  12 far back past that first inspection -- last  13 inspection.  14 BY MR. MITCHELL:  15 Q. In other words, every time there is a new  16 inspection that it checks off, it is a clean slate;  17 is that correct?  18 A. Yes.  19 MR. MITCHELL: Thank you. I don't have  20 any more questions.  21 MS. GRANT: I have no questions.  22 MR. IQBAL: I have two follow-up  23 questions.  24 FURTHER EXAMINATION  25 BY MR. IQBAL:</p>	<p style="text-align: right;">Page 80</p> <p>1 inspections, how many of them have been visual?  2 A. I would say about 30 of them.  3 Q. Okay. So --  4 A. 90 percent of the time, it is somebody  5 that's intoxicated or medical conditions or  6 stupidity, and they, you know, cause injuries to  7 themselves.  8 Q. Right. Right.  9 So you would say 90 percent of the time  10 you just stop at the visual inspection?  11 A. Yes. Once I make sure that it's safe and  12 everything is functioning the way it should, I will  13 release it back to public use.  14 Q. Got it. Got it.  15 Do you recall any internal  16 investigation -- internal investigations out of  17 that 30 to 40, just off the top of your head?  18 A. Yes.  19 Q. When was the last one?  20 A. About a year and a half ago.  21 Q. Okay. And at where?  22 A. It was at -- see, what was it? Harrah's.  23 MR. IQBAL: Okay. Thank you, Steve. We  24 appreciate it. Thanks for coming down.  25 We can go off the record.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. When you went back this year after  2 getting the subpoena, did you see the same  3 five-minute video?  4 A. Yes.  5 Q. And that was the video of looking down at  6 the individual getting on the escalator and going  7 halfway; correct?  8 A. Well, he went about a quarter of the way.  9 Q. Quarter of the way?  10 A. Yeah, because he got on the escalator, it  11 started to go down the curve, and that's when he --  12 you know, took his cane and reached up for the  13 handrail --  14 Q. Right.  15 A. -- and then went forward.  16 Q. Correct.  17 And this time you also didn't see the  18 video from the camera --  19 A. No.  20 Q. -- looking from the bottom; right?  21 A. No.  22 Q. You only saw the video of the entrance to  23 the escalator and a quarter of the way down?  24 A. Yes.  25 Q. And in your 30 to 40 accident</p>	<p style="text-align: right;">Page 81</p> <p>1 THE REPORTER: Annalise, do you want a  2 copy?  3 MS. GRANT: Yes. I'll take a pdf copy  4 via email.  5 THE REPORTER: Mo, do you want a copy?  6 MR. IQBAL: Yes, please.  7 (Thereupon, the taking of the deposition  8 was concluded at 3:42 p.m.)  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

1 REPORTER'S DECLARATION

STATE OF NEVADA)

2 COUNTY OF CLARK)

I, Lisa Makowski, CCR No. 345, declare as  
3 follows:

4 That I reported the taking of the deposition of  
5 the witness, JAMES STEPHEN ROBERTSON, commencing on  
6 Monday, August 21, 2017, at the hour of 2:11 p.m.

7 That prior to being examined, the witness was by  
8 me duly sworn to testify to the truth, the whole  
9 truth, and nothing but the truth; that, before the  
10 proceedings' completion, the reading and signing of  
11 the deposition not has been requested by the deponent  
12 or a party.

13 That I thereafter transcribed said shorthand  
14 notes into typewriting and that the typewritten  
15 transcript of said deposition is a complete, true and  
16 accurate transcription of said shorthand notes taken  
17 down at said time.

18 I further declare that I am not a relative or  
19 employee of any party involved in said action, nor a  
20 person financially interested in the action.

21 Dated at Las Vegas, Nevada this 15th day of  
22 September, 2017.

23

24

\_\_\_\_\_  
Lisa Makowski, CCR 345

25

# EXHIBIT F

# EXHIBIT F

JNB00764



## AGREEMENT FOR DOVER MASTER MAINTENANCE SERVICE

TO: GOLDEN NUGGET HOTEL & CASINO  
(Purchaser - herein called You)

BUILDING LOCATION SAME

2300 SO CASINO DR

LAUGHLIN NV 89029

Dover Elevator Company (herein called We) will provide DOVER MASTER MAINTENANCE SERVICE on the elevator equipment in the above building and described below (herein called the equipment) on the terms and conditions set forth herein.

No. Elevators and Type  
**ONE (1) HYDRAULIC PASSENGER**  
**TWO (2) ESCALATORS**

Manufacturer  
**OTIS**  
**MONTGOMERY**

Serial No.  
**TIME OFFICE**

### EXTENT OF COVERAGE

We will:

Regularly and systematically examine, adjust, lubricate and, whenever required by the wear and tear of normal elevator usage, repair or replace the equipment (except for the items stated hereafter), using trained personnel directly employed and supervised by us to maintain the equipment in proper operating condition.

Furnish all parts, tools, equipment, lubricants, cleaning compounds and cleaning equipment.

Relamp all signals as required during regular examinations only.

Periodically examine and test the hydraulic system and/or governor, safeties and buffers on the equipment, at our expense, as outlined in the American National Standard Safety Code For Elevators and Escalators, A.N.S.I. A17.1, current edition as of the date this agreement is submitted. It is expressly understood and agreed that we will not be liable for any damage to the building structure occasioned by these tests.

### ITEMS NOT COVERED

We assume no responsibility for the following items, which are not included in this agreement:

The cleaning, refinishing, repair or replacement of

- Any component of the car enclosure including removable panels, door panels, sills, car gates, plenum chambers, hung ceilings, light diffusers, light fixtures, tubes and bulbs, handrails, mirrors, car flooring and floor covering.
- Hoistway enclosure, hoistway gates, door panels, frames and sills.
- Cover plates for signal fixtures and operating stations.
- Intercommunication systems used in conjunction with the equipment.
- Main line power switches, breakers and feeders to controller.
- Emergency power plant and associated contactors.
- Emergency car light and all batteries, including those for emergency lowering.
- Smoke and fire sensors and related control equipment not specifically a part of the elevator controls.
- Jack unit cylinder, buried piping and buried conduit.

## PRORATED ITEMS

The items listed on the schedule below show wear and will have to be replaced in the future. To provide you with the maximum of service from these items, we are accepting them in their present condition with the understanding that you agree to pay, in addition to the base amount of this agreement, an extra at the time the items listed are first replaced by us. Your cost for the replacements will be determined by prorating the total charge of replacing the individual items. You agree to pay for that portion of the life of the items used prior to the date of this agreement, and we agree to pay for that portion used since the date of this agreement.

## SCHEDULE OF PARTS TO BE PRORATED

NAME OF PART

DATE INSTALLED

## HOURS OF SERVICE

We will perform all work hereunder during regular working hours of our regular working days, unless otherwise specified. We include emergency minor adjustment callback service during regular working hours of our regular working days.

**THIS CONTRACT INCLUDES 24 HOUR MINOR EMERGENCY CALLBACKS.**

If overtime work is not included and we are requested by you to perform work outside of our regular working hours, you agree to pay us for the difference between regular and overtime labor at our regular billing rates.

## PURCHASER'S RESPONSIBILITIES

- Possession or control of the equipment shall remain exclusively yours as owner, lessee, possessor or custodian.
- Your responsibility includes, but is not limited to, instructing or warning passengers in the proper use of the equipment, taking the equipment out of service when it becomes unsafe or operates in a manner that might cause injury to a user, promptly reporting to us any accidents or any condition which may need attention and maintaining surveillance of the equipment for such purposes.
- You will provide us unrestricted access to the equipment, and a safe workplace for our employees.
- You will keep the pits and machine rooms clear and free of water and trash and not permit them to be used for storage.
- You agree that you will not permit others to make changes, adjustments, additions, repairs or replacements to the equipment.

## TERM

This agreement is effective as of FEBRUARY 8, 1994 (the anniversary date) and will continue thereafter until terminated as provided herein. Either party may terminate this agreement at the end of the first five years or at the end of any subsequent five-year period by giving the other party at least ninety (90) days prior written notice.

This agreement may not be assigned without our prior consent in writing.



## CONDITIONS OF SERVICE

No work, service or liability on the part of Dover Elevator Company, other than that specifically mentioned herein, is included or intended.

The parties hereto recognize that with the passage of time, equipment technology and designs will change. We shall not be required to install new attachments or improve the equipment or operation from those conditions existing as of the effective date of this agreement. We have the responsibility to make only those adjustments, repairs or replacements required under this agreement which are due to ordinary wear and tear and are disclosed to be reasonably necessary by our examination. You agree to accept our judgement as to the means and methods to be used for any corrective work. We shall not be required to make adjustments, repairs or replacements necessitated by any other cause including but not limited to, obsolescence, accidents, vandalism, negligence or misuse of the equipment. If adjustments, repairs, or replacements are required due to such causes, you agree to pay us as an extra to this agreement for such work at our regular billing rates.

We shall not be required to make tests other than those specified in the extent of coverage, nor to install new attachments or devices whether or not recommended or directed by insurance companies or by federal, state, municipal or other authorities, to make changes or modifications in design, or make any replacement with parts of a different design or to perform any other work not specifically covered in this agreement.

It is understood, in consideration of our performance of the service enumerated herein at the price stated, that nothing in this agreement shall be construed to mean that we assume any liability on account of accidents to persons or property except those directly due to negligent acts of Dover Elevator Company or its employees, and that your own responsibility for accidents to persons or properties while riding on or being on or about the aforesaid equipment referred to, is in no way affected by this agreement.

We shall not be held responsible or liable for any loss, damage, detention, or delay resulting from causes beyond our reasonable control, including but not limited to accidents, fire, flood, acts of civil or military authorities, insurrection or riot, labor troubles, including any strike or lockout which interferes with the performance of work at the building site or our ability to obtain parts or equipment used in the performance of this agreement. In the event of delay due to any such cause, our performance under this agreement will be postponed without liability to us by such length of time as may be reasonably necessary to compensate for the delay. In no event will we be responsible for special, indirect, incidental or consequential damages.

## PRICE

The price for the service as stated herein shall be [REDACTED]  
[REDACTED] Dollars [REDACTED] per month, payable monthly in advance upon presentation of invoice. You shall pay as an addition to the price, the amount of any sales, use, excise or any other taxes which may now or hereafter be applicable to the services to be performed under this agreement.

This price shall be adjusted annually and such adjusted price shall become effective as of each anniversary date of the agreement, based on the percentage of change in the straight time hourly labor cost for elevator examiners in the locality where the equipment is to be examined. For purposes of this agreement, "straight time hourly labor cost" shall mean the straight time hourly rate paid to elevator examiners plus fringe benefits which include, but are not limited to, pensions, vacations, paid holidays, group life insurance, sickness and accident insurance, and hospitalization insurance. The straight time hourly labor cost applicable to this agreement is \$[REDACTED] of which \$[REDACTED] constitutes fringe benefits.

A service charge of 1½ % 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 our attorney fees, collection costs or court costs in connection therewith.

SPECIAL CONDITIONS AS AGREED UPON BETWEEN THE GOLDEN NUGGET HOTEL AND DOVER ELEVATOR COMPANY, WE WILL PROVIDE THE FOLLOWING MODERNIZATION AND UPGRADES ON THE OTIS TIME OFFICE ELEVATOR.

1. INSTALL ONE NEW DOOR OPERATOR.
2. INSTALL ONE SET OF STAINLESS STEEL CAR DOORS.
3. INSTALL ONE SET OF JANUS PANDA FORTY ENTRANCE DETECTORS.

THE TOTAL COST FOR THE ABOVE UPGRADES WILL BE [REDACTED]. DOVER ELEVATOR WILL ACCEPT (12) MONTHLY PAYMENTS OF [REDACTED] EACH, TO BE COMBINED WITH THE PRESENT MONTHLY ELEVATOR MAINTENANCE COST OF [REDACTED], MAKING THE TOTAL MONTHLY COST [REDACTED]. THIS CONTRACT WILL EXPIRE (1) YEAR FROM THE CONTRACT DATE AND A NEW CONTRACT WITH A PRICE ADJUSTMENT WILL BE GIVEN PRIOR TO THAT TIME.

#### ADDITIONAL PROVISIONS

This instrument contains the entire agreement between the parties hereto and is submitted for acceptance within 30 days from the date executed by us, after which time it is subject to change. All prior negotiations or representations, whether written or verbal, not incorporated herein are superseded. No changes in or additions to this agreement will be recognized unless made in writing and signed by both parties.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement.

We reserve the right to terminate this agreement at any time by notice in writing should payments not be made in accordance with the terms herein.

Should your acceptance be in the form of a purchase order or similar document, the provisions, terms and conditions of this agreement will govern in the event of conflict.

ACCEPTANCE BY YOU AND SUBSEQUENT APPROVAL BY AN EXECUTIVE OFFICER OF DOVER ELEVATOR COMPANY WILL BE REQUIRED BEFORE THIS AGREEMENT BECOMES EFFECTIVE.

Accepted: GOLDEN NUGGET HOTEL  
(Full Legal Company Name or Individual Purchaser)

By: [Signature]  
(Signature of Authorized Official)

FRANK L. NEAL  
(Type or Print Name)

Title V.P. - CFO  
(Type or Print)

Date Signed: 2-10-94

#### BILLING ADDRESS:

GOLDEN NUGGET HOTEL

PO BOX 77111

LAUGHLIN NV 89028-7111

DOVER ELEVATOR COMPANY  
3330 POLLUX AVE  
LAS VEGAS NV 89102

#### DOVER USE ONLY

By: [Signature]  
JON W. OLSEN, Sales Representative

Date Signed: February 8, 1994

#### APPROVED: DOVER ELEVATOR COMPANY

By: [Signature]

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

Date Signed: March 3, 1994

# Master Maintenance Agreement

**GOLDEN NUGGET HOTEL**



**JNB00769**

GNL 000034



## AGREEMENT FOR DOVER MASTER MAINTENANCE SERVICE

TO: Golden Nugget Hotel BUILDING LOCATION Golden Nugget Hotel  
(Purchaser - herein called You)  
Casino Dr.  
Laughlin, NV 89029

Dover Elevator Company (herein called We) will provide DOVER MASTER MAINTENANCE SERVICE on the elevator equipment in the above building and described below (herein called the equipment) on the terms and conditions set forth herein.

No. Elevators and Type	Manufacturer	Serial No.
Four (4) Traction	DOVER	CB3464-65

### EXTENT OF COVERAGE

We will:

Regularly and systematically examine, adjust, lubricate and, whenever required by the wear and tear of normal elevator usage, repair or replace the equipment (except for the items stated hereafter), using trained personnel directly employed and supervised by us to maintain the equipment in proper operating condition.

Furnish all parts, tools, equipment, lubricants, cleaning compounds and cleaning equipment.

Relamp all signals as required during regular examinations only.

Periodically examine and test the hydraulic system and/or governor, safeties and buffers on the equipment, at our expense, as outlined in the American National Standard Safety Code For Elevators and Escalators, A.N.S.I. A17.1, current edition as of the date this agreement is submitted. It is expressly understood and agreed that we will not be liable for any damage to the building structure occasioned by these tests.

### ITEMS NOT COVERED

We assume no responsibility for the following items, which are not included in this agreement:

The cleaning, refinishing, repair or replacement of

- Any component of the car enclosure including removable panels, door panels, sills, car gates, plenum chambers, hung ceilings, light diffusers, light fixtures, tubes and bulbs, handrails, mirrors, car flooring and floor covering.
- Hoistway enclosure, hoistway gates, door panels, frames and sills.
- Cover plates for signal fixtures and operating stations.
- Intercommunication systems used in conjunction with the equipment.
- Main line power switches, breakers and feeders to controller.
- Emergency power plant and associated contactors.
- Emergency car light and all batteries, including those for emergency lowering.
- Smoke and fire sensors and related control equipment not specifically a part of the elevator controls.
- Jack unit cylinder, buried piping and buried conduit.

## PRORATED ITEMS

The items listed on the schedule below show wear and will have to be replaced in the future. To provide you with the maximum of service from these items, we are accepting them in their present condition with the understanding that you agree to pay, in addition to the base amount of this agreement, an extra at the time the items listed are first replaced by us. Your cost for the replacements will be determined by prorating the total charge of replacing the individual items. You agree to pay for that portion of the life of the items used prior to the date of this agreement, and we agree to pay for that portion used since the date of this agreement.

## SCHEDULE OF PARTS TO BE PRORATED

NAME OF PART

DATE INSTALLED

## HOURS OF SERVICE

We will perform all work hereunder during regular working hours of our regular working days, unless otherwise specified. We include emergency minor adjustment callback service during regular working hours of our regular working days.

This contract includes 24 hour minor emergency callbacks.

If overtime work is not included and we are requested by you to perform work outside of our regular working hours, you agree to pay us for the difference between regular and overtime labor at our regular billing rates.

## PURCHASER'S RESPONSIBILITIES

- Possession or control of the equipment shall remain exclusively yours as owner, lessee, possessor or custodian.
- Your responsibility includes, but is not limited to, instructing or warning passengers in the proper use of the equipment, taking the equipment out of service when it becomes unsafe or operates in a manner that might cause injury to a user, promptly reporting to us any accidents or any condition which may need attention and maintaining surveillance of the equipment for such purposes.
- You will provide us unrestricted access to the equipment, and a safe workplace for our employees.
- You will keep the pits and machine rooms clear and free of water and trash and not permit them to be used for storage.
- You agree that you will not permit others to make changes, adjustments, additions, repairs or replacements to the equipment.

## TERM

This agreement is effective as of July 19, 19 91 (the anniversary date) and will continue thereafter until terminated as provided herein. Either party may terminate this agreement at the end of the first five years or at the end of any subsequent five-year period by giving the other party at least ninety (90) days prior written notice.

This agreement may not be assigned without our prior consent in writing.



## CONDITIONS OF SERVICE

No work, service or liability on the part of Dover Elevator Company, other than that specifically mentioned herein, is included or intended.

The parties hereto recognize that with the passage of time, equipment technology and designs will change. We shall not be required to install new attachments or improve the equipment or operation from those conditions existing as of the effective date of this agreement. We have the responsibility to make only those adjustments, repairs or replacements required under this agreement which are due to ordinary wear and tear and are disclosed to be reasonably necessary by our examination. You agree to accept our judgement as to the means and methods to be used for any corrective work. We shall not be required to make adjustments, repairs or replacements necessitated by any other cause including but not limited to, obsolescence, accidents, vandalism, negligence or misuse of the equipment. If adjustments, repairs, or replacements are required due to such causes, you agree to pay us as an extra to this agreement for such work at our regular billing rates.

We shall not be required to make tests other than those specified in the extent of coverage, nor to install new attachments or devices whether or not recommended or directed by insurance companies or by federal, state, municipal or other authorities, to make changes or modifications in design, or make any replacement with parts of a different design or to perform any other work not specifically covered in this agreement.

It is understood, in consideration of our performance of the service enumerated herein at the price stated, that nothing in this agreement shall be construed to mean that we assume any liability on account of accidents to persons or property except those directly due to negligent acts of Dover Elevator Company or its employees, and that your own responsibility for accidents to persons or properties while riding on or being on or about the aforesaid equipment referred to, is in no way affected by this agreement.

We shall not be held responsible or liable for any loss, damage, detention, or delay resulting from causes beyond our reasonable control, including but not limited to accidents, fire, flood, acts of civil or military authorities, insurrection or riot, labor troubles, including any strike or lockout which interferes with the performance of work at the building site or our ability to obtain parts or equipment used in the performance of this agreement. In the event of delay due to any such cause, our performance under this agreement will be postponed without liability to us by such length of time as may be reasonably necessary to compensate for the delay. In no event will we be responsible for special, indirect, incidental or consequential damages.

## PRICE

The price for the service as stated herein shall be \_\_\_\_\_ Dollars \_\_\_\_\_) per month, payable monthly in advance upon presentation of invoice. You shall pay as an addition to the price, the amount of any sales, use, excise or any other taxes which may now or hereafter be applicable to the services to be performed under this agreement.

This price shall be adjusted annually and such adjusted price shall become effective as of each anniversary date of the agreement, based on the percentage of change in the straight time hourly labor cost for elevator examiners in the locality where the equipment is to be examined. For purposes of this agreement, "straight time hourly labor cost" shall mean the straight time hourly rate paid to elevator examiners plus fringe benefits which include, but are not limited to, pensions, vacations, paid holidays, group life insurance, sickness and accident insurance, and hospitalization insurance. The straight time hourly labor cost applicable to this agreement is \$ \_\_\_\_\_ of which \$ \_\_\_\_\_ constitutes fringe benefits.

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 our attorney fees, collection costs or court costs in connection therewith.

## SPECIAL CONDITIONS

## ADDITIONAL PROVISIONS

This instrument contains the entire agreement between the parties hereto and is submitted for acceptance within 30 days from the date executed by us, after which time it is subject to change. All prior negotiations or representations, whether written or verbal, not incorporated herein are superseded. No changes in or additions to this agreement will be recognized unless made in writing and signed by both parties.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement.

We reserve the right to terminate this agreement at any time by notice in writing should payments not be made in accordance with the terms herein.

Should your acceptance be in the form of a purchase order or similar document, the provisions, terms and conditions of this agreement will govern in the event of conflict.

ACCEPTANCE BY YOU AND SUBSEQUENT APPROVAL BY AN EXECUTIVE OFFICER OF DOVER ELEVATOR COMPANY WILL BE REQUIRED BEFORE THIS AGREEMENT BECOMES EFFECTIVE.

Accepted: GOLDEN NUGGET HOTEL  
(Full Legal Company Name or Individual Purchaser)

By: *Pat Roche*  
(Signature of Authorized Official)

PAT ROCHE  
(Type or Print Name)

Title CONTROLLER  
(Type or Print)

Date Signed: 8/6/91

### BILLING ADDRESS:

GOLDEN NUGGET LAUGHLIN

P. O. BOX 77111

LAUGHLIN, NV 89029-7711

### DOVER ELEVATOR COMPANY

3330 Pollux Ave.  
Las Vegas, NV 89102

#### DOVER USE ONLY

By: *Michael James*  
Michael James, Sales Representative

Date Signed: 7-8-91

#### APPROVED: DOVER ELEVATOR COMPANY

By: *Mary Lou Stone*  
MARY LOU STONE  
CONTRACT ANALYST

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

Date Signed: 9-16-91



## AGREEMENT FOR DOVER MASTER MAINTENANCE SERVICE

TO: GOLDEN NUGGET HOTEL & CASINO  
(Purchaser - herein called You)

BUILDING LOCATION SAME

2300 SOUTH CASINO DRIVE

LAUGHLIN, NV 89029

Dover Elevator Company (herein called We) will provide DOVER MASTER MAINTENANCE SERVICE on the elevator equipment in the above building and described below (herein called the equipment) on the terms and conditions set forth herein.

No. Elevators and Type	Manufacturer	Serial No.
ONE (1) HYDRAULIC	DOVER	ED6409

### EXTENT OF COVERAGE

We will:

Regularly and systematically examine, adjust, lubricate and, whenever required by the wear and tear of normal elevator usage, repair or replace the equipment (except for the items stated hereafter), using trained personnel directly employed and supervised by us to maintain the equipment in proper operating condition.

Furnish all parts, tools, equipment, lubricants, cleaning compounds and cleaning equipment.

Relamp all signals as required during regular examinations only.

Periodically examine and test the hydraulic system and/or governor, safeties and buffers on the equipment, at our expense, as outlined in the American National Standard Safety Code For Elevators and Escalators, A.N.S.I. A17.1, current edition as of the date this agreement is submitted. It is expressly understood and agreed that we will not be liable for any damage to the building structure occasioned by these tests.

### ITEMS NOT COVERED

We assume no responsibility for the following items, which are not included in this agreement:

The cleaning, refinishing, repair or replacement of

- Any component of the car enclosure including removable panels, door panels, sills, car gates, plenum chambers, hung ceilings, light diffusers, light fixtures, tubes and bulbs, handrails, mirrors, car flooring and floor covering.
- Hoistway enclosure, hoistway gates, door panels, frames and sills.
- Cover plates for signal fixtures and operating stations.
- Intercommunication systems used in conjunction with the equipment.
- Main line power switches, breakers and feeders to controller.
- Emergency power plant and associated contactors.
- Emergency car light and all batteries, including those for emergency lowering.
- Smoke and fire sensors and related control equipment not specifically a part of the elevator controls.
- Jack unit cylinder, buried piping and buried conduit.



## PRORATED ITEMS

The items listed on the schedule below show wear and will have to be replaced in the future. To provide you with the maximum of service from these items, we are accepting them in their present condition with the understanding that you agree to pay, in addition to the base amount of this agreement, an extra at the time the items listed are first replaced by us. Your cost for the replacements will be determined by prorating the total charge of replacing the individual items. You agree to pay for that portion of the life of the items used prior to the date of this agreement, and we agree to pay for that portion used since the date of this agreement.

## SCHEDULE OF PARTS TO BE PRORATED

NAME OF PART

DATE INSTALLED

## HOURS OF SERVICE

We will perform all work hereunder during regular working hours of our regular working days, unless otherwise specified. We include emergency minor adjustment callback service during regular working hours of our regular working days.

THIS CONTRACT INCLUDES 24 HOUR MINOR EMERGENCY CALLBACKS.

If overtime work is not included and we are requested by you to perform work outside of our regular working hours, you agree to pay us for the difference between regular and overtime labor at our regular billing rates.

## PURCHASER'S RESPONSIBILITIES

- Possession or control of the equipment shall remain exclusively yours as owner, lessee, possessor or custodian.
- Your responsibility includes, but is not limited to, instructing or warning passengers in the proper use of the equipment, taking the equipment out of service when it becomes unsafe or operates in a manner that might cause injury to a user, promptly reporting to us any accidents or any condition which may need attention and maintaining surveillance of the equipment for such purposes.
- You will provide us unrestricted access to the equipment, and a safe workplace for our employees.
- You will keep the pits and machine rooms clear and free of water and trash and not permit them to be used for storage.
- You agree that you will not permit others to make changes, adjustments, additions, repairs or replacements to the equipment.

## TERM

This agreement is effective as of APRIL 1, 1993 (the anniversary date) and will continue thereafter until terminated as provided herein. Either party may terminate this agreement at the end of the first ~~five~~ years or at the end of any subsequent ~~five~~ year period by giving the other party at least ninety (90) days prior written notice.

This agreement may not be assigned without our prior consent in writing.

## CONDITIONS OF SERVICE

No work, service or liability on the part of Dover Elevator Company, other than that specifically mentioned herein, is included or intended.

The parties hereto recognize that with the passage of time, equipment technology and designs will change. We shall not be required to install new attachments or improve the equipment or operation from those conditions existing as of the effective date of this agreement. We have the responsibility to make only those adjustments, repairs or replacements required under this agreement which are due to ordinary wear and tear and are disclosed to be reasonably necessary by our examination. You agree to accept our judgement as to the means and methods to be used for any corrective work. We shall not be required to make adjustments, repairs or replacements necessitated by any other cause including but not limited to, obsolescence, accidents, vandalism, negligence or misuse of the equipment. If adjustments, repairs, or replacements are required due to such causes, you agree to pay us as an extra to this agreement for such work at our regular billing rates.

We shall not be required to make tests other than those specified in the extent of coverage, nor to install new attachments or devices whether or not recommended or directed by insurance companies or by federal, state, municipal or other authorities, to make changes or modifications in design, or make any replacement with parts of a different design or to perform any other work not specifically covered in this agreement.

It is understood, in consideration of our performance of the service enumerated herein at the price stated, that nothing in this agreement shall be construed to mean that we assume any liability on account of accidents to persons or property except those directly due to negligent acts of Dover Elevator Company or its employees, and that your own responsibility for accidents to persons or properties while riding on or being on or about the aforesaid equipment referred to, is in no way affected by this agreement.

We shall not be held responsible or liable for any loss, damage, detention, or delay resulting from causes beyond our reasonable control, including but not limited to accidents, fire, flood, acts of civil or military authorities, insurrection or riot, labor troubles, including any strike or lockout which interferes with the performance of work at the building site or our ability to obtain parts or equipment used in the performance of this agreement. In the event of delay due to any such cause, our performance under this agreement will be postponed without liability to us by such length of time as may be reasonably necessary to compensate for the delay. In no event will we be responsible for special, indirect, incidental or consequential damages.

## PRICE

The price for the service as stated herein shall be \*\*\*\*\* Dollars 960.00 per month, payable monthly in advance upon presentation of invoice. You shall pay as an addition to the price, the amount of any sales, use, excise or any other taxes which may now or hereafter be applicable to the services to be performed under this agreement.

This price shall be adjusted annually and such adjusted price shall become effective as of each anniversary date of the agreement, based on the percentage of change in the straight time hourly labor cost for elevator examiners in the locality where the equipment is to be examined. For purposes of this agreement, "straight time hourly labor cost" shall mean the straight time hourly rate paid to elevator examiners plus fringe benefits which include, but are not limited to, pensions, vacations, paid holidays, group life insurance, sickness and accident insurance, and hospitalization insurance. The straight time hourly labor cost applicable to this agreement is \*\*\*\*\* of which \*\*\*\*\* constitutes fringe benefits.

A service charge of 1½ % 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 our attorney fees, collection costs or court costs in connection therewith.

**SPECIAL CONDITIONS**

**ADDITIONAL PROVISIONS**

This instrument contains the entire agreement between the parties hereto and is submitted for acceptance within 30 days from the date executed by us, after which time it is subject to change. All prior negotiations or representations, whether written or verbal, not incorporated herein are superseded. No changes in or additions to this agreement will be recognized unless made in writing and signed by both parties.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement.

We reserve the right to terminate this agreement at any time by notice in writing should payments not be made in accordance with the terms herein.

Should your acceptance be in the form of a purchase order or similar document, the provisions, terms and conditions of this agreement will govern in the event of conflict.

ACCEPTANCE BY YOU AND SUBSEQUENT APPROVAL BY AN EXECUTIVE OFFICER OF DOVER ELEVATOR COMPANY WILL BE REQUIRED BEFORE THIS AGREEMENT BECOMES EFFECTIVE.

**Accepted:** GOLDEN NUGGET HOTEL & CASINO  
(Full Legal Company Name or Individual Purchaser)

**By:** *Richard Neal*  
(Signature of Authorized Official)

*RICHARD NEAL*  
(Type or Print Name)

**Title** *VP - CFO*  
(Type or Print)

**Date Signed:** *4-9-93*

**BILLING ADDRESS:**

GOLDEN NUGGET HOTEL & CASINO

P.O. BOX 77111

LAUGHLIN, NV 89028-7111

**DOVER ELEVATOR COMPANY**

3330 POLLUX  
LAS VEGAS, NV 89102

**DOVER USE ONLY**

**By:** *Jon W. Olsen*  
JON W. OLSEN, SALES REPRESENTATIVE

**Date Signed:** *March 12, 1993*

**APPROVED: DOVER ELEVATOR COMPANY**

**By:** *Linda K. Jackson*

LINDA K. JACKSON  
CONTRACT ANALYST  
**Title:** \_\_\_\_\_

**Date Signed:** *5-17-1993*

# Master Maintenance Agreement

GOLDEN NUGGET HOTEL & CASINO



JNB00778

GNL 000043



## AGREEMENT FOR DOVER MASTER MAINTENANCE SERVICE

TO: GOLDEN NUGGET HOTEL & CASINO  
(Purchaser - herein called You)

BUILDING LOCATION SAME

2300 SOUTH CASINO DRIVE

LAUGHLIN, NV 89029

Dover Elevator Company (herein called We) will provide DOVER MASTER MAINTENANCE SERVICE on the elevator equipment in the above building and described below (herein called the equipment) on the terms and conditions set forth herein.

No. Elevators and Type	Manufacturer	Serial No.
FOUR (4) HYDRAULIC	DOVER	ED3260-63

### EXTENT OF COVERAGE

We will:

Regularly and systematically examine, adjust, lubricate and, whenever required by the wear and tear of normal elevator usage, repair or replace the equipment (except for the items stated hereafter), using trained personnel directly employed and supervised by us to maintain the equipment in proper operating condition.

Furnish all parts, tools, equipment, lubricants, cleaning compounds and cleaning equipment.

Relamp all signals as required during regular examinations only.

Periodically examine and test the hydraulic system and/or governor, safeties and buffers on the equipment, at our expense, as outlined in the American National Standard Safety Code For Elevators and Escalators, A.N.S.I. A17.1, current edition as of the date this agreement is submitted. It is expressly understood and agreed that we will not be liable for any damage to the building structure occasioned by these tests.

### ITEMS NOT COVERED

We assume no responsibility for the following items, which are not included in this agreement:

The cleaning, refinishing, repair or replacement of

- Any component of the car enclosure including removable panels, door panels, sills, car gates, plenum chambers, hung ceilings, light diffusers, light fixtures, tubes and bulbs, handrails, mirrors, car flooring and floor covering.
- Hoistway enclosure, hoistway gates, door panels, frames and sills.
- Cover plates for signal fixtures and operating stations.
- Intercommunication systems used in conjunction with the equipment.
- Main line power switches, breakers and feeders to controller.
- Emergency power plant and associated contactors.
- Emergency car light and all batteries, including those for emergency lowering.
- Smoke and fire sensors and related control equipment not specifically a part of the elevator controls.
- Jack unit cylinder, buried piping and buried conduit.

## PRORATED ITEMS

The items listed on the schedule below show wear and will have to be replaced in the future. To provide you with the maximum of service from these items, we are accepting them in their present condition with the understanding that you agree to pay, in addition to the base amount of this agreement, an extra at the time the items listed are first replaced by us. Your cost for the replacements will be determined by prorating the total charge of replacing the individual items. You agree to pay for that portion of the life of the items used prior to the date of this agreement, and we agree to pay for that portion used since the date of this agreement.

## SCHEDULE OF PARTS TO BE PRORATED

NAME OF PART

DATE INSTALLED

## HOURS OF SERVICE

We will perform all work hereunder during regular working hours of our regular working days, unless otherwise specified. We include emergency minor adjustment callback service during regular working hours of our regular working days.

THIS CONTRACT INCLUDES 24 HOUR MINOR EMERGENCY CALLBACKS.

If overtime work is not included and we are requested by you to perform work outside of our regular working hours, you agree to pay us for the difference between regular and overtime labor at our regular billing rates.

## PURCHASER'S RESPONSIBILITIES

- Possession or control of the equipment shall remain exclusively yours as owner, lessee, possessor or custodian.
- Your responsibility includes, but is not limited to, instructing or warning passengers in the proper use of the equipment, taking the equipment out of service when it becomes unsafe or operates in a manner that might cause injury to a user, promptly reporting to us any accidents or any condition which may need attention and maintaining surveillance of the equipment for such purposes.
- You will provide us unrestricted access to the equipment, and a safe workplace for our employees.
- You will keep the pits and machine rooms clear and free of water and trash and not permit them to be used for storage.
- You agree that you will not permit others to make changes, adjustments, additions, repairs or replacements to the equipment.

## TERM

This agreement is effective as of FEBRUARY 22, 1993 (the anniversary date) and will continue thereafter until terminated as provided herein. Either party may terminate this agreement at the end of the first ~~five~~ years or at the end of any subsequent ~~five~~-year period by giving the other party at least ninety (90) days prior written notice.

This agreement may not be assigned without our prior consent in writing.

## CONDITIONS OF SERVICE

No work, service or liability on the part of Dover Elevator Company, other than that specifically mentioned herein, is included or intended.

The parties hereto recognize that with the passage of time, equipment technology and designs will change. We shall not be required to install new attachments or improve the equipment or operation from those conditions existing as of the effective date of this agreement. We have the responsibility to make only those adjustments, repairs or replacements required under this agreement which are due to ordinary wear and tear and are disclosed to be reasonably necessary by our examination. You agree to accept our judgement as to the means and methods to be used for any corrective work. We shall not be required to make adjustments, repairs or replacements necessitated by any other cause including but not limited to, obsolescence, accidents, vandalism, negligence or misuse of the equipment. If adjustments, repairs, or replacements are required due to such causes, you agree to pay us as an extra to this agreement for such work at our regular billing rates.

We shall not be required to make tests other than those specified in the extent of coverage, nor to install new attachments or devices whether or not recommended or directed by insurance companies or by federal, state, municipal or other authorities, to make changes or modifications in design, or make any replacement with parts of a different design or to perform any other work not specifically covered in this agreement.

It is understood, in consideration of our performance of the service enumerated herein at the price stated, that nothing in this agreement shall be construed to mean that we assume any liability on account of accidents to persons or property except those directly due to negligent acts of Dover Elevator Company or its employees, and that your own responsibility for accidents to persons or properties while riding on or being on or about the aforesaid equipment referred to, is in no way affected by this agreement.

We shall not be held responsible or liable for any loss, damage, detention, or delay resulting from causes beyond our reasonable control, including but not limited to accidents, fire, flood, acts of civil or military authorities, insurrection or riot, labor troubles, including any strike or lockout which interferes with the performance of work at the building site or our ability to obtain parts or equipment used in the performance of this agreement. In the event of delay due to any such cause, our performance under this agreement will be postponed without liability to us by such length of time as may be reasonably necessary to compensate for the delay. In no event will we be responsible for special, indirect, incidental or consequential damages.

## PRICE

The price for the service as stated herein shall be [REDACTED]  
\*\*\*\*\*Dollars (\$ [REDACTED] per month, payable monthly in advance upon presentation of invoice. You shall pay as an addition to the price, the amount of any sales, use, excise or any other taxes which may now or hereafter be applicable to the services to be performed under this agreement.

This price shall be adjusted annually and such adjusted price shall become effective as of each anniversary date of the agreement, based on the percentage of change in the straight time hourly labor cost for elevator examiners in the locality where the equipment is to be examined. For purposes of this agreement, "straight time hourly labor cost" shall mean the straight time hourly rate paid to elevator examiners plus fringe benefits which include, but are not limited to, pensions, vacations, paid holidays, group life insurance, sickness and accident insurance, and hospitalization insurance. The straight time hourly labor cost applicable to this agreement is \$ [REDACTED] of which \$ [REDACTED] constitutes fringe benefits.

A service charge of 1½ % 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 our attorney fees, collection costs or court costs in connection therewith.

## SPECIAL CONDITIONS

THE CONTRACT PRICE WILL BE (\$ [REDACTED] PER MONTH FOR NINE (9) MONTHS FOR WARRANTY ON YOUR ELEVATORS WHICH IS LESS [REDACTED] % OFF THE FULL CONTRACT PRICE OF \$ [REDACTED] PER MONTH. ONCE THE NINE (9) MONTH WARRANTY PERIOD HAS EXPIRED, THE ORIGINAL FULL CONTRACT PRICE OF \$ [REDACTED] WILL AUTOMATICALLY RESUME FOR THE DURATION OF THE CONTRACT.

## ADDITIONAL PROVISIONS

This instrument contains the entire agreement between the parties hereto and is submitted for acceptance within 30 days from the date executed by us, after which time it is subject to change. All prior negotiations or representations, whether written or verbal, not incorporated herein are superseded. No changes in or additions to this agreement will be recognized unless made in writing and signed by both parties.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement.

We reserve the right to terminate this agreement at any time by notice in writing should payments not be made in accordance with the terms herein.

Should your acceptance be in the form of a purchase order or similar document, the provisions, terms and conditions of this agreement will govern in the event of conflict.

ACCEPTANCE BY YOU AND SUBSEQUENT APPROVAL BY AN EXECUTIVE OFFICER OF DOVER ELEVATOR COMPANY WILL BE REQUIRED BEFORE THIS AGREEMENT BECOMES EFFECTIVE.

**Accepted:** GOLDEN NUGGET HOTEL & CASINO

(Full Legal Company Name or Individual Purchaser)

**By:** [Signature]

(Signature of Authorized Official)

Richard L. Neal

(Type or Print Name)

**Title** Vice President & Chief Financial Officer

(Type or Print)

**Date Signed:** 02/25/93

## BILLING ADDRESS:

GOLDEN NUGGET HOTEL & CASINO

P.O. BOX 77111

LAUGHLIN, NV 89028-77111

## DOVER ELEVATOR COMPANY

3330 POLLUX

LAS VEGAS, NV 89102

## DOVER USE ONLY

**By:** [Signature]

JON W. OLSEN, SALES REPRESENTATIVE

**Date Signed:** Feb 22, 1993

## APPROVED: DOVER ELEVATOR COMPANY

**By:** [Signature]

LINDA K. PIERSON  
CONTRACT ANALYST

**Title:** \_\_\_\_\_

**Date Signed:** MAR - 8 1993



EXHIBIT G

EXHIBIT G

JNB00783

# ThyssenKrupp Elevator



## Repair Order.

Date: September 12, 2012  
Attention: Golden Nugget Laughlin  
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

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

By:

(Signature of Authorized Individual)

(Printed or Typed Name)

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

By:

(Signature of ThyssenKrupp Elevator Representative)

Larry Panaro  
(702) 262-6775

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

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

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

JNB00784

## 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 ½% 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**

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**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)

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**From:** Panaro, Larry  
**Sent:** Tuesday, October 2, 2012 4:58 PM  
**To:** 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 18 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)

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# 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: 10/2/12

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

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

RO 03/02

JNB00788

## 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.

Payment Overview (LDHY Golden Nugget (All) AP - Entry)

Operating Unit	Gaming and Casinos	Payee	
Number	80369	Paid To Name	THYSSENKRUPP ELEVATOR
Currency	USD	Taxpayer ID	62-1211267
Amount	31,017.00	Supplier Number	10787
Date	10/24/2012	Site	ATL-PO BOX 90
Payment Process Request	WN GNL 102412	Address	PO BOX 933004 ATLANTA, GA 91193-3004 United States
Voucher		Bank	
Status	Reconciled	Name	BANK OF AMERICA
Cleared Amount	31,017.00	Account	Laughlin - AP
Cleared Date	11/06/2012	Payment Document	
Void Date		Payment Method	Check
Maturity Date		Payment Process Profile	
Acknowledged Status			

**Invoices**

Number	Amount Paid	GL Date	Description
Q22814DP	31,017.00	10/24/2012	

Invoice Overview      Bank      Supplier      Payments

JNB00790

GNL 002040



Payment Overview (LDNY Golden Nugget (All) AP - Entry)			
<b>Operating Unit</b>		Gaming and Casinos	
Number	81809		
Currency	USD		
Amount	31,197.00		
Date	02/01/2013		
Payment Process Request	WN GNL 20113		
Voucher			
Status	Reconciled		
Cleared Amount	31,197.00		
Cleared Date	02/11/2013		
Void Date			
Maturity Date			
Acknowledged Status			
<b>Invoices</b>		<b>Payee</b>	
Number	Amount Paid	GL Date	Description
6000020161	31,197.00	02/01/2013	
<b>Bank</b>		<b>Supplier</b>	
Name	BANK OF AMERICA		
Account	Laughlin - AP		
Payment Document			
Payment Method	Check		
Payment Process Profile			
Paid To Name		THYSSENKRUPP ELEVATOR	
Taxpayer ID		62-1211267	
Supplier Number	10787	Site	ATL-PO BOX 90
Address	PO BOX 933004 ATLANTA, GA 91193-3004 United States		

Invoice Overview
Bank
Supplier
Payments

JNB00791

GNL 002041

EXHIBIT H

EXHIBIT H

JNB00792

**NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY**  
**Division of Industrial Relations**  
**Mechanical Compliance Section**

4600 Kietzke Lane, Suite F-151 Reno, NV 89502  
Phone: (775) 688-3750 Fax (775) 688-1664

1301 N. Green Valley Parkway, Suite 160 Henderson, NV 89074  
Phone: (702) 486-9054 Fax (702) 486-9176

**ELEVATORS/RELATED EQUIPMENT OPERATING PERMIT**

**User:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Laughlin, NV 89029-1520

**State No.** NV1993

**Drive:** Chain

**Object:** Escalator

**Manufacturer:** Montgomery

**Year Built:** 1980

**User Object No.** 2-DN

**Serial:** CE42505

**Speed:** 90

**Capacity:** 24

**Cat 1:** 07/14/2014

**Landings:** 2

**Cat 3:**

**First Inspection:**

**Cat 5:**

**Location Site:** RIVERSIDE-BUFFET

**Use:** Passenger

**Inspector:** William Schaefer

**Authorized Entity:** High Sierra Elevator Inspection

**Inspection Date:** 02/11/2015

**User Location No:** 3509532

**Issue Date:** 04/08/2015

**Expiration Date:** 08/11/2015

**Owner:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Las Vegas, NV 89125

**Mail To:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Laughlin, NV 89029-1520

**JNB00793**

## INSPECTION FORM

OBJECT	<u>ESCALATOR</u>	DRIVE	<u>CHAIN</u>
STATE #	<u>1993</u>	FIRST INSP	<u>11/16/1999</u>
SERIAL #	<u>CE42505</u>	ANNUAL	<u>7/14/14</u>
OWNER #	<u>2 DN</u>	FIVE YEAR	<u>N/A</u>
USE	<u>PASS</u>	LANDINGS	<u>2</u>
CAPACITY	<u>24 INCHES</u>	ROPE COND	<u>N/A</u>
MFGR	<u>MONTGOMERY</u>	SPEED FPM	<u>90</u>
YEAR BUILT	<u>1980</u>	PERMIT EXP	<u>1/14/2015</u>
AREA			
SITE	<u>GOLDEN NUGGET HOTEL &amp; CASINO</u>	OWNER	<u>GOLDEN NUGGET HOTEL</u>
ADDRESS	<u>2300 CASINO DRIVE</u>	MAILING & CASINO	
CITY	<u>LAUGHLIN</u>	ADDRESS	<u>2300 CASINO DRIVE</u>
STATE	<u>NEVADA</u>	CITY	<u>LAUGHLIN</u>
	<u>ZIPCODE</u>	STATE	<u>NEVADA</u>
	<u>89029</u>		<u>89029</u>

CONTACT: DON HARTMANN 298-7160  
CODE VIOLATIONS:

ABATEMENT DATE: \_\_\_\_\_

BRAKE TORQUE READING		BRAKE TORQUE RANGE	
COMB IMPACT UPPER-LEFT	RIGHT	OR CENTER	VERTICAL UPTHURST
COMB IMPACT LOWER-LEFT	RIGHT	OR CENTER	VERTICAL UPTHURST
SKIRT/STEP INDEX CONDUCTED	<u>Y/N</u>	PASS/FAIL	<u>3/16</u> BRUSHES <u>Y/N</u>
<u>OK</u>		<u>RECEIVED</u>	
		<u>FEB 17 2015</u>	
		<u>MECHANICAL UNIT</u>	
		<u>HENDERSON OFFICE</u>	

CODE VIOLATIONS EXPLAINED TO: \_\_\_\_\_

ISSUE PERMIT: YAS

INSP DATE: 2/11/15 PERMIT EXP DATE: 8/11/14

COMPLIED DATE: \_\_\_\_\_

FIELD INSPECTOR: W. SCHAEFER

NEVADA ID# 1748 QEI# C3250

JNB00794

**NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY**  
**Division of Industrial Relations**  
**Mechanical Compliance Section**

4600 Kietzke Lane, Suite F-151 Reno, NV 89502  
Phone: (775) 688-3750 Fax (775) 688-1664

1301 N. Green Valley Parkway, Suite 160 Henderson, NV 89074  
Phone: (702) 486-9054 Fax (702) 486-9176

**ELEVATORS/RELATED EQUIPMENT OPERATING PERMIT**

**User:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Laughlin, NV 89029-1520

**State No.** NV1993

**Drive:** Chain

**Object:** Escalator

**Manufacturer:** Montgomery

**Year Built:** 1980

**User Object No.** 2-DN

**Serial:** CE42505

**Speed:** 90

**Capacity:** 24

**Cat 1:** 07/14/2014

**Landings:** 2

**Cat 3:**

**First Inspection:**

**Cat 5:**

**Location Site:** RIVERSIDE-BUFFET

**Use:** Passenger

**Inspector:** William Schaefer

**Authorized Entity:** High Sierra Elevator Inspection

**Inspection Date:** 07/14/2014

**User Location No:** 3509532

**Issue Date:** 09/29/2014

**Expiration Date:** 01/14/2015

**Owner:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Laughlin, NV 89029-1520

**Mail To:** Golden Nugget Hotel/Casino  
2300 S Casino Dr  
Laughlin, NV 89029-1520

**JNB00795**

## INSPECTION FORM

OBJECT ESCALATOR  
 STATE # 1993  
 SERIAL # CE42505  
 OWNER # 2 DN  
 USE PASS  
 CAPACITY 24 INCHES  
 MFGR MONTGOMERY  
 YEAR BUILT 1980  
 AREA  
 SITE GOLDEN NUGGET HOTEL & CASINO

ADDRESS 2300 CASINO DRIVE  
 CITY LAUGHLIN  
 STATE NEVADA ZIPCODE 89029

CONTACT: DON HARTMANN 298-7160  
 CODE VIOLATIONS:

BRAKE TORQUE READING

95

BRAKE TORQUE RANGE

125-150 70-115

COMB IMPACT UPPER-LEFT NA RIGHT NA OR CENTER NA VERTICAL UPTHURST NA

COMB IMPACT LOWER-LEFT NA RIGHT NA OR CENTER NA VERTICAL UPTHURST NA

SKIRT/STEP INDEX CONDUCTED Y/N PASS/FAIL 3/16 BRUSHES Y/N

NO Discrepancies

OK to Issue Permit

CODE VIOLATIONS EXPLAINED TO:

ISSUE PERMIT:

YES

INSP DATE:

7/14/14

PERMIT EXP DATE:

7/14/15

COMPLIED DATE:

FIELD INSPECTOR:

W. SCHAEFER

NEVADA ID#

1748

QEI#

C3250

RECEIVED

JUL 16 2014

MECHANICAL UNIT  
HENDERSON OFFICE

LC 1610

OWNER GOLDEN NUGGET HOTEL  
 MAILING & CASINO  
 ADDRESS 2300 CASINO DRIVE  
 CITY LAUGHLIN  
 STATE NEVADA 89029

JNB00796

# ESCALATOR INSPECTION GUIDE

BUILDING GOLDEN NUGGET

ESCALATOR # 2DN STATE # 1993

S/N - CE 4250N

## UPPER

OUTSIDE STOP ☒

ALARM ☒ NA

CONTROLLER STOP ☒

HR INLET RIGHT ☒

HR INLET LEFT ☒

COMB IMPACT RIGHT ☒ NA  
" " CTR ☒ NA  
COMB IMPACT LEFT ☒ NA  
" " VERY ☒ NA

SKIRT RIGHT ☒

SKIRT LEFT ☒

STEP LEVEL ☒ NA

DRIVE CHAIN SWITCH ☒ NA

HR LIGHTS & RECEPTACLE ☒

MISSING STEP DEVICE ☒ NA

DEMARICATION LIGHTS ☒

STEPS ☒

HOUSEKEEPING ☒

COMBS ☒

NSP. OPERATION ☒

KEY SWITCH ☒

WARRANT ☒ NA

upthrust R ☒

" L ☒

## LOWER

OUTSIDE STOP ☒

ALARM ☒ NA

INSIDE STOP ☒

STEP CHAIN SW. RIGHT ☒

STEP CHAIN SW. LEFT ☒

HR INLET RIGHT ☒

HR INLET LEFT ☒

COMB IMPACT RIGHT ☒ NA  
" " CTR ☒ NA  
COMB IMPACT LEFT ☒ NA  
" " VERY ☒ NA

SKIRT RIGHT ☒

SKIRT LEFT ☒

STEP LEVEL ☒ NA

UPTHRUST RIGHT ☒ NA

UPTHRUST LEFT ☒ NA

MISSING STEP DEVICE ☒ NA

DEMARICATION LIGHTS ☒

HR LIGHTS & RECEPTACLE ☒

COMBS ☒

HOUSEKEEPING ☒

KEY SWITCH ☒

NSP. OPERATION ☒

STEP-SKIRT CLEARANCE ☒

## MIDDLE

ANTI SLIDE DEVICES ☒

INSIDE HOUSEKEEPING ☒

CEILING GUARDS ☒

BRAKE TORQUE ☒ 95

BRAKE SLIDE UP ☒ 4-5

BRAKE SLIDE DOWN ☒ 4-5

HR RIGHT ☒

HR LEFT ☒

TANDEN OPERATION ☒

BALUSTRADES ☒

BRAKE TORQUE RANGE

125-150

70-115

RECEIVED

JUL 16 2014

MECHANICAL UNIT  
HENDERSON OFFICE

3/16

JNB00797

State of Nevada  
DIVISION OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Administration - Mechanical Section  
Opening and Closing Conference  
Authority - NRS 455C and NAC 455C

OPENING CONFERENCE:

OWNER/USER and/or CONTRACTOR COMPANY NAME: GOLDEN NUGGET

Date: 7/14/14

Time: 12:30 PM

Explain the following:

1. The purpose, scope and nature of the inspection, Show I.D.
2. The Legal Authority for the inspection.
3. The owner/user and/or Contractor has the right to deny entry, explain (Warrant).
4. The owner/user and/or Contractor must designate a walk-around representative:
5. Violations will be brought to the owner/user and/or Contractors' and employees' attention and noted.
6. Photos and/or Videos may be taken related to the purpose of the inspection.

GRANTS Entry \_\_\_\_\_ (Initial)

DENIES Entry \_\_\_\_\_ (Initial)

OWNER/USER and/or CONTRACTOR REPRESENTATIVE

Name: DON HARTMAN

Print

Title: DIRECTOR

Signature

RECEIVED

JUL 16 2014

MECHANICAL or SPECIAL INSPECTOR REPRESENTATIVE

Name: W. SCHAEFER SPEC. INSPECTOR

Print

Title: MECHANICAL UNIT  
HENDERSON OFFICE

Signature

CLOSING CONFERENCE:

OWNER/USER COMPANY NAME: GOLDEN NUGGET

Date: 7/14/14

Time: 3:20 PM

Explain the following:

1. If violation(s) were observed during the inspection; standards and reasonable abatement procedures and time.
2. Notice of Violation and/or proposed administrative fine.
3. The owner/user's rights following an inspection concerning appeal process.
4. Follow-up inspections.

The above items were discussed with:

OWNER/USER REPRESENTATIVE

Name: DON HARTMAN

Print

Title: DIRECTOR

Signature

702 298 7160

MECHANICAL or SPECIAL INSPECTOR REPRESENTATIVE

Name: W. SCHAEFER SPEC. INSPECTOR

Print

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

Signature

JNB00798



7/11/14  
2300 S. CHANDLER DR.  
LAUDONLIN, NV. 89029

JNB00799

1/24/14  
KT

State of Nevada  
DIVISION OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Administration - Mechanical Section  
Opening and Closing Conference  
Authority - NRS 455C and NAC 455C

**OPENING CONFERENCE:**

OWNER/USER and/or CONTRACTOR COMPANY NAME: GOLDEN NUGGET

Date: 1/17/14

Time: 8:00 AM

**Explain the following:**

1. The purpose, scope and nature of the inspection, Show I.D.
2. The Legal Authority for the inspection.
3. The owner/user and/or Contractor has the right to deny entry, explain (Warrant).
4. The owner/user and/or Contractor must designate a walk-around representative:
5. Violations will be brought to the owner/user and/or Contractors' and employees' attention and noted.
6. Photos and/or Videos may be taken related to the purpose of the inspection.

GRANTS Entry X (Initial)

DENIES Entry \_\_\_\_\_ (Initial)

**OWNER/USER and/or CONTRACTOR REPRESENTATIVE**

Name: DON HARTMAN

Title: CHIEF ENGINEER

Print

Signature

**MECHANICAL or SPECIAL INSPECTOR REPRESENTATIVE**

Name: W. SCHAEFER SPEC. INSPECTOR

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

Print

Signature

**CLOSING CONFERENCE:**

OWNER/USER COMPANY NAME: GOLDEN NUGGET

Date: 1/17/14

Time: 9:15 AM

**Explain the following:**

1. If violation(s) were observed during the inspection; standards and reasonable abatement procedures and time.
2. Notice of Violation and/or proposed administrative fine.
3. The owner/user's rights following an inspection concerning appeal process.
4. Follow-up inspections.

The above items were discussed with:

**OWNER/USER REPRESENTATIVE**

Name: DON HARTMAN

Title: CHIEF ENGINEER

Print

Signature

**MECHANICAL or SPECIAL INSPECTOR REPRESENTATIVE**

Name: W. SCHAEFER SPEC. INSPECTOR

Title: MECHANICAL UNIT  
HENDERSON OFFICE

Print

Signature

JAN 21 2014

JNB00800



# EXHIBIT I

# EXHIBIT I

JNB00802

# TKE Account History Report



Report Run Date: 14-FEB-2017 10:32:03 Branch: 108950 Branch Name: Start Date: 12-MAY-2014 End Date: 12-NOV-2015 Activity Status: APPROVED, PROCESSED SR  
Priority: Customer Acct#: Customer Name: Unit Serial#: US135386 Contract#: Building Name: Route#: SR#: Include PM: Yes Include Callbacks: Yes Include SI: Yes Include  
Repairs: Yes

Customer: GOLDEN NUGGET Customer Number: 75037
Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1520

TKE Annual Safety Test	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	07/14/2014 02:00:00 PM	07/14/2014 02:00:00 PM	07/14/2014 04:00:00 PM	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
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	GLENDENEN, KATHLEEN E	07/14/2014 02:00:00 PM	07/14/2014 02:00:00 PM	07/14/2014 04:00:00 PM	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
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							
GOLDEN NUGGET HOTEL - TKE Annual Safety Test Subtotal					0 hrs 0 mins	4 hrs 0 mins	4 hrs 0 mins

JNB00803



Customer: GOLDEN NUGGET Customer Number: 75037

Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1520

TKE 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

05/12/2015  
08:18:00 PM

05/12/2015  
07:45:00 PM

05/12/2015  
08:30:00 PM

0 hrs 15  
mins

0 hrs 30  
mins

0 hrs 45  
mins

Activity Code: SR #: 13999284 Task #: 7632101 Priority: P2 Contractual Payroll Status: PROCESSED

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  
10:57:46 AM

05/07/2015  
12:00:00 PM

05/07/2015  
03:00:00 PM

0 hrs 0  
mins

3 hrs 0  
mins

3 hrs 0  
mins

Activity Code: SR #: 13937272 Task #: 7599203 Priority: P2 Contractual Payroll Status: PROCESSED

Description: #2 DWN ESC HANDRAIL SQUEAKING TOO MUCH Caller: DON PH: 702-604-7005

Resolution: down escalator,aquired 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  
09:34:46 AM

04/24/2015  
12:00:00 PM

04/24/2015  
12:30:00 PM

0 hrs 0  
mins

0 hrs 30  
mins

0 hrs 30  
mins

Activity Code: SR #: 13729600 Task #: 7488723 Priority: P2 Contractual Payroll Status: PROCESSED

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

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

DUTCHER, CHRISTOPHER M

10/27/2014  
05:05:00 PM

10/28/2014  
01:30:00 PM

10/28/2014  
02:30:00 PM

0 hrs 0  
mins

1 hrs 0  
mins

1 hrs 0  
mins

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 trailwheel 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

JNB00804

Customer: GOLDEN NUGGET Customer Number: 75037

Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1520

TKE 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 #: 14024880 Task #: 7645676 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 steve 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	DUTCHER, CHRISTOPHER M	05/13/2015 06:00:00 AM	05/13/2015 06:00:00 AM	05/13/2015 08:00:00 AM	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 13506170 Task #: 7369574 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: oiled stepchains Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	04/10/2015 01:00:00 PM	04/10/2015 01:00:00 PM	04/10/2015 01:30:00 PM	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 13506168 Task #: 7369573 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 steptreads Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	04/10/2015 06:00:00 AM	04/10/2015 06:00:00 AM	04/10/2015 12:00:00 PM	0 hrs 0 mins	6 hrs 0 mins	6 hrs 0 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 11661220 Task #: 6388281 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	DUTCHER, CHRISTOPHER M	12/16/2014 06:30:00 AM	12/16/2014 06:30:00 AM	12/16/2014 07:00:00 AM	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 11420120 Task #: 6259445 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: visual inspection of units Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	12/02/2014 06:30:00 AM	12/02/2014 06:30:00 AM	12/02/2014 07:00:00 AM	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins

JNB00805



Customer: GOLDEN NUGGET Customer Number: 75037

Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1520

TKE 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 #: 11239198 Task #: 6162639 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: down escalator, cleaned upper and lower pits, 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	DUTCHER, CHRISTOPHER M	11/18/2014 08:30:00 AM	11/18/2014 08:30:00 AM	11/18/2014 10:00:00 AM	0 hrs 0 mins	1 hrs 30 mins	1 hrs 30 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 10622226 Task #: 5832413 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: visual inspect both units, received paint from sherwin williams, customer relations Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	10/09/2014 07:00:00 AM	10/09/2014 07:00:00 AM	10/09/2014 09:00:00 AM	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 10085204 Task #: 5545364 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	DUTCHER, CHRISTOPHER M	09/05/2014 07:00:00 AM	09/05/2014 07:00:00 AM	09/05/2014 08:00:00 AM	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 9535992 Task #: 5251871 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: Preventive Maintenance   Performed Preventive Maintenance, visual inspection Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	08/01/2014 01:00:00 PM	08/01/2014 01:00:00 PM	08/01/2014 02:00:00 PM	0 hrs 0 mins	1 hrs 0 mins	1 hrs 0 mins
SN: US135386 OEM SerNo: CE42505 Description: #2 Down Activity Code: SR #: 9020446 Task #: 4976808 Priority: P3 Standard Payroll Status: PROCESSED Description: TKE Preventive Maintenance Caller: N/A PH: N/A Resolution: visual inspection and observation of both units Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A	DUTCHER, CHRISTOPHER M	06/30/2014 07:15:00 AM	06/30/2014 07:15:00 AM	06/30/2014 08:30:00 AM	0 hrs 0 mins	1 hrs 15 mins	1 hrs 15 mins

JNB00806



Customer: GOLDEN NUGGET Customer Number: 75037

Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1520

TKE 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

06/19/2014  
07:00:00 AM

06/19/2014  
07:00:00 AM

06/19/2014  
08:00:00 AM

0 hrs 0  
mins

1 hrs 0  
mins

1 hrs 0  
mins

Activity Code: SR #: 8888330 Task #: 4907449 Priority: P3 Standard Payroll Status: PROCESSED

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

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

05/13/2014  
09:00:00 AM

05/13/2014  
09:00:00 AM

05/13/2014  
01:00:00 PM

0 hrs 0  
mins

4 hrs 0  
mins

4 hrs 0  
mins

Activity Code: SR #: 8407216 Task #: 4651065 Priority: P3 Standard Payroll Status: PROCESSED

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

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

JNB00807

# EXHIBIT J

# EXHIBIT J

JNB00808

# 1329301

**AFFIDAVIT OF CUSTODIAN OF RECORDS**

STATE OF Arizona  
COUNTY OF MOHAVE ) ss.

COMES NOW, TRINIA Richey, who after first being duly sworn, deposes and says:

1. I am the CUSTODIAN / Director of HIM, and in such capacity, am the Custodian of Records of the offices of WARMC.

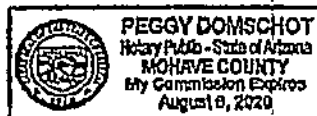
2. That on the 7 day of Sept, 2017, a subpoena and/or request for records was served regarding the above-entitled case, calling for the production of records pertaining to JOE N. BROWN whose date of birth is 09/26/1949.

3. That I have examined the original records and have made a true and exact copy of them, and that the reproduction of them attached hereto is true and correct.

4. That the original records was made at or near the time of the acts, events, conditions, opinions, or diagnoses recited therein by or from information transmitted by a person with knowledge in the course of a regularly-conducted activity at the office of WARMC, in which the custodian of records is engaged.

SUBSCRIBED and SWORN to before me  
This 7th day of September, 2017.

Peggy Domschot  
NOTARY PUBLIC in and for said  
COUNTY and STATE



Trina Richey  
CUSTODIAN OF RECORDS

\*\*\*\*\*IN LIEU OF NOTARY PUBLIC\*\*\*\*\*

**DECLARATION OF CUSTODIAN OF RECORDS**

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

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CUSTODIAN OF RECORDS

\*THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED WITH THE RECORDS AND/OR BILLS



GNL 000313  
JNB00809

## ED Nurse Documentation

## Western Arizona Regional Medical Center

2735 Silver Creek Road  
Bullhead City AZ 86442

Name: Joe Brown

Age: 65 yrs Sex: Male DOB: 09/26/1949

Arrival Date: 05/12/2015 Time: 20:22

Bed: Bed 1

Diagnosis: JEFFERSON'S FX-UNSTABLE; Contusion - PELVIS; Forehead  
Laceration

MRN: 388699

Account#: 1329301

Private MD: NA, None

### Presentation:

05/12 Presenting complaint: EMS states: "PT HAD MECHANICAL FALL AT THE GOLDEN NUGGET APPROX 20 bc1  
20:22 MINUTES AGO WHEN HE WENT TO STEP OFF THE ESCALATOR AND MISSED THE STEP AND FELL.  
PT C/O POSTERIOR NECK PAIN AND HAS A PUNCTURE WOUND TO THE TOP OF HIS HEAD AND  
MULTIPLE SMALL ABRASIONS. PT DENIES DIZZINESS OR LOC. PT DENIES BACK PAIN. PT ALSO  
C/O NUMBNESS TO LOWER EXTREMS". Care prior to arrival: C collar in place. Placed on backboard.  
Glucose check. 100.

20:22 Method Of Arrival: EMS - Ground: AMR. bc1

20:22 Acuity: Level 3. bc1

20:24 Mechanism of Injury: Fall from standing position. bc1

### Triage Assessment:

20:26 Pain: Complains of pain in back of neck Pain currently is 10 out of 10 on a pain scale. Quality of pain is bc1  
described as aching, throbbing, Pain began suddenly 20 minutes ago. Aggravated by increased activity,  
movement repositioning. General: Appears uncomfortable, Behavior is appropriate for age, cooperative,  
Smells of alcohol. Ebola Screening: Has patient lived in or traveled to a country with widespread Ebola  
transmission or had contact with an individual with confirmed Ebola Virus Disease within the previous 21  
days? No. Neuro: Level of Consciousness is awake, alert, Oriented to time, place, person, situation, Grips  
are equal bilaterally ON UPPER EXTREMS, WEAKNESS TO RLE. Weakness in right leg(s) foot/feet  
Speech is normal, Pupils are Pupil size of left eye is 3mm Pupil size of right eye is 3mm sluggish.  
Cardiovascular: Chest pain is denied. Respiratory: Airway is patent Respiratory effort is regular,  
unlabored, Denies shortness of breath. Derm: Skin on top of head. Musculoskeletal: Reports pain in back  
of neck Pain is 10 out of 10 on a pain scale. Injury Description: Laceration sustained to top of head is 0.5  
to 2.5 cm long, was sustained less than 30 minutes ago. is bleeding a small amount.

### Historical:

- Allergies: Lisinopril;
- Home Meds:
  - 1. UNK
- PMHx: Hypertension; NECK PAIN; CHRONIC RENAL INSUFF
- PSHx: NECK FUSION X5; CARPAL TUNNEL REPAIR

- Social history: No barriers to communication noted, The patient speaks fluent English, Smoking status: Patient uses tobacco products.
- Immunization history: Last tetanus immunization: up to date < 5 years ago.

### Screening:

#### 20:30 Suicide Risk Assessment:

Patient Questions Do you feel hopeless or helpless: No Have you had thoughts of suicide in the past: No bc1  
Are you having thoughts of suicide now: No.

#### 20:30

Abuse assessment: No assessment findings of abuse, such as: unexplained injuries or bruising, suspicious bc1  
burns, signs of withdrawal, depression, or fear of others. Assessment for neglect: No signs or indications of  
neglect noted, such as: exploitation, malnutrition, or poor hygiene.

#### Fall Risk:

Patient was assessed to be at risk for fall due to current intoxicated state, a history of falls, Risk protocol  
initiated, including Fall risk band on, family present and encouraged to stay with patient.

#### Sepsis Protocol:

Patient presentation is not suspicious for sepsis; screening is not indicated.

#### Respiratory/TB Assessment:

No associated symptoms.



## ED Physician Documentation

## Western Arizona Regional Medical Center

2735 Silver Creek Road  
Bullhead City AZ 86442

Name: Joe Brown  
Age: 65 yrs Sex: Male DOB: 09/26/1949  
Arrival Date: 05/12/2015 Time: 20:22  
Bed: Bed 1  
ED Physician: Olade, Roger

MRN: 388699  
Account#: 1329301  
Private MD: NA, None

### HPI:

05/12  
20:42 This 65 yrs old Male presents to ED via EMS - Ground with complaints of Fall Injury. j13  
20:42 Details of fall: The patient fell from down approximately 20 stairs. Onset: The symptoms/episode began/occurred acutely, just prior to arrival. j13  
20:47 Associated injuries: The patient sustained injury to the head, laceration, neck injury, pain, pain with movement, right leg, decreased range of motion, painful injury. Associated signs and symptoms: The patient has no apparent associated signs or symptoms. Pertinent positives: Loss of consciousness: the patient experienced no loss of consciousness. Severity of symptoms: **MISSED FIRST STEP ON ESCALATOR AND ROLLED DOWN TO BOTTOM**. COMPLAINS OF PAIN TO BACK AND NECK, DECREASED ROM RT LEG, AND LACERATION TO RT FOREHEAD. j13

### Historical:

- Allergies: Lisinopril;
- Home Meds:
  - 1. UNK
- PMHx: Hypertension; NECK PAIN; CHRONIC RENAL INSUFF
- PSHx: NECK FUSION X5; CARPAL TUNNEL REPAIR

- Social history: No barriers to communication noted. The patient speaks fluent English. Smoking status: Patient uses tobacco products.
- Immunization history: Last tetanus immunization: up to date < 5 years ago.
- The history from nurses notes was reviewed: and I agree with what is documented, up to this point.

### ROS:

20:50 10 systems reviewed and otherwise negative except as documented in HPI j13  
MS/extremity: Positive for pain, of the right leg.  
Skin: Positive for laceration(s).  
21:12 j13  
Neuro: Negative for headache.

### Exam:

20:56 j13  
**Constitutional:** This is a well developed, well nourished patient who is awake, alert, and in no acute distress.  
**Eyes:** Pupils equal round and reactive to light, extra-ocular motions intact. Lids and lashes normal.  
**Conjunctiva and sclera** are non-icteric and not injected. Cornea within normal limits. Periorbital areas with no swelling, redness, or edema.  
**ENT:** Nares patent. No nasal discharge, no septal abnormalities noted. Tympanic membranes are normal and external auditory canals are clear. Oropharynx with no redness, swelling, or masses, exudates, or evidence of obstruction, uvula midline. Mucous membrane moist.  
**Respiratory:** Lungs have equal breath sounds bilaterally, clear to auscultation and percussion. No rales, rhonchi or wheezes noted. No increased work of breathing, no retractions or nasal flaring.  
**Chest/axilla:** Normal chest wall appearance and motion. Nontender with no deformity. No lesions are appreciated.  
**Cardiovascular:** Regular rate and rhythm with a normal S1 and S2. No gallops, murmurs, or rubs. Normal PMI, no JVD. No pulse deficits.  
**Abdomen/GI:** Soft, non-tender, with normal bowel sounds. No distension or tympany. No guarding or rebound. No evidence of tenderness throughout.  
**Psych:** Awake, alert, with orientation to person, place and time. Behavior, mood, and affect are within normal limits.  
**Head/face:** Noted is ecchymosis, that is mild, of the forehead, a laceration(s), 1 cm(s), of the forehead.

Print Time: 5/13/2015 13:51:53

Page 1 of 4



GNL 000336  
JNB00811

# EXHIBIT K

# EXHIBIT K

JNB00812

**In the Matter Of:**

A-16-739887-C

JOE N. BROWN

vs

LANDRY'S INC.

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**JOE N. BROWN**

*January 17, 2018*

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702-805-4800

[scheduling@envision.legal](mailto:scheduling@envision.legal)

JNB00813

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, )  
and his wife, NETTI J. BROWN, )  
an individual, )  
Plaintiffs, ) Case No.: A-16-739887-C  
vs. ) Dept. No.: XXXI

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, ROE BUSINESS ENTITIES )  
1-100, )  
Defendants. )

GNL, CORP., a Nevada )  
corporation, )  
Third-Party Plaintiff, )

vs. )  
THYSSENKRUPP ELEVATOR )  
CORPORATION, a foreign )  
corporation; DOES 1-75; )  
ROE CORPORATIONS 1-75 and )  
ROE CORPORATIONS 1-25, )  
Third-Party Defendants )

VIDEOTAPED DEPOSITION OF JOE N. BROWN

LAS VEGAS, NEVADA

WEDNESDAY, JANUARY 17, 2018

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 901



1 VIDEOTAPED DEPOSITION OF JOE N. BROWN, held  
2 at Rogers Matrangelo Carvalho & Mitchell, located at  
3 700 South 3rd Street, Las Vegas, Nevada, on  
4 Wednesday, January 17, 2018, at 10:06 a.m., before  
5 Monice K. Campbell, Certified Court Reporter, in and  
6 for the State of Nevada.

7  
8 APPEARANCES:

9 For the Plaintiff:

10 IQBAL LAW, PLLC  
11 BY: MOHAMMED A. IQBAL, JR., ESQ.  
12 101 Convention Center Drive, Suite 1175  
Las Vegas Nevada 89109  
702.750.2950

13 For the Defendant Golden Nugget, Inc.:

14 AIG STAFF COUNSEL  
15 BY: ALEXANDRA B. McLEOD, ESQ.  
16 7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
702.940.3556  
alexandra.mcleod@aig.com

17  
18 For the Third-Party Defendant Thyssenkrupp Elevator  
19 Corporation:

20 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
21 BY: REBECCA L. MASTRANGELO, ESQ.  
22 700 South 3rd Street  
Las Vegas, Nevada 89101  
(702) 384-1460  
rmastrangelo@rmcmlaw.com

23 Also Present:

24 NETTIE J. BROWN  
25 TOM BURTNEY, VIDEOGRAPHER

1 LAS VEGAS, NEVADA; WEDNESDAY, JANUARY 17, 2018

2 10:06 A.M.

3 \* \* \* \* \*

4 THE VIDEOGRAPHER: This begins the  
5 video-recorded deposition of Joe Nathan Brown.  
6 Today's date is January the 17th, 2018 and the time  
7 is 10:06 am. This deposition is taking place at 700  
8 South 3rd Street, Las Vegas, Nevada. This case is in  
9 the District Court, Clark County, Nevada, entitled  
10 Joe N. Brown, an individual, and his wife, Nettie J.  
11 Brown, an individual, plaintiffs, versus Landry's,  
12 Incorporated, et al., defendants, and GNL  
13 Corporation, a Nevada corporation, third-party  
14 plaintiff, versus Thyssenkrupp Elevator Corporation,  
15 et al., third-party defendants.

16 The case number is A-16-739887-C. I'm Tom  
17 Burtney, the videographer, and the court reporter is  
18 Monice K. Campbell with Envision Legal Solutions.

19 Will counsel please identify yourselves  
20 for the record.

21 MS. MASTRANGELO: Rebecca Mastrangelo for  
22 the third-party defendant, Thyssenkrupp Elevator.

23 MS. McLEOD: Alexandra McLeod for the  
24 Golden Nugget entities.

25 MR. IQBAL: Mohamed Iqbal on behalf of

1 plaintiffs.

2 THE VIDEOGRAPHER: Also present is Nettie  
3 J. Brown.

4 Will the court reporter please administer  
5 the oath.

6 Whereupon,

7 JOE N. BROWN,  
8 having been sworn to testify to the truth, the whole  
9 truth, and nothing but the truth, was examined and  
10 testified under oath as follows:

11  
12 EXAMINATION

13 BY MS. MASTRANGELO:

14 Q. Would you state your name for the record,  
15 please?

16 A. Joe Nathan Brown.

17 Q. What is your date of birth?

18 A. September 26th, '49.

19 Q. Mr. Brown, have you ever had an occasion  
20 to give sworn testimony or a deposition for any  
21 reason?

22 A. Yes. Yes, sworn testimony.

23 Q. What kind of matters have you given sworn  
24 testimony in?

25 A. A criminal case.

1 day?

2 A. No.

3 Q. Did you have any alcohol that day?

4 A. Yes.

5 Q. What kind of alcohol did you have?

6 A. For sure I know I had vodka and a beer. I  
7 don't remember the rest of it.

8 Q. Where did you drink?

9 A. At Harrah's. I had a beer at the Golden  
10 Nugget, but I drank the vodka at Harrah's. And I  
11 drank some at several other places the night before.

12 Q. Did you sleep over in Laughlin the night  
13 before, or did this accident happen the same day you  
14 drove into town?

15 A. We slept over the night before.

16 Q. Did you just have one vodka drink at  
17 Harrah's on the date of the accident?

18 A. I had some other drinks but I don't  
19 remember.

20 Q. Some other alcoholic drinks?

21 A. Yes.

22 Q. Did you have more than one beer?

23 A. I don't -- I had one beer at Harrah's.

24 Q. At Golden Nugget, you mean?

25 A. I mean the Golden Nugget. I had the vodka

1 at Harrah's.

2 Q. Did you feel like you were intoxicated  
3 before you fell?

4 A. No.

5 Q. So you played a little poker at Golden  
6 Nugget. Was it video poker?

7 A. Yes.

8 Q. And then you guys decided to go to dinner?

9 A. Right.

10 Q. And just describe for me what you remember  
11 about the incident, starting with you guys were just  
12 walking toward the escalator.

13 A. Well, we walked past the bar and went --  
14 and the escalator was right in front of us, so that's  
15 where we went down. My wife went down the steps, but  
16 I -- the rest of us went down the escalator.

17 Q. Do you know why your wife took the steps?

18 A. To beat us down, I guess.

19 Q. You weren't in any hurry, though, right?

20 A. No.

21 Q. Did you know where the elevator was to go  
22 downstairs?

23 A. No, I didn't know where -- it said  
24 elevator but I couldn't see it.

25 Q. Did you see the sign that said elevator

## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5 I, Monice K. Campbell, a Certified Court Reporter  
6 licensed by the State of Nevada, do hereby certify:  
7 That I reported the deposition of JOE N. BROWN, on  
8 Wednesday, January 17, 2018, at 10:06 a.m.

9 That prior to being deposed, the witness was  
10 duly sworn by me to testify to the truth. That I  
11 thereafter transcribed my said stenographic notes via  
12 computer-aided transcription into written form, and  
13 that the typewritten transcript is a complete, true  
14 and accurate transcription of my said stenographic  
15 notes; that review of the transcript was NOT  
16 requested.

17 I further certify that I am not a relative,  
18 employee or independent contractor of counsel or of  
19 any of the parties involved in the proceeding; nor a  
20 person financially interested in the proceeding; nor  
21 do I have any other relationship that may reasonably  
22 cause my impartiality to be questioned.  
23  
24  
25

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
1st day of February, 2018,

MONICE K. CAMPBELL, CCR NO. 312

EXHIBIT L

EXHIBIT L

JNB00822



**In the Matter Of:**

Brown vs Landry's Inc., et al.

**CLAY MOLLETTE**

*September 24, 2018*

*Job Number: 495553*

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 JOE N. BROWN, an )  
5 individual, and his Wife, )  
6 NETTIE J. BROWN, an )  
7 individual ) CASE NO: A-16-739887-C  
8 )  
9 Plaintiffs, ) DEPT NO: XXXI  
10 )  
11 vs. )  
12 )  
13 LANDRY'S, INC., a foreign )  
14 corporation; GOLDEN NUGGET, )  
15 INC., a Nevada corporation, )  
16 d/b/a GOLDEN NUGGET )  
17 LAUGHLIN; GNL, CORP., a )  
18 Nevada corporation; DOE )  
19 INDIVIDUALS 1-100, ROE )  
20 BUSINESS ENTITIES 1-100, )  
21 )  
22 Defendants. )  
23 )  
24 GNL, CORP., a Nevada )  
25 corporation; )  
26 )  
27 Third-Party Plaintiff, )  
28 )  
29 Vs. )  
30 )  
31 THYSSENKRUPP ELEVATOR )  
32 CORPORATION, a foreign )  
33 corporation; DOES 1-75; ROE )  
34 CORPORATION 1-75 and ROE )  
35 CORPORATION 1-25, )  
36 )  
37 Third-Party Defendants. )  
38 )  
39  
40 DEPOSITION OF CLAY MOLLETTE  
41 LAS VEGAS, NEVADA  
42 MONDAY, SEPTEMBER 24, 2018  
43  
44 REPORTED BY: BRITTANY J. CASTREJON, RPR, CCR NO. 926  
45 JOB NO.: 495553

1 DEPOSITION OF CLAY MOLLETTE, held at  
2 Grant & Associates, located at 7455 Arroyo Crossing  
3 Parkway, Suite 300, Las Vegas, Nevada 89113, on Monday,  
4 September 24, 2018, at 2:03 p.m., before Brittany J.  
5 Castrejon, Certified Court Reporter, in and for the  
6 State of Nevada.

7

8 APPEARANCES:

9 For Plaintiffs:

10 IQBAL LAW PLLC  
11 BY: MOHAMED IQBAL, JR., ESQ.  
12 101 Convention Center Drive  
13 Suite 1175  
Las Vegas, Nevada 89109  
702-750-2950  
mai@ilawlv.com

14 For Defendants/Third-Party Plaintiffs, GNL, CORP.;  
15 Landry's, Inc.; Golden Nugget, Inc.:

16 GRANT & ASSOCIATES  
17 BY: ALEXANDRA McLEOD, ESQ.  
18 7455 Arroyo Crossing Parkway  
Suite 300  
Las Vegas, Nevada 89113  
702-940-3529  
alexandra.mcleod@aig.com

19

20 For Third-Party Defendant Thyssenkrupp Elevator:

21 ROGERS, MASTRANGELO, CARVALHO  
22 & MITCHELL  
BY: SEAN N. PAYNE, ESQ.  
23 700 South 3rd Street  
Las Vegas, Nevada 89101  
702-383-3400  
24 spayne@rmcmlaw.com

25

1 Las Vegas, Nevada; Monday, September 24, 2018

2 2:03 p.m.

3 -oOo-

4 Whereupon --

5 (The court reporter requirements under Rule  
6 30(b)(4) of the Nevada Rules of Civil  
7 Procedure were waived.)

8 CLAY MOLLETTE,

9 having been first duly sworn by the court reporter to  
10 testify to the truth, the whole truth, and nothing but  
11 the truth, was examined and testified under oath as  
12 follows:

13 EXAMINATION

14 BY MS. McLEOD:

15 Q. Please state your name and spell your last name  
16 for the record.

17 A. Clayton Mollette. Last name Mollette,  
18 M-O-L-L-E-T-T-E.

19 Q. And for identification purposes, would you give  
20 us your date of birth, please?

21 A. 11/10/1986.

22 Q. Have you ever had your deposition taken before,  
23 Mr. Mollette?

24 A. Say that one more -- repeat that.

25 Q. Have you ever had a deposition taken before, a

1 Q. What did you and Mr. Brown do after the ladies in  
2 your party split off?

3 A. We sat in his hotel room and watched TV.

4 Q. Anything else you recall about your activities  
5 with Mr. Brown?

6 A. We had a drink.

7 Q. Do you recall how many drinks you had?

8 A. No. I wouldn't be able to say.

9 Q. Do you know if Mr. Brown had alcoholic beverages?

10 A. If he had alcoholic beverages?

11 Q. Correct. Or an alcoholic beverage?

12 MR. IQBAL: Did you guys drink together?

13 THE WITNESS: Yes, we did drink together.

14 BY MS. MCLEOD:

15 Q. Can you estimate how many drinks Mr. Brown had?

16 A. No.

17 Q. Did you notice any indication that Mr. Brown was  
18 intoxicated?

19 A. No.

20 Q. What happened during the day where you decided to  
21 go to the Golden Nugget, if you remember?

22 A. What happened? Where do you want me to start  
23 from? Like. . .

24 Q. Why did you decide to go to the Golden Nugget?

25 A. Because we wanted to go to Bubba Gump Shrimp.

1 asked about that previously.

2 What were you and Joe drinking?

3 A. Crown Royal.

4 Q. Was it a bottle?

5 A. A half a pint.

6 Q. A half a pint bottle?

7 A. Yeah.

8 Q. How big is a half a pint? Just -- can you make  
9 a --

10 MS. McLEOD: Objection. The size speaks for  
11 itself.

12 MR. IQBAL: I'm going to take that back.

13 BY MR. IQBAL:

14 Q. So the half a pint bottle, did you guys finish?

15 A. No.

16 Q. Okay. So there was still alcohol left in that  
17 bottle when you guys left for dinner?

18 A. Yes.

19 Q. So it was a couple of drinks that you had?

20 A. Yes.

21 Q. And to the best of your knowledge, was it a  
22 couple of drinks that Joe had?

23 A. Yeah. Just a couple.

24 Q. Were you intoxicated after those couple of  
25 drinks?

1           A.   No.

2                   MR. IQBAL:   That's all I have.

3                   MS. McLEOD:   Nothing further from me.

4                   MR. PAYNE:   Nothing further here.   Thank  
5   you.

6                   MS. McLEOD:   That means we're off the  
7   record.

8                   (Proceedings concluded at 3:15 p.m.)

9    ///

10   ///

11   ///

12   ///

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14   ///

15   ///

16   ///

17   ///

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19   ///

20   ///

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23   ///

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25   ///

1 STATE OF NEVADA )  
2 ) SS:  
3 COUNTY OF CLARK )

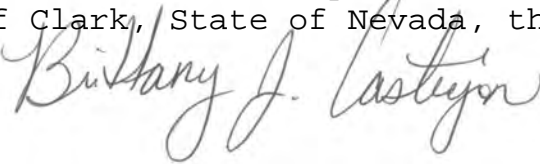
4 CERTIFICATE OF REPORTER

5 I, Brittany J. Castrejon, a Certified Court  
6 Reporter licensed by the State of Nevada, do hereby  
7 certify: That I reported the DEPOSITION OF CLAY  
8 MOLLETTE, on Monday, September 24, 2018, at 2:03 p.m.;

9 That prior to being deposed, the witness was duly  
10 sworn by me to testify to the truth. That I thereafter  
11 transcribed my said stenographic notes into written  
12 form, and that the typewritten transcript is a complete,  
13 true and accurate transcription of my said stenographic  
14 notes. That the reading and signing of the transcript  
15 was requested.

16 I further certify that I am not a relative,  
17 employee or independent contractor of counsel or of any  
18 of the parties involved in the proceeding; nor a person  
19 financially interested in the proceeding; nor do I have  
20 any other relationship that may reasonably cause my  
21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my  
23 office in the County of Clark, State of Nevada, this 3rd  
24 day of October, 2018.



25  
Brittany J. Castrejon, RPR, CCR NO. 926



# EXHIBIT M

# EXHIBIT M

JNB00831

---

**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

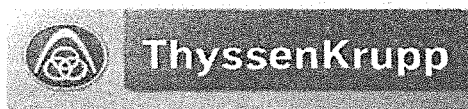
#### \*\*\*Safety Matter\*\*\*

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.

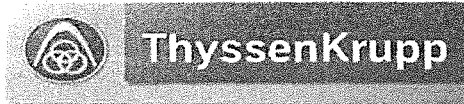
The step replacement includes new roller/roller assemblies for each step.

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.



### 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**

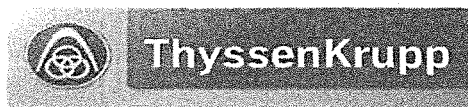
In consideration of ThyssenKrupp Elevator performing the services herein specified, Purchaser, to the fullest extent permitted by law, expressly agrees to indemnify, defend, save harmless, discharge, release and forever acquit ThyssenKrupp Elevator Corporation, ThyssenKrupp Elevator Manufacturing, Inc., 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, judgements, 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



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



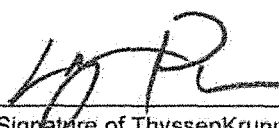
Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

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.

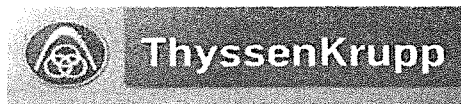
Purchaser's acceptance of this Work Order together with the terms and conditions printed on subsequent pages hereof and which are expressly made a part of this proposal and agreed to, will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements 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



## 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

JNB00839

## 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**



**ThyssenKrupp**

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.



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, judgements, 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 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



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



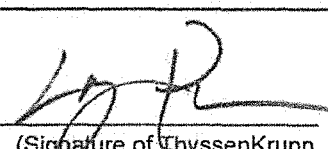

Unless otherwise stated, you agree to pay as follows: 50% upon signed acceptance and 50% upon completion.

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.

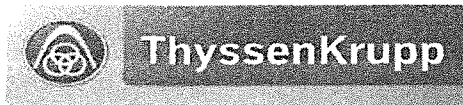
This Work Order is submitted for acceptance within 30 days from the date executed by ThyssenKrupp Elevator Corporation.

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	2015-2-117143		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

JNB00846



# INVOICE

Page: 1 of 1 KONE Spares



<b>Invoice number:</b> 1157017206		<b>Area Office:</b> KONE Inc., Federal																																																									
<b>Invoice Date:</b> 07/14/2015		<b>KONE Spares</b> 36 2357423																																																									
<b>Customer Purchase Order No:</b> 1003525		<b>325 19TH STREET</b>																																																									
<b>KONE Order No:</b> 340496802		<b>MOLINE, IL 61265</b>																																																									
<b>Billing Type:</b> YF2		<b>PH: 800-343-3344</b>																																																									
<b>Salesperson:</b> Mrs Meghan Ludin		<b>FAX: 309-762-7475</b>																																																									
<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																																																									
<b>RECEIVED</b> <b>JUL 17 2015</b> <b>GNL</b>																																																											
<b>Payment Terms:</b> ZUSB Net 30		<b>Other Comments:</b>																																																									
<table border="1"><thead><tr><th>Req</th><th>Ship</th><th>Quantity</th><th>Item Number</th><th>Description</th><th>Unit Price</th><th>Amount</th></tr><tr><th></th><th>Pre</th><th>Curr</th><th>BO</th><th></th><th></th><th></th></tr></thead><tbody><tr><td>40</td><td>0</td><td>40</td><td>0</td><td>USP34244001</td><td>STEP, 3E THRU-AXLE SERVIC</td><td>\$ 420.00 \$ 16,800.00</td></tr><tr><td colspan="6"><b>Subtotal in USD</b></td><td><b>\$ 16,800.00</b></td></tr><tr><td colspan="6"><b>SHIPPING AND HANDLING</b></td><td><b>\$ 508.09</b></td></tr><tr><td colspan="6"><b>State Tax</b></td><td><b>\$ 772.80</b></td></tr><tr><td colspan="6"><b>County Tax</b></td><td><b>\$ 588.00</b></td></tr><tr><td colspan="6"><b>Total Invoice Amount in USD</b></td><td><b>\$ 18,668.89</b></td></tr></tbody></table> <p><i>Account</i> <i>0872.00.00.070.000.00</i></p> <p><i>8/25/2015</i> <i>10/21/11</i> <i>E. K. K. K. K. K.</i></p> <p><small>Invoices not paid within 30 days are subject to a service charge of 1.5% per month or the maximum permitted by law.</small></p>				Req	Ship	Quantity	Item Number	Description	Unit Price	Amount		Pre	Curr	BO				40	0	40	0	USP34244001	STEP, 3E THRU-AXLE SERVIC	\$ 420.00 \$ 16,800.00	<b>Subtotal in USD</b>						<b>\$ 16,800.00</b>	<b>SHIPPING AND HANDLING</b>						<b>\$ 508.09</b>	<b>State Tax</b>						<b>\$ 772.80</b>	<b>County Tax</b>						<b>\$ 588.00</b>	<b>Total Invoice Amount in USD</b>						<b>\$ 18,668.89</b>
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<b>Total Invoice Amount in USD</b>						<b>\$ 18,668.89</b>																																																					

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> 115701	
		<b>Invoice Date:</b> 07/14/2015	
		<b>Customer Number:</b> 12649754	
		<b>KONE Order No:</b> 340496802	
		<b>Area Office No:</b> YF2	
		<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 \$ 18,668.89	
<small>Use this address for payments only. Direct calls and area correspondence to our area office above.</small>			

115701720600018668897

JNB00847  
GNL 002033

-----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) [www.thyssenkruppelevator.com](http://www.thyssenkruppelevator.com) Facebook · Blog · Twitter · LinkedIn

-----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!  
 > -----  
 > 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  
>>  
>> 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/>>  
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>> 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](https://plus.google.com/u/0/b/101712657051078702814/1017126570510787028)  
>> 028  
>> 14> \* YouTube  
>> <<http://www.youtube.com/channel/UCMlk2PG6wp5wjK-UAMqUXXQ?feature=guid>  
>> e>  
>>  
>> 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>  
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>> 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/101712657051078702814/1017126570510787028>  
>> 028  
>> 14> \* YouTube  
>> <<http://www.youtube.com/channel/UCMlk2PG6wp5wjK-UAMqUXXQ?feature=guid>  
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>> Subscribe to our e-newsletter  
>> <<http://thyssenkruppelevator.com/subscribe>>

>>  
>> 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	
<b>Invoice Date:</b> 08/12/2015		<b>36 2357423</b>	
<b>Customer Purchase Order No:</b> 1004752		<b>KONE Spares</b>	
<b>KONE Order No:</b> 340514250		<b>325 19TH STREET</b>	
<b>Billing Type:</b> YF2		<b>MOLINE, IL 61265</b>	
<b>Salesperson:</b> Mr Daniel Whitcanack		<b>PH: 800-343-3344</b>	
		<b>FAX: 309-762-7475</b>	
<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	
<b>RECEIVED</b>  AUG 17 2015  GNL			
<b>Payment Terms:</b> ZUSB Net 30		<b>Other Comments:</b>	

Req	Ship Pre	Quantity Curr	BO	Item Number	Description	Unit Price	Amount
40	0	40	0	USP29864	ROLLER, 4"DIA 7/8"WIDE	\$ 58.00	\$ 2,320.00
<b>Subtotal in USD</b>							<b>\$ 2,320.00</b>
<b>SHIPPING AND HANDLING</b>							<b>\$ 71.89</b>
<b>State Tax</b>							<b>\$ 106.72</b>
<b>County Tax</b>							<b>\$ 81.20</b>
<b>Total Invoice Amount in USD</b>							<b>\$ 2,579.81</b>

*Account 8/17/2015 10:20*

*Account 8/17/2015 10:20*

*0872.000.000 0700.000.000*

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	

115703363900002579813

JNB00853  
GNL 002030



GOLDEN NUGGET HOTEL & CASINO  
Las Vegas, NV, 89104  
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 :  
ACCOUNTS 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



GOLDEN NUGGET HOTEL & CASINO  
Las Vegas, NV, 89104

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 :	1003525
Type :	STANDARD
Order Date:	07-JUL-15
Due Date :	24-JUL-15
Entered by :	Garcia, Irais Rubi
Approved By :	Meyer, Robert
Buyer :	Irais, Garcia

VENDOR :  
KONE INC  
ONE KONE COURT  
MOLINE, IL 61265 UNITED STATES

SHIP TO:  
0872 - GOLDEN NUGGET LAUGHLIN  
2300 SOUTH CASINO DR.  
LAUGHLIN, NV 89029 UNITED STATES

BILL TO :  
2300 SOUTH CASINO DR.  
LAUGHLIN, NV 89029 UNITED STATES

Notes :  
QUOTE# 330338051  
PLEASE CONFIRM RECEIPT OF THIS PO TO:

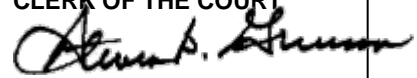
IRAIS GARCIA  
P: 702-386-8192  
F: 702-387-4457  
igarcia@goldennugget.com

REQUESTOR: DON HARTMANN  
DEPT: ENGINEERING

THERE MAY BE FREIGHT (PP&A)

Ordered By	Effective Date	Expiration Date	Ship Via	F.O.B	Terms
Irais, Garcia					IMMEDIATE
Remarks :	GNL 1003852 - ENGINEERING - DON HARTMANN				
Comments :	GNL Engineering E-1				

Line	Item Number	Description + Comment	UNIT	COST	Taxable	Quantity	Amount
1	3084016	STEP, 3E THRU-AXLE SERVICE #USP34244001	Each	420.00	N	40	\$16800.00
Total Amount							\$ 16,800.00



1 **MTD**

2 LEE J. GRANT II, ESQ.  
3 Nevada Bar No. 11808  
4 ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.  
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; THYSSENKRUPP ELEVATOR  
25 CORP., a foreign corporation; DOE  
26 INDIVIDUALS 1-100,  
27 ROE BUSINESS ENTITIES 1-100,

28 Defendants.

GNL, CORP., a Nevada corporation;

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**

**LANDRY'S, INC.'S MOTION TO  
DISMISS FOR LACK OF GENERAL  
OR PERSONAL JURISDICTION**

**Date of hearing:**

**Time of hearing:**

COMES NOW Defendant, LANDRY'S, INC. (hereinafter "LANDRY'S" or  
"Defendant"), by and through their counsel of record, ALEXANDRA B. M<sup>c</sup>LEOD, ESQ., of  
the law firm of GRANT & ASSOCIATES, and hereby submit the instant LANDRY'S, INC.'S

1 MOTION TO DISMISS FOR LACK OF GENERAL OR PERSONAL JURISDICTION in the  
2 above-entitled action, pursuant to Nevada Rule of Civil Procedure 12(b)(2).

3 This Motion is made and based upon all of the papers and pleadings on file herein, the  
4 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 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 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*  
15 *NUGGET, INC.*

16 **NOTICE OF MOTION**

17 TO: ALL PARTIES HERETO; and

18 TO: COUNSEL OF RECORD FOR ALL PARTIES HERETO:

19 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **LANDRY'S,**  
20 **INC.'S MOTION TO DISMISS FOR LACK OF GENERAL OR PERSONAL**  
21 **JURISDICTION** on for hearing before the above-entitled Court on the **4** day of  
22 **Dec.**, 2018, at the hour of **9:30** a.m./~~p.m.~~, in Department 31, or as soon thereafter as  
23 counsel may be heard.

24 DATED this 1<sup>st</sup> day of November, 2018.

25 GRANT & ASSOCIATES

26 

27 ALEXANDRA B. MCLEOD, ESQ.

28 Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

*Attorney for Defendants/Third-Party Plaintiffs,*  
*GNL, CORP., LANDRY'S, INC. & GN, INC.*

## POINTS &amp; AUTHORITIES

I. INTRODUCTION & STATEMENT OF RELEVANT FACTS

Plaintiff Joe Brown alleges a broken neck resulting from a fall on the down escalator at the Golden Nugget Hotel & Casino in Laughlin, Nevada on May 12, 2015 at 7:28 pm. Plaintiff's Second Amended Complaint alleges the escalator was too loose, unstable, narrow, and shaky (at ¶¶13-14). To the contrary, State Inspector Steve Robertson determined that the incident occurred when Plaintiff stepped in between steps and lost his balance when the steps began to descend. ThyssenKrupp Elevator was the servicing company contracted to maintain and repair the down escalator at Golden Nugget Laughlin prior to and at the time of Plaintiff's fall.

Plaintiffs named GNL, Corp. ("GNL"), and, erroneously, also sued Golden Nugget, Inc., ("GNI") and Landry's, Inc. ("Landry's") and alleged that they "collectively" own and operate the Golden Nugget Laughlin. GNL initially appeared in the action and indicated that it was the only correct entity responsible for the ownership and operation of the Golden Nugget Laughlin. In fact, GNL has admitted to owning and operating the subject location as evidenced by its admission of the issue in its Answer to Plaintiff's Amended Complaint, at 2:1-3: "Answering Paragraph 4 of Plaintiffs Amended Complaint, GNL, Corp.'s admits that it owns and operates a resort hotel called the Golden Nugget Laughlin. Defendant denies the remaining allegations contained in this Paragraph." Notably, the "remaining allegations" that were denied were that the entities jointly own and operate the Laughlin Nugget. Nevertheless, Plaintiff now seeks to proceed with the action against GNI and Landry's when there is no legally justifiable reason for doing so.

Despite GNL's admission that it owned and operated the Golden Nugget Laughlin, Plaintiffs intend to proceed to trial against an unrelated foreign corporation that neither directly nor indirectly, through one or more of its subsidiaries, owns any percent of the outstanding ownership or membership interest in GNL, but happens to have common ownership, many entities removed. As verified by Steve Scheinthal, Executive Vice President and General Counsel for LANDRY'S INC., on September 30, 2013, LANDRY'S, INC. declared a stock

dividend divesting of all of its shares in Landry's Gaming, Inc., including all of Landry's Gaming, Inc.'s subsidiaries, which resulted in Fertitta Entertainment, Inc., owning all outstanding shares of Landry's Gaming, Inc., and all of its subsidiaries. Since September 30, 2013, LANDRY'S, INC. neither directly nor indirectly, through one or more of its subsidiaries, owns any percent of the outstanding ownership or membership interest in Landry's Gaming, Inc., Golden Nugget, Inc. or any of Golden Nugget, Inc.'s subsidiaries. Therefore, at the time Plaintiffs' lawsuit commenced (July 12, 2016), LANDRY'S no longer had even remote ownership interest in GNL, Corp. or the Golden Nugget Laughlin.

Because LANDRY'S is a foreign corporation and does not "own, operate, or control" the Golden Nugget Laughlin, there is no legal basis for which Plaintiffs may maintain a lawsuit against it. Nevada law is clear that a relationship between entities, such as **common ownership or a parent/subsidiary relationship is not sufficient to maintain a lawsuit**, absent some additional basis.

## II. **STANDARD OF REVIEW**

NRCP 12(b)(2) allows the defense of lack of jurisdiction over the person to be made by motion. This defense was preserved through earlier motion practice (denied without prejudice on March 28, 2017, and order subsequently entered on April 17, 2017 and filed on April 24, 2017). A motion to dismiss is essentially a ruling on a question of law. *Northstar Int'l. v. Ariz. Corp. Comp.*, 720 F.2d 578, 580 (9th Cir. 1983). Ergo, the motion tests the legal sufficiency of the complaint. In order to defeat a motion under subsection (b) of this NRCP 12, Plaintiffs must have presented a prima facie case upon which the trier of fact can grant relief against Defendant LANDRY'S. *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 471 P.2d 802 (1987).

"When a challenge to personal jurisdiction is made, the plaintiff has the burden of introducing competent evidence of essential facts which establish a prima facie showing that personal jurisdiction exists." *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687, 692, 857 P.2d 740, 743-744 (1993),<sup>1</sup> quoting *Abbott-Interfast v. Dist. Ct.*, 107 Nev. 871, 873, 821 P.2d 1043,

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<sup>1</sup> Ironically, GNLV, Corp., the entity that owns and operates the Golden Nugget Las Vegas hotel and casino, was a Real Party In Interest in the *Trump* matter. Instructively, neither LANDRY'S nor GNI were parties to that case,

1 1044, (1991) (internal citations omitted). The plaintiff must produce some evidence in support  
2 of all facts necessary for a finding of personal jurisdiction, and **the burden of proof never**  
3 **shifts to the party challenging jurisdiction**. *Id.* at 692-693 (internal citations omitted).

4 “In determining whether a prima facie showing has been made, the district court is not  
5 acting as a fact finder. It accepts **properly supported** proffers of evidence by a plaintiff as  
6 true.” *Id.* at 693, *quoting Boit v. Gar-Tee Products, Inc.*, 967 F.2d 671, 675 (1<sup>st</sup> Cir. 1992). In  
7 doing so, the ***plaintiff must introduce some admissible evidence*** and may not simply rely on the  
8 allegations of the complaint to establish personal jurisdiction. *Id.* Even if the plaintiff makes a  
9 prima facie case of jurisdiction prior to trial, the plaintiff must still prove personal jurisdiction at  
10 trial by a preponderance of the evidence. *Id.* Here, Plaintiffs have failed to establish a prima  
11 facie case of jurisdiction and cannot meet their burden to prove jurisdiction over LANDRY’S at  
12 trial.

### 13 **III. THE COURT DOES NOT HAVE GENERAL JURISDICTION OVER** 14 **LANDRY’S**

15 “The level of contact with the forum state necessary to establish general jurisdiction is  
16 high.” *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 485, 835 P.2d 17, 19  
17 (1992). General jurisdiction “approximates physical presence” in the forum state. *&Masters,*  
18 *Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). **General jurisdiction only**  
19 **exists when a defendant’s contacts with the forum state are so “substantial” or**  
20 **“continuous and systematic” that it is considered present in that forum,** and, thus, subject  
21 to suit there. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512-513, 134  
22 P.3d 710, 712 (2006) (emphasis added) (*citing Firouzbadi v. First Judicial Dist. Ct.*, 110 Nev.  
23 1348, 1352, 885 P.2d 616, 619 (1994)). In *Arbella*, this Court noted that no general jurisdiction  
24 would exist because the defendant was a Massachusetts insurance company with no office or  
25 direct activities in Nevada. *Id.*

26  
27  
28 because they do not own or operate the Golden Nugget Las Vegas Nugget. Likewise, they have no involvement in  
the Golden Nugget Laughlin to support Plaintiffs’ claims against them in the instant case.

On the other hand, if a nonresident's activities in the forum are sufficiently substantial and continuous, general jurisdiction will lie even if the cause of action is not related to the defendant's activities in the state. *Laxalt v. McClatchy*, 622 F. Supp. 737, 742 (D. Nev. 1985). If the defendant's activities are not sufficiently pervasive to warrant general jurisdiction, however, **the nature and quality of the forum related activities must be examined in relation to the specific cause of action to determine whether limited jurisdiction exists.** *Id.* (emphasis added).

"To determine if a defendant's activities qualify as 'continuous and systematic' or 'substantial[,] [courts] examine all of the defendant's activities that impact the state, including whether the defendant makes sales, solicits or engages in business, serves the state markets, designates an agent for service of process, holds a license, has employees, or is incorporated there." *Hirsch v. Blue Cross, Blue Shield Kansas City*, 800 F.2d 1474, 1478 (9th Cir. 1986).

The defendant in *Arabella* is analogous to LANDRY'S in this matter. LANDRY'S does not have substantial or continuous and systematic contacts with Nevada. The only contact with the forum state is past (prior to 2013), remote ownership of GNL, Corp. and other Nevada businesses. There are no offices or direct activities in Nevada. If any activities occur in Nevada, they are insignificant and sporadic. When substantial contacts cannot be established, the court must look to the forum related activities of the out of state party in relation to the specific cause of action, as analyzed below.

#### IV. **LANDRY'S LACKS THE REQUISITE CONTACTS WITH THE FORUM STATE TO ESTABLISH PERSONAL JURISDICTION**

"To obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1) that the requirements of the state's long-arm statute have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction." *Arbella*, 122 Nev. at 512, 134 P.3d at 712 (quoting *Trump*, 109 Nev. at 698, 857 P.2d at 747). "Nevada's long-arm statute, NRS 14.065, reaches the limits of due process set by the United States Constitution." *Baker v. Dist. Ct.*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). The Due Process Clause of the Fourteenth Amendment requires a nonresident defendant to have "minimum contacts" with the forum state sufficient to



1 ensure that exercising personal jurisdiction over him would not offend “traditional notions of  
2 fair play and substantial justice.” *Id.* at 531-32, 999 P.2d at 1023 (*quoting Mizner v. Mizner*, 84  
3 Nev. 268, 270, 439 P.2d 679, 680 (1968) [*citing Internat. Shoe Co. v. Washington*, 326 U.S.  
4 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)]).

5 Nevada courts are authorized to exercise jurisdiction over parties “on any basis not  
6 inconsistent with... the Constitution of the United States.” NRS 14.065; *Baker*, 116 Nev. at 531,  
7 999 P.2d at 1023. In order to determine whether the District Court was authorized to exercise  
8 jurisdiction over LANDRY’S, the relevant questions is whether the exercise of jurisdictions  
9 “comports with the limits imposed by federal due process” on the State of Nevada. *Damier A.G.*  
10 *v. Bauman*, 571 U.S. --, --, 134 S. Ct. 746, 753 (2014). Here, it does not.

11 Specific personal jurisdiction arises “**only when the cause of action arises from**  
12 **defendant’s contacts with the forum.**” *Freeman v. Second Judicial Dist. Court*, 116 Nev. 550,  
13 553, 1 P.3d 963, 965 (2000) (internal citations omitted). “To subject a defendant to specific  
14 jurisdiction, this court must determine if the defendant ‘purposefully established minimum  
15 contacts’ so that jurisdiction would ‘comport with ‘fair play and substantial justice.’” *Id. quoting*  
16 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77, 85 L. Ed. 2d 528, 105 S. Ct. 2174  
17 (1985) (*quoting International Shoe Co. v. Washington*, 326 U.S. 310, 320, 90 L. Ed. 95, 66 S.  
18 Ct. 154 (1945)); *see also Trump*, 109 Nev. at 699-700, 857 P.2d at 748-49.

19 “A state may exercise specific personal jurisdiction only where: (1) the defendant  
20 purposefully avails himself of the privilege of serving the market in the forum or of enjoying the  
21 protection of the laws of the forum, or where the defendant purposefully establishes contacts  
22 with the forum state and affirmatively directs conduct toward the forum state, and (2) the cause  
23 of action arises from that purposeful contact with the forum or conduct targeting the forum.”  
24 *Trump*, 109 Nev. at 699-700, 857 P.2d at 748 (*citing Budget Rent-A-Car*, 108 Nev. at 487, 835  
25 P.2d at 20 (*citing World-Wide Volkswagen Corp.*, 444 U.S. at 291, 297)); *MGM Grand, Inc. v.*  
26 *District Court*, 107 Nev. 65, 69, 807 P.2d 201, 203 (1991); *see Burger King*, 471 U.S. at 474;  
27 *Munley v. District Court*, 104 Nev. 492, 495-96, 761 P.2d 414, 416 (1988) (“the cause of action  
28 must have a specific and direct relationship or be intimately related to the forum contacts,”

1 which must be significant and substantial, and cannot be "random," "fortuitous," or  
2 "attenuated").

3 In the case at bar, Plaintiffs seek to establish jurisdiction over LANDRY'S by focusing  
4 the actions of its subsidiaries and the location of the Subject Accident, rather than examining the  
5 extent of LANDRY'S contacts with this forum, or, more to the point, the lack thereof. "In *MGM*  
6 *Grand, Inc. v. District Court*, 107 Nev. 65, 807 P.2d 201 (1991), [the Nevada Supreme Court]  
7 held that jurisdiction over a nonresident corporation could not be premised upon that  
8 corporation's status as parent to a Nevada corporation." *Sands China Ltd. v. Eighth Judicial*  
9 *Dist. Court of State ex rel. County of Clark*, 127 Nev. 1173, 373 P.3d 958 (2011). "Similarly,  
10 the United States Supreme Court in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131  
11 S.Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent  
12 corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that  
13 including the parent's contacts with the forum would be, in effect, the same as piercing the  
14 corporate veil." *Id.*

15 Recently, the issue was exhaustively addressed in *Viega GmbH v. Eighth Jud. Dist. Ct.*,  
16 328 P.3d 1152, 1161 (2014). "[C]orporate entities are presumed separate, and thus, the mere  
17 'existence of a relationship between a parent company and its subsidiaries is not sufficient to  
18 establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts  
19 with the forum." *Id.* (numerous internal citations omitted). Following an extensive analysis, the  
20 Nevada Supreme Court relied upon the reasoning set forth by the Second Circuit Court of  
21 Appeals:

22 As the Second Circuit Court of Appeals has recognized, such problems in  
23 overcoming the presumption of separateness are inherent in attempting to sue a  
24 foreign corporation that is part of a carefully structured corporate family, and  
***courts may not create exceptions to get around them:***

25 'We recognize that without discovery it may be extremely difficult for plaintiffs  
26 ... to make a *prima facie* showing of jurisdiction over a foreign corporation....  
27 [But] [t]he rules governing establishment of jurisdiction over such a foreign  
28 corporation are clear and settled, and it would be inappropriate for us to deviate  
from them or to create an exception to them because of the problems plaintiffs  
may have in meeting their somewhat strict standards.

Accordingly, for the reasons set forth above, we grant the petition and direct the clerk of the court to issue a writ of prohibition precluding the district court from allowing the case to proceed against the German Viega companies. *Viega GmbH, supra*, at 1161, *quoting Jazini v. Nissan Motor Co., Ltd.*, 148 F.3d 181, 186 (2d Cir. 1998) (emphasis added).

The same reasoning that was applied by the Nevada Supreme Court in *Viega* is equally applicable here, Plaintiffs have made absolutely no *prima facie* showing that jurisdiction over LANDRY'S is appropriate. This failure must be deemed fatal to their case where, as here, the Plaintiffs have been permitted but neglected to pursue any discovery on the jurisdictional matters.

Further, our Nevada Supreme Court in *Trump, supra*, laid out a comprehensible set of criteria for exercising specific jurisdiction over an out of state defendant, stating:

The criteria for exercising specific *in personam* jurisdiction over an out-of-state defendant has been delineated as follows:

The defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. The cause of action must arise from the consequences in the forum state of the defendant's activities, and those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

*Jarstad v. National Farmers Union*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976); *see Abbott v. Harrah*, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974); *Certain-Teed Prods. v. District Court*, 87 Nev. 18, 23, 479 P.2d 781, 785 (1971); *see also McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 816 (9th Cir. 1988). **"It is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative."** *Abbott*, 90 Nev. at 324, 526 P.2d at 76. **Furthermore, "it is the quality of these contacts... and not the quantity, that confers personal jurisdiction over a defendant."** *Brainerd* 873 F.2d at 1259.  
*Trump*, 109 Nev. at 700, 857 P.2d at 748-749 (emphasis added).

In *Trump*, the Court determined that by directing his conduct towards Nevada, Trump purposefully availed himself to the laws of the state. *Id.* at 702. Furthermore, because the causes of action directly related to Trump's conduct in Nevada, it was reasonably anticipated he could be haled into a Nevada court. *Id.* Trump also specifically targeted Nevada, availing himself to the protection of the laws of Nevada by creating an irrevocable trust in Nevada, which contained a Nevada choice of law clause. *Id.* at 702-703.

When analyzing these same factors, this Court has held that contact in Nevada unrelated to the causes of action were insufficient to subject an out of state party to personal jurisdiction.

1 *See Fullbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1001  
2 (2015). *Fullbright* arose out of complications from a real estate development project in San  
3 Antonio, Texas. *Id.* at 999. The project began in 2006 where three individuals, who were  
4 managers of a Nevada LLC called Triple L Management, began acquiring parcels of real estate  
5 in San Antonio. *Id.* Title to the property was put in the name of Verano Land Group, LP, a  
6 limited partnership created by Triple L managers. *Id.* Verano was registered as a Texas  
7 partnership. *Id.* Verano, via Triple L, sought out and retained the Texas law firm of Fulbright &  
8 Jaworski to provide Verano with legal guidance pertaining to the development project. *Id.* at  
9 999-1000. During their time as a partnership, Jane Macon, an attorney at Fulbright & Jaworski,  
10 sent multiple emails and placed many phone calls to Triple L's managers in Nevada, concerning  
11 the project. *Id.* at 1000. The billing invoices were also sent to Triple L's Nevada mailing  
12 address, which were all paid from a Nevada bank account. *Id.*

13 In 2010, after Macon traveled to Las Vegas to participate in presentations to Verano's  
14 investors, Verano's investors began to question whether Triple L and its managers were  
15 adequately representing Verano's interests. *Id.* Near the end of 2010, a supermajority of  
16 Verano's investors voted to remove Triple L from its role as Verano's general partner and  
17 replace it with a new GP. *Id.* Throughout most of 2011, Macon continued to represent Verano,  
18 and in doing so, communicated with Verano's new general partner regarding the project. *Id.*  
19 However, by late 2011, the attorney client relationship between Fulbright & Jaworski and  
20 Verano had terminated. *Id.* Then, in November 2011, Verano's new general partner re-  
21 registered Verano as a Nevada partnership. *Id.*

22 In 2012, Verano instituted the underlying action against petitioners, Fulbright &  
23 Jaworski, naming them as defendants. *Id.* The complaint alleged breach of fiduciary duty. *Id.*  
24 Petitioners filed a motion to dismiss for lack of personal jurisdiction, which Verano opposed,  
25 asserting that there was both personal and specific jurisdiction over Fulbright & Jaworski. *Id.* at  
26 1000-1001. In particular, Verano argued that Fulbright & Jaworski's contacts in with Nevada in  
27 unrelated matters were sufficient to subject the firm to general personal jurisdiction for the  
28 purposes of the underlying matter. *Id.* Additionally, Verano contended that petitioners were

1 subject to specific personal jurisdiction because they had purposefully availed themselves of the  
2 privilege of acting in Nevada by agreeing to represent a Nevada-based client, by directing  
3 correspondence to that client in Nevada, and by participating in two presentations in Nevada. *Id.*  
4 The district court agreed, denying the motion, and the petition for writ of prohibition followed.  
5 *Id.*

6 In reviewing the facts, the Nevada Supreme Court determined that Nevada did **not** have  
7 personal jurisdiction over Fulbright & Jaworski simply because it represented clients in Nevada.  
8 *Id.* at 1004. Additionally, the Court held that “[w]e are not persuaded that this evidence  
9 amounted to purposeful availment sufficient to make a prima facie showing of specific personal  
10 jurisdiction. Purposeful availment requires that ‘[t]he cause of action... arise from the  
11 consequences in the forum state of the defendant's activities.’” *Id.* at 1005, *quoting Consipio*  
12 *Holding, BV v. Carlberg*, 128 Nev. at --, 282 P.3d 751, 755 (2012) (internal quotations omitted).  
13 The Supreme Court went on, adding “[t]hus, without any evidence as to how Macon's legal  
14 advice at the two Las Vegas presentations related to Verano's causes of action against  
15 petitioners, we conclude that Macon's two trips to Nevada did not amount to petitioners  
16 purposefully availing themselves of the privilege of acting in Nevada.” *Id.*, *citing Consipio*  
17 *Holding, BV*, 128 Nev. at --, 282 P.3d at 755.

18 Here, LANDRY’S is highly distinguishable from the *Trump* case and more in line with  
19 *Fulbirght* when the same factors are analyzed. First, LANDRY’S has not purposefully availed  
20 itself of privileges in Nevada. It is anticipated that Plaintiffs will point to a Nevada business  
21 license in an attempt to establish purposeful availment, despite the case law set forth above  
22 which decided that a business license is insufficient to confer jurisdiction. The only activity  
23 alleged here is ownership, albeit distant and many times removed, of a Nevada entity (GNL,  
24 Corp.). Second, Plaintiffs’ cause of action did not arise from LANDRY’S ownership activities  
25 in Nevada. Third, LANDRY’S indirect ownership interest in GNL, Corp. falls far short of the  
26 substantial enough connection to make the exercise of jurisdiction over LANDRY’S reasonable.

27 Especially when compared to a lawyer’s representation of a Nevada client, directing  
28 correspondence to that client in Nevada, and by participating in two presentations inside the

forum jurisdiction, LANDRY'S remote ownership interest simply does not amount to purposeful availment. Discovery has uncovered no evidence to demonstrate that LANDRY'S took an active part of maintaining the escalator in question and Plaintiff's fall did not result from consequences of any of LANDRY'S ownership activities. Because the cause of action did not arise out of the non-resident defendant's acts in the forum state, jurisdiction would be unreasonable. *Munley v. Second Judicial Dist. Court*, 104 Nev. 492, 494-495, 761 P.2d 414 (1988), citing *Circus Circus Hotels, Inc. v. Superior Court*, 174 Cal.Rptr. 885, 900 (Cal.Ct.App. 1981) (nonresident defendant hotel's promotional activities in California do not, without more, operate to confer personal jurisdiction over defendant, where plaintiff sues in California for defendant's alleged negligence occurring in the course of recreational activities at defendant's hotel, even though plaintiff's sojourn outside the forum was in response to such promotional activities). Further exercise of jurisdiction, such as compelling LANDRY'S to defend itself at trial in Nevada, offends due process. As such, LANDRY'S must be dismissed.

V. CONCLUSION

After the close of discovery and at the end of the case, Plaintiffs can no longer rest on the mere allegation that LANDRY'S "owns and operates" the Golden Nugget Laughlin or has purposefully established minimum contacts with Nevada in order to establish jurisdiction. Rather, the Plaintiffs have the burden of introducing **competent evidence** of essential facts which establish a prima facie showing that personal jurisdiction exists. In light of Plaintiffs outright failure to establish jurisdiction, LANDRY'S must be dismissed before trial as Nevada's

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1 continued exercise of jurisdiction over this foreign corporation offends due process. Likewise,  
2 LANDRY'S should be deleted from the case caption.

3 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2018.

4 GRANT & ASSOCIATES

5 

6 ALEXANDRA B. MCLEOD, ESQ.

7 Nevada Bar No. 8185

8 7455 Arroyo Crossing Parkway, Suite 300

9 Las Vegas, Nevada 89113

10 *Attorney for Defendants/Third-Party Plaintiffs,*  
11 *GNL, CORP., LANDRY'S, INC. & GOLDEN*  
12 *NUGGET, INC.*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 1<sup>st</sup> day of November, 2018 I caused a true and correct copy of the foregoing **LANDRY'S, INC.'S MOTION TO DISMISS FOR LACK OF GENERAL OR PERSONAL JURISDICTION** 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

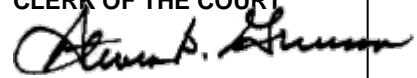
— Pursuant to EDCR 7.26, to be sent via facsimile; and/or

X 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/ Camie DeVoge*

\_\_\_\_\_  
An Employee of GRANT & ASSOCIATES





**ERR**

LEE J. GRANT II, ESQ.  
Nevada Bar No. 11808  
ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.  
Nevada Bar No. 8185  
GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
Tel.: (702) 940-3529  
Fax: (855) 429-3413  
Alexandra.M<sup>c</sup>Leod@aig.com

Attorney for Defendants/Third-Party Plaintiffs,  
GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

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

vs.

**ERRATA TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT ON LIABILITY AND  
PUNITIVE DAMAGES**

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,  
ROE BUSINESS ENTITIES 1-100,

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

THYSSENKRUPP ELEVATOR  
CORPORATION a foreign corporation; DOES  
1-75; ROE CORPORATION 1-75 and ROE  
CORPORATION 1-25,

**DATE OF HEARING: 12/4/18**  
**TIME OF HEARING: 9:30 A.M.**

Third-Party Defendants

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 submits this Errata to its Motion for Summary Judgment on Liability and Punitive Damages. In  
2 the original Motion, Exhibit "B" referenced the incorrect bate stamp numbers. The correct bate  
3 stamp number of the video being referenced is GNL000052.

4 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of November, 2018.

5 GRANT & ASSOCIATES

6 

7 ALEXANDRA B. MCLEOD, ESQ.

8 Nevada Bar No. 8185

9 7455 Arroyo Crossing Parkway, Suite 300

10 Las Vegas, Nevada 89113

11 *Attorney for Defendants GNL, LANDRY'S, & GNI*

12 **CERTIFICATE OF SERVICE**

13 I certify that I am an employee of GRANT & ASSOCIATES and that on this 8<sup>th</sup> day of  
14 November, 2018 I caused a true and correct copy of the foregoing **ERRATA TO**  
15 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND**  
16 **PUNITIVE DAMAGES** to be served as follows:

17 \_\_\_\_\_ By placing the same to be deposited for mailing in the United States Mail, in a  
18 sealed envelope upon which first class postage was prepaid in Las Vegas,  
19 Nevada; and/or

20 \_\_\_\_\_ Pursuant to EDCR 7.26, to be sent via facsimile; and/or

21   X   Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services  
22 by the document(s) listed above to the Counsel set forth on the service list.

23 */s/ Camie DeVoge*

24 \_\_\_\_\_  
25 An Employee of GRANT & ASSOCIATES

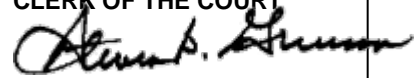
# EXHIBIT B

# EXHIBIT B

JNB00873

# DVD of Surveillance Video Footage

Will be delivered to  
Judge via hard copy of  
Motion. The same has  
been provided to  
counsel previously as  
GNL000052



**MLIM**  
LEE J. GRANT II, ESQ.  
Nevada Bar No. 11808  
ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.  
Nevada Bar No. 8185  
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Alexandra.M<sup>c</sup>Leod@aig.com

Attorney for Defendants/Third-Party Plaintiffs,  
GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

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

vs.

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,  
ROE BUSINESS ENTITIES 1-100,

**DEFENDANTS', GNL, CORP.,  
LANDRY'S, INC. & GOLDEN  
NUGGET, INC.'S MOTION IN  
LIMINE #1 TO EXCLUDE SRINIVAS  
NALAMACHU, M.D. FOR  
UNAUTHORIZED PRACTICE OF  
MEDICINE IN NEVADA**

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

THYSSENKRUPP ELEVATOR  
CORPORATION a foreign corporation; DOES  
1-75; ROE CORPORATION 1-75 and ROE  
CORPORATION 1-25,

**Date of hearing:**

Third-Party Defendants

**Time of hearing:**

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

GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
Telephone No. (702) 940-3529  
Facsimile No. (855) 429-3413

1 submit the instant Motion *in Limine* #1 to Exclude Srinivas Nalamachu, M.D. for Unauthorized  
2 Practice of Medicine in Nevada in the above-entitled action, pursuant to NRCP 16(c)(3) and  
3 EDCR 2.47.

4 This Motion is made and based upon all of the papers and pleadings on file herein, the  
5 Points and Authorities hereinafter to follow, and such oral argument and testimony as this  
6 Honorable Court may entertain at a hearing of the subject Motion, if so desired.

7 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2018.

8 GRANT & ASSOCIATES

9 

10 ALEXANDRA B. MCLEOD, ESQ.

11 Nevada Bar No. 8185

12 7455 Arroyo Crossing Parkway, Suite 300

13 Las Vegas, Nevada 89113

14 Attorney for Defendants GNL, LANDRY'S, & GNI

15 NOTICE OF MOTION

16 TO: ALL PARTIES HERETO; and

17 TO: COUNSEL OF RECORD FOR ALL PARTIES HERETO:

18 PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
19 DEFENDANTS' MOTION *IN LIMINE* #1 TO EXCLUDE SRINIVAS NALAMACHU, M.D.  
20 FOR UNAUTHORIZED PRACTICE OF MEDICINE IN NEVADA on for hearing before the  
21 above-entitled Court on the 18 day of December, 2018, at the hour of 9 00 a.m./~~p.m.~~, in  
22 Department 31, or as soon thereafter as counsel may be heard.

23 DATED this 13<sup>th</sup> day of November, 2018.

24 GRANT & ASSOCIATES

25 

26 ALEXANDRA B. MCLEOD, ESQ.

27 Nevada Bar No. 8185

28 7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

Attorney for Defendants GNL, LANDRY'S, & GNI

**DECLARATION OF ALEXANDRA B. MCLEOD, ESQ.**  
**IN SUPPORT OF MOTIONS *IN LIMINE* AND IN COMPLIANCE WITH EDCR 2.47**

I, ALEXANDRA B. MCLEOD, ESQ., under penalty of perjury, declare and say:

1. I am an attorney duly licensed to practice law in the State of Nevada and am employed by the law firm of **GRANT & ASSOCIATES**, counsel of record for Defendants GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC. in case number A-16-739887-C currently pending before the Eighth Judicial District Court of Nevada.
2. I have personal knowledge as to the facts set forth in the instant declaration. If called upon to testify, I could and would do so competently and would similarly testify to the subsequent facts as set forth in this declaration.
3. Pursuant to EDCR 2.47, a meet and confer was held between all counsel on November 13, 2018, at 2:30 p.m. to discuss the filing of pre-trial motions and motions *in limine*. Counsel attending the conference were Rebecca Mastrangelo, Esq., Mohamed Iqbal, Esq., and myself. The parties reiterated their respective positions but no stipulation could be reached at that time regarding this motion.
4. Specifically, I explained the reasons the defense believed Dr. Nalamachu to have engaged in the unauthorized practice of medicine, but counsel for Plaintiffs could not agree to withdraw their expert at this time. Plaintiffs' counsel did agree to review the advisory opinion regarding the definition of the practice of medicine.
5. Counsel intends to make further attempts to resolve the matter, and if the Parties are able to agree, the motion will be withdrawn in the interests of judicial economy.

Pursuant to NRS 53.045, I declare under penalty of perjury that the contents of this declaration are true and correct. Further, your Declarant sayeth naught.

Dated this 13<sup>th</sup> day of November, 2018.

BY



ALEXANDRA B. MCLEOD, ESQ  
Nevada Bar No. 8185

## POINTS &amp; AUTHORITIES

**I. INTRODUCTION & STATEMENT OF RELEVANT FACTS**

Plaintiff Joe Brown alleges a broken neck resulting from a fall on the down escalator at the Golden Nugget Hotel & Casino in Laughlin, Nevada on May 12, 2015 at 7:28 pm. Plaintiff's Second Amended Complaint alleges the escalator was too loose, unstable, narrow, and shaky (at ¶¶13-14). To the contrary, State Inspector Steve Robertson determined that the incident occurred when Plaintiff stepped in between steps and lost his balance when the steps began to descend. ThyssenKrupp Elevator was the servicing company contracted to maintain and repair the down escalator at the Golden Nugget Laughlin prior to and at the time of Plaintiff's fall.

Brown was using a cane as a walking aid at the time of his fall and admittedly had been drinking alcohol. He was transported from the casino to a hospital in Arizona and later flown to Sunrise Hospital in Las Vegas, where it was confirmed that he sustained an inoperable, acute fracture of the C1 anterior and posterior arch. Meanwhile, Plaintiff Nettie Brown's claims are limited to loss of consortium.

With that background in mind, Plaintiffs retained Srinivas Nalamachu, M.D., a Kansas doctor,<sup>1</sup> to perform a limited record review<sup>2</sup> and Independent Medical Evaluation/Rule 35 Examination of Plaintiff Joe Brown. Dr. Nalamachu did perform an examination in Plaintiff's Las Vegas home on February 16, 2018.<sup>3</sup> Following his review of select medical records and examination of Mr. Brown, Dr. Nalamachu formulated four opinions and authored his February 25, 2018 report.<sup>4</sup> However, because his examination of Plaintiff in Nevada was unauthorized, Dr. Nalamachu's testimony and opinions must be excluded from trial.

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<sup>1</sup> See EXHIBIT A, Curriculum Vitae of Srinivas Nalamachu, M.D. at pages 1 "clinical experience" and 22 "licensure."

<sup>2</sup> See EXHIBIT B, Report of Independent Medical Evaluation, dated Feb. 25, 2018, at page 1 "list of medical records provided."

<sup>3</sup> *Id.* at page 1, ¶1.

<sup>4</sup> *Id.* at page 3, under heading "Impression."



## II. EVIDENCE MUST BE EXCLUDED WHENEVER ITS PROBATIVE VALUE IS OUTWEIGHED BY PREJUDICE

A motion *in limine* is a motion “at the outset” or one made “preliminarily.” Black’s Law Dictionary, 803 (8th ed. 2004). The authority for consideration of motions *in limine* arises out of NRCp 16(c)(3) and its discretionary authority as granted for “advance rulings from the court on the admissibility of evidence.” The Supreme Court has approved the use of motions *in limine* in a number of cases by recognizing the legitimacy of such pre-trial motion practice and the courts’ authority to rule on these motions. *See, Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980); *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1976). In *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318 (1995) the Nevada Supreme Court cited *Jeep v. Murray*, 101 Nev. 640 (1985) for the proposition that “the trial judge is vested with discretion to simplify the issues” and to exclude evidence more prejudicial than probative. In performing its gatekeeper function, the trial court is guided by NRS 48.025(1), which provides that only “relevant evidence” is admissible.

“[T]he purpose of a pretrial motion is to avoid cluttering up the trial and to reduce the need for sidebar conferences and arguments outside the presence of the jury.” *Richmond v. State*, 118 Nev. 924, 931-32, 59 P.3d 1249, 1254 (2002). Motions *in limine* can be utilized to narrow the issues in a case to make for a quicker trial, to assist with possible settlement, and to make the case easier for the jury to understand.

Of significance is the issue of preserving issues for appeal. The Nevada Supreme Court has concluded that by making a matter the subject of a motion *in limine*, a party has preserved for appeal even if no further objections are made during the course of the trial:

We, therefore, hold that where an objection has been fully briefed, the district court has thoroughly explored the objection during a hearing on a pretrial motion, and the district court has made a definitive ruling, then a motion *in limine* is sufficient to preserve an issue for appeal. To the extent that *Daly*, *Staude*, and *Rice* are inconsistent with our holding today, they are modified. *Id.*, 118 Nev. at 932.

Granted, where an order *in limine* is conditional, contemporaneous objections may still be required. *BMW v. Roth*, 127 Nev. Adv. Op. 11, 252 P.3d 649 (2011). Regardless of a court’s initial ruling on a motion *in limine*, the court may adjust a motion *in limine* during the course of a trial. *Farfaras v. Citizens Bank & Trust of Chi.*, 433 F.3d 558, 565 (7th Cir. 2006) (citing

1 *Luce v. United States*, 469 U.S. 38, 41-42, 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984) (“Indeed  
2 even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound  
3 judicial discretion, to alter a previous *in limine* ruling.”). In addition, if the *in limine* procedural  
4 environment makes it too difficult to evaluate an evidentiary issue, it is appropriate to defer  
5 ruling until trial. *See Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir.  
6 1997) (delaying until trial may afford the judge a better opportunity to estimate the evidence's  
7 impact on the jury).

8 **III. THE COURT MUST ACT AS GATEKEEPER TO EXCLUDE NALAMACHU’S**  
9 **UNAUTHORIZED PRACTICE OF MEDICINE IN THE CASE AT BAR**

10 *Hallmark* stands for the well-established proposition that expert testimony must have a  
11 sufficient foundation before it may be admitted into evidence. *Hallmark v. Eldridge*, 124 Nev.  
12 492, 503-04, 189 P.3d 646, 653-54 (2008); *see also Daubert v. Merrell Dow Pharm., Inc.*, 509  
13 U.S. 579, 590 (1993); *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043 (9th Cir.),  
14 *cert. denied* 135 S. Ct. 870 (2014); *Howard Entm't, Inc. v. Kudrow*, 146 Cal. Rptr. 3d 154, 170  
15 (Ct. App. 2012). This Court has the duty to act as gatekeeper and to exclude expert opinions  
16 which are not the product of reliable methodology, *Id.*, at 500, 189 P.3d at 651, or, here, which  
17 are the product of unauthorized practice of medicine in our State. *See generally* NAC 630.225.  
18 Our Nevada Supreme Court previously determined that the District Court is in the best position  
19 to determine the helpfulness of proposed testimony in light of the material facts in issue.  
20 *Krause, Inc. v. Little*, 117 Nev. 929, 34 P.3d 566 (2001). Unless the District Court’s exercise of  
21 discretion is manifestly wrong under NRS 50.275, it will be upheld by the Nevada Supreme  
22 Court.

23 Occasionally the need arises in a case to retain a physician from another state to obtain a  
24 Rule 35 examination of a litigant. If the physician does not possess a current Nevada medical  
25 license, there is a legitimate question as to whether the physician can in fact perform an  
26 examination in Nevada without a license. In a hearing of the Nevada State Board of Medical  
27 Examiners on September 14, 2007 on a Petition for Advisory Opinion from the Board regarding  
28 the Scope and Definition of the Practice of Medicine in NRS 630.020, the Board unanimously

1 declared that independent medical examinations are the practice of medicine.<sup>5</sup> As such, out of  
2 state physicians, such as Dr. Nalamachu, are barred from performing IMEs in Nevada.

3 There is at least one solution to this conundrum, similar to the pro hac vice process for  
4 attorneys. It appears the Nevada State Board of Medical Examiners will permit the physician  
5 who is not licensed in Nevada to perform the examination if NAC 630.225(1) is satisfied. This  
6 requires as follows:

7 Any physician licensed in this State shall notify the Board if any unlicensed  
8 physician comes into this State for consultation with or assistance to the physician  
9 licensed in this State and specify the date of the consultation or assistance,  
whether the unlicensed physician has provided such consultation or assistance, or  
both, to the licensed physician in the past, and the date of that consultation and  
assistance.

10 A “host” doctor must be willing to effectively chaperone the process, but this satisfies the  
11 regulation where a suitable Nevada licensed physician cannot be located.

12 In the case at bar, Plaintiffs retained out-of-state physician, Srinivas Nalamachu, M.D.,  
13 licensed in Kansas and Missouri but not in Nevada, to perform a Rule 35 examination. The  
14 examination apparently went forward in Mr. Brown’s Las Vegas residence, not in a hospital,  
15 clinic, or offices of any Nevada host doctor. As such, Nalamachu’s examination and resulting  
16 opinions are unauthorized and inherently unreliable and Dr. Nalamachu must be excluded from  
17 testifying at the time of trial.

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28 <sup>5</sup> See **EXHIBIT C**, Nevada State Board of Medical Examiners Minutes of Open Session Board Meeting,  
September 14, 2007, at pp 21-22.

1 **IV. CONCLUSION**

2 WHEREFORE, based on the reasoning above, the Golden Nugget Laughlin Defendants  
3 request that the Court issue an order *in limine* as follows:

4 1) Excluding testimony, reports, and opinions of Dr. Srinivas Nalamachu.

5 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2018.

6 GRANT & ASSOCIATES

7 

8 ALEXANDRA B. MCLEOD, ESQ.

9 Nevada Bar No. 8185

10 7455 Arroyo Crossing Parkway, Suite 300

11 Las Vegas, Nevada 89113

12 *Attorney for Defendants/Third-Party Plaintiffs,*  
13 *GNL, CORP., LANDRY'S, INC. & GOLDEN*  
14 *NUGGET, INC.*

15 **CERTIFICATE OF SERVICE**

16 I certify that I am an employee of GRANT & ASSOCIATES and that on this 13<sup>th</sup> day of  
17 November, 2018 I caused a true and correct copy of the foregoing DEFENDANTS' MOTION  
18 IN LIMINE #1 TO EXCLUDE SRINIVAS NALAMACHU, M.D. FOR UNAUTHORIZED  
19 PRACTICE OF MEDICINE IN NEVADA to be served as follows:

20  
21 \_\_\_\_\_ By placing the same to be deposited for mailing in the United States Mail, in a  
22 sealed envelope upon which first class postage was prepaid in Las Vegas,  
23 Nevada; and/or

24 \_\_\_\_\_ Pursuant to EDCR 7.26, to be sent via facsimile; and/or

25 X Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services  
26 by the document(s) listed above to the Counsel set forth on the service list.

27 */s/ Camie DeVoge*

28 An Employee of GRANT & ASSOCIATES

# Exhibit “A”

JNB00883

**Srinivas Nalamachu, MD**

7100 College Blvd  
Overland Park, KS 66210  
Phone 913-599-2440  
Mobile 913-314-7101  
Fax 913-599-5252  
*nalamachu@yahoo.com*

**Clinical experience:**

2017	Founder and Chief Medical Officer Mid America PolyClinic Overland Park, KS
2006- 2017	President and Medical Director International Clinical Research Institute Inc., Overland Park, KS
2015-2017	President and Medical Director, Pain Management Institute Overland Park, KS
1998-1999	Staff Physician, Physical Medicine & Rehabilitation Jamaica Hospital Medical Center Queens, NY
2011-2015	Staff Physician, Physical Medicine and Rehabilitation Eastern Kansas VA Healthcare system

**Academic appointments:**

Current	Clinical Associate Professor KC University of Medicine and Biosciences Kansas City, MO
2014-2016	Adjunct Associate Professor Temple University School of Medicine Philadelphia, PA
2007-2016	Clinical Assistant Professor Department of Physical Medicine and Rehabilitation Kansas University Medical Center Kansas City, KS
1998-1999	Clinical Instructor Rehabilitation Medicine Department Albert Einstein College of Medicine, NY

JNB00884

**Medical education and Residency training:**

1995-1998	Residency Training Physical Medicine and Rehabilitation Temple University Hospital Moss Rehabilitation Hospital Philadelphia, PA
1994-1995	Residency in Internal Medicine Albert Einstein Medical Center
1982-89	Medical Education and Mandatory Internship Kakatiya Medical College Warangal, India
1978-82	Pre-Medical Education Osmania University, India

**Investigator Initiated Research:**

2014-2015	Principal Investigator, Open-label, parallel group, flexible dosing and titration study to evaluate the efficacy and safety of Xartemis XR® in the management of post-operative pain following an outpatient arthroscopic knee surgery. (Single center study), funded by Mallinckrodt ®
2011-2012	Principal Investigator, Single-center, open label study to evaluate the FORTESTA ® as a treatment for the efficacy and safety with opioid induced secondary hypogonadism, funded by Endo
2011-2012	Principal Investigator, Evaluating the pharmacokinetic profile of Hydromorphone in patients taking Hydrocodone/APAP in steady state vs. non steady state groups, funded by Mallinckrodt
2011-2012	Principal Investigator, Randomized, parallel-group, open-label, dose finding study to evaluate the efficacy of Synera ® patch compared to Naproxen sodium for the treatment of lateral and medial epicondylitis of the elbow, funded by NUVO.
2011-2012	Principal Investigator, Single center study to evaluate the dissolution time of different strengths of Abstral ®, funded by ProStrakan
2010- 2011	Lead Investigator, Open label exploratory study to evaluate the efficacy and safety of OROS Hydromorphone in neuropathic pain, funded by Mallinckrodt

2010- 2011	Lead Investigator, Open label exploratory study to evaluate the efficacy and safety of PENNSAID® in heel pain, funded by Mallinckrodt
2008-2009	Open label study to evaluate the efficacy of Synera ® in patients with pain secondary to carpal tunnel syndrome, funded by ZARS
2007-2008	Evaluating the efficacy and safety of extended release Oxymorphone (Opana ER ®) in patients with neuropathic pain: An open label study, funded by Endo
2003-2004	Principal Investigator, "Open label study Lidoderm Patch vs. Anesthetic and Steroid injections in Carpal tunnel syndrome", funded by Endo
2004-2005	Lead Investigator, "A Multicenter, Parallel study comparing Naprosyn vs. 5% Topical Lidocaine patch in Carpal tunnel syndrome", funded by Endo
2003-2004	Principal Investigator, "Prospective, Open-Label Assessment of Botox vs. Anesthetic/Steroid combination in the treatment of Cervicothoracic Myofascial pain", funded by Allergan
2001-2002	Principal Investigator, "Double blind placebo-controlled study of efficacy of Myobloc in Fibromyalgia, funded by Elan

**Industry sponsored research:**

2017-Current	Principal Investigator, Safety and Efficacy of CNTX-4975 in subjects with chronic moderate to severe osteoarthritis knee pain
2016	Principal Investigator Nurse educator program for Opioid safety Sponsored by USFDA
2015-2016	Principal Investigator Safety and Efficacy of Fulranumab in OA of Knee Janssen Pharma
2015-2016	Double blind study to evaluate the safety and efficacy of KF 7013-01 in CRPS Grunenthal Pharma
2015-2016	Principal Investigator, DS 5565 efficacy and safety studies, Daiichi Sankyo Pharma
2015-2016	Principal Investigator

**JNB00886**



	Opioid Induced Constipation safety clinical trial Shionogi Pharmaceuticals
2015-2016	Principal Investigator, OC-EG-302 and 303 clinical trials Egalet Pharmaceuticals
2013-2015	Principal Investigator, Double blind to evaluate Dysport with 2 cc dilution in Cervical Dystonia, Ipsen Pharmaceuticals
2012-2013	Principal Investigator, Double blind study to evaluate the efficacy of CB-5945 in Opioid induced constipation in non-cancer pain, Cubist Pharmaceuticals
2012-2013	Principal Investigator, Double blind study to evaluate the efficacy of NKTR-181 in OA of knee, Nektar Pharmaceuticals
2012-2013	Lead Investigator, Open label to study to evaluate the safety and efficacy of Cryotouch ® device in Occipital Neuralgia, Myoscience corporation
2012-2013	Lead Investigator, Open label to study to evaluate the safety and efficacy of Cryotouch ® device in forefoot pain secondary to nerve entrapment, Myoscience corporation
2012-2013	Principal Investigator, Double blind study to evaluate the efficacy and safety of BEMA Buprenorphine in chronic low back pain in opioid naïve patients, Endo pharmaceuticals
2012-2013	Principal Investigator, Double blind study to evaluate the efficacy and safety of OXYDET001 in chronic low back pain, Collegium pharmaceuticals
2012-2013	Principal Investigator, Double blind study to evaluate the efficacy and safety of BEMA Buprenorphine in chronic low back pain in opioid tolerant patients, Endo pharmaceuticals
2012-2013	Principal Investigator, Open label extension study to evaluate the safety of BEMA Buprenorphine, Endo pharmaceuticals
2012-2013	Principal Investigator, Double blind to evaluate the efficacy of ZAL-201 in Lumbosacral radiculopathy, Zalicus Pharmaceuticals
2011-2012	Principal Investigator, Evaluation of the burden of illness among adults in the United states with Neuropathic Pain

JNB00887

2011-Current	Principal Investigator, Open label study to evaluate the safety and efficacy of once daily Hydrocodone in chronic low back pain and Osteoarthritis, Purdue Pharma
2011-Current	Principal Investigator, Double blind study to evaluate the efficacy and safety of Oxycodone/Nalaxone in chronic low back pain, Purdue Pharma
2011-Current	Principal Investigator, Double blind study to evaluate the efficacy of Botulinum toxin type A (Dysport) in lower limb spasticity, Ipsen
2011-Current	Principal Investigator, Double blind study to evaluate the efficacy of Botulinum toxin type A (Dysport) in upper limb spasticity, Ipsen
2010-2012	Principal Investigator, Double blind study to evaluate the efficacy and safety of buccal buprenorphine in chronic low back pain, BDSI
2010-2012	Principal Investigator, Open label study to evaluate the safety and efficacy of buccal buprenorphine in chronic pain, BDSI
2010-2012	Principal Investigator, Double blind study to evaluate the safety and efficacy of extended release Hydrocodone low back pain (Phase II)-. Zogenix
2010-2012	Principal Investigator, Open label extension study to evaluate the safety and efficacy of extended release Hydrocodone in chronic pain (Phase III), Zogenix
2010-2012	Principal Investigator, Double blind study to evaluate the efficacy and safety of extended release Hydrocodone in chronic low back pain (Phase II), Cephalon/TEVA
2010-Current	Principal Investigator, Open label study to evaluate the safety efficacy of extended release Hydrocodone in chronic pain (Phase III), Cephalon/TEVA
2009- Current	Principal Investigator, A Randomized, Double-Blind, Parallel-Group Study of Tapentadol Immediate Release vs. Oxycodone Immediate Release for the Treatment of Acute Low Back Pain
2009- Current	Principal Investigator,

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	Double blind, placebo-controlled study to evaluate the safety and efficacy of Axamadol in patients with chronic low back pain
2009- Current	Principal Investigator, Double blind, placebo-controlled study to evaluate the safety and efficacy of Axamadol in patients with painful diabetic neuropathy
2008-2009	Principal Investigator, Multicenter study to evaluate the safety and efficacy of NMED-1077 in opioid tolerant patients for the treatment of chronic low back pain
2008-2009	Principal Investigator, A Multicenter, Randomized, Placebo-Controlled, Crossover Study for the Evaluation of the Safety, Tolerability and Efficacy of ARX-F02 Compared to Placebo in the Treatment of Cancer Breakthrough Pain
2007-2008	Principal Investigator, Multicenter study to evaluate the safety and efficacy of NMED-1077 in opioid tolerant patients for the treatment of chronic Osteoarthritis pain in hip and knee.
2007-2008	Principal Investigator, A phase II, Double-blind, Placebo controlled, Randomized, Multicenter crossover study to investigate topical administration of KD7040 for safety, efficacy, and pharmacokinetic profile in subjects with Post- Herpetic Neuralgia
2007-2008	Lead Investigator, An Open-label, two-stage, phase II study to explore the titration schedule for transitioning to severe chronic pain from current opioid therapy to the Sufentanil transdermal therapeutic system
2007-2008	Principal Investigator, Efficacy and Safety of Fentanyl Buccal Tablets Compared with Oxycodone for the Management of Breakthrough Pain
2006-2007	Principal Investigator, Open-Label study to evaluate the effect of treatment with Fentanyl Buccal Tablets on Pain Anxiety Symptoms When Used for the Management of Breakthrough Pain
2007-2008	Principal Investigator, A Phase III trial to evaluate the effectiveness and Safety of Tapentadol Extended Release (ER) in Patients with Moderate to Severe Chronic Pain Due to Osteoarthritis of the Knee
2007-2008	Principal Investigator,

	An Open-Label Extension study with flexible Dosing of Extended-Release (ER) Tapentadol to treat Patients with Moderate to Severe Chronic low back Pain
2007-2008	Principal Investigator, Long term safety study of Nasalfent (Fentanyl Citrate Nasal Spray) for Treatment of Breakthrough Cancer Pain in opioid tolerant patients
2007-2008	Principal Investigator, Efficacy & Safety Study of Nasalfent (Fentanyl Citrate Nasal Spray) for Treatment of Breakthrough Cancer Pain in opioid tolerant patients
2007-2008	Principal Investigator, A Multiple-Dose, Non-Randomized, Open-Label, Multicenter Study to Evaluate the Long-Term Safety and Effectiveness of EN3267 in the Treatment of Breakthrough Pain in Cancer Patients
2007-2008	Principal Investigator, A Double-Blind, Randomized, Placebo-Controlled, Multicenter Study to Evaluate the Efficacy and Safety of EN3267 for Treatment of Breakthrough Pain in Opioid Tolerant Cancer Patients Followed by an up to 12-Month, Non-Randomized, Open-Label Extension to Assess Long-Term Safety
2006-2007	Principal Investigator, A Multicenter, Randomized, Double Blind, Placebo-Controlled, Phase 3 Efficacy Study of Kadian NT (Morphine Plus Naltrexone Hydrochloride ER) Capsules in Subjects with Moderate to Severe Chronic Pain Due to Osteoarthritis of the Hip or Knee
2006-2007	Principal Investigator, PRECISION: Prospective Randomized Evaluation of Celecoxib Integrated Safety vs. Ibuprofen or Naproxen
2006-2007	Principal Investigator, GI-REASONS- A Trial of GI Safety of Celecoxib Compared with Non-Selective Nonsteroidal Anti-inflammatory Drugs (NSAIDs)
2006-2007	Principal Investigator, A six-week double-blind, randomized, multicenter comparison study of the analgesic effectiveness of Celecoxib 200 mg BID compared to Tramadol Hydrochloride 50 mg QID in subjects with chronic low back pain
2005-2006	Lead Investigator, "A Randomized, double-blind study comparing the safety and efficacy of the Lidocaine patch 5% with placebo in patients with Pain from Carpal tunnel syndrome"

2005-2006	Principal Investigator, "An Open-label long term safety study to evaluate the safety of the Matrix Fentanyl for the treatment of moderate to severe non-malignant chronic pain"
2006-2007	Principal Investigator, "A Double-blind, randomized, placebo-controlled study to evaluate the efficacy, safety and tolerability of ORAVESCENT® Fentanyl citrate in Opioid-Tolerant patients with Cancer and breakthrough pain."
2005-2007	Principal Investigator, "An open label, 18-month study to evaluate the safety, tolerability and efficacy of ORAVESECENT ® Fentanyl citrate for the management of breakthrough pain in Opioid tolerant patients with chronic noncancer pain"
2005-2006	Principal Investigator, "A Double-blind, randomized, placebo-controlled study to evaluate the efficacy and safety of ORAVESCENT® Fentanyl citrate for the management breakthrough pain in Opioid-tolerant patients with chronic neuropathic pain"
2005-2006	Principal Investigator, A Double-blind, randomized, placebo-controlled study to evaluate the efficacy and safety of ORAVESCENT® Fentanyl citrate for the management breakthrough pain in Opioid-tolerant patients with chronic low back pain"
2004-2005	Principal Investigator, "A Randomized, double-blind study comparing the efficacy of Lidocaine patch 5% patch with placebo in patients with chronic axial low back pain"
2004-2005	Principal Investigator, "An open label titration followed by a randomized, double-blind, placebo-controlled study to assess the efficacy, tolerability and safety of Oxymorphone extended release tablets in Opioid-naïve patients with chronic low back pain"
2004-2005	Principal Investigator, "An open label titration followed by a randomized, double-blind, placebo-controlled study to assess the efficacy, tolerability and safety of Oxymorphone extended release tablets in Opioid-experienced patients with chronic low back pain"
2004-2005	Principal Investigator, Randomized, Placebo-controlled, parallel study of the safety and efficacy of Botox in subjects with Post Herpetic Neuralgia"
2004- 2005	Principal Investigator, "A Multicenter Study to Evaluate the Responsiveness of Seven Functional Tasks in patients with Post-Stroke Upper Limb Spasticity receiving a Double-Blind, Placebo Controlled"

	BOTOX Purified Neurotoxin Complex Treatment followed by an Open Label BOTOX treatment"
2004	Principal Investigator, "A Multicenter Study to Evaluate the Reliability & Clinical Meaningfulness of Seven Functional Tasks on Post-stroke subjects with and without Wrist and Finger Flexor Spasticity"
2003 -2004	Principal Investigator, "A Multicenter, Open-Label Study of the Safety of Repeated Doses of BOTOX for the treatment of Focal, Upper Limb Post Stroke Spasticity"
2003-2004	Principal Investigator, "Double-Blind, Placebo Controlled Study of the Efficacy and Tolerability of Once Daily Celebrex vs. Placebo in the Treatment of Subjects with Osteoarthritis of the Knee Non-Responsive to Naproxen and Ibuprofen"
2001-2002	Principal Investigator, Medical Index of Neuromuscular Diseases Registry
2002	Principal Investigator, "Multicenter center study to evaluate the efficacy of Lidoderm patch in Neuropathic pain and Osteoarthritis of the Knee"
2001	Sub Investigator, "Double blinded study to evaluate the efficacy of Valdecocib as an adjunct to Opiates in Cancer Pain"
2000-2001	Sub Investigator, "Double blinded placebo-controlled study of Nefirecetam in patients with post stroke depression"
2000	Principal Investigator, Lidoderm Phase IV study for Post Herpetic Neuralgia
1999	Principal Investigator, Pain relief study for Ultram Gordon Black Research Corporation
1993-1994	Post Doctoral Research Associate Albert Einstein College of Medicine

**Safety consulting Experience:**

2015-Current	Chief medical adviser and safety consultant for respiratory depression studies, Kashiv Pharma, Bridgewater, NJ
2015- Current	Consultant, Safety review committee

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Single and Multiple Ascending Studies to evaluate the respiratory depression with Sublingual Fentanyl in Opioid naïve patients  
 Insys Therapeutics, Glendale, AZ

2015-Current                      Independent Physician,  
 DSMB, PRA

**Clinical development/commercialization experience:**

2015-2016	Clinical and Safety consultant, PRA Health sciences
2011-2014	Consultant, Myoscience
2011-2012	Speakers Bureau Archimedes Pharma
2010-2014	Consultant and Speakers bureau ProStrakan
2010-2015	Advisor and Speaker Bureau Ipsen Pharmaceuticals
2009-2015	Consultant Grunenthal AG
2010-2013	Consultant Nuvo Research
2009-2013	Consultant Clinical development team Collegium Pharmaceuticals
2009- 2010	Consultant for Clinical research and REMS Neuromed
2008- 2009	Consultant and Speakers bureau King Pharmaceuticals
2007- 2010	Research Consultant Kalypsys (Biotech Company)
2007- 2009	Research Consultant Xenoport (Biotech Company)
2007- 2010	Consultant Acel Rx (Biotech Company)
2009- 2012	Speakers Bureau

	Eli Lilly and Company
2005-2015	Research Consultant United Biosource Corporation (CRO)
2005-Current	Scholar/Advisor, GLG leadership councils New York, NY
2006-Current	Advisor, Guidepoint Global (Global advisors) New York, NY
2004-Current	Research Consultant and Speakers Bureau Cephalon/TEVA
2004- Current	Research Consultant and Speakers bureau Endo Pharmaceuticals
2001-2010	Consultant Pfizer Arthritis and Pain Division
2000-2012	Research Consultant and Speakers Bureau Pricara Pharmaceuticals Pain Management division
2001-2011	Research Consultant and Injection trainer Allergan
2005-2010	Consultant and Injection trainer Solstice Neurosciences
2003-2004	Speakers Bureau Organon Pharmaceuticals
2009-2010	Reviewer, Medical Science Monitor
2000-2002	Reviewer, Archives of Physical Medicine and Rehabilitation
2008-Current	Reviewer, Indian Journal of Neurology
2012-Current	Reviewer, Pain Medicine
2013-Current	Co-chair, Physician Advisory council, KemPharm
2012-Current	Scientific Advisory Board, Collegium Pharmaceuticals
2014-Current	Scientific Advisory Board, Scilex Pharmaceuticals
2012-2015	Consultant and Speaker, Iroko Pharmaceuticals

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2013-Current	Consultant, Depomed
2013-Current	Speaker, Mundipharma (Latin America division)

**Leadership, committee experience and awards:**

2006-2007	Board of Directors Mid continent Girl Scouts council
2014-Current	Vice president, Board of Directors Alliance for patient access Chair, Pain therapy group
2009-Current	Editorial board, Pain Clinician
2013-Current	Editorial board, World Journal of Anesthesiology
2013-Current	Editorial board, Pain week Journal
2015- Current	Editorial board, Practical Pain management
2016- Current	Editorial board, Journal of Pain Research
August 2006	Innovation in Excellence award, Allergan Neurosciences
2011-Current	Co-chair, Pain Week scientific committee
2011-2012	AAPM subcommittee for Clinical Research
2012- 2106	Collaboration with FDA on Safe Use initiative
2012	Advisory Board, Pain and Therapy, Springer publishing
2012	Medical Director, Outcomes Research, NEMA Research
2014	Professional leader of the year award, Asian American Chamber of Commerce of Kansas City

**Publications:**

1. Lidocaine Patch 5% with systemic analgesics such as Gabapentin: A rational polypharmacy for the treatment of chronic pain: Pain Medicine Vol 4 Number 4 2003
2. Author of the Chapter Osteoporosis (Primary) in E-Medicine's electronic text book of Physical Medicine and Rehabilitation. 2004-Current
3. Regulation of Carboxypeptidase E- Effect of Ca++ on enzyme activity and stability: Journal of Biological Chemistry 1994; 269:15. 1192-1195
4. Review article "Topical 5% Lidocaine in the treatment of Neuropathic Pain" Journal of neuropathic pain and symptom palliation, Vol 2, No 4, 2006
5. Lidocaine patch 5% for Carpal Tunnel Syndrome: How it compares with injections: Original research article. "Journal of Family Practice" March 2006

6. The Pain Quality Assessment Scale (PQAS®): Assessment of Pain quality in Carpal tunnel syndrome”: - Published in “Journal of Pain” Vol.7 2006
7. A Comparison of the Lidocaine Patch 5% vs. Naproxen 500 mg Twice Daily for the Relief of Pain Associated with Carpal Tunnel Syndrome: A 6-Week, Randomized, Parallel-Group Study- “Medscape online Journal of Medicine” in 2006
8. Efficacy and long-term tolerability of sublingual fentanyl orally disintegrating tablet in the treatment of breakthrough cancer pain- Current Medical Research and Opinion, December 2009
9. Long-term effectiveness and tolerability of sublingual fentanyl citrate orally disintegrating tablet for the treatment of breakthrough cancer pain- “Current Medical Research and Opinion”
10. Efficacy and Tolerability of Cyclobenzaprine Extended Release for Acute Muscle Spasm: A pooled analysis. Postgraduate Medicine Vol 122, 2010
11. Long-Term Dosing, Safety, and Tolerability of Fentanyl Buccal Tablet in the Management of Noncancer-related Breakthrough Pain in Opioid-Tolerant Patients: Current Medical Research and Opinion.”
12. Effect of fentanyl buccal tablet on pain-related anxiety: A 4-week open-label study among opioid-tolerant patients with chronic and breakthrough pain, *Journal of Opioid Management* Oct 2011
13. Review article “Opioid rotation with extended-release opioids: where should we begin: International Journal of general medicine, Dec 2011
14. Successful dose-finding with sublingual fentanyl tablet: Combined results from 2 open-label titration studies, Pain Practice, Nov 2011
15. Diagnosing and Managing Post Herpetic Neuralgia: Drugs and Aging, May 2012
16. A Review of Duloxetine 60 mg Once-Daily Dosing for the Management of Diabetic Peripheral Neuropathic Pain, Fibromyalgia, and Chronic Musculoskeletal Pain Due to Chronic Osteoarthritis Pain and Low Back Pain: Pain Practice, June 2012
17. Safety and tolerability of once-daily OROS hydromorphone extended release in Opioid tolerant adults with moderate to Severe chronic cancer and noncancer pain: Pooled analysis of 11 clinical studies: Journal of pain and symptom management, July 2012
18. Tramadol/paracetamol fixed-dose combination in the treatment of moderate to severe pain, Journal of Pain Research, Sep 2012
19. Safety and tolerability of OROS® hydromorphone ER in adults with chronic noncancer and cancer pain: Pooled analysis of 13 studies, Journal of Opioid management, Aug 2012
20. Review article Title: Diagnosing and Managing Post herpetic Neuralgia, Drugs and Aging, Oct 2012
21. Pain treatment in arthritis related pain: Beyond NSAIDs: The open Rheumatology Journal, 2012
22. Fixed-dose combinations in the frontline of multimodal pain management: the perspective of the nurse-prescriber, Nursing Research and Reviews, Jan 2013

23. Burden of Illness Associated with Painful Diabetic Peripheral Neuropathy (pDPN) among Adults Seeking Treatment in the United States: Results from a Retrospective Chart Review and Cross-sectional Survey": Diabetes, Metabolic Syndrome and Obesity: Targets and Therapy, Feb 2013
24. Can treatment success with 5% Lidocaine medicated plaster be predicted in cancer pain with neuropathic components or trigeminal neuropathic pain? Journal of pain research, April 2013
25. Open-label study to evaluate the efficacy and safety of extended release hydromorphone in patients with chronic neuropathic pain: Journal of Opioid management, Jan 2013
26. Development of Federally Mandated Risk Evaluation and Mitigation Strategies (REMS) for Trans mucosal Immediate-Release Fentanyl Products: Pain Practice, 2013
27. Essential Oxygen oil for treatment of sport-related injuries: American journal of sports medicine, March 2013.
28. Tramadol/paracetamol fixed-dose combination for chronic pain management in family practice: A clinical review: ISRN Family medicine, Vol 2013
29. Burden of spinal cord injury related neuropathic pain in the US: retrospective chart review and cross-sectional survey: Spinal cord, July 2013
30. The basics of breakthrough pain: Trans mucosal fentanyl. Educational review: Practical Pain management, March 2013
31. Effectiveness and gastrointestinal tolerability during conversion and titration with once daily OROS® hydromorphone extended release in opioid tolerant patients with chronic low back pain, Journal of Pain Research, April 2013
32. Post procedural neuropathy after atrial fibrillation ablation, Journal of Interventional cardiac electrophysiology, April 2013
33. Economic and humanistic burden of post-trauma and post-surgical neuropathic pain among adults in the United States, Journal of Pain Research, June 2013
34. Influence of anatomic location of lidocaine patch 5% on effectiveness and tolerability for post herpetic neuralgia, Patient preference and adherence, June 2013
35. An Open-Label Pilot Study evaluating the effectiveness of the heated Lidocaine/Tetracaine Patch for the treatment of pain associated with Carpal Tunnel Syndrome, Pain Practice, Sep 2013
36. Challenges of treating patients with chronic pain with dysphagia: Physician and Patient Perspectives, Current Medical Research and Opinion, October 2013
37. NSAIDs: Optimizing pain management through risk reduction, The American journal of managed care, Nov 2013
38. An Evaluation of Total Disintegration Time for 3 Different Doses of Sublingual Fentanyl Tablets, Pain and Therapy, Nov 2013

39. Fast-Acting Sublingual Zolpidem for Middle-of-the-Night Wakefulness, Sleep disorders, Dec 2013
40. Development of federally mandated REMS for trans mucosal immediate release fentanyl products, Pain Practice 2013
41. Opioid and antiepileptic drug utilization among patients with chronic neuropathic pain conditions, Value in health, May 2013
42. Single-Entity Hydrocodone Extended-Release Capsules in Opioid-Tolerant Subjects with Moderate-to-Severe Chronic Low Back Pain: A Randomized Double-Blind, Placebo-Controlled Study, "Pain Medicine", Nov 2014
43. Acute Pain Management in the Emergency Department: Emphasis on NSAIDs, Emergency Medicine 2013,4:1
44. Treatment of Hypogonadism in chronic pain patients treated with Opioid analgesics, Painview, Fall/Winter 2013
45. Basics of breakthrough pain: Trans mucosal Fentanyl, Practical Pain Management, April 2013
46. Efficacy and Tolerability of Subcutaneous Methyl naltrexone in Patients with Advanced Illness and Opioid-Induced Constipation: A Responder Analysis of 2 Randomized, Placebo-Controlled Trials, Pain Practice, April 2014
47. Health Status, Function, Productivity, and Costs among Individuals with Idiopathic Painful Peripheral Neuropathy with Small Fiber Involvement in the United States: Results from a Retrospective Chart Review and Cross-sectional Survey, Journal of Medical Economics, April 2014
48. Health status, function, productivity and costs among individuals with idiopathic painful peripheral neuropathy with small fiber involvement in the US: Results from a retrospective chart review and cross-sectional survey, Journal of Medical Economics, April 2014
49. Pain Severity and the Economic Burden of Neuropathic Pain in the United States: BEAT Neuropathic Pain Observational Study, Clinico Economics and Outcomes Research, May 2014
50. Drug-drug interaction between NSAIDs and low-dose aspirin: a focus on cardiovascular and GI toxicity, Expert opinion on drug safety, June 2014
51. Lack of correlation between the effective dose of fentanyl sublingual spray for breakthrough cancer pain and around the clock opioid dose, Journal of Opioid management, Aug 2014
52. Role of Indomethacin in Acute Pain and Inflammation Management: A Review of the literature. Postgraduate Medicine, July/Aug 2014
53. Special report on "Managing the risk of unintentional opioid overdose using the EVZIO® Naloxone auto-injector. Pain Medicine News, Sep 2014
54. Pain severity and the economic burden of neuropathic pain in the US: BEAT neuropathic pain observational study, ClinicoEconomics and Outcomes Research, Sep 2014

55. "Selective" Cox-1 or Cox-2 NSAIDs: time to change a misleading measure: Editorial, Journal of Clinical Pharmacy and Therapeutics, Sep 2014
56. A long-term, open-label safety study of single entity hydrocodone bitartrate extended release for the treatment of moderate to severe chronic pain: Journal of Pain Research
57. Randomized controlled trial versus real world study in Post herpetic neuralgia: Journal of Pain and Relief
58. An analysis of rescue medication utilization from a 3-month, randomized, double blind placebo-controlled study in patients with chronic low back pain treated with single entity, twice daily, extended release hydrocodone; Pain Medicine 2015
59. Levorphanol use: Past, present and future: Postgraduate Medicine, Feb 2016
60. An overview of prodrug technology and its allocation for abuse deterrent opioids; Postgraduate Medicine, Feb 2016
61. Evaluation of 12-hour dosing interval of the durability of pain relief throughout a 12hour dosing interval of a novel extended release abuse deterrent formulation of Oxycodone-Oxycodone DeterX®: Current Medical and Research Opinion, May 2016
62. Application of Human Factors Engineering (HFE) to the Design of a Naloxone Auto-injector for the Treatment of Opioid Emergencies: Drug Delivery and Translational Research, Sep 2016
63. Levorphanol: An optimal choice for Opioid rotation, Practical Pain Management, Nov 2016
64. Evolution to low-dose NSAID therapy, Pain Management, (2016) 6 (2) 175-189
65. Pharmacokinetics and safety of fentanyl sublingual spray and fentanyl citrate intravenous: a single ascending dose study in opioid-naïve healthy volunteers, Current Med Research and Opinion, May 2017
66. Pharmacokinetics and safety of fentanyl sublingual spray and fentanyl citrate intravenous: a multiple ascending dose study in opioid-naïve healthy volunteers, Current Medical Research and Opinion, August 2017
67. Efficacy and Safety of Naloxegol for opioid induced constipation assessed by specific opioid medication, opioid dose and duration of opioid use, Journal of Opioid Management, March 2018

**Poster/Abstract Presentations:**

1. Heterotopic Ossification can be a functional asset- Presented at the national assembly of AAPM&R annual assembly in Washington, DC November 1999
2. Clinical presentation of axonal variant of Guillain-Barre Syndrome: Poster session at the national assembly of AAPM&R in San Francisco, CA November 2000
3. Bilateral brachial plexus disease as a complication of Lyme Disease- Poster presentation at AAPM&R national assembly in San Francisco, CA November 2000

4. Neuroschistosomiasis presenting as Cauda Equina Syndrome- Poster presentation at AAPM&R national assembly in San Francisco, CA November 2000
5. A 4-week, randomized, parallel-group, open-label study comparing the efficacy of Lidocaine 5% Vs Corticosteroid plus anesthetic injections on distinct pain qualities in carpal tunnel syndrome- Poster presentation at 7th international Neuropathic Pain conference- November 2004
6. Efficacy of Topical Lidocaine 5% patch in musculoskeletal and neurological pain- a retrospective case series- Poster presentation at American Academy of Pain Medicine annual assembly. February 2005
7. A 4-week, randomized, parallel-group, open-label study comparing the efficacy of Lidocaine 5% Vs Corticosteroid plus anesthetic injections on distinct pain qualities in carpal tunnel syndrome- Oral presentation at AAPM&R annual assembly in October 2005
8. An open-label assessment of Botulinum toxin type A vs. Anesthetic/Steroid combination in the treatment of cervicothoracic myofascial pain- Poster presentation at AAPM&R annual assembly in October 2005
9. Assessment of Pain in Carpal tunnel syndrome: Validity of the Pain Quality Assessment Scale- Poster presentation at Neuropathic pain society annual meeting. November 2005
10. A 6 week, Randomized, Parallel-group, Open label study comparing the efficacy of Lidocaine patch 5% vs. Naproxen in Carpal tunnel syndrome- Poster presentation at Neuropathic Pain Society meeting. November 2005
11. Patients' experience with fentanyl effervescent buccal tablets: Interim analysis of a long-term, multicenter, open-label study in cancer-related breakthrough pain- American Pain Society annual meeting. May 2006
12. Evaluation of the Efficacy and Safety of the Lidocaine Patch 5% Compared with Corticosteroid Injection in Improving Pain Associated with Carpal Tunnel Syndrome: A 4-Week, Randomized, Parallel-Group, Open-Label Pilot Study- Poster presentation at the Neuropathic Pain Society annual meeting. November 2005
13. Mood, functioning, and quality of life in opioid-tolerant patients with noncancer chronic pain and breakthrough pain: Effect of fentanyl buccal tablet (FBT)- American Pain Society annual assembly- May 2007
14. Patient preference for fentanyl buccal tablet (FBT) in the management of breakthrough pain: Open-label evaluation in opioid-tolerant patients with chronic noncancer pain- American Pain Society annual assembly- May 2007
15. Effect of fentanyl buccal tablet (FBT) in mood, functioning and quality of life: Presented at the American Academy of Pain Management-September 2007
16. Efficacy of Cyclobenzaprine Hydrochloride modified release 15mg and 30mg once daily for low back and neck pain associated with muscle spasms: A pooled analysis of two randomized, double-blind, parallel group, placebo controlled multicenter studies: American Academy of Pain Management annual meeting: February 2008
17. An Open-Label Study of Oxymorphone Extended Release in Patients with Chronic Neuropathic Pain- American Pain Society annual meeting, May 2009
18. Safety and Tolerability of Once-Daily Hydromorphone ER in Opioid-Tolerant Adults with Moderate to Severe Chronic Noncancer and Cancer Pain: Pooled Analysis of 13 Clinical Trials: Pain Week, Sep 2010

19. An Open-label Pilot Study Evaluating Heated Lidocaine/Tetracaine Patches in the Treatment of Patients with Carpal Tunnel Syndrome: Pain Week, Sep 2010
20. Successful Dose-Finding with Sublingual Fentanyl (Abstral®): Combined Results From 2 Open-Label Titration Studies: Pain Week, Sep 2010
21. Fentanyl Pectin Nasal Spray and Patient Acceptability: Long-Term Consistent and Reliable Effects in the Treatment of Breakthrough Cancer Pain- World Congress of Pain, Montreal, August 2010
22. A Phase 2 Multicenter, Randomized, Placebo-Controlled Study to Evaluate the Clinical Efficacy, Safety, and Tolerability of the Sublingual Sufentanil NanoTab in the Treatment of Breakthrough Pain in Cancer Patients- ASRA 2010
23. Safety and Tolerability of Once-Daily Hydromorphone ER in Opioid-Tolerant Adults with Moderate to Severe Chronic Noncancer and Cancer Pain: Pooled Analysis of 11 Clinical Trials- AAPM, Washington DC March 2011
24. Results of an Open-Label Dose Conversion and Titration Study of Once-Daily Hydromorphone ER in Opioid-Tolerant Patients with Chronic Low Back Pain- AAPM, Washington, DC, March 2011
25. Tolerability of Sublingual Fentanyl Tablets for the Treatment of Breakthrough Cancer Pain in Patients Aged  $\geq 65$  Years: Pooled Analysis from 2 Clinical Trials- APS, Austin TX, May 2011
26. Tolerability of sublingual fentanyl tablets for breakthrough cancer pain in patients aged  $\geq 65$  pooled analyses of 2 clinical trials: EFIC (Pain in Europe), Sep 2011
27. Effectiveness and Safety of Lidocaine 5% Patch as Add-On Treatment in Patients with Allodynia Caused by Postherpetic Neuralgia, Diabetic Neuropathy, or Low Back Pain: Annual assembly of AAPM&R, Orlando, November 2011
28. Efficacy and Safety of Fentanyl Buccal Tablet Compared with Immediate-Release Oxycodone for the Management of Breakthrough Pain in Opioid-Tolerant Patients with Chronic Pain: A Pooled Analysis of Two Studies- Pain Week, Las Vegas, Sep 2011
29. GI tolerability during conversion and titration with once daily OROS Hydromorphone ER in opioid tolerant patients with chronic low back pain- Pain Week, Las Vegas, Sep 2011
30. Breakthrough Cancer Pain in patients treated with Fentanyl Sublingual Tablets: Post Hoc analyses of treatment Response, Pain week, Las Vegas, Sep 2011
31. Effectiveness and Safety of Lidocaine 5% Patch Combined with Gabapentin in Patients with Post Herpetic Neuralgia, Diabetic Neuropathy, or Low Back Pain: Comparison of Patients with and Without Allodynia: American Osteopathic Association, Nov 2011
32. Safety and Tolerability of Once-Daily OROS® Hydromorphone ER in Opioid-Tolerant Adults with Moderate to Severe Chronic Cancer and Non-Cancer Pain: Pooled Analysis of 11 Clinical Studies: American Academy of Pain Medicine, Palm Springs, Feb 2012
33. Randomized, Parallel-group, Open-label, Dose-finding Study Evaluating the Efficacy of Diclofenac Sodium Topical Solution in Soft-tissue Pain of the Heel: American Academy of Pain Medicine, Palm Springs, Feb 2012
34. Evaluation of total disintegration time for 3 different doses of sub lingual fentanyl: Poster presentation at World Institute of Pain, Miami, Feb 2012

35. Open label study to evaluate the efficacy and safety of extended release Hydromorphone (Exalgo ®) in patients with neuropathic pain, Poster presentation at World Institute of Pain, Miami, Feb 2012
36. An Open-Label Pilot Study Evaluating Heated Lidocaine/Tetracaine Patches in the Treatment of Patients with Carpal Tunnel Syndrome, American Academy of Neurology, New Orleans, Apr 2012
37. Efficacy and Tolerability of OROS Hydromorphone Extended-Release in Patients with Moderate to Severe Osteoarthritis Pain: A Phase 3, Flexible-Dose, Randomized, Double-Blind, Placebo-Controlled Study, American Pain Society, May 2012
38. Fentanyl buccal compared with immediate release Oxycodone for the management of breakthrough pain in opioid tolerant patients with chronic pain: A pooled analysis of patient preferences in two studies. To be presented at IASP, Milan, 2012
39. An evaluation of taste and preference for 3 different doses of sublingual fentanyl tablets. To be presented at IASP, Milan 2012
40. Characteristics of Subjects with Chronic Low Back Pain-Related Neuropathic Pain (CLBP-NeP) in the US: BEAT Neuropathic Pain Observational Study: Scheduled for presentation at American Neurological Association, Boston, Oct 2012
41. Characteristics of Subjects with Painful Diabetic Neuropathy (PDN) in the US: BEAT Neuropathic Pain Observational Study: Scheduled for presentation at American Neurological Association, Boston, Oct 2012
42. Characteristics of breakthrough cancer pain in patients treated with fentanyl sublingual tablets: An analysis of 2 Phase III trials. MASCC/ International symposium on supportive care in cancer, for presentation in New York City, June 2012
43. Burden of Spinal Cord Injury-Related Neuropathic Pain (SCI-NeP) in the US: BEAT Neuropathic Pain Observational Study, AAPM, Phoenix, September 2012
44. Post-traumatic- / Post-surgical-related Neuropathic Pain in the US, BEAT Neuropathic Pain Observational Study: AAPM, Phoenix, September 2012
45. Characteristics of Subjects with Human Immunodeficiency Virus-Related Neuropathic Pain in the United States: BEAT Neuropathic Pain Observational Study, ASRA 2012
46. Characteristics of Subjects with Painful Peripheral Neuropathy with Small Fiber Involvement in the United States: BEAT Neuropathic Pain Observational Study
47. Single-Entity Hydrocodone Extended-Release for Chronic Pain, Poster presentation at PAIN week, Las Vegas, Sep 2012
48. Single-Entity Hydrocodone Extended-Release: Disability and Satisfaction, Poster presentation at PAIN week, Las Vegas, Sep 2012
49. Hydromorphone Extended-Release in Chronic Neuropathic Pain, Poster presentation at PAIN week, Las Vegas, Sep 2012
50. An Open-Label Study to Evaluate the Efficacy and Safety of Hydromorphone Extended-Release (ER) In Patients with Chronic Neuropathic Pain, Poster presentation at PAIN week, Las Vegas, Sep 2012
51. Single-Entity Hydrocodone ER for Chronic Low Back Pain, Poster presentation at AAPMt, Phoenix, Sep 2012



52. Single Entity Hydrocodone: Disability and Satisfaction survey, AAPM, April 2013 (Submitted)
53. Clinical utility of once-daily OROS<sup>®</sup> hydromorphone extended release (hydromorphone ER) compared to other strong extended release opioids, AAPM, April 2013
54. Characteristics of Subjects with Chronic Low Back Pain-Related Neuropathic Pain in the US: BEAT Neuropathic Pain Observational Study, American Neurological Association, Oct 2012
55. Characteristics of Subjects with Painful Diabetic Neuropathy in the US: BEAT Neuropathic Pain Observational Study, American Neurological Association, Oct 2012
56. Evaluating the titration and persistency of treatment with hydromorphone ER in a real-world setting, American Pain Society, May 2013
57. Lack of correlation between the dose of fentanyl sublingual spray for breakthrough cancer pain and the dose of around-the-clock opioid for persistent pain, American Pain Society, May 2013
58. Efficacy and safety of subcutaneous methyl naltrexone in advanced illness patients with opioid-induced constipation: a responder analysis, American Pain Society, May 2013
59. Development of a federally mandated risk evaluation and mitigation strategy (REMS) for trans mucosal immediate-release fentanyl products, American Pain Society, May 2013
60. Diclofenac Submicron Particle Capsules Reduce Opioid Rescue Medication Use in a Phase 3 Study in Patients with Acute Pain Following Elective Surgery, Pain week, Sep 2013
61. Comparison of the Heated Lidocaine/Tetracaine Patch and Oral Naproxen for Treatment of Lateral Epicondylitis, Pain week, Sep 2013
62. Challenges of Treating Patients with Chronic Pain with Dysphagia (CPD): Physician and Patient Perspectives, Pain Week, Sep 2013
63. Open-label safety of MNK-795 (Oxycodone/APAP Extended release tablets), in patients with Osteoarthritis or Chronic low back pain, AAPM, Phoenix, March 2014
64. Integrated Efficacy and Safety of Gastroretentive Gabapentin in Treatment of Patients with Post Herpetic Neuralgia (PHN), American Pain Society, Tampa, May 2014
65. SoluMatrix<sup>®</sup> Diclofenac Demonstrates Sustained Opioid-sparing Effects in a Phase 3 Study of Patients with Acute Pain Following Elective Surgery, Pain Week, Sep 2014
66. Safety and Tolerability of Extended-Release Oxycodone/Acetaminophen Tablets in Phase 3 Clinical Trials, Pain Week, Sep 2014
67. Evaluation of the durability of pain relief of Oxycodone DeterX<sup>®</sup>: An extended release abuse deterrent formulation through its 12hr interval, Pain Week 2015
68. A review of the clinical data on ZT Lido: Pain Week 2015

JNB00903

69. 1.8% Lidocaine Patch (ZT Lido), Review of a new formulation: Pain week 2015
70. New pain therapies with low inherent abuse potential: Are prodrugs an answer to the opioid abuse epidemic? A review: Pain week 2015
71. The PK, bioavailability, abuse deterrent and tamper resistant properties of KP 201/APAP, a combination opioid pain reliever containing a hydrocodone prodrug: Pain week 2015
72. Levorphanol, another choice in Opioid rotation: American Pain Society, May 2016
73. Long-term safety and efficacy of naldemedine for the treatment of opioid-induced constipation in subjects with chronic non-cancer pain receiving opioid therapy: Results from a 52-week Phase 3 clinical trial: Pain week 2016
74. The Long-term Analgesic Effectiveness of Opioid Therapy in Chronic Non-Cancer Pain Patients: A Literature Review of Randomized Controlled, Open-label, and Epidemiologic Studies: Pain week 2016
75. Pharmacokinetics and Safety of Fentanyl Sublingual Spray and Intravenous Fentanyl Citrate in Adult Opioid-Naïve Healthy Volunteers: A Randomized, Open-Label, Single Ascending Dose Study: Southern Region Burn Conference, Oct 2016
76. Neuromodulation Therapy for the management of Post Mastectomy Pain Syndrome (PMPS): Pain week 2016
77. Levorphanol, another choice in Opioid rotation: Pain week 2016
78. Pharmacokinetics and Safety of Fentanyl Sublingual Spray and Intravenous Fentanyl Citrate in Adult Opioid-Naïve Healthy Volunteers: A Randomized, Open Label, Single Ascending Dose Study: ASRA, November 2016
79. Efficacy and Safety of Naloxegol for OIC in Patient Subgroups Defined by Specific Opioid Medication, Opioid Dose, and Duration of Opioid Use: AAPM, March 2017
80. A Multicenter Study Comparing the Patient Outcomes Associated with Use of a Nurse Pain Educator for Patients with Chronic Pain, Pain week 2017

**Staff Privileges:**

Overland Park Regional Medical Center  
Menorah Medical Center

**Memberships:**

International Association for Study of Pain

**Qualifications/Certifications:**

Educational Council of Foreign Medical Graduates- 1994  
American Board of Physical Medicine and Rehabilitation -1998

JNB00904

**Licensure:**

Kansas: 1999- Current  
Missouri: 2017-Current  
New York: 1998-2001

# Exhibit “B”

JNB00906

**Mohamed A. Iqbal, Jr.**

**Iqbal Law PLLC**

**101 Convention Center Dr., Suite 1175**

**Las Vegas NV 89109**

**Via e-mail: [mai@ilawlv.com](mailto:mai@ilawlv.com)**

**Feb. 25, 2018**

**Independent Medical Evaluation**

**Re: Joe Brown (Date of Birth: 09/26/1949)**

Dear Mr. Iqbal,

This is a report of my Independent Medical Evaluation of Mr. Joe Brown who I have examined at his home on Feb 16, 2018 at your request. This report is based on my review of the copies of following medical records provided to me by your office as well as my physical examination on Feb. 16, 2018. I have never taken care of Mr. Brown as a patient and this is my initial and only interaction that I had with him. List of medical records provided via e-mail include:

1. Western Arizona Regional Medical Center, Bullhead City, AZ (May 12, 2015)
2. Sunrise Medical Center, Las Vegas, NV (May 13, 2015- May 15, 2015)
3. VA Medical Center (multiple hospitalizations and out-patient evaluations starting July 15, 2015 until March 2016)

- i. Mr. Brown was admitted to Western Regional Medical Center on May 12, 2015 at 8:22pm after a fall off the escalator at the Golden Nugget

**JNB00907**

Casino, which was reportedly secondary to a loss of balance from an apparent shaky step. He reportedly rolled down to the bottom of the escalator. When I interviewed him on 2/16/18, he could not remember any of the events immediately after the fall until he was in the Emergency room. Medical records from Western regional ER noted he was complaining of severe neck pain which was worse with activity and movement, they have also observed a laceration on top of his head with minimal bleeding and slurring of speech. His short stay at the Western regional included pain control, hydration and CT imaging of his head and Cervical spine. As per records, he was found to have unstable C1 fracture but no fractures in hip or pelvis. His CT scan of the head was normal with no fracture or bleeding. After he was medically stabilized, he was air-lifted to Sunrise Medical Center in Las Vegas, NV for higher level of care.

- ii. Mr. Brown was admitted to Sunrise Medical Center at 1:34 AM on May 13, 2015 where he was evaluated by spine surgeon and was discharged home with home healthcare for physical and occupational therapy with instructions to follow up with spine surgeon as an out-patient.
- iii. Post discharge, his progress was slow and complicated by pain, left foot drop, dysphagia, as well as failure to thrive. His diagnostic workup revealed esophageal candidiasis, acute L5 radiculopathy on the left side. He was treated for both conditions and has made meaningful functional gains since then, but according to him he still has significant limitations that interfere with his day to day activities.

Based on my chart review and interview with him, his past medical history is significant for Hypertension which is controlled with medications. There was also a mention of lacunar infarcts but there was no mention of any cognitive deficits in any of his evaluation. He currently reports no swallowing difficulty, but his appetite is poor. He reports he has tried multiple pain medications and has had no benefit or did not tolerate them. According to Mr. Brown, he had no significant functional limitations prior to this injury, his current problems include significant pain in his right his leg making ambulation difficult because of which he is unable to go outside of the home for shopping or any other recreation. He also

expresses regret that he can not play with his grandchildren. He is unable to sleep more than an hour or two any given night because of his neck pain and muscle spasms.


On physical exam (2/16/18), his gait was antalgic on the right side and he needed to use can even for household ambulation. He was cooperative, pleasant, was able to follow all the commands and answer all the questions appropriately. He was heard of hearing on the right side and I had to move to his left to better communicate with him. I also noted severe range of motion restrictions in neck for all movements along with a significant increase in muscle tone in his neck and upper back muscles. He also needed to moderate help for transfers from supine to sit and sit to stand positions. He also looks depressed but denied any suicidal thoughts.

#### **Impression:**

Based on my chart review, my interview with him both in person and over the phone as well as a physical exam on 2/16/18:

1. I have noticed significant physical and functional limitations in his right lower extremity and neck.
2. He has severe limitations with his ambulation and transfers making community ambulation difficult and inability to participate in any recreational activities or be able to play with his grandchildren.
3. His inability to find a comfortable position to sleep because of moderate to severe pain and severe range of motion deficits is leading to day time fatigue. He has not tolerated most of the pain medications and is currently taking Lidocaine 4% patch with partial relief of pain.
4. I also believe all these problems are contributing to anxiety and depression. (There is published literature showing chronic pain leading to anxiety and depression).

It is my medical opinion that has reached his near maximum potential and doubt that he will make any more significant physical or functional gains.

Sincerely,  


Srinivas Nalamachu, MD

Founder and Chief Medical Officer

Mid America PolyClinic

7100 College Blvd

Overland Park KS 66210

913-599-2440

Nalamachu@yahoo.com



# Exhibit “C”

JNB00911



## Nevada State Board of Medical Examiners

### **\* \* \* MINUTES \* \* \***

#### **OPEN SESSION BOARD MEETING**

**Held in the Conference Room at the offices of the  
Nevada State Board of Medical Examiners**

**1105 Terminal Way, Suite 301, Reno, NV 89502**

**and videoconferenced to**

**the conference room of the Nevada State Board of Dental Examiners**

**6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118**

***FRIDAY, SEPTEMBER 14, 2007 – 8:30 a.m.***

#### ***Board Members Present***

Javaid Anwar, M.D., President  
Sohail U. Anjum, M.D., Vice President  
Charles N. Held, M.D.  
Jean Stoess, M.A.  
S. Daniel McBride, M.D.  
Benjamin J. Rodriguez, M.D.  
Renee West

#### ***Board Members Absent***

Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

#### ***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel  
Laurie L. Munson, Deputy Executive Director/  
Information Systems Administrator/Chief of Administration  
Bonnie S. Brand, J.D., General Counsel  
Edward O. Cousineau, J.D., Deputy General Counsel  
Douglas C. Cooper, Chief of Investigations  
Lynnette L. Daniels, Chief of Licensing  
Jerry C. Calvanese, M.D., Medical Reviewer

#### ***Also Present***

Christine M. Guerri-Nyhus, J.D., Chief Deputy Attorney General  
Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation (in Las Vegas)  
John Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)  
Peggy Alby, R.R.T., Practitioner of Respiratory Care Committee Member (in Las Vegas)

**JNB00912**

Open Session Minutes  
September 14, 2007 Board Meeting  
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*Agenda Item 25*

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

**25(a) Pankaj Bhatnagar, M.D.**

Pankaj Bhatnagar, M.D. appeared before the Board on his application for licensure.

Dr. Anwar asked Dr. Bhatnagar whether he wanted his application to be considered in closed session, with the public being excluded, and he said he did not.

Dr. McBride questioned Dr. Bhatnagar, who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Bhatnagar explained the circumstances surrounding the malpractice claims against him.

Dr. McBride moved that the Board grant Dr. Bhatnagar's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**25(b) Joshua Jewell, M.D.**

Joshua Jewell, M.D. appeared before the Board on his application for limited license to attend residency training.

Dr. Anwar asked Dr. Jewell whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved to go into Closed Session. Dr. Anwar seconded the motion and it passed.

Upon returning to Open Session, Dr. Anjum moved that the Board grant Dr. Jewell's application for a limited license to attend residency training, contingent upon successful participation in the Nevada Health Professionals Assistance Foundation program. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

*Agenda Item 23*

**PETITION FOR ADVISORY OPINION FROM THE BOARD REGARDING THE SCOPE AND  
DEFINITION OF THE PRACTICE OF MEDICINE IN NRS 630.020**

- Bonnie S. Brand, J.D., General Counsel; John Hunt, J.D.; Clive Segil, M.D.

John Hunt, Esq., attorney for Clive Segil, M.D., stated that courts have long held that independent medical examinations are not the practice of medicine. Nevada has a tremendous opportunity to have a renowned surgeon, Dr. Segil, who is seeking licensure in the state of Nevada. However, Dr. Segil performed an independent medical examination and presented testimony which was critical in a case, in which the party for whom he testified prevailed, and





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the attorney of the non-prevailing party filed a complaint against Dr. Segil with the Board based upon his performing that independent medical examination. Dr. Segil's application for licensure is being held in abeyance until such time as he receives a ruling from the Board as to whether an independent medical examination is the practice of medicine in the state of Nevada. This is obviously critical to Dr. Segil because he wants to know the Board's position on this prior to it ruling on his application. Beyond this, there is a bigger picture, in that independent medical examinations are critical in assisting citizens in obtaining the best ruling possible based upon the best testimony possible. They are asking the Board to issue an opinion that indicates an independent medical examination is not the practice of medicine as it is defined in NRS 630.

Ms. Brand stated that Nevada law states that "diagnosis" is the practice of medicine, and Mr. Hunt used the word "diagnosis" in his petition and stated that what Dr. Segil had done was "diagnosis."

Mr. Hunt stated that if one looks at the way in which he used the term, the question becomes whether the diagnosis is for the purpose of treatment. This is not an examination; it is an assessment, and anything that is done by the independent medical examination doctor is not being done for the purpose of treatment, and therefore it does not violate the statute.

Dr. Anwar stated the term "independent medical examination" is problematic because in the practice of medicine an independent medical examination is considered an independent medical examination for the purpose of treatment, and Nevada law requires that if someone is going to take an action that directly or indirectly affects patient care, he or she has to have a Nevada license.

Ms. Guerri-Nyhus advised the Board that the attorney has asked for a declaratory order or advisory opinion, and under NRS 233B, the Board is required to respond, and under NRS 630, the Board is required to respond within 30 days. The Board is deemed to be the proper interpreter of its own statutes, so the Board is required to hold a discussion towards issuing an opinion within 30 days.

Ms. Brand suggested that Mr. Hunt review NRS 630.047 in conjunction with NAC 630.225.

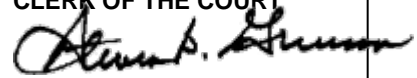
Dr. Lamerson stated it is her understanding that these physicians are coming from out of state, examining Nevada residents in the state of Nevada, and making a diagnosis.

Mr. Clark added that the physician takes a history and does a physical, then writes a report which goes to the attorneys and the doctor testifies at the trial.

Ms. Brand added that the doctor generally testifies about his findings, i.e., his diagnosis, and his recommendations as to what the person needs based upon that diagnosis.

Dr. Anjum moved that the Board respond to the petition by declaring that independent medical examinations are the practice of medicine. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.





**MLIM**  
LEE J. GRANT II, ESQ.  
Nevada Bar No. 11808  
ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.  
Nevada Bar No. 8185  
GRANT & ASSOCIATES  
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Las Vegas, Nevada 89113  
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Alexandra.M<sup>c</sup>Leod@aig.com

Attorney for Defendants/Third-Party Plaintiffs,  
GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

**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; THYSSENKRUPP ELEVATOR  
CORP., a foreign corporation; DOE  
INDIVIDUALS 1-100,  
ROE BUSINESS ENTITIES 1-100,

Defendants.

GNL, CORP., a Nevada corporation;

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.'S MOTIONS IN  
LIMINE #2 REGARDING OTHER  
INCIDENTS OR REPAIRS AND #3  
REGARDING DISCOVERY  
MATTERS**

**Date of hearing:**

**Time of hearing:**

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

GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
Telephone No. (702) 940-3529  
Facsimile No. (855) 429-3413

submit the instant Motions *in Limine* #2 Regarding Other Incidents or Repairs and #3 Regarding Discovery Matters in the above-entitled action, pursuant to NRCP 16(c)(3) and EDCR 2.47.

This Motion is made and based upon all of the papers and pleadings on file herein, the Points and Authorities hereinafter to follow, and such oral argument and testimony as this Honorable Court may entertain at a hearing of the subject Motion, if so desired.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2018.

GRANT & ASSOCIATES



ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

Attorney for Defendants GNL, LANDRY'S, & GNI

#### NOTICE OF MOTION

TO: ALL PARTIES HERETO; and

TO: COUNSEL OF RECORD FOR ALL PARTIES HERETO:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTIONS IN LIMINE #2 REGARDING OTHER INCIDENTS OR REPAIRS AND #3 REGARDING DISCOVERY MATTERS** on for hearing before the above-entitled Court on the 18 day of December, 2018, at the hour of 9 00 a.m./~~p.m.~~, in Department 31, or as soon thereafter as counsel may be heard.

DATED this 13<sup>th</sup> day of November, 2018.

GRANT & ASSOCIATES



ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

Attorney for Defendants GNL, LANDRY'S, & GNI

**DECLARATION OF ALEXANDRA B. MCLEOD, ESQ.**  
**IN SUPPORT OF MOTIONS *IN LIMINE* AND IN COMPLIANCE WITH EDCR 2.47**

I, ALEXANDRA B. MCLEOD, ESQ., under penalty of perjury, declare and say:

1. I am an attorney duly licensed to practice law in the State of Nevada and am employed by the law firm of **GRANT & ASSOCIATES**, counsel of record for Defendants GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC. in case number A-16-739887-C currently pending before the Eighth Judicial District Court of Nevada.
2. I have personal knowledge as to the facts set forth in the instant declaration. If called upon to testify, I could and would do so competently and would similarly testify to the subsequent facts as set forth in this declaration.
3. Pursuant to EDCR 2.47, a meet and confer was held between all counsel on November 13, 2018, at 2:30 p.m. to discuss the filing of pre-trial motions and motions *in limine*. Counsel attending the conference were Rebecca Mastrangelo, Esq., Mohamed Iqbal, Esq., and myself.
4. Specifically, I explained the defense's objections to the admission of any evidence of prior or subsequent incidents, or regarding the 2012 step replacement. I pointed out that if Plaintiffs seek to introduce evidence of other incidents as direct proof of negligence, a showing of substantial similarity is required.
5. Additionally, I explained the defense position that reference in front of the jury to the timing of production of documents and other discovery, or to previous discovery disputes would be improper. Despite our discussion, Plaintiffs could not agree to exclude evidence of or argument on these collateral discovery matters.

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1 6. Plaintiffs' counsel explained his reasoning in opposing the motions that the evidence  
2 would go to punitive damages and reckless disregard even if it were not admissible as  
3 direct proof of negligence.

4 Pursuant to NRS 53.045, I declare under penalty of perjury that the contents of this  
5 declaration are true and correct. Further, your Declarant sayeth naught.

6 Dated this 13<sup>th</sup> day of November, 2018.

7 BY



8  
9 ALEXANDRA B. MCLEOD, ESQ  
Nevada Bar No. 8185



## POINTS &amp; AUTHORITIES

**I. INTRODUCTION & STATEMENT OF RELEVANT FACTS**

Plaintiff Joe Brown alleges a broken neck resulting from a fall on the down escalator at the Golden Nugget Hotel & Casino in Laughlin, Nevada on May 12, 2015 at 7:28 pm. Plaintiff's Second Amended Complaint alleges the escalator was too loose, unstable, narrow, and shaky (at ¶¶13-14). To the contrary, State Inspector Steve Robertson determined that the incident occurred when Plaintiff stepped in between steps and lost his balance when the steps began to descend. ThyssenKrupp Elevator was the servicing company contracted to maintain and repair the down escalator at the Golden Nugget Laughlin prior to and at the time of Plaintiff's fall.

Brown was using a cane as a walking aid at the time of his fall and admittedly had been drinking alcohol. He was transported from the casino to a hospital in Arizona and later flown to Sunrise Hospital in Las Vegas, where it was confirmed that he sustained an inoperable, acute fracture of the C1 anterior and posterior arch. Meanwhile, Plaintiff Nettie Brown's claims are limited to loss of consortium.

With that background in mind, Defendants seeking a ruling, prior to trial and the presentation of evidence, to preclude references to prior and subsequent incidents revealed in discovery as well as references to any previous discovery disputes or the timing of production of responses and documents.

**II. EVIDENCE MUST BE EXCLUDED WHENEVER ITS PROBATIVE VALUE IS OUTWEIGHED BY PREJUDICE**

A motion *in limine* is a motion "at the outset" or one made "preliminarily." Black's Law Dictionary, 803 (8th ed. 2004). The authority for consideration of motions *in limine* arises out of NRC 16(c)(3) and its discretionary authority as granted for "advance rulings from the court on the admissibility of evidence." The Supreme Court has approved the use of motions *in limine* in a number of cases by recognizing the legitimacy of such pre-trial motion practice and the courts' authority to rule on these motions. *See, Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980); *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370,

1 551 P.2d 1095 (1976). In *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318 (1995) the  
2 Nevada Supreme Court cited *Jeep v. Murray*, 101 Nev. 640 (1985) for the proposition that “the  
3 trial judge is vested with discretion to simplify the issues” and to exclude evidence more  
4 prejudicial than probative. In performing its gatekeeper function, the trial court is guided by  
5 NRS 48.025(1), which provides that only “relevant evidence” is admissible.

6 “[T]he purpose of a pretrial motion is to avoid cluttering up the trial and to reduce the  
7 need for sidebar conferences and arguments outside the presence of the jury.” *Richmond v.*  
8 *State*, 118 Nev. 924, 931-32, 59 P.3d 1249, 1254 (2002). Motions *in limine* can be utilized to  
9 narrow the issues in a case to make for a quicker trial, to assist with possible settlement, and to  
10 make the case easier for the jury to understand.

11 Of significance is the issue of preserving issues for appeal. The Nevada Supreme Court  
12 has concluded that by making a matter the subject of a motion *in limine*, a party has preserved  
13 for appeal even if no further objections are made during the course of the trial:

14 We, therefore, hold that where an objection has been fully briefed, the district  
15 court has thoroughly explored the objection during a hearing on a pretrial  
16 motion, and the district court has made a definitive ruling, then a motion *in*  
*limine* is sufficient to preserve an issue for appeal. To the extent that *Daly*,  
*Staude*, and *Rice* are inconsistent with our holding today, they are modified. *Id.*,  
118 Nev. at 932.

17 Granted, where an order *in limine* is conditional, contemporaneous objections may still be  
18 required. *BMW v. Roth*, 127 Nev. Adv. Op. 11, 252 P.3d 649 (2011). Regardless of a court’s  
19 initial ruling on a motion *in limine*, the court may adjust a motion *in limine* during the course of  
20 a trial. *Farfaras v. Citizens Bank & Trust of Chi.*, 433 F.3d 558, 565 (7th Cir. 2006) (citing  
21 *Luce v. United States*, 469 U.S. 38, 41-42, 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984) (“Indeed  
22 even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound  
23 judicial discretion, to alter a previous *in limine* ruling.”)). In addition, if the *in limine* procedural  
24 environment makes it too difficult to evaluate an evidentiary issue, it is appropriate to defer  
25 ruling until trial. *See Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir.  
26 1997) (delaying until trial may afford the judge a better opportunity to estimate the evidence's  
27 impact on the jury).

28 . . .

1 **III. BECAUSE IT IS MORE PREJUDICIAL THAN PROBATIVE AND THE PRIOR**  
2 **OR SUBSEQUENT EVENTS AND REPAIRS ARE NOT SUBSTANTIALLY**  
3 **SIMILAR TO THE FACTS OF THE CASE AT BAR, EVIDENCE OF ANY**  
4 **OTHER ACCIDENT OR REPAIR IS INADMISSIBLE**

5 In order for evidence of any accident other than the Subject Occurrence to be  
6 admissible, a party must present by competent evidence a causal connection between the other  
7 event and the incident at issue. *See, generally, FGA, Inc. v Giglio*, 128 Nev. Adv. Rep. 26, 278  
8 P.3d 490, 498 (2012). A party seeking to introduce evidence of a prior or subsequent incident  
9 bears the burden to establish why it is relevant to a fact of consequence. *See id.*

10 Nevertheless, Plaintiffs are expected to argue that Defendant GNL owns and operates  
11 an unsafe escalator and that Defendant TKE is an unsafe maintenance company. In the course  
12 of discovery several prior and a few subsequent incidents on the down escalator were brought  
13 to light.<sup>1</sup> However, there were no violations noted following any prior incident that were not  
14 remediated before the permit to operate the escalator were renewed and reissued, and  
15 specifically before Plaintiff Joe Brown's fall. It is anticipate that Plaintiffs will pursue a theory  
16 of liability involving cracked escalator steps. But they can point to no citations or violations for  
17 cracked steps and none of the prior occurrences cite cracked escalator steps as the cause of the  
18 incident. (In fact, the State Inspector did not find cracked steps in his inspection after the  
19 Subject Incident either.) Neither was a subsequent May 25, 2015 incident determined to be  
20 caused by any defect or malfunction of the escalator, and not linked in any way to Plaintiff's  
21 earlier fall. Any such evidence of either prior or subsequent incidents should be excluded by  
22 this Court as irrelevant and unduly prejudicial to the matter at bar.

23 In addition to the prior and subsequent incidents on the escalator, Plaintiffs are also  
24 expected to seek admission of prior 2012 repair recommendations to replace cracked escalator  
25 steps.<sup>2</sup> Despite having been provided with copies of purchase orders and actual payment  
26 records,<sup>3</sup> Plaintiffs intend to argue that not all the steps were actually replaced. However,  
27 documents produced in discovery demonstrate that the cracked escalator steps were indeed

28 <sup>1</sup> Twelve prior incidents were identified on 4-9-10; 8-28-10; 11-25-10; 2-8-12; 5-9-12; 8-17-12; 1-23-13; 2-23-13;  
4-21-13; 5-26-13; 9-30-13; and 2-14-15. A subsequent was identified on 5-25-15.

<sup>2</sup> *See* EXHIBIT A, [Proposed] Repair Orders

<sup>3</sup> *See* EXHIBIT B, Proof of Payment to ThyssenKrupp Elevator in the total amount of \$62,214 (Option #2)

1 replaced and that the “down” escalator received all new steps, while salvaged steps were used  
2 on the neighboring “up” escalator.<sup>4</sup> Since Plaintiff Joe Brown’s fall occurred on the down  
3 escalator, he was riding an escalator with three-year-old steps (replaced in 2012). As such, only  
4 repair recommendations post-dating the step replacement could be relevant to Brown’s fall.

5 “A showing of substantial similarity is required when a plaintiff attempts to introduce  
6 evidence of other accidents as direct proof of negligence.” *White v. Ford Motor Co.*, 312 F.3d  
7 998, 1009 (9<sup>th</sup> Cir. 2002) (internal punctuation omitted). “The admissibility of prior accident  
8 reports must be evaluated carefully due to their inflammatory nature and possible  
9 misinterpretation by the jury. To minimize the possibility of unfair prejudice to the defendant, a  
10 showing of ‘substantial similarity’ is required.” *Schwartz v. New Castle Corp.*, 1997 U.S. App.  
11 LEXIS 33701, at \*5 (9<sup>th</sup> Cir. 1997) (addressing admissibility of prior incidents in the context of  
12 a slip and fall at Excalibur Hotel).

13 In this case, in order to comply with the substantial similarity requirement, each prior  
14 and subsequent incident would have to be scrutinized in evidentiary hearings or mini-trials to  
15 assure that admissibility were limited to incidents substantially similar to the particularized  
16 facts of the instant case. Plaintiffs are expected to argue that the escalator steps were unstable  
17 and shaky due to cracking. Defendants will rebut that with the State Inspector’s findings as  
18 well as Plaintiff’s admitted consumption of alcohol as a possible alternate cause or contributing  
19 factor. Under either Party’s account of the accident, there is no showing of substantial  
20 similarity with any other incident. Therefore, the probative value, if any, of these other  
21 incidents is clearly outweighed by the danger of unfair prejudice under NRS 48.035(1). Finally,  
22 allowing Plaintiffs’ counsel or any of their witnesses, including escalator expert Sheila Swett,  
23 to draw such an inference in front of the jury is extremely prejudicial. As such, the defense  
24 requests that all testimony and evidence of prior and subsequent accidents be excluded.

25 . . .

26 . . .

27  
28 <sup>4</sup> See **EXHIBIT A**, email cover to [Proposed] Repair Order, dated October 2, 2012.

1     **IV. COUNSEL MUST BE PRECLUDED FROM RELITIGATING DISCOVERY**  
2     **DISPUTES IN FRONT OF THE JURY**

3           Finally, Defendants seek a ruling, prior to trial and the presentation of evidence, to  
4     preclude references, implications or testimony pertaining to claimed discovery violations,  
5     timing of the production of documents and other discovery, and previously ruled upon  
6     discovery motions. Counsel should not attempt to relitigate in front of the jury any discovery  
7     issue resolved by or which should have been brought before the Discovery Commissioner.

8           The trial court is empowered by NRCP 16(c)(4) and (13) to simplify the issues and to take  
9     action to avoid “unnecessary proof” and to establish “a reasonable limit on the time allowed for  
10    presenting evidence.” Allowing counsel to relitigate discovery issues would only serve to  
11    confuse the issues, mislead the jury, and distract from the merits of the case before the Court.  
12    *See* NRS 48.035(1). Because such statements about previous discovery disputes will not aid the  
13    jury in determining any of the issues in this matter, NRS 48.025 directs that they be excluded at  
14    trial. Therefore, this Court should exercise its gatekeeping powers to preclude collateral  
15    discovery issues from discussion or argument before the jury at trial. Neither the timing of  
16    production of evidence nor the outcome of previous discovery disputes is relevant to any fact of  
17    consequence at trial and references, argument, or testimony on those topics must be prohibited.

18    ...

19    ...

20    ...

21    ...

22    ...

23    ...

V. CONCLUSION

WHEREFORE, based on the precedent and evidentiary rules cited above, the Golden Nugget Laughlin Defendants request that the Court issue orders *in limine* as follows:

- 1) Excluding evidence, argument, or testimony of any prior or subsequent incidents, or regarding the 2012 step replacement; and,
- 2) Precluding references, testimony, or argument regarding claimed discovery violations, timing of the production of documents and other discovery, and previously ruled upon discovery motions.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2018.

GRANT & ASSOCIATES



ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

*Attorney for Defendants/Third-Party Plaintiffs,  
GNL, CORP., LANDRY'S, INC. & GOLDEN  
NUGGET, INC.*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 13<sup>th</sup> day of November, 2018 I caused a true and correct copy of the foregoing **DEFENDANTS', GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.'S MOTIONS *IN LIMINE* #2 REGARDING OTHER INCIDENTS OR REPAIRS AND #3 REGARDING DISCOVERY MATTERS** 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

X 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/ Camie DeVoge*

\_\_\_\_\_  
An Employee of GRANT & ASSOCIATES

# Exhibit “A”

JNB00926



# ThyssenKrupp Elevator



## Repair Order.

Date: September 12, 2012  
Attention: Golden Nugget Laughlin  
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

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

By: \_\_\_\_\_

(Signature of Authorized Individual)

(Printed or Typed Name)

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

By: \_\_\_\_\_

(Signature of ThyssenKrupp Elevator Representative)

Larry Panaro  
(702) 262-6775

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

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

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

JNB00927

## 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 ½% 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  
**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 18 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)

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# 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:

RO 03/02

JNB00931

## 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 “B”

JNB00933

Payment Overview (LDHY Golden Nugget (All) AP - Entry)			
<b>Operating Unit</b>		Gaming and Casinos	
Number	80369		
Currency	USD		
Amount	31,017.00		
Date	10/24/2012		
Payment Process Request	WN GNL 102412		
Voucher			
Status	Reconciled		
Cleared Amount	31,017.00		
Cleared Date	11/06/2012		
Void Date			
Maturity Date			
Acknowledged Status			
<b>Invoices</b>		<b>Payee</b>	
Number	Amount Paid	GL Date	Description
Q22814DP	31,017.00	10/24/2012	
<b>Bank</b>		<b>Supplier</b>	
Name	BANK OF AMERICA		
Account	Laughlin - AP		
Payment Document			
Payment Method	Check		
Payment Process Profile			
Paid To Name		THYSSENKRUPP ELEVATOR	
Taxpayer ID		62-1211267	
Supplier Number	10787	Site	ATL-PO BOX 90
Address		PO BOX 933004 ATLANTA, GA 91193-3004 United States	

Invoice Overview
Bank
Supplier
Payments

JNB00934

GNL 002040

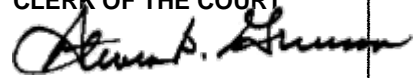


Payment Overview (LDNY Golden Nugget (All) AP - Entry)			
<b>Operating Unit</b>		Gaming and Casinos	
Number	81809		
Currency	USD		
Amount	31,197.00		
Date	02/01/2013		
Payment Process Request	WN GNL 20113		
Voucher			
Status	Reconciled		
Cleared Amount	31,197.00		
Cleared Date	02/11/2013		
Void Date			
Maturity Date			
Acknowledged Status			
<b>Invoices</b>		<b>Payee</b>	
Number	Amount Paid	GL Date	Description
6000020161	31,197.00	02/01/2013	
<b>Bank</b>		<b>Supplier</b>	
Name	BANK OF AMERICA		
Account	Laughlin - AP		
Payment Document			
Payment Method	Check		
Payment Process Profile			
Paid To Name		THYSSENKRUPP ELEVATOR	
Taxpayer ID		62-1211267	
Supplier Number	10787	Site	ATL-PO BOX 90
Address	PO BOX 933004 ATLANTA, GA 91193-3004 United States		

Invoice Overview
Bank
Supplier
Payments

JNB00935

GNL 002041



**MLIM**  
REBECCA L. MASTRANGELO, ESQ.  
Nevada Bar No. 5417  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
700 South Third Street  
Las Vegas, Nevada 89101  
Phone (702) 383-3400  
Fax (702) 384-1460  
rmastrangelo@rmcmlaw.com  
Attorneys for Defendant/Third-Party Defendant  
THYSSENKRUPP ELEVATOR CORPORATION

**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,  
ROE BUSINESS ENTITIES 1-100,

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

THYSSENKRUPP ELEVATOR CORPORATION  
a foreign corporation; DOES 1-75; ROE  
CORPORATIONS 1-75 and ROE  
CORPORATIONS 1-25,

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

Date of Hearing:  
Time of Hearing:

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR**  
**CORPORATION'S MOTION IN LIMINE #3 RE: RESPONSIBILITY AVOIDANCE**  
**AND REPTILE THEORY ARGUMENTS**

JNB00936

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation ("TKE"), by and  
2 through its attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Motion in Limine #3 re:  
4 Responsibility Avoidance and Reptile Theory Arguments.

5 This motion is based upon the pleadings and papers on file herein, the accompanying  
6 Memorandum of Points and Authorities and oral argument, if any, at the time of the hearing on this  
7 matter.

8 DATED this 13<sup>th</sup> day of November, 2018.

9 ROGERS, MASTRANGELO, CARVALHO  
10 & MITCHELL

11   
12 REBECCA L. MASTRANGELO, ESQ.

13 Nevada Bar No. 5417  
14 700 S. Third Street  
15 Las Vegas, Nevada 89101  
16 Attorney for Defendant/Third-Party Defendant  
17 THYSSENKRUPP ELEVATOR CORPORATION

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1 **NOTICE OF MOTION**

2 TO: ALL INTERESTED PARTIES; and  
3 TO: THEIR ATTORNEYS OF RECORD

4 YOU WILL PLEASE TAKE NOTICE that undersigned will bring the foregoing  
5 **DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR**  
6 **CORPORATION'S MOTION IN LIMINE #3 RE: RESPONSIBILITY AVOIDANCE AND**  
7 **REPTILE THEORY ARGUMENTS** on for hearing before Department XXXI of the Eighth  
8 Judicial District Court in Clark County, Nevada on the 18 day of December, 2018, at  
9 the hour of 9:00 A.m., or as soon thereafter as the matter can be heard.

10 DATED this \_\_\_\_\_ day of November, 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 Defendant/Third-Party Defendant  
19 THYSSENKRUPP ELEVATOR CORPORATION

18 **POINTS AND AUTHORITIES**

19 **I.**

20 **OVERVIEW AND RELIEF SOUGHT**

21 This case involves a fall which occurred on the down escalators at the Golden Nugget  
22 Laughlin Resort and Casino ("GNL"). Three members of Plaintiff Joe Brown's party preceded him  
23 onto the escalator and rode it down with no difficulty. However, when Mr. Brown, who had been  
24 drinking alcohol and who requires a cane to walk, stepped onto the escalator, he was unable to steady  
25 himself and he fell, sustaining personal injuries. Plaintiffs' Second Amended Complaint sounds in  
26 negligence.

27 Defense counsel has been involved in past trials wherein plaintiffs have attempted to argue  
28 that the defendant has "refused to accept responsibility" for an accident or incident. The plaintiff

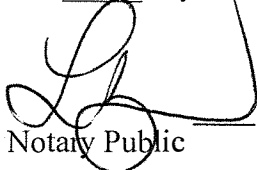


1 FURTHER AFFIANT SAYETH NAUGHT.

2 DATED this 13<sup>th</sup> day of November, 2018.

3   
4 REBECCA L. MASTRANGELO, ESQ.

5  
6 SUBSCRIBED AND SWORN to before me  
7 this 13 day of November, 2018.

8   
9 Notary Public



11 IV.

12 LEGAL ARGUMENT

13 A. **Plaintiffs Must Not Be Permitted to Make “Responsibility Avoidance” Arguments at**  
14 **Any Time During Trial, Including During Opening and Closing Statements**

15 Plaintiffs may claim at trial that Defendant, through counsel or otherwise, has “refused to  
16 accept responsibility” for this claim, and that the Defendant’s “refusal” is further evidence of the  
17 Defendant’s carelessness, emotionally inciting the jury, and implicitly asking the jury to punish the  
18 Defendant.

19 Such arguments could take the form of utilizing the Answer to the Complaint, a legal form,  
20 and making issue of the standard denial paragraphs. Plaintiffs thus implicitly seek to punish the  
21 Defendant for asserting its right to a jury trial. This is improper and unfairly prejudicial.

22 Opening statements are “a brief outline of the evidence which the parties believe they will  
23 be able to present.” Nevada Civil Practice Manual §2208. Opening statements should never be  
24 argumentative, nor should they include improper references or remarks. Id.

25 As the Defendant has a fundamental right to defend itself, and to confront the witnesses  
26 against it, no attorney may make a disparaging remark intimating that Defendant is “avoiding  
27 responsibility” by exercising its fundamental rights. *United States v. Derosa*, 548 F.2d. 464 (3rd Cir.  
28 1977); *United States v. Dinitz*, 424 U.S. 600 (1976); *Arizona v. Washington*, 434 U.S. 497, 54 L.Ed.

1 2d 717 (1978).

2 Remarks which are intended to influence the jury, but which have nothing to do with the  
3 issues in the case, are improper. *Home Design Services vs. Park Square Enterprises*, 2006 U.S.  
4 District Lexus 7254 (M.D. Florida 2006) (“The Court should not permit counsel to make assertions  
5 to the jury that cannot be proved and are irrelevant to issues in the case.”)

6 Here, the Plaintiffs have pled that the Defendant was negligent, and that its negligence caused  
7 injury. The Plaintiffs did not plead, and should not now be heard to complain, that the Defendant  
8 is somehow additionally responsible for “avoiding responsibility,” or for having the temerity to  
9 appear at trial with a lawyer, or exercise its right to put the Plaintiffs to their burden of proof.

10 It is well settled in Nevada that it is inappropriate for counsel to make personal comments  
11 about any witnesses or evidence, either directly or indirectly. Counsel may not offer opinions  
12 regarding the truthfulness of their own witnesses, or the lack of truthfulness of opposing witnesses.  
13 *DeJesus v. Flick*, 116 Nev. 812, 7 P.3d 459 (2000); *Lioce v. Cohen*, 149 P.3d 916 (Nevada 2006).  
14 Counsel are prohibited from inviting a jury to look disparagingly on anyone who appears in a  
15 courtroom in the United States—including the Defendant — to exercise their right to defend  
16 themselves.

17 This theme of “avoiding responsibility” or of “not caring” is calculated to inflame the jury,  
18 and therefore must be prohibited.

19 Plaintiffs’ counsel should not be allowed to refer to the Defendant disparagingly, or to invite  
20 the jury to do so, simply because it is exercising its fundamental right to put the Plaintiffs to their  
21 burden of proof on the claims they brought.

22 **B. Arguments Concerning Safety Violations Are Improper**

23 “Reptile” theory is basically a personal injury playbook based upon the work of Don Keenan,  
24 a plaintiff attorney based out of Atlanta, Georgia, and David Ball, a jury consultant. The authors put  
25 forth a technique and theory that is premised upon purported scientific studies of the human  
26 “Reptilian brain.” See pp. 17-19 of Ball, David, and Don C. Keenan, *Reptile: The 2009 Manual of*  
27 *the Plaintiff’s Revolution*, New York, NY: Balloon, 2009.

1 According to the authors, the Reptile's primary function in the human brain is self-  
2 preservation, which creates an impulse that drives all life and represents an imperative that will  
3 ultimately win out over all other considerations, including the force of logic. The lawyer's job,  
4 according to the authors, is to "get the juror's brain out of 'fritter mode' and into survival mode."  
5 *Id.* at p. 18. The cleverly-worded techniques put forth in the work appeal to anger, to fear, to herd  
6 instinct, and to tell jurors they must protect the community, i.e., protect themselves and send a  
7 message with their decision. The key to implementing the Reptile strategy, according to the authors,  
8 is to appeal to jurors' emotions and instincts of self-preservation by repeatedly referring to the  
9 defendant's purported breach of "safety rules," rather than a violation of the applicable standard of  
10 care. Such trial techniques have been expressly condemned by courts considering them, and,  
11 likewise, this Court should not permit Plaintiffs to refer to "safety rules" as a means of misleading  
12 and indoctrinating the jury.

13 The "Reptile" theory originates from *REPTILE: The 2009 Manual of the Plaintiff's*  
14 *Revolution*. The premise of the theory is for the plaintiff to establish a broad, over-generalized  
15 "umbrella rule" or "safety rule" that he will allege was violated by the Defendant. The Reptile  
16 authors argue that the valid measure of damages for a Reptile plaintiff is not the amount of harm  
17 actually caused in a case, but instead the maximum harm that a Defendant's alleged conduct could  
18 have caused. The intent of this strategy is to prime the jury to return a verdict for the Plaintiffs out  
19 of fear of safety for themselves and their community.

20 While traditional trial strategies appeal to jurors through reasoning and the evidence, Reptile  
21 encourages the spreading of "tentacles of danger" to intimidate the jury into deciding the case based  
22 upon manufactured fear for their own safety and that of others. The basis of the Reptile tactics is that  
23 each juror has an inner "reptile" that can be awakened by sensing danger, real or imagined. The  
24 theory goes that if a juror begins to fear of his or her own safety, or the safety of others, emotions  
25 override reason and the juror will make decisions out of self-preservation rather than on the  
26 evidence.

27 The Reptile teaches, therefore, that "in trial, your goal is to get the juror's brain out of fritter  
28



1 mode and into survival mode. You do this by framing the case in terms of Reptilian survival.” *Id.*  
2 at 18. Shockingly, the Reptile defines “brain fritter,” as “free to do whatever it wants.” *Id.* Plaintiffs  
3 are likely counting on inciting in jurors sufficient fear for personal and community safety that they  
4 no longer objectively weigh the evidence or follow the Court’s instructions as required by law. The  
5 Reptile teaches that fear wins over facts.

6 The Reptile strategy encourages plaintiff attorneys to “spread the tentacles of danger”  
7 beginning in voir dire, opening statement and throughout the trial as a means to manipulate the jurors  
8 into a favorable verdict. *Id.* at 35; 58; 138. The Reptile is promoted as a means of exacting revenge  
9 for tort reform. *See Id.* at Chapter 3 ‘The Toxicology of Tort- “Reform”; Chapter 4 (Antidote for  
10 Tort- “Reform” Poison) (emphasis added). The strategy violates the golden rule on the most  
11 fundamental level and has no place in Nevada courtrooms. Further, it runs afoul of Nevada’s Rules  
12 of Evidence. Finally, it deprives defendants of their constitutional rights to a fair and impartial trial.

13 Such tactics to intentionally inject “terror and anxiety” into the courtroom should not be  
14 allowed in this case, and the Defendant respectfully requests that the Court prohibit the Plaintiffs  
15 from the use of Reptile tactics, including in voir dire, as they violate Nevada law.

16 **(1) The “Reptile” and “Safety Rules”**

17 The key to the Reptile strategy, as explained by the authors, is the effective use of “safety  
18 rules” throughout the trial, including during voir dire, opening statements, examination of witnesses,  
19 and closing arguments. It is through references and arguments regarding Safety Rules that a lawyer  
20 using the Reptile method is able to turn each juror’s focus inward toward their emotional response  
21 to the thought of the potential harm to them should someone violate a Safety Rule, and away from  
22 an analysis of the evidence. Indeed, consider the following excerpt from Reptile found in the chapter  
23 titled “Safety Rules and the Reptile”:

24 Never separate a rule from the danger it was designed to prevent. Safety rules are  
25 powerful trial tools. But the only kind of safety-rule violation the Reptile cares about  
is the kind that can endanger her. The greater the danger, the more the Reptile cares.

26 Some safety-rule violations are too specific to endanger the juror’s Reptile. “A coal-  
27 mining company is not allowed to turn off the lights while workers are in the mine”  
applies only to the Reptiles of miners. But it becomes useful when positioned as a  
28 special case of a more general rule, such as, “A company must not needlessly  
endanger its employees” or “A company is never allowed to remove a necessary

1 safety measure.” That connects it to everyone with a job.

2 [...]

3 Your Reptile does not care when you break a rule that protects others. But when  
4 someone else breaks a safety rule that protects you, your Reptile takes over – usually  
by infuriating you at the rule-breaker, trying to impel you to do something about it....

5 *Reptile*, at pp. 51–52. The stated purpose of the Reptile method and the use of Safety Rules is to  
6 induce a purely emotional response from the jury by inducing them to become “infuriated” with the  
7 defendant.

8 **(2) A Jury May Not Police The Community By Making An Example Of A Tort**  
9 **Defendant**

10 The “Reptile” script is a barely-concealed effort at subverting the rules of ethical trial  
11 practice. Its camouflaged tactics appeal to the fear, emotion, and anger of jurors, and repeatedly tells  
12 jurors to “protect the community.” It opines that such can be done by making an example of the  
13 defendant, and by essentially asking the jury to speculate about the damage the Plaintiff cannot  
14 provide. Undoubtedly, the brazenness of these appeals likely sells copious amounts of books and  
15 promotes the authors’ seminars, but such tactics cannot pass muster in a Nevada courtroom.

16 Multiple courts have prohibited arguments that ask a jury to “send a message to a defendant”  
17 or to “act as the conscience of the community.” The Reptile script’s focus on the jury as a  
18 “community guardian” is essentially no different, and must be prohibited. For instance, the Fifth  
19 Circuit has held that a “conscience of the community” argument constitutes “improper distraction  
20 from the jury’s sworn duty to reach a fair, honest, and just verdict according to the facts and evidence  
21 presented at trial.” *Westbrook v. General Tire & Rubber Co.*, 754 F.2d 1233, 1268 (5th Cir. 1985).  
22 The court continued:

23 Our condemnation of a “community conscience” argument is not limited to the use of those  
24 specific words; it extends to all impassioned and prejudicial pleas intended to evoke a sense of  
25 community loyalty, duty, and expectation. Such appeals serve no proper purpose and carry the  
26 potential of substantial injustice when invoked against outsiders. *Id.* at 1538-1539. Other  
27  
28

jurisdictions from throughout the country agree with this general sentiment. *See U.S. v. Johnson*, 968 F.2d 768 (8th Circuit 1992) (prohibiting unduly inflammatory and prejudicial “conscience of the community arguments”); *U.S. v. Solivan*, 937 F.2d 1146 (6th Cir. 1991) (recognizing as improper any “conscience of the community” argument that is designed to inflame or incite the jury, and reversing conviction based on prosecutor’s closing argument urging jurors to “send a message” because it appealed to the jurors’ emotions, passions, and prejudices); *U.S. v. Monaghan*, 741 F.2d 1434 (D.C. Cir. 1984) (“A prosecutor may not urge jurors to convict a criminal defendant in order to protect community value, preserve civil order, and deter future lawbreaking.”); *U.S. v. Barlin*, 686 F.2d 81 (2nd Cir. 1982) (condemning this genre of comments and arguments as designed to divert, rather than focus, the jury upon the evidence). While true that a majority of these opinions came from criminal cases, Defendant’s main focus is that Plaintiffs should not be allowed to inappropriately inject argument during opening statements, make improper “community danger” arguments, or engage in jury nullification during voir dire. Such guidelines do not hinge on any difference between the criminal standard of proof and the civil standard.

**(3) Plaintiffs Must Prove Their Actual Damages Without Any “Community Danger” Argument**

The “Reptile” manual instructs lawyers to ignore the actual harm a defendant may have caused, and to instead focus on hypothetical harm that might have been caused. As put forth in the work, “[t]o the reptile, the smallest case is not small, because whatever harm the violation caused can cause massive harm the next time” and that jurors should be told that “[t]he difference between a minor injury and a fatality is just luck.” *See Reptile*, at p. 225.

The inherent abuse in this argument is obvious: focusing on a choice between community safety versus danger, as opposed to the damage actually sustained by a plaintiff, deprives any tort defendant of a fair trial. The prejudice to a defendant is compounded when the plaintiff’s lawyer reads a manipulative script, suggesting a plaintiff might recover for conduct that did not harm him. Such argument would be disallowed in any case, even where punitive damages are alleged. As stated by the United States Supreme Court:

1 A defendant's dissimilar acts, independent from the acts upon which liability was  
2 premised, may not serve as the basis for punitive damages. A defendant should be  
3 punished for the conduct that harmed the plaintiff, not for being an unsavory  
individual... Due process does not permit courts, in the calculation of punitive  
damages, to adjudicate the merits of the other parties' hypothetical claims.

4 *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

5 Arguments which encourage jurors to look beyond the law and the relevant facts in deciding  
6 a case amounts to attorney misconduct. *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). Yet, the  
7 Reptile strategy is essentially a masked golden rule argument that tells the jurors to decide a case not  
8 on the actual damages sustained by a plaintiff, but rather on the potential harms and losses that could  
9 have occurred in the community, a community that includes the juror and his/her family. Most  
10 jurisdictions limit or exclude evidence of "other similar incidents," even when such incidents are  
11 actually caused by the defendant. It logically follows that evidence or arguments about hypothetical  
12 "other similar incidents," and the potential harms and losses posed to other members of the  
13 community, cannot be discussed, as such have no relevance to the ultimate issues that the jury will  
14 decide. Moreover, it is fundamental that a jury cannot base its verdict on matters not in evidence,  
15 conjecture, or speculation. Rather, a plaintiff must prove damages to a reasonable degree of  
16 certainty, and only those damages proximately caused by a defendant's conduct can be recovered.  
17 Any evidence or argument that goes beyond the scope of a plaintiff's damages, such as potential  
18 harms posed to a community, is irrelevant and unfairly prejudicial.

19 A lawyer is not, under any circumstances, permitted to make arguments designed to appeal  
20 to jurors' emotion or sympathy. Any appeal to a jury's emotional or sympathetic tendencies, rather  
21 than an appeal to a jury's intellectual ability to evaluate evidence, is improper. *Krause, Inc. v. Little*,  
22 34 P.3d 566 (2001). Yet, this is precisely the stated purpose of Reptile: to stealthily appeal to fear  
23 and emotion. Such tactics must be strictly prohibited in this matter.

24 **(4) Voir Dire Questions Which Ask Jurors to Police One Another Are Abusive and**  
25 **Disallowed**

26 Reptile strategy calls upon jurors to complain to the judge, during deliberations, if one of  
27 their fellow jurors isn't "following the law." Nevada law, however, strictly forbids any  
28

1 communication by a court officer with a deliberating jury, except on administrative matters. Indeed,  
2 NRS 16.120 states that the court officer “shall not permit any communication to [the jury in  
3 deliberation], or make any himself, except by order of the court, except to ask them if they have  
4 agreed upon their verdict. Moreover, the court officer is prohibited from communicating to anyone  
5 about the state of the jury’s deliberations. *Id.* In *People v. Cleland*, 21 P.3d 1225 (Cal. 2001), a  
6 court’s decision to interview and then discharge a sitting juror, after other jurors complained that the  
7 juror was not following the law, was held an abuse of discretion mandating reversal. Similarly, a  
8 trial court was held to commit reversible error for discharging a deliberating juror for reasons related  
9 to her interactions with other jurors. *State v. Valenzuela*, 643 A.2d. 582 (N.J. 1994). Furthermore,  
10 a juror cannot be removed or reprimanded for taking a position at odds with other jurors’ views.  
11 *State v. Paige*, A.2d 164 (N.J. App. 1992). Yet, the Reptile script invites this very error by telling  
12 the jury to complain about one another during deliberations. As shown above, the Court should  
13 preclude any such statements to the jury by Plaintiffs’ counsel.

14         Additionally, even though latitude is given in jury selection, the court is bound to place  
15 reasonable restrictions on questioning. Nevada law requires the trial judge to control the manner of  
16 jury selection and encourages the trial bench to tolerate “desultory excursions” of unprepared  
17 counsel, who show little regard for judicial economy. *Whitlock v. Salmon*, 104 Nev. 24 (1988).  
18 Restrictions on jury questioning are necessary and proper, so long as they are not “unreasonable.”  
19 *Leone v. Goodman*, 105 Nev. 221 (1989). Furthermore, NRCp 47(a) provides that the court “shall  
20 permit such supplemental examination by counsel as it deems proper.” The language of the rule  
21 requires the trial judge to consider the propriety of questioning, and stop or restrict any improper  
22 questioning.

23         Therefore, a restriction upon voir dire examination is mandated under the law. The Court,  
24 respectfully, must only allow questions which might uncover bias or those which would allow a  
25 lawyer to intelligently exercise peremptory challenges. The Court must not, directly or indirectly,  
26 allow manipulation of the jury, no matter how camouflaged, and must ensure that the jurors receive  
27 no hint that they have any duty whatsoever to “rat out” their fellows during deliberations.

1           **(5) Reptile Strategies Are Improper “Golden Rule” Arguments**

2           The Reptile strategy is nothing more than a backdoor attempt to make golden rule arguments  
3 that are improper as a matter of law. In Nevada, golden rule arguments are disallowed because it is  
4 improper to ask jurors to put themselves in the shoes of a party. The Nevada Supreme Court, and  
5 numerous other courts, have prohibited “golden rule” arguments in both criminal and civil settings.  
6 *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008); *see also State v. McDaniel*, 320 S.C. 33, 462  
7 S.E.2d 882 (Ct.App.1995) (reversing conviction and remanding for new trial in sexual  
8 assault/robbery case where solicitor used “you” or a form of “you” some forty-five times, asking the  
9 jury to put themselves in place of the victim); *Forrestal v. Magendantz*, 848 F.2d 303, 309 (1st  
10 Cir.1988) (stating golden rule argument is universally condemned); *U.S. v. Teslim*, 869 F.2d 316,328  
11 (7th Cir.1989) (holding it is improper for prosecutor to urge jurors to place themselves in party’s  
12 shoes); *State v. McHenry*, 276 Kan. 513, 78 P.3d 403, 410 (2003) (golden rule arguments are not  
13 allowed because they encourage jury to depart from neutrality and decide case on improper basis of  
14 personal interest and bias); *Caudill v. Commonwealth*, 120 S.W.3d 635, 675 (Ky.2003) (prohibited  
15 golden rule argument is one in which prosecutor asks jurors to imagine themselves or someone they  
16 care about in position of crime victim); *State v. Carlson*, 559 N.W.2d 802,811-812 (N.D.1997)  
17 (golden rule argument is improper and should be avoided in civil and criminal actions); *Hayes v.*  
18 *State*, 236 Ga.App. 617, 512 S.E.2d 294, 297 (1999) (an improper golden rule argument asks jurors  
19 to consider a case, not objectively as fair and impartial jurors, but rather from biased, subjective  
20 standpoint of litigant or victim). Further, irrelevant information or inflammatory rhetoric that diverts  
21 the jury’s attention from its proper role or invites an irrational, purely subjective response should be  
22 curtailed.

23           The Reptile strategy is substantially similar to the improper golden rule arguments as it asks  
24 jurors to base their verdict not on the evidence of the case but rather on the fear that they or other  
25 members of the community could be injured, just as the Plaintiffs, by the immediate danger of the  
26 Defendant. Reptile tactics, like golden rule arguments, should be prohibited at this trial to preserve  
27 Juror objectivity.

1           **(6) The Reptile Tactics Are Contrary To The Rules Of Evidence**

2           The very premise of the Reptile strategy is to subvert the jury's objectivity and to provoke  
3 a subjective response based upon fear. This is incompatible with the jury's duty to weigh the  
4 relevant evidence. " '[R]elevant evidence' means evidence having any tendency to make the  
5 existence of any fact that is of consequence to the determination of the action more probable or less  
6 probable than it would be without the evidence." NRS 48.015. Further, "evidence which is not  
7 relevant is not admissible." NRS 48.025(2). The very goal of the Reptile strategy is to  
8 overgeneralize a very broad Safety Rule to the point that it is no longer directly relevant solely to the  
9 facts of the particular case at hand. Reptile questions that are hypothetical and generalized are not  
10 relevant to the issue of whether Plaintiffs' injuries were caused by Defendant's negligence.

11           Further, even if the evidence is relevant to the issues in this case, it should be excluded under  
12 NRS 48.035 because its probative value is substantially outweighed by the danger of unfair  
13 prejudice, confusion of the issues or misleading the jury. The Reptile strategy is an intentional shift  
14 away from the specific facts of the case and is intended to confuse the issues and mislead the jury.  
15 To ensure that the objectivity of the jury remains undisturbed and the jury adheres to its duty to  
16 weigh the evidence, Plaintiffs should be prohibited in voir dire or trial from utilizing the  
17 manipulative Reptile techniques.

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III.

CONCLUSION

Defendant respectfully requests that the instant Motion be granted, and for such other and further relief that this Court deems just and proper.

DATED this 13<sup>th</sup> day of November, 2018.

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL



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THYSSENKRUPP ELEVATOR CORPORATION



1 **CERTIFICATE OF SERVICE**

2 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  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 13 day of  
4 November, 2018, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE**  
6 **#3 RE: RESPONSIBILITY AVOIDANCE AND REPTILE THEORY ARGUMENTS** was  
7 served via electronic means with the Eighth Judicial District Court, addressed as follows, upon the  
8 following counsel of record:

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