

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 7

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Dated June 10, 2022.

Respectfully submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.
MOHAMED A. IQBAL, JR.
Nevada Bar No. 10623
9130 W. Post Road, Suite 200
Las Vegas, NV 89148
Attorneys for Appellant

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 7** 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**



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 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

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 89028-7711

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
Title: CONTRACT ANALYST

Date Signed: MAR 2 1993

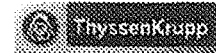
EXHIBIT I

EXHIBIT I

JNB01055

APRIL SERVICE RECORDS - GOLDEN NUGGET LAUGHLIN

TKE Account History Report



Report Run Date: 22-JUL-2016 16:31:46 Branch: 108950 Branch Name: Start Date: 01-APR-2015 End Date: 31-MAY-2015 Activity Status: PROCESSED SR Priority:
Customer Acct#: Customer Name: Unit Serial#: US135385 Contract#: US50117 Building Name: Route#: SR#: Include PM: Yes Include Callbacks: Yes Include St: Yes
Include Repairs: Yes

Customer: GOLDEN NUGGET Customer Number: 75137

Site Name: GOLDEN NUGGET HOTEL 2300 S CASINO DR LAUGHLIN 89029-1526

TKE Preventive Maintenance	Assigned To	Incident Date	Act Start Date	Act End Date	Travel Hrs	Labor Hrs	Total Hrs
SN: US135385 OEM SerNo: CE42504-5 Description: #1 UP	DUTCHER, CHRISTOPHER M	04/10/2015 01:30:00 PM	04/10/2015 01:30:00 PM	04/10/2015 02:00:00 PM	0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins
Activity Code: SR #: 13506166 Task #: 7369572 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							
GOLDEN NUGGET HOTEL - TKE Preventive Maintenance Subtotal					0 hrs 0 mins	0 hrs 30 mins	0 hrs 30 mins

GNL 000048
JNB01056

MAY SERVICE RECORDS - GOLDEN NUGGET LAUGHLIN

TKE Account History Report



Report Run Date: 22-JUL-2016 16:36:03 Branch: 108950 Branch Name: Start Date: 01-APR-2015 End Date: 31-MAY-2015 Activity Status: PROCESSED SR Priority: Customer Acct#: Customer Name: Unit Serial#: US135386 Contract#: US50117 Building Name: Route#: SR#: Include PM: Yes Include Callbacks: Yes Include SI: Yes Include Repairs: Yes

Customer: GOLDEN NUGGET Casino Number: 78937
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: CE42505-5 Description: #2 Down	DUTCHER, CHRISTOPHER M	05/25/2015 08:11:00 PM	05/26/2015 08:00:00 AM	05/26/2015 12:00:00 PM	0 hrs 0 mins	4 hrs 0 mins	4 hrs 0 mins
Activity Code: SR #: 14178064 Task #: 7727173 Priority: P2 Contractual Payroll Status: PROCESSED Description: HAD ACCIDENT ON ESC INJURED PARAMEDICS TOOK CUST TO HOSPITAL SVC TUE AM *PER PROTOCOL HAVE TKE LOOK AT ESC* Caller: GEORGE PH: 7022987111 Resolution: down escalator, filed out incident report, see report for information, reviewed security footage, performed visual inspection with state inspector lorne travis, unit returned to service Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N PO #: N/A							
SN: US135386 OEM SerNo: CE42505-5 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: CE42505-5 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: CE42505-5 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							

GOLDEN NUGGET HOTEL - TKE Callback Subtotal 0 hrs 15 mins 8 hrs 0 mins 8 hrs 15 mins

GNL 000049
JNB01057

Customer: GOLDEN HUGGET Customer Number: 7807

Site Name: GOLDEN HUGGET 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: CE42505-5 Description: #2 Down	DUTCHER, CHRISTOPHER M	05/28/2015 06:00:00 AM	05/28/2015 06:00:00 AM	05/28/2015 08:00:00 AM	0 hrs 0 mins	2 hrs 0 mins	2 hrs 0 mins
Activity Code: SR #: 14243062 Task #: 7761948 Priority: P3 Standard Payroll Status: PROCESSED							
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: down escalator, customer relations with don hartman about cracked steps and worn stepchain							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505-5 Description: #2 Down	DUTCHER, CHRISTOPHER M	05/27/2015 07:00:00 AM	05/27/2015 07:00:00 AM	05/27/2015 02:00:00 PM	0 hrs 0 mins	7 hrs 0 mins	7 hrs 0 mins
Activity Code: SR #: 14216198 Task #: 7747560 Priority: P3 Standard Payroll Status: PROCESSED							
Description: TKE Preventive Maintenance Caller: N/A PH: N/A							
Resolution: down escalator, acquired 2 quotes for part replacement, printed obsolescence and replacement policy statement-fabricated escalator steps with step body cracks, faxed in accident reports, barricaded unit and cleaned all faces of steps and inspected for cracks as layed out in kone bulletin, observed operation and returned to service							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505-5 Description: #2 Down	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
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							
SN: US135386 OEM SerNo: CE42505-5 Description: #2 Down	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
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 stepreads							
Coverage: PLATINUM PREMIERE FULL MAINT 24 HR CBS INCLUDED ESCALATOR Billable: N							
PO #: N/A							
SN: US135386 OEM SerNo: CE42505-5 Description: #2 Down	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
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							

JNB01038

Customer: GOLDEN NUGGET Customer Number: 75937

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

GOLDEN NUGGET HOTEL - TKE Preventive Maintenance Subtotal

**0 hrs 0
mins**

**17 hrs 30
mins**

**17 hrs 30
mins**

GNL-000054
JNB01059

EXHIBIT J

EXHIBIT J

JNB01060



JNB01061

EXHIBIT C

JNB01062



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 JOE BROWN,

6 Plaintiff(s),

7 vs.

8 LANDRY'S INC.,

9 Defendant(s).

Case No. A-16-739887-C

DEPT. XXXI

10
11
12
13 BEFORE THE HONORABLE JOANNA S. KISHNER,
14 DISTRICT COURT JUDGE

15 TUESDAY, AUGUST 7, 2018

16
17 **TRANSCRIPT OF PROCEEDINGS RE:**
18 **PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED**
19 **COMPLAINT**

20
21 (Appearances on page 2.)

22
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24
25 RECORDED BY: SANDRA HARRELL, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):	MOHAMED A. IQBAL, ESQ.
For the Defendant(s), Golden Nugget, Inc. and Landry's Inc., and the Defendant(s) and Third Party Plaintiff(s), GNL Corp:	ALEXANDRA B. McLEOD, ESQ.
For the Third Party Defendant(s), Thyssenkrupp Elevator Corporation:	REBECCA L. MASTRANGELO

1 **LAS VEGAS, NEVADA, TUESDAY, AUGUST 7, 2018**

2 [Proceedings commenced at 9:31 a.m.]

3
4 THE COURT: Page 10, *Joe Brown vs. Landry's*, 739167.

5 MS. MASTRANGELO: Good morning, Your Honor. Rebecca
6 Mastrangelo for Thyssenkrupp Elevator.

7 MS. McLEOD: Good morning, Your Honor. Alexandra
8 McLeod from Grant & Associates, 8185, on behalf of the Golden Nugget
9 defendants.

10 MR. IQBAL: Good morning, Your Honor. Mohammed Iqbal
11 on behalf of Plaintiffs, 10623.

12 THE COURT: Okay. Motion for Leave to File Second
13 Amended Complaint. So I got oppositions to this one. I have two
14 different types of oppositions. I've got one opposition, untimely, under
15 the NRCP 15 standpoint, and I've got the other opposition that statute of
16 limitations has run, so you can't amend to add somebody who's not in
17 the first one.

18 Go ahead, counsel.

19 MR. IQBAL: Yes. Thank you, Your Honor.

20 So Plaintiffs move to amend their existing pleadings to add
21 further detail regarding Gold -- the Golden Nugget entities, and then to
22 name third party Thyssenkrupp as a direct defendant.

23 THE COURT: Okay.

24 MR. IQBAL: Based on Thyssen's and Nugget's knowledge of
25 the dangerous and defective condition of the escalator and their

1 awareness of the risk posed to the public by those defects, and their
2 failure to remedy the problems, which resulted in the devastating injuries
3 to Plaintiff.

4 Now, Your Honor correctly stated the positions of -- of the
5 oppositions. And going to 15(a), the 15(a) argument by Thyssen. So
6 Thyssen relies on inapplicable federal law, citing federal district court
7 cases, as we point out in the reply, based on Federal 15(c) parts and
8 subparts.

9 Now, Nevada 15(c) is one sentence. They have a footnote
10 about the accord and respect that Nevada law gives to federal, but
11 only when the applicable rule mirrors the federal rule. Here, there's a
12 substantial difference. Again, the federal 15(c) has two major subparts,
13 has sub-subparts, and then sub-sub-subparts. Nevada has one
14 sentence under 15(c).

15 So the reliance on the federal district court cases to push this
16 to a 10 -- Rule 10 analysis is simply wrong. You -- you cannot deny a
17 Nevada amendment based on a subpart of Rule 15(c) that doesn't exist
18 in this state. Because Nevada's 15(c) has no subparts.

19 And so yeah, the Delaware case that they cite, it's based
20 on 15(c)(3), the Connecticut case, 15(c)(1)(C)(ii). That's simply
21 inapplicable.

22 So then we turn to the question of whether Nevada law allows
23 amendments under 15(a). Thyssen argues no. And they cite
24 *Nurenberger*. They cite *Nurenberger* and they say -- they argue:

25 "Has been good law in Nevada for 27 years."

1 Wrong again. The -- the critical parts of *Nurenberger* relevant
2 to this analysis were overturned in *Costello*. The Supreme Court in
3 *Costello* expressly disavowed what it called dicta in the *Nurenberger*
4 decision, suggesting that 15 -- Rule 15 did not apply. The *Costello*
5 court, the controlling opinion in Nevada today, said no, it -- it does apply.
6 And *Costello*'s a 2011 case.

7 So, ultimately, when we look at a 15(a) analysis, Your Honor,
8 the key issue is permitting an amendment when there is a lack of
9 prejudice. *Costello* allows relation back where the opposing party will
10 not be put -- will be put at no disadvantage. There has been no
11 prejudice -- viable prejudice alleged by allowing the proposed
12 amendment to go forward, nor could they plausibly do so. Here's why.

13 The maintenance of the escalator that broke Plaintiff's neck
14 was placed squarely at issue by Plaintiffs in the operative complaint, the
15 first amended complaint. As the alleged maintainer of the escalator,
16 Thyssen knew that it would have to account for the diligence of its
17 maintenance. Thyssen admitted in its opposition that it's "been involved
18 in this matter since nearly the beginning." Thyssen has had every
19 opportunity to participate in discovery and has done so.

20 And moreover, Thyssen's defense against the third party
21 complaint from Nugget hasn't been to go after Nugget. They have
22 attacked Plaintiff's underlying bases. So where they -- if they were an
23 official party, their -- their discovery efforts would not have been any
24 different. There would be no prejudice with the amendment going
25 forward.

1 THE COURT: Why didn't it come in earlier? Why didn't you
2 seek to bring them in earlier?

3 MR. IQBAL: Your Honor, part of that was because there was
4 a lot of evidence that was hidden. There was a lot of evidence hidden
5 as -- as discussed in the reply until six months after that -- that statute of
6 limitations ran. We -- we've been aggressive in discovery. The -- the
7 evidence, the e-mails explicitly -- you're talking about the safety
8 concerns for the riding public were -- were offered in a second
9 supplemental from Thyssen November 6th, 2017. In less than a month,
10 we -- we issued a -- a six-part, multi-part 2.34 discovery letter to -- to
11 Nugget, we have continued those efforts and we've issued discovery to
12 Thyssen. Those discovery efforts continue. Even as -- as recent as
13 May 7th, we do a deposition in New York of Thyssen's engineer at that
14 time. And he talks about e-mails that he has sent back and forth. We
15 haven't gotten those e-mails.

16 After that May 7th deposition, in June, we -- we -- again, after
17 getting the transcript, we again then issued discovery requests to
18 Thyssen. So the diligence is there.

19 And -- and the difference between the MGM case that you had
20 and this one, our -- our party, Plaintiff, an individual, did not have
21 access. Thyssen had responsibilities under 16.1. Their April 15 --
22 Rule 16 initial disclosures had some documents, some portions of the
23 maintenance log. But not critical portions of the maintenance log
24 showing that just a few -- just days after Plaintiff's injury, it was
25 determined that the steps were cracked.

1 Now, what -- the difference again is the strength of the
2 evidence that was hidden from Plaintiffs for six months after that statute
3 of limitations passed with -- with Thyssen. And -- and Nugget
4 separately, in February of '07 -- '17, in March of '17 stated we're not
5 aware of any mechanical problems, this, that, and everything.

6 What do we get in November 6th? We get explicit e-mails that
7 both parties hid -- both parties hid. I mean, I don't know if it gets any
8 better than this.

9 "A serious safety issue for the riding passengers." The
10 escalator steps are "obsolete, prone to cracking."

11 You know, there's a difference between that affidavit that was
12 at issue in the earlier case and the strength of the evidence here, the
13 posture of the parties, and the diligence that Plaintiffs have shown here.
14 So it's -- Thyssen really can't complain about time when their second
15 supplemental with all of those juicy e-mails that, by the way, back and
16 forth between them and Golden Nugget, Nugget didn't share either with
17 Plaintiffs, until that second supplemental came out. So you can't
18 complain about time when you've -- when you've hidden evidence for six
19 months.

20 And -- and so when you look at it, the Rule 15(c) analysis
21 under the federal rules is -- is wrong. The *Nurenberger* analysis is also
22 wrong, because they don't cite *Costello*, which is the actual controlling
23 law. And then you have that additional third component of hiding these
24 relevant e-mails and evidence.

25 Now, that -- that's with -- that's with Thyssen. So what -- what

1 you're left with then is 15(a), as justice requires. Liberally construed as
2 justice requires. We've been in front of Your Honor on -- on Motions to
3 Dismiss, summary judgment on the Nugget entities. This has been a --
4 a very heavily litigated case. And -- and so there's no dilatory motive,
5 there's no bad faith. This is -- this is simply preserving the -- the right --
6 and again, we're not saying we're -- we're entitled to -- to a decision on
7 punitive damages. That would be inappropriate. That's a jury decision.
8 That's for the trier of fact. This is simply that this should go to the jury.

9 Now, switching to the Nugget entities and their opposition,
10 their opposition -- here we go. They misstate the punitive damages
11 standard. They're citing a 1984 case and they're saying:

12 "Plaintiff's burden to establish the defendants acted
13 intentionally, willfully, and deliberately, knowing that such conduct
14 would be harmful to Plaintiff specifically."

15 Page 6, lines 6 and 7 of their opposition.

16 That is wrong. Nevada's punitive damages rule, the statute,
17 was changed in 1995, 11 years after the case cited by Golden Nugget.
18 It's: Or despicable conduct which is engaged in with a conscious
19 disregard of the rights or safety of others.

20 Now, let's go back to that case that Nevada --

21 THE COURT: Counsel. Counsel.

22 MR. IQBAL: I'm sorry.

23 THE COURT: I really appreciate you giving a seminar. When
24 I have my 9:00s -- remember I said I was calling the ones I thought were
25 going to be quicker so that we could get --

1 MR. IQBAL: Absolutely, Your Honor.

2 THE COURT: -- the other people, I've got to get them. And I
3 appreciate it. If you think it's going to take long, what I can do is I can
4 pause you right now, finish up my other 9:00s, get them in and out of
5 here, and then circle back to you all. It -- because I didn't know that this
6 was one that people would take more than just about five minutes on
7 each side, because that's normally what we do for --

8 MR. IQBAL: I appreciate that, Your Honor.

9 THE COURT: -- I want to make sure everyone gets fully
10 heard. Yeah.

11 MR. IQBAL: Absolutely.

12 THE COURT: So I want to make sure everyone gets fully
13 heard. What --

14 MR. IQBAL: And I -- I can even stop right now and ask if the
15 court has any questions for Plaintiffs, and then I can sit down.

16 THE COURT: Sure. That's fine. I didn't want to cut you off if
17 you want more time. I just want to try and allocate for everybody else's
18 schedules as well.

19 MR. IQBAL: Absolutely. I'll -- I'll just close by saying just like
20 with Thyssen, Golden Nugget has the completely wrong standard for
21 punitive damages and we're entitled to it.

22 THE COURT: Okay. Thank you so much.

23 So let's each respond briefly, he gets final word, and then the
24 court will make a ruling.

25 Go ahead, counsel. Who's going first? Thyssen? Okay.

1 MS. MASTRANGELO: Five minutes, Your Honor.

2 None of counsel's arguments has addressed the issue we're
3 here for today. Neither the motion nor the reply address the statute of
4 limitations. Neither the motion nor the reply addressed his failure to
5 properly identify Doe defendants and allegations against them. And
6 neither the motion nor the reply address the mandates of *Nurenberger*,
7 which is still good law. I've been to the Supreme Court more times on
8 *Nurenberger* than any other issue, and it remains good law till today.

9 This motion, as far as Thyssenkrupp is concerned, is not even
10 a close call. The whole purpose of naming Doe defendants in a
11 complaint is when you don't know the identity of that defendant and later
12 you find out who it is and you substitute. Here, he knew the identity well
13 before the statute of limitations ran. He's always known the identity.
14 Thyssenkrupp has been in this case before the statute of limitations ran,
15 and even when Thyssenkrupp got in the case, he waited another year
16 and a half to file this motion.

17 So even if you had everything else working, Judge, he still
18 hasn't named any allegations against Doe Defendant Escalator
19 Maintenance Company in either the first amended complaint or the
20 original complaint. There is nothing in there that says maintenance
21 company was negligent. Nothing in there at all. That does not satisfy
22 *Nurenberger*, it does not satisfy his Doe defendant allegations.

23 It's just under any liberal -- under the most liberal
24 interpretation of the law, this motion has to be denied.

25 THE COURT: What do we do about the -- do you agree on

1 the subsequent e-mails only more recently being disclosed, which
2 showed tie-ins between --

3 MS. MASTRANGELO: No. I produced those e-mails in
4 response to Golden Nugget's request for production long ago.

5 THE COURT: What would long ago be? Well, I -- they
6 weren't 16.1 disclosures back at the beginning of this case in '16?

7 MS. MASTRANGELO: We produced our maintenance
8 records in 16.1, we --

9 THE COURT: Complete?

10 MS. MASTRANGELO: Complete. There are some
11 maintenance --

12 THE COURT: Or in -- because he -- he is -- because
13 counsel --

14 MS. MASTRANGELO: -- records that don't exist because of
15 the passage of time. We produced everything surrounding this incident,
16 Judge. We produced the correspondence from KONE, the escalator
17 manufacturer, directing their client, their customer, Golden Nugget's, as
18 well as the maintenance company, to replace these steps. We produced
19 all that long ago. And I don't have the exact date that they were
20 produced. He says November of '17. I believe it was prior to that. But
21 even November of '17, he waited another seven, eight months before
22 filing this motion.

23 And again, it all goes back to the Doe defendants in the
24 original complaint, Judge. That's what you have to base it on. When the
25 statute of limitations ran, we have to -- the only way he can

1 Thyssenkrupp in is Doe and Roe allegations. He did not say one single
2 Doe was an escalator maintenance company, he did not make a single
3 allegation of negligence against a maintenance company.

4 THE COURT: Okay.

5 MS. MASTRANGELO: Those claims just can't be part of this
6 case.

7 THE COURT: Okay. Appreciate it.

8 Your argument's different. Go ahead.

9 MS. McLEOD: The proposed changes to Plaintiff's complaint
10 with respect to the Golden Nugget entities are less comprehensive than
11 that of Thyssenkrupp. But the standard here is not that justice allows
12 amendment, but requires amendment. And another topic that Plaintiff
13 failed to address either in their motion or their reply, is the futility of the
14 amendments that they're seeking and the fact that should the court allow
15 the second amended complaint, think both defendants will have reasons
16 to file motions on that complaint.

17 With regard to the allegations and punitive damages
18 allegations, the standard, as far as I know and as I've argued
19 successfully in other departments, is the *Countrywide* case, which was
20 not addressed by Plaintiff in their motion. And when it was brought up in
21 opposition, it was not brought up or addressed in their reply.

22 The -- even the proposed second amended complaint states a
23 cause of action for negligence and loss of consortium. Those causes of
24 action do not, under *Countrywide*, they're insufficient to support a claim
25 of punitive damages. Plaintiff completely sidesteps that argument and

1 completely fails to address the precedent of the *Countrywide* case. We
2 echo the sentiments of our -- our co-defendant and we believe that this
3 proposed amendment should be disallowed as futile.

4 MR. IQBAL: Your Honor, very quickly.

5 THE COURT: Yeah, of course.

6 MR. IQBAL: Counsel just said that we ignored *Countrywide*.
7 It's in our reply, page 8 of 12, lines 14 to 22.

8 THE COURT: Sure.

9 MR. IQBAL: And then going to Thyssenkrupp's argument that
10 this was produced long ago, April 18, 2017, was their Rule 16. The
11 second supplemental was November 6, 2017. We didn't sit on our
12 hands after that, because we just got a few e-mails. We sent out
13 exhaustive discovery, and based on those e-mails, started doing multiple
14 depositions, which we've done. So there's been no diligence.

15 I just wanted to correct the record, Your Honor. Thank you.

16 THE COURT: Sure. All right. Got a couple of questions.
17 With reference back to the first amended complaint. Okay.

18 MR. IQBAL: Yes.

19 THE COURT: Part of Thyssenkrupp's argument is on the
20 Roes, right? So paragraph 7 is your Roes.

21 The true names and capacity of each defendant Roe business
22 entities 1 through 100 are presently unknown to Plaintiffs, who
23 therefore sue said defendants by such fictitious names. Defendants
24 are informed and believed and therefore allege that each defendant
25 designated Roe Business Entities 1 through 100 are legally

1 responsible for the events referred to herein. The first amended
2 complaint will be amended to include them when their true names
3 and capacities become known.

4 So would you argue that that is or is not sufficient to put --

5 MR. IQBAL: Your Honor, under -- under the standard, we --
6 we knew of Thyssenkrupp, obviously, they were brought in. We did not
7 know of their role in -- in the defects, we did not role -- know their role in
8 the maintenance, we did not know that these e-mails were going back
9 and forth and that they sat on their hands, Your Honor.

10 And so when you look at 15(a), when you look at *Costello*, you
11 can relate back, you can relate back when the -- when there's no
12 prejudice. And they've literally conducted discovery, which is still
13 ongoing, as if they've been in this -- against Plaintiffs.

14 Separately, even under *Nurenberger*, which again, *Costello*, it
15 clearly points out, is -- is dicta and overruled, even under *Nurenberger*,
16 even under that flawed analysis that Thyssen has, you -- let me -- let me
17 quote it and then I'll sit down.

18 THE COURT: Yeah, sure.

19 MR. IQBAL: *Nurenberger* holds the right to amend and relate
20 back shall rarely be denied Plaintiffs irrespective of the extent of the
21 delay whenever the intended defendant has sought in any way to
22 mislead or deceive the complaining party.

23 That's *Nurenberger*, if they want to rely on that. And what did
24 we do, Your Honor? We -- we added actual transcripts from the
25 depositions of their own engineer and their own second supplemental,

1 which was e-served on November -- November 6th, 2017. And the
2 evidence is -- is staring all of us in the face.

3 Thank you, Your Honor.

4 THE COURT: And the court agrees. The court's going to
5 grant the Motion for Leave for the Second Amended Complaint in its
6 entirety. While the court's appreciative of the excellent oral arguments in
7 the pleadings of all the parties, since there's reference, I mean, each
8 case is different. I have to look at the facts in each case. I have to look
9 at the diligence in each case. I have to look at the information that's
10 available in each case.

11 And in this case, when I look at the totality and look in the
12 applicable case law, that would be what this court has to analyze, this
13 court's going to find it's appropriate for the Motion for Leave the Second
14 Amended Complaint. This is very different from the other case. I've got
15 to get Thyssenkrupp in there. When I look at the Golden Nugget, it is --
16 while it's excellently been drafted, it's still -- a plethora of Supreme Court
17 and appellate court cases says that this court should grant the Motion for
18 Leave the Second Amended Complaint. The court's going to grant.

19 Is that going to be filed 10 days from this entry of order? Or
20 how much time do you need to file it? And if whatever time you say, I'm
21 going to ask the other parties what they -- their viewpoint is.

22 MR. IQBAL: Your Honor, 10 days is -- is perfectly fine.

23 THE COURT: 10 days from notice of entry?

24 MR. IQBAL: 10 business days under the -- under the rule.

25 THE COURT: Yeah. Does that work for the other parties?

1 MS. MASTRANGELO: Doesn't make a difference to me,
2 Judge.

3 MS. McLEOD: That's fine.

4 THE COURT: Okay. So then when you draft your order, put
5 that the -- the second amendment's going to be filed within 10 business
6 days after Notice of Entry of order. And you all might want to stay tuned
7 on a lot of those NRCP changes coming down the pike.

8 Have a great one. Thank you so very much.

9 MR. IQBAL: Thank you, Your Honor.

10 [Proceedings concluded at 9:53 a.m.]

11 / / /

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video proceedings in the above-entitled case to the best of my
20 ability.

21



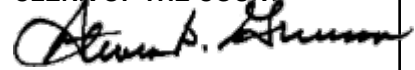
Shawna Ortega, CET*562

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CASES

Case No.: A-16-739887-C

Dept. No.: XXXI

**PLAINTIFFS' MOTION IN LIMINE TO
EXCLUDE EXPERT WITNESS DAVIS L.
TURNER FOR FAILURE TO DISCLOSE
INSPECTION, RELATED
INFORMATION, AND DOCUMENTS**

DATE:

TIME:

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby submit this motion in limine to exclude Expert Witness Davis L. Turner for failure to disclose inspection, related information, and documents (this "Motion"). This Motion is based on the papers and pleadings on file, the following Memorandum of Points and Authorities, the associated exhibits, and on any oral argument as this Court may allow.

Dated: November 13, 2018

IQBAL LAW PLLC

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

Mohamed A. Iqbal, Jr. (NSB# 10623)

Attorneys for Plaintiffs

**PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER
FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND
DOCUMENTS**

NOTICE OF MOTION

Please take NOTICE that on the **18th** day of **December**, 2018, at **9:00** a.m. or as soon thereafter as feasible, the undersigned shall bring the above Plaintiffs' **MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND DOCUMENTS** before Department XXXI of the Eight Judicial District Court.

Dated: November 13, 2018

IQBAL LAW PLLC

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

Mohamed A. Iqbal, Jr. (NSB# 10623)

Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

The EDCR 2.47 Declaration of Mohamed A. Iqbal, Jr., Esq., in Support of Plaintiffs' Motion in Limine (the "Iqbal Decl.") is filed concurrently herewith.

I. THE RELEVANT FACTS

A. Plaintiffs Receive Notice in May of 2018, at the Expert Disclosure Deadline, of a November 2017 Inspection Plaintiffs Had No Knowledge Of

The Court is very well versed with the overall aspects of this case. As such and turning to the issues underlying this motion in limine, escalator expert witness Davis L. Turner's "Report of Findings and Opinions" was produced on or about May 2, 2018, at the time of the expert witness disclosure deadline (the "Report"). See attached as **Exhibit A** to the Iqbal Decl. the first nine (9) pages of the Report, dated December 3, 2017. Mr. Turner asserted that it was prepared on behalf of ThyssenKrupp Elevator Company ("TKE") **and** GNL, Corp., defendants,¹ following an inspection of the "escalator at the location in question conducted on November 16, 2017." Exhibit A, at p. 2 of 9, Section 2.0 (emphasis added).

¹ The various Golden Nugget defendants are collectively referenced herein as the "Nugget Defendants".

1 Plaintiffs were wholly unaware of the planning for the November 16, 2017 inspection and
2 the details of and the witnesses associated with the inspection and remained in the dark for
3 several months. Even the May 2, 2018 disclosure of the Report contributed only Mr. Turner's
4 retention by both TKE and the Nugget Defendants and the occurrence of the November 2017
5 inspection. As this matter involved substantial motion practice throughout discovery, both Mr.
6 Turner and Plaintiffs' escalator expert were only deposed in October of 2018.

7 Plaintiffs' escalator expert was commanded to bring her entire file to her October 1, 2018
8 deposition and did so; in fact, TKE's counsel made copies of that file. Mr. Turner was similarly
9 instructed to bring his entire file and failed to do so when his deposition began on October 19,
10 2018 – prejudicing Plaintiffs. *See* attached as **Exhibit B** to the Iqbal Decl., Transcript of Davis
11 L. Turner's October 19, 2018 Deposition at pp. 34, 35 (highlighting several missing components
12 from Mr. Turner's file that he failed to bring to the deposition); *see also* pp. 190:17-191:6 (where
13 undersigned counsel notes on the record the incompleteness of Mr. Turner's file and expects a
14 copy of the full file). Adding to the prejudice was the fact that discovery closed on October 2,
15 2018 and, as of the date of this motion, Plaintiffs are still deprived of Mr. Turner's full file.

16 **B. Mr. Turner's Deposition Revealed the Critical Components and Importance**
17 **of the November 2017 Inspection – that Plaintiffs Were Deprived of**
18 **Preparing for, Attending, or Participating In, As TKE and the Nugget**
19 **Defendants' Deliberately Hid the Inspection and All Traces thereof from**
20 **Plaintiffs Until the Initial Expert Disclosure Deadline in May of 2018**

21 Under oath at his deposition, Mr. Turner testified that he completed an inspection of the
22 subject escalator and was assisted by Christopher Dutcher. Exhibit B, at pp. 8:23-9:4, 12:9-18.
23 Mr. Dutcher was the primary TKE escalator mechanic responsible for the subject escalator at the
24 Laughlin Nugget from 2010 to 2018 and constitutes a percipient witness. Mr. Turner testified to
25 Mr. Dutcher being at the inspection to assist him (Exhibit B, p. 14:15-17) and referenced
26 discussions between himself and Mr. Dutcher. *Id.*, at p. 15:13-23. Mr. Dutcher, given his
27 position, is a critical witness in this matter—and Mr. Turner was assisted by this critical

1 witness's hands-on experience with the subject escalator. In contrast, Plaintiffs' expert was
2 deprived of Mr. Dutcher's assistance and the contributions/input of the mystery Nugget
3 employee/manager (see below) during her May 2018 inspection—by which time Mr. Dutcher
4 had been transferred to New York City.

5 Mr. Turner also noted the presence of a Nugget Defendant employee or manager at the
6 inspection, who was having conversations with counsel for TKE and counsel for the Nugget
7 Defendants as Mr. Turner was engaged with Mr. Dutcher; this mystery individual was *never*
8 *identified* and the contents of his separate conversations with counsel were not preserved or
9 recorded. See Exhibit B, p. 13:5-7; p. 147:14-16 (where Mr. Turner could not recall any of the
10 conversation between counsel and the Nugget employee/manager).

11 Mr. Turner also testified that he prefers to do an inspection before issuing a report and he
12 provided several reasons why an inspection is generally important, as he deconstructed and
13 discussed different components of the typical inspection. Exhibit B, at p. 22:5-18. Indeed, Mr.
14 Turner's inspection and report benefited from the presence and assistance of Mr. Dutcher and,
15 perhaps (we simply do not know, given the lack of preserved information/details) the presence of
16 the mystery Nugget employee/officer.

17 Mr. Turner also confirmed that the inspection marked the very first and only time he
18 directly spoke with counsel for the Nugget Defendants; he asked whether the Nugget Defendants
19 had a separate expert witness, and counsel Alex McCloud indicated that the Nugget Defendants
20 were considering retaining Mr. Turner as well, concurrent with TKE's ongoing retention of Mr.
21 Turner. Exhibit B, pp. 8:25-9:4. This sworn testimony demonstrated that Mr. Turner was not
22 retained by the Nugget Defendants prior to or at the inception of the November 2017
23 inspection—rendering the inspection as an NRCP 34 inspection that required notice to Plaintiffs.

24 Importantly, without any knowledge of the inspection and the cooperation between TKE
25 and the Nugget Defendants (who were ostensibly adversarial, based on the Nugget Defendants'
26 maintaining a cross claim against TKE since its filing on February 1, 2017), Plaintiffs

27 PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER
28 FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND
DOCUMENTS

specifically issued discovery to determine what if any correspondence, communications, and documents TKE and the Nugget Defendants shared. Both TKE and the Nugget Defendants failed to disclose the communications they shared regarding the inspection and, indeed, stonewalled Plaintiffs entirely regarding these requests. See attached as **Exhibit C** to the Iqbal Decl., Defendant GNL, Corp.’s Responses to Plaintiffs’ Second Set of Request for Production of Documents, Response to Request No. 16, and Third-Party Defendant Thyssenkrupp Elevator Corporation’s Response to Plaintiffs’ First Set of Requests for Production of Documents, Response to Request No. 1 (the full responses from both defendants are included in their entirety). There was no objections on the basis of common interest or joint defense privilege.

II. LEGAL STANDARDS

A. Parties Must Produce the Information, Communications, and Documents Experts are Given and/or Consider or Review

Data or information that the expert considers – versus relies upon – needs to be disclosed. This disclosure applies to data or information considered but not relied upon by the expert. See Advisory Committee Notes, 1993 Amendments, Fed. R. Civ. P. 26(a)(2); see also *Karn v. Ingersoll Rand*, 168 F.R.D. 633, 634 (N.D. Ind. 1996) (“[c]onsidered’, which simply means ‘to take into account,’ clearly invokes a broader spectrum of thought than the phrase ‘relied upon,’ which requires dependence on the information”); *Baxter Diagnostics, Inc. v. AVL Scientific Corp.*, 1993 WL 360674 (D.C. Cal. 1993) (citing the amendments to rule 26 as required “automatic disclosure of all information considered by the trial experts” in forming their opinion). “information considered, but not relied upon, can be of great importance in understanding and testing the validity of an expert’s opinion.”² Courts require the disclosure of

² *Trigon Ins. Co.*, 204 F.R.D. at 282.

1 all materials reviewed by the expert in forming his or her opinions.³ Failure to disclose all the
2 data or other information “considered” is sufficient reason to preclude the expert’s testimony.⁴

3 No less than “fundamental fairness” requires “disclosure of all information supplied to
4 a testifying expert in connection with his testimony” – even if it would be otherwise
5 privileged. *In re Pioneer Hi-bred Int’l, Inc.*, 238 F.3d 1370, 1375-76 (Fed. Cir. 2001). This
6 includes oral communications the expert considered, regardless of whether they came from a
7 party or a party’s counsel. *Synthes Spine Co., L.P. v. Walden*, 232 F.R.D. 460, 465 (E.D.
8 Pa.2005). Perhaps this requirement is best stated by the U.S. District Court for the District
9 of New Jersey: “[I]n simple language, this means disclosure applies to what the witness
10 “saw, heard, considered, read, thought about or relied upon in reaching the conclusions and
11 opinions to be expressed.” *Reed v. Binder*, 165 F.R.D. 424, 428 n.6 (D.N.J. 1996).

12 **B. NRCP 37 Provides the Pathway for Addressing Parties’ Discovery**
13 **Deficiencies and/or Misconduct**

14 NRCP 37(c)(1), in pertinent part, states: “If a party fails to provide information or
15 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that
16 information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the
17 failure was substantially justified or is harmless.”

18 Courts have wide latitude in using discretion to issue sanctions under Rule 37(c)(1). *Yeti*
19 *by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)(regarding FRCP
20 37(c)(1); NRCP 37(c)(1) is substantially similar to FRCP 37(c)(1)). The factors for determining
21 whether discovery deadline violations are justified or harmless include: (1) prejudice or surprise
22 to the party against whom the evidence is offered; (2) the ability of that party to cure the
23 prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or willingness involved in
24 not timely disclosing the evidence. *Manneh v. Inverness Medical Innovations, Inc.*, 2010 WL

25 _____
26 ³ *Id* at 283; *Karn*, 168 F.R.D. at 635.

27 ⁴ *See e.g., Olsen v. Montana Rail Link, Inc.*, 227 F.R.D. 550, 551-53 (D. Mont. 2005).

3212129 at *2 (S.D. Cal. 2010)(*quoting Lanard Toys, Ltd. v. Novelty, Inc.*, 2010 WL 1452527 at *6 (9th Cir. 2010)).

Where obstruction efforts are consistent and pervasive enough to contravene the very purpose of discovery, more stringent sanctions are appropriate. “Dismissal is appropriate where a pattern of deception and discovery abuse [makes] it impossible [...] to conduct a trial with any reasonable assurance that the truth would be available.” *Valley Engineers Inc. v. Electric Engineering Co.*, 158 F.3d 101, 1057 (9th Cir. 1998).

III. ARGUMENT

A. Plaintiffs were Deprived of Information, Communications, and Key Witnesses from Defendants’ Collusion in Hiding the Inspection from Plaintiffs and Stonewalling Discovery Responses – and the Rule 37 Factors Weigh In Favor of Exclusion

As clearly demonstrated for the first time at Davis L. Turner’s deposition on October 19, 2018 – which occurred after the close of discovery, Plaintiffs were deprived of, among other things, the conversations (of counsel with Nugget staff), and engagement with the key TKE mechanic, Chris Dutcher, that Mr. Turner enjoyed and accessed throughout the inspection. Mr. Turner heard conversations amongst counsel and Nugget staff that were not recorded for Plaintiffs’ review, and, indeed, he was unable to recount or detail those conversations at his deposition. The lack of any recording regarding the assistance he received from percipient witness Mr. Dutcher makes any review by Plaintiffs of these communications *impossible*.

The law is clear – Plaintiffs are entitled to everything Mr. Turner reviewed, heard, experienced, and was provided that contributed to his inspection and the Report. Not only were Plaintiffs deprived of this material, but Plaintiffs were in the dark regarding the inspection itself until the initial expert disclosure deadline and Plaintiffs ascertained details regarding the inspection only after discovery closed. Furthermore, Plaintiffs have been and are still being deprived of Mr. Turner’s full file, with trial rapidly approaching.

PLAINTIFFS’ MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER
FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND
DOCUMENTS

NRCP 37's factors all weigh in favor of Plaintiffs. Factor one – prejudice and surprise – is at the heart of this issue. Plaintiffs were blindsided by the news of an early inspection they were not invited to, and the surprise and prejudice only increased upon examination of Mr. Turner under oath. Given the fact that Mr. Dutcher has long since transferred to New York City (where Plaintiffs traveled to conduct his deposition), and the unrecorded nature of correspondence, conversations, and assistance from an inspection that occurred one calendar year ago – factor two also favors Plaintiffs, as this prejudice cannot be cured. This prejudice is likely to disrupt trial, given the sheer significance of the prejudice involved (where a percipient witness assisted defendants' witness with an inspection and was unavailable – entirely – to Plaintiffs' witness, who was further deprived of other correspondence and engagement(s) with Nugget staff). Accordingly, factor three favors Plaintiffs as well. Finally, the fourth factor of bad faith and untimely disclosure looms large – indeed, defendants (two massive corporations/sets of entities) went behind Plaintiffs' backs (two individual Nevada plaintiffs) and conducted critical discovery without Plaintiffs' knowledge. Once defendants received the benefit of the inspection, they obscured the details and all traces – going so far as to make false statements and stonewall Plaintiffs' discovery aimed at identifying correspondence between the defendants. This fourth factor joins the others in favoring Plaintiffs.

Fundamental fairness requires that Mr. Turner and the Report be excluded.

B. Given the other Discovery Abuses by Defendants, Exclusion of Davis L. Turner is an Appropriate Remedy

The events detailed herein are not isolated incidents. Both the Nugget Defendants and TKE have individually committed discovery abuses beyond hiding this inspection and relevant materials underlying the Report from Plaintiffs. The Nugget Defendants falsely claimed for the better part of a year that they were unaware of any mechanical problems or issues with the subject escalator – denials proved false by TKE's second supplemental, which contained emails highlighting the safety concerns associated with the subject escalator. See attached as **Exhibit D**

PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER
FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND
DOCUMENTS

1 to the Iqbal Decl. the December 8, 2017 EDCR 2.34 Letter from Plaintiffs to the Nugget
2 Defendants detailing the false statements and long period of obscuring evidence. Similarly, TKE
3 claimed that no emails existed from Mr. Dutcher to various internal TKE personnel; this was
4 proved false by Mr. Dutcher's sworn deposition testimony establishing that he did send emails to
5 those same internal TKE personnel. See attached, also as Exhibit D, the June 8, 2018 EDCR
6 2.34 Letter from Plaintiffs to TKE detailing the stark inconsistencies between Mr. Dutcher's
7 sworn testimony and TKE's denials.

8 With pervasive and consistent discovery abuses by both defendants, the exclusion sought
9 in this motion is entirely appropriate.

10 **IV. CONCLUSION**

11 Plaintiffs respectfully request that the Court grant this Motion and exclude Davis L.
12 Turner and the Report.

13 Respectfully Submitted,

14 IQBAL LAW PLLC

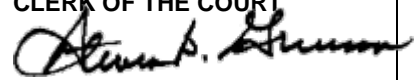
15 By: /s/ Mohamed A. Iqbal, Jr.

16 Mohamed A. Iqbal, Jr. (NSB# 10623)

17 Christopher Mathews (NSB #10674)

18 *Attorneys for Plaintiffs*

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27 **PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT WITNESS DAVIS L. TURNER**
28 **FOR FAILURE TO DISCLOSE INSPECTION, RELATED INFORMATION, AND**
DOCUMENTS



1 **DECL**
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9 *Attorneys for Plaintiffs*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

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

18 Defendants.

19 AND ALL RELATED CASES

Case No.: A-16-739887-C

Dept. No.: XXXI

DATE:

TIME:

20 **DECLARATION OF MOHAMED A. IQBAL, JR., ESQ.**
21 **IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT**
22 **WITNESS DAVIS L. TURNER FOR FAILURE TO DISCLOSE INSPECTION,**
23 **RELATED INFORMATION, AND DOCUMENTS**

24 I, MOHAMED A. IQBAL, JR., under penalty of perjury, declare and say:

25 1. I am an attorney duly licensed to practice law in the State of Nevada and am the principal
26 for Iqbal Law PLLC, counsel of record for Plaintiffs JOE BROWN and NETTIE BROWN in
27 case number A-16-739887-C currently pending before the Eighth Judicial District Court of
28 Nevada. Exhibits A, B, C, and D attached hereto are true and correct copies (or identified
portions) of documents and correspondence in the possession of and/or accessible to all of the
parties in this case.

1 2. I have personal knowledge as to the facts set forth in this declaration. If called upon to
2 testify, I could and would do so competently and would similarly testify to the subsequent facts
3 as set forth in this declaration.

4 3. Pursuant to EDCR 2.47, a meet and confer was held between all counsel on November
5 13, 2018, at 2:30 p.m. to discuss the filing of motions in limine. The conference was attended by
6 Rebecca Mastrangelo, Esq., Alex McLeod, Esq., and myself. The parties reiterated their
7 respective positions, but no stipulation could be reached at that time regarding this motion or
8 other motions. I indicated the bases for excluding Mr. Turner as an expert witness and his report;
9 counsel for defendants disagreed.

10 4. Counsel intend to make further attempts to resolve the matter and if the parties reach
11 agreement, the motion will be withdrawn in the interests of judicial economy. Pursuant to NRS
12 53.045, I declare under penalty of perjury that the contents of this declaration are true and
13 correct.

14 Dated this 14th day of November 2018.


15
16 
17 _____
18 MOHAMED A. IQBAL, JR.
19 Nevada Bar No. 10623
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26
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EXHIBIT A

Davis L. Turner & Associates, LLC

Elevator • Escalator • Consulting

DLT&A

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Phone (949) 582-1074
DLT506@aol.com

Report of Findings and Opinions
in the matter of:

Joe N. Brown an individual and his wife, Nettie J. Brown, an
individual.

v.

Landry's Inc., Golden Nugget, Inc., GNL Corp, et al

CASE NO.: A-167-739887-C

Prepared by:

Davis L. Turner & Associates, LLC
December 03, 2017

1.0 Introduction

Davis L. Turner and Associates, LLC is an elevator consulting firm. Among the services provided by the firm are litigation support, consulting and expert services in the elevator/escalator industry. The firm's qualifications are enumerated in the *Curriculum Vitae* in Attachment 2. Fees for professional services are contained in the fee schedule in Attachment 3. Trial and Deposition testimony provided are contained in Attachments 4 and 5 respectively.

The author was asked to review certain discovery documents, perform inspections and other tasks in order to form opinions and conclusions as to the cause of an incident that occurred on May 12, 2015¹ at the Golden Nugget Hotel and Casino in Laughlin, Nevada.

2.0 Scope

This report is prepared pursuant to NRCP 16.1(a)(2)(B) on behalf of ThyssenKrupp Elevator Company, cross-defendants (and GNL, Corp., defendants) in the matter of Joe N. Brown, et al v. Landry's Inc, Golden Nugget, Inc., et al as preliminary findings and opinions based on the documents and data reviewed to date and listed in Attachment 1, Document Inventory, as well as an inspection of the escalator at the location in question conducted on November 16, 2017.

3.0 Background, Joe N. Brown

On or about May 12, 2015 Mr. Joe N. Brown and some family members were guests at the Golden Nugget Hotel and Casino in Laughlin, Nevada. In the evening on the 12th Mr. Brown and his party had occasion to use the #2 down escalator (Subject Escalator) in the casino to go to dinner at the Bubba Gump Shrimp Company in the casino. Mr. Brown and his party approached the escalator at the upper landing. Mr. Brown boarded the escalator preceded by his daughter, Shalonda Marlette, his son-in-law Clay Marlette and his friend Mary Brown. Mr. Brown's wife, Nettie, elected to use the stairs adjacent to the escalator to go down to the restaurant level. See Exhibit A

Upon boarding the escalator Mr. Brown fell and sustained injuries. He was subsequently transported to a local hospital.² Mr Brown alleged that the escalator "*step was shaky*."³

None of the persons with Mr. Brown assisted him in the boarding or riding of the escalator.

¹ The incident occurred approximately 7:30 pm on May 12, 2015

² Joe Brown responses to Interrogatories by Golden Nugget Laughlin.

³ Plaintiff's Responses to Defendant GNL, Corp.'s first set of Interrogatories, Int #2.

Mr. Brown elected to utilize the subject escalator as opposed to using the nearby elevator (approximately 75 feet from the escalator. See Exhibit B)

4.0 Background, escalator installation:

The escalator is one of two escalators installed by Montgomery Elevator Company circa 1980. They serve the casino level and the restaurant river walk level below the casino. A description of the escalator is contained in Section 6, below.

5.0 Nevada Codes and Standards.

The Nevada Elevator Code comprises the Nevada Administrative Code Chapter 455C-400 to 644 and Title 40 Nevada Revised Statutes 455C.

Nevada adopts the ASME A17.1 Safety Code for Elevators and Escalators as well as other codes and standards in the ASME A17 family of codes. The ASME A17.1 code had been revised each three years and various jurisdictions, including Nevada, adopt the newer editions. Since 2007 the A17.1 code has been revised only every three years. The current edition of the code is the 2016 edition which has not yet been adopted by the State of Nevada.

The ASME A17.1 edition adopted by the State of Nevada is specified in NAC Chapter 455C 500. The following editions and adoptions dates are tabulated below:

A17.1 Edition	Effective Date	Reference
ASME A17.1 - 1985	Prior to December 1992	w/ Supp a and b
ASME A17.1 - 1990	December 1992	Not Supp a or b
ASME A17.1 - 1993	Jumped from 1990 to 1996	R142-98
ASME A17.1 - 1996	2/28/00	R142-98
ASME A17.1 - 2000	9/15/04 (Not adopted)	R101-02 I
ASME A17.1 - 2004	12/15/04	R101-02A, NAC 455C.500
ASME A17.1 - 2007	12/17/08	R160-08
ASME A17.1 - 2010	N/A ⁴	Proposed R185-12 Withdrawn 7/30/13
ASME A17.1 - 2013	1/16/15	R077-14, Sec 45

The most recent A17.1 code adopted by the State of Nevada is the 2013 edition. (See Table above)

The applicable elevator codes are enforced by the State of Nevada, Department of Business and Industry, Division of Industrial Relations, Mechanical Compliance

⁴ R185-12 indicates 2004 edition is to be replaced by 2010 edition.

Section (MCS). Escalators are inspected twice per year and approximately six month intervals.

It is my understanding that the subject escalator was installed in 1980, prior to the adoption of the ASME A17.1 Safety Code for Elevators and Escalators by the State of Nevada. Based on MCS records the inspections are based on the retroactive portions of the A17.1 code which includes Part 8, Section 8.6.8, Maintenance and Testing of Escalators and Moving Walks. The ASME A17.2 Guide for the Inspection of Elevators, Escalators and Moving Walks is generally followed for inspection and testing routines and procedures.

The last inspection performed by MCS prior to May 12, 2015 was on February 11, 2015. No discrepancies or code violations were found.

Likewise, the previous five (5) semi-annual inspections, both internal and external, revealed no discrepancies or code violations.

6.0 Investigation/Review:

Documents listed in the inventory of documents were reviewed as well as publically available codes and standards. A physical inspection of the escalator was conducted on November 16, 2017.

6.1 The escalator in question had the following characteristics based on the documents reviewed:

Type	Passenger Escalator
Model	Montgomery Model HR 3E
Speed (nominal)	90 fpm
Width	24 inch step width.
Handling Capacity (Theoretical)	Passengers per hour
Rise	13'-3"
Angle of inclination	30 degrees
Floors Served	Casino to River Walk/Restaurants
Balustrade	Solid Interior panels with Stainless Steel decking and trim.
Handrail	Black. NT 2000
Installation Date	1980
Manufacturer	Montgomery Elevator Company
Service Company	ThyssenKrupp Elevator Company
Owner's Designation	#2 Down Escalator
State Registration Number	NV1993
Applicable Code	ASME A17.1 (See item 5.0 above)

These characteristics were confirmed during my November 16, 2017 inspection.

6.2 Forensic Inspection of November 16, 2017

On November 16, 2017 I conducted an inspection of the subject escalator. The following characteristics and operating parameters were observed, measured or determined:

Model Montgomery Model HR-3E
Speed..... 90 fpm
Vertical Rise..... 13'-3"
Step width 24"
Balustrade..... Solid interior panels with stainless steel molding and decking
Manufacturer Montgomery Elevator Company
Owner's Designation #2 down escalator

Safety devices or features present and the associated code requirement:

	A17.1 - 2013	A17.1 - 1978
Skirt Deflection devices	6.1.3.3.10	NR
Step Demarcation Lights	6.1.6.7	805.1k
Handrail Extension Beyond Comb (20 in)	6.1.3.4.2	802.4b
Two Flat Steps at the top and bottom.	6.1.3.6.5	NR
Lighting - adequate	6.1.7.2	806.2
Distinction between comb and step - color	6.1.3.6.2	NR
Safety Zone	6.1.3.6.4	NR
Signs	6.1.6.9	NR
Dimensions of Steps $\geq 15\frac{1}{2}" \times 24"$	6.1.3.5.2	802.5b
Adjacent floor Surfaces, continuous with floor plates	6.1.3.6.2	NR
Comb Plates/teeth	6.1.3.6.1	802.6b
Distance between handrails - $32\frac{1}{4}"$	6.1.3.2.2	802.4d

The above features aid the passenger when boarding riding and exiting the escalator. While several items were not required by the ASME A17.1 code when the escalator was installed these features were in compliance with the current code adopted by the State of Nevada.

6.3 CCTV Security Video Review

The event of May 12, 2015 was recorded on a CCTV security system. A brief description of the event as seen on the video is contained above in section 3.0.

6.3.1 Of the three people who preceded Mr. Brown on the escalator the last to enter was his son-in-law Mr. Marlette. Mrs. Nettie Brown had completed her descent down the stairway. When Mr. Marlette was about 1/3 of the way down the escalator Mr. Brown approached the entrance to the escalator to board and ride down. Approximately 10 seconds had elapsed between the time that Mr. Marlette boarded the escalator and Mr. Brown boarded the escalator which would place them about 10 steps apart on the escalator, Mr. Brown following Mr. Marlette.

6.3.2 Mr. Brown walked with the aid of a cane which he held in his right hand as he boarded the escalator. Before stepping on to the moving step Mr. Brown grasped the left side handrail with his left hand without difficulty and appears to have placed his right hand on the right side handrail. His first step on to a moving step was with his right foot.

6.3.3 As he approached the start of the upper transition of the escalator when the steps begin to descend Mr. Brown exhibits instability and begins to lose his balance. Seconds later he falls. See Exhibit C

6.4 Post incident Inspection

6.4.1 On the day following the incident, May 13, 2015, the Nevada MCS, after receiving notification of the incident from the Golden Nugget, conducted an inspection of the escalator. MCS Inspector Steve Robertson noted no unusual conditions or deficiencies on the escalator that caused to Mr. Brown's fall. When asked at his deposition if the steps were "shaky" he responded that they were not.⁵ After reviewing the CCTV video of the incident Mr. Robertson concluded that Mr. Brown simply lost his balance and fell.

6.4.2 Assisting Mr. Robertson with his inspection on May 13, 2015 was Mr. Chris Dutcher, ThyssenKrupp maintenance technician. Mr. Dutcher examined the escalator along with Mr. Robertson and viewed the CCTV security video of the incident. He, too, found no deficiencies with the escalator that could have contributed to Mr. Brown's fall and concluded that Mr. Brown lost his balance where the steps began to form at the upper transition because he had "*stepped between the break in steps while grabbing the left handrail.*"⁶

6.4.3 Both Mr. Robertson and Mr. Dutcher found the escalator to be "*in normal operating condition*". No damage to the escalator was found. Mr. Robertson instructed that the escalator may be returned to service.

6.5 ThyssenKrupp Maintenance Records.

6.5.1 Tests: On July 14, 2014 the annual internal inspection was performed and the annual safety tests were conducted. This is consistent with the MCS Inspection records.

6.5.2 Callbacks: Between December 9, 2012 and August 2, 2015 there were 16 unscheduled service calls (callbacks). All issues were resolved.

6.5.3 Repairs: 5/14/14 - 6/8/15

⁵ Robertson depo transcript Page 17/Ln 25

⁶ TKE First Report of Alleged Incident, Description of Alleged Incident.

- Between 5/14/14 and 5/23/14 the "damaged gear box" was removed and replaced.
- The step chain was replaced on 6/8/15

6.5.4 Maintenance:11/30/12 - 12/01/15

Preventive Maintenance was performed on a regular basis pursuant to the terms and conditions of the Agreement for Dover Master Maintenance Service.⁷

The post incident inspection by TKE maintenance technician is documented in the May 13, 2015 entry. The results of the inspection are memorialized in MCS inspector Robertson's MCS Elevator Accident Report and the TKE First Report of Alleged Incident by Mr. Dutcher.

6.6 State of Nevada Inspection Records

6.6.1 Inspection records from the State of Nevada MCS for the subject escalator bearing state registration number NV1993 were obtained and reviewed. The internal and external inspection reviewed covered a period from January 2011 up to and beyond the May 12, 2015 date of Mr. Brown's incident. With the exception of one handrail issue in January of 2011 and one step demarcation light issue in January of 2012 there were no code violations or deficiencies noted on the subject escalator during the inspections. The two issues regarding the handrail and the step demarcation light were corrected by ThyssenKrupp during routine maintenance prior to subsequent MCS inspections.

6.6.2 Nevada MCS Notice of Violation records covering the period from April of 2005 up to and beyond May 12, 2015 were reviewed. Other than the aforementioned discrepancies there were no violations in the five to six years that were not abated prior to the May 12, 2015 incident to Mr. Brown.

7.0 Conclusions:

7.1 The twelve (12) items described in section 6.2 of this report aid passengers boarding the escalator and, with the exception of some vintage escalators, are found on tens of thousands of escalators throughout the United States.

7.2 The subject escalator complied with or exceeded the requirements of the applicable ASME A17.1 Safety Code for Elevators and Escalators that was in effect when the unit was installed in 1980.

7.3 Semi-annual state inspections conducted by the Mechanical Compliance Section revealed no violations to the #2 down escalator for years prior to the May 12, 2015 incident.

⁷ Referred to as "Platinum Premier Full Maint" on the TKE service records.

7.4 The flat step configuration at the upper landing exceeded the requirements of the applicable ASME A17.1 Safety Code for Elevators and Escalators when the escalator was installed.

7.5 The elevator from the casino level to the restaurant level was in close proximity to the subject escalator and could have been used by Mr. Brown and his companions and the incident would have been avoided.

8.0 Opinions, NRCP 16.1 (a) (2)(B)

8.1 Based on the documents provided and listed in Attachment 1 hereto, and my external inspection of the escalator on November 16, 2017 the escalator had no unique design features that contributed to the incident to Joe N. Brown on May 12, 2015.

8.2 The maintenance performed by ThyssenKrupp is not at issue in this matter.

8.3 The escalator complied with the applicable codes at the time of the inspections by the Mechanical Compliance Section on February 11, 2015 and May 13, 2015 inspection and underwent routine preventive maintenance by ThyssenKrupp in the interim. There is no reason to believe that the escalator was out of compliance between those dates to include May 12, 2015, the date of Mr. Brown's incident.

8.4 The escalator was well maintained and complied with applicable codes at the time of the incident.

8.5 Neither ThyssenKrupp nor Golden Nugget Laughlin (GNL) performed any act that caused Mr. Brown to fall

8.6 Neither ThyssenKrupp nor Golden Nugget Laughlin (GNL) failed to perform any service or act that would have prevented Mr. Brown's fall.

8.7 The safety devices and features described in section 6.3 of this report have been developed and codified in the A17.1 Safety Code for Elevators and Escalator over many decades and have proven effective in minimizing any difficulty that passengers have in boarding or riding on an escalator when people are cognizant of their actions and the devices and features available for their use and the escalator is used in a manner for which it was intended.

8.8 Mr. Brown is responsible for his fall on the #2 down escalator in the evening of May 12, 2015.

8.9 Mr. Brown's companions could have avoided the incident by assisting him to board and ride the escalator.

8.9 Mr. Brown and his companions could have avoided the incident by utilizing the nearby elevator to travel to the restaurant from the casino level. The Bubba Gump Shrimp Company was adjacent to the elevator at the restaurant level.

9.0 Qualifications NRCP 16.1 (a) (2)(B)

Attachment 2 contains a current and complete copy of the author's *Curriculum Vitae* which enumerates the basis of my qualifications, education, training and experience.

Attachment 3 contains the fee schedule for time and expertise applicable to this assignment.

10.0 Expert Experience NRCP 16.1 (a) (2)(B)

A listing of other cases in which this author has provided testimony as an expert witness in both trials and depositions is contained in Attachments 3 and 4.

The writer has performed a preliminary external inspection of the escalator in question. Additional inspections may be required to verify or refute information provided by other parties.

The writer reserves the right to modify, change, amend, append or supplement the opinions and conclusions expressed herein based on the production of additional discovery, documentation, additional inspection of the equipment or other evidence.

Respectfully,



December 3, 2017

Exhibits

Exhibit A: Photograph - Nettie Brown, et al at the top of the subject escalator

Exhibit B: Photograph - Joe Brown boarding the escalator. Location of the elevator

Exhibit C: Photograph - Joe Brown begins to lose balance at step transition.

Attachments:

1. Inventory of Documents reviewed) NRCP 16.1 (a) (2)(B)
2. Curriculum Vitae of Davis L. Turner NRCP 16.1 (a) (2)(B)
3. Fee Schedule of Davis L. Turner & Associates NRCP 16.1 (a) (2)(B)
4. Trial Experience of Davis L. Turner NRCP 16.1 (a) (2)(B)
5. Deposition testimony experience of Davis L. Turner NRCP 16.1 (a) (2)(B)

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,)
and his Wife, NETTIE J. BROWN,)
an individual,)
)
Plaintiffs,)
)
vs.) No. A-16-739887-C
)
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; ROE BUSINESS ENTITIES)
1-100,)
)
Defendants.)
)

AND ASSOCIATED CASES)

DEPOSITION OF
DAVIS LEE TURNER
FRIDAY, OCTOBER 19, 2018

535 Anton Boulevard, Suite 400
Costa Mesa, California

Reported by: ROBERTA WIMBERLY, CSR No. 4882

APPEARANCES OF COUNSEL

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For Defendants GNL, Corp.\Golden Nugget, Inc.\Landry's
Inc:

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Also Present: KEVIN WILLIAMS

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BY MR. IQBAL

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BY MS. MASTRANGELO

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DEPOSITION	PAGE
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Costa Mesa, California, Friday, October 19, 2018

10:09 a.m. - 5:43 p.m.

DAVIS LEE TURNER,

having been first duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. IQBAL:

Q Good morning, sir.

A Good morning, Mr. Iqbal. It that pronounced
correctly, Iqbal?

Q You are correct. I represent the plaintiffs in
this case. I have my assistant Kevin here with me. We
also have Rebecca representing ThyssenKrupp in the room
here. Also the court reporter. And on the phone we have
Alexandra McCleod, who is representing the Golden Nugget
entities. Before I start with some of the introductory
stuff, can you give us your first and last name and spell
your last name, please.

A My named is Davis Lee Turner. The last name is
T-u-r-n-e-r.

Q Thank you. How many depositions have you taken,
sir?

A In the last 22 years, several hundred.

Q Okay. All right. So you are a veteran.

A I am, yes.

1 Q I'm going to skip a lot of the introductory sort
2 of prep and admonitions and things like that and try and
3 get right into it. The one thing I will request is -- I'm
4 going to try my best. Sometimes I get going too quickly.
5 I'm going to try my very best to wait until you give a
6 full answer before I cut in with a question so the court
7 reporter doesn't hate me and so we have a clean record.
8 So I'll try my very best there. All I ask is that you try
9 your best to wait until I get my full question out before
10 you give your answer. Does that seem fair?

11 A Yes, it does.

12 Q Okay. Great. You said in the last 22 years
13 you've given several hundred depositions. How about in
14 the last two years?

15 A Probably about four or five.

16 Q Okay. How many times have you testified at
17 trial?

18 A In the last 22 years about 50 or 60 times.

19 Q Okay. So you are well aware you are under oath.
20 I'm just going to ask one final introductory question. Is
21 there anything that is preventing you from giving truthful
22 testimony here today?

23 A No, nothing.

24 Q Great. Who retained you in this matter?

25 A Ms. Mastrangelo retained me.

1 Q Okay. When was that?

2 A In, I believe, July of 2017.

3 Q How were you retained? Were you contacted by
4 e-mail?

5 A Contacted by phone.

6 Q And then did you have an engagement letter or a
7 contract with ThyssenKrupp?

8 A No.

9 Q Did you have a fee schedule or sheet that you
10 sent to Rebecca?

11 A Yes.

12 Q So there was no signed agreement or contract
13 between you and ThyssenKrupp?

14 A Nothing in writing, no.

15 Q All right. I saw just a few minutes ago that you
16 have our deposition notice\subpoena.

17 A Yes.

18 Q Did you bring your entire file associated with
19 this case?

20 A I did, yes.

21 Q Okay. Does this file include all e-mail
22 communications and letters and notes that you may have
23 either sent or received or taken?

24 A It contains hard copies of correspondence I
25 received by hard copy and e-mails. I have a log and

1 inventory of e-mails that I received. It's mostly just
2 transmittals of documents. So that's all on the inventory
3 that I have.

4 Q Okay. So everything that you got in hard copy
5 form and a log of the e-mails is all there?

6 A Yes.

7 Q Okay. Great. At some point I may take a look at
8 that. Now, are you representing ThyssenKrupp exclusively
9 or are you also representing Nugget in this case?

10 A My original understanding was that I was
11 representing ThyssenKrupp, but I've been led to believe
12 that I'm also being, if you will, shared with
13 Golden Nugget.

14 Q Okay. Now, were you informed of that or -- let
15 me ask one question at a time. Were you informed that you
16 were also being shared with Golden Nugget?

17 A It kind of evolved, you know, as the year and a
18 half or whatever went by that I would also be representing
19 Golden Nugget. There wasn't any kind of formal
20 conversation about it or anything like that.

21 Q Okay. When you say it evolved, can you take me
22 through that process?

23 A Yeah. I received documents from Ms. Mastrangelo
24 and we arranged for an inspection on the site. We did
25 that in, I believe, November of 2017. I met Ms. McCleod

1 on the site. She did not have an expert there, so I kind
2 of inquired as to who their expert was, and she said
3 something like I think we're going to use you. One of
4 those. I said no problem.

5 Q Are you also being paid by Golden Nugget?

6 A I'm being paid by Ms. Mastrangelo who has
7 arranged, from what I understand, payment arrangements
8 with Golden Nugget.

9 Q Do you know the specifics of the payment
10 arrangement?

11 A No.

12 Q Before this deposition did you speak with
13 Ms. McCleod?

14 A No.

15 Q Besides the inspection in 2017 when you met
16 Ms. McCleod, have you had any other correspondence or
17 communications with her?

18 A Not directly, no.

19 Q So have you had indirect communications with her?

20 A Only through documents received from
21 Ms. Mastrangelo that contained discovery documents from
22 Golden Nugget.

23 Q Okay. Before this deposition did you have
24 communications and correspondence with Ms. Mastrangelo?

25 A Yes.

1 Q When did those take place?

2 A We've had several telephone conversations. We
3 met this morning prior to this just to discuss, you know,
4 what has gone on in the past. There has been recently
5 some documents produced through discovery that I don't
6 have that she said she was going to be sending me which I
7 will review. Just the timing of some issues like this
8 deposition. Just requesting information. There were some
9 things I wanted to ask about that I thought I didn't have.
10 It turned out I had it, but I couldn't find it.

11 Q Okay. Now, you mentioned that there were
12 discovery documents that you didn't have that you will be
13 reviewing. Are you talking about between now and whenever
14 this case resolves you are going to be reviewing the new
15 documents?

16 A Yes.

17 Q Okay. What documents did you receive that you
18 didn't have before?

19 A I haven't received them yet.

20 Q Got it.

21 A That's what we talked about, that I was going to
22 get the depositions of some of the people that were in
23 Mr. Brown's party on the date of the incident.

24 Q Okay. Did you receive Mr. Dutcher's deposition
25 transcript?

1 A Yes, I did.

2 Q Did you review it?

3 A Yes, I did.

4 Q So you met with Rebecca this morning, and you
5 said you had several conversations with her. Roughly when
6 did those conversations take place?

7 A I don't know. Just over a period of time, months
8 ago, days ago. I think I spoke to her yesterday about her
9 travel schedule and when I would get to meet with her
10 prior to the deposition. We had a discussion about two
11 weeks ago where we discussed timing and calendar. I was
12 going to leave town for a couple of weeks, and I think
13 that's why we put the deposition off until today. I don't
14 recall exactly when it was we talked.

15 Q How long did you meet with Rebecca this morning?

16 A About an hour.

17 Q What did you talk about?

18 A We talked about the depositions she is going to
19 send me. We went over some of the testimony from
20 Ms. Swett because I just recently got her deposition.
21 I've had a chance to look through it, but certainly not
22 study it to any great degree. We talked about photographs
23 that Ms. Swett had produced from her phone. I looked at
24 those quickly. That's pretty much it.

25 Q Okay. Have you talked about the escalator at

1 issue specifically?

2 A Yeah, we mentioned it. Some of the things came
3 up in the photographs that I looked at. We discussed the
4 escalator.

5 Q Okay. All right. Between your retention in July
6 of 2017 and today, have you spoken with any Golden Nugget
7 personnel besides Ms. McCleod?

8 A No.

9 Q So when you went to the inspection in November of
10 2017, did you have any conversations with any Nugget
11 employees at the time of the inspection?

12 A I have a vague recollection of a Golden Nugget
13 employee being there. I do not recall who it was, but he
14 had something to do with facilities management or
15 something along those lines. He wore a tie, I think.

16 Q Does the name Don Hartmann ring a bell?

17 A It does because I have his deposition, but I
18 don't know if it was him.

19 Q I'll represent that I took his deposition
20 January 25th, 2018, and he said that he was the director
21 of facilities at the time.

22 A I don't know if he was at the inspection, though.

23 Q Okay.

24 A He looked like that type of person, supervisor
25 other than a worker.

1 Q Got you. Do you recall specifics or even general
2 themes of the conversation when you met with this
3 individual at the inspection?

4 A No, I really didn't have any conversation with
5 him. He was talking mostly to Ms. McCleod and
6 Ms. Mastrangelo, and I was just within earshot. I don't
7 recall what the conversation was about. I was
8 concentrating on the work that I had to do.

9 Q Got you. All right. Let me just ask in
10 general -- actually, let me close that section so we don't
11 have to go back. Between your retention in July of 2017
12 and today, have you had any conversations or
13 communications with any ThyssenKrupp employees or
14 personnel or agents besides Rebecca?

15 A Not with regard to this case, but I have had
16 occasion to meet ThyssenKrupp personnel on other occasions
17 for other reasons. So I have had conversations with
18 ThyssenKrupp people at code meetings or industry meetings
19 we've had.

20 Q Have you discussed with any of those individuals
21 this case?

22 A No.

23 Q Have you discussed with any of those individuals
24 this specific escalator?

25 A No.

1 Q Okay. Just generally, what was the nature of the
2 conversations with the ThyssenKrupp people that you met at
3 the code meetings and things like that?

4 A I received a call from one of their engineers
5 about some proposed code regulations that we were
6 preparing with regard to escalators, and it had to do with
7 the establishment of safety integrity levels for
8 programable electronic equipment that is to be used on
9 escalators. They have an interest in getting that
10 particular proposal finished so they can use some
11 equipment that won't violate any code rules.

12 Q Okay. Gotcha. All right. So no conversations
13 with any Thyssen folks outside of Rebecca with regards to
14 this case. Correct?

15 A That's correct. Mr. Dutcher and I spoke during
16 the inspection in November of 2017. He was the mechanic
17 that was on the site to assist me during my inspection.

18 Q Okay. So Mr. Dutcher was there in person?

19 A Yes.

20 Q Who else was there in person during the
21 inspection?

22 A There was another gentleman, another ThyssenKrupp
23 technician. I don't recall what his name was.

24 Q Okay. But from his deposition Dutcher says that
25 he was the main mechanic assigned to Golden Nugget

1 Laughlin between 2010 and 2018. Is that your
2 understanding?

3 A Generally, yes.

4 Q Okay. So there were two mechanics from
5 ThyssenKrupp at the inspection and Rebecca and Alex and
6 then one Golden Nugget individual who seemed like a
7 supervisor with a tie?

8 A Yes.

9 Q Anybody else?

10 A Me.

11 Q Okay. What conversations did you have with
12 Mr. Dutcher at the inspection?

13 A Primarily I wanted to gain access to different
14 portions of the elevator -- escalator. I'm sorry. So we
15 discussed the sequence of events for my inspection, what
16 kind of assistance I would need from him in gaining access
17 to those component parts. I asked him -- I believe we
18 talked about how long he had been there maintaining it.
19 He mentioned a few years. I don't know if he said the
20 2010 number or not. I think that's pretty much what it
21 was. We just talked about my inspection and what I wanted
22 to do and how he could help me, and he agreed to do
23 whatever I needed done.

24 Q Gotcha. You talked about different component
25 parts. What parts of the escalator in question did you

1 examine or inspect?

2 A I did what you've heard referred to as an
3 external inspection of the escalator, visually examined
4 things like the handrail, the steps, floor plates,
5 clearances between the step and the skirt, the
6 balustrading in between, the condition of the steps. I
7 took some measurements, which consisted of the speed of
8 the escalator, speed of the handrails. I didn't measure
9 the rise. I think that was the external portion.

10 For the internal portion I asked Mr. Dutcher
11 to remove some of the steps so that I could gain access to
12 the inside of the escalator. He removed the floor plate
13 at the lower landing which covers the working mechanisms
14 down there and we removed the floor plate at the upper
15 landing to get access to the controller and the workings
16 at the upper landing.

17 With some steps removed we could move the
18 space around so I could look inside the escalator and look
19 at the condition of tracks, rollers, handrail drives, the
20 motor, the brake, the other components that are inside.

21 Q Okay. How many steps did Mr. Dutcher remove?

22 A Two.

23 Q Did you go to the garage and inspect the steps
24 that were removed from the escalator and that were
25 actually on the escalator during the incident?

1 A No.

2 Q Were you aware that the actual steps that were
3 involved in the incident were packed up and in the garage?

4 A I believe somebody mentioned it to me.

5 Q Okay. You didn't want to see those steps?

6 A I saw no need.

7 Q How long was that inspection?

8 A About two hours. Just over two hours.

9 Q Did you take notes?

10 A Yes.

11 Q Are those notes here?

12 A I have them. If you can read Sanskrit, I'll dig
13 them out.

14 Q That's fine. At a certain point I'll look
15 through your file.

16 A Thank you.

17 Q We'll be efficient there. No need to dive into
18 them right now.

19 A I don't know many people who can read Sanskrit,
20 so I'm kind of honored.

21 Q I'm terrible with languages except that one.

22 A I have trouble with one language. Greek. It's
23 all Greek to me.

24 Q Let me ask you about inspections in general. You
25 mentioned it was a two-hour inspection. Is that typical

1 when you are retained as an expert witness and you go and
2 examine these different machines?

3 A It's typical for me because I have certain things
4 I need to do. Often I'm asked how long is this inspection
5 going to be because they want to know when and if the
6 unit, either elevator or escalator, will be out of
7 service. So I give them a ballpark two hours. I find
8 that's held pretty true for what I need by the time I
9 finish doing the measurements, the observation, taking
10 photographs, looking at the internal workings of the
11 escalator, reviewing any paperwork, such as wiring
12 diagrams that might be available, looking inside the
13 controller to the equipment and doing an inventory of
14 safety devices that would be on the unit.

15 Q For escalators typically do you go through this
16 same sequence of observations, taking measurements,
17 looking at the internal workings, doing the inventory of
18 the safety measures and looking at the controller?

19 A Yes.

20 Q Now, you made a comment two hours is typical for
21 you. Why did you say that?

22 A Some people take longer and some people don't
23 take as long. It depends on their familiarity with the
24 type of equipment that we look at.

25 Q Got it. Are you familiar with this KONE brand of

1 escalator that is in the Golden Nugget?

2 A I am, yes.

3 Q How many matters or cases that you've been
4 involved with have involved this type of KONE escalator?

5 A This particular model?

6 Q This model, yes.

7 A Over a hundred. That's over the 22-year period
8 I've been doing this.

9 Q So you're very familiar with this model of
10 escalator?

11 A I'm familiar with it. I don't know if I would
12 put "very" with it because they all have different
13 variations as we look at them.

14 Q That's fair. Why is it important to do the
15 observations, the measurements, the internal workings and
16 look at the inventory of safety measures?

17 A It's important, first of all, to visit the site
18 to get a layout of the environment, what is it like, where
19 are things located, how is the escalator -- what does it
20 look like, what are the surroundings. Mostly I look at
21 the floor area. In the Golden Nugget there is carpeting
22 at the upper landing, which tends to lead to a buildup of
23 lint and dirt inside the escalators as people track it in.
24 Other office buildings that would have an escalator or a
25 department store might not have carpet. It would be tile

1 or Terrazzo, and they tend to not gather as much dirt. In
2 casinos you find things like \$10,000 chips and things like
3 that down in the workings. I'm kidding. I'd retire if I
4 found any of those. It's strange the things you find
5 inside the escalator that people drop, coins, dirt, dust.
6 A lot of different things. So that's for the
7 environmental surroundings and the atmosphere that the
8 escalator works in.

9 The external portion is, again, to get an
10 idea of the condition and the dimensions of the external
11 workings, the speed of the handrail, the condition of the
12 handrail and how that speed of the handrail relates to the
13 speed of the steps. They are supposed to be substantially
14 the same, the step speed. I also measure the stopping
15 distance on the escalator when the brake is engaged. Not
16 an issue in this case, but I do that, anyway, because I
17 want to get a condition of how the escalator might be
18 maintained and if the stopping distance is within
19 allowable code requirements.

20 On the external portion I look for tripping
21 hazards, ledges and so on around the floor plate that may
22 cause some tripping conditions and then the relationship
23 of the steps as they move through the escalator at the
24 curves, the flat portions and what we call the incline and
25 transitions from horizontal to incline.

1 Then I ask it to be opened so that I can
2 look internally at the escalator and see the parts that
3 nobody ever looks at and sees. That's the underside of
4 the steps, the chains, the handrail drive, what they call
5 the turnaround mechanism at the bottom where the steps
6 turn around and head back up on that particular escalator.
7 It would be the other direction on the adjacent escalator
8 where they turn around and go up the outside. The
9 condition of the machinery at the lower landing and the
10 upper landing.

11 I look at the controller. There is usually
12 some data on the controller that will give me an idea of
13 when the escalator was installed, if there were any wiring
14 changes made to it. I look at the wiring diagrams that
15 are usually kept inside the controller. That tells me
16 what safety devices are on it and take an inventory of
17 that. So just to get a general condition.

18 Q Gotcha. Why is it important to get a general
19 condition of the escalator?

20 A Just to have a feel for the way it's operating
21 and what might be wrong with it, if anything. We're
22 looking for things that might have caused an accident. In
23 this particular case, Mr. Brown fell on the escalator and
24 I was looking for a reason why he would fall.

25 Q Gotcha. So would you ever do an expert report

1 without an inspection?

2 A I've done them, yes.

3 Q Have you done them rarely or --

4 A It's very rare.

5 Q Do you prefer to do an inspection before you have
6 to issue a report?

7 A Yes.

8 Q Why?

9 A So I can know as much as I can about the
10 equipment and put it in the report so that I have a
11 factual basis for the opinions and conclusions that I draw
12 later on. So I kind of build a report backwards.
13 Sometimes it looks like it's conclusory I think is the
14 word, where you list all the facts and everything and what
15 the condition of the escalator is, and then from those
16 facts you draw some opinions together with my education,
17 training and experience, if you will, as to probable cause
18 or lack of cause for an incident that occurred.

19 Q Okay. Now, those few instances where you issued
20 a report without an inspection, were you comfortable doing
21 that?

22 A Yes.

23 Q Can you explain what made those situations
24 different where you didn't need an inspection?

25 A Yes. There was a case that we just resolved

1 involving an escalator in New York. It was an individual
2 who fell over the side of an escalator and was fatally
3 injured. I did not do an inspection of that escalator
4 because it was at Shea Stadium, which had been torn down
5 ten years ago, and the escalator did not exist.

6 Q Got you. Okay. So outside of those extreme
7 cases, you want to do an inspection?

8 A Yes.

9 Q Okay. Do you typically ask that the mechanic
10 responsible for that escalator be present during the
11 inspection?

12 A No.

13 Q Why not?

14 A I ask my client to have a mechanic available. I
15 let them decide who it will be, whether it's the one
16 responsibility for that unit that is on his regular route,
17 as we call it, or it's just another mechanic that happens
18 to be there. So I just need somebody who is authorized
19 and licensed to work on the escalator, remove component
20 parts and operate it for me. I'm not a licensed mechanic.
21 So I do not want to go and mess around with the equipment
22 and start taking things apart. Not that I'm not capable.
23 I'm just not authorized.

24 Q Gotcha. Did you go into the pit when they
25 started removing the different parts?

1 A I believe I went into the lower landing pit. I
2 went in there and I looked around. I wanted to look up
3 the incline underneath the part of the floor plate that we
4 don't remove to see what the condition was and how things
5 lined up and then take some photographs, I believe, of
6 some safety devices down there. I don't know. But if I
7 was, it was just in the lower landing that I looked.

8 Q Okay. When you ask for a mechanic to be present
9 so they can do the things that you need to inspect, do you
10 typically need two mechanics just to be able to remove the
11 steps and put them back?

12 A That gets to be a jurisdictional issue. The
13 jurisdiction being what does the local union of elevator
14 constructors require for safety reasons on an escalator.
15 In some jurisdictions, states, whatever you want to call
16 it, any time work is done on an escalator where you remove
17 any part, they want two mechanics. Other jurisdictions
18 allow you to use only one. Then if it's only one -- let
19 me say the parts that I need removed or opened don't take
20 two people to do it. The two people are there for safety
21 reasons they allege. So if somebody gets stuck, somebody
22 is there to control the escalator if you're down in the
23 pit or someplace else.

24 But the removal of steps is basically a
25 one-person job. I sometimes assist if a person -- the

1 steps are removed from the lower landing of the escalator.
2 You do it by opening up the floor plate at the bottom so
3 you have access. You go in and take the fastenings loose
4 to the step and you can remove it and then they turn
5 around and I take it from them and I put it on the floor.
6 That's how I assist them so that he doesn't have to drop
7 it and break it and do whatever. So I assist him in that
8 regard. He hands me something and I take it and put it on
9 the floor. It's basically a one-person job.

10 So Mr. Dutcher was there and he did not have
11 an assistant, although there was another technician that
12 was there. I think he came from another job or working on
13 the elevator or something like that. But Mr. Dutcher was
14 able to do what I needed done.

15 Q Okay. Besides your dialogue with Mr. Dutcher on
16 what you needed done, did you have any other conversations
17 with him about the history of that specific escalator?

18 A Not that I recall, no.

19 Q So he was basically there to help you conduct the
20 inspection?

21 A That's correct. That's primarily why I don't ask
22 for a specific mechanic. I just need help to do the
23 inspection. I don't want to depose him on a job and ask
24 him a lot of questions. I'll rely on discovery documents
25 to get any history that I need.

1 Q Gotcha. Okay. Did you rely on your inspection
2 in -- I believe you said it in your report, but I'll just
3 ask the question. Did you rely on your inspection in
4 putting together your report in this case?

5 A Yes, I did.

6 Q Did you rely on the inspection in putting
7 together both the original and the rebuttal?

8 A Yes.

9 Q Now, you said it was approximately two hours. Of
10 that two hours, what portion of time was the escalator put
11 out of service or stopped so you could inspect it?

12 A About an hour and a half. There are some things
13 where we leave it running and people can use it and they
14 can get on and I can do things like measure the speed of
15 the escalator, do some observations about the floor plates
16 and I can stay out of people's way while they get on and
17 off.

18 When we shut it down, we barricade it so you
19 know you are not supposed to use the escalator, and I go
20 and do my thing. When we get all done, I tell the
21 mechanic we can button it up, I'm finished. So we start
22 to put it all back together again.

23 Q Gotcha. So that's part of the external
24 inspection where you can let people ride the escalator and
25 you also ride the escalator. Correct?

1 A Yes.

2 Q Would you say that the escalator in question is
3 in a high traffic area?

4 A We were there in the morning of a weekday. I
5 didn't see it to be high traffic compared to airports,
6 baseball games, office buildings, bus terminals. It was
7 not very high traffic. It was more like I'd say a
8 department store, but they are all closing up and they are
9 all very slow right now. So like a department store type
10 thing.

11 Q Gotcha. Even if you are inspecting an escalator
12 in a high traffic area, the owner is typically going to
13 want you to inspect it during the early morning or late
14 evening hours. Correct?

15 A Or even at night.

16 Q Right.

17 A Yes.

18 Q So even in a high traffic area, during the
19 inspection itself you may have less traffic given the time
20 of the day. Correct?

21 A That's correct.

22 Q What time did your inspection start, roughly?
23 You can check your notes in you need to.

24 A Eight o'clock a.m.

25 Q The 17th was what? A Wednesday? That's fine. I

1 can look at a calendar.

2 A I do have a date of the 16th here on my notes. I
3 typed it in before. There is a survey sheet I made up.
4 Before I go there what I know about the escalator I type
5 in ahead of time. I have a date of the 16th. That might
6 be the date I met Ms. Mastrangelo and we went to Laughlin
7 and did the inspection the next morning.

8 Q So did you drive up or did you fly?

9 A I flew to Las Vegas.

10 Q She picked you up?

11 A Yes.

12 Q So you got to Las Vegas the day before the
13 inspection. Did you go to Rebecca's office?

14 A No. She met me at the airport and we drove to
15 Laughlin.

16 Q Okay. Did you talk about the case on the drive
17 down?

18 A Yes.

19 Q And then you stayed at Laughlin? What hotel did
20 you stay at?

21 A A hotel called the Golden Nugget. I figured that
22 would be convenient.

23 Q Yes.

24 A I understand it's highly recommended by Laughlin
25 standards.

1 Q It is. It's got good ratings on Bookings.

2 A Yes, that's what I understand.

3 Q Just to not be awkward, I didn't stay there when
4 I went down to Laughlin.

5 A Really?

6 Q I would in the future, I think, potentially. So
7 you went down and stayed at the Nugget and then the next
8 morning had the inspection?

9 A Yes.

10 Q After the inspection did you go straight back to
11 McCarran and fly out back here?

12 A Yes. I went back to Las Vegas. My wife had come
13 with me and she went and toured around Las Vegas with a
14 friend of hers. So I met her and we got on a plane and
15 flew back to California.

16 Q Gotcha. Typically do you schedule and request
17 inspections or does the client dictate when and where --
18 not where, but when the inspections occur?

19 A The client will let me know when they can satisfy
20 my request for an inspection. I don't pick a date or a
21 time. The client will then discuss it with other parties,
22 co-defendants, plaintiffs and so on and see what might be
23 convenient for everybody and then come back to me. We go
24 back and forth, I'm not in town that day or I can't make
25 it or it's Sunday and I don't do things on Sunday and all

1 that other stuff. We have a meeting of the minds and
2 decide on a date and discuss travel arrangements, if
3 that's involved. Naturally, anything in Southern
4 California is all the same day kind of thing. Although
5 recently I've been asked to do some early morning
6 inspections in Los Angeles. I live only 60 miles away,
7 but with the traffic, it's a three-hour trip. So I go the
8 night before and stay overnight and make the early
9 inspection.

10 Q Gotcha. Do you typically before your inspections
11 request a set of documents?

12 A I prefer to have some documents to review
13 beforehand, yes, so that I can get a feel for what am I
14 looking for, if anything. I don't want a biased
15 inspection one way or the other, but it helps me
16 concentrate on some things. So I do like to have some
17 documents of some kind. At least a complaint, which
18 although they are very general in the complaint about the
19 nature of the accident, but for like an elevator I can
20 narrow it down to either they claimed it was a free fall,
21 they got hit by the doors or they tripped coming out.

22 On an escalator they got some entrapment or
23 they tripped and fell or did something. So just to get an
24 idea so that I can bring the proper tools when I go to
25 make the measurements that are needed. But to your

1 question, yes, I prefer to have some documents before I
2 go.

3 Q Gotcha. You've been doing this a long time.
4 Before inspections, in addition to complaints, do you ask
5 for other documents?

6 A If there is any discovery in the way of
7 interrogatories, special and -- what do they call them --
8 the special and the form interrogatories. FROGS they call
9 them.

10 Q Weird lingo in California.

11 A I have to abbreviate everything myself. So I
12 like to see those, if I can. If there has been any
13 request for documents. Admissions don't mean much to me.
14 But if there are documents that have been produced through
15 a request for production, I like to see what has been
16 produced. Sometimes there are maintenance records in
17 there that help me get a history of what happened with the
18 elevator with regard to any -- the escalator. I'm sorry.
19 What has happened with the escalator with regard to
20 changes that have been made or work that has been done on
21 it and so on and so forth. So if I have that in advance,
22 then, as I said, I can bring the proper tools to make the
23 measurements I need and observe the proper items when I do
24 the inspection.

25 Q In this case did you get the necessary documents

1 before you did the inspection?

2 A I had some documents that I received in July of
3 2017, which was prior to the inspection, and they
4 consisted of the maintenance agreement, a report of the
5 accident, the state's accident report, interrogatory
6 responses from Mr and Mrs. Brown and a video of the
7 incident.

8 Q Okay. And so that first stack of documents in
9 front of you was received in July. Correct?

10 A That's correct.

11 Q And then you have another stack below that. When
12 was that received?

13 A It was received on December 1st, 2017.

14 Q Gotcha. Between July and December 1st, 2017, did
15 you receive any other documents?

16 A Yes. There were some e-mails where I received
17 the -- you want to know what they were?

18 Q Yes.

19 A The deposition of Mr. Robertson, the state
20 inspector, some early case conference supplemental lists
21 of witnesses and production of documents. That was the
22 second supplement. There was ThyssenKrupp's answers to
23 interrogatories. I received another e-mail that had
24 records from the State of Nevada Department of Business
25 and Industry Mechanical Compliance section. And that was

1 it. Then I received the information -- the correspondence
2 dated November 21, and I received that on 12\1\17.

3 Q Gotcha. So the documents that you got in between
4 the July stack and the December stack, do you have those
5 with you?

6 A No.

7 Q Do you know where they are?

8 A They are all just discovery documents. I have
9 them at home on my computer. They were all sent by
10 e-mail.

11 Q Okay. The e-mails, beyond transmitting the
12 documents, did they contain any substantive information?

13 A No. Just travel information mostly for the
14 inspection.

15 Q Gotcha. I'll just be honest. Our depo request
16 sought your entire file. If you have some documents that
17 are at home, is it possible that you can send those to
18 Rebecca so we can get a copy?

19 A Sure. But I believe you already have them.

20 Q Just to compare to make sure they are the same as
21 we got.

22 A I'd be glad to do that.

23 Q Great.

24 A Are you willing to pay for that?

25 Q If I give you a highlighter, sir, and when we're

1 off the record or during a break, would you mind
2 highlighting on your list what documents from your file
3 that you don't have right now with you?

4 A That I don't have?

5 Q Yes.

6 A Yes.

7 MS. MASTRANGELO: Just for the record, we can
8 send you all those, but I was looking over his shoulder
9 and it's like ThyssenKrupp's responses to a request for
10 production. That's what he got, and they are on his
11 computer. He didn't print them out to be here. If you
12 want that e-mail, you can certainly have it.

13 MR. IQBAL: Let's go off the record really quick.

14 (Discussion held off the record.)

15 BY MR. IQBAL:

16 Q Thank you, Mr. Turner. I appreciate you doing
17 that. You took your document inventory and you
18 highlighted in blue for me 2.0, 3.0 and 4.0 and 6.0
19 certain documents in your file that you don't have with
20 you here today. I understand the representation that we
21 have these. Just for clarity and completeness, we've
22 requested that we get these documents, and then we'll take
23 a look at them. So I appreciate that.

24 Sir, on your document inventory you have
25 1.2 TKE first report of alleged incident dated May 12,

1 2015. Can you find that, sir? 1.2.

2 MS. MASTRANGELO: That would be the earlier
3 transmission.

4 THE WITNESS: Thank you.

5 BY MR. IQBAL:

6 Q So 1.2 on your document inventory is titled
7 "First report of alleged incident." It has a ticket
8 number. It's one page. It appears to be filled out by
9 Chris Dutcher. Did you discuss this first report of
10 alleged incident with Mr. Dutcher?

11 A No.

12 Q There is an area where it says "Description of
13 alleged event," and I will quote what it says under there.
14 "Unknown man was stepping onto the upper level step area
15 and stepped between the brake and steps while grabbing the
16 left handrail and fell down the escalator." Do you know
17 who provided this information to Mr. Dutcher?

18 A No.

19 Q All right. Do you mind if I take a photo of this
20 page?

21 A No.

22 Q Thank you, sir.

23 A I have two requests, if I might.

24 Q Sure.

25 A I would like to correct the issue here with

1 regard to what I have with me. Item 6 I highlighted, but
2 it's a document I received on a CD. I didn't print out
3 everything that was on the CD. It consists of the
4 deposition transcript from Mr and Mrs. Brown, the
5 deposition transcript of Mr. Hartmann, and various
6 exhibits to those depositions. That's it.

7 Q Okay. Besides the deposition transcripts and the
8 exhibits, was there anything else on that CD?

9 A This is the list of the items on the CD.

10 Q Okay. That's helpful. Thank you, sir.
11 Typically when you do inspections, do you look at the
12 logbook for this specific machine?

13 A If it's available, I look at it, yes.

14 Q Does the code say that a logbook should be
15 available or nearby next to every machine?

16 A It says it shall be on the premises available for
17 elevator personnel.

18 Q So sometimes you do inspections where the logbook
19 is not available?

20 A Not to me, no.

21 Q So can you make a general statement -- do you
22 agree with this general statement. Every inspection that
23 you do, you review the logbook?

24 A I can't make that statement. Take out the word
25 "every," and maybe I can agree to most of it. On my

1 inspections I attempt to look at the logbook and any
2 records that happen to be on the site that are available
3 either in the machine room or someplace in close proximity
4 to the equipment.

5 Q Okay. In what instances do you not get a chance
6 to look at the logbook during your inspection?

7 A Let's clarify what a logbook is. What do you
8 mean by a "logbook"?

9 Q You tell me what comes to your mind when I say
10 "logbook."

11 A It's called a check chart and maybe a repair
12 record that might be kept on the job site. A check chart
13 is -- I think of it as a reminder for the mechanic who is
14 doing the job about certain tasks that have to be
15 performed during certain periods of time, monthly, weekly,
16 semi annually, so on. As those tasks are done by the
17 mechanic, he checks off it's done and he will initial that
18 particular work was done. That's a check chart or a
19 logbook.

20 Typically along with that is a repair or
21 callback log where the repairs are made to the equipment,
22 a note is made that certain work was done and the initials
23 of the mechanic, and then when there is a callback -- in
24 the olden days before electronic communications, if there
25 was a callback or a callout, an unscheduled call for

1 service on the escalator or elevator, they would make a
2 note of the fact they were there on a callback and the
3 nature of the work that they performed to rectify whatever
4 problem there might be. Many times you see the initials
5 again, the ROA, running on arrival. No problem found is
6 NPF. They have all kinds of initials and stuff. So you
7 see that many times. But that's the logbook that I
8 envisioned when you said logbook.

9 Q It's a check chart and a repair record?

10 A Repair and callback record.

11 Q Repair and callback record. Okay.

12 A My second request.

13 Q Yes.

14 A A brief break.

15 MR. IQBAL: Absolutely, sir. Let's do it.

16 (Recess taken.)

17 BY MR. IQBAL:

18 Q Mr. Turner, did you have any conversations with
19 anyone during the break?

20 A No.

21 Q Now, you said over time it became that you are
22 also Golden Nugget's expert in this case. Is that typical
23 in your experience for you to represent the servicer of
24 the equipment and the owner?

25 A It's atypical. No, it's not typical.

1 Q Okay. Why is it atypical?

2 A The owner will generally get their own expert
3 that may have a different area of expertise in a field
4 other than elevators or escalators, but they will border
5 over into what the other does with regard to caring for
6 his property, the escalator or elevator, whatever it might
7 be. There is a different expertise, if you will, if you
8 are talking about ownership as opposed to the technical
9 aspects of the equipment.

10 Q Gotcha. You say it's atypical. How many times
11 have you represented both the owner and the servicer in
12 the same case?

13 A Maybe a dozen over 20 years.

14 Q Do you have any issue with that or are you okay
15 with representing both parties?

16 A The issue just comes down to the billing.

17 Q Here there are no issues with respect to billing?

18 A There haven't been, no.

19 Q I was asking you your perception of the word
20 "logbook" when I say logbook. You said it's the check
21 chart and the repair record and the callback record. Is
22 that correct?

23 A Yes.

24 Q When I say "logbook," does anything else come to
25 mind?

1 A No.

2 Q Okay. And so I was asking that in a general
3 sense. In this case during that November 2017 inspection,
4 did you review the logbook?

5 A I did not.

6 Q Is there a reason why you didn't review it?

7 A I don't recall seeing it anywhere.

8 Q Did you ask for the logbook?

9 A I did not, no.

10 Q Did you specifically ask for either the check
11 chart or the repair records or the callback records?

12 A I did not, no.

13 Q Is there any reason why you didn't?

14 A Yes. My assumption at the time was -- and I know
15 we shouldn't assume things -- was that I would get the
16 maintenance records from Ms. Mastrangelo eventually and it
17 would contain the necessary -- that information as to
18 callbacks, the repairs, the preventive maintenance tasks
19 and the other items that typically would be contained in
20 the logbook.

21 Q Okay. Did you receive that information?

22 A I did, yes.

23 Q When did you receive it?

24 A There were some documents that I received in May
25 of 2018 along with -- it's on the CD with the transcripts

1 of Mr and Mrs. Brown and Mr. Hartmann, and there was an
2 account history report included with that. And then I
3 received another set later on with one of the supplemental
4 witness lists and so on, the case conference supplemental
5 list of witnesses. It also contains documents when they
6 come out.

7 Q So when you say "later on," after May?

8 A After May. Let me see if I can find it. I don't
9 see it itemized here, but I know I have another set, also.
10 It might be earlier on. It may have been somewhere around
11 November the 16th at the specific time I was doing the
12 inspection. There was an e-mail that was sent to me, a
13 second supplement to an early case conference, witnesses
14 and production of documents. And I didn't itemize
15 everything in here, but I have a feeling that there were
16 the same documents I received later with Mr. Hartmann's
17 deposition transcript. I remember seeing two sets. One
18 set was in color and the other was black and white copies.

19 Q Did you have all of that information available
20 when you did your initial report?

21 A It is listed in my inventory of documents with
22 the report.

23 Q So your report was -- so your initial report was
24 December 3rd, 2017. Correct?

25 A That's correct.

1 Q And you received some documents after that.
2 Correct?

3 A That's correct.

4 Q And then your supplemental report was May 28,
5 2018. Correct?

6 A I believe so. Let me look at my log.

7 Q I've got it here.

8 MS. MASTRANGELO: The rebuttal?

9 MR. IQBAL: The rebuttal.

10 THE WITNESS: Yeah.

11 MR. IQBAL: Okay. All right. Let's have as
12 Exhibit 1 both reports. Let's have as Exhibit 1 your
13 initial report from December and then your rebuttal
14 report. I have notes on mine.

15 Q Do you, by chance, have a copy of those two
16 reports, sir?

17 A I do. This is the original. I'll get the
18 rebuttal in a moment. This is the rebuttal dated May 28,
19 2018.

20 Q Great.

21 A Do you want to look at that?

22 Q Yes.

23 I'll ask that the court reporter -- when you
24 get a chance, can you make a copy of these two and
25 designate both of them together as Exhibit 1?

1 (Exhibit 1 was marked for identification by the
2 court reporter.)

3 BY MR. IQBAL:

4 Q Sir, I'm going to hand you what has now been
5 designated as Exhibit 1. If we could go through it. I
6 would like you to turn to your attachment A where you have
7 the -- the attachment 1, the document inventory. Let me
8 know when you're there.

9 A I'm here.

10 Q Okay. If you look at 1.4, TKE accident history
11 report.

12 A Account history report?

13 Q Account history report, yes.

14 A Okay.

15 Q So you were sent the account history between July
16 of 2014 and October of 2015. Correct?

17 A Correct. I have to correct my previous testimony
18 that I did receive that report earlier than I previously
19 testified to. So this is when I received it, and, again,
20 another copy came with Mr. Hartmann's deposition.

21 Q Gotcha. Is there a reason why you were only
22 given an account history for a year and three months?

23 A Is there a reason?

24 Q Yes.

25 A Not that I'm aware of.

1 Q Did you request the account history before July
2 2014?

3 A No.

4 Q Did you request the account history after October
5 2015?

6 A No.

7 Q Would the account history of the escalator before
8 July 2014 be relevant to you at all?

9 A It could be, yes.

10 Q Okay. Have you reviewed the account history
11 before 2014?

12 A I believe so, yes.

13 Q What do you base that belief on?

14 A The fact that I received a broader time span with
15 Mr. Hartmann's deposition as an exhibit and I looked
16 through those entries for callbacks, repairs and
17 preventive maintenance issues for items earlier than that.
18 There was also some documentation that was sent to me
19 regarding purchase orders, proposals, a series of e-mails
20 back and forth between ThyssenKrupp and Mr. Hartmann about
21 the escalators. So I was able to put together a broader
22 history, if you will, other than what is indicated here.

23 Q Okay. But that broader history was after you did
24 the original report because Mr. Hartmann's deposition was
25 in January. Correct?

1 A That's correct.

2 Q Okay. Did you incorporate that, for lack of a
3 better term, broader history into your supplemental
4 report?

5 A No. My supplemental report dealt mostly with
6 what Ms. Swett had to offer in her report, which I believe
7 is the purpose of it.

8 Q Gotcha. So neither of your reports, then,
9 includes information about the account history prior to
10 2014?

11 A No, probably not.

12 Q Okay. Neither of your reports include
13 information from the account history after October of
14 2015. Correct?

15 A The question again, please.

16 Q Neither your initial report nor your supplemental
17 report include information from the account history after
18 October 2015. Correct?

19 A I believe so. I believe that's correct, yes.

20 Q Now, I asked you a lot of questions just
21 generally about how an inspection can impact a report.
22 You did an inspection in this case. Let me ask you
23 specifically. Did your inspection in this case impact
24 your report?

25 A Yes.

1 Q Did your inspection in this case impact your
2 supplemental report?

3 A Yes.

4 Q Did your inspection in this case inform your
5 expert opinion and conclusions in this case?

6 A Ask that again, please.

7 Q Sure. Did your inspection that was conducted in
8 November of 2017 inform your expert opinion and
9 conclusions in this case?

10 A Yes.

11 Q Now, there was a document that you had
12 highlighted in blue showing what you didn't have with you.

13 A Yes. Sorry.

14 MS. MASTRANGELO: You can make a copy of that if
15 you want.

16 THE WITNESS: I did correct this, by the way,
17 sir. When we were on our break, I saw that I skipped a
18 page. It was this page that I skipped. So these items
19 are also not with me. They were all e-mails and so on.

20 MR. IQBAL: Let's make this Exhibit 2. We'll
21 return this file. I'm just request that the court
22 reporter make a copy. Exhibit 2 is a document inventory
23 with highlighted in blue the parts of your file that you
24 don't have with you currently. Those documents and
25 records that you don't have you with currently include

1 some correspondence. A lot of it is discovery that I'm
2 sure we have. But also No. 6, a client CD. And then
3 there are further markings --

4 MS. MASTRANGELO: I think he has the CD here.

5 THE WITNESS: I do have the CD. I don't have
6 printed out what is there. I showed you a list of what is
7 on the CD. Do you want to make a copy of that and append
8 it to the inventory, also?

9 MR. IQBAL: That would be fantastic. I would
10 appreciate that.

11 THE WITNESS: Just trying to help.

12 BY MR. IQBAL:

13 Q Just to confirm, sir, when we look at the few
14 things that are highlighted in blue and it says
15 E correspondence from client, E correspondence from
16 client -- I'm looking specifically at 2.0 and 3.0 -- and
17 then e-mail from client under 7.0, that means the same
18 thing. Right? When you say E correspondence, you mean
19 e-mail?

20 A E-mail, yes.

21 Q To the best of your recollection, those e-mails
22 from the client came from Rebecca directly?

23 A Yes.

24 Q Did you receive e-mails from anyone else?

25 A No.

1 Q To the best of your recollection, those e-mails
2 that you received from Rebecca were largely please see
3 attached or simply transmittal e-mails?

4 A That's correct.

5 Q To the best of your recollection, there were no
6 substantive opinions or correspondence or positions of
7 ThyssenKrupp in those transmittal e-mails?

8 A No.

9 Q No, there weren't?

10 A There were not.

11 Q All right. Now, the security video of the
12 incident --

13 A Did you want to mark this? This is the list of
14 what is on the CD that you want to appended to Exhibit 2.

15 MR. IQBAL: Okay. Let's do that. We will attach
16 this to Exhibit 2. So Exhibit 2 is going to be a six-page
17 document that is titled "Document Inventory" with an
18 additional seventh page that is titled "CD received
19 May 16, 2018."

20 THE WITNESS: That deals with item 6.0.

21 MR. IQBAL: Got it. Thank you.

22 (Exhibit 2 was marked for identification by the
23 court reporter.)

24 BY MR. IQBAL:

25 Q So the security video of the incident, did you

1 watch the security video?

2 A Yes.

3 Q How many times?

4 A Five or six.

5 Q When was the last time you saw it?

6 A Yesterday.

7 Q Correct me if I'm wrong, but the security video
8 is from the top of the escalator?

9 A Yes. Actually, the security video is in four
10 parts. The screen is a split screen. The upper
11 right-hand corner is a view from the top of the escalator.
12 There are other views that are of the lower landing from
13 the side. I believe there is a restaurant as you get off
14 the escalator to the left side. There is a camera that
15 faces the escalator there. As time moves on through the
16 video, it changes to another view of the outside where we
17 can see Mr. Brown being ambulated from the building to
18 emergency vehicles. I don't recall if there were any
19 other views that came in. But there was a four-item split
20 screen on the video.

21 Q Okay. You received that video on a CD?

22 A I did, yes.

23 Q Approximately how long was that video in terms of
24 duration? How many minutes?

25 A Several.

1 Q That's fine. It was just an approximation
2 question.

3 A Yeah. It was about 10, 15 minutes. Not time
4 lapsed. It could have been stopped and started later on
5 and so on and so forth.

6 Q Was there anything else on that security video --
7 I'm sorry. Was there anything else on that CD which
8 contained the security video?

9 A No.

10 Q Okay. Do you have that security video with you
11 today?

12 A I do.

13 Q Under 1.6, sir, in your attachment 1 to your
14 initial report -- this here --

15 A Yes.

16 Q -- you have Golden Nugget incident report by
17 Ryan Knupp. Do you see that?

18 A Yes.

19 Q Is it safe to presume when you have "incident
20 report" highlighted, it's the incident that we're all here
21 today discussing?

22 A Yes.

23 Q May 12, 2015?

24 A Yes.

25 Q Did you review the incident report from the

1 accident on May 25th?

2 A The incident report that was prepared on
3 May 25th?

4 Q Yeah. So there was a second incident, a second
5 injury incident involving this escalator where someone
6 else fell and got hurt. The date of that second incident
7 was May 25th, 2015.

8 Let me just ask you a general question. Are
9 you aware that there was another injury incident two weeks
10 after this incident that we're here about today?

11 A Yes, I am.

12 Q What do you recall or what are you aware of
13 regarding that incident on May 25th?

14 A I'm not sure about the pronunciation of his name,
15 but a man and his wife were on the escalator and he stated
16 that his wife lost her balance and fell into the gentleman
17 and they fell down.

18 Q Did you review the incident report from that
19 May 25th incident?

20 A I read it, yeah.

21 Q You don't have it here specifically highlighted.
22 You have the incident report from the 12th under 1.6. I
23 don't see a specific reference in your attachment 1 to the
24 Golden Nugget incident report from May 25th.

25 A I received it later on.

1 Q Okay. Did you receive it before your
2 supplemental report was done on May 28th, 2015?

3 MS. MASTRANGELO: Let me make an objection. You
4 keep calling it a supplemental report when it's clearly a
5 rebuttal report by its title.

6 BY MR. IQBAL:

7 Q Did you receive the May 25th incident report
8 before or after your rebuttal report from May 28, 2018?

9 A I believe I received it before.

10 Q Okay. You have this document inventory for your
11 original report. Do you have a document inventory
12 attached to your rebuttal report?

13 A I don't believe so, no.

14 Q Do you have anywhere any records or notes of what
15 you reviewed before your rebuttal report?

16 A I may have made reference to it in the
17 introduction and scope of my rebuttal report. I'm looking
18 now. I don't believe so. All I did was make mention of
19 the fact I received Ms. Swett's report and was providing a
20 rebuttal to it.

21 Q Okay. So you're not sure sitting here today of
22 when you actually received the incident report from
23 May 25th?

24 A I'm not sure, no.

25 Q Do you have any recollection of receiving other

1 incident reports from incidents -- injury incidents
2 occurring between 2010 and 2015?

3 A Yes.

4 Q What is that recollection based on?

5 A That recollection is based on the fact that the
6 information that I received on November 21 -- I actually
7 received it December 1st -- contained a cover letter
8 saying with regard to the matter referenced above, please
9 find enclosed some additional documents recently produced
10 by Golden Nugget Laughlin. It contains defendants' third
11 party 9th supplemental list of witnesses and documents
12 pursuant to NRCP 16.1 disclosure and in it are various
13 records from the State of Nevada Mechanical Compliance
14 Section and a series of incident reports beginning
15 April of 2010 and the last one is dated around 5\26\13.
16 That's a submitted date.

17 Q Did you receive any incident reports from
18 incidents in 2014?

19 A I don't believe so, no. These are all, if I
20 might clarify, incident reports apparently prepared by the
21 Golden Nugget. There is a cover letter that says
22 documents produced by Golden Nugget.

23 Q Gotcha. Now, going back to Exhibit 1, your
24 initial report, not the rebuttal, I want to just ask you a
25 couple questions on your initial report. On page 3 at the

1 top you have a statement, "Mr. Brown elected to utilize
2 the subject escalator as opposed to using the nearby
3 elevator approximately 75 feet from the escalator. See
4 Exhibit B." Do you see that, sir?

5 A Yes.

6 Q Are you aware that multiple individuals in the
7 party testified to being directed to use the escalator by
8 the valet?

9 A I don't recall that, no. Keep in mind that I do
10 not have any deposition testimony of other people in the
11 party other than Mr. and Mrs. Brown.

12 Q Correct. And Ms. Brown took the steps?

13 A Yes. There were two Ms. Browns, I think, one
14 related and one not.

15 Q Ms. Nettie Brown took the steps, his wife, and
16 you'll see the deposition transcripts. But would you have
17 wanted Mr. Brown to take the elevator?

18 A I would have suggested that he take the elevator.
19 I think that whoever said to use the elevator -- I don't
20 know the whole context of what went on. I wasn't there.
21 But if somebody were to ask me offhand where is the
22 restaurant, I would say it's at the bottom of the
23 escalator, and they can take that any way they want,
24 either use the escalator or go some other way. I imagine
25 what they would do is use the escalator because that was

1 mentioned, even though it wasn't recommended that they
2 take it, just that that's where the restaurant was.

3 Q Right. So if the valet -- and they parked in
4 valet and then they asked the valet where is Bubba Gump
5 and the valet said go straight through the casino and use
6 the escalator to take it down. If you were in the
7 position of the valet, would you have made the same
8 recommendation?

9 A I don't know. I don't know what the
10 circumstances were around that. If they were out of the
11 car and I saw the condition of Mr. Brown with his cane --
12 I don't know what the valet saw or what registered in his
13 mind to say that. Had I seen Mr. Brown's condition, I
14 would have suggested to use the elevator.

15 Q And when you say "condition," you mean using a
16 cane?

17 A Using a cane.

18 Q Is it your general recommendation that people
19 using canes not use an escalator?

20 A It's my general opinion that they should either
21 not use the escalator or receive assistance from somebody
22 in their party in ambulating on the escalator so that they
23 could become stable if it's necessary.

24 Q What is your opinion based on?

25 A Based on my experience of working on many, many

1 accidents and reviewing many, many others and reading
2 about them.

3 Q Okay. Did this specific escalator have a sign
4 barring people who use canes from using it?

5 A No.

6 Q Does any escalator have that sign?

7 A No.

8 Q The escalators that you are aware of?

9 A That's correct. I believe we've had difficulty
10 with the Department of Justice and discrimination when we
11 say no wheelchairs, no canes because they think we're
12 discriminating by not allowing people with disabilities to
13 use the escalators when they think they are perfectly
14 capable of doing that. While we've discussed it at our
15 code meetings to develop signs in such a manner, we've
16 been barred from doing it in the interest of equality and
17 being politically correct.

18 Q Got it. When you turn to page 6, 6.4.2, at the
19 bottom of that paragraph -- at the end of the paragraph
20 you cite Chris Dutcher's first report of alleged incident,
21 which you've shown me. Do you recall that, sir?

22 A Yes.

23 Q Do you recall the statement in that report
24 that -- you don't have any basis where that statement came
25 from from Mr. Dutcher. Correct?

1 A I don't know where he got it from. I got it from
2 Mr. Dutcher.

3 Q Gotcha.

4 A I think I stated that.

5 Q Did you ask Mr. Dutcher about his first incident
6 report when you met him on November 17th?

7 A No.

8 Q I'm sorry. November of 2017.

9 A No, I did not.

10 Q Now, the repairs section, 6.5.3, that is at the
11 bottom of page 6 and goes to the top of page 7. Let me
12 know when you're there.

13 A I'm there.

14 Q Okay. Are you aware that there was a notice of
15 violation on May 26 given the spacing of the step chain?

16 A Yes, 5\26\15.

17 Q The day after the second injury incident in May.
18 Correct?

19 A Correct.

20 Q Is that a significant problem when an escalator
21 has a step chain with too large of a gap?

22 A We need to define what "too large" is. There has
23 to be some type of -- call it a gap if you are on your
24 side of the table. Call it running clearance if you're on
25 my side of the table.

1 Q Let's call it running clearance.

2 A The running clearance is required because the
3 steps move in relation to each other. If there was no
4 running clearance, they would rub against each other and
5 eventually become damaged. They get too large when the
6 steps do not mesh. That is when the step tread of one
7 step meshes or interlinks with the cleated riser on the
8 adjacent step. That cleated riser came into the code
9 about 1955. Prior to that, the riser was smooth.

10 What it caused was when the adjacent steps
11 were there was the continuous open running clearance all
12 the way across the escalator. The cleating of both the
13 riser and the arrangement of the step tread allowed them
14 to mesh together so there was not a large space extending
15 all the way across the escalator and diminished the
16 probability of entrapment of clothing, shoelaces, shoes,
17 other things that could become entrapped if they were in
18 close proximity to those steps when they either formed the
19 flat area on an up escalator at the top or flat area at
20 the down escalator at the bottom.

21 So the purpose of the cleats was to reduce
22 the probability of that entrapment. If, in fact, they no
23 longer meshed, then one would conclude that the space was
24 too large and could lead to entrapment of clothing or some
25 other object.

1 Q Is that why the subject escalator was given a
2 notice of violation by the state?

3 A I believe so, yes. That's what is stated. They
4 mentioned nothing about the mesh, only that -- I believe I
5 had it. I don't know what his exact words were. But he
6 did say it needed to be replaced because there was an
7 indication that it was not code compliant.

8 Q Okay. That replacement happened June 8th, 2015?

9 A That's what my notes say, yes.

10 Q Right below that you have preventive maintenance
11 was performed on a regular basis. Do you see that, sir?

12 A Yes.

13 Q You base that -- you have a citation to a
14 footnote referred to as the Platinum Premier Full Maint on
15 the TKE service records.

16 A Yes.

17 Q What does Platinum Premier Full Maint mean?

18 A That's a vertical transportation maintenance
19 agreement by Dover Elevator Company which was acquired by
20 ThyssenKrupp back in the late '90s, I believe, early '90s.
21 But the agreement that is in place is still the same Dover
22 paper. So they call it a Platinum maintenance, which was
23 a full service maintenance contract for maintenance on
24 that escalator, the 2 escalator, and I believe it covered
25 one elevator in the building, also.

1 Q Are you familiar with that contract and the terms
2 outside of this matter or is this the first time you had
3 seen the Platinum Premier Full Maint?

4 A I've seen that contract before.

5 Q How many times?

6 A A dozen or so.

7 Q And your statement here that preventive
8 maintenance was performed on a regular basis, is that
9 based just on the contract?

10 A Based on what records I looked at. It says
11 they'll perform regular maintenance, and I looked at the
12 account history. It appears they were performing regular
13 maintenance.

14 Q Preventive maintenance?

15 A Preventive maintenance, yes.

16 Q Let's get the Chris Dutcher depo transcript. We
17 actually have copies.

18 MS. MCLEOD: Counsel, which depo transcript are
19 you referencing?

20 MR. IQBAL: Chris Dutcher's.

21 MS. MASTRANGELO: You're not going to have her
22 print the whole depo, are you? If so, don't print me one
23 because I'm not taking anymore stuff home. I travel
24 light.

25 BY MR. IQBAL:

1 Q Do you have a copy of Mr. Dutcher's deposition
2 transcript?

3 A I do not, no.

4 MR. IQBAL: Let's go off the record really quick.
5 (Recess taken.)

6 MR. IQBAL: Thank you for making that copy. I
7 appreciate it. I'm going to ask that Mr. Dutcher's
8 deposition transcript be marked as Exhibit 3. I'm going
9 to hand the copy to Mr. Turner.

10 THE WITNESS: Thank you.

11 (Exhibit 3 was marked for identification by the
12 court reporter.)

13 BY MR. IQBAL:

14 Q Just to make sure that we pick up where we left
15 off, I was asking you, sir, about your original report and
16 section 6 regarding the preventive maintenance statement
17 that you made. You base that statement not just on the
18 contract, but also the Thyssen account history where
19 Mr. Dutcher would put preventive maintenance. Correct?

20 A Yes.

21 Q So if you can take Exhibit 3 and turn to page 20
22 and 21. Now, when I reference the page numbers, it's
23 going to be the internal page numbers within the condensed
24 copy. It's not going to be the page number at the very
25 bottom right.

1 A That's good because it doesn't show up too well.

2 Q Okay. So if you'll turn within Exhibit 3 to
3 pages 20 and 21. Actually, it's page 19, 20, 21 and 22.
4 Let me know when you're there.

5 A I'm there.

6 Q Just to confirm, if you look at page 20, line
7 22 -- and you can just read to yourself starting at
8 page 20, line 22, up to page 21, line 4. Mr. Dutcher
9 testified that he was the person assigned to the down
10 escalator and the up escalator at the Laughlin Nugget for
11 approximately those eight years. Do you see that, sir?

12 A Yes.

13 Q Does that comport with your recollection of
14 looking at the records?

15 A Yeah. The time frame might be a little bit
16 different. Yes, it does.

17 Q So on page 22 do you see lines 18 to 20? That's
18 an answer.

19 A On page 22?

20 Q Yes, sir. Same page. I'll quote. "If I was too
21 busy with a lot of calls, I would just write 'Preventative
22 Maintenance' and move on." Do you see that?

23 A Yes, I do.

24 Q Now, if you can turn to -- this is just context
25 and foundation for my question. But if you can turn to

1 page 55. Again, that's the deposition transcript page 55.

2 A I'm there.

3 Q Lines 5 through 12. "Question, Okay. So that --
4 if you were pressed for time, then there was no record
5 made on the TK Smart system and there was no logbook
6 entry. There would just be nothing, then?" "Answer,
7 Yes."

8 A Yes.

9 Q And then do you see below that another question,
10 "Okay. And you -- you never went back and add -- filled
11 in that information?" Answer, "No." Do you see that,
12 sir?

13 A I do.

14 Q And then the last portion before I ask you the
15 question is on page 80 within the deposition. Let me know
16 when you're there.

17 A I'm there.

18 Q Lines 13 to 19. I'm going to read. "Question,
19 Okay. Is it fair to say that this account history only
20 represents roughly 40 percent of the -- the work that you
21 did?" "Answer, Yes." "Question, Okay. And the other
22 60 percent is not recorded anywhere?" "Answer, Yes." Do
23 you see that?

24 A Yes, I do.

25 Q Okay. In the three places that I referenced you

1 starting with page 22, is it fair to say that according to
2 his testimony, when Mr. Dutcher was too busy, that he
3 would just write "Preventive Maintenance" if he wrote
4 anything at all?

5 A If that's what he said, that's what he did.

6 Q Based on his testimony, he said that 60 percent
7 of the work wasn't recorded anywhere. Do you see that?

8 A Yes.

9 Q Okay. The code requires accurate recordkeeping.
10 Correct?

11 A It does, yes.

12 Q Based on the testimony that you see here, would
13 you say that Mr. Dutcher kept accurate records?

14 A They weren't complete, but they might have been
15 accurate.

16 Q Based on what you read here and his testimony,
17 his admission that 60 percent of his work he did not put
18 anywhere, he didn't put in his ThyssenKrupp phone, the
19 Smart system and he didn't put it in the logbook, is that
20 problematic for you?

21 A Most of the time, yes.

22 Q Let me step back. The code requires that any
23 work that is done on a machine be recorded. Correct?

24 A Yes.

25 Q In his testimony he indicates that over

1 50 percent, the majority of the time that he did work, it
2 was not recorded anywhere. Correct?

3 A That's correct.

4 Q If you were the ThyssenKrupp supervisor in charge
5 of Mr. Dutcher, would you have a problem with him
6 recording only 40 percent of the work that he did?

7 A Not after I spoke to him about it and had him
8 correct it. Before that I would have a problem with it.

9 Q Why would you have a problem with it?

10 A Because we need to keep not only accurate but
11 complete records. Not only because the code says so, but
12 because we need to know what is done on that escalator. A
13 lot of it has to do with multiple technicians working on
14 the equipment for one reason or another. That when
15 somebody other than Mr. Dutcher, if you will, goes to do
16 some work on it, be it a callback or a repair or just
17 routine maintenance while he's on vacation, they should
18 have a good feeling for what work has been done either so
19 they can catch up on what has not been done and not
20 duplicate work that has been done. But one of the
21 examples -- that's one of the examples. That's the kind
22 of problems I would have with it.

23 Q So he testified that he would just write
24 "Preventive Maintenance" when he didn't have time to put
25 in an entry.

1 A If he wrote "Preventive Maintenance," that's
2 satisfactory.

3 Q Is that satisfactory for whatever activity he did
4 on the machine?

5 A No. If he does preventive maintenance, they
6 write "Preventive Maintenance." It's just a routine type
7 thing. I think you've heard some testimony about visual
8 inspections and looking at the outside. Basically, you
9 don't take the equipment apart every time you do an
10 inspection. Some of the basic maintenance functions are
11 visual inspection. You might squirt oil on something or
12 clean something off with a rag or turn a screw. An entry
13 of "preventive maintenance" is satisfactory.

14 Q Does it concern you that Mr. Dutcher during the
15 eight years he was the primary mechanic assigned to the
16 Golden Nugget only wrote down 40 percent of the work that
17 he did?

18 A Yes.

19 Q Does it concern you that ThyssenKrupp's account
20 history that is based on Mr. Dutcher's input may be
21 inaccurate or incomplete to such a degree?

22 A That's compound. It may not be inaccurate, but
23 it would be incomplete.

24 Q Does that concern you?

25 A Yes.

1 Q Why?

2 A Because I want to know what work was done for
3 reasons I gave earlier.

4 Q Does it concern you that no supervisor or
5 individual at ThyssenKrupp corrected this behavior?

6 A I saw no records at all indicating that
7 Mr. Dutcher was ever spoken to about correcting that
8 shortcoming. So I don't know if they did or did not speak
9 to him about it.

10 Q If this shortcoming was in place for eight years
11 and no one spoke to Mr. Dutcher about his incomplete
12 recordkeeping, would that concern you?

13 MS. MASTRANGELO: Object to the form, foundation.

14 THE WITNESS: Hypothetically, yes.

15 BY MR. IQBAL:

16 Q Okay. You indicated that it wouldn't be a
17 problem after you spoke to him. What would you tell him
18 if you found that up to 60 percent of the work on this
19 escalator was not written in the logbook or was not
20 transmitted to Thyssen? What would you tell Mr. Dutcher?

21 A I would begin by saying how do you account for
22 being paid for the 60 percent of the work that you're not
23 logging. It's got to be logged someplace to account for
24 his time. So somewhere -- there has got to be a log
25 someplace. So he is either falsifying some records

1 someplace else to get paid for his 40 hours or he's not
2 getting paid for just the time that he logs. So on a
3 ticket someplace is his time that he spends somewhere so
4 he can get paid for the week. I think that might wake him
5 up to the fact that we need to know what is done on these
6 escalators and elevators he's responsible for as well as
7 all the other elevators that he does.

8 Q Okay. Would you tell him to log in somewhere all
9 of the activity that he conducted?

10 A Yes.

11 Q If he did not, what would you do?

12 A I think it's good reason for termination or
13 suspension.

14 Q Were you aware of the incompleteness that he
15 testified to when you put your initial report together?

16 A No.

17 Q Were you aware of the incompleteness of the
18 ThyssenKrupp account record when you put together your
19 rebuttal report?

20 A It didn't jump out at me, no.

21 Q I'll represent that Mr. Dutcher was deposed on
22 May 14th, 2018. Rebecca was there. I was there. We went
23 to New York because he has been transferred to New York.
24 I'll represent that the deposition transcript came out in
25 early June or at the very end of May. So based on your

1 recollection and the dates that are in the document
2 sitting in front of you, is it more likely than not that
3 his incomplete recordkeeping did not make it into your
4 rebuttal report?

5 A It did not, no.

6 Q It did not?

7 A No.

8 Q If you'll turn to page 57. Actually, let me ask
9 you this. You are going to know your report better than
10 me. Where in your initial report did you talk about the
11 preventive maintenance?

12 A 6.32.

13 Q See, I told you. 6.54?

14 A 6.54. That happens when you guess. You can't
15 guess. You have to know.

16 Q Would you make any changes to that statement on
17 preventive maintenance?

18 A No.

19 Q Would you make any changes to your references to
20 the ThyssenKrupp account history?

21 A Reference where?

22 Q So you relied on the ThyssenKrupp account history
23 when you did your original report. Correct?

24 A Yes.

25 Q Based on Mr. Dutcher's testimony that up to

1 60 percent of the work that he did was recorded nowhere
2 and certainly not in the account history, would you make a
3 reference regarding the incompleteness of the account
4 history in your report?

5 A If I had a chance to go over it again in more
6 detail, I might.

7 Q But you're not sure?

8 A I haven't looked at it in great detail again yet.

9 Q Now, if you turn to page 57 in Dutcher's
10 deposition, there is a question that is asked on line 8
11 through 10. "Question, Okay. Okay. And so e-mails you
12 reserved for situations when you were concerned about the
13 machine?" "Answer, Yes." Feel free to read, if you want,
14 the full context for my question which I'm about to ask.
15 Feel free to read starting at the bottom of page 56, line
16 23, and you can read through the end of 57. I don't want
17 to ask the question until you have a complete
18 understanding of the context. Go ahead and read that and
19 let me know when you're done.

20 A Okay. Go ahead.

21 Q So here it appears that, based on this testimony
22 under oath by Mr. Dutcher, he would e-mail Larry Panaro
23 and Scott Olsen when he had concerns about the machine.
24 Does that seem a fair assessment?

25 A That's what he said, yes.

1 Q Is that typical in the industry?

2 MS. MASTRANGELO: Object to the form.

3 THE WITNESS: I don't know if e-mailing is
4 appropriate. Usually a verbal conversation with your
5 supervisor and/or Mr. Panaro, who is a sales
6 representative, I believe -- verbal conversation or notes
7 on time tickets or notes someplace. E-mail -- I don't
8 know if that would be appropriate.

9 BY MR. IQBAL:

10 Q Why would e-mail not be appropriate?

11 A It may not be possible. You need something, I
12 think, more official than an e-mail. I never saw any
13 records of Mr. Dutcher sending any e-mails to somebody.
14 Most of it was Mr. Panaro to Mr. Hartmann about he spoke
15 with Mr. Dutcher and so on and so forth.

16 Q I'm aware of those e-mails. They were in
17 ThyssenKrupp's second supplemental. I also agree with you
18 that we don't see any e-mails from Mr. Dutcher. In your
19 recollection, you don't recall any e-mails from
20 Mr. Dutcher to Mr. Olsen or Panaro. Correct?

21 A I don't recall any, no.

22 Q Do you recall seeing or reviewing at any time
23 since July of 2017 any internal ThyssenKrupp e-mails?

24 A I believe I saw some between -- internal
25 ThyssenKrupp only. I was going to say between

1 ThyssenKrupp and KONE Spares was internal regarding
2 ordering materials. But I don't recall seeing any
3 internal e-mails on ThyssenKrupp, no.

4 Q He testified here that he sent e-mails, but you
5 don't recall seeing any?

6 A I haven't seen any.

7 Q So in terms of recording either maintenance or
8 inspection, servicing or repair of a machine, what kind of
9 records do you expect? And if there are differences with
10 each of those categories, please explain.

11 A Differences where? If you're going to do some
12 work on a machine, you want to record what you did.
13 Callback, preventive maintenance, repair, cleaning,
14 observing, whatever it might be. If it's just routine
15 preventive maintenance, you log the time and you know you
16 did some routines. It's not the best answer, but it's an
17 answer. So he did a visual inspection, everything seemed
18 to be in order, that's preventive maintenance. Again, he
19 might have tightened a screw, cleaned something, measured
20 something, whatever it might be. You don't need to be
21 that detailed, although it does help if somebody else
22 follows you in there and they know what you've done.

23 Q Gotcha. So if you are doing some routine, and
24 the example you gave was tightening a screw, it's okay to
25 put "preventive maintenance"? It's not the best, but it's

1 okay?

2 A Yes.

3 Q If you do anything that goes beyond the routine,
4 would you want an accurate description of what was done?

5 A If it was, for example, a minor repair that you
6 had to fix something while you were there, it wasn't a
7 callback, but just a routine inspection or routine
8 maintenance call and you were there and you saw something
9 that needed fixing, you should document what you fixed and
10 how you fixed it.

11 Q Now, in the State of Nevada are you aware that
12 the union requires -- we had talked about this initially
13 and you had said that depending on the jurisdiction, some
14 require two folks there versus one. Are you aware in
15 Nevada the union requires two technicians to be at the
16 site?

17 MS. MASTRANGELO: Object to the form.

18 THE WITNESS: For what purpose?

19 BY MR. IQBAL:

20 Q For cleaning an escalator.

21 MS. MASTRANGELO: Lacks foundation.

22 THE WITNESS: If it's an annual clean-down, it
23 would require two people. I mentioned before there are
24 certain things where the union wants two people there. If
25 an individual is there and he's doing cleaning, which

1 simply consists of getting a rag and wiping up a piece of
2 oil, I don't need two people. You send two, but you write
3 down cleaned the floor plate.

4 BY MR. IQBAL:

5 Q If it is an annual cleaning, that would require
6 two people?

7 A The term we use is an annual clean-down for a
8 thorough cleaning of the escalator requiring the removal
9 of a lot of steps, sometimes some interior panels, other
10 major components. As I said, for both safety and
11 convenience reasons the union would require two people to
12 be there.

13 Q Okay. Is that specific to Nevada or is that just
14 generally applicable across the country, if you know?

15 A I'm trying to think of how to put this the right
16 way. The requirement for two people is not specific to
17 Nevada, but it's not a general requirement across the
18 industry. Although it is a general practice, it's not
19 required.

20 Q Gotcha. Okay. The escalator at the Golden
21 Nugget, if you can approximate or estimate based on your
22 experience of seeing about a hundred of these KONE
23 escalators, this model, how long would the annual
24 clean-down take?

25 A That escalator has just over 13 feet of rise. It

1 has about 60 steps in it. All of them would have to be
2 removed one way or another and put someplace, cleaned and
3 put back again. I would imagine on the order of three
4 days is a rough estimate.

5 Q Okay. For something that involved that would
6 take three days or two days or however long, putting down
7 "preventive maintenance" for the annual clean-down would
8 not be correct?

9 A Correct.

10 Q It should be put down as annual clean-down?

11 A Annual clean-down.

12 Q Okay. Where would that -- are you familiar with
13 the way that Thyssen technicians and service folks keep
14 records on their Smart phones?

15 A Not entirely, no. I don't know if it's a Smart
16 phone or a company-issued personal assistive device
17 specialized for ThyssenKrupp. I don't know if they use a
18 Smart phone or not.

19 Q Okay.

20 A But generally there are entries that are in
21 there, and those that I've seen will generally have a menu
22 of options that you pick rather than asking a guy to write
23 out all prose, this is what was done. You pick something
24 and say I worked on this, what was it, annual clean-down,
25 partial clean down, replace the handrail so on and so

1 forth. So they would do that with their PDA, if you will,
2 and it would be put on the computer.

3 Q Okay. Because there isn't like a whole giant
4 universe of things you can do, they would have pre-set
5 areas that you could check that you've done?

6 A That's my understanding, yes.

7 Q And you said you didn't understand entirely, but
8 you have some background or basis for that belief.
9 Correct?

10 A Yes.

11 Q What is that?

12 A My experience in the industry.

13 Q Typically do all of the servicers, like Thyssen
14 and KONE and Otis and Schindler, have either Smart phones
15 or PDAs that allow for their technicians to log in
16 information at the site?

17 A They have a device to be able to do that. I
18 don't know if it's a Smart phone or PDA. Some people call
19 it a brick. I don't know what it is. It's a personalized
20 or company-specific device they use to communicate.

21 Q Got you. Is it a general practice in the
22 industry that things that are logged into these devices,
23 and because they may use different devices -- let's just
24 call them devices for shorthand. Is it a general practice
25 in the industry that in addition to recording on the

1 devices or the device that a record should be made in the
2 logbook?

3 A I think they are getting away from manual records
4 in the logbook. Typically anybody who is an old soul like
5 me would probably do both, belt and suspenders type of
6 approach. You put it in your device, log it in with the
7 company and go in and make an entry in the logbook, if you
8 will, on the check chart.

9 Q That would be best practice, in your mind?

10 A It would be a belts and suspenders approach.
11 It's a practice. I don't know if I would call it best
12 practice.

13 Q But at a minimum anything beyond tightening a
14 screw should either be logged into the device or in the
15 logbook. Correct?

16 A One or the other, in my opinion, yes.

17 Q In your experience, do these servicers like
18 Thyssen and KONE and Otis and Schindler train their
19 technicians on recordkeeping?

20 A I believe they do. They have to teach them how
21 to use the device itself. I think it's mostly the use of
22 the device rather than what to put in. As I said, it's
23 usually a menu item that you check from. So they are
24 going to say here is how you do it and you go to menu A
25 and pick this item, you worked on an elevator or

1 escalator, and you go to menu B, what part of the
2 escalator did you work on, the upper landing, lower
3 landing, what part of the upper landing did you do, and
4 you say the machine. What did you do to the machine.
5 Lubricate it. So through those four menu items, you go
6 through and you pick out that you worked on the escalator
7 at the upper landing on the machine and you lubricated it.
8 And that would be the entry.

9 Q Okay. Your answer started off "I believe." What
10 is that belief based on? The training on how to use
11 whatever device?

12 A Speaking with mechanics, reviewing documents from
13 these different jobs, reading depositions from mechanics
14 about training they received and my personal experience
15 with Otis, which ended, unfortunately, in 1988, but they
16 were just getting into the PDA approach toward things,
17 doing away with paperwork and getting into electronic
18 things. So it was kind of in its infancy at the time, but
19 that was a general theme they were following at that time.

20 Q Okay. Does the code anywhere have a requirement
21 of how long these records should be maintained by the
22 servicer?

23 A Not that I recall.

24 Q If you worked with a servicer -- am I using the
25 right term when I reference Thyssen or Schindler or Otis

1 as a servicer?

2 A Service company you could call it. Let me just
3 clarify. Those that you mentioned are referred to as the
4 majors, if you will. They do sales, installation,
5 modernization, maintenance. A whole lot of things. One
6 of the services that they offer is maintenance, which we
7 call service. You can use the two terms the same. But
8 maintenance is maintenance. It means you keep things
9 going like they are and you maintain it. You don't do
10 anything to improve it. You don't change it. That's
11 another part of the business that they are in, upgrading
12 and so on and so forth. So I like to say maintenance is
13 just maintenance. We maintain it, keep it running.
14 Certain standards have to be followed, so on and so forth.

15 Also part of the vertical transportation
16 maintenance agreement or service agreement would be
17 repairs and callbacks and other things like that that are
18 in not only the Dover Platinum service agreement or
19 whatever it's called, but in most of them that I've read.
20 It touches on a scope of work that is included in that
21 agreement.

22 Q Gotcha. Upgrading, would that be under the
23 category of modernization?

24 A Generally, yes.

25 Q Okay. You referenced just now the majors, the

1 major service companies. Do all of the major service
2 companies have a portion of their work being modernization
3 and upgrade?

4 A Yes.

5 Q Are there smaller companies out there that just
6 do service and maintenance and repairs and callbacks?

7 A Yes.

8 Q Have you done work for in your 22-year career all
9 of the major service companies?

10 A No.

11 Q Which ones have you worked for?

12 A Otis and Mitsubishi.

13 MS. MASTRANGELO: That was longer than 22 years
14 ago.

15 THE WITNESS: It was a long time ago.

16 BY MR. IQBAL:

17 Q In your expert report work have you worked for
18 all of the major service companies?

19 A At one time or another, I believe so, yes.

20 Q How often have you worked for ThyssenKrupp?

21 A Probably a total of two dozen times over
22 22 years. There was a period of time when I was doing --
23 no, that's Schindler. ThyssenKrupp was kind of spotty, on
24 and off. Still kind of spotty. So I'd say about two or
25 three dozen times.

1 Q When you compare -- just approximately. You're
2 not a robot. I'm not expecting a precise answer here.
3 But the approximately 24 to 36 times that you worked for
4 Thyssen as an expert witness, when you compare that to
5 your work for other major service companies, is that one
6 of the more frequent employers of your service or do you
7 have other service companies that you do a lot more work
8 for?

9 A There are other majors that I do a lot more work
10 for.

11 Q Could you name them?

12 A KONE, Mitsubishi.

13 Q In your 22 years of being an expert witness,
14 roughly how many times have you been employed by KONE?
15 Rough estimate, if you have it.

16 A Less than a hundred, but close to it.

17 Q How about Mitsubishi?

18 A Mitsubishi, probably about 75 to 80 times. It's
19 over 22 years, by the way. I want to also add Otis to
20 that list.

21 Q How often have you been retained by Otis?

22 A Probably 50.

23 Q So Thyssen probably comes in behind KONE,
24 Mitsubishi and Otis?

25 A Kind of a tie between Schindler and Thyssen.

1 Q Are we missing any major service company or have
2 we hit all of them?

3 A Fuji Tech would be considered a minor major,
4 second tier major. They do everything, maintenance,
5 installation, modernization, repairs. I've worked for
6 them infrequently.

7 Q Gotcha. That's Fuji. Right?

8 A Fuji Tech, yes.

9 Q When you say "infrequently," can you give a rough
10 estimate?

11 A Maybe a dozen times over 22 years.

12 Q So most of your expert witness work over 22 years
13 has been on behalf of the service company?

14 A The majors.

15 Q The majors?

16 A Yes.

17 Q What percentage -- let me step back. In your
18 22-year history of being an expert witness with most of
19 that spent being retained by the majors, in all of those
20 situations were these companies the defendants?

21 A Yes.

22 Q Outside of the majority of your work which is
23 with the majors, do you also do work for minor service
24 companies?

25 A Yes.

1 Q What percentage of -- again, approximates or
2 ballpark figures are okay here. What percentage of your
3 expert witness work over the last 22 years has been with
4 the major service companies versus the minor service
5 companies?

6 A I'd say probably 90 percent, 95 percent majors
7 and 5 percent minors, smaller companies.

8 Q Now, there are some articles about the relative
9 safety records of these majors, but I want to hear it from
10 you based on your 22-year experience. Which of the major
11 service companies has the best overall record when it
12 comes to maintaining their machines and less accidents,
13 less issues, less callbacks?

14 MS. MASTRANGELO: Object to the form, foundation.

15 THE WITNESS: This is a big country and I work
16 the whole country. Every one of the companies that I work
17 for vary geographically as you move across the country.
18 So if I were in California, I'd say they are all pretty
19 much the same. If I were to go to New York, probably the
20 minors do a little bit better job than some of the majors
21 do. If I were to go to Florida, I'd say probably Thyssen
22 and Schindler do a better job than others do.

23 So it's that type of thing as you go around.
24 You can't really with a broad brush say this is the top
25 most elevator company everywhere, all over the world or

1 all over the United States. You could say all over Los
2 Angeles, but that's about as far as you could go. Were
3 you talking about just general performance or were you
4 talking about safety? What were you talking about?

5 BY MR. IQBAL:

6 Q How about safety?

7 A Safety is another thing. Based on my experience,
8 because most of my work has been with KONE, one would
9 think they are the least safe than anybody because they
10 are always getting sued for something. But that doesn't
11 mean they are always negligent for some reason or
12 responsible for another reason. They just get sued. So I
13 can't really say from a safety standpoint because the
14 records are very hard to come by, almost impossible about
15 the whole population of actual incidents that occur. We
16 have all kinds of sources of reported incidents in the
17 newspapers, in magazines, and some people like to say look
18 at all these accidents that they are having on this
19 particular type of equipment. I say, well, is it an
20 accident or is it a newspaper report. Because they don't
21 investigate to see what really happened or what the cause
22 was. Well, it's a newspaper report.

23 So they want to just judge everybody on
24 these newspaper articles. Some of them have a little bit
25 more information than others, but you have to really look

1 at what has gone on as far as let's investigate it, find
2 out what the cause was, what the responsibilities are, the
3 condition of the equipment, all of those things that go
4 into it, and then we'll draw some conclusions about, you
5 know, is it really the company's fault or is it a user
6 problem or what is the case.

7 Q So you like to typically in your reports get to a
8 point where you can identify whether the fault lies with
9 the service company or the individual user. Correct?

10 A Or somebody else. It might be somebody else. It
11 could be the user, could be the service company, could be
12 the owner, could be a passerby or somebody that bumped
13 into somebody and caused it and you never find the person.
14 It could be a lot of things. But in general I would say
15 my role is to determine the cause of the accident, what
16 caused it, and try to evaluate the degree of
17 responsibility of the various parties.

18 Q Degree of responsibility?

19 A Right.

20 Q Now, you mentioned 95 percent majors and
21 5 percent minors. So would you say all of your work is
22 with the defense side when you do expert reports?

23 A No.

24 Q What percentage of your expert reports are on
25 behalf of service companies, both major and minor, versus

1 plaintiffs?

2 A It used to be about 80\20. I do 20 percent
3 plaintiff's work. This was based on time. But that's
4 diminished somewhat over the years. I've become busy, if
5 you will. I'm doing less plaintiff's work now.

6 Q Okay. Can you give some general approximation of
7 the last couple of years? Is it 95\5? Is it 90\10?

8 A I would say the last ten years is probably 95\5.

9 Q Okay. So, generally speaking, you disfavor doing
10 work for plaintiff's because it takes more time?

11 MS. MASTRANGELO: Mischaracterizes his testimony.

12 THE WITNESS: Time is one factor. The other is I
13 get into a lot of situations where they ask you to come in
14 and you do something and find out it's a totally frivolous
15 lawsuit, and I don't want to get involved in it because I
16 have to cobble together some kind of case for somebody.
17 So in general I say no, I don't want to do it. If I
18 review it and it looks like a good legitimate case, I'll
19 take it.

20 I have a couple that I've done on the
21 defense side that have resulted in significant awards for
22 the plaintiff. A case I had down in Florida was one that
23 went to trial. It was a little girl that got hurt on an
24 escalator. I talked to the plaintiff's attorney. He sent
25 me some initial information and I evaluated it and I said

1 it looks like you've got a good case here and somebody has
2 to be responsible for it. So I did that and they ended up
3 with an \$11 million settlement during the trial.

4 I had another one on a residence elevator,
5 one of those small things in a house, in Pensacola,
6 Florida. I was initially retained by the owner of the
7 home. He settled. Somehow I ended up working for the
8 plaintiff on that case because he said we'll settle, but
9 you can use my expert, you know. So I did that one. It
10 was a little boy that got on a residence elevator and he
11 managed to get himself killed. So it was a fatality.
12 That one never went to trial, but it got settled for like
13 \$6-1\2 million for the plaintiff. So I've done those.

14 Oddly enough, when I'm on those cases, I
15 usually see people that I would say are plaintiff's
16 experts working for the defense. So we have a total role
17 reversal there. So I've done defense work.

18 Q You mean plaintiff's work?

19 A Plaintiff's work, yeah. I've done plaintiff's
20 work, but I've cut back on it because of the reasons I
21 said. A lot of it is just a lot of work for nothing and
22 trying to cobble together some kind of case for somebody.
23 I won't tell you what my joke is these days because it's
24 really not funny.

25 Q Okay.

1 A That's pretty much what it is.

2 Q Okay. You said recently it's been 95 percent
3 defense work and 5 percent plaintiff's work. Correct?

4 A Uh-huh.

5 Q In the 95 percent of your work that you are being
6 retained by the defense, have you ever found fault with
7 the client that retained you?

8 A Yes.

9 Q What percentage of the time would you say?

10 A A low number. 5 to 10 percent.

11 Q What do you do in those situations?

12 A I advise the client the risk he has in his case,
13 things that are wrong, you know, he's got to address
14 because they are serious or they are real, and let them
15 decide what they want to do.

16 Q In that 5 to 10 percent of the time when you are
17 representing a service company and you find fault with the
18 service company, do you put that conclusion in your expert
19 report?

20 A Reports are not required everywhere. Federal
21 Court, State of Nevada, couple other states, Utah,
22 requires expert reports. Other states don't require
23 expert reports. So I would not put it in a report. I
24 would verbalize it with the client and let them know and
25 sit down and really have a serious heart-to-heart talk

1 with them about where the sensitive parts are in the case
2 and where the responsibility would lie.

3 Q Okay. You are talking about jurisdictions where
4 a report isn't required?

5 A Correct.

6 Q So let's take a situation where you are in a
7 jurisdiction that requires a report and you run into one
8 of these 5 to 10 percent times where you find that your
9 own client that retained you was, to use your word,
10 responsible. What do you do then when a report is
11 required?

12 A I talk to them before the report is due.

13 Q Okay. What do you tell them?

14 A I tell them they've got some issues here that you
15 need to be prepared to address because they are very risky
16 and you've got some liability and responsibility, and you
17 decide what you want to do. I don't tell them what they
18 should do. One time I told a client what he should do and
19 he did it. I went out and looked at the equipment. I saw
20 a fault there that was a problem. I said get your
21 checkbook out and get this settled early. It's that
22 simple. I told him what the problem was.

23 Q So in jurisdictions that require reports, you
24 find something problematic for your client, the service
25 company, you make sure to communicate that to them

1 verbally before the report is due. Correct?

2 A Yes.

3 Q And in those situations typically do you tell
4 them to settle?

5 A Typically, no. I just did once. One time I did
6 that.

7 Q Have you ever reached the stage where an expert
8 report was due and it was one of those situations where
9 your service company client was responsible?

10 A No. Most of my work is California. Reports are
11 not required. Many times my clients shun reports. We
12 could do one -- nothing in the law says or rules of
13 evidence say you have to do a report or you're not allowed
14 to do a report. But in California it doesn't say
15 anything, and they try to shy away from it.

16 Q Gotcha. So in all of your years of practice as
17 an expert witness, 22 years -- right --

18 A Yes.

19 Q -- and hundreds and hundreds of cases --
20 correct --

21 A Yes.

22 Q -- have you ever written a report that has
23 conclusions detrimental to your client?

24 A No.

25 MR. IQBAL: Okay. Oh, my gosh. I'm sorry. We

1 were supposed to stop at 12:30. I was reading my clock
2 wrong. I apologize. It's almost 1:00. Sorry, Alex.
3 Let's go off the record.

4 (Recess taken.)

5 BY MR. IQBAL:

6 Q Mr. Turner, thanks again for coming in for the
7 depo. I appreciate the time that you are taking to answer
8 these questions.

9 A Sure.

10 Q During the break did you have any conversations
11 with anyone?

12 A Rebecca and I spoke a little bit about cases,
13 other cases, and stuff like that.

14 Q Did you speak about this case?

15 A No.

16 Q Did you speak about your testimony this morning?

17 A I just asked how I was doing. She said fine.

18 Q Anything else?

19 A No.

20 Q So you were speaking about other cases. Are you
21 working with Rebecca on other cases?

22 A I have some, yeah. But we didn't talk about
23 those.

24 Q How many other cases do you have with Rebecca?

25 A Two others, I believe.

1 Q Are those two other cases representing
2 ThyssenKrupp?

3 A I'm not sure. One is Otis. The other one I'm
4 not sure.

5 Q How many matters have you worked on with Rebecca
6 or her firm?

7 A I believe I answered that already. It's got to
8 be over the years a dozen.

9 Q Okay. I just want to do a check to clarify that
10 we have an accurate record of what is here and what is not
11 here. So Exhibit 2, your document inventory, when you
12 highlighted 2.0, is that -- does that highlight mean that
13 you don't have 2.0, 2.1, 2.1.1, 2.1.2 or does it just
14 reflects you don't have 2.0?

15 A Everything under that category, 2.0 and whatever
16 the subgroups are.

17 Q You don't have those?

18 A I don't have those, no.

19 Q Do you have 5.0 with you?

20 A I do. That's the correspondence received dated
21 11\21\17 and received on 12\1\17.

22 Q Okay. It's fair to say that the first pile under
23 there from July 17, 2017, has everything from 1.1 to 1.8?

24 A Yes.

25 Q And you have that with you?

1 A Yes.

2 Q Now 6.0 on page 2, which you don't have with you,
3 you said you received that on a CD?

4 A Yes.

5 Q Did that CD come with any cover letter or e-mail?

6 A Yes, I believe so. That's this CD. I'm pretty
7 sure there was a letter with it. I do not see one. It
8 doesn't say that I received a letter. Yes, this is the
9 letter. This is the CD.

10 Q Thank you. So the CD is here, and we'll get a
11 copy. And then 7.0, 8.0, 9.0 you have, just not with you?

12 A True on 7, 8 -- correspondence from client --
13 that's true, I don't have that. And I don't have Chris
14 Dutcher except electronically.

15 Q Now, but you do have all of these documents?

16 A If it's listed there, I have it, yes. There are
17 some things that I have that I didn't go down and get on
18 here, but there is a correspondence dated 9\5\18. As you
19 see, 8.1.3 is empty because I have to go through and see
20 if there was anything else in that package of stuff.
21 Exhibit to Ray Belka -- I'm not sure if he had two or
22 three exhibits.

23 Q Gotcha.

24 A He had seven exhibits marked but not attached.
25 So it's one of those deals.

1 Q Gotcha. Maybe during our next quick break I can
2 take a look at your folder, if you don't mind, because
3 there are some e-mails and things like that just to go
4 through.

5 A Sure.

6 Q I think we're good with that for now. So going
7 back to Mr. Dutcher's deposition transcript, Exhibit 3.

8 A I should point out that I did not receive any of
9 the exhibits to Mr. Dutcher's transcript.

10 Q Okay. But you did receive his transcript?

11 A Yes, I did.

12 Q When you review transcripts, do you make markings
13 and notes?

14 A No.

15 Q You don't?

16 A I make notes sometimes.

17 MS. MASTRANGELO: But not on the transcript?

18 THE WITNESS: Not on the transcript.

19 BY MR. IQBAL:

20 Q Okay. You have some handwritten notes in
21 Sanskrit?

22 A In Sanskrit.

23 Q But do you have all of your handwritten notes
24 with you?

25 A I believe so, yeah.

1 Q All of your handwritten notes that you've made in
2 this case starting July 2017 to now, do you have them?

3 A I believe so.

4 Q Would those notes also have on occasion notes
5 regarding things you found in different transcripts?

6 A Sometimes.

7 Q Okay. Would that be the case here?

8 A Let me look. No, I don't have that.

9 Q You don't have all of your notes?

10 A I don't have notes from his transcript.

11 Q Do you have notes from other transcripts?

12 A Some. I have notes from Ms. Swett's report.

13 This is notes on travel to the inspection that I did,
14 notes from interrogatory responses, notes from the video
15 review, and notes from initial conversation with
16 Ms. Mastrangelo.

17 Q Just real quick, you are staring at one page of
18 notes from your inspection. Do you mind if I take a look
19 at those?

20 A This was for travel.

21 Q Okay. So your notes from the actual inspection,
22 do you have those with you?

23 A Yep, I do. Yes. I don't mean to say "Yep."

24 Q No problem.

25 A I know I've got them. Sorry.

1 MR. IQBAL: That's okay. We can go off the
2 record while you're looking for your notes.

3 THE WITNESS: Please.

4 (Recess taken.)

5 BY MR. IQBAL:

6 Q Sir, you are handing me some stapled yellow pad
7 notes, and it's four pages from the yellow pad -- three
8 and a half pages from a yellow pad and some escalator
9 survey that is three pages. It has handwritten notes.
10 And then it's got one page of drawings from November 16,
11 2017. It's got an escalator skirt clearance survey sheet.
12 That's one page with handwritten notes. And it's got
13 escalator survey, escalator characteristics. That's half
14 a page with handwritten notes. Sir, are these all of your
15 notes from the inspection?

16 A Yes. I also have some photographs that I took.
17 Do you want them?

18 Q Yes, please.

19 A This is a CD containing the photographs. I did
20 print some out, but I didn't make big copies. These
21 photographs are on that CD.

22 Q Okay. Now, are all of the photographs that you
23 took on the CD?

24 A Yes.

25 Q Are all of the photographs from the CD here in my

1 hand?

2 A All but three.

3 Q All but three?

4 A There were three I took with my iPhone that I did
5 not print out on that, but they are on the CD. There were
6 three short videos that I took. They are on the CD, but I
7 couldn't print out a video.

8 Q Is this the only copy of the CD that you have?

9 A Yes.

10 Q I don't want to take it since it's you're only
11 copy.

12 A I have them on my computer.

13 MS. MASTRANGELO: He made that for you.

14 THE WITNESS: I made that for you.

15 BY MR. IQBAL:

16 Q Great. Thank you. Here you go. I kept them in
17 order. So if you would go to Mr. Dutcher's deposition,
18 which is Exhibit 3, and turn to page 126 in the
19 deposition. Let me know when you're there. It's going to
20 be pages 123 to 126.

21 A I'm there.

22 Q There is a discussion on page 126 regarding KONE
23 steps that are prone to develop cracks from the OEM. Do
24 you see that between lines 3 and 11?

25 A I do, yes.

1 Q Okay. So what is an OEM?

2 A Original equipment manufacturer.

3 Q Are you familiar with the KONE welded steps that
4 he is referring to that are prone to develop cracks?

5 A I believe so, yes.

6 Q Is it fair to say that it is a known
7 characteristic in the industry that KONE welded steps are
8 prone to cracks?

9 A Repeat the question.

10 Q Yes. Is it fair to say that the industry
11 considers the welded KONE steps as being prone to cracks?

12 A That's different that the first time you asked.

13 Q Yeah.

14 A The industry is generally knowledgeable some of
15 the KONE steps are prone to develop cracks, yes.

16 Q Would those be the welded steps?

17 A Yes.

18 Q Okay. Newer through axle steps, are they as
19 prone to cracks as the welded steps?

20 A No.

21 Q Why is that?

22 A Technically because the through axle step was
23 designed to absorb the torque or the twisting forces of
24 the flange that held the rollers on the outside of the
25 step as it goes through the upper curve, which is where a

1 torque is exerted and causes what is referred to as the
2 B cracks in the side of the step. So because the through
3 axle absorbs that, it's not absorbed by the side of the
4 step, so those cracks do not appear then on the new,
5 quote, through axle steps.

6 Q Gotcha. So is it correct to say there are Type A
7 cracks and Type B cracks?

8 A There are, yes.

9 Q What is the difference between the two kind of
10 cracks?

11 A Primarily the difference is where they appear.
12 The B cracks appear on the side of the step where a flange
13 is mounted with some bolts that holds a wheel that then
14 attaches to the step chain, which is what drives the
15 escalator around.

16 The A cracks appear in the corner. You
17 can't say the leading or trailing edge because you can
18 reverse the steps and they go the other way. But in the
19 corner of the step where there is prone to be some
20 twisting action as a result of just going through the
21 motion on the escalator, and because of the welding
22 process that they used, it caused what they call a stress
23 riser to appear at that point that would manifest itself
24 not on every step but just on some -- would manifest
25 itself as the steps went through their operation on the

1 escalator. And when that stress was relieved by cracking,
2 it could be repaired by reinforcing then that end of the
3 step so they didn't have a requirement to replace the step
4 if the A crack appeared to make a repair, and then you
5 could keep the step in service.

6 Q And you would do that by drilling a screw in?

7 A No. There was actually a band that was supposed
8 to be put on it to reenforce it. Drilling a hole was to
9 stop the B cracks from spreading. You might be familiar
10 with a crack in the windshield of your car. The way they
11 keep the crack from spreading is to drill a little hole at
12 the end of the crack so at that hole all the stressors are
13 absorbed through a smooth surface rather than have the
14 crack, which is a sharp surface, try to fight the stresses
15 in the window. In this case it was the stresses in the
16 side of the step.

17 Q Okay. So which one of these steps is known to be
18 critical and needing replacement right away?

19 A The ones with the B cracks.

20 Q If you are inspecting an escalator and you see
21 B cracks, what is your recommendation?

22 A Replace the step.

23 Q In what time frame?

24 A As soon as you can. I should point out that when
25 that crack appears, that KONE actually had in their policy