

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.

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APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 8

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Dated June 10, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I am an employee of IQBAL LAW PLLC and that on June 10, 2022, I caused a true and correct copy of the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 8** to be served as follows:

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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**

1 or procedure to prevent the cracks from getting any bigger
2 you could drill a hole in the side of that, much as you
3 would do on the glass issue. It would keep the crack from
4 getting worse, but it wouldn't heal it. And because there
5 was no -- there is a structural failure of the step when
6 the crack appears, but the step doesn't fall apart or
7 distort. So it just keeps operating and you don't even
8 know it's there unless the step were to go through some
9 additional forces that would cause a portion of it to fall
10 apart or break or do something, in which case you would
11 start getting movement of the step that wasn't warranted.

12 Q Okay. If you have B cracks on an escalator, what
13 can happen?

14 A If it's just a crack and it doesn't get any
15 worse, nothing will happen. They just keep working, as I
16 said. They keep going.

17 Q What if the B crack gets worse? What can happen?

18 A The step could deform or a portion break off or
19 the chain wheel would break off and the step could sink
20 down and then cause what we call a step wreck or a pileup.
21 There would be serious damage to the escalator.

22 Q Okay. In such a situation where you mentioned
23 serious damage to the escalator, could that also happen to
24 anybody who happened to be on that step at that time?

25 A They would be what I like to call collateral

1 damage.

2 Q So if a step is deformed, then whoever is
3 standing on it, there is a possibility that individual
4 would also be hurt?

5 A If it's deformed enough to cause a step wreck and
6 have the steps pile up and actually damage the whole step
7 or series of steps and the cone plates at the end where
8 they would be damaged, if there was somebody on that step,
9 they could become injured, yes.

10 Q So turning to page 141 and 142 of Mr. Dutcher's
11 deposition transcript. Let me know when you're there.

12 A I'm there.

13 Q There are some questions about a repair order on
14 September 12, 2012, recommending a replacement of
15 114 steps and then an October 2nd repair order with an
16 option for replacing 57 steps. And then there was some --
17 a few steps replaced in December. Do you see that?

18 A Yes, I do.

19 Q Okay. I'm going to hand you chunks -- hopefully
20 chunks so we can go through this quickly because these are
21 not Bates numbered. We should have brought our copies.
22 I'm going to hand you what can be marked as Exhibit 4.
23 It's going to be two work orders, one from September 12,
24 2012, and one from October 2nd, 2012. I'll mark these as
25 Exhibit 4 and hand them to you. Here you go, sir.

1 (Exhibit 4 was marked for identification by the
2 court reporter.)

3 BY MR. IQBAL:

4 Q Let's start with the September 12, 2012. Do you
5 see where it says "Safety Matter" and it's underlined and
6 it's got stars before and after?

7 A The asterisks before and after, yes.

8 Q Do you see where it says at the end of that
9 paragraph, "Therefore, because a significant amount of
10 your steps already have cracks and the others are prone to
11 cracking, we are recommending replacement of all of the
12 steps on both escalators." Do you see that?

13 A Yes, I do.

14 Q When you see a document such as this that says
15 "Safety Matter" and that has a recommendation underlined
16 for replacement of all of the steps, what is your
17 immediate response to that?

18 A It sounds relatively serious and I would want to
19 look further into it and find out what the safety matter
20 is, for one, and what the nature of the matter is, the
21 nature of the damage. Prone to cracking. Come and
22 explain that to me. What do you mean prone to cracking?
23 Look into it and then, based on what I learn, to take some
24 action on it.

25 Q Would this be something you would look into right

1 away?

2 A Yes.

3 Q Why?

4 A Because of the way it's written. It seemed to be
5 a fairly important issue at the time.

6 Q All right. And then if you turn to the next
7 repair order from October 2nd, 2012. Let me know when
8 you're there.

9 A All right. October 2, 2012.

10 Q So roughly three weeks later. Is that fair to
11 say?

12 A 20 days.

13 Q This repair order also has "Safety Matter" with
14 asterisks and underlined. Correct?

15 A Yes.

16 Q It has some underlined lines there. Do you see
17 that?

18 A Yes.

19 Q It looks like, "Therefore, we are proposing an
20 option to the following. We shall replace all the steps,
21 58 steps, on the down escalator unit. We will salvage
22 enough older uncracked steps to be able to install these
23 in the up escalator unit when cracked steps have been
24 identified. Additionally, as part of this proposal we
25 shall perform the step skirt indexing adjustments on both

1 escalators in order to be in compliance with the state and
2 NOV." Do you see that?

3 A I do.

4 Q When we refer back to Mr. Dutcher's testimony,
5 I'll represent that he had in front of him, even if you
6 don't have the exhibits, what we're talking about, the
7 September 12 repair order and then the October 2nd repair
8 order, and then ultimately a few steps being replaced in
9 December.

10 A Excuse me. What did you just say? Ultimately
11 what?

12 Q A few steps being replaced in December.

13 A That was in the testimony.

14 Q So it looks like the first option or the first
15 repair order was replaced by a second repair order just
16 based on what we have before us. Correct?

17 A The way I read this -- they call it a repair
18 order. It's a proposal.

19 Q Got it.

20 A The first one here is by Mr. Panaro, and then
21 there is a note at the bottom about a purchase order,
22 which is also in there. And this second one dated
23 October 2nd is an option to the first one. So it's two
24 proposals. Here is the full way and here is another way
25 to do it. So the second one is an option.

1 Q Got you. Mr. Dutcher testified that Golden
2 Nugget didn't take up either the first recommendation or
3 the second recommendation and that ultimately months later
4 only a few steps were replaced in December.

5 A That's his testimony, yes.

6 Q Based on his testimony and what you have in front
7 of you, does that seem reasonable?

8 A What he said does not seem reasonable, no. But
9 based on what I have in front of me, it looks like the
10 Golden Nugget issued a purchase order to do the original
11 September 12 proposal.

12 Q You mean Thyssen?

13 A Thyssen, right.

14 MS. MASTRANGELO: No, no.

15 THE WITNESS: The purchase order was issued by
16 Golden Nugget to do that on purchase order 19266 dated
17 9\28\12.

18 BY MR. IQBAL:

19 Q Right. But those replacements were never done.
20 Correct?

21 A I don't know. I'm probably as confused about
22 this as you might be.

23 Q Well, let's find out from the account history
24 from Thyssen. I'm going to hand you the account history
25 from Thyssen's second supplemental right here. We will

1 have the two repair orders, October and September -- let's
2 put them together. You can -- just the first two pages.

3 A These two are the purchase order. Do you want
4 that to go with this?

5 Q Yes, please do that.

6 A This is the purchase order that goes with this.
7 Do you want them together?

8 Q Yes. You can also put the October 2nd repair
9 order. So that will be Exhibit 4. Keep that to your
10 left. Right in front of you is the account history from
11 Thyssen. Can you look through and see when in 2012 the
12 steps were actually replaced after the recommendation was
13 made in September?

14 MS. MCLEOD: Counsel, could I get a Bates range
15 on the documents you are showing the witness, please?

16 MR. IQBAL: Yes. Unfortunately, there are no
17 Bates numbers because we printed from Thyssen's second
18 supplemental. But the second supplemental is November 6,
19 2017. Immediately after the first couple of pages, the
20 supplemental ECC, the captions there are about, I would
21 say, from page 7 to 25 an account history.

22 MS. MCLEOD: Thank you for the clarification.

23 THE WITNESS: In the section entitled "On Site
24 Repairs," which is where the entry would be, I do not see
25 an entry at all for 2012 or '13.

1 BY MR. IQBAL:

2 Q Okay. Since I'm going to be asking a lot of
3 questions on this and these aren't Bates numbered, do you
4 mind if we together number the pages on the right? That
5 will make it so much faster.

6 A That's fine.

7 MR. IQBAL: Off the record.

8 (Recess taken.)

9 BY MR. IQBAL:

10 Q So were you able to find in the account history
11 where the steps were replaced in December of 2012?

12 A Yes. I initially looked -- it's not under safety
13 tests. I looked at callbacks. I didn't see it. But it
14 did appear in the entry on page 16 at the top, incident
15 date 12\7\12, TKM PM, replace steps, install skirt
16 brushes, remove old steps and cardboard from job. So
17 there were steps replaced.

18 Q Right. It doesn't say how many steps. Right?

19 A It does not, no.

20 Q So all we have is the testimony of Chris Dutcher
21 saying a few steps were replaced. Correct?

22 A Yes. That was in December.

23 Q So based on that, when there is a recommendation
24 that is styled -- if you go back to Exhibit 4 -- that is
25 styled as a safety matter and a recommendation is made to

1 replace 118 steps and four months later a few steps are
2 replaced, is that reasonable in your eyes?

3 A I don't know all the circumstances. I know that
4 based on the first proposal, as I said, I would want to
5 find out all the details of it. Apparently a second
6 proposal went in for a modification in the system. I
7 don't know what kind of conversations took place since
8 then. As I said, a cracked step is not a broken step. It
9 didn't collapse or do anything. There is no record of any
10 step accidents, only the discovery of some cracks in the
11 steps.

12 Q Right.

13 A So is it reasonable? I would say based on the
14 limited information I have that it doesn't appear to be
15 reasonable.

16 Q It doesn't appear to be reasonable that --

17 A That they only did a few in December.

18 Q When this issue was identified at least in
19 September?

20 A In September, three months earlier, yes.

21 Q Do you see a lot of repair orders?

22 A In this document I see only three, four, five
23 repair orders.

24 Q I guess I should have asked a better question.
25 I'm sorry. In general over your 22 years of experience as

1 an expert witness in reviewing, I'm guessing, thousands of
2 pages of documents, have you seen a lot of repair orders
3 and proposals?

4 A Yes.

5 Q In your experience is it unusual to have repair
6 orders or proposals have "Safety Matter" and asterisks and
7 underlined language like this?

8 A It's not unusual, no.

9 Q Okay. In prior matters where you have seen
10 proposals with "Safety Matter" or a recommendation of
11 replacing all the steps, are those recommendations usually
12 taken up?

13 A I'm just thinking a minute. I'd say in general
14 they are taken up. But, again, what I've seen is a lot of
15 discussion after a proposal goes in to find out exactly
16 what can be done, if there are alternatives and so on and
17 what the safety matter is and so on. Salesmen have a way
18 of writing proposals to scare the client. So they use all
19 kinds of language in there about litigation, lawsuits,
20 death, dismemberment, all kinds of stuff that really
21 doesn't hold water, if you don't mind my saying it that
22 way.

23 Q Right.

24 A But they think they are going to get the
25 attention of the customer by writing it, so they do that.

1 Q Typically they do get the customer's attention?

2 A They will to some degree. Maybe not the full
3 bore that they anticipated in the beginning.

4 Q Let's turn to page 144. Just so we have -- let's
5 just take Mr. Dutcher's testimony. Let me know when
6 you're at 144.

7 A I'm looking through this record again because I
8 saw another entry in here. There is an entry under
9 preventive maintenance on page 11, down escalator, cleaned
10 upper and lower pits, replaced pit pads, removed two
11 steps, checked gear oil. So they replaced a couple of
12 steps at that point on the 14th of November.

13 Q What --

14 A Page 11, second from the bottom.

15 Q That is in 2014. Right?

16 A I understand.

17 Q Right. So two steps were replaced almost two
18 years after?

19 A Well, they tried to keep up with it. And then I
20 thought I saw another one.

21 Q How do you know they tried to keep up with it?

22 A Well, they replaced some steps.

23 Q But they replaced --

24 A Apparently they got bad enough they needed to be
25 replaced. Then on page 14, that was just rollers. I'm

1 sorry. Page 14, first entry.

2 Q Just rollers?

3 A Just rollers. I'm sorry.

4 MR. IQBAL: That's okay. Let's have this account
5 history marked as Exhibit 5. Let me put an Exhibit 5 note
6 on that. You can hold on to that. Thank you, sir.

7 (Exhibit 5 was marked for identification by the
8 court reporter.)

9 BY MR. IQBAL:

10 Q So Mr. Dutcher, who is the service technician
11 assigned to the Nugget Laughlin escalators, testifies
12 here -- if you can turn to page 144.

13 A Yes.

14 Q To your left you have Exhibit 4 if you want to
15 reference those repair orders which are being referenced
16 here. But starting at line 13. Now, the Bates numbering
17 that is referenced here is from our Bates numbers.

18 "Question, And JNB 2034 references the repair order dated
19 September 12, 2012. Do you see that?" "Answer, Yes, I
20 see that." You have that repair order in your hand.
21 Correct?

22 A Yes.

23 Q Okay. And then, "Question, And then a few pages
24 after that JNB 2037 references -- that's the page for the
25 repair order from October 2nd, 2012. Correct?" The

1 answer is "Yes." You also have that in your hand.

2 Correct?

3 A Yes.

4 Q So then it continues, "Question, Okay. And so
5 you have the two repair orders from September and then
6 October and then ultimately a few steps were replaced in
7 December. Correct?" Answer, "Yes." Do you see that?

8 A Yes.

9 Q Okay. Now, if you go to page 145 and you see
10 lines 13 to 16, "Question, Okay. And your answer 'I don't
11 know' is to the question why did it take three months to
12 replace the steps. Right?" Answer, "Yes." Based on just
13 the testimony of the guy who was assigned to the Nugget
14 Laughlin escalators, does it seem reasonable to you that
15 he didn't know why the steps weren't replaced?

16 MS. MASTRANGELO: Object to the form.

17 MS. MCLEOD: Join. Sorry. I was on mute.

18 THE WITNESS: Does it seem reasonable? To a
19 degree it's reasonable. Many times the mechanic on the
20 job is not aware of the inner workings of the commercial
21 site and what goes on and the discussions that go on
22 between the owner and sales department or whoever else.
23 So I would say he should know, but if he didn't, I'm not
24 surprised.

25 BY MR. IQBAL:

1 Q Okay. Does it seem reasonable to you that on an
2 issue identified at least as early as September that
3 nothing was even done until December?

4 MS. MASTRANGELO: Lacks foundation.

5 MS. MCLEOD: Join. Also assumes facts not in
6 evidence.

7 THE WITNESS: The issue that was proposed in
8 September -- the manner in which it was proposed would
9 seem to indicate that there was some immediacy, if you
10 will, needed. But, again, I don't know what the
11 conversations were in between or the research or anything
12 like that, so it's hard to say.

13 BY MR. IQBAL:

14 Q Right. I don't think anybody is aware of those
15 conversations that went back and forth. We have just what
16 we have before us. We have his testimony.

17 A That's it.

18 Q So based on the testimony of Mr. Dutcher and
19 based on the account history that we have, is it
20 reasonable to you that on an issue first raised in
21 September that nothing was actually done until December?

22 MS. MASTRANGELO: Same objections. And it goes
23 beyond this witness's expert opinions in this case.

24 MS. MCLEOD: Join.

25 THE WITNESS: I can't say whether or not it's

1 reasonable because I don't know what went on in between.
2 I have no idea. Based on this, it took three months to do
3 anything, period.

4 BY MR. IQBAL:

5 Q Right.

6 A No opinion.

7 Q Okay. If you were in Mr. Dutcher's place, would
8 you have pushed for an earlier replacement of steps?

9 MS. MASTRANGELO: Same objections.

10 MS. MCLEOD: Join. Calls for speculation.

11 THE WITNESS: I believe I saw some e-mails
12 between Mr. Panaro and Mr. --

13 BY MR. IQBAL:

14 Q Hartmann?

15 A -- Hartmann about requesting status updates on
16 decisions and so on and so forth.

17 Q That's from 2015?

18 A Maybe. All right. Anyway, it was Mr. Dutcher
19 who was asking Mr. Panaro to follow up on it, from what I
20 understand.

21 Q Okay. If there are no e-mails, no activity, no
22 evidence in the record of a back and forth conversation,
23 because, as you said about ten minutes ago, you would
24 follow up on this, there is no record of a follow-up to
25 the language in the repair orders, if the record doesn't

1 show any kind of follow-up, which you said you would do --

2 A Yeah.

3 Q -- would that be reasonable?

4 MS. MASTRANGELO: Same objections, plus it
5 mischaracterizes the evidence. Go ahead.

6 MS. MCLEOD: Join. Also compound.

7 THE WITNESS: To follow up or to find the records
8 or do what? What is reasonable?

9 BY MR. IQBAL:

10 Q For someone to not follow up for three months,
11 would that be reasonable? Yes or no?

12 MS. MASTRANGELO: Same objections.

13 THE WITNESS: No.

14 BY MR. IQBAL:

15 Q Okay. For no internal discussions or e-mails to
16 exist in the record, meaning we have no evidence of
17 conversations within ThyssenKrupp or within Golden Nugget,
18 if that was the case for an issue that was raised in
19 September and nothing was done until December, if there is
20 no evidence of any internal discussions at the owner,
21 Golden Nugget, is that reasonable?

22 MS. MASTRANGELO: Same objections.

23 MS. MCLEOD: Objection; compound, calls for
24 speculation, assumes facts not in evidence.

25 THE WITNESS: The proposal made in September on

1 the 12th apparently had an option offered 20 days later.
2 I have to assume that there was some discussion. Be it
3 documented in an e-mail or otherwise, there was some
4 discussion. The option that was offered in October
5 apparently was not acted on in this form to replace
6 58 steps on one escalator and so on and so forth. That
7 was not acted on in October. But something else was done
8 in December. I have to assume there was some discussion
9 going on.

10 BY MR. IQBAL:

11 Q Right.

12 A That's my assumption.

13 Q But based on what you have before you in the
14 records and based on the fact there are no internal
15 e-mails based on what we have, not your assumptions, based
16 on the record you have in front of you, is it reasonable
17 that there is no record of internal discussions at Golden
18 Nugget regarding either the September or October work
19 orders?

20 MS. MASTRANGELO: Object to the form, improper
21 hypothetical, mischaracterizes the evidence, lacks
22 foundation.

23 THE WITNESS: It's not unreasonable.

24 BY MR. IQBAL:

25 Q It's not unreasonable?

1 A Not to me, no.

2 Q Why not?

3 A Based on my experience. I've seen this happen
4 many, many times. You submit -- in fact, you don't even
5 submit a proposal. You discuss first with the owner
6 verbally. You go in and say we should be doing this or
7 you need to modernize all the equipment or whatever the
8 case might be. In this case, replace some steps. I'll
9 prepare a proposal for you. And the guy says no, it's not
10 in the budget. Yes, it is in the budget. I would like to
11 see that so I can do some capital planning. There is a
12 lot of stuff, none documented, until the elevator company
13 prepares a proposal. That's the first documentation you
14 see. It says enclosed please find a proposal to do such
15 and such.

16 It goes to the customer and he sits there
17 and he'll respond thank you very much or thank you, we'll
18 do this right away or something else comes along. I know
19 that goes on without any documentation. You're not going
20 to find documentation for every little thing or big thing
21 that goes on. There are a lot of verbal discussions.

22 Putting together proposals like this with
23 numbers in it takes a lot of work and you don't want to go
24 through the work if they are not going to do it.
25 Somewhere along the line, based on my experience, Thyssen

1 got the idea that Golden Nugget wanted to do something or
2 they wouldn't have prepared a proposal. It doesn't seem
3 to be the right thing to do. There was a discussion and
4 they came up with an option and something else went on.
5 We don't know because there is no documentation. In
6 December they replaced some steps.

7 Q Right. So everything you just said is based on
8 assumptions from your experience. Correct?

9 MS. MASTRANGELO: Mischaracterizes the testimony.

10 MS. MCLEOD: Join.

11 THE WITNESS: It's based on my experience.

12 BY MR. IQBAL:

13 Q But sitting before you today, you don't have any
14 e-mails or any correspondence outside of those repair
15 orders regarding the proposal in September of 2012.
16 Correct?

17 A That's correct.

18 Q Okay. So based on what we have before us, you
19 also don't have any internal e-mails within Golden Nugget
20 regarding either one of those proposals. Correct?

21 A Correct.

22 MR. IQBAL: Okay. We've been going for more than
23 an hour. Let's go off the record.

24 (Recess taken.)

25 BY MR. IQBAL:

1 Q Mr. Turner, during your break did you speak with
2 anyone?

3 A No.

4 MR. IQBAL: Okay. I'm going to hand you what is
5 going to be marked as Exhibit 6. You'll see internal
6 pagination at the bottom center, pages 1 through 6. I'll
7 represent this is directly from Thyssen's second
8 supplemental, November 6, 2017. I'll go ahead and mark
9 this as Exhibit 6 and hand it to you. Here you go, sir.

10 (Exhibit 6 was marked for identification by the
11 court reporter.)

12 BY MR. IQBAL:

13 Q Let's make sure we're working with the same
14 documents here. At the top -- do you see the little
15 tiny 1 at the bottom of the page in the middle?

16 A Yes, I do.

17 Q On the very last page do you see a little tiny 6?

18 A I do, yes.

19 Q Again, I'll represent when I was asking
20 Mr. Dutcher questions we were using our own Bates numbers.
21 These are from ThyssenKrupp's second supplemental which
22 are not Bates numbered. That's why we're following the
23 internal pagination.

24 So the very first e-mail on page 1 looks
25 like Mr. Panaro is e-mailing Mr. Scott Olsen from October

1 31st, 2017, and the substance of the e-mail is "just more
2 info..." Do you see that, sir?

3 A Yes.

4 Q When you look below that, it appears to be a
5 forward. You can see from the subject heading at the top
6 of page 1, it appears to be a forward of e-mail exchanges
7 from 2015. Do you see that, sir?

8 A Yes, I do.

9 Q Let's go to the very last page to make sure we're
10 on the same documents here. Page 6 has what looks like
11 the very end of an e-mail. Do you see that, sir?

12 A Yes, sir.

13 Q It says "GN Laughlin - 5 Esc steps.pdf" and
14 "GN Laughlin - 40 Esc steps.pdf." Do you see that?

15 A Yes, I do.

16 Q Is it fair to say that page 6 is a continuation
17 of the e-mail on page 5, as far as we know?

18 A As far as we know, yes.

19 Q Okay. If you look on that page 5, it looks to be
20 an e-mail that is signed "Sincerely, Larry Panaro" from
21 ThyssenKrupp, but page 5 doesn't even have the start of
22 that e-mail. Correct?

23 A It doesn't appear to have it, no.

24 Q If you go to page 4 at the bottom, it looks like
25 that first e-mail starts. Let me know when you're there.

1 A Yes.

2 Q Okay. So that's the first e-mail in the chain
3 that we have in these six e-mails. That first e-mail at
4 the bottom of page 4 was sent on Tuesday, June 16, 2015.
5 Do you see that, sir?

6 A I do, yes.

7 Q That's from Larry Panaro of ThyssenKrupp to
8 Don Hartmann, who I'll represent is the director of
9 facilities at Golden Nugget. Do you see that?

10 A Yes, I do.

11 Q So let's quickly make sure we both have the same
12 e-mails. If you go to page 3, because the top of page 4
13 is the next e-mail, you see on page 3 an e-mail -- two
14 e-mails, one from Larry Panaro to Don Hartmann on
15 August 5th at 3:24. Do you see that somewhat in the
16 middle of the page?

17 A Yes.

18 Q And above that it looks like a response three
19 minutes later. Do you see that from Mr. Hartmann to
20 Mr. Panaro?

21 A Yes.

22 Q And then if you go to page 2, you have, it looks
23 like, three e-mails. From the bottom you have an e-mail
24 on August 5th at 3:31 p.m. from Larry to Don. Do you see
25 that?

1 A It appears to be, yes.

2 Q And then it appears right above that that
3 Mr. Hartmann responded at 3:59 p.m. that same day. Do you
4 see that?

5 A Wait a minute. Yes.

6 Q And then above that we have an e-mail back from
7 Larry at 4:02 from August 5th, 2015. Correct?

8 A Yes.

9 Q We're almost done here in terms of identifying
10 the e-mails we have. On page 1 do you see the message
11 from Mr. Panaro to, actually, himself and Don Hartmann on
12 August 10th, 2015?

13 A Yes.

14 Q Okay. Great. All right. Of course we have the
15 forwarding e-mail from Panaro to Olsen on October 31st,
16 2017. Correct?

17 A Yes.

18 Q All right. We are dealing with the same
19 documents. Great. This Exhibit 6 -- let's go back to the
20 original e-mail, which starts at the bottom of page 4. Do
21 you see that?

22 A Yes, from Panaro to Hartmann dated June 16.

23 Q 2015?

24 A 2015, yes.

25 Q Okay. In that e-mail -- go ahead and read that

1 e-mail. You can read it to yourself. It starts at the
2 bottom of page 4 and, obviously, continues on to page 5.

3 A Okay.

4 Q All right. Here Larry cites, to quote, "It was
5 great catching up with you last week." Obviously you
6 weren't there and I wasn't there, but based on what this
7 e-mail says, is it safe to presume that Larry Panaro
8 caught up with Don Hartmann in the last week before
9 June 16, 2015?

10 A We can make that inference, yes.

11 Q Great. And then Larry references their
12 conversation and then Don's conversation with Chris
13 Dutcher, the mechanic. Do you see that?

14 A Yes.

15 Q And then Larry states, "As we discussed, this is
16 a safety matter for the riding public."

17 A Yes.

18 Q "There are currently 40 steps showing signs of
19 cracking, and five of the 40 are critical. At this time
20 we recommend replacing the 40 steps. However, the five
21 steps need to be addressed asap." Do you see that?

22 A I see that.

23 Q When you read an e-mail like that let's say
24 hypothetically -- you have a successful business right
25 now, but let's say hypothetically you go back and become

1 director of facilities or you are in charge of escalators
2 at some commercial building. If you get an e-mail like
3 this from a service company, what would your next steps
4 be?

5 A I would have some further discussion about what
6 do we need to do to get something done, either the five
7 steps or the 40 steps, whatever they might be.

8 Q You testified before that if it's one of those
9 critical cracks that needs to be replaced right away?

10 A The B cracks we talked about, yes. I should say
11 that I don't know exactly what I said -- I'll rely on my
12 testimony, but the B cracks as recommended by the
13 manufacturer, and that's KONE\Montgomery, whatever they
14 called themselves at the time, recommended the B crack
15 steps be replaced rather than an attempt to repair them.

16 Q Right. So if you got an e-mail like this, would
17 you respond to Mr. Panaro?

18 A Yes.

19 Q Given what he wrote about a, quote, safety matter
20 for the riding public, five of the 40 are critical and
21 the, quote, five steps need to be addressed asap, closed
22 quote, would you get back to him pretty quickly?

23 A I would get back to him in short order let me
24 say.

25 Q All right. If you turn to page 3, which is the

1 very next e-mail. So we have June 16th, 2015, and then on
2 page 3 is the very next e-mail in this e-mail chain and
3 it's another e-mail from Larry to Don, and that is on
4 August 5th, 2015, at 3:24 p.m. Do you see that, sir?

5 A Yes.

6 Q I'm going to quote the e-mail for you and get
7 your response. "I hope all is well. I just wanted to
8 reach out to you and follow up on the escalator step
9 matter at Golden Nugget Laughlin. Has a decision been
10 made on which direction the property wants to go on these
11 step replacement proposals? Chris Dutcher (TKE Laughlin
12 mechanic) brought it up to me again last week as a safety
13 concern of his. That is why I thought I would reach out
14 to you. Please let me know at your earliest convenience."
15 Do you see that?

16 A Yes.

17 Q Based on this e-mail chain that we have which was
18 produced by your client, does it seem reasonable that
19 there was no response from Mr. Hartmann until the next
20 e-mail on August 5th to an initial e-mail on July 16th?

21 A It would not seem reasonable to me, no.

22 Q We will get into Mr. Dutcher's testimony and we
23 will look through the account history. There are records
24 that Golden Nugget recently produced showing these steps
25 were actually replaced in 2016, January of 2016. Does

1 that seem reasonable that steps identified with critical
2 cracking that need to be replaced asap in June of 2015
3 aren't actually replaced until 2016?

4 MS. MASTRANGELO: Mischaracterizes the record and
5 the evidence. Go ahead.

6 MS. MCLEOD: Objection; compound, misstates
7 evidence.

8 MS. MASTRANGELO: It's beyond the scope of his
9 retention. Go ahead.

10 THE WITNESS: What you asked me is was it
11 reasonable. Is that what the question started off with?

12 BY MR. IQBAL:

13 Q Yes.

14 A What we did is we've got Mr. Panaro writing on
15 June 16, and five weeks later he writes another letter,
16 follow-up to Mr. Hartmann, and then whatever he talked
17 about in this June 16 letter wasn't done until the
18 following year early.

19 Q Yeah.

20 A Is that reasonable?

21 Q Yes.

22 MS. MASTRANGELO: Let me reiterate it misstates
23 the evidence. Go ahead.

24 THE WITNESS: It's not reasonable, no. Not that
25 I'm entitled to that opinion.

1 BY MR. IQBAL:

2 Q You are. I'm taking your deposition. You have a
3 lot of experience.

4 A There are opinions I'm not entitled to.

5 Q That's fine. As long as you are answering my
6 questions, we're good. I appreciate that. So it looks
7 like you followed up August 10th to the e-mail from --
8 August 5th -- it looks like Panaro followed up on his own
9 e-mail from June 16th. That's almost two months. Does
10 that seem reasonable that he would have to follow up on
11 such as important e-mail?

12 MS. MASTRANGELO: Same objections; beyond the
13 scope.

14 THE WITNESS: You know, I don't know if it's
15 reasonable or not. I don't have enough information other
16 than a couple of e-mails. I have no idea what took place
17 during that per our discussion and your conversation with
18 Chris Dutcher. What was it about? Do you know?

19 BY MR. IQBAL:

20 Q Well, he has notes, and we'll get into that.
21 Based on the e-mails in front of you --

22 A Based on these e-mails, I can't answer that
23 question. I want to wait and see what he says in there.
24 And then I may not be able to.

25 Q Okay. Let's do that. So turn to page 151 of

1 Mr. Dutcher's deposition, please.

2 A Yes, sir.

3 Q If you look at page 151, lines 11 and 12. Do you
4 see that?

5 A Yes.

6 Q Okay. It says, "Question, Right. So you talked
7 with Don about the cracked steps on 5\28. Correct?"
8 "Answer, Yes, correct." Do you see that, sir?

9 A Yes.

10 Q Now, when we go down further on that page, it
11 says 5\28. Given context, it's actually 5\28\2015. At
12 the top of page 152 do you see the question "And then less
13 than two weeks after that, you have the work order from
14 June 16, 2015." Do you see that, sir?

15 A Yes.

16 Q Okay. So you can see if you quickly scan
17 page 153, it's still talking about June 16, 2015. If you
18 go to 154, still talking about June 16. They're talking
19 about the proposal. And do you see at the bottom of 154
20 where it says, "The proposal identifies five steps are
21 showing critical cracking? Yes?" If you turn the page,
22 sir, do you see the answer "Yes"?

23 A Yes.

24 Q Okay. And then there are entries you'll see on
25 155, August 6th, 2015, about steps that they purchased.

1 And then if you go to 157 and you go to line 5 through 10,
2 that question, "Okay. So the same discussion that started
3 at the end of May and then resulted in this work order of
4 June 16th, that discussion was continuing in October of
5 2015." Those work orders are from 2012. Okay. "So the
6 same discussion that started at the end of May and then
7 resulted in this work order of June 16th, that discussion
8 was continuing in October of 2015 when you had the
9 discussion with Don Hartmann about replacing the steps.
10 Correct?" And the answer, "Yes." Do you see that?

11 A Uh-huh.

12 Q Okay. Now, if you scroll down to 158, you see
13 the question from line 4 to 7. "Question, So discussions
14 were continuing in November of 2015 following your initial
15 inspections at the end of May 2015?" "Answer, Yes." Do
16 you see that?

17 A Yes.

18 Q Okay. So based on what we have here -- and we'll
19 get into Golden Nugget's documents showing the repairs in
20 2016. Let me base my next question on what we've seen so
21 far from Mr. Dutcher's deposition. He identified the
22 cracked steps at the end of May. There was an e-mail and
23 work order from June 16, 2015, regarding at least five
24 steps with critical cracking that needed to be replaced
25 asap. And those discussions were continuing in November

1 of 2015. Correct?

2 A Uh-huh.

3 Q Does that seem reasonable, that Golden Nugget
4 would allow an escalator with critically cracked steps to
5 not be repaired for four or five months?

6 A In retrospect, it's reasonable. Nothing happened
7 to the steps in that five months, so it couldn't have been
8 too critical.

9 Q I'm not asking in retrospect. Based on what you
10 have before you, and you testified that -- I believe your
11 exact words were in short order you would have addressed
12 this. Is it reasonable that Golden Nugget took six
13 months, seven months to address a situation that had
14 critically cracked steps? Yes or no?

15 MS. MCLEOD: Objection; calls for speculation,
16 asked and answered, compound, misstates evidence.

17 MS. MASTRANGELO: And it's beyond the scope. Go
18 ahead.

19 THE WITNESS: Is it reasonable to take six
20 months?

21 BY MR. IQBAL:

22 Q With critically cracked steps.

23 A Assuming they are critically cracked?

24 Q Yes.

25 A I would say it's not reasonable, no.

1 Q Let me ask a general question. Someone like
2 Dutcher, who is the actual technician, versus Larry
3 Panaro, who we know is a salesperson -- and you talked
4 about salespeople and some of the language they use -- do
5 you recall that testimony?

6 A Yes.

7 Q Do you differentiate between what a salesperson
8 like Larry Panaro would tell you versus what the actual
9 technician assigned to the machine would tell you? I'm
10 just asking in general.

11 A In general there is a difference of what they
12 will tell me or tell you, yes.

13 Q What is that difference?

14 A The difference is they have different
15 perspective, different background, different motivations
16 for relaying information to you. Some of the information
17 you get may be guarded for one reason or another. Either
18 the person feels like they can't speak about certain
19 topics, just like there are certain topics that I can't
20 speak about but end up doing it because you ask me
21 questions. Again, they have different motivation,
22 different background, different knowledge of the
23 equipment.

24 I don't think Larry Panaro ever put his hand
25 on the escalator or worked on them. So he would have a

1 different knowledge base than Mr. Dutcher would.

2 Q How would Mr. Dutcher's knowledge base differ
3 from a salesperson like Mr. Panaro?

4 A How would it differ?

5 Q Yes.

6 A Based on the background, education, experience it
7 would differ. Mr. Dutcher may have a better technical
8 feel for it as to the condition of the equipment, the way
9 it operates, what can be expected from it. Mr. Panaro, I
10 think, would rely mostly on what Mr. Dutcher might tell
11 him and what he hears from his respective bosses. They
12 just have different backgrounds. That's all.

13 Q Generally speaking, if you want to find out about
14 a piece of equipment, would you rather go to a salesperson
15 or would you go to the technician who has been assigned to
16 that equipment for years?

17 A My own preference would be to go to the
18 technician.

19 Q Because that technician has personal knowledge of
20 that machine?

21 A What we refer to as hands-on experience.

22 Q And you value that. Correct?

23 A It has value, yes.

24 Q If the person with hands-on experience gives you
25 a set of recommendations and backs -- again, this is a

1 general question. So if the person with experience who
2 has got hands-on experience, as you said, gives you
3 recommendations and backs those recommendations up in
4 discussions that you have with that individual, would you
5 value that input more than, say, from a salesperson?

6 A It depends on what the subject matter is. There
7 are different backgrounds, different knowledge bases,
8 different authorities to speak, so on. You don't want to
9 talk out of school, but many times people do. So I would
10 listen to everybody and weigh it and see what goes on and
11 make a decision based on all the information that you
12 have. Don't discard anything out of hand.

13 Q Right. When you're weighing information, would
14 you give greater weight to the technician who is assigned
15 to the piece of equipment, whether it's an elevator or
16 escalator, versus a salesperson?

17 A If I were to ask the technician who has hands-on
18 experience about the equipment, how much is it going to
19 cost, I wouldn't believe him.

20 Q Right.

21 A If I were to ask the salesman how much is it
22 going to cost, I'd believe him because that's his
23 knowledge base.

24 Q Gotcha.

25 A If I were to ask a technician what is the

1 condition of the steps, I would believe him. There are
2 holes in it, it's cracked, it's recommended they replace
3 it, so on and so forth. But nobody talks about the types
4 of cracks in here, A's or B's. I haven't seen any of that
5 yet.

6 Q Got it.

7 A If I were to ask the salesperson about the
8 condition of the steps, I wouldn't weigh that as heavily
9 because he never looked at them.

10 Q Gotcha. You testified if you were asking about
11 the condition of the steps, you would believe the input
12 coming from the technician. Correct?

13 A Yes.

14 Q So if that technician recommended over and over
15 the replacement of steps, you would give that greater
16 weight given the hands-on experience with the steps.
17 Correct?

18 A I would favor that based on his experience, yes.

19 Q If you turn to page 192 in Mr. Dutcher's
20 deposition.

21 A Yes, sir.

22 Q Line 11, "Question, "Okay. But from 2012, that
23 September 12th recommendation from you to replace all
24 114 steps, all the way through 2018, President's Day, your
25 recommendation to replace all 114 steps, that

1 recommendation in and of itself was never taken up.

2 Correct?" "Answer, Yes." Do you see that?

3 A Yes.

4 Q You can refer back to Exhibit 4 if you'd like,
5 but that was the recommendation from September 12th, 2012?

6 A Yes.

7 Q I just want to orient you to the context. So it
8 looks like in this case the technician with the experience
9 with the condition of the steps which you testified,
10 generally speaking, you would give more weight to, his
11 recommendations were not taken up. Is that what it looks
12 like?

13 A That's what he has testified to, yes. But I
14 don't see Mr. Dutcher's name on this proposal. I see
15 Mr. Panaro's name, but I don't see Mr. Dutcher's name. So
16 to say that the recommendation was Mr. Dutcher's
17 recommendation -- I think the recommendation in here is
18 from Mr. Panaro.

19 Q You are actually pointing to Exhibit 4, which are
20 the --

21 A This is Exhibit 4, proposal of September 12,
22 2012.

23 Q Correct. If we go back to Exhibit 5, which is
24 the e-mail, you go back to the original e-mail from Larry
25 to Don --

1 A Hold on a second.

2 MS. MASTRANGELO: Exhibit 6 is the e-mail. Is
3 that what you meant?

4 MR. IQBAL: I'm sorry. Exhibit 6.

5 THE WITNESS: Page 5?

6 BY MR. IQBAL:

7 Q Page 4. Okay. You see there, "Per our
8 conversation and your conversations with Chris Dutcher
9 (TKE mechanic) attached are the proposals to replace the
10 damaged\cracked escalator steps on the down unit at the
11 Golden Nugget Laughlin."

12 A Yes.

13 Q Do you see that?

14 A I do.

15 Q So the proposals from 2012, let's put them aside.
16 There is a proposal from June of 2015 that presumably,
17 based on the language of this e-mail, was attached to this
18 e-mail. Correct?

19 A It appears so, yes.

20 Q Okay. And based on what is written here,
21 Mr. Panaro references the conversations that Don Hartmann
22 had with Chris Dutcher. Correct?

23 A Yes.

24 Q Okay. Given what you said about salespeople
25 versus technician, the fact that this proposal is -- this

1 recommendation is ultimately coming from discussions with
2 the technician and the technician's recommendation, you
3 would give it more weight than if it was just coming from
4 Larry Panaro. Correct?

5 A If it reflected what the discussion with the
6 mechanic was, yes.

7 Q Your answer is yes?

8 A Yes.

9 Q Now, go ahead and -- should we take a quick
10 break? You've been far too polite.

11 MS. MASTRANGELO: I don't think we've been going
12 an hour.

13 THE WITNESS: Time flies when you're having fun.

14 BY MR. IQBAL:

15 Q If you want to keep going, we can.

16 A No, we'll take a quick one. Just a real fast
17 one.

18 (Recess taken.)

19 BY MR. IQBAL:

20 Q Mr. Turner, are you ready, sir?

21 A Yes, I am.

22 Q Just now we went through Mr. Dutcher's deposition
23 testimony. To make sure you have more of the context,
24 let's go through that in the account history, Exhibit 5.
25 If you could turn to page 10 first.

1 A Yes.

2 Q The second entry on that page, preventive
3 maintenance, do you see that 5\28\2015 entry?

4 A I do, yes.

5 Q In resolution it says, "Down escalator, customer
6 relations with Don Hartmann about cracked steps and worn
7 step chain." Do you see that?

8 A Yes.

9 Q Above that there is an entry for June 3rd, 2015.
10 Do you see that entry, sir?

11 A Yes, I do.

12 Q Okay. Just so everyone knows where we are, we're
13 on Exhibit 5, page 10, the very first entry at the top
14 from June 3rd, 2015. The resolution says, "Discuss
15 concerns with Scott Olsen and Larry Panaro." Did I read
16 that correctly?

17 A Yes.

18 Q So that's the May 28th, 2015, and then June 3rd,
19 2015. Now, if you flip to page 7. Let me know when
20 you're there.

21 A I'm there.

22 Q That very middle entry from October 5th, 2015, do
23 you see that, sir?

24 A I do, yes.

25 Q And under "Resolution," it says, "Observed

1 operation of units, customer relations with Don Hartmann
2 about his escalator steps needing replaced." Do you see
3 that, sir?

4 A I do, yes.

5 Q If you flip to page 6, the next month after that,
6 November, 19, 2015, this is the bottom entry on page 6,
7 under "Resolution," it says, "Down escalator, spoke with
8 Don Hartmann about proposals." Do you see that?

9 A Yes, I do.

10 Q So if you turn in Mr. Dutcher's deposition to
11 page 158 --

12 A Yes.

13 Q -- this will provide context for my question.
14 Page 157, line 20.

15 A Yes.

16 Q And, again, the Bates numbers are with our
17 version of these same documents. "And then when you turn
18 to JNB 002018, you have at the bottom of that page a
19 November 19, 2015 entry, 'Resolution: Down escalator,
20 spoke to Don Hartmann about proposals.' "Is it safe to
21 say you had discussions with Don Hartmann about proposals
22 to replace down escalator steps." "Answer, "Yes." So if
23 we turn to page 6 of the account history --

24 A Yes.

25 Q -- it's referring to that November 19, 2015 entry

1 where he spoke with Mr. Hartmann. Do you see that, sir?

2 A Yes.

3 Q Is it safe to say based on what we have before us
4 today that he was referencing in his testimony what is in
5 the account history?

6 A Yes.

7 Q Great. So then right after that on page 158,
8 line 4, "Question, So discussions were continuing in
9 November of 2015 following your initial inspections at the
10 end of May 2015?" "Answer, "Yes." "Question, "And so it
11 was during those May 2015 inspections that you identified
12 the critical steps that should have been replaced
13 immediately. Correct?" "Answer, Yes." Do you see that?

14 A Yes.

15 Q What is your immediate thought when you see a
16 technician having continuous and constant discussions
17 about critical steps that need to be replaced as soon as
18 possible?

19 MS. MASTRANGELO: Objection; beyond the scope.

20 BY MR. IQBAL:

21 Q I haven't finished my question. Sorry. What is
22 your initial thought when you see a technician identifying
23 critical steps that need to be replaced immediately at the
24 end of May still having to follow up and have discussions
25 into November?

1 MS. MASTRANGELO: Beyond the scope. Go ahead.

2 THE WITNESS: My initial reaction is he is
3 persistent.

4 BY MR. IQBAL:

5 Q And should a technician be persistent with
6 critical steps that need to be replaced right away?

7 A He should be persistent with whatever he does.
8 If his opinion is they are critical and need to be
9 replaced right away, which they weren't, they didn't have
10 to be replaced right away, that he should pursue it.

11 Q Right. Do you have any basis for believing that
12 his recommendation was false?

13 A Yes.

14 Q What is your basis?

15 A The basis is the steps never failed completely.

16 Q So the step has to physically fail completely
17 before it should be replaced?

18 A No. The step has to fail completely to prove how
19 critical they are. There is no indication that they
20 failed either before this accident, afterwards or up until
21 the time whatever date they were replaced.

22 Q So if a technician comes to you and says these
23 steps have critical cracks, you are going to wait until
24 they actually fail to replace them or actually listen to
25 the technician?

1 A No.

2 MS. MASTRANGELO: Mischaracterizes his testimony.

3 THE WITNESS: No.

4 BY MR. IQBAL:

5 Q Please explain.

6 A I'll listen to the technician and I will say we
7 have to look into replacing them. He says they are
8 critical. It turns out they may not be as critical as
9 Mr. Dutcher indicated because they never failed.

10 Q They may be, but that's not in the record we
11 have. Correct?

12 A The record is that they never failed. There is
13 no record of them having failed.

14 Q So when a technician who is assigned to a machine
15 makes the same urgent recommendation over and over and
16 over again, you may not actually consider that
17 recommendation if you have a separate opinion?

18 MS. MASTRANGELO: Mischaracterizes his testimony.

19 THE WITNESS: If I have a separate opinion, I may
20 discount his recommendations.

21 BY MR. IQBAL:

22 Q And if you don't?

23 A If I don't what?

24 Q If you don't have a separate opinion and you were
25 not in the guts, within the well seeing the actual

1 critical cracked steps --

2 A I think we're confusing things here. The only
3 one in here that saw the critical cracked steps was
4 Mr. Dutcher. I'm not aware that Mr. Hartmann ever got in
5 and looked at them. So I have only Mr. Dutcher to go by.
6 I listen to him, and he says these are critical, they are
7 going to fail, they are going to create some problems,
8 somebody may get hurt, the equipment may get damaged, and
9 you should replace them right away.

10 So you go through your thought process and
11 you say, well, let me see what happens here and see what
12 it's going to be and weigh all the other things they have
13 to do. And there might have been a conversation one
14 time -- I don't know -- I'll speculate if you allow me --
15 that there might have been a conversation someplace about
16 how long are they going to last. I don't know if anybody
17 said just a week, two weeks, a month. I don't know. And
18 maybe Mr. Hartmann asked the question have you ever seen
19 these steps fail and break. Mr. Dutcher's answer could
20 have been no.

21 Q Everything you just said now was speculation.
22 Right?

23 A Speculation, yeah. But that's what we do. We
24 speculate. We try to cobble together some answers to make
25 a case.

1 Q I would like you to at least for my next couple
2 questions focus on the record that we have. So taking a
3 look at Mr. Panaro's e-mail communicating that at least
4 five of the steps need to be replaced asap, you did
5 testify earlier that it would be unreasonable to not get
6 back to him until August with a follow-up. Correct?

7 A To respond, yes.

8 Q So it would be unreasonable to wait several weeks
9 before responding. Correct?

10 A I believe that would be unreasonable, yeah.

11 Q If you were a director of facilities at Golden
12 Nugget, you would have responded earlier than August 5th.
13 Correct?

14 A In some manner, yes.

15 Q As part of your business do you do inspections?

16 A I do forensic inspections.

17 Q Forensic inspections. Do you do annual or
18 semi-annual required inspections?

19 A I'm not authorized to do those.

20 Q Okay. What would it take to get that
21 authorization? Is it a specific course or some
22 certification?

23 A It's a certification from the authority having
24 jurisdiction. In this case the Mechanical Compliance
25 section would have to approve me to be one of their

1 inspectors to do that, and they have their own
2 requirements or background that they want you to have.
3 I'm not real sure what they are.

4 Q Gotcha. So when you do forensic inspections, do
5 you inspect the equipment at issue?

6 A The equipment at issue, if it's an escalator,
7 that's what I inspect. If it's an elevator, that's what I
8 inspect.

9 Q Got it. If it's an escalator, you would inspect
10 the steps?

11 A On a forensic?

12 Q Yes.

13 A Yes.

14 Q But here you didn't do that. Correct?

15 A I did do that.

16 Q You inspected the steps that were on the
17 escalator, but they had replaced the actual steps involved
18 in the accident. Correct?

19 A That's my understanding, yes.

20 Q So you didn't actually inspect the steps in the
21 garage that were involved in the accident we're sitting
22 here today on. Correct?

23 A I did not, no.

24 Q Okay. What good would it do to look at steps
25 that weren't involved in an accident and ignore the actual

1 steps that were involved in the accident?

2 A Just as I said, to get a feel or an understanding
3 of the environment and the operation of the equipment and
4 how it worked.

5 Q Did you ask to see the actual steps involved in
6 the accident?

7 A I don't recall that I did, no.

8 Q Did Dutcher and the other technician who was at
9 the inspection along with the Golden Nugget individual do
10 everything that you asked them to do?

11 A Yes, pretty much.

12 Q Pretty much?

13 A I never asked the other individual with the tie
14 to do anything. As I said, he had some discussion with
15 Ms. Mastrangelo and Ms. McCleod, and I just happened to be
16 in earshot, but I didn't participate in that conversation.

17 Q Do you know what they talked about?

18 A I don't recall.

19 Q Was it about the escalator?

20 A It may have been. I don't know. There are a lot
21 of things that attorneys talk about that I'm not supposed
22 to hear, and I have a way of shutting it out so I either
23 forget about it immediately or I never heard it in the
24 first place.

25 Q Sitting here, your recollection is that you were

1 dealing with Mr. Dutcher and the other technician from
2 Thyssen and the attorneys were speaking with someone who
3 looked like a supervisor from Nugget because he had a tie
4 on. Correct?

5 A I only say that to differentiate him from
6 somebody who had overalls on that looked like a mechanic
7 or maintenance man.

8 Q Gotcha. As you are sitting here today, Rebecca
9 and Alex were having a discussion with Golden Nugget
10 personnel and you were interacting with the Thyssen
11 technicians. Correct?

12 A I was inspecting the escalator.

13 Q Right. You are aware there was a separate
14 discussion going on, but you don't know what they talked
15 about. Correct?

16 A I don't know what they talked about.

17 Q I wanted to wait until you finished your water.
18 Sorry.

19 A I understand.

20 Q Sorry. Give me one second here. I'm trying to
21 find a page. I apologize. I may have asked this question
22 before. I'm sorry. Did you review the logbook? I
23 understand "logbook" means three different things. Did
24 you review anything associated with the logbook during the
25 inspection?

1 A Asked and answered. No.

2 Q Okay.

3 MS. MASTRANGELO: I was going to say that, but I
4 didn't want to be a jerk.

5 THE WITNESS: I'll be a jerk. I was waiting for
6 that chance. I'm sorry.

7 MR. IQBAL: No problem. Thank you for your
8 patience. I appreciate it. I'm going the hand you what
9 has been marked -- what will be marked as Exhibit 7.

10 Alex, Exhibit 7 is GNL 002095 to 2122.

11 MS. MCLEOD: Thank you.

12 (Exhibit 7 was marked for identification by the
13 court reporter.)

14 BY MR. IQBAL:

15 Q Mr. Turner, this Exhibit 7 looks like copies from
16 a logbook. But you tell me what you have in your hand or
17 what it looks like.

18 A These appear to be the maintenance logs based on
19 our previous definition of the logs which are comprised of
20 check charts, callback sheets, test logs, rope and repair
21 or repair and callback logs for the No. 2 escalator
22 designated 1993 by the state for the years 2011 through
23 2017. Either part or in whole it appears as Exhibit C to
24 Ms. Swett's deposition.

25 Q Okay. And you separated it out by a couple of

1 pages. Now, is that each different entry or each
2 different year?

3 A Each year, 2017, 2016, 2015, 2014 -- are you
4 following me?

5 Q I'm with you.

6 A -- 2013, 2012, and 2011.

7 Q Okay. I just need one, and I can ask you
8 questions based on that. Thank you, sir. So here is the
9 first one for 2011.

10 A Yes, sir.

11 Q If you look at the third page, it says "Escalator
12 Maintenance Tasks." Do you see that, sir?

13 A Yes.

14 Q Now, are these markings at the top different
15 dates?

16 A Yes.

17 Q Okay.

18 A Let me look to make sure. They appear to be
19 dates, yes. Some of the entries are initials of CMD. I
20 guess that is Mr. Dutcher.

21 Q Correct. So places where the number should go
22 for dates, on some of the entries he just put his
23 initials?

24 A Yes.

25 Q Can you tell what dates those entries were made

1 if it's just his initials?

2 A No.

3 Q Does that seem inconsistent to you, that some of
4 the entries he had the dates and then some of the entries
5 he just had his initials?

6 A There are dates written down below in a row
7 marked "Date."

8 Q Okay.

9 A It actually asks for the name or initials here
10 and for the first year starting, and on the front page he
11 didn't write it here. But these are dates seven, eight
12 and nine.

13 Q Gotcha. So based on the logs here, there was no
14 maintenance after September 2011 for that year?

15 A There are no entries made.

16 Q There are no entries made after September?

17 A That's correct.

18 Q Okay. Let's move to 2012. In 2012 can you go to
19 that same page, sir, the third page.

20 A Yes, I have it.

21 Q How many entries does he make for the year 2012?

22 A There are a lot of entries, but they are only for
23 three different dates. It does not look like
24 Mr. Dutcher's signature. I don't know why.

25 Q What are the three dates identified?

1 A Identified as July 18, August 29, and December 7.

2 Q Okay. So the maintenance logs only have three
3 dates from 2012 and they are all in the second half of the
4 year?

5 A Yes.

6 Q Do the maintenance logs for 2012 show any
7 activity in the first half of the year?

8 A Not that I can see.

9 Q Just keeping count, in 2011 there were no entries
10 after September, and then in 2012 there were no entries
11 for the first six months. Correct?

12 A Apparently, yes.

13 Q How about 2013? What dates do you see for 2013,
14 sir?

15 A There are entries made in January, February,
16 June, July, November and December.

17 Q So there are several months missing from 2013?

18 A Yes.

19 MS. MASTRANGELO: Object to the form.

20 THE WITNESS: Actually, the months aren't
21 missing. The entries are missing. Something about
22 months, they keep happening whether you want them to or
23 not. I'm sorry.

24 BY MR. IQBAL:

25 Q No. That's very good. I like it. So there are

1 multiple entries missing. Based on what has been produced
2 by Golden Nugget, there are entries missing from 2011,
3 2012 and 2013. Correct?

4 A Yes.

5 Q How about 2014? So it looks like for 2014 there
6 were only three entries. Can you take a look and confirm
7 my suspicion?

8 A Again, consistent with a previous answer I gave,
9 there are several entries, but only for three months, as
10 indicated here. Those months are July, October and
11 November.

12 Q That's 2013. So we are missing entries at least
13 associated with dates for the first six months of 2013.
14 Correct?

15 MS. MASTRANGELO: I'll object. That is not the
16 complete maintenance record. But for that document he can
17 answer.

18 THE WITNESS: For this document there are no
19 entries made for the first six months, that's correct.

20 BY MR. IQBAL:

21 Q And 2015. Thank you. I'm going to hand you
22 2015, sir. I'll try to not make the same mistake. Golden
23 Nugget 2113. There looks to be one, two, three, four,
24 five, six, seven, eight, nine sets of entries. Can you
25 confirm that for me?

1 A There are entries here that are identified by
2 dates for May, June, July and September, I believe. He
3 might have one out of place. It looks like a 10. So
4 October. But, yes, nine of 12 months contain multiple
5 entries.

6 Q But in terms of actual identified dates, it's
7 less than nine. Correct?

8 A Yes.

9 Q How many actual dates does he identify?

10 A Four.

11 Q Four is a lot less than 12. Right?

12 A Last time I looked.

13 Q Based on just this production, what was
14 produced -- before we get to the last two years, let me
15 just ask you. Based on what was produced by Golden
16 Nugget, what I'm holding in my hand appears to be
17 incomplete. Yes or no?

18 MS. MASTRANGELO: Object to the form. It
19 mischaracterizes the evidence and the totality of the
20 records. Go ahead.

21 THE WITNESS: The form itself appears to be
22 incomplete, yes.

23 BY MR. IQBAL:

24 Q So the documents I have in my hand which are part
25 of Exhibit 7 appear to be incomplete?

1 MS. MASTRANGELO: Same objection.

2 THE WITNESS: These documents, yes.

3 BY MR. IQBAL:

4 Q These documents are --

5 A Are incomplete.

6 Q Thank you. Okay. And then 2016?

7 A 2016. Page GNL 002117 has multiple entries for
8 six of 12 months. The months identified are January,
9 February, March, April, May and June that contain entries.
10 The other months do not contain entries.

11 Q So based on what you are holding in your hand
12 that was produced to us, does it look incomplete on its
13 face?

14 MS. MASTRANGELO: Same objections.

15 THE WITNESS: The document itself is not
16 complete, correct.

17 BY MR. IQBAL:

18 Q Thank you. A quick question. On the second page
19 is the escalator test log?

20 A Yes, sir.

21 Q For 2016 the escalator test log, which is
22 GNL 2116, is completely empty?

23 A That's correct.

24 Q Should it be empty?

25 A There should be entries for any tests that were

1 conducted during the year 2016, and there are none.

2 Q So based on what was produced to us, it doesn't
3 show any testing done in 2016?

4 A It shows there are no entries made in this
5 document for 2016 under the category of escalator test
6 log.

7 Q Okay. Is there testing that should be done every
8 year?

9 A Yes.

10 Q So there should be, but there aren't any entries
11 in the escalator test log. Correct?

12 A There are no entries.

13 Q And there should be entries?

14 A If a test was done, there should be entries.
15 It's up to the state to ensure those tests are done during
16 an internal inspection of the escalator.

17 Q Gotcha. And then turning quickly to 2015,
18 page 2, the escalator test log for 2015, there are no
19 entries. Correct?

20 A Correct, there are no entries.

21 Q Can you identify the Bates number, sir?

22 A The Bates number is GNL 002112.

23 Q So it's basically an empty form. Correct?

24 A Other than the preprinted entries that are there,
25 nobody has completed anything. Everything is preprinted

1 for labels and titles and areas and so on.

2 Q Right.

3 A There are no entries made on it.

4 Q Okay. It appears -- and correct me if I'm
5 wrong -- the records for 2011 show an entry in the
6 escalator test log. Is that correct?

7 A Yes. There are indications in the last column
8 about different tests that were done and the fact that it
9 was certified. That's in the last column with the
10 circles.

11 Q Got you. So for 2011 there was some input into
12 the escalator test log, and we just went through a couple
13 of years where there was absolutely no input. Correct?

14 A That's correct.

15 Q All right. How about what you are holding in
16 your hand?

17 A I'm holding 2017 test logs and pages that we have
18 been discussing, page 3, Bates No. GNL 002121.

19 Q Okay.

20 A It shows multiple entries in four different
21 months on this sheet. Those months are January, April,
22 June and September.

23 Q So it's missing entries for several months.
24 Correct?

25 A There are just no entries.

1 Q So that's yes?

2 MS. MASTRANGELO: That was 2017?

3 THE WITNESS: I don't know about missing. They
4 might be someplace else.

5 BY MR. IQBAL:

6 Q Got you. Based on what you had in your hand,
7 there were no entries for several months?

8 A Correct.

9 Q But here on page 3, GNL 2121, we actually have
10 page 3 filled out?

11 A I just read that one to you. 2121, there are
12 four months that I said were January, April, June and
13 September.

14 Q Right. My fault. The escalator test log,
15 page 2, there are actually entries for 2017?

16 A Yes, there are for various tests.

17 Q Okay. So having looked at these records which
18 were produced to us recently -- I'll represent it was the
19 18th supplement from Golden Nugget -- when you see some
20 years escalator test logs with entries and handwriting and
21 then some years with escalator test logs completely blank
22 of any input, what is your reaction?

23 MS. MASTRANGELO: Object to the form.

24 THE WITNESS: I don't know if I have one. I said
25 I would like to see some entries on there. But, as

1 indicated, they might be someplace else. We talked
2 earlier about the fact they've gone electronic with it,
3 and then if some people are old school, like myself, we do
4 a belts and suspenders approach and you enter the
5 electronic entry and have your manual test logs that you
6 use if that's what you're used to doing.

7 BY MR. IQBAL:

8 Q Right. That would make sense chronologically if
9 you had entries through a certain year and then you
10 started having blanks. Correct? Here the blanks are
11 sporadic. Yes?

12 A Yes.

13 Q That's yes?

14 A Yes. "Yes" is yes.

15 Q That would be concerning to you?

16 MS. MASTRANGELO: Object to the form.

17 THE WITNESS: No.

18 BY MR. IQBAL:

19 Q It's not concerning if there are no records of
20 tests that have been done?

21 MS. MASTRANGELO: Object to the form and
22 mischaracterizes the evidence.

23 THE WITNESS: No.

24 BY MR. IQBAL:

25 Q Okay. Does it concern you that there was

1 inconsistent input by Mr. Dutcher in these logs that I'm
2 holding in my hand, Exhibit 7, produced by Golden Nugget?

3 A I don't know that the input was inconsistent as
4 much as it was sporadic.

5 Q Does it concern you that the input was, to use
6 your word, sporadic?

7 A Somewhat, yeah.

8 Q Somewhat?

9 A Somewhat.

10 Q Can you explain why it's somewhat of a concern?

11 A As I talked earlier, it's nice to have some
12 consistency in the manner in which work is done. It's
13 nice to have complete and accurate records. The
14 information in there, I have no way of knowing if it's
15 accurate, but I know it's not complete as far as those
16 particular records are concerned. But there are other
17 records, namely the account activities, whatever the form
18 was called.

19 Q The account history?

20 A Account history, yes. Thank you.

21 Q Right. But you do recall when Mr. Dutcher
22 testified that up to 60 percent of what he did didn't even
23 make it into the logs or the account history. Correct?

24 A Right.

25 Q And that was concerning to you?

1 A It is. You know, he said it's about 60 percent.
2 I gave you some percentages of my breakdown of my work. I
3 think about the philosopher who said 42.7 percent of all
4 statistics are made up on the spot. So take them for what
5 they are worth, and it gives you a general idea what it
6 was.

7 Q Right. Out of Exhibit 7 I'm going to hand you
8 the record we have in front of us for 2014, so GNL 2107 to
9 GNL 2110. If you could take a look at the last page,
10 2110, for me, sir.

11 A Yes.

12 Q Is there anything inputted into the top section
13 of "Escalator Repair Log"?

14 A It's the repair log of the -- the maintenance log
15 from 2014 for the No. 2 escalator. There is nothing in
16 the upper section called "Escalator Repair Log."

17 Q Okay. And then in the bottom section is there an
18 entry?

19 A There is an entry dated October 28th. It was
20 made apparently at 12:30.

21 Q Okay. What does it say?

22 A "Wobbly steps." And then the resolution was --
23 it appears to be bad trail rollers, two steps, and then
24 names and initial Chris slash somebody else.

25 Q Now, if you take a look at the account history

1 report, page 6 -- and we're on Exhibit 5.

2 A Yes. Thank you. Page 6.

3 Q Okay. At the top it has "On Site Repair." Do
4 you see that?

5 A Yes, I do.

6 Q And then there are two entries, both for
7 May 2014, regarding a gear box.

8 A One is a gear box on the No. 2 down, yes.

9 Q What is the other?

10 A The other one is another one, damage to escalator
11 gear box No. 2 down.

12 Q Okay. And then if you turn to page 5, eight days
13 after that, it appears that there was an installation.
14 Does it say "Move and install damaged escalator gear box"
15 at the bottom?

16 A "Remove and install damaged escalator gear box."
17 "Nugget remove." He wrote it as one word, but it's
18 "remove."

19 Q Got you. Are we to presume that he installed a
20 damaged gear box?

21 A If you take this on its face, yes, but that's not
22 what he did.

23 Q And you are basing that just on common sense.
24 Correct?

25 A A little bit of that and knowing he has two

1 options, either remove and replace or remove, have
2 repaired and return it after it's repaired.

3 Q Gotcha. What does the gear box do?

4 A The gear box takes the revolutions per minute or
5 the output from the electric motor and both reduces the
6 speed of the revolutions and the torque or the power
7 needed to move the escalator down to a speed where the
8 escalator steps can move at 90 feet per minute rather than
9 rotate at the motor speed, which is about 1200 RPMs. So
10 the gear box just converts the speed and the torque from
11 the motor into what is usable to run the escalator.

12 Q Got you. So it's pretty critical to running the
13 escalator?

14 A Yes.

15 Q What can damage a gear box?

16 A Wear and tear, lack of lubrication. Just mostly
17 age, wear and tear.

18 Q Do you think that's what happened here?

19 A I don't know what happened here. I didn't see
20 the internals of it and how they determined what the
21 damage was.

22 Q Okay. So for 2015, the year in question where we
23 had the subject injury which we're all here about today,
24 that starts GNL 2111. This is Exhibit 7 again. Is there
25 anything written on the escalator test log for 2015?

1 A Firstly, you've handed me two logs, one for 2015
2 and one for 2016. I'm going to return 2016 to you. Is
3 that okay?

4 Q Absolutely. Thank you.

5 A Thank you. Your question again, please.

6 Q Sure. So you have the records for 2015 in your
7 hand from Exhibit 7. Could you identify first the Bates
8 numbers that we're dealing with?

9 A We're dealing with Bates numbers GNL 002111
10 through GNL 002114.

11 Q Thank you, sir. On the second page is the
12 escalator test log for 2015. Is there any input on that
13 page?

14 MS. MASTRANGELO: Asked and answered.

15 THE WITNESS: No.

16 BY MR. IQBAL:

17 Q Is there any input on the last page for the
18 escalator repair log or the service request?

19 A Yes.

20 Q Let's put those together and hand them to the
21 reporter.

22 A Bear with me just a second.

23 Q Sure. Thank you, Mr. Turner, for putting those
24 in order. Now, we talked about the term "clean-down" this
25 morning before lunch. You testified that it's a

1 substantial process that takes two to three days. Is that
2 fair to say?

3 A I think I said three, approximately.

4 Q A clean-down involves cleaning each of the steps?

5 A A clean-down involves cleaning the whole
6 escalator, to include all of the steps. All or each,
7 whichever you want to do.

8 Q Gotcha. So a clean-down is every step and every
9 component of the escalator?

10 A It's intended to be, yes.

11 Q Does that include cleaning the pit, as well?

12 A Yes.

13 Q Do you know if the clean-down was included in the
14 services that Thyssen was being paid by Golden Nugget to
15 perform?

16 A I don't recall if it was included in the contract
17 or not.

18 Q Okay.

19 A The work was included. I don't know if it was
20 included in the monthly invoicing.

21 Q Gotcha. If you take a look at page 17 and 16 of
22 Exhibit 5, the account history, and if you look at the
23 bottom -- actually the third, fourth and fifth entries on
24 page 16 from 2012, December 7 and then December 6 and then
25 December 6, do you see that entry from December 7 saying

1 "Annual clean-down on down escalator"?

2 A I do, yes.

3 Q Do you see the coverage below it, "Platinum
4 Premier Full Maint 24 Hour CBS included escalator"?

5 A Yes.

6 Q I know all we have are the records before us.
7 Just based on the records that we have before us, does it
8 appear that the annual clean-down of the down escalator
9 was included in the plan that Golden Nugget had with
10 Thyssen?

11 MS. MASTRANGELO: Lacks foundation.

12 THE WITNESS: I can't tell from this document.

13 BY MR. IQBAL:

14 Q Where it says "Billable" and there is an "N,"
15 just based on these records, would it appear it was not
16 billed?

17 MS. MASTRANGELO: Same objection.

18 THE WITNESS: I have no idea.

19 BY MR. IQBAL:

20 Q You can identify there was a clean-down, and if
21 you go to page 17, you can see the clean-down started on
22 the 30th of November. Do you see that, sir, at the
23 bottom?

24 A I do, yes.

25 Q There was eight hours on November 30th and then

1 there was seven hours on December 3rd. Do you see that?

2 A Yes.

3 Q And do you see the December 4th, 2012 entry of
4 four hours clean-down?

5 A I do, yes.

6 Q And then December 5th. Do you see the clean-down
7 for eight hours?

8 A Yes.

9 Q And then that continues the annual clean-down if
10 you look on page 16 extended to December 7th. Do you see
11 that, sir?

12 A I see an entry on the 6th. I see for eight
13 hours. I see an entry on the 6th is something different.

14 Q And then above that?

15 A Above that is on the 7th. I see a clean-down
16 entry and "Finish up state report" is another eight hours.
17 So the time spent there is equivalent to about seven
18 months' worth of work at four hours per month just to go
19 back to an old piece of my testimony.

20 Q Gotcha. So it looks like the clean-down -- based
21 on the records we have in front of us, the clean-down
22 started November of 2012 -- November 30th, 2012 and
23 finished up on December 7th with another eight hours?

24 A Yes, it appears to be. And there were --
25 Mr. Dutcher had Mr. McEwen assisting him on some of that.

1 So there were two people working periodically.

2 Q So as you testified earlier, it's a pretty
3 extensive process, and we see that in the records for
4 2012. Correct?

5 A Yes.

6 Q Can you find a clean-down after 2012 in these
7 records?

8 A I have to assume that you couldn't and you're
9 asking me for help. Or is that just a question that you
10 want to ask?

11 Q Just a question I want to ask. But I can help
12 you by looking for it, as well.

13 A There is an entry on page 14 in the center,
14 June 26th. There was some cleaning that was done. That's
15 the lower pits and turnarounds in the upper landing.
16 That's part of not a clean-down, but part of the cleaning
17 that is done.

18 Q Right. I'm asking for that multi-day clean-down
19 you testified to.

20 A I'm going back to page 7, and I don't see the
21 term "clean-down" used, but there are a couple entries for
22 cleaning, which would be just routine and would not
23 require a lot of disassembly of the unit to clean it, the
24 pit areas top and bottom.

25 Q I'm asking about clean-down. As you said, a

1 clean-down involves cleaning everything. Right?

2 A Yes.

3 Q Including each and every step. Correct?

4 A Yes.

5 Q And based on the record, the account history that
6 we have here, the only clean-down that is in this
7 electronically issued account history report is for 2012.
8 Correct?

9 A There is only one recorded in here, yes, that I
10 see.

11 Q Where did you see cleaning, by the way?

12 A There were two entries for cleaning the pit areas
13 and so on. I need a break, if I could.

14 MR. IQBAL: Sure. Absolutely.

15 (Recess taken.)

16 BY MR. IQBAL:

17 Q Mr. Turner, I see that you are looking through
18 Exhibit 5, the account history. So going back to my
19 question, after the 2012 entries, which we saw several
20 entries for clean-downs -- correct?

21 A Yes.

22 Q -- do you see any entries for clean-downs after
23 December 7, 2012?

24 A For the term "clean-down," I see no entries after
25 that.

1 Q Now, on page 14 there is a cleaned upper and
2 lower pits and turnarounds in the middle of the page from
3 June 26, 2013. Do you see that?

4 A Yes.

5 Q Is it fair to say the cleaning of the upper and
6 lower pits and turnarounds, the cleaning of the motor and
7 gear box and the checking of the switches, the oiling of
8 the step chains and the returning to service took two
9 hours and 15 minutes altogether?

10 A Apparently, yes.

11 Q Okay. So the cleaning portion of whatever was
12 done that day in terms of preventive maintenance was all
13 included within the two hours and 15 minutes?

14 A Yes.

15 Q So it's not possible to do a clean-down in that
16 short of a time. Correct?

17 A You can do part of a clean-down in that time.
18 You clean -- it's not a clean-down, per se. It's one of
19 those -- I might add to that it's one of those where we
20 don't have to take the escalator out of service for an
21 extended period of time, clear with the owner of the
22 equipment it's going to be down and it can be done within
23 two hours and it's not an inconvenience for the clientele.

24 Q Got that. Gotcha. Based on the term that we've
25 been using, quote, unquote, clean-down, meaning every part

1 of the escalator being cleaned, we don't have anything
2 after that December 2012 date. Correct?

3 A That's correct.

4 Q And you testified this morning that inspections
5 are important because you get to see the environment, see
6 if there is carpet where the escalator starts. Do you
7 recall that?

8 A Yes, I do.

9 Q Do you recall testifying that where you have
10 carpet, you can have more debris enter the escalator
11 because of the lint and the stuff coming off the carpet?

12 A Yes.

13 Q So is it fair to say that a carpet surface
14 leading to an escalator is going to require more
15 clean-down of that escalator versus a stone surface
16 leading to an escalator?

17 A When you use the term "clean-down," meaning
18 clean-down, the annual comprehensive clean-down, or just
19 cleaning?

20 Q Just cleaning.

21 A Because I pointed out just cleaning in a couple
22 of places where they clean the upper and lower landing
23 pits and it's a two-and-a-half-hour entry, so on and so
24 forth. It may require a little bit more of that,
25 especially on the entrance to the escalator, be it upper

1 or lower, that has a carpet floor.

2 Q So carpet flooring versus a marble flooring may
3 put more dirt into the escalator and require more cleaning
4 than an escalator with a stone surface?

5 A Generally, yes. I don't call it dirt. I call it
6 debris, lint, stuff like that.

7 Q So carpet can lead to more debris than other
8 surfaces. Correct?

9 A Yes.

10 Q In the case of the Nugget down escalator which
11 you inspected, there is carpet. Correct?

12 A At the upper landing, yes.

13 Q And at the bottom landing what is the surface?

14 A The lower landing is also carpet.

15 Q Okay. So you identified for me on page 14 a
16 cleaning of the upper and lower pits.

17 A Yes.

18 Q And so that is in June of 2013. We have the
19 clean-down in December of 2012. Are there any other
20 records of any cleaning?

21 A Page 11, second from the bottom, November 18,
22 2014. "Cleaned upper and lower pits. Replaced pit pads."
23 Remember there was a discussion about pit pads? Ms. Swett
24 talked about them. They are intended to absorb any oil or
25 lubricants that might collect. Remove two steps,

1 et cetera, et cetera, so on and so forth. So that's
2 another entry where cleaning was done.

3 Q Right. It looks like there is a lot that
4 happened in that hour and a half in 2014, November 18th.
5 Is that fair to say?

6 A Yes.

7 Q So cleaned upper and lower pits, replaced the pit
8 pads, removed two steps, checked gear oil, replaced two
9 steps, added oil to drip bucket, tightened all connections
10 in controller, sprayed skirts, observed operation and
11 returned to service?

12 A Yes.

13 Q That's quite a lot to do in an hour and a half,
14 isn't it?

15 A No, not really. Cleaning pit pads, upper and
16 lower pits, that's remove the pit pads, pick up the rags
17 that are at the bottom and throw them away. You have the
18 whole unit opened up. He took out two steps so he could
19 have access to the gear box. He didn't do anything other
20 than remove them to get access and then checked the oil
21 with a dip stick, it's okay or not, add the oil and put
22 the steps back. Added oil to dip bucket, tightened all
23 connections to controller, sprayed skirts. You can do
24 that in an hour and a half.

25 Q So your testimony is that cleaning the upper and

1 lower pits doesn't take that much time?

2 A It depends on the extent of the cleaning. You
3 can get in there with a vacuum cleaner and everything you
4 can reach, you do it, or you can go in and get the oil
5 absorbing pads and throw them away. That's cleaning the
6 pits. It's all different.

7 Q Gotcha. So the pits were cleaned in November of
8 2014 and the pits were cleaned in June of 2013. I know
9 I'm going in reverse chronological order.

10 A And we had the clean-down.

11 Q And then we had the clean-down in 2012?

12 A Yes.

13 Q Do you see any cleaning after November of 2014 in
14 the records here?

15 A No.

16 Q For an escalator like this that you inspected
17 that has the carpet surface at the top and the bottom,
18 what would you recommend in terms of clean-down? Should
19 it be once a year, should it be once every six months?
20 For an escalator like this, based on your experience, how
21 many clean-downs are required a year?

22 MS. MASTRANGELO: Objection; beyond the scope.

23 THE WITNESS: Clean-downs? One.

24 BY MR. IQBAL:

25 Q One per year?

1 A One per year. Other routine cleaning, maybe
2 every six months. You know, in between the full
3 clean-downs, you go in and clean everything up.

4 Q Got you. I appreciate that clear answer of one a
5 year. So we have this account history report from May of
6 2010 to December of 2015 and we see one clean-down in this
7 five-year period and then two separate cleanings, and
8 those are the only entries. Correct?

9 A That's correct.

10 MS. MASTRANGELO: Asked and answered.

11 MR. IQBAL: Okay. I'm not going to try to
12 separate these. I'll put these all together and make this
13 an exhibit. Are we up to Exhibit 8?

14 THE REPORTER: Correct.

15 (Exhibit 8 was marked for identification by the
16 court reporter.)

17 BY MR. IQBAL:

18 Q Sir, I'll hand you some photos that were taken
19 during Ms. Swett's deposition and mark them here as
20 Exhibit 8 and then hand them to you. I've shuffled them
21 around. I haven't removed any photos. They are all here.
22 I just put them in a different order to save some time.
23 That's the least I can do.

24 A It's too late for that.

25 Q Here you go, sir. That first page -- I'll

1 represent during the May inspection we went to the
2 warehouse\garage and the actual steps involved in the
3 accident that were replaced in 2016 were in boxes. Do you
4 see those boxes, sir?

5 A I see boxes here, yes.

6 Q Do you see they say KONE?

7 A I do, yes.

8 Q If you flip to the second page, you can see there
9 are photos taken of the steps within the boxes.

10 A Yes.

11 Q Do you see that?

12 A Yes.

13 Q Okay. If you put that page aside and also look
14 at the third page, it's a fuzzy picture, but it shows --
15 is that the bottom of a step?

16 A We call it the underside.

17 Q The underside of the step. Okay. And then if
18 you go to the next page --

19 A You want it here or there?

20 Q You can put that there and you can put that
21 there. The next page shows a close-up. Can you identify
22 what part of the step that is, the close-up?

23 A Not really, no.

24 Q Okay. And then the next page has another picture
25 of a step in a box. Do you see that?

1 A Yes.

2 Q Based on your review of these first five photos,
3 what kind of condition do those steps appear to be in?

4 A The steps themselves just appear to be covered in
5 an excessive amount of lint.

6 Q Why do you say "excessive"?

7 A Because it looks like a lot of lint. That's the
8 best adjective I could think of.

9 Q Gotcha. Would you call those steps dirty?

10 A Yes.

11 Q Do those steps show any evidence of recent
12 cleaning?

13 A No, not really.

14 Q If you opened up an escalator and saw steps that
15 looked like that, what would your reaction be?

16 A They should be cleaned.

17 Q Okay. If you opened up an escalator and saw
18 steps like that, would you think that a cleaning was long
19 overdue?

20 A It was due. I don't know when the last one was
21 unless I look at the records. That's why we need complete
22 records and accurate records.

23 Q Based on what we have in front of us in
24 Exhibit 5, there is no evidence of any cleaning after
25 2014. Correct?

1 A Other than the minor routine cleaning that we
2 talked about and the other two issues.

3 Q Right. I'm not talking clean-down. I'm saying
4 any cleaning.

5 A Any cleaning? Whatever the date was. The last
6 testimony is there on the record. I don't recall what
7 dates.

8 Q Are these steps in an acceptable condition for
9 you?

10 MS. MASTRANGELO: Object to the form. Being in a
11 box?

12 THE WITNESS: Acceptable for what? If they are
13 going to be used on the escalator, they should be cleaned.
14 If the other side of it is cleaned and they are in one
15 piece and they are functional, then they can be used.

16 BY MR. IQBAL:

17 Q Okay. If the other side is also filthy?

18 A The upper side?

19 Q Yes.

20 A That should definitely be cleaned.

21 Q If you have that much lint, is it then difficult
22 to see cracks?

23 A No.

24 Q No?

25 A No. You wipe it and you look. It's easy.

1 Q Understood. And you made a wiping motion with
2 your arm, meaning that you wipe the lint off and then you
3 would be able to see cracks. Correct?

4 A If you wipe it, yes.

5 Q If you don't wipe it and a step looks like that
6 and there is a layer of thick lint, is it possible to see
7 cracks?

8 A It's possible. Not probable.

9 Q Not probable. Okay. So it is easier to see
10 cracks after you have wiped away that layer of lint.
11 Correct?

12 A Yes.

13 Q And if that layer of lint is maintained and gets
14 thicker and thicker, then it would be more difficult to
15 observe cracks. Correct?

16 A That's correct.

17 Q Let's keep flipping. Really they are not in any
18 particular order. So you can keep flipping. You can keep
19 going.

20 A I can't identify what part of the step that is.

21 Q No problem at all. Can you identify what part of
22 the step that is?

23 A Yes. This is the riser. We call it the riser.
24 This is a trailer wheel here and this is an axle.

25 Q Okay. Just for the record, what page is that?

1 This is 1, 2, 3, 4, 5, 6 -- so on page 7 you identified --
2 thank you, sir. On page 7 you identified the riser?

3 A Yes. And the trailer wheel and the trailer wheel
4 axle.

5 Q And what is on the axle?

6 A Lint and dust.

7 Q Based on your expertise, would you say that step
8 on page 7 needs cleaning?

9 A The same as the other ones. Same answer.

10 Q Yes?

11 A Yes.

12 Q Okay. How about page 8?

13 A Page 8 is, again, the underside of the step. I
14 can identify a trailer wheel, an axle and parts of the
15 tread, which is the top horizontal surface of the step.

16 Q Okay.

17 A I believe.

18 Q Based on that page 8, does it look like that step
19 needs cleaning?

20 A Yes.

21 Q All right. No. 9 -- I believe that's part of the
22 actual inspection of the actual escalator itself. You can
23 flip that. You can see the carpet. That's page 10.

24 A Do you mind if I mark these?

25 Q No. Please go ahead.

1 A This is the landing plate. I can't tell which
2 landing it is, either upper or lower.

3 Q No problem.

4 A It appears to be -- I can't tell.

5 Q Okay.

6 A The step demarcation lights are shown in green
7 through there.

8 Q Now you are on page 13. Feel free to mark that.
9 Keep going.

10 A It seems like I've seen that one before.

11 Q For the record, page 15 might be a duplicate.
12 Page 16 is just a picture of the boxes. Would you agree
13 with that?

14 A Yeah, wrapped in Visqueen.

15 Q Page 18 appears to be a close-up. Can you make
16 out what part of the step we're looking at?

17 A Yes. This is a trailer wheel. This would be a
18 portion of the riser, the vertical riser. And it's the
19 underside of the step.

20 Q Does that underside on page 18 require cleaning?

21 A Yeah.

22 Q Yes?

23 A Yes.

24 Q You can skip the ones --

25 A This is the upper landing of the escalator. It

1 shows the signs, cone plates, floor plate, brushes. This
2 looks like the lower landing of the escalator. There is
3 the piece of the step riser showing as the steps go up.
4 That's 21. This is the gear box we discussed earlier.
5 It's near the upper landing underneath the steps.
6 Apparently there were at least two steps taken out to gain
7 access to it, as Mr. Dutcher had done when he did his gear
8 box lubrication.

9 Q If you go back to that gear box photo for one
10 second, does it look like that gear box needs cleaning?

11 A It has a lot of lint on it. Again, clean it,
12 wipe it off, do something.

13 Q It does, in your mind, need some cleaning?

14 A It should be cleaned. This is a portion of a
15 step.

16 Q I'll again represent in a warehouse in a box.

17 A This is a new step with the barricade. An old
18 step. This is an old step. New steps in the escalator.

19 Q If you could mark that photo --

20 A 27.

21 Q How can you tell that's a new step?

22 A There are labels on these steps similar to the
23 labels that are on the box and then the other steps I saw,
24 and I see that these have the through axle on them.

25 Q So these are new steps. The steps in the boxes

1 were the welded KONE steps. Correct?

2 A They were the steps that were removed from the
3 escalator. You can call them whatever you want, old
4 steps, welded steps, dirty steps.

5 Q Right. All three of those apply. So I'll just
6 represent those steps were removed in early 2016, and you
7 are looking right now at the actual escalator as of May
8 2018. Correct?

9 A May 2018 is when Ms. Swett took these pictures?

10 Q Correct.

11 A These are not pictures at her depo. They are
12 pictures at her inspection. You will see you identified
13 them as pictures from her depo.

14 Q In No. 28 you are looking at a step in a box, an
15 old step?

16 A I can't tell if that's cardboard or not, but it's
17 an older step.

18 Q I have a quick question on 28.

19 A This is 28?

20 Q Does that step need to be cleaned?

21 A Yes. A box. This is the lower landing pit area
22 of the escalator. These are the rags, the oil absorbing
23 rags that are to be cleaned out and thrown away. This is
24 the escalator showing just the lower landing combs, the
25 steps, the skirt brushes. I have no idea what that is.

1 Sorry.

2 Q That's okay.

3 A This is steps in the escalator as it sat in
4 May -- whatever it was when Ms. Swett did her inspection.
5 This is a newer step that had been removed for her
6 inspection.

7 Q What photo are you identifying?

8 A This is identified as 34.

9 Q Okay.

10 A 35 is unidentifiable.

11 Q It looks like a close-up of a step in a box.

12 A I don't know what this is. It doesn't look like
13 a box. It might have been taken out of the box. 49.

14 Q Thank you. If you could hand that to the court
15 reporter, and that will be Exhibit 8.

16 When was the first time you saw Ms. Swett's
17 photos of the steps in the boxes?

18 A This morning.

19 Q This morning?

20 A Yes.

21 Q Okay. So until this morning you hadn't seen the
22 actual steps involved in the accident?

23 A No.

24 Q No, as in no, you have not seen them?

25 A No, I had not seen them previously prior to this

1 morning.

2 Q Got it. Do you recall when we were talking about
3 5\27 or 5\28\2015 was when Mr. Dutcher identified the
4 cracked steps? Do you recall that in the account history?

5 A Yes.

6 Q And you are aware that --

7 A What was the year?

8 Q 2015. So it was 16 days after the incident that
9 we're here about that happened on 5\12 and it was three or
10 four days after the second accident on May 25th.

11 A Okay.

12 Q We can check the account history, but I'll
13 represent to you --

14 A At this point I'll trust you.

15 Q -- that Mr. Dutcher identified the cracked steps
16 on either 5\27 or 5\28. Are you aware that the inspection
17 by the state inspector on May 25th failed to identify
18 those cracks?

19 A On 5\25?

20 Q Yes.

21 A That was the day after Mr. Ruler's incident?

22 Q Right.

23 A He made no reference to any cracked steps in
24 either of his reports.

25 Q Okay. So there was no reference to cracked steps

1 in the state inspector's report after the second incident
2 in May?

3 A That's my understanding, as I recall. I can
4 look. His notice of violation made no mention of cracked
5 steps, nor did his elevator accident report, both dated
6 5\26.

7 Q So the account history shows that just after the
8 report by the state inspector, Mr. Dutcher actually found
9 the cracked steps. Correct?

10 A Apparently, yes.

11 Q Okay. So based on the fact that our incident on
12 May 12 was an injury incident and a state inspector came
13 out on the 13th, it's also fair to assume the state
14 inspector on May 13th also failed to identify cracked
15 steps. Correct?

16 A Yes. He made no mention of them in his report.

17 Q Okay.

18 A Assuming cracked steps were there to be
19 identified.

20 Q Right. Are you aware that Mr. Dutcher testified
21 that the cracks developed before May 7, 2015?

22 MS. MASTRANGELO: Objection; mischaracterizes the
23 testimony.

24 THE WITNESS: I recall some of his testimony was
25 that the cracks don't develop overnight.

1 BY MR. IQBAL:

2 Q Right. All right. Let's go specifically to that
3 so we can clear it up. If you go to page 175 to 178 of
4 Mr. Dutcher's testimony.

5 A Yes.

6 Q If you look at the top of page 175, line 2, there
7 is a question, "So given your almost ten years of
8 experience, now is it your belief that the cracks formed
9 sometime before May 7, 2015?" "Answer, Yes." Do you see
10 that?

11 A Yes.

12 Q Is that fairly clear based on just what he
13 testified?

14 A That they developed sometime before May 17th --
15 May 7th. I'm sorry.

16 Q So there was the state inspector on May 13th and
17 then there was the state inspector on May 26th, and
18 neither of those state inspections discovered or
19 identified or reported cracked steps. Correct?

20 A That's correct.

21 Q But then Mr. Dutcher at the end of May 2015,
22 either May 27 or May 28, just after those two inspectors
23 came through, actually found cracks. Correct?

24 A Yes.

25 Q And some of those cracks were critical. Correct?

1 A I don't know what they were. I never saw
2 anything where he identified whether they were A or
3 B cracks.

4 Q Right.

5 A There were based on Mr. Paleo's e-mail.

6 Q Panaro?

7 A Panaro. He's not the bread guys. There were
8 five that were identified as being critical, if you will,
9 but they didn't identify them as being A or B type cracks.

10 Q Okay. When someone makes a distinction and says
11 there are 40 steps with cracks and five with critical
12 cracks that need to be replaced asap, is it fair to assume
13 that the 40 and then the five are different kinds of
14 cracks?

15 MS. MASTRANGELO: Object to the form.

16 THE WITNESS: I don't think it's fair to assume
17 that.

18 MS. MCLEOD: Objection; calls for speculation.

19 THE WITNESS: I don't think it's fair to assume
20 they are different kinds of cracks. The condition of the
21 step may be different and it might be all A cracks, but
22 some have progressed to be worse than others.

23 BY MR. IQBAL:

24 Q Gotcha. Okay. But when somebody makes a
25 distinction, and especially, as we saw, the recommendation

1 came from the technician assigned to the escalator during
2 his eight year stay at Laughlin -- if someone makes that
3 distinction, and especially since it's a technician,
4 between five critical steps that need to be replaced asap
5 and
6 40 cracked steps, you would accept that distinction.
7 Correct?

8 A That some were worse than others, yes.

9 Q Okay. And the cracks that were worse than
10 others -- in fact, all of the cracks -- all of the cracked
11 steps don't appear in either the state inspector's report
12 on the 13th of May or the 26th of May. Correct?

13 A That's correct.

14 Q Okay. Is it possible to see cracks if you are
15 just doing a visual inspection?

16 A It depends on the scope of your visual
17 inspection. Again, it depends. I'm sorry about that. If
18 you are going to do an external visual inspection, you are
19 not going to see steps because you don't open up the unit
20 and look at the underside of the steps or the sides of the
21 steps. You can do a visual by opening the escalator where
22 you are not going to perform any tests or adjustments or
23 replacements, and then there are different portions of the
24 steps you can see where some of the cracks would be
25 visible.

1 Q That's very helpful. I appreciate that. So if
2 it's an inspection that is limited to riding the escalator
3 and visually looking at the escalator and riding it and
4 looking at it while you're riding it without stopping the
5 escalator, then it would be impossible to identify cracks.
6 Correct?

7 A Correct.

8 Q To identify cracks, you would at the very least
9 need to stop the escalator and look underneath. Correct?

10 A Yes.

11 Q And if you don't do that, you're not going to
12 find cracks. Correct?

13 A Correct. Nor would you feel the cracks because,
14 as I said, the cracks may not progress to a point where it
15 causes the step to do anything unusual, like sink down or
16 ride sideways or shake or whatever they alleged they did.

17 MR. IQBAL: Here is what I'm going to do. There
18 is a 90 percent chance that I am completely done with your
19 testimony, sir. The thing that obviously is giving me
20 some pause and some hesitation is that you don't have your
21 full file with you with the documents. I accept your
22 statement that we probably have them. But given that you
23 are missing some things in your file which we requested
24 today, I will take a look at the rest of the file when you
25 send it to me and, based on that, make a final decision on

1 whether there are going to be additional questions.

2 At this point I don't think I have anymore,
3 but if I could take a look at your folder to just make
4 sure that I don't have any at this time. Would that be
5 okay?

6 THE WITNESS: That's fine.

7 MR. IQBAL: We can go off the record.

8 (Recess taken.)

9 BY MR. IQBAL:

10 Q Mr. Turner, thank you very much for letting me
11 look through the documents that you brought. I appreciate
12 your counsel saying that I can get a copy of your folder
13 and electronically the parts of your file that you haven't
14 brought with you today. Based on that, I will do a review
15 and, most likely, I won't have any additional questions
16 unless there is something that is not consistent with what
17 we got in discovery. I just base that on a sense of
18 fairness because October 1st, my client -- not my client,
19 my expert witness, Sheila Swett, brought her entire file
20 for your attorneys to review. So I just want the same
21 basic circumstances for your deposition. I anticipate,
22 unless there is something completely haywire, that I will
23 not have any additional questions based on the parts of
24 your file that are not here.

25 One question I did have. You printed out an

1 article from the New York Times on the conflict of
2 interest -- potential conflict of interest between owners
3 and servicing companies. Do you recall that?

4 A No.

5 Q Well, why don't you take a look at that.

6 A It might have been the New York Times article
7 from either the Chicago or Detroit Free Press or the
8 National Enquirer or something like that that Ms. Swett
9 had in her binder. That one.

10 MS. MASTRANGELO: That was Sheila's.

11 THE WITNESS: You may take that. That was in
12 Ms. Swett's binder.

13 BY MR. IQBAL:

14 Q So on the second page -- I'm just going to read
15 part of this article that was in your folder. It may have
16 been from Ms. Swett's records. I'll see if you agree with
17 the statements that are made. "Most localities have
18 building inspectors check escalators several times a year,
19 but some governments require escalator owners to have
20 maintenance companies do some or all of the inspections.
21 These self-inspections, which are fairly common in the
22 building industry, cause conflicts of interest, said
23 Herbert H. Hayes, an escalator consultant in Brooklyn.
24 Escalator owners may be reluctant to shut down
25 escalator -- may be reluctant to shut escalators down for

1 repairs, he said, and service companies may be reluctant
2 to initiate repairs because, under most maintenance
3 contracts, they must pay half the cost." Do you agree or
4 disagree with that statement I just read?

5 A Neither.

6 Q Neither?

7 A Neither.

8 Q You have no position?

9 A It's too complex to agree with the whole thing.
10 There are tiny parts I agree with. Like Mr. Hayes' name
11 is not right. It's Hubert Hayes, not Herbert Hayes.
12 There are typos throughout there. Some underlining I made
13 was to identify people I know that have since passed into
14 the great machine room in the sky. It was just an
15 article, and Ms. Swett felt like it was important. You
16 might want to ask her why she thought so. I only wanted
17 to see it because she had it. I wanted to see what she
18 was interested in.

19 Q Gotcha. Are you concerned at all about a
20 conflict of interest with respect to the two clients that
21 are going to be paying your fees, ThyssenKrupp and --

22 A Not at all. If I might clarify your question,
23 not my answer, in a particular instance in Nevada there
24 are independent state regulated inspectors. We're not
25 asking ThyssenKrupp to do the mandated annual

1 certifications for permits. In some states, Florida,
2 Texas, sometimes the mechanic has a certification and they
3 give them permission to do those inspections. They do the
4 inspection and send in a report, and then the office that
5 gets the inspection report, state agency or city, will
6 send the permit out. It's a conflict. What am I going to
7 say bad about me?

8 The other part of it is in many cases there
9 are mechanics who work in the industry who do those
10 inspections as allegedly a third party, like in Florida.
11 So what happens is that the mechanic will go out and he
12 might not inspect his own equipment, but he'll inspect
13 equipment for another mechanic in the same union as him.
14 Not even the same company. Because they are in the same
15 union, they run into an issue with their IUEC bylaws with
16 regard to damaging a brother, if you will, by criticizing
17 his work.

18 We've had a lot of arguments with the IUEC
19 about getting mechanics certified as inspectors so they
20 could do just that. I think it's still a problem, but I
21 feel like Don Quixote when I take that to the mill.

22 Q Gotcha. When you were talking about mechanics, I
23 recall Dutcher having an excuse -- we can look it up, but
24 I'll represent that he basically said I was too busy as a
25 reason for not keeping complete records. Does that excuse

1 fly with you?

2 A No.

3 Q No?

4 A No.

5 Q Why not?

6 A There is some kind of record that he keeps. I
7 think I alluded to it during my answer. I like to see
8 complete and accurate records. If he says he is too busy,
9 he seems to have enough time to fill out whatever records
10 he needs to get his 40-hour-a-week paycheck. Why can't he
11 fill out a record that says an hour and a half of that was
12 spent on this escalator or it wasn't. So that's why I
13 would have that chat with him about keeping the records
14 correct and complete.

15 Q Okay. My last question. If you can turn to the
16 letter that you received July 17th. If you can read that
17 sentence that starts "As soon."

18 A "As soon as you know what your availability is,
19 will you please advise and I will need to coordinate with
20 the state and the parties and their experts."

21 Q That's referencing your availability --

22 A The inspection.

23 Q -- coming to the inspection --

24 A Yes.

25 Q -- in November of 2017?

1 A Yes.

2 Q Are you aware that plaintiffs were not invited
3 and had no knowledge of that?

4 A I'm not made aware of that kind of thing until I
5 show up at the inspection and somebody is not there. I
6 don't ask questions. I just assume they weren't invited.

7 MR. IQBAL: Gotcha. At this time no further
8 questions. Thank you.

9 MS. MASTRANGELO: Thank you. Alex?

10 MS. MCLEOD: Yeah, no questions from me, but we
11 will have an objection to any attempts to continue
12 Mr. Turner's deposition. By my phone records, our
13 first -- my first call-in for the first half of the
14 deposition before lunch was two hours and 48 minutes.
15 This call right now is three hours and 59 minutes. We are
16 quickly approaching the seven-hour one-day rule for
17 depositions.

18 We certainly understand that plaintiff wants
19 to review the electronic documents. We don't have any
20 objection to that. But we will object to any attempt to
21 continue this deposition, as he has provided a full day of
22 testimony, not to mention the fact that we are beyond the
23 discovery cutoff, which I understand was made as an
24 accommodation for scheduling. Any attempt for
25 continuation would also be beyond the discovery cutoff.

1 So with that, I have nothing further. I would like a copy
2 of the transcript, Madam reporter.

3 MR. IQBAL: I appreciate that objection, but, to
4 be fair, our scheduling of all of the depositions was to
5 accommodate everyone's schedule, not just mine. I do
6 appreciate the professionalism that you and Rebecca have
7 shown with respect to scheduling, but that was for all of
8 our schedules. So that's all I have.

9 MS. MASTRANGELO: I'm not quite finished. I want
10 to add that Sheila Swett did not produce her photographs
11 during her deposition, but we just got them recently.
12 Hence, Dave just got them recently.

13 EXAMINATION

14 BY MS. MASTRANGELO

15 Q Quick question, Dave. Based on the new
16 documents, the photographs, depositions, all the things
17 you've reviewed after your initial report was authored and
18 signed, have any of your opinions changed as a result of
19 that review?

20 A Basically, no.

21 Q Does the fact that Chris Dutcher didn't document
22 all of his maintenance on this escalator change your
23 opinions as set forth in your initial report?

24 A No.

25 MR. IQBAL: Objection; misstates testimony,

1 assumes facts not in evidence.

2 MS. MASTRANGELO: No further questions.

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REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand
Reporter of the State of California, do hereby certify:

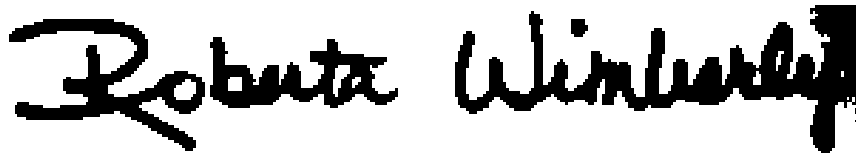
That the foregoing proceedings were taken before
me at the time and place herein set forth; that any
witnesses in the foregoing proceedings, prior to
testifying, were placed under oath; that a verbatim record
of the proceedings was made by me using machine shorthand
which was thereafter transcribed under my direction;
further, that the foregoing is an accurate transcription
thereof.

I further certify that I am neither financially
interested in the action nor a relative or employee of any
attorney of any of the parties.

The witness has requested to review pursuant to
Rule (3)(e)(2).

IN WITNESS WHEREOF, I have this date subscribed
my name.

Dated: October 30, 2018



ROBERTA WIMBERLY
CSR No. 4882

DEPOSITION ERRATA SHEET

Our Assignment No. J 2897300

Case Caption: Joe N. Brown, et al.

vs.

Landry's, Inc., et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the day of 20____.

DAVIS LEE TURNER

DEPOSITION ERRATA SHEET

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SIGNATURE: _____ DATE: _____

DAVIS LEE TURNER

DEPOSITION ERRATA SHEET

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SIGNATURE : _____ DATE : _____

DAVIS LEE TURNER



EXHIBIT C

JNB01304

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[Alexandra.M^cLeod@aig.com](mailto:Alexandra.McLeod@aig.com)

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

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

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

Plaintiffs,

vs.

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

Defendants.

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

**DEFENDANT GNL, CORP.'S
RESPONSES TO PLAINTIFFS'
SECOND SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS**

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

COMES NOW, Defendant GNL, CORP. (hereinafter "Defendant"), by and through its
attorney, Alexandra B. M^cLeod, Esq., of the law firm of **GRANT & ASSOCIATES**, pursuant to
Rule 34, of the Nevada Rules of Civil Procedure, and hereby submits its response to Plaintiffs'

Second Set of Request for Production of Documents as follows:

DEFINITIONS

A. “Non-discoverable/Irrelevant” – The Request in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. “Unduly Burdensome” – The Request in question seeks discovery which is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.

C. “Vague” – The Request in question contains a word or phrase which is not adequately defined, or the overall Request is confusing, and GNL is unable to reasonably ascertain what information or documents Plaintiff seeks in the Request.

D. “Overly Broad” – The Request in question seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation and, accordingly, seeks information or documents which are non-discoverable/irrelevant and is unduly burdensome.

GENERAL OBJECTIONS

1. GNL objects to Plaintiffs’ Instruction No. 1 inasmuch as Plaintiffs cannot unilaterally set the time for electronic service of this Defendant’s responses. Service will be made in due course pursuant to NRCP 34 but may be served or received beyond Plaintiffs’ 5:00 pm PDT deadline.

2. GNL objects to Plaintiffs’ Requests to the extent that they request any information that is protected by any absolute or qualified privilege or exemption, including, but not limited to, the attorney-client privilege, the attorney-work product exemption, and the consulting-expert exemption. Specifically, GNL objects to Plaintiffs’ Requests on the following grounds:

a. GNL objects to Plaintiffs’ Requests to the extent that they seek documents or disclosure of information that protected from disclosure by the attorney-client

1 privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and/or applicable
2 case law.

3 b. GNL objects to Plaintiffs' Requests to the extent that they seek
4 documents or disclosure of information that are protected from disclosure by the work-product
5 exemption in accordance with Rule 26(b)(1), (3), and (4) of the Nevada Rules of Civil
6 Procedure and/or applicable case law.

7 c. GNL objects to Plaintiffs' Requests to the extent that they seek
8 documents or information protected from disclosure pursuant to the consultant/expert
9 exemption in accordance with Rule 26(b)(3) and (4) of the Nevada Rules of Civil Procedure
10 and/or applicable case law.

11 d. GNL objects to Plaintiffs' Requests to the extent that they seek trade
12 secrets, commercially sensitive information, or confidential proprietary data entitled to
13 protection under Rule 26(c)(7) of the Nevada Rules of Civil Procedure. See also NRS 49.325.

14 3. GNL objects to Plaintiffs' Requests pursuant to Rule 33(d) of the Nevada Rules
15 of Civil Procedure in that Plaintiff seeks a compilation or summary of information which can be
16 gleaned from documents Defendant has agreed to produce to Plaintiff herein.

17 4. GNL objects to Plaintiffs' Requests to the extent they seek information,
18 documentation, etc., which are not in Defendant's or Defendant's attorneys' possession,
19 custody, or control.

20 5. These responses will be made on the basis of information and writings available
21 to and located by GNL upon reasonable investigation of records. There may be other and
22 further information respecting the Requests propounded by Plaintiff of which GNL despite its
23 reasonable investigation and inquiry, are presently unaware. GNL reserves the right to modify
24 or enlarge any response with such pertinent additional information as it may subsequently
25 discover.

26 6. No incidental or implied admissions will be made by the responses to Requests.
27 The fact that GNL may respond or object to any Request, or any party thereof, shall not be
28

1 deemed an admission that GNL accepts or admits the existence of any fact set forth or assumed
2 by such Request, or that such response constitutes admissible evidence. The fact that GNL
3 responds to part of any Request is not to be deemed a waiver by GNL of his objections,
4 including privilege, to other parts to such Request.

5 7. GNL objects to any instruction or Requests to the extent that same would impose
6 upon GNL greater duties than are set forth under the Nevada Rules of Civil Procedure. GNL
7 will supplement its responses to those Requests as required by NRCP 26(e).

8 8. All response will be made solely for the purpose of this action. Each response
9 will be subject to all objections as to competence, relevant, materiality, propriety and
10 admissibility, and to any and all other objections on any ground which would require the
11 exclusion from evidence of any statement herein if any such statements were made by a witness
12 present and testifying at trial, all of which objections and grounds are expressly reserved and
13 may be interposed at such hearings.

14 9. GNL adopts by reference the above objections and incorporates each objection as
15 if it was fully set forth below in each of Defendant's responses.

16 **REQUEST NO. 9:**

17 Please produce ALL DOCUMENTS, WRITINGS AND CORRESPONDENCE
18 RELATING to ANY "Elevator Accident Reports" issued by the State of Nevada's Division of
19 Industrial Relations (including but not limited to the Mechanical Compliance Section)
20 (collectively, the "State of Nevada") OR its PEOPLE, RELATING to the ESCALATOR from
21 the date of its installation to September 1, 2017.

22 **RESPONSE TO REQUEST NO. 9:**

23 OBJECTION: This Request is vague, overly broad, as it is not limited in temporal scope,
24 unduly burdensome, compound, and assumes facts not in evidence. FURTHER OBJECTION:
25 The information sought in this Request is equally available, if at all, to the Requesting Party
26 through a records request or subpoena to the State of Nevada's Division of Industrial Relations;
27 therefore, responding to this Request would be unreasonably time-consuming, burdensome, and
28

1 unfair. *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D.
2 Nev. Feb. 6, 2014). Subject to and without waiving the foregoing objections, this answering
3 Defendant responds as follows:

4 Upon information and belief, the Subject Escalator was installed circa 1979, and
5 therefore, Defendant would not have records from the date of its installation. This answering
6 Defendant is not in possession of any responsive documents titled “State of Nevada Elevator
7 Accident Report” other than **EXHIBIT G (GNL 000029)** to Defendants’ Initial NRCP 16.1
8 Disclosure.

9 **REQUEST NO. 10:**

10 Please produce ALL DOCUMENTS, WRITINGS AND CORRESPONDENCE in
11 YOUR possession RELATING to the Elevator Accident Reports identified in Request No. 9
12 above.

13 **RESPONSE TO REQUEST NO. 10:**

14 **OBJECTION:** This Request is vague, overly broad, as it is not limited in temporal scope,
15 unduly burdensome, compound, and assumes facts not in evidence. **FURTHER OBJECTION:**
16 The information sought in this Request is equally available to the Requesting Party through a
17 records request or subpoena to the State of Nevada’s Division of Industrial Relations. Therefore,
18 responding to this Request would be unreasonably time-consuming, burdensome, and unfair.
19 *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D. Nev.
20 Feb. 6, 2014). Subject to and without waiving the foregoing objections, this answering
21 Defendant responds as follows:

22 None. Please refer to Defendant’s response to Request No. 9, as set forth above.

23 **REQUEST NO. 11:**

24 Please produce ALL DOCUMENTS, WRITINGS AND CORRESPONDENCE in
25 YOUR possession RELATING to ANY violations CONCERNING the ESCALATOR, from
26 January 1, 2010 to September 1, 2017.

27 . . .
28

RESPONSE TO REQUEST NO. 11:

OBJECTION: This Request is vague, overly broad, as it is not adequately limited in temporal scope or similar-type incidents, unduly burdensome, compound, lacks foundation, and assumes facts not in evidence. Any information on subsequent incidents is outside the scope of discovery provided by NRCP 26. *See, e.g., Walker vs. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. Lexis 24122 (Montana 2007) (declining to require the production of claims information post the Plaintiff's incident). FURTHER OBJECTION: The term "violations" is undefined, argumentative, and ambiguous, and, therefore, is subject to multiple interpretations. Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to the Subject Incident as follows:

Please refer to information contained in documents previously produced as **GNL000053-000106**, as well as documents served contemporaneously herewith as **GNL000346-000360**. Please note that these documents are sometimes titled "Notice of Violation & Inspection."

REQUEST NO. 12:

Please produce ALL inspection reports AND CORRESPONDENCE of ANY kind from the State of Nevada OR its PEOPLE, OR ANY other regulator, RELATING to the ESCALATOR, from January 1, 2010 to September 1, 2017.

RESPONSE TO REQUEST NO. 12:

OBJECTION: This Request is vague, overly broad, as it is not adequately limited in temporal scope or similar-type incidents, unduly burdensome, compound, lacks foundation, and assumes facts not in evidence. Any information on subsequent incidents is outside the scope of discovery provided by NRCP 26. *See, e.g., Walker vs. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. Lexis 24122 (Montana 2007) (declining to require the production of claims information post the Plaintiff's incident). FURTHER OBJECTION: The term "regulator" is ambiguous and undefined, and therefore subject to multiple interpretations. Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to

the Subject Incident as follows:

Please refer to information contained in documents previously produced as **GNL 000029**, **GNL 000048-000051**, **GNL 000053-000106**, as well as documents served contemporaneously herewith as **GNL 000346-000360** and **GNL 000408-000418**.

REQUEST NO. 13:

Please produce ALL follow-up reports to “Report No. 200” RELATING to the INCIDENT.

RESPONSE TO REQUEST NO. 13:

OBJECTION: This Request is vague and ambiguous as the Incident Report (previously produced as GNL000001-000014) is designated as “Case # 2015-00200” not “Report No. 200.”

FURTHER OBJECTION: This Request is also overly broad, unduly burdensome, and compound, as well as assumes facts not in evidence. Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

Not Applicable. Defendant is not in possession of any documents responsive to this Request.

REQUEST NO. 14:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS CONCERNING ANY follow up reports to Report 200 that RELATE to the INCIDENT.

RESPONSE TO REQUEST NO. 14:

OBJECTION: This Request is vague and ambiguous as the Incident Report (previously produced as GNL000001-000014) is designated as “Case # 2015-00200” not “Report No. 200.”

FURTHER OBJECTION: This Request is also overly broad, unduly burdensome, and compound, as well as assumes facts not in evidence. Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

Not Applicable. Defendant is not in possession of any documents responsive to this Request.

...

REQUEST NO. 15:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS that RELATE to Report No. 200.

RESPONSE TO REQUEST NO. 15:

OBJECTION: This Request is vague and ambiguous as the Incident Report (previously produced as GNL000001-000014) is designated as "Case # 2015-00200" not "Report No. 200."

FURTHER OBJECTION: This Request is also overly broad, unduly burdensome, and compound, as well as assumes facts not in evidence. Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

Please see documents previously produced as **GNL000015-000029** and **GNL000048-000052**.

REQUEST NO. 16:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS RELATING to the ESCALATORS exchanged between YOU and ANY of the other defendants to this action AND the State of Nevada or its PEOPLE between January 1, 2012 and September 10, 2017.

RESPONSE TO REQUEST NO. 16:

OBJECTION: This Request is vague, compound, overly broad as not adequately limited in temporal scope, unduly burdensome, and assumes facts not in evidence. FURTHER

OBJECTION: This Request seeks information that may be confidential and/or protected by attorney-client and/or attorney-work product privilege. Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to the Subject Incident as follows:

Please see documents previously produced as **GNL 000048-000051**, **GNL 000053-000106**, **GNL 000171-000172**, as well as documents served contemporaneously herewith as **GNL 000346-000360** and **GNL 000408-000418**.

...

REQUEST NO. 17:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS RELATING to ANY suggested, anticipated, planned, approved OR actual modernization, modification, or alteration of the ESCALATOR between the date of its installation and September 1, 2017.

RESPONSE TO REQUEST NO. 17:

OBJECTION: This Request is vague, overly broad, as it is not adequately limited in temporal scope or similar-type incidents, unduly burdensome, compound, lacks foundation, and assumes facts not in evidence. Any information on subsequent incidents is outside the scope of discovery provided by NRCP 26. *See, e.g., Walker vs. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. Lexis 24122 (Montana 2007) (declining to require the production of claims information post the Plaintiff's incident). FURTHER OBJECTION: The terms "modernization", "modification," and "alteration" are undefined and ambiguous, and therefore, are subject to multiple interpretations. Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to the Subject Incident as follows:

Please see documents previously produced as **GNL 000048-000051, GNL 000053-000106, GNL 000171-000172**, as well as documents served contemporaneously herewith as **GNL 000346-000360**.

REQUEST NO. 18:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS CONCERNING ANY repairs OR part-replacements RELATING to the ESCALATOR between the date of its installation and September 1, 2017.

RESPONSE TO REQUEST NO. 18:

OBJECTION: This Request is vague, overly broad, as it is not adequately limited in temporal scope or similar-type incidents, unduly burdensome, compound, lacks foundation, and assumes facts not in evidence. Any information on subsequent incidents is outside the scope of discovery provided by NRCP 26. *See, e.g., Walker vs. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. Lexis 24122

(Montana 2007) (declining to require the production of claims information post the Plaintiff's incident). Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to the Subject Incident as follows:

Please see documents previously produced as **GNL 000048-000051, GNL 000053-000106, GNL 000171-000172**, as well as documents served contemporaneously herewith as **GNL 000346-000360**.

REQUEST NO. 19:

Please produce ALL Reports No. 1 through No. 199.

RESPONSE TO REQUEST NO. 19:

OBJECTION: This Request is vague and ambiguous as the Incident Report (previously produced as GNL000001-000014) is designated as "Case # 2015-00200" not "Report No. 200."

The security incident and response reports are numbered sequentially, and reports numbered earlier in the sequence are for wholly unrelated incidents in different areas of the property.

Defendant agrees to produce prior incident reports pertaining to the down escalator only, which can be argued to be reasonably calculated to lead to the discovery of admissible evidence.

FURTHER OBJECTION: This Request is vague, overly broad as it is not limited in temporal scope, unduly burdensome, assumes facts not in evidence, compound, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. FURTHER

OBJECTION: This Request seeks documents that are protected by the privacy rights of third parties, and beyond the scope provided by Nevada Rules of Civil Procedure and, specifically,

Rule 26, as it seeks information that is protected personal information under NRS chapter 603A, Protected Health Information under HIPAA, as well as protected by customers' rights to

privacy. No exceptions exist for discovery and Defendant cannot disclose information responsive to this request without violating its security responsibilities as a Data Collector in

Nevada. The Requesting Party has failed to show a compelling need for this discovery. Subject to and without waiving the foregoing objections, this answering Defendant responds with

documents no more than five years prior to the Subject Incident as follows:

Please see documents previously produced as **GNL000107-170**, as well as documents served contemporaneously herewith as **GNL 000361-000407**.

REQUEST NO. 20:

Please produce ALL subsequent reports following Report No. 200, up to and including any reports dated September 1, 2017.

RESPONSE TO REQUEST NO. 20:

OBJECTION: This Request is vague and ambiguous as the Incident Report (previously produced as GNL000001-000014) is designated as "Case # 2015-00200" not "Report No. 200." The security incident and response reports are numbered sequentially, and reports numbered earlier in the sequence are for wholly unrelated incidents in different areas of the property.

Defendant has produced prior incident reports pertaining to the down escalator only, which can be argued to be reasonably calculated to lead to the discovery of admissible evidence.

OBJECTION: This Request is vague, overly broad as it is not limited in temporal scope, unduly burdensome, assumes facts not in evidence, compound, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence inasmuch as any information on subsequent incidents is outside the scope of discovery provided by NRCP 26. *See, e.g., Walker vs. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. Lexis 24122 (Montana 2007) (declining to require the production of claims information post the Plaintiff's incident). FURTHER OBJECTION: This Request seeks documents that are protected by the privacy rights of third parties, and beyond the scope provided by Nevada Rules of Civil Procedure and, specifically, Rule 26, as it seeks information that is protected personal information under NRS chapter 603A, Protected Health Information under HIPAA, as well as protected by customers' rights to privacy. No exceptions exist for discovery and Defendant cannot disclose information responsive to this request without violating its security responsibilities as a Data Collector in Nevada. The Requesting Party has failed to show a compelling need for this discovery.

...

...

REQUEST NO. 21:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS RELATING to State Inspector Steve Robertson's May 13, 2015 "Elevator Accident Report" (produced by GNL and identified by the bates no. GNL000029) on the ESCALATOR.

RESPONSE TO REQUEST NO. 21:

OBJECTION: This Request is vague, ambiguous, overly broad, unduly burdensome, assumes facts not in evidence. Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

Upon information and belief, Defendant currently has no additional documents responsive to this request. See Robertson deposition at 20:24-21:3 and 58:2-5.

REQUEST NO. 22:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS RELATING to State Inspector Steve Robertson's other Elevator Accident Report(s) – based on his testimony at his August 21, 2017 deposition – on the ESCALATOR AND on ALL other elevators AND escalators at the PREMISES.

RESPONSE TO REQUEST NO. 22:

OBJECTION: This Request is vague, ambiguous, an unintelligible without a specific reference to the deposition testimony/transcript of Mr. Robertson. FURTHER OBJECTION: This Request assumes facts not in evidence, lacks foundation, and is compound and overly broad as it is not adequately limited in temporal scope, alleged incident or Subject Escalator. Requested documentation on other elevators and escalators at the premises is not reasonably calculated to lead to the discovery of admissible evidence and therefore compliance would be unreasonably time-consuming, burdensome, and unfair. *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D. Nev. Feb. 6, 2014) Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

Upon information and belief and based on a search of the term "report" in the word index to Robertson's deposition, there are no documents responsive to this Request.

REQUEST NO. 23:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS RELATING to, AND IDENTIFY ALL other State Inspectors' AND contracted third parties' reports regarding the ESCALATOR (associated with scheduled, unscheduled inspections and accident reports).

RESPONSE TO REQUEST NO. 23:

OBJECTION: This Request is vague, compound, overly broad as it is not limited in temporal scope or alleged incident, unduly burdensome, assumes facts not in evidence, and lacks foundation. Subject to and without waiving the foregoing objections, this answering Defendant responds with documents no more than five years prior to the Subject Incident as follows:

Please see documents previously produced as **GNL 000029, GNL 000048-000051, GNL 000053-000106, GNL 000171-000172**, as well as documents served contemporaneously herewith as **GNL 000346-000360**.

REQUEST NO. 24:

Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS regarding The American Society of Mechanical Engineers ("ASME") AND its guidelines (including ANY training or educational materials regarding shifting ASME standards) in YOUR possession.

RESPONSE TO REQUEST NO. 24:

OBJECTION: This Request is vague, overly broad, and unduly burdensome. FURTHER OBJECTION: This information sought in this Request is equally available to the Requesting Party through a records request or subpoena to The American Society of Mechanical Engineers ("ASME"). Therefore, responding to this Request would be unreasonably time-consuming, burdensome, and unfair. *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D. Nev. Feb. 6, 2014). Subject to and without waiving the foregoing objections, this answering Defendant responds as follows:

1 Upon information and belief, Defendant currently has no documents responsive to this
2 request.

3 **REQUEST NO. 25:**

4 Please produce ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS
5 RELATING to the Americans with Disabilities Act of 1990, as amended (“ADA”) AND its
6 guidelines (including ANY training or education materials) in YOUR possession.

7 **RESPONSE TO REQUEST NO. 25:**

8 OBJECTION: This Request is vague, ambiguous, and unintelligible. The information sought in
9 this Request is equally available to the Requesting Party through a records request or subpoena
10 to the entity regulating the Americans with Disabilities Act of 1990 (“ADA”). Therefore,
11 responding to this Request would be unreasonably time-consuming, burdensome, and unfair.
12 *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D. Nev.
13 Feb. 6, 2014). Subject to and without waiving the foregoing objections, this answering
14 Defendant responds as follows:

15 Upon information and belief, Defendant currently has no documents responsive to this
16 request which relate to the Subject Incident or Subject Escalator.

17 **REQUEST NO. 26:**

18 Please produce copies of ALL discovery including ALL DOCUMENTS, WRITINGS
19 AND COMMUNICATIONS YOU received from ALL non-Plaintiff PERSONS OR PEOPLE
20 involved in this action, including but not limited to other defendants.

21 **RESPONSE TO REQUEST NO. 26:**

22 OBJECTION: This Request is vague, ambiguous, and overly broad. The information sought in
23 this Request is equally available to the Requesting Party through a demand for prior pleadings
24 and discovery. Therefore, responding to this Request would be unreasonably time-consuming,
25 burdensome, and unfair. *See Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014
26 WL 496936 (D. Nev. Feb. 6, 2014). Subject to and without waiving the foregoing objections,
27 this answering Defendant responds as follows:
28

None at this time other than what has been served on and produced to all parties during the discovery of this case, including Defendants' NRCP 16.1 Disclosures, and all supplements thereto.

NOTE: These responses shall be deemed continuing pursuant to Rule 26(e)(2), and will be supplemented or amended as warranted between the time answers are served and the time of arbitration or trial of this matter.

DATED this 20th day of October, 2017.

GRANT & ASSOCIATES



ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

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

CERTIFICATE OF SERVICE

I certify that I am an employee of GRANT & ASSOCIATES and that on this 20th day of October, 2017, I served a true and correct copy of the foregoing **DEFENDANT GNL, CORP.'S RESPONSES TO PLAINTIFFS' SECOND SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by serving as follows:

 x Through the Court authorized electronic mail to all parties listed on the master service pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR;
 Depositing said document(s) with the U.S. Postal Service;
addressed to the following person(s) at the address(es) listed below:

Mohamed A. Iqbal, Jr., Esq.
Christopher Mathews, Esq.
101 Convention Center Drive, Suite 1175
Las Vegas, NV 89109
Ph: 702-750-2950
Fax: 702-825-2841
mal@llawlv.com
Attorney for Plaintiffs

Rebecca L. Mastrangelo, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, NV 89101
Attorney for Third-Party Defendant,
ThyssenKrupp Elevator Corporation

/s/ Camie Devoge

An Employee of **GRANT & ASSOCIATES**

1 REBECCA L. MASTRANGELO, ESQ.
Nevada Bar No. 5417
2 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 S. Third Street
3 Las Vegas, Nevada 89101
Phone (702) 383-3400
4 Fax (702) 384-1460
rmastrangelo@rmcmlaw.com
5 Attorneys for Third-Party Defendant
THYSSENKRUPP ELEVATOR CORPORATION
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

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

11 Plaintiffs,)
12)

13 vs.)

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

17 Defendants.)

18 GNL, CORP., a Nevada corporation;)

19 Third-Party Plaintiff,)

20 vs.)

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

23 Third-Party Defendants.)
24

25 **THIRD-PARTY DEFENDANT THYSSENKRUPP ELEVATOR**
26 **CORPORATION'S RESPONSE TO PLAINTIFFS' FIRST SET OF**
REQUESTS FOR PRODUCTION OF DOCUMENTS

27 Third-Party Defendant, THYSSENKRUPP ELEVATOR CORPORATION, by and
28 through its attorneys, REBECCA L. MASTRANGELO, ESQ. and the law firm of ROGERS,

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

JNB01321

1 MASTRANGELO, CARVALHO & MITCHELL, hereby responds to Plaintiffs' First Set of
2 Requests for Production of Documents as follows:

3 **REQUEST NO. 1:**

4 Please produce all documents, writings and communications (which include without
5 limitation, e-mails and text messages), dated from January 1, 2011 to September 1, 2017,
6 exchanged (sent or received) between, addressed or forwarded to, and/or copying: on one hand,
7 you and, on the other, any one or more of the following: GNL Corp./Landry's/Golden Nugget,
8 Inc., contacts - Don Hartman (Director of Facilities), Irais Mendoza (Purchasing Buyer), Richard
9 Smith (Risk Manager), and Clint Belka (VP of Engineering) relating to the escalator.

10 **RESPONSE:**

11 Objection. Overly burdensome and overly broad in scope ("all documents . . . relating to
12 the escalator") and time (January 1, 2011 to September 1, 2017) and thereby irrelevant to the
13 subject matter of the pending action and not reasonably calculated to lead to the discovery of
14 admissible evidence. Notwithstanding said objections and without waiving same, thyssenkrupp
15 has not located any documents responsive to this Request other than those which were previously
16 produced in thyssenkrupp Elevator Corporation's Second Supplement to Early Case Conference
17 Production of Documents.

18 **REQUEST NO. 2:**

19 Please produce all documents, writings and communications, dated from January 1, 2011
20 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
21 copying: on one hand, Christopher Dutcher, and on the other, any one or more of Don Hartman,
22 Irais Mendoza, Richard Smith, and Clint Belka, relating to the escalator.

23 **RESPONSE:**

24 Objection. Asked and answered. Request is also objected to as overly burdensome and
25 overly broad in scope ("all documents . . . relating to the escalator") and time (January 1, 2011 to
26 September 1, 2017) and thereby irrelevant to the subject matter of the pending action and not
27

1 reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said
2 objections and without waiving same, thyssenkrupp has not located any documents responsive to
3 this request.

4 **REQUEST NO. 3:**

5 Please produce all documents, writings, and communications, dated from January 1, 2011
6 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
7 copying: on one hand, Larry Panaro, and on the other, any one or more of Don Hartman, Irais
8 Mendoza, Richard Smith, and Clint Belka, relating to the escalator.

9 **RESPONSE:**

10 Objection. Asked and answered. Request is also objected to as overly burdensome and
11 overly broad in scope (“all documents . . . relating to the escalator”) and time (January 1, 2011 to
12 September 1, 2017) and thereby irrelevant to the subject matter of the pending action and not
13 reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said
14 objections and without waiving same, thyssenkrupp has not located any documents responsive to
15 this Request other than those which were previously produced in thyssenkrupp Elevator
16 Corporation’s Second Supplement to Early Case Conference Production of Documents.

17 **REQUEST NO. 4:**

18 Please produce all documents, writings, and communications, dated from January 1, 2011
19 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
20 copying: on one hand, Jim MacDavid, and on the other, any one or more of Don Hartman, Irais
21 Mendoza, Richard Smith, and Clint Belka, relating to the escalator.

22 **RESPONSE:**

23 Objection. Asked and answered. Request is also objected to as overly burdensome and
24 overly broad in scope (“all documents . . . relating to the escalator”) and time (January 1, 2011 to
25 September 1, 2017) and thereby irrelevant to the subject matter of the pending action and not
26 reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said
27

1 objections and without waiving same, thyssenkrupp has not located any documents responsive to
2 this Request other than those which were previously produced in thyssenkrupp Elevator
3 Corporation's Second Supplement to Early Case Conference Production of Documents.

4 **REQUEST NO. 5:**

5 Please produce all documents, writings, and communications, dated from January 1, 2011
6 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
7 copying: on one hand, Scott Olsen, and on the other, any one or more of Don Hartman, Irais
8 Mendoza, Richard Smith, and Clint Belka, relating to the escalator.

9 **RESPONSE:**

10 Objection. Asked and answered. Request is also objected to as overly burdensome and
11 overly broad in scope ("all documents . . . relating to the escalator") and time (January 1, 2011 to
12 September 1, 2017) and thereby irrelevant to the subject matter of the pending action and not
13 reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said
14 objections and without waiving same, thyssenkrupp has not located any documents responsive to
15 this Request other than those which were previously produced in thyssenkrupp Elevator
16 Corporation's Second Supplement to Early Case Conference Production of Documents.

17 **REQUEST NO. 6:**

18 Please produce all documents, writings, and communications, dated from January 1, 2011
19 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
20 copying: on one hand, Paul Hamrick, and on the other, any one or more of Don Hartman, Irais
21 Mendoza, Richard Smith, and Clint Belka, relating to the escalator.

22 **RESPONSE:**

23 Objection. Asked and answered. Request is also objected to as overly burdensome and
24 overly broad in scope ("all documents . . . relating to the escalator") and time (January 1, 2011 to
25 September 1, 2017) and thereby irrelevant to the subject matter of the pending action and not
26 reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said
27

1 objections and without waiving same, thyssenkrupp has not located any documents responsive to
2 this Request other than those which were previously produced in thyssenkrupp Elevator
3 Corporation's Second Supplement to Early Case Conference Production of Documents.

4 **REQUEST NO. 7:**


5 Please produce all documents, writings and communications, dated from January 1, 2011
6 to September 1, 2017, exchanged (sent or received) between, addressed or forwarded to, and/or
7 copying: any one or more of Paul Hamrick, Scott Olsen, Jim MacDavid, Larry Panaro, and/or
8 Christopher Dutcher, relating to the escalator; for the avoidance of doubt, this request includes,
9 without limitation, your internal communications relating to the escalator.

10 **RESPONSE:**

11 Objection. Overly burdensome and overly broad in scope ("all documents . . . relating to
12 the escalator") and time (January 1, 2011 to September 1, 2017) and thereby irrelevant to the
13 subject matter of the pending action and not reasonably calculated to lead to the discovery of
14 admissible evidence. Notwithstanding said objections and without waiving same, thyssenkrupp
15 has not located any documents responsive to this Request other than those which were previously
16 produced in thyssenkrupp Elevator Corporation's Second Supplement to Early Case Conference
17 Production of Documents.

18 DATED this 6th day of February, 2018.

19 ROGERS, MASTRANGELO, CARVALHO &
20 MITCHELL

21 
22 Rebecca L. Mastrangelo, Esq.
23 Nevada Bar No. 5417
24 700 S. Third Street
25 Las Vegas, Nevada 89101
26 Attorney for Defendant
27 THYSSENKRUPP ELEVATOR CORPORATION
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 6 day of
4 February, 2018, a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT**
5 **THYSSENKRUPP ELEVATOR CORPORATION'S RESPONSE TO PLAINTIFFS'**
6 **FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was served via
7 electronic means with the Eighth Judicial District Court, addressed as follows, upon the
8 following counsel of record:

9
10 Mohamed A. Iqbal, Jr., Esq.
11 Christopher Mathews, Esq.
12 101 Convention Center Drive, Suite 1175
13 Las Vegas, Nevada 89109
14 Attorneys for Plaintiffs

15 Annalisa N. Grant, Esq.
16 Alexandra B. McLeod, Esq.
17 GRANT & ASSOCIATES
18 7455 Arroyo Crossing Parkway, Suite 300
19 Las Vegas, Nevada 89113
20 Attorneys for Defendant/Third-Party Plaintiff

21
22
23
24
25
26
27
28

An employee of ROGERS, MASTRANGELO,
CARVALHO & MITCHELL

EXHIBIT D

December 8, 2017
via E-Service

Lee Grant, Esq.
Annalisa N. Grant, Esq.
Alexandra McLeod, Esq.
GRANT & ASSOCIATES
7455 Arroyo Crossing Parkway, Suite 300
Las Vegas, NV 89113

RE: Case No. A-16-739887-C, Brown v. Landry's, Inc. et al.

- (1) False Statements and Concealment of Evidence**
- (2) Demand for Responsive Email Correspondence and Documents**
- (3) Demand for EDCR 2.34 Discovery-dispute Resolution Efforts**
- (4) Litigation Hold on Escalator Steps and Dates for Inspection**
- (5) Deposition Dates for Don Hartmann, Richard Smith, Clint Bekla, and Scott Olsen**
- (6) Settlement Offer**

Dear Counsel:

Third-Party Defendant Thyssenkrupp Elevator Corp.'s ("TKE") November 2017 supplemental production (the "TKE 2nd Supp."): ¹ (i) *revealed* damaging evidence against GNL, Corp. ("GNL") that GNL *hid* and *made false statements* about throughout discovery; ² and (ii) necessitates the notices and demands set forth herein.

(1) The TKE 2nd Supp. Reveals GNL's False Statements and Concealment of Evidence

The TKE 2nd Supp. contains, *inter alia*:

- i. October 2012 emails from TKE to GNL regarding the needed replacement of steps on the escalator at issue in this matter (the "Subject Escalator")—years before Plaintiff Joe Brown's May 12, 2015 injury (the "Injury");
- ii. A June 16, 2015 email from TKE to GNL approximately one month after the Injury recommending the mass replacement of many escalator steps, including five "critical" steps ("As we discussed, this is a safety matter for the riding public . . . At this time, we recommend replacing the 40 steps, however, *the 5 steps need to be addressed asap*"); ³ and
- iii. A June 25, 2015 email from TKE to GNL regarding urgently needed repair work and the mechanic "stress[ing] that this necessary repair work should be done very soon to avoid any further damage and/or incidents". ⁴

There appear to be *numerous emails concerning the dangerous condition of and needed repairs to* the Subject Escalator, and multiple incidents involving unsuspecting casino customers. These emails and attached documents involve several GNL and TKE personnel over several years—before and after the Injury, meaning GNL faced no difficulty in gathering and producing them. Indeed, GNL should have disclosed these emails by **February 2017** at the latest, in response to Ps First RFPs served on November 22, 2016, which sought, *inter alia*, "DOCUMENTS CONCERNING ANY reported malfunction by, AND

¹ TKE's November 6, 2017 Second Supplement to Early Case Conference List of Witnesses and Production of Documents ("TKE 2nd Supp."). The TKE 2nd Supp. is a 98-page disclosure without bates-numbering, so this correspondence shall identify the PDF's page number(s)).

² As discussed herein, all three of the following contained false statements and concealed evidence: (i) GNL, Corp.'s February 2, 2017 original responses to Plaintiffs' November 22, 2016 First Set of Requests for Production of Documents ("Ps First RFPs"); (ii) GNL, Corp.'s March 3, 2017 supplemental responses to Ps First RFPs; and (iii) GNL, Corp.'s October 20, 2017 responses to Plaintiffs' September 8, 2017 Second Set of Requests for Production of Documents ("Ps Second RFPs").

³ TKE 2nd Supp. at pp. 75-76 (Emphasis added).

⁴ *Id.* at p. 77.

ANY mechanical/operational problem issue CONCERNING, the ESCALATOR.”⁵ Plaintiffs granted GNL extended time to respond – nearly 2.5 months. GNL responded to Plaintiffs’ professional courtesy with a false statement and no documents:

“Defendant was unaware of any mechanical/operational issues with the Subject Escalator at the time the alleged incident occurred, and therefore, has no documents responsive to this request.”⁶

With the above, GNL (i) *concealed* the evidence of these emails; (ii) *failed to produce or even identify* any communications; (iii) *falsely claimed* it had no responsive documents and was “unaware of any mechanical/operational issues”;⁷ and (iv) *failed to explain* the due diligence undertaken, search terms employed, and individuals involved.⁸ In March of 2017, GNL *re-issued the original false statement* in supplemental responses;⁹ GNL did identify discovery here, but only four (4) pages worth regarding random TKE service records.¹⁰ In the *full calendar year* since the Ps First RFPs were served, and the *nine months* since GNL’s supplemental responses, and even *the full month* since the TKE 2nd Supp. proved damaging evidence existed under GNL’s untrue claims, GNL has not retracted or corrected these inaccurate statements and, instead, has continued to suppress this evidence—and, presumably, a lot of other evidence. And that’s the crux of the injustice here: GNL is flouting its discovery obligations and to what extent is unknown, while Plaintiffs’ case-in-chief was buttressed by TKE’s adherence to its discovery obligations, and Plaintiffs lack knowledge of the evidence GNL currently withholds.

As now revealed by the TKE 2nd Supp., even Plaintiffs’ most recent discovery to GNL has met with the same treatment. In response to the Ps Second RFPs and at least three separate requests seeking specific production,¹¹ GNL again stonewalled, only identifying random groupings of disclosed documents. Critically, GNL continued to suppress the emails and Plaintiffs’ legitimate and relevant RFPs—even after the TKE 2nd Supp.’s startling exposure.

The actual emails disclosed by TKE are – *standing alone – very troubling*, for revealing an entity (GNL) which failed to replace “critical” steps, ignored a “safety matter for the riding public” and moved at a snail’s pace and with a penny-pinching mentality regarding urgent repair work that was needed “very soon” to avoid “any further damage and/or incidents” to unsuspecting customers—a recipe for punitive damages. However, GNL’s long-term cover-up of the evidence is an independent wrong that introduces the specter of spoliation and adverse inferences. And GNL’s cover-up is made worse by the fact that it was on special notice for this evidence from Plaintiffs’ litigation hold letter dated November 15, 2016.¹²

(2) Demand for Email Correspondence and Documents Responsive to Ps First RFPs and Ps Second RFPs by December 22, 2017

⁵ Ps First RFPs, Request No. 2, p. 7, ll. 6-7.

⁶ See GNL’s February 2, 2017 Responses to Ps First RFPs, Response No. 2, p. 2, ll. 18-20.

⁷ *Id.* (Emphasis added).

⁸ In fact, GNL has never indicated – with any of its defective, obstructionist RFP responses, what searches and due diligence it undertook.

⁹ See GNL’s March 3, 2017 Supplemental Response to Ps First RFPs, Supplemental Request No. 2, p. 2, ll. 15-19.

¹⁰ *Id.*

¹¹ Among other requests, the Ps Second RFPs specifically sought all “DOCUMENTS, WRITINGS AND COMMUNICATIONS” relating to and/or concerning (1) the Subject Escalator exchanged between GNL and any other defendants to this action (Request No. 16)(which include emails exchanges with TKE); (2) ANY suggested, anticipated, planned, approved OR actual modernization, modification, or alteration of the Escalator between the date of its installation and September 1, 2017 (Request No. 17); and (3) ANY repairs OR part-replacements RELATING to the ESCALATOR between the date of its installation and September 1, 2017 (Request No. 18).

¹² Plaintiffs’ November 2016 litigation hold letter explicitly warned GNL to preserve and retain all documents and electronically stored information associated with the Injury.

Internal and external email correspondence and documents regarding the Subject Escalator and the Injury, exchanged between Don Hartmann, Clint Bekla, Irais Mendoza, Jim MacDavid, Scott Olsen, Larry Panaro, Paul Hamrick, and Christopher Dutcher (affiliated with GNL or TKE), are squarely within the scope of Ps First RFPs and/or Ps Second RFPs, including without limitation Ps First RFP Request No. 2,¹³ and Ps Second RFPs Requests Nos. 16, 17 and 18.¹⁴ And we know such evidence exists, from the TKE 2nd Supp.

Given that GNL has had in excess of *an entire calendar year* to respond to Ps First RFPs, and *nearly three (3) months* to respond to Ps Second RFPs, please produce the internal and external email, correspondence and documents responsive to the above-referenced RFPs, including communications involving one or more of the above-referenced eight individuals, within fourteen (14) calendar days of today, or December 22, 2017.

(3) Demand for EDCR 2.34 – Discovery-dispute Resolution Efforts between December 13, 2017 and December 22, 2017

This letter also constitutes a demand for an EDCR 2.34 meeting, regarding GNL’s responses to Ps Second RFPs. GNL’s responses to Ps Second RFPs are substantially deficient (in addition to the fact that they contain false statements and conceal evidence). Rather than provide the documents requested by Plaintiffs, GNL regurgitates the same boilerplate objections and references previously-disclosed documents that substantially fail to satisfy Plaintiffs’ requests. The language used here reflects the same elusive gamesmanship and stone-walling found in GNL’s responses to P First RFPs, and continue to make a mockery of GNL’s discovery obligations. The basis for Plaintiffs’ EDCR 2.34 demand are set forth below.¹⁵ Please contact undersigned counsel by December 13, 2017 with dates and times for a good-faith EDCR 2.34 conference to occur between December 13th and December 22nd, 2017.

¹³ See Footnote 5, *supra*.

¹⁴ See Footnote 11, *supra*.

¹⁵ GNL’s responses are deficient for a multitude of reasons. For example:

Request No. 9:

GNL’s response is elusive, unintelligible, and deficient in multiple respects. Plaintiffs’ request includes *all* documents, writings and correspondences *relating to any* “elevator accident reports” issued by the State of Nevada’s Division of Industrial Relations. GNL’s response objects on grounds that “public records are equally available to each party,” but this request was not limited to public records; rather, it includes those public records within GNL’s possession *and* any related documents, writings and correspondences—internal or otherwise—and likely evidence GNL currently conceals. Additionally, GNL’s response indicates that Defendant “would” not have records from the date of installation, which was 1979. The word “would” implies that GNL has not actually engaged in a meaningful and diligent review of/for such documents, or has not attempted retrieval of documents. Plaintiffs did not request disclosure of what GNL “would” have; rather, Plaintiffs requested those disclosures available to GNL upon a reasonable and diligent investigation. Separately, GNL’s response that it is not in possession of any responsive documents entitled “State of Nevada Elevator Accident Report” again ignores the breadth of the request, as the request was not limited to that specific title—and is likely false, given the revelations of the TKE 2nd Supp.

Request No. 10:

GNL’s response is elusive and deficient in multiple respects – and also very troubling. Plaintiffs here requested all documents, writings and correspondences in GNL’s possession, relating to the same Accident Reports identified in Request No. 9. GNL responded in Request No. 9 that the reports are publicly available and GNL would suffer an undue burden if required to produce these documents; Request No. 10 specifically requires the documents in *GNL’s* possession—internal and otherwise non-public documents within GNL’s control, which by definition are not equally available to Plaintiffs. Moreover, GNL claiming that it would be an undue burden to produce documents responsive to this Request means that GNL has a huge inventory of emails, communications and other documents

Request No. 13:

GNL’s response is unintelligible and elusive. GNL objects on grounds that the request is vague and ambiguous and proceeds to state that the title of Report No. 200 is designated as Case # 2015-00200, thus Plaintiffs’ request is unclear. Subsequently, GNL indicates that Defendant is not in possession of any documents responsive to this request, but GNL’s response does not articulate whether there are no follow-up reports to Report No. 200 simply because Plaintiff used an improper Report No., or if given GNL’s objection, there are no follow-up reports to the particular report in general.

(4) Litigation Hold on Escalator Steps and Dates for Inspection—December 2017 and January 2018

GNL IS HEREBY GIVEN NOTICE OF ITS OBLIGATION TO TAKE REASONABLE STEPS TO PRESERVE AND RETAIN ALL OF THE ESCALATOR STEPS ASSOCIATED WITH THE INJURY, AND WITH THE SUBJECT ESCALATOR FROM JANUARY 1, 2012 TO SEPTEMBER 1, 2017, ALL ASSOCIATED AND/OR RELATED PARTS, AND ALL RELATED DOCUMENTS AND ELECTRONICALLY STORED INFORMATION, WITHIN THE SCOPE OF NRCP RULE 34(a). In particular, GNL must keep and maintain all parts, modified or removed steps, replaced steps, broken and/or damaged steps, and steps slated for replacement (collectively, the “Steps”), and maintenance records, repair logs, security logs, incident reports, inquiries, correspondence, emails, text messages and complaints in its possession, regardless of whether prepared by personnel employed by GNL or others. Please also provide to undersigned counsel by December 13, 2017, proposed dates and times for inspection of the Subject Escalator and the Steps by Plaintiffs’ expert witness during the first two weeks of January 2018.

(5) Deposition Dates for Don Hartmann, Richard Smith, Clint Bekla, and Scott Olsen—December 2017, January 2018 and February 2018

Please provide the availability of Don Hartmann, Richard Smith, Clint Bekla, and Scott Olsen, individually, for depositions during the following time periods: ***December 21st and 22nd, 2017***, and ***January 10th through February 2nd*** (inclusive, meaning that undersigned counsel shall be available on any and all dates within ***this 3.5-week range***, for morning and afternoon sessions). We have provided nearly a month of flexibility and expect all of the above-referenced witnesses to be able to commit to some date within this vast stretch of time. Please provide concrete dates of availability for these individuals by December 15, 2017.

(6) Settlement Offer

As set forth above, GNL is facing a rapidly deteriorating litigation position, including from (1) the disturbing content of the emails produced in the TKE 2nd Supp. – and emails, attached documents, and communication GNL presently suppresses; evidence of gross negligence and reckless disregard, forming the basis for punitive damages, now factor into this case; and (2) the discovery abuses themselves—including false statements and concealment of damaging evidence for the better part of a calendar year, which trigger spoliation and adverse inference issues. And GNL’s litigation position was not enviable to begin with, as its escalator caused an unsuspecting customer, a Vietnam War veteran, to break his neck and suffer extraordinary levels of pain every single day. In light of the foregoing, Plaintiffs are willing to settle this case today for \$6,200,000. We trust that you will share this correspondence with GNL, the related defendants Landry’s and Golden Nugget, Inc., and with the applicable insurance carrier(s). The above offer remains open until close of business on January 8, 2018.

Please contact me regarding scheduling the EDCR 2.34 efforts (Section 3), the January 2018 inspection of the Steps (Section 4), and the requested deposition dates (Section 5). Thank you in advance for your cooperation.

Sincerely,
IQBAL LAW PLLC


Mohamed A. Iqbal, Jr.
Attorneys for Plaintiffs

Similarly, GNL’s responses to Requests No. 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 are deficient.

IQBAL LAW PLLC

June 8, 2018
Rebecca L. Mastrangelo
William Mitchell
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
300 S. 4th St., #710
Las Vegas, NV 89101
via E-Service

RE: Case No. A-16-739887-C, Brown v. Landry's, Inc. et al.

- (1) Discovery of Previously Denied Emails During Chris Dutcher's Deposition**
- (2) Demand for Emails, Documents, and Other Correspondence Responsive to Plaintiffs' January 4, 2018 First Set of RFPs to TKE ("Plaintiffs' 1st RFPs") by July 9, 2018, and for EDCR 2.34 Efforts**
- (3) Litigation Hold and Plaintiffs' Right to Inspect**
- (4) TKE's Potential Spoliation**
- (5) Deposition Dates for Scott Olsen, Larry Panaro, and TKE's Relevant IT Officer, Employee, or Consultant**

Dear Rebecca and Will:¹

On January 4, 2018, Plaintiffs served seven specific requests upon Third-Party Defendant Thyssenkrupp Elevator Corp. ("TKE") in Plaintiffs' 1st RFPs, which identified key individuals and sought, *inter alia*:

- ◆ Internal documents, records, other writings, and correspondence (including emails)² dated January 1, 2011 to September 1, 2017 between any one or more of Paul Hamrick, Scott Olsen, Jim MacDavid, Larry Panaro, and/or Christopher Dutcher, relating to the down escalator (the "Escalator") at the Golden Nugget Laughlin ("Golden Nugget"). See Request No. 7.
- ◆ Documents, records, other writings, and correspondence (including emails) dated January 1, 2011 to September 1, 2017 between Christopher Dutcher and Golden Nugget personnel. See Request No. 2.

TKE's February 6, 2018 Response to Plaintiffs' First Set of RFPs ("TKE's 1st RFP Responses") produced nothing—no documents, records, other writings or correspondence (including emails)—and claimed to have "not located any documents responsive to this Request" to each and every one of Plaintiffs' seven requests. In six of its responses, TKE claimed no responsive documents other than those in TKE's November 6, 2017 Second Supplement to Early Case Conference List of Witnesses and Production of Documents ("TKE 2nd Supp."). The TKE 2nd Supp. contains *no internal TKE emails* regarding the Escalator, and it contains *no emails* sent to, received by, or even copying Chris Dutcher. In fact, the TKE 2nd Supp. contains only three email chains, two from 2012 and one from 2015, with a grand total of 13 emails.³

(1) Discovery during Chris Dutcher's Deposition of Previously Denied Emails

On or about May 30, 2018, Plaintiffs received the transcript of the May 14, 2018 deposition of TKE mechanic Chris Dutcher (the "Dutcher Dep."), which confirmed that Chris Dutcher testified under oath to, *inter alia*, the following:

- ◆ Sending to and receiving from TKE supervisors emails regarding the Escalator;⁴
- ◆ During his eight years of servicing the Escalator on behalf of TKE, a timeframe that includes the incident at issue in this case, Dutcher considered Scott Olsen and Larry Panaro to be his supervisors;⁵ and

¹ As undersigned counsel indicated on or about May 31, 2018, we do not intend to litigate this when Rebecca is out of the office on a noticed absence—hence the 30 days referenced in Section (2), *infra*.

² These items are squarely within the scope of the terms "ALL DOCUMENTS, WRITINGS AND COMMUNICATIONS" as set forth in Plaintiffs' 1st RFPs and used in each of the seven separate requests therein.

³ This total does not include the "FYI" emails from Larry Panaro (TKE) to Scott Olsen (TKE) dated October 31, 2017 that forwarded the underlying 2012 and 2015 emails between TKE and Golden Nugget.

⁴ See Dutcher Dep. at p. 30:20-22; 56:8-16; 57:1-19; 61:21-24 and 70:21-25.

⁵ *Id.* at p. 14:18-15:3; 15:11-22; 34:16-24; 35:10-21; 36:8-22; 37:16-25; 43:14-25 and 59:15-18.

- ◆ Dutcher had emails with Golden Nugget's Don Hartmann.⁶

It is now clear that the emails TKE apparently failed to locate, as asserted in TKE's 2nd Supp. in February of 2018, actually do exist, based on the sworn testimony of Chris Dutcher in May. Equally troubling, Mr. Dutcher also testified to potential spoliation and loss of evidence.

(2) Demand for Emails, Documents, Records, and Correspondence Responsive to Plaintiffs' 1st RFPs, by July 9, 2018 and for EDCR 2.34 Efforts

All internal TKE emails, documents, records, and correspondence regarding the Escalator, and *all of Chris Dutcher's* emails, documents, records, and correspondence regarding the Escalator, are within the scope of Request Nos. 2 and 7 in Plaintiffs' 1st RFPs. Given the fact that TKE has had in excess of *five months* to respond to them, a further grant of 30 days here—made in good faith—is generous. Accordingly, please produce:

- ◆ All internal TKE emails, documents, records, and correspondence dated January 1, 2011 to September 1, 2017 regarding the Escalator; and
- ◆ All emails, documents, records, and correspondence sent or received by, or copying, Christopher Dutcher dated January 1, 2011 to September 1, 2017 regarding the Escalator, *by the close of business on July 9, 2018*, to undersigned counsel's attention.

This letter constitutes Plaintiffs' initial EDCR 2.34 effort, and we would like to arrange a conference call to discuss and potentially resolve this dispute. Please contact undersigned counsel with dates and times for an EDCR 2.34 conference.

(3) Litigation Hold on TKE's "Cloud", the TKE "Smart Phone" Recording System, Dutcher's Former Device(s), the "Logbook", Dutcher's Email Account, and the "Account History Report" for the Escalator, and Plaintiffs' Right to Inspect the Same

TKE is hereby given notice of its obligation to take reasonable steps to preserve any and all information, emails, documents, data, correspondence and equipment associated with the following:

- ◆ TKE's "Cloud"⁷—Dutcher's emails regarding the Escalator may be in the TKE Cloud;
- ◆ TKE's "Smart Phone" Recording System⁸—Dutcher testified extensively regarding the "Smart Phone" system, and how he recorded information regarding certain services, repairs, and inspections of the Escalator;
- ◆ Dutcher's previous TKE iPhone⁹—Dutcher received emails on, and sent emails from, this device, and turned it over to Scott Olsen upon Dutcher's move to New York City in February of 2018;
- ◆ TKE or Golden Nugget Laughlin's "Logbook"¹⁰—Dutcher testified that he recorded certain events in the Logbook associated with his services, repairs, and inspections of the Escalator;
- ◆ Dutcher's email account; and
- ◆ The complete "Account History Report"—Dutcher testified that the Account History Report located on pages 7 to 23 of TKE's 2nd Supp. was incomplete (*e.g.*, evidence of annual inspections is missing from the Account History Report in TKE's 2nd Supp.)¹¹

⁶ *Id.* at p. 64:7-18.

⁷ *Id.* at p. 34:2-8 and 73:14-16.

⁸ *Id.* at p. 21:23-25; 22-23; 24:1-10; 25:21-25; 26:5-24; 30:1-6; 42:1-13; 54:22-25; 55:5-13; 68:11-69:18; 70:13-17; 76:16-19; 79:7-15; 79:25-80:24; 81:17-20; 82:1-9 and 90:16-19.

⁹ *Id.* at p. 33:7-12.

¹⁰ *Id.* at p. 26:25-27:20; 50:12-19; 51:21-25; 52-53; 54:1-21; 55:1-18; 57:20-58:6; 60:18-61:4; 65:23-66:16; 68:11-20; 74:3-7 and 79:16-19.

¹¹ *Id.* at p. 76:16-24; 79:7-80:19; 86:15-21; 90:8-93:9.

and all associated and/or related parts, and all related documents and electronically stored information, within the scope of NRC Rule 34(a).

Furthermore, Plaintiffs reserve the right to seek, among other things, third-party inspections and forensic accounting with respect to the above-referenced information, equipment and systems.

(4) TKE's Potential Spoliation

The preservation of the above-referenced information, emails, documents, records, data, correspondence and equipment is especially important given Dutcher's sworn testimony about potential spoliation linked to TKE's procedures, acts, and failures to act. Dutcher testified that his TKE iPhone crashed in mid-2017 and that he was unable to retrieve emails before that time.¹² If true, this loss of potential evidence occurred well after this litigation was initiated and after TKE's obligations to preserve evidence became not only tangible but unambiguous and substantial. Dutcher also testified that the TKE Smart Phone system barred access to information outside of the current calendar year¹³ and had problems with data entry,¹⁴ and that certain Account History Report entries from before 2012 are unavailable.¹⁵

Given the fact that: (i) TKE denied for several months the existence of, and/or simply failed to identify/produce, most of the above-referenced information, emails, documents, records, data, correspondence and equipment—until Plaintiffs' discovery; (ii) Plaintiffs only discovered such evidence at Mr. Dutcher's May 2018 deposition (e.g., given Mr. Dutcher's testimony that he sent emails regarding the Escalator to his supervisors); and (iii) until May of 2018 Plaintiffs were made unaware of such evidence by TKE's assertions, Plaintiffs are very concerned about the spoliation of evidence by TKE's acts and failures to act.

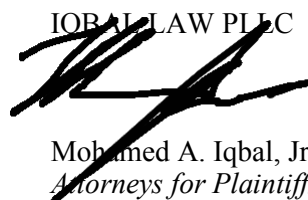
(5) Deposition Dates for Scott Olsen, Larry Panaro, and TKE's Relevant IT Officer, Employee, or Consultant

Please provide the availability of Scott Olsen, Larry Panaro, and TKE's person most knowledgeable regarding TKE's IT system(s) and configuration, TKE's Cloud, TKE's "Smart Phone" system, TKE employee devices and email account(s), and data and document retention, for depositions during the following time periods: July 10th through July 31st (inclusive, meaning that undersigned counsel shall be available on any and all dates within *this three-week range*, for morning and afternoon sessions). Accordingly, we have provided a substantial amount of flexibility and expect all of the above-referenced witnesses to be able to commit to some date within this stretch of time. Please provide concrete dates of availability for these individuals *by June 18, 2018*.

Please contact me regarding scheduling the proposed EDCR 2.34 conference call (Section 2) and the requested deposition dates (Section 5). Thank you in advance for your cooperation.

Sincerely,

IQBAL LAW PLLC



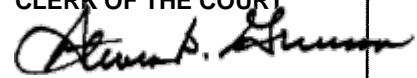
Mohamed A. Iqbal, Jr.
Attorneys for Plaintiffs

¹² *Id.* at p. 72:12-73:24.

¹³ *Id.* at p. 26:9-24.

¹⁴ *Id.* at p. 80:20-81:22.

¹⁵ *Id.* at p. 90:8-93:9.



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

Date of Hearing:

Time of Hearing:

DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR
CORPORATION'S MOTION IN LIMINE #8 RE: EXCLUDE
THE TESTIMONY OF SHEILA NABORS SWETT

JNB01335

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation ("TKE"), by and
2 through its attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Motion in Limine #8 re:
4 Exclude the Testimony of Sheila Nabors Swett.

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

8 DATED this 14th day of November, 2018.

9 ROGERS, MASTRANGELO, CARVALHO
10 & MITCHELL

11 
12 REBECCA L. MASTRANGELO, ESQ.

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

2 TO: ALL INTERESTED PARTIES; and

3 TO: THEIR ATTORNEYS OF RECORD

4 YOU WILL PLEASE TAKE NOTICE that undersigned will bring the foregoing
5 **DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR**
6 **CORPORATION'S MOTION IN LIMINE #8 RE: EXCLUDE SHEILA NABORS SWETT**
7 on for hearing before Department XXXI of the Eighth Judicial District Court in Clark County,
8 Nevada on the 18 day of December, ²⁰¹⁹~~2018~~, at the hour of 9:00 A.m., or as soon
9 thereafter as the matter can be heard.

10 DATED this 14 day of November, 2018.

11 ROGERS, MASTRANGELO, CARVALHO
12 & MITCHELL

13 
14 REBECCA L. MASTRANGELO, ESQ.

15 Nevada Bar No. 5417

16 700 S. Third Street

17 Las Vegas, Nevada 89101

18 Attorney for Defendant/Third-Party Defendant

19 THYSSENKRUPP ELEVATOR CORPORATION

20 **POINTS AND AUTHORITIES**

21 **I**

22 **BACKGROUND AND RELIEF SOUGHT**

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

Plaintiffs hired Sheila Nabors Swett as an expert witness to opine on the alleged negligent
maintenance by Defendants. Swett's report, attached as Exhibit "A," sets forth conclusory

1 opinions criticizing thyssenkrupp's maintenance and cleaning of the escalator but doesn't opine
2 on how the alleged deficiencies led to Mr. Brown's fall. In addition, Swett acknowledged in
3 deposition that her criticisms, as set forth in her report, were not the causal reason for Mr.
4 Brown's fall. Further, Ms. Swett is unqualified to render any opinions on escalator maintenance
5 and there is a lack of foundation for any opinions she may give.

6 II

7 DEPOSITION TESTIMONY OF SHEILA SWETT

8 Sheila Nabors Swett was deposed on October 1, 2018. (See deposition transcript attached as
9 Exhibit "B.") Ms. Swett does not possess the proper qualifications necessary to testify in this matter.
10 Ms. Swett does not have an engineering degree, and in fact, has no college degree outside of a two
11 year technical degree. (Exhibit "B," pages 8-12.) She has never worked on an escalator as a
12 mechanic; she has never installed an escalator; she has never maintained, serviced or repaired an
13 escalator. The companies she has owned do not provide escalator maintenance. (Exhibit "B," pages
14 43-44; page 123):

15 Q Have you ever worked as an elevator or escalator mechanic?

16 A No.

17 Q Have you ever done any physical installation of escalators?

18 A Not escalators, no.

19 Q Have you ever maintained an escalator?

20 A No.

21 Q Have you ever repaired or serviced an escalator?

22 A I have not.

23 ...

24 Q But you don't do and none of your companies do escalator maintenance?

25 A No.

26 At her deposition, Ms. Swett opined that Joe Brown fell due to a shaky step on the escalator, which
27 was caused by cracks in the steps that TKE failed to find due to "dirt" on the escalator stairs. (Exhibit
28 "B," pages 114-115):

Q Let me just ask you one big question before the break, which will hopefully make our
afternoon go a little quicker. I would like you to list for me the opinions that you
have in this case as to why -- what caused Mr. Brown to fall.

A Okay.

1 Q One.
2 A One, the cracks in the steps; two, and this is subsidiary, maintenance. They should
3 have caught this long before that. So, the maintenance of the elevator, they should
4 have caught those cracks. You don't -- you don't get cracks in every step you have in
5 a day. So, the maintenance of not looking for those cracks and knowing that they
6 exist on that elevator type and that they have had issues with that elevator before.
7 So...

8 Q So, that's literally just one opinion; but I get your subsection.
9 A Yes.

10 However, Ms. Swett admitted that the alleged "dirty" condition of the escalator would not have
11 caused Plaintiff's fall. (Exhibit "B"; pages 104-105):

12 Q. If there was a buildup of dust and dirt and so forth underneath this escalator and in
13 the areas that you observed it in 2018, if that same or similar condition was present
14 in 2015, could that have caused the escalator steps to be shaky?

15 A No.

16 Q If the dirty, dusty condition that you saw in 2018 existed in May of 2015, did that
17 have any bearing on Mr. Brown's fall?

18 A The steps that we saw were dirty enough that they could -- you could not see the
19 cracks.

20 Q No, but I'm just talking about him getting on the escalator and falling, did that -- was
21 that caused in any way by the dirt?

22 A It was caused by the cracks of the steps.

23 Q Okay. I've got to have a yes or no unless there's some other answer to it. If the dirty,
24 dusty condition that you observed in 2018, if that same condition or similar condition
25 was present in May of 2015 on this escalator, did that in any way cause
26 Mr. Brown to fall on that date?

27 A Okay. The dirt, had it occurred on that day or previous to that date, would have
28 impeded their ability to see cracks. So, the dirt itself would not have caused it. The
inability to properly visually inspect the step caused...

Ms. Swett simply assumes that the steps were dirty at the time of the incident. (Exhibit "B," page
106):

21 Q. Got you. Is there any way now for anyone to say one way or the other whether the
22 escalator was dirty in May of 2015?

23 A There's no way that I can tell. I can only tell from the steps that were removed. And
24 those steps were certainly dirty.

25 Ms. Swett does not know what "cracked" step Plaintiff stepped on to allegedly cause his fall.
26 (Exhibit "B," page 124; 128-129):

27 Q Okay. And I apologize. I know I asked you this, but I don't remember what you
28 said. Is there any way that you're able to say which step Mr. Brown was on at the
time of his fall?

A I -- there's no way I could tell, because he actually fell steps and then they continued

1 to roll.

2 Q So, is there any way -- is there any evidence that the step that Mr. Brown was on just

3 A There's no way to determine which step he was on.

4 Q Or if it was cracked?

5 A You could determine if a step was cracked, but you could not determine if that's the

6 one he was standing on.

7 Ms. Swett should not be allowed to testify at trial to her speculative opinions for the

8 following reasons:

- 9 1) Ms. Swett does not possess the necessary qualifications to testify as to negligent
- 10 maintenance pursuant to *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008).
- 11 2) The alleged "dirty" condition of the escalator did not cause Plaintiff's fall.
- 12 3) Ms. Swett cannot identify which step was so cracked and unstable as to cause
- 13 Plaintiff's fall, and cannot testify that the step that Mr. Brown was standing on prior
- 14 to his fall was, in fact, cracked.

15 **III**

16 **MOTION IN LIMINE**

17 Motions in Limine are designed to seek the court's rulings on the admissibility of arguments

18 and evidence seeking to be admitted or utilized at trial. Such motions are governed by EDCR 2.47,

19 and must contain an affidavit of counsel setting forth the parties attempts to resolve the matter prior

20 to the filing of the motion. Defendant has attempted to resolve the factual or legal issues involved

21 in this motion, as outlined below.

22 **IV**

23 **AFFIDAVIT OF COUNSEL PURSUANT WITH EDCR 2.47**

24 STATE OF NEVADA)

25) ss:

26 COUNTY OF CLARK)

27 REBECCA L. MASTRANGELO, being first duly sworn, deposes and says:

- 28 1. That your Affiant is an attorney licensed to practice law in all the courts in the State
- of Nevada;
2. That your Affiant is counsel of record for Defendant/Third Party Defendant
- thyssenkrupp Elevator Corporation in the above captioned matter;

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4. That prior to filing said Motion, Affiant had a personal telephone call with Plaintiffs' counsel, Mohamed Iqbal, Esq. on November 13, 2018. At that time, Mr. Iqbal advised that he would not stipulate that his expert, Sheila Nabors Swett, could be excluded at the time of trial. As such, the instant Motion became necessary to seek a court order on Ms. Swett's exclusion.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 14th day of November, 2018.


REBECCA L. MASTRANGELO, ESQ.

SUBSCRIBED AND SWORN to before me
this 14 day of November, 2018.

~~Notary Public~~



V

LEGAL ARGUMENT

A. Ms. Swett does not have the necessary foundation to testify to her opinions pursuant to NRS 50.275 and *Hallmark*.

Under NRS 50.275, an expert witness must satisfy the following three requirements in order to testify:

(1) he or she must be qualified in an area of “scientific, technical or other specialized knowledge” (the qualification requirement); (2) his specialized knowledge must “assist the trier of fact to understand the evidence or to determine a fact in issue” (the assistance requirement); and (3) his testimony must be limited “to matters within the scope of his specialized knowledge” (the limited scope requirement).

In determining whether a person is properly qualified, a district court should consider the following factors: (1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training. *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008). These factors are not exhaustive, may be accorded varying weights, and

1 may not be equally applicable in every case. *Id.*

2 If a person is qualified to testify as an expert under NRS 50.275, the district court must then
3 determine whether his or her expected testimony will assist the trier of fact in understanding the
4 evidence or determining a fact in issue. *Id.* An expert's testimony will assist the trier of fact only
5 when it is relevant and the product of reliable methodology. *Id.*

6 In determining whether an expert's opinion is based upon reliable methodology, a district
7 court should consider whether the opinion is

8 (1) within a recognized field of expertise;

9 (2) testable and has been tested;

10 (3) published and subjected to peer review;

11 (4) generally accepted in the scientific community and

12 (5) based more on particularized facts rather than assumption, conjecture, or generalization.

13 *Id.* at 500–02.

14 Further, while not adopting federal standard set forth in *Daubert v. Merrill Dow*
15 *Pharmaceuticals*, 509 U.S. 579, 113, 113 S.Ct. 2786, 125 L.Ed. 2d. 1469 (1993), the Nevada
16 Supreme court reiterated in *Hallmark* that the Nevada standard “tracks” FRE 702, and that *Daubert*
17 is “persuasive authority” regarding expert admissibility. *Hallmark*, 189 Nev. at 650.

18 Ms. Swett purports to discuss TKE’s negligent maintenance of the escalator. However, she
19 has never performed maintenance on any escalator, and has never worked in the industry as an
20 escalator mechanic. She opines that the stairs were “dirty” at the time of the incident, but she has no
21 personal knowledge of the condition present at that time. She merely assumes that the stairs were
22 “dirty” given her inspection in 2018, years after the incident.¹

23 Ms. Swett’s experience in escalator “design” does not provide her the necessary
24 qualifications to testify as to negligent maintenance. See *Jones v. Novartis Pharmaceuticals Corp.*,
25 235 F. Supp. 3d 1244, 1251 (N.D. Ala. 2017), *aff’d* in part sub nom. *Jones v. Novartis*

27 ¹ Notably, the inspection, occurring one day after the subject accident, conducted by independent inspector,
28 James Stephen Robertson, showed that the stairs were in good condition, and were not shaky or unstable. (Exhibit
“C,” pages 17-19; 74).

1 *Pharmaceuticals Co.*, 720 Fed. Appx. 1006 (11th Cir. 2018) (Emphasis added.):

2 To meet Prong One, a party must show that the expert has sufficient “knowledge, skill,
3 experience, training, or education” to form a reliable opinion about the relevant issue.
4 Hendrix, 609 F.3d at 1193. **Experience in a particular field is not enough to qualify an
expert; the expert must have experience with the issue before the court.** See *id.* at 1201.

5 See also *Furlan v. Schindler Elevator Corp.*, 864 F. Supp. 2d 291, 298–99 (E.D. Pa. 2012), *aff’d*, 516
6 Fed. Appx. 201 (3d Cir. 2013):

7 Finally, Mr. Kennedy's qualifications provide no reassurance that his opinion is reliable.
8 “[A]n expert's ‘level of expertise may affect the reliability of the expert's opinion.’ ” Elcock,
9 233 F.3d at 749 (quoting Paoli II, 35 F.3d at 741). Mr. Kennedy has not performed
10 maintenance work on an escalator since the 1980s. He has no formal education relating to
escalators, engineering, or any relevant field. At his deposition, he could not identify an
instance in which he had maintained or repaired an HC–48 escalator, and he has never seen
the finger guard of an HC–48 escalator in new condition.

11 For these reasons, Mr. Kennedy's opinion does not satisfy Daubert's reliability requirement,
12 and the Court grants defendant's motion to preclude his testimony.

13 See also *Mueller v. Chugach Fed. Sols., Inc.*, 2014 WL 2891030, at *9 (N.D. Ala. June 25, 2014):

14 Even so, Dr. Barbaree should not be permitted to testify as to the proper maintenance of a
15 cooling tower, or whether defendants complied with prevailing maintenance standards within
the relevant industry.

16 Ms. Swett does not satisfy any of the qualification requirements under *Hallmark*. She has no
17 relevant escalator maintenance experience from any formal schooling, employment experience, or
18 practical experience and specialized training. *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646
19 (2008). Even if Ms. Swett could testify as to the negligent design of the escalator², these opinions
20 have no bearing upon the liability of TKE for negligent maintenance. Thus, she should be precluded
21 from testifying as a self-proclaimed “expert” at trial.

22 **B. There is no evidence of negligent maintenance.**

23 As the Court is aware, in order to proceed with the claim of negligence, plaintiffs have the
24 burden of proving:

- 25 1. A duty of care owed by the Defendant;
- 26 2. A breach of the duty;
- 27 3. Proximate cause between the breach of duty and Plaintiffs’ alleged damages;

28 ² The escalator’s designer and manufacturer is no a party to this suit.

4. **and**
Damages sustained by the Plaintiff.

Joynt v. California Hotel & Casino, 108 Nev. 539, 835 P.2d 799 (1992); *Klasch v. Walgreen Co.*, 127 Nev. Adv. Op. 74, 264 P.3d 1155, 1158 (2011).

Further, it is well settled law in the state of Nevada that:

The mere fact that there was an accident and someone was injured is not of itself sufficient to predicate liability. Negligence is never presumed, but must be established by substantial evidence.

Gunlock v. New Frontier Hotel Corp., 78 Nev. 182, 370 P.2d 682, 684 (1962) (overruled on other grounds).

Maintenance providers “are [not] insurers of elevator passengers' safety.” *Brady v. Elevator Specialists, Inc.*, 653 S.E.2d 59, 64 (Ga. Ct. App. 2007). Because elevators are mechanical devices, they can “become dangerous and cause injury without the negligence of anyone.” *Id.* at 65. See also *Spencer v. Otis Elevator Co.*, 2016 WL 5419438, at *3–4 (S.D. Ga. Sept. 27, 2016):

For Plaintiff to prevail on her negligence claim at trial, she must provide “affirmative proof” of Defendants’ negligence. *Ellis*, 388 S.E.2d at 920. The elevator’s malfunction and Plaintiff’s subsequent injury, alone, do not establish negligence. *Brady*, 653 S.E.2d at 64. Plaintiff must prove that Defendants did something wrong – in this case, evidence that Defendants failed to properly maintain the elevator or failed to fix a problem they knew or should have known about.

Where an expert opinion is not sufficiently based in facts, it should not be admitted. See *United States v. Real Prop. Located at 475 Martin Lane, Beverly Hills California*, 298 Fed. Appx. 545, 550–51 (9th Cir. 2008); citing *Guidroz–Brault v. Missouri Pac. R.R.*, 254 F.3d 825, 831–32 (9th Cir.2001). See also *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 807 (9th Cir.1988) (upholding district court's exclusion of conclusions in expert report with only “scant basis” in the record); *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 2007 WL 2375056, at *2 (D. Nev. Aug. 15, 2007):

In addition, as Judge Cardozo explained: “[a]n opinion has a significance proportioned to the sources that sustain it.” *Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank*, 253 N.Y. 23, 25, 170 N.E. 479, 483 (1930). Thus, “an expert’s report that does nothing to substantiate this opinion is worthless, and therefore inadmissible.”

Ms. Swett admitted that the alleged “dirty” condition of the escalator did not cause Plaintiff’s fall. (Exhibit “B,” pages 104-105). While her opinion testimony is that some of the escalator steps

1 were “shaky” due to cracking, she cannot opine that TKE was negligent in its maintenance of the
2 steps because she does not have the proper foundation. Even if she had such a foundation, the alleged
3 dirty condition did not cause the fall. Nor can she properly testify that dirty condition of the steps
4 prevented TKE from finding the shaky condition of the steps. Ms. Swett has no idea what the
5 condition of the steps were at the time of the incident, and her opinion on the dirty condition is mere
6 speculation.

7 Ms. Swett has also admitted that she cannot testify that Plaintiff was standing on a cracked
8 step prior to his fall. In order to find liability, Plaintiffs must prove that a defective condition
9 **actually caused** the injury, not merely that a defect was present at the time. See *Glenn v. B & R*
10 *Plastics, Inc.*, 326 F. Supp. 3d 1044, 1065 (D. Idaho 2018):

11 In *Mortensen*, the Idaho Supreme Court stated, “Proof of malfunction causing direct injury
12 ... could, under certain circumstances, be circumstantial evidence of the defect in the product
13 at the time of sale.” 107 Idaho at 839, 693 P.2d at 1041 (citing *Farmer*, 97 Idaho 742, 553
14 P.2d 1306). The court then added, “However, the *Farmer* rule that evidence of malfunction
15 is circumstantial evidence of a ‘defective condition’ only applies where the plaintiff’s proof
16 has excluded the possibility of other ‘reasonably likely causes.’ ” Id. (citing *Farmer*, 97 Idaho
17 at 749, 553 P.2d at 1313). Thus, the requirement to exclude other “reasonably likely causes”
18 applies to the question of whether a malfunction is circumstantial evidence of a defective
19 condition. More to the point, however, in *Mortensen*, the court explained, “Under *Farmer*,
20 ‘[a] prima facie case may be proved by direct or circumstantial evidence of a malfunction of
21 the product and the absence of evidence of abnormal use and the absence of evidence of
22 reasonable secondary causes which would eliminate liability of the defendant.’ ” Id. at
23 839-40, 693 P.2d at 1041-42 (emphasis added) (quoting *Farmer*, 97 Idaho at 747, 553 P.2d
24 at 1311). Thus, *Mortensen* and *Farmer* plainly state that the absence of evidence of abnormal
25 use and the absence of evidence of reasonable secondary causes are requirements of a prima
26 facie case of a product defect, whether the evidence of a malfunction is direct or
27 circumstantial.

28 Thus, even if there were a couple cracked steps on the escalator in May of 2015, Ms. Swett’s
own testimony is that she does not know which step Plaintiff was on or if it was cracked. To the
contrary, the testimony of Mr. Robertson shows that the escalator steps were **not** shaky or unstable,
as he tested them the day after the incident. (Exhibit “C,”; pages 17-19; 74). Without identifying
which step was allegedly so cracked and unstable that it caused Plaintiff to fall, Ms. Swett’s
testimony is nothing more than sheer speculative.

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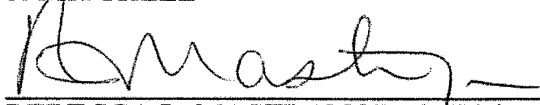
VI

CONCLUSION

Based upon all of the foregoing, Defendant respectfully requests that the Court grant the foregoing Motion in Limine.

DATED this 14th day of November, 2018.

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL



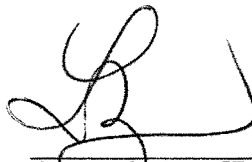
REBECCA L. MASTRANGELO/ESQ.
Nevada Bar No. 5417
700 S. Third Street
Las Vegas, Nevada 89101
Attorney for Defendant/Third-Party Defendant
THYSSENKRUPP ELEVATOR CORPORATION

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 14 day of
4 November, 2018, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE**
6 **#8 RE: EXCLUDE THE TESTIMONY OF SHEILA NABORS SWETT** was served via
7 electronic means with the Eighth Judicial District Court, addressed as follows, upon the following
8 counsel of record:

9
10 Mohamed A. Iqbal, Jr., Esq.
11 Christopher Mathews, Esq.
12 101 Convention Center Drive, Suite 1175
13 Las Vegas, Nevada 89109
14 Attorneys for Plaintiffs

15 Annalisa N. Grant, Esq.
16 Alexandra B. McLeod, Esq.
17 GRANT & ASSOCIATES
18 7455 Arroyo Crossing Parkway, Suite 300
19 Las Vegas, Nevada 89113
20 Attorneys for Defendant/Third-Party Plaintiff

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An employee of ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

EXHIBIT A

JNB01348



SWETT & ASSOCIATES

Elevator Consultants

May 4, 2018

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

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

Dear Mr. Iqbal:

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

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

ITEMS REVIEWED AND CONSIDERED:

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

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

INTRODUCTION:

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

EQUIPMENT BASICS:

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

INCIDENT SUMMARY:

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

SITE REVIEW:

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

CONCLUSIONS

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Findings from depositions, site visit, and exhibits reviewed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OPINIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

Respectfully Submitted,

Sheila N. Swett

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JNB_002309

JNB01354

EXHIBIT B

JNB01355

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3		
4	JOE N. BROWN, an	:
	individual, and his wife,	:
5	NETTIE J. BROWN, an	:
	individual,	:
6		:
	Plaintiffs,	: CASE NO. A-16-739887-C
7		: DEPT. NO XXXI
	vs.	:
8		:
	LANDRY'S INC., a foreign	:
9	corporation; GOLDEN	:
	NUGGET, INC., a Nevada	:
10	corporation d/b/a GOLDEN	:
	NUGGET LAUGHLIN; GNL,	:
11	CORP., a Nevada	:
	corporation; DOE	:
12	INDIVIDUALS 1-100, ROE	:
	BUSINESS ENTITIES 1-100,	:
13		:
	Defendants.	:
14		:
	GNL, CORP., a Nevada	:
15	corporation;	:
		:
16	Third-Party Plaintiffs,	:
		:
17	vs.	:
		:
18	THYSSENKRUPP ELEVATOR	:
	CORPORATION a foreign	:
19	corporation; DOES 1-75;	:
	ROE CORPORATIONS 1-75 and	:
20	ROE CORPORATIONS 1-25,	:
		:
21	Third-Party Defendants.	:
		:
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ORAL DEPOSITION

SHEILA NABORS SWETT

OCTOBER 1ST, 2018

ORAL DEPOSITION of SHEILA NABORS SWETT, taken on the 1st day of October, 2018, beginning at 10:28 a.m., at the offices of Regus, 1200 Smith Street, Houston, Texas, pursuant to Notice and to Rule 30(b) (2) of the Nevada Rules of Civil Procedure.

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SHEILA NABORS SWETT,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. MASTRANGELO:

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

A. Sheila Nabors Swett, S-w-e-t-t.

Q. Okay. Ms. Swett, we met previously at the escalator inspection. My name is Rebecca Mastrangelo. I represent ThyssenKrupp Elevator. Ms. McLeod is on the videoconference. She represents Golden Nugget.

How many depositions have you given previously?

A. Twenty-ish.

Q. When was the last time, approximately?

A. In the last six months, I've given one, yeah.

Q. Okay. Have you had any other cases in the state of Nevada?

A. No.

Q. Have you testified in trial as an expert at all?

A. None of my cases have made it to trial.

Q. Okay. As far as you know, has your testimony or your qualifications as an expert been offered to go to trial and it's been excluded or disallowed for any

<p style="text-align: right;">Page 6</p> <p>1 reason?</p> <p>2 A. No, never.</p> <p>3 Q. All right. I think I'll just briefly go over</p> <p>4 the deposition --</p> <p>5 MS. MASTRANGELO: Can you hear okay?</p> <p>6 Alex, you okay?</p> <p>7 MS. MCLEOD: I'm good.</p> <p>8 MS. MASTRANGELO: Okay. I think I'll</p> <p>9 just --</p> <p>10 MS. MCLEOD: I was trying to see if I</p> <p>11 could mute it so that you didn't get any feedback from</p> <p>12 my end.</p> <p>13 MS. MASTRANGELO: No, you're fine on our</p> <p>14 end.</p> <p>15 Q. (BY MS. MASTRANGELO) I think I'll just go</p> <p>16 over the deposition rules that we follow in Nevada just</p> <p>17 so that we're all on the same page and that you and I</p> <p>18 don't have any misunderstandings today or at some later</p> <p>19 point in time.</p> <p>20 As you know, the court reporter is</p> <p>21 taking down your testimony. We also have somebody on</p> <p>22 the videoconference. So, it's extra important that you</p> <p>23 wait until the full question is asked before you start</p> <p>24 to answer and I'll try to do the same for you.</p> <p>25 Under the Nevada Rules of Civil</p>	<p style="text-align: right;">Page 8</p> <p>1 A. My brain gets finished here. I graduated</p> <p>2 high school in 1974, started college in 1976, I</p> <p>3 believe. I have a two-year mechanical technology</p> <p>4 degree from State Technical Institute of Memphis, which</p> <p>5 at the time was the highest rated technical school in</p> <p>6 the United States. And you're going to give me dates.</p> <p>7 I have University of -- now it's University of -- or</p> <p>8 Memphis. When I went there, it was Memphis State</p> <p>9 University. A lot of diagnostics. My elevator company</p> <p>10 had sent me there to attempt to statistically provide</p> <p>11 ways to do maintenance and that kind of thing. So,</p> <p>12 it's a lot of statistics, quality control, that type of</p> <p>13 thing. I did not obtain a degree.</p> <p>14 I have gone to the University of</p> <p>15 Northampton, Northampton, England. It is a degree --</p> <p>16 it is a postgraduate degree for lift technology. I</p> <p>17 also did not complete that degree.</p> <p>18 That should be it.</p> <p>19 Q. Okay. Do you mind me asking how old you are?</p> <p>20 A. 60 years old.</p> <p>21 Q. I'm sorry for that.</p> <p>22 A. In one month, you'll have to ask me again.</p> <p>23 Q. All right. So, you graduated from high</p> <p>24 school and then you went on to college. Did you get</p> <p>25 the mechanical technology degree, like, somewhere</p>
<p style="text-align: right;">Page 7</p> <p>1 Procedure, you have an opportunity, after the</p> <p>2 transcript is prepared, to obtain a copy of the</p> <p>3 transcript and review it for accuracy or any changes or</p> <p>4 additions to your testimony that you may want to make.</p> <p>5 We'll ask you at the conclusion of the deposition if</p> <p>6 you want to exercise that option. If you don't want to</p> <p>7 read it, you're entitled to waive it, also. However,</p> <p>8 if you make any changes to your testimony or you</p> <p>9 testify differently in another proceeding than you're</p> <p>10 doing today, obviously the attorneys would be able to</p> <p>11 comment on the changes that you make, which may affect</p> <p>12 your credibility or even the admissibility of your</p> <p>13 opinions. Do you understand that?</p> <p>14 A. I understand.</p> <p>15 Q. Okay. Is there any reason at all that you</p> <p>16 don't feel capable of giving truthful testimony here</p> <p>17 today?</p> <p>18 A. No reason.</p> <p>19 Q. Okay. Have you brought with you your entire</p> <p>20 file pertaining to the Joe Brown versus Landry's,</p> <p>21 et al. case?</p> <p>22 A. I hope that I have.</p> <p>23 Q. Okay. All right. Let's start out with,</p> <p>24 could you give me a chronological idea of your</p> <p>25 educational background, please?</p>	<p style="text-align: right;">Page 9</p> <p>1 around 1978?</p> <p>2 A. Probably -- probably early in '82. I</p> <p>3 immediately started to work. So, I'm looking for -- I</p> <p>4 do all years by how old my children are and they were</p> <p>5 not born yet. So, that's harder for me. I did have</p> <p>6 that CV in here. So, in the -- in the early Eighties.</p> <p>7 Q. Okay. So, did you go to work after high</p> <p>8 school and did college, like, on a part-time basis?</p> <p>9 A. Most of the time I worked full time from the</p> <p>10 day I turned 16 years old.</p> <p>11 Q. Okay. All right. And then you went to</p> <p>12 Memphis State University. Can you tell me a little bit</p> <p>13 more about -- you said something about you went there</p> <p>14 because the company you were working for wanted</p> <p>15 something to do with statistically providing</p> <p>16 maintenance?</p> <p>17 A. Right. Correct. We were -- for the most</p> <p>18 part, it was going into the business section for</p> <p>19 statistics and quality control and that kind of thing.</p> <p>20 And we were looking to do statistical analysis so that</p> <p>21 we could do maintenance in a proactive situation.</p> <p>22 Q. To me, that would mean -- I just want to make</p> <p>23 sure I'm understanding you -- like, scheduling</p> <p>24 maintenance based on, like, usage and --</p> <p>25 A. Right.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. -- problems and that?</p> <p>2 A. Right, a number of trips, previous issues</p> <p>3 with specific components, that type of thing. So,</p> <p>4 it's -- it was a possible what you could consider</p> <p>5 preventive maintenance instead of merely just a</p> <p>6 maintenance at that time.</p> <p>7 Q. All right. Did you go on to develop or</p> <p>8 assist in the development of that type of a maintenance</p> <p>9 program for that company?</p> <p>10 A. No.</p> <p>11 Q. Okay. Why not?</p> <p>12 A. It was years later that it actually happened.</p> <p>13 Q. Okay. Were you still working for a</p> <p>14 maintenance company at that time?</p> <p>15 A. No. It -- it was a manufacturer. It was not</p> <p>16 a maintenance company. It was a major.</p> <p>17 Q. Who were you working for at that time?</p> <p>18 A. Dover Elevator.</p> <p>19 Q. And what years did you work for Dover</p> <p>20 Elevator?</p> <p>21 A. I worked 13 years. I think I left in '95.</p> <p>22 Q. And during that period of time up until 1995,</p> <p>23 Dover was not maintaining any elevators?</p> <p>24 A. Yes, they were; but I wasn't in</p> <p>25 manufacturing.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. Until when?</p> <p>2 A. It's been about six years since I've taken</p> <p>3 anything there.</p> <p>4 Q. During that period of time, 1997, '98 up</p> <p>5 until, roughly, 2012, did you ever physically go to</p> <p>6 Northampton University?</p> <p>7 A. No, I did not.</p> <p>8 Q. Okay. How were you -- you said that you went</p> <p>9 there. So, how were you taking these classes?</p> <p>10 A. It was all -- I wouldn't say it was online</p> <p>11 because nothing was given online. It was books sent</p> <p>12 and then tests returned type of education.</p> <p>13 Q. So, they -- books were, like, mailed to you?</p> <p>14 A. Yes.</p> <p>15 Q. And then you took a written test and mailed</p> <p>16 it back for grading?</p> <p>17 A. Well, assignments were given and those were</p> <p>18 given probably email. But specific assignments were</p> <p>19 given and we completed those assignments and sent those</p> <p>20 back.</p> <p>21 Q. Why didn't you obtain a degree from that</p> <p>22 university?</p> <p>23 A. By that time, I owned multiple companies and</p> <p>24 had multiple employees and I cannot -- and a lot of my</p> <p>25 ability to pay them was my ability to also work. So,</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Oh, okay. You were in --</p> <p>2 A. Yeah, I was a design engineer.</p> <p>3 Q. Do you have an engineering degree?</p> <p>4 A. No.</p> <p>5 Q. So, as -- well, let me finish with your</p> <p>6 education. Then we'll go on to that. Why did you not</p> <p>7 obtain a degree beyond the two years associate's</p> <p>8 degree?</p> <p>9 A. For the most part, I worked 60 hours a week</p> <p>10 and I had two children.</p> <p>11 Q. How far did you go in Memphis State as far</p> <p>12 as, you know, how close would you have been to getting</p> <p>13 a degree?</p> <p>14 A. For the most part, I had enough hours. It</p> <p>15 was the difficulty in maneuvering those hours into what</p> <p>16 they consider a specific degree plan, because they were</p> <p>17 divided into engineering and business and those two are</p> <p>18 very difficult to combine for a single degree.</p> <p>19 Q. When was the last time you attended Memphis</p> <p>20 State or Memphis University?</p> <p>21 A. Actually, I went part-time into the mid-'90s.</p> <p>22 Q. Okay. And then when did you start taking</p> <p>23 these classes at Northampton?</p> <p>24 A. That was probably '97, '98. I had already</p> <p>25 left.</p>	<p style="text-align: right;">Page 13</p> <p>1 it was -- it became difficult. I then sent my oldest</p> <p>2 child. And he has a full degree. He has a master's.</p> <p>3 So...</p> <p>4 Q. So, you got to pay for that?</p> <p>5 A. Yeah. So, I do the experience. He does the</p> <p>6 education.</p> <p>7 Q. Okay. Those classes that you were taking for</p> <p>8 lift technology, is that just, like, elevator stuff?</p> <p>9 A. Yes. That's what Europe calls elevators,</p> <p>10 lifts.</p> <p>11 Q. Did they -- did you take any specific classes</p> <p>12 through Northampton University about escalators?</p> <p>13 A. No.</p> <p>14 Q. And the stuff you did at Memphis State or</p> <p>15 University of Memphis, it sounds like that was not</p> <p>16 specific to elevators or escalators. That was specific</p> <p>17 to business and statistics?</p> <p>18 A. Correct. Northampton is the only college in</p> <p>19 the world that is specific to elevators.</p> <p>20 Q. And so that -- so, if I'm getting all this</p> <p>21 right -- and I think I am -- the only degree that you</p> <p>22 have is this two-year associate's degree from</p> <p>23 approximately 1982?</p> <p>24 A. Correct.</p> <p>25 Q. What was the name of that college or</p>

<p style="text-align: right;">Page 14</p> <p>1 university?</p> <p>2 A. It is -- at that time it was called State</p> <p>3 Technical Institute in Memphis. STIM is what they went</p> <p>4 by.</p> <p>5 Q. And is that still in existence but under a</p> <p>6 different name?</p> <p>7 A. Exactly. And I do not know that name.</p> <p>8 Q. That's easy enough to find.</p> <p>9 What is the specific type of degree or</p> <p>10 the name to it?</p> <p>11 A. It was an associate's of engineering</p> <p>12 technology, the major; and the degree was mechanical</p> <p>13 engineering technology.</p> <p>14 Q. And have you ever been through the union</p> <p>15 schooling that elevator and escalator mechanics are</p> <p>16 required to take?</p> <p>17 A. I have not.</p> <p>18 Q. Now, I also see on your resume' that's been</p> <p>19 provided, University of Alabama postgraduate work?</p> <p>20 A. Right.</p> <p>21 Q. What did you do there?</p> <p>22 A. I was attempting to start a business degree</p> <p>23 and it was -- it was probably the first off-site</p> <p>24 business degree anyone had, they had it. They were --</p> <p>25 it was not ready for the mainstream. So, I merely took</p>	<p style="text-align: right;">Page 16</p> <p>1 And that was -- it was also a business-type</p> <p>2 environment.</p> <p>3 From Holiday Inn, I went to a company</p> <p>4 called Bryce Corporation.</p> <p>5 Q. What was it?</p> <p>6 A. Bryce --</p> <p>7 Q. Bryce?</p> <p>8 A. -- B-r-y-c-e, where I handled all of the</p> <p>9 routing of the trucks that delivered their product and</p> <p>10 picked stuff up and wherever they landed to take to</p> <p>11 another place. So, I was over logistics of their</p> <p>12 company. And from there, I went to Dover Elevator.</p> <p>13 Q. Okay. And what year was Dover? It's</p> <p>14 probably on your resume'.</p> <p>15 A. Yeah.</p> <p>16 Q. It looks like '83. Does that sound about</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So, was Dover Elevator in 1983 your</p> <p>20 first foray into the elevator trade?</p> <p>21 A. Correct.</p> <p>22 Q. And what different positions chronologically</p> <p>23 have you held with Dover?</p> <p>24 A. The first was general layout, where we did</p> <p>25 the engineering for specific jobs as they were gotten.</p>
<p style="text-align: right;">Page 15</p> <p>1 what they had available, which was very little.</p> <p>2 Q. Okay.</p> <p>3 A. So...</p> <p>4 Q. Short term.</p> <p>5 A. Yes.</p> <p>6 Q. When you say "off-site," you mean, like,</p> <p>7 doing it --</p> <p>8 A. Yeah.</p> <p>9 Q. -- computer or remotely?</p> <p>10 A. Right. It was -- it was -- they called it</p> <p>11 the new college.</p> <p>12 Q. Okay. So, let's start out just in very broad</p> <p>13 strokes with your employment background. You said you</p> <p>14 worked from age 16 forward. So, give me the big</p> <p>15 picture from age 16 forward.</p> <p>16 A. Well, I graduated high school when I was 17.</p> <p>17 So, it was pretty much from that. I worked in accounts</p> <p>18 receivable for -- they did uniforms for the police and</p> <p>19 fire department. They were called Shapiro. I worked</p> <p>20 there full time. Also, my father had a business since</p> <p>21 I was born of construction and I would -- I did their</p> <p>22 books and worked there, also. Maintained a license as</p> <p>23 a general contractor in the state of Tennessee, full</p> <p>24 general contractor, which he worked under.</p> <p>25 After Shapiro, I went to Holiday Inn.</p>	<p style="text-align: right;">Page 17</p> <p>1 And they were also new installations. So, I think it</p> <p>2 was called new equipment layout. That was traction</p> <p>3 equipment and had -- I was there for about eight years.</p> <p>4 Q. In general layout?</p> <p>5 A. Yeah, in general layout up through the --</p> <p>6 having people under you, training people. I actually</p> <p>7 was the only one that was trained to do escalators at</p> <p>8 Dover. However, they didn't do very many escalators.</p> <p>9 So, it was outside of their business plan, let's call</p> <p>10 it that.</p> <p>11 Q. So, can you give us -- was it a very small</p> <p>12 percentage that --</p> <p>13 A. Oh, very, very small.</p> <p>14 Q. Okay.</p> <p>15 A. Very, very small.</p> <p>16 Q. Because you don't see very many Dover</p> <p>17 escalators out there anymore.</p> <p>18 A. It's likely they wouldn't say Dover, also.</p> <p>19 They were brought in from overseas.</p> <p>20 And from there I was put into</p> <p>21 modernization where I did all specialty things that</p> <p>22 were required for any modernization projects that we</p> <p>23 got. We did preplanning. I went on site to every --</p> <p>24 every decent-sized job Dover had, did all of the</p> <p>25 takeoffs and measurements to provide new equipment and</p>

<p style="text-align: right;">Page 18</p> <p>1 was finally over that, the mechanical part of 2 modernization. It's a whole different area. And that 3 was also for Dover.</p> <p>4 Q. Okay. My understanding of what you just 5 described is, for modernization, you would go on site 6 to the bigger jobs and look at the equipment and then 7 suggest, here's how you can have more new stuff, and 8 then do a proposal for it?</p> <p>9 A. Yes -- no, it would have been bid out by that 10 time, by the time that I went. We did not bring 11 manufacturing in prior to a bidding of a job. So, the 12 job would have been bid. I would have been on site to 13 assist the local offices and at that time we normally 14 did takeoffs because that left -- we had enough 15 confidence in most things that that left us ahead of 16 the game and I didn't have to return to do the takeoffs 17 of all the equipment. I could then design anything 18 special that had to be designed and make sure 19 everything had been ordered that was required.</p> <p>20 Q. Okay. So, when you say after the bid, was it 21 after the bid had been -- after Dover's bid had been 22 accepted by the customer?</p> <p>23 A. It -- it was either/or. A lot of times in 24 the Chicago office, the very -- the larger offices that 25 knew their clientele and knew if they were going to be</p>	<p style="text-align: right;">Page 20</p> <p>1 existing installation. We cannot increase the height 2 of the building. We cannot, you know, dig lower in a 3 building. It's not something that can be done. So, 4 all of this had to be pre-evaluated and sometimes 5 equipment had to be premade that was not standard off 6 our assembly line to be done.</p> <p>7 Also, when you load, there's a code 8 requirement that says if you do not change your loading 9 on a structure by more than 10 percent, you are able to 10 continue without hiring -- or having a structural 11 engineer come in. And so we would attempt to make sure 12 that we maintained under that allowance so that there 13 would not be the additional expense of structural 14 engineers coming in. And in doing that, we attempted 15 to hit the same points in the building that were 16 already there.</p> <p>17 Occasionally, the more difficult jobs 18 were things like gearless equipment, going from one -- 19 from two to one front opening to front and rear 20 opening, which is a massive change to equipment, while 21 trying to reuse all possible equipment that was there. 22 So, you're trying to hit a past and then continue on 23 with what they need now.</p> <p>24 And so that was the type of things that 25 we went into. Hydraulics, not nearly so complicated.</p>
<p style="text-align: right;">Page 19</p> <p>1 able to -- or had a good chance of the bid, we came 2 before. We came during the bidding process. So, all 3 we had at that point was the specification that it was 4 being bid by. Otherwise, if we got jobs from other 5 areas, smaller areas of the country, I would go after 6 the fact. So, we did not necessarily have to have -- 7 but it usually cut off about six weeks of the lead time 8 and we found that profitable. We got the bid when we 9 walked in with the drawings. So...</p> <p>10 Q. I got you. Okay. Now, is -- you said this 11 under the category of modernization. But it sounds to 12 me like that would be for new installations, also. No?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. After I left, in installations, we did not 16 do -- they were completely different. They're two 17 different animals.</p> <p>18 Q. Okay. And so tell me what you did 19 specifically. You mentioned you would design. What 20 specifically were you doing?</p> <p>21 A. Well, in the areas of traction, you have -- 22 when you change machines and cabs and -- you could go 23 faster, slower, you have set criteria that's already 24 there. And so we must make sure that the equipment 25 that we put in there is still code compliant with the</p>	<p style="text-align: right;">Page 21</p> <p>1 Hydraulics are, for the most part, a pump and a valve. 2 So, normally we didn't get involved with field 3 conditions of hydraulic elevators unless by chance they 4 were modernizing everything they had, and if we were 5 already out there, we'd take a look at that, also.</p> <p>6 Q. Okay. You mentioned earlier sometimes you 7 would have to do things that were not standard right 8 off the assembly line, something special for the job. 9 Can you just give us a couple of examples of what would 10 fall into that category?</p> <p>11 A. Something that was done pretty normally is 12 the way that the elevator car sling is done at 13 different companies is different than the way that 14 Dover does their car slings. Therefore, the mounting 15 of things that were occasionally changed in 16 modernizations, the roller guides, the safeties, that 17 type of thing, had to be specially engineered to what 18 was actually there. And we would do that and do 19 drawings so that it went through our factory. And when 20 it got to the jobsite, there would be instructions and 21 drawings of that particular piece.</p> <p>22 Q. Did the work that you were doing for Dover 23 that you've been discussing for the past few minutes 24 dealing with these modernizations, did it then have to 25 be approved by an engineer for Dover?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. No.</p> <p>2 Q. Was there an engineer who was, like, in</p> <p>3 charge of this part of the business?</p> <p>4 A. No.</p> <p>5 Q. Did any of your modernization projects</p> <p>6 involve the modernization of escalators?</p> <p>7 A. No. Dover's business had very little</p> <p>8 escalators.</p> <p>9 Q. All right. Why did you leave Dover in, it</p> <p>10 looks like, 1996 from your resume'?</p> <p>11 A. Right. It appeared that things were going to</p> <p>12 change merely by the way Dover was starting to do their</p> <p>13 business, and I had just made a decision I was not</p> <p>14 going to go through what I considered was going to be</p> <p>15 turmoil, which within six months did turn in that</p> <p>16 direction when they were purchased by another company</p> <p>17 and two different elevator companies were then --</p> <p>18 attempted to homogenize.</p> <p>19 Q. And that was Dover and --</p> <p>20 A. Thyssen.</p> <p>21 Q. -- Thyssen?</p> <p>22 A. Just Thyssen, not ThyssenKrupp. Just</p> <p>23 Thyssen. And it was putting U.S. and Dover together</p> <p>24 because they had acquired -- very recently acquired</p> <p>25 U.S.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Yeah.</p> <p>2 A. Exactly what I did for Dover. I mean, I</p> <p>3 would move machines, turn machines. It enabled</p> <p>4 independent companies to have that on their -- on --</p> <p>5 they would just list me as engineering. So...</p> <p>6 Q. Okay. Is there, in any of the states that</p> <p>7 you've worked in, is there some type of, like, a board</p> <p>8 or whatever that governs engineers, licensed engineers?</p> <p>9 A. Well, I was never a licensed engineer.</p> <p>10 Q. Right.</p> <p>11 A. And there is -- California requires seismic</p> <p>12 calculations to go through a PE. And I -- in the areas</p> <p>13 that those things had to go through PEs, I knew PEs in</p> <p>14 those areas. In all of Thyssen, there was one PE.</p> <p>15 Q. Okay.</p> <p>16 A. So, there's not a lot of PEs, and because of</p> <p>17 that, the elevator industry has toned down that it's</p> <p>18 not that required.</p> <p>19 MR. IQBAL: What is PE?</p> <p>20 THE WITNESS: Professional Engineer.</p> <p>21 MR. IQBAL: Oh. Okay.</p> <p>22 Q. (BY MS. MASTRANGELO) And I'm just -- no</p> <p>23 offense meant, but I'm just wondering if there's</p> <p>24 anything that precludes somebody without an actual</p> <p>25 engineering degree from holding herself out as an</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. So, what did you do in November of 1996 when</p> <p>2 you left Dover -- did you just resign?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Then what did you do?</p> <p>5 A. I started my own company. My background was</p> <p>6 engineering, which is the dumbest way to start a</p> <p>7 company in the world, in the world of elevators.</p> <p>8 However, I had -- normally businesses are started by</p> <p>9 salespeople. But I had contacts of small and</p> <p>10 independent elevator companies as well as larger</p> <p>11 elevator companies all over the country. So, I decided</p> <p>12 to do engineering for smaller independent elevator</p> <p>13 companies, larger -- so, continue what I was doing at</p> <p>14 Dover, however, do it at a specific and -- and just</p> <p>15 through me.</p> <p>16 I have done -- and then I also was doing</p> <p>17 consulting, which was providing specifications for jobs</p> <p>18 and modernization. Modernization is what I knew best.</p> <p>19 Modernization was most difficult of all the things I</p> <p>20 knew. It was -- so, I began to do consulting and I</p> <p>21 also began to do inspections. So, I based it on those</p> <p>22 three things and started my business.</p> <p>23 Q. And just so we're all on the same page, how</p> <p>24 are you defining the engineering that you did?</p> <p>25 A. For other companies?</p>	<p style="text-align: right;">Page 25</p> <p>1 engineer.</p> <p>2 A. No. I'm an elevator engineer. They know me</p> <p>3 and they know what I've got. So, at no point did I</p> <p>4 tell anybody that I was, you know -- I had any more</p> <p>5 than I had. And most of the customers I dealt with</p> <p>6 were the customers I had for the years I was at Dover.</p> <p>7 Q. Did you ever work with John Koshak when you</p> <p>8 were at Dover?</p> <p>9 A. Yes.</p> <p>10 Q. Was he in the same vintage?</p> <p>11 A. No, I never worked with him at Dover. I've</p> <p>12 known him for twenty -- for the amount of time that</p> <p>13 I've had my own company and -- so, he was after me.</p> <p>14 But he is currently -- I am currently the executive</p> <p>15 director of the consultant group and he is now the</p> <p>16 president of that consulting group. We've been on code</p> <p>17 committees for years together. So, yeah, I know him</p> <p>18 pretty well.</p> <p>19 Q. Have you guys worked on any litigated cases</p> <p>20 together at all?</p> <p>21 A. Never.</p> <p>22 Q. Have you discussed this case with him?</p> <p>23 A. No.</p> <p>24 Q. All right. So, we were sort of around 1996</p> <p>25 in our chronology of your life. And I see on your</p>

<p style="text-align: right;">Page 26</p> <p>1 resume', it says Sheila Swett, General Contractors.</p> <p>2 Was that the first business entity you were practicing</p> <p>3 under?</p> <p>4 A. No, my father -- no, I would say I didn't</p> <p>5 practice under that hardly at all. I basically built a</p> <p>6 couple of churches for poor little church people. But</p> <p>7 it was a time when my uncle and my father, who had been</p> <p>8 general contractors, homebuilders, general contractors,</p> <p>9 wanted to get into small commercial. And they -- they</p> <p>10 had difficulty due to their age and their ability to</p> <p>11 pass tests to pass that test. And it was a pretty</p> <p>12 hefty test. I tried to work --</p> <p>13 Q. To be a general contractor, you mean?</p> <p>14 A. Yeah, a general contractor of commercial</p> <p>15 buildings, not of residential. They had had that</p> <p>16 forever. And so I'd been working with them to help</p> <p>17 them with the test and I finally said -- well, the test</p> <p>18 cost a hundred dollars to take. I said, well, I'll go</p> <p>19 take the test and I'll be able to help you better</p> <p>20 because I'll know what's on that test that you're</p> <p>21 missing. I went and took the test. I passed it for</p> <p>22 full licensed commercial. I could build nuclear</p> <p>23 plants. And I got home. I said okay. I know how --</p> <p>24 you know how this ends. I know what to teach you now.</p> <p>25 And they said we don't need it now. We'll just work</p>	<p style="text-align: right;">Page 28</p> <p>1 under after you left Dover?</p> <p>2 A. I was a sole proprietor, and I called it</p> <p>3 Swett and Associates. It was a sole proprietor in</p> <p>4 Tennessee.</p> <p>5 Q. Is that company still in business?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. But you do not live in Tennessee any</p> <p>8 longer?</p> <p>9 A. I do not.</p> <p>10 Q. Okay. When did you leave Tennessee?</p> <p>11 A. I was going to look here.</p> <p>12 Q. Approximately.</p> <p>13 A. About 13 years ago.</p> <p>14 Q. So, 2005-ish?</p> <p>15 A. It should be correct on here. I think it is</p> <p>16 2005.</p> <p>17 Q. From the time you left Dover until 2005, did</p> <p>18 you work at Swett and Associates doing the type of</p> <p>19 engineering, consulting, and inspections you previously</p> <p>20 described or did the inspections and consulting come</p> <p>21 later?</p> <p>22 A. At Dover, I did no -- I did no -- the only</p> <p>23 specification I did was reading specifications from</p> <p>24 other companies and I did no inspections. Those</p> <p>25 require a license and they require nothing attached.</p>
<p style="text-align: right;">Page 27</p> <p>1 under your license. So, that's how I got it. Like I</p> <p>2 say, I did some churches in the area. Shortly after</p> <p>3 that, my father passed away and my uncle passed away.</p> <p>4 So...</p> <p>5 Q. Is that business still --</p> <p>6 A. No.</p> <p>7 Q. -- like, technically on the books or no?</p> <p>8 A. Because I had to insure it. And since I</p> <p>9 wasn't doing anything, I wasn't going to insure it</p> <p>10 anymore and I was in Texas, also.</p> <p>11 Q. Okay. Approximately when did you stop with</p> <p>12 that business?</p> <p>13 A. About six years ago, because I was getting</p> <p>14 three-year extensions for the license, and I haven't</p> <p>15 done anything in six years, I'm not going to do</p> <p>16 anything else.</p> <p>17 Q. Okay. And the reason I was asking, is your</p> <p>18 resume' looks like it says "to present" on here.</p> <p>19 A. Yeah, that's the problem with copying</p> <p>20 resume's.</p> <p>21 Q. Do you have a newer version than the one that</p> <p>22 was submitted in this case?</p> <p>23 A. No.</p> <p>24 Q. Okay. All right. Okay. So, then, if it</p> <p>25 wasn't that, what entity did you start doing business</p>	<p style="text-align: right;">Page 29</p> <p>1 So, I could not do anything that Dover was involved in.</p> <p>2 That would be --</p> <p>3 Q. I think we misunderstood each other.</p> <p>4 A. Yes.</p> <p>5 Q. I was saying from 1996 up until 2005, were</p> <p>6 you doing the engineering, consulting and inspections?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. All right. Under the Swett and</p> <p>9 Associates?</p> <p>10 A. Yes.</p> <p>11 Q. And then in 2005, did you move to Houston?</p> <p>12 A. I bought a company in Houston that did</p> <p>13 predominantly inspections.</p> <p>14 I'm going to get these dates wrong if I</p> <p>15 don't find that piece of paper with all of them on</p> <p>16 there.</p> <p>17 MR. IQBAL: Here you go.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 Q. (BY MS. MASTRANGELO) Yeah, it looks like</p> <p>20 July 1, 2005, to present.</p> <p>21 A. Yes. And I know that because I looked back</p> <p>22 on QuickBooks. That's the first check I ever wrote.</p> <p>23 Q. So, the name of the company you bought was</p> <p>24 Elevator Technical Services?</p> <p>25 A. Technical Services, correct.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. And then under that, it says, "Elevator 2 Contracting Services." Is that just a description 3 of -- 4 A. No. 5 Q. Or is that part of your name? 6 A. Elevator Technical Services prior to me also 7 had something called Elevator Contracting Services. 8 I've never used that name, but I do own it. 9 Q. Okay. So, presently, do you do business 10 under both Swett and Associates and Elevator Technical 11 Services? 12 A. I do. 13 Q. Okay. How many websites do you have 14 personally or through this -- these businesses? 15 A. Probably just one. 16 Q. Okay. What website do you use? 17 A. It's probably Swettcorp.com. 18 Q. Okay. On your report, at the very bottom, it 19 looks like it's swetta.com. Was that a prior one? 20 A. That was a prior one. 21 Q. Okay. 22 A. And it could easily be linked to that other 23 one. 24 Q. No, I looked it up this morning. It's, like, 25 for sale, if you want it back.</p>	<p style="text-align: right;">Page 32</p> <p>1 it's -- you are the business? 2 A. Yes. 3 Q. Do you have, like, you know, admin people 4 that work for you or anything like that? 5 A. A lot of the times I'll -- I do all the 6 admin, but I do have office help in my office right 7 now. So... 8 Q. Okay. And then for ETS, how is that staffed? 9 A. I have a mechanic, a union mechanic, who's 10 also an inspector. I have another inspector, who is my 11 son, Daniel Swett, who is also in business with 12 John Koshak. And then I have the office staff, 13 Shiu Yien Chong. 14 THE REPORTER: I'm sorry. 15 A. Shiu -- oh, this will be easy. S-c -- no. 16 S-h-i-u, Yien, Y-i-e-n, Chong. Easy. That's all that 17 I have there. I have had more but -- yeah. 18 Q. (BY MS. MASTRANGELO) Okay. So, I want to ask 19 you about each of the companies, like, what one does 20 that the other one doesn't do. So, I guess, let's just 21 start with ETS. Tell me what that company does. 22 A. It is 95 percent inspections. They are local 23 to Houston area and the surrounding area. I have done 24 some due diligence and that type of work. Lately, I've 25 gone a little -- a little into Dallas. I've been asked</p>
<p style="text-align: right;">Page 31</p> <p>1 A. No, I don't. Swettcorp.com. 2 Q. All right. Presently, can you give us sort 3 of a breakdown of how much of your business is through 4 Swett and Associates versus, we'll just say, ETS for 5 simplicity? 6 A. And you'd have to define what business is. 7 Income of Elevator Technical Services is around 900,000 8 a year. Income for -- that's Elevator Technical 9 Services. Income for Swett and Associates is 300, 10 400,000. It's about a third of the income. However, 11 that's all my income. So, that's the difference. 12 Q. For Swett and Associates, do you, like, have 13 any associates? 14 A. Sometimes, but it's usually because they've 15 brought me into a project. Even consultants will use 16 me as their engineer as they go into larger projects. 17 So, Syska and Hennessy asked me to be -- 18 THE REPORTER: I'm sorry. 19 A. Syska and Hennessy asked me to be their 20 engineering partner when they were bidding a huge job. 21 And so that would have -- I would have considered those 22 associates. So, it works in both directions. If I 23 need assistants, I will -- I will go and get any 24 requirements I need. 25 Q. (BY MS. MASTRANGELO) Okay. But pretty much</p>	<p style="text-align: right;">Page 33</p> <p>1 to do that because I'm WBE and HUB certified. 2 Historically Underutilized Business. And then I have a 3 couple of clients that have one specific building in 4 San Antonio and one in Austin. So, I will go and do 5 theirs. But it is almost exclusively in Houston. We 6 do do some ships, which I don't know what those are 7 considered because they move around a lot. 8 Q. All right. So, when you're talking about 9 these inspections that ETS does in the Houston and 10 surrounding areas, are those, like, state and city 11 mandated inspections? 12 A. Correct. 13 Q. Like annuals and five-year tests? 14 A. Correct. 15 Q. Okay. And do you do the escalator 16 inspections as well as part of that? 17 A. Yes. 18 Q. What type of inspections are required city 19 and state here for escalators? 20 A. As long as they're commercial escalators, 21 they are required to do annual testing. 22 Q. And what do those annual tests consist of? 23 A. Removing steps, looking at all of the safety 24 devices, doing the test, actual putting the safety 25 devices in action and making sure that they operate as</p>

<p style="text-align: right;">Page 34</p> <p>1 required.</p> <p>2 Q. Like, make sure all the switches trip?</p> <p>3 A. Exactly. I mean, the hand -- handrail</p> <p>4 inlets, those are actually just pushed, you know,</p> <p>5 tripped. And so we actually do those -- all of those</p> <p>6 tests. And normally the mechanic, if the owner has an</p> <p>7 agreement with -- a maintenance agreement, normally the</p> <p>8 mechanic from that company is doing the actual hands-on</p> <p>9 agreement. However, my mechanic can test. He is a</p> <p>10 union -- he carries a union card. So, he can test.</p> <p>11 Q. Okay. What's the name of the mechanic that</p> <p>12 works for you?</p> <p>13 A. Robert Weed, W-e-e-d.</p> <p>14 Q. Okay. So, it sounds like what the Houston</p> <p>15 area requires for testing of escalators and state</p> <p>16 mandated inspections is, like, a combination of Nevada.</p> <p>17 Nevada requires an external on the six month and then</p> <p>18 an internal on the other six months and it sounds like</p> <p>19 you have one inspection that's the whole year?</p> <p>20 A. Does the whole thing. We do internal and</p> <p>21 external at the same time.</p> <p>22 Q. Do you have any idea that's not just a wild</p> <p>23 guess as to how many elevators and escalators there</p> <p>24 are, like, in the greater Houston area?</p> <p>25 A. I used to, but I can get you that information</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Since nineteen ninety -- since I bought ETS.</p> <p>2 He graduated, probably the next year and started</p> <p>3 working for me.</p> <p>4 Q. And did you say you had another son?</p> <p>5 A. I do.</p> <p>6 Q. What does that son do?</p> <p>7 A. He is an Assistant Attorney General of the</p> <p>8 state of Texas.</p> <p>9 Q. Are those your only children?</p> <p>10 A. My only -- my only two. I have stepchildren,</p> <p>11 also.</p> <p>12 Q. The reason why I'm asking is, people usually</p> <p>13 seem to follow their parents in this trade for whatever</p> <p>14 reason.</p> <p>15 A. Yeah, and that's why I bought ETS because he</p> <p>16 told me he was following me. So, I had to get</p> <p>17 something big enough he could land in.</p> <p>18 Q. Is your husband in the trade as well?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What is his name?</p> <p>21 A. Jim -- or James Dirmeyer, D-i-r-m-e-y-e-r.</p> <p>22 Q. And who does he work for?</p> <p>23 A. ThyssenKrupp.</p> <p>24 Q. In what branch or office?</p> <p>25 A. He works out of our house.</p>
<p style="text-align: right;">Page 35</p> <p>1 by calling the city.</p> <p>2 Q. I'm just curious.</p> <p>3 A. Yeah, it's a lot.</p> <p>4 Q. And many more elevators than escalators, I</p> <p>5 would imagine?</p> <p>6 A. Elevators are usually 95 percent of the</p> <p>7 industry. Escalators, about 5 percent.</p> <p>8 MR. IQBAL: I'm sorry. When you say</p> <p>9 "industry," you mean nationwide?</p> <p>10 THE WITNESS: United States. Yeah.</p> <p>11 They're used -- I've been told they're used more in</p> <p>12 Europe or actually India, China, places that you have</p> <p>13 to move people much faster than here.</p> <p>14 Q. (BY MS. MASTRANGELO) Okay. Do -- for ETS</p> <p>15 only, do you also do the inspections or does Robert and</p> <p>16 Daniel do --</p> <p>17 A. No, I do them, also.</p> <p>18 Q. You do them, also.</p> <p>19 A. Not as much. I have to pay them. So, I make</p> <p>20 sure they're doing a full-time schedule.</p> <p>21 Q. Did your son Daniel ever work in the elevator</p> <p>22 trade?</p> <p>23 A. No.</p> <p>24 Q. How long has he worked for you,</p> <p>25 approximately?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. What does he do for ThyssenKrupp?</p> <p>2 A. He writes code for electrical drawings.</p> <p>3 Q. And has he worked for ThyssenKrupp ever since</p> <p>4 ThyssenKrupp bought out the Dover entities?</p> <p>5 A. Well before that.</p> <p>6 Q. Okay. And he was with Dover?</p> <p>7 A. He's been there 40 years.</p> <p>8 Q. Have you discussed with your husband, Jim,</p> <p>9 anything about this particular case?</p> <p>10 A. No, and he wouldn't know anything anyway. I</p> <p>11 don't think they have escalator electrical drawings.</p> <p>12 Q. Does any of Jim's kids, your stepkids, work</p> <p>13 in the trade?</p> <p>14 A. No.</p> <p>15 Q. All right. So, you told me about the ETS.</p> <p>16 Now tell me what Swett and Associates does.</p> <p>17 A. I still do engineering. I still do drawings</p> <p>18 for smaller elevator companies as well as major</p> <p>19 elevator companies. And I have clients -- my</p> <p>20 inspection clients are normally larger facilities. And</p> <p>21 I do -- we still inspect in Alabama. We inspect in</p> <p>22 Missouri. And specifications are as needed, as anyone</p> <p>23 comes to me and wants them. I do do the specifications</p> <p>24 for a lot of my -- the clients in Missouri and Alabama</p> <p>25 that are my larger clients.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. And what are you specifically referencing</p> <p>2 when you're saying specifications?</p> <p>3 A. I do new installation specifications as well</p> <p>4 as modernization specifications of the existing</p> <p>5 equipment that they have.</p> <p>6 Q. And the inspections that you do, you said</p> <p>7 they're normally for larger facilities, like, in</p> <p>8 Alabama and Missouri. Are those state inspections or</p> <p>9 something else, quality?</p> <p>10 A. They're -- both of those states are state --</p> <p>11 their regulations are through the state.</p> <p>12 Q. Okay. And any inspections that you would</p> <p>13 have in the Houston area, you wouldn't do them through</p> <p>14 Swett and Associates. You would do them through ETS?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Got you. And then what kind of</p> <p>17 engineering have you done -- you said for smaller</p> <p>18 companies as well as major companies. Are those, like,</p> <p>19 the specifications or is that something different?</p> <p>20 A. No, I normally am just -- I'm just doing the</p> <p>21 drawings. I do not do the specifications.</p> <p>22 Q. You do the drawings based upon the</p> <p>23 specifications --</p> <p>24 A. The specifications.</p> <p>25 Q. -- provided to you?</p>	<p style="text-align: right;">Page 40</p> <p>1 So-and-So from Dallas and could you do -- can I send</p> <p>2 you some specs and you give us a drawing?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Have you worked for Otis, also?</p> <p>5 A. Not in that -- in engineering, no.</p> <p>6 Q. Have you worked for Otis in any capacity?</p> <p>7 A. I've been an expert for Otis.</p> <p>8 Q. Okay. We'll get to that in a minute.</p> <p>9 How about KONE?</p> <p>10 A. Yeah.</p> <p>11 Q. You've worked for them?</p> <p>12 A. Yes.</p> <p>13 Q. The drawings side?</p> <p>14 A. Drawings.</p> <p>15 Q. Who's the other big one, Schindler, have you</p> <p>16 done Schindler?</p> <p>17 A. God, no.</p> <p>18 Q. What other elevator companies, if any, other</p> <p>19 than Otis, have you served as an expert for?</p> <p>20 A. Otis; Amtech, which is a subsidiary of Otis.</p> <p>21 And then it's mostly manufacturers, valve manufacturers</p> <p>22 and that type.</p> <p>23 Q. You said valve?</p> <p>24 A. Yeah, hydraulic valve.</p> <p>25 Q. Hydraulics. Have you ever served as an</p>
<p style="text-align: right;">Page 39</p> <p>1 A. And who's providing the equipment, which</p> <p>2 usually the elevator company provides me with</p> <p>3 information of what equipment they're going to provide</p> <p>4 on the job. And then I do the drawings for those.</p> <p>5 Q. And in those instances, are you typically</p> <p>6 hired by the building owner?</p> <p>7 A. No.</p> <p>8 Q. Who are you hired by?</p> <p>9 A. Elevator companies.</p> <p>10 Q. Okay. Have you done that type of work for</p> <p>11 ThyssenKrupp?</p> <p>12 A. I have.</p> <p>13 Q. Okay. Approximately how many jobs in the</p> <p>14 last five years have you done for ThyssenKrupp?</p> <p>15 A. A dozen.</p> <p>16 Q. In what states?</p> <p>17 A. A lot -- most of the time I don't have to go</p> <p>18 to the states, to the actual facility. So, I'm not</p> <p>19 positive on the states. There could be 12 different</p> <p>20 states. But I've done a few in Texas. Like, almost</p> <p>21 never do I have to visit the site. They are</p> <p>22 responsible for providing me with the information of</p> <p>23 the existing jobs.</p> <p>24 Q. So, how does that work logistically? Does</p> <p>25 somebody just call you and say, hey, Sheila, this is</p>	<p style="text-align: right;">Page 41</p> <p>1 expert for Dover or ThyssenKrupp?</p> <p>2 A. I don't think so.</p> <p>3 Q. KONE?</p> <p>4 A. No.</p> <p>5 Q. Or Montgomery?</p> <p>6 A. No.</p> <p>7 Q. Schindler?</p> <p>8 A. No.</p> <p>9 Q. I forgot to mention earlier. I just tend to</p> <p>10 go on and on and on. So, if you want a break, just say</p> <p>11 so.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. So, Swett and Associates, when you do</p> <p>14 expert work, do you run it all through Swett as opposed</p> <p>15 to ETS?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Approximately how many files do you</p> <p>18 have open that are either litigated or claims or where</p> <p>19 you know it's an injury claim somewhere along the line?</p> <p>20 A. Right now there's about, I would say, six or</p> <p>21 eight that I have that are in varying stages or closed</p> <p>22 that I'm not aware of.</p> <p>23 Q. Okay. For the past, say, ten years, has that</p> <p>24 been pretty consistent, that it's just a few cases?</p> <p>25 A. Just a few cases.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. Is that by choice or you just haven't</p> <p>2 been called on that many times to do this?</p> <p>3 A. Well, it is more -- I've never advertised.</p> <p>4 I've never sought. So, normally --</p> <p>5 Q. Are you reading my notes, my questions?</p> <p>6 A. No. I'm sorry. I can barely see here. I've</p> <p>7 never advertised. I've never sought business. It's</p> <p>8 recommendations from other people that can't do it for</p> <p>9 some reason or another or I'm not sure how y'all get</p> <p>10 experts, but I don't know if it's just in the, you</p> <p>11 know, in the -- in the cloud somewhere where you can</p> <p>12 put that. I'm not sure. But, no, I've never</p> <p>13 advertised. Everything I've -- and I've really never</p> <p>14 asked how they got ahold of me.</p> <p>15 Q. In this case, do you have any idea how</p> <p>16 counsel located you?</p> <p>17 A. I have no idea.</p> <p>18 Q. Have you spoken to Stephen Carr about this</p> <p>19 case?</p> <p>20 A. I have not.</p> <p>21 Q. Do you know him?</p> <p>22 A. I do.</p> <p>23 Q. So, it sounds like from what you've told me</p> <p>24 your actual expert work is probably a fairly small</p> <p>25 percentage of your business?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Have you ever maintained an escalator?</p> <p>2 A. No.</p> <p>3 Q. Have you ever repaired or serviced an</p> <p>4 escalator?</p> <p>5 A. I have not.</p> <p>6 Q. Have you ever designed an escalator?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what kind of escalators have you</p> <p>9 designed or describe your experience in that regard?</p> <p>10 A. I did all the ones Dover ever did. So -- but</p> <p>11 I would say there not a dozen of them out there.</p> <p>12 THE REPORTER: I'm sorry. There?</p> <p>13 A. A dozen Dover escalators out there.</p> <p>14 Q. (BY MS. MASTRANGELO) And that was when you</p> <p>15 worked for Dover?</p> <p>16 A. Correct.</p> <p>17 Q. Since you left there, have you been involved</p> <p>18 in the design of escalators?</p> <p>19 A. I have not.</p> <p>20 Q. What do you believe qualifies you to be an</p> <p>21 escalator expert?</p> <p>22 A. My years in business, my years as an</p> <p>23 inspector, my general overall knowledge of the vertical</p> <p>24 transportation industry, my code committee work, just</p> <p>25 general involvement in the elevator/escalator</p>
<p style="text-align: right;">Page 43</p> <p>1 A. It is.</p> <p>2 Q. Of the six or eight open cases that you have</p> <p>3 now, are any of those on behalf of the defense?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Historically, can you give me a</p> <p>6 breakdown of how often you've been retained on behalf</p> <p>7 of the defense versus the plaintiff? Is it, like,</p> <p>8 50/50, 70/30, something like that?</p> <p>9 A. No, it is very shallow on the defense side.</p> <p>10 They seem to have specific experts that they utilize</p> <p>11 time and time again.</p> <p>12 Q. How many cases such as this where there's</p> <p>13 some kind of a personal injury claim that's the basis</p> <p>14 for this suit have you worked on involving escalators</p> <p>15 as opposed to elevators?</p> <p>16 A. I would say it's the same range as elevators</p> <p>17 to escalators are. So, probably 5 to 10 percent.</p> <p>18 Q. Have you been deposed in any of those cases?</p> <p>19 A. I'm not sure. I would actually have to look.</p> <p>20 Q. Have you ever worked as an elevator or</p> <p>21 escalator mechanic?</p> <p>22 A. No.</p> <p>23 Q. Have you ever done any physical installation</p> <p>24 of escalators?</p> <p>25 A. Not escalators, no.</p>	<p style="text-align: right;">Page 45</p> <p>1 community.</p> <p>2 Q. Have you sat on any escalator code</p> <p>3 committees?</p> <p>4 A. The maintenance committees, the existing</p> <p>5 committees, all have a small portion of escalators in</p> <p>6 them. And I have -- and inspection also have that</p> <p>7 portion in them. They, of course, have the majority</p> <p>8 elevator because the majority of the product is</p> <p>9 elevators. So...</p> <p>10 Q. Are there any specific -- and when we're</p> <p>11 talking about code committees, what code are you</p> <p>12 referring to?</p> <p>13 A. Well, I'm on the wind turbine elevator code.</p> <p>14 And that is not a committee -- that is no longer a</p> <p>15 subcommittee. It is its own code now. So, I'm on the</p> <p>16 main committee for that. Subcommittees as either an</p> <p>17 alternate or a member of maintenance, inspection, and</p> <p>18 existing elevator.</p> <p>19 Q. Okay. And which code governs those</p> <p>20 committees?</p> <p>21 A. A17.1 covers maintenance and inspection.</p> <p>22 A17.3 covers existing elevators.</p> <p>23 Q. Okay. Are there any A17.1 or A17.3</p> <p>24 committees that deal specifically and only with</p> <p>25 escalators?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What's the name of -- is it just</p> <p>3 escalator committee?</p> <p>4 A. Probably. Also -- they're also into chains,</p> <p>5 too. So...</p> <p>6 Q. Have you ever been a member of any A17</p> <p>7 escalator committees?</p> <p>8 A. No, not specific to escalators.</p> <p>9 Q. Just out of curiosity, tell me about this</p> <p>10 wind turbine. Why is it its own code and, like, what</p> <p>11 is it?</p> <p>12 A. Because it is a crazy elevator that they</p> <p>13 were -- they were making their own rules about. And so</p> <p>14 ASME decided that there needed to be a code for it.</p> <p>15 So, they developed a committee to make the code.</p> <p>16 Q. Are these elevators, like, powered by wind</p> <p>17 turbines?</p> <p>18 A. They -- I would say, yes, because they're</p> <p>19 inside of that turbine. It allows them to get from the</p> <p>20 bottom to the cell. They're very rudimentary and we --</p> <p>21 the code is made so that they are far more safe than</p> <p>22 they were originally. They were originally using much</p> <p>23 like window washing equipment to go up and down. So...</p> <p>24 Q. So, these are like those wind turbines that</p> <p>25 you see in Palm Springs?</p>	<p style="text-align: right;">Page 48</p> <p>1 one tomorrow. And I'm a participant in changing,</p> <p>2 maintaining, answering questions that are presented to</p> <p>3 the different committees.</p> <p>4 Q. Have you chaired any of those committees?</p> <p>5 A. No.</p> <p>6 Q. Have you authored any publications of any</p> <p>7 kind pertaining to escalators?</p> <p>8 A. I have not.</p> <p>9 Q. How about elevators?</p> <p>10 A. No publications.</p> <p>11 Q. On your resume', I see a reference under</p> <p>12 Community Activities to you being a volunteer for</p> <p>13 Elevator and Escalator Safety Foundation Safe-T Rider</p> <p>14 Program. Tell me a little bit about that.</p> <p>15 A. I actually am on the board, sit on the board</p> <p>16 of EESF, Elevator Escalator Safety Foundation.</p> <p>17 Q. What is it and then tell us a little bit</p> <p>18 about it?</p> <p>19 A. It is a program to teach the use -- the safe</p> <p>20 use of elevators and escalators. Its largest program</p> <p>21 is to second graders and then it has a program for</p> <p>22 college students. It has a program for elderly people.</p> <p>23 So, I'm trying to think -- I think those are the three</p> <p>24 major ones.</p> <p>25 Q. And, like, what do you do, go out there and</p>
<p style="text-align: right;">Page 47</p> <p>1 A. They're -- they're the power -- the big power</p> <p>2 fields of -- almost every one of them have an elevator</p> <p>3 in them because otherwise they had to climb ladders.</p> <p>4 And it became more expensive to pay for disability of</p> <p>5 the shoulders, knees, hips of climbing that kind of</p> <p>6 ladder. So, they began investing in elevators. And</p> <p>7 that's when they decided to make a code for them</p> <p>8 specifically.</p> <p>9 Q. That's interesting. Why -- why did you</p> <p>10 develop such an interest in that that you'd sit on --</p> <p>11 that specific committee?</p> <p>12 A. A lot of the manufacturers are in Texas and</p> <p>13 John Koshak chaired that committee and he sought me out</p> <p>14 to help in that because I had ran both engineering</p> <p>15 and -- and inspection. And so whenever you're</p> <p>16 designing a code, you need outside influence. I was</p> <p>17 the why person. I'm the questioner.</p> <p>18 Q. Are you a NAECA member, also?</p> <p>19 A. Yes, I'm certified through NAECA.</p> <p>20 Q. Other than the wind turbine as a separate</p> <p>21 code, how active are you with ASME?</p> <p>22 A. I would say I'm very active.</p> <p>23 Q. What kind of things do you do that you would</p> <p>24 say you're very active?</p> <p>25 A. I go to their committee meetings. I'll be at</p>	<p style="text-align: right;">Page 49</p> <p>1 actually, like, give a presentation at the schools or</p> <p>2 different facilities?</p> <p>3 A. I have in the past. Usually, when my</p> <p>4 children were in school, we did it every year. Now</p> <p>5 it's more difficult to get into schools, period. And</p> <p>6 they have -- the last five years they have gone over to</p> <p>7 a computer-generated app where you go and you do the</p> <p>8 program on that and get your certificate. I don't</p> <p>9 think it's nearly as effective, but it's as much as</p> <p>10 they can do in the climate that we're in, which is</p> <p>11 nobody goes in that school.</p> <p>12 Q. Right.</p> <p>13 A. So...</p> <p>14 Q. How about for the elderly people, how have</p> <p>15 you, you know, communicated with that --</p> <p>16 A. I -- I have not. As I -- I sit on the board.</p> <p>17 And we try to get more and more involved in that -- you</p> <p>18 know, that side of -- of safety, for the most part.</p> <p>19 And to do that, they attempt AARP and, you know, that</p> <p>20 kind of involvement, attempting to get involved in</p> <p>21 those organizations so that they can send literature or</p> <p>22 place them in their magazines or stuff like that.</p> <p>23 Q. Okay. Do you have any literature from EESF,</p> <p>24 like, that would be distributed or meant for elderly</p> <p>25 people to -- that addresses safe use of escalators?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. EESF.org has all of it on there.</p> <p>2 Q. Have you written any of their stuff?</p> <p>3 A. No, they -- they hire professional writers.</p> <p>4 We -- we look at it and change things or approve or</p> <p>5 disapprove.</p> <p>6 Q. Okay. What type of safe practices are</p> <p>7 communicated to elderly people through EESF relating to</p> <p>8 use of escalators?</p> <p>9 A. Hold the handrail, watch -- you know, watch</p> <p>10 as you step on, watch as you step off. For the most</p> <p>11 part, the same thing that is on the edge of the</p> <p>12 escalator.</p> <p>13 Q. Does EESF suggest that elderly people use</p> <p>14 elevators instead of escalators?</p> <p>15 A. We suggest that there's proper signage to</p> <p>16 point from every -- we get a lot of it in airports,</p> <p>17 proper signage to notify where the closest elevator is.</p> <p>18 Q. All right. Let's go a little bit -- just --</p> <p>19 I'm going to finish out this area of the topic. I can</p> <p>20 see everybody wants to take a break. So -- unless it's</p> <p>21 urgent and you want to break right now. Okay.</p> <p>22 What's the difference between a regular</p> <p>23 QEI and this QEC that's referenced on your resume'?</p> <p>24 A. QEC is a Qualified Elevator Consultant. And</p> <p>25 those differences are listed on the website. And that</p>	<p style="text-align: right;">Page 52</p> <p>1 it?</p> <p>2 A. Probably. That's shortly after starting my</p> <p>3 own company.</p> <p>4 Q. Back then in 1997, did you have to be, like,</p> <p>5 sponsored by somebody in the trade?</p> <p>6 A. Not for QEI, no.</p> <p>7 Q. Okay. Have you retested every year for QEI</p> <p>8 since your first time?</p> <p>9 A. Up until about three years ago when it went</p> <p>10 out of ASME and into ANSI, the rules changed and about</p> <p>11 three years ago, we had to total retest. But we never</p> <p>12 have to retest again.</p> <p>13 Q. Okay. So, once you're in from three years</p> <p>14 ago, you're in for life?</p> <p>15 A. Pretty much, yes.</p> <p>16 Q. You got to pay that annual fee?</p> <p>17 A. Pay an annual fee and you sign a document</p> <p>18 that says you have current code books and that you've</p> <p>19 been ethical.</p> <p>20 Q. When you took that test the last time</p> <p>21 approximately three years ago, was -- was it an open</p> <p>22 book test?</p> <p>23 A. It was. The original one was not.</p> <p>24 Q. Because not everybody had a laptop in 1997.</p> <p>25 A. I'll tell you.</p>
<p style="text-align: right;">Page 51</p> <p>1 website, IAEC.org. Basically, this is a consultant</p> <p>2 with a certain amount of years of experience. But it's</p> <p>3 no more years experience than is required for them to</p> <p>4 be in the organization. What is required is they</p> <p>5 maintain their knowledge. They require them to go to</p> <p>6 two of the last three forums. The IAEC has educational</p> <p>7 forums every year. They require them to do two of the</p> <p>8 last three elevator shows. They require them to give</p> <p>9 proof that they're involved in a state or local or</p> <p>10 code, which is national boards or meetings so that they</p> <p>11 not only take from the industry but give back to the</p> <p>12 industry, that they do educational settings themselves.</p> <p>13 They are available for that type of thing.</p> <p>14 So, it is more of a giving back to the</p> <p>15 industry through your own knowledge of having worked in</p> <p>16 it for X amount of years.</p> <p>17 Q. And is there some kind of fee associated</p> <p>18 with that?</p> <p>19 A. There is a fee associated with getting it</p> <p>20 originally and there is no fee associated after that.</p> <p>21 They are -- they can have pop quizzes of making sure</p> <p>22 they've been to all of the events that they are</p> <p>23 supposed to go to.</p> <p>24 Q. And you've been QEI licensed or certified</p> <p>25 since -- I saw it on here somewhere -- since 1987, is</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Do you have any license that specifically</p> <p>2 allows you to inspect in the state of Nevada?</p> <p>3 A. No, I do not.</p> <p>4 Q. And I think I asked you this already. I</p> <p>5 apologize. Is this your one and only case you've ever</p> <p>6 had in Nevada?</p> <p>7 A. I believe that it is. I have seen other</p> <p>8 cases, but I've never been involved in them.</p> <p>9 Q. Okay. These different certifications</p> <p>10 referenced on your resume' the MBE, DBE, and M/WBE,</p> <p>11 HUB, are those all different Texas certifications?</p> <p>12 A. No. Women Business Enterprise. They're all</p> <p>13 small business association-type certifications. HUB is</p> <p>14 Historically Underutilized Business, and that is</p> <p>15 specific to Texas. Different states call them</p> <p>16 different things.</p> <p>17 Q. Who did you buy this Elevator Technical</p> <p>18 Services from?</p> <p>19 A. The Walshes, W-a-l-s-h.</p> <p>20 Q. And did they do the same type of elevator</p> <p>21 inspections as your company currently does?</p> <p>22 A. That's very subjective.</p> <p>23 Q. Did they -- yeah, I understand that.</p> <p>24 A. Okay.</p> <p>25 Q. Did they do state and city required</p>

<p style="text-align: right;">Page 54</p> <p>1 inspections?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. One more thing before we take a break.</p> <p>4 I looked on your website and there was something about</p> <p>5 sales of escalators. Is either of your companies</p> <p>6 involved in the sale of escalators? Do you know what</p> <p>7 I'm talking about?</p> <p>8 A. No.</p> <p>9 Q. Let me look real quick.</p> <p>10 Swett Corp. Residential Pneumatic</p> <p>11 Elevator Sales.</p> <p>12 A. Yes.</p> <p>13 Q. What is that about?</p> <p>14 A. I do have a license to do that and I have</p> <p>15 installed one in my home in Memphis about 20 years ago</p> <p>16 and that's pretty much it.</p> <p>17 Q. Okay. No one is buying those.</p> <p>18 A. We're not putting them in. I mean, they're</p> <p>19 good elevators; but we don't have the time. I don't</p> <p>20 the time to do it. So, I just give them to other</p> <p>21 people.</p> <p>22 Q. You know, I wanted to ask you something else.</p> <p>23 I previously asked you a question about inspections of</p> <p>24 escalators. And you made a point of saying commercial</p> <p>25 escalators. Are there any other kind besides</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Okay. All right. How about Page 2?</p> <p>2 A. Let me find it. There is a couple in here.</p> <p>3 This is one that is not on here that is escalator. And</p> <p>4 it's Omni Hotel. And I'll have to find it.</p> <p>5 Q. I thought I saw an Omni on Page 2.</p> <p>6 A. I don't think that's the right one. I'd have</p> <p>7 to look because I've done a few for Omni. But one of</p> <p>8 them was an escalator.</p> <p>9 Q. Okay. Let me ask you this before we proceed.</p> <p>10 This page -- these three pages that are titled Summary</p> <p>11 Expert Cases, are these all the cases you've had or</p> <p>12 only the ones you have been deposed in?</p> <p>13 A. They are not evidently all the ones I have</p> <p>14 because I remember Omni's escalator case. And it does</p> <p>15 not look like it's on here. Very recently, I've been</p> <p>16 told that I'm supposed to keep a list. And so I'm</p> <p>17 continually updating this list. I got -- I know I have</p> <p>18 a couple more since this. But I remember the specific</p> <p>19 because I represented Omni.</p> <p>20 Q. Okay. So, back to my original question, are</p> <p>21 these cases that you just worked on or cases that you</p> <p>22 actually testified in?</p> <p>23 A. Most of them I gave depositions in. None of</p> <p>24 them went to trial. The closest one that went to trial</p> <p>25 was the first one.</p>
<p style="text-align: right;">Page 55</p> <p>1 commercials?</p> <p>2 A. Well, if there had been in Texas, we would</p> <p>3 not have had to inspect them. So, I've never seen -- I</p> <p>4 don't doubt that there is some somewhere, but I've</p> <p>5 never seen a residential escalator.</p> <p>6 Q. I'd be surprised if there were, but you never</p> <p>7 know.</p> <p>8 MS. MASTRANGELO: Okay. Let's take a</p> <p>9 couple minutes break.</p> <p>10 MR. IQBAL: Okay.</p> <p>11 (Recess from 11:42 a.m. to 11:57 p.m.)</p> <p>12 Q. (BY MS. MASTRANGELO) Okay. Ms. Swett, I had</p> <p>13 asked you while we were on the break to see if you had</p> <p>14 your summary of expert cases sheets that were produced</p> <p>15 in this case and you've located those.</p> <p>16 Starting on Page 1 -- and I'm not going</p> <p>17 to ask you about every single entry -- the very bottom</p> <p>18 entry is dated 2012 to 2013. And the entities which</p> <p>19 precede that are not dated. Can we infer by that that</p> <p>20 they are all prior to 2012?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is there anything on this first page</p> <p>23 that looking at it you recall the case involved an</p> <p>24 escalator incident as opposed to elevator?</p> <p>25 A. Not this page.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. But you did not testify in trial?</p> <p>2 A. No. I got on an airplane, and when I got</p> <p>3 there, they told me it settled. I've been close on a</p> <p>4 couple of them, but never walked through that door.</p> <p>5 Q. Okay.</p> <p>6 MR. IQBAL: And when you say, "the first</p> <p>7 one," it's the --</p> <p>8 THE WITNESS: -- KONE in Chicago.</p> <p>9 Twelve people were injured of which one ended up dying.</p> <p>10 Q. (BY MS. MASTRANGELO) Okay. Let me just ask</p> <p>11 you about a couple of things on there. The third one</p> <p>12 down, it says, "Plaintiff versus major manufacturer</p> <p>13 (believe Otis) expert for manufacturer." Do you</p> <p>14 believe you were retained by Otis?</p> <p>15 A. Yes.</p> <p>16 Q. And it says at the bottom, "OEM released from</p> <p>17 suit." That would have been Otis?</p> <p>18 A. Correct.</p> <p>19 Q. Do you remember anything else about that</p> <p>20 case?</p> <p>21 A. It was not an injury case. It was -- they</p> <p>22 were suing them for slowing down the project. And I</p> <p>23 was brought in to represent Otis.</p> <p>24 Q. Like a construction dispute?</p> <p>25 A. Uh-huh. Not my favorite.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. Not anyone's favorite. That just sounds 2 plain boring.</p> <p>3 Okay. And then the next one down, it 4 looks like also plaintiff versus major manufacturer and 5 you thought it was Amtech. So, you would have been 6 retained by Amtech?</p> <p>7 A. Yes.</p> <p>8 Q. And do you recall anything more about that 9 case?</p> <p>10 A. No, on this -- no, it was this one. Yeah. 11 And it also was not an injury. They had redone the cab 12 in stone all the way around and to the ceiling and 13 burned up their elevator motor. Don't do that.</p> <p>14 Q. Okay. The bottom one, Adrian Rodriguez, Otis 15 was a defendant in that case. You were retained by the 16 plaintiff?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember anything about that case?</p> <p>19 A. Oh, yes.</p> <p>20 Q. Tell me a little bit about the fact pattern.</p> <p>21 A. This was at one of the hotels in San Antonio. 22 The -- an employee of the hotel, at the end of her day, 23 went to get on the elevator and as she pushed the 24 button and it opened up, she went and stepped on and it 25 shot through the ceiling and she died. She fell seven</p>	<p style="text-align: right;">Page 60</p> <p>1 to Rebecca Rabago on Page 2, did you work for the 2 plaintiff on all the other cases?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you remember what the 2015 case, 5 Gary Chip Thompson versus Otis Elevator, was generally 6 about?</p> <p>7 A. I actually think that one is still going on. 8 I can't remember a lot about it. I recently got a 9 notification of trial. And I have it blocked for two 10 weeks on my calendar. I hope they tell me when it is 11 so I can go back and look. It was in a city -- or a 12 county building. And it was elevator. I know that.</p> <p>13 Q. How about the one directly under that, 14 Sarah Berry, that one has KONE as a defendant. Do you 15 remember if that was an escalator case?</p> <p>16 A. No, it was not.</p> <p>17 MR. IQBAL: And, Counsel, what page are 18 we on?</p> <p>19 MS. MASTRANGELO: I'm on Page 2, still.</p> <p>20 Q. (BY MS. MASTRANGELO) A couple more -- well, 21 actually, the next one down, Gary Schneider versus 22 ThyssenKrupp. It says settled. But do you remember 23 the basic fact pattern behind that case?</p> <p>24 A. That one, supposedly it was a -- just a 25 sudden stop and then he was trapped in it for a while.</p>
<p style="text-align: right;">Page 59</p> <p>1 floors.</p> <p>2 Q. How did that case end up resolving?</p> <p>3 A. All four experts, including the one from the 4 Otis, said it was Otis' fault.</p> <p>5 Q. Did it settle thereafter?</p> <p>6 A. It settled, yeah.</p> <p>7 Q. Do you remember who Otis' expert was?</p> <p>8 A. Yes.</p> <p>9 Q. Who was it?</p> <p>10 A. John Donnelly.</p> <p>11 Q. Okay. All right. The Omni Hotel escalator 12 case that's not on the list?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Were you representing the Omni Hotel?</p> <p>15 A. Yes, owner.</p> <p>16 Q. Some of the other entries on your list on 17 Page 2 reference Rebecca Rabago.</p> <p>18 A. Yes.</p> <p>19 Q. Was she the lawyer for Omni?</p> <p>20 A. I don't think she was -- she might have 21 started the escalator case, but she definitely didn't 22 end it. But I think it was that -- that team, because 23 I think they do most all of Omni's, God help them for 24 the one they're in right now.</p> <p>25 Q. Other than the couple that specifically refer</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Were you deposed in that case?</p> <p>2 A. I don't think so.</p> <p>3 Q. How about the next one down, 2017, Roblado 4 versus ThyssenKrupp and others?</p> <p>5 A. That one, I was not deposed because I became 6 involved -- my company became involved in it after the 7 fact without anybody's knowledge. And so John Koshak 8 got that. And I think it was settled.</p> <p>9 Q. When you say your company, the inspection 10 company?</p> <p>11 A. Yeah. Between the time I was retained 12 through Swett and Associate and the time we went out to 13 do an evaluation, my scheduler -- they changed 14 management companies. And that was one of the ones we 15 inherited that was not happy.</p> <p>16 Q. Okay. So, you had a conflict and you had to 17 get out of it?</p> <p>18 A. Yeah.</p> <p>19 Q. All right. It looks like Page 3, all of 20 those are on behalf of the plaintiff --</p> <p>21 A. Yes.</p> <p>22 Q. -- including this one. Okay. Tell me what 23 you recall about the one escalator case for the Omni 24 that is not on this list for whatever reason.</p> <p>25 A. It was in Texas. It was a smaller town. I</p>

<p style="text-align: right;">Page 62</p> <p>1 want to say Corpus. There was an event at the second 2 level and an elderly man and woman were going to the 3 event that was, I believe, a reception for a wedding. 4 And when he got to the top of the escalator, the 5 elderly man managed to fall and somebody came and 6 pushed the stop button. Anyway, the elderly man was 7 not the plaintiff. Someone decided to become a 8 superman and go rescue the elderly man and was running 9 up the escalator to get to the elderly man when someone 10 pushed the stop button and that person fell and he 11 sued.</p> <p>12 Q. Is that case still going on? 13 A. No, that one -- that one, I don't think, 14 settled for any great amount of money. I don't think 15 it settled for anything. I know it's not going on. 16 Q. Okay. Did you give a deposition in that 17 case? 18 A. No, I think I just gave an expert report. 19 Q. And do you know who the plaintiff's expert 20 is, if they have one, or was? 21 A. I honestly don't -- I don't think it got that 22 far. 23 Q. It doesn't sound like it should have. 24 Are there any other escalator cases that 25 you can think of that you've worked on in the last four</p>	<p style="text-align: right;">Page 64</p> <p>1 calendar. 2 Q. Do you have a ballpark figure as to how many 3 hours that you've spent on the case today? 4 A. I think we're at about 30. 5 Q. Okay. And what is your hourly rate? 6 A. It was probably 200, unless I'm being 7 deposed, and I think it's 300 then. 8 Q. Why do you charge more for depositions? 9 A. Because they're not fun. 10 Q. I should be offended by that. 11 MR. IQBAL: I should have objected to 12 that question, but I couldn't find a reasonable basis. 13 Q. (BY MS. MASTRANGELO) Have you spoken with 14 anyone other than counsel about this case, your 15 opinions, or this deposition? 16 A. No. 17 Q. For example, have you spoken with either of 18 the plaintiffs? 19 A. No. 20 Q. Have you spoken with any witnesses? 21 A. No. 22 Q. Spoken with anyone from the state of Nevada? 23 A. No. 24 Q. Spoken with anyone from ThyssenKrupp? 25 A. Only on the site. And there were two people</p>
<p style="text-align: right;">Page 63</p> <p>1 or five years that stick out in your mind for any 2 reason? 3 A. No. 4 Q. Okay. Our Rules of Civil Procedure also 5 require experts to produce information pertaining to 6 billing in the case. And I don't think we received 7 anything. Do you have information on your billing? 8 A. I do not. I have not billed, but I have 9 received a retainer. But I can get that. 10 MR. IQBAL: We can send you that 11 information. I think we need to -- to update our 12 expert disclosures. So... 13 Q. (BY MS. MASTRANGELO) How much was your 14 retainer in this case? 15 A. Either 2,000 or 2500. I have it in here, 16 too. 17 Q. Okay. 18 A. But finding it... 19 Q. Do you -- how do you keep your -- I'm 20 assuming you bill by the hour? 21 A. I do. 22 Q. So, how do you keep your billing? 23 A. Usually on a calendar. 24 Q. Just old-fashioned handwriting? 25 A. Old-fashioned. Actually, it's typed now on a</p>	<p style="text-align: right;">Page 65</p> <p>1 there, I think. And it was not -- it was high. 2 Q. Have you spoken with anyone else who claims 3 to be an expert in the elevator/escalator industry? 4 A. Not about this case. 5 Q. Okay. Is there a reason that you haven't 6 spoken to the plaintiffs about what happened on the day 7 of the incident? 8 A. I have -- I have the reports and I have the 9 video and I have not spoken to the plaintiffs. 10 Q. Is that something you just typically don't 11 do? 12 A. I typically leave that up to the attorney. 13 Q. Okay. Do you have, like, handwritten notes 14 or computer-generated notes about your review of the 15 case and inspection and so forth? 16 A. The only handwritten thing I have is the -- 17 when I was adding all that stuff up. But you're more 18 than welcome to have it. 19 Q. I don't want to keep it, but I'll take a look 20 at it. 21 A. This is me adding all those hours up. Here's 22 some more. 23 Q. And when you're saying that, you're talking 24 about the maintenance, callbacks, et cetera? 25 A. Yes.</p>

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1 Q. Maybe what we'll do at some point is try to
2 make a copy of these.

3 A. Okay.

4 MR. IQBAL: Or we can -- we can get you
5 a copy.

6 A. Okay. Here's some more.

7 Q. (BY MS. MASTRANGELO) Okay. So, you've handed
8 me five pink sheets -- oh, wait, here's another one.
9 Six pink sheets and three neon greens. Are the colors
10 significant?

11 A. No. Probably all the pink ones were
12 done before I went to -- I'd leave the green ones kind
13 of attached to each other. They're probably a little
14 different. You want me to attempt to put them
15 together? Because there's some on the backside, too.
16 I got industrious.

17 Q. Yeah, I see some on the backside, too.

18 Do y'all have third-party inspectors in
19 Texas or is that what you're considered?

20 A. We are considered third-party inspectors.

21 Q. So, does the state of Texas or the city of
22 Houston or some other municipality come out ever if
23 there's accidents to the public?

24 A. If there's an injury accident or the person
25 is removed in an ambulance, they're supposed to come

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1 out.

2 Q. And that would have to be done by the state
3 as opposed to somebody like you?

4 A. A lot of times I'm -- a lot of times I'm
5 there, because a lot of times they don't know that
6 they're supposed to call them. So, they'll call us
7 first and we'll tell them that they've got to notify
8 their notifying agency.

9 Q. Okay. Other than these big old colorful
10 notes, Post-it note things, have you kept any other
11 notes or anything?

12 A. I usually have to read it right before. So,
13 I can reread it again. I usually reread my reports and
14 that brings back most of the stuff. So...

15 Q. How about as far as in the documents
16 themselves, do you take notes in the margins or
17 highlight things or whatever as you're going through?
18 It doesn't look like it.

19 A. I brought this in case I need to make some
20 more notes.

21 No.

22 MR. IQBAL: You do have some sticky tabs
23 on --

24 A. Oh, yeah, that is for the people -- I told
25 her I was going to make it pretty so I could find

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1 everything. This is Mr. Turner's and Mr. Richard Smith
2 and Ms. -- these are the depositions. And then there's
3 one that doesn't have a sticky tab, Mr. Dutcher doesn't
4 have a sticky.

5 THE REPORTER: I'm sorry? Mr.?

6 A. Dutcher.

7 Q. (BY MS. MASTRANGELO) Dutcher.

8 A. Dutcher doesn't have a sticky tab. So,
9 that's so I can find it.

10 Q. Well, we'll work through it.

11 Do you know Davis Turner?

12 A. I don't think that I do, but I'm also the
13 only woman in the industry. So, most people will say
14 that they know me. I know that the first time I ever
15 heard of him, that day I got a LinkedIn request from
16 him and I just went -- and I did not respond but I --
17 I'm at every event there is. So, I may have met him.

18 Q. When do you think that you got that LinkedIn
19 request, like?

20 A. Pretty much the day I read his report.

21 Because that would have been the first time I'd ever
22 heard of him. And all of a sudden I had a LinkedIn
23 request.

24 Q. Okay. Did you know that he's been the chair
25 of the escalator committee for, you know, since I was

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1 born?

2 A. Yeah.

3 Q. Okay.

4 A. Because I looked it up.

5 Q. Oh, did you? Okay.

6 I can't remember. Did you take any
7 photographs or video of the escalator or the steps or
8 the surrounding areas when you came down to Laughlin?

9 A. I did. And I sent them all.

10 Q. I don't have those. About how many
11 photographs did you take, ballpark?

12 A. 40.

13 Q. Okay. And they were photographs of what?

14 A. A lot of them were photographs of those dark
15 ugly steps that you couldn't tell anything about. A
16 lot were photographs -- just I would take photographs
17 as the open steps went up. And I think there's a
18 photograph of the motor. There's a photograph of the
19 Elevator This Way sign. That kind of thing.

20 Q. The first thing you said was something about
21 the dark steps. Were those in that warehouse building?

22 A. In the warehouse building, yeah.

23 Q. Did you take any video at all?

24 A. If I did, it was by accident, because they
25 put that button too close to the other button.

<p style="text-align: right;">Page 70</p> <p>1 Q. Did you take all the photos on an iPhone?</p> <p>2 A. Yes.</p> <p>3 Q. Has counsel given you any information about</p> <p>4 this case or pertaining to any issue in this case that</p> <p>5 you otherwise did not receive through documents or some</p> <p>6 other source?</p> <p>7 A. No.</p> <p>8 Q. In other words, did he tell you anything that</p> <p>9 you haven't seen anywhere else and you only know it</p> <p>10 because he told you?</p> <p>11 A. No.</p> <p>12 Q. What else do you have in your file other than</p> <p>13 the items reviewed and considered as set forth in your</p> <p>14 report and your rebuttal report?</p> <p>15 A. I think that's pretty much all I have because</p> <p>16 I tried to go through it to make sure that was all that</p> <p>17 was here.</p> <p>18 Q. Okay. Can I take a real quick look at your</p> <p>19 file, which may speed up the process here?</p> <p>20 A. That's a tab on the bottom. I don't know</p> <p>21 what that tab is.</p> <p>22 Q. Okay. The very first page is an email from</p> <p>23 counsel to you. It looks like it's dated March 26,</p> <p>24 2018. Is that when you were retained?</p> <p>25 A. I don't know. I'd have to look at the email.</p>	<p style="text-align: right;">Page 72</p> <p>1 those that would have them as attachments. There would</p> <p>2 have been one there. And that may or may not be in</p> <p>3 there.</p> <p>4 Q. Okay. Did you generally communicate with</p> <p>5 counsel via email as opposed to snail mail or on the</p> <p>6 phone?</p> <p>7 A. I haven't snail mailed in forever. It would</p> <p>8 probably have been on the phone if he needed me.</p> <p>9 Q. This Chris Dutcher deposition has a lot of, I</p> <p>10 don't know, darkened or highlighted testimony. Was</p> <p>11 that done by you or is that how it came to you?</p> <p>12 A. How it came to me.</p> <p>13 Q. I'll give you this back in a second.</p> <p>14 Your file here contains three</p> <p>15 depositions, Don Hartman, Richard Smith, and</p> <p>16 Chris Dutcher. Have you reviewed any other</p> <p>17 depositions?</p> <p>18 A. I have not.</p> <p>19 Q. Have they sent you any other depositions for</p> <p>20 whatever reason you haven't read?</p> <p>21 A. I feel like everything I've been sent is in</p> <p>22 there.</p> <p>23 Q. And then in the back of your binder here</p> <p>24 there are initially a couple things. It looks like</p> <p>25 KONE steps. I don't really know what this is. And</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. Hold on one second.</p> <p>2 A. I doubt it because it was -- it's been a</p> <p>3 while since...</p> <p>4 Q. How were you initially retained in this case?</p> <p>5 MR. IQBAL: Objection; vague, asked and</p> <p>6 answered.</p> <p>7 Q. (BY MS. MASTRANGELO) Do you understand what</p> <p>8 I'm asking?</p> <p>9 A. Not really. It was either called me, very</p> <p>10 likely email, because I don't answer very many phone</p> <p>11 calls. And then I called back. And then I sent him my</p> <p>12 resume' and letter and any -- he probably paid me the</p> <p>13 fee and I was on my way. I do not normally ask if I'm</p> <p>14 plaintiff or owner or elevator company. Usually it's</p> <p>15 plaintiff because there's far more plaintiff work out</p> <p>16 there than the other two.</p> <p>17 Q. Have you kept all the emails between yourself</p> <p>18 and plaintiffs' counsel's firm pertaining to this case?</p> <p>19 A. Most of them are just sending me that stuff</p> <p>20 right there. So, I don't -- I don't erase anything</p> <p>21 ever.</p> <p>22 Q. Okay. Because I just see the one in here,</p> <p>23 the one I referred to, March 26, 2018. Do you think</p> <p>24 there were others?</p> <p>25 A. There would have been one when they sent me</p>	<p style="text-align: right;">Page 73</p> <p>1 then some kind of news article. I'm going to hand</p> <p>2 those to you and let you just, like, tell us in general</p> <p>3 terms, like, what are these documents?</p> <p>4 A. Okay. Those are -- I referred to them in</p> <p>5 there. So, I grabbed a copy of them that KONE had, a</p> <p>6 specific campaign to replace these steps. And I have</p> <p>7 that document. And then there was a couple -- BTX,</p> <p>8 newsletters regarding -- that substantiated the cracks</p> <p>9 and what it did. And this is, again, more news things</p> <p>10 that basically showed I'm not the only person that</p> <p>11 knows about it and knows what happens, when it happens.</p> <p>12 And then I've got the replacement from KONE.</p> <p>13 Q. Do -- and I'll read those articles the next</p> <p>14 time we take a break. Do any of those articles suggest</p> <p>15 that cracked steps can cause steps to be shaky or cause</p> <p>16 people to fall?</p> <p>17 A. I don't know that it says causes people to</p> <p>18 fall. It definitely says it causes them to be shaky.</p> <p>19 Q. And then there's some kind of email here. It</p> <p>20 looks like it came from counsel to you. And it says</p> <p>21 Page Email 1 of 3, but I'm not sure that they're all</p> <p>22 here. Why don't you take a look at that. Are there</p> <p>23 any other emails that you have?</p> <p>24 A. No. I mean, not that I know of. Everything</p> <p>25 that I've got is in there that I know of.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. Okay. I am just going to remove the emails 2 and those articles that you just described so that I 3 can, when we take a break, make a copy of those. And I 4 think everything else in your binder I have. I'll just 5 ask you to produce these -- copies of these handwritten 6 notes to counsel. And then he can produce those to us. 7 A. Okay. 8 Q. And I'll give you back that in case you need 9 to refer to anything. 10 Prior to submitting your expert report, 11 did you provide counsel with a copy of the report to 12 preview? 13 A. No, but we -- he -- I did probably read 14 excerpts of it. 15 Q. Okay. Quit reading my notes. 16 A. I've done this before. 17 Q. Did you make any changes at his suggestion or 18 as a result of your discussion after you read those 19 excerpts to him? 20 A. There's no way I can remember that. 21 Q. Okay. Do you have a copy of the first draft 22 or the second draft or just the final copy? 23 A. I'm pretty sure I just save over. So... 24 Q. Okay. And the same thing with the rebuttal 25 report, you just have the one final copy?</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. IQBAL: Yeah, Dutcher's depo was in 2 New York, May 14th. 3 MS. MASTRANGELO: Whenever it was. 4 MR. IQBAL: Yeah. 5 Q. (BY MS. MASTRANGELO) Do you agree with me 6 that the version of the A17.1 code that applies is the 7 one that was in effect on the date the escalator was 8 installed? 9 A. Not really, because there are portions of the 10 code that -- Section 8 of A17.1 is for all elevators 11 and escalators. So, that is -- that is past when it 12 was installed. Also, according to the state, A17.3 is 13 for existing elevators. And so certain safety 14 mechanisms are brought up through A17.3. So, it 15 doesn't live with its original code. 16 Q. Okay. Other than the step to skirt index, is 17 there any other provision that an escalator owner has 18 to comply with and bring up to code or is everything 19 else, from the time it was installed, it has to comply 20 with that code? 21 A. Documentation has changed. 22 Q. Is that Section 8? 23 A. Yes. Documentation, maintenance control 24 programs, that type of thing has all changed. 25 Q. Okay. Other than documentation, the MCP, and</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes. 2 Q. Does your report and your rebuttal report, do 3 those two reports combined contain all of the opinions 4 you've formed in this case? 5 A. So far, yes. 6 Q. And have they -- do those two reports have 7 all the bases or supporting evidence for your opinions? 8 A. Yes. 9 Q. You said so far, which causes me to ask, is 10 there something else that you anticipate doing as far 11 as this case that you haven't done yet for whatever 12 reason? 13 A. No, but sometimes there's late documentation 14 that comes in that I then read and determine if it's of 15 any consequence. 16 Q. Okay. Have you asked counsel for permission 17 to do anything else that for whatever reason he told 18 you, I don't want you to do that or I'm not paying you 19 to do that? 20 A. No. 21 Q. Have you reviewed any new documents since you 22 got -- since you authored your rebuttal report? Have 23 you received anything more recently? 24 A. I don't think so. I think Mr. Dutcher's and 25 Mr. Turner's came very close to each other.</p>	<p style="text-align: right;">Page 77</p> <p>1 the step to skirt index, can you think of anything else 2 in the escalator code that requires an escalator owner 3 to update its equipment to comply with current code 4 versus be grandfathered in? 5 A. Yeah. I would have to look. I think some 6 signage is required now that wasn't required 7 originally. 8 Q. What kind of signage? 9 A. The -- the pictograph of holding handrail, 10 holding hand. No carts. I think that is in current 11 code now. 12 Q. And where does it say in the current code 13 that older equipment have to update their escalators to 14 comply with that versus the traditional it's 15 grandfathered back to the year of installation? 16 A. Well, in Section 8, it says in the original 17 scope that it is required. It was for all elevators. 18 A17.3, that is what the document is for, for all 19 existing elevators. So, those two places is -- also, 20 if anything is installed new, that particular piece and 21 anything that it triggered would be -- would be 22 required to be according to the code it was installed 23 under, which would be a more current code. 24 Q. Okay. So, what code do you believe applies 25 to the subject escalator?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. It was installed in 1983. I'd have to go 2 back to Nevada to see what they had then. 3 Q. Okay. Where did you get the idea that this 4 escalator was installed in 1983? 5 A. I thought that was on everybody's document. 6 Mr. Turner had a page. I had a page. Let me see. I 7 could have been pulling that from another case. Here 8 it is upside down. There it is. Oh, 1980. 9 Q. Okay. So, the subject elevator, you agree, 10 was installed in 1980? 11 A. Yes. That's the documentation we have. 12 Q. Okay. And during the course of your study 13 and evaluation of this case, did you make any effort to 14 determine what code would apply to this 1980 installed 15 escalator? 16 A. I'd have to look at the Nevada code. I have 17 codes all the way back to 1920. 18 Q. Did you look at the Nevada code? 19 A. There is a Nevada section in here somewhere. 20 Q. No, my question was: Did you look at the 21 Nevada code as part of your study of this case so far? 22 A. Only what's in here. 23 Q. Only what's in where? 24 A. Nevada Department of Business and Industry 25 and all that stuff.</p>	<p style="text-align: right;">Page 80</p> <p>1 with the code. 2 Q. (BY MS. MASTRANGELO) Are you going to offer 3 any opinions in this case that the subject elevator did 4 not meet code at the time of the subject accident? 5 A. Everything that I said was in my statement 6 and I think there was a few things but... 7 Q. Okay. I'm not asking what's in your report. 8 I'm asking you, when this case goes to trial, are you 9 going to say that this escalator violated code on the 10 date of the incident? 11 A. I can only say the condition it was in at the 12 date I saw it. 13 Q. Okay. So, I've got to keep asking you until 14 I get an answer to the question. Are you going to 15 testify at trial that this elevator violated code on 16 the date of Mr. Brown's fall? 17 MR. IQBAL: You mean escalator? 18 MS. MASTRANGELO: Escalator, sorry. 19 A. On the day of his fall. No. I wasn't there 20 at that time. Only the day I saw it. 21 Q. (BY MS. MASTRANGELO) Did it violate code on 22 the day you saw it? 23 A. There was a couple of things in my report. 24 Q. Did it violate code when you saw it? 25 A. The signage was not appropriate.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Yeah. But you don't have any codes in your 2 file. You just have the state records. 3 A. Right. 4 Q. Okay. So, did you at any point in time up 5 until right now look at the Nevada code to determine 6 what code applies? 7 A. I only looked at the records I have. 8 Q. So, you did not look at the Nevada code? 9 A. In 1980, no. 10 Q. As you sit here today, do you know what code 11 applies to the subject escalator? 12 A. If they had a code or if they used ASME, it 13 would be 1976, I believe. 14 Q. Do you know whether Nevada had adopted the 15 1976 code? 16 A. No. 17 Q. Does it make any -- strike that. 18 Do you need to know for any reason which 19 code applies? Is that something that you would like to 20 know? 21 MR. IQBAL: Objection; form. 22 A. According to the results of the steps and the 23 casting, that had nothing to do with the code. 24 THE REPORTER: And the? 25 A. The casting, cracks. That had nothing to do</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Okay. 2 A. And the elevator -- the maintenance was not 3 in accordance with the MCP, which is a violation of 4 code. 5 Q. The maintenance records or the maintenance 6 itself? 7 A. The maintenance itself. 8 Q. How are you able to say that the escalator 9 violated code on the date of your inspection when you 10 don't know which code applied? 11 A. Well, MCP is in Section 8, which is to all 12 escalators. And that particular one requires cleaning. 13 And it was -- was not clean. That would be a violation 14 of code. So... 15 Q. Okay. Where in the code -- well, strike 16 that. 17 Were there signs on the escalator? 18 A. Yes. 19 Q. Okay. And in looking at your rebuttal 20 report, it sort of sounded like you took issue with the 21 fact that the signage on the escalator was in English. 22 Is there some requirement that it be in other languages 23 as well? 24 A. No, but it's also a pictograph is required, 25 not a book.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. I'm going to get to that. But you say</p> <p>2 that the list of rules was written in English. Do you</p> <p>3 take any issue with that?</p> <p>4 A. There's no code requirement. Everything in</p> <p>5 Texas is written in two languages.</p> <p>6 Q. Okay. As far as you know, do Mr. and</p> <p>7 Mrs. Brown speak and read English?</p> <p>8 A. I believe so. As far as I know.</p> <p>9 Q. Is the pictogram -- is the reason that the</p> <p>10 code requires a pictogram for people who don't speak</p> <p>11 and read English?</p> <p>12 A. I would -- I would say that is certainly one</p> <p>13 of the reasons. Also, it's a quicker interpretation.</p> <p>14 Q. Do you know which version of the code first</p> <p>15 required these pictographs?</p> <p>16 A. Probably in the Eighties.</p> <p>17 Q. Do you know if the 1976 code required</p> <p>18 pictographs?</p> <p>19 A. I do not know.</p> <p>20 Q. Why do you believe that the pictograph</p> <p>21 requirement is retrospective?</p> <p>22 That might not be the right word.</p> <p>23 Why do you think the pictograph</p> <p>24 requirement has to be added to existing units that did</p> <p>25 not require it at the time they were installed?</p>	<p style="text-align: right;">Page 84</p> <p>1 New York, the hundred-plus-year-old one, just for work</p> <p>2 or just shopping?</p> <p>3 A. For all reasons. If you're in Macy's, you're</p> <p>4 shopping. But also I know that's one of the oldest</p> <p>5 escalators there are. When I'm in San Francisco, I go</p> <p>6 see the circular. It's the first circular escalator in</p> <p>7 the United States. So...</p> <p>8 Q. Did you look at the Macy's escalator in</p> <p>9 New York of -- you know, just interestingly like I look</p> <p>10 at it or did you go there to inspect it for work?</p> <p>11 A. I looked at it interestingly.</p> <p>12 Q. Okay. In the state of Nevada inspection</p> <p>13 records that you've reviewed for this case, did you see</p> <p>14 any indication that the subject escalator has ever been</p> <p>15 cited or given an NOV due to inadequate signage?</p> <p>16 A. No, it has not.</p> <p>17 Q. In this case, do you believe that Mr. Brown</p> <p>18 was holding the escalator handrail before he fell?</p> <p>19 A. Yes.</p> <p>20 Q. And that's based upon?</p> <p>21 A. Video.</p> <p>22 Q. And he didn't have a stroller or luggage cart</p> <p>23 or anything like that?</p> <p>24 A. No.</p> <p>25 Q. Okay. So, had the pictograph sign been on</p>
<p style="text-align: right;">Page 83</p> <p>1 A. I will review that. However, I've seen a</p> <p>2 bunch of escalators and they've never had only writing.</p> <p>3 Q. Okay. How many escalators have you seen that</p> <p>4 have predated the, say, 1993 or '4 code requirement for</p> <p>5 the pictograms?</p> <p>6 A. There's a lot in New York that I go see every</p> <p>7 time I go there. There's -- Macy's especially. And</p> <p>8 they all have pictogram.</p> <p>9 Q. All right. So, it sounds like just because</p> <p>10 you've seen that pictograph on other older escalators</p> <p>11 you're assuming the code required it to bring it up to</p> <p>12 date?</p> <p>13 A. Let me see what I said and if I said it was a</p> <p>14 code problem because I would have -- I'm sure -- I</p> <p>15 definitely remembered.</p> <p>16 Q. The only place I saw it, just to help you</p> <p>17 out, is in your rebuttal report. And you just say the</p> <p>18 signage was not code compliant, but you don't cite any</p> <p>19 section of the code --</p> <p>20 A. Okay.</p> <p>21 Q. -- which is sort of what I'm looking for in a</p> <p>22 roundabout way.</p> <p>23 A. I'll have to find it. It's not cited as a</p> <p>24 number. So...</p> <p>25 Q. Have you seen the Macy's escalator in</p>	<p style="text-align: right;">Page 85</p> <p>1 that escalator, what difference would that have made in</p> <p>2 this case as far as his accident?</p> <p>3 A. None.</p> <p>4 Q. Okay. All right. You also had an opinion in</p> <p>5 your rebuttal report on Page 4 in that same section we</p> <p>6 were talking about the signage where you state -- and</p> <p>7 I'm just paraphrasing -- that you believe that had the</p> <p>8 sign pointing to the elevator had been in the place</p> <p>9 that it is now at the time of Mr. Brown's accident, it,</p> <p>10 quote, "would have prevented Mr. Brown's accident." Is</p> <p>11 that one of your opinions in this case?</p> <p>12 A. It would have been a choice and he would have</p> <p>13 made that choice.</p> <p>14 Q. You believe he would have chosen to use the</p> <p>15 elevator as opposed to the escalator?</p> <p>16 A. That is -- I would say yes.</p> <p>17 Q. Okay. On what basis do you hold that</p> <p>18 opinion?</p> <p>19 A. Elevators are certainly easier.</p> <p>20 Q. You have not read his deposition?</p> <p>21 A. I have not.</p> <p>22 Q. Have you been made aware by any source that</p> <p>23 Mr. Brown testified that he saw the sign pointing to</p> <p>24 the elevator before he stepped on the escalator?</p> <p>25 A. I have not.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. Okay. Assuming that that was his testimony 2 and will be his testimony at trial, how does that 3 affect your opinion that he would have used the 4 elevator and not fallen? 5 MR. IQBAL: Objection; misstates 6 evidence. 7 A. It would not have mattered. It was the 8 escalator step that made him fall. 9 Q. (BY MS. MASTRANGELO) Are escalator owners 10 permitted in any way that you know to forbid people 11 from using escalators because they walk with a cane? 12 A. No. 13 Q. Would you recommend and the safety committee 14 that you belong to, do they recommend that people 15 with -- using canes use elevators instead of 16 escalators? 17 A. I believe they would say something about 18 balance issues. I don't -- I don't recall that they 19 say anything about canes. 20 Q. Okay. How about people who have a history of 21 falling? 22 A. I think they would consider that in the 23 balance issue. 24 Q. Okay. And that would be your recommendation 25 to elderly people who have a history of falling and</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. IQBAL: Objection; form, misstates 2 evidence. 3 A. Again, that also, to me, goes with service. 4 So, I don't -- that's beyond my expertise. 5 Q. (BY MS. MASTRANGELO) At what speed was the 6 escalator running on the date of Mr. Brown's fall? 7 A. Escalators, for the most part, are running at 8 their nameplated speed. They don't increase or 9 decrease unless they have a very more current version. 10 Q. What was the nameplated speed on this 11 particular escalator? 12 A. Okay, Mr. Turner. There you are. 13 90 foot a minute. 14 Q. Okay. Why are you referring to Mr. Turner's 15 report to get this information I've asked you about the 16 escalator? 17 A. Because I have his tab. 18 Q. Okay. And you're assuming that his 19 documentation is correct? 20 A. 90 foot a minute is as fast as you can run an 21 escalator. But I would -- I would have looked while I 22 was there, also, but this is tabbed. 23 Q. So, where did you document it in your -- as a 24 result of your inspection what speed the escalator was 25 running at?</p>
<p style="text-align: right;">Page 87</p> <p>1 need a cane for stability, you would recommend, if you 2 were asked, that they use an elevator as opposed to an 3 escalator? 4 MR. IQBAL: Objection; improper 5 hypothetical and form. 6 Q. (BY MS. MASTRANGELO) You can answer. 7 A. If I were asked. 8 Q. Were you aware that Mr. Brown's medical 9 records state that he was a fall risk and had a history 10 of falls prior to the date of the incident? 11 MR. IQBAL: Objection; misstates 12 testimony, misstates evidence. 13 A. I normally do not read the medical records 14 because that is beyond my expertise. 15 Q. (BY MS. MASTRANGELO) But you were not made 16 aware of that by any other -- 17 A. No. 18 Q. Okay. Were you aware from any source that 19 the medical records indicate that Mr. Brown was legally 20 intoxicated on the day of the incident? 21 A. Again, I did not -- that's beyond my 22 expertise. My expertise is escalators. 23 Q. But you wouldn't recommend that an 24 intoxicated older man with a cane use an escalator, 25 would you?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. I'm not sure if I even did. But... 2 Q. Is the -- 3 MS. MASTRANGELO: No, I don't want you 4 to answer. 5 Q. (BY MS. MASTRANGELO) Is the speed that the 6 escalator was running at on the date of the incident of 7 any bearing to your opinions in this case? 8 A. No. 9 Q. Did the escalator have demarcation lights? 10 A. Yes. 11 Q. Top and bottom? 12 A. Yes, when I saw it. 13 Q. Do you have any reason to believe they were 14 not operational on the date of Mr. Brown's accident? 15 A. I have no reason to believe that. You could 16 not see that in the video. 17 Q. What is the purpose of the demarcation 18 lights? 19 A. To bring your attention to your feet. 20 Q. Did the escalator at issue have a handrail on 21 the date of the incident? 22 A. It did. 23 Q. Was it running at a speed consistent with the 24 steps on the escalator? 25 A. It was running at a speed that would be</p>

<p style="text-align: right;">Page 90</p> <p>1 compliant, yes.</p> <p>2 Q. Why is that important?</p> <p>3 A. If -- if one runs faster or slower than the</p> <p>4 other, it will move your arm and therefore balance</p> <p>5 point away from what's required.</p> <p>6 Q. So, does it assist someone in getting on the</p> <p>7 escalator?</p> <p>8 A. May both assist them or not assist them</p> <p>9 according to when they grab it, honestly.</p> <p>10 Q. Does it assist them if they're using the</p> <p>11 handrail?</p> <p>12 A. Yes.</p> <p>13 Q. And does that handrail protrude out enough so</p> <p>14 that a person can grab onto the handrail before they</p> <p>15 step onto the escalator if they choose to?</p> <p>16 A. It protrudes beyond the step.</p> <p>17 Q. How many flat steps were there at the top end</p> <p>18 of the escalator?</p> <p>19 A. I think there were only two.</p> <p>20 Q. Is that code compliant?</p> <p>21 A. It is for that vintage of escalator.</p> <p>22 Q. And what's the purpose of the code for that</p> <p>23 vintage of escalator requiring two flat steps?</p> <p>24 A. They've since increased it. So, they</p> <p>25 determined that that's not enough. However, it is</p>	<p style="text-align: right;">Page 92</p> <p>1 So, it was -- apparently, they weren't there to do the</p> <p>2 inspection.</p> <p>3 Q. Well, the steps were pulled.</p> <p>4 A. Yes.</p> <p>5 Q. Was there anything that you didn't do that</p> <p>6 you wanted to do and expressed an interest in doing?</p> <p>7 A. It would not have been any different merely</p> <p>8 because the safety devices themselves, you know, are</p> <p>9 not what caused the incident. So, had I found a safety</p> <p>10 device that was not working, which is included in the</p> <p>11 full inspection, then that would have been a problem</p> <p>12 for then but not necessarily a problem for original.</p> <p>13 Q. Right. But because no safety switches were</p> <p>14 triggered during or as a result of Mr. Brown's fall,</p> <p>15 that's not even relevant to this case?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. So, were you able to look at and do</p> <p>18 everything you needed to do for Mr. Brown's accident</p> <p>19 when you did your inspection in May of 2018?</p> <p>20 A. I saw what I went to see.</p> <p>21 Q. Okay. So, in that same section of your</p> <p>22 rebuttal report, on the first page where it says,</p> <p>23 response to Mr. Turner's rebuttal 6.0 in Section 1. We</p> <p>24 talked about that cursory inspection. And at the end</p> <p>25 of that subsection 1 paragraph, it says, you know, you</p>
<p style="text-align: right;">Page 91</p> <p>1 before you start the incline to gain your balance.</p> <p>2 Q. When you watched the video of Mr. Brown's</p> <p>3 incident, did he grab onto the handrail before he fell?</p> <p>4 A. He had ahold of the handrail.</p> <p>5 Q. Did he have both of his feet on the escalator</p> <p>6 step before he fell?</p> <p>7 A. I don't know that I could tell that.</p> <p>8 Q. Okay. Did it appear to you that he looked</p> <p>9 down as he was stepping on?</p> <p>10 A. Yes.</p> <p>11 Q. Did you see anything in the video that would</p> <p>12 indicate the escalator was shaking or that the steps</p> <p>13 were shaky?</p> <p>14 A. I could not see the steps.</p> <p>15 Q. All right. Does your report reflect</p> <p>16 everything of substance that you did in Laughlin the</p> <p>17 day that you inspected the escalator and the steps?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. In your rebuttal report, it seems to</p> <p>20 sort of suggest that you agree with Mr. Turner that</p> <p>21 your inspection was, quote, "cursory." Do you agree</p> <p>22 with that?</p> <p>23 A. Oh, it was not an A17.1 inspection, no.</p> <p>24 Q. Why didn't you do a more full inspection?</p> <p>25 A. Well, I almost didn't get to pull the steps.</p>	<p style="text-align: right;">Page 93</p> <p>1 would volunteer that the escalator had been repaired</p> <p>2 and the culprit of the incident, steps, rollers and</p> <p>3 chains removed and replaced in kind with new code</p> <p>4 compliant parts. Does that mean that none of the</p> <p>5 equipment or conditions which you believe caused</p> <p>6 Mr. Brown's accident were still existing when you</p> <p>7 inspected?</p> <p>8 A. There were a couple of appearing to be</p> <p>9 original steps. So, I don't know if -- it's very</p> <p>10 difficult to tell the original step a person steps on.</p> <p>11 But it appeared that most of the steps had been</p> <p>12 replaced. But there were a few that had not been</p> <p>13 replaced.</p> <p>14 Q. Okay. I mean, is it impossible now to</p> <p>15 determine which -- or at any point in time, I guess,</p> <p>16 it's impossible to determine which specific step</p> <p>17 Mr. Brown was on at the time he fell. Is that fair?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. Do you agree with each new and</p> <p>20 replacement part, which is incorporated into an</p> <p>21 escalator, the life of the escalator is extended?</p> <p>22 MR. IQBAL: Objection; form, vague.</p> <p>23 A. Not necessarily. If there are other parts of</p> <p>24 the escalator that also have the wear that would</p> <p>25 require a replacement or modernization to be done.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. (BY MS. MASTRANGELO) But generally if</p> <p>2 there's -- and not talking specifically about this</p> <p>3 escalator, but in general, if an escalator gets parts</p> <p>4 replaced and it's well maintained, it can last way</p> <p>5 longer than 35 years. Do you agree?</p> <p>6 A. I have seen them last longer than 35 years.</p> <p>7 But it's also the usage and that type of thing.</p> <p>8 Q. What is your understanding of what an</p> <p>9 exterior inspection entails as done by the state of</p> <p>10 Nevada in its every six-month inspections per the</p> <p>11 documents you've reviewed or from any source?</p> <p>12 A. Yeah. Exterior inspections according to</p> <p>13 A17.1 are all visual. The incline of the escalator,</p> <p>14 the meshing of teeth between comb plate and escalator</p> <p>15 step. There's not a lot in an exterior inspection</p> <p>16 period. I mean, you're looking to make sure all the</p> <p>17 parts are still there, that there's no gaping holes, no</p> <p>18 gaps that have opened up. Honestly, if the chain has</p> <p>19 stretched, a visual of that, but then you would still</p> <p>20 have to measure. So...</p> <p>21 Q. Do you have to open it up to measure?</p> <p>22 A. No. No, you can -- if it's bad, you do not.</p> <p>23 You can usually tell.</p> <p>24 Q. Okay. And you could tell just from a visual?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 riding an escalator isn't going to notice?</p> <p>2 A. I suppose.</p> <p>3 Q. One would hope?</p> <p>4 A. I would hope.</p> <p>5 Q. Okay. All right. And then the A17.1,</p> <p>6 Section 8, also addresses what an interior inspection</p> <p>7 entails?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And tell us what that entails.</p> <p>10 A. Missing step, step chain switch, skirt</p> <p>11 switches, according to how old it is, up pull, comb</p> <p>12 plate impact in two directions, inlet -- handrail</p> <p>13 inlet.</p> <p>14 Q. Missing step?</p> <p>15 A. Yeah, I did that one first, missing step.</p> <p>16 Q. Oh, you did.</p> <p>17 A. Yeah.</p> <p>18 Q. Oh, yeah, you did.</p> <p>19 A. Yeah. Also, stop switches. And there are</p> <p>20 some things that require manual restarts. So, you</p> <p>21 just -- as they go through those, you notice if it puts</p> <p>22 itself back in service or if it's a manual restart.</p> <p>23 Q. And do -- to do each of these tests or to do</p> <p>24 any of these tests, do you have to pull a step or two?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Exterior?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. All right. So, it sounds to me like</p> <p>4 your understanding of an exterior escalator inspection</p> <p>5 would be the inspector rides it a few times, looks,</p> <p>6 listens, feels?</p> <p>7 A. Walks away.</p> <p>8 Q. Okay. And is there a specific section of</p> <p>9 A17.1 that discuss what should be done on an exterior</p> <p>10 escalator inspection?</p> <p>11 A. They -- they -- A17.1 has an annual escalator</p> <p>12 inspection. However, they do have a part that's --</p> <p>13 interior, part that's exterior. The part that's</p> <p>14 exterior is almost nothing.</p> <p>15 Q. Okay. What section number could I look at if</p> <p>16 I wanted to look at that?</p> <p>17 A. It would be in Section A under reports -- I</p> <p>18 mean, under inspecting, which is also in Section 8.</p> <p>19 Q. So, it sounds like from your description of</p> <p>20 the exterior inspection, that could certainly be done</p> <p>21 without a mechanic present?</p> <p>22 A. Correct. It could probably be done without</p> <p>23 an inspector present. There's not much to it.</p> <p>24 Q. Well, the inspector, you would agree, is</p> <p>25 going to pick up on things like your average person</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. So, it sounds like for the interior,</p> <p>2 you most definitely need a mechanic there to provide</p> <p>3 you access?</p> <p>4 A. Correct.</p> <p>5 Q. And to reset the switches that are not</p> <p>6 self-resetting?</p> <p>7 A. Correct.</p> <p>8 Q. In one of your reports, you state something</p> <p>9 to the effect of there weren't interiors done or the</p> <p>10 Thyssen mechanic didn't do interiors other than two</p> <p>11 years, 2013 and 2014. Am I saying that right?</p> <p>12 A. Yes.</p> <p>13 Q. Have you been provided with the MCP from the</p> <p>14 building pertaining to this escalator?</p> <p>15 A. Was it given in discovery?</p> <p>16 Q. Yeah.</p> <p>17 A. Then I've been provided.</p> <p>18 Q. I did not see it in your book. And it looks</p> <p>19 like this.</p> <p>20 A. I do not see it.</p> <p>21 Q. Okay.</p> <p>22 MR. IQBAL: Did we get those?</p> <p>23 MS. MASTRANGELO: Yeah, GNL produced</p> <p>24 them. I'll show them to you after I get my bearings</p> <p>25 here.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. (BY MS. MASTRANGELO) So, we're going to mark 2 these and they are identified as GNL 002095 through GNL 3 002102. And they're specifically the 2011 and 2012 MCP 4 for this subject escalator. I'm going to show them to 5 your counsel before I give them to you. And we'll mark 6 that as Exhibit A and B.</p> <p>7 MR. IQBAL: Do you know when these were 8 produced?</p> <p>9 MS. MASTRANGELO: Well, I did not 10 produce them. But Golden Nugget did. But I want to 11 say -- I couldn't guess. I'm not going to guess.</p> <p>12 MR. IQBAL: What are those numbers? 13 Sorry. They start at --</p> <p>14 THE WITNESS: 2095 --</p> <p>15 MR. IQBAL: Uh-huh.</p> <p>16 THE WITNESS: -- through 2102.</p> <p>17 MR. IQBAL: 2102.</p> <p>18 MS. MASTRANGELO: And just, Mo, for your 19 edification, there are more --</p> <p>20 MS. MCLEOD: Are we marking those for 21 the deposition?</p> <p>22 MS. MASTRANGELO: Yeah, I've marked just 23 2011 and 2012 as A and B respectively. But I just 24 wanted to let Mo know they were produced up through -- 25 from those numbers through GNL 002122, which is 2017.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Okay. The state of Nevada records that you 2 did see that are in your file, can you locate the 3 inspection for the July, 2013, semiannual, I guess 4 we'll call it?</p> <p>5 A. I have a July, 2013.</p> <p>6 Q. Okay. Do you have the NOV page of that as 7 well as the passed inspection page, p-a-s-s-e-d, 8 passed? It looks like this.</p> <p>9 A. It might be under a different -- or sent 10 differently because it's not like that.</p> <p>11 (Exhibit C was marked)</p> <p>12 Q. (BY MS. MASTRANGELO) I'll show you my copy 13 just to speed up the process here if you don't mind me 14 looking over your shoulder.</p> <p>15 A. Not at all.</p> <p>16 Q. Actually, let me show your counsel first. 17 I'm marking as Exhibit C the 7/16/13 elevator and 18 escalator results of inspection document, which that 19 was produced, I believe, by my office since it's not 20 Bates stamped.</p> <p>21 MR. IQBAL: Yeah, there's no -- there's 22 no Bates number on this Exhibit C. It has handwritten 23 markings for July 22nd, 2013. So...</p> <p>24 MS. MASTRANGELO: Actually, the 25 handwritten is July 16, 2013.</p>
<p style="text-align: right;">Page 99</p> <p>1 So, every year 2011 to 2017.</p> <p>2 Q. (BY MS. MASTRANGELO) So, my question for the 3 expert is do you see in July of 2011 as well as July of 4 2012 where the ThyssenKrupp mechanic did attend the 5 internal inspection with the state of Nevada or its 6 designee?</p> <p>7 A. Let me get the right year. 2011. Okay. I 8 see that there is a record there.</p> <p>9 (Exhibits A and B were marked)</p> <p>10 A. Yes.</p> <p>11 Q. (BY MS. MASTRANGELO) Okay. So, I understand 12 that this is the first time you've seen those 13 documents, but it would appear by those documents that 14 your report is incorrect indicating that the 15 ThyssenKrupp mechanic only attended two internal 16 inspections.</p> <p>17 A. I would have to put that with the dates that 18 I have. But, yeah, if the two that I had said they 19 attended were not these two, that would be correct.</p> <p>20 Q. Yeah, your report says two escalator safety 21 tests performed by ThyssenKrupp, one on 7/14/14 and one 22 on 7/16/13. And that, you know, therefore, 23 ThyssenKrupp didn't do any others. But you see there 24 that they did 2011 and 2012 as well?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. IQBAL: Well, there's additional 2 handwritten --</p> <p>3 Q. (BY MS. MASTRANGELO) Okay. This was 4 previously produced in the case and we'll mark it as 5 Exhibit C. That pertains to the 7/16/13 inspection. 6 You've seen other documents bearing that date, which 7 consist of the form by the state, but you have not seen 8 this particular one?</p> <p>9 A. I don't think so.</p> <p>10 Q. Okay. Do you see this area where it says, 11 "No discrepancies found during inspection. Location, 12 clean and neat. Maintenance control program and 13 records on site and up to date. Okay to issue 14 operating permits"?</p> <p>15 A. I see it.</p> <p>16 Q. Okay. Do you have anything in your records 17 that says something otherwise?</p> <p>18 A. No.</p> <p>19 Q. I'm going to show you the same -- a similar 20 document for the following year, which would have been 21 July, 2014, which would have been the last internal 22 inspection prior to Mr. Brown's accident.</p> <p>23 (Exhibit D was marked)</p> <p>24 Q. (BY MS. MASTRANGELO) So, Ms. Swett, again, 25 I'm going to show you what we have now marked as</p>

<p style="text-align: right;">Page 102</p> <p>1 Exhibit D, which is dated 7/14/14, which is the same 2 form, but it was filled out the year later. 3 MR. IQBAL: Also, there's no Bates 4 numbers on here. But I agree with Rebecca. The dates 5 are handwritten 7/14/14 and then there's a stamped date 6 of 7/16/14. 7 Q. (BY MS. MASTRANGELO) So, this report also 8 says, "No discrepancies found during inspection. Okay 9 to issue operating permits. This notice acts as permit 10 until received. Maintenance program on site and up to 11 date. Location, clean and neat." 12 Did I read that correctly? 13 A. Yes. 14 Q. Okay. Do you have any reason to believe any 15 of those notations by the third-party inspector were 16 not accurate or false? 17 A. I have no reason to believe. 18 Q. And in those sections in 2013 and 2014 of the 19 what's now part of the state file which indicates that 20 the location was neat and clean would indicate to me 21 that there wasn't that dirty and lint condition that 22 you observed present in 2013 and 2014. Is that how you 23 would interpret that? 24 MR. IQBAL: Objection; form, vague. 25 Counsel is testifying.</p>	<p style="text-align: right;">Page 104</p> <p>1 were. 2 Q. Okay. Do you believe -- do you know this 3 guy, Bill Schaefer, at all? 4 A. I do not. 5 Q. Do you believe that some third-party 6 inspectors, like, falsify records and say that there 7 were no violations or that it was clean and neat when 8 they didn't even do a good inspection? 9 A. Yes. New York just kicked a whole bunch of 10 them out. 11 Q. Do you know anything about Mr. Schaefer's 12 qualifications or how long he's been employed? 13 A. I do not. 14 Q. If there was a buildup of dust and dirt and 15 so forth underneath this escalator and in the areas 16 that you observed it in 2018, if that same or similar 17 condition was present in 2015, could that have caused 18 the escalator steps to be shaky? 19 A. No. 20 Q. If the dirty, dusty condition that you saw in 21 2018 existed in May of 2015, did that have any bearing 22 on Mr. Brown's fall? 23 A. The steps that we saw were dirty enough that 24 they could -- you could not see the cracks. 25 Q. No, but I'm just talking about him getting on</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Honestly, I couldn't -- there -- there is so 2 many records of third-party inspections that aren't 3 actually done. Is there a signature of the mechanic 4 that was there on that inspection? 5 Q. (BY MS. MASTRANGELO) Well, that wasn't what I 6 was asking you. I'm asking you not for other cases 7 that you've seen in Texas or anywhere else, but in this 8 particular case, by your review of that record, would 9 that indicate to you that there was a filthy, dirty 10 buildup of dust and lint in the pit and the steps? 11 MR. IQBAL: Objection; vague as to time 12 period. Same prior objections. 13 A. It would indicate that that inspector wrote 14 that down. And it was his -- what he felt like he was 15 seeing. 16 Q. (BY MS. MASTRANGELO) Okay. And this in 17 July of 2014 was an internal inspection, meaning the 18 steps would have been pulled and he would have looked 19 under there? 20 A. Correct. 21 Q. Okay. 22 A. And at that point, I would have looked to see 23 how long the elevator mechanic was there during that 24 time period. So, I would then correlate that with the 25 time the mechanic -- according to his -- the documents</p>	<p style="text-align: right;">Page 105</p> <p>1 the escalator and falling, did that -- was that caused 2 in any way by the dirt? 3 A. It was caused by the cracks of the steps. 4 Q. Okay. I've got to have a yes or no unless 5 there's some other answer to it. If the dirty, dusty 6 condition that you observed in 2018, if that same 7 condition or similar condition was present in May of 8 2015 on this escalator, did that in any way cause 9 Mr. Brown to fall on that date? 10 A. Okay. The dirt, had it occurred on that day 11 or previous to that date, would have impeded their 12 ability to see cracks. So, the dirt itself would not 13 have caused it. The inability to properly visually 14 inspect the step caused... 15 Q. Okay. And do you know why -- other than 16 that, why it's not a good idea to have your escalator 17 dirty? 18 A. That is, for the most part, the reason is all 19 mechanical pieces of equipment of any kind, it is -- 20 the No. 1 thing is keep them clean, for a multitude of 21 reasons, one of which is you cannot tell if there is 22 issues occurring if you cannot see those issues. 23 Q. Isn't the main reason that that is in the 24 code because it could be a fire hazard? 25 A. Well, it can be a fire hazard. But for</p>

<p style="text-align: right;">Page 106</p> <p>1 maintenance, to me, that's totally different.</p> <p>2 Q. So, if I'm understanding you right, any dusty</p> <p>3 or dirty condition which may have existed on the</p> <p>4 escalator in May of 2015 didn't cause Mr. Brown to</p> <p>5 fall, but it may have, in your opinion, caused the</p> <p>6 mechanic not to see something, which then was a</p> <p>7 problem.</p> <p>8 A. Correct.</p> <p>9 Q. Got you. Is there any way now for anyone to</p> <p>10 say one way or the other whether the escalator was</p> <p>11 dirty in May of 2015?</p> <p>12 A. There's no way that I can tell. I can only</p> <p>13 tell from the steps that were removed. And those steps</p> <p>14 were certainly dirty.</p> <p>15 Q. But do you know when those steps -- you're</p> <p>16 talking about the steps in the warehouse?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know when those had been removed?</p> <p>19 A. I would say when the others were installed.</p> <p>20 Q. So --</p> <p>21 A. And we have records of that.</p> <p>22 Q. So, a couple of years they were sitting in</p> <p>23 the warehouse also collecting dust?</p> <p>24 A. No, they were in boxes, enclosed in boxes and</p> <p>25 sealed because it took some effort to get them out.</p>	<p style="text-align: right;">Page 108</p> <p>1 on top?</p> <p>2 A. No, I couldn't --</p> <p>3 Q. Okay.</p> <p>4 A. -- tell.</p> <p>5 Q. Okay. On Page 5 of your report, the very top</p> <p>6 sentence says, "No preventative maintenance was done</p> <p>7 between December of 2013 and May of 2014, which</p> <p>8 resulted in gearbox failure and a 50 man-hour</p> <p>9 repair/replaced gearbox."</p> <p>10 A. Right.</p> <p>11 Q. Does that have anything to do with the</p> <p>12 subject incident?</p> <p>13 A. No.</p> <p>14 Q. Okay. Can you describe for us the old design</p> <p>15 steps versus the new design steps? I'm just trying to</p> <p>16 look for, like, compare and contrast so we can tell</p> <p>17 what's the difference between an old step and a new</p> <p>18 step.</p> <p>19 A. The cast step that has the issue has a weld</p> <p>20 along the edge. And what that does is make -- it's</p> <p>21 enabled to have any flexibility. And, therefore, it</p> <p>22 cracks instead of the slight movement that is -- and</p> <p>23 they have given ways to prevent -- from continuing the</p> <p>24 crack. However, it is still not -- it's still not a</p> <p>25 good way to fix the steps.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. When you rode the escalator in May of 2018,</p> <p>2 you say in your report that you rode the escalator</p> <p>3 applying pressure front to back and side to side. Did</p> <p>4 any of the steps rock?</p> <p>5 A. No.</p> <p>6 Q. Were any of the steps shaky?</p> <p>7 A. No.</p> <p>8 Q. Could you tell whether the steps that you</p> <p>9 were doing this had -- I don't know -- experiment or</p> <p>10 whatever on were old steps versus new steps?</p> <p>11 A. No, you couldn't because -- there's only a</p> <p>12 few, a very few that appeared to be old. And it would</p> <p>13 have had -- it would have been very difficult to even</p> <p>14 find them.</p> <p>15 Q. Okay. And you can't tell from riding on an</p> <p>16 escalator which ones are old or which one is new; is</p> <p>17 that right?</p> <p>18 A. Only if they have the cracks and are not</p> <p>19 stable. And then you couldn't tell if it's old or new,</p> <p>20 other than new steps, it's this particular step and</p> <p>21 this particular vintage that has the cracking issues.</p> <p>22 Q. Okay. But what I was getting at is, I</p> <p>23 thought you could only identify what -- whether the</p> <p>24 steps are old design or new design from looking</p> <p>25 underneath. Can you tell by riding it, on -- you know,</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Are you talking about drilling the hole?</p> <p>2 A. Drilling the hole at the end of the crack so</p> <p>3 it will not continue. And it -- and even if you take</p> <p>4 these steps and send them out, there is a repair</p> <p>5 program for steps, not these steps, but for steps. And</p> <p>6 if they find that they have -- that these are the type</p> <p>7 steps that crack, they will not repair. You must then</p> <p>8 either buy new. And they will not repair them. They</p> <p>9 will send them back to you.</p> <p>10 Q. Okay. In addition, to those couple articles,</p> <p>11 which you got on your own, have you seen the KONE</p> <p>12 product bulletin that's been produced in this case?</p> <p>13 A. I probably have.</p> <p>14 Q. Okay. And that differentiates the cracks</p> <p>15 between Type A, which they say you can fix them with</p> <p>16 the hole, and Type B, which you're not supposed to fix.</p> <p>17 You're just supposed to replace?</p> <p>18 A. Correct.</p> <p>19 Q. Do you believe in that Type A/Type B</p> <p>20 distinction or do you think they should all just be</p> <p>21 replaced?</p> <p>22 A. I personally think they should all be</p> <p>23 replaced because it's only a matter of time that the</p> <p>24 other is going to occur.</p> <p>25 Q. Okay. What about the replacement steps, how</p>

<p style="text-align: right;">Page 110</p> <p>1 are they any different than these old design ones?</p> <p>2 A. They've been designed so that there is a</p> <p>3 little movement. They are -- they are not of the same</p> <p>4 material, cast material. For the most part -- is --</p> <p>5 of -- is -- I'm trying -- it can be fractured. You can</p> <p>6 fracture cast. Steel does not have that same</p> <p>7 fracturing and aluminum does not have that same</p> <p>8 fracturing capability.</p> <p>9 Q. How many escalator steps of the old model or</p> <p>10 old design did you personally look at or view at the</p> <p>11 time you did your inspection?</p> <p>12 A. The ones that were in the warehouse, we</p> <p>13 looked at a lot but...</p> <p>14 Q. No, I'm sorry, I miss --</p> <p>15 A. Or the ones that are in -- I only saw three</p> <p>16 or four. And I took pictures. So, there weren't that</p> <p>17 many. I really couldn't understand why they would have</p> <p>18 kept only those, also.</p> <p>19 Q. Okay. So, you're saying that three to four</p> <p>20 old design steps were still on that escalator in use in</p> <p>21 May of 2018?</p> <p>22 A. That's what it appeared to me from 14 feet</p> <p>23 away looking down into the interior of that.</p> <p>24 Q. Okay. And what kind of features did those</p> <p>25 steps have that caused you to think, oh, I think those</p>	<p style="text-align: right;">Page 112</p> <p>1 your opinion right. On the three or four old design</p> <p>2 steps or the steps you believe were old designs, they</p> <p>3 were dirty and there was a dirt buildup on the motor on</p> <p>4 the upper level. Was there a dirt buildup condition</p> <p>5 anywhere else that you saw?</p> <p>6 A. No. The pit looked pretty good. I can only</p> <p>7 assume that they expected me to look at the pits.</p> <p>8 Q. Okay. And then the rest of the steps in the</p> <p>9 unit that weren't these three or four old design steps</p> <p>10 were cleaner?</p> <p>11 A. Yes.</p> <p>12 Q. Acceptable?</p> <p>13 A. Acceptable.</p> <p>14 Q. Acceptably clean?</p> <p>15 A. Acceptably clean.</p> <p>16 Q. All right. Were any of the escalator steps</p> <p>17 that you looked at on the unit while it's running</p> <p>18 through axle design?</p> <p>19 A. You can't tell that.</p> <p>20 Q. Okay. How could you tell? Do you have to</p> <p>21 take them off?</p> <p>22 A. You pretty much would have to pull it, pull</p> <p>23 the step.</p> <p>24 Q. Did the -- I recall specifically, because</p> <p>25 there was a female mechanic there. That's unusual.</p>
<p style="text-align: right;">Page 111</p> <p>1 are the old design?</p> <p>2 A. Only that they had at least five years of</p> <p>3 dirt on them.</p> <p>4 Q. But were you able to see through the dirt</p> <p>5 good enough to recognize they're old design versus new</p> <p>6 design?</p> <p>7 A. No.</p> <p>8 Q. Okay. So, I'm trying to figure out, why do</p> <p>9 you think those were the old design that were on there?</p> <p>10 A. Because all the rest of the steps were -- of</p> <p>11 one clean -- and this was of a different material and</p> <p>12 they were noticeably filthy.</p> <p>13 Q. Okay. So, were the other, you know, 58 steps</p> <p>14 cleaner or fifty --</p> <p>15 A. Yes, they were noticeably. They were the</p> <p>16 difference between a light gray metal and a pure black</p> <p>17 step.</p> <p>18 Q. Okay. All right. So, when you're talking</p> <p>19 about, in your report, about there was this massive</p> <p>20 dirt buildup and all that, it was really only on these</p> <p>21 three or four steps?</p> <p>22 A. No, on the motor, also. There was -- which</p> <p>23 is in the upper level of this -- like, one quarter down</p> <p>24 is the motor.</p> <p>25 Q. Okay. So, I just want to make sure I got</p>	<p style="text-align: right;">Page 113</p> <p>1 Did the female mechanic, she pulled at least one step</p> <p>2 and maybe two.</p> <p>3 A. She pulled two steps.</p> <p>4 Q. Okay. Were you able to tell from the steps</p> <p>5 she pulled whether or do you remember whether they were</p> <p>6 thru axle or not?</p> <p>7 A. Those were new steps. I was surprised they</p> <p>8 didn't have quick connects. But that's really --</p> <p>9 THE REPORTER: I'm sorry. You were?</p> <p>10 A. Quick connects. So -- but they were the</p> <p>11 newer steps.</p> <p>12 Q. (BY MS. MASTRANGELO) Were they the thru-axle</p> <p>13 design.</p> <p>14 A. Not thru axle.</p> <p>15 Let me just take a quick picture of that</p> <p>16 in my head here.</p> <p>17 Q. You don't have your pictures on your phone</p> <p>18 still, do you, that we could look at?</p> <p>19 A. I'm sure I do. All I have to do is find</p> <p>20 them.</p> <p>21 What date was I there?</p> <p>22 Q. May 2nd, or something, 2018. I may have the</p> <p>23 date wrong. Yeah, May 2nd.</p> <p>24 MR. IQBAL: I think we've been going for</p> <p>25 more than an hour and a half since our last break.</p>

<p style="text-align: right;">Page 114</p> <p>1 MS. MASTRANGELO: Yeah, I'm just about 2 ready for a lunch break. 3 MR. IQBAL: Okay. 4 Q. (BY MS. MASTRANGELO) Maybe you could look at 5 those before we rejoin. 6 A. Yeah. I'll find them. 7 Q. Let me just ask you one big question before 8 the break, which will hopefully make our afternoon go a 9 little quicker. I would like you to list for me the 10 opinions that you have in this case as to why -- what 11 caused Mr. Brown to fall. 12 A. Okay. 13 Q. One. 14 A. One, the cracks in the steps; two, and this 15 is subsidiary, maintenance. They should have caught 16 this long before that. So, the maintenance of the 17 elevator, they should have caught those cracks. You 18 don't -- you don't get cracks in every step you have in 19 a day. So, the maintenance of not looking for those 20 cracks and knowing that they exist on that elevator 21 type and that they have had issues with that elevator 22 before. So... 23 Q. So, that's literally just one opinion; but I 24 get your subsection. 25 A. Yes.</p>	<p style="text-align: right;">Page 116</p> <p>1 great. And that would help me a lot. If you don't, 2 then I guess we'll just deal with it. 3 THE REPORTER: Off the record? 4 MS. MASTRANGELO: Off the record. 5 (Luncheon recess from 1:33 p.m. to 2:30 p.m.) 6 Q. (BY MS. MASTRANGELO) All right. I'm going to 7 attempt to pick up where I left off. I have one 8 question I may have asked you before, and if I did, I 9 apologize. The old steps, those three or four old 10 design steps that you believe you saw when you did your 11 inspection in 2018, were any of them cracked? 12 A. Oh, I didn't have them removed. I did not 13 have them remove them. 14 Q. Okay. Would you have to remove them to see 15 them or could you just bring them down to the opening 16 and look at them? 17 A. You have to clean them and remove them. 18 Q. Okay. So, you don't know one way or another 19 if they were cracked? 20 A. No, I do not. 21 I'm finding my pictures. I'm going to 22 hand them to you. 23 Q. Oh, okay. Did you take any pictures of the 24 ones that were -- I'll come over there and look over 25 your shoulder, if that's all right.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Are there any other -- any other opinions 2 that you have as to what caused Mr. Brown to fall other 3 than the cracks in the steps and ThyssenKrupp not 4 seeing them sooner? 5 A. Yeah. My -- my only other complaint and you 6 have said that in his deposition he said he saw the 7 elevator. It took me a long time to find that elevator 8 and I was there to look for it. So, I do not believe 9 that it was adequately -- there was adequate signage. 10 And that would have given a choice. 11 Q. And the only issue, I guess, that I have with 12 that is he said he did see the signs and he didn't look 13 for the elevator. He just decided to take the 14 escalator anyway. 15 MR. IQBAL: Objection; form, misstates 16 evidence. 17 Q. (BY MS. MASTRANGELO) Any other opinions that 18 you hold as to the reason why Mr. Brown fell? 19 A. No. 20 Q. Okay. So, let's take about an hour lunch 21 break. During the lunch break, I'm going to see if I 22 can make copies, if you don't need them, of those 23 couple articles and the emails I want to look at and 24 then, you know, we'll have a couple hours tops after 25 the lunch break. And if you find those photographs,</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Okay. These are the new ones. See, the new 2 ones, they have the stickers and all of the -- and 3 these do not have the stickers or anything. And 4 they're -- so, you can probably see them better on 5 something besides a postage stamp. 6 Q. Okay. Is there anything else interesting in 7 those -- any of those photographs that relate to the 8 questions I asked you earlier today? 9 A. I did not -- those are new, sticker stamps. 10 Q. Do all those stickers have the same number on 11 them? 12 A. They're part numbers. 13 Okay. I did have a picture of the pit, 14 and it did not look great. But it has pit pads, which 15 are hunks of cotton to pick up oil. 16 Q. What are the pit pads used for? 17 A. To collect oil at the bottom of the elevator. 18 But if you're worried about flammability, that 19 increases your risk instead of decreases it. 20 Q. Anything else in the photos -- 21 A. No. 22 Q. -- we should supplement your testimony with 23 from earlier? 24 MS. MASTRANGELO: And, Mo, I'd just ask 25 if you could produce those.</p>

<p style="text-align: right;">Page 118</p> <p>1 MR. IQBAL: Yeah, we will produce the</p> <p>2 photos.</p> <p>3 MS. MASTRANGELO: Okay. Thank you.</p> <p>4 Q. (BY MS. MASTRANGELO) One more thing before</p> <p>5 you get off of there because I might need to look over</p> <p>6 your shoulder again. You mention somewhere in your</p> <p>7 report about the new steps having stabilizing tabs or</p> <p>8 something like that?</p> <p>9 A. I am not sure you can see it in the photo.</p> <p>10 Q. Where would they be?</p> <p>11 A. In the back, they're a tab that just sticks</p> <p>12 off into the back. And the hardest thing is these have</p> <p>13 mirrored sides. So, it looks like -- a couple of times</p> <p>14 I did not understand what I was looking at, but that's</p> <p>15 because it's really that...</p> <p>16 Q. Yeah, I understand what you're saying.</p> <p>17 A. Maybe --</p> <p>18 Q. What's, like, the technical term for</p> <p>19 stabilizing tabs? Because I've really not heard of</p> <p>20 that before. Or is there one?</p> <p>21 A. I thought that was pretty technical.</p> <p>22 Q. Okay. And is it, like, one on each side?</p> <p>23 A. Yes.</p> <p>24 Q. Are they pictured maybe in this literature</p> <p>25 you brought -- and, by the way, I'm going to hand you</p>	<p style="text-align: right;">Page 120</p> <p>1 steps on long enough, what will happen?</p> <p>2 A. If that -- if it breaks through, the step</p> <p>3 will penetrate and the people will penetrate with them.</p> <p>4 Q. Just fall down into the unit?</p> <p>5 A. Like the lid of a garbage can.</p> <p>6 Q. Okay. All right. I'm going to shift focus a</p> <p>7 little bit to maintenance.</p> <p>8 Is there any kind of written standard of</p> <p>9 what you are aware as to the appropriate number per</p> <p>10 hours, per unit for escalators of this vintage or any</p> <p>11 other?</p> <p>12 A. Only -- there's been books written on it.</p> <p>13 And I believe that escalators are four hours a month.</p> <p>14 Q. Okay. And what kind of authoritative work</p> <p>15 have you read that says four hours a month?</p> <p>16 A. Again, it is just from the leaders of the</p> <p>17 consultant industry and their -- what they have deemed</p> <p>18 as proper maintenance.</p> <p>19 Q. Okay. No, I understand that. But if I want</p> <p>20 to look up and read that book, like, where could I find</p> <p>21 this?</p> <p>22 A. Elevator World has them. I'm sure it's one</p> <p>23 of the maintenance books that they have.</p> <p>24 Q. And what does that four hours a month entail</p> <p>25 as far as maintenance procedures?</p>
<p style="text-align: right;">Page 119</p> <p>1 all your originals back.</p> <p>2 A. Yeah, could have been.</p> <p>3 Q. Let me ask you this. Do the stabilizing</p> <p>4 tabs, like, attach to the step chain at all?</p> <p>5 A. No.</p> <p>6 Q. It's completely separate. And they're not in</p> <p>7 the --</p> <p>8 A. No, I'm thinking it might -- if I put the</p> <p>9 part number in, it will bring up an actual picture from</p> <p>10 KONE.</p> <p>11 Q. Okay. I can check that out.</p> <p>12 Okay. So, the cracks in the steps that</p> <p>13 we're talking about, that is apparently a known</p> <p>14 manufacturing defect?</p> <p>15 A. It is a known defect for that step.</p> <p>16 Q. Okay. And it's a defect from manufacturer or</p> <p>17 just is it wear and tear defect?</p> <p>18 A. Well, I'm sure wear and tear will make them</p> <p>19 defect faster. But it is a design issue that has been</p> <p>20 known for about 25 years.</p> <p>21 Q. Which apparently is why KONE has more or less</p> <p>22 recalled them without formally saying recall?</p> <p>23 A. Yes, we recalled them, but you're paying for</p> <p>24 them.</p> <p>25 Q. Okay. And I guess if you leave the cracked</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Right. It -- there's -- there's a lot of</p> <p>2 maintenance that's required to be done on them. The --</p> <p>3 even the clean-down. The clean-down takes a long time.</p> <p>4 So, it can be established as multiple four-hour</p> <p>5 periods. But lubrication. Usually the inspection may</p> <p>6 or may not be included, according -- and that's</p> <p>7 normally contractually done. But just general</p> <p>8 maintenance. Like, the worst is the clean-down. And</p> <p>9 the adjustment of anything, the tightening of all the</p> <p>10 new-type steps, there's a lot of tightening to keep --</p> <p>11 these are different little panels so that they don't</p> <p>12 have to buy a whole step anymore. They can just</p> <p>13 purchase a single piece of the step. So, on an</p> <p>14 escalator, most of it is cleaning it, keeping it clean.</p> <p>15 Q. And the clean-down is recommended once per</p> <p>16 year?</p> <p>17 A. At least once a year.</p> <p>18 Q. Okay. And other than that, like -- okay,</p> <p>19 that's the big one that takes the most amount of hours,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. So, then to do all these other hours</p> <p>23 throughout the year, like, what else are they doing?</p> <p>24 A. Yeah.</p> <p>25 Q. Observing?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. Like I say, a lot of the times, the four 2 hours a month is -- some of that is clean-down. And if 3 you had -- if you did a clean-down just by definition 4 of taking it apart, you're going to be doing a lot of 5 other things. So, that's a significant portion of it. 6 It takes usually about a week to clean them down. 7 Q. Yeah, and I understand that. But let's set 8 aside the clean-down. Let's say, okay, this clean-down 9 was done in January -- 10 A. Uh-huh. 11 Q. -- for however long it took, even if it's 12 more than four hours during that month. What are they 13 doing, you know, March, April, May, June, July, August, 14 September? 15 A. Mostly checking and lubricating and, you 16 know, all -- just general maintenance on them. 17 Q. That's what I'm asking. What are the general 18 maintenance tasks other than a clean-down? 19 A. I'd have to get my general maintenance task 20 out. 21 Q. What book would you refer to if you had to 22 answer that question? 23 A. Well, all of the majors have their own 24 particular -- KONE has it. Thyssen has it. And 25 they're all very similar. I have -- I use one myself.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Is -- is doing a visual inspection part of 2 maintenance where you're riding, looking, listening? 3 A. There is -- that is. And they -- basically 4 it says how long it takes, five minutes, ten minutes, 5 whatever. 6 Q. And cleaning is part of maintenance? 7 A. Right. You're always checking your handrails 8 and the -- the pull it has. So -- I mean, it can't -- 9 you've got to be able to stall a handrail, but it also 10 must move at a specific rate. Those would, to me, be 11 visual. 12 Q. Okay. And lubrication is part of routine 13 maintenance? 14 A. Yes. 15 Q. Minor adjustments? 16 A. Right. 17 Q. Meeting with the customer to see if they have 18 any issues? 19 A. Yes, that's a requirement of keeping your 20 customer, but that's really not -- yeah. 21 Q. Okay. And, like, cleaning, lubricating, and 22 adjustments, those things are also done in conjunction 23 with a repair or following a repair? 24 A. Sometimes, yes. Sometimes testing is done 25 following a repair.</p>
<p style="text-align: right;">Page 123</p> <p>1 But mine is electronically put together so that 2 according -- and then the time periods are spaced out 3 according to the tasks that have to be done. 4 Q. But you don't do and none of your companies 5 do escalator maintenance? 6 A. No. 7 Q. Okay. So, what do you have this thing -- is 8 it something you developed? 9 A. I'm sure I looked at BEEP. 10 Q. Okay. 11 THE REPORTER: I'm sorry. 12 THE WITNESS: B-E-E-P. 13 Q. (BY MS. MASTRANGELO) Like, what do you use 14 your version of it for since you don't do maintenance? 15 A. For maintenance control programs. 16 Q. Okay. To just check -- 17 A. Because as a consultant, I can develop 18 maintenance control programs and provide it to my 19 clients and I can also oversee maintenance control 20 programs or maintenance of facilities, which I do, 21 also. 22 Q. Okay. Do you work with John Koshak in that 23 regard in any of those types of things? 24 A. Yeah, I've worked with him -- I am a -- I 25 don't know if it's a distributor but -- of the EMCP.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. And sometimes those routine maintenance items 2 are done in conjunction with correcting something found 3 on a callback? 4 A. Well, usually the difference is the callback 5 usually happens because of -- of something. So, you 6 answer the callback. Normally, there's the elevator 7 and escalator maintenance providers do not do 8 maintenance on a callback. They Band-Aid the callback 9 and run on and continue on because it's not in a 10 sequence of time that they're being allotted. So, it 11 is -- it is not common for them to do maintenance 12 during repair or callbacks. 13 Q. Did you see in Christopher Dutcher's 14 deposition that he testified to the contrary as far as 15 his practice? 16 A. Yes, I believe he also said that wasn't 17 Thyssen's practice. That Thyssen's practice was to 18 record all work done. 19 Q. In your mind, is there an acceptable number 20 of callbacks per unit, per year that's standard in the 21 industry? 22 A. I -- 23 Q. Let's say, escalators. 24 A. I would -- I would say eight, which is double 25 for -- double an elevator.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. Eight per unit, per year?</p> <p>2 A. Yes.</p> <p>3 Q. That, to me, would suggest, if eight is an</p> <p>4 acceptable number, that even the best maintained</p> <p>5 equipment is going to have some problems?</p> <p>6 A. Yeah, they are machines.</p> <p>7 Q. Okay. And any machine can break down and</p> <p>8 it's not necessarily failure of maintenance. It's</p> <p>9 just, you know, a fan belt breaks in your car?</p> <p>10 A. Correct.</p> <p>11 Q. Now, your opinion, right before we went on</p> <p>12 our lunch break -- I'm paraphrasing -- you said</p> <p>13 something that sort of sounded like had Thyssen cleaned</p> <p>14 the unit better, they would have seen these cracks in</p> <p>15 the steps earlier.</p> <p>16 A. Correct. And it's also a known issue for</p> <p>17 that step. So, they should have looked for those</p> <p>18 cracks.</p> <p>19 Q. Okay. And I apologize. I know I asked you</p> <p>20 this, but I don't remember what you said. Is there any</p> <p>21 way that you're able to say which step Mr. Brown was on</p> <p>22 at the time of his fall?</p> <p>23 A. I -- there's no way I could tell, because he</p> <p>24 actually fell steps and then they continued to roll.</p> <p>25 Q. Okay. Is there any way for us to know</p>	<p style="text-align: right;">Page 128</p> <p>1 all the steps to be replaced.</p> <p>2 Q. Okay. Do you understand that the steps were</p> <p>3 replaced, like, December, 2012?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. So, there's my two years.</p> <p>7 Q. Right. So, the next entry that I had --</p> <p>8 MR. IQBAL: Sorry.</p> <p>9 Objection; misstates evidence.</p> <p>10 Q. (BY MS. MASTRANGELO) -- was post-incident on</p> <p>11 June 16, 2015, there was a proposal to replace 5</p> <p>12 critical steps or 40 cracked steps.</p> <p>13 A. Uh-huh.</p> <p>14 Q. How many steps are on this escalator total?</p> <p>15 A. I think there's in there somewhere how many</p> <p>16 there are. But it's more than --</p> <p>17 MR. IQBAL: Objection; misstates</p> <p>18 evidence.</p> <p>19 Q. (BY MS. MASTRANGELO) There's more than 40.</p> <p>20 A. Yes.</p> <p>21 Q. So, some of the steps weren't cracked,</p> <p>22 apparently.</p> <p>23 A. Right.</p> <p>24 Q. So, is there any way -- is there any evidence</p> <p>25 that the step that Mr. Brown was on just prior to his</p>
<p style="text-align: right;">Page 127</p> <p>1 definitively whether the step he was standing on when</p> <p>2 he started to fall was cracked?</p> <p>3 A. My only thought is I think they -- they</p> <p>4 advised them to replace all the steps.</p> <p>5 Q. Okay. But that was some time after the</p> <p>6 incident?</p> <p>7 MR. IQBAL: Objection; misstates</p> <p>8 evidence.</p> <p>9 A. It wasn't that far after the incident, and</p> <p>10 they just don't occur overnight.</p> <p>11 Q. (BY MS. MASTRANGELO) Okay. How long does it</p> <p>12 take for one of these KONE steps to go from perfectly</p> <p>13 fine to having a crack?</p> <p>14 A. Well, I dare say, from putting it new to</p> <p>15 having a crack, there was -- there's some that have</p> <p>16 been determined that were cracked in a couple -- within</p> <p>17 a couple of years and that's from brand-new.</p> <p>18 Q. Okay. Now, just because the proposal was for</p> <p>19 all the steps to be replaced, I don't think there was</p> <p>20 anything that said all the steps were cracked. Is that</p> <p>21 your understanding, also?</p> <p>22 MR. IQBAL: Objection; misstates</p> <p>23 evidence.</p> <p>24 A. I would have to look back. I only recall off</p> <p>25 the top of my head that multiple times they requested</p>	<p style="text-align: right;">Page 129</p> <p>1 fall was cracked?</p> <p>2 A. There's no way to determine which step he was</p> <p>3 on.</p> <p>4 Q. Or if it was cracked?</p> <p>5 A. You could determine if a step was cracked,</p> <p>6 but you could not determine if that's the one he was</p> <p>7 standing on.</p> <p>8 Q. Have you been made aware that his daughter</p> <p>9 rode down the escalator prior to him on that day?</p> <p>10 A. Yes.</p> <p>11 Q. Like, almost immediately prior. Were you</p> <p>12 aware that she's testified that she didn't feel any of</p> <p>13 the steps were shaky?</p> <p>14 MR. IQBAL: Objection; misstates</p> <p>15 evidence.</p> <p>16 A. They would be different according to what</p> <p>17 step she was on, honestly.</p> <p>18 Q. (BY MS. MASTRANGELO) Okay. But you don't</p> <p>19 know one way or another what she said in her</p> <p>20 deposition?</p> <p>21 A. No, I do not.</p> <p>22 Q. So, in your opinion, only the steps which had</p> <p>23 cracks would be shaky?</p> <p>24 A. And the ones around them according to the</p> <p>25 chain had -- is stretched because it's -- it's the</p>

<p style="text-align: right;">Page 130</p> <p>1 combination of everything being tight and correctly 2 aligned.</p> <p>3 Q. Okay. In what areas do you understand that 4 the step chain was stretched?</p> <p>5 A. The inspector, after the second one, said 6 that it was stretched over the maximum allowable.</p> <p>7 Q. Right. But I did not take that to mean the 8 entire step chain but just a section of it or many 9 sections of it.</p> <p>10 A. It is the entire step chain because it's 11 connected together.</p> <p>12 Q. Okay. How much stretch was there?</p> <p>13 A. I think it's over 6 millimeters.</p> <p>14 Q. So, is it your testimony and opinion that on 15 the date of Mr. Brown's fall, the entire step chain 16 exceeded 6 millimeters?</p> <p>17 A. It was over maximum allowable.</p> <p>18 Q. Which is 6 millimeters?</p> <p>19 A. That's what that -- the inspector wrote the 20 report.</p> <p>21 Q. Do you know how long that stretched step 22 chain condition existed prior to it being noted by the 23 inspector in late May, 2015?</p> <p>24 A. I have an opinion that it wasn't two weeks. 25 It takes longer. They stretch by increments, not by</p>	<p style="text-align: right;">Page 132</p> <p>1 only -- you can only get to the point that it's almost 2 not going to mesh.</p> <p>3 Q. Okay. What happens when it doesn't mesh at 4 all?</p> <p>5 A. You stack steps. And they call it an 6 escalator crash but it's actually step -- it's step 7 stacking.</p> <p>8 Q. And is step stacking -- we have a lot of 9 tongue twisters in this case. Is the step stacking the 10 sort of purpose behind the code section that defines it 11 as 6 millimeters being the max?</p> <p>12 A. Yes.</p> <p>13 Q. To avoid that?</p> <p>14 A. Yes, to keep all the steps together.</p> <p>15 Q. And do you agree that the state -- the 16 third-party inspector who did the state inspection -- I 17 think it was the same one year after year after year. 18 Either he missed it multiple times or he never saw it 19 until, I guess, 2015?</p> <p>20 MR. IQBAL: Objection; form, misstates 21 evidence.</p> <p>22 A. I mean, I can't -- I can't say for sure, but 23 it appears that he did not closely check between the 24 first incident and the second incident. It was very 25 close together, which leads me to believe he might not</p>
<p style="text-align: right;">Page 131</p> <p>1 magically, today it's fine and tomorrow it has 2 maximum -- the maximum allowed stretch.</p> <p>3 Q. Right. And, as I understand your opinion, it 4 would take some time for it to go from nothing to 5 6 millimeters --</p> <p>6 A. That is correct.</p> <p>7 Q. -- standard. Okay. But at some point, you 8 know, it's 5 millimeters, it's five and a half. Like, 9 how -- how do we know it just didn't get to six or more 10 when it was first written up, I guess, is the question?</p> <p>11 MR. IQBAL: Objection; form.</p> <p>12 Q. (BY MS. MASTRANGELO) No way to know?</p> <p>13 A. There's no way to know. There's no way to 14 know that he actually checked it the first time. 15 Usually you begin to look with an eagle eye when 16 something occurs more than once.</p> <p>17 Q. Is there any indication in the documents that 18 you reviewed that the cleated riser of any step failed 19 to mesh with the head of the adjacent step?</p> <p>20 A. Nothing that I reviewed.</p> <p>21 Q. Okay. Is -- is it the space in between the 22 steps that's critical or the meshing?</p> <p>23 A. Well, they're both critical; but it's the in 24 between that is what you're measuring. I mean, you 25 cannot get to the point that it doesn't mesh. You can</p>	<p style="text-align: right;">Page 133</p> <p>1 have closely checked the other years that he came in.</p> <p>2 Q. Okay. But that was two different inspectors. 3 One came out after Mr. Brown's accident and a different 4 one came out after the second. And what I'm asking you 5 is, you know, from those documents we reviewed earlier, 6 the state inspection records, the step chain was never 7 written up before 2015. Do you agree with that?</p> <p>8 A. I see no record of it.</p> <p>9 Q. Okay. So, either the stretch maybe had 10 started but wasn't in excess of 6 millimeters before 11 2015 or every year this inspector looks at it and just 12 doesn't, for whatever reason, doesn't do anything about 13 it?</p> <p>14 MR. IQBAL: Objection; form.</p> <p>15 A. That would be a question for that inspector, 16 honestly.</p> <p>17 Q. (BY MS. MASTRANGELO) Is there any other 18 explanation that you can think of?</p> <p>19 A. I would think that they're not looking very 20 closely at their data.</p> <p>21 Q. Okay. Did you see in the -- well, I know it 22 was in Mr. Dutcher's deposition, that on May 7, 2015, 23 which is about 18 days prior to Mr. Brown's fall, that 24 he testified that he greased all the steps and observed 25 all the rollers?</p>

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1 A. I think I did see that.

2 Q. Okay. How is that done? How is that

3 physically done?

4 A. Observing all the rollers can be done on

5 inspection just from the pit with nothing -- with no

6 step out. Greasing, for the most part, is the same

7 way, if you're greasing the rollers. Or was he

8 greasing the step chain?

9 Q. Well, that's a question for a review of his

10 deposition to look at.

11 From the pit without the steps out, you

12 said?

13 A. Yes.

14 Q. Okay. And just running it on inspection and

15 doing it as the steps are coming down?

16 A. So, according to what the -- if he was

17 visually -- you can't do both of them, all of it at the

18 same time. You have steps on both sides. I mean,

19 rollers on both sides. And it's according to if he was

20 greasing -- what he was greasing. If it's everything,

21 then he's going to come down one step at a time.

22 Q. If that's the way he did it from the pit,

23 running it down, would he have been in a position to

24 see cracks in the steps?

25 A. Only if they were clean.

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1 Q. If they were clean. Okay. And if they were

2 there, obviously. Okay.

3 Do you know how the inspectors for state

4 inspections do their internal, if they do it at all,

5 view of the steps? Do they get in the pit and do it

6 like that, also?

7 A. Normally, the inspector does not get in the

8 pit. It is a very limited area to be in. The -- the

9 cracks are to be determined by the mechanics. They're

10 the ones that have that ability to clean and see those

11 particular cracks.

12 Q. Yeah. And I understand that completely. But

13 I'm asking about the internal inspections that are done

14 pursuant to state law, how do the inspectors do that?

15 A. For rollers or for --

16 Q. Well, let me ask you more specifically. You

17 know, the question I really want to ask is: Are they

18 ever in a position to see cracked -- cracks on steps?

19 A. They are not.

20 Q. But apparently the inspector did at one point

21 because he told ThyssenKrupp to take a look at them?

22 A. The mechanic, it appears, told the inspector.

23 I mean, like I say, this is known issues. If I walked

24 up to Montgomery of that vintage and that age, the

25 first thing I would say is, have you checked for those

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1 cracks. The next thing he's going to say is when

2 those -- when the steps were, you know -- they're all

3 gone. There's five left. We -- we look at them every

4 month or something. But the inspector cannot see them.

5 Q. Okay. When he's doing an internal

6 inspection, at no time he's in a position to see them?

7 A. Unless they remove the steps.

8 Q. Okay. Have you ever seen any escalators with

9 cracked steps during any type of your inspections?

10 A. I have.

11 Q. When?

12 A. The "Witham" here in Houston, Texas -- the

13 "Witham" Theater -- Wortham -- Wortham Theater -- were

14 cracked.

15 Q. Were they -- these type of KONE steps?

16 A. Yes.

17 Q. About how long ago was that?

18 A. Oh, it's been a good ten years.

19 Q. Was that in conjunction with a case or just a

20 regular inspection?

21 A. An inspection.

22 Q. Okay. If an escalator step has a crack, how

23 mechanically does that -- well, strike that.

24 Before I ask you that, we've been saying

25 because Mr. Brown said the step was shaky. But how do

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1 you think the step behaved, which, in your opinion,

2 caused him to fall?

3 A. I found that it's more of a front to back --

4 Q. Like a rocking --

5 A. -- shake.

6 Q. -- back and forth?

7 A. Not necessarily side to side, but a front to

8 back, which, because that is the direction of your

9 balance and it is one of the bigger problems.

10 Q. Now, tell me how, you know, in mechanical

11 terms, how does a crack in a step cause or how can it

12 cause a step to rock front to back like you have --

13 A. Well, the cracks are only on front -- I mean,

14 there's not -- it's not on the back. It's, you know,

15 on -- where the rollers are. So, it's only one

16 position. So, it -- when it becomes unstable, it --

17 the shaft becomes unstable. And then the roller moves,

18 for the most part. It also assists the rollers in

19 breaking down if -- if that starts to happen. You

20 know, chips in the rollers because they're in the

21 groove and if they start to move, then, you know,

22 you'll see the groove being grabbing hold of chunks of

23 those steps, rollers.

24 Q. Do you know when the last time the rollers

25 were replaced on this escalator?

<p style="text-align: right;">Page 138</p> <p>1 A. All the rollers, no, not off the top of my 2 head.</p> <p>3 Q. If somebody is replacing a roller, should he, 4 as a trained escalator mechanic, be able to see cracks, 5 if there were any?</p> <p>6 A. He should -- as a trained mechanic, should 7 look for the cracks and then he can see them.</p> <p>8 Q. The same question for a step chain being 9 stretched. How mechanically does that result in the 10 step rocking front to back, if that's your opinion?</p> <p>11 A. Yeah. It also gives you an instability. 12 But, to me, that is more of a front-to-back movement 13 just in this direction (indicating).</p> <p>14 Q. Well, you're going side to side, but you're 15 saying front to back.</p> <p>16 A. My feet are here and I'm going like this 17 (indicating).</p> <p>18 Q. Okay.</p> <p>19 A. And the other was more of this direction 20 (indicating). So, one is more of a rocking and the 21 other is just a movement like the carnival steps.</p> <p>22 Q. Okay. Let me try to make sure our record is 23 clear. So, if there's a crack in the step, you believe 24 that would cause the step to rock and not be level, but 25 up and down a little bit back to front?</p>	<p style="text-align: right;">Page 140</p> <p>1 you copied this for a reason for this case? Because it 2 doesn't seem like it pertains.</p> <p>3 A. Not sure. I would have read it and put it in 4 here that I had read it because it -- you get real 5 technical about have you read anything.</p> <p>6 Q. Right.</p> <p>7 A. And I would have pulled a few things and read 8 them.</p> <p>9 Q. Okay. Well, we can read it in detail and 10 it's either in there or it's not.</p> <p>11 A. Yeah.</p> <p>12 Q. This publication that you printed from KONE 13 Spares, it says on the top, their safety issue is at 14 least stated in this publication says increased 15 safety -- it talks about entrapment, but I don't see 16 anything specific in the KONE literature that talks 17 about, you know, steps rocking or being unstable. Is 18 there anything in there?</p> <p>19 A. I would hope not.</p> <p>20 Q. Okay.</p> <p>21 A. Because that would be frightening to an 22 owner. They're trying to sell something and they have 23 an underlying -- it's unsafe. But they don't want to 24 scare them to death.</p> <p>25 Q. Got you. All right. And then this Vertical</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Yeah, just a rocking.</p> <p>2 Q. But if the step chain is stretched, you think 3 it would laterally move front and back?</p> <p>4 A. Front to back, not side to side.</p> <p>5 Q. Got you.</p> <p>6 A. Front to back.</p> <p>7 Q. And do you believe one or both of those 8 movements of the steps occurred at the time of 9 Mr. Brown's fall?</p> <p>10 A. I think the worst of the two is the rocking. 11 But if indeed both of them occurred, it would not -- it 12 would be worse.</p> <p>13 Q. Okay. Now, I read these articles that you 14 had in your file while we were on the break. I read 15 them very quickly. But I did not see in the Consumer 16 World, which is The New York Times, 1989, I didn't see 17 anything in there about step cracks. It was -- there's 18 a lot in here about people getting their clothes caught 19 or maybe even their bodies caught in between steps and 20 skirts and stuff like that. But I didn't see anything 21 about the step cracks. Did I miss something because I 22 read it fast?</p> <p>23 A. Let me -- I think the Detroit Free Press --</p> <p>24 Q. Okay. I'm going to get to that one. But is 25 there anything specifically in this Consumer World that</p>	<p style="text-align: right;">Page 141</p> <p>1 Transportation Excellence, what that is, do you know?</p> <p>2 A. They are consultants.</p> <p>3 Q. Okay. And I really read this very quickly. 4 And it looks like it's more along the lines of MCPs and 5 maintaining records rather than the specific issues 6 we've been talking about.</p> <p>7 A. Right.</p> <p>8 Q. Okay. And then finally, the Detroit Free 9 Press does talk about rocking and things like that, 10 among other things. Is there anything specific in this 11 Detroit Free Press? I know you cited it in one of your 12 reports. Is there anything else?</p> <p>13 A. Right. I mean, the cracks -- owners must be 14 aware of potential danger of stair cracks during 15 escalator's annual cleaning. And, again, that's when 16 you can see it is when it is clean. Cracks developing 17 in an escalator step, support structure, can cause a 18 step to rock under rider weight.</p> <p>19 Q. Have you had any other personal experiences 20 or had any personal experiences, period, or other cases 21 that you've been involved in where the specific issue 22 was steps rocking because of cracks?</p> <p>23 A. I have not had any personal escalator cases. 24 I have a lot of escalator accidents that are just from 25 the immediate time that the accident has happened and</p>

<p style="text-align: right;">Page 142</p> <p>1 there's usually no way to follow anything past that.</p> <p>2 Q. Okay. One of these articles quoted somebody</p> <p>3 who said the, you know, vast majority of escalator</p> <p>4 accidents are due to, like, rider error or negligence.</p> <p>5 Do you agree with that?</p> <p>6 MR. IQBAL: Objection; form.</p> <p>7 A. Well, there's a lot of entrapping in an</p> <p>8 escalator and those are usually not rider errors.</p> <p>9 Because we require stiffness. We require all the stuff</p> <p>10 that should keep people from entrapping themselves.</p> <p>11 So, if -- if they're talking about riding on the edge</p> <p>12 of the handrail as they're going down a 30-foot</p> <p>13 escalator, that is. But very few consultants believe</p> <p>14 that to be an elevator accident. That is rider</p> <p>15 irresponsibility. But if you're between the handrails,</p> <p>16 in a normal position, there should really be no reason</p> <p>17 to become entrapped in an escalator.</p> <p>18 Q. Okay. In your rebuttal report on Page 4,</p> <p>19 subsection two, the very last sentence of that</p> <p>20 subsection says, quote, "I believe the cracked steps</p> <p>21 led to the unstable steps Mr. Brown may have</p> <p>22 encountered which led to his accident."</p> <p>23 Why did you say "may have encountered"?</p> <p>24 A. Because I was not there. And I could not</p> <p>25 test the exact step that Mr. Brown was on. However,</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. IQBAL: Objection; improper</p> <p>2 hypothetical, form, misstates evidence. Counsel is</p> <p>3 testifying.</p> <p>4 A. I -- I'm not that kind of expert.</p> <p>5 Q. (BY MS. MASTRANGELO) Okay. That's fair. All</p> <p>6 right. In your discussions with counsel leading up to</p> <p>7 this deposition, this morning, at lunchtime, have you</p> <p>8 discussed anything else with him that you haven't</p> <p>9 discussed with me?</p> <p>10 A. No. Since we were late, I had -- we didn't</p> <p>11 discuss anything before either.</p> <p>12 MR. IQBAL: And I'll represent we didn't</p> <p>13 discuss it during lunch either.</p> <p>14 MS. MASTRANGELO: All right.</p> <p>15 MR. IQBAL: But you can ask her, go</p> <p>16 ahead.</p> <p>17 MS. MASTRANGELO: Subject to reviewing</p> <p>18 my notes here for a few minutes, I think I'm done with</p> <p>19 my questioning. So, I'll pass it on.</p> <p>20 MR. IQBAL: Can we take a five-minute</p> <p>21 break?</p> <p>22 MS. MASTRANGELO: Yeah, absolutely.</p> <p>23 (Recess from 3:11 p.m. to 3:20 p.m.)</p> <p>24 MS. MASTRANGELO: Alex, she's all yours.</p> <p>25</p>
<p style="text-align: right;">Page 143</p> <p>1 the evidence of the cracks shows that it was luck of</p> <p>2 the draw, roulette, on an escalator.</p> <p>3 Q. Okay. If the judge or jury believes that</p> <p>4 there wasn't a cracked and unstable step that caused</p> <p>5 his fall, what other possibilities are there that</p> <p>6 caused him to fall?</p> <p>7 MR. IQBAL: Objection; form.</p> <p>8 A. I'm, for the most part, an expert on</p> <p>9 escalators and that is really all I can -- I mean, if</p> <p>10 those cracks are there, they will give you an unstable</p> <p>11 footing.</p> <p>12 Q. (BY MS. MASTRANGELO) And do you place any</p> <p>13 fault in this on Mr. Brown, his falling?</p> <p>14 MR. IQBAL: Objection; form.</p> <p>15 A. As I said, I don't understand, if you're</p> <p>16 riding in a proper manner, holding the handrail and the</p> <p>17 escalator is reacting, and if you ride on a good</p> <p>18 escalator, they are very tight, there is not any</p> <p>19 movement on those steps, then there should have been no</p> <p>20 issue.</p> <p>21 Q. (BY MS. MASTRANGELO) How about somebody who</p> <p>22 is walking with a cane, is unsteady on his feet, has</p> <p>23 had prior falls and was twice the limit for legal</p> <p>24 intoxication, do you place any fault on him for getting</p> <p>25 on that escalator and falling?</p>	<p style="text-align: right;">Page 145</p> <p>1 EXAMINATION</p> <p>2 BY MS. MCLEOD:</p> <p>3 Q. I heard your testimony earlier about being</p> <p>4 late this morning and not having an opportunity to meet</p> <p>5 with Mr. Iqbal today before the deposition. Did you</p> <p>6 have any phone conferences with him before today in</p> <p>7 preparation for your deposition?</p> <p>8 A. He did come by my office last night and said</p> <p>9 that he would be by the office this morning and we</p> <p>10 would talk. So, no, nothing.</p> <p>11 Q. Could you estimate for me how many escalators</p> <p>12 you personally have inspected over your career?</p> <p>13 A. I do quite a few of them multiple times,</p> <p>14 like, every year. So, we probably do about a hundred a</p> <p>15 year. But it's -- and then, again, the next year we'll</p> <p>16 do the same hundred and plus a couple, minus a couple.</p> <p>17 Q. When you say "we," is that you personally or</p> <p>18 your company?</p> <p>19 A. Usually I'm involved in it because it takes</p> <p>20 two people to do any kind of removing of steps. So, I</p> <p>21 have a mechanic and so he would be involved in helping</p> <p>22 in that situation. So, it puts us a man down.</p> <p>23 Q. And perhaps for a more accurate count instead</p> <p>24 of counting escalators, I should ask you to estimate</p> <p>25 how many escalator inspections you've completed over</p>

<p style="text-align: right;">Page 146</p> <p>1 your career.</p> <p>2 A. Probably 800 to a thousand.</p> <p>3 Q. Prior to your forensic examination of the</p> <p>4 Golden Nugget down escalator in May of 2018, when was</p> <p>5 the last time you personally performed an escalator</p> <p>6 inspection?</p> <p>7 A. That was not an escalator inspection that I</p> <p>8 performed. I merely visually looked at the interior of</p> <p>9 the escalator. So, that's important for me to say, we</p> <p>10 did not perform an inspection. I have one scheduled</p> <p>11 for Wednesday. I'm trying to think. I've been -- I</p> <p>12 just have to check the schedule on the last one. But</p> <p>13 Wednesday, I will be inspecting escalators.</p> <p>14 Q. Okay. And I tried to make that distinction</p> <p>15 in my question. I called it a forensic examination</p> <p>16 rather than an inspection.</p> <p>17 A. Okay. It was not an inspection, yes.</p> <p>18 Q. But had you done actual escalator inspections</p> <p>19 from January 1st, 2018, until that forensic examination</p> <p>20 in May?</p> <p>21 A. Oh, so, this year?</p> <p>22 Q. Correct.</p> <p>23 A. That's what you're asking me.</p> <p>24 Probably not --</p> <p>25 Q. I'm just asking for the most recent</p>	<p style="text-align: right;">Page 148</p> <p>1 that they ride on and, for the most part, nobody else's</p> <p>2 between the time I see them and the time they correct</p> <p>3 it or the time that I notify of an incident, it's --</p> <p>4 it's riding on my insurance.</p> <p>5 Q. (BY MS. MCLEOD) Understood. That's what</p> <p>6 happens when I didn't count to three like I said I'd</p> <p>7 try to. I apologize for interrupting you.</p> <p>8 In this case for Mr. Joe Brown, you are</p> <p>9 testifying as an expert in Nevada. What is your</p> <p>10 understanding about who's responsible in Nevada to shut</p> <p>11 down an escalator after a negative finding upon</p> <p>12 inspection?</p> <p>13 MR. IQBAL: Objection; form.</p> <p>14 A. Yeah, again, I -- I don't -- I do not know if</p> <p>15 Nevada gives their inspectors a guideline or if they</p> <p>16 tell their inspectors to shut down when they -- when</p> <p>17 they see unsafe conditions.</p> <p>18 Q. (BY MS. MCLEOD) In any of your positions over</p> <p>19 your career, have you ever been responsible for issuing</p> <p>20 permits or citations for escalators?</p> <p>21 A. Yes.</p> <p>22 Q. Is that something that you still do as part</p> <p>23 of your consultant work?</p> <p>24 A. I still do it when I'm the inspector.</p> <p>25 Q. Just to make sure we're all on the same page,</p>
<p style="text-align: right;">Page 147</p> <p>1 inspection before you came to the Golden Nugget.</p> <p>2 A. I would have to go back on my calendar and</p> <p>3 look, honestly. I don't remember. This is what I do</p> <p>4 for a living. I don't remember the last time.</p> <p>5 Q. And I understand you don't remember a</p> <p>6 specific date that you performed an inspection, but can</p> <p>7 you tell me generally whether you performed inspections</p> <p>8 between January 1st and May 1st of 2018?</p> <p>9 A. Yes. And I shut a group of escalators down.</p> <p>10 That's actually the only reason I remember it.</p> <p>11 Q. Whose responsibility is it to shut an</p> <p>12 escalator down upon a negative finding at an</p> <p>13 inspection?</p> <p>14 A. That is -- that is very subjective. States</p> <p>15 usually will tell their third-party inspectors when</p> <p>16 they -- the state requires them or the authority having</p> <p>17 jurisdiction requires them. I, however, shut a lot of</p> <p>18 them down, call the city, call the state, tell them</p> <p>19 I've shut it down and it's up to the city or the state</p> <p>20 to squabble with them because it's my --</p> <p>21 Q. Being it's --</p> <p>22 THE REPORTER: Hold on, hold on, hold</p> <p>23 on.</p> <p>24 MS. MCLEOD: I'm sorry.</p> <p>25 A. Okay. Because it's my -- it's my insurance</p>	<p style="text-align: right;">Page 149</p> <p>1 I think we are, but I want to make sure. Is it your</p> <p>2 understanding that Joe Brown was riding the down</p> <p>3 escalator from the casino floor of the Golden Nugget to</p> <p>4 the restaurant level at the time of his incident?</p> <p>5 A. It is my understanding, yes.</p> <p>6 Q. And reading your reports and listening to</p> <p>7 your testimony today, it seems to me that based on</p> <p>8 Mr. Brown's description that the escalator was shaking,</p> <p>9 you were deducing that he was more likely than not</p> <p>10 riding on a cracked step. Is that accurate?</p> <p>11 A. That is accurate.</p> <p>12 Q. What are other possible causes of a shaky</p> <p>13 ride on an escalator?</p> <p>14 A. Some motor issues will bounce them. However,</p> <p>15 you -- that would be on any step. Everybody on the</p> <p>16 escalator would feel it.</p> <p>17 Q. Have you been able to eliminate motor issues</p> <p>18 as a cause of a shaky ride on the escalator the day</p> <p>19 that Mr. Brown fell?</p> <p>20 A. I can -- I've only -- I have gone by the</p> <p>21 reports -- the maintenance reports of what was wrong</p> <p>22 with those steps, because the rest of it is gone. I</p> <p>23 mean, I had no ability to check it.</p> <p>24 Q. So, you found documentary -- you found</p> <p>25 documents regarding the cracked steps but no documents</p>

<p style="text-align: right;">Page 150</p> <p>1 regarding motor issues, correct?</p> <p>2 A. Not the motor. I think they had a shaft</p> <p>3 replacement.</p> <p>4 Q. So, based on the documents, you've been able</p> <p>5 to eliminate a motor issue as a cause of the shaky ride</p> <p>6 on the day Mr. Brown fell on the escalator?</p> <p>7 MR. IQBAL: Objection; form, misstates</p> <p>8 evidence. Counsel is testifying.</p> <p>9 A. I -- the more likely event was the cracked</p> <p>10 step.</p> <p>11 Q. (BY MS. MCLEOD) So, you have not been able to</p> <p>12 eliminate a motor issue; is that correct?</p> <p>13 A. The motor -- the shaft -- I think they had a</p> <p>14 shaft problem -- was changed before I was able to see</p> <p>15 anything. So, there's no way I can indicate that that</p> <p>16 was happening. Also, when a shaft breaks, the whole</p> <p>17 thing stops.</p> <p>18 Q. I'm sorry. Yes or no, you have or have not</p> <p>19 been able to eliminate a motor issue on the day of</p> <p>20 Mr. Brown's fall on the down escalator at the Golden</p> <p>21 Nugget?</p> <p>22 A. I have not been able to eliminate a motor</p> <p>23 issue.</p> <p>24 Q. Are there any other possible causes of a</p> <p>25 shaky ride on an escalator?</p>	<p style="text-align: right;">Page 152</p> <p>1 use?</p> <p>2 A. I do not have that name memorized. But there</p> <p>3 is -- I do have his reports. If that is who did it, I</p> <p>4 agree, yes.</p> <p>5 Q. Okay. Would his deposition be important to</p> <p>6 you in your analysis of this case?</p> <p>7 A. I was not aware he had made a deposition.</p> <p>8 But I like most depositions of people in the industry.</p> <p>9 Q. You've pointed out several times in your</p> <p>10 testimony today that your inspection of the escalator</p> <p>11 more than three years after the subject incident limits</p> <p>12 your ability to determine the cause, correct?</p> <p>13 MR. IQBAL: Objection; misstates</p> <p>14 testimony, form.</p> <p>15 A. The same equipment that is in there three</p> <p>16 years later is not the equipment that was in there</p> <p>17 before.</p> <p>18 Q. (BY MS. MCLEOD) Right. And you were limited</p> <p>19 by that change, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. But Mr. Robertson was inspecting the</p> <p>22 same equipment that was in use for Mr. Joe Brown's ride</p> <p>23 on the day he fell, right?</p> <p>24 MR. IQBAL: Objection; calls for</p> <p>25 speculation, misstates evidence.</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Not -- there's not a lot of ability for an</p> <p>2 escalator to shake unless it is not stable. The things</p> <p>3 that make it not stable are the chains, the rollers,</p> <p>4 and these cracks are in the midst of the rollers and</p> <p>5 the chain situation.</p> <p>6 Q. And also the motor issue you referred to</p> <p>7 earlier, correct?</p> <p>8 A. That is not really -- that is more of a</p> <p>9 bumping of the escalator itself.</p> <p>10 Q. I'm just trying to make a list of all the</p> <p>11 possible causes of a shaky ride. You're the expert.</p> <p>12 A. Right.</p> <p>13 Q. So, is there anything else on that list we</p> <p>14 have not discussed?</p> <p>15 A. No. No, that's all.</p> <p>16 Q. Okay. In reviewing your reports and</p> <p>17 specifically the items reviewed and considered, it</p> <p>18 appears to me that you were not provided with the</p> <p>19 deposition of the Nevada state inspector,</p> <p>20 James Robertson, that was taken August 21st, 2017; is</p> <p>21 that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Is it your understanding that James Robertson</p> <p>24 was the inspector who came to the Golden Nugget after</p> <p>25 Mr. Brown's fall to inspect and return the escalator to</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Yes, and, as I recall, the next inspection</p> <p>2 was made in a very short time period later and there</p> <p>3 were issues involved in that escalator.</p> <p>4 Q. (BY MS. MCLEOD) But your understanding, that</p> <p>5 after Joe Brown's fall, the escalator was taken out of</p> <p>6 service, correct?</p> <p>7 A. For --</p> <p>8 MR. IQBAL: Objection; form.</p> <p>9 Q. (BY MS. MCLEOD) Until it could be inspected.</p> <p>10 A. I would have assumed that and hoped for that,</p> <p>11 yes. I did not know for sure, no.</p> <p>12 Q. You read the report of the inspection?</p> <p>13 A. Yes.</p> <p>14 Q. Was it silent as to the state of the</p> <p>15 escalator when the inspector encountered it?</p> <p>16 A. I'm not sure. I'd have to reread this</p> <p>17 report.</p> <p>18 Q. Okay. Understanding that you don't have the</p> <p>19 inspector's name memorized, assume with me for purposes</p> <p>20 of this question that it was Mr. Robertson and he was a</p> <p>21 state inspector for the state of Nevada.</p> <p>22 A. Correct.</p> <p>23 Q. Okay?</p> <p>24 A. Yes.</p> <p>25 Q. If the escalator was taken out of service</p>

<p style="text-align: right;">Page 154</p> <p>1 after Joe Brown's fall until Mr. Robertson arrived to 2 the Golden Nugget to inspect it, would his inspection 3 and his deposition testimony be important to you in 4 your analysis of the case? 5 A. It would be important to have that knowledge, 6 yes. 7 Q. Do you believe that reading Mr. Robertson's 8 deposition testimony might change some of the opinions 9 that you've expressed in this case? 10 A. I have no way to know that until I read it. 11 Q. So, it's possible? 12 A. It's possible. It's information, yes. 13 Q. Is it your understanding that all the down 14 escalator steps were replaced in 2012? 15 A. Either all or the greater majority of them is 16 my understanding. I would have to look at the exact 17 number. 18 Q. Based on your review of the documents in this 19 case file, when, following the 2012 step replacement, 20 was the first notice to Golden Nugget that the down 21 escalator steps required attention or replacement? 22 MR. IQBAL: Objection; form, misstates 23 evidence. 24 Q. (BY MS. MCLEOD) Do you understand my 25 question, ma'am?</p>	<p style="text-align: right;">Page 156</p> <p>1 Rebuttal to rebuttal report -- yes. 2 Q. Actually, I believe that's Mr. Turner's 3 report. 4 A. Oh. I'm rebuttalling his report -- oh, 5 June 4th. 6 MS. MCLEOD: Objection of testimony from 7 counsel. 8 A. June 4th. Prepared by Swett and Associates, 9 June 4th. 10 Q. (BY MR. IQBAL) Okay. So, just to be clear 11 for the record, when was the date of your rebuttal 12 report? 13 A. June 4th, 2018. 14 Q. Okay. This discovery was produced 15 July 9th, 2018. Are you clairvoyant? 16 A. I wish. But no, I did not have those. 17 Q. Okay. Can you include in your report 18 documents in discovery that haven't yet been produced? 19 MS. MCLEOD: Objection; argumentative. 20 A. No, I cannot. 21 Q. (BY MR. IQBAL) All right. You made a comment 22 this morning about, quote, you were surprised they did 23 not have quick connects. Can you explain that? 24 A. Quick connects are -- it's very difficult to 25 get an escalator step out. Quick connects are usually</p>
<p style="text-align: right;">Page 155</p> <p>1 A. I do. I'm looking for dates. 2 Q. That's fine. Please take your time. 3 A. There's an email on August -- actually, 4 multiple emails on August 5th. 5 Q. August 5th of what year, ma'am? 6 A. 2015. 7 Q. Thank you. 8 A. Also, August 10th and also June 16th, 2015. 9 I seem to have emails from Larry Panero to Don Hartman 10 copy Scott Olsen. 11 Q. You'd agree with me that all of those dates 12 are after Mr. Brown's fall? 13 A. Yes. I had to count on my fingers. 14 Q. Thank you very much, ma'am. I have no 15 further questions for you. 16 MR. IQBAL: Okay. I have some -- I have 17 some questions. 18 EXAMINATION 19 BY MR. IQBAL: 20 Q. All right. Sheila, the first two exhibits 21 today, Exhibit A and Exhibit B, there was a point made 22 about how they weren't in your report and how your 23 report was incomplete. What was the date of your 24 rebuttal report? 25 A. May 28th -- no -- yes. Wait a minute.</p>	<p style="text-align: right;">Page 157</p> <p>1 put on a couple of the escalator steps so that they 2 come out easily for -- for inspection, for the most 3 part. 4 Q. Okay. And in the escalators that you 5 inspect, do they usually have quick connects? 6 A. Yes, usually a few of them, a few of the 7 steps have them, certainly not all of the steps. But a 8 few of the steps have them so that you can get to the 9 other equipment easily. 10 Q. Okay. Now, you mentioned The "Witham" here 11 in Texas where you saw cracked steps; is that correct? 12 A. Yeah, it's Wortham. I'm sorry. Wortham. 13 Q. Wortham. Is that a commercial building? 14 A. It is a city auditorium. It's where they do 15 symphonies and plays and such. 16 Q. And you inspected that escalator? 17 A. I have. 18 Q. And you found cracked steps? 19 A. Yes. 20 Q. What did you recommend? 21 A. Well, I merely wrote it on the report and 22 turned their escalator off. 23 Q. Okay. Is that your practice when you find 24 cracked steps? 25 A. For cracked steps, yes, because it takes them</p>

<p style="text-align: right;">Page 158</p> <p>1 out of my responsibility and into the owner 2 responsibility.</p> <p>3 Q. Okay. Are you aware that Chris Dutcher, 4 Thyssen's mechanic, inspected the subject escalator on 5 May 7th, 2015?</p> <p>6 A. I'd have to go find that but...</p> <p>7 Q. Okay. I'll represent that the subject 8 incident happened May 12th, 2015.</p> <p>9 A. Okay. That date -- May --</p> <p>10 Q. 7th.</p> <p>11 A. -- 7th. Okay. I'm almost to May.</p> <p>12 Q. For the record, you're -- you're looking at 13 ThyssenKrupp's account history?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. It's not listed in their preventative 17 maintenance portion. But there's more portions that 18 they have. Let me --</p> <p>19 Q. That's fine. It's in his deposition. I'll 20 move along. It's no problem.</p> <p>21 A. Okay.</p> <p>22 Q. If you could turn to Chris Dutcher's 23 deposition testimony.</p> <p>24 A. All right.</p> <p>25 Q. That's in your -- in your files.</p>	<p style="text-align: right;">Page 160</p> <p>1 notice any cracking?</p> <p>2 "ANSWER: No."</p> <p>3 That's through 17.</p> <p>4 Q. Okay. And I'll represent that that 5 inspection happened on May 7th, five days before the 6 accident.</p> <p>7 In your opinion, should he have been 8 looking for cracks?</p> <p>9 A. Yes. It is a known issue with this step, 10 with this unit.</p> <p>11 Q. Okay. On Pages 174 through 175, he testifies 12 that cracks did not form between May 7th and the 13 May 12th incident and that cracks formed sometime 14 before May 7th, 2015. Do you agree with him?</p> <p>15 A. I'd certainly agree, and I represented that.</p> <p>16 Q. Are you aware that Mr. Dutcher made many 17 recommendations between 2012 and 2018 to replace all 18 114 steps on the up and down escalator and that those 19 recommendations were never taken up?</p> <p>20 MS. MCLEOD: Objection; misstates 21 evidence.</p> <p>22 A. I'm aware that there was considerable 23 communications regarding these steps and the need to 24 replace them.</p> <p>25 Q. (BY MR. IQBAL) Okay. Can you turn to</p>
<p style="text-align: right;">Page 159</p> <p>1 A. I have it.</p> <p>2 Q. Okay. If you turn to Page 173, Lines 1 3 through 17.</p> <p>4 A. Okay. I've got it.</p> <p>5 Q. Just read Lines 1 through 17 for me.</p> <p>6 A. "QUESTION: Okay. It says grease all step 7 chain roller assemblies."</p> <p>8 THE REPORTER: Okay. I'm sorry.</p> <p>9 THE WITNESS: Oh, I'm sorry.</p> <p>10 A. "QUESTION: Okay. It says grease all step 11 chain roller assemblies. That's what you were just 12 talking about.</p> <p>13 "ANSWER: Yes, that's why I said all.</p> <p>14 "Okay. At -- at that time, would you 15 have been able to notice cracks in any of the four 16 cracked steps that you found at the end of May?</p> <p>17 "ANSWER: I was not specifically looking 18 for the cracks at that time.</p> <p>19 "QUESTION: All right.</p> <p>20 "ANSWER: I was just looking at the 21 rollers.</p> <p>22 "QUESTION: Okay. So, you just looked 23 at the rollers?</p> <p>24 "ANSWER: Just the rollers.</p> <p>25 "QUESTION: So, at that time, you didn't</p>	<p style="text-align: right;">Page 161</p> <p>1 Page 192 and read Lines 11 through 19.</p> <p>2 A. "QUESTION: Okay. But from 2012, that 3 September 12th recommendation for you to replace all 4 114 steps all the way through 2018 President's Day, 5 your recommendation to replace all 114 steps, that 6 recommendation in and of itself was never taken up, 7 correct?</p> <p>8 "ANSWER: Yes."</p> <p>9 Q. Okay. When you make recommendations 10 following inspections to your clients, in your 11 experience, are your recommendations generally 12 followed? And I'm just talking generally.</p> <p>13 A. As an inspector? As what?</p> <p>14 Q. As an inspector.</p> <p>15 A. As an inspector, according to where I'm at, 16 they must be corrected before they're allowed to get a 17 permit.</p> <p>18 Q. Okay.</p> <p>19 A. But that's not a fail-safe. Sometimes they 20 hire somebody else to say what they want to say.</p> <p>21 Q. Got you. Got you. If you can turn to 22 Page 198 --</p> <p>23 A. Okay.</p> <p>24 Q. -- in Mr. Dutcher's deposition, the answers 25 which he gave under oath. And if you can start on Line</p>

<p style="text-align: right;">Page 162</p> <p>1 5 and read from Line 5 to 20.</p> <p>2 MS. MCLEOD: Objection. A deposition</p> <p>3 speaks for itself. It doesn't need to be reread into</p> <p>4 the record.</p> <p>5 MR. IQBAL: Well, my questions are going</p> <p>6 to be based on that. And that's an improper objection</p> <p>7 at a deposition.</p> <p>8 Q. (BY MR. IQBAL) So, go ahead.</p> <p>9 MS. MASTRANGELO: I'm just going to</p> <p>10 object that it goes beyond the scope. And if it's</p> <p>11 outside her report, it's inappropriate. But go ahead.</p> <p>12 A. "QUESTION: You have been asked already a lot</p> <p>13 of questions about the step replacement on the</p> <p>14 escalators between 2012 recommendations and the 2015</p> <p>15 recommendation. My question is: Assuming that all of</p> <p>16 the steps on the down escalator were replaced in 2012,</p> <p>17 would it be usual or unusual for those steps to be</p> <p>18 cracked in 2015?</p> <p>19 "ANSWER: I'm unsure if they were all</p> <p>20 replaced in 2012. I don't recall that happening.</p> <p>21 "QUESTION: Assume hypothetically for</p> <p>22 purposes of my question that they were.</p> <p>23 "ANSWER: Assume that they were replaced</p> <p>24 in 2012?</p> <p>25 "QUESTION: Correct.</p>	<p style="text-align: right;">Page 164</p> <p>1 would be better, safer to replace all the steps.</p> <p>2 Mr. Dutcher agrees that all steps -- that had all steps</p> <p>3 been replaced in 2012, steps would not have been</p> <p>4 cracked in 2015. I'm in agreement with Mr. Dutcher.</p> <p>5 The cracked steps should have been replaced immediately</p> <p>6 and it would have been a safer option to replace all</p> <p>7 the steps. I believe the cracked steps led to the</p> <p>8 unstable steps Mr. Brown may have encountered which led</p> <p>9 to his accident."</p> <p>10 Q. Okay. If you are on an inspection next week</p> <p>11 and let's hypothetically say you are inspecting an</p> <p>12 escalator with these old KONE steps, hypothetically the</p> <p>13 escalator steps are clean. Would you be looking for</p> <p>14 cracks?</p> <p>15 A. The mechanic should be looking for cracks.</p> <p>16 Q. And if the mechanic found cracks and you were</p> <p>17 there helping move things around, what would you do?</p> <p>18 A. Well, we would certainly look for more</p> <p>19 cracks. It would basically open up the investigation</p> <p>20 of all the steps.</p> <p>21 Q. And if the steps, 40 or however much -- many</p> <p>22 steps had cracks, what would you do?</p> <p>23 A. I would turn it off according to where I'm</p> <p>24 at. If I'm in Texas or Missouri, wherever I'm at,</p> <p>25 contact the authority having jurisdiction in the AHJ.</p>
<p style="text-align: right;">Page 163</p> <p>1 "ANSWER: In that short amount of time,</p> <p>2 they shouldn't crack."</p> <p>3 Q. Then if you turn to your rebuttal report,</p> <p>4 Page 4 of your rebuttal report, Paragraph 2, counsel</p> <p>5 asked you about your very last sentence. But let's</p> <p>6 take a look at your -- at the rest of that paragraph.</p> <p>7 A. Page 4.</p> <p>8 Q. Of your rebuttal.</p> <p>9 A. Okay. Paragraph --</p> <p>10 Q. Paragraph 2.</p> <p>11 A. All right.</p> <p>12 Q. And can you just read that paragraph up to</p> <p>13 the last sentence. Counsel covered the last sentence.</p> <p>14 But if you could read that paragraph up to the last</p> <p>15 sentence.</p> <p>16 A. Is this the numerical two we're talking</p> <p>17 about?</p> <p>18 Q. Yes.</p> <p>19 A. "Mr. Dutcher, TKE mechanic, also states that</p> <p>20 he knows about the step crack issue, but then states he</p> <p>21 doesn't like looking at cracks in the steps. After</p> <p>22 discovering the cracks and notifying TKE, Mr. Dutcher</p> <p>23 repeatedly advised GNL of the importance of replacement</p> <p>24 of the cracked steps. Mr. Dutcher advised not only</p> <p>25 that the 40 cracked steps need to be replaced, but it</p>	<p style="text-align: right;">Page 165</p> <p>1 Tell them I've turned it off. Tell them why I've</p> <p>2 turned it off. Send my report to everybody and let</p> <p>3 them make their own decision.</p> <p>4 Q. Okay. And in reviewing the emails between</p> <p>5 ThyssenKrupp and Golden Nugget, ThyssenKrupp told</p> <p>6 Golden Nugget about cracked steps in 2012, correct?</p> <p>7 A. Yes.</p> <p>8 Q. ThyssenKrupp also told Golden Nugget about</p> <p>9 cracked steps in 2015, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And the steps were not replaced, correct?</p> <p>12 A. Not in that time period.</p> <p>13 Q. Okay. Do you think that's reasonable to let</p> <p>14 lots and lots of folks use an escalator that has</p> <p>15 cracked steps because you're angling for a cheaper bid</p> <p>16 and you want to save a bunch of money?</p> <p>17 MS. MCLEOD: Objection; form,</p> <p>18 argumentative.</p> <p>19 MS. MASTRANGELO: Mischaracterizes and</p> <p>20 lacks foundation as well.</p> <p>21 A. I would hope that they would not. It opens</p> <p>22 them up to a huge amount of liability.</p> <p>23 Q. (BY MR. IQBAL) So, how do you apportion the</p> <p>24 liability here between ThyssenKrupp, which was</p> <p>25 supposedly maintaining and -- maintaining and repairing</p>

<p style="text-align: right;">Page 166</p> <p>1 the escalator, and then Golden Nugget, the owner?</p> <p>2 MS. MASTRANGELO: Objection; form.</p> <p>3 MS. MCLEOD: Objection; calls for a</p> <p>4 legal conclusion, ultimate conclusion by the trier of</p> <p>5 fact.</p> <p>6 A. It is hand-in-hand to me. Honestly, either</p> <p>7 of them could have stopped and almost required it to be</p> <p>8 done. The ultimate is always the owner. They're the</p> <p>9 ones that pay for it and they're the ones that order --</p> <p>10 that allow it to be done. It's their piece of</p> <p>11 equipment.</p> <p>12 Q. (BY MR. IQBAL) Okay. Did you review the</p> <p>13 emails where Golden Nugget kept rejecting bids and</p> <p>14 ThyssenKrupp's repair orders kept getting smaller in</p> <p>15 size?</p> <p>16 A. Yes.</p> <p>17 Q. Do you think that was appropriate?</p> <p>18 A. I -- I do not. I mean, if they felt like</p> <p>19 those steps needed to be replaced, they should have</p> <p>20 held to that.</p> <p>21 Q. Did you see the emails from 2012 and 2015</p> <p>22 where Thyssen was telling Golden Nugget about it being</p> <p>23 a, quote, "serious safety issue for the riding public"?</p> <p>24 A. Yes. And there were multiple. And there</p> <p>25 seemed to be a lot even more concern from Thyssen</p>	<p style="text-align: right;">Page 168</p> <p>1 A. No, I shut it down when we were there. It</p> <p>2 was shut down when I left. The escalator was shut down</p> <p>3 when I left.</p> <p>4 Q. Okay. Are you aware that in Dutcher's</p> <p>5 deposition he -- he testified that the account</p> <p>6 history -- ThyssenKrupp's account history that you were</p> <p>7 just, you know, paging through, that 60 percent of the</p> <p>8 reports and incidents were not recorded anywhere</p> <p>9 because he was, quote, "too busy with multiple runs"?</p> <p>10 MS. MASTRANGELO: Objection;</p> <p>11 mischaracterizes the testimony.</p> <p>12 A. I did see that.</p> <p>13 Q. (BY MR. IQBAL) Okay. Is there an issue with</p> <p>14 that? Do you have an issue with that?</p> <p>15 A. According to our code, all records must be</p> <p>16 kept. According to everything I've ever seen of</p> <p>17 Thyssen's, all records must be kept. And it begins to</p> <p>18 bring about the work overload of the mechanic himself.</p> <p>19 Q. Okay. Now, you've mentioned BEEP, B-E-E-P.</p> <p>20 What is that?</p> <p>21 A. Wait a minute. Basic Elevator Escalator</p> <p>22 Program, I think. It is Thyssen's maintenance control</p> <p>23 plan.</p> <p>24 Q. Okay. Let's -- let's go to Page 4 of your</p> <p>25 rebuttal report. And paragraph Roman Numeral I. Tell</p>
<p style="text-align: right;">Page 167</p> <p>1 asking again and again for a response. So...</p> <p>2 Q. Did you see any responses in the emails that</p> <p>3 you reviewed?</p> <p>4 A. Not for a great deal of time and then the</p> <p>5 response was how much. Then the response was now we</p> <p>6 want the steps we bought to be installed. Give us that</p> <p>7 price.</p> <p>8 Q. Was that reasonable, in your opinion?</p> <p>9 A. I've never seen it happen before on something</p> <p>10 as critical and large as this.</p> <p>11 Q. So, in your mind, if your mechanic finds</p> <p>12 cracks in an escalator, you're going to shut that</p> <p>13 escalator down?</p> <p>14 A. I will shut it down. I don't necessarily</p> <p>15 have the authority, but I will anyway.</p> <p>16 Q. Okay. And in your experience, you were</p> <p>17 talking about the -- starts with -- The Wortham. Your</p> <p>18 mechanic did find cracked steps, yes?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you -- you shut down the</p> <p>21 escalator?</p> <p>22 A. Yes.</p> <p>23 Q. Did you wait many, many weeks or when did you</p> <p>24 shut it down after you found out about the cracked</p> <p>25 steps?</p>	<p style="text-align: right;">Page 169</p> <p>1 me when you're ready.</p> <p>2 A. That one?</p> <p>3 Q. Yes.</p> <p>4 A. Okay.</p> <p>5 Q. That starts out, "Mr. Dutcher, TKE mechanic."</p> <p>6 A. Yes.</p> <p>7 Q. Can you read that first sentence?</p> <p>8 A. Yes. "Mr. Dutcher, TKE mechanic, states in</p> <p>9 his deposition that 60 percent time in -- he did not</p> <p>10 record the maintenance or task in the TKE maintenance</p> <p>11 system because he was too busy."</p> <p>12 Q. Okay. Let's just stop there. And you</p> <p>13 testified that's -- that's a problem, correct?</p> <p>14 A. That is a problem.</p> <p>15 Q. Okay. And just so we have it, can you turn</p> <p>16 to his deposition, Page 79, Line 25. You don't have to</p> <p>17 read the whole thing. But between Page 75, Line 25 and</p> <p>18 Page 80, Line 19.</p> <p>19 MS. MASTRANGELO: Can she just read it</p> <p>20 to herself since you've identified it?</p> <p>21 Q. (BY MR. IQBAL) Can you find where it talks</p> <p>22 about the 60 percent of the reports and incidents?</p> <p>23 A. Okay.</p> <p>24 Q. It's going to be on Page 79. The next one.</p> <p>25 A. That makes it easier.</p>

<p style="text-align: right;">Page 170</p> <p>1 This is where it specifies it's</p> <p>2 60 percent of the time he did not have time to put --</p> <p>3 to record his time and what was actually done. And the</p> <p>4 ones before is a mass of confusion and multiple ways</p> <p>5 and methods he's trying to maintain. But...</p> <p>6 Q. What's the problem with the mechanic who's,</p> <p>7 quote/unquote, "too busy"?</p> <p>8 A. Well, the equipment does not get maintained</p> <p>9 correctly. The mechanic can be in danger because he is</p> <p>10 rushing. The next mechanic that comes along doesn't</p> <p>11 have the information that the first mechanic -- of what</p> <p>12 he did. So, he doesn't -- he either decides upon</p> <p>13 himself what was accomplished and what wasn't or he</p> <p>14 redoes everything. But most important it gives you a</p> <p>15 record of callbacks, a record of what's been going</p> <p>16 wrong and what Mechanic A has been doing to fix it so</p> <p>17 Mechanic B, if the same thing occurs, can either look</p> <p>18 and say, this is how I fixed it or this hasn't worked</p> <p>19 so far, so I needed to do a fresh analysis of what this</p> <p>20 problem is. It's -- records -- maintenance records are</p> <p>21 very important.</p> <p>22 Q. Do you instruct your mechanics to keep good</p> <p>23 maintenance records?</p> <p>24 A. My mechanics do not maintain.</p> <p>25 Q. Okay. If your mechanics maintained or if you</p>	<p style="text-align: right;">Page 172</p> <p>1 mechanic or would the mechanic convey that information</p> <p>2 about serious safety issues to his supervisors?</p> <p>3 MS. MCLEOD: Objection; form, calls for</p> <p>4 speculation.</p> <p>5 A. A lot of it was emails. So, I would think</p> <p>6 that his -- I don't know if it was his supervisor, but</p> <p>7 the people back at the office would then have knowledge</p> <p>8 of it. And apparently there were many instances he</p> <p>9 said he spoke to GNL about it. And there's emails</p> <p>10 asking if he spoke to them about it. So...</p> <p>11 Q. (BY MR. IQBAL) Okay. So, based on the</p> <p>12 documents that you've reviewed, is it your belief that</p> <p>13 supervisors and other individuals at ThyssenKrupp</p> <p>14 beyond Chris Dutcher knew about the safety concerns to</p> <p>15 the riding public?</p> <p>16 A. I don't have a list of his supervisor</p> <p>17 particularly. But I know that people at the office</p> <p>18 knew about it because those emails were going back and</p> <p>19 forth. And it had a ThyssenKrupp address on it.</p> <p>20 Q. Okay. And you say you do -- your company</p> <p>21 does about a hundred inspections a year of escalators?</p> <p>22 A. Of escalators, yeah. We probably do about a</p> <p>23 hundred.</p> <p>24 Q. Okay. And you'll come along on a lot of them</p> <p>25 just to help move stuff?</p>
<p style="text-align: right;">Page 171</p> <p>1 were in charge of, say, a mechanic -- let's say you</p> <p>2 were working at Thyssen or Otis or Schindler and you</p> <p>3 were in charge of mechanics, would you require that</p> <p>4 they keep good records?</p> <p>5 MS. MASTRANGELO: Object to the form,</p> <p>6 foundation.</p> <p>7 A. And that's hypothetical, but anyone that</p> <p>8 knows me would know that they would have to maintain in</p> <p>9 accordance with code.</p> <p>10 Q. (BY MR. IQBAL) Okay. Given Dutcher's</p> <p>11 testimony where 60 percent of the reports and incidents</p> <p>12 weren't recorded anywhere because he was, quote, "too</p> <p>13 busy," would you accept that level of missing</p> <p>14 information?</p> <p>15 A. No, even if it got to the point that he wrote</p> <p>16 it down on a notepad that he carried around in his</p> <p>17 pocket and turned it in every week. There needs to be</p> <p>18 a record.</p> <p>19 Q. Okay. And you're aware -- you've seen the</p> <p>20 emails from 2012 and 2015 about the serious risk to the</p> <p>21 riding public, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Are -- in your experience, would the</p> <p>24 mechanic for Thyssen or whichever servicer was handling</p> <p>25 a given escalator, would that information stay with the</p>	<p style="text-align: right;">Page 173</p> <p>1 A. No, I don't move anything. The mechanic is</p> <p>2 required to move -- to be the one touching all of the</p> <p>3 equipment.</p> <p>4 Q. Got you.</p> <p>5 A. However, the mechanic in our situation, our</p> <p>6 mechanic is also an inspector. But he cannot be an</p> <p>7 inspector on anything he is doing the testing on. So,</p> <p>8 we always have to have at least one other person to be</p> <p>9 the inspector and then I can bring somebody to help</p> <p>10 move stuff, too.</p> <p>11 Q. Got it. Okay. All right. What do you think</p> <p>12 of just general competence levels of third-party</p> <p>13 inspectors and state inspectors, generally, in your</p> <p>14 honest opinion?</p> <p>15 MS. MASTRANGELO: Object to form, lacks</p> <p>16 foundation.</p> <p>17 A. State inspectors as well as AHJs have a very</p> <p>18 difficult problem in that they are well underpaid of</p> <p>19 anyone in the industry. So, they get substandard</p> <p>20 people in there that do that type of work anyway.</p> <p>21 Third-party inspectors occasionally or more often than</p> <p>22 not you run into a difficulty that -- if they -- they</p> <p>23 don't spend the adequate amount of time doing the</p> <p>24 inspection, because they get paid more, they do more</p> <p>25 inspections. It's part of the industry that we've</p>

<p style="text-align: right;">Page 174</p> <p>1 always fought. But it's very difficult to change the 2 culture.</p> <p>3 Q. (BY MR. IQBAL) Okay. You took a look at your 4 photos when we got back and counsel was actually 5 looking at them with you briefly over your shoulder. 6 After looking at the photos, what was -- what was the 7 condition of the pit?</p> <p>8 A. Well, I would have -- I would have considered 9 it not clean. If I get it on a bigger screen, I could 10 probably tell more about it. But it had pit pads in 11 it, which pit pads are there to sop up grease, but they 12 should be removed after they do their job. And it's -- 13 it's a lazy person's -- a lazy mechanic's way of trying 14 to keep his pit clean.</p> <p>15 Q. And you testified that the -- the steps in 16 the warehouse were in sealed boxes, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And when you open up the boxes -- we 19 opened up several boxes -- you saw the actual steps 20 inside, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And what was the condition of those steps?</p> <p>23 A. They were filthy, greasy, grimy. They were 24 in horrible condition.</p> <p>25 Q. Okay. Did they have, like, a coat of filth</p>	<p style="text-align: right;">Page 176</p> <p>1 of the incident, was that sign there?</p> <p>2 A. No, it was not.</p> <p>3 Q. Okay. If you know, why do you think Golden 4 Nugget ignored Mr. Dutcher's recommendations over six 5 years to replace all the steps?</p> <p>6 MS. MASTRANGELO: Objection; form. 7 MS. MCLEOD: Objection; misstates 8 evidence, calls for speculation.</p> <p>9 A. Other than it is an extremely costly 10 correction, I -- I don't know of any other reason.</p> <p>11 Q. (BY MR. IQBAL) Okay. And based on the emails 12 that you reviewed with Thyssen sending and then 13 resending repair orders with less and less budgeted 14 work and smaller and smaller fees, do you get the 15 impression that Nugget was budget-conscious?</p> <p>16 MS. MCLEOD: Objection; calls for 17 speculation. Outside the scope of the expert's 18 designation.</p> <p>19 A. I don't believe Thyssen would have done it 20 had it not been -- had there not been a budget issue.</p> <p>21 Q. (BY MR. IQBAL) You mean Nugget or --</p> <p>22 A. I don't believe Thyssen would have lowered 23 their prices and lowered their scopes had there not 24 been budget issues or cost issues.</p> <p>25 Q. Okay. You're aware that there was a second</p>
<p style="text-align: right;">Page 175</p> <p>1 all over?</p> <p>2 A. Yes.</p> <p>3 MS. MCLEOD: Objection; leading.</p> <p>4 Q. (BY MR. IQBAL) Would it be possible to see 5 cracks in steps if you have a coat of thick filth over 6 a step?</p> <p>7 A. No, you would definitely have to clean the 8 step.</p> <p>9 Q. Based on your visual inspection on the 10 morning of May 2nd, would you say the -- the down 11 escalator at Golden Nugget was a high-use escalator?</p> <p>12 A. We were there very early. But based on other 13 casinos, they do run 24 hours a day. And this was 14 the -- you know, one of the few ways to get from this 15 one level to another. There didn't seem to be multiple 16 paths. So, it was very likely high use. While we were 17 there, everybody was still sleeping. So...</p> <p>18 Q. Okay. And when you inspected, there was a 19 sign for the elevator, correct?</p> <p>20 A. Yes, when I -- yes. It wasn't an inspection.</p> <p>21 Q. I'm sorry. I'm sorry. When you were there 22 on May 2nd, 2018, there was a sign for the elevator, 23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And when you look at the video from the date</p>	<p style="text-align: right;">Page 177</p> <p>1 accident involving the same down escalator 2 approximately two weeks after the accident involving 3 Joe Brown, correct?</p> <p>4 A. I'm aware.</p> <p>5 Q. Okay. You're also aware that that summer of 6 2015, following these two accidents, there were emails 7 in June through August about replacing the steps 8 because of a serious public issue, correct?</p> <p>9 A. Correct. I am aware.</p> <p>10 Q. Okay. And are you aware that there was -- 11 there's no evidence -- and Dutcher testifies to this -- 12 that there's no evidence that critical steps were 13 replaced between June and October of 2015, correct?</p> <p>14 MS. MASTRANGELO: Objection; leading. 15 MS. MCLEOD: Join.</p> <p>16 A. I am aware that that is what he said, and I 17 can't find anything that would contradict that.</p> <p>18 Q. (BY MR. IQBAL) Okay. Is there anything in 19 Thyssen's account record that actually shows the steps 20 were replaced at the end of 2015 or ever?</p> <p>21 A. I think at one point they got something 22 signed very late. But I'd have to get dates on it. I 23 think they had a PO at one point.</p> <p>24 Q. The account record that you were flipping 25 through previously, that should have all maintenance</p>

<p style="text-align: right;">Page 178</p> <p>1 repairs, basically all of the relevant facts of the</p> <p>2 account, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. When you flip through the account record</p> <p>5 history that ThyssenKrupp has provided, can you</p> <p>6 actually see a replacement of steps occurring?</p> <p>7 A. No, I don't think I can. I just -- I only</p> <p>8 see a PO, I believe. But I'm looking. Actually,</p> <p>9 probably in my report. Hold on. Let me find it.</p> <p>10 Possibly October -- possibly October 31st. No, that's</p> <p>11 the 17th. That's the beginning. I don't see that I've</p> <p>12 written it. So, let me look through the report. I</p> <p>13 only have that they weren't replaced until the end of</p> <p>14 2015. So, I'd have to find the actual documentation.</p> <p>15 Q. Okay. I don't have anything else right now.</p> <p>16 Thank you.</p> <p>17 MS. MASTRANGELO: I don't have any other</p> <p>18 questions.</p> <p>19 MS. MCLEOD: Do you have follow-up,</p> <p>20 Rebecca?</p> <p>21 MS. MASTRANGELO: No, ma'am.</p> <p>22 MS. MCLEOD: I have very limited</p> <p>23 follow-up.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 180</p> <p>1 Yes or no, are you critical of how long it took Golden</p> <p>2 Nugget to replace the escalator steps in 2012?</p> <p>3 A. I have to find the 2012 records.</p> <p>4 MS. MASTRANGELO: Are you trying to find</p> <p>5 the record for when they proposed it or when it was</p> <p>6 done?</p> <p>7 THE WITNESS: Both.</p> <p>8 MS. MASTRANGELO: Okay. I'm showing</p> <p>9 December 7, 2012, is when they replaced the steps,</p> <p>10 which is the top entry on the second-to-the-last page</p> <p>11 of those maintenance records, if yours are in the same</p> <p>12 order as mine. I'm not trying to testify. I'm just</p> <p>13 trying to help.</p> <p>14 MR. IQBAL: And your report has the</p> <p>15 repair orders from June of 2012.</p> <p>16 MS. MASTRANGELO: That's the one I</p> <p>17 was -- right there.</p> <p>18 A. Okay. All right. December of 2012 and June</p> <p>19 of 2012 was the first time I said anything about them</p> <p>20 being asked for, almost six months. According to KONE</p> <p>21 Spares, that's an off -- off-the-shelf item. If it was</p> <p>22 my -- if it was my equipment, I would have made sure it</p> <p>23 got a lot quicker than that. But...</p> <p>24 Q. (BY MS. MCLEOD) So, yes, you're critical?</p> <p>25 A. Yes, I'm critical. Six months is too much</p>
<p style="text-align: right;">Page 179</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MS. MCLEOD:</p> <p>3 Q. Ma'am, you testified that you were critical</p> <p>4 of how long it took Golden Nugget to replace the steps</p> <p>5 in 2012, correct?</p> <p>6 MR. IQBAL: Objection; form, misstates</p> <p>7 testimony.</p> <p>8 A. I think it's 2015 was when I was most</p> <p>9 critical. The notification, in 2012.</p> <p>10 Q. (BY MS. MCLEOD) There we go.</p> <p>11 A. Okay.</p> <p>12 Q. I will reask the question. I was trying to</p> <p>13 save us some time.</p> <p>14 A. Not going to happen.</p> <p>15 Q. We'll do it step by step.</p> <p>16 Ma'am, are you critical of how long it</p> <p>17 took Golden Nugget to replace the steps in 2012, yes or</p> <p>18 no?</p> <p>19 A. The -- there appears to be a repair order in</p> <p>20 2012 that is in a decent time frame.</p> <p>21 Q. So, you are not critical?</p> <p>22 MR. IQBAL: Objection.</p> <p>23 A. I would have to look at what that PO says.</p> <p>24 Q. (BY MS. MCLEOD) I need you to look at</p> <p>25 whatever you need to look at to answer my question.</p>	<p style="text-align: right;">Page 181</p> <p>1 time.</p> <p>2 Q. Okay. How long -- how many steps were</p> <p>3 replaced in 2012?</p> <p>4 A. I guess I have to find POs for that.</p> <p>5 Q. I'll see if I can make things faster.</p> <p>6 Perhaps it won't work.</p> <p>7 A. That will be helpful.</p> <p>8 Q. Do you understand that more than 50 steps</p> <p>9 were replaced in 2012?</p> <p>10 A. I do not understand how many. That would be</p> <p>11 on the PO.</p> <p>12 Q. Okay.</p> <p>13 A. No, it does not have it on this right here.</p> <p>14 MR. IQBAL: Again, just trying to be</p> <p>15 helpful like Rebecca was doing. The closest in time</p> <p>16 repair order is from October 2nd, 2012.</p> <p>17 A. October 2nd, which is also the amount that</p> <p>18 was the smallest of the last POs that I was looking at,</p> <p>19 on October 2nd, they said that 30 steps had cracks, but</p> <p>20 they also said on two escalators. They replaced 58</p> <p>21 steps only on the down escalator unit.</p> <p>22 Q. (BY MS. MCLEOD) How many steps does the down</p> <p>23 escalator have?</p> <p>24 A. More than 58. But I would have to count</p> <p>25 them. That's the only way you can tell, honestly.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. You don't believe that there are 58 steps on 2 the down escalator?</p> <p>3 A. Oh, no. I said I would have to count them.</p> <p>4 Q. Okay.</p> <p>5 A. But, yeah, 58 were done and they salvaged 6 uncracked steps from the down escalator to put on the 7 up escalator.</p> <p>8 MR. IQBAL: Is that what happened or is 9 that in the report?</p> <p>10 Q. (BY MS. MCLEOD) So, at least 58 --</p> <p>11 THE REPORTER: I'm sorry.</p> <p>12 Q. (BY MS. MCLEOD) At least 58 steps were 13 replaced, correct?</p> <p>14 A. On the down --</p> <p>15 MR. IQBAL: Objection; misstates 16 evidence. It's a proposal, not what actually happened.</p> <p>17 A. Right. It's a repair order.</p> <p>18 Q. (BY MS. MCLEOD) Okay. I believe that 58 19 steps were replaced.</p> <p>20 MR. IQBAL: Objection.</p> <p>21 Q. (BY MS. MCLEOD) How many steps do you believe 22 were replaced, ma'am?</p> <p>23 MR. IQBAL: Objection. Counsel is 24 testifying. Misstates evidence. It is taking a 25 proposal --</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. If you don't, that's fine.</p> <p>2 A. I don't know. There's no evidence of number.</p> <p>3 Q. Okay. Assume, hypothetically, for purposes 4 of my question --</p> <p>5 A. Okay.</p> <p>6 Q. -- okay -- that over 58 -- over 50 steps were 7 replaced.</p> <p>8 A. Okay.</p> <p>9 Q. In your experience, how long would it take to 10 get those parts in?</p> <p>11 A. According to KONE, it says they're 12 off-the-shelf parts. I would have to call KONE Spares 13 and ask. But they say it's off the shelf.</p> <p>14 Q. In your experience, how long does it take to 15 get off-the-shelf parts to your location?</p> <p>16 A. Four weeks.</p> <p>17 Q. I'm sorry?</p> <p>18 A. Four weeks.</p> <p>19 Q. Four weeks.</p> <p>20 You were asked about the expense for the 21 step replacement. Directing your attention to Page 2 22 of your report at the top of that document, isn't it 23 true that you've reviewed a purchase order from the 24 Golden Nugget for an amount in excess of \$89,000 25 relating to the step replacement in 2012?</p>
<p style="text-align: right;">Page 183</p> <p>1 MS. MCLEOD: I'm allowing the --</p> <p>2 MR. IQBAL: -- multiple --</p> <p>3 MS. MCLEOD: I'm allowing the witness to 4 answer --</p> <p>5 MR. IQBAL: Can I --</p> <p>6 THE REPORTER: Okay. I'm sorry. I'm 7 sorry. I'm not getting any of this.</p> <p>8 MR. IQBAL: Can I finish my objection? 9 Objection; misstates evidence. Taking multiple repair 10 orders with proposals as actual facts and actual 11 replacements is improper and it is also inconsistent 12 with the account history.</p> <p>13 MS. MASTRANGELO: Well, to add on to 14 that, I think the witness was asked and she was looking 15 for a PO, not a proposal. So, that's what we should be 16 looking at.</p> <p>17 A. Or, I guess, a signed one would also be okay. 18 But we don't have one of those.</p> <p>19 Because there's, one month earlier, 20 there is a proposal for more that has a signature, but 21 no signature on Golden Nugget's side. It has Thyssen's 22 request.</p> <p>23 Q. (BY MS. MCLEOD) My question was: How many 24 steps were replaced? Do you know?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 185</p> <p>1 A. That was the first proposal. Let me get to 2 that and I will look at that proposal for \$89,000.</p> <p>3 Q. That's fine. But you reference it 4 specifically at the top of Page 2 of your report as a 5 purchase order, not a proposal.</p> <p>6 A. Right. It's got to be in here because it's 7 got a PO number.</p> <p>8 Q. I'm sorry?</p> <p>9 A. It has to be here because it's a PO number.</p> <p>10 MS. MASTRANGELO: I can show you my copy 11 to speed this up.</p> <p>12 THE WITNESS: Yay.</p> <p>13 MS. MASTRANGELO: Purchase Order 19266. 14 Is that it?</p> <p>15 THE WITNESS: Yes, that's the 16 one that --</p> <p>17 MS. MASTRANGELO: There you go.</p> <p>18 THE WITNESS: Ah. Bingo.</p> <p>19 A. 118 steps for both escalators. Yes.</p> <p>20 Q. (BY MS. MCLEOD) And that was in 2012, 21 correct, ma'am?</p> <p>22 A. Correct.</p> <p>23 Q. Thank you very much. I have no further 24 questions.</p> <p>25</p>

<p style="text-align: right;">Page 186</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. IQBAL:</p> <p>3 Q. What was -- what was the month of that</p> <p>4 purchase order?</p> <p>5 A. September -- the date of it is September 28th</p> <p>6 of 2012.</p> <p>7 Q. There's no evidence that the steps were</p> <p>8 actually replaced in September, correct?</p> <p>9 A. I think we got to the end of October or</p> <p>10 something. I don't know that I've got that.</p> <p>11 Q. Okay. And in the account history, it only</p> <p>12 shows a replacement in December?</p> <p>13 A. Yes.</p> <p>14 Q. In December of 2012, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you recall Chris Dutcher's testimony</p> <p>17 where he said, between 2012 and 2018, his</p> <p>18 recommendation to replace all 114 steps was never</p> <p>19 taken, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall that?</p> <p>22 A. He did say that.</p> <p>23 Q. Okay. So, you recall that all of the steps</p> <p>24 were never actually replaced, correct?</p> <p>25 MS. MCLEOD: Objection; misstates</p>	<p style="text-align: right;">Page 188</p> <p>1 Madam Reporter, I would like a copy of</p> <p>2 the transcript. An e-tran is fine at the email address</p> <p>3 I gave you earlier.</p> <p>4 MS. MASTRANGELO: Sheila, do you want to</p> <p>5 review?</p> <p>6 THE WITNESS: Yes, please.</p> <p>7 THE REPORTER: Anything else?</p> <p>8 Off the record?</p> <p>9 MS. MASTRANGELO: Off the record.</p> <p>10 (Deposition concluded at 4:34 p.m.)</p> <p>11 (Signature Required)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 187</p> <p>1 evidence, leading.</p> <p>2 A. I do not have the document that said that</p> <p>3 they were replaced. I have a PO.</p> <p>4 Q. (BY MR. IQBAL) Yes.</p> <p>5 A. Nor do I have a check that said they were.</p> <p>6 But...</p> <p>7 Q. Okay. Let's -- let's go to Page 192 of</p> <p>8 Mr. Dutcher's deposition. Are you aware that he was</p> <p>9 the mechanic from Thyssen assigned to this down</p> <p>10 escalator from 2012 to 2018?</p> <p>11 A. That's correct. Yes, I'm aware. Okay.</p> <p>12 Q. So, Page 192, Lines 11 through 19. Can you</p> <p>13 read those lines into the record and then I'm done?</p> <p>14 A. Okay. "QUESTION: Okay. But from 2012, that</p> <p>15 September 12th recommendation from -- for you to</p> <p>16 replace all 114 steps all the way through 2018,</p> <p>17 President's Day, your recommendation to replace all 114</p> <p>18 steps, that recommendation in and of itself was never</p> <p>19 taken up?</p> <p>20 "ANSWER: Yes."</p> <p>21 MR. IQBAL: Okay. All right. No</p> <p>22 further questions.</p> <p>23 MS. MASTRANGELO: I don't have anything</p> <p>24 else.</p> <p>25 MS. MCLEOD: Nothing further for me.</p>	<p style="text-align: right;">Page 189</p> <p>1 STATE OF TEXAS)</p> <p>2 COUNTY OF HARRIS)</p> <p>3</p> <p>4 REPORTER'S CERTIFICATION</p> <p>5 TO THE DEPOSITION OF</p> <p>6 SHEILA NABORS SWETT</p> <p>7 TAKEN ON OCTOBER 1ST, 2018</p> <p>8</p> <p>9 I, Janel R. Wilson, Certified Shorthand Reporter</p> <p>10 in and for the State of Texas, hereby certify that this</p> <p>11 deposition transcript is a true record of the testimony</p> <p>12 given by the witness named herein, after said witness</p> <p>13 was duly sworn by me.</p> <p>14 I further certify that I am neither attorney nor</p> <p>15 counsel for, nor related to, nor employed by any of the</p> <p>16 parties or attorneys in the action in which this</p> <p>17 proceeding was taken. Further, I am not a relative or</p> <p>18 employee of any attorney of record in this cause, nor</p> <p>19 do I have a financial interest in the action.</p> <p>20 Certified to by me on this 15th day of</p> <p>21 October, 2018.</p> <p>22 <i>Janel R. Wilson</i></p> <p>23</p> <p>24 Janel R. Wilson, CSR</p> <p>25 Texas CSR 7517</p> <p>Expiration: 12/31/2018</p> <p>Litigation Services and</p> <p>Technologies of Nevada, LLC</p> <p>Firm Registration No. 726</p> <p>3770 Howard Hughes Parkway</p> <p>Suite 300</p> <p>Las Vegas, Nevada 89169</p> <p>(800) 330-1112</p>

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5		I declare under penalty of perjury that I have read the		
6		foregoing _____ pages of my testimony, taken		
7		on _____ (date) at		
8		_____ (city), _____ (state),		
9				
10		and that the same is a true record of the testimony given		
11		by me at the time and place herein		
12		above set forth, with the following exceptions:		
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EXHIBIT C

JNB01405

DISTRICT COURT

CLARK COUNTY, NEVADA

CERTIFIED COPY

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. A-16-739887-C

Dept. No. XXXI

DEPOSITION OF JAMES STEPHEN ROBERTSON

LAS VEGAS, NEVADA

MONDAY, AUGUST 21, 2017

at 2:11 p.m.

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

JOB NO: 277

<p style="text-align: right;">Page 2</p> <p>1 DEPOSITION OF JAMES STEPHEN ROBERTSON, 2 taken at 700 South Third Street, Las Vegas, Nevada, 3 on Monday, August 21, 2017, at 2:11 p.m., before Lisa 4 Makowski, Certified Court Reporter, in and for the 5 State of Nevada. 6 7 APPEARANCES: 8 For the Plaintiffs: 9 IQBAL LAW PLLC 10 BY: MOHAMED A. IQBAL, JR., ESQ. 101 Convention Center Drive 11 Suite 1175 11 Las Vegas, Nevada 89109 12 (484)680-6981 12 Mai@ilawlv.com 13 For Thyssenkrupp Elevator Corporation: 14 ROGERS, MASTRANGELO, CARVALHO & 14 MITCHELL 15 BY: WILLIAM CLARK MITCHELL, ESQ. 15 700 South Third Street 16 Las Vegas, Nevada 89101 16 (702)383-3400 17 wmitchell@rmcmlaw.com 18 18 For Defendant GNL: (via teleconference) 19 20 GRANT & ASSOCIATES 20 BY: ANNALISA N. GRANT, ESQ. 21 7455 Arroyo Crossing Parkway 21 Suite 300 21 Las Vegas, Nevada 89113 22 (702)940-3529 22 Annalisa.grant@aig.com 23 * * * * * 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 LAS VEGAS, NEVADA, MONDAY, AUGUST 21, 2017 2 2:11 P.M. 3 -o0o- 4 5 (The court reporter requirements under 6 Rule 30(b)(4) of the Nevada Rules of 7 Civil Procedure were waived.) 8 9 JAMES STEPHEN ROBERTSON, 10 having been first duly sworn, did testify as follows: 11 EXAMINATION 12 BY MR. MITCHELL: 13 Q. All right. Good afternoon, 14 Mr. Robertson. 15 Is it okay if I call you Steve? 16 A. Yes. 17 Q. Great. I'm Will. I represent 18 ThyssenKrupp, who I'm sure you are very familiar 19 with. 20 A. Oh, yes. I worked for them a long time. 21 Q. You did? 22 A. Yes. 23 Q. How long did you work for them for? 24 A. About five years, before I retired. 25 Q. Okay. And will you state and spell your</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 WITNESS PAGE 3 JAMES STEPHEN ROBERTSON 4 Examination by Mr. Mitchell 4 5 Examination by Mr. Iqbal 21 6 Further Examination by Mr. Mitchell 75 7 Further Examination by Mr. Iqbal 78 8 9 INDEX OF EXHIBITS 10 EXHIBIT PAGE 11 Exhibit 1 Accident Report 16 12 Exhibit 2 Report 20 13 -o0o- 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 name for the record, Steve. 2 A. My legal name is James Stephen, 3 S-T-E-P-H-E-N, Robertson, R-O-B-E-R-T-S-O-N. 4 Q. Is your dad named James? 5 A. Yes. Yeah. That way my mom didn't have 6 to holler for Steve or James and get both of us. 7 Q. Makes sense. 8 And what is your current title with the 9 State? 10 A. Let's see. They have changed our 11 description several times. 12 Q. Okay. 13 A. I think right now we are mechanical 14 compliance division. 15 Q. Okay. 16 A. If you want -- 17 Q. Thank you. 18 Have you ever been deposed before? 19 A. Yes. 20 Q. Roughly how many times? 21 A. Twice, I believe. 22 Q. Okay. I'll just -- since you have been 23 deposed twice, I will kind of gloss over the 24 admonitions that we typically give. 25 But you understand you are under an oath</p>

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1 to tell the truth as you would be in court of law,
 2 which carries all the same penalties of perjury?
 3 A. Yeah.
 4 Q. We try not to talk over one another. I
 5 don't think that we are going to have a problem
 6 with that. You seem to be able to listen to my
 7 questions and answer afterwards.
 8 A. Yes.
 9 Q. Great. We don't want to talk over each
 10 other.
 11 And if you don't understand any of my
 12 questions today -- I'm bound to ask some confusing
 13 ones or word them poorly. If you ask me to
 14 reclarify or reask the question, I'm happy to do
 15 it.
 16 A. Okay.
 17 Q. Thanks, Steve.
 18 Have you ever testified in trial?
 19 A. No.
 20 Q. Roughly when were you deposed in those
 21 other cases?
 22 A. Let's see. It has been five or six
 23 years.
 24 Q. Were they pretty close to one another?
 25 A. Yeah, within the one-year period.

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1 Q. Okay.
 2 A. And they were both in California.
 3 Q. Do you service elevators in California
 4 and escalators, or were you living out there at the
 5 time?
 6 A. I was living out there at the time.
 7 Q. Were they elevators or escalators in
 8 those cases?
 9 A. One elevator and one escalator.
 10 Q. Okay.
 11 I just want to get into your background a
 12 little bit.
 13 When did you get into the elevator
 14 industry?
 15 A. '88.
 16 Q. So some -- I mean, you were already an
 17 adult when you got into the elevator industry then?
 18 A. Oh, yeah.
 19 Q. And what was your first job there?
 20 A. Basically, cleaning, painting, sweeping.
 21 Q. For what company was this?
 22 A. I started off with Associates Elevator.
 23 They have since been bought out and disposed of.
 24 Q. Okay. And was this in California or
 25 Nevada?

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1 A. California.
 2 Q. What part?
 3 A. L.A.
 4 Q. Okay. And then just kind of walk me
 5 through to present day, briefly. I mean, did you
 6 move up there, did you move companies, and how were
 7 you involved in the elevator industry?
 8 A. Okay. I started out there in '88, worked
 9 out there for I think about four years; moved back
 10 to Indiana, worked there for about three years;
 11 moved back to California, worked another ten years,
 12 and then went to Nevada.
 13 Q. And about in 2005 you came to Nevada; is
 14 that right?
 15 The only reason I bring that up, you said
 16 you were deposed in those cases about five or six
 17 years ago in California?
 18 A. Uh-huh.
 19 Q. So you may have been in California for
 20 longer than ten years; does that sound right?
 21 A. Could be.
 22 Q. Okay.
 23 A. Because I moved back and forth, you know,
 24 wherever the work was plentiful.
 25 Q. Okay. Who did you work for in Indiana?

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1 A. Schindler Corporation, KONE Corporation,
 2 Otis, and Mallar, which became Schindler.
 3 Q. Were you a mechanic for them? Were you
 4 doing the painting, cleaning, sweeping for them?
 5 What did you do in Indiana?
 6 A. I was a full mechanic, and I was doing
 7 service and some modernizations.
 8 Q. Modernizations?
 9 A. Yeah.
 10 Q. What about when you moved back to
 11 California in 1995, who were you working for?
 12 A. Otis.
 13 Q. Also as a mechanic?
 14 A. Yes.
 15 Q. And then throughout that roughly ten
 16 years that you were in California, did you keep
 17 working with Otis or did you work with different
 18 companies?
 19 A. No. Basically, I worked for Otis the
 20 whole time. There was a couple of jobs that Otis
 21 did as they would sub it out to a second company.
 22 Q. Sure.
 23 A. But we actually did the work. So we got
 24 paid through a second company. But basically, I
 25 worked for Otis, you know, the whole time.

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

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

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

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1 guy. And then he goes through all of his
 2 preliminaries and stuff, and then he goes back and
 3 looks at what happened, and then he says, oh, okay,
 4 we had an accident, you know, and will call it in.
 5 Sometimes they try to call it in. They
 6 call the wrong number. Because we have a specific
 7 line for accidents, and if they call the office,
 8 they don't get anything but a recording. And then
 9 it is, you know followed up from that recording,
 10 you know, the next day.
 11 Q. Right, but it should have been reported
 12 that day is your position; right?
 13 A. Yes. Yes.
 14 Q. And it wasn't?
 15 A. I don't know.
 16 Q. Okay. It looks like, from your report,
 17 it was reported on the 13th; correct?
 18 A. Yes. That's when I got the report or...
 19 Q. Okay. Now, when you went and talked to
 20 security and you saw the video, how long was the
 21 video?
 22 A. The part that I looked at was probably
 23 five minutes.
 24 Q. Five minutes?
 25 A. Yes.

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1 Q. Okay.
 2 A. Because what they do, they go a half hour
 3 before, half hour after the incident, and then
 4 rather than sit there and watch people get on and
 5 off and everything, they narrow it down to where he
 6 gets on the escalator, falls, and then afterwards,
 7 you know, so we can see what the escalator was
 8 doing after he had his accident.
 9 Q. Okay. Okay. So you saw five minutes and
 10 that five minutes you saw was continuous?
 11 A. Yes.
 12 Q. Okay. And what was the angle of the
 13 video?
 14 A. It was down and probably 30-degree angle
 15 looking down and to the side. It wasn't exactly
 16 straight down. It was kind of off to the side a
 17 little bit.
 18 Q. Right.
 19 A. But it was looking down at the escalator.
 20 Q. The escalator. So you could see folks
 21 getting on.
 22 And then with the angle of the video,
 23 could you see the entire ride down and then them
 24 getting off the escalator?
 25 A. No. It only -- we only saw halfway down.

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1 Q. Okay.
 2 A. And then the other camera at the bottom
 3 showed the ride down.
 4 Q. Okay. So if you take an escalator ride
 5 as, you know, from top to bottom, the Golden Nugget
 6 has at least two cameras, one camera to cover
 7 getting on the escalator --
 8 A. Uh-huh.
 9 Q. -- and then one camera to cover folks
 10 getting off the escalator?
 11 A. Correct.
 12 Q. And that five minutes that you saw was
 13 from the top camera or from the bottom camera or a
 14 combination?
 15 A. From the top camera.
 16 Q. From the top camera.
 17 Did you see any video from the bottom
 18 camera?
 19 A. No. I didn't request it.
 20 Q. Okay. Are you aware if the Golden Nugget
 21 has the video from the bottom?
 22 A. Yes. They should have it, because normal
 23 operation, they record it, put on disk, and save
 24 it.
 25 Q. Okay. So that's -- is that a state law

Page 25

1 or just good practice that when you have an
 2 accident, you should hold on to the video?
 3 A. Good practice.
 4 Q. Okay. And in your opinion, the Golden
 5 Nugget and the other casinos in Clark County, they
 6 hold on to all the videos?
 7 A. Yeah, as far as I know.
 8 Q. Now, of the 30 to 40 accidents that you
 9 have inspected in Clark County, how many of them
 10 occurred on Golden Nugget properties?
 11 A. I think three or four.
 12 Q. Three or four. Okay.
 13 Involving escalators or elevators?
 14 A. Escalators.
 15 Q. Escalators.
 16 A. Yes.
 17 Q. Any at that specific property?
 18 A. Yes.
 19 Q. Okay. How many at that property?
 20 A. The four.
 21 Q. Oh, all four?
 22 A. That's what I was talking about, the
 23 Golden Nugget Laughlin.
 24 Q. Okay. So four accidents that you have
 25 inspected --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 REPORTER'S DECLARATION
2 STATE OF NEVADA)
3 COUNTY OF CLARK)
4 I, Lisa Makowski, CCR No. 345, declare as
5 follows:
6 That I reported the taking of the deposition of
7 the witness, JAMES STEPHEN ROBERTSON, commencing on
8 Monday, August 21, 2017, at the hour of 2:11 p.m.
9 That prior to being examined, the witness was by
10 me duly sworn to testify to the truth, the whole
11 truth, and nothing but the truth; that, before the
12 proceedings' completion, the reading and signing of
13 the deposition not has been requested by the deponent
14 or a party.
15 That I thereafter transcribed said shorthand
16 notes into typewriting and that the typewritten
17 transcript of said deposition is a complete, true and
18 accurate transcription of said shorthand notes taken
19 down at said time.
20 I further declare that I am not a relative or
21 employee of any party involved in said action, nor a
22 person financially interested in the action.
23 Dated at Las Vegas, Nevada this 15th day of
24 September, 2017.
25 _____
 Lisa Makowski, CCR 345